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CAUSE NO. 2005-04492

PRUDENTIAL FINANCIAL, INC. §  
§  
§  
V. §  
§  
JP MORGAN CHASE BANK, §  
NATIONAL ASSOCIATION, FIRSTCITY §  
FINANCIAL CORPORATION, FIRST- §  
CITY NATIONAL BANK OF HOUSTON §  
AS TRUSTEE OF THE FIRST CITY §  
BANCORPORATION EMPLOYEE §  
RETIREMENT TRUST, AND FCLT §  
LOANS ASSET CORPORATION §

IN THE DISTRICT COURT OF  
  
HARRIS COUNTY, TEXAS  
  
152ND JUDICIAL DISTRICT

**DEFENDANT FIRSTCITY FINANCIAL CORPORATION'S  
FIRST AMENDED ANSWER AND CROSS-CLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, FIRSTCITY FINANCIAL CORPORATION (hereinafter "FirstCity"  
Defendant herein, and files this First Amended Answer, and Cross-claim to Plaintiff's Petition in  
Interpleader, FCLT's First Amended Answer, and Third-Party Defendant Timothy J. Blair's  
Third Amended Counter-Petition for Declaratory Relief and respectfully shows as follows:

FILED  
CHARLES BACARISSE  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS  
2005 SEP 30 PM 3:53  
BY DEPUTY

**ANSWER AND GENERAL DENIAL**

1. FirstCity admits the allegations of Plaintiff's Petition in Interpleader insofar as it alleges that Plaintiff has no interest in a certain 321,211 shares of Prudential stock identified in Plaintiff's Petition In Interpleader (hereinafter "the Demutualization Proceeds"). FirstCity generally denies every other allegation in Plaintiff's Petition in Interpleader and demands strict proof thereof in accordance with the laws and constitution of the State of Texas.

2. Defendant FirstCity denies generally each and every cross claim made by FCLT and also denies Third-Party Defendant Timothy J. Blair's Third Amended Counter-Petition for

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Declaratory Relief according to Rule 92 of the Texas Rules of Civil Procedure and demands strict proof thereof in accordance with the laws and constitution of the State of Texas.

AFFIRMATIVE DEFENSES

1. Defendant FCLT's claims are barred, in whole or in part, by the applicable statute of limitations.
2. Defendant FCLT's claims are barred, in whole or in part, by the doctrine and defense of justification.
3. Defendant FCLT's claims are barred, in whole or in part, by the doctrine and defense of waiver and estoppel when Defendant FCLT abandoned any and all interests and rights to the Demutualization Proceeds.

CROSS CLAIM, THIRD PARTY CLAIM AND CLAIM FOR  
DECLARATORY RELIEF

FirstCity seeks a Declaratory Judgment pursuant to Texas Civil Practice and Remedies Code § 37.004(a) that the Demutualization Proceeds belong to FirstCity and respectfully shows as follows:

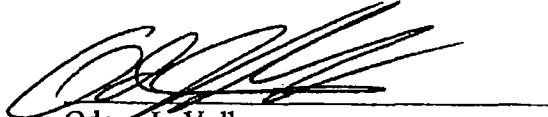
FirstCity is the successor by merger to FCB. Therefore any interests, assets or rights of FCB not otherwise disposed of by the Reorganization Plan are the property of FirstCity. The Joint Plan of Reorganization of FirstCity Bancorporation of Texas, Inc. entered on July 3, 1995 had no effect on FirstCity's ownership of the Demutualization Proceeds because the Demutualization Proceeds only came into existence on December 18, 2001, nearly six full years after the execution of the Reorganization Plan. Therefore, the Demutualization Proceeds could not have been and were not subject to the Reorganization Plan and FirstCity remains the owner of the Demutualization Proceeds.

By way of further cross-claim and third party counterclaim, FirstCity Financial complains of FCLT and Mr. Blair. FirstCity Financial denies that either Mr. Blair or FCLT is the rightful owners of the Demutualization Proceeds, but rather asserts this claim that FirstCity Financial is the sole owner of the Demutualization Proceeds.

ACCORDINGLY, FirstCity respectfully requests that Defendants FCLT and Timothy J. Blair take nothing by way of this suit, that First City be granted a Declaratory Judgment that the Demutualization Proceeds belong to FirstCity, that the Demutualization Proceeds be awarded to FirstCity, that FirstCity be discharged without liability, that it recover its costs and attorney's fees pursuant to Texas Civil Practice and Remedies Code section 37.009, and that it be awarded all other relief to which it may be justly entitled.

Respectfully submitted,

HAYNES AND BOONE, L. L. P.



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ATTORNEYS FOR DEFENDANT  
FIRSTCITY FINANCIAL CORPORATION

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he has delivered a true and correct copy of the foregoing document to all counsel of record in this proceeding, via hand delivery, this 30<sup>th</sup> day of September, 2005.



Odean L. Volker