

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL  
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,

Plaintiff,

vs.

BARKER, RODEMS & COOK, P.A.,  
a Florida professional service corporation,

WILLIAM J. COOK,

Defendants.

CASE NO.: 05-CA-7205

RECEIVED

DIVISION: C

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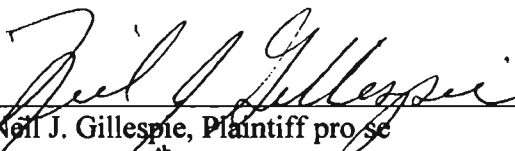
CLERK OF CIRCUIT COURT  
HILLSBOROUGH COUNTY, FL

DEMAND FOR TRIAL BY JURY

MOTION FOR LEAVE TO SUBMIT  
PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff pro se Neil J. Gillespie moves for leave to submit Plaintiff's First Amended Complaint pursuant to Rule 1.190(a), Fla.R.Civ.P. A party may amend a pleading once as a matter of course. Leave of court shall be given freely when justice so requires. A copy of the amended pleading is attached to this motion.

RESPECTFULLY SUBMITTED this 5th day of May, 2010.

  
Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
(352) 854-7807

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand to Ryan Christopher Rodems, attorney, Barker, Rodems & Cook, P.A., Attorneys for Defendants, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, this 5th day of May, 2010.

  
Neil J. Gillespie

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL  
CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
GENERAL CIVIL DIVISION**

NEIL J. GILLESPIE,

Plaintiff,

CASE NO.: 05-CA-7205

vs.

BARKER, RODEMS & COOK, P.A.,  
a Florida professional service corporation,

DIVISION: C

WILLIAM J. COOK,

DEMAND FOR TRIAL BY JURY

RYAN CHRISTOPHER RODEMS,

CHRIS A. BARKER,

Defendants.

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**PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff, NEIL J. GILLESPIE, sues defendants, BARKER, RODEMS, & COOK, P.A., a Florida professional service corporation, and WILLIAM J. COOK, RYAN CHRISTOPHER RODEMS, and CHRIS A. BARKER, corporate officers and natural persons, and alleges:

**Parties**

1. Plaintiff, NEIL J. GILLESPIE, resides in Ocala, Marion County, Florida. ("Plaintiff").
2. Defendant BARKER, RODEMS & COOK, P.A. is a Florida professional service corporation and law firm with offices located at 400 North Ashley Drive, Suite 2100 in the city of Tampa, Hillsborough County, Florida, 33602. ("BRC"). For the purpose of this complaint, BRC is a successor law firm to Alpert, Barker, Rodems, Ferrentino & Cook, P.A. ("Alpert firm"), the predecessor law firm.

3. Defendant CHRIS A. BARKER is licensed attorney, Florida Bar ID no. 885568, a corporate officer of BRC, and a natural person. (“Mr. Barker” or “Barker”). Mr. Barker is added to Plaintiff’s First Amended Complaint under the relation back doctrine,

Fla.R.Civ.P., Rule 1.190(c). Mr. Barker was a partner of the predecessor Alpert firm.

4. Defendant RYAN CHRISTOPHER RODEMS is a licensed attorney, Florida Bar ID no. 947652, a corporate officer of BRC, and a natural person. (“Mr. Rodems” or “Rodems”). Rodems is added to Plaintiff’s First Amended Complaint under the relation back doctrine,

Fla.R.Civ.P., Rule 1.190(c). Mr. Rodems was a partner of the predecessor Alpert firm.

5. Defendant WILLIAM J. COOK is a licensed attorney, Florida Bar ID no. 986194, a corporate officer of BRC, and a natural person. (“Mr. Cook” or “Cook”). Mr. Cook was a partner of the predecessor Alpert firm.

### **Jurisdiction and Venue**

6. This is an action for damages that exceed \$15,000.00.

7. The events complained of occurred in Hillsborough County, Florida. BRC has offices located in Hillsborough County, Florida.

8. Mr. Barker, Mr. Rodems, and Mr. Cook reside in Hillsborough County, Florida.

### **Background**

9. The Alpert law firm sought Plaintiff to serve as class-action representative in two separate lawsuits, one against ACE Cash Express and one against AMSCOT Corporation. The litigation was over so-called “payday loans” which are delayed deposit check cashing schemes that can result in usurious rates of interest for the consumer. The Alpert firm needed Plaintiff to intervene and save the AMSCOT case from dismissal as its initial plaintiff Eugene Clement was unqualified. Defendants assumed the case after the Alpert

firm imploded. Defendants later failed to prevail on the merits, and AMSCOT settled for business reasons. In settling AMSCOT, Defendants broke the contingent fee agreement with Plaintiff, lied about a claim to \$50,000 in “court-awarded fees and costs” and wrongfully took over 90% of the total recovery for themselves.

The Florida Attorney General intervened in the ACE class-action. Defendants did not prevail on the merits is ACE either. Defendants represented Plaintiff so poorly that he called opposing counsel for help and negotiated his own settlement. The Florida AG did better for its constituencies. The AG obtained \$250,000 for the Florida State University School of Law, and \$250,000 for the Department of Banking and Finance. The AG also obtained loan forgiveness for many consumers. Defendants finished poorly for their remaining client Eugene Clement, and later split their attorney’s fees with him.

During the course of representation, Mr. Barker, Mr. Rodems and Mr. Cook conspired to exploit their clients, broke bar rules, and breached their duty to clients. Defendants’ formed their firm in secret while working for the Alpert firm. The charade went on for months. Co-conspirators Barker, Rodems and Cook secretly arranged to take clients, cases, and employees away from Jonathan Alpert. Once Defendants controlled the AMSCOT case, they stopped representing the interest of Plaintiff. Defendants hijacked the case for their own benefit. They disobeyed Plaintiff’s instructions to settle. Plaintiff became a hostage in a case controlled by three bullies with law degrees.

After taking 90% of the AMSCOT settlement by fraud, Defendants relied upon the parol evidence rule to enforce their scam. When Plaintiff complained to the Florida Bar, Defendants accused him of extortion. When Plaintiff later alerted AMSCOT,

Defendants sued him for libel. It was all part of a corrupt business model that also involved other clients of Barker, Rodems & Cook, PA.

#### General Allegations

10. Plaintiff realleges and incorporates by reference paragraphs 1 through 9.

11. Barker, Rodems & Cook, PA (“BRC”) is a law firm and Florida professional service corporation formed August 4, 2000. The firm employs three lawyers, Mr. Barker, Mr. Rodems, and Mr. Cook, and various support staff.

12. Prior to the formation of BRC, individual Defendants Mr. Barker, Mr. Rodems, and Mr. Cook were employed at Alpert, Barker, Rodems, Ferrentino & Cook, P.A., a law firm led by Jonathan Louis Alpert, Florida Bar no. 121970. (“Alpert firm”).

13. BRC and the Alpert firm existed concurrently for a period of about four (4) months, August 4, 2000 through December 12, 2000. During that time Mr. Barker, Mr. Rodems, and Mr. Cook were engaged in a conflict of interest and divided loyalties with their clients, litigation, and law partners, especially Mr. Alpert.

14. In early December 1999 the Alpert firm commenced at least three separate class action lawsuits with plaintiff Eugene R. Clement. After the Alpert firm imploded all three cases were assumed by Defendants, who failed to prevail on the merits in any case.

a. On December 9, 1999 the Alpert firm filed a class action complaint in United States District Court, Middle District of Florida, Tampa Division, Eugene R. Clement v. AMSCOT Corporation, case no. 99-2795-CIV-T-26C. (“AMSCOT”). The action was based on “payday lending” and alleged violation of federal and state laws. Mr. Alpert signed the complaint as lead attorney in the lawsuit. Plaintiff was later sought to intervene to save this action from dismissal because Mr. Clement was unqualified.

b. On December 6, 1999 the Alpert firm and Mr. Clement commenced a class action complaint in United States District Court, Middle District of Florida, Tampa Division, Eugene R. Clement v. Payday Express, Inc., case no. 99-2768-CIV-T-23C. (“Payday Express”). The action was based on “payday lending” and alleged violation of federal and state laws. Mr. Alpert signed the complaint as lead attorney in the lawsuit. Plaintiff was not involved in this lawsuit, but the outcome of this case is pertinent to Plaintiff’s claim that Defendants were not entitled to “court-awarded fees and costs”.

c. On December 6, 1999 the Alpert firm and Mr. Clement commenced a lawsuit state court, Eugene R. Clement v. ACE Cash Express, Inc., case no. 99-09730, Circuit Court for the Thirteenth Judicial Circuit in Hillsborough County. (“ACE”). The action was based on “payday lending” and alleged a violation of the Florida Deceptive and Unfair Trade Practices, sections 501.201 to 501.23 of the Florida Statutes. Plaintiff’s lawsuit against ACE would later be consolidated with this case, and the Florida Attorney General would later intervene in this action.

15. The AMSCOT and Payday Express cases each pled three counts, one federal and two state. Count I alleged violation of the Federal Truth in Lending Act (TILA). Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes. Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes. A count was later added to the Payday Express case alleging violation of civil RICO under 18 U.S.C. § 1962(c) which was later dismissed.

16. The lead plaintiff in the AMSCOT case, Eugene R. Clement, was unqualified to serve as a class representative and doomed the case from the outset. AMSCOT’s lawyer,

John Anthony, challenged the ability of Mr. Clement to serve as class representative in AMSCOT's Response in Opposition to Clement's Motion for Class Certification and Memorandum of Law in Support. Mr. Anthony wrote: "It has become unquestionably clear, after taking Clement's deposition, that his complete lack of trustworthiness, honesty and credibility make Clement a wholly inadequate class representative." (p.4, ¶1). "First Clement lied under oath numerous time, including making misrepresentations about his criminal background." (p.4, ¶2). Clement had suffered both a conviction and pre-trial intervention for prostitution within the past two years, the later just nine months prior. (p.4, ¶2). Clement's debt exceeded \$450,000.00, and there was some question about Clement's sanity. (p.6, ¶1,2).

17. United States District Judge Richard A. Lazzara commented on Mr. Clement's inability to serve as class representative in an Order of September 20, 2000 compelling Clement's testimony: "Whether Mr. Clement used money obtained through deferred deposit transactions for the hiring of prostitutes is highly relevant to his ability to adequately serve as class representative." AMSCOT's Motion to Compel Clement to Respond to Certified Question and Related Questions and Memorandum of Law in Support Thereof alleged that Clement failed to disclose two Florida-based criminal proceedings relating to his hiring of prostitutes, including one dated October 29, 1999, just two months before the initiation of the AMSCOT lawsuit. In support of the allegations was a criminal report affidavit/notice to appear charging Clement with solicitation of prostitution against section 796.07, Florida Statutes, together with Clement's mug shot.

Plaintiff Referred to Defendants

18. Florida Department of Banking and Finance attorney Susan Sandler referred Plaintiff to the Alpert firm for “payday loans” he could no longer pay. Plaintiff owed a total principal balance of \$2,186.27 on six “payday loans” despite having paid \$4,081.08 in fees and costs on the loans over a two year period.

19. Plaintiff met Mr. Alpert at his law firm at 100 South Ashley Drive, Tampa, Florida, December 28, 1999. Mr. Cook was present and requested Plaintiff’s records of transactions with AMSCOT Corporation. At that time Plaintiff did not owe AMSCOT any money but did have five other outstanding “payday loans” to EZ Check Cashing, Check ‘n Go, ACE Cash Express, Check Smart, and America\$h. Plaintiff settled pro se with National Cash Advance on December 24, 1999.

<u>Company</u>	<u>Loan amount</u>	<u>Total interest paid</u>	<u>Current balance (NSF)</u>
EZ Check Cashing	\$450.00	\$917.50	\$500.00 (later settled pro se)
Check ‘n Go	\$300.00	\$876.25	\$338.00
ACE	\$300.00	\$1,108.20	\$336.94
AMSCOT	\$100.00	\$148.47	\$ ---
National Cash Advance	\$300.00	\$884.00	338.00 (settled pro se)
Check Smart	\$300.00	\$76.66	\$338.33
America\$h	\$300.00	\$70.00	\$335.00
Total	\$2,050.00	\$4,081.08	\$2,186.27

Plaintiff listened to what the lawyers said about “payday loans” and told them he would be in touch if he decided to proceed.

Plaintiff Becomes a Client of the Alpert Firm

20. Mach 20, 2000 Plaintiff met Mr. Cook who agreed to investigate his claims against ACE Cash Express and America\$h. Mr. Cook declined to represent Plaintiff’s



claims against EZ Check Cashing<sup>1</sup> or Check 'n Go<sup>2</sup>. Mr. Cook said Plaintiff may benefit from the AMSCOT case, which was already being litigated.

21. March 21, 2000 Plaintiff signed a Class Representation Contract with Alpert, Barker, Rodems, Ferrentino & Cook, P.A. to investigate potential claims from transactions with ACE Cash Express and America\$<sup>3</sup>. Mr. Cook signed the contingent fee agreement for the Alpert firm. (Exhibit 1).

22. April 12, 2000 Mr. Cook called Plaintiff to copy his transactions with ACE Cash Express. Plaintiff produced his ACE file the next day at the Alpert firm.

23. April 14, 2000 a class action complaint was filed, Neil Gillespie v. ACE Cash Express, Inc., case no. 8:00-CV-723-T-23B, in United States District Court, Middle District of Florida, Tampa Division. ("ACE"). (Exhibit 1). The ACE lawsuit pled three counts, one federal and two state. Count I alleged violation of the Federal Truth in Lending Act (TILA). Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes. Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes. Mr. Cook<sup>4</sup> signed the complaint for Alpert, Barker, Rodems, Ferrentino & Cook, P.A. The lawsuit was based on "payday lending" alleged violation of federal and state laws. The Alpert firm represented Plaintiff on a contingent fee basis. Plaintiff believed the

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<sup>1</sup> Gillespie later settled this matter pro se.

<sup>2</sup> Gillespie was part of a class that settled claims in Reuter v. Check 'N Go of Florida, Inc., Fifteenth Judicial Circuit, Palm Beach County, Florida, case no.: 502001CA001164XXOCAI.

<sup>3</sup> On May 3, 2000, Mr. Cook wrote Gillespie that he would not represent him in a claim against America\$.

<sup>4</sup> On April 30, 2000, Gillespie wrote Mr. Cook about errors in the Complaint, that paragraphs 19 and 20 were incomplete, and that paragraphs 14 and 15 were repeated. Mr. Cook ignored the errors, and Gillespie again wrote Mr. Cook on May 7, 2000, citing his carelessness, lack of proofreading, and unprofessional attitude. All of this is more evidence of Defendants incompetence.

contract he signed with Mr. Cook March 21, 2000 was a contingent fee agreement regulated by The Florida Bar.

24. On or about May 19, 2000, the Florida Attorney General unilaterally served a subpoena duces tecum upon Ace Cash Express, Inc.

25. On August 1, 2000 Neil Gillespie v. ACE Cash Express, Inc., case no. 8:00-CV-723-T-23B was consolidated with Eugene R. Clement v. ACE Cash Express, Inc., which was removed to federal court March 27, 2000, case no. 8:00-CV-593-T-26C (former case no. 99-09730, Circuit Court for the Thirteenth Judicial Circuit in Hillsborough County).

Mr. Alpert Attacks Attorney Arnold Levine - Mr. Rodems a Witness

26. A Tampa Police Department report dated June 5, 2000, case number 00-42020, alleges Mr. Alpert committed battery, Florida Statutes §784.03, upon attorney Arnold Levine by throwing hot coffee on him. At the time Mr. Levine was a 68 year-old senior citizen. The report states: “The victim and defendant are both attorneys and were representing their clients in a mediation hearing. The victim alleges that the defendant began yelling, and intentionally threw the contents of a 20 oz. cup of hot coffee which struck him in the chest staining his shirt. A request for prosecution was issued for battery.” Mr. Rodems is listed as a witness on the police report and failed to inform Plaintiff that Mr. Alpert attacked attorney Arnold Levine.

27. Mr. Levine previously sued Alpert, Barker & Rodems, PA, a \$5 million dollar claim for defamation, Buccaneers Limited Partnership v. Alpert, Barker & Rodems, PA, US District Court, Middle District of Florida, Tampa Division, case 99-2354-CIV-T-23C.

Mr. Alpert Runs for State Attorney After Suicide of Harry Lee Coe

28. On or about July 20, 2000 Mr. Alpert became a candidate for state attorney for Hillsborough County<sup>5</sup>. The vacancy was created by the suicide of State Attorney Harry Lee Coe who shot himself July 13, 2000 over gambling debts and related matters. A report on the matter showed Mr. Coe had \$5,000 in bad check fees alone. The tragedy shows the serious societal problems created by excessive bank fees.

29. Defendants' deceived Plaintiff by their financial support of Mr. Alpert for state attorney, while concealing his recent criminal behavior. Each made a \$500.00 contribution to the Alpert campaign, the maximum allowed under Florida law. Records from the Florida Division of Elections show the following contributions:

- a. Chris Barker made a \$500.00 contribution on July 21, 2000
- b. Ryan Christopher Rodems made a \$500.00 contribution on July 21, 2000
- c. William J. Cook made a \$500.00 contribution on July 26, 2000.

Political Crusade Against Payday Loans Hurts Lawsuit

30. Mr. Alpert campaigned on his record with "payday loan companies". His political advertisements stated that Jonathan Alpert has spent his life standing up for working people and protecting consumers, and that "The Alpert Record" has "Protected working families by taking on payday loan companies". The paid political advertisement stated that "Now, he wants to take that experience and fight to protect us as our State Attorney. He will fight for us - and he knows how to get results!"

31. Plaintiff believed in fighting "payday loan companies" and supported Alpert's campaign with a \$25 contribution. Plaintiff mailed his \$25 check to Mr. Cook at the Alpert firm together with a letter dated August 23, 2000. Mr. Cook delivered Plaintiff's

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<sup>5</sup> Mr. Alpert was defeated and eliminated in the September 5, 2000 primary election.

check to the Alpert campaign. Plaintiff received a “thank you” letter from Mr. Alpert dated August 31, 2000.

32. Mr. Alpert’s political crusade against “payday loan companies” was detrimental to the AMSCOT lawsuit, according to AMSCOT’s Response in Opposition to Clement’s Motion for Class Certification and Memorandum of Law in Support. AMSCOT’s lawyer John Anthony wrote: “Finally, there are some serious questions as to whether Jonathan L. Alpert, Esquire will properly prosecute this class action for the benefit of the class. Specifically, Mr. Alpert is currently running for the position of state attorney and has made it clear that one of his primary platforms is that he will, if elected, pursue criminal action against the payday advance industry. AMSCOT is in the process of obtaining a copy of the transcript from a recent television show wherein Mr. Alpert made his intentions clear. Accordingly, it is likely that Mr. Alpert is running for elected office on this lawsuit, and that, accordingly, his motives in prosecuting the lawsuit may very likely be different than those of the class he is seeking to represent.”

Defendants Form Law Firm In Secret: Barker, Rodems & Cook, PA

33. On August 2, 2000, Mr. Barker executed Articles of Incorporation for Barker, Rodems & Cook, P.A, principal place of business at 300 W. Platt Street, Tampa, Florida. Defendants formed their new law firm in secret from Jonathan Alpert, rented office space, and acquired things needed to open a new law office. Defendants later hired-away staff from the Alpert firm, including a receptionist and a legal secretary. Defendants worked on their plans quietly, in secret, to the extent possible. Defendants did not publicly announce the formation of their new law firm until December 6, 2000. (Exhibit 3). Prior to that time, Mr. Cook told Plaintiff that he and Mr. Barker and Mr. Rodems

formed their own law firm, and asked Plaintiff to keep the information secret from Mr. Alpert. Defendants' double-dealing and deception against Mr. Alpert placed Plaintiff in a position of conflict and divided loyalties with the lawyers and law firm representing him.

Defendants Pressured Plaintiff to Intervene in the AMSCOT Lawsuit

34. Mr. Cook was under pressure to replace the unqualified Mr. Clement as lead plaintiff in the AMSCOT lawsuit to prevent its dismissal. Mr. Cook solicited Plaintiff to intervene in the AMSCOT lawsuit to save the litigation.

35. Plaintiff declined to sue AMSCOT a year earlier during his initial meeting with Mr. Cook on December 28<sup>th</sup>, 1999. Plaintiff did not owe AMSCOT money. Plaintiff's debt to AMSCOT was paid in full, unlike the other five "payday loan" companies, whom he owed a total of at least \$1,848.27. Plaintiff wanted to concentrate his effort resolving matters with the remaining five "payday loan" companies. Plaintiff's exposure with AMSCOT was limited to transactions of \$100.00 each, and the total fees and costs he paid AMSCOT amounted to just \$148.47.

36. Plaintiff explained the circumstances the preceding paragraph to Mr. Cook, but Cook continued to solicit Plaintiff to sue AMSCOT. When Plaintiff argued to Mr. Cook that his exposure with AMSCOT was limited, Cook responded that Plaintiff's position was selfish. Mr. Cook pressured Plaintiff to sue AMSCOT, based on Plaintiff's political beliefs that "payday loan companies" were bad, detrimental to people and society, and charged usurious rates of interest disguised as fees and costs. Mr. Cook assured Plaintiff that AMSCOT had, in fact, committed the violations plead in the class-action complaint.

37. Mr. Cook's pressure on Plaintiff to sue AMSCOT created a conflict with Plaintiff because Mr. Cook already represented Plaintiff in the ACE lawsuit. Plaintiff wanted to keep Mr. Cook happy for the benefit of Plaintiff's interest in the ACE lawsuit.

38. Mr. Cook provided Plaintiff pleadings from the AMSCOT lawsuit even though he was not yet a party. In a letter dated September 25, 2000, Mr. Cook provided Plaintiff an Order he received in the AMSCOT case. Plaintiff felt pressured that Cook provided him pleadings in the AMSCOT lawsuit where he was not a party together with information about the ACE lawsuit. Mr. Cook was linking Plaintiff, AMSCOT and ACE together.

Defendants Offer Plaintiff Incentives to Sue AMSCOT Corporation

39. Mr. Cook offered Plaintiff a number of incentives to sue AMSCOT, because recovery of \$148.47 Plaintiff paid in fees to AMSCOT was not compelling. Mr. Cook offered Plaintiff the following incentives to sue AMSCOT:

a. Mr. Cook told Plaintiff that he would receive a fee for serving as a class representative, and the amount awarded by the Court to compensate Plaintiff would likely be between \$5,000.00 and \$10,000.00. Mr. Cook said class representatives in the Tampa Bay Buccaneers lawsuit received \$5,000.00 each, and this case was worth more, he said.

NOTE: In Reuter v. Check 'N Go of Florida, Inc., Fifteenth Judicial Circuit, Palm Beach County, Florida, case no.: 502001CA001164XXOCAI, the Final Approval Order And Judgment of May 16, 2008 by Circuit Court Judge Edward A. Garrison approved \$25,000 to Donna Reuter as a fair and reasonable Class Representative Award.

b. Mr. Cook said Plaintiff would receive statutory damages in addition to the recovery of the \$148.47 Plaintiff paid in fees to AMSCOT. The statutory damages under TILA, the federal Truth In Lending Act, are \$1,000.00.

c. Mr. Cook said Plaintiff would likely receive punitive damages under the state law claim of Usury, section 687, Florida Statutes, and actual damages under the state law claim of Deceptive and Unfair Trade Practices Act, section 501 Florida Statutes.

d. Under the terms of the contingent fee agreement, the above awards and damages and any costs and attorney's fees awarded would become part of the Total Recovery and divided according to the percentages of the contingent fee agreement.

e. Mr. Cook said Plaintiff would get special attention as a favorite client of his newly formed law firm. The new firm would be anxious for business which Defendants hoped Plaintiff would provide. Cook said once Defendants were free from the control of Mr. Alpert they would be able to decide themselves what cases to accept and litigate.

40. Plaintiff finally relented to Mr. Cook's pressure and intervened in the AMSCOT lawsuit, see Motion For Intervention As Plaintiffs And Proposed Class Representatives, submitted November 9, 2000. This occurred while Plaintiff was a client of the Alpert firm a month before Defendants told Mr. Alpert that they formed a new law firm and were taking his clients and lawsuits away from him. Mr. Cook also convinced Ms. Gay Ann Blomefield to sue AMSCOT. Now Mr. Cook had two prospective class representatives to replace the unqualified Mr. Clement. If either Plaintiff or Ms. Blomefield were later disqualified as lead plaintiffs, the AMSCOT lawsuit could proceed with the remaining plaintiff. The US District Court granted the motion for intervention On March 20, 2001.

41. In a letter to Plaintiff dated March 8, 2010, Mr. Rodems wrote: "you did not have actual damages" in the AMSCOT case. (page 2, paragraph 8). This is further evidence that Defendants used Plaintiff solely for Defendants' own personal benefit and gain.

42. Defendants' pressure of Plaintiff and offer of incentives to sue AMSCOT was likely a crime under section 877.01(1), Florida Statutes, Instigation of litigation, and an overt act in furtherance of their conspiracy against Plaintiff and the other co-plaintiffs.

43. Following the breakup of the Alpert firm, Plaintiff brought new potential claims to Defendants at BRC, which now represented Plaintiff in the AMSCOT lawsuit and the ACE lawsuit. In a March 22, 2001 letter to Mr. Cook, Plaintiff requested representation in his efforts with the Florida Department of Vocational Rehabilitation. (DVR). Mr. Cook responded March 27, 2001 that we are not in a position to represent you for any claims you may have with Vocational Rehabilitation.

44. In a May 22, 2001 letter to Mr. Cook, Plaintiff requested representation in his effort to obtain job placement services from St. Petersburg Junior College for students with disabilities. Mr. Cook responded May 25, 2001 we are not in the position to pursue litigation with St. Petersburg Junior College.

45. Mr. Cook's assurance to Plaintiff of assistance with other claims was a deception to induce Plaintiff to sue AMSCOT. Mr. Cook also led Plaintiff to believe that Defendants would assist him in finding employment. Plaintiff provided Defendants his resume, but Defendants did not assist Plaintiff with finding employment.

46. Mr. Cook and Plaintiff signed a Class Representation Contract to sue AMSCOT November 3, 2000. (Exhibit 2). The Alpert firm represented Plaintiff on a contingent fee basis. Plaintiff believed the contract was a contingent fee agreement regulated by The Florida Bar.

47. Mr. Cook signed the contract on behalf of Alpert, Barker, Rodems, Ferrentino & Cook, P.A. even though Mr. Cook knew that he and Mr. Barker and Mr. Rodems already



formed a new law firm in August, 2000. Defendants were partners in two law firms at the same time, one of which was secret. Mr. Alpert was the senior partner in the firm representing Plaintiff in two lawsuits, AMSCOT and ACE. This placed Plaintiff in a position of conflict and divided loyalties with the lawyers and law firm representing him.

48. Defendants' deceit and conflict of interest created by executing the Class Representation Contract to sue AMSCOT November 3, 2000, knowing they already formed another law firm and did not plan to honor the contract, was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

49. Defendants announced the formation of their new law firm, Barker, Rodems & Cook, P.A., by letter to Plaintiff dated December 6, 2000. (Exhibit 3). This occurred four (4) months after Mr. Barker filed the Articles of Incorporation for the new law firm.

50. On December 12, 2000 a Joint Stipulation for Substitution of Counsel was submitted by Mr. Alpert and Mr. Cook, transferring the AMSCOT case from the Alpert firm to BRC as counsel of record.

51. On December 12, 2000 a Joint Stipulation for Substitution of Counsel was submitted by Mr. Alpert and Mr. Cook, transferring the ACE case from the Alpert firm to BRC as counsel of record.

52. Defendants began representing Plaintiff in the AMSCOT case on a contingent fee basis December 12, 2000. There is no signed contingent fee agreement between Defendant Barker, Rodems & Cook, PA and Plaintiff in the AMSCOT lawsuit. Defendants did not execute a contingent fee agreement with Plaintiff when it assumed the case December 12, 2000. Plaintiff asked Mr. Cook about the lack of a contingent fee agreement in July, 2001. Mr. Cook responded by letter dated July 23, 2001 (Exhibit 4)

and provided new attorneys' fees contracts for both the AMSCOT (Exhibit 5) and ACE lawsuits, but the parties did not sign either contract.

53. Defendants began representing Plaintiff in the ACE case on a contingent fee basis December 12, 2000. There is no signed contingent fee agreement between Defendant Barker, Rodems & Cook, PA and Plaintiff in the ACE lawsuit. Defendants did not execute a contingent fee agreement with Plaintiff when it assumed the case December 12, 2000. Plaintiff asked Mr. Cook about the lack of a contingent fee agreement in July, 2001. Mr. Cook responded by letter dated July 23, 2001 (Exhibit 4) and provided new attorneys' fees contracts for both the AMSCOT and ACE (Exhibit 6) lawsuits, but the parties did not sign either contract.

#### AMSCOT Counterclaim Against Plaintiff and Ms. Blomefield

54. On or about March 27, 2001, AMSCOT filed a counterclaim against Plaintiff and Ms. Blomefield. Defendants failed to advise Plaintiff he was subject to a counterclaim. There was no provision in the Alpert firm Class Representation Contract (Exhibit 2) for defending a counterclaim. At the time of the AMSCOT counterclaim there was no contingent fee agreement whatsoever between Defendants and Plaintiff.

#### TILA Claims Not Valid in ACE Lawsuit

55. On December 21, 2000 United States District Court Judge James S. Moody, Jr. issued an Order in the ACE lawsuit that dismissed with prejudice Count I, Plaintiff's TILA claims, and remanded the case to the Circuit Court of the Thirteenth Judicial Circuit for Count II, the alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes, and Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes.

Judge Moody explained his decision to dismiss with prejudice the TILA claims on page 3, paragraph 3 of the Order. “On March 31, 2000, the Federal Reserve Board ("FRB") promulgated revisions to a regulation that interprets TILA as applying to check-cashing transactions. See 65 Fed. Reg. 17129, 30 (2000), to be codified at 12 C.F.R. pt. 226. The revision to the regulation states, however, that the effective date of the new rule is March 24, 2000, but that compliance is "optional" until October 1, 2000. Id. The Court agrees with Defendant that the plain language of the regulation means that compliance was not mandated until October 1, 2000. The transactions at issue in this case occurred prior to the FRB's regulation. Since Plaintiffs' transactions occurred prior to October 1, 2000, TILA is not applicable and cannot form a basis for relief against Defendant. Accordingly, Plaintiffs' claims under TILA are dismissed.” (Exhibit 7).

#### TILA Claims Not Valid in Payday Express Lawsuit

56. On April 6, 2001, United States District Magistrate Judge Steven D. Merryday issued an Order in the Payday Express lawsuit that dismissed with prejudice the TILA and RICO claims, and dismissed without prejudice the remaining state law claims of usury and FDUTPA. Judge Merryday held that “Because TILA’s mandatory disclosures were not required of the defendants before October 1, 2000, TILA cannot form a basis for relief of the plaintiff’s claims.” (page 4, last paragraph).

#### TILA Claims Not Valid in AMSCOT Lawsuit

57. On August 1, 2001, United States District Judge Richard A. Lazzara issued an order in the AMSCOT lawsuit denying class certification as moot, dismissed Count I with prejudice, the alleged violation of the Federal Truth in Lending Act (TILA). The Order dismissed Counts II and III without prejudice to bring in state court, and closed the

file. Count II alleged violation of state usury laws pursuant to sections 687.02, 687.03, and 687.04 Florida Statutes. Count III alleged violation of the Florida Deceptive and Unfair Trade Practices Act, sections 501.201 to 501.23 Florida Statutes. (Exhibit 8).

58. Defendants knew ten (10) months before making the closing statement in the AMSCOT settlement that the AMSCOT lawsuit was not a fee-shifting TILA action. On August 1, 2001 the AMSCOT lawsuit ceased being a fee-shifting TILA action when the TILA claim was dismissed with prejudice. Defendants also knew from the decisions in ACE and Payday Express that TILA could not form a basis for relief in AMSCOT.

#### Florida Attorney General Motion to Intervene in ACE

59. On or about February 9, 2001 the Florida Attorney General moved to intervene in the ACE lawsuit citing Florida RICO jurisdiction. Roger B. Handberg, Senior Assistant Attorney General, Economic Crimes Division, appeared for the AG. An Order granted the intervention April 3, 2001. The AG filed its 82 page complaint April 12, 2001.

#### \$5,000 Improper Payoff Attempt

60. Soon after Judge Lazzara's Order dismissing AMSCOT, John Anthony offered Mr. Cook a \$5,000 "consulting fee" or "non-refundable retainer" to refrain from appealing the ruling or filing state law claims or suing AMSCOT in the future. This was in violation of Rule 4-5.6(a). Mr. Cook described this payment as an "improper payoff attempt" and not an offer to settle. Mr. Cook said that "the Florida Bar likely would prohibit such an agreement." Mr. Cook did not report Anthony's Rule 4-5.6(a) violation to the Florida Bar as required by Rule 4-8.3(a). Mr. Cook did not report Mr. Anthony's "improper payoff attempt" to the Florida Bar as required by Rule 4-8.3(a).

#### Breach of Fiduciary Duty

61. Defendants represented Plaintiff as his attorneys. Defendants owed Plaintiff a fiduciary duty. It is long established that the relationship between an attorney and his client is one of the most important, as well as the most sacred, known to the law. The responsibility of an attorney to place his client's interest ahead of his own in dealings with matters upon which the attorney is employed is at the foundation of our legal system. (Deal v. Migoski, 122 So. 2d 415). It is a fiduciary relationship involving the highest degree of truth and confidence, and an attorney is under a duty, at all times, to represent his client and handle his client's affairs with the utmost degree of honesty, forthrightness, loyalty, and fidelity. (Gerlach v. Donnelly, 98 So. 2d 493).

62. On August 15, 2001 Mr. Cook announced that Defendants would not honor the AMSCOT contingent fee agreement with Plaintiff. Cook said Plaintiff's damages were limited to \$1,000, the fee-shifting provision of TILA. This was false. Defendants did not prevail on any TILA claims. Defendants breached its fiduciary duty owed to Plaintiff, Ms. Blomefield and Mr. Clement by failing to put their clients' interest ahead of their own in dealings with matters upon which Defendants were employed.

63. Defendants refusal to honor the contingent fee agreement in the AMSCOT lawsuit was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

#### Defendants Commit Fraud Against Their Own Clients

64. Defendants conspired to defraud Plaintiff, Ms. Blomefield and Mr. Clement in the AMSCOT lawsuit using a corrupt business model that relied upon a five part deception. Defendants' corrupt business model worked as follows:

- a. Defendants breached their fiduciary duty to Plaintiff and the other clients.

b. Defendants fraudulently procured a favorable agreement from Plaintiff and the other clients taking 90 percent of the AMSCOT settlement for their own benefit.

c. Defendants relied upon the parol evidence rule to enforce the settlement.

b. Defendants further argued that bar rules prohibit them from honoring a contingent fee agreement since that amounts to splitting attorney's fees with a nonlawyer.

65. Defendants fraudulently procured a favorable agreement from Plaintiff in the AMSCOT settlement with a five part deception:

a. Part 1: Defendants created a "sticking part" argument that blamed its clients for suing AMSCOT. Mr. Cook told Plaintiff that AMSCOT resented him and that was a "sticking part" to settling because AMSCOT did not want to pay Plaintiff any money.

b. Part 2: Mr. Cook told Plaintiff that AMSCOT did not resent Defendants and wanted to pay money to the Defendants to settle the lawsuit.

c. Part 3: Defendants falsely claimed entitlement to fee-shifting TILA damages to evade the contingent fee agreement with Plaintiff, Ms. Blomefield and Mr. Clement.

d. Part 4: Defendants used deceit to induce Plaintiff, Ms. Blomefield, and Clement to sign a "Release and Settlement Agreement" with AMSCOT October 30, 2001.

e. Part 5: Defendants used deceit to induce Plaintiff to sign a "closing statement" November 1, 2001 in order to receive \$2,000 promised in the "Release and Settlement Agreement" with AMSCOT on October 30, 2001.

66. During a meeting with Plaintiff August 15, 2001, Mr. Cook told Plaintiff that AMSCOT did not want to pay the plaintiffs anything because AMSCOT resented the plaintiffs for suing. Mr. Cook told Plaintiff this was a "sticking part" or barrier to a

settlement. Mr. Cook told Plaintiff that AMSCOT did not resent Defendants and wanted to pay money to Defendants to settle the lawsuit. Mr. Cook said that the “sticking part” was a \$1,000 payment to each of three plaintiffs, not a \$50,000 payment to Defendants.

67. Defendants “sticking part” argument was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

68. Defendants false claim to court-awarded fees and costs was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

69. During the August 15, 2001 meeting with Plaintiff, Mr. Cook falsely told Plaintiff that Defendants incurred costs and expenses of \$33,000 in the AMSCOT lawsuit. Cook used this amount as a basis to justify his \$50,000 demand from AMSCOT. Plaintiff later learned that the actual costs and expenses were only \$3,580.67, plus \$2,544.79 paid to Mr. Alpert, for total costs and expenses of \$6,125.46. These costs and expenses were not itemized on the closing statement as required by bar Rule 4-1.5(f)(5).

70. Defendants false claim that it incurred \$33,000 in costs and expenses was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

71. Defendants creation of a deceptive closing statement, and failure to itemize costs and expenses of \$6,125.46 as required by bar Rule 4-1.5(f)(5), was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

72. On August 15, 2001 Mr. Cook wrote that Plaintiff “authorized” Defendants to appeal the dismissal of TILA claims, but not file a new lawsuit in State court. Mr. Cook also wrote that Plaintiff “authorized” Defendants to demand \$1,000 to settle his claim plus \$50,000 in attorney’s fees and costs. (Exhibit 9). Plaintiff’s so-called ‘authorization’

was contrary to his interest, induced by false information Defendants provided him as described herein, and was therefore void.

73. Defendants' separate negotiation with AMSCOT for its attorneys' fees placed Defendants in a position of conflict with Plaintiff, Ms. Blomefield and Mr. Clement. Defendants' August 15, 2001 letter is prima facie evidence of breach of fiduciary duty.

74. Defendants separate negotiation with AMSCOT for its attorneys' fees, and Defendants' August 15, 2001 letter to Plaintiff were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

Defendants Hijack The AMSCOT Lawsuit And Hold Plaintiff Hostage

75. On August 16, 2001 Plaintiff instructed Mr. Cook by letter to settle the AMSCOT lawsuit. (Exhibit 10). Plaintiff believed Defendants no longer represented his interest in the litigation. Plaintiff requested that Defendants provide copies of his settlement instruction letter to Ms. Blomefield and Mr. Clement. Plaintiff provided Defendants the following instructions to settle the AMSCOT litigation:

“I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney's fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney's fees and costs. Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.”



Plaintiff was concerned that Defendants no longer represented his interest, and among other things he would be indebted to AMSCOT for its costs and attorney's fees since Defendants failed to prevail on the TILA claim.

76. Defendants did not obey Plaintiff's August 16, 2001 written instructions to settle the AMSCOT lawsuit.

77. Defendants did not obey Plaintiff's September 15, 2001 written instructions to settle his claims the AMSCOT lawsuit.

78. Defendants did not obey Plaintiff's September 21, 2001 instructions to settle his claims in the AMSCOT lawsuit.

79. Defendants hijacked the AMSCOT lawsuit for their own benefit and held Plaintiff hostage for Defendants' financial gain.

80. On or about July 25, 2005, Plaintiff sent a copy of his August 16, 2001 letter to Defendants instructing them to settle the lawsuit, to Ian Mackechnie, President of AMSCOT with a cover letter. (Exhibit 11). A month later John Anthony responded to Plaintiff and wrote (in part): "Amscot is disappointed that your lawyer apparently did not obey your instructions regarding discontinuing litigation you and he knew to be frivolous." (Exhibit 12).

81. Defendants failure to obey Plaintiff's instructions to settle the AMSCOT case, and hijack of the case for Defendants' own benefit, were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

#### Defendants Written Evidence of Fraud Against Its Clients

82. In a memorandum dated Monday, August 20, 2001, Mr. Cook wrote the following to memorialize his conversation with Plaintiff about AMSCOT: (Exhibit 13).

a. "I explained to him that I did not believe that the sticking part was created through the attorney's fees, but rather it was the payment to the clients."

b. "I told him of my conversation with John Anthony in which he offered to pay this firm \$5,000.00 but would not agree to pay our client's anything. I told him I rejected that offer. He asked me why I had not mentioned the settlement offer to him previously. I told him it was not a settlement offer. It was an improper payoff attempt."

c. "I told him that the \$50,000.00 demand was not set in stone and we would consider the \$10,000.00 offer that he suggested."

83. Defendants submitted a written offer to AMSCOT August 20, 2001. Mr. Cook wrote (in part): "...our clients are willing to accept \$1,000.00 each, representing the amount of their individual TILA statutory damages. They would also want any outstanding loans forgiven. In addition, we would accept \$50,000.00 to settle this firm's outstanding attorneys' fees and costs." (page 1, paragraph 3) (Exhibit 14).

84. Defendants' August 20, 2001 written settlement offer to AMSCOT is prima facie evidence of Defendants' breach of fiduciary duty. Plaintiff was not restricted to TILA statutory damages in his recovery. TILA damages did not apply. The TILA claims were dismissed with prejudice. Defendants' separate demand for \$50,000 to settle the firm's outstanding attorneys' fees and costs was speculative, not supported by actual fees and expenses incurred, and put Defendants interests ahead of Plaintiff. It was evidence of Defendants' proprietary interest in the AMSCOT litigation.

85. Defendants negotiated with AMSCOT on behalf of Ms. Blomefield and Mr. Clement to have any outstanding loans forgiven. Plaintiff did not have outstanding debt or loans to AMSCOT. Defendants did not seek alternative compensation for Plaintiff.

Defendants further breached their fiduciary duty to Plaintiff by failing to obtain a settlement of equal value for him from AMSCOT.

86. AMSCOT made a counter offer and agreed to pay each plaintiff \$1,000, forgive any outstanding debts (Plaintiff did not have outstanding debts to AMSCOT), and a \$10,000 payment to the Defendants, in a letter dated August 24, 2001.

87. AMSCOT then offered to pay the Defendants the sum of \$50,000. AMSCOT offered to pay each plaintiff \$2,000. There is no documentation supporting AMSCOT's increased offer. Defendants did not provide a bill to AMSCOT for legal services, nor provided any basis for the \$50,000 in attorney's fees and cost.

88. Once AMSCOT agreed to pay Plaintiff and the other clients a monetary settlement, Defendants created a new deceit to evade the contingent fee agreement. Under the agreement, attorneys' fees became part of the Total Recovery. To evade that clause, Defendants represented to Plaintiff that the United States Court of Appeals for the Eleventh Circuit awarded \$50,000 in attorney's fees and costs to the Defendants, and this precluded recovery under the Representation Contract, citing a "whichever is higher" provision for court-awarded attorney's fees and costs. Defendants referred to the \$50,000 as a "claim against AMSCOT for court-awarded fees and costs".

United States Court of Appeals: No Fee-Shifting TILA Costs or Fees

89. Defendants' representation in the preceding paragraph was false. The United States Court of Appeals for the Eleventh Circuit did not award Defendants \$50,000 in attorney's fees and costs to the. Defendants did not have a claim to court-awarded fees and costs because Defendants did not prevail on a TILA claim.

90. Defendants false claim that the United States Court of Appeals for the Eleventh Circuit awarded them \$50,000 in attorney's fees and costs is an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

91. Defendants filed a notice of appeal in AMSCOT August 20, 2001 to the United States Court of Appeals, Eleventh Circuit, Case No. 01-14761-A. Defendants submitted Appellants Initial Brief October 2, 2001. AMSCOT did not submit a reply brief.

92. AMSCOT settled the lawsuit for business reasons October 30, 2001. Defendants did not prevail on a TILA claim. The AMSCOT settlement agreement had a "No Admission" clause. It was expressly understood that the Parties explicitly denied any wrongdoing, liability, or obligation whatsoever to the other party relating to the settlement.

93. Mr. Cook submitted a Joint Stipulation For Dismissal With Prejudice in the AMSCOT case November 6, 2001 with the US Court of Appeals for the Eleventh Circuit that the parties amicably resolved the matter and moved for dismissal with prejudice with each party bearing its own attorneys' fees and costs. (Exhibit 15). This is conclusive evidence that Defendants did not have an award of attorneys' fees and costs pursuant to a fee-shifting TILA statute. Likewise Defendants did not have a "claim against AMSCOT for court-awarded fees and costs."

94. On December 7, 2001 the US District Court of Appeals for the Eleventh Circuit ruled that the Joint Stipulation for Dismissal with Prejudice was construed as a motion to dismiss the appeal with prejudice, with the parties bearing their own costs and attorney's fees. (Exhibit 16). This is conclusive evidence that Defendants did not have an award of

attorneys' fees and costs pursuant to a fee-shifting TILA statute. Likewise Defendants did not have a "claim against AMSCOT for court-awarded fees and costs."

FRAUD IN THE INDUCEMENT, Release and Settlement Agreement with AMSCOT

95. On October 30, 2001 Defendants fraudulently induced Plaintiff, Ms. Blomefield and Mr. Clement to sign a Release and Settlement Agreement with AMSCOT Corporation. ("AMSCOT agreement"). (Exhibit 17). Paragraph 1 is Settlement with Plaintiffs for \$2,000 each. Paragraph 2 is Settlement with Firm, the Defendants, and reads: "Amscot shall pay the Firm the sum of Fifty Thousand Dollars and No/100 (\$50,000), in satisfaction of Plaintiffs' claims for attorneys' fees and costs, as more fully described herein, against Amscot as asserted in the Action." To induce Plaintiff to sign the AMSCOT agreement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that the \$50,000 sum was a claim for court-awarded fees and costs. The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the Release and Settlement Agreement with AMSCOT.

d. Plaintiff relied upon Defendants falsehood as true and signed the agreement October 30, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered

financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

96. Defendants fraud to induce Plaintiff to sign the AMSCOT agreement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

97. Plaintiff, Ms. Blomefield and Mr. Clement did not immediately receive the \$2,000 payment from AMSCOT described in paragraph 1 of the AMSCOT agreement. Payment was held for three days until Plaintiff, Ms. Blomefield and Mr. Clement signed Defendants closing statement on November 1, 2001.

FRAUD IN THE INDUCEMENT, Defendants' Closing Statement in AMSCOT

98. On November 1, 2001, Defendants fraudulently induced Plaintiff to sign a closing statement prepared by Defendants in the AMSCOT lawsuit. (Exhibit 18). Defendants also fraudulently induced Ms. Blomefield and Mr. Clement to sign similar closing statements. To induce Plaintiff to sign the closing statement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that "...AMSCOT Corporation separately paid my attorneys \$50,000.00 to compensate my attorneys for their claim against AMSCOT for court-awarded fees and costs." The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the closing statement made by Defendants in the AMSCOT lawsuit.

d. Plaintiff relied upon Defendants falsehood as true and signed the closing statement November 1, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

99. Defendants fraud to induce Plaintiff to sign the closing statement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

Defendants AMSCOT Closing Statement Does Not Comply with Florida Bar Rules

100. Defendants' closing statement in the AMSCOT lawsuit (Exhibit 18) does not comply with Rule 4-1.5(f)(5), The Rules Regulating The Florida Bar. Defendants closing statement fails to:

(a) Reflect an itemization of all costs and expenses. Costs and expenses in the AMSCOT lawsuit of \$3,580.88 were not itemized as required.

(b) Show the amount of fee received by each participating lawyer or law firm. Payment to Jonathan Alpert for the AMSCOT lawsuit of \$2,544.79 was not shown.

(c) A copy of the closing statement was not executed by all participating lawyers. Jonathan Alpert received payment of \$2,544.79 from the AMSCOT settlement but did not execute the closing statement.

101. Defendants preparation and execution of a closing statement in the AMSCOT lawsuit that does not comply with Rule 4-1.5(f)(5) was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

102. Defendants cannot avoid compliance with Rule 4-1.5(f)(5), The Rules Regulating The Florida Bar, by claiming AMSCOT paid its attorneys' fees and costs. The rule does not alleviate attorneys from compliance under this claimed contingency.

103. Defendants' closing statement in the AMSCOT lawsuit further violates Rule 4-1.5(f)(5), The Rules Regulating The Florida Bar, by falsely stating Defendants had a \$50,000 "claim against AMSCOT for court-awarded fees and costs" or that AMSCOT separately paid this "claim". Defendants did not have a claim against anyone in the AMSCOT lawsuit for \$50,000 in court-awarded fees and costs. Defendants did not prevail on a TILA claim. The fee-shifting TILA claims were dismissed with prejudice by the court. Defendants knew that three separate courts dismissed three separate lawsuits they brought, and each court held that TILA claims were not possible because the law was not retroactive. AMSCOT settled the lawsuit for business reasons October 30, 2001. The AMSCOT settlement agreement had a "No Admission" clause and it was expressly understood that the Parties explicitly denied any wrongdoing, liability, or obligation whatsoever to the other party in the settlement.

#### Conclusion of the ACE Lawsuit

104. Defendants failed to adequately represent Plaintiff in the ACE lawsuit.

105. On or about May 22, 2002 Plaintiff called opposing counsel, Mr. Paul D. Watson, was greeted by voice mail, and left a message that was substantially the following:

"This is Neil Gillespie, my number is 246-5186, I am calling about the ACE case, I had called Bush, Ross and was told you left and that you took the case with you. At this point I am interested in settling the case and am not real satisfied with the current counsel that I have and would like to speak with you more about that."

106. On June 12, 2002 a mediation was held in the ACE lawsuit. The mediator was Gasper Ficarrotta of Tampa. Opposing counsel Neil A. Sivyver was present and acknowledged Plaintiff's voice mail to Mr. Watson of May 22, 2002. Mr. Sivyver assured



Plaintiff he would settle his claims in the ACE lawsuit that day regardless of what Defendants did with their other client Mr. Clement. (Ms. Blomefield was not a party in the ACE lawsuit).

107. Roger B. Handberg, Senior Assistant Attorney General, was present and represented the AG June 12, 2002 at the mediation described in the preceding paragraph.

108. On June 12, 2002 a Stipulation Of The Parties settled the ACE lawsuit for Plaintiff and Mr. Clement. ACE paid Plaintiff and Clement \$5,000 each, with each party bearing their own fees and costs and shall share in the mediation fees. (Exhibit 19).

109. Plaintiff essentially negotiated for himself because Defendants failed to adequately represent him. Defendants were still Plaintiff's attorney of record.

110. Plaintiff obtained a \$2,000 net settlement negotiating on his own behalf. Defendants obtained a lesser net amount for Mr. Clement while negotiating for him.

111. Defendants prepared a closing statement in the ACE lawsuit dated June 24, 2002. The closing statement is contrived and shows Plaintiff received a \$500 payment from Mr. Clement's settlement. The statement also contains the following language: "I acknowledge receipt of \$500.00 from my Co-Plaintiff, Eugene R. Clement." (Exhibit 20).

112. Defendants' closing statement in the ACE lawsuit violates bar rules because there is no provision for Plaintiff, a non-lawyer, to receive settlement proceeds in a contingent fee case belonging to a co-plaintiff or non-lawyer client.

113. Defendants their split attorney's fees with Mr. Clement. Mr. Cook told Plaintiff that Defendants paid Mr. Clement an additional \$500 from Defendants attorneys' fees after the closing statement in the ACE lawsuit was executed to lessen the disparity in

Clement's settlement compared to Plaintiff's settlement. Mr. Cook said Defendants reduced its attorneys' fees and paid Mr. Clement the difference.

#### Florida Attorney General Settlement with ACE Cash Express

114. The Florida AG and ACE entered a Settlement Agreement December 30, 2002. (Exhibit 21). ACE paid a total of \$500,000 in settlement and for issuance by the Florida Department of Banking and Finance, Division of Securities and Finance ("DBF") of authorizations, licenses, or other approvals necessary for ACE to continue in business in Florida, and for releases and other stipulations. ACE paid \$250,000 to the DBF Regulatory Trust Fund in full satisfaction of all attorney's fees, costs, and other expenses incurred by the DBF in connection with this matter. ACE made a contribution of \$250,000 to the Florida State University College of Law in full satisfaction of all attorney's fees, costs and other expenses incurred by the Attorney General in connection with this matter. ACE also agreed to loan forgiveness by an affiliated company, Goleta National Bank for the "Goleta Loan Consumers" with an independent audit paid by ACE.

#### Plaintiff Discovers Defendants Fraud in the AMSCOT Settlement

115. On or about May 9, 2003 Defendants disclosed to Plaintiff the actual costs and expenses incurred in the AMSCOT lawsuit, \$6,125.46. (Exhibit 22). Because of the significant discrepancy between the actual amount and the amount that Mr. Cook said were incurred, \$33,000, Plaintiff further investigated the settlement.

116. Plaintiff located the Appellate Court file and read that the United States Court of Appeals for the Eleventh Circuit granted a Motion for Dismissal with the parties bearing their own costs and attorney's fees. This information and the other evidence provided in

this amended complaint proved the falsity of Defendants' assertion that it had a claim to \$50,000 in "court-awarded fees and costs" or an actual award of \$50,000 under TILA.

117. As a result of Defendants fraud, Plaintiff was not able to give his Informed Consent in the AMSCOT lawsuit or settlement.

ACAP - Attorney Consumer Assistance Program

118. After Plaintiff found evidence of fraud by Defendants in the AMSCOT lawsuit, he consulted counsel who in turn referred him to The Florida Bar. On June 12, 2003 Plaintiff spoke with Donald M. Spangler of the Attorney Consumer Assistance Program. (ACAP). Mr. Spangler assigned reference no. 03-18867 to the matter. Upon a review of the facts as Plaintiff described, Mr. Spangler said Plaintiff could make a bar complaint. Mr. Spangler also said Plaintiff could contact Mr. Cook to try and settle the matter. The Florida Bar complaint form specifically states "...you should attempt to resolve your matter by writing to the subject attorney, before contacting ACAP or filing a complaint. Even if this is unsuccessful, it is important that you do so in order to have documentation of good-faith efforts to resolve your matter."

119. Plaintiff wrote Mr. Cook June 13, 2003 in a good faith effort to resolve the matter. Plaintiff included a spreadsheet showing how he arrived at the proposed resolution.

120. Mr. Barker responded to Plaintiff by letter of June 19, 2003 on behalf of Mr. Cook and Defendants. Mr. Barker misquoted Plaintiff's good faith effort to resolve this matter through ACAP and accused Plaintiff of felony extortion. Barker wrote "First, you state that if our law firm does not pay you money, then you will file a complaint against Mr. Cook with the Florida Bar and contact our former clients. We consider this threat to

be extortionate. See § 836.05 Fla. Stat. (2000); Carricarte v. State, 384 So.2d 1261 (Fla. 1980); Cooper v. Austin, 750 So.2d 711 (Fla. 5<sup>th</sup> DCA 2000); Gordon v. Gordon, 625 So.2d 59 (Fla. 4<sup>th</sup> DCA 1993); Berger v. Berger, 466 So.2d 1149 (Fla. 4<sup>th</sup> DCA 1985).”

### **COUNT 1 – BREACH OF FIDUCIARY DUTY**

121. Plaintiff realleges and incorporates by reference paragraphs 1 through 120.
122. Plaintiff adds this allegation of breach of fiduciary duty in the AMSCOT lawsuit to the amended complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).
123. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.
124. An attorney has a personal fiduciary obligation to a client independent of any employee relationship he may have with his law firm.
125. Defendants’ actions alleged above constituted a breach of that fiduciary obligation in that Defendants sought to advance its own interests over the interests of Plaintiff.
126. Plaintiff was damaged in that he did not receive the full value for his claims in the lawsuit forward by Defendants nor did he receive full value from Defendants’ services.
127. Defendants’ actions were the direct cause of Plaintiff’s damages.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for beach of fiduciary duty, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, with interest, costs, expenses, and attorney’s fees.

### **COUNT 2 - BREACH OF IMPLIED-IN-LAW CONTRACT, AMSCOT**

128. Plaintiff realleges and incorporates by reference paragraphs 1 through 127.
129. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.

130. A representation contract must comply with The Rules Regulating The Florida Bar. A representation contract that does not comply with The Rules Regulating The Florida Bar is void and unenforceable.

131. Defendants represented Plaintiff in the AMSCOT lawsuit on a contingent fee basis beginning December 12, 2000.

132. From December 12, 2000 through July 22, 2001, there was no contingent fee contract whatsoever between Plaintiff and Defendants.

133. Defendants belatedly prepared a written contingent fee agreement in the AMSCOT lawsuit approximately seven (7) months later on or about July 23, 2001, in violation of Bar Rule 4-1.5(f)(2).

134. The belatedly prepared written contingent fee agreement in the AMSCOT lawsuit was not signed by Plaintiff or Defendants in violation of Bar Rule 4-1.5(f)(2). (Exhibit 5). The agreement remains unsigned today.

135. The Total Recovery in the AMSCOT lawsuit was \$56,000.

136. At the time AMSCOT settled there were three plaintiffs. Each plaintiff is entitled to a one-third share of the \$56,000 Total Recovery or \$18,666.66 each.

137. Defendants are prohibited from claiming any part of the \$56,000 Total Recovery in the AMSCOT lawsuit as attorneys' fees because an unsigned contingent fee agreement is a violation of Bar Rule 4-1.5(f)(2) and therefore void and unenforceable.

138. Defendants paid Plaintiff \$2,000 in the AMSCOT lawsuit.

139. Defendants owe Plaintiff \$16,666.66 in the AMSCOT lawsuit.

WHEREFORE Plaintiff demands judgment for \$16,666.66 against Defendants, together with punitive damages, interest, costs, expenses, and attorney's fees.

**COUNT 3 - BREACH OF IMPLIED-IN-FACT CONTRACT, AMSCOT**

140. Plaintiff realleges and incorporates by reference paragraphs 1 through 139.
141. Plaintiff alleges an alternative claim for relief under breach of contract in the AMSCOT lawsuit settlement pursuant to Rule 1.110(g), Fla.R.Civ.P.
142. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.
143. Defendants represented Plaintiff in the AMSCOT lawsuit on a contingent fee basis beginning December 12, 2000.
144. From December 12, 2000 through July 22, 2001, there was no contingent fee contract whatsoever between Plaintiff and Defendants.
145. Defendants belatedly prepared a written contingent fee agreement in the AMSCOT lawsuit approximately seven (7) months later on or about July 23, 2001, in violation of Bar Rule 4-1.5(f)(2).
146. The belatedly prepared written contingent fee agreement in the AMSCOT lawsuit was not signed by any of the parties in violation of Bar Rule 4-1.5(f)(2). (Exhibit 5). The agreement remains unsigned today.
147. The AMSCOT lawsuit settled on October 30, 2001 for business reasons. Defendants did not prevail on the merits or appeal in the AMSCOT lawsuit.
148. The Total Recovery in the AMSCOT lawsuit was \$56,000.
149. Defendants refused to honor the terms of the contingent fee agreement with Plaintiff in the settlement of the AMSCOT lawsuit when disbursing his share of the \$56,000 Total Recovery.
150. Under the terms of the contingent fee agreement in the AMSCOT lawsuit, and the Rules Regulating The Florida Bar, a lawful accounting is calculated as follows:

Total Recovery	\$56,000	\$56,000
- Costs and Expenses	- \$3,580.70	\$52,419.30
- Lien, Jonathan L. Alpert	- 2,544.70	\$49,874.60
- 45% Contingent Fee	- \$22,443.57	\$27,431.03
- 2/3 due to the 2 other clients	- \$18,287.35	\$9,143.68
- \$2,000 already paid	- \$2,000	\$7,143.68

151. Contrary to law and the contingent fee agreement, Defendants took \$50,000 from the Total Recovery under the guise of court-awarded attorney's fees and costs in the AMSCOT lawsuit.

152. Defendants unjust enrichment was \$21,431.03 in the AMSCOT lawsuit.

153. Plaintiff's lawful share of the settlement is \$9,143.68 in the AMSCOT lawsuit.

154. Defendants paid Plaintiff \$2,000.00 in the AMSCOT lawsuit.

155. Defendants owe Plaintiff \$7,143.68 in the AMSCOT lawsuit.

156. Defendants actions were the direct cause of the Plaintiffs damages.

WHEREFORE plaintiff demands judgment for \$7,143.68 against Defendants, together with punitive damages, interest, costs, expenses, and attorney's fees.

#### **COUNT 4 - FRAUD, AMSCOT RELEASE AND SETTLEMENT**

157. Plaintiff realleges and incorporates by reference paragraphs 1 through 156.

158. Plaintiff adds an allegation of Fraud in the Release and Settlement with AMSCOT to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

159. Under Florida law, partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the

ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965).

160. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.

161. On October 30, 2001 Defendants fraudulently induced Plaintiff, Ms. Blomefield and Mr. Clement to sign a Release and Settlement Agreement with AMSCOT

Corporation. (AMSCOT agreement). (Exhibit 17). Paragraph 1 is Settlement with Plaintiffs for \$2,000 each. Paragraph 2 is Settlement with Firm, the Defendants, and reads: "Amscot shall pay the Firm the sum of Fifty Thousand Dollars and No/100 (\$50,000), in satisfaction of Plaintiffs' claims for attorneys' fees and costs, as more fully described herein, against Amscot as asserted in the Action." To induce Plaintiff to sign the AMSCOT agreement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that the \$50,000 sum was a claim for court-awarded fees and costs. The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the Release and Settlement Agreement with AMSCOT.

d. Plaintiff relied upon Defendants falsehood as true and signed the agreement October 30, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered



financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

162. Defendants actions were the direct cause of the Plaintiffs damages.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for fraud, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, together with interest, costs, expenses, and attorney's fees.

#### **COUNT 5 - FRAUD, CLOSING STATEMENT**

163. Plaintiff realleges and incorporates by reference paragraphs 1 through 162.

164. Under Florida law, partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965).

165. At all times pertinent Defendants were in a fiduciary relationship with Plaintiff.

166. On November 1, 2001, Defendants fraudulently induced Plaintiff to sign a closing statement prepared by Defendants in the AMSCOT lawsuit. (Exhibit 18). Defendants also fraudulently induced Ms. Blomefield and Mr. Clement to sign similar closing statements. To induce Plaintiff to sign the closing statement:

a. Defendants represented to Plaintiff, Ms. Blomefield and Mr. Clement that "...AMSCOT Corporation separately paid my attorneys \$50,000.00 to compensate my attorneys for their claim against AMSCOT for court-awarded fees and costs." The representation was a false statement concerning a material fact. The TILA claims were dismissed and there was no claim to court-awarded fees and costs.

b. Defendants made the statement knowing that the representation was false. Defendants knew the TILA claims were dismissed and there was no claim to court-awarded fees and costs.

c. Defendants intended the representation would induce Plaintiff to act upon it and signed the closing statement made by Defendants in the AMSCOT lawsuit.

d. Plaintiff relied upon Defendants falsehood as true and signed the closing statement November 1, 2001 in return for payment of \$2,000 from AMSCOT. Plaintiff suffered financial loss of \$7,143.68 by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

167. Defendants actions were the direct cause of the Plaintiffs damages.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for fraud, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, together with interest, costs, expenses, and attorney's fees.

#### **COUNT 6 - NEGLIGENCE**

168. Plaintiff realleges and incorporates by reference paragraphs 1 through 167.

169. Plaintiff adds this allegation of negligence in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

170. Under Florida law, partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965).

171. Defendants had a duty under law to conform to a certain standard of conduct for the protection of others, including the Plaintiff.

172. As set forth in Plaintiff's First Amended Complaint, Defendants failed to perform the duty owed Plaintiff.

173. Defendants were the proximate cause of Plaintiff's damages.

WHEREFORE Plaintiff demands judgment against Defendants in the amount of his loss and damages plus punitive damages, together with interest, costs, expenses, and attorney's fees.

#### **COUNT 7 - NEGLIGENT MISREPRESENTATION**

174. Plaintiff realleges and incorporates by reference paragraphs 1 through 173.

175. Plaintiff adds this allegation of negligent misrepresentation in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

176. Under Florida law, partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965).

177. Defendants misrepresented to Plaintiff that his damages in the AMSCOT lawsuit were limited to \$1,000 under a fee-shifting provision of the federal Truth In Lending Act (TILA). This was a misrepresentation of a material fact.

178. Defendants either knew of the misrepresentation, made the misrepresentation without knowledge of its truth or falsity, or should have known the representation was false.

179. Defendants intended to induce Plaintiff to act on the misrepresentation. Plaintiff lacked Informed Consent, the ability to make an informed choice when he signed the

Release and Settlement with AMSCOT and Closing Statement because of Defendants' deceptions set forth in Plaintiff's First Amended Complaint.

180. Plaintiff suffered financial loss of \$7,143.68 while acting in justifiable reliance upon the misrepresentation by accepting the sum of \$2,000 instead of the sum of \$9,143.68 to which Plaintiff was entitled under law and the Representation Contract.

WHEREFORE Plaintiff demands judgment in the amount of his loss of \$7,143.68 for fraud, plus treble punitive damages of \$21,431.04, for judgment of \$28,574.72 against Defendants, together with interest, costs, expenses, and attorney's fees.

#### **COUNT 8 - UNJUST ENRICHMENT**

181. Plaintiff realleges and incorporates by reference paragraphs 1 through 180.

182. Plaintiff adds this allegation of unjust enrichment in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

183. Under Florida law, partners engaged in the practice of law are each responsible for the fraud or negligence of another partner when the later acts within the scope of the ordinary business of an attorney. Smyrna Developers, Inc. v. Bornstein, 177 So.2d 16 (Fla. Dist. Ct. App. 2d Dist. 1965).

184. Plaintiff has conferred a benefit on Defendants, who have knowledge thereof, the overpayment of \$16,666.66 in Count 3, Breach of Implied-In-Law contract.

185. Plaintiff has conferred a benefit on Defendants, who have knowledge thereof, the overpayment of \$7,143.68 in Count 4, Breach of Implied-In-Fact contract.

186. Defendants voluntarily accepted and retained the benefit conferred.

187. The circumstances render Defendant's retention of the benefit inequitable unless the Defendant pays to Plaintiff the value of the benefit.

188. Defendant has been unjustly enriched at the expense of Plaintiff.

189. Plaintiff is entitled to damages as a result of Defendant's unjust enrichment, including the disgorgement of all monies unlawfully accepted by Defendant from Plaintiff.

**WHEREFORE,** Plaintiff demands judgment for monetary damages against Defendants for unjust enrichment and such other relief this Court deems just and proper, together with punitive damages, interest, costs, expenses, and attorney's fees.

#### **COUNT 9 - CIVIL CONSPIRACY**

190. Plaintiff realleges and incorporates by reference paragraphs 1 through 190.

191. Plaintiff adds this allegation of civil conspiracy in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

192. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook are parties to a civil conspiracy.

193. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook conspired to do both lawful and unlawful acts by unlawful means.

194. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook conspired to do the things complained about in this lawsuit to harm Plaintiff, including Breach of Fiduciary Duty, Breach of Implied-In-Law Contract, Breach of Implied-In-Fact Contract, Fraud, Negligence, Negligent Misrepresentation, Unjust Enrichment, Invasion of Privacy and Abuse of Process.

195. Named Defendants Mr. Barker, Mr. Rodems and Mr. Cook owed a duty to Plaintiff as his attorneys to protect Plaintiff from harm resulting from Breach of Fiduciary Duty, Breach of Implied-In-Law Contract, Breach of Implied-In-Fact Contract, Fraud, Negligence, Negligent Misrepresentation, Unjust Enrichment, Invasion of Privacy, and Abuse of Process.

196. Upon information and belief, Defendants conspired against other clients. An application submitted by Mr. Rodems showed former clients Rita M. Pesci and Roslyn Vazquez made complaints they were overcharged in contingent fee agreements.

197. Defendants' pressure of Plaintiff and offer of incentives to sue AMSCOT was likely a crime under section 877.01(1), Florida Statutes, Instigation of litigation, and an overt act in furtherance of their conspiracy against Plaintiff and the other co-plaintiffs.

198. Defendants' deceit and conflict of interest created by executing the Class Representation Contract to sue AMSCOT November 3, 2000, knowing they already formed another law firm and did not plan to honor the contract, was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

199. Defendants refusal to honor the contingent fee agreement in the AMSCOT lawsuit was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

200. Defendants "sticking part" argument was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

201. Defendants false claim to court-awarded fees and costs was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

202. Defendants false claim that it incurred \$33,000 in costs and expenses was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

203. Defendants creation of a deceptive and misleading closing statement, and failure to itemize costs and expenses of \$6,125.46 required by bar Rule 4-1.5(f)(5), was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

204. Defendants separate negotiation with AMSCOT for its attorneys' fees, and Defendants' August 15, 2001 letter to Plaintiff were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

205. Defendants failure to obey Plaintiff's instructions to settle the AMSCOT case, and hijack of the case for Defendants' own benefit, were overt acts in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

206. Defendants false claim that the United States Court of Appeals for the Eleventh Circuit awarded them \$50,000 in attorney's fees and costs is an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

207. Defendants fraud to induce Plaintiff to sign the AMSCOT agreement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

208. Defendants fraud to induce Plaintiff to sign the closing statement was an overt act in furtherance of their conspiracy against Plaintiff, Ms. Blomefield and Mr. Clement.

209. Defendants accusation that Plaintiff committed felony extortion for his good-faith effort to settle this matter through the Attorney Consumer Assistance Program (ACAP) of The Florida Bar. Mr. Barker accused Plaintiff of criminal extortion for his effort to settle the matter was an overt act in furtherance of their conspiracy against Plaintiff.

210. Defendants' conspiracy and their overt acts caused Plaintiff to suffer damages.

**WHEREFORE,** Plaintiff demands judgment for damages against Defendants Mr. Barker, Mr. Rodems and Mr. Cook for civil conspiracy and such other relief this Court deems just and proper together with punitive damages, interest, costs, expenses, and attorney's fees.

**COUNT 10 - INVASION OF PRIVACY**

211. Plaintiff realleges and incorporates by reference paragraphs 1 through 210.

212. Plaintiff adds this allegation of invasion of privacy in the AMSCOT lawsuit to Plaintiff's First Amended Complaint under the relation back doctrine, Fla.R.Civ.P., Rule 1.190(c).

213. Defendants published Plaintiff's privileged medical information during the course of the AMSCOT lawsuit. Defendants published information about Plaintiff's disability, treatment and rehabilitation. Plaintiff's medical condition was not at issue in the AMSCOT lawsuit. The AMSCOT litigation concerned check cashing, the federal Truth In Lending Act (TILA), Florida state usury law, and the Florida Deceptive and Unfair Trade Practices Act.

214. Defendants published Plaintiff's privileged medical information in response to AMSCOT's interrogatories to Neil Gillespie. Defendants failed to object to interrogatories about Plaintiff's privileged medical information.

215. Defendants published Plaintiff's privileged medical information during a deposition with AMSCOT. Plaintiff was deposed May 14, 2001 by John A. Anthony, attorney for AMSCOT Corporation. Approximately twenty pages of the 122 page transcript concerned Plaintiff's disability, treatment and rehabilitation. Defendants failed to object to interrogatories about Plaintiff's privileged medical information. Defendants



later published the information by ordering and distributing the transcript of the deposition. Defendants allowed co-plaintiff Gay Ann Blomefield to attend Plaintiff's deposition and hear Plaintiff's privileged medical information.

216. Defendants published private facts about Plaintiff that are offensive and are not of legitimate public concern. Defendants permitted a wrongful intrusion into Plaintiff's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.

217. The Florida Supreme Court has held that public disclosure of private facts—the dissemination of truthful private information which a reasonable person would find objectionable, is one of four types of wrongful conduct that can be remedied through an action for invasion of privacy. *See Agency for Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So.2d 1239, 1252 n. 20 (Fla. 1996).

218. Defendants' actions were the direct cause of Plaintiff's damages.

WHEREFORE Plaintiff demands judgment against Defendants for Invasion of Privacy in an amount determined by a jury, together with punitive damages, interest, costs, expenses, and attorney's fees.

#### **COUNT 11 - ABUSE OF PROCESS**

219 Plaintiff realleges and incorporates by reference paragraphs 1 through 218.

220. Defendants BRC and Mr. Cook sued Plaintiff January 19, 2006 in a counterclaim for libel over a July 25, 2005 letter Plaintiff wrote to Ian Mackechnie, President of AMSCOT Corporation. In fact Plaintiff's letter to Mackechnie also included another enclosed letter. The letter to Mackechnie discussed the lawsuit Clement v. Amscot Corporation, Case No. 8:99-ev-2795-T-26C where Defendants represented Plaintiff. The

second enclosed letter was a copy of Plaintiff's letter to Mr. Cook dated August 16, 2001 written during the course of the AMSCOT lawsuit instructing Mr. Cook to settle the lawsuit. Defendants failed to obey Plaintiff's instruction to settle. The letter (but not enclosure) was attached to Plaintiff's initial complaint as Exhibit 8. The letter and attachment is attached to Plaintiff's First Amended Complaint as Exhibit 11.

221. The filing of a counterclaim may constitute issuance of process for the purpose of an abuse of process action. *Peckins v. Kaye*, 443 So.2d 1025, 1026 (Fla. 2d DCA 1983).

222. On September 7, 2006 attorney David M. Snyder representing Plaintiff notified Mr. Rodems by letter that "Defendant's counterclaim for defamation, while it may have stated a cause of action at the outset, has little chance of ultimate success given the limited distribution and privileged nature of the publication complained of. *See e.g. Nodar v. Galbreath*, 462 So. 2d 803 (Fla. 1984)."

223. Upon information and belief, Defendants' counterclaim for libel against Plaintiff is a willful and intentional misuse of process for the collateral purpose of making Plaintiff drop his claims against Defendants and settle this lawsuit on terms dictated by them. Defendants have perverted the process of law for a purpose for which it is not by law intended. Defendants are using their counterclaim as a form of extortion.

234. On at least six (6) separate occasions Defendants, by and through their counsel Mr. Rodems, now a Defendant himself, have offered a "walk-away" settlement:

a. September 14, 2006, Mr. Rodems wrote Plaintiff's lawyer Mr. Snyder that "We would agree, however, to a walk away. That is, each party dismisses all claims with prejudice, each party to bear his or its own attorneys' fees and costs."

b. October 5, 2006, Mr. Rodems wrote Plaintiff's lawyer Mr. Snyder and stated: "To clarify, our offer to settle is as follows: (1) We will dismiss our claims with prejudice, Gillespie dismisses his with prejudice, and neither side will pay the other any money; and, (2) Gillespie agrees to sign a general release to be prepared by us; and, (3) Gillespie must agree to appear in court to announce the settlement and submit to questioning from me regarding the voluntariness of his settlement; and, (4) Gillespie must agree to hire and pay a court reporter to transcribe the settlement hearing. The offer is open until 5:00 p.m. on Friday, October 6, 2006 and must be accepted in writing received in this office before the deadline by facsimile or hand delivery with your or his signature."

c. February 7, 2007 Mr. Rodems contacted Plaintiff directly by letter and wrote (in part): "If it is your desire to end this litigation, we are prepared to offer the following settlement terms: We mutually agree to dismiss all claims pending in this action, and to waive any other claims we or you may have, with each party to bear his or its own fees and costs. We will not seek any attorneys' fees or costs from you. A mutual release is enclosed. You are free to consult with an attorney regarding this offer, at your own expense. You are not obligated to accept this offer."

d. At various time during 2007 and possibly 2008 Mr. Rodems made similar settlement offers to Plaintiff's former counsel Robert W. Bauer.

e. Some time in August or September 2009 Mr. Rodems made a similar settlement offer to attorney Seldon J. "Jeff" Childers on Plaintiff's behalf.

f. January 28, 2010 Mr. Rodems contacted Plaintiff directly by letter with the following offer, a resubmission of a failed email from January 26, 2010:

“However, I would like to once again propose to you an opportunity to settle with Mr. Cook and Barker, Rodems & Cook, P.A. whereby you would pay them no money and they would pay you no money. The offer is as follows: Mr. Cook and Barker, Rodems & Cook, P.A. would dismiss the counterclaims for libel and would issue a satisfaction of judgment for the judgment against you in exchange for your dismissal of your pending claims.”

235. In a letter to Plaintiff dated November 19, 2007, Chief Branch Disciplinary Counsel Susan V. Bloemendaal, The Florida Bar, responded to Plaintiff’s allegation that Mr. Rodems improperly filed a counterclaim. Bloemendaal wrote (relevant portion): “Concerning your allegation that the claim is frivolous, this is an issue for the trial court in the pending civil case.”

236. Defendants’ actions were the direct cause of Plaintiff’s damages.

WHEREFORE Plaintiff demands judgment against Defendants the amount of his loss, his attorney’s fees and costs for defending the counterclaim, together with punitive damages, interest, costs, expenses, and attorney’s fees.

**COUNT 12 - Claim for Punitive Damages Pursuant to §768.72 Florida Statutes**

237. Plaintiff realleges and incorporates by reference paragraphs 1 through 236.

238. Pursuant to section 768.72(1), Florida Statutes, Plaintiff amends his complaint to assert a claim for punitive damages. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages.

239. Pursuant to section 768.72(2) Florida Statutes, Plaintiff asserts a claim for punitive damages because Defendants were personally guilty of fraud, intentional misconduct or gross negligence.

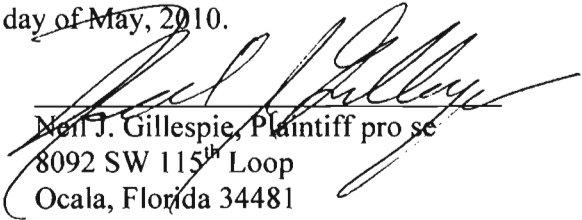
240. Pursuant to section 768.72(3) Florida Statutes, Plaintiff asserts a claim for punitive damages against Barker, Rodems & Cook, PA for the conduct of Mr. Barker, Mr. Rodems and Mr. Cook and states their conduct meets the criteria specified in subsection (2) and the corporation actively and knowingly participated in such conduct; The officers, directors, or managers of the corporation knowingly condoned, ratified, or consented to such conduct; and the corporation engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the Plaintiff.

WHEREFORE Plaintiff demands final judgment on all counts for compensatory and punitive damages against Defendants, together with interest, costs, expenses, and attorney's fees, and other remedy the Court deems just and proper.

**Demand for Trial by Jury**

Pursuant to Rule 1.430(b) of the Fla. R. Civ. P., plaintiff demands trial by jury.

RESPECTFULLY SUBMITTED this 5th day of May, 2010.

  
Neil J. Gillespie, Plaintiff pro se  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: (352) 854-7807

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Ryan C. Rodems, attorney for Barker, Rodems & Cook, P.A., 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602, this 5th day of May, 2010.

  
Neil J. Gillespie

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Exhibit 1	Class Representation Contract, ACE (Alpert firm) March 21, 2000
Exhibit 2	Class Representation Contract, AMSCOT (Alpert firm) November 6, 2000
Exhibit 3	Letter of William J. Cook to Neil Gillespie, December 6, 2000, new firm formed
Exhibit 4	Letter of William J. Cook to Neil Gillespie, July 23, 2001, new fee contracts
Exhibit 5	New fee contract, AMSCOT (BRC), not signed, never executed
Exhibit 6	New fee contract, ACE (BRC), not signed, never executed
Exhibit 7	Order in ACE, TILA claims & case dismissed, US Dist. Judge Moody, Dec-21-2000
Exhibit 8	Order in AMSCOT, TILA claims & case dismissed, US Dist. Judge Lazzara, Aug-01-2001
Exhibit 9	Letter of William Cook to Neil Gillespie, August 15, 2001, rejects contingent fee agreement
Exhibit 10	Letter of Neil Gillespie to William J. Cook, August 16, 2001, instructions to settle AMSCOT
Exhibit 11	Letter of Neil Gillespie to Ian Mackechnie, President, AMSCOT, July 25, 2005
Exhibit 12	Letter of John A. Anthony to Neil Gillespie, August 26, 2005, BRC did not obey instructions
Exhibit 13	Memorandum of William J. Cook, August 20, 2001, \$50K “improper payoff attempt” etc.
Exhibit 14	Letter of William J. Cook to John Anthony, demands \$1K for clients, \$50K for BRC
Exhibit 15	US Court of Appeals, 11 <sup>th</sup> Cir., Joint Stipulation for Dismissal AMSCOT, Nov-11-2001
Exhibit 16	US Court of Appeals, 11 <sup>th</sup> Cir., Order, parties bear own fees & costs, AMSCOT, Dec-07-01
Exhibit 17	Release and Settlement Agreement, AMSCOT, October 30, 2001
Exhibit 18	Closing Statement, AMSCOT, November 1, 2001 without itemized expenses
Exhibit 19	Stipulation Of The Parties, ACE, June 12, 2002
Exhibit 20	Closing Statement, ACE, June 24, 2002 with itemized expenses
Exhibit 21	Florida AG and ACE Settlement Agreement December 30, 2002
Exhibit 22	Letter from William J. Cook, May 9, 2003, itemized expenses in AMSCOT

## CLASS REPRESENTATION CONTRACT

### I. PURPOSE

I/We, Neil J. Gillespie,  
do hereby retain and employ the law firm of Alpert, Barker, Rodems, Ferrentino & Cook,  
P.A., to investigate my potential claim resulting from my transactions with  
ACE and Americash  
and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

### II. COSTS AND EXPENSES

I/We hereby agree to pay for the costs and expenses of the investigation and preparation of my/our claims for damages. Should it be necessary to institute a lawsuit or arbitration proceeding, I/we agree to pay all costs and expenses associated with any Court or arbitration proceeding. If an appeal of any decision is filed, regardless of the person or party filing such appeal, I agree to pay the costs and expenses associated with initiating or responding to such appeal.

I/We authorize Alpert, Barker, Rodems, Ferrentino & Cook, P.A., to advance and pay any costs and expenses it deems appropriate to the handling of my case. I/We will pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for the costs and expenses advanced out of the portion of any recovery remaining after attorneys' fees have been subtracted. I/We will then receive the portion of what remains, which is known as the "net recovery". Thus, the "total recovery" (all monies received or collected, including attorneys' fees, if awarded) less Alpert, Barker, Rodems, Ferrentino & Cook, P.A.'s attorneys' fees and any costs and expenses will equal the "net recovery".

I/We understand that my/our portion of the "net recovery" will be a prorated or per person share which will be proportional to that of all other class members. The amount of money I/we receive will be determined by dividing the "net recovery" (the amount of any recovery remaining after attorneys' fees and expenses have been subtracted) by the number of class members who are determined eligible to receive proceeds from any judgment or settlement. I/We understand that the Court or other tribunal may approve a different ratio or formula depending upon the circumstances.

If there is no recovery, or if the total recovery is not adequate to pay for all of the costs and expenses advanced, I/we understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will not seek payment from me for any expenses.

EXHIBIT

1

If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any costs and expenses allowed by law.

### **III. ATTORNEYS' FEES**

In almost all cases in America, each party to a lawsuit or arbitration proceeding pays its own attorneys' fees. In rare cases, the Defendant(s) may pay all or part of the attorneys' fees or the Court or arbitration panel may award attorneys' fees based upon a statute or otherwise.

I/We agree to pay Alpert, Barker, Rodems, Ferrentino & Cook, P.A., an attorneys' fee if it is successful in obtaining any monies or other benefit on my behalf. I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will receive the attorneys' fees awarded by a Court or arbitration panel or will receive the applicable percentage of the "total recovery" (all monies received from the Defendant(s) including, but not limited to, money for actual damages, punitive damages, interest, penalties, attorneys' fees and expenses), whichever is higher. The applicable percentages shall be as follows:

- A. 33.334% of the "total recovery" prior to the time that an answer is filed or a demand for appointment of arbitrator(s) is made; thereafter,
- B. 40% of the "total recovery" from the time of the filing of an answer or the demand for appointment of arbitrator(s), through the entry of a judgment;
- C. An additional 5% of the "total recovery" after a Notice of Appeal is filed by any person or party or if post-judgment relief or action is required for recovery on the judgment.

In the event that my/our claim is settled on terms of an agreement calling for payment in installments, whether monthly, annually or otherwise, in the future, my/our attorneys' contingent fee percentage shall be calculated on the costs of any structured settlement or, if the cost is unknown, on the present money value of the structured settlement. If both the damages and the attorneys' fees are to be paid out in future installments, this limitation shall not apply.

I/We understand that if there is no recovery, I/we will not be indebted to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., for any attorneys' fees.



If I/we terminate this contract, then Alpert, Barker, Rodems, Ferrentino & Cook, P.A., may seek payment from me/us for any attorneys' fees allowed by law.

#### **IV. ALPERT, BARKER, RODEMS, FERRENTINO & COOK, P.A. MAY WORK WITH OTHER LAWYERS ON MY CASE**

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., in its discretion, may work with other lawyers on my/our case if deemed necessary. If Alpert, Barker, Rodems, Ferrentino & Cook, P.A., agrees to work with other lawyers on my/our case, I/we understand that the attorneys' fees I/we will have to pay will not increase. Other law firms or lawyers hired by Alpert, Barker, Rodems, Ferrentino & Cook, P.A., will be paid out of the attorneys' fees agreed to in this contract and, if I/we so desire, I/we will be advised regarding how the attorneys' fees are divided.

#### **V. WHAT THIS CONTRACT COVERS**

##### **A. Scope of Representation**

At the time of signing this contract, I/we also signed a Statement of Client's Rights as well as an Acknowledgment regarding investigation of my claim. These three documents encompass the entire agreement between me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A. These signed agreements take the place of any prior, oral or written agreements and may only be changed or modified by a separate, written agreement signed and dated by me/us and Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

This contract is to be interpreted in accordance with Florida law.

I/We understand that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., has no duty to represent me/us in any matters other than my/our potential claim resulting from ACE and Americash transactions.

I/We understand that if Alpert, Barker, Rodems, Ferrentino & Cook, P.A., determines, at some later date, that my claim should not or cannot be reasonably prosecuted by the Firm, the Firm may notify me in writing of this decision and withdraw as my attorneys. Under such circumstances, I shall be responsible to Alpert, Barker, Rodems, Ferrentino & Cook, P.A., only for any fees and costs permitted by law.

##### **B. Documents and Information**

I/we authorize the lawyers to utilize my/our documents and/or information in any regulatory, enforcement, or other proceedings of any kind as may be necessary in the lawyers' sole discretion.

**APPROVAL OF THIS CONTRACT**


The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned attorneys.

This contract may be cancelled by written notification to the attorneys at any time within three (3) business days of the date the contract was signed, as shown below, and if cancelled the client(s) shall not be obligated to pay any fees to the attorneys for the work performed during that time. If the attorneys have advanced funds to others in representation of the client(s), the attorneys are entitled to be reimbursed for such amounts as the attorneys have reasonably advanced on behalf of the client(s).

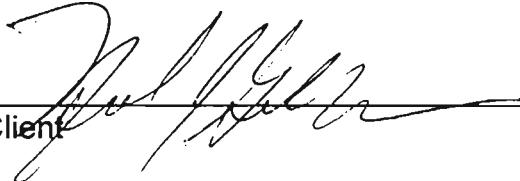
I/We have read this contract and any documents specifically referenced herein, and agree to all terms referenced within such documents.

DATED: March 21, 2000

DATED: March 21, 2000

  
\_\_\_\_\_  
Alpert, Barker, Rodems,  
Ferrentino & Cook, P.A.  
Post Office Box 3270  
Tampa, Florida 33601-3270  
813/223-4131

of

  
\_\_\_\_\_  
Client  
  
\_\_\_\_\_  
Client

## CLASS REPRESENTATION CONTRACT

### I. PURPOSE

I/We, Neil Gillespie,  
do hereby retain and employ the law firm of Alpert, Barker, Rodems, Ferrentino & Cook,  
P.A., to investigate my potential claim resulting from My transactions with  
AMSCOT  
and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Alpert, Barker, Rodems, Ferrentino & Cook, P.A.

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**2**

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my transactions with AMSCOT.

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**B. Documents and Information**

I/we authorize the lawyers to utilize my/our documents and/or information in any regulatory, enforcement, or other proceedings of any kind as may be necessary in the lawyers' sole discretion.

### APPROVAL OF THIS CONTRACT

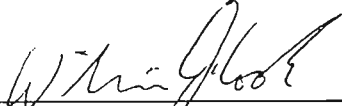
The undersigned client(s) has/have, before signing this contract, received and read the Statement of Client's Rights and understands each of the rights set forth therein. The undersigned client(s) has/have signed the Statement and received a signed copy to refer to while being represented by the undersigned attorneys.

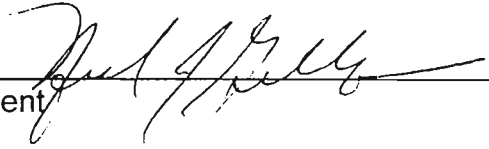
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I/We have read this contract and any documents specifically referenced herein, and agree to all terms referenced within such documents.

DATED: 11/3/2000

DATED: 11-3-2000

  
\_\_\_\_\_ of  
Alpert, Barker, Rodems,  
Ferrentino & Cook, P.A.  
Post Office Box 3270  
Tampa, Florida 33601-3270  
813/223-4131

  
\_\_\_\_\_  
Client  
  
\_\_\_\_\_  
Client

**ALPERT, BARKER, RODEMS, FERRENTINO & COOK**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

FROM THE DESK OF  
WILLIAM J. COOK

100 SOUTH ASHLEY DRIVE, SUITE 2000  
TAMPA, FLORIDA 33602

MAILING ADDRESS  
POST OFFICE BOX 1212  
TAMPA, FL 33601-1212

TELEPHONE (813) 223-4111  
FAX (813) 223-9612

December 6, 2000

Neil J. Gillespie  
Apartment C-2  
1121 Beach Drive NE  
St. Petersburg, Florida 33701-1434

Re: *Gillespie v. ACE America's Cash Express, Inc.*  
U.S.D.C., Middle District, Florida, Case No. 8:00CV-723-T-23B  
Our File No. 00.4813

Dear Neil:

I, along with my partners, Chris Barker and Chris Rodems, are pleased to announce the formation of our own law firm. I will be happy to take your case with me if you would like; however, you have the option of deciding whether you wish to remain with our current firm or whether you wish to retain new attorneys to handle your case.

Should you wish for me to take your file, please execute the attached Client Consent form and return it to me as soon as possible.

Thank you for your time and attention to this matter and I look forward to hearing from you soon.

Sincerely,



William J. Cook

WJC/mss

Enclosures

**EXHIBIT**

**3**

# BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
RYAN CHRISTOPHER RODEMS  
WILLIAM J. COOK

300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/489-1001  
Facsimile 813/489-1008

July 23, 2001

Neil J. Gillespie  
Apartment C-2  
1121 Beach Drive NE  
St. Petersburg, Florida 33701-1434

**Re: Eugene R. Clement, et al. v. AMSCOT Corporation**  
**Case No. : 99.2795-Civ-T-26C**  
**Our File No. : 99-4766**

**Re: Eugene R. Clement v. ACE Cash Express, Inc.**  
**Circuit Court, Thirteenth Judicial Circuit**  
**Consolidated Case No. 99-9730; Division J**  
**Our File No.: 99.4764**

Dear Neil:

I am enclosing new attorneys' fees contracts for each of the two cases in which we are representing you. The agreements are simply a formality to confirm that you have a contractual agreement with our new law firm.

Please review the agreements carefully and if they meet with your approval, please sign them and return them to me.

Thank you for your attention to this.

Sincerely,



William J. Cook

WJC/so  
Enclosures





## **CLASS REPRESENTATION CONTRACT**

### **I. PURPOSE**

I/We, Neil Gillespie, do hereby retain and employ the law firm of Barker, Rodems & Cook, P.A., to investigate my potential claim resulting from my payday loans with AMSCOT Corporation and, if advisable, to pursue necessary litigation on my behalf.

I/We understand that I/we may be one of several plaintiff(s) or part of a class of plaintiff(s) represented by Barker, Rodems & Cook, P.A.

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DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

\_\_\_\_\_  
Barker, Rodems & Cook, P.A.  
300 West Platt Street, Suite 150  
Tampa, Florida 33606  
813/489-1001

of

\_\_\_\_\_  
Client

\_\_\_\_\_  
Client

## **CLASS REPRESENTATION CONTRACT**

### **I. PURPOSE**

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**EXHIBIT**

**6**

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DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

\_\_\_\_\_ of  
Barker, Rodems & Cook, P.A.  
300 West Platt Street, Suite 150  
Tampa, Florida 33606  
813/489-1001

\_\_\_\_\_  
Client

\_\_\_\_\_  
Client



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

FILED  
CM  
00 DEC 22 10:10  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA

**EUGENE R. CLEMENT,**

**Plaintiff,**

**v.**

**Case No. 8:00-cv-593-T-26C**

**ACE CASH EXPRESS, INC.,**

**Defendant.**

**CONSOLIDATED**

---

**NEIL GILLESPIE,**

**Plaintiff,**

**v.**

**[REDACTED]  
(formerly case no. 8:00-cv-723-T-23B)**

**ACE CASH EXPRESS, INC.,**

**Defendant.**

---

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

On December 6, 1999, Plaintiff, Clement, on behalf of himself and others purporting to be similarly situated, filed a class action lawsuit against Ace Cash Express, Inc. ("Defendant") in Florida state court alleging that Defendant's check-cashing services are violative of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), § 501.201 *et seq.*, Fla. Stat. Plaintiff later amended the complaint to add alleged violations of the Truth-In-Lending Act ("TILA"), 15 U.S.C. §1601, *et seq.* Defendant removed the case to federal court on March 27, 2000.<sup>1</sup>

---

<sup>1</sup> Plaintiff Clement's lawsuit did not allege violations of Florida's usury statute.

On April 14, 2000, Plaintiff, Gillespie, on behalf of himself and others purporting to be similarly situated, filed a class action lawsuit against Defendant in this Court for alleged violations of TILA, FDUTPA, and Florida's usury statute, the Florida's Lending Practices Act, Ch. 687, Fla. Stat. Plaintiffs separately moved for consolidation of the cases and on August 1, 2000, the actions were consolidated. The consolidated action, in which this motion to dismiss arises, seeks declaratory and injunctive relief, damages, attorney's fees and costs for alleged violations of TILA, Florida's usury statute, and FDUPTA arising from Defendant's deferred deposit program and allegedly deceptive notices received by Plaintiffs regarding checks returned for insufficient funds.

Defendant moves to dismiss Plaintiffs' claims (Dkt. #43). In addition, the parties have filed various other motions regarding class certification. The Court has considered Defendant's motion to dismiss, the supporting and opposing memoranda (Dkt. #63), and finds that dismissal is appropriate for the reasons stated herein.

### **TRUTH-IN-LENDING ACT**

TILA was enacted to promote informed borrowing by requiring lenders to fully disclose to borrowers the terms of credit being extended in credit transactions; that is, TILA governs only credit disclosures. See 15 U.S.C. §1601; Nussbaum v. Mortgage Service America Co., 913 F. Supp. 1548 (S.D. Fla. 1995). The disclosure requirements under TILA were meant to protect customers from becoming unknowingly obligated to pay hidden and unreasonable charges imposed by a lender and to permit them to meaningfully compare terms of credit extended by different lenders. Nussbaum, 913 F. Supp. at 1548. Plaintiffs allege that Defendant failed to comply with TILA by failing to properly disclose the "amount financed," the "annual percentage rate," and the "finance charge" on

alleged extensions of credit to Plaintiffs. (Consolidated Complaint, ¶47). Plaintiffs claim that Defendant's failure to provide the required disclosures violate TILA.

Defendant contends that TILA does not apply to the check-cashing transactions (deferred deposits or payday advances) at issue in this case and therefore dismissal is appropriate. In essence, Defendant claims that Florida state law controls and that Plaintiffs' transactions with Defendant were not "extensions of credit" for which "interest" was charged, instead the transactions were done in accordance with Florida's Money Transmitters' Code and all fees charged were authorized by statute. Defendant maintains that the State of Florida has identified the transactions at issue as check-cashing transactions, and identified the fees involved as service charges. The Court has reviewed the authority cited by the parties and agrees with Defendant that TILA does not require the disclosures sought by Plaintiffs.

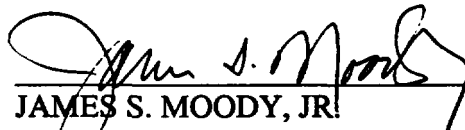
On March 31, 2000, the Federal Reserve Board ("FRB") promulgated revisions to a regulation that interprets TILA as applying to check-cashing transactions. See 65 Fed. Reg. 17129, 30 (2000), to be codified at 12 C.F.R. pt. 226. The revision to the regulation states, however, that the effective date of the new rule is March 24, 2000, but that compliance is "optional" until October 1, 2000. Id. The Court agrees with Defendant that the plain language of the regulation means that compliance was not mandated until October 1, 2000. The transactions at issue in this case occurred prior to the FRB's regulation. Since Plaintiffs' transactions occurred prior to October 1, 2000, TILA is not applicable and cannot form a basis for relief against Defendant. Accordingly, Plaintiffs' claims under TILA are dismissed.

**PLAINTIFFS' REMAINING STATE LAW CLAIMS**

Plaintiffs assert statutory causes of action under Florida's usury statute in Counts II, III, and IV, claiming that "interest" charged "far exceeds" the eighteen percent usury limit, and two separate claims under FDUPA, stating that "in the guise of cashing checks," Defendant loaned money at "exorbitant rates," failed to make proper disclosures and sent "baseless and deceptive" notices to consumers who had checks returned for insufficient funds. The Court notes that the liability of a check cashing business under the circumstances present in this action is one of first impression under Florida law and one which is more properly heard in Florida's state courts. Plaintiffs' state law claims constitute the real body of this case. Without the TILA claim, the essence of Plaintiffs' claims is the alleged violations of Florida's usury law and the FDUPA.

Accordingly, it is therefore **ORDERED AND ADJUDGED** that Defendants' Motion to Dismiss (Dkt. #43) is GRANTED with prejudice as to Plaintiffs' TILA claim. All other remaining claims arise under state law and this Court lacks jurisdiction to hear these claims. This case is therefore **remanded** to the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida. The Clerk is also directed to close the case and forward a certified copy of this Order to that Court.

**DONE and ORDERED** in Tampa, Florida on December 21, 2000.

  
JAMES S. MOODY, JR.  
UNITED STATES DISTRICT JUDGE

Copies furnished to:  
Counsel/Parties of Record

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

EUGENE R. CLEMENT,  
GAY ANN BLOMEFIELD, and  
NEIL GILLESPIE, individually and  
on behalf of others similarly situated,

Plaintiffs,

v.

CASE NO: 8:99-cv-2795-T-26BAJ

AMSCOT CORPORATION,

Defendant.

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FILED  
01 AUG -1 AM 10:10  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

**ORDER**

Before the Court is Plaintiffs' Renewed Motion for Class Certification and supporting memorandum (Dkts. 89 and 92), Amscot's Response in Opposition (Dkt. 101), Plaintiffs' Notice of Supplemental Authority (Dkt. 93), Plaintiffs' Reply Memorandum (Dkt. 114), and all depositions, exhibits, declarations, affidavits, and materials on file. After careful consideration, the Court concludes that the motion should be denied as moot and this case should be dismissed.

**This Lawsuit**

Defendant Amscot Corporation is a Florida corporation doing business in Hillsborough County, Florida. Defendant operates a check cashing business licensed under Chapter 560 of the Florida Statutes. (Dkt. 14 at pg. 2).

**EXHIBIT**

**8**

Plaintiff Eugene R. Clement is a resident of Hillsborough County, Florida, and was a customer of Defendant at a Tampa branch. (Dkt. 14 at pgs. 1 and 4). In December 1997, Mr. Clement filled out an application which provided in part in upper case letters: "Chapter 832, Florida Statutes, makes it a crime for any person to knowingly issue a bad check." (Dkt. 14 at pg. 4 and Exh. A). Mr. Clement periodically engaged in "deferred deposit" transactions by providing Defendant one or more non-postdated checks or postdated checks in return for cash. (Dkt. 14 at pg. 4). Mr. Clement also engaged in rollover transactions with Defendant. (Dkt. 14 at pg. 5). Rollover transactions occur approximately two weeks after the initial transaction when persons may pay an additional 10% of the face amount of the check to extend the "deferral period" another two weeks. (Dkt. 14 at pg. 5).

Plaintiff Gay Ann Blomefield is a resident of Hillsborough County, Florida, and was a customer of Defendant at a Tampa branch. She periodically engaged in "deferred deposit" transactions by providing Defendant one or more non-postdated or postdated checks in return for cash. (Dkt. 86 at pg. 4). Ms. Blomefield also engaged in rollover transactions with Defendant. (Dkt. 86 at pg. 4). She engaged in a series of various transactions with Defendant for approximately two years before this lawsuit was filed. (Dkt. 86 at pg. 4).

Neil Gillespie is a resident of Pinellas County, Florida, and was a customer of Defendant at a St. Petersburg branch. (Dkt. 86 at pg. 5). Mr. Gillespie periodically engaged in "deferred deposit" transactions by providing Defendant one or more non-

postdated checks. (Dkt. 86 at pg. 5). He engaged in deferred deposit transactions on at least eleven occasions ending in November of 1999. (Dkt. 86 at pg. 5).

In two complaints the Plaintiffs and Intervenor Plaintiffs sued Defendant for various violations focusing on its failure to disclose certain information in the transactions and its charging usurious interest. Count I seeks relief under the Truth-in-Lending Act (the TILA). Counts II and III assert state law claims for usury and violations of Florida's Deceptive and Unfair Trade Practices Act (FDUTPA), respectively.

### **Procedural Background**

On September 8, 2000, this Court denied the motion to dismiss the First Amended Class Action Complaint, ruling at that time that sufficient facts were alleged to avoid dismissal of the suit. (Dkt. 45).<sup>1</sup> Neither party directed this Court's attention to 65 Fed. Reg. 17129, in which the Board of Governors of the Federal Reserve System (Board) published revisions to the official staff commentary to Regulation Z promulgated pursuant to the TILA. The revisions, dated March 31, 2000, addressed short-term cash advances known as "payday loans." After considering the arguments made and all the authorities now before it, the Court finds that count I fails to allege a claim for relief

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<sup>1</sup> On March 20, 2001, this Court permitted intervention of Plaintiffs Gay Ann Blomefield and Neil Gillespie and denied class certification without prejudice. (Dkt. 85). On March 23, 2001, Plaintiffs' counsel filed the Class Action Complaint-in - Intervention. (Dkt. 86).

under the TILA.<sup>2</sup> Moreover, any attempt at stating a claim under the TILA would be futile. Having reached this conclusion, the motion for class certification is now moot.

### **Count I: Truth-in-Lending Violations**

#### **The Board's Role**

Congress delegated expansive authority to the Board to promulgate regulations to carry out the purpose of the TILA. See 15 U.S.C.A. § 1604(a); Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 560, 566 (1980). One of the purposes of the TILA is “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.” See 15 U.S.C.A. § 1604(a). The Board created Regulation Z as a regulation necessary to effectuate the purposes of the TILA. See 12 C.F.R. § 226 (a) (“This regulation, known as Regulation Z, is issued by [the Board] to implement the [TILA], which is contained in Title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.).”).

Apart from the promulgation of regulations to implement the TILA, the Board may also rely on its staff to issue administrative interpretations in the form of an official staff commentary. See 15 U.S.C.A. § 1640(f). As stated by the Board in its March 31, 2000, issuance of a final rule addressing payday loans:

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<sup>2</sup> As to the remaining two state-law claims for usury and violations of Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA), the Court finds it inappropriate to exercise its pendent jurisdiction.



The Board's official staff commentary (12 C.F.R. part 226 (Supp. I)) interprets [Regulation Z], and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions.

Congress has bestowed such great authoritative weight to the interpretations and applications by the staff of the Board, that "it is unrealistic to draw a radical distinction between opinions issued under the imprimatur of the Board and those submitted as official staff memoranda." See Ford Motor, 444 U.S. at 566 n.9.

### *The Court's Role*

"[T]he legislative history evinces a decided preference for resolving interpretive issues by uniform administrative decision, rather than piecemeal through litigation." Ford Motor, 455 U.S. at 568. Thus, courts should not substitute their interpretations of the TILA for that of the Board, "so long as the latter's lawmaking is not irrational." See Ford Motor, 455 U.S. at 568. Where the Board and its staff have effectively clarified an area of the law, the courts must accept those opinions construing the TILA and the regulations and consider them dispositive absent "some obvious repugnance to the statute." See Anderson Bros. Ford v. Valencia, 452 U.S. 205, 219 (1981) (citing Ford Motor). Apart from determining whether the commentary is repugnant to the statute, however, the court's more difficult role, at least in this case, is deciding whether the commentary should be applied retroactively to transactions occurring before the effective date of the commentary. See, e.g., McPhillips v. Gold Key Lease, Inc., 38 F.Supp.2d 975

(M.D.Ala. 1999); Wiley v. Earl's Pawn & Jewelry, Inc., 950 F.Supp. 1108 (S.D.Ala. 1997).

*"Payday Loan" as an Extension of Credit*

This action involves "payday loans" which, as argued by Plaintiffs and many other plaintiffs in similar cases, requires an examination of the term "credit" as that term is defined by the TILA, Regulation Z, and any official staff commentaries. Credit is defined the same by the TILA and Regulation Z as "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." See 15 U.S.C.A. § 1602(e); 12 C.F.R. § 226.2(a)(14). The official staff commentary now defines credit to specifically include payday loans:

2(a)(14) "Credit".

. . . .

2. Payday loans; deferred presentment. Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. See §

226.2(a)(17).

12 C.F.R. Pt. 226 (Supp. I).

All of the transactions in this action occurred before the effective date of the official staff commentary, which is March 24, 2000. See 65 Fed. Reg. 17129. Generally, retroactive application of administrative rules is not favored. See Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988). Some courts, however, have held that this general rule disfavoring retroactivity “does not necessarily apply to agency commentaries.” See McPhillips, 38 F.Supp.2d at 980 (citing Barlow v. Evans, 992 F.Supp. 1299, 1305 (M.D.Ala. 1997)). In any event, the court must give deference to the agency’s classification of the commentary as either a clarification or a change. See McPhillips, 38 F.Supp.2d at 980 (citing Wright v. Director, Federal Emergency Management Agency, 913 F.2d 1566, 1571 (11<sup>th</sup> Cir. 1990)). Nevertheless, “unfettered deference to an agency’s classification of its revision as a clarification would allow an agency to make substantive changes, with retroactive effect, merely by referring to the new interpretation as a clarification.” See McPhillips, 38 F.Supp.2d at 980 (citing Pope v. Shalala, 998 F.2d 473, 482 (7<sup>th</sup> Cir. 1993), overruled on other grounds, Johnson v. Apfel, 189 F.3d 561 (7<sup>th</sup> Cir. 1999)).

#### *Clarification versus Amendment or Change*

To determine whether the March 2000 official staff revision should have retroactive application to this case, the revision must be examined in view of the past

interpretations by the agency of the particular subject matter of the revision. See McPhillips v. Gold Key Lease, Inc., 38 F.Supp.2d 975, 980 (M.D.Ala. 1999) (“court should consider whether the revision is consistent with prior interpretations and views expressed by the agency”). In the event there are no prior interpretations of the particular transaction, this fact should also be considered.<sup>3</sup> If a court finds that revisions to the official staff commentary amount to a substantive change, rather than simply a clarification of existing law, then the commentary is not applied retroactively. See McPhillips, 38 F.Supp.2d at 980 (court found that revisions amounted to substantive change in law even though Board interpreted its revision as a clarification).

First, the evolution of the official staff commentary adding payday loans and deferred presentments to the definition of credit must be examined. Beginning on November 5, 1999, the Board published for comment proposed revisions to the official staff commentary to Regulation Z with respect to short-term cash advances or “payday loans.” See 64 Fed. Reg. 60368. The November publication noted that the revisions to the commentary would be adopted in final form in March 2000 and “to the extent the revisions impose new requirements on creditors, compliance *would be optional until October 1, 2000, the effective date for mandatory compliance.*” (Emphasis added). This

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<sup>3</sup> Plaintiffs cite Barlow v. Evans, 992 F.Supp. 1299, 1305 (M.D.Ala. 1997), and Wiley v. Earl’s Pawn & Jewelry, 950 F.Supp. 1108, 1112 (S.D.Ala. 1997), as court opinions holding that the staff commentary subjecting pawnbrokers to the TILA applied to transactions that preceded the commentary’s effective date. These cases involved a different revision. Each new revision should be examined as a whole to determine its applicability to the individual case.

statement makes it clear that any new requirements placed on the creditors will not be enforced through mandatory compliance until six months after the effective date of the rule.

The Board addressed in particular the definition of credit in the November publication in pertinent part as follows:

The Board has been asked to *clarify* whether “payday loans”—also known as “cash advance loans,” “check advance loans,” and “post-dated check loans”—constitute credit for purposes of TILA. Typically in such transactions, a short-term cash advance is made to a customer in exchange for the consumer’s personal check in the amount of the advance, plus a fee; sometimes the advance is made in exchange for the consumer’s authorization to debit electronically the consumer’s checking account in the amount of the advance, plus a fee. The transaction occurs with knowledge by both parties that the amount advanced is not, or may not be, available from the consumer’s checking account at the time of the transaction. Thus, the parties agree that the consumer’s check will not be cashed or the account electronically debited until a designated future date. On that date, the consumer usually has the option to repay the obligation by allowing the party advancing the funds to cash the check or electronically debit the consumer’s checking account, or by providing cash or some other means of payment. The consumer may also have the option to defer repayment beyond the initial period by paying an additional fee.

Section 226.2(a)(14) defines credit as the right to defer the payment of debt or the right to incur debt and defer its payment. In the case of payday loans, this includes the agreement to defer cashing the check or debiting the consumer’s account. Comment 2(a)(14)-2 would be added to *clarify* that payday loan transactions constitute credit for purposes of TILA. Persons that regularly extend payday loans and impose a finance charge are required to provide TILA disclosures to consumers.

64 Fed. Reg. 60368 at \*60368-60369 (emphasis added). The commentary employs the word “clarify” two times in the above-referenced section. The first time “clarify” is used in the sense that the commentary will be determining once and for all if (not when) payday loans fall within the definition of credit under the TILA and Regulation Z. The second time “clarify” appears in the above section, it merely states that the comment will be added to definitively make payday loans an example of something that constitutes credit.

Having received comments, thereafter on March 31, 2000, the Board published the final revisions to the official staff commentary to Regulation Z. The effective date of the revised commentary was March 24, 2000, with the proviso that “[c]ompliance is optional until October 1, 2000.” See 65 Fed. Reg. 17129. The background section of the revised commentary reveals the various comments made regarding the applicability of the TILA and Regulation Z to payday loans and provides in pertinent part:

In November 1999, the Board published proposed amendments to the commentary (64 FR 60368, November 5, 1999). The Board received more than 50 comment letters. Most of the comments were from financial institutions, other creditors, and their representatives. Comments were also received from state attorneys general, state regulatory agencies, and consumer advocates. The comment letters were focused on the proposed comment concerning payday loans. Most commenters supported the proposal. A few commenters, mostly payday lenders and their representatives, were opposed.

As discussed below, the commentary is being adopted substantially as proposed. Some revisions have been made for clarity in response to commenters’ suggestions. The

commentary revision concerning payday loans *clarifies* that when such transactions involve an agreement to defer payment of a debt, they are within the definition of credit in TILA and Regulation Z.

65 Fed. Reg. 17129 (emphasis added). The term “clarifies” found in this section appears to mean the same thing as it did in the November publication—that payday loans are now defined as credit.

Under “Commentary Revisions” of the March 2000 publication, the commentary expounded upon the comments submitted regarding payday loans as follows:

**2(a)(14) Credit.**

The Board proposed to add comment 2(a)(14)-2 to *clarify* that transactions commonly known as “payday loans” constitute credit for purposes of TILA. . . .

Most commenters supported the proposal because they believed that payday loans are credit transactions. A few commenters opposed the proposal. These commenters questioned whether payday loans should be covered under TILA when applicable state law does not treat such transactions as credit. They were concerned that Regulation Z would preempt state law where, for example, the transactions are regulated under check-cashing laws, and they also asserted that providing TILA disclosures would result in unnecessary compliance costs. These commenters also questioned whether disclosure of the APR in such transactions provides consumers with useful information. One commenter asserted that the proposed comment’s scope was unclear, and believed the comment might be interpreted too broadly, resulting in the application of Regulation Z to noncredit transactions. This commenter also suggested that payday lenders will be unable to determine whether transactions are consumer credit or for an exempt purpose, such as business credit.

For the reasons discussed below, comment 2(a)(14)-2 is adopted to *clarify* that payday loans, and similar transactions

where there is an agreement to defer payment of a debt, constitute credit for purposes of TILA. Some revisions have been made for clarity to address commenters' concerns.

(Emphasis added). Obviously, some issues existed with respect to a state law's effect on the TILA. The term "clarify" or "clarifies" in this section ultimately determines that payday loans fall within the definition of credit.

The March 2000 publication specifically addresses the interplay between state laws and the TILA and Regulation Z as follows:

TILA, as implemented by Regulation Z, reflects the intent of the Congress to provide consumers with uniform cost disclosures to promote the informed use of credit and assist consumers in comparison shopping. This purpose is furthered by applying the regulation to transactions, such as payday loans, that fall within the statutory definition of credit, regardless of how such transactions are treated or regulated under state law. The fact that some creditors may have to comply with state laws as well as with Regulation Z, and that creditors may bear compliance costs, is not a sufficient basis to disregard TILA's applicability to the covered transactions. Where a creditor is unable to determine if a transaction is primarily for an exempt purpose, such as business-purpose credit, the creditor is free to make disclosures under TILA, and the fact that disclosures are made would not be controlling on the question of whether the transaction was exempt. See Comment 3(a)-1.

A few commenters questioned the effect of the proposed comment on state laws that regulate payday loans and similar transactions. Section 226.28 of Regulation Z describes the effect of TILA on state laws. As a general matter, state laws are preempted if they are inconsistent with the act and regulation, and then only to the extent of the inconsistency. A state law is inconsistent if it requires or permits creditors to make disclosures or take actions that contradict the requirements of federal law. A state law may not be deemed



inconsistent if it is more protective of consumers.

TILA does not impair a state's authority to regulate or prohibit payday lending activities. Persons that regularly extend payday loans and otherwise meet the definition of creditor (§226.2(a)(17)) are required, however, to provide disclosures to consumers consistent with the requirements of Regulation Z. . . . The Board will review any issues brought to its attention regarding the effect of TILA and Regulation Z on particular state laws. . . .

The Board recognizes in this section that certain states have passed laws sheltering the fees charged for payday loans from characterization as finance charges or interest, such as Florida. The commentary places everyone on notice that the TILA and Regulation Z in essence trump state law characterizations of fees as something other than what the federal laws prescribe. In that vein, the March publication provides:

In describing payday loan transactions, the proposed comment referred to the fact that consumers typically must pay a fee. Some commenters questioned whether such fees are finance charges for purposes of Regulation Z. These commenters noted that under some state laws, the fees charged for payday loans and similar transactions are not considered interest or finance charges.

A fee charged in connection with a payday loan may be a finance charge for purposes of TILA pursuant to section 226.4 of Regulation Z, regardless of how the fee is characterized for state law purposes. Where the fee charged constitutes a finance charge under TILA, and the person advancing funds regularly extends consumer credit, that person is a creditor covered by Regulation Z. See §226.2(a)(17). Comment 2(a)(14)-2 has been revised to reflect this guidance.

(Emphasis added.) Thus, proponents of payday lenders in most instances can no longer rely on the argument that state law preempts the TILA and Regulation Z.

Finally, at the end of the revision, the staff attempts to classify the revision as a clarification rather than a change in the law with respect to payday loans:

*Comment 2(a)(14)-2 has been added as an example of a specific type of transaction that involves an agreement to defer payment of a debt. Because such a transaction falls within the existing statutory and regulatory definition of "credit," the comment does not represent a change in the law. Generally, updates to the Board's staff commentary are effective upon publication. Consistent with the requirements of section 105(d) of TILA, however, the Board typically provides an implementation period of six months or longer. During that period, compliance with the published update is optional so that creditors may adjust their documents to accommodate TILA's disclosure requirements.*

(Emphasis added). While the Board's staff has stated that the comment "does not represent a change in law," at the same time it provided creditors an implementation period "so that creditors may adjust their documents to accommodate TILA's disclosure requirements." This allowance seems to admit that the Board's staff was aware that this particular area had not been made a part of the law as it existed at the time of the notice for the proposed rule. Indeed, the Board entertained comments and took a position on how to handle the TILA with co-existing state laws for check cashing.

This Court is unaware of any prior interpretations by the staff definitively making payday loans part of credit as that term is defined by the TILA and Regulation Z. This case presents a situation in which no final commentary addressing payday loans existed prior to the final March 2000 revision which made payday loans part of credit under the TILA and Regulation Z. There is no question that in Florida the effect of the TILA and Regulation Z has been unclear with respect to those properly registered under Chapter

560 of the Florida Statutes. While some federal district court opinions outside of Florida have held that payday loans are extensions of credit under the TILA and Regulation Z,<sup>4</sup> the decisions within Florida have not been uniform. See Gonzales v. Easy Money, Inc., No. 5:00-cv-2-Oc-10GRJ (Feb. 22, 2001); Clement v. Ace Cash Express, Inc., No. 8:00-cv-593-T-26C (M.D.Fla. Dec. 21, 2000); Betts v. McKenzie Check Advance of Florida, LLC, No. 8:99-cv-2828-T-30F (M.D.Fla. Dec. 20, 2000). Based on the comments solicited by the Board and the fact that no prior interpretations by the agency had been expressed, the Court finds that the March 2000 revision effects a substantive change in the law without retroactive application. Because the transactions at issue in this case occurred before compliance with the official staff commentary was either optional or mandatory, the official staff commentary should not be applied to them.

Based on the above reasons and absent any authority from the Eleventh Circuit or United States Supreme Court to the contrary, the Court finds that the official staff commentary at issue should not be given retroactive application in this case. Consequently, count I is dismissed with prejudice.

### **Counts II and III: Violations of Florida's Usury Law and FDUTPA**

Because the Court has resolved Plaintiffs' federal claims against Defendant, only

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<sup>4</sup> See Hartke v. Illinois Payday Loans, Inc., 1999 U.S. Dist. LEXIS 14937, \*6 (C.D.Ill. Sept. 13, 1999); Turner v. E-Z Check Cashing of Cookeville, TN, Inc., 35 F.Supp. 2d 1042, 1048 (M.D. Tenn. 1999); In re: Brigance, 219 B.R. 486, 492 (Bankr.W.D. Tenn. 1998); Hamilton v. York, 987 F.Supp. 953, 957-958 (E.D.Ky. 1997).

Plaintiffs' state law claims remain in this action. Title 28, Section 1367 of the United States Code provides that the district courts may decline to exercise supplemental jurisdiction over state claims where it has dismissed all the underlying federal claims. See 28 U.S.C. § 1367(c)(3). In making this determination, the court should consider factors such as "comity, judicial economy, convenience, fairness, and the like." See Crosby v. Paulk, 187 F.3d 1339, 1352 (11th Cir. 1999) (quoting Roche v. John Hancock Mut. Life Ins. Co. 81 F.3d 249, 257 (1st Cir. 1996)). Although this decision is discretionary, see Englehardt v. Paul Revere Life Ins. Co., 139 F.3d 1346, 1350 (11th Cir. 1998 ), the dismissal of state law claims is strongly encouraged where the federal claims are dismissed prior to trial. See Baggett v. First Nat'l Bank, 117 F.3d 1342, 1353 (11th Cir. 1997). Where the court declines to exercise supplemental jurisdiction over such claims, the claims should be dismissed without prejudice so they can be refiled in the appropriate state court. See Crosby, 187 F.3d at 1352. In the interest of judicial economy and convenience, the Court declines to exercise supplemental jurisdiction over the remaining state law claims in this action.

Accordingly, it is therefore ordered and adjudged as follows:

1. Plaintiffs' Renewed Motion for Class Certification (Dkt. 89) is **denied as moot**.
2. Count I is dismissed with prejudice.
3. Counts II and III are dismissed without prejudice to bringing them in state court.

4. The Clerk is directed to close this file.

**DONE AND ORDERED** at Tampa, Florida, on this 1 day of August, 2001.

A handwritten signature in black ink, appearing to read 'RAL', is written over a horizontal line.

**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**

Counsel of Record

F I L E   C O P Y

Date Printed: 08/02/2001

Notice sent to:

— John A. Anthony, Esq.  
Gray, Harris, Robinson, Shackleford, Farrior  
501 E. Kennedy Blvd., Suite 1400  
P.O. Box 3324  
Tampa, FL 33601

— William J. Cook, Esq.  
Barker, Rodems & Cook, P.A.  
300 W. Platt St., Suite 150  
Tampa, FL 33606

— Peter J. Grilli  
Peter J. Grilli, P.A.  
100 S. Ashley Dr., Suite 1300  
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# BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
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300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/489-1001  
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August 15, 2001

Neil J. Gillespie  
Apartment C-2  
1121 Beach Drive NE  
St. Petersburg, Florida 33701-1434

**Re: *Eugene R. Clement, individually and on behalf of others similarly situated,  
AMSCOT Corporation***

**Case No. : 99.2795-Civ-T-26C**

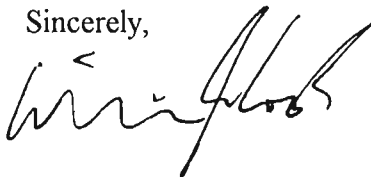
**Our File No. : 99-4766**

Dear Neil:

This confirms that you authorized us to appeal the decision in the above-referenced case. We will not be filing a new lawsuit in State court. In addition, you authorized us to demand \$1,000.00 to settle your claim plus \$50,000.00 in attorneys' fees and costs.

Of course, we will keep you updated on the appeal and any settlement negotiations. As we discussed, however, we do not believe that the Defendant will accept our settlement offer.

Sincerely,



William J. Cook

WJC/mss

EXHIBIT

9

**Neil J. Gillespie**  
1121 Beach Drive NE, Apt. C-2  
St. Petersburg, Florida 33701-1434

Telephone and Fax: (727) 823-2390

VIA FAX AND FIRST CLASS MAIL

August 16, 2001

William J. Cook, Attorney at Law  
Barker, Rodems & Cook, PA  
300 West Platt Street, Suite 150  
Tampa, Florida 33606

**Re: *Eugene R. Clement, individually and on behalf of others similarly situated,***  
***AMSCOT Corporation***  
**Case No. : 99.2795-Civ-T-26C**  
**Your File No. : 99-4766**

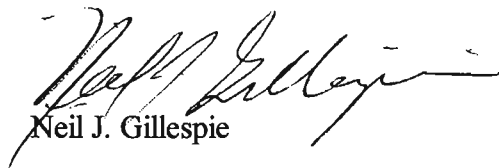
Dear Bill,

Thank you for your letter dated August 15, 2001 relative to the above captioned case. I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney's fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney's fees and costs.

Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.

Thank you for your kind consideration.

Sincerely,

  
Neil J. Gillespie

cc: Kindly provide a copy of this letter to Mr. Clement and Ms. Blomefield

**EXHIBIT**

**10**



# Fax

**From:** Neil J. Gillespie  
1121 Beach Drive NE, Apt C-2  
St. Petersburg, FL 33701  
Phone/Fax: (727) 823-2390

**To:** William Cook, Attorney at Law

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**Fax:** 813-489-1008

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**Date:** August 16, 2001

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**Pages:** 2 including this page

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**Re:** AMSCOT Corporation

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☐ **Urgent**      ☐ **Please Reply**      ☐ **For Your Review**

---

● **Comments:** See accompanying letter.

**Neil J. Gillespie**  
8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481

Telephone: (813) 810-0151

July 25, 2005

Ian Mackechnie, President  
Amscot Corporation  
600 N. Westshore Blvd., 12<sup>th</sup> Floor  
Tampa, Florida 33609

RE: Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C, US District Court, Middle District Florida, Tampa Division; on appeal, Case No. 01-14761-A US Court of Appeals, For the Eleventh Circuit

Dear Mr. Mackechnie,

I was a plaintiff in the above captioned lawsuit. While this action is settled, I regret becoming involved, and was pressured into it by my lawyer, William Cook. I am sorry for the consequences you suffered. About two years ago I found discrepancies in the case file. This is part of my attempt to uncover the truth. As I see it, you paid \$43,000.00 too much to settle this case. Here's why.

Prior to my involvement in the above captioned lawsuit, Mr. Cook represented me in a lawsuit against ACE, America's Cash Express, for payday loan roll-over transactions. The lawsuit was joined by Florida Attorney General Robert Butterworth. I still believe the ACE litigation was justified. However, in my view Amscot was not as culpable as ACE, and I initially declined Mr. Cook's solicitation to join the lawsuit. But Mr. Cook said that I was selfish for not suing Amscot, and I relented.

During the course of litigation it became apparent to me that Mr. Cook and his associates were incompetent and not truthful. During the settlement negotiations I tried to settle this case for \$10,000.00 in legal fees and \$1,000.00 to each of the three plaintiffs (see copy of my letter, enclosed). You ultimately paid \$56,000.00 to settle, and I believe this was the result of our lawyers' collusion. This is my opinion, and I welcome any supporting evidence. In the alternative, perhaps your lawyer John Anthony was just a very poor negotiator, and you paid \$43,000.00 too much to settle the lawsuit.

I filed a complaint against William Cook with the Florida Bar (TFB No. 2004-11,734(13C) to no avail. I am available to discuss this further if you wish. Thank you.

Sincerely,

  
Neil J. Gillespie

**EXHIBIT**

**11**

**Neil J. Gillespie**  
1121 Beach Drive NE, Apt. C-2  
St. Petersburg, Florida 33701-1434

Telephone and Fax: (727) 823-2390

VIA FAX AND FIRST CLASS MAIL

August 16, 2001

William J. Cook, Attorney at Law  
Barker, Rodems & Cook, PA  
300 West Platt Street, Suite 150  
Tampa, Florida 33606

**Re: *Eugene R. Clement, individually and on behalf of others similarly situated,***  
***AMSCOT Corporation***  
**Case No. : 99.2795-Civ-T-26C**  
**Your File No. : 99-4766**

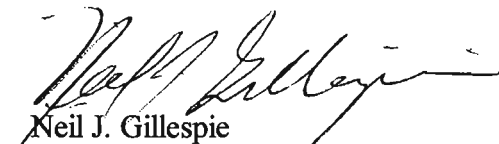
Dear Bill,

Thank you for your letter dated August 15, 2001 relative to the above captioned case. I agree with you that the Defendant will probably not accept your settlement offer. I believe the sticking point is your request for \$50,000 in attorney's fees and costs. I do not believe the \$1,000 request each for myself, Mr. Clement and Ms. Blomefield is a barrier to settlement. Therefore I suggest you ask for a lesser amount of attorney's fees and costs.

Given your lack of success in this matter thus far, I suggest you ask for \$10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.

Thank you for your kind consideration.

Sincerely,

  
Neil J. Gillespie

cc: Kindly provide a copy of this letter to Mr. Clement and Ms. Blomefield

GRAY | ROBINSON  
ATTORNEYS AT LAW

SUITE 2200  
201 N. FRANKLIN STREET (33602)  
POST OFFICE BOX 3324  
TAMPA, FL 33601  
TEL 813-273-5000  
FAX 813-273-5145  
gray-robinson.com

CLERMONT  
JACKSONVILLE  
KEY WEST  
LAKELAND  
MELBOURNE  
NAPLES  
ORLANDO  
TALLAHASSEE  
TAMPA

813-273-5066

JANTHONY@GRAY-ROBINSON.COM

August 26, 2005

**VIA FED EX**

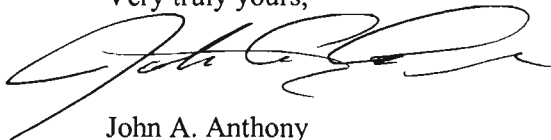
Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

**Re: Eugene R. Clement, individually and on behalf of others  
similarly situated, vs. Amscot Corporation, a Florida corporation  
United States District Court, Case No. 99-2795-CIV-T-26C**

Dear Mr. Gillespie:

I have been asked to respond to your letter to Ian MacKechnie of July 25, 2005. Amscot is disappointed that your lawyer apparently did not obey your instructions regarding discontinuing litigation you and he knew to be frivolous. Amscot is disappointed that you did not admit that the litigation lacked merit when I deposed you. We regret that Amscot was required to expend time, money, and other resources defending frivolous litigation. I assure you that we did our best as lawyers to move the case to the correct conclusion, without making it more expensive for all involved. We are pleased that this matter has been concluded, and consider it to have been a closed controversy for some time now. We hope you will put it all behind you as well.

Very truly yours,



John A. Anthony

JAA/aw

cc: Ian MacKechnie

# 708746 v1

MEMORANDUM

TO : File  
FROM : WJC *WJC*  
DATE : Monday, August 20, 2001  
RE : Clement v. AMSCOT  
: 99.4766

---

I spoke with Neil Gillespie on August 17, 2001. We had a fairly lengthy conversation about the pluses and minuses of going forward with the appeal and the settlement offer. I explained to him that I did not believe that the sticking part was created through the attorneys' fees, but rather it was the payment to the clients. I told him of my conversation with John Anthony in which he offered to pay this firm \$5,000.00 but would not agree to pay our clients anything. I told him that I rejected that offer. He asked me why I had not mentioned the settlement offer to him previously. I told him that it was not a settlement offer. It was an improper payoff attempt. At the end of the conversation, when I told him that I would wait until Monday before I sent the settlement offer, he told me that that was not necessary. He simply wanted to advise me that he was not necessarily happy with the \$50,000.00 settlement demand. I told him that the \$50,000.00 demand was not set in stone and we could consider the \$10,000.00 offer that he suggested. I told him that it was not likely that we would receive such an offer, however.

WJC

WJC/mss

EXHIBIT

13

# BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
RYAN CHRISTOPHER RODEMS  
WILLIAM J. COOK

300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/489-1001  
Facsimile 813/489-1008

August 20, 2001

John A. Anthony, Esquire  
Gray, Harris, Robinson, Shackleford, Farrior  
Post Office Box 3324  
Tampa, Florida 33601-3324

**Re: *Eugene R. Clement, individually and on behalf of others similarly situated,  
AMSCOT Corporation***

**Case No. : 99.2795-Civ-T-26C**

**Our File No. : 99-4766**

Dear Mr. Anthony:

In our recent telephone conversation, you said that your client would be willing to pay this firm some kind of "consulting fee" or "non-refundable retainer" in the amount of \$5,000.00 if our clients were to refrain from appealing Judge Lazarra's recent ruling or refile their state law claims in state court. You did not offer any money to our clients. That offer is rejected.

We cannot and will not agree to resolve our clients' claims without any consideration going to our clients.

If your client truly wishes to resolve these claims, our clients are willing to accept \$1,000.00 each, representing the amount of their individual TILA statutory damages. They would also want any outstanding loans forgiven. In addition, we would accept \$50,000.00 to settle this firm's outstanding attorneys' fees and costs.

I am sure that you realize that our actual fees and costs are far in excess of this amount. If our clients were to prevail on appeal, the court undoubtedly would enter summary judgment against your client, thereby entitling us to an award of our fees and costs. Our motion for class certification likely would also be granted, in that your opposition to our class certification motions focused primarily on the merits of our clients' claims.

EXHIBIT

14

John A. Anthony, Esquire  
August 20, 2001  
Page 2

We view our chances of success on appeal as good, as at least one district court has already decided the same issue contrary to Judge Lazarra's ruling. Indeed, Judge Lazarra himself explicitly recognized in his order that the retroactivity issue was difficult.

This offer is being made on behalf of the individual plaintiffs only and not on behalf of any class. Consequently, our clients' agreement to settle on the above-described terms would not affect the claims of any other Amscot customers.

This offer shall remain open for thirty (30) days.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. J. Cook', with a stylized flourish at the end.

William J. Cook

WJC/so

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
CASE NO. 01-14761A

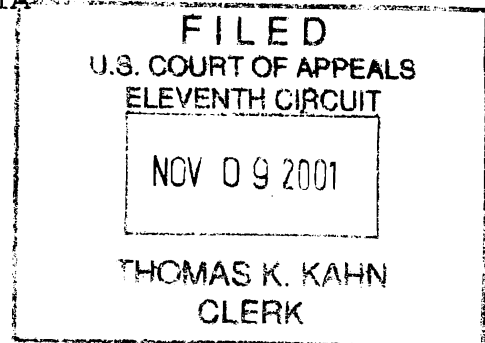
EUGENE R. CLEMENT,  
GAY ANN BLOMEFIELD, and  
NEIL GILLESPIE, individually and  
on behalf of others similarly situated,

Appellants,

v.

AMSCOT CORPORATION,

Appellee.



JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

The Parties, by and through their undersigned counsel, having amicably resolved this matter, pursuant to Federal Rule of Appellate Procedure 42(b) move for dismissal with prejudice with each party bearing its own attorneys' fees and costs.

RESPECTFULLY SUBMITTED this 6th day of November, 2001.

BARKER, RODEMS & COOK, P.A.

A handwritten signature in cursive script, appearing to read "W. J. Cook".

WILLIAM J. COOK, ESQUIRE  
Florida Bar No. 986194  
300 West Platt Street  
Suite 150  
Tampa, Florida 33606  
(813) 489-1001 (TEL)  
(813) 489-1008 (FAX)  
Attorneys for Appellants

Gray, Harris, Robinson,  
Shackleford, Farrior

A handwritten signature in cursive script, appearing to read "Lara R. Fernandez".

LARA R. FERNANDEZ, ESQUIRE  
Florida Bar No. 0088500  
501 E. Kennedy Blvd.  
Suite 1400  
Tampa, Florida 33602  
(813) 273-5000 (TEL)  
(813) 273-5145 (FAX)  
Attorneys for Appellee

EXHIBIT

15



**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, counsel for the Appellants certify that the following persons and entities have an interest in the outcome of this case.

Alpert, Jonathan L., Esq.

Alpert & Ferrentino, P.A.

Amscot Corporation

Anthony, John A., Esq.

Barker, Rodems & Cook, P.A.

Barker, Chris A., Esq.

Blomefield, Gay Ann

Clement, Eugene R.

Cook, William J., Esq.

Gillespie, Neil

Gray, Harris, Robinson, Shackelford, Farrior, P.A.

Lazzara, The Honorable Richard A.

United States District Judge, Middle District of Florida

MacKechnie, Ian

Rodems, Ryan Christopher, Esq.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-14761-AA

FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

DEC 07 2001

EUGENE R. CLEMENT,  
individually and on behalf of others similarly  
situated,

THOMAS K. KAHN

CLERK

Plaintiff-Appellant,

GAY ANN BLOMEFIELD,  
NEIL GILLESPIE,

8: 99-CV-2795-T-2C EAS

Plaintiffs-Intervenors-  
Counter-Defendants-Appellants,

versus

AMSCOT CORPORATION,  
A Florida Corporation,

Defendant-Intervenor-Counter  
-Claimant-Appellee.

-----  
On Appeal from the United States District Court for the  
Middle District of Florida  
-----


BEFORE: EDMONDSON and BARKETT, Circuit Judges.

BY THE COURT:

The parties joint stipulation for dismissal of this appeal with prejudice, which is construed as a motion to dismiss this appeal with prejudice, with the parties bearing their own costs and attorney's fees, is GRANTED.

A TRUE COPY - ATTESTED:  
CLERK U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT

BY:

  
DEPUTY CLERK  
ATLANTA, GEORGIA

EXHIBIT

16

## RELEASE AND SETTLEMENT AGREEMENT

This Release And Settlement Agreement (this "Agreement") is made and entered into this 30 day of October, 2001, by and between Amscot Corporation ("Amscot"), Eugene R. Clement ("Clement"), Gay Ann Blomefield ("Blomefield"), and Neil Gillespie ("Gillespie"), individually and on behalf of others similarly situated (collectively, the "Plaintiffs"), and Barker, Rodems & Cook, P.A. (the "Firm") collectively referred to herein as the "Parties," who hereby execute this Agreement and state as follows:

1. **Settlement With Plaintiffs.** Amscot shall pay each of the Plaintiffs the sum of Two Thousand Dollars and No/100 (\$2,000), in satisfaction of their claims for damages, as more fully described herein, against Amscot as asserted in the matters styled (i) Eugene R. Clement, et al. v. Amscot Corporation, Case No. 8:99-cv-2795-T-26C, pending in the United States District Court, Middle District of Florida, Tampa Division and (ii) Eugene R. Clement, et al. v. Amscot Corporation, Case No. 01-14761-A, pending in the United States Court of Appeals, For the Eleventh Circuit (collectively, referred to as the "Action").

2. **Settlement With Firm.** Amscot shall pay the Firm the sum of Fifty Thousand Dollars and No/100 (\$50,000), in satisfaction of Plaintiffs' claims for attorneys' fees and costs, as more fully described herein, against Amscot as asserted in the Action.

3. **Age, Competence, and Authority.** To procure payment of said sum as referenced in paragraph number one, the Plaintiffs hereby declare that they are each more than eighteen (18) years of age, and are otherwise competent and fully authorized to execute this Agreement. To procure payment of said sum as referenced in paragraph number two, the Firm hereby represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. The Firm has the necessary corporate power, authority, and has obtained all

necessary consents required to execute, deliver and perform the obligations under the provisions of this Agreement.

4. **Unknown and Unanticipated Damages.** The Plaintiffs and the Firm hereby agree that, as a further consideration and inducement for this Agreement, this Agreement shall apply to all unknown and unanticipated damages resulting from the transactions and occurrences alleged or that could have been alleged in the complaint initiating this Action filed by the Plaintiffs.

5. **Amicable Civil Resolution.** Without in any way admitting guilt or liability in connection with the referenced events, by or on behalf of any of the Parties, the Parties have agreed to an amicable civil resolution of all causes of action arising out of the transactions and occurrences alleged or that could have been alleged in the complaint initiating this Action filed by the Plaintiffs.

6. **Mutual Releases.** Upon Plaintiffs' and the Firm's receipt of the consideration required pursuant to paragraph numbers one and two (1. and 2.) hereof, this Agreement shall operate as a general and mutual release by the Plaintiffs and the Firm against Amscot and by Amscot against the Plaintiffs and the Firm, and all of both Amscot's and the Firm's shareholders, directors, officers, employees, and agents of any kind, and all successors and assigns, from any and all liability relating to the transaction outlined generally in paragraph numbers one and two (1. and 2.) herein. This mutual release shall therefore discharge all claims, liens, debts, actions, demands, damages, costs, expenses, actions, and causes of actions, or assertions of any kind whatsoever, both at law and equity, whether known, unknown, alleged, direct, indirect, disputed, contingent, real, or imagined, that in any way relate to the Action or said transactions relating to the Action.

7. **Release of Liens:** The Plaintiffs and the Firm represent that there are no outstanding claims, liens or subrogation rights against the released parties resulting from or in any

way related to the damages claimed in the Action, and all occurrences thereafter other than those which will be satisfied by the Plaintiffs and the Firm.

8. **Indemnification/Hold Harmless:** Plaintiffs and the Firm agree to protect, defend, indemnify and hold Amscot harmless from and against any and all liabilities, damages, claims, demands, costs or expenses, including, without limitation, reasonable attorneys' fees as hereinafter set forth resulting from or relating to the Action, including specifically, any lien asserted by the former firm who represented the Plaintiffs, Alpert, Barker, Rodems, Ferrentino & Cook, P.A. n/k/a Alpert & Ferrentino, P.A.

9. **Confidentiality.** The consideration for Amscot acceding to the terms of this Agreement is favorable community relations and the maintenance of good will and favorable reputation of Amscot. The Parties agree that no disclosure shall be made to any third party regarding the transaction generally outlined in paragraph numbers one and two (1. and 2.) herein, except as required by existing State of Florida statutes, under the laws of the United States of America, or pursuant to a third party subpoena, or in connection with resolution of any outstanding third-party liens.

10. **No Admission.** It is expressly understood that the Parties explicitly deny any wrongdoing, liability, or obligation whatsoever to the other party relating to the transaction set forth in paragraph numbers one and two (1. and 2.) herein. Because this Agreement is a settlement document, it is agreed by the Parties that this Agreement shall not be filed, introduced into evidence, or otherwise used for any purpose in connection with the transaction set forth generally in paragraph numbers one and 2 (1. and 2.) herein. The provisions hereof are intended to be broader than the provisions of Florida Statutes § 90.408 and Federal Rule of Evidence 408.

11. **No Interpretation Against the Drafter.** The Parties acknowledge that this Agreement is voluntarily entered into by all of them. All having had the right to counsel in connection with the negotiation, execution, and drafting hereof, no portion of this Agreement shall be construed against any of the Parties on the grounds that its counsel may have been the primary drafter hereof.

12. **Modification.** The terms and conditions of this Agreement may not be modified except in writing signed by the Parties.

13. **Florida Contract/Hillsborough County Venue.** This Agreement is hereby deemed a Florida contract, executed and performed in Hillsborough County, Florida. This Agreement shall be construed according to the laws of the State of Florida, regardless of whether this Agreement is executed by certain of the parties hereto in other states or counties. The Parties consent to jurisdiction and venue in Hillsborough County, Florida.

14. **Waiver of Jury Trial.** The Parties hereby knowingly, voluntarily, and intentionally waive the right to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement, and any agreement contemplated to be executed in conjunction therewith, or in the course of conduct, course of dealing, statements (whether verbal or written), or actions of any of the Parties. The Parties acknowledge that this provision is a material inducement for this Agreement.

15. **Third Party Rights:** Nothing in this Agreement, whether express or implied, is intended or should be construed to confer upon, or to grant to, any person, except the Parties and their respective assignees and successors, any claim, right, or remedy under or because of either this Agreement or any provision of it. Conversely, none of the Parties are waiving, releasing, or

otherwise modifying their rights as against any third party except as expressly provided herein.

16. **Execution in Counterparts.** This Agreement is binding on, and inures to the benefit of, the respective successors, permitted assignees, and personal representatives of the Parties. The Parties may execute this Agreement in counterparts. Each executed counterpart will be considered an original, and both of them together will constitute the same agreement. This Agreement will become effective as of its stated effective date when each party has executed a counterpart and delivered it to the other party.

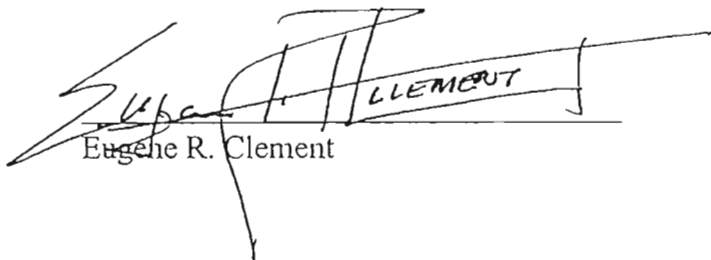
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

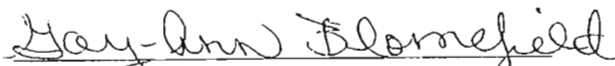
AMSCOT CORPORATION

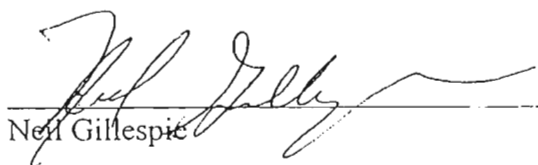
By: \_\_\_\_\_

Name: \_\_\_\_\_

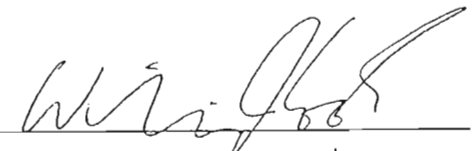
Title: \_\_\_\_\_

  
Eugene R. Clement

  
Gay Ann Blomefield

  
Neil Gillespie

BARKER, RODEMS & COOK, P.A.

By: 

Name: William J. Cook

Title: Secretary/Treasurer

#412987/ldw

16. Execution in Counterparts. This Agreement is binding on, and inures to the benefit of, the respective successors, permitted assignees, and personal representatives of the Parties. The Parties may execute this Agreement in counterparts. Each executed counterpart will be considered an original, and both of them together will constitute the same agreement. This Agreement will become effective as of its stated effective date when each party has executed a counterpart and delivered it to the other party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**AMSCOT CORPORATION**

By: 

Name:

LAW MACKECHNE

Title:

PRESIDENT

\_\_\_\_\_  
Eugene R. Clement

\_\_\_\_\_  
Gay Ann Blomefield

\_\_\_\_\_  
Neil Gillespie

**BARKER, RODEMS & COOK, P.A.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#412987/ldw



**BARKER, RODEMS & COOK, P.A.**  
**CLOSING STATEMENT**

Style of Case: Eugene R. Clement, Gay Ann Blomefield, and  
Neil Gillespie v. AMSCOT Corporation.

As of: October 31, 2001

Our File No.: 99.4766

ATTORNEYS' FEES & COSTS	\$ 50,000.00
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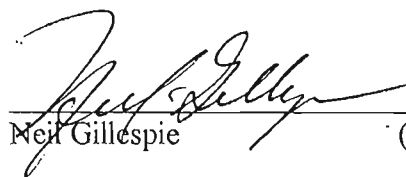
PAYMENTS TO CLIENTS

EUGENE R. CLEMENT	\$ 2,000.00
GAY ANN BLOMEFIELD	2,000.00
NEIL GILLESPIE	2,000.00

<b>TOTAL</b>	<b>\$ 56,000.00</b>
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In signing this closing statement, I acknowledge that AMSCOT Corporation separately paid my attorneys \$50,000.00 to compensate my attorneys for their claim against AMSCOT for court-awarded fees and costs. I also acknowledge that I have received a copy of the fully executed Release and Settlement Agreement dated October 30, 2001.

 11-1-01  
\_\_\_\_\_  
Neil Gillespie (Date)

BARKER, RODEMS & COOK, P.A.

By: \_\_\_\_\_  
WILLIAM F. COOK, ESQUIRE

**EXHIBIT**

**18**

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

EUGENE R. CLEMENT, individually and  
on behalf of others similarly situated,

Plaintiff,

v.

ACE CASH EXPRESS, INC., a Texas corporation  
d/b/a ACE America's Cash Express,

Defendant.

Consolidated Case No. 99-9730  
Division J  
Class Representation  
Jury Trial Demanded

NEIL GILLESPIE, individually and on behalf  
of others similarly situated,

Plaintiff,

v.

ACE CASH EXPRESS, INC., a Texas corporation  
d/b/a ACE America's Cash Express,

Defendant.

**STIPULATION OF THE PARTIES**

Pursuant to the Mediation Conference held the 12<sup>th</sup> day of June, 2002, the parties have agreed to abide by the following:

1. The Defendant, ACE CASH EXPRESS, INC., agrees to pay and the Plaintiffs, EUGENE R. CLEMENT and NEIL GILLESPIE, agree to accept the sum of \$5,000.00 each, in full and complete settlement of any and all claims against all defendants that have been brought or could have been brought in the above styled cause.
2. Clement and Gillespie shall execute releases of all defendants. ACE will release Clement and Gillespie.
3. The Defendant, ACE CASH EXPRESS, INC., shall forward said sum to the Plaintiff's attorney within thirty (30) days of the date of this Stipulation.
4. Each party shall bear their own fees and costs, and shall share in the mediation fees.

**EXHIBIT**


**19**

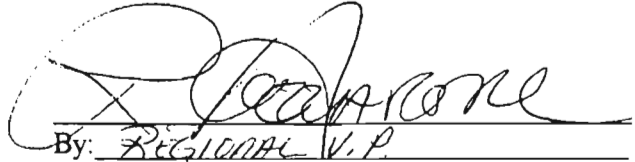
5. After receipt of the funds, the Plaintiffs will cause this action and the related appeal in the Second District Court of Appeal to be dismissed, with prejudice.


6/12/02  
Date

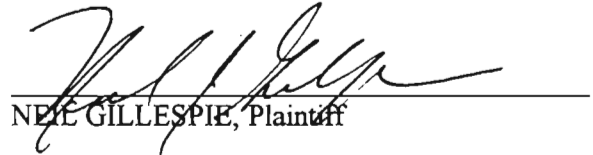
  
GASPER L. FICARROTTA, Mediator

ACE CASH EXPRESS, INC.

  
NEIL A. SIVYER, Attorney for Defendant  
ACE CASH EXPRESS, INC.

  
By: REGIONAL V.P.

  
EUGENE R. CLEMENT, Plaintiff

  
NEIL GILLESPIE, Plaintiff

  
WILLIAM J. COOK, Attorney for Plaintiffs

BARKER, RODEMS & COOK, P.A.

Closing Statement as of June 24, 2002

Style of Case: NEIL GILLESPIE, et al. v. ACE CASH EXPRESS, INC., a Texas corporation, d/b/a ACE America's Cash Express

Our File No.: 99-4764

---

CREDITS:

SETTLEMENT PROCEEDS ..... \$ 5,000.00

PAYMENT FROM EUGENE R. CLEMENT'S SETTLEMENT ..... \$ 500.00

---

DEBITS:

ATTORNEYS' FEE (per contract and agreement at mediation on 6/12/02) .... \$ 1,500.00

COSTS (see attached) ..... \$ 2,000.00

---

NET TO CLIENT ..... \$ 2,000.00


I acknowledge receipt of \$500.00 from my Co-Plaintiff, Eugene R. Clement. As an administrative convenience, I am receiving the amount directly from my attorneys' Trust Account as part of my settlement proceeds.

The above closing statement is hereby approved by the undersigned on the above date.

NEIL GILLESPIE

BARKER, RODEMS & COOK, P.A.

  
\_\_\_\_\_

By:   
\_\_\_\_\_

EXHIBIT

20

# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client/Matter	Seq	Description	Unit	Our Cost	Client Cost
229	01/08/2001	000049-994764	S	Postage		\$3.20	\$3.20
666	01/08/2001	000049-994764	S	Photocopies	4	\$1.00	\$1.00
481	01/10/2001	000049-994764	S	Photocopies	1	\$0.25	\$0.25
168	01/11/2001	000049-994764	S	Postage		\$0.34	\$0.34
493	01/11/2001	000049-994764	S	Photocopies	2	\$0.50	\$0.50
470	01/31/2001	000049-994764	S	Facsimiles		\$9.00	\$9.00
1198	01/31/2001	000049-994764	S	Legal Research		\$21.86	\$21.86
961	02/08/2001	000049-994764	S	Photocopies @ .25 per page	23	\$5.75	\$5.75
964	02/08/2001	000049-994764	S	Photocopies @ .25 per page	4	\$1.00	\$1.00
979	02/08/2001	000049-994764	S	Postage		\$0.68	\$0.68
1071	02/12/2001	000049-994764	S	Postage		\$1.31	\$1.31
1086	02/12/2001	000049-994764	S	Facsimiles		\$9.50	\$9.50
1148	02/12/2001	000049-994764	S	Photocopies @ .25 per page	87	\$21.75	\$21.75
1154	02/13/2001	000049-994764	S	Photocopies @ .25 per page	9	\$2.25	\$2.25
1167	02/13/2001	000049-994764	S	Postage		\$2.20	\$2.20
1235	02/13/2001	000049-994764	S	Photocopies @ .25 per page	64	\$16.00	\$16.00
1177	02/14/2001	000049-994764	S	Postage		\$0.76	\$0.76
1529	02/27/2001	000049-994764	S	Postage		\$0.76	\$0.76
1585	02/27/2001	000049-994764	S	Facsimiles		\$3.50	\$3.50
1589	02/27/2001	000049-994764	S	Facsimiles		\$13.50	\$13.50
1601	02/27/2001	000049-994764	S	Postage		\$1.39	\$1.39
1630	02/27/2001	000049-994764	S	Photocopies @ .25 per page	28	\$7.00	\$7.00
1639	02/27/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
1644	02/27/2001	000049-994764	S	Photocopies @ .25 per page	60	\$15.00	\$15.00
1647	02/27/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
1611	02/28/2001	000049-994764	S	Postage		\$2.36	\$2.36

# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Report	Date	Client-Matter	Stat	Description	Quantity	Unit Cost	Total Cost
1618	02/28/2001	000049-994764	S	Photocopies @ .25 per page	44	\$11.00	\$11.00
1685	03/02/2001	000049-994764	S	Photocopies @ .25 per page	124	\$31.00	\$31.00
1694	03/02/2001	000049-994764	S	Postage		\$1.65	\$1.65
1711	03/02/2001	000049-994764	S	Postage		\$0.34	\$0.34
1712	03/05/2001	000049-994764	S	Postage		\$4.38	\$4.38
1846	03/08/2001	000049-994764	S	Photocopies @ .25 per page	1	\$0.25	\$0.25
2019	03/15/2001	000049-994764	S	Legal Research		\$66.36	\$66.36
2135	03/19/2001	000049-994764	S	Photocopies @ .25 per page	10	\$2.50	\$2.50
2179	03/19/2001	000049-994764	S	Legal Research		\$1.80	\$1.80
2254	03/31/2001	000049-994764	S	Facsimiles 6 pages on 3/20 and 3/29		\$3.00	\$3.00
2292	03/31/2001	000049-994764	S	Photocopies @ .25 per page	98	\$24.50	\$24.50
2355	03/31/2001	000049-994764	S	Postage		\$5.66	\$5.66
2431	04/18/2001	000049-994764	S	Clerk of the Court, Middle District of Florida - Miscellaneous expenses		\$4.50	\$4.50
2535	04/28/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
2546	04/28/2001	000049-994764	S	Facsimiles	10	\$5.00	\$5.00
2560	04/28/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
2614	04/28/2001	000049-994764	S	Photocopies @ .25 per page	545	\$136.25	\$136.25
2665	04/28/2001	000049-994764	S	Photocopies @ .25 per page	4	\$1.00	\$1.00
2698	04/28/2001	000049-994764	S	Postage		\$1.57	\$1.57
2761	04/28/2001	000049-994764	S	Postage		\$1.78	\$1.78
2851	05/01/2001	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
2853	05/01/2001	000049-994764	S	Facsimiles	11	\$5.50	\$5.50
2840	05/02/2001	000049-994764	S	Postage		\$2.78	\$2.78
2858	05/02/2001	000049-994764	S	Facsimiles	17	\$8.50	\$8.50
2872	05/02/2001	000049-994764	S	Photocopies @ .25 per page	37	\$9.25	\$9.25
3058	05/03/2001	000049-994764	S	Facsimiles	7	\$3.50	\$3.50

# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client/Matter	Seq	Description	Units	Our Cost	Client Cost
2895	05/04/2001	000049-994764	S	Postage		\$0.34	\$0.34
3068	05/07/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
3030	05/08/2001	000049-994764	S	Photocopies @ .25 per page	163	\$40.75	\$40.75
3072	05/08/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
3088	05/08/2001	000049-994764	S	Postage		\$0.34	\$0.34
3105	05/08/2001	000049-994764	S	Postage		\$5.43	\$5.43
3064	05/09/2001	000049-994764	S	Clerk of the Court, Middle District of Florida - Copy Services		\$120.00	\$120.00
3112	05/09/2001	000049-994764	S	Postage		\$0.89	\$0.89
3121	05/09/2001	000049-994764	S	Postage		\$0.68	\$0.68
3166	05/09/2001	000049-994764	S	Photocopies @ .25 per page	3	\$0.75	\$0.75
3131	05/10/2001	000049-994764	S	Postage		\$5.91	\$5.91
3204	05/11/2001	000049-994764	S	Postage		\$1.86	\$1.86
3245	05/11/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
3302	05/11/2001	000049-994764	S	Photocopies @ .25 per page	48	\$12.00	\$12.00
3251	05/14/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
3181	05/15/2001	000049-994764	S	Legal Research		\$2.03	\$2.03
3184	05/15/2001	000049-994764	S	Legal Research		\$35.01	\$35.01
3197	05/15/2001	000049-994764	S	Legal Research		\$21.53	\$21.53
3217	05/15/2001	000049-994764	S	William J. Cook - Miscellaneous charges		\$22.12	\$22.12
3256	05/16/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
3260	05/16/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
3294	05/16/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
3298	05/16/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
3318	05/16/2001	000049-994764	S	Photocopies @ .25 per page	4	\$1.00	\$1.00
3322	05/16/2001	000049-994764	S	Postage		\$0.34	\$0.34
3409	05/16/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00

# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Trans ID	Date	Client/Matter	Stat	Description	Qty	Unit Cost	Client Total
3419	05/18/2001	000049-994764	S	Facsimiles	8	\$4.00	\$4.00
3424	05/21/2001	000049-994764	S	Facsimiles	1	\$0.50	\$0.50
3442	05/23/2001	000049-994764	S	Photocopies @ .25 per page	4	\$1.00	\$1.00
3466	05/23/2001	000049-994764	S	Postage		\$0.34	\$0.34
3527	05/23/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
3503	05/24/2001	000049-994764	S	Postage		\$1.02	\$1.02
3509	05/24/2001	000049-994764	S	Postage		\$0.34	\$0.34
3519	05/24/2001	000049-994764	S	Postage		\$0.68	\$0.68
3541	05/24/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
3558	05/24/2001	000049-994764	S	Photocopies @ .25 per page	8	\$2.00	\$2.00
3573	05/24/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
3590	05/24/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
3581	05/25/2001	000049-994764	S	Photocopies @ .25 per page	40	\$10.00	\$10.00
3629	05/25/2001	000049-994764	S	Postage		\$1.65	\$1.65
3606	05/29/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4434	06/01/2001	000049-994764	S	Department of Banking and Finance - Copy Services		\$7.80	\$7.80
3751	06/04/2001	000049-994764	S	Photocopies @ .25 per page	32	\$8.00	\$8.00
3760	06/04/2001	000049-994764	S	Postage		\$3.12	\$3.12
3801	06/04/2001	000049-994764	S	Photocopies @ .25 per page	56	\$14.00	\$14.00
3844	06/04/2001	000049-994764	S	Facsimiles	15	\$7.50	\$7.50
3927	06/06/2001	000049-994764	S	Postage		\$0.68	\$0.68
3861	06/07/2001	000049-994764	S	Photocopies @ .25 per page	48	\$12.00	\$12.00
4057	06/08/2001	000049-994764	S	Photocopies @ .25 per page	219	\$54.75	\$54.75
12441	06/08/2001	000049-994764	S	Postage		\$0.68	\$0.68
4062	06/11/2001	000049-994764	S	Photocopies @ .25 per page	12	\$3.00	\$3.00
4005	06/12/2001	000049-994764	S	Legal Research		\$13.88	\$13.88



# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Transact	Date	Client/Matter	Stat	Description	Units	Unit Price	Total Price
4087	06/12/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4091	06/12/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
4106	06/12/2001	000049-994764	S	Postage		\$0.68	\$0.68
4141	06/12/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
4144	06/12/2001	000049-994764	S	Facsimiles	16	\$8.00	\$8.00
4162	06/12/2001	000049-994764	S	Postage		\$1.65	\$1.65
4184	06/12/2001	000049-994764	S	Photocopies @ .25 per page	9	\$2.25	\$2.25
4186	06/12/2001	000049-994764	S	Photocopies @ .25 per page	32	\$8.00	\$8.00
4124	06/13/2001	000049-994764	S	Long Distance Telephone Calls		\$0.33	\$0.33
4225	06/14/2001	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
4216	06/15/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
4259	06/15/2001	000049-994764	S	Postage		\$0.34	\$0.34
4321	06/15/2001	000049-994764	S	Photocopies @ .25 per page	20	\$5.00	\$5.00
4340	06/15/2001	000049-994764	S	Postage		\$2.46	\$2.46
4405	06/15/2001	000049-994764	S	Facsimiles	44	\$22.00	\$22.00
4410	06/15/2001	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
4414	06/18/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4417	06/19/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4422	06/19/2001	000049-994764	S	Facsimiles	1	\$0.50	\$0.50
4463	06/20/2001	000049-994764	S	Facsimiles	1	\$0.50	\$0.50
4294	06/21/2001	000049-994764	S	Office of the Comptroller - Copy Services		\$173.10	\$173.10
4384	06/21/2001	000049-994764	S	Postage		\$0.68	\$0.68
4386	06/21/2001	000049-994764	S	Postage		\$0.34	\$0.34
4465	06/21/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
4484	06/21/2001	000049-994764	S	Photocopies @ .25 per page	6	\$1.50	\$1.50
4500	06/21/2001	000049-994764	S	Photocopies @ .25 per page	1306	\$326.50	\$326.50

# Expense Listing

Listing Order: Transaction Date, Client-Matter

Client: CLEMENT, EUGENE

Matter: Ace Cash Express

Date Range: 12/01/2000 - 06/24/2002

Code: All Codes

Person: All Persons

Responsible: All Responsible

Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Unit Cost	Grand Total
4492	06/25/2001	000049-994764	S	Photocopies @ .25 per page	76	\$19.00	\$19.00
4514	06/25/2001	000049-994764	S	Photocopies @ .25 per page	77	\$19.25	\$19.25
4520	06/25/2001	000049-994764	S	Postage		\$3.12	\$3.12
4529	06/25/2001	000049-994764	S	Postage		\$0.34	\$0.34
4541	06/25/2001	000049-994764	S	Facsimiles	15	\$7.50	\$7.50
4546	06/25/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
4494	06/26/2001	000049-994764	S	Photocopies @ .25 per page	98	\$24.50	\$24.50
4733	06/26/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$140.00	\$140.00
4734	06/27/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$50.00	\$50.00
4745	07/02/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4757	07/03/2001	000049-994764	S	William J. Cook - Parking Expense		\$24.00	\$24.00
5231	07/03/2001	000049-994764	S	Postage		\$0.68	\$0.68
5233	07/03/2001	000049-994764	S	FedEx Shipping Charges		\$22.88	\$22.88
4847	07/05/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
4836	07/06/2001	000049-994764	S	Postage		\$0.68	\$0.68
4854	07/06/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
4886	07/06/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
4861	07/09/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
4970	07/11/2001	000049-994764	S	William J. Cook - Travel Expense- Hotel/Airline		\$601.10	\$601.10
5043	07/11/2001	000049-994764	S	Photocopies @ .25 per page	8	\$2.00	\$2.00
5321	07/11/2001	000049-994764	S	Comptroller, State of Florida - Copy Services		\$59.10	\$59.10
5047	07/12/2001	000049-994764	S	Photocopies @ .25 per page	3	\$0.75	\$0.75
5113	07/12/2001	000049-994764	S	Postage		\$0.68	\$0.68
5259	07/12/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
5292	07/17/2001	000049-994764	S	Photocopies @ .25 per page	17	\$4.25	\$4.25
5304	07/17/2001	000049-994764	S	Postage		\$1.14	\$1.14

# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Receipt	Date	Client-Matter	Stat	Description	Units	Unit Cost	Client Cost
5333	07/20/2001	000049-994764	S	Legal Research		\$2.25	\$2.25
5337	07/20/2001	000049-994764	S	Legal Research		\$128.28	\$128.28
5644	07/25/2001	000049-994764	S	Photocopies @ .25 per page	244	\$61.00	\$61.00
5620	07/26/2001	000049-994764	S	Facsimiles	10	\$5.00	\$5.00
5658	07/30/2001	000049-994764	S	Photocopies @ .25 per page	40	\$10.00	\$10.00
5692	07/30/2001	000049-994764	S	Department of Banking and Finance - Copy Services		\$9.45	\$9.45
5676	07/31/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
5719	08/01/2001	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
5723	08/01/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
5706	08/02/2001	000049-994764	S	Postage		\$2.52	\$2.52
5786	08/02/2001	000049-994764	S	Photocopies @ .25 per page	110	\$27.50	\$27.50
5738	08/03/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
6023	08/14/2001	000049-994764	S	Long Distance Telephone Calls		\$0.86	\$0.86
6277	08/15/2001	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
6516	08/31/2001	000049-994764	S	FedEx Shipping Charges		\$20.68	\$20.68
6739	09/13/2001	000049-994764	S	Long Distance Telephone Calls		\$0.12	\$0.12
6935	09/13/2001	000049-994764	S	Photocopies @ .25 per page	51	\$12.75	\$12.75
6851	09/21/2001	000049-994764	S	Legal Research		\$62.28	\$62.28
7142	09/27/2001	000049-994764	S	Photocopies @ .25 per page	35	\$8.75	\$8.75
7186	09/28/2001	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
7266	10/01/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
7428	10/03/2001	000049-994764	S	Berryhill & Associates, Inc. - Miscellaneous charges		\$50.00	\$50.00
7507	10/03/2001	000049-994764	S	Photocopies @ .25 per page	1	\$0.25	\$0.25
7315	10/04/2001	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
7611	10/11/2001	000049-994764	S	Postage		\$0.34	\$0.34
7578	10/15/2001	000049-994764	S	FedEx Shipping Charges		\$15.08	\$15.08

# Expense Listing

**Listing Order:** Transaction Date, Client-Matter

**Client:** CLEMENT, EUGENE

**Matter:** Ace Cash Express

**Date Range:** 12/01/2000 - 06/24/2002

**Code:** All Codes

**Person:** All Persons

**Responsible:** All Responsible

**Invoicing Status:** Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Billable Cost
7747	10/16/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
7940	10/24/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
8399	11/09/2001	000049-994764	S	Postage		\$3.78	\$3.78
8408	11/09/2001	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
8411	11/09/2001	000049-994764	S	Facsimiles	24	\$12.00	\$12.00
8439	11/09/2001	000049-994764	S	Photocopies @ .25 per page	90	\$22.50	\$22.50
8494	11/09/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$168.00	\$168.00
8427	11/13/2001	000049-994764	S	Clerk of Court , Second District Court of Appeal - Filing Fee		\$250.00	\$250.00
8428	11/13/2001	000049-994764	S	Clerk of the Circuit Court, Thirteenth Circuit - Filing Fee		\$156.00	\$156.00
8490	11/13/2001	000049-994764	S	Postage		\$1.14	\$1.14
8577	11/13/2001	000049-994764	S	Photocopies @ .25 per page	25	\$6.25	\$6.25
8468	11/14/2001	000049-994764	S	Legal Research		\$4.54	\$4.54
8609	11/20/2001	000049-994764	S	Facsimiles	1	\$0.50	\$0.50
8657	11/27/2001	000049-994764	S	Postage		\$0.34	\$0.34
8697	11/27/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9196	12/12/2001	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9067	12/13/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$151.00	\$151.00
9199	12/14/2001	000049-994764	S	Berryhill & Associates, Inc. - Deposition Fee		\$126.50	\$126.50
9259	12/17/2001	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
9260	12/17/2001	000049-994764	S	Facsimiles	27	\$13.50	\$13.50
9473	12/17/2001	000049-994764	S	Photocopies @ .25 per page	1233	\$308.25	\$308.25
9326	12/18/2001	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
9389	12/18/2001	000049-994764	S	Postage		\$1.36	\$1.36
9439	12/18/2001	000049-994764	S	Photocopies @ .25 per page	12	\$3.00	\$3.00
9575	01/02/2002	000049-994764	S	Postage		\$2.39	\$2.39
9643	01/02/2002	000049-994764	S	Photocopies @ .25 per page	24	\$6.00	\$6.00

# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Ser	Description	Units	Our Cost	Client Cost
9646	01/04/2002	000049-994764	S	Photocopies @ .25 per page	6	\$1.50	\$1.50
9703	01/04/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9708	01/07/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
9773	01/10/2002	000049-994764	S	Postage		\$2.85	\$2.85
9893	01/10/2002	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
9914	01/10/2002	000049-994764	S	Photocopies @ .25 per page	30	\$7.50	\$7.50
9810	01/15/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
9818	01/16/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9828	01/17/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
9837	01/21/2002	000049-994764	S	Long Distance Telephone Calls		\$0.34	\$0.34
9993	01/22/2002	000049-994764	S	Postage		\$2.04	\$2.04
9995	01/22/2002	000049-994764	S	Postage		\$2.39	\$2.39
10279	01/23/2002	000049-994764	S	Photocopies @ .25 per page	36	\$9.00	\$9.00
10075	01/25/2002	000049-994764	S	Photocopies @ .25 per page	56	\$14.00	\$14.00
10126	01/25/2002	000049-994764	S	Facsimiles	40	\$20.00	\$20.00
10205	01/25/2002	000049-994764	S	Postage		\$2.85	\$2.85
10449	02/12/2002	000049-994764	S	Legal Research		\$5.59	\$5.59
10467	02/12/2002	000049-994764	S	Long Distance Telephone Calls		\$1.19	\$1.19
10800	02/28/2002	000049-994764	S	Facsimiles	7	\$3.50	\$3.50
10972	03/11/2002	000049-994764	S	Long Distance Telephone Calls		\$0.95	\$0.95
11016	03/11/2002	000049-994764	S	Postage		\$5.00	\$5.00
11042	03/11/2002	000049-994764	S	Photocopies @ .25 per page	29	\$7.25	\$7.25
11179	03/13/2002	000049-994764	S	Facsimiles	6	\$3.00	\$3.00
11341	03/24/2002	000049-994764	S	Postage		\$3.75	\$3.75
11357	03/24/2002	000049-994764	S	Facsimiles	18	\$9.00	\$9.00
11455	03/29/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50

# Expense Listing

Listing Order: Transaction Date, Client-Matter  
 Client: CLEMENT, EUGENE  
 Matter: Ace Cash Express  
 Date Range: 12/01/2000 - 06/24/2002

Code: All Codes  
 Person: All Persons  
 Responsible: All Responsible  
 Invoicing Status: Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
11679	04/01/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
11985	04/15/2002	000049-994764	S	Postage		\$0.68	\$0.68
12024	04/15/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
12229	04/15/2002	000049-994764	S	Photocopies @ .25 per page	3	\$0.75	\$0.75
12090	04/17/2002	000049-994764	S	Facsimiles	3	\$1.50	\$1.50
12104	04/18/2002	000049-994764	S	Facsimiles	17	\$8.50	\$8.50
12114	04/22/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
12122	04/22/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
12125	04/23/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
12242	04/25/2002	000049-994764	S	Photocopies @ .25 per page	89	\$22.25	\$22.25
12259	04/25/2002	000049-994764	S	IKON Office Solutions - Copy Services		\$172.32	\$172.32
12282	04/25/2002	000049-994764	S	Postage		\$29.04	\$29.04
12287	04/26/2002	000049-994764	S	Postage		\$2.64	\$2.64
12313	04/26/2002	000049-994764	S	Photocopies @ .25 per page	2	\$0.50	\$0.50
12780	05/15/2002	000049-994764	S	Facsimiles	8	\$4.00	\$4.00
12790	05/16/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
12924	05/17/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
12925	05/20/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
13218	06/03/2002	000049-994764	S	Facsimiles	9	\$4.50	\$4.50
13225	06/04/2002	000049-994764	S	Facsimiles	5	\$2.50	\$2.50
13459	06/12/2002	000049-994764	S	Gaspar J. Ficarrotta - Mediation Fee		\$344.00	\$344.00
13371	06/13/2002	000049-994764	S	Facsimiles	2	\$1.00	\$1.00
13479	06/17/2002	000049-994764	S	Facsimiles	4	\$2.00	\$2.00
Transaction Listing Total:						\$4,901.69	\$4,901.69

STATE OF FLORIDA  
DEPARTMENT OF BANKING AND FINANCE  
AND  
OFFICE OF THE ATTORNEY GENERAL

**IN RE:**

**ACE CASH EXPRESS, INC. d/b/a  
ACE AMERICA'S CASH EXPRESS,**

**DBF CASE NO.: 9177-F-9/02**

**SETTLEMENT AGREEMENT**

The Florida Department of Banking and Finance, Division of Securities and Finance ("DBF"), the Office of the Attorney General ("Attorney General") and ACE Cash Express, Inc. d/b/a ACE America's Cash Express ("Respondent" or "ACE") agree as follows:

1.     **JURISDICTION.** DBF is charged with the administration of Chapter 516, 560, and 687, Florida Statutes, and the Attorney General is charged with the administration of Chapters 501, 559, 687, 895, and 896, Florida Statutes. This agreement applies to Florida transactions only.

2.     **BACKGROUND.**

**Attorney General**

a.     The Attorney General moved to intervene as plaintiff in two civil cases that were pending against ACE, contending that ACE had violated Chapters 501, 516, 559, 560, 687, 895, and 896, Florida Statutes, in connection with deferred deposit check cashing services provided by ACE in Florida prior to April 2000. Those cases are: *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown*

*entities and individuals, Consolidated Case No. 99 09730*, in the Circuit Court for the Thirteenth Judicial District of Florida (the “Clement” case); and *Betts v. Ace Cash Express*, 927 So.2d 294 (Fla. 5<sup>th</sup> DCA 2002), (the “Betts” case). DBF was not a named party in either case.

b. ACE and the other defendants disagreed with the claims made by the Plaintiffs and the Attorney General in each of those cases.

c. The Attorney General’s motion to intervene in the Betts case was denied.

d. In the Clement case, the individual Plaintiffs’ claims were dismissed with prejudice, leaving the Attorney General as the sole Plaintiff. The Attorney General’s RICO claims were dismissed with prejudice and are subject of a pending appeal before the Second District Court of Appeal of Florida styled *State of Florida, Office of the Attorney General v. Zilliox*, Case No. 2002-2340 (consolidated with Case No. 2002-3113). All of the claims asserted by the Attorney General in the Clement case are to be settled pursuant to this Agreement, with the Attorney General voluntarily dismissing their claims.

e. ACE and the individual defendants have denied and continue to deny that they engaged in any wrongdoing, and this Agreement shall not constitute any admission of any wrongdoing or liability on the part of ACE or any of the individual defendants.

f. The Attorney General and ACE wish to avoid the time and expense involved in further litigation.



**Department of Banking and Finance**

g. Goleta National Bank, a national bank located in Goleta, California ("Goleta"), has offered loans to residents of Florida since April 2000. ACE has provided agency services to Goleta related to those loans in Florida. On October 25 and 28, 2002, ACE and Goleta entered into separate consent orders with the Office of the Comptroller of the Currency of the United States ("OCC"), pursuant to which Goleta agreed, among other things, to generally cease the origination, renewal and rollover of its loans in Florida and ACE agreed, among other things, to generally cease providing services to Goleta related to the origination, renewal and rollover of such Goleta loans, both by no later than December 31, 2002. Goleta, ACE and the OCC agreed that the loans provided by Goleta and serviced by ACE were made pursuant to 12 U.S.C. §85 and that the interest rate charged by Goleta was permissible under the laws of the United States for national banks located in the State of California. DBF was not a party to the agreement between Goleta, ACE, and the OCC.

h. ACE also offers a bill paying service through which it offers to accept or receive voluntary utility payments from its Florida customers and, for a fee, electronically transmit the payment to the utility. The DBF has informed ACE that to offer this service, ACE should be licensed as a Funds Transmitter under Part II, Chapter 560, Florida Statutes. ACE disagrees with the position taken by the DBF, but, to avoid the expense and uncertainty of litigation, ACE agreed to file, and has pending with DBF, an application to act as a Funds Transmitter

under Part II, Chapter 560, Florida Statutes. The DBF will issue that license, as well as the license authorizing ACE to act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes, on or before the effective date of this Agreement. Ace agrees that future transactions involving the transmission of funds will be governed by the provisions of Part II, Chapter 560, Florida Statutes, and ACE will comply with those provisions in all future transactions.

i. ACE is licensed with DBF as a Check Casher under Part III, Chapter 560, Florida Statutes.

**Purpose and Intent**

j. The parties wish to resolve and to release any claims that were asserted, or could have been asserted, or could be asserted, because of or arising from the investigation, litigation, or regulatory review conducted by the DBF or the Attorney General.

k. The DBF agrees that ACE has fully cooperated with it in this matter.

l. It is the intent of the parties that this agreement be implemented promptly, and without injury or inconvenience to ACE customers.

m. It is the intent of the parties that DBF issue or renew any authorization or license necessary for ACE to continue to offer services in Florida, including deferred presentment transactions, check cashing, bill paying, debit card transactions, money orders, wire transfers and other products that are authorized under Florida law.

n. It is the intent of the parties that this agreement be implemented without causing competitive disadvantage to ACE.

3. **CONSIDERATION.** ACE, the DBF, and the Attorney General agree as follows:

- a. ACE will cease providing agent services to Goleta in connection with the origination, renewal, or rollover of any Goleta loans in the State of Florida by December 31, 2002. ACE may, however, continue to provide services to Goleta related to the servicing and collection of Goleta loans originated, renewed, or rolled over in the State of Florida before January 1, 2003, subject to paragraph 3(g) below.
- b. ACE has applied for, and DBF agrees to issue upon the issuance of the final order contemplated by this agreement, a license with an effective date of December 30, 2002, authorizing ACE to act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes. ACE agrees not to enter into any deferred presentment transactions in Florida unless such deferred presentment transactions are completed in accordance with Part IV, Chapter 560, Florida Statutes. DBF agrees that ACE may act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes, and as a Funds Transmitter under Part II, Chapter 560, Florida Statutes, between December 30, 2002 and the issuance of the final order, provided that all such funds transmission and deferred presentment transactions engaged in during this time period are otherwise completed in accordance with Part II, Chapter 560, Florida Statutes, and Part IV, Chapter 560, Florida Statutes. DBF agrees that this is consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895 and 896, Florida Statutes, or an Rules related to those statutes.

c. ACE represents and warrants that it has obtained the consent of Goleta so that no Goleta loans entered into before the effective date of this Agreement will be extended (except for the customers' five-day extension options that are part of the terms of outstanding loans) or converted, without full payment by the Goleta loan customers, to any other type of transaction. Where applicable, ACE agrees that it will not offer deferred presentment services to a Goleta loan customer unless that customer's Goleta loan is repaid or cancelled in accordance with paragraph 3(g)-below. DBF agrees that the continued services provided under the Goleta loan program authorized by this subparagraph and by paragraph 3(a) above are consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895 and 896, Florida Statutes, or any Rules related to those statutes.

d. DBF agrees to issue to ACE licenses pursuant to Part II, Chapter 560, Florida Statutes, and Part IV, Chapter 560, Florida Statutes, with an effective date of December 30, 2002 upon the issuance of the final order contemplated in this Agreement. ACE and the DBF agree that, until the issuance of the final order contemplated in this agreement, ACE will continue to offer its bill paying service in order to avoid injury to those customers who rely on that service. DBF and the Attorney General agree that continuing to offer that service is consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895, and 896, Florida Statutes, or any Rules related to those statutes.

e. DBF acknowledges that no additional information is needed from ACE for it to issue the licenses contemplated by this Agreement.

f. ACE agrees to pay a total of \$500,000 in settlement and for issuance by DBF of authorizations, licenses, or other approvals necessary for ACE to continue in business in Florida, and for the releases in paragraphs 7 and 8 below. Of the \$500,000 total settlement, ACE has agreed to pay \$250,000 to the DBF Regulatory Trust Fund in full satisfaction of all attorney's fees, costs, and other expenses incurred by the DBF in connection with this matter and, ACE has agreed to deliver to the Attorney General, a contribution of \$250,000 to the Florida State University College of Law in full satisfaction of all attorney's fees, costs and other expenses incurred by the Attorney General in connection with this matter. These amounts will be paid by check, and will be delivered to the DBF or the Attorney General upon entry of the Final Order as provided for herein.

g. ACE represents and warrants that it has obtained the consent of Goleta so that loans that are delinquent as of October 1, 2002, and remain unpaid as of the effective date of this agreement, from customers who engaged in Goleta loan transactions commenced or originated before October 1, 2002 in Florida (collectively, the "Goleta Loan Customers") need not be repaid, and the debt owed to Goleta from Goleta Loan Customers will be cancelled.

h. If Goleta, either directly or through ACE, its agent, has notified a credit-reporting agency of a Goleta Loan Customer's delinquent debt to Goleta, then ACE represents and warrants that it has obtained the consent of Goleta for ACE to notify the credit agency that the delinquent amount has been cancelled.

i. In addition to the amount specified in paragraph 3(f) above, ACE will pay up to \$15,000 for an independent audit of the loan cancellations provided in paragraph 3(g) above, the credit reporting notifications provided in paragraph 3(h) above, and verification of compliance with the transition from the Goleta loan product to the state licensed product contemplated in paragraph 3(b) and 3(c) above. DBF will select the independent auditor, after consultation with ACE. The independent auditor selected will be required to report to the DBF within 90 days of the selection.

j. The entry of a Final Order by DBF in the form of the Attachment to this agreement.

k. Within 10 days after the entry of the final order contemplated herein, the Attorney General will dismiss with prejudice its lawsuit, *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown entities and individuals, Consolidated Case No. 99 09730*, in the Circuit Court for the Thirteenth Judicial District of Florida, as to all defendants.

l. Within 10 days after the entry of the final order contemplated in 3(j) above, the Attorney General will dismiss with prejudice its appeal of any orders in the Clement case litigation, including *State of Florida, Office of the Attorney General v. Zilliox*, Case No. 2002-2240 and *State of Florida, Office of the Attorney General v. Alternative Financial, Inc.*, Case No. 2002-3113.

4. **CONSENT.** Without admitting or denying any wrongdoing, Respondent consents to the issuance by the DBF of a Final Order, in substantially the form of the attached Final Order, which incorporates the terms of this Agreement.

5. **FINAL ORDER.** The Final Order incorporating this Agreement is issued pursuant to Subsection 120.57(4), Florida Statutes, and upon its issuance shall be a final administrative order.

6. **WAIVERS.** Respondent knowingly and voluntarily waives:

- a. its right to an administrative hearing provided for by Chapter 120, Florida Statutes, to contest the specific agreements included in this Agreement;
- b. any requirement that the Final Order incorporating this Agreement contain separately stated Findings of Fact and Conclusions of Law or Notice of Rights;
- c. its right to the issuance of a Recommended Order by an administrative law judge from the Division of Administrative Hearings or from the DBF;
- d. any and all rights to object to or challenge in any judicial proceeding, including but not limited to, an appeal pursuant to Section 120.68, Florida Statutes, any aspect, provision or requirement concerning the content, issuance, procedure or timeliness of the Final Order incorporating this Agreement; and
- e. any causes of action in law or in equity, which Respondent may have arising out of the specific matters addressed in this agreement. DBF for itself and the DBF Released Parties, accepts this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist, and DBF, for itself and the DBF Released Parties, expressly denies that any such right or cause of action does in fact exist.

7. **ATTORNEY GENERAL RELEASE.** The Attorney General, for himself and his predecessors, successors and assigns, hereby waives, releases and forever discharges ACE, its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns, and Goleta, and its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns (collectively, the "ACE Released Parties"), from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, fees, penalties, damages, judgments, liabilities and obligations, both contingent and fixed, known and unknown, foreseen and unforeseen, anticipated and unanticipated, expected and unexpected, related to or arising out of Goleta's or ACE's operations in Florida prior to the effective date of this agreement. This release includes, but is not limited to, any claims related to any loans made, renewed, or rolled over, by Goleta in Florida and any services provided by ACE or its franchisees related thereto, any claims related to any violation of Chapters 501, 516, 559, 560, 687, 772, 895 and 896, *Florida Statutes*, any claims related to check cashing services provided prior to the effective date of Part IV, Chapter 560, *Florida Statutes*, and any claims related to any licensing requirements for the services provided by ACE to its customers in Florida prior to the effective date of this agreement. Without limiting the generality of the foregoing, this release also includes all claims asserted or that could have been or could be asserted against the parties named as defendants or that could have been named as defendants in *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown entities and individuals, Consolidated Case No. 99 09730*. ACE, for itself



and on behalf of the ACE Released Parties, accepts this release and waiver by the Attorney General without in any way acknowledging or admitting that any such cause of action does or may exist, and ACE, for itself and on behalf of the ACE Released Parties, expressly denies that any such right or cause of action does in fact exist. Respondent hereby waives, releases and forever discharges the Attorney General and his respective employees, agents, and representatives (collectively, the "Attorney General Released Parties") from any causes of action in law or in equity, which Respondent may have arising out of the specific matters addressed in this agreement. The Attorney General, for themselves and the Attorney General Released Parties, accept this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist, the Attorney General, for himself and the Attorney General Released Parties, expressly deny that any such right or cause of action does in fact exist.

8. **DEPARTMENT OF BANKING AND FINANCE RELEASE.** The DBF, for itself and its predecessors, successors and assigns, hereby waives, releases and forever discharges ACE and its predecessors, successors, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns, and Goleta, and its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns (collectively, the "ACE Released Parties"), from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, fees, penalties, damages, judgments, liabilities and obligations, both contingent and fixed, known and unknown, foreseen and unforeseen, anticipated and unanticipated, expected and unexpected, related to or arising out of the conduct of ACE and/or Goleta in connection with the offering of deferred presentment

services or loans in Florida, where such conduct occurred prior to the effective date of this Agreement.. This release includes, but is not limited to, any claims related to any loans made, renewed, or rolled over by Goleta in Florida and any services provided by ACE or its franchisees related thereto, any claims related to any violation of Chapters 501, 516, 559, 560, 687, 772, 895 and 896, *Florida Statutes*, any claims related to check cashing services provided prior to the effective date of Part IV, Chapter 560, *Florida Statutes*, and any claims related to any licensing requirements for the services provided by ACE to its customers in Florida prior to the effective date of this Agreement. ACE, for itself and on behalf of the ACE Released Parties, accept this release and waiver by the Attorney General and the DBF without in any way acknowledging or admitting that any such cause of action does or may exist, and ACE, for itself and on behalf of the ACE Released Parties, expressly denies that any such right or cause of action does in fact exist.

9. **EXCLUSION.** This release does not include any claims under Chapter 560, *Florida Statutes*, against franchisees of ACE related to deferred presentment transactions engaged in after the effective date of Part IV, Chapter 560, *Florida Statutes*, unless such transactions were under the Goleta loan program.

10. **ATTORNEYS' FEES.** Each party to this Agreement shall be solely responsible for its separate costs and attorneys' fees incurred in the prosecution, defense or negotiation in this matter up to entry of the Final Order incorporating this Agreement and the dismissals by the Attorney General provided for in 3 (k) and 3 (l) above.

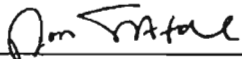
11. **EFFECTIVE DATE.** The effective date of this agreement is December 30, 2002.

12. **FAILURE TO COMPLY.** Nothing in this Agreement limits Respondent's right to contest any finding or determination made by DBF or the Attorney General concerning

Respondent's alleged failure to comply with any of the terms and provisions of this Agreement or of the Final Order incorporating this Agreement.

**WHEREFORE**, in consideration of the foregoing, DBF, the Attorney General, and ACE execute this Agreement on the dates indicated below.

**DEPARTMENT OF BANKING AND FINANCE**

By:   
DON SAXON  
Division Director

Date: 12/30/02

**OFFICE OF THE ATTORNEY GENERAL**

By:   
RICHARD DORAN, Attorney General

Date: 12/30/02

**ACE CASH EXPRESS, INC., d/b/a  
ACE AMERICA'S CASH EXPRESS**

By: \_\_\_\_\_  
ERIC C. NORRINGTON  
Vice President

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

**BEFORE ME**, the undersigned authority, personally appeared \_\_\_\_\_,  
as \_\_\_\_\_ of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH  
EXPRESS, who is personally known to me or who has produced  
\_\_\_\_\_ as identification, and who, after being duly sworn, states that he  
has read and understands the contents of this Agreement and voluntarily executed the same on  
behalf of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS.

Respondent's alleged failure to comply with any of the terms and provisions of this Agreement or of the Final Order incorporating this Agreement.

WHEREFORE, in consideration of the foregoing, DBF, the Attorney General, and ACE execute this Agreement on the dates indicated below.

DEPARTMENT OF BANKING AND FINANCE

By: \_\_\_\_\_  
DON SAXON  
Division Director

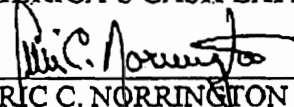
Date: \_\_\_\_\_

OFFICE OF THE ATTORNEY GENERAL

By: \_\_\_\_\_  
RICHARD DORAN, Attorney General

Date: 12/30/02

ACE CASH EXPRESS, INC., d/b/a  
ACE AMERICA'S CASH EXPRESS'

By: \_\_\_\_\_  
ERIC C. NORRINGTON  
Vice President

Date: 12/30/02

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned authority, personally appeared \_\_\_\_\_,  
as \_\_\_\_\_ of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH  
EXPRESS, who is personally known to me or who has produced  
\_\_\_\_\_ as identification, and who, after being duly sworn, states that he  
has read and understands the contents of this Agreement and voluntarily executed the same on  
behalf of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS.

**SWORN AND SUBSCRIBED** before me this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
**NOTARY PUBLIC**

**State of Florida**

**Print Name:**

**My Commission No.:**

**My Commission Expires:**

**(SEAL)**



**ACE Cash Express, Inc.**  
1231 Greenway Drive #600  
Irving, Texas 75038  
(972) 550-5000

INVOICE		COMMENT	GROSS	DEDUCTION	AMOUNT PAID
NUMBER	DATE				
12/23/02	12/23/02	Settlement	250,000.00		250,000.00

**PAYMENT ADVICE**



**ACE Cash Express, Inc.**  
1231 Greenway Drive #600  
Irving, Texas 75038  
(972) 550-5000

WELLS FARGO BANK

CHECK  
NUMBER

005132

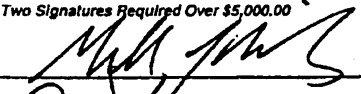

DATE	AMOUNT
12/19/02	\$*****250,000.00

PAY Two Hundred Fifty Thousand 00/100 dollars\*\*\*\*\*

TO THE ORDER OF

Florida State University College of Law  
425 West Jefferson Street  
Tallahassee, FL 32306

Two Signatures Required Over \$5,000.00

  
\_\_\_\_\_  
  
\_\_\_\_\_  
VOID AFTER 120 DAYS

MP

MP

⑈005132⑈ ⑆11301787014759 630098⑈

# BARKER, RODEMS & COOK

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

CHRIS A. BARKER  
RYAN CHRISTOPHER RODEMS  
WILLIAM J. COOK  
JEFFREY W. GIBSON

300 West Platt Street, Suite 150  
Tampa, Florida 33606

Telephone 813/489-1001  
Facsimile 813/489-1008

May 9, 2003

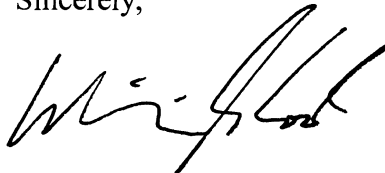
Mr. Neil J. Gillespie  
301 West Platt Street, No. 155  
Tampa, Florida 33606

Dear Neil:

Pursuant to your request, I am enclosing a copy of our expenses from the *Amscot* case. You did not receive one of these when you settled your case because you were not required to pay any expenses out of your settlement. As you know, the Defendant paid our fees and costs separately. Also, our former firm advised us that it incurred expenses of \$2,544.79.

I was good to hear from you. I hope everything is going well.

Sincerely,



William J. Cook

WJC:SDW  
Enclosure

EXHIBIT

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# Expense Listing

**Listing Order:** Transaction Date, Client-Matter

**Client:** CLEMENT, EUGENE

**Matter:** Clement v. Amscot

**Date Range:** 12/01/2000 - 05/09/2003

**Code:** All Codes

**Person:** All Persons

**Responsible:** All Responsible

**Invoicing Status:** Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
223	01/08/2001	000049-994766	P	Postage		\$1.43	\$1.43
226	01/08/2001	000049-994766	P	Postage		\$1.43	\$1.43
659	01/08/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
660	01/08/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
663	01/08/2001	000049-994766	P	Photocopies	270	\$67.50	\$67.50
680	01/08/2001	000049-994766	P	Photocopies	8	\$2.00	\$2.00
84	01/10/2001	000049-994766	P	Facsimiles		\$0.50	\$0.50
231	01/10/2001	000049-994766	P	Postage		\$0.68	\$0.68
479	01/10/2001	000049-994766	P	Photocopies	4	\$1.00	\$1.00
1772	01/10/2001	000049-994766	P	Long Distance Telephone Calls		\$0.05	\$0.05
485	01/11/2001	000049-994766	P	Photocopies	2	\$0.50	\$0.50
172	01/11/2001	000049-994766	P	Postage		\$0.34	\$0.34
162	01/12/2001	000049-994766	P	Postage		\$0.34	\$0.34
530	01/12/2001	000049-994766	P	Photocopies	8	\$2.00	\$2.00
153	01/16/2001	000049-994766	P	Postage		\$0.68	\$0.68
511	01/16/2001	000049-994766	P	Photocopies	6	\$1.50	\$1.50
219	01/18/2001	000049-994766	P	Postage		\$0.34	\$0.34
597	01/18/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
304	01/22/2001	000049-994766	P	Postage		\$0.34	\$0.34
312	01/22/2001	000049-994766	P	Postage		\$0.34	\$0.55
606	01/22/2001	000049-994766	P	Photocopies	33	\$8.25	\$8.25
609	01/22/2001	000049-994766	P	Photocopies	1	\$0.25	\$0.25
319	01/23/2001	000049-994766	P	Postage		\$0.34	\$0.34
558	01/23/2001	000049-994766	P	Photocopies	2	\$0.50	\$0.50
107	01/26/2001	000049-994766	P	Facsimiles		\$1.00	\$1.00
363	01/26/2001	000049-994766	P	Postage		\$0.34	\$0.34



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**Responsible:** All Responsible

**Invoicing Status:** Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
733	01/26/2001	000049-994766	P	Photocopies	162	\$40.50	\$40.50
448	01/30/2001	000049-994766	P	Postage		\$1.18	\$1.18
699	01/30/2001	000049-994766	P	Photocopies	42	\$10.50	\$10.50
1199	01/31/2001	000049-994766	P	Legal Research		\$15.72	\$15.72
1210	01/31/2001	000049-994766	P	Legal Research		\$7.50	\$7.50
1212	01/31/2001	000049-994766	P	Legal Research		\$26.21	\$26.21
657	02/01/2001	000049-994766	P	Postage		\$0.34	\$0.34
834	02/05/2001	000049-994766	P	Postage		\$0.89	\$0.89
849	02/05/2001	000049-994766	P	Postage		\$0.34	\$0.34
872	02/05/2001	000049-994766	P	Photocopies @ .25 per page	14	\$3.50	\$3.50
864	02/06/2001	000049-994766	P	Postage		\$1.39	\$1.39
899	02/06/2001	000049-994766	P	Facsimiles		\$15.50	\$15.50
1062	02/07/2001	000049-994766	P	Regency Reporting Service , Inc. - Deposition Fee		\$59.60	\$59.60
1004	02/08/2001	000049-994766	P	Facsimiles		\$1.00	\$1.00
1174	02/14/2001	000049-994766	P	Postage		\$1.81	\$1.81
1259	02/14/2001	000049-994766	P	Photocopies @ .25 per page	80	\$20.00	\$20.00
1267	02/15/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
1291	02/15/2001	000049-994766	P	Postage		\$0.34	\$0.34
1393	02/22/2001	000049-994766	P	Susan O'Dell - Copy Services		\$11.00	\$11.00
1464	02/22/2001	000049-994766	P	Photocopies @ .25 per page	8	\$2.00	\$2.00
1680	03/02/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
1699	03/02/2001	000049-994766	P	Postage		\$0.34	\$0.34
1945	03/07/2001	000049-994766	P	Facsimiles		\$1.00	\$1.00
1932	03/12/2001	000049-994766	P	Postage		\$0.76	\$0.76
2089	03/12/2001	000049-994766	P	Photocopies @ .25 per page	60	\$15.00	\$15.00
2091	03/12/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50

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**Person:** All Persons

**Responsible:** All Responsible

**Invoicing Status:** Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
2180	03/19/2001	000049-994766	P	Legal Research		\$0.43	\$0.43
2247	03/31/2001	000049-994766	P	Facsimiles 10 pages on 3/19 and 3/26		\$5.00	\$5.00
2297	03/31/2001	000049-994766	P	Photocopies @ .25 per page	82	\$20.50	\$20.50
2335	03/31/2001	000049-994766	P	Postage		\$2.75	\$2.75
2248	04/04/2001	000049-994766	P	Facsimiles 2 pages on 4/01		\$1.00	\$1.00
2450	04/23/2001	000049-994766	P	Chris Barker - Miscellaneous charges		\$7.04	\$7.04
2455	04/23/2001	000049-994766	P	Legal Research Lexis		\$38.75	\$38.75
2474	04/24/2001	000049-994766	P	IKON Document Services - Copy Services		\$468.42	\$468.42
2778	04/27/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
2536	04/28/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
2595	04/28/2001	000049-994766	P	Photocopies @ .25 per page	11	\$2.75	\$2.75
2649	04/28/2001	000049-994766	P	Photocopies @ .25 per page	589	\$147.25	\$147.25
2686	04/28/2001	000049-994766	P	Postage		\$2.72	\$2.72
2755	04/28/2001	000049-994766	P	Postage		\$0.34	\$0.34
2826	05/03/2001	000049-994766	P	Postage		\$0.34	\$0.34
2827	05/03/2001	000049-994766	P	Miscellaneous expenses Lit. Copsys and binders		\$468.42	\$468.42
3055	05/08/2001	000049-994766	P	Photocopies @ .25 per page	15	\$3.75	\$3.75
3087	05/08/2001	000049-994766	P	Postage		\$1.10	\$1.10
3155	05/10/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
3235	05/14/2001	000049-994766	P	Photocopies @ .25 per page	16	\$4.00	\$4.00
3349	05/14/2001	000049-994766	P	Postage		\$0.55	\$0.55
3182	05/15/2001	000049-994766	P	Legal Research		\$187.10	\$187.10
3185	05/15/2001	000049-994766	P	Legal Research		\$11.02	\$11.02
3439	05/22/2001	000049-994766	P	Photocopies @ .25 per page	24	\$6.00	\$6.00
3585	05/25/2001	000049-994766	P	Photocopies @ .25 per page	15	\$3.75	\$3.75
3630	05/25/2001	000049-994766	P	Postage		\$0.55	\$0.55

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**Responsible:** All Responsible

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Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
3779	05/29/2001	000049-994766	P	Regency Reporting Service , Inc. - Deposition Fee		\$417.75	\$417.75
3676	05/31/2001	000049-994766	P	Photocopies @ .25 per page	45	\$11.25	\$11.25
3714	06/01/2001	000049-994766	P	Postage		\$0.97	\$0.97
3742	06/01/2001	000049-994766	P	Photocopies @ .25 per page	20	\$5.00	\$5.00
4023	06/12/2001	000049-994766	P	Postage		\$0.34	\$0.34
4236	06/14/2001	000049-994766	P	Richard Lee Reporting - Deposition Fee		\$524.30	\$524.30
4634	06/15/2001	000049-994766	P	Postage		\$0.34	\$0.34
4323	06/18/2001	000049-994766	P	Photocopies @ .25 per page	18	\$4.50	\$4.50
4342	06/18/2001	000049-994766	P	Postage		\$0.55	\$0.55
4512	06/25/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
4526	06/25/2001	000049-994766	P	Postage		\$0.34	\$0.34
4563	06/26/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
4652	06/26/2001	000049-994766	P	Facsimiles	1	\$0.50	\$0.50
4575	06/27/2001	000049-994766	P	Photocopies @ .25 per page	42	\$10.50	\$10.50
4655	06/27/2001	000049-994766	P	Facsimiles	5	\$2.50	\$2.50
4853	07/05/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
4835	07/06/2001	000049-994766	P	Postage		\$0.34	\$0.34
4857	07/06/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
4890	07/06/2001	000049-994766	P	Photocopies @ .25 per page	3	\$0.75	\$0.75
4859	07/09/2001	000049-994766	P	Facsimiles	4	\$2.00	\$2.00
4957	07/10/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
4984	07/10/2001	000049-994766	P	Photocopies @ .25 per page	159	\$39.75	\$39.75
5028	07/10/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
5065	07/10/2001	000049-994766	P	Postage		\$1.02	\$1.02
5087	07/10/2001	000049-994766	P	Postage		\$2.18	\$2.18
5090	07/10/2001	000049-994766	P	Postage		\$3.95	\$3.95

# Expense Listing

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**Invoicing Status:** Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
5092	07/10/2001	000049-994766	P	Postage		\$0.34	\$0.34
5203	07/10/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
5319	07/12/2001	000049-994766	P	American Investigations Management Inc. - Deposition Fee		\$32.03	\$32.03
5596	07/19/2001	000049-994766	P	Postage		\$0.34	\$0.34
5338	07/20/2001	000049-994766	P	Legal Research		\$9.86	\$9.86
5392	07/23/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
5426	07/23/2001	000049-994766	P	Postage		\$0.34	\$0.34
5452	07/24/2001	000049-994766	P	Photocopies @ .25 per page	46	\$11.50	\$11.50
5502	07/24/2001	000049-994766	P	Postage		\$1.71	\$1.71
5672	07/31/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
5678	07/31/2001	000049-994766	P	Postage		\$0.80	\$0.80
5689	07/31/2001	000049-994766	P	Postage		\$0.57	\$0.57
5717	08/01/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
5856	08/06/2001	000049-994766	P	Photocopies @ .25 per page	68	\$17.00	\$17.00
5911	08/06/2001	000049-994766	P	Facsimiles	20	\$10.00	\$10.00
5894	08/08/2001	000049-994766	P	Photocopies @ .25 per page	5	\$1.25	\$1.25
5962	08/08/2001	000049-994766	P	Postage		\$5.04	\$5.04
6127	08/09/2001	000049-994766	P	Photocopies @ .25 per page	82	\$20.50	\$20.50
6057	08/10/2001	000049-994766	P	Postage		\$1.95	\$1.95
5941	08/13/2001	000049-994766	P	Division of Administrative Hearings - Copy Services		\$21.25	\$21.25
5998	08/14/2001	000049-994766	P	Legal Research		\$19.90	\$19.90
5999	08/14/2001	000049-994766	P	Legal Research		\$9.01	\$9.01
6087	08/14/2001	000049-994766	P	Postage		\$0.34	\$0.34
6191	08/14/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
6181	08/15/2001	000049-994766	P	Postage		\$0.34	\$0.34
6327	08/16/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00

# Expense Listing

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Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
6187	08/17/2001	000049-994766	P	Clerk of the Court, Middle District of Florida - Filing Fee		\$105.00	\$105.00
6234	08/17/2001	000049-994766	P	Postage		\$0.68	\$0.68
6289	08/17/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
6238	08/20/2001	000049-994766	P	Postage		\$0.68	\$0.68
6479	08/20/2001	000049-994766	P	Photocopies @ .25 per page	14	\$3.50	\$3.50
6254	08/21/2001	000049-994766	P	Postage		\$1.02	\$1.02
6482	08/21/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
6393	08/23/2001	000049-994766	P	Postage		\$1.03	\$1.03
6406	08/23/2001	000049-994766	P	Photocopies @ .25 per page	18	\$4.50	\$4.50
6370	08/24/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
6425	08/28/2001	000049-994766	P	Photocopies @ .25 per page	4	\$1.00	\$1.00
6431	08/28/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
6463	08/28/2001	000049-994766	P	Postage		\$0.68	\$0.68
6474	08/28/2001	000049-994766	P	Postage		\$0.34	\$0.34
6569	08/29/2001	000049-994766	P	Facsimiles	3	\$1.50	\$1.50
6531	08/31/2001	000049-994766	P	Photocopies @ .25 per page	96	\$24.00	\$24.00
6540	08/31/2001	000049-994766	P	Photocopies @ .25 per page	60	\$15.00	\$15.00
6552	08/31/2001	000049-994766	P	Postage		\$2.29	\$2.29
6852	09/21/2001	000049-994766	P	Legal Research		\$6.77	\$6.77
6989	09/21/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
7099	09/24/2001	000049-994766	P	Photocopies @ .25 per page	27	\$6.75	\$6.75
7103	09/25/2001	000049-994766	P	Photocopies @ .25 per page	1	\$0.25	\$0.25
7180	09/28/2001	000049-994766	P	Photocopies @ .25 per page	78	\$19.50	\$19.50
7204	10/02/2001	000049-994766	P	IKON Document Services - Copy Services		\$96.40	\$96.40
7309	10/02/2001	000049-994766	P	Postage		\$3.95	\$3.95
7573	10/02/2001	000049-994766	P	FedEx Shipping Charges		\$32.24	\$32.24

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Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
7797	10/02/2001	000049-994766	P	IKON Document Services - Copy Services		\$55.51	\$55.51
7541	10/10/2001	000049-994766	P	Postage		\$1.02	\$1.02
7571	10/10/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
7522	10/15/2001	000049-994766	P	Legal Research		\$27.68	\$27.68
7536	10/15/2001	000049-994766	P	Legal Research		\$177.29	\$177.29
7837	10/23/2001	000049-994766	P	Postage		\$0.34	\$0.34
7931	10/23/2001	000049-994766	P	Photocopies @ .25 per page	2	\$0.50	\$0.50
7948	10/29/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
7976	10/29/2001	000049-994766	P	Facsimiles	7	\$3.50	\$3.50
7979	10/29/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
7946	10/30/2001	000049-994766	P	Facsimiles	6	\$3.00	\$3.00
7964	10/30/2001	000049-994766	P	Postage		\$0.57	\$0.57
7987	10/30/2001	000049-994766	P	Facsimiles	7	\$3.50	\$3.50
7992	10/30/2001	000049-994766	P	Photocopies @ .25 per page	14	\$3.50	\$3.50
7965	10/31/2001	000049-994766	P	Postage		\$0.34	\$0.34
7970	10/31/2001	000049-994766	P	Photocopies @ .25 per page	1	\$0.25	\$0.25
8021	10/31/2001	000049-994766	P	Photocopies @ .25 per page	6	\$1.50	\$1.50
8056	11/01/2001	000049-994766	P	Postage		\$0.34	\$0.34
8104	11/02/2001	000049-994766	P	Facsimiles	2	\$1.00	\$1.00
8116	11/02/2001	000049-994766	P	Postage		\$0.34	\$0.34
8340	11/06/2001	000049-994766	P	Postage		\$1.59	\$1.59
8195	11/07/2001	000049-994766	P	Photocopies @ .25 per page	18	\$4.50	\$4.50
8296	11/07/2001	000049-994766	P	Photocopies @ .25 per page	23	\$5.75	\$5.75
8351	11/08/2001	000049-994766	P	Postage		\$0.57	\$0.57
8453	11/14/2001	000049-994766	P	Legal Research		\$7.56	\$7.56
8517	11/15/2001	000049-994766	P	Facsimiles	1	\$0.50	\$0.50

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**Code:** All Codes

**Person:** All Persons

**Responsible:** All Responsible

**Invoicing Status:** Invoiced and Not Invoiced

Record	Date	Client-Matter	Stat	Description	Units	Our Cost	Client Cost
8731	11/21/2001	000049-994766	P	Postage		\$4.63	\$4.63
8804	11/21/2001	000049-994766	P	Photocopies @ .25 per page	40	\$10.00	\$10.00
9038	12/12/2001	000049-994766	P	Long Distance Telephone Calls		\$0.06	\$0.06
Transaction Listing Total:						\$3,580.67	\$3,580.88