IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE AT JACKSON

FREEDOM FROM RELIGION FOUNDATION, INC.	)	
Plaintiff,	)	
vs.	)	**Case No. _____**
TOWN OF WHITEVILLE, TENNESSEE, MAYOR JAMES BELLAR and THE WHITEVILLE TENNESSEE BOARD OF ALDERMEN,	)	
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, NOMINAL DAMAGES AND ATTORNEY'S FEES

Plaintiff Freedom From Religion Foundation, Inc. (the "FFRF"), pursuant to 42 U.S.C. § 1983, files this complaint against the Town of Whiteville, Tennessee ("Whiteville"), Whiteville Mayor James Bellar and the Whiteville, Tennessee Board of Aldermen, seeking a declaratory judgment, injunctive relief and attorney's fees for defendants' violations of the First and Fourteenth Amendments of the United States Constitution.

PARTIES

1. The FFRF is a nonprofit Wisconsin corporation. The FFRF is organized for the purposes of promoting the constitutional principle of separation of church and state, and to educate the public on matters relating to non-theistic beliefs. The FFRF has over 17,000 members with members in all fifty states. One FFRF member regularly does business in Whiteville and regularly comes into unwelcome contact with defendants' display of religious symbols on Whiteville property.

2. Whiteville is a municipality incorporated under the laws of the State of Tennessee and is the duly formed governing body of the Town of Whiteville located in Hardeman County, Tennessee. Pursuant to Fed. R. Civ. P. 4(j)(2)(A), Whiteville may be served by delivering a copy of the summons and complaint to its chief executive officer, Mayor James Bellar at 158 East Main Street, Whiteville, Tennessee 38075.

3. Defendant James Bellar is the Mayor and chief executive officer of Whiteville and may be served at 158 East Main Street, Whiteville, Tennessee 38075. At all times relevant to this complaint, Mayor Bellar has acted within the scope of his employment as a public official and under color of law. Defendant Bellar is sued individually and in his official capacity for purposes of obtaining injunctive relief.

4. Defendant Whiteville, Tennessee Board of Aldermen is the duly formed governing body of the Town of Whiteville, Tennessee. This defendant may be served by delivering a copy of the summons and complaint to 158 East Main Street, Whiteville, Tennessee 38075. At all times relevant to this complaint, the Whiteville, Tennessee Board of Aldermen has acted under the color of law and within the scope of its authority as the governing body for the Town of Whiteville.

JURISDICTION AND VENUE

5. Pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 this court has subject matter jurisdiction over plaintiff's claims which arise out of the deprivation of its members' civil rights, under color of law, which are protected by 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution.

6. This court has *in personam* jurisdiction over the Town of Whiteville and its Board of Aldermen which are located in Hardeman County, Tennessee. This court has *in personam* jurisdiction over defendant James Bellar who is a resident and citizen of the State of Tennessee.

7. Pursuant to 28 U.S.C. § 1391(b), this court is the proper venue for this case because the Town of Whiteville and its Board of Aldermen are located within the Western District of Tennessee, defendant James Bellar resides within the Western District of Tennessee and all of the events giving rise to this complaint occurred in the Western District of Tennessee.

FACTS

8. Between six and eight years ago, Whiteville erected a large cross on top of the Whiteville water tower. A photograph of the cross is attached to this complaint as Exhibit A.

9. The water tower is owned by Whiteville.

10. Whiteville illuminated the cross at night to make it more visible.

11. John Doe is a member of the FFRF who regularly conducts business in Whiteville. Mr. Doe requests that his identity and address remain confidential for fear of physical and economic reprisals from defendants and other persons favoring defendants' unconstitutional actions.

12. During his conduct of business in Whiteville, Mr. Doe is forced to view the cross on top of the water tower.

13. The cross on top of the water tower is an endorsement of Christianity by Whiteville.

14. Mr. Doe's contact with the cross on the Whiteville water tower is unwelcome and offensive to Mr. Doe, who believes that the installation of a religious symbol on Whiteville property is an illegal and unconstitutional exercise of Whiteville's authority, and is defendants' endorsement of Christianity.

15. Mr. Doe is non-Christian and non-religious.

16. The cross on the water tower signifies to Mr. Doe that Whiteville is only welcome to religious people (specifically Christians) and that as a non-religious person, he is unwelcome in Whiteville.

17. In response to complaints from its member John Doe, on December 8, 2010, the FFRF wrote to Whiteville demanding that the cross be removed from the Whiteville water tower.

18. The defendants did not respond to this letter.

19. On March 8, 2011, and May 12, 2011, the FFRF wrote follow-up letters to Whiteville regarding the cross on the water tower (see copies of FFRF letters to Whiteville attached to this complaint as collective Exhibit B).

20. Defendants again failed to respond to the FFRF's letters.

21. On September 29, 2011, counsel for FFRF wrote to defendant Bellar and the Whiteville Board of Aldermen demanding that Whiteville remove the cross from its water tower within thirty days.

22. Although defendant Bellar referred to the FFRF and its members as "terrorists" in local media reports, defendants initially indicated that they would remove the cross from the water tower.

23. On information and belief, on October 17, 2011, defendant Bellar told WBBJ ABC-7 News, "Someone needs to stand up to these atheist sons of bitches."

24. Upon further consideration, defendants responded to FFRF's demand by taking the bizarre step of removing only one arm of the cross on the water tower. A photograph of the one-armed cross is attached to this complaint as Exhibit C.

25. Subsequently, however, defendants again intentionally drew attention to the one-armed cross on top of the water tower by illuminating it at night.

26. At approximately the same time as defendants removed one arm of the cross on the water tower, another cross was placed on the public sidewalk in front of Mayor Bellar's insurance agency (see photograph attached to this complaint as Exhibit D). Presumably, this cross was installed by, or at the direction of, Mayor Bellar.

27. On or about November 28, 2011, defendants installed two large crosses in front of the Whiteville City Hall (see photograph attached to this complaint as Exhibit E).

28. On or about November 30, 2011, defendants decorated the crosses in front of Whiteville City Hall with Christmas wreaths (see photograph attached to this complaint as Exhibit F).

29. During the conduct of his business in Whiteville, Mr. Doe is forced to view the crosses in front of City Hall.

30. The crosses placed in front of Whiteville City Hall are an endorsement of Christianity by Whiteville.

31. Mr. Doe's contact with the crosses in front of the Whiteville City Hall is unwelcome and offensive to Mr. Doe, who believes that the installation of religious symbols on Whiteville property is an illegal and unconstitutional exercise of Whiteville's authority and is defendants' endorsement of Christianity.

32. The crosses on public property signify to Mr. Doe that Whiteville is only welcome to religious people (specifically Christians) and that as a non-religious person, he is unwelcome in Whiteville.

33. On or about December 6, 2011, defendants moved one of the crosses from in front of the Whiteville City Hall to the parking lot and sidewalk in front of a nearby bank.

34. On information and belief, a portion of this cross was on the sidewalk which is owned by Whiteville.

35. On December 8, 2011, the cross in front of the bank was relocated back in front of City Hall so that, again, there are two crosses in front of City Hall (see photograph attached to this complaint as Exhibit G).

36. Defendants' installation and continued maintenance of Christian crosses on its water tower, in front of Whiteville City Hall and on publicly owned sidewalks shows defendants' pattern of intentional contempt for and disregard of the civil rights of FFRF and its members which are guaranteed by the Establishment Clause of the First Amendment of the United States Constitution.

CAUSE OF ACTION

37. The actions of defendants installing and maintaining religious symbols on public property in Whiteville constitutes a policy and practice of governmental endorsement of religion which deprives the FFRF and its members of their civil rights, under color of law, guaranteed by the Establishment Clause of the First Amendment of the U.S. Constitution, as applied to state and local governments through the Fourteenth Amendment to the U.S. Constitution.

38. Plaintiff is entitled to declaratory and injunctive relief, nominal damages and reasonable attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

39. Plaintiff and its members have suffered and continue to suffer immediate and irreparable harm each day the crosses remain on public property in Whiteville. This harm may only be remedied by a declaratory judgment, preliminary and permanent mandatory injunctions requiring defendants to immediately and permanently remove the cross on the Whiteville water tower, the crosses in front of Whiteville City Hall and the cross on the publicly owned sidewalk, and a

permanent injunction prohibiting defendants from installing crosses and other religious symbolism on Whiteville property in the future.

40. The FFRF can make a substantial showing of its likelihood of prevailing on the merits of this case.

41. Enjoining defendants' endorsement of religion described in this complaint will not unduly prejudice defendants pending a final decision in this action.

42. The public interest is best served by the enforcement of the constitutionally protected civil rights of FFRF and its members and by enjoining the violation of those rights by misguided local governmental officials.

43. The public interest requires that local government officials follow the mandates of federal statutes and the U.S. Constitution in spite of their personal religious beliefs and practices.

PRAYER FOR RELIEF

WHEREFORE, plaintiff FFRF prays for the following relief:

1. That defendants be served with summonses and this complaint;

2. That this court render a declaratory judgment that the policy and practice of defendants' installation of religious symbols on Whiteville property is a violation of the Establishment Clause of the First Amendment to the U.S. Constitution, and deprives FFRF and its members of their civil rights under color of law which is actionable under 42 U.S.C. § 1983;

3. That this court issue preliminary and permanent mandatory injunctions requiring defendants to immediately and permanently remove the cross on the Whiteville water tower, the crosses in front of Whiteville City Hall and the cross on the publicly owned sidewalk;

4. That this court issue a permanent injunction enjoining defendants from installing crosses and other religious symbolism on Whiteville property in the future;

5. That this court award FFRF nominal damages of One Dollar ($1.00);

6. That this court award FFRF its reasonable attorney's fees incurred in connection with this case pursuant to 42 U.S.C. § 1988;

7. That this court award FFRF such other and further relief as is just under the circumstances.

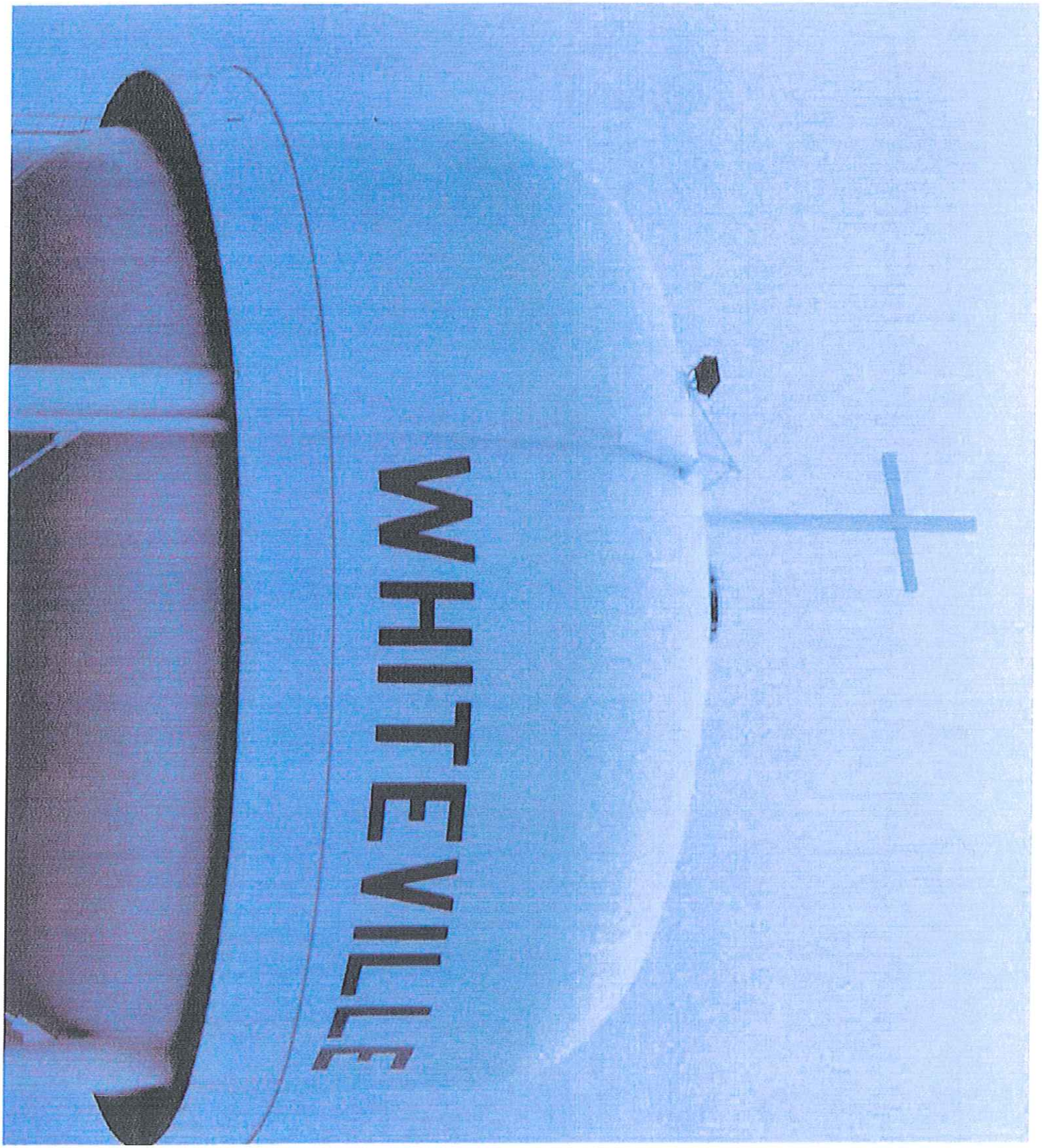
Respectfully submitted,

HUBBARD, BERRY & HARRIS, PLLC

By: /s/ Alvin L. Harris

Alvin L. Harris
201 Fourth Avenue, North, Suite 1420
Nashville, Tennessee 37219
(615) 251-5448

Attorneys for Plaintiff Freedom From Religion Foundation, Inc.


WHITEVILLE

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

December 8, 2010

SENT VIA U.S. MAIL & FAX
(731) 254-8012

COPY

The Honorable James Bellar
Town of Whiteville
158 E Main St
Whiteville TN 38075

Re: Display of Cross on Government Property

Dear Mayor Bellar:

I am writing on behalf of a concerned Whiteville resident and taxpayer, and other Tennessee members of the Freedom From Religion Foundation ("FFRF") who object to the display of a cross on public property. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation between state and church. We represent over 16,000 members across the country, including nearly 200 in Tennessee.

It is our information and understanding that a cross sits on top of the Whiteville water tower. We also understand that this cross is illuminated at night, making the display even more noticeable to all Whiteville citizens and passersby. Enclosed for your review is a copy of a photo of the cross on the water tower.

The religious significance of the Latin cross is unambiguous and indisputable. "The Latin cross... is the principal symbol of Christianity around the world, and display of the cross alone could not reasonably be taken to have any secular point." *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 792 (1995)(Souter, J., concurring). An overwhelming majority of federal courts agree that the Latin cross universally represents the Christian religion, and only the Christian religion. *See, e.g., Separation of Church and State Comm. v. City of Eugene*, 93 F.3d 617, 620 (9th Cir. 1996)("There is no question that the Latin cross is a symbol of Christianity, and that its placement on public land...violates the Establishment Clause") *Harris v. City of Zion*, 927 F.2d 1401, 1412 (7th Cir. 1991)("a Latin cross...endorses or promotes a particular religious faith. It expresses an unambiguous choice in favor of Christianity.") cert. denied, 505 U.S. 1218 (1992); *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 271 (7th Cir. 1986)("When prominently displayed...the cross dramatically conveys a message of governmental support for Christianity, whatever the intentions of those responsible for the display may be. Such a display is not only religious but sectarian.") cert. denied, 479 U.S. 961 (1986).

A majority of federal courts has held displays of Latin crosses on public property to be an unconstitutional endorsement of religion. *See, e.g., Buono v. Norton*, 371 F.3d 543, 550 (9th Cir. 2004); *Carpenter v. City and County of San Diego*, 93 F.3d 627,632 (9th Cir. 1996); *Friedman v. Bd. of County Comm'rs*, 781 F.2d 777, 778 (10th Cir. 1985)(en banc); *ACLU v. Rabun County Chamber of Commerce*, 698 F.2d 1098, 1111 (11th Cir. 1983); *ACLU v. Eckels*, 589 F. Supp. 222, 241 (S.D. Tex. 1984). While most of the aforementioned cases involved the display of a Latin cross in public parks, the display on any government property would also violate the Establishment Clause. Justice Kennedy has stated, "I doubt not, for example, that the Clause forbids a city to permit a permanent erection of a large Latin cross on the roof of city hall..." *Allegheny* at 661. (1989)(Kennedy J., concurring in part, dissenting in part). Such a religious display "would place the government weight behind an obvious effort to proselytize on behalf of a particular religion." *Id.*

No court of final resort has ever upheld the government's permanent display of a Latin cross on public land as constitutional. The inherent religious significance of the Latin cross is undeniable and is not disguisable. No secular purpose, no matter how sincere, will detract from the overall message that the Latin cross stands for Christianity and the overall display promotes Christianity. The display of this patently religious symbol on the City water tower confers government endorsement of Christianity; a blatant violation of the Establishment Clause.

It is unlawful for the Town of Whiteville to display a patently religious symbol such as a Christian cross on public property. The Whiteville cross, displayed on the Town water tower, unabashedly creates the perception of government endorsement of Christianity. It conveys the message to the twenty-six percent of the U.S. population who are not Christians that they are not "favored members of the political community." *Allegheny v. ACLU of Pittsburgh*, 492 U.S. 573, 594. The cross has an exclusionary effect, making non-Christian and non-believing residents of Whiteville political outsiders.

We ask you to remove the cross from Whiteville property immediately or direct the display be moved to a more appropriate private location. We would appreciate hearing from you at your earliest convenience, in writing, informing us of the steps the Whiteville will take to resolve this egregious violation. Our complainant awaits action.

Sincerely,

Rebecca S. Markert
Staff Attorney

FREEDOM FROM RELIGION *foundation*

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

March 7, 2011

COPY

The Honorable James Bellar
Mayor
Town of Whiteville
158 E Main St
Whiteville TN 38075

Re: Display of Cross on Government Property

Dear Mayor Bellar:

I am writing on behalf of the Freedom From Religion Foundation (FFRF) to follow up on a letter we sent on December 8, 2010. In that letter we indicated that the Whiteville water tower has an illuminated cross prominently displayed. Such a display on public property confers government endorsement of Christianity, a blatant violation of the Establishment Clause. I have included a copy of the original letter for your reference.

To date, we have not yet received a reply from you concerning our letter. We renew our request for a written response as to what actions have been taken to resolve this Establishment Clause violation. If you have referred this matter to the Town's attorney, please advise.

Thank you for your time and attention to this matter.

Sincerely,

Rebecca S. Markert
Staff Attorney

Enclosure

FREEDOM FROM RELIGION foundation

P.O. BOX 750 · MADISON, WI 53701 · (608) 256-8900 · WWW.FFRF.ORG

May 12, 2011

COPY

The Honorable James Bellar
Town of Whiteville
158 E Main St
Whiteville TN 38075

Re: 3rd Letter - Display of Cross on Government Property

Dear Mayor Bellar:

Our national organization has written two letters to you concerning the illuminated cross prominently displayed on the Whiteville water tower. As mentioned in the original letter dated December 8, 2010, which I have attached for your review, this display on public property is a blatant violation of the Establishment Clause. A follow-up letter was sent to you on March 7, 2011.

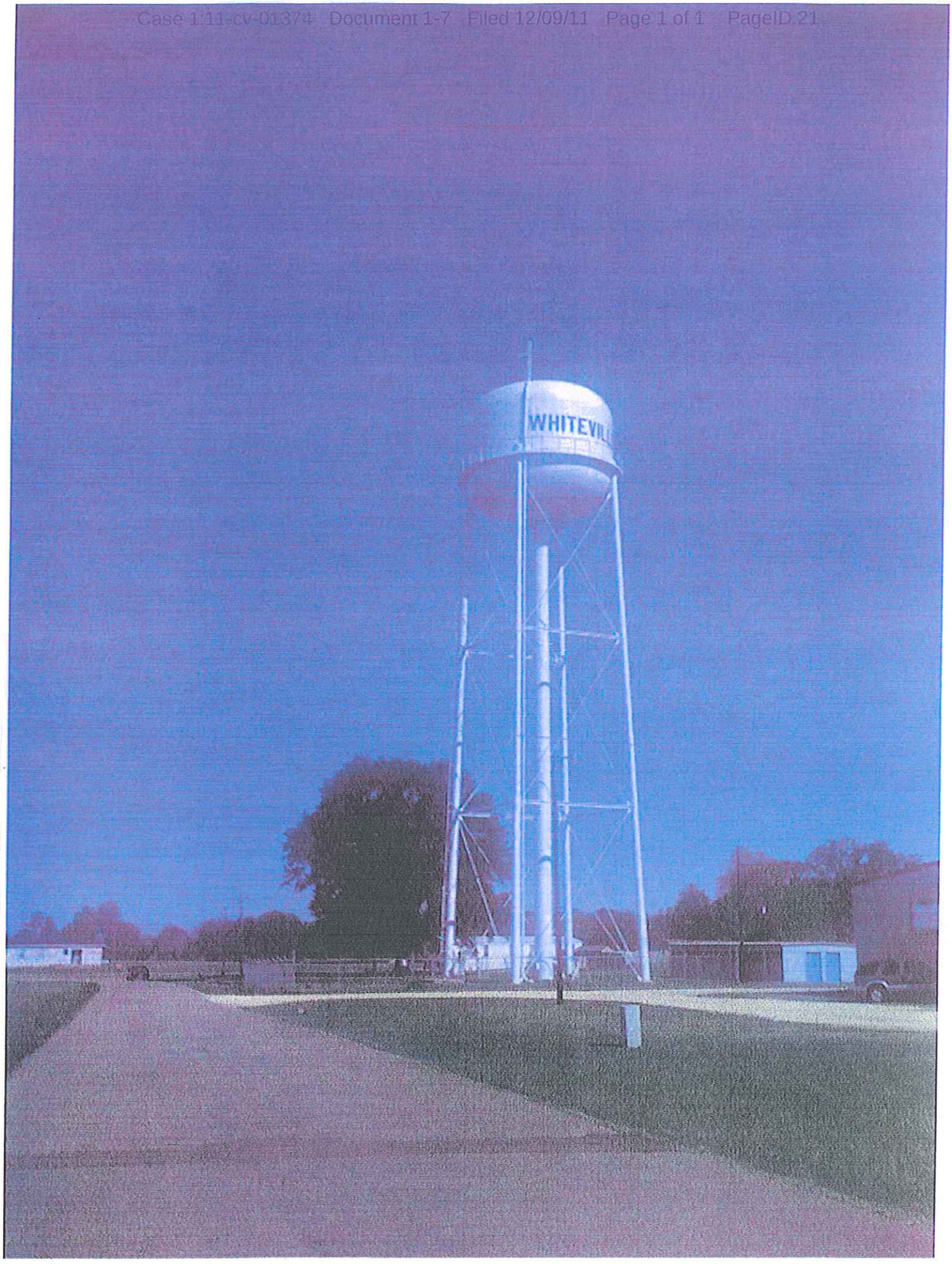
Unfortunately, we still have not received a response to either of our letters. We again request that you notify us in writing of the steps you have taken to remove this display and to prevent similar violations in the future. If this matter has been referred to your attorney, please advise.

Sincerely,

RMarkert/sas

Rebecca S. Markert
Staff Attorney

Enclosure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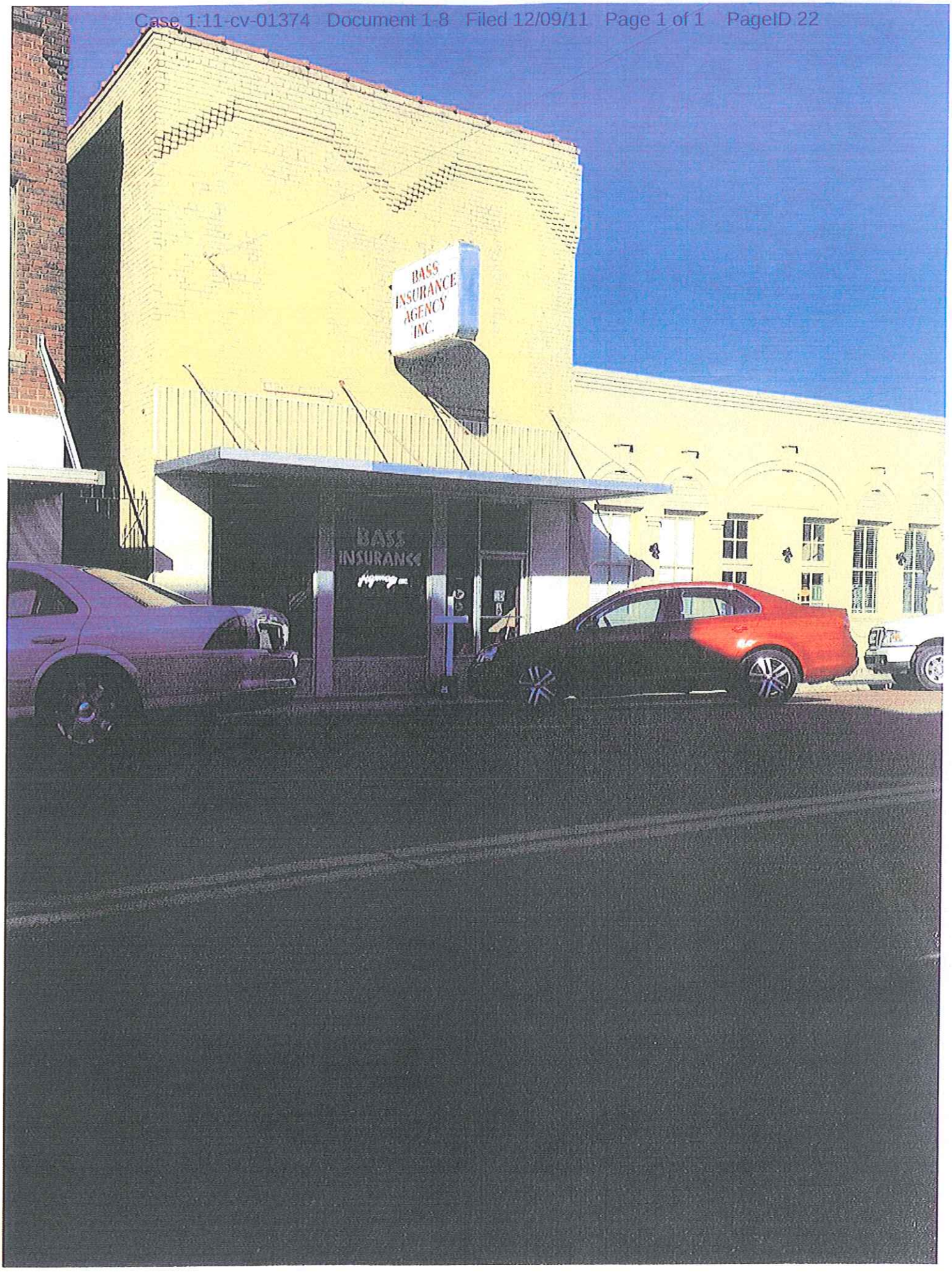
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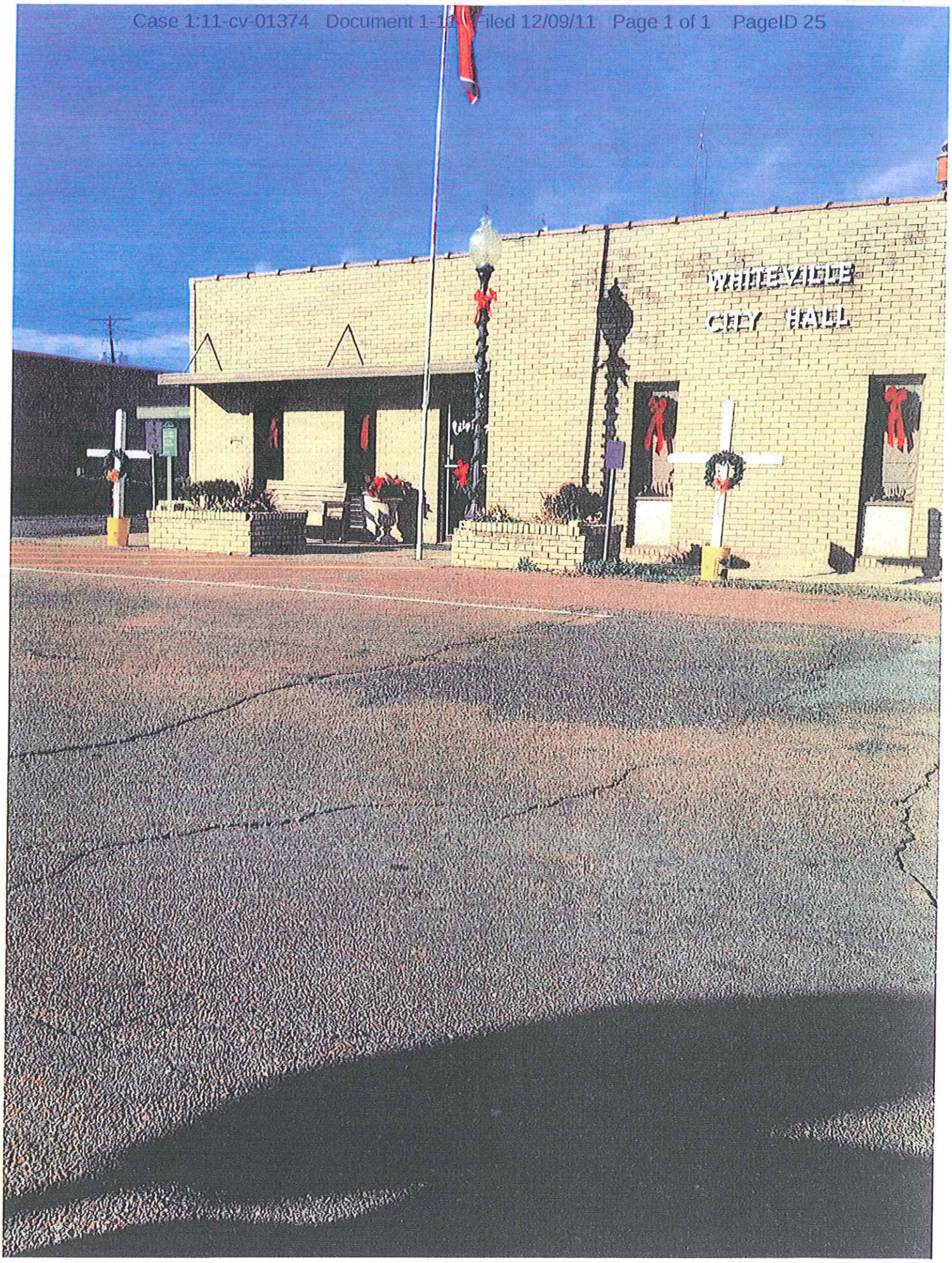
INC.
BASS
INSURANCE


CITY HALL


COAST GUARD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