

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

WEGNER AUTO COMPANY, INC., a South
Dakota corporation, and the SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION, an agency of
the State of South Dakota,

Plaintiffs,

vs.

LES SUMPTION d/b/a S&S Communications and
S&S COMMUNICATIONS, a South Dakota general
partnership,

Defendants.

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CIV 09-483

**AFFIDAVT OF JON
THURBER IN SUPPORT OF
APPLICATION FOR
DEFAULT JUDGMENT AND
PREJUDGMENT INTEREST
COMPUTATION**

Jon Thurber, Utility Analyst with the South Dakota Public Utilities Commission ("Commission"), a Plaintiff in this action, states the following pursuant to SDCL 15-6-55(b)(1) in support of Plaintiffs' Application for Default Judgment in the above-entitled matter:

1. My name is Jon Thurber. I reside in Pierre, South Dakota, and my business address is: Public Utilities Commission, State Capitol Building, 500 East Capitol Ave., Pierre, South Dakota 57501. I am currently employed as a staff Utility Analyst for the Commission and have served in this capacity since July of 2008. I graduated summa cum laude from the University of Wisconsin – Stevens Point in December of 2006, with a Bachelors of Science Degree in Managerial Accounting, Computer Information Systems, Business Administration, and Mathematics. In January of 2007, I started my employment with the State of South Dakota as an auditor for the Department of Legislative Audit ("Legislative Audit"). In July of 2008, I joined the Commission as a staff Utility Analyst. I have worked on behalf of Commission staff on a multitude of cases, including three electric general rate increase requests in Dockets EL08-030, EL09-009 and EL09-018.

2. At Legislative Audit my duties involved auditing the books and records of various state agencies, including review of agency contracts and transactions. During my tenure at the Commission, I have engaged in the analysis of numerous utility filings in connection with regulatory matters and financial transactions, including highly complex analyses of company financial records and transactions in connection with rate proceedings. Many of the rate case analyses I have performed have involved both the creation of and use of sophisticated computer spread sheet analytical tools and models to perform the financial analyses. From my education in computer information systems, including the training I have received on Microsoft Excel, together with the considerable experience I have had in performing spreadsheet design and analysis in my professional duties, I have developed what I consider to be a high level of expertise in designing and using Excel spread sheets to organize and analyze large amounts of data and perform financial calculations.

3. I have executed this Affidavit on behalf of the Commission and the other Plaintiffs in support of Plaintiffs' Application for Default Judgment in the above-entitled matter. In this capacity, I have utilized the expertise described in the averments in paragraph 2 of this Affidavit to review the Excel spread sheets prepared by Keith Senger and appended as Exhibit C to Staff's Motion for Summary Disposition in Docket CT05-005 and incorporated by reference in the Commission's Order Granting Motions to Consolidate; Motions to Dismiss; Motions to Dismiss in Part; and Motion for Summary Disposition in Docket CT05-005 ("Damages Order"). In my opinion, Exhibit C is a complete and accurate analysis and portrayal of the claims asserted in the Complaints consolidated in Docket CT05-005 and the actions approved in the Damages Order.

4. In addition to my general review of Exhibit C, my review included a specific and detailed review and analysis of the interest calculations performed by Mr. Senger, which calculated prejudgment interest accrued through October 21, 2008, the date of hearing in Docket CT05-005. These involved two separate calculations for two different periods of time. The first of these prejudgment interest calculations involved the period between the cessation of service by S&S and the date bond and other security proceeds were paid out to the Damages Awardees in Docket TC05-047, thus reducing the loss amounts sustained by Damages Awardees after such date. This calculation applied the statutory prejudgment simple interest rate of ten percent per annum to the approved Net Claim Amount on Exhibit C, totaling \$572,444.50 for all Damages Awardees, over the period from June 3, 2003, the date of S&S's cessation of service, to July 13, 2007, the date of bond proceeds distribution. This amount, totaling \$235,402.02 for all Damages Awardees, remained unchanged after the October 21, 2008, hearing date.


5. The second calculation applied the statutory prejudgment simple interest rate of ten percent per annum to the Approved Damages Awards – which is the Net Claim Amounts less the bond proceeds received, and totals \$471,890.98 for all Damages Awardees – over the period from July 14, 2007, until the sooner to occur of payment by Defendants or the entry of judgment by the Court in this proceeding. As of the hearing date of October 21, 2008, in Docket CT05-005, this prejudgment interest accrual totaled \$60,246.86.

6. In my professional opinion, the interest calculations performed by Mr. Senger and described above and in paragraphs 21-23 of the Complaint in this action properly and accurately calculated the interest accrued on the damages found by the Commission to have been incurred by the Damages Awardees through October 21, 2008, in accordance with SDCL 21-1-13.1 and 54-3-16.

7. In addition to my review of Exhibit C to the Staff's Motion for Summary Disposition in Docket CT05-005, I performed an update of the calculations of prejudgment interest as set forth in the column of Exhibit C entitled "Prejudgment interest from 7/14/07 to 10/21/08" to bring the calculation forward to October 12, 2010, the date set for hearing on Plaintiffs' Application for Default Judgment in this action. This essentially involved changing the end date for the interest accrual period from October 21, 2008, to October 12, 2010, in the Excel spreadsheet formula for that spreadsheet column. These calculations are shown on proposed Judgment Exhibit A – CIV 09-483, Plaintiffs Awarded Joint Damages (attached hereto and to the proposed Default Judgment filed and served herewith). All other data fields on Judgment Exhibit A – CIV 09-483, Plaintiffs Awarded Joint Damages have been left unchanged from Exhibit C to the Damages Order except for the

updating of the addresses of a few of the Damages Awardees. For simplicity, only those data columns were included in Judgment Exhibit A – CIV 09-483, Plaintiffs Awarded Joint Damages necessary to identify the Damages Awardees and reflect their Damages Awards together with the updated prejudgment interest calculations through October 12, 2010. Based on this update and the resulting Excel calculations, the interest accrued at the statutory rate of ten percent simple per annum on the unpaid aggregate Damages Award balance of \$471,890.98 for the period July 14, 2007, through October 12, 2010 is \$153,461.47. The sum of this \$153,461.47 in prejudgment interest and the \$235,402.02 in prejudgment interest accrued from June 3, 2003, through July 13, 2007, on the then unpaid aggregate damages balance of \$572,444.50 equals \$388,869.49 in total prejudgment interest accrued through October 12, 2010, the date of hearing on the Application for Default Judgment. The sum of total accrued prejudgment interest in the amount of \$388,869.49 plus the aggregate Damages Award balance of \$471,890.98 equals \$860,760.47, as the total of damages plus prejudgment interest for which judgment is requested in this action.


Dated this 21st day of September, 2010.



Jon Thurber, Utility Analyst
South Dakota Public Utilities Commission

On this 21st day of Sept., 2010, came before me, a Notary Public in and for the State of South Dakota, Jon Thurber, who is well known to me and who, having been first duly sworn, executed the foregoing Affidavit in my presence.

(SEAL)



Notary Public
My Commission Expires:

TINA DOUGLAS
My Commission Expires
April 14, 2011