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Order of Clarification for Previous Summary Judgment Order (MICROBILT CORPORATION)

Elizabeth E. Long
Superior Court of Fulton County

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MICROBILT CORPORATION,	*	
	*	
Plaintiff,	*	
	*	
v.	*	Civil Action No. 2003-CV-79446
	*	(Business Division Two—EL)
FIDELITY NATIONAL FINANCIAL INC., et al.	*	
	*	
Defendants,	*	
	*	

ORDER OF CLARIFICATION FOR PREVIOUS SUMMARY JUDGMENT ORDER

The above-styled case is before the Court on Defendants' Motion for Reconsideration or Clarification ("Motion for Reconsideration") of this Court's January 17, 2007, Summary Judgment Order.

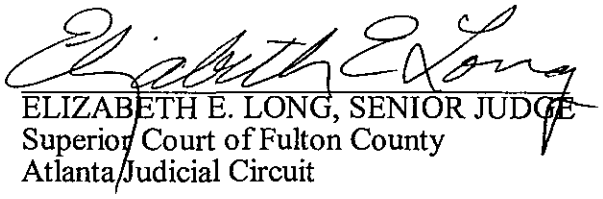
Defendants' Motion for Reconsideration requests the Court to recognize that the parties are in agreement with respect to CPU-to-CPU connections and to award summary judgment in favor of Defendants for amounts claimed under recoupment. After reviewing the briefs submitted on these issues, the Court finds as follows:

The parties are in agreement that CPU-to-CPU connections are outside of the scope of the Exclusive Access Agreement entered into by the parties. Thus, this issue is resolved and does not require jury determination.

With respect to recoupment, Defendants allege that NMC erroneously paid Plaintiff over $70,000 for Tower Loan credit reports that were outside of the scope of the Contract (i.e., CPU-to-CPU connections and after the termination date), not subject to the voluntary payment doctrine, and thus require summary judgment. See Edmond v. State Farm Mutual Auto. Ins. Co., 175 Ga. App. 548 (1985). In Edmond, the trial court's determination to recoup and

reallocate State Farm's previous erroneous payments hinged upon the defendant's misinterpretation of no-fault law, which constituted payment under a mistake of the law. Id. at 550. Defendants, here, have alleged no facts that they were mistaken as to what the law was or required under the Exclusive Access Agreement. See, Wallis v. B & A Const. Co., Inc., 273 Ga. App. 68, 74 (2005). At this stage the issue remains unresolved and the recoupment of such payments shall be determined by a jury.

SO ORDERED this 26th day of February, 2007.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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