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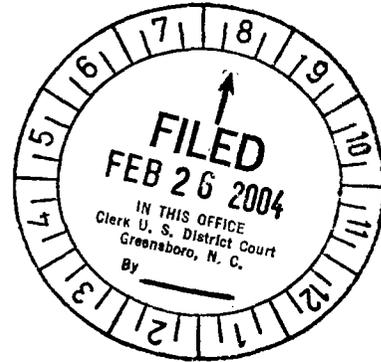
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
CASE NO.: 1:03 CV 00306

UNDERWRITERS INSURANCE COMPANY,)
)
Plaintiff,)

v.)

ATA TRUCKING, INC., BALDWIN)
TRUCKING, INC.; BROOKS)
TRANSPORTATION SERVICES, LLC;)
CABRERA TRANSPORTATION, INC.; DAVIS)
TRANSFER COMPANY; EAGLE CAPITAL)
CORPORATION; FARMERS GIN & STORAGE)
CO., INC.; HIGHWAY, U.S.A., INC.; HILL-TOP)
TRANSPORTATION, INC.; LONG BAR)
TRANSPORTATION CO., INC.; CHARLES F.)
MORRIS D/B/A AIR-BEE LOGISTICS;)
PERFORMANCE TRUCKING, INC.; R.E.)
BARNETT & SONS TRUCKING COMPANY,)
RISING SUN EXPRESS, INC.; ROYAL)
EXPRESS, INC.; ROYAL LOGISTICS, LLC;)
SOUTHERN STAR INDUSTRIES, INC.; T&T)
SERVICES, INC. A/K/A & D/B/A T&T)
DEDICATED CARRIERS, INC.; AND TRI-)
STAR TRUCKING, INC.)

Defendants.)



**MEMORANDUM OPINION AND
ORDER AND JUDGMENT**

THIS MATTER is before the Court upon the Motion of Plaintiff, The Underwriters Insurance Company (“Underwriters”), pursuant to 28 U.S.C. §§ 1335 and 2361, for Determination of Interpleader. After a thorough review of the file, and the motion, the Court now makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Court makes the following findings of fact:

1. Plaintiff Underwriters, the issuer of a property brokers surety bond under 49 U.S.C. § 13906, brought this action, pursuant to 28 U.S.C. § 1335, against persons and entities which have asserted claims against the bond. Said bond claims exceeded the penalty of the bond. Plaintiff now moves for determination of its interpleader claim and, *inter alia*, for discharge from further liability and permanent injunctive relief pursuant to 28 U.S.C. §§ 1335 and 2361.

2. Plaintiff Underwriters, as surety, issued a “Property Broker’s Surety Bond Under 49 U.S.C. § 13906” (assigned bond No.: 40021290 and bearing license No.: MC-333261-B) on behalf of Prestige Transportation Services, Inc. (“Prestige”), as principal, with a bond penalty of \$10,000.00 [hereinafter referred to as the “Bond”].

3. In view of the Defendants’ adverse and conflicting interests and the aggregate amount of the bond claims at the time the Complaint was filed, Plaintiff was unable to make an apportionment of the remaining bond penalty among the Defendants and, therefore, filed the instant action.

4. Contemporaneously with the filing of the instant action, Plaintiff deposited the bond penal amount of \$10,000.00 into the registry of the Court.

5. The Court finds: (A) that this action was filed by Plaintiff, a corporation, which had in its custody or possession money of the value of \$500.00 or more; (B) that there were two or more adverse claimants of diverse citizenship as defined in 28 U.S.C. § 1332 claiming to be entitled to such money; and (C) that Plaintiff deposited such money into the registry of the Court.

Therefore, the requirements of 28 U.S.C. § 1335 have been met and the Court has original jurisdiction over this matter.

6. Pursuant to Rule 55(a), Fed. R. Civ. P., the Court has previously entered default against the following defendants: Defendants ATA Trucking, Inc.; Baldwin Trucking, Inc.; Brooks Transportation Services, LLC; Cabrera Transportation, Inc.; Davis Transfer Company; Eagle Capital Corporation; Farmers Gin & Storage Co., Inc.; Highway, U.S.A., Inc.; Hill-Top Transportation, Inc.; Long Bar Transportation Co., Inc.; Charles F. Morris d/b/a Air-Bee Logistics; Performance Trucking, Inc.; R.E. Barnett & Sons Trucking Company, Royal Express, Inc.; Royal Logistics, LLC; Southern Star Industries, Inc.; and T&T Services, Inc. a/k/a & d/b/a T&T Dedicated Carriers, Inc.; and Tri-Star Trucking, Inc. [hereinafter referred to collectively as the "Non-Answering Defendants"]. Further, pursuant to Rule 55(b), Fed. R. Civ. P., the Court has entered default judgment against the Non-Answering Defendants.

7. Defendant Rising Sun Express, Inc., the only Defendant which has not had default entered against it, filed an Answer in which it asserts a claim in the amount of \$450.00 against the Bond proceeds on deposit with the Registry of the Court.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes as a matter of law that:

1. To the extent that any of the foregoing Findings of Fact are deemed, or constitute, Conclusions of Law, those Findings of Fact are restated and incorporated herein.

2. The captioned action is a proper action or proceeding for interpleader under 28 U.S.C. § 1335 and for determination of the respective rights, if any, of the Defendants to the Bond and to the remaining Bond penalty, and this Court has jurisdiction over the subject matter of this action and the parties thereto. Plaintiff's Motion for Determination of Interpleader should be granted.

3. The amount of the bond penalty under the Bond is a total of \$10,000.00, and said total has been deposited into the registry of the Court;

4. Plaintiff is discharged from any and all liability to any and all Defendants and from any and all liability under the Bond, and the Bond is deemed null and void with no further force or legal effect;

5. Defendant Rising Sun Express, Inc. has presented a valid claim and is entitled to recover the amount of \$450.00 from the Bond proceeds on deposit in the registry of the Court, and the Clerk shall pay Rising Sun Express, Inc. such amount on demand as soon as this judgment becomes final and the time for appeal has elapsed;

6. No Defendants, other than Rising Sun Express, Inc., are entitled to recover any of the Bond proceeds on deposit in the registry of the Court, because they have not answered or otherwise responded to the Complaint, and because they have had default and default judgment entered against them;

7. Plaintiff is entitled to a refund in the amount of the Bond proceeds not ordered by the Court to be disbursed to Defendants and the Clerk shall pay Plaintiff such amount on demand as soon as this judgment becomes final and the time for appeal has elapsed;

8. The Plaintiff is dismissed from the interpleader claim;

9. Defendants ATA Trucking, Inc., Baldwin Trucking, Inc.; Brooks Transportation Services, LLC; Cabrera Transportation, Inc.; Davis Transfer Company; Eagle Capital Corporation; Farmers Gin & Storage Co., Inc.; Highway, U.S.A., Inc.; Hill-Top Transportation, Inc.; Long Bar Transportation Co., Inc.; Charles F. Morris d/b/a Air-Bee Logistics; Performance Trucking, Inc.; R.E. Barnett & Sons Trucking Company, Rising Sun Express, Inc.; Royal Express, Inc.; Royal Logistics, LLC; Southern Star Industries, Inc.; T&T Services, Inc. a/k/a &

d/b/a T&T Dedicated Carriers, Inc.; and Tri-Star Trucking, Inc. are permanently restrained and enjoined from instituting or prosecuting any action or proceeding against Plaintiff or the Bond in any federal or state court;

10. Any counterclaim asserted against the Plaintiff is dismissed with prejudice;

11. All claims that the Defendants may have concerning the funds on deposit or Plaintiff's obligations with respect to those funds are fully and finally resolved by this decree; and

12. Plaintiff shall have such other and further relief that is just and appropriate.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

1. The captioned action is a proper action or proceeding for interpleader under 28 U.S.C. § 1335 and for determination of the respective rights, if any, of the Defendants to the Bond and to the remaining Bond penalty, and this Court has jurisdiction over the subject matter of this action and the parties thereto.

2. Plaintiff's Motion for Determination of Interpleader is granted.

3. The amount of the bond penalty under the Bond is a total of \$10,000.00, and said total has been deposited into the registry of the Court;

4. Plaintiff is discharged from any and all liability to any and all Defendants and from any and all liability under the Bond, and the Bond is deemed null and void with no further force or legal effect;

5. Defendant Rising Sun Express, Inc. is entitled to recover the amount of \$450.00 from the Bond proceeds on deposit in the registry of the Court, and the Clerk shall pay Rising Sun Express, Inc. such amount on demand as soon as this judgment becomes final and the time for appeal has elapsed;

6. No Defendants, other than Rising Sun Express, Inc., are entitled to recover any of the Bond proceeds on deposit in the registry of the Court;

7. Plaintiff is entitled to a refund in the amount of the Bond proceeds not ordered by the Court to be disbursed to Defendants and the Clerk shall pay such amount to Plaintiff on demand as soon as this judgment becomes final and the time for appeal has elapsed;

8. The Plaintiff is dismissed from the interpleader claim;

9. Defendants ATA Trucking, Inc., Baldwin Trucking, Inc.; Brooks Transportation Services, LLC; Cabrera Transportation, Inc.; Davis Transfer Company; Eagle Capital Corporation; Farmers Gin & Storage Co., Inc.; Highway, U.S.A., Inc.; Hill-Top Transportation, Inc.; Long Bar Transportation Co., Inc.; Charles F. Morris d/b/a Air-Bee Logistics; Performance Trucking, Inc.; R.E. Barnett & Sons Trucking Company, Rising Sun Express, Inc.; Royal Express, Inc.; Royal Logistics, LLC; Southern Star Industries, Inc.; T&T Services, Inc. a/k/a & d/b/a T&T Dedicated Carriers, Inc.; and Tri-Star Trucking, Inc. are permanently restrained and enjoined from instituting or prosecuting any action or proceeding against Plaintiff or the Bond in any federal or state court;

10. Any counterclaim asserted against the Plaintiff is dismissed with prejudice; and

11. All claims that the Defendants may have concerning the funds on deposit or Plaintiff's obligations with respect to those funds are dismissed and are fully and finally resolved by this decree.

This the 26 day of February, 2004.


James A. Beaty, Jr.
United States District Judge