



## ROUGH DOCKET

- April 28, 2008 Filed Case # EQCV010968
- April 29, 2008 Filed "Typo" Correcting Terence C. Ken  
Spelling of Terence from Ter@ence
- May 30, 2008 Filed Motion for leave to serve by  
Publication
- July 3, 2008 Filed motion for Summary Judgment  
Brief in Support " " "  
Order & Judgment " " "  
Affidavit of Publication by Newspaper
- July 18, 2008 Filed motion to Recuse Judge Kimes  
whom I sued in Fed Court case  
4:05-CV-00009 on Jan 7, 2005

Notes: to date July 23, 2008: Have not received back:  
 motion for leave to serve Def't Envelope for Phil Lombardi  
 - No Green cards nor Envelopes returned for motion for  
 Summary Judgment from Elizabeth A. Skumker nor  
 Paul J. Cleary  
 \* - But HAVE REC'D Signed green cards from:  
 Terence C. Ken & Phil Lombardi for Mot for Sum Judgment

PETITION

7007 3020 0002 1607 0733

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

DENVER CO 80203

**OFFICIAL USE**

|   |                 |                   |
|---|-----------------|-------------------|
| Postage   | \$ 00.58        | 0713              |
| Certified Fee                                     | \$ 02.65        | 05                |
| Return Receipt Fee<br>(Endorsement Required)      | \$ 02.15        | Postmark<br>Here  |
| Restricted Delivery Fee<br>(Endorsement Required) | \$ 00.00        |                   |
| <b>Total Postage &amp; Fees</b>                   | <b>\$ 05.38</b> | <b>04/28/2008</b> |

Sent To Elisabeth A. Shumaku

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4 denver, CO 80203

PS Form 3800, August 2006 See Reverse for Instructions

7007 3020 0002 1607 0740

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

TULSA OK 74103

**OFFICIAL USE**

|   |                 |                   |
|---|-----------------|-------------------|
| Postage   | \$ 00.58        | 0713              |
| Certified Fee                                     | \$ 02.65        | 05                |
| Return Receipt Fee<br>(Endorsement Required)      | \$ 02.15        | Postmark<br>Here  |
| Restricted Delivery Fee<br>(Endorsement Required) | \$ 00.00        |                   |
| <b>Total Postage &amp; Fees</b>                   | <b>\$ 05.38</b> | <b>04/28/2008</b> |

Sent To Phil Lombardi

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4 Tulsa OK 74103

PS Form 3800, August 2006 See Reverse for Instructions

7007 3020 0002 1607 0757

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

TULSA OK 74103

**OFFICIAL USE**

|   |                 |                   |
|---|-----------------|-------------------|
| Postage   | \$ 00.58        | 0713              |
| Certified Fee                                     | \$ 02.65        | 05                |
| Return Receipt Fee<br>(Endorsement Required)      | \$ 02.15        | Postmark<br>Here  |
| Restricted Delivery Fee<br>(Endorsement Required) | \$ 00.00        |                   |
| <b>Total Postage &amp; Fees</b>                   | <b>\$ 05.38</b> | <b>04/28/2008</b> |

Sent To Paul J. Cleary

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4 Tulsa, OK 74103

PS Form 3800, August 2006 See Reverse for Instructions

7007 3020 0002 1607 0764

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

TULSA OK 74103

**OFFICIAL USE**

|   |                 |                   |
|---|-----------------|-------------------|
| Postage   | \$ 00.58        | 0713              |
| Certified Fee                                     | \$ 02.65        | 05                |
| Return Receipt Fee<br>(Endorsement Required)      | \$ 02.15        | Postmark<br>Here  |
| Restricted Delivery Fee<br>(Endorsement Required) | \$ 00.00        |                   |
| <b>Total Postage &amp; Fees</b>                   | <b>\$ 05.38</b> | <b>04/28/2008</b> |

Sent To Terrence C. Kern

Street, Apt. No.,  
or PO Box No.

City, State, ZIP+4 Tulsa, OK 74103

PS Form 3800, August 2006 See Reverse for Instructions

*Filed  
Certified  
4-23-08*

**IN THE IOWA DISTRICT 5 COURT FOR CLARKE COUNTY**

UPON THE PETITION OF

Jerry DeWayne Mercer,  
and Eddie Leon Andrews  
Petitioners,

Case No. EQCV 010968

AND CONCERNING

INDIVIDUALS:  
Elisabeth A. Shumaker  
and Phil Lombardi  
and Paul J. Cleary  
and Terrence C. Kern  
Respondents,

**ORIGINAL NOTICE**

TO THE ABOVE-NAMED PETITIONERS:

You are notified that a Petition Complaint has been filed in the office of the clerk of this court naming you as the Respondent in this action. A copy is attached to this Notice.

You must serve a motion or answer upon the Respondent within 20 days after service of this Original Notice upon you and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for Clarke County, at the courthouse in Osceola, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator. The Clerk of Court will be able to provide you with this number. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

Plaintiffs' Addresses:

Mercer: General Delivery, Osceola, Ia [50213-9999]

Andrews: 4 Smedley Lane, Newtown Square, Pa 19073

*Julia D. Cattill*  
*Leah Grove* Clerk of Court

Clarke County Courthouse  
Osceola, Iowa, 50213  
Phone 641-342-6096

In the District 5 Court of Clarke County  
State of Iowa

2008 APR 28 PM 4:10

Jerry DeWayne Mercer and Eddie Leon Andrews )

Vs. )

Case Number EQW010968

Elisabeth A. Shumaker, an individual, )  
and Phil Lombardi, an individual, )  
and Paul J. Cleary, an individual, )  
and Terrence C. Kern, an individual )

Petition Complaint, and claim under authority of  
Iowa's doctrine of Common Law Fraud

1. Elisabeth A. Shumaker, from a location in the vicinity of Denver, Colorado and visited into Jackson County Oregon via the United States Mail Service, committed mail fraud, on or before December 6, 2007. Elisabeth A. Shumaker prepared and uttered a false material misrepresentation as a positive assertion which is now known to be false and made recklessly without knowledge of the truth with the intention that it be acted upon by Jerry DeWayne Mercer and Eddie Leon Andrews relied on Elisabeth A. Shumaker's false assertion to the detriment of Jerry DeWayne Mercer and Eddie Leon Andrews losing in excess of \$500,000,000.00 per each violation and;

2. Elisabeth A. Shumaker's acts are violative of Iowa's doctrine of *common law fraud* articulated by the Iowa Supreme Court, *inter alia*, in and Under the Equal Access Law, Elisabeth A. Shumaker's acts are violative of the Colorado's doctrine of *common law fraud* articulated by the Washington & Lee Law Review, 59 Wash & Lee L. Rev. 83 referenced as if stated fully herein, and Under the Equal Access Law, Elisabeth A. Shumaker's acts are violative of the Oklahoma's doctrine of *common law fraud* articulated by [footnote 1] and;

3. Phil Lombardi, from a location in the vicinity of Tulsa, Oklahoma and visited into Jackson County Oregon via the United States Mail Service, committed mail fraud, on or before March 20, 2008. Phil Lombardi prepared and uttered a false material misrepresentation as a positive assertion which is now known to be false and made recklessly without knowledge of the truth with the intention that it be acted upon by Jerry DeWayne Mercer and Eddie Leon Andrews

relied on Phil Lombardi's false assertion to the detriment of Jerry DeWayne Mercer and Eddie Leon Andrews losing in excess of \$500,000,000.00 per each violation and;

4. Phil Lombardi's acts are violative of Oregon's doctrine of *common law fraud* articulated by the Oregon Supreme Court, *inter alia*, in and Under the Equal Access Law, Phil Lombardi's acts are violative of the Oklahoma's doctrine of *common law fraud* articulated by [footnote 1] and;

5. Paul J. Cleary, from a location in the vicinity of Tulsa, Oklahoma and visited into Jackson County Oregon via the United States Mail Service, committed mail fraud, on or before March 26, 2008. Paul J. Cleary prepared and uttered a false material misrepresentation as a positive assertion which is now known to be false and made recklessly without knowledge of the truth with the intention that it be acted upon by Jerry DeWayne Mercer and Eddie Leon Andrews relied on Paul J. Cleary's false assertion to the detriment of Jerry DeWayne Mercer and Eddie Leon Andrews losing in excess of \$500,000,000.00 per each violation and;

6. Paul J. Cleary's acts are violative of Oregon's doctrine of *common law fraud* articulated by the Oregon Supreme Court, *inter alia*, in and Under the Equal Access Law, Paul J. Cleary's acts are violative of the Oklahoma's doctrine of *common law fraud* articulated by [footnote 1] and;

7. Terrence C. Kern, from a location in the vicinity of Tulsa, Oklahoma and visited into Jackson County Oregon via the United States Mail Service, committed mail fraud, between September 2006 and October 24, 2006 and on or about April 16, 2008. Terrence C. Kern prepared and uttered a false material misrepresentation as a positive assertion which is now known to be false and made recklessly without knowledge of the truth with the intention that it be acted upon by Jerry DeWayne Mercer and Eddie Leon Andrews relied on Terrence C. Kern's false assertion to the detriment of Jerry DeWayne Mercer and Eddie Leon Andrews losing in excess of \$500,000,000.00 per each violation and;

8. Terrence C. Kern's acts are violative of Oregon's doctrine of *common law fraud* articulated by the Oregon Supreme Court, *inter alia*, in and Under the Equal Access Law, Terrence C. Kern's acts are violative of the Oklahoma's doctrine of *common law fraud* articulated by [footnote 1] and;

[footnote 1]: the *Worsham v. Nix*, 83 P.3d 879, 2004 OK CIV APP 2 (06/03/2003), and a claim for *common law fraud* or negligent misrepresentation requires, among other things, an allegation that the plaintiff Eddie Leon Andrews, did rely on as demonstrated by Postal Money Order No. 10518083313 and contributions from above interested Jerry DeWayne Mercer and Eddie Leon Andrews relied on Elisabeth A. Shumaker, Phil Lombardi, Paul J. Cleary, and Terrence C. Kern's false assertions to the detriment of Jerry DeWayne Mercer and Eddie Leon acted in

**[footnote 1] continued:** reliance upon the alleged misrepresentation, see *Pence v. United States*, 316 U.S. 332, 338 (1941) (federal common law); *Esteves v. Esteves*, 680 A.2d 398, 401 n.1 (D.C. 1996) (D.C. common law); *Hall v. Ford Enterprises, Ltd.*, 445 A.2d 610, 612 (D.C. 1982) (negligent misrepresentation); and, Several courts have ruled that reliance is not a required element of scheme to defraud. See, e.g., *Schreider Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1399-1400 (9th Cir. 1986) (noting that essential elements of mail and wire fraud are (1) formation of scheme to defraud, (2) use of United States mails or wires in carrying out schemes, and (3) intent to defraud); *United States v. Miller*, 545 F.2d 1204, 1216 (9th Cir. 1976) (affirming mail fraud conviction for filing falsified tax returns); *United States v. Mirabile*, 503 F.2d 1065, 1066 (8th Cir. 1974) (affirming mail fraud conviction for filing falsified tax returns and noting broad scope and "ever-expanding role" of mail fraud statute); *Lustiger v. United States*, 386 F.2d 132, 138 (9th Cir. 1967) ("It is only necessary to prove that . . . [the] scheme [is] reasonably calculated to deceive, and that the mail service of the United States was used and intended to be used in the execution of the scheme."); see also *Durland v. United States*, 161 U.S. 306, 312-13 (1896) (concluding that mail fraud statute's "scheme to defraud" is not limited by common law interpretations)

### Conclusion

9. A jury's determination that Elisabeth A. Shumaker, Phil Lombardi, Paul J. Cleary and Terrence C. Kern prepared a document which Elisabeth A. Shumaker, Phil Lombardi, Paul J. Cleary and Terrence C. Kern knew was false and uttered the false document through the United States Mail service with the intention that Jerry DeWayne Mercer and Eddie Leon Andrews did rely on Elisabeth A. Shumaker, Phil Lombardi's, Paul J. Cleary's and Terrence C. Kern's false assertion to the detriment of Jerry DeWayne Mercer and Eddie Leon Andrews relying on the false document to lose in excess of \$500,000,000.00 per each violation and Jerry DeWayne Mercer and Eddie Leon Andrews are therefore entitle to treble damages<sup>1</sup> or the sum in excess of \$500,000,000.00 per each violation to be paid by Elisabeth A. Shumaker, Phil Lombardi, Paul J. Cleary and Terrence C. Kern and;

10. THE SUM IN CONTROVERSY IN THIS CASE EXCEEDS \$10,000.00 and;

11. TRIAL BY JURY DEMANDED and;

12. THIS INSTRUMENT IS NON-NEGOTIABLE and;

Prepared and submitted by:

 Jerry DeWayne Mercer

© Eddie Leon Andrews Eddie Leon Andrews

<sup>1</sup> see 18U.S.C. § 1964© which enjoys comity with Oregon State law regarding fraud, Colorado State law regarding fraud, Oklahoma State law regarding fraud and Iowa State law regarding fraud.

**Acknowledgement**

STATE OF IOWA     )  
                                  )  
CLARKE COUNTY    )

BE IT REMEMBERED, that on the twenty-eighth day of April, A.D. 2008, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared the natural Man, Jerry DeWayne Mercer, who proved to me to be the same Man who executed the foregoing Petition Complaint against individuals: Elisabeth A. Shumaker, Phil Lombardi, Paul J. Cleary, and Terrence C. Kern, and affirmed that he is personally aware of the contents and accuracy of the statements made therein, and affirms that the document is, to the very best of his current knowledge, true, correct, complete, and not misleading.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed My Official Seal the day and year last above written.

  
\_\_\_\_\_  
Notary Public for Iowa, Clarke County

SEAL



Commission Expires on 1-26-10

**Certificate of Service**

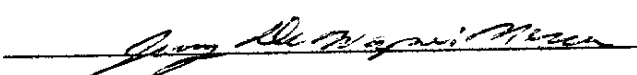
By my signature below, I certify that on this, the twenty-eighth day of April, A.D. 2008, I served a true and correct copy of the foregoing Petition Complaint Against individuals: Elisabeth A. Shumaker, Phil Lombardi, Paul J. Cleary, and Terrence C. Kern, by placing same in the U.S. Mail, sufficient postage prepaid to:

Elisabeth A. Shumaker                      Certified Mail # 7007 3020 0002 1607 0733  
Denver, CO 80203                              Return Receipt Requested

Phil Lombardi                                  Certified Mail # 7007 3020 0002 1607 0740  
Tulsa, OK 74103                                  Return Receipt Requested

Paul J. Cleary                                   Certified Mail # 7007 3020 0002 1607 0757  
Tulsa, OK 74103                                  Return Receipt Requested

Terrence C. Kern                                Certified Mail # 7007 3020 0002 1607 0764  
Tulsa, OK 74103                                  Return Receipt Requested

 , Jerry DeWayne Mercer

IN THE IOWA DISTRICT COURT FOR CLARKE COUNTY

Jerry DeWayne Mercer  
and Eddie Leon Andrews

Plaintiffs

v.

Elisabeth A. Shumaker, an individual  
and Phil Lombardi, an individual  
and Paul J. Cleary, an individual  
and Terence C. Kern, an individual

Defendants

EQUITY NO. EQCV010968

CONFIDENTIAL INFORMATION

2008 APR 29 PM 12:29  
CLARKE COUNTY IOWA

NAME

Personal Identification Number  
(Social Security Number or Employer I.D. Number)

Plaintiff(s)

- |                         |                   |
|-------------------------|-------------------|
| 1. Jerry DeWayne Mercer | D. L. # 669XX8927 |
| 2. Eddie Leon Andrews   | D. L. # 447626840 |

Defendants

- |                       |         |
|-----------------------|---------|
| 1. Elisabeth Shumaker | UNKNOWN |
| 2. Phil Lombardi      | UNKNOWN |
| 3. Paul J. Cleary     | UNKNOWN |
| 4. Terence C. Kern    | UNKNOWN |
| 5.                    |         |

Other Party

- 1.
- 2.

Information supplied by Jerry DeWayne Mercer and Eddie Leon Andrews, Plaintiffs.

*All Rights Reserved*

*Jerry DeWayne Mercer*  
Signature

April 29, 2008  
Date

|  |  |
|--|--|
| NAME & ADDRESS of Attorney (or Petitioner -- if not represented by attorney):<br><br><i>Jerry DeWayne Mercer<br/>General Delivery<br/>Osceola, Iowa 50213-9999</i>   | FOR COURT USE ONLY<br><br>Case Number:<br><br>County Where Case Filed: |
| Attorney P.I.N.: _____ Telephone No: <i>(641) 342-2826</i>   |  |
| CASE NAME (Petitioner / Plaintiff Name vs. Respondent / Defendant Name):<br><br><i>Jerry DeWayne Mercer and Eddie Lem Andrews</i><br>U<br><i>INDIVIDUALS: Elizabeth A. Skumaker, Phil Lombardi,<br/>Paul J. Cleary, Terence C. Fen</i> |  |

2009 APR 26 Fri 11:25  
 DISTRICT COURT IOWA

**NATURE OF THE CASE:** CHECK the BOX to the LEFT of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that involves the largest amount of damages or the one you consider most important.

|  |   |  |
|--|---|--|
| <input type="checkbox"/> <b>LAW: Contract/ Commercial Claim</b>                | <input type="checkbox"/> <b>DOMESTIC RELATIONS</b>                          | <input type="checkbox"/> <b>EQUITY</b>                         |
| Debt collection (LA-C1)  | Dissolution -- children involved (CD-DC)                                    | Mortgage foreclosure (EQ-EM)                                   |
| Employment-related claim (LA-C3)   | Dissolution -- no children (CD-DN)  | Other real property claim (EQ-ER)                              |
| <input checked="" type="checkbox"/> Other contract or commercial claim (LA-C9) | Modification -- children involved (CD-MC)                                   | <input checked="" type="checkbox"/> Other equity (EQ-EO)       |
|  | Modification -- no children (CD-MN)   |  |
| <input checked="" type="checkbox"/> <b>LAW: Tort - Personal Injury (P.I.)</b>  |   | <input type="checkbox"/> <b>OTHER CIVIL ACTIONS</b>            |
| Motor vehicle accident (LA-T2)   | § 234 - Foster care (DR-D1)   | Administrative appeal to dist. court (CV-V1)                   |
| Premises liability / slip & fall (LA-T3)                                       | § 252A - Support action (DR-D2)   | Change of name (CN-CN)   |
| Malpractice: medical or dental (LA-T1)   | § 252A.18 - Foreign support (DR-D3)   | Distress warrant (CV-V2)                                       |
| Products liability (toxic chem. / subst.) (LA-T8)                              | § 252B.11 - Cost recovery (DR-D4)   | Foreign judgment entry (CV-V3)                                 |
| Products liability (not toxic substance) (LA-T4)                               | § 252C - Administrative Order (DR-D5)                                       | Lien (LN- IE, IIL, IM or IO)                                   |
| Wrongful death (LA-T7)   | § 252D - Income withholding (DR-D6)   | Post conviction relief (PC-PC)                                 |
| <input checked="" type="checkbox"/> Other negligent / intentional P.I. (LA-T9) | § 252E - Medical support (DR-D7)  | Seized property / forfeiture (SP-SP)                           |
|  | § 252F / § 600B - Paternity (DR-D8)   | Transcript of judgment (TJ-TJ)                                 |
| <input type="checkbox"/> <b>LAW: Tort - Other damages (no P.I.)</b>            | § 252K - UFISA (DR-R1)  | <input checked="" type="checkbox"/> Other civil action (CV-V9) |
| Professional malpractice - no P.I. (LA-T5)                                     | § 598B - Out of state custody (DR-R2)                                       | <b>FOR COURT USE ONLY</b>                                      |
| <input checked="" type="checkbox"/> Fraud / business tort (LA - C2)            | § 600 - Adoption (AT-AT)  |  |
| Other tort - property/financial damages (LA-T6)                                | <input checked="" type="checkbox"/> Other domestic relations action (DR-D9) |  |

**Notice of Typo on EQCV010968**

Dear Sheila,

I made a clerical mistake (typo) regarding the name of one of the defendants:

**Ter<sup>rence</sup>ence C. Kern.** Upon the filings yesterday of **EQCV010968**, I placed an extra "r". The actual spelling is **Terence C. Kern.** I made the correction upon the Cover Sheet and the Confidential Information page.

The only IA Rule, I found, pertaining to this type of mistake was- IA Rule 2.23 3 (g)

*Clerical Mistakes* - Clerical Mistakes in judgment, orders or **other parts of the record** and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

If there is another form or other means of correcting this please let me know.

Phone 641-342-2926

Email is [jdmerk@iowatelecom.net](mailto:jdmerk@iowatelecom.net)

Sincere apologies,  
Jerry Mercer

*Thanks for all your help*

*f Sheila, Just for your convenience to explain*

**IN THE IOWA DISTRICT 5 COURT FOR CLARKE COUNTY**

*to explain  
Type  
J*

UPON THE PETITION OF

Jerry DeWayne Mercer,  
and Eddie Leon Andrews  
Petitioners,

Case. No. EQCV010968

AND CONCERNING

INDIVIDUALS:  
Elisabeth A. Shumaker  
and Phil Lombardi  
and Paul J. Cleary  
and Terrence C. Kern  
Respondents,

**ORIGINAL NOTICE**

*Note: Extra*

TO THE ABOVE-NAMED PETITIONERS:

You are notified that a Petition Complaint has been filed in the office of the clerk of this court naming you as the Respondent in this action. A copy is attached to this Notice.

You must serve a motion or answer upon the Respondent within 20 days after service of this Original Notice upon you and, within a reasonable time thereafter, file your motion or answer with the Clerk of Court for Clarke County, at the courthouse in Osceola, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator. The Clerk of Court will be able to provide you with this number. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.

*Julia O. Castell*  
*Renee Stone* Clerk of Court

Plaintiffs' Addresses:

Mercer: General Delivery, Osceola, Ia [50213-9999]

Andrews: 4 Smedley Lane, Newtown Square, Pa 19073

Clarke County Courthouse  
Osceola, Iowa, 50213  
Phone 641-342-6096