United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

July 9, 2004

Before

Hon. William J. Bauer, *Circuit Judge*

Hon. Richard A. Posner, *Circuit Judge*

Hon. Frank H. Easterbrook, *Circuit Judge*

No. 03-3871

HELLER FINANCIAL, INCORPORATED,
Plaintiff-Appellee,

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey Corporation,
Defendant-Appellant,

v.

KEY CORPORATE CAPITAL, INCORPORATED,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 03 C 2017

Harry D. Leinenweber, *Judge.*

ORDER

The opinion in this case issued on June 14, 2004, is amended by adding the following paragraph on page 7 of the slip opinion, just before the last paragraph beginning "Heller and Key, we conclude...":

Ordinarily when a district court erroneously resolves a contract dispute on the basis that the terms of the contract are too clear to permit the consideration of extrinsic evidence, the sequel is a trial or summary judgment proceeding at which such evidence is presented. In this case, however, the parties have explicitly waived the presentation of such evidence, and so there is no occasion for a remand. We add that the negotiating history is irrelevant. Heller did not negotiate terms with Prudential or Key. They were negotiated with American Paper Group, the borrower. Prudential and Key then purchased fractional shares of the existing loans. Unless Heller proposes to say that it shared with Prudential and Key the negotiating history between Heller and the borrower, that history can't be material; Prudential and Key are not affected by events of which they were unaware.