

2000-1 Addison Circle

Legal Correspondence RE: Trends Art Piece - 1999



PUBLIC WORKS DEPARTMENT

Post Office Box 9010 Addison, Texas 75001-9010

(972) 450-2871

16801 Westgrove

September 28, 1999

Mr. Chris Wolfe
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202

Re: Affidavit of Jeffrey Alan Markiewicz

Dear Mr. Wolfe:

Enclosed please find the executed and notarized copy of the referenced document. Please call me if you have any questions or need additional information.

Sincerely,

Jeff Markiewicz
Project Manager

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS

**FACSIMILE COVER PAGE**Date: September 28, 1999

Time: _____

Total Number of Pages (including this sheet): 5Normal/Rush: RushClient/Matter #: 3195/25211TO: (1) Jeff Markeiwicz

FAX: (972) 450-2837

FROM: Chris WolfeDirect Dial #: (214) 672-2194

MESSAGE:

**IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL OUR SERVICE CENTER
AT (214) 672-2508
or Sherry Hope at (214) 672-2596
Thank you.**

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STATE OF TEXAS §
 COUNTY OF DALLAS §

AFFIDAVIT OF JEFFREY ALAN MARKIEWICZ

Jeffrey Alan Markiewicz, being duly sworn, states as follows:

1. My name is Jeffrey Alan Markiewicz. I am over the age of eighteen, have never been convicted of a felony, and am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

2. I am the project manager for the Town of Addison, Texas. As part of my job I am involved in the planning for the construction to take place in the traffic circle at the intersection of Quorum Drive and Addison Circle Drive (hereafter referred to as the "Addison Circle") and have knowledge of the nature of the project and its impact on traffic and nearby merchants including the Optical Shoppe and Trends Store.

3. The Town of Addison is in the process of constructing a major work of art approximately fifty (50) feet in height in the center of the Addison Circle. The project is being undertaken to enhance and beautify this area of Addison for the benefit of the public and local merchants.

4. In order to erect this structure and ensure the safety of the public and construction personnel, Addison will temporarily reroute traffic around the traffic circle during construction. Addison has taken several measures to minimize the inconvenience to local merchants during construction including the following:

a. The only roadway that will be blocked during construction will be the Addison Circle. All other public streets leading up to the circle including Quorum Drive and Addison Circle Drive will remain open to the public throughout construction.

- b. Both the Trends Store and the Optical Shoppe have at least one entrance on Quorum Drive. Both merchants will therefore continue to have direct vehicular and pedestrian access to their places of business and will not experience a total restriction of access at any time.
- c. The existing parking along Quorum Drive, including those spaces adjacent to the Trends Store and the Optical Shoppe, will remain open to the public during construction, as will the sidewalks on both Quorum Drive and Addison Circle Drive. The parking garage behind the Trends Store will remain accessible via side streets to traffic approaching the area from any direction.
- d. Two Addison Police Officers will assist the public on Quorum Drive and help direct/reroute the public to local merchants and parking including that for the Trends Store and the Optical Shoppe.
- e. During construction, the Addison Circle will only be closed on certain days when operations require closure to maintain public safety. The circle may only be closed from 7:00 a.m. to 4:00 p.m. Monday through Friday, and will be open at all other times including evenings, weekends, and any other days in which there is no construction activity scheduled such as bad weather days.
- f. Construction will proceed quickly, and is expected to take no more than sixty (60) days, weather permitting, and finish before the Thanksgiving and the Christmas shopping season. As soon as construction is complete, the traffic circle will be reopened to traffic as it was prior to construction.

g. Addison is providing and installing signs to notify the driving public that merchants will remain open during construction, including the Trends Store and the Optical Shoppe, and how they can be reached. Copies of the signs are attached hereto, as Exhibit "A", and incorporated herein.

5. In the weeks before commencement of construction, representatives of Addison met with merchants and property owners in and around the Addison Circle, including representatives of the Trends Store and the Optical Shoppe and their landlord to explain the project and the steps that would be taken to minimize inconvenience to those affected. Addison met with the landlord of Trends Store and the Optical Shoppe, Post Properties, on or about August 19, 1999, and again on or about September 1, 1999. Addison followed these meetings with a meeting with Trends Store and the Optical Shoppe on or about September 10, 1999.

6. By letter dated September 15, 1999, an attorney representing the Trends Store and the Optical Shoppe wrote the town and objected to the planned temporary closure of the Addison Circle and contended that the closure would amount to a "taking" of property and entitle his clients to compensation. A copy of this letter is attached hereto as Exhibit B and incorporated herein. Counsel for Addison responded to such letter by a letter dated September 17, 1999, a copy of which is attached hereto as Exhibit C and incorporated herein.

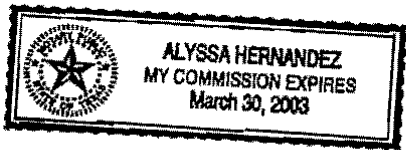
7. Construction has already begun. Any delay in construction would be extremely costly. The overall construction cost is approximately \$1.7 million, with an additional cost of approximately \$100,000 for peripheral activities including signs. If construction was stopped, a number of costs would be incurred. At this time I estimate that the costs of a work stoppage would include approximately \$5,696 to demobilize equipment and work crews, \$4,987 per day in loss of work, \$250 per day to store the art work, and \$6,032 to remobilize. In addition, any

delays in construction would risk extending the completion date until after Thanksgiving and into the busy Christmas season, which local merchants have requested Addison to avoid if at all possible.

Jeffrey Alan Markiewicz
Jeffrey Alan Markiewicz

SWORN TO BEFORE ME on this 28 day of September, 1999, to

certify which witness my hand and official seal.



Alyssa Hernandez
Notary Public In and For
The State of Texas

My Commission Expires:

3/30/03

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS

**FACSIMILE COVER PAGE**Date: September 17, 1999

Time: _____

Total Number of Pages (including this sheet): 9Normal/Rush: NormalClient/Matter #: 3195.25211

TO: (1) RON WHITEHEAD FAX: 972.450.7043
(2) CARMEN MORAN FAX: 972.450.7043
(3) JEFF MARKIEWICZ FAX: 972.450.2837
(3) JOHN BAUMGARTNER FAX: 972.450.2837

FROM: SIM ISRAELOFF Direct Dial #: (214) 672-2131

MESSAGE: RE: QUORUM DRIVE

**IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL OUR SERVICE CENTER**

AT (214) 672-2508

or KARA HILL at (214) 672-2658

Thank you.

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COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



SIM D. ISRAELOFF
214.672.2131
SISRAELOFF@COWLESTHOMPSON.COM

September 17, 1999

Via Facsimile 214.745.5390

Arthur J. Anderson
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

RE: Quorum Drive

Dear Mr. Anderson:

I have reviewed your letter of September 15, 1999 with representatives of the Town of Addison and have spoken with you with respect to the nature of your client's concerns.

As you know, the town is constructing a major work of art in the traffic circle at the intersection of Quorum Drive and Addison Circle Drive. Addison believes the project will enhance and beautify the town and benefit nearby merchants and the public. As with all public works, however, construction will cause a temporary inconvenience for nearby residents and merchants. In order to erect the structure and ensure the safety of the public and construction personnel, the town needs to temporarily re-route traffic around the circle. The town has attempted to balance the needs of the public, the business community, and public safety. It has taken a number of steps to minimize the inconvenience to local merchants including the following:

1. The only street that will be blocked during construction will be the traffic circle itself. All public streets leading up to the circle including Quorum Drive will remain open to the public for local traffic throughout the construction. You have confirmed that both the Trends Store and the Optical Shoppe have entrances on Quorum Drive, so both merchants will continue to have direct street access and will not experience a total restriction on access at any time.

2. The existing parking along Quorum Drive, including those spaces adjacent to the Trends Store and the Optical Shoppe, will remain open to the public during construction, as will the sidewalks on both Quorum Drive and in the traffic circle itself. The parking garage behind the Trends Store will remain accessible via side streets to traffic approaching the area from any direction. Porters/flagmen will assist the public on Quorum Drive to help direct them to local merchants and parking.

September 17, 1999

Page 2

3. The traffic circle will only be closed during construction times, 7:00 a.m. to 4:00 p.m. Monday through Friday, and will be open during the evenings, on weekends, and on any other day that there is no construction activity scheduled.

4. The town is installing signs notifying the driving public that the merchants in the construction area including the Trends Store and the Optical Shoppe remain open for business and how they can be reached. Copies of the signs are enclosed.

5. Construction will proceed as quickly as possible, and is expected to take no more than 60 days weather permitting and finish before Thanksgiving. As soon as construction is complete, the traffic circle will be reopened to traffic as it was before construction.

As you can see from the above, the town is sympathetic to your client's concerns. The town previously met with local merchants including your clients to explain the project and the significant efforts the town has made to address their concerns. The town would be happy to talk further with your clients and work with them to see if anything further can be done. In our conversation yesterday you agreed to provide me a letter listing any additional suggestions your clients may have. I look forward to receiving that letter and will immediately forward it to the town for consideration. Please note, however, that construction staging has already begun. Any delay in the start of construction would be extremely costly to the town and would risk extending the completion date until after Thanksgiving and into the busy Christmas shopping season, which local merchants have asked the town to avoid if possible.

In your letter you take the legal position that the temporary closure of the traffic circle will constitute a "taking" of your client's property for public use. In our telephone discussion yesterday you suggested that if the town will not keep the traffic circle open to through traffic during construction, it can instead "pay us money." As we discussed, I am not aware of any legal authority supporting such a claim since your clients will at no times suffer a total restriction on access. The Texas Supreme Court has stated the rule as follows:

"...in order to show a material and substantial interference with access to one's property [and justify a claim for compensation], it is necessary to show that there has been a total but temporary restriction of access; or a partial but permanent restriction of access; or a temporary limited restriction of access brought about by an illegal activity or one that is negligently performed or unduly delayed. The facts of this case do not fit into any of the above categories. Therefore [the merchant] cannot prevail in its suit for lost profits."

City of Austin v. Avenue Corporation, 704 S.W.2d 11, 12 (Tex. 1986).

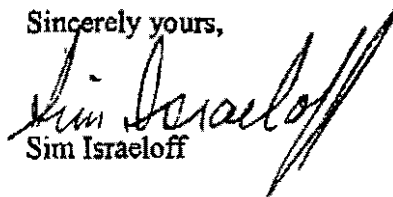
September 17, 1999
Page 3

I have asked you to provide me with any legal authority supporting your allegation that the planned temporary limited restriction on access to your client's businesses constitutes a compensable taking of property. I will review any authority you provide and will advise the town as to its obligations in light of that material. On the basis of the information you have provided to date and the law as stated above, the planned construction clearly does not constitute a compensable taking.

You have requested a copy of the construction contract for the work on the traffic circle. It is my understanding that a copy was previously requested by the Trends Store and has been provided to them, but I will be happy to obtain another copy and will provide one to you as well.

I appreciate your willingness to discuss this issue with me yesterday. The town is interested and willing to discuss this matter with you and your clients further. I look forward to hearing from you.

Sincerely yours,



Sim Israeloff

SL:kfh

September 17, 1999

Page 4

fax bcc: Ron Whitehead
 Carmen Moran
 Jeff Markiewicz
 John Baungartner
 Ken Dippel (firm)

**BUSINESS SIGNS A
4 FT. X 4 FT.**

**ADDISON CIRCLE SHOPS ARE
OPEN FOR BUSINESS**

- Post Apartment Leasing Center**
- Addison Circle Cleaners**
- Addison Hair Cutting Company**
- Addison Tobacco & Cigar**
- Advantage Tickets**
- Antonio Ristorante**
- Bimple's**
- Bloodgood Sharp Buster Architects**
- Kampal Sushi & Grill**
- Keaton Interiors**
- Opus Salon**
- Optical Shop of Addison**
- Robert Reese & Associates, Inc.**
- Signori Giovanni**
- State Farm**
- Trends Unique Gifts & Accessories**

**LOOK FOR INFORMATION SIGNS
TO LOCATE EACH BUSINESS**

BUSINESS SIGN B



TO ACCESS

- POST APARTMENT LEASING CENTER
- ADDISON CIRCLE CLEANERS
- ADDISON HAIR CUTTING CO.
- ADDISON TOBACCO & CIGAR
- BLIMPIE'S
- KEATON INTERIORS
- OPUS SALON
- OPTICAL SHOP OF ADDISON
- TRENDS UNIQUE GIFTS


BUSINESS SIGN D

TO ACCESS PROCEED AHEAD

- POST APARTMENT LEASING
- ADDISON CIRCLE CLEANERS
- ADDISON HAIR CUTTING CO.
- ADDISON TOBACCO & CIGAR
- ADVANTAGE TICKETS
- ANTONIO RISTORANTE
- BLIMPIE'S
- KAMPAI SUSHI & GRILL
- KEATON INTERIORS
- OPUS SALON
- OPTICAL SHOP OF ADDISON
- TRENDS UNIQUE GIFTS

BUSINESS SIGN H


TO ACCESS



• POST APARTMENT LEASING
• CENTER AND OTHER RETAIL
• TENANTS

BUSINESS SIGN C

TO ACCESS



• ANTONIO RISTORANTE
• KAMPAI SUSHI & GRILL

BUSINESS SIGN G

**ADDISON CIRCLE
SHOPS &
RESTAURANTS**

BUSINESS SIGN I

**ADDISON CIRCLE
SHOPS &
RESTAURANTS**

BUSINESS SIGN E

TO ACCESS PROCEED AHEAD

- POST APARTMENT LEASING CENTER
- BLOODGOOD SHARP BUSTER ARCHITECTS
- SIGNORI GIOVANNI
- STATE FARM INSURANCE

BUSINESS SIGN F

TO ACCESS

- STATE FARM
- SIGNORI GIOVANNI
- BLOODGOOD SHARP BUSTER ARCHITECTS

TO ACCESS

- POST APARTMENT LEASING CENTER
- AND OTHER RETAIL TENANTS

1-800-735-7468

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FACSIMILE COVER PAGE

Date: September 22, 1999

Time: _____

Total Number of Pages (including this sheet): 18

Normal/Rush: Normal

Client/Matter #: 3195-25211

TO: (1) Bill Shipp
(2) Jeff Markiewicz
(3)

FAX: 972-450-7043
FAX: 972-450-2837
FAX:

FROM: "Mike" Johnson (for Sim I.)

Direct Dial #: (214) 672-2531

MESSAGE: Bill, will you please get copies of this to Ron W., Carmen M. and Ken D.

Thanks!

**IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL OUR SERVICE CENTER
AT (214) 672-2508
or "Mike" Johnson at (214) 672-2531
Thank you.**

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SEP: 22. 1999 2:33PM

COWLES & THOMPSON 214 672 2020

NO. 7922 P. 2

Sep-22-1999 11:21am From-WINSTEAD SECHREST & MINICK/2

214-745-5390

T-490 P.001/016 F-260

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199
DALLAS HOUSTON AUSTIN
MEXICO CITY

WINSTEAD SECHREST & MINICK

A Professional Corporation
Attorneys & Counselors

Telephone: (214) 745-5400
Telecopier: (214) 745-5390

Direct Dial 745-5745
anderson@winstead.com

FAX TRANSMITTAL

PLEASE DELIVER TO THE FOLLOWING:	TELEPHONE NUMBER:	FAX NUMBER:
<i>Sir, Yskaeloff</i>		<i>214-672-2020</i>
<i>Andrea Nelson</i>		<i>972-788-2316</i>

FROM: **ARTHUR J. ANDERSON**

DATE: 9-22-99 TIME IN: _____

NUMBER OF PAGES: 16 (INCLUDING COVER SHEET).

PLEASE CALL **IMMY WILSON OR CHRIS GREENE AT (214) 745-5482** AS SOON AS POSSIBLE IF YOU DO NOT RECEIVE THE TOTAL NUMBER OF PAGES OR IF TRANSMISSION IS NOT READABLE.

ATTORNEY # AND CLIENT-MATTER #: 179 22071-1

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ADDITIONAL MESSAGE: _____

ORIGINAL WILL NOT FOLLOW

ORIGINAL WILL FOLLOW VIA:

- Regular Mail
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0014VPCDOCS/DALLAS_10332311

5400 Northside Tower
1201 Elm Street
Dallas, Texas 75270-2199
DALLAS HOUSTON AUSTIN
MEXICO CITY

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& MINICK**
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amendson@winstead.com

September 22, 1999

VIA FAX 214/672-2020

Sim Israeloff, Esq.
Cowles & Thompson, P.C.
901 Main St., Suite 4000
Dallas, Texas 75202

RE: Addison Circle Drive Closure

Dear Sim,

As you are aware, we represent Trends and the Optical Shop in this matter. We appreciate the Town's willingness to consider other options for the Addison Circle Drive construction. Our clients have suggested the following options for the Town to consider:

1. Carmen Moran said during the meeting with the retailers that the contractor only needed one side of Quorum to be closed at a time. With this in mind, why not revise the closure to follow this suggestion? One side of Quorum could remain open at all times with two flagmen to direct traffic as needed and porters to direct traffic to parking.
2. The contractors can work on Sunday to complete the installation more quickly or reduce the hours the streets will be closed daily. The reduction time should be in the afternoon.
3. With either full closure or partial, weekly advertisements should be included in all the area newspapers (Carrollton, Plano, Addison, Dallas Morning News, etc.). These should be half a page—full color from date of closing to two weeks after the roads are open again. The Town of Addison should pay for this advertising, and Optical Shop and Trends should have review rights for the advertisement.
4. Whether a full closure or partial, there should be signage on Beltline (same location as banners used for the special events). The banner could read: Check out the newest Addison addition - ... sculpture and visit Trends and the Optical Shop while there... Signage to remain up from date of closing to two weeks after the streets are open. Trends/Optical Shop should approve the signage.
5. Whether a full closure or partial, signage on Quorum and Addison Road should be larger and at least 3' off the ground. The existing event signage is not large or high enough. Trends/Optical Shop should approve the signage.
6. With the full closure or partial, additional signage on Keller Springs, Trinity Mills and Addison Road should be installed to be approved by Trends and Optical Shop.

Sim Israeloff, Esq.
September 22, 1999
Page 2

7. Our clients prefer valet parking rather than a porter if the street closure cannot be changed. "Valet parking available" should be noted on all signage.

8. Proposed signage needs a better design and the typefaces should reflect the different vendor styles.

9. The "No Parking between 2 a.m. and 6 a.m." signage on Quorum promised September 9 should be installed and enforced.

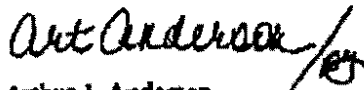
10. The Town should provide adequate signage directing clients to the garages. The signage today is not effective.

11. We would request that the Town pay for lost income due to traffic not being able to drive by, pull up or see the store. People will avoid the area due to the construction and it will damage business during and after the construction. In that regard, we would request that the Town prepay tenant rent and electricity September through December as partial compensation. Furthermore, our clients request that their attorney's fees be paid by the Town.

You have also requested case law reference on the takings issue. The Texas Constitution provides: No person's property shall be taken, *damaged* or destroyed for or applied to public use without adequate compensation being made... TEX. CONST. art. I, § 17 (emphasis added). In *DuPuy v. City of Waco*, the Supreme Court held: It is the settled rule in this state that an abutting property owner possesses an easement to access which is a property right; that this easement is not limited to a right of access to the system of public roads; and that diminishment in the value of property resulting from a loss of access, thereby damaging the property, is an inverse condemnation. 396 S.W.2d at 109. In *DuPuy*, the Supreme Court held that converting a through street to a cul-de-sac in front of the landowner's business was an inverse condemnation.

Also attached is a copy of the holding of Judge Barefoot Sanders in *LJ & J Corporation v. City of Dallas*. It indicates that damages were awarded retail stores for the temporary prohibition of all vehicular traffic on Main and the prohibition of through access on Akard. Also attached is a copy of our TRO Application which will not be filed so long as the parties are working toward a resolution of this issue. My clients and I are available at your earliest convenience to meet to resolve the outstanding issues with the Town. Please give me a call to discuss this matter.

Very truly yours,



Arthur J. Anderson

AJA/sln

Enclosure

cc: Andra Newsom (via fax 972/788-2316)

1209065.2
(79-22071)-1

Source: All Sources: States Legal - U.S. : Texas : TX Federal and State Cases
Terms: dallas and main and inverse and access and date goq (09/17/1994) (Edit Search)

1998 U.S. Dist. LEXIS 9971, *

LJ&J CORPORATION, d/b/a STREETZ; FOREMAN OFFICE PRODUCTS; JERRY APODACA, Individually and d/b/a AKARD SHOE REPAIR; DR. DIANE B. MOSBACHER; and DR. MATTHEW BASHOEVER, Individually and d/b/a ACCENT OPTICAL; GIFTS, GIFTS, GIFTS, a Texas General Partnership; and SUB TOTAL SUB SHOPPE, INC., Plaintiffs, v. THE CITY OF DALLAS, Defendant.

Civil No. 3:94-CV-2420-H Consolidated with CIVIL No. 3:95-CV-0554-H

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

1998 U.S. Dist. LEXIS 9971

June 29, 1998, Decided

June 29, 1998, Filed; June 29, 1998, Entered on Docket

CORE TERMS: pre-judgment, interest rate, post-judgment, condemnation, temporary, construction project, vehicular traffic, streets

COUNSEL: [*1] For LJ & J CORPORATION dba Streetz & Foreman Office Products Inc, plaintiff: Thomas Harold Keen, Attorney at Law, Beverly Ann Whitley, Attorney at Law, Bell Nunnally & Martin, Dallas, TX USA.

For FOREMAN OFFICE PRODUCTS INC, JERRY APODACA, dba Akard Shoe Repair, DIANE B MOSBACHER, Dr, dba Accent Optical, MATTHEW BASHOEVER, Dr, dba Accent Optical, SUB TOTAL SUB SHOPPE INC, plaintiffs: Thomas Harold Keen, Attorney at Law, Bell Nunnally & Martin, Dallas, TX USA.

For GIFTS GIFTS GIFTS, consolidated plaintiff: Thomas Harold Keen, Attorney at Law, Bell Nunnally & Martin, Dallas, TX USA.

For CITY OF DALLAS TEXAS, defendant: Mark Laurence Bryza, Attorney at Law, Edward Randolph Price, III, Attorney at Law, Christopher David Bowers, Attorney at Law, Kenneth Robert Bennett, Attorney at Law, Dallas City Attorney's Office, Dallas, TX USA.

OSWIN P CHRISMAN, ADR Provider, Pro se, Dallas, TX USA.

ROSS W STODDARD, III, ADR Provider, Pro se, Irving, TX USA.

For CITY OF DALLAS TEXAS, third-party plaintiff: Edward Randolph Price, III, Attorney at Law, Dallas City Attorney's Office, Dallas, TX USA.

For CITY OF DALLAS TEXAS, third-party plaintiff: Christopher David Bowers, [*2] Attorney at Law, Dallas City Attorney's Office, Dallas, TX USA.

For GIFTS GIFTS GIFTS, plaintiff (95-CV-554): Thomas Harold Keen, Attorney at Law, Jenkins & Gilchrist, Dallas, TX USA.

For DALLAS TX CITY OF, defendant (95-CV-554): Christopher David Bowers, Attorney at Law, Dallas City Attorney's Office, Dallas, TX USA.

For GIBSON & ASSOCIATES, third-party defendant (95-CV-554): Charles W Stuber, Attorney

at Law, Canterbury Stuber Pratt Elder & Gooch, Dallas, TX USA.

**JUDGES: BAREFOOT SANDERS, SENIOR JUDGE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS.**

OPINIONBY: BAREFOOT SANDERS

OPINION: MEMORANDUM OPINION AND ORDER

On June 25, 1998, the Court held a conference on the issues raised in Defendant's letter to Plaintiffs' counsel dated June 11, 1998 (filed with the District Clerk by letter dated June 12, 1998). In the June 11 letter Defendant raised three objections to Plaintiff's proposed Final Judgment.

With respect to Defendant's first objection the Court ruled that the paragraph in question would be deleted.

Defendant withdrew its third objection.

Defendant's second objection relates to pre-judgment interest. Defendant asserts that Plaintiffs are not entitled [*3] to pre-judgment interest because the jury was not instructed regarding pre-judgment interest. The Court notes that there was no evidence before the jury regarding pre-judgment interest. Defendant cites no legal authority supporting its position other than a suggestion in Texas Pattern Jury Charges, PJC 110.2 (1997). Defendant's position lacks merit and is overruled.

Defendant further asserts that Plaintiffs are not entitled to recover pre-judgment interest from the beginning of the temporary access restriction. The Court disagrees. In the Joint Pretrial Order filed May 29, 1998, at page 2, the parties stipulated that the Main Street construction project lasted from November 10, 1992 until March 25, 1994; that access for through vehicular traffic was totally prohibited on that portion of Main Street between Akard and Ervay streets from February 27, 1993 to November 22, 1993; and that Akard Street between Elm and Commerce Streets was closed to through vehicular traffic during most of the construction project. At the trial Plaintiffs adduced testimony and other evidence that the temporary limited restriction of access to Plaintiffs' businesses began with the closing of the streets on [*4] February 27, 1993 (November 10, 1992 in the case of Plaintiff Apodaca). Defendant's evidence was to the contrary. The jury accepted Plaintiffs' testimony and so showed by its verdict. Defendant's objection is overruled.

There remains the question of the rate of pre-judgment interest. The Court is of the opinion that Plaintiffs are entitled to pre-judgment interest at the rate of ten percent (10%) per annum from and after February 27, 1993. There is no applicable federal statute on pre-judgment interest. State law governs the calculation of pre-judgment interest in 42 U.S.C. § 1983 claims. See Pressey v. Patterson, 898 F.2d 1018, 1026 (5th Cir. 1990). Of course, Plaintiffs' claim for temporary limited restriction of access brought about by an activity negligently performed or unduly delayed (inverse condemnation) is a state law claim to which state pre-judgment interest law applies. Plaintiffs prevailed on the 1983 claim and the state law claim. Texas law provides pre-judgment interest in a condemnation case equal to the post-judgment interest rate in effect at the time of judgment. Tex. Civ. Stat. Ann. art. 5069-1E.201 (West 1998) ("The pre-judgment interest rate in a condemnation [*5] case is equal to the post-judgment interest rate at the time of judgment and is computed as simple interest.") See also Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc., 962 S.W.2d 507, 528 n.9 (Tex. 1998). The Texas post-judgment interest rate is effectively ten percent (10%) per annum. See Tex. Fin. Code Ann. § 304.003(c)(2) (Vernon Pamph. 1998).

Judgment will be entered accordingly. Attorneys' fees and nontaxable expenses will be determined post-judgment in accordance with Fed.R.Civ.P. 54(d)(2).

SEP. 22. 1999 2:35PM

COWLES & THOMPSON 214 672 2020

NO. 7922 P. 7

Sep-22-1999 11:23am From:WINSTEAD SECREST & WINICK/2

214-746-5390

T-480 P.005/018 F-200

SO ORDERED.

DATED: June 29, 1998.

BAREFOOT SANDERS, SENIOR JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Source: All Sources : States Legal - U.S. : Texas : TX Federal and State Cases
Terms: dallas and main and inverse and access and date gen (09/17/1994) (Edit Search)
View: Full
Date/Time: Friday, September 17, 1999 - 10 28 AM EDT

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II.**VENUE**

4. Venue is proper in Dallas County pursuant to Texas Civil Practices & Remedies Code § 15.0151.

III.**FACTUAL BACKGROUND**

5. Plaintiffs are the leasehold owners of certain real property threatened with irreparable injury by the conduct of Defendant in this cause. Each Plaintiff runs a store within the mixed use complex known as Addison Circle. A rendering of the area is attached hereto as Exhibit A, which shows the exact location of each Plaintiff within the complex. Each Plaintiff's retail business is dependent upon the vehicular traffic around the Circle..

6. Plaintiffs have recently learned that Defendant intends to close down and barricade the circle and surrounding areas in order to install the Addison Circle Sculpture. The street closure is not for public health or safety reasons. Upon information and belief, Defendant intends to block all four sides of the circle on both Quorum Road and Addison Circle Road. No cars will be permitted past the traffic barricades onto the Circle and the portion of Quorum Road closest to the Circle will be used as a parking area.

7. Plaintiff's door fronts on Addison Circle. The Circle closure deprives Plaintiff completely of all vehicular access. The blockades on Quorum Road further serve to constitute a street closure. Such closures are unreasonable and will have catastrophic effects on Plaintiffs' businesses. Despite Plaintiffs' pleas to Defendant, Defendant refuses to work with Plaintiffs to find an acceptable solution. Plaintiffs are threatened with immediate and irreparable harm from

Defendant's action of barricading the Circle and closing Quorum Drive, for which Plaintiff has no adequate remedy at law. Therefore, Plaintiffs have no recourse but to seek temporary and permanent injunctive relief enjoining the Town of Addison from barricading the Circle and closing Quorum Drive.

IV.

APPLICATION FOR INJUNCTIVE RELIEF

Temporary Restraining Order

8. Plaintiffs request that the Court temporarily enjoin Defendant from blockading the Circle and closing Quorum Drive. It is essential that the Court act immediately, prior to notice on Defendant and a hearing on the matter, because Defendant erected the barricades and closed the roads on the day this Application is filed.

Temporary Injunction

9. In order to preserve the status quo and Plaintiffs' rights during the pendency of this action, Defendant should be cited to appear and show cause why it should not be temporarily restrained from blockading the Circle and closing Quorum Drive during the pendency of the action.

Permanent Injunction

10. Plaintiffs further requests that, after trial, the Court permanently enjoin Defendant from barricading the Circle and closing Quorum Drive, such that all vehicular access is denied to Plaintiffs.

V.

CONDITIONS PRECEDENT

11. All conditions precedent to Plaintiffs being entitled to bring this action and recover the relief requested herein have been performed, have occurred or have been waived.

VI.

PRAYER

12. Plaintiffs request the following relief:

- (a) That this Court issue a temporary restraining order without notice to Defendant, restraining Defendants from barricading the Circle and closing Quorum Drive;
- (b) That this Court issue a temporary injunction, after notice to the Defendants and an evidentiary hearing, restraining the Defendants from barricading the Circle and closing Quorum Drive;
- (c) That this Court, upon final hearing, issue a permanent injunction restraining the Defendants from barricading the Circle and closing Quorum Drive such that all vehicular access is denied to Plaintiffs; and
- (d) That this Court grant such other and further relief, both general and special, at law and in equity, to which the Plaintiffs may be justly entitled.

SEP. 22. 1999 2:36PM

COWLES & THOMPSON 214 672 2020

NO. 7922 P. 12

Sep-22-1999 11:24am From-WINSTEAD SECHREST & MINICK/2

214-745-5390

T-480 P.011/016 F-260

Respectfully Submitted,

WINSTEAD SECHREST & MINICK P.C.
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199
(214) 745-5400 Phone
(214) 745-5390 Fax

By:

Arthur J. Anderson SB# 01165957
Christine Moseley SB# 90001492

ATTORNEYS FOR PLAINTIFFS

..ODMA\FCD\DCS\DALLAS_1\32089402
359.22071-1

**PLAINTIFFS' ORIGINAL PETITION APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND TEMPORARY
AND PERMANENT INJUNCTIONS - Page 5**

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared OPTICAL SHOP by and through _____, its _____, who being by me duly sworn on oath deposed and said that he is the _____ of Optical Shop, Plaintiff in the above-entitled and numbered cause, that he has read the above and foregoing Plaintiffs' Application for Temporary Restraining Order and Temporary and Permanent Injunctions and that each and every factual statement contained therein is within his personal knowledge and is true and correct.

Subscribed and sworn to before me this _____ day of September, 1999, to which witness my hand and official seal.

Notary Public in and for the State of Texas

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared TRENDS, by and through _____, its _____, who being by me duly sworn on oath deposed and said that he is the _____ of Trends, Plaintiff in the above-entitled and numbered cause, that he has read the above and foregoing Plaintiffs' Application for Temporary Restraining Order and Temporary and Permanent Injunctions and that each and every factual statement contained therein is within his personal knowledge and is true and correct.

Subscribed and sworn to before me this _____ day of September, 1999, to which witness my hand and official seal.

Notary Public in and for the State of Texas

SEP. 22. 1999 2:36PM

COWLES & THOMPSON 214 672 2020

NO. 7922 P. 15

Sep-22-1999 11:28am From-WINSTEAD SECREST & MINICK/2

214-745-3300

T-480 P.014/016 F-280

**PLAINTIFFS' ORIGINAL PETITION APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND TEMPORARY
AND PERMANENT INJUNCTIONS - Page 8**

TOWN OF
ADDISON

PUBLIC WORKS

To: Ken Dippel

From: Jeff Markiewicz

Company: Cowles-Thompson

Phone: 972/450-2871

FAX: 972/450-2837

FAX #: 214-672-2020

Date: 9/22/99

16801 Westgrove

P.O. Box 9010

Addison, TX 75001-9010

of pages (including cover): 18

Wanted to make sure you received a copy of this. Jeff will call you at a later time to discuss.

Alysa

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SEND CONFIRMATION REPORT for
TOWN OF ADDISON
9724502837
Sep-22-99 4:25PM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
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Total		4'16"	Pages Sent: 18	Pages Printed: 0			

TOWN OF
ADDISON

PUBLIC WORKS

To: Ken Dippel

From: Jeff Markiewicz

Company: Cowles-Thompson

Phone: 972/450-2871

FAX: 972/450-2837

FAX #: 214-672-2020

Date: 9/22/99

16801 Westgrove

P.O. Box 9010

Addison, TX 75001-9010

of pages (including cover): 18

Wanted to make sure you received a copy of
this. Jeff will call you at a later time
to discuss.

Alysa

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
TOWN OF ADDISON
9724502837
Sep-16-99 2:51PM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
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Total		0'43"	Pages Sent: 2	Pages Printed: 0			

TOWN OF
ADDISON

To: Carmen

Company: _____

FAX #: _____

Date: 9/16/99

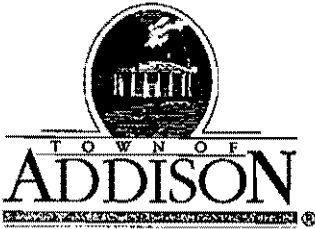
of pages (including cover): 2

PUBLIC WORKS

From: John

Phone: 972/450-2871
FAX: 972/450-2837

16801 Westgrove
P.O. Box 9010
Addison, TX 75001-9010



PUBLIC WORKS DEPARTMENT

Post Office Box 9010 Addison, Texas 75001-9010

(972) 450-2871

16801 Westgrove

September 16, 1999

Mr. Sim Israeloff
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202

Re: Quorum Drive Closure

Dear Sim:

I have enclosed for your use:

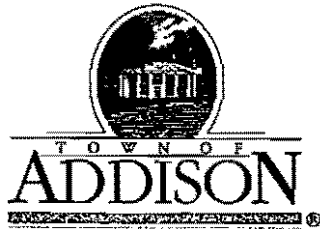
1. Construction Traffic Plan
2. Business Signage Plan
3. Parking Plan
4. Copy of Contract

I have also enclosed a copy of the contract with addendums to be forwarded to Arthur J. Anderson with Winstead Sechrest & Minick. Please call me at 972/450-2871 if you have any questions or need additional information.

Sincerely,

Jeff Markiewicz
Project Manager

Chris
Row



PUBLIC WORKS DEPARTMENT

Post Office Box 9010 Addison, Texas 75001-9010

(972) 450-2871

16801 Westgrove

September 16, 1999

Mr. Sim Israeloff
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202

Re: Quorum Drive Closure

Dear Sim:

I have enclosed for your use:

1. Construction Traffic Plan
2. Business Signage Plan
3. Parking Plan
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Sincerely,

Jeff Markiewicz
Project Manager

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



SIM D. ISRAELOFF
214.672.2131
SISRAELOFF@COWLESTHOMPSON.COM

Copy: Carmen Moran
Ron Whitehead

September 16, 1999

Via Facsimile 214.745.5390

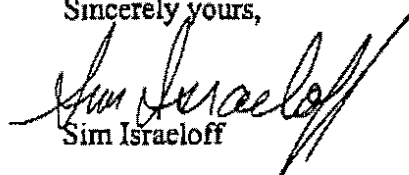
Arthur J. Anderson
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

RE: Quorum Drive Closure

Dear Mr. Anderson:

This firm represents the Town of Addison in connection with your letter of September 15, 1999. I will investigate the matters raised in your letter and provide you a formal response as soon as possible. In the meantime, please take notice that we represent the Town of Addison in this matter and wish to be heard in the event that you seek legal remedies. Please call me at 214.672.2131 or, if I am not available, call my associate Chris Wolf at 214.672.2194 before submitting any request for judicial relief to any court so that we may be heard. Thank you.

Sincerely yours,



Sim Israeloff

SI:kfh

John Baumgartner

From: John Baumgartner
Sent: Thursday, September 16, 1999 3:06 PM
To: 'sisraeloff@cowlesthompson.com'
Cc: Ron Whitehead; Carmen Moran; Jeffrey Markiewicz; Chris Terry; 'kdippel@cowlesthompson.com'
Subject: Quorum Drive Closure

Sim,

Thank you for copying me on your response to Mr. Anderson's letter.

I discussed this issue with Ron Whitehead, City Manager (972-450-7027) today. He indicated that he wanted to be the primary contact for this issue. Carmen Moran, Director of Development Services (972-450-7018) is the Department Director that is responsible for the project. Jeff Markiewicz, Project Manager (972-450-2860) is her project manager on the project. If possible, please copy all three of them on future correspondence.

Ron, Carmen, and Post Properties have been involved in the project from its inception and Jeff has been working with the property owners, designers and the contractor since the bid was awarded. Please call Ron directly if you have any questions or need additional information.

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



SIM D. ISRAELOFF
214.672.2131
SISRAELOFF@COWLESTHOMPSON.COM

September 17, 1999

Via U.S. Mail

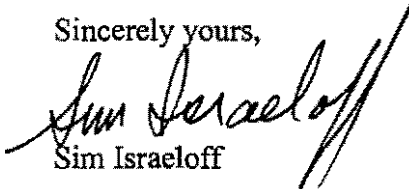
Arthur J. Anderson
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

RE: Quorum Drive Closure

Dear Mr. Anderson:

Per your request, enclosed is a copy of the contract regarding the traffic circle at the intersection of Quorum Drive and Addison Circle Drive.

Sincerely yours,



Sim Israeloff

SI:kfh
Enclosures

September 17, 1999
Page 2

bcc: w/o encls.
John Baumgartner

Ken Dippel (firm)

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



SIM D. ISRAELOFF
214.672.2131
SISRAELOFF@COWLESTHOMPSON.COM

Copy: Carmen Moran
Ron Whitehead

September 16, 1999

Via Facsimile 214.745.5390

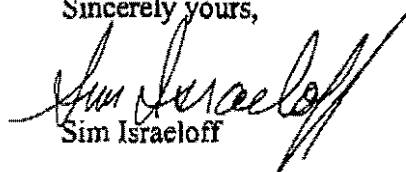
Arthur J. Anderson
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

RE: Quorum Drive Closure

Dear Mr. Anderson:

This firm represents the Town of Addison in connection with your letter of September 15, 1999. I will investigate the matters raised in your letter and provide you a formal response as soon as possible. In the meantime, please take notice that we represent the Town of Addison in this matter and wish to be heard in the event that you seek legal remedies. Please call me at 214.672.2131 or, if I am not available, call my associate Chris Wolf at 214.672.2194 before submitting any request for judicial relief to any court so that we may be heard. Thank you.

Sincerely yours,



Sim Israeloff

SI:kfh

September 16, 1999
Page 2

bcc: Via Facsimile 972.450.2837
John Baumgartner

Ken Dippel (firm)

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
TOWN OF ADDISON
9724502837
Sep-16-99 10:53AM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
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Total 0'54" Pages Sent: 3 Pages Printed: 0

TOWN OF
ADDISON

To: Ron

Company: _____

FAX #: _____

Date: 9/16/99

of pages (including cover): 3

PUBLIC WORKS

From: John

Phone: 972/450-2871
FAX: 972/450-2837

16801 Westgrove
P.O. Box 9010
Addison, TX 75001-9010

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
TOWN OF ADDISON
9724502837
Sep-16-99 10:52AM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
922	9/16 10:51AM	0'52"	7043.....	Send.....	3/ 3	EC 96	Completed.....

Total 0'52" Pages Sent: 3 Pages Printed: 0

TOWN OF
ADDISON

To: Carmen

Company: _____

FAX #: _____

Date: 9/16/99

of pages (including cover): 3

PUBLIC WORKS

From: John

Phone: 972/450-2871
FAX: 972/450-2837

16801 Westgrove
P.O. Box 9010
Addison, TX 75001-9010

COWLES & THOMPSON
A Professional Corporation
ATTORNEYS AND COUNSELORS

COPY 

FACSIMILE COVER PAGE

Date: September 16, 1999

Time: _____

Total Number of Pages (including this sheet): 3

Normal/Rush: Normal

Client/Matter #: 9999-100

TO: (1) JOHN BAUMGARTNER FAX: 972.450.2837

FROM: SIM ISRAELOFF Direct Dial #: (214) 672-2131

MESSAGE: RE: ADDISON/QUORUM DRIVE CLOSURE

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL OUR SERVICE CENTER
AT (214) 672-2508
or KARA HILL at (214) 672-2658
Thank you.

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DALLAS TYLER MCKINNEY

901 MAIN STREET SUITE 4000 DALLAS, TEXAS 75202-3793
TEL 214.672.2000 FAX 214.672.2020

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



SIM D. ISRAELOFF
214.672.2131
SISRAELOFF@COWLESTHOMPSON.COM

September 16, 1999

Via Facsimile 214.745.5390

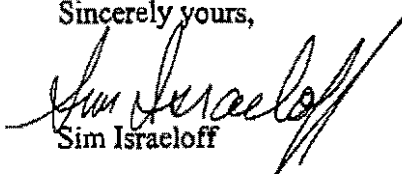
Arthur J. Anderson
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

RE: Quorum Drive Closure

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Sincerely yours,



Sim Israeloff

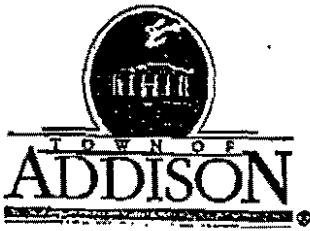
SI:kfh

September 16, 1999

Page 2

bcc: Via Facsimile 972.450.2837
John Baumgartner

Ken Dippel (firm)



PUBLIC WORKS DEPARTMENT

(972) 450-2871

Post Office Box 9010 Addison, Texas 75001-9010

16801 Westgrove

September 13, 1999

Mr. Ron Gayle
Keaton Interiors & TRENDS
15615 Quorum Drive
Addison, Texas 75001

Re: Document Request

Dear Mr. Gayle:

Attached please find one (1) copy of the following documents you requested for the Blue Prints at Addison Circle Art Piece.

Notice to Proceed
Contract
Changer Order #1
Performance Bond
Notice of Award
Bid Summary
Westerchil Bid Submittal
Project Manual - March 6, 1998
Addendum #1 to Project Manual
Addendum #2 to Project Manual

Please call me if you have any questions or need additional information.

Sincerely,

Jeff Markiewicz
Project Manager



PUBLIC WORKS DEPARTMENT

(972) 450-2871

Post Office Box 9010 Addison, Texas 75001-9010

16801 Westgrove

September 13, 1999

Mr. Ron Gayle
Keaton Interiors & TRENDS
15615 Quorum Drive
Addison, Texas 75001

Re: Document Request

Dear Mr. Gayle:

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Performance Bond
Notice of Award
Bid Summary
Westerchil Bid Submittal
Project Manual - March 6, 1998
Addendum #1 to Project Manual
Addendum #2 to Project Manual

Please call me if you have any questions or need additional information.

Sincerely,

Jeff Markiewicz
Project Manager

COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS

COPY 

FACSIMILE COVER PAGE

DATE: 9-16-1999 TIME: _____

TOTAL NUMBER OF PAGES (including this sheet): 4

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TO: (1) John Baumgartner FAX: 972-450-2937
(2) _____ FAX: _____
(3) _____ FAX: _____

FROM: Sim Israeloff DIRECT DIAL #: (214) 672-2131

MESSAGE: _____

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL OUR SERVICE CENTER
AT (214) 672-2508 OR _____ AT (214) 672-_____.

Thank You.

IMPORTANT/CONFIDENTIAL: This message is intended only for the use of the individual or entity to which it is addressed. This message contains information from the law firm of Cowles & Thompson which may be privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee, or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please notify us immediately at our telephone number 214.672.2000. We will be happy to arrange for the return of this message to us, via the United States Postal Service, at no cost to you.

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199
DALLAS HOUSTON AUSTIN
MEXICO CITY

WINSTEAD SECHREST & MINICK

A Professional Corporation
Attorneys & Counselors

Telephones: (214) 745-5400
Telecopiers: (214) 745-5390

Direct Dial: 745-5745
anderson@winstead.com

FAX TRANSMITTAL

PLEASE DELIVER TO THE FOLLOWING:	TELEPHONE NUMBER:	FAX NUMBER:
Rox Whitehead		972-450-7043
Lee Dippel		214-672-2020
R. Scott Wheeler		972-450-7043

FROM: **ARTHUR J. ANDERSON**

DATE: 9-15-99 TIME IN: 4:15 pm

NUMBER OF PAGES: 3 (INCLUDING COVER SHEET).

PLEASE CALL JIMMY WILSON OR CHRIS GREENE AT (214) 745-5483 AS SOON AS POSSIBLE IF YOU DO NOT RECEIVE THE TOTAL NUMBER OF PAGES OR IF TRANSMISSION IS NOT READABLE.

ATTORNEY # AND CLIENT-MATTER #: 179 22071-1

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ADDITIONAL MESSAGE: _____

ORIGINAL WILL NOT FOLLOW

ORIGINAL WILL FOLLOW VIA:
 Regular Mail Hand Delivery
 Overnight Delivery Other

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199
DALLAS HOUSTON AUSTIN
MEXICO CITY

**WINSTEAD
SECHREST
& MINICK**
A Professional Corporation
Attorneys & Counselors

(214) 745-5400
Fax (214) 745-5390
www.winstead.com
Direct Dial. (214) 745-5745
sanderson@winstead.com

September 15, 1999

VIA FAX 972/450-7043

Mr. Ron Whitehead
Addison Town Manger
5300 Belt Line Road
Addison, TX 75001-9010

RE: Quorum Drive Closure

Dear Mr. Whitehead:

Our firm represents the Trends Store and the Optical Shoppe located next to Addison Circle in Addison, Texas. It is my understanding that the Town is planning to close all access points to Addison Circle in order to erect a piece of artwork. The dates for closure are from September 20 through November 20, 1999 from 7:00 a.m. to 4:00 p.m., Monday through Friday. While the anticipated completion date is November 20, this is not guaranteed because weather may delay the process. Our clients oppose the street closure due to the adverse impact on their retail business, and are concerned that the Town appears unwilling to address the Addison Circle retailers' concerns.

From the drawing presented to our clients, it is my understanding the area to be blocked includes all four sides of the circle on Quorum and Addison Circle Road which will result in dead end streets without turn-arounds meeting City standards. It is our understanding the Town of Addison has approved the hiring by Post Properties for two porters to help direct traffic on both the south and north side of Quorum, an express recognition that access will be materially adversely affected.

Because the blockaded streets violate Town safety standards for streets and will result in a denial of through vehicular access, the Town's proposed actions constitute an unconstitutional taking of access. The Texas court cases involving a restriction of access may be divided into three categories:

(1) those in which there was a total restriction of access for either a temporary or a permanent period of time;

Mr. Ron Whitehead

September 15, 1999

Page 2

(2) those in which there was a partial restriction of access for a temporary period of time;
and

(3) those in which the activity causing the restriction of access was illegal, unreasonable, or unnecessary. *State v. Allen*, 870 S.W.2d 1 (Tex.1994), reh'g of cause overruled, (Mar. 9, 1994); *City of Austin v. Avenue Corp.*, 704 S.W.2d 11 (Tex. 1986).

Turning this portion of the street into a parking lot results in a material and substantial interference with vehicular access to the Trend's Store and Optical Shoppe. Please advise as to how the Town will respond to our client's concerns in order that we can pursue necessary remedies. If a satisfactory explanation is not received by Friday, September 17, then we will be forced to pursue our litigation alternatives.

Also, please provide to our office a copy of the contract between the City and the contractor with any addenda. If you have any questions or need additional information, please let me know.

Very truly yours,



Arthur J. Anderson

AJA/plg

cc: Ken Dippel, Esq., Addison Town Attorney (via fax 214/672-2020)
R. Scott Wheeler, Addison Mayor (via fax 972/450-7043)

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
920	9/16 10:36AM	2'03"	7043.....	Send.....	5/ 5	EC 96	Completed.....

Total 2'03" Pages Sent: 5 Pages Printed: 0

TOWN OF
ADDISON

PUBLIC WORKS

To: Carmen

From: John

Company: _____

Phone: 972/450- 2871
FAX: 972/450-2837

FAX #: _____

Date: 9/16/99

16901 Westgrove
P.O. Box 9010
Addison, TX 75001-9010

of pages (including cover): 5

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ATTORNEYS AND COUNSELORS



FACSIMILE COVER PAGE

DATE: 9-16-1999

TIME: _____

TOTAL NUMBER OF PAGES (including this sheet): 4

NORMAL/RUSH: _____

CLIENT/MATTER #: 9999-100

TO: (1) John Baumgartner
(2) _____
(3) _____

FAX: 972-450-2937

FAX: _____

FAX: _____

FROM: Sim Israeloff

DIRECT DIAL #: (214) 672-2131

MESSAGE: _____

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL OUR SERVICE CENTER
AT (214) 672-2508 OR _____ AT (214) 672-_____.

Thank You.

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5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199

DALLAS HOUSTON AUSTIN
MEXICO CITY

WINSTEAD SECHREST & MINICK

A Professional Corporation
Attorneys & Counselors

Telephone: (214) 745-5400
Telecopier: (214) 745-5390

Direct Dial: 745-5745
anderson@winstead.com

FAX TRANSMITTAL

PLEASE DELIVER TO THE FOLLOWING:	TELEPHONE NUMBER:	FAX NUMBER:
Ron Whitehead		972-450-7043
Ken Dippel		214-672-2020
R. Scott Wheeler		972-450-7043

FROM: **ARTHUR J. ANDERSON**

DATE: 9-15-99 TIME IN: 4:15 pm

NUMBER OF PAGES: 3 (INCLUDING COVER SHEET).

PLEASE CALL JIMMY WILSON OR CHRIS GREENE AT (214) 745-5483 AS SOON AS POSSIBLE IF YOU DO NOT RECEIVE THE TOTAL NUMBER OF PAGES OR IF TRANSMISSION IS NOT READABLE.

ATTORNEY # AND CLIENT-MATTER #: 179 22071-1

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ADDITIONAL MESSAGE: _____

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A Professional Corporation
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FAX (214) 745-5390
www.winstead.com
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sanson@winstead.com

September 15, 1999

VIA FAX 972/450-7043

Mr. Ron Whitehead
Addison Town Manger
5300 Belt Line Road
Addison, TX 75001-9010

RE: Quorum Drive Closure

Dear Mr. Whitehead:

Our firm represents the Trends Store and the Optical Shoppe located next to Addison Circle in Addison, Texas. It is my understanding that the Town is planning to close all access points to Addison Circle in order to erect a piece of artwork. The dates for closure are from September 20 through November 20, 1999 from 7:00 a.m. to 4:00 p.m., Monday through Friday. While the anticipated completion date is November 20, this is not guaranteed because weather may delay the process. Our clients oppose the street closure due to the adverse impact on their retail business, and are concerned that the Town appears unwilling to address the Addison Circle retailers' concerns.

From the drawing presented to our clients, it is my understanding the area to be blocked includes all four sides of the circle on Quorum and Addison Circle Road which will result in dead end streets without turn-arounds meeting City standards. It is our understanding the Town of Addison has approved the hiring by Post Properties for two porters to help direct traffic on both the south and north side of Quorum, an express recognition that access will be materially adversely affected.

Because the blockaded streets violate Town safety standards for streets and will result in a denial of through vehicular access, the Town's proposed actions constitute an unconstitutional taking of access. The Texas court cases involving a restriction of access may be divided into three categories:

(1) those in which there was a total restriction of access for either a temporary or a permanent period of time;

Mr. Kon Whitehead

September 15, 1999

Page 2

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Turning this portion of the street into a parking lot results in a material and substantial interference with vehicular access to the Trend's Store and Optical Shoppe. Please advise as to how the Town will respond to our client's concerns in order that we can pursue necessary remedies. If a satisfactory explanation is not received by Friday, September 17, then we will be forced to pursue our litigation alternatives.

Also, please provide to our office a copy of the contract between the City and the contractor with any addenda. If you have any questions or need additional information, please let me know.

Very truly yours,



Arthur J. Anderson

AJA/plg

cc: Ken Dippel, Esq., Addison Town Attorney (via fax 214/672-2020)
R. Scott Wheeler, Addison Mayor (via fax 972/450-7043)

HP LaserJet 3100
Printer/Fax/Copier/Scanner

SEND CONFIRMATION REPORT for
TOWN OF ADDISON
9724502837
Sep-16-99 10:38AM

Job	Start Time	Usage	Phone Number or ID	Type	Pages	Mode	Status
920	9/16 10:36AM	2'03"	7043.....	Send.....	5/ 5	EC 96	Completed.....

Total 2'03" Pages Sent: 5 Pages Printed: 0

TOWN OF
ADDISON

To: Carmen

Company: _____

FAX #: _____

Date: 9/16/99

of pages (including cover): 5

PUBLIC WORKS

From: John

Phone: 972/450- 287
FAX: 972/450-2837

16801 Westgrove
P.O. Box 9010
Addison, TX 75001-9010

COPY

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FACSIMILE COVER PAGE

Date: October 5, 1999

Time: _____

Total Number of Pages (including this sheet): 5

Normal/Rush: Normal

Client/Matter #: 9996/9996

TO: (1) Mr. Jeff Markiewicz
(2) _
(3) _

FAX: (972) 450-2837
FAX:
FAX:

FROM: CRWolfe

Direct Dial #: (214) 672-2194

MESSAGE: **Please review and call if you have any questions.**

**IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
PLEASE CALL OUR SERVICE CENTER**

**AT (214) 672-2508
or Marlene Dunham at (214) 672-2596**

Thank you.

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ATTORNEYS AND COUNSELORS



CHRISTOPHER R. WOLFE
214.672.2194
CWOLFE@COWLESTHOMPSON.COM

October 5, 1999

Via Facsimile 214.745.5390

Mr. Arthur J. Anderson
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

RE: Quorum Drive Closure

Dear Mr. Anderson:

This letter is to confirm our telephone conversations of October 4, 1999. As we discussed, the Town of Addison remains sympathetic to your clients' concerns and are happy to discuss any further suggestions your clients may have. The following is an attempt to address the concerns set forth in your letter dated September 22, 1999:

1. Carmen Moran said during the meeting with the retailers that the contractor only needed one side of Quorum to be closed at a time. With this in mind, why not revise the closure to follow this suggestion? One side of Quorum could remain open at all times with two flagmen to direct traffic as needed and porters to direct traffic to parking.

As in any large project considerable thought was put into traffic phasing and closures. While working with the contractor it was determined that leaving Quorum Drive open at all times during the actual sculpture erection process would not be feasible. This decision was based on operational requirements of the crane, heavy equipment, and the need to maintain a safe working environment for the contractor and public. However, it should be noted that the traffic circle will remain open as much as possible and work limited to the yard or inside the traffic circle, when feasible. Furthermore, the town would stress that traffic closures will only be required on certain days during the installation schedule from September 20 to November 20, depending on construction operations. Only when construction operations create a safety concern will a traffic closure take place. During all other times, the traffic circle will be open to traffic through the circle.

2. The contractors can work on Sunday to complete the installation more quickly or reduce the hours the streets will be closed daily. The reduction time will be in the afternoon.

The town has permitted the contractor to work seven days a week to finish the installation as soon as possible. Work hours are established by ordinance as Monday – Friday 7 a.m. to 7 p.m.



Mr. Arthur J. Anderson
October 5, 1999
Page 2

and Saturday and Sunday 8 a.m. - 7 p.m.. The contractor must follow this ordinance. If and when traffic closures are required, they will only be permitted Monday - Friday 7 a.m. - 4 p.m.. Closure during evening and weekend hours will not be permitted due to the increased interruption of traffic, residents and business customers that would occur during these times.

3. With either full closure or partial, weekly advertisements should be included in all the area newspapers (Carrollton, Plano, Addison, Dallas Morning News, etc). These should be half a page - full color from date of closing to two weeks after the roads are open again. The Town of Addison should pay for this advertising, and Optical Shop and Trends should have review rights for the advertisement.

As we discussed, the town has acquired the services of a public relations/advertising consultant. She is aware of your clients' concerns and is attempting to publicize the construction of the art project, as well as make the public aware that the businesses near the traffic circle are open and readily accessible, despite the inconvenience. Through this PR consultant, the town has already composed and distributed letters and flyers for the surrounding residents and merchants, including your clients. The town also handed out information concerning the art project during the annual "Octoberfest," which was attended by over 100,000 people. Furthermore, the town has created a media packet that will be sent to media outlets upon the date of first closure. This packet will contain a general announcement, as well as detailed information concerning the street closures, which should directly benefit your clients.

4. With a full closure or partial, there should be signage on Beltline (same location as banners used for the special events). The banner could read: Check out the newest Addison addition...sculpture and visit Trends and the Optical Shop while there... Signage to remain up from date of closing to two weeks after the streets are open. Trends/Optical Shop should approve the signage.

While the town appreciates the above suggestion, after much consideration it is not currently inclined to follow. It should be noted, however, that the town is diligently working to minimize your clients' inconvenience by other helpful means and is still open to your clients' further suggestions.

5. Whether a full closure or partial, signage on Quorum and Addison Road should be larger and at least 3' off the ground. The existing event signage is not large enough or high enough. Trends/Optical Shop should approve the signage.

Four signs are currently up with eight more to follow, providing more instruction and larger print. The town is attempting to locate these signs at the most advantageous points and will attempt to place them at least 3' off the ground.



Mr. Arthur J. Anderson
October 5, 1999
Page 3

6. With the full closure or partial, additional signage on Keller Springs, Trinity Mills and Addison Road should be installed to be approved by Trends and Optical Shop.

While the town appreciates the above suggestion, after much consideration is not currently inclined to follow. It believes these signs are too far for the construction site to be instructive or helpful. However, the town remains open to your clients' further suggestions.

7. Our clients prefer valet parking rather than a porter if the street closure cannot be changed. "Valet parking available" should be noted on all signage.

The town is currently in the process of contacting various valet services, in an attempt to address your clients' concerns.

8. Proposed signage needs a better design and the typefaces should reflect the different vendor styles.

The town is attempting to create a "better" design for the signs, but they will not be able reflect the vendor's individual styles. The signs will remain to appear as construction signs.

9. The "No Parking between 2 a.m. and 6 a.m." signage on Quorum promised September 9 should be installed and enforced.

Pursuant to your clients' requests, this has already been done. The signs are installed and will be enforced.

10. The Town should provide adequate signage directing clients to the garages. The signage today is not effective.

The town feels that this is an issue more properly addressed by your clients' landlord, Post Properties. However, the town remains sensitive to the concerns of your clients and will attempt to assist around the construction site as much as possible.

11. We would request that the Town pay for lost income due to traffic not being able to drive by, pull up or see the store. People will avoid the area due to the construction, and it will damage business during and after the construction. In that regard, we would request that the Town prepay tenant rent and electricity September through December as partial compensation. Furthermore, our clients request that their attorney's fees be paid by the Town.

While the town appreciates the above suggestion, after much consideration it is not currently inclined to follow. It should be noted, however, that the town is diligently working to minimize



Mr. Arthur J. Anderson
October 5, 1999
Page 4

your clients' inconvenience by other help helpful means and is still open to your clients' further suggestions.

In conclusion, the town believes the construction of this piece of art, while inconvenient, will ultimately benefit surrounding residents and merchants, including your clients. I hope this letter will be of some assistance to you and your clients. Let me know if you have any further suggestions or questions. I look forward to hearing from you.

Sincerely yours,

Chris Wolfe

CW/msd

Cc: Mr. Jeff Markiewicz

Facsimile: (972) 450-2837

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 ATTORNEYS AND COUNSELORS



FACSIMILE COVER PAGE

Date: October 6, 1999 Time: _____

Total Number of Pages (including this sheet): 5

Normal/Rush: Normal Client/Matter #: 3195/25211

TO: (1) Mr. Arthur J. Anderson FAX: (214) 745-5390
 (2) Mr. Jeff Markiewicz FAX: (972) 450-2837

FROM: Chris Wolfe Direct Dial #: (214) 672-2194

MESSAGE: Please review and call if you have any questions.

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION,
 PLEASE CALL OUR SERVICE CENTER
 AT (214) 672-2508
 or Marlene Dunham at (214) 672-2596
 Thank you.

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COWLES & THOMPSON

A Professional Corporation

ATTORNEYS AND COUNSELORS



CHRISTOPHER R. WOLFE
214.672.2194
CWOLFE@COWLESTHOMPSON.COM

October 6, 1999

Via Facsimile 214.745.5390

Mr. Arthur J. Anderson
Winstead Sechrest & Minick
5400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270-2199

RE: Quorum Drive Closure

Dear Mr. Anderson:

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The town has permitted the contractor to work seven days a week to finish the installation as soon as possible. Work hours are established by ordinance as Monday - Friday 7 a.m. to 7 p.m.



Mr. Arthur J. Anderson
October 6, 1999
Page 2

and Saturday and Sunday 8 a.m. – 7 p.m. The contractor must follow this ordinance. If and when traffic closures are required, they will only be permitted Monday – Friday 7 a.m. – 4 p.m. Closure during evening and weekend hours will not be permitted due to the increased interruption of traffic, residents and business customers that would occur during these times.

3. With either full closure or partial, weekly advertisements should be included in all the area newspapers (Carrollton, Plano, Addison, Dallas Morning News, etc). These should be half a page – full color from date of closing to two weeks after the roads are open again. The Town of Addison should pay for this advertising, and Optical Shop and Trends should have review rights for the advertisement.

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4. With a full closure or partial, there should be signage on Beltline (same location as banners used for the special events). The banner could read: Check out the newest Addison addition...sculpture and visit Trends and the Optical Shop while there... Signage to remain up from date of closing to two weeks after the streets are open. Trends/Optical Shop should approve the signage.

While the town appreciates the above suggestion, after much consideration it is not currently inclined to erect such signage. It should be noted, however, that the town is diligently working to minimize your clients' inconvenience by other helpful means and is still open to your clients' further suggestions.

5. Whether a full closure or partial, signage on Quorum and Addison Road should be larger and at least 3' off the ground. The existing event signage is not large enough or high enough. Trends/Optical Shop should approve the signage.

Four signs are currently up with eight more to follow, providing more instruction and larger print. The town is attempting to locate these signs at the most advantageous points and will attempt to place them at least 3' off the ground.



Mr. Arthur J. Anderson
October 6, 1999
Page 3

6. With the full closure or partial, additional signage on Keller Springs, Trinity Mills and Addison Road should be installed to be approved by Trends and Optical Shop.

The town has considered this suggestion, but believes these signs would be too far from the construction site to be instructive or helpful. However, the town remains open to your clients' further suggestions.

7. Our clients prefer valet parking rather than a porter if the street closure cannot be changed. "Valet parking available" should be noted on all signage.

At the request of your client, the town has hired the services of a professional valet parking company. A valet parking attendant will be placed on the north and south side of the circle to assist people in parking their vehicles while accessing local merchants. This valet service will be in operation starting Monday, October 11, 1999 to November 19, 1999 during weekdays from 10:00 a.m. to 4:00 p.m. Valet parking will be available during these dates regardless of any traffic closures at no cost to the merchants or customers. Signs will be placed along Quorum Drive to identify that this service is available.

8. Proposed signage needs a better design and the typefaces should reflect the different vendor styles.

The town has acquired eight additional signs with larger text to describe how to access each business at the circle. These signs will be strategically placed around the Addison Circle development.

9. The "No Parking between 2 a.m. and 6 a.m." signage on Quorum promised September 9 should be installed and enforced.

Pursuant to your clients' requests, this has already been done. The signs are installed and will be enforced.

10. The Town should provide adequate signage directing clients to the garages. The signage today is not effective.

The town has worked with Post Properties to improve this situation at the request of the businesses at the circle. On September 14, 1999, the town approved by meritorious exception to allow Post to place additional signs describing access to the parking garages in the public right-of-way.

11. We would request that the Town pay for lost income due to traffic not being able to drive by, pull up or see the store. People will avoid the area due to the construction, and it will damage business during and after the construction. In that regard, we would



Mr. Arthur J. Anderson
October 6, 1999
Page 4

request that the Town prepay tenant rent and electricity September through December as partial compensation. Furthermore, our clients request that their attorney's fees be paid by the Town.

As we have discussed in previous correspondence, your clients are not legally entitled to compensation by the town for any alleged lost income.

In conclusion, the town believes the construction of this piece of art will ultimately benefit surrounding residents and merchants, including your clients. I hope this letter will be of some assistance to you and your clients. Let me know if you have any further suggestions or questions.

Sincerely yours,

Chris Wolfe

CW/msd

Cc: Mr. Jeff Markiewicz

Facsimile: (972) 450-2837