

5-20-2009

Credit Bureau of E. Idaho, Inc. v. Lecheminant Clerk's Record v. 1 Dckt. 36381

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Supreme Court No.
Volume No. 1

Vol. 1 of 1

COPY

LAW CLERK
IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

CREDIT BUREAU OF
EASTERN IDAHO, INC., an
Idaho Corporation

PLAINTIFF-
And
APPELLANT

Vs

JEFF LECHEMINANT and
LISA LECHEMINANT

DEFENDANT-
And
RESPONDENT

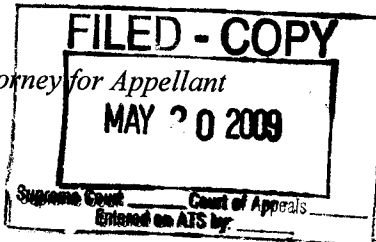
*Appealed from the District Court of the Seventh Judicial
District of the State of Idaho, in and for Madison County*

Honorable Brent J Moss District Judge

*Bryan D Smith
PO Box 50731
Idaho Falls, ID 83405-0731*

*Marvin M Smith
PO Box 51630
Idaho Falls, ID 83405-1630*

Attorney for Appellant



Attorney for Respondent

Filed this the day of , 2009

36381

Clerk
Deputy

IN THE SUPREME COURT OF THE STATE OF IDAHO

CREDIT BUREAU OF EASTERN IDAHO)
INC., an Idaho Corporation)
PLAINTIFF-)
APPELLANT)

VS)

JEFF LECHEMINANT and LISA)
LECHEMINANT)
DEFENDANT-)
RESPONDENT)

SUPREME Court NO. 36381-2009

CASE NO. CV-06-130

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the 7th Judicial District of the State of Idaho, in and for
THE
COUNTY OF MADISON
BRENT J. MOSS
DISTRICT JUDGE

Bryan D Smith
PO Box 5073
Idaho Falls, ID 83405-0731

ATTORNEY
FOR APPELLANT

Marvin M. Smith
PO Box 51630
Idaho Falls, ID 83405-1630

ATTORNEY
FOR RESPONDENT

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Credit Bureau Of Eastern Idaho, Inc vs. Jeff D Lecheminant, Lisa Lecheminant

Date	Code	User	Judge
2/14/2006	NCOC	ANGIE	New Case Filed - Other Claims
		ANGIE	Filing: B1 - Civil Complaint, More Than \$300, Not > \$1000 No Prior Appearance Paid by: Smith, Bryan D (attorney for Credit Bureau Of Eastern Idaho, Inc) Receipt number: 0103263 Dated: 2/15/2006 Amount: \$62.00 (Check)
	SMIS	ANGIE	Summons Issued Jeff D Lecheminant
	SMIS	ANGIE	Summons Issued Lisa Lecheminant
3/28/2006	AFSR	GWEN	Affidavit Of Service Jeff Lecheminant
	AFSR	GWEN	Affidavit Of Service Lisa Lecheminant
	APED	GWEN	Application For Entry Of Default
	APDJ	GWEN	Application for Default Judgment
	ADFT	GWEN	Affidavit In Support Of Default
	DEFAULT	GWEN	Default
	ORDD	GWEN	Order For Default And Judgment
	DFJD	GWEN	Default Judgment Entered Without Hearing \$833.16
	ABSTRACT	GWEN	Abstract of Judgment
	CDIS	GWEN	Civil Disposition entered for: Lecheminant, Jeff D, Defendant; Lecheminant, Lisa, Defendant; Credit Bureau Of Eastern Idaho, Inc, Plaintiff. order date: 3/28/2006
4/7/2006	AACG	GWEN	Application and Affidavit for Writ of Continuing Garnishment
	OFOR	GWEN	Order For Issuance of Continuing Garnishment
	WRIT	GWEN	Writ Issued
		GWEN	Miscellaneous Payment: Writs Of Execution Paid by: Bryan Smith Receipt number: 0104298 Dated: 4/7/2006 Amount: \$2.00 (Check)
7/17/2006	WRRT	GWEN	Writ Returned
7/31/2006	APPL	GWEN	Application for Order of Examination
	ORDR	GWEN	Order of Examination (Bonneville County)
	ORDR	GWEN	Order of Examination (Bonneville County)
9/28/2006	APCG	KRIS	Application For Continuing Garnishment
	AFFD	KRIS	Affidavit of Bryan D Smith in Support of Application For Order of Continuing Garnishment
	WRIT	KRIS	Writ Issued
		KRIS	Miscellaneous Payment: Writs Of Execution Paid by: Bryan Smith Receipt number: 0108131 Dated: 10/2/2006 Amount: \$2.00 (Check)
1/18/2007	APPL	GWEN	Application for Order of Continuing Garnishment
ROA	AFFD	GWEN	Affidavit of Bryan D Smith in Support of Writ of Execution

Credit Bureau Of Eastern Idaho, Inc vs. Jeff D Lecheminant, Lisa Lecheminant

Date	Code	User		Judge
1/18/2007	ORDR	GWEN	Order for Garnishment (recieved)	Mark S. Rammell
	WRIT	GWEN	Writ Issued	Mark S. Rammell
		GWEN	Miscellaneous Payment: Writs Of Execution Paid by: Bryan Smith Receipt number: 0000366 Dated: 1/18/2007 Amount: \$2.00 (Check)	Mark S. Rammell
9/21/2007	AFFD	GWEN	Affidavit in Support of writ of Execution	Mark S. Rammell
	WRIT	GWEN	Writ Issued	Mark S. Rammell
		GWEN	Miscellaneous Payment: Writs Of Execution Paid by: Bryan Smith Receipt number: 0005428 Dated: 9/21/2007 Amount: \$2.00 (Check)	Mark S. Rammell
10/17/2007	MOTN	GWEN	Motion to Contest Claim of Exemption	Mark S. Rammell
	BREF	GWEN	Brief in Support of Motion to Contest Claim of Exemption	Mark S. Rammell
	NOTH	GWEN	Notice Of Hearing	Mark S. Rammell
	ORDR	GWEN	Order (received) Not signed	Mark S. Rammell
10/18/2007	HRSC	GWEN	Hearing Scheduled (Motion for Claim of Exemption 10/23/2007 11:30 AM)	Mark S. Rammell
	MISC	GWEN	Request to Appear telephonically	Mark S. Rammell
10/19/2007	MEMO	KRIS	Memorandum in Opposition to Motion to Contet Claim of Exemption	Mark S. Rammell
10/22/2007	MEMO	GWEN	Memorandum in Opposition to Motion to Contest Claim of Exemption	Mark S. Rammell
10/23/2007	HRHD	KRIS	Hearing result for Motion for Claim of Exemption held on 10/23/2007 11:30 AM: Hearing Held Writ Recinded	Mark S. Rammell
10/30/2007	ORDR	GWEN	Order Granting Request to Appear Telephonically	Mark S. Rammell
10/31/2007	WRRT	GWEN	Writ Returned	Mark S. Rammell
2/21/2008	ORDR	GWEN	Order	Mark S. Rammell
2/28/2008	APDC	GWEN	Appeal Filed In District Court	Mark S. Rammell
		GWEN	Filing: R1C - Appeals And Transfers Magistrate To District Other Cv/sp Appeals Paid by: Smith, Bryan D (attorney for Credit Bureau Of Eastern Idaho, Inc) Receipt number: 0008372 Dated: 2/28/2008 Amount: \$53.00 (Check) For: Credit Bureau Of Eastern Idaho, Inc (plaintiff)	Brent J. Moss
3/3/2008	ORDR	GWEN	Order Governing Procedure on Appeal	Brent J. Moss
4/8/2008	STIP	GWEN	Stipulation Governing Porcedure on Appeal	Brent J. Moss
4/10/2008	ORDR	GWEN	Order	Brent J. Moss
5/15/2008	BREF	GWEN	Plaintiff's Brief on Appeal	Brent J. Moss
3/11/2008	BREF	GWEN	Respondent's Brief on Appeal	Brent J. Moss
7/8/2008	BREF	KRIS	Plaintiff's Reply Brief on Appeal	Brent J. Moss

Date: 4/1/2009

Seventh Judicial District Court - Madison County

User: GWEN

Time: 02:01 PM

ROA Report

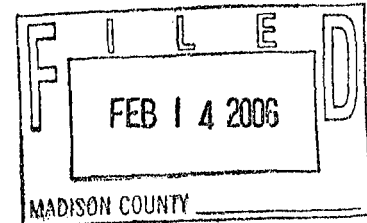
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Case: CV-2006-0000130 Current Judge: Brent J. Moss
Credit Bureau Of Eastern Idaho, Inc vs. Jeff D Lecheminant, etal.

Credit Bureau Of Eastern Idaho, Inc vs. Jeff D Lecheminant, Lisa Lecheminant

Date	Code	User		Judge
9/30/2008	HRSC	ANGIE	Hearing Scheduled (Motion 10/20/2008 10:00 AM)	Brent J. Moss
10/1/2008	NOTH	GWEN	Notice Of Hearing	Brent J. Moss
10/6/2008	MOTN	GWEN	Motion to Reschedule hearing	Brent J. Moss
	AFFD	GWEN	Affidavit of Marvin M Smith	Brent J. Moss
	ORDR	GWEN	Order on Motion to Reschedule Hearing (received)	Brent J. Moss
10/9/2008	NOTH	KRIS	Amended Notice Of Hearing	Brent J. Moss
10/10/2008	HRSC	KRIS	Hearing Scheduled (Hearing 12/08/2008 10:00 AM) Notice of Appeal	Brent J. Moss
12/8/2008	MINE	ANGIE	Minute Entry Hearing type: Hearing Hearing date: 12/8/2008 Time: 10:33 am Court reporter: David Marlow	Brent J. Moss
	DCHH	ANGIE	Hearing result for Hearing held on 12/08/2008 10:00 AM: District Court Hearing Held Court Reporter: David Marlow Number of Transcript Pages for this hearing estimated: Less than 100 pages	Brent J. Moss
2/11/2009	MEMO	GWEN	Memorandum Decision	Brent J. Moss
	CDIS	GWEN	Civil Disposition entered for: Lecheminant, Jeff D, Defendant; Lecheminant, Lisa, Defendant; Credit Bureau Of Eastern Idaho, Inc, Plaintiff. Filing date: 2/11/2009	Brent J. Moss
	STAT	GWEN	STATUS CHANGED: closed	Brent J. Moss
3/12/2009		GWEN	Filing: T - Civil Appeals To The Supreme Court (\$86.00 for the Supreme Court to be receipted via Misc. Payments. The \$15.00 County District Court fee to be inserted here.) Paid by: Smith, Bryan D (attorney for Credit Bureau Of Eastern Idaho, Inc) Receipt number: 0016672 Dated: 4/7/2009 Amount: \$15.00 (Check) For: Credit Bureau Of Eastern Idaho, Inc (plaintiff)	Brent J. Moss
		GWEN	Miscellaneous Payment: Supreme Court Appeal Fee (Please insert case #) Paid by: Bryan Smith Receipt number: 0016673 Dated: 4/7/2009 Amount: \$86.00 (Check)	Brent J. Moss
		GWEN	Miscellaneous Payment: For Making Copies Of Transcripts For Appeal Per Page Paid by: Bryan Smith Receipt number: 0016674 Dated: 4/7/2009 Amount: \$200.00 (Check)	Brent J. Moss

Bryan D. Smith, Esq.
Idaho State Bar # 4411
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC, an Idaho corporation,

Plaintiff,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMIANT, husband and wife,

Defendants.

Case No. CV-06-130

COMPLAINT

Fee Category: B.1
Fee: \$62.00

COMES NOW plaintiff, Credit Bureau of Eastern Idaho, Inc, and for a claim against
defendants, alleges as follows:

1. The plaintiff is an Idaho corporation qualified to do business in the State of Idaho.
2. The defendant, Jeff D. Lecheminant, is an individual residing in the State of Idaho.
3. The defendant, Lisa Lecheminant, is an individual residing in the State of Idaho.
4. At all times mentioned herein the plaintiff was, and still is, a licensed and bonded collector under the laws of the State of Idaho, and before the commencement of this action the debts herein sued upon was assigned by City of Rexburg to the plaintiff for the purpose of

collection. The plaintiff is now the holder thereof for such purposes. The defendants are husband and wife who incurred the debts as alleged herein for community purposes.

5. The defendants are indebted to the plaintiff by reason of the allegations herein and owe the plaintiff in the following stated amounts:

CREDIT BUREUA OF EASTERN IDAHO

Principal Amount Owing	\$ 63.66
Prejudgment Interest	<u>\$ 20.62</u>
Subtotal	\$ 84.28

RAYS INCORPORATED

Principal Amount Owing	\$195.99
Prejudgment Interest	<u>\$110.89</u>
Subtotal	\$306.88

TOTAL **\$391.16**

6. The plaintiff is entitled to further prejudgment interest from the date the complaint is filed until judgment is entered.

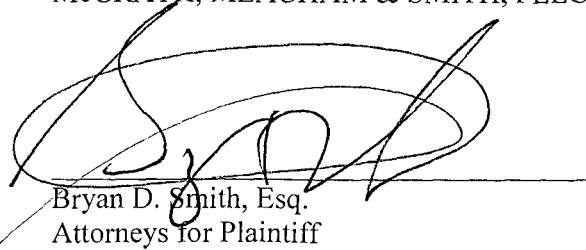
7. Despite the plaintiff's requests and demands, and without offering any reason or objection to the bill, the defendants have failed to pay the indebtedness in full.

8. To obtain payment of the obligation due, the plaintiff has been required to retain the services of McGrath, Meacham & Smith, PLLC, attorneys at law. This action arises from an open account and/or from services provided. Moreover, written demand for payment on the defendants has been made more than 10 days prior to commencing this action. Pursuant to Idaho Code § 12-120(1) and 12-120(3) the plaintiff is entitled to recover the plaintiff's attorney's fees incurred herein in the sum of \$350.00 if judgment is taken by default and such greater amount as may be evidenced to the court if this claim is contested. Pursuant to Idaho Rules of Civil Procedure § 54(d)(1) the plaintiff is further entitled to recover the plaintiff's costs incurred herein.

WHEREFORE, the plaintiff demands judgment against the defendants, and each of them, for the principal sum of \$259.65, together with legal interest on said sum in the amount of \$131.51, the filing fee of \$62 and attorney's fees incurred herein in the sum of \$350.00, for a combined total of \$ 803.16 plus the costs of suit to be proven to the court, and for such other and further relief as is equitable and just.

DATED: 13th February, 2006.

McGRATH, MEACHAM & SMITH, PLLC



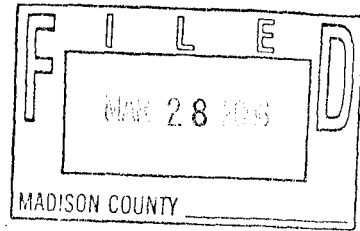
Bryan D. Smith, Esq.
Attorneys for Plaintiff

**NOTICE UNDER
FEDERAL FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §§ 1692a to 1692o**

Jeff D. and Lisa Lecheminant
259 J Street
Idaho Falls, Idaho 83402

1. Amount of Debt: **\$391.16**
2. Name of Creditor: **Credit Bureau of Eastern Idaho, Inc**
3. Unless you dispute the validity of the above-described debt, or a portion thereof, within 30 days of your receipt of this letter, we will assume that the debt is valid.
4. If you notify us, in writing, within 30 days of your receipt of this letter that you dispute the debt, or a portion thereof, we will obtain verification of the debt, or a copy of any judgment, and will mail you a copy of the verification or judgment.
5. If you request, in writing, within 30 days of your receipt of this letter, we will provide you with the name and address of the original creditor, if different from the current creditor described above.
6. This Notice informs you of specific rights to information under federal law. The time limits set in the accompanying demand letter must be complied with or legal action to collect the debt may be commenced. Any judgment in such legal action cannot be taken by default until 20 days after you have been served a summons and a copy of the complaint. Thus, no judgment will be taken within 30 days of this Notice, but the 30 days allowed by this Notice are not in addition to the requirements of state law.

NOTE: This is an attempt to collect a debt. Any information obtained will be used for that purpose.



Bryan D. Smith, Esq.
ISB # 4411
McGRATH, MEACHAM,
& SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC, an Idaho corporation,

Plaintiff,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMIANT, husband and wife,

Defendants.

Case No. CV-06-130

DEFAULT JUDGMENT

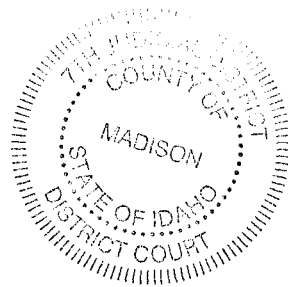
The defendants, Jeff D. and Lisa Lecheminant, having been regularly served with process and having failed to appear and plead to plaintiff's complaint on file herein, and the time allowed by law for so pleading having expired and the default of said defendants having been duly entered, and it appearing that said defendants is not an infant or incompetent person and an affidavit of non-military service having been filed herein, and it appearing by the Application for Entry of Default Judgment, Affidavit of Bryan D. Smith, Attorney for plaintiff, and the court's records and files, that plaintiff is entitled to a judgment herein;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff has and recovers from the defendants the sum of \$833.16, said amount being itemized as follows, to-wit:

Principal	\$259.65
Interest	\$131.51
Attorney's fee	\$350.00
Filing fee	\$ 62.00
Service fee	\$ 30.00
Amount Paid	\$ -0.00
<hr/>	
TOTAL	\$833.16

upon which sum interest shall accrue at the rate provided by law, and upon which judgment execution may issue.

DATED this 28 day of March, 2006.



Mavis S. Lawrence

Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that I am the clerk of the above-entitled court, and that on the 28 day of March, 2006, I served a true and correct copy of the foregoing **DEFAULT JUDGMENT** on the persons listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.


Persons Served:

Bryan D. Smith
McGrath, Meacham &, Smith, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405

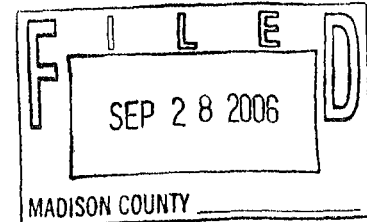
Hand Mail

Jeff D. and Lisa Lecheminant
259 J Street
Idaho Falls, ID 83402

Hand Mail



Clerk



Bryan D. Smith, Esq.
 Idaho State Bar Number 4411
McGRATH, MEAHCAM & SMITH, PLLC
 414 Shoup Avenue
 P.O. Box 50731
 Idaho Falls, Idaho 83405
 Telephone: (208) 524-0731
 Facsimile: (208) 529-4166

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON
 MAGISTRATE COURT

CREDIT BUREAU OF EASTERN
 IDAHO, INC., an Idaho corporation,

Plaintiff,

vs.

JEFF D. LECHEMINANT and LISA
 LECHEMIANT,

Defendants.

Case No.: CV-06-130

**AFFIDAVIT OF BRYAN D. SMITH
 IN SUPOPRT OF APPLICATION
 FOR ORDER OF CONTINUING
 GARNISHMENT**

STATE OF IDAHO)
)ss.
 County of Bonneville)

Bryan D. Smith, being first duly sworn, deposes and states as follows:

1. I represent the plaintiff in this case, Credit Bureau of Eastern Idaho, Inc., and as such I have personal knowledge of the facts stated herein.
2. Judgment was entered herein on March 28, 2006 in the sum of \$833.16.
3. The cause of action arose after July 1, 1987, and therefore, the judgment bears interest at the rate of which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as provided by Idaho Code § 28-21-104 for all judgment

declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 8.375% per annum.

4. The defendant is Jeff D. Lecheminant.
5. Sandy Moulton and Jeff D. Lecheminant are husband and wife.
6. Sandy Moulton and Jeff D. Lecheminant reside at the following address:

Sandy Moulton and Jeff D. Lecheminant
259 J Street
Idaho Falls, Idaho 83402

7. Sandy Moulton is an employee of Eastern Idaho Regional Medical Center.
8. Eastern Idaho Regional Medical Center is located at the following address:

Eastern Idaho Regional Medical Center
3100 Channing Way
Idaho Falls, Idaho 83404

9. Sandy Moulton's "earnings" from Eastern Idaho Regional Medical Center are community property. See Idaho Code Section 32-906.

10. The word "earnings" include "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise." See Idaho Code Section 11-206.

11. Again, Sandy Moulton and Jeff D. Lecheminant are husband and wife; therefore, they have "obligations of mutual respect, fidelity, and **support**" for each other. See Idaho Code Section 32-901.

12. In addition, the earnings of Sandy Moulton are "moneys" or "other property" and Jeff D. Lecheminant has an interest in such earnings. See Idaho Code Section 11-201.

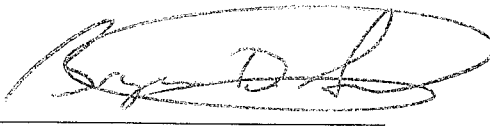
13. The foregoing interest is "liable to execution". See Idaho Code Section

11-201.

14. Thus, Credit Bureau of Eastern Idaho, Inc., respectfully requests the issuance of an ORDER OF CONTINUING GARNISHMENT against the employer of Sandy Moulton, Eastern Idaho Regional Medical Center. See generally Idaho Code Section 8-509(b).

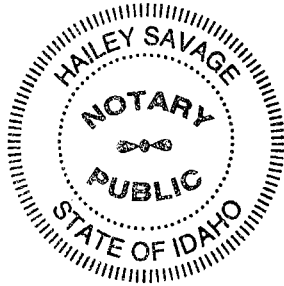
DATED this 26th day of September, 2006.

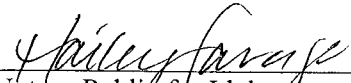
McGRATH, MEACHAM & SMITH, PLLC

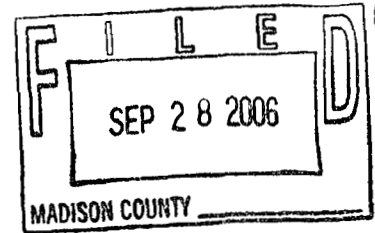
By: 

Bryan D. Smith, Esq.
Attorneys for Plaintiff

SUBSCRIBED AND SWORN to before me this 26th day of September, 2006.




Notary Public for Idaho
Residing In: Idaho Falls
My Commission Expires: 1/9/12



Bryan D. Smith, Esq.
Idaho State Bar Number 4411
McGRATH, MEAHCAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
Telephone: (208) 524-0731
Facsimile: (208) 529-4166

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE COURT

CREDIT BUREAU OF EASTERN
IDAHO, INC., an Idaho corporation,

Plaintiff,

v.

JEFF D. LECHEMINANT and LISA
LECHEMIANT,

Defendants.

Case No: CV-06-130

**ORDER FOR CONTINUING
GARNISHMENT**

The Plaintiff filed an application on September 26, 2006, entitled
"APPLICATION FOR ORDER OF CONTINUING GARNISHMENT." The application
requests the issuance of an order of continuing garnishment against the employer of
Sandy Moulton.

Based on the foregoing application, the court hereby grants the application and
enters the following ORDER:

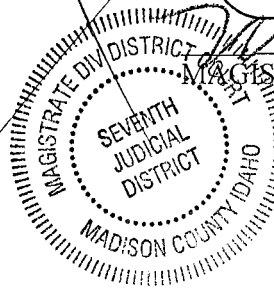
1. The Sheriff of Bonneville, Idaho shall garnish the maximum amount of
Sandy Moulton's disposable earnings from Eastern Idaho Regional Medical Center at
each disbursement interval until the JUDGMENT, plus interest, is paid in full.

2. Eastern Idaho Regional Medical Center is located at the following address:

Eastern Idaho Regional Medical Center
3100 Channing Way
Idaho Falls, ID 83404

3. This garnishment shall operate continuously until the JUDGMENT, plus interest, is paid in full.

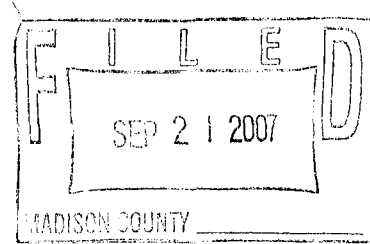
DATED the 28 day of Sept, 2003.



[Handwritten Signature]
MAGISTRATE JUDGE 191

*Rescinded
10-23-07*

Bryan D. Smith, Esq.
ISB # 4411
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC., an Idaho corporation,

Plaintiff,

Vs.

JEFF D. LECHEMINANT and LISA
LECHEMIANT,

Defendants.

Case No. CV-06-130

AFFIDAVIT IN SUPPORT OF WRIT OF
EXECUTION

STATE OF IDAHO)
)ss:
County of Bonneville)

Bryan D. Smith, being first duly sworn, deposes and says:

1. I have personal knowledge of the facts stated herein as attorney for the plaintiff in the above-entitled action.

2. Judgment was entered herein on March 28, 2006 in the sum of \$833.16. The cause of action arose after July 1, 1987, and therefore, the judgment thereon bears interest at the rate which is in effect on the date of entry of the judgment. (The rate changes July 1 of each year as provided by Idaho Code § 28-21-104 for all judgments declared during the succeeding 12 months.) The applicable rate for the judgment in this matter is 8.375% per annum.

3. Therefore, the court should issue the writ in the amount of \$972.20 broken down as follows:

Unpaid Judgment	\$833.16
Accrued Interest	\$103.04
Recording Fee	\$ 3.00
Execution Fee(s)	\$ 8.00
Service Fee	\$ 25.00
Payments	\$- 0.00
TOTAL	\$972.20

4. The fees listed above were actually and necessarily incurred in the post-judgment collection of the judgment.

DATED: 19th September, 2007.

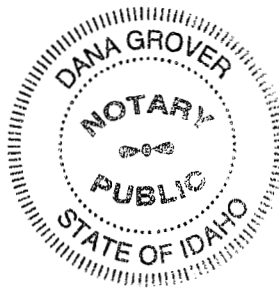
McGRATH, MEACHAM & SMITH, PLLC



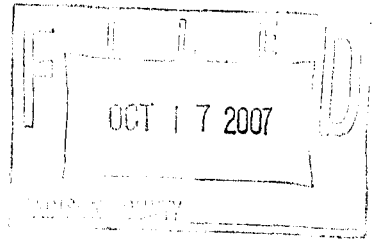
Bryan D. Smith

SUBSCRIBED AND SWORN to before me on 19th September, 2007.

(SEAL)



Dana Grover
Notary Public for State of Idaho
Residing at : Idaho Falls, ID
My commission expires: 10-10-12



Bryan D. Smith, Esq.
Idaho State Bar Number: 4411
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

CREDIT BUREAU OF EASTERN
IDAHO, INC., an Idaho corporation

Plaintiff,

v.

JEFF D. LECHEMINANT and LISA
LECHEMINANT,

Defendant.

Case No. CV-06-130

**MOTION TO CONTEST
CLAIM OF EXEMPTION**

COMES NOW plaintiff, Credit Bureau of Eastern Idaho, Inc., by and through its counsel of record, Bryan D. Smith, Esq., of the firm of McGrath, Meacham & Smith, PLLC, pursuant to Idaho Code §11-203 and moves the Court for an order denying the third party's claim of exemption.

This motion is made on the grounds and for the reasons that the third party has filed a Claim of Exemption, a copy of which is attached hereto marked as Exhibit "A" and by this reference included herein. The Claim of Exemption provides no legal basis to exempt the monies garnished in this proceeding.

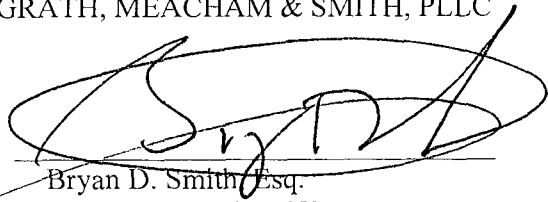
This motion is based on the Notice of Hearing, Brief in Support of Motion to Contest Claim of Exemption, and this Motion to Contest Claim of Exemption and on the Court's records and files.

Plaintiff requests oral argument on said motion.

DATED this 16th day of October, 2007.

McGRATH, MEACHAM & SMITH, PLLC

By:



Bryan D. Smith Esq.
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2007, I caused a true and correct copy of the foregoing **MOTION TO CONTEST CLAIM OF EXEMPTION** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by causing the same to be delivered by hand, facsimile or overnight delivery, addressed to the following:

- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Overnight Delivery

Marvin M. Smith
Anderson Nelson Hall Smith, P.A.
490 Memorial Drive
Idaho Falls, ID 83405

- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Overnight Delivery

Bonneville County Sheriff
Civil Division
605 North Capital Ave
Idaho Falls, ID 83402

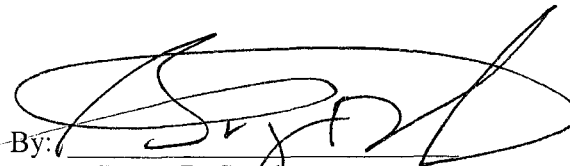
By: 
Bryan D. Smith

Exhibit “A”

CIVIL # 200705676

WARRANT # _____

MARVIN M. SMITH
ISB NO. 2236
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Attorneys for Eastern Idaho Regional Medical Center

7 OCT 15 P3 50

MADISON COUNTY
SHERIFFS DEPT.
IDAHO FALLS, IDAHO
RECEIVED

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

CREDIT BUREAU OF EASTERN IDAHO,
INC., an Idaho corporation,

Plaintiff,

v.

JEFF D. LECHEMINANT and LISA
LECHEMINANT,

Defendant.

Case No. CV-06-130

CLAIM OF EXEMPTION

Eastern Idaho Regional Medical Center and Sandy Moulton claim an exemption
from levy for the following described money:

- a. Money, which will be paid to Sandy Moulton as:
 - Wages (This exemption is being claimed pursuant to Idaho Code § 11-204).

DATED this 15th day of October, 2007.

ANDERSON NELSON HALL SMITH, P.A.



MARVIN M. SMITH, attorney for Eastern Idaho
Regional Medical Center

DATED this 15 day of October, 2007



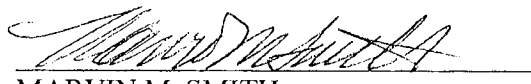
SANDY MOULTON

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 15th day of October, 2007, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

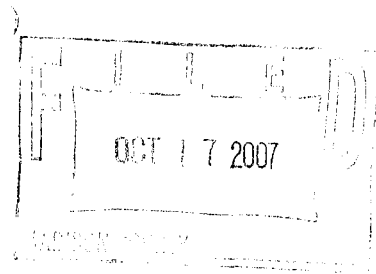
Bonneville County Sheriff's Office
605 N. Capital
Idaho Falls, ID 83402
Via Hand Delivery

Madison County Sheriff's Office
145 E. Main Street
Rexburg, ID 83440
Via Facsimile - 356-7640



MARVIN M. SMITH

Bryan D. Smith, Esq.
Idaho State Bar # 4411
MCGRATH, MEACHAM & SMITH, PLLC
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Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC., AN IDAHO CORPORATION,

Plaintiff,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMIANT, husband and wife

Defendants.

Case No. CV-06-130

BRIEF IN SUPPORT OF MOTION TO
CONTEST CLAIM OF EXEMPTION

I. INTRODUCTION.

This matter comes before the court on a motion to contest a claim of exemption.

The factual history is set forth below.

II. FACTUAL HISTORY.

DATE	EVENT
March 28, 2006	The court enters judgment against Jeff Lecheminant and Lisa Lecheminant in the amount of \$833.16;
September 5, 2006	Counsel for plaintiff met with Jeff Lecheminant who said (1) he was self employed as a contractor; and (2) he was married to Sandy Moulton who was working at Eastern Idaho Regional Medical Center (EIRMC) as a nurse;

September 26, 2006 Plaintiff files an Application for on Order for Continuing Garnishment, Affidavit of Bryan D. Smith in Support of Execution, Order For Continuing Garnishment, and Writ of Execution; the continuing garnishment seeks to garnish Sandy Moulton's community property wages at EIRMC;

September 28, 2007 The Court enters the Order for Continuing Garnishment;

December 2006 the Bonneville County Sheriff refuses to serve Order for Continuing Garnishment saying that plaintiff could not garnish Sandy Moulton's wages at EIRMC;

January 2007 The court clerk tells plaintiff's paralegal that "per Judge Rammell, you cannot garnish Sandy Moulton's wages"; the court clerk states that under *Miller v. Miller*, 113 Idaho 415 (1987) a writ for *continuous* garnishment cannot be issued against a defendant's spouse;

January 15, 2007 Plaintiff files Application for Order for Garnishment, Affidavit of Bryan D. Smith in Support of Execution, Order for Garnishment, and Writ of Execution;

March 8, 2007 The court clerk tells staff for plaintiff's counsel that court will not sign the writ and that the court is returning the writ;

September 25, 2007 Plaintiff sends garnishment to EIRMC to garnish the wages of Sandy Moulton who is married to Jeff Lecheminant (the Bonneville County Sheriff serves the garnishment this time);

October 15, 2007 Attorneys for Eastern Idaho Regional Medical Center file a claim of exemption;

October 17, 2007 Plaintiff files its motion to contest claim of exemption; and

October 23, 2007 Hearing set on Plaintiff's Motion to Contest Claim of Exemption.

III. IDAHO CASE LAW HOLDS THAT COMMUNITY PROPERTY CAN SATISFY THE SEPARATE DEBT OF ONE OF THE SPOUSES.

A. Idaho Case Law.

Idaho law first addressed in *Holt v. Empey*, 32 Idaho 106 (1919) the extent to which community property can be liable for the separate debt of a spouse. In *Holt*, the real property of Empey's husband was attached by Holt to satisfy a debt that the husband had incurred as a surety for a third party. Empey intervened in the action, alleging that the property attached was community property and not subject to levy for the separate debt of her husband. The Idaho Supreme Court disagreed stating, "We therefore hold that community real estate is liable to attachment and execution for the debts of the husband, whether incurred for his own use or for the benefit of the community." *Holt v. Empey*, *supra*, 32 Idaho 110. Although it is unclear from the court's opinion whether the husband's debt was incurred before or during the marriage, the community property was liable regardless of whether the debt was antenuptial or postnuptial. See JOANN HENDERSON, IDAHO LAW FOUNDATION, COMMUNITY PROPERTY LAW OF IDAHO ch. 9, at 15 (1982).

In *Gustin v. Byam*, 41 Idaho 538 (1925), Gustin and her husband lived on land owned by Gustin's father under an arrangement whereby the husband was to farm the land during the year and give one-half of the crops to the father for use of the land. During the marriage, the husband gave a note to his brother secured by a chattel mortgage covering the whole of the crops, including the share of Gustin's father. At the father's insistence, the mortgage was subsequently released by the brother. At around the same time, the brother endorsed the note to a hardware company, which then brought suit to collect on the note. A default judgment was obtained, and the husband's share of the

crops was levied upon and sold in order to satisfy the judgment. Gustin filed an action seeking to set aside the judgment and to recover the value of the crops, claiming that the crops were community property and exempt from execution.

On appeal from a judgment entered in favor of the defendants, the Idaho Supreme Court noted that at that time, I.C. § 32-912 gave the husband the management and control of the community property, with full power of alienation except as provided in the statute. Among the powers the husband could exercise alone was the sale of community personal property, whether it was exempt from execution or not. Relying on the holding in *Holt*, the Court held that the community property was liable for the separate debts of the husband as well as for community debts. The Court said, “[t]he community property is liable for the separate debts of the husband as well as for community debts.” *Gustin v. Byam, supra*, 41 Idaho 538 at 603. Consequently, Gustin was unable to recover the property sold.

Both *Holt* and *Gustin* were decided at a time when the husband was given sole power to manage and control the community property by statute. In 1974, the legislature amended I.C. § 32-912, giving the husband and the wife equal management and control of the community property. See 1974 Idaho Sess. Laws ch. 194, § 2. Despite the change in the management and control of the community property and in spite of any doubt concerning the continued vitality of *Holt* and *Gustin*, those cases were cited with approval by our Supreme Court in *Bliss v. Bliss*, 127 Idaho 170 (1995), where the court cited *Holt*, *Gustin*, and Crapo, *Equal Management of Community Property: Creditors' Rights*, 13 Idaho L. Rev. 177, 178 (1977), for the proposition that “[p]arties often marry

with separate antenuptial debts, and those debts are payable from community property.” Id. at 173 (emphasis added.)

More recently, in *Action Collection Service, Inc. v. Seele*, 138 Idaho 753 (Ct. App. 2003), the Court of Appeals held that the separate property debt of one spouse can be satisfied out of the community property wages of that spouse. The court reasoned that the elevation of the status of wives to equal managers of the community property by virtue of the amendment to Idaho statutes, without a specific exemption of the liability of the community property for each spouse's separate debts, suggests that the legislature intended for the rules of law enunciated in *Holt* and *Gustin* to apply equally to the husband and the wife after amendment of the statute. Therefore, just as the community property in those cases was liable for the separate debts of one spouse, whether antenuptial or postnuptial, the community property wages were liable to satisfy the separate property judgment of one spouse.

Therefore, just as the community property in *Holt*, *Gustin*, and most recently *Action Collection* was liable for the separate debts of one spouse, the community property wages of the defendant's spouse are liable to satisfy the plaintiff's judgment against defendant. As stated in *Bliss v. Bliss*, 127 Idaho at 173: “***Parties often marry with separate antenuptial debts, and those debts are payable from community property.***” *Id.* at 173 (emphasis added.)

B. Idaho Statutory Law.

Under Idaho Code Section 32-912, “[e]ither the husband or the wife shall have the right to manage and control the community property.” Here, there can be no dispute that the wages of defendant's spouse are the community property of defendant. *See Martsch*

v. *Martsch*, 103 Idaho 142 (1982) (holding that wages are community property). This means that the judgment defendant has the right to manage and control 100% of his spouse's wages.

Moreover, Idaho Code Section 11-201 identifies the property in Idaho that is subject to execution as follows:

Property liable to seizure.—All goods, chattels, moneys and *other property, both real and personal, or any interest therein of the judgment debtor*, not exempt by law, and *all property and rights of property*, seized and held under attachment in the action, are liable to execution. Shares and interest in any corporation or company, and debts and credits, and *all other property both real and personal, or any interest in either real or personal property*, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. (Emphasis added.)

The phrases “*other property, both real and personal, or any interest therein of the judgment debtor*, not exempt by law, and *all property and rights of property*” and “*all other property both real and personal, or any interest in either real or personal property*” are broad enough to include “community property” generally defined as “all property acquired during marriage.” Idaho Code Section 32-906.

All these statutory provisions are further supportive of Idaho case law that a judgment creditor can satisfy a judgment against a judgment debtor from the community property wages of the judgment debtor's spouse.

C. The Wages Of The Defendant's Spouse Are Community Property Subject To Execution.

Here, the plaintiff has a judgment against Jeff Lecheminant. Jeff is married to Sandy Moulton who receives wages from her employment at Eastern Idaho Regional Medical Center. Sandy's wages are community property. Under Idaho case law, these wages are liable to satisfy Jeff's separate property judgment. Under Idaho statutory law,

Jeff has the right to manage and control 100% of Sandy's wages therefore making Sandy's wages subject to execution and garnishment.

IV. ALTHOUGH THE COMMUNITY PROPERTY WAGES OF SANDY MOULTON ARE NOT SUBJECT TO AN ORDER FOR CONTINUING GARNISHMENT, THEY ARE SUBJECT TO GARNISHMENT.

Idaho case law established in *Holt*, *Gustin*, *Bliss*, and *Action Collection* all stands for the proposition that the community property wages of the defendant's spouse are liable to satisfy the plaintiff's judgment against defendant. The issue is by what method a plaintiff can attach those community property wages. Plaintiff submits that Idaho law prohibits such attachment by way of an order for *continuing* garnishment. See *Miller v. Miller*, *supra*, 113 Idaho at 415. However, Idaho law allows such attachment by way of garnishment.

A. The Community Property Wages Of A Defendant Spouse Are Not Subject To Attachment By An Order Of Continuous Garnishment.

In *Miller v. Miller*, *supra*, 113 Idaho at 415, the court addressed whether a judgment only against a husband could be enforced by way of an order for *continuous* garnishment against the wages of the judgment defendant's wife. The court did not address the issue of whether the wages of a judgment debtor's spouse are or are not subject to "levy," "execution," or "garnishment." Specifically, the husband had been sued for trespass and a judgment was entered against him. The plaintiff obtained an order of *continuous* garnishment against the wages of the judgment defendant's wife. The judgment defendant's wife was not a party to the underlying lawsuit. The issue arose whether the order of *continuous* garnishment could be issued against the wages of the judgment defendant's wife given that she was not on the judgment.

The court held that “joinder of a spouse as a party defendant was a necessary prerequisite, under I.C. Section 8-509(b).” *Id.* at 420. Idaho Code Section 8-509(b), which deals with an order for *continuous* garnishment, reads as follows:

(b) When the garnishee is the employer of the judgment debtor, the judgment creditor, upon application to the court, shall have issued by the clerk of court, a continuing garnishment directing the employer-garnishee to pay to the sheriff such future moneys coming due to the judgment debtor as may come due to said judgment debtor as a result of the judgment debtor's employment. This continuing garnishment shall continue in force and effect until the judgment is satisfied. The creditor shall be solely responsible for insuring that the amounts garnished do not exceed the amount due on the judgment.

The court reasoned that “[t]he language of I.C. Section 8-509 is specifically limited to a ‘judgment creditor’ and a ‘judgment debtor.’ ‘A well-settled rule of construction is that the words of a statute must be given their plain, usual and ordinary meaning in the absence of any ambiguity.’ A judgment debtor according to *Black's Law Dictionary* (5th ed. 1979), p. 758 is, ‘A person against whom judgment has been recovered, and which remains unsatisfied.’ Paula, having not been a named party defendant, clearly did not qualify as a judgment debtor and, hence, was not within the scope of I.C. Section 8-509(b).” *Miller v. Miller, supra*, 13 Idaho at 420.

In other words, the plaintiff in *Miller* could not get an order of *continuous* garnishment because the wife’s employer (the garnishee) was not the employer of the judgment debtor (the husband debtor/defendant). *Miller* stands for the proposition that a plaintiff cannot get an order of *continuous* garnishment against the wages of a spouse because of the limitations contained in I.C. Section 8-509. *Miller* does not even address the issue whether a plaintiff can execute by garnishment the wages of the defendant’s spouse.

B. The Community Property Wages Of A Defendant Spouse Are Subject To Execution By Garnishment.

Idaho Code Section 8-507, states, in pertinent part, that upon written directions from the plaintiff or his attorney, the sheriff shall execute and garnish “property belonging to the defendant”:

8-507. Garnishment – Service of writ of attachment, execution, or garnishment – Banks.—(a) Upon receiving written directions from the plaintiff or his attorney, that any person or corporation, public or private, has in his or its possession or control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon any such person, or corporation identified in the plaintiff’s written directions all of the following documents:

- (1) a copy of the writ;
- (2) a notice that such credits, or other property, or debts, as the case may be, are attached in pursuance of such writ;
- (3) a notice of exemptions available under federal and state law;
- (4) instructions to debtors and third parties for asserting a claim of exemption;
- (5) a form for making a claim of exemption; and
- (6) if the garnishee is a bank or depository institution, a search fee of five dollars (\$5.00) and the last known mailing address of the defendant and, if known, a tax identification number, that will enable the garnishee to identify the defendant on its records.

Here, Jeff has the right to manage and control 100% of Sandy’s wages at EIRMC.

For this reason, and all the other reasons that cited in this brief, Sandy’s wages constitute “property belonging to him.” Accordingly, Sandy’s wages are subject to execution and garnishment by virtue of Idaho Code Section 8-507(a).

V. THE EXEMPTION THAT EASTERN IDAHO REGIONAL MEDICAL CENTER RELIES UPON IS NOT ENFORCEABLE BECAUSE IT IS UNCONSTITUTIONAL.

A statute that denies equal protection of the laws guaranteed in the fourteenth amendment of the Constitution of the United States is unenforceable. *Suter v. Suter*, 97 Idaho 461 (1976). Specifically, a statute that provides for a different classification of a

husband and wife solely on the basis of sex is unenforceable if the basis for that different classification is arbitrary and not reasonable. *Id.* A different classification is arbitrary and not reasonable if the different classification does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike. *Id.*

In *Suter v. Suter*, *supra*, 97 Idaho at 461, the Idaho Supreme Court held that Idaho Code Section 32-909 was unconstitutional and therefore not enforceable. Idaho Code Section 32-909 read as follows: “**Earnings of wife living separate from husband.** -- The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband are the separate property of the wife.” The court held that Idaho Code Section 32-909 was unconstitutional because it “results in unequal treatment for a husband and a wife as regards their individual earnings after a separation. The different classification of a husband and wife solely on the basis of sex ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’” *Id.* at 467 (quotations omitted). The court explained held that “the unequal treatment accorded a husband and wife through the operation of Idaho Code Section 32-909 is arbitrary on its face and demonstrates no substantial relation to the object of community property legislation.” *Id.* The court further explained that “Idaho Code Section 32-909 creates an unconstitutional distinction in the division of marital property upon divorce and therefore is a denial of the equal protection of the laws as guaranteed in the fourteenth amendment of the Constitution of the United States.” *Id.*

Here, Idaho Code Section 11-204 results in unequal treatment for a husband and a wife as regards their individual earnings during marriage because it treats the earnings of the wife differently than the earnings of the husband. It exempts from garnishment a wife's compensation "due and owing" without exempting from garnishment a husband's compensation "due and owing." This unequal treatment accorded between a husband and a wife through operation of Idaho Code Section 32-909 is arbitrary on its face and demonstrates no substantial relation to the object of community property legislation.

In fact, Idaho Code Section 11-204 is contrary to the current object of community property law. When Idaho Code Section 11-204 was enacted in 1881, Idaho's community property law was that the husband had the exclusive right to manage and control all the community property except for the earnings of the wife for her personal services. *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163 (1929). On the other hand, the wife had the exclusive right to manage and control her community earnings resulting from her own personal services. *Id.* If the law were the same today, Idaho Code Section 11-204 would bear a substantial relation to the object of community property law because execution against the husband should not extend to property over which he has no right to manage or control. However, in 1974, Idaho changed its community property law so that "[e]ither the husband or the wife shall have the right to manage and control the community property." *See* 1974 Idaho Sess. Laws ch. 194, § 2 and Idaho Code Section 32-912. Thus, today the husband has the right to manage and control a wife's community earnings resulting from her own personal services just as a wife has the right to manage and control a husband's community earnings resulting from his own personal services. Given the change to the law in 1974, Idaho Code Section 11-

204 is actually contrary to current Idaho community property law because it exempts from garnishment a husband's interest in property that he has every right to manage and control. Accordingly, Idaho Code Section 11-204 creates an unconstitutional distinction in the treatment of marital property upon garnishment and therefore is a denial of the equal protection of the laws as guaranteed in the fourteenth amendment of the Constitution of the United States.

VI. CONCLUSION.

For all the reasons set forth above, plaintiff respectfully requests that the court grant plaintiff's motion to contest claim of exemption.

DATED this 10th day of October, 2007.

McGRATH, MEACHAM & SMITH, PLLC

By: 

Bryan D. Smith, Esq.
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2007, I caused a true and correct copy of the foregoing **BRIEF IN SUPPORT OF MOTION TO CONTEST CLAIM OF EXEMPTION** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by causing the same to be delivered by hand, facsimile or overnight delivery, addressed to the following:

- U.S. Mail
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Marvin M. Smith
Anderson Nelson Hall Smith, P.A.
490 Memorial Drive
Idaho Falls, ID 83405

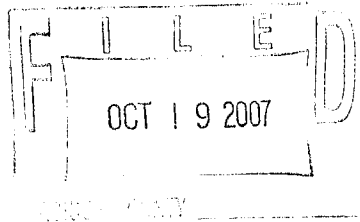
By: 

Bryan D. Smith

OCT 19 2007 4:14PM

ANDERSON NELSON HALL SMITH

NO. 6/1 P. 2



MARVIN M. SMITH
ISB NO. 2236
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Attorneys for Eastern Idaho Regional Medical Center

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC., an Idaho corporation,

Plaintiff,

v.

JEFF D. LECHEMINANT and LISA
LECHEMINANT,

Defendants.

Case No. CV-06-130

**MEMORANDUM IN OPPOSITION
TO MOTION TO CONTEST
CLAIM OF EXEMPTION**

COME NOW Third Party Eastern Idaho Regional Medical Center ("EIRMC"), by and through its attorney of record, and hereby submits its Memorandum in Opposition to Motion to Contest Claim of Exemption.

STATEMENT OF FACTS

Credit Bureau of Eastern Idaho, Inc. obtained a judgment against Jeff Lecheminant and Lisa Lecheminant while they were married. Jeff and Lisa divorced and subsequently Jeff Lecheminant married Sandy Moulton, employed by EIRMC. Credit Bureau of Eastern Idaho, Inc. is now attempting to garnish Sandy Moulton's wages to satisfy its judgment against Jeff

10/19/2007 4:14PM

AN: NELSON NELSON HALL SMITH

NO. 6/1

P. 3

Lecheminant, which was an antenuptial debt.

ANALYSIS

I. IDAHO CODE § 11-204 IS A VALID CONSTITUTIONAL STATUTE THAT HAS NEVER BEEN REPEALED.

At the outset there is no doubt that wages earned by the parties during marriage are community property. This is clear in I.C. § 32-906(1), which states:

All other property acquired after marriage by either husband or wife is community property. The income of all property separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses of the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

However, Idaho Code § 11-204 states:

All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and all compensation due or owing for her personal services, is exempt from execution against her husband.

Said statute creates a special kind of community property. Professor of Law W.J. Brokelbank noted in his 1962 book, *The Community Property Law of Idaho* at pp.265-66:

The Idaho legislature of 1881 set up a special kind of community property, viz., "rents, issues and profits" of the wife's separate property and "all compensation due or owing for her personal services" (both of which are community property in Idaho) and provided that this special kind of community property should be "exempt from execution against her husband."

The Idaho Supreme Court, in *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 270

P.220 held:

As to the earnings of a married woman, not living separate and apart from her

husband, on account of her personal services, **the exemption applies only to such earnings as are *due and owing*. After the earnings have been paid, or converted into other property, the exemption granted by said section no longer obtains.**

Id. at 280 P. 222 (emphasis added).

In this case, the debts must be satisfied from the separate property of the debtor spouse (Jeff Lecheminant) or from non-exempt community property. Otherwise, the judgment creditor obtains a windfall when a new community is formed. The separate property of the debtor spouse and non-exempt community property is still available to the Judgment creditor for satisfaction of the debt. Thus, certain property, like Ms. Moulton's wages, become shielded under the community property laws, under I.C. § 11-204.

Plaintiff has asserted that pursuant to I.C. § 32-912 the antenuptial debts of one spouse binds the community property and thus makes the community assets available for execution. This section states that "Either the husband or the wife shall have the right to manage and control the community property and either may bind the community by contract . . ." The Plaintiff's argument is misplaced since the debt and judgment arose prior to the inception and existence of this community (with Ms. Moulton). The debts at issue in this case were not incurred during the existence of this community. The non-debtor spouse (Sandy Moulton) was not a party to the collection action against her husband and yet the Plaintiff has attempted to execute on the non-party, non-debtor's spouse's interest in the present community property in violation of her due process rights.

Since the Plaintiff in this case attempted to garnish Ms. Moulton's wages, which are exempt community per I.C. § 11-204, the question then becomes whether or not a judgment creditor can attach the exempt community property of Ms. Moulton to satisfy the antenuptial debt

of Ms. Moulton's present husband where she was neither a party nor judgment debtor. The courts have held that if the debt was incurred for the benefit of the community then the debt can be paid from the community property. The debt which gave rise to this action arose before this community was formed and was not incurred for the benefit of this community of Ms. Moulton. The community, therefore, is not obligated to repay such debts from this particular community property (wages), which is the exempt community property of Ms. Moulton under I.C. § 11-204.

The United States Ninth Circuit Court of Appeals (applying Idaho law) in a matter regarding a foreclosure action stated, "Only if the debt is incurred for the benefit of the community does I.C. § 32-912 allow satisfaction of the unpaid debt from the community property." *First Idaho Corporation v. Davis*, 867 F.2d 1241, 1243 (9th Cir. 1989). In *Freeburn v. Freeburn*, 97 Idaho 845, 849, 555 P.2d 385, 389 (1976) the Court held "The character of an item of property as community or separate vests at the time of its acquisition." (Citations omitted). This is the logic that must be followed here, that the debt acquired by Mr. Lecheminant is separate in character since it was vested prior to the formation of the new community; or the debt is a community debt of a former community but cannot be satisfied out of the "present" special kind of community property created by I.C. § 11-204.

Upon reviewing Idaho case law, none have addressed the specific question as to whether or not the special kind of community property created by I.C. § 11-204, including wages, can be attached by a judgment creditor to satisfy an antenuptial debt of the debtor spouse. However, there is case law indicating that community property classified under I.C. § 204 cannot be used for that purpose. The subject debt was not incurred for the benefit of this present community, the debt was not acquired during the existence of this community, and its very nature is separate in

character in regard to the present community.

Further, “[a] party challenging a statute on constitutional grounds bears the burden of proving the statute is unconstitutional and must overcome a strong presumption of validity.” *In re Karel*, 144 Idaho 379, 162 P.3d 758, 762 (2007).

Idaho Code § 11-204 (in existence since 1881) has never been overturned by the Idaho Legislature and Idaho Supreme Court/Court of Appeal, respectively. By symmetry of reasoning it must be assumed that I.C. § 11-204 applies equally to married men as it does married woman. This principle of extension has been approved in Idaho law. *See e.g., Neveau v. Neveau*, 103 Idaho 707, 652 P.2d 655 (Ct. App. 1982); *Harrigfeld v. District Court*, 95 Idaho 540, 511 P.2d 822 (1973). The exemption provided by I.C. § 11-204 is to be construed liberally in favor of the debtor. *See e.g., In Re Moore*, 269 BR 864 (Bkrcty D. Idaho 2001). Therefore, in this case the exemption should be construed even more liberally for Ms. Moulton because she is not the debtor, not a party to this suit, and was not even married to Jeff Lecheminant when the debt was incurred.

It is important to note that from 1915 to 1974, by statute, a wife had the exclusive management and control of her earnings, not her husband. Therefore, since 1974 the wife has actually had less control of her earnings not more. If Plaintiff's argument is accepted and Ms. Moulton is not granted the exemption given to her per I.C. § 11-204, a married woman will effectively have no control over her earnings.

In this case, the wages Sandy Moulton receives from EIRMC is compensation due or owing for her personal services. Therefore, per I.C. § 11-204 Sandy Moulton's wages are exempt from execution against her husband.

II. SANDY MOULTON'S WAGES ARE NOT SUBJECT TO GARNISHMENT PER THE IDAHO SUPREME COURT'S HOLDING IN MILLER V. MILLER, 113 IDAHO 415 (1987).

In *Miller v. Miller*, 113 Idaho 415, 420, 745 P.2d 294, 299 (1987) the Idaho Supreme

Court stated and held:

After the entry of the district court's judgment for damages against E. Paul, Pete filed pursuant to I.C. § 8-509 (Supp. 1987) a motion for continuing garnishment against the wages of E. Paul's spouse, Paula Miller. Following a hearing, the court denied the motion on the ground of Pete's failure to name Paula as a party defendant. The district court reasoned that allowing a garnishment of Paula's wages without having been made a party defendant, and with the judgment having been entered only against her husband, would deny her due process of law. We agree with the district court's conclusion that the joinder of a spouse as a party defendant was a necessary prerequisite, under I.C. § 8-509(b) . . .

The language of I.C. § 8-509 is specifically limited to a "judgment creditor" and a "judgment debtor." "A well-settled rule of construction is that the words of a statute must be given their plain, usual and ordinary meaning in the absence of any ambiguity." (Citations omitted). A judgment debtor according to *Black's Law Dictionary* (5th ed. 1979), p. 758 is, "A person against whom judgment has been recovered, and which remains unsatisfied." Paula, having not been a named party defendant, clearly did not qualify as a judgment debtor and, hence, was not within the scope of I.C. § 8-509(b).

The *Miller* case is closely analogous to the matter at hand. In this case, Sandy Moulton was not a party defendant and is not a "judgment debtor" just as Paula Miller in the *Miller* case. If the Idaho Supreme Court would not allow a continuing garnishment against someone who is not a "judgment debtor" then why would it allow any garnishment against someone who is not a "judgment debtor"? Thus, it is EIRMC's position that *Miller* stands for the proposition that garnishment of any type can only be effected against persons who are actually party defendants in a suit and are judgment debtors. Therefore, because Sandy Moulton was not a party defendant in this matter and no judgment was entered against her, the wages of Sandy Moulton can not be garnished.

19. 2007 4:15PM

ANDERSON NELSON HALL SMITH


NO. 6/1 P. 8

CONCLUSION

Based upon the analysis, case law precedent, and statute set forth above, EIRMC respectfully requests that this Court deny Plaintiff's Motion to Contest Claim of Exemption.

DATED this 19th day of October, 2007.

ANDERSON NELSON HALL SMITH, P.A.



MARVIN M. SMITH, attorney for Eastern Idaho Regional Medical Center

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 19th day of October, 2007, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Bryan D. Smith
MCGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, ID 83405

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



MARVIN M. SMITH

Date: 4/8/2009
Time: 12:08 PM
Page 1 of 2

Seventh Judicial District Court - Madison County

User: GWEN

Minutes Report

Case: CV-2006-0000130

Credit Bureau Of Eastern Idaho, Inc vs. Jeff D Lecheminant, etal.

Selected Items

Hearing type:	Motion for Claim of Exemption	Minutes date:	10/23/2007
Assigned judge:	Mark S. Rammell	Start time:	11:30 AM
Court reporter:		End time:	11:30 AM
Minutes clerk:	Lori Ann Lewis	Audio tape number:	
Prosecutor:	[none]		

Tape Counter: 1131

J INTRO

COURT QUESTIONS MR. SMITH AS TO WHY ANOTHER WRIT WAS SUBMITTED
AFTER BEING TOLD TWICE THAT THE COURT WOULD NOT SIGN IT

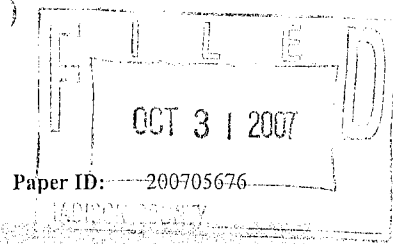
COURT IS GOING TO RESCIND WRIT

MR. SMITH EXPLAINS WHY IT WAS REISSUED

COURT IS GOING TO RESCIND WRIT

BYRON R. STOMMEL
(208) 529-1350

BONNEVILLE COUNTY SHERIFF'S OFFICE
605 N CAPITAL
IDAHO FALLS, ID 83402



UNSATISFIED RETURN OF SERVICE

CREDIT BUREAU OF EASTERN IDAHO

-- VS --

PLAINTIFF(S)

COURT: 7TH DIST. MADISON

CASE NO: CV06130

JEFFREY DARWIN & LISA LECHEMIANT

DEFENDANT(S)

PAPER(S) SERVED:

NOTICE OF GARNISHMENT

WRIT OF EXECUTION

I, BYRON R. STOMMEL, SHERIFF OF BONNEVILLE COUNTY, STATE THAT THE ABOVE DESCRIBED DOCUMENTS WERE DELIVERED TO ME FOR SERVICE ON THE 25TH DAY OF SEPTEMBER 2007.

I HEREBY CERTIFY THAT, ON THE 26TH DAY OF SEPTEMBER 2007, AT 4:00 O'CLOCK P.M., I, CHARLENE MUNNS, BEING DULY AUTHORIZED, SERVED THE ABOVE DESCRIBED DOCUMENTS IN THE ABOVE-ENTITLED MATTER BY LEVYING ON ANY PROPERTY, MONEY AND EFFECTS BELONGING TO THE DEFENDANT IN THE POSSESSION OF

***** E. I. R. M. C. *****

AT 3100 CHANNING WAY IDAHO FALLS ID 83404

WITHIN THE COUNTY OF BONNEVILLE, STATE OF IDAHO, AND HAVING NOT SATISFIED THIS JUDGMENT, I AM RETURNING THE ABOVE DESCRIBED DOCUMENTS AS UNSATISFIED.

PAPERS SERVED OR MAILED TO THE DEFENDANT:

NOTICE OF GARNISHMENT

WRIT OF EXECUTION

CLM OF EXEMPTION & INSTRUCTION

LEGAL NOTICE OF EXEMPTIONS

COMMENTS: SERVED BY MAILING THE GARNISHMENT PAPERWORK TO THE GARNISHEE MARKED ATTENTION HUMAN RESOURCES AT 3100 CHANNING WAY, IDAHO FALLS, IDAHO 83404 ON 9-26-2007. MAILED THE EXEMPTION PACKET TO THE DEFENDANTS JEFF & LISA LECHEMIANT AT 259 J STREET, IDAHO FALLS, IDAHO 83402 ON 9-26-2007. ALSO MAILED THE EXEMPTION PACKET TO SANDY MOULTON AKA LECHEMIANT AT 259 J STREET, IDAHO FALLS, IDAHO 83402 ON 9-26-2007. A COPY OF THE EXEMPTION SHEET WAS ALSO SERVED TO E.I.R.M.C.. THE GARNISHMENT FOR STATED THAT THE EARNINGS OF SANDY MOULTON AKA SANDY LECHEMIANT ARE THE COMMUNITY PROPERTY OF JEFF D. LECHEMIANT AND THEREFORE THE ATTORNEY FOR THE PLAINTIFF WAS ATTACHING ANY MONEY, CREDITS, OR OTHER PERSONAL PROPERTY BELONGING TO SANDY MOULTON AKA SANDY LECHEMIANT OR DEBTS, ACCOUNTS OR OTHER AMOUNTS OR PAYMENTS OWING TO SANDY MOULTON AKA SANDY LECHEMIANT. RECEIVED INTERROGATORIES ON 10/18/2007: SANDY IS EMPLOYED FULL TIME WITH AN AVERAGE TAKE HOME PAY OF \$2237.19 WHICH IS PAID BIWEEKLY. RECEIVED A FAX FROM THE ATTORNEY TO RELEASE THE GARNISHMENT AND TO RELEASE ANY MONEY TO THE DEFENDANT. ISSUED SHERIFF CHECK # 4727 IN THE AMOUNT OF \$618.62 TO THE DEFENDANT. ORIGINALS RETURNED TO COURT.

CHARGES

JUDGMENT AMOUNT: 972.20
SHERIFF'S FEES: 40.00
TOTAL: 1,012.20

DATED THIS 30TH DAY OF OCTOBER 2007.

BYRON R. STOMMEL
SHERIFF

BYRON R. STOMMEL
(208) 529-1350

BONNEVILLE COUNTY SHERIFF'S OFFICE
605 N CAPITAL
IDAHO FALLS, ID 83402

Paper ID: 200705676

UNSATISFIED RETURN OF SERVICE

PAYMENTS

APPLIED TO JUDGMENT:	0.00
APPLIED TO FEES:	0.00
TOTAL COLLECTED TO DATE:	0.00
AMOUNT UNCOLLECTED:	1,012.20

BY *Charlene Munns*

CHARLENE MUNNS
SERVING OFFICER

BY *Melynda Robinson Torngren*

MELYNDA ROBINSON TORNGREN
RETURNING OFFICER

2007 SEP 25 PM 4:38

Re: Credit Bureau of Eastern Idaho, Inc v. Jeff D. and Lisa Lecheminant
Madison County Case Number CV-06-130

BRUNNEN
SHERIFF'S DEPT.
IDAHO FALLS, IDAHO
RECEIVED

STATUTORY INTERROGATORIES:

TO: Eastern Idaho Regional Medical Center

TAKE NOTICE that all money, wages, goods, credits, effects, tents due, and all other personal property in your possession or under your control, belonging to the defendant named in the attached copy of the writ of execution is levied upon and upon and you are hereby notified not to pay or transfer the same to anyone but the office of the sheriff. WAGES are subject to maximum garnishment provisions of Title III of the Consumer Credit Protective Act (15 USC 1673)

BRUNNEN
SHERIFF'S OFFICE
IDAHO FALLS, IDAHO
RECEIVED
OCT 18 AM 10:13
WARRANT # _____
CIVIL # _____

DATE 9-26-07

ANSWER OF GARNISHEE:

PLEASE ANSWER THE FOLLOWING INTERROGATORIES. IDAHO CODE 8-512 provides that the garnishee shall make full and true answer to interrogatories within five (5) days or the plaintiff may take judgment against him by default.

1. FINANCIAL INSTITUTIONS: Do you have in your possession or under your control any money or property belonging to the defendant (s)? yes - wages
Amount next pay date is 10/26/07
2. Is the Defendant your employee? yes
 Full Time Part Time Contract
3. What is his/her average take home pay? 2,237.19 When paid? every other Friday
1. Do you owe the Defendant any money? Yes No
If so, how much and when did it become due?
If not yet due, when will it become due? will be paid on 10/26/07
2. Has the defendant assigned his/her wages? Yes No
When and to whom was the assignment made? _____
3. Are you honoring any other garnishments? Yes No
If so, what state and county serve the garnishment? _____
4. If the Defendant no longer works for you, when did his/her employment end?
Who does he/she work for now? NIA

Michael Klein
GARNISHEE

Garnishment Specialist
TITLE

10/18/07
DATE

CIVIL # **200705878**

WARRANT

2007 SEP 25 PM 4:38

BOONEVILLE COUNTY
SHERIFF'S DEPT.
IDAHO FALLS, IDAHO
RECEIVED

Bryan D. Smith, Esq.
ISB # 4411
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC., an Idaho corporation,

Plaintiff,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMIANT,

Defendants.

Case No. CV-06-130

WRIT OF EXECUTION

THE PEOPLE OF THE STATE OF IDAHO

To the Sheriff of the County of Bonneville,

GREETINGS:

Judgment	\$833.16
Costs	\$36.00
Interest	\$103.04
Payments	\$0.00
Total	\$972.20

WHEREAS, the plaintiff, **Credit Bureau of Eastern Idaho, Inc.**, recovered judgment in the said District Court in the said County of MADISON, against JEFF D. LECHEMINANT and LISA LECHEMIANT on **March 28, 2006**, for the sum of **\$833.16**, with interest at the legal rate

for judgments as prescribed by Idaho Code § 28-22-104 until paid, together with costs and disbursements at the date of said judgment and accruing costs as appear to us on record.

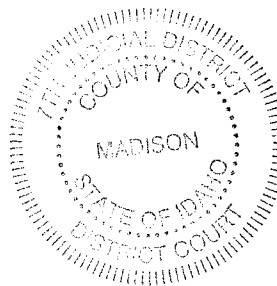
And whereas, the judgment roll in the action in which said judgment was entered is filed in the Clerk's office of said Court in said County of MADISON, and the said judgment was docketed in said Clerk's office in the said County, on the day and year first above written.

And the sum of \$833.16 with interest in the amount of \$103.04, plus costs of \$36.00, less payments of \$0.00 for a total of \$972.20 is now—as of September 19, 2007—actually due on said judgment.

NOW, THEREFORE, YOU, the said Sheriff, are hereby required to make the said sums due on said judgment with interest as aforesaid, and costs and accruing costs, to satisfy said judgment in full out of the personal property of said debtor, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to the debtor on the day whereon said judgment was docketed in said County, or at any time thereafter. Pursuant to Idaho Code § 11-103 you may make return hereon not less than 10 nor more than 60 days after your receipt hereof, with what you have done endorsed thereon.

WITNESS HON. Mark S. Rammell Judge
of the said District Court, at the Courthouse in the
County of MADISON, this 21 September,
2007.

ATTEST my hand and seal of said Court the day
and year last above written.



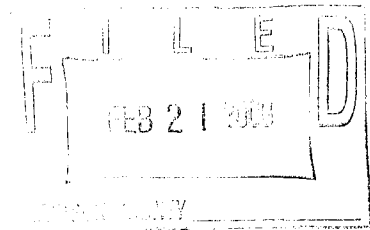
MARILYN RASMUSSEN
Clerk
[Signature]
Deputy Clerk

~~UNSATISFIED RETURN OF SERVICE~~

(WRIT 9/21/07)

PAGE 52

Bryan D. Smith, Esq.
Idaho State Bar Number: 4411
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

CREDIT BUREAU OF EASTERN
IDAHO, INC., an Idaho corporation

Plaintiff,

v.

JEFF D. LECHEMINANT and LISA
LECHEMINANT,

Defendant.

Case No. CV-06-130

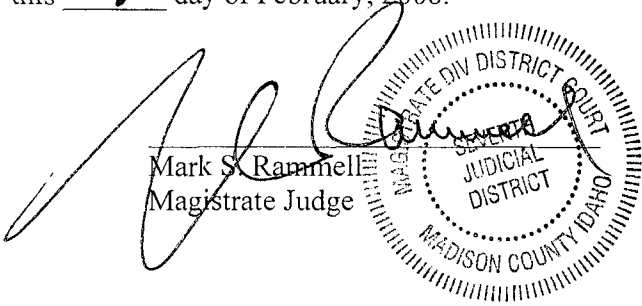
ORDER

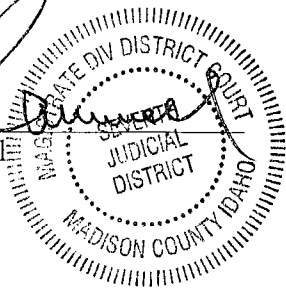
THIS CAUSE having come up regularly for hearing before the Court on October 23, 2007, pursuant to plaintiff's Motion to Contest Claim of Exemption and plaintiff appearing by and through counsel of record Bryan D. Smith, Esq., of the firm McGrath, Meacham & Smith, PLLC, and defendant appearing by and through counsel of record Marvin M. Smith, Esq., of the firm Anderson, Nelson, Hall, Smith, P.A.; and the Court having considered the records filed herein and having heard and considered oral argument from counsel, and otherwise being fully advised in the premises:

NOW, THEREFORE, it shall be the order of this Court and it is hereby ordered:

1. That plaintiff's Motion to Contest Claim of Exemption is DENIED; and the court hereby grants the defendant's claim of exemption.

MADE AND ENTERED this 20 day of February, 2008.


Mark S. Rammell
Magistrate Judge



CERTIFICATE OF SERVICE

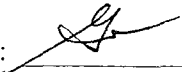
I HEREBY CERTIFY that on the 21 day of February, 2008, I caused a true and correct copy of the foregoing **ORDER** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by causing the same to be delivered by hand, facsimile or overnight delivery, addressed to the following:

- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Overnight Delivery

Marvin M. Smith
Anderson Nelson Hall Smith, P.A.
490 Memorial Drive
Idaho Falls, ID 83405

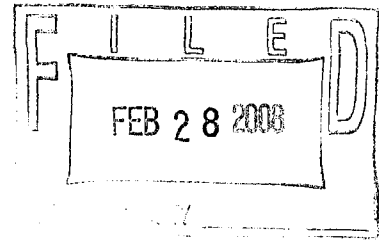
- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Overnight Delivery

Bryan D. Smith, Esq.
McGrath, Meacham & Smith, PLLC
P. O. Box 50731
Idaho Falls, Idaho 83405-0731

By: 

Court Clerk

Bryan D. Smith, Esq.
ISB # 4411
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731



Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC, an Idaho corporation,

Plaintiff,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMINANT

Defendants.

Case No. CV-06-130

NOTICE OF APPEAL

TO THE ABOVE NAMED RESPONDENT:

**Marvin M. Smith, ESQ., 490 Memorial Drive, IDAHO FALLS, IDAHO 83405, AND TO
THE CLERK OF THE ABOVE-ENTITLED COURT:**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, Credit Bureau of Eastern Idaho, Inc., appeals against the above-named respondent, Jeff Lecheminant and Lisa Lecheminant, husband and wife, to the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Madison, from the court's Order Denying Motion to Contest Claim of Exemption signed February 20, 2008 by Magistrate Mark S. Rammell.

2. Appellant has the right to appeal to the District Court, and the memorandum decisions, orders, and judgment described in paragraph 1 above are subject to appeal pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which the appellant intends to assert in the appeal are the following:

a. Under Idaho community property law, can the community wages of one spouse be used to satisfy the separate debt of the other spouse?

b. If the community wages of one spouse can be used to satisfy the separate debt of the other spouse, are those wages subject to execution by garnishment pursuant to Idaho Code Section 8-507 or another permissible statute?

c. If the community wages of one spouse are subject to execution by garnishment pursuant to Idaho Code Section 8-507 or another permissible statute to satisfy the separate debt of the other spouse, does Idaho Code Section 11-204 apply on a claim of exemption or is the statute unconstitutional?

4. There has been no order entered sealing any portion of the record in this case.

5. The appellant requests no transcript be prepared on appeal.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules: The entire magistrate court file.

7. I certify:

(a) That the appellate filing fee has been paid;

(b) That service has been made upon all parties required to be served pursuant

to Rule 20, Idaho Appellate Rules.

DATED this 26th day of February, 2008.

McGRATH, MEACHAM & SMITH, PLLC

By: 

Bryan D. Smith
Attorneys for Appellant

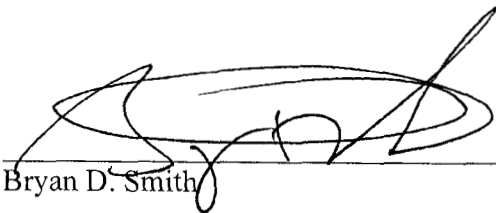
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 2008, I caused a true and correct copy of the forgoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

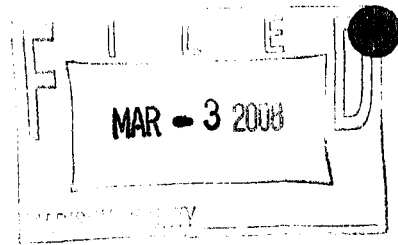
PARTIES SERVED:

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery

Marvin M. Smith
Anderson Nelson Hall Smith, P.A.
490 Memorial Drive
Idaho Falls, ID 83402



Bryan D. Smith



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MADISON COUNTY**

CREDIT BUREAU OF EASTERN)
IDAHO, and Idaho corporations,)
)
Petitioner,)
)
vs.)
)
JEFF D. LECHEMINANT and LISA)
LECHEMINANT,)
)
Respondents.)
_____)

Case No. CV-06-130

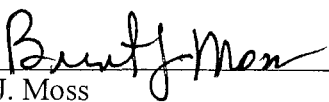
ORDER GOVERNING
PROCEDURE ON APPEAL

Pursuant to I.R.C.P. 83(f), Appellants filed a notice of appeal with this Court on February 26, 2008, in which they appeal a February 20, 2008 Judgment from the Magistrate Division of the District Court for Madison County, Honorable Mark S. Rammell, Magistrate Judge, presiding. Therefore, IT IS HEREBY ORDERED that:

1. This appeal shall be determined on the record;
2. A transcript of the proceedings in the Magistrate Division shall be prepared at appellant's expense pursuant to I.R.C.P. 83 (j) and (k) unless, after a motion by one of the parties and a hearing, this Court determines a transcript is unnecessary;
3. Pursuant to I.R.C.P. 83(v) and I.A.R. 34, briefs shall be submitted to this Court according to the following schedule:

- (a) Appellant's brief shall be filed with this Court within thirty-five (35) days of the date of notice that the transcript and record have been filed with this Court;
- (b) Respondent's brief shall be filed with this Court within twenty-eight (28) days after service of Appellant's brief; and
- (c) Appellant's reply brief, if any, shall be filed with this Court within twenty-one (21) days after service of Respondent's brief.
4. The original briefs shall be filed with the Clerk of the Madison County District Court, located at 134 East Main, Rexburg, Idaho, 83440. Briefs need not be bound or covered. A simple staple and white paper will suffice.
5. When all the foregoing requirements have been complied with, Appellant shall arrange a hearing for oral argument at the next convenient Law and Motionday following the expiration of the time limit for the filing of Appellant's reply brief. Oral argument shall be scheduled for hearing at the Madison County Courthouse in Rexburg, Idaho. Notice of the hearing date shall be served upon this Court and counsel for the respondent. If no hearing is scheduled, this Court will assume that the appeal has been submitted for decision without argument.

DATED this 3 day of March, 2008.



Brent J. Moss
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was served upon the individuals listed below via U.S. Mail, postage prepaid, on this 3 day of March, 2008:

Bryan D. Smith
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, ID 83405
Attorney for Petitioner

Marvin M. Smith
ANDERSON, NELSON, HALL, SMITH, P.A.
490 Memorial Drive
Idaho Falls, ID 83402
Attorney for Respondent

Clerk of the Court

By:


Deputy Clerk

Bryan D. Smith, Esq.
ISB # 4411
MCGRATH, SMITH & ASSOCIATES, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, Idaho 83405
(208) 524-0731

RECEIVED APR - 2 2008

APR - 8

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC, an Idaho corporation,

Plaintiff,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMINANT,

Defendants.

Case No. CV-06-130

STIPULATION GOVERNING
PROCEDURE ON APPEAL

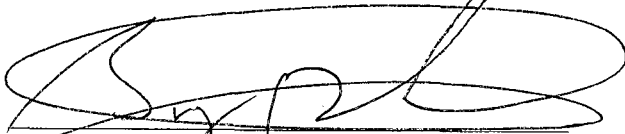
COME NOW the above parties, plaintiff, Credit Bureau of Eastern Idaho, Inc., by and through its attorney of record, Bryan D. Smith, Esq., of the firm McGrath, Smith & Associates, PLLC, and Defendant, Jeff D. Lecheminant, by and through their attorney of record, Marvin M. Smith, of the firm Anderson, Nelson, Hall, Smith P.A., and stipulate as follows:

1. It is not necessary to transcribe the reporter's transcript in this case.
2. The court may enter an order obviating the requirement that the transcript be prepared.

3. Upon service after entry of such an order, appellant shall have 35 days to file its opening brief on appeal pursuant to the court's Order Governing Procedure on Appeal dated March 3, 2008 and at which time all further deadlines contained in that order shall become of effect.

DATED this 14th day of April, 2008.

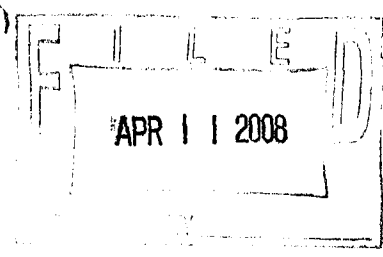
McGRATH, SMITH & ASSOCIATES, PLLC



Bryan D. Smith, Esq.
Attorneys for Plaintiff



Marvin M. Smith
Attorney for Defendant



Bryan D. Smith, Esq.
ISB # 4411
McGRATH, SMITH, & ASSOCIATES, PLLC
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Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
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CREDIT BUREAU OF EASTERN IDAHO,
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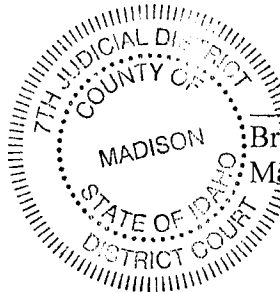
ORDER

Upon stipulation of the parties and good cause appearing therefore;

IT IS HEREBY ORDERED, as follows:

1. The parties need not have a reporter's transcript prepared on appeal;
2. Within 35 days of service of this order, the plaintiff shall file its opening brief on appeal pursuant to the court' Order Governing Procedure on Appeal dated March 3, 2008; and
3. All further deadlines contained in the Order Governing Procedure on Appeal dated March 3, 2008 shall become of effect as stated in said order upon the filing of this Order.

DATED this 10 day of ~~March~~ ^{April}, 2008.



Brent J. Moss
Brent J. Moss
Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of ~~March~~ ^{April}, 2008, I caused a true and correct copy of the forgoing **ORDER** to be served, by placing the same in a sealed envelope and depositing it in the U.S. Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

PARTIES SERVED:

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Delivery

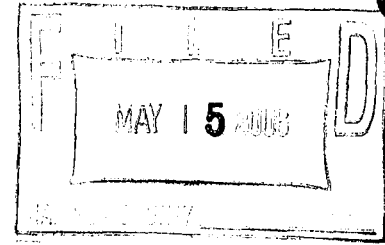
Marvin M. Smith
Anderson Nelson Hall Smith, P.A.
490 Memorial Drive
Idaho Falls, ID 83402

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- Facsimile
- Hand Delivery
- Overnight Delivery

Bryan D. Smith
McGrath, Smith & Associates, PLLC
P.O. Box 50731
Idaho Falls, ID 83402

[Signature]
Clerk of Court

Bryan D. Smith, Esq.
Idaho State Bar # 4411
MCGRATH, SMITH & ASSOCIATES, PLLC
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Attorneys for Petitioner

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC., AN IDAHO CORPORATION,

Petitioner,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMIANT, husband and wife

Respondents.

Case No. CV-06-130

PLAINTIFF'S BRIEF ON APPEAL

I. INTRODUCTION.

This matter comes before the court on appeal from the magistrate's order dated February 20, 2008 denying the motion filed by Credit Bureau of Eastern Idaho, Inc.

("CBEI") to contest the claim of exemption filed by Jeff Lecheminant ("Lecheminant.")

The factual and procedural history are set forth below.

II. FACTUAL PROCEDURAL HISTORY.

DATE	EVENT
March 28, 2006	The court enters judgment against Jeff Lecheminant and Lisa Lecheminant in the amount of \$833.16;
September 5, 2006	Counsel for CBEI met with Jeff Lecheminant who said (1) he was self employed as a contractor; and (2) he was married to Sandy Moulton who was working at Eastern Idaho Regional Medical Center (EIRMC) as a nurse;
September 26, 2006	CBEI files an Application for on Order for Continuing Garnishment, Affidavit of Bryan D. Smith in Support of Execution, Order For Continuing Garnishment, and Writ of Execution; the continuing garnishment seeks to garnish Sandy Moulton's community property wages at EIRMC;
September 28, 2007	The Court enters the Order for Continuing Garnishment;
December 2006	The Bonneville County Sheriff refuses to serve Order for Continuing Garnishment saying that CBEI could not garnish Sandy Moulton's wages at EIRMC;
January 2007	The court clerk tells CBEI's paralegal that "per Judge Rammell, you cannot garnish Sandy Moulton's wages"; the court clerk states that under <i>Miller v. Miller</i> , 113 Idaho 415 (1987) a writ for <i>continuous</i> garnishment cannot be issued against a defendant's spouse;
January 15, 2007	CBEI files Application for Order for Garnishment, Affidavit of Bryan D. Smith in Support of Execution, Order for Garnishment, and Writ of Execution;
September 25, 2007	CBEI sends garnishment to EIRMC to garnish the wages of Sandy Moulton who is married to Jeff Lecheminant (the Bonneville County Sheriff serves the garnishment this time);
October 15, 2007	Eastern Idaho Regional Medical Center files a claim of exemption for itself and Sandy Moulton;
October 17, 2007	CBEI files its motion to contest claim of exemption; and
October 23, 2007	Hearing set on CBEI's Motion to Contest Claim of Exemption where court denies CBEI's motion;

February 20, 2008 Court enters written order denying CBEI's Motion to Contest Claim of Exemption; and

February 27, 2008 CBE files its Notice of Appeal.

III. ISSUE ON APPEAL.

A. Under Idaho community property law, can the community wages of one spouse be used to satisfy the separate debt of the other spouse?

B. If the community wages of one spouse can be used to satisfy the separate debt of the other spouse, are those wages subject to execution by garnishment pursuant to Idaho Code Section 8-507 or another permissible statute?

C. If the community wages of one spouse are subject to execution by garnishment pursuant to Idaho Code Section 8-507 or another permissible statute to satisfy the separate debt of the other spouse, does Idaho Code Section 11-204 apply on a claim of exemption or is the statute unconstitutional?

D. Can CBEI recover attorney's fees on appeal?

IV. IDAHO CASE LAW HOLDS THAT COMMUNITY PROPERTY CAN SATISFY THE SEPARATE DEBT OF ONE OF THE SPOUSES.

A. Idaho Case Law.

Idaho law first addressed in *Holt v. Empey*, 32 Idaho 106 (1919) the extent to which community property can be liable for the separate debt of a spouse. In *Holt*, the real property of Empey's husband was attached by Holt to satisfy a debt that the husband had incurred as a surety for a third party. Empey intervened in the action, alleging that the property attached was community property and not subject to levy for the separate debt of her husband. The Idaho Supreme Court disagreed stating, "We therefore hold that community real estate is liable to attachment and execution for the debts of the husband,

whether incurred for his own use or for the benefit of the community.” *Holt v. Empey*, *supra*, 32 Idaho 110. Although it is unclear from the court's opinion whether the husband's debt was incurred before or during the marriage, the community property was liable regardless of whether the debt was antenuptial or postnuptial. *See* JOANN HENDERSON, IDAHO LAW FOUNDATION, COMMUNITY PROPERTY LAW OF IDAHO ch. 9, at 15 (1982).

In *Gustin v. Byam*, 41 Idaho 538 (1925), Gustin and her husband lived on land owned by Gustin's father under an arrangement whereby the husband was to farm the land during the year and give one-half of the crops to the father for use of the land. During the marriage, the husband gave a note to his brother secured by a chattel mortgage covering the whole of the crops, including the share of Gustin's father. At the father's insistence, the mortgage was subsequently released by the brother. At around the same time, the brother endorsed the note to a hardware company, which then brought suit to collect on the note. A default judgment was obtained, and the husband's share of the crops was levied upon and sold in order to satisfy the judgment. Gustin filed an action seeking to set aside the judgment and to recover the value of the crops, claiming that the crops were community property and exempt from execution.

On appeal from a judgment entered in favor of the defendants, the Idaho Supreme Court noted that at that time, I.C. § 32-912 gave the husband the management and control of the community property, with full power of alienation except as provided in the statute. Among the powers the husband could exercise alone was the sale of community personal property, whether it was exempt from execution or not. Relying on the holding in *Holt*, the Court held that the community property was liable for the separate debts of

the husband as well as for community debts. The Court said, “[t]he community property is liable for the separate debts of the husband as well as for community debts.” *Gustin v. Byam, supra*, 41 Idaho 538 at 603. Consequently, Gustin was unable to recover the property sold.

Both *Holt* and *Gustin* were decided at a time when the husband was given sole power to manage and control the community property by statute. In 1974, the legislature amended I.C. § 32-912, giving the husband and the wife equal management and control of the community property. See 1974 Idaho Sess. Laws ch. 194, § 2. Despite the change in the management and control of the community property and in spite of any doubt concerning the continued vitality of *Holt* and *Gustin*, those cases were cited with approval by our Supreme Court in *Bliss v. Bliss*, 127 Idaho 170 (1995), where the court cited *Holt*, *Gustin*, and Crapo, *Equal Management of Community Property: Creditors' Rights*, 13 Idaho L. Rev. 177, 178 (1977), for the proposition that “[p]arties often marry with separate antenuptial debts, and those debts are payable from community property.” *Id.* at 173 (emphasis added.)

More recently, in *Action Collection Service, Inc. v. Seele*, 138 Idaho 753 (Ct. App. 2003), the Court of Appeals held that the separate property debt of one spouse can be satisfied out of the community property wages of that spouse. The court reasoned that the elevation of the status of wives to equal managers of the community property by virtue of the amendment to Idaho statutes, without a specific exemption of the liability of the community property for each spouse's separate debts, suggests that the legislature intended for the rules of law enunciated in *Holt* and *Gustin* to apply equally to the husband and the wife after amendment of the statute. Therefore, just as the community

property in those cases was liable for the separate debts of one spouse, whether antenuptial or postnuptial, the community property wages were liable to satisfy the separate property judgment of one spouse.

Therefore, just as the community property in *Holt, Gustin*, and most recently *Action Collection* was liable for the separate debts of one spouse, the community wages of Lecheminant's spouse are liable to satisfy CBEI's judgment against Lecheminant. As stated in *Bliss v. Bliss*, 127 Idaho at 173: "***Parties often marry with separate antenuptial debts, and those debts are payable from community property.***" *Id.* at 173 (emphasis added.)

B. Idaho Statutory Law.

Under Idaho Code Section 32-912, "[e]ither the husband or the wife shall have the right to manage and control the community property." Here, there can be no dispute that the wages of Lecheminant's spouse are community property in which Lecheminant has an interest. *See Martsch v. Martsch*, 103 Idaho 142, 147 (1982) ("All salaries are community property, unlike rents and profits where only net proceeds are community property.") This means that Lecheminant has the right to manage and control 100% of his spouse's wages.

Moreover, Idaho Code Section 11-201 identifies the property in Idaho that is subject to execution as follows:

Property liable to seizure.—All goods, chattels, moneys and *other property, both real and personal, or any interest therein of the judgment debtor*, not exempt by law, and *all property and rights of property*, seized and held under attachment in the action, are liable to execution. Shares and interest in any corporation or company, and debts and credits, and *all other property both real and personal, or any interest in either real or personal property*, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. (Emphasis added.)

The phrases “*other property, both real and personal, or any interest therein of the judgment debtor*, not exempt by law, and *all property and rights of property*” and “*all other property both real and personal, or any interest in either real or personal property*” are broad enough to include “community property” generally defined as “all property acquired during marriage.” Idaho Code Section 32-906.

All these statutory provisions are further supportive of Idaho case law that a judgment creditor can satisfy a judgment against a judgment debtor from the community property wages of the judgment debtor’s spouse.

C. The Wages Of Lecheminant’s Spouse Are Community Property Subject To Execution.

Here, CBEI has a judgment against Lecheminant who is married to Sandy Moulton who receives wages from her employment at Eastern Idaho Regional Medical Center. Sandy’s wages are community property. Under Idaho case law, these wages are liable to satisfy Lecheminant’s separate property judgment against him. Under Idaho statutory law, Lecheminant has the right to manage and control 100% of Sandy’s wages therefore making Sandy’s wages subject to execution and garnishment.

V. ALTHOUGH THE COMMUNITY WAGES OF SANDY MOULTON ARE NOT SUBJECT TO AN ORDER FOR CONTINUING GARNISHMENT, THEY ARE SUBJECT TO GARNISHMENT.

Idaho case law established in *Holt*, *Gustin*, *Bliss*, and *Action Collection* all stands for the proposition that the community wages of Lecheminant’s spouse are liable to satisfy CBEI’s judgment against Lecheminant. The issue is by what method CBEI can attach those community wages. CBEI submits that Idaho law prohibits such attachment

by way of an order for *continuing* garnishment. See *Miller v. Miller, supra*, 113 Idaho at 415. However, Idaho law allows such attachment by way of garnishment.

A. The Community Wages Of A Defendant Spouse Are Not Subject To Attachment By An Order Of Continuous Garnishment.

In *Miller v. Miller, supra*, 113 Idaho at 415, the court addressed whether a judgment only against a husband could be enforced by way of an order for *continuous* garnishment against the wages of the judgment defendant's wife. The court did not address the issue of whether the wages of a judgment debtor's spouse are or are not subject to "levy," "execution," or "garnishment." Specifically, the husband had been sued for trespass and a judgment was entered against him. The plaintiff obtained an order of *continuous* garnishment against the wages of the judgment defendant's wife. The judgment defendant's wife was not a party to the underlying lawsuit. The issue arose whether the order of *continuous* garnishment could be issued against the wages of the judgment defendant's wife given that she was not on the judgment.

The court held that "joinder of a spouse as a party defendant was a necessary prerequisite, under I.C. Section 8-509(b)." *Id.* at 420. Idaho Code Section 8-509(b), which deals with an order for *continuous* garnishment, reads as follows:

(b) When the garnishee is the employer of the judgment debtor, the judgment creditor, upon application to the court, shall have issued by the clerk of court, a continuing garnishment directing the employer-garnishee to pay to the sheriff such future moneys coming due to the judgment debtor as may come due to said judgment debtor as a result of the judgment debtor's employment. This continuing garnishment shall continue in force and effect until the judgment is satisfied. The creditor shall be solely responsible for insuring that the amounts garnished do not exceed the amount due on the judgment.

The court reasoned that "[t]he language of I.C. Section 8-509 is specifically limited to a 'judgment creditor' and a 'judgment debtor.'" 'A well-settled rule of construction is that

the words of a statute must be given their plain, usual and ordinary meaning in the absence of any ambiguity.’ A judgment debtor according to *Black's Law Dictionary* (5th ed. 1979), p. 758 is, ‘A person against whom judgment has been recovered, and which remains unsatisfied.’ Paula, having not been a named party defendant, clearly did not qualify as a judgment debtor and, hence, was not within the scope of I.C. Section 8-509(b).” *Miller v. Miller, supra*, 13 Idaho at 420.

In other words, the plaintiff in *Miller* could not get an order of *continuous* garnishment because the wife’s employer (the garnishee) was not the employer of the judgment debtor (the husband debtor/defendant). *Miller* stands for the proposition that a judgment creditor cannot get an order of *continuous* garnishment against the wages of a spouse because of the limitations contained in I.C. Section 8-509. *Miller* does not even address the issue whether a judgment creditor can execute by garnishment the wages of the judgment defendant’s spouse.

B. The Community Wages Of A Defendant Spouse Are Subject To Execution By Garnishment.

Idaho Code Section 8-507, states, in pertinent part, that upon written directions from the plaintiff or his attorney, the sheriff shall execute and garnish “property belonging to the defendant”:

8-507. Garnishment – Service of writ of attachment, execution, or garnishment – Banks.—(a) Upon receiving written directions from the plaintiff or his attorney, that any person or corporation, public or private, has in his or its possession or control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon any such person, or corporation identified in the plaintiff’s written directions all of the following documents:

- (1) a copy of the writ;
- (2) a notice that such credits, or other property, or debts, as the case may be, are attached in pursuance of such writ;

- (3) a notice of exemptions available under federal and state law;
- (4) instructions to debtors and third parties for asserting a claim of exemption;
- (5) a form for making a claim of exemption; and
- (6) if the garnishee is a bank or depository institution, a search fee of five dollars (\$5.00) and the last known mailing address of the defendant and, if known, a tax identification number, that will enable the garnishee to identify the defendant on its records.

Here, Lecheminant has the right to manage and control 100% of Sandy's community wages at EIRMC. For this reason, and all the other reasons cited in this brief, Sandy's community wages constitute "property belonging to him." Accordingly, Sandy's community wages are subject to execution and garnishment by virtue of Idaho Code Section 8-507(a).

V. THE EXEMPTION THAT EASTERN IDAHO REGIONAL MEDICAL CENTER RELIES UPON IS NOT ENFORCEABLE BECAUSE IT IS UNCONSTITUTIONAL.

A statute that denies equal protection of the laws guaranteed in the fourteenth amendment of the Constitution of the United States is unenforceable. *Suter v. Suter*, 97 Idaho 461 (1976). Specifically, a statute that provides for a different classification of a husband and wife solely on the basis of sex is unenforceable if the basis for that different classification is arbitrary and not reasonable. *Id.* A different classification is arbitrary and not reasonable if the different classification does not rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike. *Id.*

In *Suter v. Suter, supra*, 97 Idaho at 461, the Idaho Supreme Court held that Idaho Code Section 32-909 was unconstitutional and therefore not enforceable. Idaho Code Section 32-909 read as follows: "**Earnings of wife living separate from husband.** -- The earnings and accumulations of the wife and of her minor children living with her or

in her custody, while she is living separate from her husband are the separate property of the wife.” The court held that Idaho Code Section 32-909 was unconstitutional because it “results in unequal treatment for a husband and a wife as regards their individual earnings after a separation. The different classification of a husband and wife solely on the basis of sex ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’” *Id.* at 467 (quotations omitted). The court explained held that “the unequal treatment accorded a husband and wife through the operation of Idaho Code Section 32-909 is arbitrary on its face and demonstrates no substantial relation to the object of community property legislation.” *Id.* The court further explained that “Idaho Code Section 32-909 creates an unconstitutional distinction in the division of marital property upon divorce and therefore is a denial of the equal protection of the laws as guaranteed in the fourteenth amendment of the Constitution of the United States.” *Id.*

Here, Idaho Code Section 11-204 results in unequal treatment for a husband and a wife as regards their individual earnings during marriage because it treats the earnings of the wife differently than the earnings of the husband. It exempts from garnishment a wife’s compensation “due and owing” without exempting from garnishment a husband’s compensation “due and owing.” This unequal treatment accorded between a husband and a wife through operation of Idaho Code Section 32-909 is arbitrary on its face and demonstrates no substantial relation to the object of community property legislation.

In fact, Idaho Code Section 11-204 is contrary to the current object of community property law. When Idaho Code Section 11-204 was enacted in 1881, Idaho’s

community property law was that the husband had the exclusive right to manage and control all the community property except for the earnings of the wife for her personal services. *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163 (1929). On the other hand, the wife had the exclusive right to manage and control her community earnings resulting from her own personal services. *Id.* If the law were the same today, Idaho Code Section 11-204 would bear a substantial relation to the object of community property law because execution against the husband should not extend to property over which he has no right to manage or control. However, in 1974, Idaho changed its community property law so that “[e]ither the husband or the wife shall have the right to manage and control the community property.” *See* 1974 Idaho Sess. Laws ch. 194, § 2 and Idaho Code Section 32-912. Thus, today the husband has the right to manage and control a wife’s community earnings resulting from her own personal services just as a wife has the right to manage and control a husband’s community earnings resulting from his own personal services. Given the change to the law in 1974, Idaho Code Section 11-204 is actually contrary to current Idaho community property law because it exempts from garnishment a husband’s interest in property that he has every right to manage and control. Accordingly, Idaho Code Section 11-204 creates an unconstitutional distinction in the treatment of marital property upon garnishment and therefore is a denial of the equal protection of the laws as guaranteed in the fourteenth amendment of the Constitution of the United States.

VI. CBEI CAN RECOVER ATTORNEY’S FEES ON APPEAL.

With regard to a hearing on a motion to contest claim of exemption, Idaho Code Section 11-203(b) states that “the prevailing party at the hearing may be awarded costs

pursuant to the Idaho rules of civil procedure.” Idaho Rule of Civil Procedure 54(e)(5) states that “[a]ttorney fees, when allowable by statute or contract, shall be deemed as costs in an action.” Idaho Code Section 12-120(5) states that “[i]n all instances where a party is entitled to reasonable attorney’ fees and costs under subsection (1),(2), (3), or (4) of this section , such party shall also be entitled to reasonable postjudgment attorney’s fees and costs incurred in attempting to collect on the judgment.”

Here, the Magistrate Court awarded attorney’s fees in connection with the judgment and therefore the law of this case is that attorney’s fees are recoverable. Moreover, the complaint alleges compliance with Idaho Code Section 12-120(3). The defendants admitted these allegations as true having allowed judgment to be taken by default. Whereas this appeal is made in connection with CBEI’s attempt to collect on the judgment within the meaning of Idaho Code Section 12-120(5), CBEI requests that attorney’s fees be awarded in favor of CBEI and the defendants.

VII. CONCLUSION.

For all the reasons set forth above, CBEI respectfully requests that the court reverse the order of the Magistrate Court denying CBEI’s motion to contest claim of exemption and that the court award attorney’s fees on appeal against the defendants.

DATED this 14th day of May, 2008.

McGRATH, MEACHAM & SMITH, PLLC

By: 

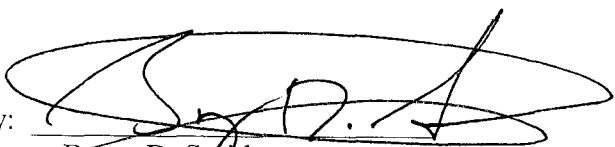
Bryan D. Smith, Esq.
Attorneys for Petitioner,
Credit Bureau of Eastern Idaho

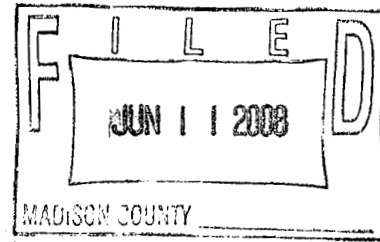
CERTIFICATE OF SERVICE

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By: 
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 Attorneys for Respondents

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON
 MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
 INC., an Idaho corporation,

Appellant,

v.

JEFF D. LECHEMINANT and LISA
 LECHEMINANT,

Respondents.

Case No. CV-06-130

**RESPONDENTS' BRIEF ON
 APPEAL**

COME NOW Respondents, by and through their attorney of record, and hereby submits their brief in opposition to the appeal of petitioner/appellant.

STATEMENT OF FACTS

Credit Bureau of Eastern Idaho, Inc. obtained a judgment against Jeff Lecheminant and Lisa Lecheminant while they were married. Jeff and Lisa divorced and subsequently Jeff Lecheminant married Sandy Moulton, employed by EIRMC. Credit Bureau of Eastern Idaho, Inc. is now attempting to garnish Sandy Moulton's wages to satisfy its judgment against Jeff Lecheminant, which was an antenuptial debt.

RESPONDENTS' BRIEF ON APPEAL - 1

I.

ANALYSIS**A. IDAHO CODE § 11-204 IS A VALID CONSTITUTIONAL STATUTE THAT HAS NEVER BEEN REPEALED.**

At the outset there is no doubt that wages earned by the parties during marriage are community property. This is clear in I.C. § 32-906(1), which states:

All other property acquired after marriage by either husband or wife is community property. The income of all property separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses or the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

However, Idaho Code § 11-204 states:

All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and all compensation due or owing for her personal services, is exempt from execution against her husband.

Said statute creates a special kind of community property. Professor of Law W.J. Brokelbank noted in his 1962 book, *The Community Property Law of Idaho* at pp.265-66:

The Idaho legislature of 1881 set up a special kind of community property, viz., "rents, issues and profits" of the wife's separate property and "all compensation due or owing for her personal services" (both of which are community property in Idaho) and provided that this special kind of community property should be "exempt from execution against her husband."

The Idaho Supreme Court, in *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 270

P.220 held:

As to the earnings of a married woman, not living separate and apart from her

RESPONDENTS' BRIEF ON APPEAL - 2

husband, on account of her personal services, **the exemption applies only to such earnings as are *due and owing*. After the earnings have been paid, or converted into other property, the exemption granted by said section no longer obtains.**

Id. at 280 P. 222 (emphasis added).

In this case, the debts must be satisfied from the separate property of the debtor spouse (Jeff Lecheminant) or from non-exempt community property. Otherwise, the judgment creditor obtains a windfall when a new community is formed. The separate property of the debtor spouse and non-exempt community property is still available to the Judgment creditor for satisfaction of the debt. Thus, certain property, like Ms. Moulton's wages, become shielded under the community property laws, under I.C. § 11-204.

B. I.C. § 32-912 DOES NOT ALLOW THE GARNISHMENT IN THIS CASE.

Plaintiff has asserted that pursuant to I.C. § 32-912 the antenuptial debts of one spouse binds the community property and thus makes the community assets available for execution. This section states that "Either the husband or the wife shall have the right to manage and control the community property and either may bind the community by contract . . ." The Plaintiff's argument is misplaced since the debt and judgment arose prior to the inception and existence of this community (with Ms. Moulton). The debts at issue in this case were not incurred during the existence of this community. The non-debtor spouse (Sandy Moulton) was not a party to the collection action against her husband and yet the Plaintiff has attempted to execute on the non-party, non-debtor's spouse's interest in the present community property in violation of her due process rights.

**C. THE DEBT WAS NOT INCURRED FOR THE BENEFIT OF "THIS"
COMMUNITY.**

Since the Plaintiff in this case attempted to garnish Ms. Moulton's wages, which are exempt community per I.C. § 11-204, the question then becomes whether or not a judgment creditor can attach the exempt community property of Ms. Moulton to satisfy the antenuptial debt of Ms. Moulton's present husband where she was neither a party nor judgment debtor. The courts have held that if the debt was incurred for the benefit of the community then the debt can be paid from the community property. The debt which gave rise to this action arose before this community was formed and was not incurred for the benefit of this community of Ms. Moulton. The community, therefore, is not obligated to repay such debts from this particular community property (wages), which is the exempt community property of Ms. Moulton under I.C. § 11-204.

The United States Ninth Circuit Court of Appeals (applying Idaho law) in a matter regarding a foreclosure action stated, "Only if the debt is incurred for the benefit of the community does I.C. § 32-912 allow satisfaction of the unpaid debt from the community property." *First Idaho Corporation v. Davis*, 867 F.2d 1241, 1243 (9th Cir. 1989). In *Freeburn v. Freeburn*, 97 Idaho 845, 849, 555 P.2d 385, 389 (1976) the Court held "The character of an item of property as community or separate vests at the time of its acquisition." (Citations omitted). This is the logic that must be followed here, that the debt acquired by Mr. Lecheminant is separate in character since it was vested prior to the formation of the new community; or the debt is a community debt of a former community but cannot be satisfied out of the "present" special kind of community property created by I.C. § 11-204.

D. THE PRINCIPLE OF EXTENSION PROTECTS THE WAGES OF SANDY MOULTON.

Upon reviewing Idaho case law, none have addressed the specific question as to whether or not the special kind of community property created by I.C. § 11-204, including wages, can be

attached by a judgment creditor to satisfy an antenuptial debt of the debtor spouse. However, there is case law indicating that community property classified under I.C. § 11-204 cannot be used for that purpose. The subject debt was not incurred for the benefit of this present community, the debt was not acquired during the existence of this community, and its very nature is separate in character in regard to the present community.

Further, “[a] party challenging a statute on constitutional grounds bears the burden of proving the statute is unconstitutional and must overcome a strong presumption of validity.” *In re Karel*, 144 Idaho 379, 162 P.3d 758, 762 (2007).

Idaho Code § 11-204 (in existence since 1881) has never been overturned by the Idaho Legislature and Idaho Supreme Court/Court of Appeal, respectively. By symmetry of reasoning it must be assumed that I.C. § 11-204 applies equally to married men as it does married woman. This principle of extension has been approved in Idaho law. *See e.g., Neveau v. Neveau*, 103 Idaho 707, 652 P.2d 655 (Ct. App. 1982); *Harrigfeld v. District Court*, 95 Idaho 540, 511 P.2d 822 (1973). The exemption provided by I.C. § 11-204 is to be construed liberally in favor of the debtor. *See e.g., In Re Moore*, 269 BR 864 (Bkrtcy D. Idaho 2001). Therefore, in this case the exemption should be construed even more liberally for Ms. Moulton because she is not the debtor, not a party to this suit, and was not even married to Jeff Lecheminant when the debt was incurred.

It is important to note that from 1915 to 1974, by statute, a wife had the exclusive management and control of her earnings, not her husband. Therefore, since 1974 the wife has actually had less control of her earnings not more. If Plaintiff's argument is accepted and Ms. Moulton is not granted the exemption given to her per I.C. § 11-204, a married woman will effectively have no control over her earnings.

In this case, the wages Sandy Moulton receives from EIRMC is compensation due or owing for her personal services. Therefore, per I.C. § 11-204 Sandy Moulton's wages are exempt from execution against her husband.

E. SANDY MOULTON'S WAGES ARE NOT SUBJECT TO GARNISHMENT PER THE IDAHO SUPREME COURT'S HOLDING IN MILLER V. MILLER, 113 IDAHO 415 (1987).

In *Miller v. Miller*, 113 Idaho 415, 420, 745 P.2d 294, 299 (1987) the Idaho Supreme

Court stated and held:

After the entry of the district court's judgment for damages against E. Paul, Pete filed pursuant to I.C. § 8-509 (Supp. 1987) a motion for continuing garnishment against the wages of E. Paul's spouse, Paula Miller. Following a hearing, the court denied the motion on the ground of Pete's failure to name Paula as a party defendant. The district court reasoned that allowing a garnishment of Paula's wages without having been made a party defendant, and with the judgment having been entered only against her husband, would deny her due process of law. We agree with the district court's conclusion that the joinder of a spouse as a party defendant was a necessary prerequisite, under I.C. § 8-509(b) . . .

The language of I.C. § 8-509 is specifically limited to a "judgment creditor" and a "judgment debtor." "A well-settled rule of construction is that the words of a statute must be given their plain, usual and ordinary meaning in the absence of any ambiguity." (Citations omitted). A judgment debtor according to *Black's Law Dictionary* (5th ed. 1979), p. 758 is, "A person against whom judgment has been recovered, and which remains unsatisfied." Paula, having not been a named party defendant, clearly did not qualify as a judgment debtor and, hence, was not within the scope of I.C. § 8-509(b).

The *Miller* case is closely analogous to the matter at hand. In this case, Sandy Moulton was not a party defendant and is not a "judgment debtor" just as Paula Miller in the *Miller* case. If the Idaho Supreme Court would not allow a continuing garnishment against someone who is not a "judgment debtor" then why would it allow any garnishment against someone who is not a "judgment debtor"? Thus, it is EIRMC's position that *Miller* stands for the proposition that garnishment of any type can only be effected against persons who are actually party defendants in

a suit and are judgment debtors. Therefore, because Sandy Moulton was not a party defendant in this matter and no judgment was entered against her, the wages of Sandy Moulton can not be garnished.

III.

F. THE CASE OF ACTION COLLECTION SERVICES, INC., IS NOT CONTROLLING IN THE INSTANT CASE.

The case of Action Collection Services, Inc. v. Seele, 138 Idaho 753, 69 P.3d 173 (Ct. App. 2003) does not aid the court in its determination of the instant appeal.

There are multiple factual and legal differences between the case at the bar and the Action Collection Services, Inc. case. Most of these issues have been addressed in previous sections; however, to recapitulate those differences, the court should consider the following:

1. In Action Collection Services, Inc., Seele was the judgment debtor.
2. Seele did not dispute that she was contractually liable for the debts encompassed by the Action judgment.
3. There is absolutely no discussion in the Action Collection Services, Inc. case of the exemption granted by I.C. §11-204.
4. In the instant case, Sandy Moulton is not the judgment debtor.
5. Sandy Moulton is not liable for the underlying debts that encompass the judgment in the instant case.

What the appellant wishes to do is simply state that community property is subject to garnishment and end the present discussion. This is not true in all cases under all circumstances. The Miller case cited above indicates that the mechanism of obtaining garnishment is limited to judgment creditors and judgment debtors. Sandy Moulton does not fit into the category of a

judgment debtor, in deed, Sandy Moulton is in the situation of the judgment debtor's new husband who was not named in the Action Collection Services, Inc. case. There is a reason for that: garnishment would not work in regard to an individual not responsible for the underlying debt and not named as a party (judgment debtor) in the judgment.

In summary, the Action Collection Services, Inc. case only serves to show the complete disconnect in the instant case between a judgment creditor and a party who is not responsible for the debt and is not susceptible to garnishment in as much as the individual is not a judgment debtor.

II.

CONCLUSION

Based upon the analysis, case law precedent, and statute set forth above, respondents respectfully requests that this Court deny appellant's appeal in all respects.

DATED this 11th day of June, 2008.

ANDERSON NELSON HALL SMITH, P.A.



MARVIN M. SMITH
Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 11th day of June, 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Bryan D. Smith
MCGRATH, SMITH
414 Shoup Avenue
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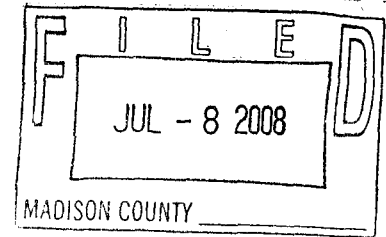
- Mailing
- Hand Delivery
- Fax: 529-4166
- Overnight



 MARVIN M. SMITH

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Attorneys for Petitioner



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF MADISON
MAGISTRATE DIVISION

CREDIT BUREAU OF EASTERN IDAHO,
INC., AN IDAHO CORPORATION,

Appellant,

vs.

JEFF D. LECHEMINANT and LISA
LECHEMIANT, husband and wife

Respondents.

Case No. CV-06-130

**PLAINTIFF'S REPLY BRIEF ON
APPEAL**

I. INTRODUCTION.

This matter comes before the court on appeal from the magistrate's order dated February 20, 2008 denying the motion filed by Credit Bureau of Eastern Idaho, Inc. ("CBEI") to contest the claim of exemption filed by Sandy Moulton (Moulton) and Eastern Idaho Regional Medical Center ("EIRMC.")

II. IDAHO CODE §11-204 IS AN ANTIQUATED UNCONSTITUTIONAL STATUTE.

Idaho Code §11-204 denies equal protection of the laws guaranteed in the fourteenth amendment of the Constitution of the United States. A statute that provides for different classifications for husband and wife solely on the basis of sex is unenforceable if there is no reasonable basis for the different classifications that are related to the object of the legislation. *Suter v. Suter*, 97 Idaho 461 (1976). CBEI has shown that there is no reasonable basis related to the object of Idaho Code §11-204's different classification for compensation of a wife for personal services as opposed to compensation of a husband for his personal services. Importantly, respondents do not attempt to show (as in make absolutely no argument for) any reasonable basis for Idaho Code § 11-204's different classification for compensation of a wife for her personal services as opposed to compensation of a husband for his personal services. Accordingly, Idaho Code §11-204 is unconstitutional for all the reasons set forth in CBEI's opening brief.

As a way of arguing that Idaho Code §11-204 is constitutional, respondents claim that the judgment must be satisfied from the separate property of the judgment debtor spouse or from nonexempt community property, or "the judgment creditor obtains a windfall when a new community is formed."¹ However, it is the judgment debtor and the judgment debtor's wife who gain a windfall when a new community is formed if their community property becomes exempt from collection simply on the basis of sex classification. And it is in fact Idaho Code §12-204 that provides this unconstitutional gratuitous windfall for the judgment debtor and his wife because Idaho Code § 12-204 would not apply if CBEI were seeking to garnish the wages of a man instead of a woman.

III. IDAHO CODE § 32-912 DOES PERMIT GARNISHMENT OF THE COMMUNITY WAGES IN THIS CASE.

Respondents contend that CBEI's reliance on Idaho Code § 32-912 is misplaced because the debt and judgment arose before the formation of the current community. However, CBEI cites Idaho Code § 32-912 to establish that both husband and wife have the right to manage and control community property and that the wages of either spouse are community property that either has the right to manage and control. Importantly, respondents have conceded that "wages earned by the parties during marriage are community property."² In response, respondents claim that the debts which are the subject of the current judgment are not subject to garnishment because they were incurred before the existence of the current community. But this argument has no legal basis, and respondents do not cite to any authority to support their position.

To the contrary, a long line of Idaho cases have held that the separate antenuptial debts of either spouse are payable from community property. *Bliss v. Bliss*, 127 Idaho 170 (1995); *Gustin v. Byam*, 41 Idaho 538 (1925); and *Holt v. Empey*, 32 Idaho 106 (1919). Respondents have not even attempted to distinguish this Idaho case law and instead have chosen to ignore it completely. Further pertinent Idaho case law includes *Action Collection Service, Inc. v. Seele*, 138 Idaho 753 (Ct. App. 2003) in which the court allowed the garnishment of community wages of a judgment debtor to satisfy that judgment debtor's separate antenuptial debt. Here, CBEI asks for the same remedy to the extent CBEI seeks to garnish community wages to satisfy Lechemiant's separate antenuptial debt.

Respondents argue that allowing such a garnishment is essentially unfair and in violation of the nonparty/nondebtor spouse's due process rights. However, Moulton has had the opportunity to object to the garnishment as this appeal demonstrates. Therefore, she has not had

her due process rights violated. Also, Idaho courts recognize that “parties often marry with separate antenuptial debts” and further recognize that “those debts are payable from community property.” *Action Collection Service, Inc. v. Seele, supra*, 138 Idaho at 758 and *Bliss v. Bliss, supra*, 127 Idaho at 173. Given that parties often marry with separate antenuptial debts, spouses who wish to avoid having their community wages garnished to satisfy separate antenuptial debts of their new spouse can readily enter into a prenuptial agreement in which the parties agree that each spouse’s wages shall remain separate property rather than become community property. However, here, Moulton and Lechemiant did not avail themselves of any prenuptial agreement.

IV. NO REQUIREMENT EXISTS THAT A DEBT MUST BENEFIT THE COMMUNITY BEFORE IT CAN BE SATISFIED OUT OF COMMUNITY PROPERTY.

Respondents rely on *First Idaho Corporation* to argue that a debt must benefit the community before it can be satisfied out of community property. However, *First Idaho Corporation* is readily distinguishable from this case. In *First Idaho Corporation*, the debt at issue was a separate debt in the form of a mortgage note signed by the wife’s deceased husband. When the husband defaulted, the bank sued the husband and the wife, who had not signed on the mortgage note. Importantly, the bank named the wife as a party and sought a judgment personally against her. However, the court dismissed the claim against the wife because she had not signed on the note and therefore had no personal liability. The court also dismissed the claim because the complaint seeking to hold the wife individually liable on a judgment did not allege that the debt was incurred for the benefit of the community.

Here, CBEI has not sued Moulton and does not seek a judgment against her. This fact makes the case of *First Idaho Corporation* readily distinguishable. If CBEI were to seek a judgment against Moulton, CBEI would be required to show that she has personal liability for the debt by either (1) showing that she agreed to pay the debt; or (2) showing that the debt was

))

incurred for the benefit of the community. Rather than seek a judgment against Moulton, CBEI is simply seeking to satisfy Lecheminant's separate debt out of community property that exists in the form of Moulton's community wages. Stated differently, the court in *First Idaho Corporation* would have had a different holding if the bank had obtained a judgment against the husband only and then sought satisfaction of the judgment out of community property held by the wife. Instead, the bank sought a personal judgment against the wife even though she was not personally obligated for the debt that was not incurred for any community benefit.

Obviously, *First Idaho Corporation* does not stand for the proposition that a debt can be satisfied from community property *only* when the debt is incurred for the benefit of the community. Otherwise, *First Idaho Corporation* would be contrary to *Gustin v. Byam*, 41 Idaho at 538 and *Holt v. Empey*, 32 Idaho at 106 where the Idaho Supreme Court applied the rule that a spouse's separate antenuptial debt could be satisfied out of community property. Moreover, the Idaho Supreme Court cited the rule in *Gustin* and *Holt* with approval and again applied the rule (without regard to whether the debt was incurred for the benefit of the community) in *Bliss v. Bliss*, 127 Idaho at 170 in 1995--some six years after *First Idaho Corporation* was decided. Finally, the Idaho Court of Appeals applied the rule that a spouse's separate antenuptial debt could be satisfied out of community wages (without regard to whether the debt was incurred for the benefit of the community) as recently as 2003 in *Action Collection Service, Inc. v. Seele*, 138 Idaho at 753. Accordingly, respondents' reliance on *First Idaho Corporation* is misplaced.

V. THE PRINCIPLE OF EXTENSION CANNOT BE APPLIED TO IDAHO CODE § 11-204.

As discussed more fully in CBEI's opening brief, Idaho Code §11-204 unconstitutionally discriminates by providing a different treatment for individuals based upon sex. Respondents contend that the principle of "extension" should be applied to this statute making Idaho Code §

11-204 apply equally to married men and married women. While Idaho courts have approved the doctrine of “extension,” “extension” does not apply here.

The cases respondents rely on deal with a statute that compelled only a husband to pay child support and a differing age of majority for males (21 years old) and females (18 years old). *Neveau v. Neveau*, 103 Idaho 707 (Ct. App. 1982) and *Harringfeld v. District Court*, 95 Idaho 540 (1973). The principle of extension was practical in these situations because the court could simply extend the statute to say that a wife too must pay child support and that the age of majority for males is 18, not 21. But the application of the principle of extension is not a practical remedy for Idaho Code §11-204 because extending the statute to husbands would create as many problems as it would solve.

The offending portion of Idaho Code §11-204 states that “all compensation due and owing [any married woman] for her personal services, is exempt from execution against her husband.” Idaho Code §11-204 also applies to all rents, issues, and profits from a wife’s separate property. The principle of extension cannot be applied to Idaho Code §11-204 because by doing so the statute would come into conflict with other Idaho law. For example, if extension is applied to Idaho Code §11-204, then all rents, issues and profits from either a husband or wife’s separate property and all compensation due or owing for either the husband or wife’s personal services would be exempt from execution as against the separate debt of the spouse even though rents, issues and profits from separate property and wages incurred during marriage are community property under Idaho Code § 32-906(1). Such an “extension” would also cut deeply into the holdings of *Gustin*, *Holt*, *Bliss*, and *Action Collection Service, Inc.*, all of which hold that a spouse’ antenuptial separate debt can be satisfied out of community property.

Moreover, Idaho Code § 11-204 is premised on the antiquated notion that existed in 1881 when the husband had the exclusive right to manage and control all the community property except for the earnings of the wife for her personal services because a wife had the *exclusive* right to manage and control her earnings for her personal services. *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163 (1929). However, in 1974 Idaho changed its community property law so that “[e]ither the husband or the wife shall have the right to manage and control the community property.” 1974 Idaho Sess. Laws ch. 194, § 2 and Idaho Code § 32-912. Thus, today the husband has the right to manage and control a wife’s community earnings resulting from her personal services just as a wife has the right to manage and control a husband’s community earnings resulting from his personal services. Therefore, the whole premise underlying Idaho Code § 11-204 no longer even exists. This court should not extend to men an antiquated law whose entire reason for existence no longer even applies to women.

VI. MOULTON’S WAGES ARE SUBJECT TO EXECUTION BY GARNISHMENT BECAUSE THE SUPREME COURT’S HOLDING IN MILLER V. MILLER APPLIES ONLY TO A “CONTINUOUS” GARNISHMENT.

Respondents’ argument that under *Miller* garnishments of all types are not allowable upon the persons who are not a party to the judgment is incorrect. For a complete discussion regarding the application of *Miller*, CBEI refers the court to its opening brief on appeal. It is enough to state here that *Miller* is limited in its application to those cases involving an order of “continuous” garnishment and does not even address the issue of whether a judgment creditor can garnish the community wages of the judgment debtor’s spouse by some vehicle other than a “continuous garnishment.”

VII. THE WELL ESTABLISHED RULE THAT SEPARATE ANTENUPTIAL DEBTS CAN BE SATISFIED OUT OF COMMUNITY PROPERTY CONTROLS THIS CASE.

The reasoning of *Action Collection Service, Inc. v. Seele*, 138 Idaho 753 (Ct. App. 2003) and its progeny is valid and applies here. In *Action Collection*, it was the spouse with the separate antenuptial debt whose community wages were being garnished. The court allowed the garnishment because the wages being garnished were clearly community property. Although Moulton is not the judgment debtor in this case, her wages are clearly community property just like those wages at issue in *Action Collection Service, Inc.* It is of no consequence who provides the "community wages" that become community property because Idaho community property law has never treated community property differently depending on whose effort produces the community property unless the parties have entered into a prenuptial agreement altering the nature or classification of wages earned during marriage. Accordingly, this court should apply the rule that community property can be used to satisfy a spouse' separate antenuptial debt.

VIII. CONCLUSION.

For all the reasons set forth above, CBEI respectfully requests that the court reverse the order of the Magistrate Court denying CBEI's motion to contest claim of exemption and that the court award attorney's fees on appeal against respondents.

DATED this 7th day of July, 2008.

McGRATH, SMITH & ASSOCIATES, PLLC

By: 

Bryan D. Smith, Esq.
Attorneys for Petitioner,
Credit Bureau of Eastern Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of July, 2008, I caused a true and correct copy of the foregoing **PLAINTIFF'S REPLY BRIEF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or by causing the same to be delivered by hand, facsimile or overnight delivery, addressed to the following:

- U.S. Mail
- Facsimile Transmission
- Hand Delivery
- Overnight Delivery

Marvin M. Smith
Anderson Nelson Hall Smith, P.A.
490 Memorial Drive
Idaho Falls, ID 83405

By: 

Bryan D. Smith

Date: 4/8/2009
Time: 12:08 PM
Page 2 of 2

Seventh Judicial District Court - Madison County

User: GWEN

Minutes Report

Case: CV-2006-0000130

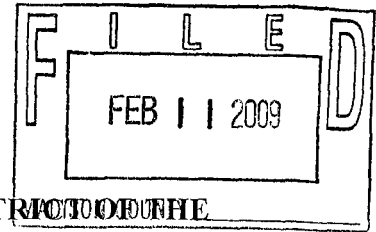
Credit Bureau Of Eastern Idaho, Inc vs. Jeff D Lecheminant, etal.

Selected Items

Hearing type:	Hearing	Minutes date:	12/08/2008
Assigned judge:	Brent J. Moss	Start time:	10:33 AM
Court reporter:	David Marlow	End time:	12:00 AM
Minutes clerk:	Angie Wood	Audio tape number:	

Parties: Credit Bureau Of Eastern Idaho, Inc; Smith,
Bryan
Marvin Smith

Tape Counter: 1033 J INTRO OF CASE
 COURT ADDRESSES COUNSEL
 MARVIN SMITH ARGUES
 BRYAN SMITH RESPONDS
 MARVIN SMITH RESPONDS
 COURT WILL EITHER REMAND OR MAKE DESCISION



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR MADISON COUNTY

CREDIT BUREAU OF EASTERN)
IDAHO, and Idaho corporations,)
)
Petitioner,)
)
vs.)
)
JEFF D. LECHEMINANT and LISA)
LECHEMINANT,)
)
Respondents.)
_____)

Case No. CV-06-130

MEMORANDUM DECISION

I. BACKGROUND AND PRIOR PROCEEDINGS

Back in March 2006, Credit Bureau of Eastern Idaho (“CBEI”) obtained a judgment against Jeff and Lisa Lecheminant for about \$800. Jeff and Lisa divorced and Jeff married Sandy Moulton. Over the course of about a year and a half, CBEI has attempted to garnish Sandy’s wages to pay her husband’s \$800 antenuptial debt.

Sandy’s employer, Eastern Idaho Regional Medical Center (“EIRMC”), objected to CBEI’s garnishment efforts and claimed an exemption—specifically, Idaho Code Section 11-204. CBEI filed a motion contesting the exemption; Magistrate Judge Mark Rammell denied that motion in February 2008. CBEI appeals that decision.

II. ISSUES ON APPEAL

1. Under Idaho community property law, can the community wages of one spouse be used to satisfy the separate debt of the other spouse?
2. If the community wages of one spouse can be used to satisfy the separate debt of the other spouse, are those wages subject to execution by garnishment?
3. If the community wages of one spouse are subject to execution by garnishment, does Idaho Code § 11-204 apply on a claim of exemption?
4. Can CBEI recover attorney's fees on appeal?

III. STANDARD OF REVIEW

CREI appeals the magistrate court's decision solely as a matter of law. This Court exercises free review.

IV. DISCUSSION

1. Sandy's wages are community property and subject to garnishment, unless exempt.

In Idaho, the separate antenuptial debts of either spouse are payable from community property.¹ Wages and salaries are community property.²

Also in Idaho, there is no requirement that the garnishee be a judgment debtor. The 1987 Idaho Supreme Court *Miller v. Miller* was addressed by both attorneys in their briefs.³ In *Miller*, the Court found that an Idaho statute, Section 8-509, required a collector to obtain a judgment before obtaining a *continuing* garnishment—by statute, there must be a judgment debtor before obtaining a *continuing* garnishment.⁴ There is no such requirement for a garnishment. CBEI seeks only a garnishment; *Miller* is inapplicable.

So, Jeff's \$800-antenuptial debt is payable from Sandy's wages. The only way Sandy's wages can avoid garnishment is if her wages are "exempt by law."⁵

¹ *Action Collection Service, Inc. v. Seele*, 138 Idaho 753, 758, 69 P.3d 173, 178 (Ct. App. 2003).

² I.C. § 32-906; *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982).

³ *Miller v. Miller*, 113 Idaho 415, 420, 745 P.2d 294, 299 (1987).

⁴ *Miller v. Miller*, 113 Idaho 415, 420, 745 P.2d 294, 299 (1987).

⁵ I.C. § 11-201 ("All goods, chattels, moneys and other property ... *not exempt by law* ... are liable to

2. **Even though Sandy's wages are community property, the wages are exempt from execution per Section 11-204.**

Sandy's wages are exempt from garnishment under Section 11-204:

All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and *all compensation due or owing for her personal services, is exempt from execution against her husband.*⁶

This exemption from garnishment of earnings "applies only to such earnings as are due and owing. After the earnings have been paid, or converted into other property, the exemption granted by said section no longer obtains."⁷

Here, Sandy's wages are due and owing until she receives them; Sandy's wages are exempt until she receives them. CBEI cannot garnish her wages because garnishment takes the earnings before the employee receives them—the wages are still "due and owing." Section 11-204 provides an exemption for Sandy's wages from garnishment.

CBEI argues that the Court should not apply Section 11-204 because, it argues, the section violates the Equal Protection Clause of the U.S. Constitution. In its support, CBEI cites the 1976 Idaho Supreme Court case *Suter v. Suter*.⁸ In *Suter*, the Court found that an Idaho statute treated a husband unequally from his wife. The unequal treatment was arbitrary and lacked a substantial relation to the object of the legislation, so the Court found the statute unconstitutional.⁹ CBEI seeks a similar interpretation of Section 11-204.

But this case differs from *Suter* in an important way. In this case, unlike *Suter*, the party arguing for an unconstitutional statute fails to establish any violation of its constitutional rights. In *Suter*, a husband argued that the Idaho statute as applied to him was unconstitutional. Here, CBEI claims that Section 11-204 unfairly limits its ability to collect an \$800-antenuptial debt with equal zeal against *both* husbands and wives. According to CBEI, *both* men and women should be subject to its collection efforts, equally. CBEI has failed to establish that this is a right protected under the Equal Protection Clause.

⁶ (Emphasis added).

⁷ *McMillan v. United States Fire Ins. Co.*, 48 Idaho 163, 280 P. 220 (1929).

⁸ *Suter v. Suter*, 97 Idaho 461, 546 P.2d 1169 (1976).

Section 11-204 may be unconstitutional; it may violate the equal protection clause as to men. But that issue isn't before the Court. Before the Court is CBEI and Section 11-204 doesn't violate the Equal Protection Clause as to CBEI.

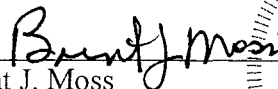
3. Attorney fees on appeal are unwarranted.

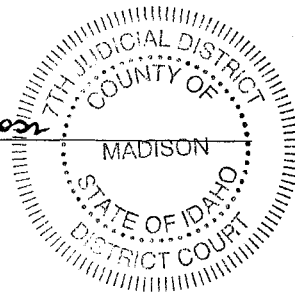
Because the Court affirms the magistrate court's decision, CBEI's petition for attorney fees on appeal is denied.

V. CONCLUSION

Sandy's EIRMC wages are exempt from garnishment per Section 11-204. The magistrate court's decision is affirmed.

DATED this 9 day of February, 2009.


Brent J. Moss
District Judge



CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision was served upon the individuals listed below via U.S. Mail, postage prepaid, on this 11 day of February, 2009:

Bryan D. Smith
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P.O. Box 50731
Idaho Falls, ID 83405
Attorney for Petitioner

Marvin M. Smith
ANDERSON, NELSON, HALL, SMITH, P.A.
490 Memorial Drive
Idaho Falls, ID 83402
Attorney for Respondent

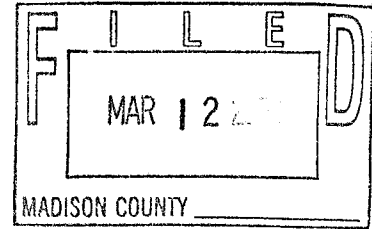
Clerk of the Court

By:



Deputy Clerk

Bryan D. Smith, Esq.
Idaho State Bar No. 4411
 SMITH, DRISCOLL & ASSOCIATES, PLLC
 414 Shoup Avenue
 P. O. Box 50731
 Idaho Falls, Idaho 83405-0731
 Telephone: (208) 524-0731
 Telefax: (208) 529-4166



Attorneys for Plaintiffs/Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

CREDIT BUREAU OF EASTERN IDAHO ,)
 INC., an Idaho corporation,)
)
 Plaintiff/Appellant)
)
 vs.)
)
 JEFF D. LECHEMINANT and LISA)
 LECHEMINANT,)
)
 Defendants/Respondents.)

Case No. CV-06-130

NOTICE OF APPEAL

TO: THE ABOVE NAMED DEFENDANT/RESPONDENTS, JEFF D. LECHEMINANT AND LISA LECHEMINANT, AND THEIR ATTORNEY, MARVIN M. SMITH, ESQ., of the firm ANDERSON, NELSON, HALL, SMITH, P.A. 490 MEMORIAL DRIVE, IDAHO FALLS, IDAHO 83402, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named plaintiff, Credit Bureau of Eastern Idaho, Inc., appeals to the Idaho Supreme Court from the District Court's Memorandum Decision dated February 9, 2009 in which the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Madison, Honorable Brent J. Moss, District Judge, presiding, affirmed the Magistrate Court's Order denying plaintiff's Motion to Contest Claim of Exemption dated February 20, 2008.

2. Plaintiff has the right to appeal to the Idaho Supreme Court from the pleadings described in paragraph one pursuant to Rule 11(a), Idaho Appellate Rules.

3. The issues which plaintiff intends to assert on appeal are the following:

a. Does the Credit Bureau of Eastern Idaho, Inc. have standing to assert that Idaho Code Section 11-204 is unconstitutional?

b. Is Idaho Code Section 11-204 unconstitutional because it exempts only the property of a married woman from execution and not the property of a married man?

c. Is Credit Bureau of Eastern Idaho, Inc. entitled to attorney fees under Idaho Code Section 12-120(5) where the attorney fees have been incurred in an attempt to collect on the judgment?

4. There has been no order entered sealing any portion of the record in this case.

5. Plaintiff requests that the reporter not prepare a transcript of the prior proceedings in this case.

6. Plaintiff requests that the following documents be included in the clerk's record in addition to those automatically included under Rule 28, Idaho Appellate Rules:

a. Writ of Execution dated September 21, 2007;

b. Claim of Exemption dated October 15, 2007;

c. Motion to Contest Claim of Exemption dated October 16, 2007;

d. Brief in Support of Motion to Contest Claim of Exemption dated October 16, 2007;

e. Memorandum in Opposition to Motion to Contest Claim of Exemption dated October 19, 2007;

f. Order denying plaintiff's Motion to Contest Claim of Exemption dated February 20, 2008;

g. Notice of Appeal dated February 26, 2008;

h. Plaintiff's Brief on Appeal dated May 14, 2008;

i. Respondent's Brief on Appeal dated June 11, 2008;

j. Plaintiff's Reply Brief on Appeal dated July 7, 2008;

k. Memorandum Decision entered February 9, 2009 by the District Court sitting as an appellate court.

7. I certify:

(a) That a copy of this notice of appeal has not been served on the reporter because appellant requests the reporter not prepare a transcript of the prior proceedings in this case;

(b) That the plaintiffs are exempt from paying the estimated transcript fee because the plaintiff requests that no transcript be prepared;

(c) That the estimated fee for preparation of the clerk's record has been paid;

(d) That the appellate filing fee has been paid;

(e) That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

DATED this 10th day of March, 2009.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 

Bryan D. Smith

Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 11th day of March, 2009, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served, by placing the same in a sealed envelope and depositing in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Marvin M. Smith, Esq.
ANDERSON, NELSON, HALL,
SMITH, P.A
490 Memorial Drive
Idaho Falls, ID 83402

- U. S. Mail
- Fax
- Overnight Delivery
- Hand Delivery

Marilyn R. Rasmussen
Clerk of the District Court
134 East Main
P. O. Box 389
Rexburg, Idaho 83440

- U. S. Mail
- Fax
- Overnight Delivery
- Hand Delivery



Bryan D. Smith

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

CREDIT BUREAU OF EASTERN IDAHO,)
INC., an Idaho Corporation)

Plaintiff/Appellant)

vs)

JEFF D. LECHEMINANT and LISA)
LECHEMINANT)

Defendant)

SUPREME COURT NO.)
CASE NO. CV-06-130)

CLERK'S CERTIFICATE OF)
APPEAL)

APPEAL FROM: *7th Judicial District Madison County*

HONORABLE *Brent J. Moss* **PRESIDING**

CASE NO. FROM COURT: *CV-06-130*

ORDER OF JUDGMENT APPEALED FROM: *Memorandum Decision, dated February 9, 2009, and Order Denying Plaintiff's Motion to Contest Claim of Exemption, dated February 20, 2008*

ATTORNEY FOR APPELLANT: *Bryan D. Smith, PO Box 5073, Idaho Falls, ID 83405-0731*

ATTORNEY FOR THE RESPONDENT: *Marvin M. Smith, PO Box 51630, Idaho Falls, ID 83405-1630*

APPEALED BY: *Credit Bureau of Eastern Idaho, Inc., and Idaho Corporation*

APPEALED AGAINST: *Jeff D Lecheminant and Lisa Lecheminant*

NOTICE OF APPEAL FILED: *March 12, 2009*

AMENDED NOTICE OF APPEAL FILED: *N/A*

NOTICE OF CROSS-APPEAL FILED: *N/A*

AMENDED NOTICE OF CROSS-APPEAL FILED: *N/A*

APPELLATE FEE PAID: *Yes*


RESPONDENT OR CROSS RESPONDENT'S REQUEST FOR ADDITIONAL RECORD: *N/A*

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED?: *No*

IF SO, NAME OF REPORTER: *None*

Dated this 7th day of April, 2009

Marilyn R. Rasmussen

BY 

DEPUTY-CLERK

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

CREDIT BUREAU OF EASTERN IDAHO,)
INC., an Idaho Corporation)

PLAINTIFF-)
APPELLANT)

VS)

JEFF LECEMINANT and LISA)
LECEMINANT)

DEFENDANT-)
RESPONDENT)

SUPREME COURT NO)
CASE NO. 2006-130)
CERTIFICATE OF EXHIBITS)

I, Gwen Cureton, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for Madison County, do hereby certify that the following is a list of the exhibits, offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

NO.	DESCRIPTION	SENT/RETAINED
NONE		

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 16 day of April, 2009.

MARILYN R. RASMUSSEN
CLERK OF THE DISTRICT COURT

By 

Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

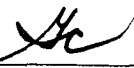
CREDIT BUREAU OF EASTERN IDAHO)	
INC., an Idaho Corporation)	
PLAINTIFF)	CLERK'S CERTIFICATE
APPELLANT)	
VS)	SUPREME COURT NO.
)	CASE NO. CV06-130
JEFF LECHEMINANT and LISA)	
LECHEMINANT)	
DEFENDANT-)	
APPELLANT)	
)	

I, Marilyn R. Rasmussen, Clerk of the District Court of the 7th Judicial District of the State of Idaho, in and for the County of Madison, do hereby certify that the foregoing Clerk's Record in the above entitled cause was compiled and bound under my direction and contains true and correct copies of all pleadings, documents and papers designated to be included under Rule 28, IAR, the Notice of Appeal, any Notice of Cross Appeal, and any additional documents requested to be included.

I further certify that all documents, x-rays, charts and pictures offered or admitted as exhibits in the above entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's Record (except for exhibits, which are retained in the possession of the undersigned), as required by Rule 31 of the Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 14 day of April, 2009.

MARILYN R. RASMUSSEN
CLERK OF THE DISTRICT COURT

By 
Deputy Clerk

