

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

KEARNEY CONSTRUCTION  
COMPANY, LLC,

Plaintiff,

v.

Case No: 8:09-cv-1850-T-30TBM

TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendant,

v.

KEARNEY CONSTRUCTION COMPANY,  
LLC, et al.,

Third Party Defendants,

v.

USAMERIBANK,

Garnishee.

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**ORDER**

**THIS CAUSE** came on for consideration upon the Report and Recommendation submitted by Magistrate Judge Thomas B. McCoun, III (Dkt. 894). Objections to the Report and Recommendation were filed on February 6, 2018, by Defendant Bing Charles W. Kearney (Dkt. 901) and Interested Parties' Tonya Kearney, Bryan Kearney, Clayton Kearney, and Charles W. Kearney (Dkt. 902).

After careful consideration of the Report and Recommendation of the Magistrate Judge, the Objections to the Report and Recommendation, and an independent examination of the file, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

**ACCORDINGLY**, it is therefore, **ORDERED AND ADJUDGED** that:

1. The Report and Recommendation (Dkt. 894) of the Magistrate Judge is adopted, confirmed, and approved in all respects and is made a part of this order for all purposes, including appellate review.

2. Travelers Casualty & Surety Company of America's Motion for Final Judgment in Garnishment as to the IRA Account (Dkt. 874), as orally amended at hearing to include all seven accounts, is GRANTED.

3. Final Judgment of Garnishment in favor of Travelers Casualty & Surety Company of America and against the garnishee USAmeriBank should be issued for the amounts in the accounts ending in -0056, -3695, -0129, -0302, -0020, -7939, and -1122, in the total amount of \$1,158,037.38, subject to offset for USAmeriBank's statutory attorney's fees.

4. Jurisdiction is retained by this Court to determine USAmeriBank's claim for statutory attorney's fees and costs.

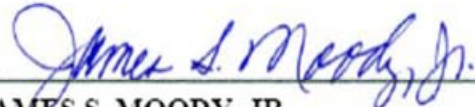
5. Disbursement of the funds held by USAmeriBank are deferred, pending resolution of USAmeriBank's claim for statutory attorney's fees.

6. Mr. Kearney's *ore tenus* request for a stay of disbursement or enforcement of the Final Judgment pending his appeal concerning the IRA Account is DENIED

WITHOUT PREJUDICE. Such request may be renewed if and when Mr. Kearney files a notice of appeal.

7. The Renewed Requests for Release of Garnished Funds in USAmeriBank Joint Accounts (Dkts. 903, 904, 905, 906) are DENIED AS MOOT.

**DONE** and **ORDERED** in Tampa, Florida, this 7th day of February, 2018.

  
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JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

**Copies Furnished To:**  
Counsel/Parties of Record