

**Georgia State University College of Law**  
**Reading Room**

---

Georgia Business Court Opinions

---

2-26-2007

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

Elizabeth E. Long  
*Superior Court of Fulton County*

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

---

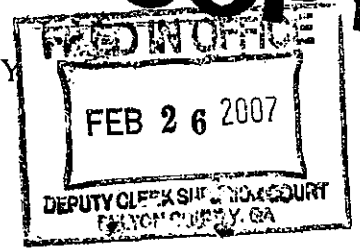
**Institutional Repository Citation**

Long, Elizabeth E., "Order of Clarification for Previous Summary Judgment Order (MICROBILT CORPORATION)" (2007).  
*Georgia Business Court Opinions*. 102.  
<https://readingroom.law.gsu.edu/businesscourt/102>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

**COPY**

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



MICROBILT CORPORATION,

Plaintiff,

v.

FIDELITY NATIONAL FINANCIAL INC.,  
et al.

Defendants,

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Civil Action No. 2003-CV-79446  
(Business Division Two—EL)

**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.

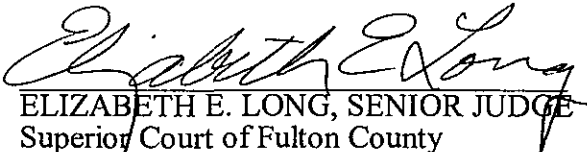
Defendants' Motion for Reconsideration requests the Court to recognize that the parties are in agreement with respect to CPU-to-CPU connections and to award summary judgment in favor of Defendants for amounts claimed under recoupment. After reviewing the briefs submitted on these issues, the Court finds 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 26<sup>th</sup> day of February, 2007.

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

**Copies to:**

Kevin Harrison Hudson, Esq.  
Mary Lillian Walker, Esq.  
Foltz Martin LLC  
3525 Piedmont Road NE  
Five Piedmont Center  
Suite 750  
Atlanta, GA 30305-1541

David L. Pardue, Esq.  
Alycia K. Jastrebski, Esq.  
Hartman, Simons, Spielman & Wood LLP  
6400 Powers Ferry Road NW  
Suite 400  
Atlanta, GA 30339