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 corporation; WILLIAM J. COOK,

DIVISION: H

Defendants.
_____/

PLAINTIFF'S MOTION FOR PUNITIVE DAMAGES PURSUANT TO SECTION 768.72 FLORIDA STATUTES

List of Exhibits

1. Clement v. AMSCOT, case 8:99-cv-2795-T-26C, Amscot's Response in Opposition to Clement's Motion For Class Certification and Memorandum of Law in Support

2. Clement v. AMSCOT, case 8:99-cv-2795-T-26C, Order of September 20, 2000

3. Clement v. AMSCOT, case 8:99-cv-2795-T-26C, Amscot's Motion to Compel Clement to Respond to Certified Question and Related Questions and Memorandum of Law in Support Thereof

4. St. Petersburg Times, Attorney's suit says he received coffee in face, June 06, 2000

5. St. Petersburg Times, Bucs accused of extortion, June 10, 2000

6. St. Petersburg Times, Bucs fans win in ticket settlement, June 22, 2000

7. Jonathan Alpert paid political advertisement

8. Neil Gillespie's letter to William Cook, August 23, 2000

9. Jonathan Alpert's letter to Neil Gillespie, August 31, 2000

10. Articles of Incorporation, Barker, Rodems & Cook, P.A., August 2, 2000

11. William Cook's letter to Neil Gillespie, September 25, 2000

12. Clement v. AMSCOT, case 8:99-cv-2795-T-26C, Motion for Intervention as Plaintiffs and Proposed Class Representatives with Incorporated Memorandum of Law

13. Clement v. AMSCOT, case 8:99-cv-2795-T-26C, Order of March 20, 2001

14. William Cook's letter to Neil Gillespie, March 27, 2001

15. William Cook's letter to Neil Gillespie, May 25, 2001

16. Class Representation Contract

17. William Cook's letter to Neil Gillespie, December 6, 2000

18. Clement v. AMSCOT, case 8:99-cv-2795-T-26C, Joint Stipulation for Substitution of Counsel

19. William Cook's letter to Neil Gillespie, July 23, 2001

20. Clement v. AMSCOT, case 8:99-cv-2795-T-26C, Order of Dismissal, August 1, 2001

21. William Cook's letter to Neil Gillespie, August 8, 2001

22. William Cook's letter to Neil Gillespie, August 15, 2001

23. Neil Gillespie's letter and fax to William Cook, August 16, 2001

24. William Cook's letter to Gay Blomefield and Eugene Clement, August 21, 2001

25. John Anthony's letter to Neil Gillespie, August 26, 2005

26. William Cook's memorandum dated August 20, 2001

27. William Cook's letter to John Anthony, August 20, 2001

28. John Anthony's letter to William Cook, August 24, 2001

29. William Cook's letter to John Anthony, August 28, 2001

30. John Anthony's letter to William Cook, August 29, 2001

31. Neil Gillespie's letter to William Cook, September 15, 2001

32. William Cook's letter to Neil Gillespie. September 18, 2001

33. Neil Gillespie's letter to William Cook, September 20, 2001

34. William Cook's memorandum dated September 24, 2001

35. William Cook's letter to Neil Gillespie, October 9, 2001

36. William Cook's letter to Neil Gillespie, September 14, 2000

37. Closing Statement, AMSCOT, dated October 31, 2001

38. Neil Gillespie's letter to William Cook, April 30, 2003

39. William Cook's letter to Neil Gillespie, Amscot expense list, May 9, 2003

40. Clement v. AMSCOT, US Court of Appeals, mandate, December 7, 2001

41. Neil Gillespie's letter to William Cook, June 8, 2003

42. Neil Gillespie's letter to William Cook, June 13, 2003

43. Neil Gillespie's letter to William Cook, June 18, 2003

44. Chris Barker's letter to Neil Gillespie, June 19, 2003

45. Neil Gillespie's letter to Chris Barker, June 22, 2003

46. Chris Barker's letter to Neil Gillespie, June 23, 2003

47. Neil Gillespie's letters to Mark Ober, SA

48. Mr. Marvin's letter to Neil Gillespie, July 12, 2006; Tobkin v. Jarboe, 710 So.2d 975

49. Neil Gillespie's letter to AMSCOT, and supporting exhibit

50. Susan Bloemendaal's letter to Neil Gillespie, May 4, 2005

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

Plaintiff,

vs. CASE NO.: 99-2795-CIV-T-26C

AMSCOT CORPORATION, a
Florida corporation,

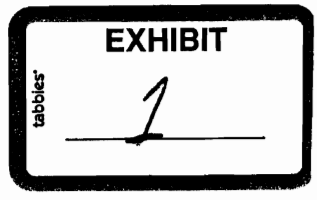
Defendant.
_____/

AMSCOT'S RESPONSE IN OPPOSITION TO CLEMENT'S MOTION FOR CLASS CERTIFICATION AND MEMORANDUM OF LAW IN SUPPORT

Defendant, Amscot Corporation ("Amscot"), pursuant to Federal Rule of Civil Procedure 23, hereby responds in opposition to Plaintiff, Eugene R. Clement's ("Clement"), Motion for Class Certification (the "Certification Motion") and states:

A. Background Allegations

On December 9, 1999, this action was initiated by Clement, individually as purportedly on behalf of others similarly situated, against Amscot by the filing of a "Class Action Complaint" (as amended, the "Complaint"). The Complaint seeks relief under different legal theories against Amscot based upon Amscot's deferred deposit check cashing service that is currently offered at approximately twenty (20) locations in six (6) counties based within this jurisdiction. In the Complaint, Clement is identified as a consumer of Amscot's services (the "Clement Check Transactions"), which he contends are violative of the following statutes: the federal Truth in Lending Act, 15 U.S.C. § 1640, and the corresponding Federal Reserve Board Regulation Z, 12



C.F.R. 226.1 et seq., Florida's Deceptive and Unfair Trade Practices Act, found at Florida Statutues, § 501.201, et seq., and Florida's usury statute, found at Florida Statutes, § 687.0304, et seq.

The Complaint has been amended on March 28, 2000, and on April 14, 2000, Amscot filed its "Motion to Dismiss First Amended Class Action Complaint and Incorporated Memorandum of Law" (the "Motion to Dismiss"), which remains pending at this time.

On July 7, 2000, and following numerous generous consented-to extensions by Amscot, Clement filed the Certification Motion. Amscot contends herein that Clement is a wholly unacceptable plaintiff with respect to the matters at issue in the Complaint, and that the relief sought in the Certification Motion is therefore inappropriate as a matter of law.

B. Summary of the Argument

Federal Rules of Civil Procedure 23(a) and (b)(3) imposes upon Clement as proposed class representative, the requirements of commonality, typicality, adequacy, and predominance of common issues over individual issues specific to Clement. Clement has wholly failed to meet his burden of satisfying these requirements as reflected in the transcript of Clement's deposition (the "Transcript"), taken on August 29, 2000, a copy of which is being filed simultaneously with this pleading.[1]

Clement seeks to certify a putative class allegedly having claims that depend on the members' particular transactions with Amscot, the particular documents executed in connection with the members' transactions, and the timing of the members' particular transactions. Individual

[1] Amscot has received the Transcript within a matter of hours prior to the filing deadline for this pleading, and is therefore unable in the context of this pleading to cite to page and line of the Transcript as would be most appropriate in this context. However, Amscot will hereafter seek authorization of this Court to submit an amended version of this pleading that does provide these citations for the benefit of the Court and opposing counsel.

questions of fact predominate in this matter, and the absence of common issues among the putative class members preclude class certification. This case is the classic type with which courts are justifiably concerned over the very real danger of certifying a large class action which will thereafter most likely splinter into an unmanageable plethora of individualized claims. Further, Clement is very unique with respect to his unfitness in many respects to serve in the fiduciary capacity of class plaintiff. Moreover, the majority of Amscot's consumer base engaged in transactions unlike the Clement Check Transactions. Finally, the vast majority of Amscot's customer base executed binding, written arbitration agreements, which require them to arbitrate any claims they may have against Amscot. For these reasons, as set forth in more detail below, the Certification Motion should be denied.

I. Clement has not, and cannot, meet the requirements of Rule 23(a)

A. Clement is a wholly inadequate class representative

Rule 23(a)(4) requires that the named plaintiff will fairly and adequately protect the interests of the class. This Court has found that "it is crucial to consider with great care the suitability of the plaintiff[] to act as class representative[]," as such representative "serves as guardian of the interests of the class and because of this fiduciary relationship he must be held to a high level of responsibility." Hively v. Northlake Foods, Inc., 191 F.R.D. 661, 668 (M.D. Fla. 2000) This Court has further held that such a representative "owes to those whose cause he advocates a duty of the finest loyalty." Id.

Specifically, this Court has held that class representatives must have the personal characteristics and integrity necessary to fulfill the fiduciary role of the class representative. Hively v. Northlake Foods, Inc., 191 F.R.D. 661, 668 (M.D. Fla. 2000); see also Kirkpatrick v. J.C. Bradford & Co., 827 F.2d 718, 726 (11th Cir. 1987). Moreover, class certification may be denied

if there is a strong indication that the Plaintiff's testimony might not be credible. Id.

It has become unquestioningly clear, after taking Clement's deposition, that his complete lack of trustworthiness, honesty and credibility make Clement a wholly inadequate class representative. *See, e.g.*, Hively, 191 F.R.D. at 669 (finding that the lack of trustworthiness, honesty and credibility of the named plaintiffs, due in part to misrepresentations about their criminal background, would dominate the case, causing absent class members material prejudice).

First, Clement lied under oath numerous time, including making misrepresentations about his criminal background. Specifically, within regard to his criminal background, Clement testified he had not had any exposure to the law within the last (2) years. (See Footnote 1). To the contrary, Clement had suffered both a conviction and a pre-trial intervention for prostitution within the last two (2) years. In fact, the pre-trial intervention occurred less than nine (9) months ago. Only when he was thereafter confronted with specific information relating to that incident was Clement forced to admit his criminal past. (See Footnote 1). Additionally, Clement testified under oath that he was not involved in any other lawsuits at the current time. (See Footnote 1). To the contrary, Clement is the plaintiff in at least three (3) other lawsuits against check-cashing companies, in at least one of which Clement has moved for class certification. (See Footnote 1). The Transcript reveals a pattern of deception on an array of issues, ranging from those of limited importance to some going to the core issues of commonality, suitability, and typicality.

As further evidence of Clement's lack of the integrity and personal characteristics necessary for a class representative, Clement admitted under oath that he had not filed a tax return in the last three (3) years and that he had closed his bank account with First Union while he knew he had outstanding checks on payday advance transactions with Amscot and others. (See Footnote 1). As a result, two (2) of Clement's checks to Amscot bounced. Perhaps even more importantly than the

loss suffered from the bounced checks, Clement's decision to enter into payday advance transactions with the intent not to honor those checks, and to then close his bank account while there were outstanding checks, violates the criminal statutes for worthless checks and for kiting. This scheme occurred after Clement was apparently upset about the five dollar ($5) verification fee charged by Amscot but nevertheless concluded the transaction with Amscot and issued a check to Amscot without the intent to honor it. (See Footnote 1). In fact, Clement even consulted with an attorney to obtain legal advice, presumably about his potential civil and criminal liability for his improper actions.

Moreover, Clement's complete lack of memory about his transactions with Amscot and his complete inability to differentiate in any manner his transactions with Amscot from his transactions with other check-cashing companies likewise renders Clement an inadequate class representative. The only information Clement was able to remember about his transactions with Amscot were the dates of his first and last transaction. When questioned, Clement admitted that he knew that information only because he had reviewed a printout the day before of each of his transactions with Amscot. (See Footnote 1) Moreover, when questioned as to which version of the signature card he signed, he testified that he was absolutely sure he had executed a certain version, which in fact he had not. (See Footnote 1). He had instead signed a different version. (See Footnote 1) Moreover, he indicated he had signed the signature card as part of his first transaction with Amscot, when in fact he had not signed the signature card until a later transaction with Amscot. Clement could not even recognize the Amscot representative with whom he had engaged in *numerous* check-cashing transactions. (See Footnote 1). Finally, Clement's lack of awareness of the allegations made in the Complaint (See Footnote 1), and his failure to meet with his attorney until basic groundwork of this action had already been laid (See Footnote 1) further demonstrate that Clement would not adequately

represent the proposed class. All of this information is crucial for considering whether a proposed class representative will adequately represent a proposed class. See Greenspan v. Brassler, 78 F.R.D. 130 (S.D.N.Y. 1978).

When questioned as to what could be the cause of his inability to remember even the basic information relating to his transactions with Amscot, he indicated that he was taking medication for a heart problem and to calm his nerves, caused in part by his outstanding debt in excess of $450,000. (See Footnote 1).

Moreover, when questioned as to whether he was willing to fund his portion of the litigation costs for prosecuting this lawsuit, he indicate he was not willing to do so, in light of his debt in excess of $450,000. (See Footnote 1). This constitutes another relevant factor for determining whether Clement is an adequate plaintiff. See Lopez v. Orlor, Inc., 176 F.R.D. 35 (D. Conn. 1997).

Testimony given by Clement during his deposition would likely lead some reasonable persons to conclude that there exist some questions about Clement's sanity. The Transcript reflects that Clement is currently under prescription medication to control emotional disorders, that appear to be caused by serious health problems and his own admitted insolvency. (See Footnote 1)

Additionally, a class representative is an inadequate representative unless he has sufficient interest in the issues and the outcome to ensure vigorous advocacy. See Davis v. Cash for Payday, Inc., 2000 WL 639734 (N.D. Ill. 2000). Because Clement did not execute an arbitration agreement as part of his transactions with Amscot, he does not have sufficient interest to pursue and litigate what will likely be a key issue in this matter, namely whether the proposed class plaintiffs will be required to arbitrate their claims against Amscot.

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.

Based on the foregoing, Mr. Clement and his counsel have failed to establish that they will adequately represent the interests of the proposed class.

B. Clement's claim is not typical of the claims of the proposed class

Moreover, typicality is not present if the class representative is subject to unique defenses that could be central to the litigation. Hively v. Northlake Foods, Inc., 191 F.R.D. 661, 668 (M.D. Fla. 2000); see also Ross v. Bank South, N.A., 837 F.2d 980 (11th Cir. 1988) (vacated on other grounds) (finding defenses that are specific to the named representative may defeat the requirements of typicality or adequacy of the representative). The existence of even an arguable defense can vitiate the adequacy of representation if it will distract the named plaintiff's attention from the issues common to the class. Ross, 837 F.2d at 990-91; McNichols v. Loeb Rhoades & Co., 97 F.R.D. 331, 334 (N.D. Ill.1982)(in order to defeat class certification, possible defense need only be "unique, arguable and likely to usurp a significant portion of the litigant's time and energy"). The certification of a class is questionable "where it is predictable that a major focus of the litigation will be on an arguable defense unique to the named plaintiff or a small subclass." Ross, 837 F.2d at 991. Defenses unique to the named plaintiff provide a foreseeable danger which will preoccupy the plaintiff to the detriment of purported class members. Hively, 191 F.R.D. at 668.

As set forth in more detail above, Amscot's involvement in intentionally submitting worthless checks and engaging in a check-kiting scheme are unique to Clement and will certainly require a significant amount of Clement's time and resources to defend. Accordingly, Clement is not a proper class representative to prosecute this lawsuit.

Moreover, Amscot has sought information from Clement that will likely demonstrate that money Clement obtained from Amscot was used for prostitution. However, Clement refused to provide that information, and Amscot has moved to compel that Clement provide such information. (See Footnote 1). Accordingly, questions will certainly arise as to whether Clement's transactions with Amscot would constitute "consumer" transactions subject to protection under Florida's usury statutes, Florida's Deceptive and Unfair Trade Practices Act or TILA.

Moreover, because Clement bounced checks to Amscot (See Footnote 1), his actual damages under Florida's usury statute and Florida's Deceptive and Unfair Trade Practices Act, if any, would not be typical of the proposed class' damages. In fact, it may be that Clement owes Amscot more in damages than Clement would ever receive from Amscot even if his claims were not meritless.

C. Commonality is Lacking

Rule 23(a)(2) requires that there be questions of law or fact common to the class. The plaintiff has the burden of establishing commonality in order to obtain class certification under Rule 23. See Gilchrist v. Bolger, 733 F.2d 1551, 1556 (11th Cir. 1984). Courts define a "common issue" as one that may be shown by generalized proof applicable to the class as a whole. Nichols v. Mobile Bd. of Realtors, Inc., 675 F.2d 671 (5th Cir. 1982). Courts find commonality when the defendant's actions toward the putative class are uniform. See Perry v. Household Retail Services Inc., 180 F.R.D. 423 (M.D. Ala. 1998); see also, Franklin v. Chicago, 102 F.R.D. 944 (N.D. Ill. 1984)(focusing on the defendants standardized conduct toward the members of the class).

Unlike the defendants in Perry and Franklin, Amscot's actions were not uniform nor did Amscot engage in standardized conduct toward the potential class. Indeed, Amscot's treatment of customers and transactions differed greatly and individual questions permeate the litigation. There are numerous types of transactions involved and for each type of transaction different forms were utilized at different times. See, for example, exhibits 1, 2, and 3 to the deposition of Ian MacKechnie. Amscot has twelve (12) different locations where customers may engage in different types of transactions. (See Worling Depo., p. 8). Customers of Amscot engaged in several different types of transactions, including check cashing without deferred deposit; deferred deposit by post[2] A portion of those customers who engaged in deferred deposit signed a deferred deposit application which Clement alleges "wrongly threatens criminal prosecution for passing worthless checks." (See Memorandum in Support of Plaintiff's Motion for Class Certification, p. 4). Furthermore, in some of the transactions, Amscot has contracts which include arbitration provisions, (See Depo. of Ian MacKechnie, p. 22-25), and any proposed class plaintiffs who signed contracts requiring arbitration must be compelled to arbitrate their claims instead of litigate them. Therefore, Clement has failed to meet his burden on the issue of commonality.

II. Common Issues Do Not Predominate

Even if Clement were able to establish the requirements of numerosity, commonality, typicality and adequacy under Rule 23 (a), which he cannot, the court may not certify the class unless one of the three situations discussed in Rule 23(b) applies. In the instant case, Clement has alleged that 23(b)(3) applies. Under Rule 23(b)(3) plaintiffs must show:

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[2] In addition, Clement has asserted that Amscot permitted a fourth type of transaction, namely rollover or extension transactions, which Amscot denies.

> that the questions of law or fact common to the members of the class **predominate** over any questions affecting only individual members and that the **class action is superior** to other available methods for the fair and efficient adjudication of the controversy.

Fed. R. Civ. P. 23(b)(3)(emphasis added). The burden of establishing these prerequisites is on the plaintiff. See Gilchrist, 733 F. 2d at 1556.

Common issues do not predominate in the instant case, because the claims require individual and fact-specific inquires. See O'Brien v. J. I. Kislak Mortgage Corp., 934 F. Supp. 1348 (S.D. Fla. 1996)(finding common issues did not predominate case where individualized factual inquires would have to be made to determine: which fees were at issue for each loan, whether such fees were properly disclosed, whether the fees were actually charged and the amount of damages to each borrower). To try the instant case as a class action would require the presentation of highly individual and fact-specific evidence and would undermine the purpose of the class action. Numerous issues regarding each individual check cashing transaction would need to be addressed with respect to each member of the putative class. Moreover, the legal basis for each claim will vary depending on the particular type of transaction alleged. Customers of Amscot engaged in several different types of transactions, including check cashing without deferred deposit; deferred deposit by post[3] Moreover, several different forms were used, depending on the type of transaction and the date upon which the transaction was conducted. See, for example, exhibits 1, 2, and 3 to the deposition of Ian MacKechnie. Some customers signed arbitration agreements, while others did not. Some customers signed agreements that informed the customer that Chapter 832, Florida Statutes makes it a crime for any person to knowingly issue a bad check, which Clement is asserting violates

[3] In addition, Clement has asserted that Amscot permitted a fourth type of transaction, namely rollover or extension transactions, which Amscot denies.

the FDUPTA, while others did not sign such agreements. Each of these different types of transactions and different forms raise individual legal and factual issues which predominate over any common issues.

Furthermore, additional individual determinations are required as Amscot must assert compulsory counterclaims under state law against certain members of the putative class whose checks were returned for insufficient funds. See Heaven v. Trust Co. Bank, 118 F.3d 735, 738 (11th Cir. 1997)(proper for the court to consider the additional individual determinations required by compulsory counterclaims when deciding to certify a class); see also, Shelly, 2000 U.S. Dist. LEXIS *24; citing Plant v. Blazer Fin. Services, Inc., 598 F.2d 1357, 1364 (5th Cir. 1979)(finding counterclaim for debt under TILA is compulsory). The presence of such counterclaims also undermines the superiority element as individual counterclaims require the presentation of separate defenses and create management difficulties that render the case inappropriate for class certification. See Leverett v. Heilig-Meyers Furniture Co., 1995 U.S. Dist. LEXIS 21797 (S.D. Ga. 1995) adopted at 1995 U.S. Dist. LEXIS 21796 (relying on Carter v. Public Fin. Corp., 73 F.R.D. 488 (N.D. Ala. 1977), and distinguishing Parr v. Thorp Credit Inc., 73 F.R.D. 127 (S.D. Iowa 1977) because the counterclaims were permissive and not compulsory). Class certification in the instant case would be improper as Clement has failed to meet the requirements of predominance and superiority set forth in Rule 23(b)(3).

III. A Class Action is Inappropriate Because the Majority of the Proposed Class Plaintiffs Must Be Compelled to Arbitrate Their Claims.

This is not an action that can be properly considered by this Court, in light of the fact that the majority of the proposed class plaintiffs executed written arbitration agreements as part of their transactions with Amscot, thereby specifically requiring any claims they assert against Amscot to

be pursued through arbitration. (See Depo. of Ian MacKechnie, p. 15)

Moreover, it appears from Amscot's review of its business records that Clement did not sign an arbitration agreement as part of his transactions with Amscot. Clement has likewise testified through deposition that he does not recall executing an arbitration agreement as part of his transactions with Amscot. (See Footnote 1). Accordingly, even if this were a proper case for class certification, Clement would be an inadequate representative plaintiff, in light of the fact that he would be permitted to pursue his claims through this Court but the majority of the other proposed class plaintiffs would be required to arbitrate their claims.

In anticipation of this argument, Plaintiff has attempted to assert that the transactions between the proposed class plaintiffs and Amscot were usurious and that the Court must first determine whether the contract is usurious before compelling the parties to arbitrate. However, in order for a plaintiff to be entitled to that benefit, a plaintiff must show colorable evidence that a contract is usurious. Party Yards, Inc. v. Templeton, 751 So. 2d 121 (Fla. 5th DCA 2000).

Plaintiff has not presented, and cannot present, colorable evidence that the of the proposed class plaintiffs with Amscot were usurious. Specifically, as set forth in Amscot's pending Motion to Dismiss this lawsuit, the check cashing fees collected by Amscot, whether through a post-dated check or through a currently dated check for which there was an agreement to defer deposit for two (2) weeks, are clearly and specifically protected from application of the usury statute by the "Check Cashing and Foreign Currency Exchange" provisions of Chapter 560, Florida Statutes.

Specifically, on May 1, 2000, the Office of the Attorney General of the State of Florida, a copy of which was attached to Clement's Notice of Supplement Authority filed in opposition to Amscot's Motion to Dismiss, issued an opinion addressing the issue of whether the very transactions that form the basis of Clement's Complaint in this action are subject to the Florida usury statutes.

In its interpretation of the interaction between the Check Cashing and Foreign Currency Exchange Act (Chapter 560, Florida Statutes) and the usury statutes (Chapter 687, Florida Statutes), the Florida Attorney General opined that "[t]he fees authorized by Part III of Chapter 560, Florida Statutes, and by the administrative rules would apply regardless of whether the personal check received in the transaction is deposited immediately or deposit is deferred until a later date." The Florida Attorney General further opined that "to the extent that a transaction comports with the provisions of [Chapter 560], it would not violate the usury provisions of Chapter 687, Florida Statutes." The Florida Attorney General concluded as follows:

> "Accordingly, I am of the opinion that a 'payday loan' or like transaction whereby a company provides cash to the consumer who, in return, provides a personal check that is held by the company for a certain time period and covers the amount of cash provided as well as a fee charged for advancing the cash, constitutes a loan subject to the usury laws. A company registered under Chapter 560, Florida Statutes, however, may cash personal checks for the fees prescribed in that chapter **without violating the usury laws** if such transactions are concluded without being extended, renewed, or in any way continued with the imposition of additional fees." (emphasis added). Opinion of the Office of the Attorney General of the State of Florida, dated May 1, 2000, a copy of which is attached hereto as Exhibit "A."

Similarly, the Office of the Comptroller opined in May of 1998 in a letter addressed to a check cashing company similar to Amscot as follows:

. . . .

> Some companies accept personal checks and agree in writing or otherwise to wait a predetermined amount of time before collecting the checks. These transactions are referred to as "deferred deposits," "payday loans," "cash advances," "payroll advances," "check discounts," or a variety of other names. (a) It is illegal to charge a check cashing fee of more than 10 percent of the face amount of the check. . . . (b) Pursuant to Section 687.02, Florida Statutes, it is illegal to charge a higher rate of interest than 18 percent per annum simple interest. Any 'rollover,' 'extension' or 'renewal' of a deferred deposit check for an additional fee may constitute interest. Any extension of this type may be an extension of credit requiring licensure of your business under the Florida Consumer Finance Act, and subject to the interest rate limits established in that act." (emphasis added). Letter from Office of the

> Comptroller to McKenzie Check Advance of Florida, dated May 5, 1998, a copy of which is attached hereto as Exhibit "B."

The opinion issued by the Office of the Comptroller again clearly implies that the only type of transaction that may generate interest and be subject to the usury statutes are those transactions allegedly involving a "rollover" or "extension" of a deferred deposit transaction for an additional fee.

Moreover, a Memorandum of Understanding entered into by the Office of the Comptroller with McKenzie Check Advance of Florida further demonstrates their interpretation of the check cashing statutes as governing the fees that can be charged for deferred deposit transactions and as providing protection from the usury statutes for all deferred deposit transactions, with the exception of rollovers and extensions. The Memorandum of Understanding stated as follows:

> . . . .
>
> McKenzie agrees not accept compensation for: (i) granting any deferred deposit customer *additional* time to redeem a check or (ii) delaying deposit of the check beyond the time provided in the original contract for that deferred deposit. Each deferred deposit transaction must be concluded by customer redemption, or deposit and collection of any check involved. . . . Fees McKenzie charges to cash checks shall comply with Section 560.309(4), Florida Statutes. Since McKenzie only accepts personal checks, fees are effectively limited to 10 percent of the face amount of checks or $5, whichever is greater [plus verification fees]. (emphasis added). Memorandum of Understanding between Office of Comptroller, Division of Banking and Finance, and McKenzie Check Advance of Florida, a copy of which is attached hereto as Exhibit "C."

Again, this Memorandum of Understanding confirms that neither currently dated checks for which deposit is agreed to be deferred for a defined amount of time nor post-dated checks are subject to the usury statutes or otherwise improper, so long as the fees charged do not exceed the amounts set forth in Chapter 560, Florida Statutes. The only transactions potentially subject to the usury statutes are "rollovers" or "extensions" of the original deferred deposit transactions.

Finally, consistently with the above-referenced interpretations, the Department of Banking and Finance even audited Amscot approximately three (3) years ago, where they were located at Amscot's offices for approximately one (1) week auditing Amscot's records. (Depo. Ian MacKechnie, p. 31-32). During that audit, the Department of Banking and Finance represented to Amscot that accepting currently dated, rather than post-dated, checks for deferred deposit transactions was "fine." (Depo of Ian MacKechnie, p. 30).

Accordingly, the only claims for which Plaintiff could possibly present colorable evidence of usury would be for those transactions in which Plaintiff alleges Defendant "rolled over" or "extended[4] Those would therefore be the only type of transaction which might permit an initial determination by this Court regarding the usury issue prior to the parties being compelled to arbitrate.

Moreover, even if Amscot's transactions were technically in violation of the usury statutes, which they were not, Florida Courts consistently recognize that usury is largely a matter of intent, and is not fully determined by the fact that the lender actually receives more than the law permits, but is determined by the existence of a corrupt purpose in the lender's mind to get more than the legal interest for the money lent. Dixon v. Sharp, 276 So. 2d 817 (Fla. 1973). See also Palm-Gross, Inc. v. Henry Paper, 639 So. 2d 664 (Fla. 4th DCA 1994) (finding that one requirement necessary for

[4] It is important to note that Plaintiff concedes he might not have entered into "rollover" transactions with Amscot, where he states that Amscot has asserted he did not roll over his loan, and that, if that is true, Clement might not be able to represent the "rollover subclass." (See Memorandum in Support of Plaintiff's Motion for Class Certification, p. 11). Moreover, Clement testified in deposition that he did not engage in "rollover" transactions with Amscot but instead allegedly entered into new transactions with Amscot whereby he provided new consideration by virtue of a new check made payable to Amscot. (See Footnote 1). Amscot's general manager has further testified through deposition that Amscot had a company policy against permitting rollovers or extensions. (Depo of Worling, p. 50).

establishing a usurious transaction is the intent to charge a usurious rate, sometimes referred to as corrupt intent). There must exist a corrupt intent to take more than the legal rate for the use of the money loaned. Id. To work a forfeiture under the statute the principal must knowingly and willfully charge or accept more than the amount of interest prohibited. Id.

With regard to the purpose of the usury statute and the definition of willfully and knowingly, the Dixon court stated:

> Under the law and the decisions, usury is a matter largely of intent. It is not fully determined by the fact of whether the lender actually gets more than the law permits, but whether there was a purpose in his mind to get more than legal interest for the use of his money . . . . It must be designed or intentional, and may be malicious, though not necessarily so. 'Wilful' is sometimes used in the sense of intentional, as distinguished from 'accidental,' and, when used in a statute affixing a punishment to acts done willfully, it may be restricted to such acts as are done with an unlawful intent. Id. at 820, quoting Chandler v. Kendrick, 146 So. 551, 552 (Fla. 1933).

As set forth above, it is very clear from the opinions of the Office of the Comptroller dating back to 1998 and the more recent opinion of the Florida Attorney General that the clear interpretation and understanding of these official governmental bodies and the check cashing industry with regard to the interaction between Chapter 560 and Chapter 687, Florida Statutes was that the only check cashing transactions that might be considered an extension of credit subject to the usury statutes were "rollovers" or "extensions" of a deferred deposit check for an additional fee. Accordingly, all indicia regarding Amscot's transactions will demonstrate a lack of intent on the part of Amscot to commit usury.

Clement has also attempted to assert that the arbitration agreements signed by Amscot's customers are "unconscionable" and therefore unenforceable. One of the primary factors raised by Clement in support of its unconscionability argument is the cost of arbitrating. However, before the Court makes such a determination, Clement must demonstrate that he has fully explored and made

attempts to take advantage of the AAA[5] Dobbins v. Hawk Enterprises, 198 F.3d 715 (8th Cir. 1999). Moreover, if, after the AAA waiver the fees are still unconscionable, the court should permit Amscot the opportunity to pay the arbitration fees for Clement or for other appropriate individuals, if any, who have indicated a desire to sue Amscot for the claims asserted in this action. See Id. (wherein the appellate court directed the district court to accept the appellant's offer to pay the arbitration fees, in order to avoid a finding that the arbitration agreement was unconscionable). This reasoning is based upon the general public policy favoring arbitration. Id.

Moreover, under Florida law, a contract must be both procedurally and substantively unconscionable in order to be unenforceable. Not only does Clement fail to establish that the arbitration provisions are procedurally unconscionable, he likewise has not established that the arbitration agreements are substantively unconscionable with regard to the claims for each of the following: usury, Deceptive and Unfair Trade Practices, and TILA. Accordingly, the arbitration agreements executed by the proposed class members are enforceable and prohibit class certification.

IV. Court Should Defer Ruling on Class Certification Until It Rules on Motion to Dismiss

At a minimum, this Court should appropriately defer ruling on this class certification issue until it rules upon the substantive issues raised by Defendant's Motion to Dismiss. See, e.g., Mallo v. Public Health Trust of Dade County, 88 F. Supp. 2d 1376 (S.D. Fla. 2000) (granting defendant's motion to stay class certification pending disposition of defendant's motion to dismiss plaintiff's amended class action complaint); Morales v. Attorneys' Title Ins. Fund, 983 F. Supp. 1418 (S.D. Fla. 1997) (staying motions for class certification pending disposition of the motions to dismiss);

[5] If it is established that Clement did not in fact sign an arbitration agreement as part of his transactions with Amscot, the other class representatives who did execute arbitration agreements would be required to make this showing.

First American Bank & Trust v. Frogel, 726 F. Supp. 1292 (S.D. Fla. 1989) (granting extension of time to respond to class action certification until the court ruled on defendant's motion to dismiss); Zimmerman v. HBO Affiliate Group, 834 F.2d 1163 (3d Cir. 1987) (finding no abuse of discretion in the district court's refusal to consider class certification before determining whether the named plaintiff and the class had a federal cause of action).

Deferral of the class certification issue until after a ruling on Defendant's Motion to Dismiss will enable the Court to properly determine whether Plaintiff has presented colorable evidence of usury, sufficient to potentially avoid arbitration of the usury claims for those class plaintiffs who executed a written arbitration agreement with Defendant.

C. Conclusion

For the foregoing reasons, Clement's Motion for Class Certification must be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 31st day of August, 2000, to William J. Cook, Esquire, ALPERT, BARKER & RODEMS, P.A., Post Office Box 3270, Tampa, FL 33601-3270.

JOHN A. ANTHONY, ESQUIRE
Lead Trial Counsel
Florida Bar # 731013
CHRISTINE NOWORYTA SMITH, ESQUIRE
Florida Bar #38164
GRAY, HARRIS, ROBINSON, SHACKLEFORD & FARRIOR
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SF:374000/ldw

EXHIBIT "A"

2000 Fla. AG LEXIS 27 printed in FULL format.

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF FLORIDA

No. 00-26

2000 Fla. AG LEXIS 27

May 1, 2000

CORE TERMS: payday, usury laws, cashing, usury, rate of interest, verification, registered, usurious, lender, casher, postdated check, personal check, per annum, sum of money, certain time, face amount, prescribed, exceeding, consumer, deferred, renewed, legislative history, amount of cash, fee charged, identification, forbearance, indirectly, collection, violating, authorizes

TYPE: INFORMAL OPINION

REQUESTBY:

[*1]
The Honorable Robert F. Milligan
Comptroller of Florida
The Capitol
Tallahassee, Florida 32399-0350

QUESTION:
You ask substantially the following question:

Are so-called "payday loans" or like transactions subject to the state laws prohibiting usurious rates of interest?

OPINIONBY:
Robert A. Butterworth, Attorney General

OPINION:
In sum:

"Payday loans" or like transactions are subject to the state laws prohibiting usurious rates of interest. A company registered under Chapter 560, Florida Statutes, may cash personal checks for the fees prescribed in that chapter without violating the usury laws only if such transactions are concluded and are not extended, renewed or continued in any manner with the imposition of additional fees.

According to your letter, a payday lender provides cash to the consumer who, in return, provides a personal check that is held by the lender for a certain time period, generally until the consumer's next payday. The check covers the amount of cash provided as well as a fee charged for advancing the cash. This office is aware that the Attorneys General of Indiana and Maryland have recently addressed

this issue and concluded that payday lenders or deferred deposit lenders [*2] are subject to state laws regulating loans and setting the maximum interest thereon. n1

- - - - - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - - - - -

n1 See, Opinion of the Attorney General of Maryland to Thomas L. Bromwell, dated November 24, 1999, and Opinion of the Indiana Attorney General to Charles W. Philips, dated January 19, 2000.

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Section 687.02(1), Florida Statutes, provides that contracts for the payment of interest exceeding 10% per annum are usurious. n2 Interest exceeding 25% per annum is criminal usury. n3 Section 687.03(1), Florida Statutes, states that an unlawful rate of interest exists if a person reserves, charges or takes, directly or indirectly, a rate of interest exceeding that amount for any loan, advance of money, line of credit or forbearance to enforce the collection of any sum of money or other obligation. This provision affects any rate of interest charged:

By way of commission for advances, discounts, or exchange, or by any contract, contrivance, or device whatever whereby the debtor is required or obligated to pay a sum of money [*3] greater than the actual principal sum received, together with interest at the rate of the equivalent of 18 percent per annum simple interest.

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n2 And see, s. 516.02(2)(a), Fla. Stat., of the Florida Consumer Finance Act, stating:

A person who is engaged in the business of making loans of money, except as authorized by this chapter or other statutes of this state, may not directly or indirectly charge, contract for, or receive any interest or consideration greater than 18 percent per annum upon the loan, use, or forbearance of money, goods, or chooses in action, or upon the loan or use of credit, of the amount or value of $ 25,000 or less.

n3 See, s. 687.071(2) and (3), Florida Statutes.

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Since the purpose of usury laws is to protect needy borrowers by penalizing unconscionable money lenders, courts will look beyond the form of a transaction to its substance when considering usury calculations. n4 Thus, the mere form of a transaction becomes immaterial, and a court will consider whether the transaction [*4] in effect exacts an interest rate higher than that allowed by law. n5

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n4 Rollins v. Odom, 519 So. 2d 652 (Fla. 1st DCA 1988). And see, Dixon v. Sharp, 276 So. 2d 817, 820 (Fla. 1973) (purpose of usury law is "to bind the power of creditors over necessitous debtors and prevent them from extorting harsh and undue terms in the making of loans").

n5 See, Beacham v. Carr, 164 So. 456 (Fla. 1936) (a court will not permit the use of a form designed to evade the evident purpose of the usury laws). And see, Mindlin v. Davis, 74 So. 2d 739 (Fla. 1954); Rehman v. Flagship First National Bank of Highlands County, 472 So. 2d 1360 (Fla. 2d DCA 1985); Jersey Palm-Gross v. Paper, 639 So. 2d 664 (Fla. 4th DCA 1994), approved, 658 So. 2d 531 (Fla. 1995); Gilbert v. Doris R. Corporation, 111 So. 2d 682, 684 (Fla. 3d DCA 1959); Party Yards, Inc. v. Templeton, 751 So. 2d 121 (Fla. 5th DCA 2000); Bermil Corporation v. Sawyer, 353 So. 2d 579 (Fla. 3d DCA 1977).

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[*5]
In Medina v. Lamonica, n6 the jury found that Medina had charged Lamonica a usurious rate of interest when Medina loaned Lamonica 500,000 Venezuelan bolivares and Lamonica gave Medina a postdated check in the amount of $ 122,000 from which the loan was to be repaid. The postdated check exceeded the principal amount of the loan in an amount sufficient to allow the jury to determine that the rate of interest was between 18% and 25%, and thus usurious. More recently in FastFunding The Company, Inc. v. Betts, n7 the court held that it should first determine whether a payday loan violated the state's usury laws before sending the case to arbitration: "If Ms. Betts is correct in her complaint that the contract violates the usury laws, then the contract is illegal and an arbitrator could not require Ms. Betts to perform under the contract."

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n6 492 So. 2d 809 (Fla. 3d DCA 1986).

n7 Case No. 5D99-2639 (Fla. 5th DCA, filed March 31, 2000). Judge Dauksch, in his concurring opinion, suggested that the Attorney General "may be interested" in this matter.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - -

[*6]
An agreement, whether express or implied, whereby a person, rather than merely cashing a check for a fee, agrees to hold the check for a certain time period for the advance of money, would appear to constitute forbearance to enforce the collection of the money. Thus, such agreements would constitute a loan subject to the usury statutes.

Companies providing payday loan services are generally registered under Part II or Part III of Chapter 560, Florida Statutes, the Money Transmitters Code. Part II of Chapter 560, Florida Statutes, addresses payment instruments and funds transmission while Part III provides for check cashing and foreign currency exchange. Those registered under Part II are authorized to engage in the activities authorized under Part III. n8 While a Part II registrant may engage in check cashing services of the nature authorized in Part III, such activities must be consistent with the provisions of that part.

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n8 Section 560.204(2), Fla. Stat.

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Part II of Chapter 560, Florida Statutes, the "Payment [*7] Instruments and Funds Transmission Act," authorizes registered persons to sell payment instruments and to transmit funds to another location. An examination of the legislative history surrounding the adoption of Part II, Chapter 560, clearly indicates that Part II was intended to address the registration and regulation of persons who sell money orders, traveler's checks, drafts, warrants, and checks, and persons who transmit funds to another location via wire, facsimile, electronic transfer, or courier. n9 While a registered person may sell payment instruments, to the extent the transaction includes an agreement to delay the enforcement of collecting any sum of money or obligation, there is a strong argument that such a transaction could be considered a loan subject to the usury provisions of Chapter 687, Florida Statutes.

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n9 See, e.g., Florida House of Representatives Committee on Commerce Final Bill Analysis & Economic Impact Statement on HB 2653 (as passed by the Legislature as Ch. 94-354), dated April 22, 1994.

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[*8]
Part III, Chapter 560, Florida Statutes, constitutes the "Check Cashing and Foreign Currency Exchange Act" (act). Section 560.309(4) provides that, exclusive of the direct costs of verification that shall be established by Department of Banking and Finance rule, no check casher shall:

(a) Charge fees, except as otherwise provided by this party in excess of 5 percent of the face amount of the payment instrument, or 6 percent without the provision of identification, or $ 5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or 4 percent without the provision of identification, or $ 5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of such payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $ 5, whichever is greater.

Rule 3C-560.501(1), Florida Administrative Code, provides that in addition to the fees established in section 560.309(4), a check casher may collect the direct costs associated with verifying a [*9] payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information prior to cashing the payment instrument, provided that the verification fee may only be collected when verification is required and shall not exceed $ 5.00 per transaction. A check casher may not charge a customer more than one verification fee per diem, regardless of whether the check casher is cashing or has cashed more than one of the customer's payment instruments that day.

the Department of Banking and Finance has also adopted Rule 3C-560.803, Florida Administrative Code, which states that a check casher may accept a postdated check, subject to the fees established in section 560.309(4).

Accordingly, Chapter 560, Florida Statutes, as implemented by rule of the Department of Banking and Finance, authorizes the acceptance of a postdated check to be cashed at the end of a specified period of time. Further, the act directs what fees may be imposed. For a personal check, the fee may not exceed 10 percent of the face value of the check and the verification fee may not exceed $ 5.00. The fees authorized by Part III of Chapter 560, Florida Statutes, and by the [*10] administrative rules would apply regardless of whether the personal check received in the transaction is deposited immediately or deposit is deferred until a later date. Nothing in Chapter 560, Florida Statutes, however, recognizes that such arrangements may be deferred from presentment in order to be extended, renewed, or continued in any manner with the imposition of additional fees. n10 Moreover, an examination of the legislative history surrounding the amendment of Chapter 560 in 1994, when Parts II and III were adopted, fails to reveal any evidence that the Legislature contemplated that such transactions could "roll over." n11

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n10 See generally, *Alsop v. Pierce, 19 So. 2d 799, 805-806 (Fla. 1944)* (a legislative directive as to how a thing should be done is, in effect, a prohibition against its being done in any other way; where the Legislature has prescribed the mode, that mode must be observed).

n11 See, n. 9, supra.

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Thus, to the extent that a transaction comports with [*11] the provisions of this act, it would not violate the usury provisions in Chapter 687, Florida Statutes. In the absence of statutory authorization for these types of transactions, cashing a check or exchanging currency for a fee outside the scope of Chapter 560, Florida Statutes, would constitute a loan, subject to the usury provisions of Chapter 687, Florida Statutes.

Accordingly, I am of the opinion that a "payday loan" or like transaction whereby a company provides cash to the consumer who, in return, provides a personal check that is held by the company for a certain time period and covers the amount of cash provided as well as a fee charged for advancing the cash, constitutes a loan subject to the usury laws. A company registered under Chapter 560, Florida Statutes, however, may cash personal checks for the fees prescribed in that chapter without violating the usury laws if such transactions are concluded without being extended, renewed, or in any way continued with the imposition of additional fees.

EXHIBIT "B"

ROBERT F. MILLIGAN
COMPTROLLER

OFFICE OF COMPTROLLER
DEPARTMENT OF BANKING AND FINANCE
STATE OF FLORIDA
TALLAHASSEE
32399-0350

May 5, 1998

Eddie Scoggins, Vice President
McKenzie Check Advance of Florida, LLC
d/b/a National Check Advance
P. O. Box 1479
Cleveland, TN 37364-1479

Subject: (1) Cashing Checks
(2) Deferred Deposit of Checks Cashed: (a) Fees: (b) Roll-Over Transactions

(1) As a Florida check casher, it is illegal to exchange a customer's check for your company's check or any other type of payment instrument (negotiable instrument). Currency and only currency must be provided in exchange for a customer's check. An exception exists when the company issuing the check to the customer is a "payment instrument seller" as defined in Section 560.103(15), Florida Statutes, and is properly registered with this office under Part II of Chapter 560, Florida Statutes.

(2) Some companies accept personal checks and agree in writing or otherwise to wait a predetermined amount of time before collecting the checks. These transactions are referred to as "deferred deposits," "payday loans," "cash advances," "payroll advances," "check discounts," or a variety of other names.

(a) It is illegal to charge a check cashing fee of more than 10 percent of the face amount of the check. In addition, verification fees are illegal if they: (i) are based on anything other than your documented costs of verifying the customer's identity, residence, employment, credit history, account status or other necessary information prior to cashing the check; (ii) are imposed more than once on the same customer on the same day; (iii) are not required to conduct the transaction; or (iv) exceed $5 per transaction.

(b) Pursuant to Section 687.02, Florida Statutes, it is illegal to charge a higher rate of interest than 18 percent per annum simple interest. Any "rollover," "extension" or "renewal" of a deferred deposit check for an additional fee may constitute interest. Any extension of this type may be an extension of credit requiring licensure of your business under the Florida Consumer Finance Act, and subject to the interest rate limits established in that act.

Please consider this letter as notice that the Division of Banking intends to fully enforce Chapter 560, Florida Statutes, and applicable administrative rules regulating check cashers and other money transmitters. Pursuant to Section 560.117(1), Florida Statutes, please refrain from issuing payment instruments if you are not properly licensed. Violations of Chapter 560, Florida Statutes, and applicable rules may lead to disciplinary actions and/or administrative fines allowable under Sections 560.114 and 560.117, Florida Statutes. Our responsibility is to assist you in complying with the law, and we will be glad to answer any questions you may have regarding this letter or the statutes and rules governing your operations.

Sincerely,

Wm. Douglas Johnson
Assistant Director
Division of Banking

WDJ/khltmhj/k

cc: Florida Check Cashing Association

TOTAL P.16

3. (a) Fees McKenzie charges to cash checks shall comply with Section 560.309(4), Florida Statutes. Since McKenzie only accepts personal checks, fees are effectively limited to 10 percent of the face amount of checks or $5, whichever is greater.

   (b) McKenzie may also collect the direct cost of verifying the customer's:

   Identity
   Residence
   Employment
   Credit history
   Account status

   The cost of verifying other categories of information necessary before cashing checks may be collected if that category has been approved in writing by the Department. Verification fees may be collected from customers only when verification is required. In no event shall total verification fees collected from customers exceed $5 per transaction.

   (c) McKenzie shall maintain documentation of the actual direct costs of the verifications listed above or approved in writing by the Department.

4. All of McKenzie's offices and staff shall be notified of any changes required by this Memorandum of Understanding as soon as possible, but no later than 30 days following the date on its adoption by all parties.

5. Within 90 days, McKenzie shall report to the Department on compliance with this Memorandum of Understanding.

Title: VICE PRESIDENT
For McKenzie Check Advance of Florida, LLC, d.b.a. National Cash Advance

Robert F. Milligan
Comptroller of Florida
Head of the Department of Banking and Finance

Date

EXHIBIT "C"

ROBERT F. MILLIGAN
COMPTROLLER OF FLORIDA

OFFICE OF COMPTROLLER
DEPARTMENT OF BANKING AND FINANCE
STATE OF FLORIDA
TALLAHASSEE
32399-0350

Memorandum of Understanding

The examination of offices of McKenzie Check Advance of Florida, LLC d.b.a. National Cash Advance (McKenzie) by the Florida Department of Banking and Finance (the Department) begun on October 22, 1997, raised concerns about aspects of McKenzie's operations. McKenzie and the Department agree to enter into this Memorandum of Understanding to ensure that the continued operations of McKenzie comply with Florida Statutes. This Memorandum of Understanding is an informal agreement between the parties and is not an action under Section 560.114, Florida Statutes, or other formal action under Florida Law. This Memorandum of Understanding does not limit the Department's power to act to correct any future violations of Florida law. Further, material noncompliance with this Memorandum of Understanding may cause the Department to initiate appropriate actions based on nonconformity with Florida law discovered as a result of the Department's October 22, 1997, examination of offices of McKenzie. The provisions of this Memorandum of Understanding apply only to McKenzie's Florida operations and do not bind its operations in other states, if any.

The parties acknowledge that McKenzie provides "deferred deposit" service to residents of the State of Florida. "Deferred deposit" means that, in return for compensation, McKenzie refrains from depositing a check which McKenzie cashes for the customer for a specified period, at the end of which period: (1) the customer may redeem the check by paying its face value; or (2) McKenzie may deposit the check in its bank account for subsequent collection.

1. McKenzie shall make payments only in currency for checks presented by customers, unless McKenzie first obtains a license or registration permitting it to sell payment instruments or to engage in another type of business not constituting check cashing.

2. (a) McKenzie agrees not to accept compensation for:
   (i) granting any deferred deposit customer additional time to redeem a check or
   (ii) delaying deposit of the check
   beyond the time provided in the original contract for that deferred deposit. Each deferred deposit transaction must be concluded by customer redemption, or deposit and collection of any check involved.

   (b) McKenzie agrees that all subsequent transactions involving checks returned to McKenzie by its depository after dishonor by a drawee bank must be in accordance with Section 68.065, Florida Statutes.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

Plaintiff,

v. CASE NO: 8:99-cv-2795-T-26C

AMSCOT CORPORATION,

Defendant.
_____/

ORDER

Before the Court are Amscot's Motion to Compel Clement to Respond to Certified Question and Related Questions (Dkt. 41), Plaintiff's Memorandum in Opposition (Dkt. 46), and Plaintiff's Unopposed Motion for Leave to File a Reply to the Response to the Motion for Class Certification. (Dkt. 47). Since the filing of the motion to compel, the Court has ruled on the motion to dismiss. The motion for class certification remains pending. After careful consideration of the matters raised in the motion to compel, the Court is of the opinion that the certified questions and any follow-up questions should be answered by Mr. Clement at a deposition.

Whether Mr. Clement used money obtained through the deferred deposit transactions for the hiring of prostitutes is highly relevant to his ability to adequately serve as class representative. Such information is also necessary for the Court to

determine whether violations of the Truth-in-Lending Act or Florida's Deceptive and Unfair Trade Practices Act, both consumer protection statutes, may have occurred. Notably, no objections relating to any privilege or constitutional right were asserted at the deposition.[1] The objection that the questions were of a harassing nature is not well taken given the obvious relevancy of the questions with respect to the appropriateness of Mr. Clement serving as class representative. In any event, Plaintiff will have an opportunity to argue the facts to this Court in a reply.

It is therefore ordered and adjudged as follows:

1) Amscot's Motion to Compel Clement to Respond to Certified Question and Related Questions (Dkt. 41) is **granted**. Defendant shall have 20 days from the date of this order within which to redepose Mr. Clement for the purpose of his answering the questions posed at the prior deposition and any other questions related to the issue of his ability to adequately serve as class representative. Mr. Clement shall answer the questions.

2) Defendant shall have ten days after the deposition to file any supplement to its response to the motion for class certification.

3) Plaintiff's Unopposed Motion for Leave to File a Reply to the Response to

---

[1] In any event, Mr. Clement, as the plaintiff, sued Amscot in this action for allowing him to obtain currency by delivering either present dated or post-dated checks to Amscot. He may not use this lawsuit as a sword and then assert a privilege as a shield.

the Motion for Class Certification. (Dkt. 47) is **granted to the extent** that Plaintiff may file a reply ten days after Defendant has filed its supplement to its response, as referenced in paragraph 2 above. The Clerk shall not docket the reply that was submitted along with the unopposed motion on September 18, 2000.

DONE AND ORDERED at Tampa, Florida, on September 20, 2000.

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

Plaintiff,

vs.

CASE NO.: 99-2795-CIV-T-26C

AMSCOT CORPORATION, a
Florida corporation,

Defendant.
_____/

AMSCOT'S MOTION TO COMPEL CLEMENT TO RESPOND TO CERTIFIED QUESTION AND RELATED QUESTIONS AND MEMORANDUM OF LAW IN SUPPORT THEREOF

Pursuant to Federal Rule of Civil Procedure 37 and Rule 3.04 of the Local Rules of the Middle District of Florida, Defendant, Amscot Corporation ("Amscot"), moves on the following grounds for the order of this Court compelling Plaintiff, Eugene R. Clement ("Clement"), to respond to a certified question and related questions posed by Amscot at Clement's deposition (the "Certified Question"), and to further respond to all other appropriate follow-up examination:

A. Background Allegations

1. On December 9, 1999, this action was initiated by Clement, individually as purportedly on behalf of others similarly situated, against Amscot by the filing of a "Class Action Complaint" (as amended, the "Complaint"). The Complaint seeks relief under different legal theories against Amscot based upon Amscot's deferred deposit check cashing service that is currently offered at approximately twenty (20) locations in six (6) counties based within this jurisdiction. In the Complaint, Clement is identified as a consumer of Amscot's services (the

"Clement Check Transactions"), which he contends are violative of the following statutes: the federal Truth in Lending Act, 15 U.S.C. § 1640, and the corresponding Federal Reserve Board Regulation Z, 12 C.F.R. 226.1 et seq., Florida's Deceptive and Unfair Trade Practices Act, found at Florida Statutues, § 501.201, et seq., and Florida's usury statute, found at Florida Statutes, § 687.0304, et seq.

2. The Complaint has been amended on March 28, 2000, and on April 14, 2000, Amscot filed its "Motion to Dismiss First Amended Class Action Complaint and Incorporated Memorandum of Law," (the "Motion to Dismiss"), which remains pending at this time.

3. On July 7, 2000, and following numerous generous consented-to extensions by Amscot, Clement filed "Plaintiff's Motion for Class Certification." On August 31, 2000, and contemporaneously with the filing of this motion, Amscot has filed its "Amscot's Response in Opposition to Clement's Motion for Class Certification and Memorandum of Law in Support Thereof." The foregoing pleadings (the "Class Certification Pleadings") remain pending at this time.

B. Allegations Relating to Relief Requested

4. On August 29, 2000, Amscot conducted the deposition of Clement for the purpose of obtaining information necessary for determining whether Clement was an adequate class representative under Rule 23 of the Federal Rules of Civil Procedure. Clement's testimony is essential for a determination of the merits of the Class Certification Pleadings.

5. One of the issues raised at the deposition related to the relationship between Clement's payday advance transactions with Amscot and the possibility that he has used the funds obtained from Amscot in connection with Clement Check Transactions to retain the services of prostitutes. This pattern of conduct by Clement is evidenced in part by the criminal report affidavit/notice to appear, dated October 29, 1999, two months before the initiation of this action,

a copy of which is attached as Exhibit "A."

6. Clement initially lied under oath during his deposition, failing to disclose two Florida-based criminal proceedings relating to his hiring of prostitutes, while denying that he had been subject to any exposure to the law within the last two (2) years. However, after confronted with detailed information about his pre-trial intervention and conviction for prostitution, Clement then admitted to such incidents, at times responding belligerently to follow-up questions.

7. Later during the deposition, Clement's dire financial situation was established in that he admitted that he is approximately $450,000 in debt, that his monthly household income is only $691 per month, and that his rent and car payment nearly exceeding this fixed income. He also admitted that neither he nor his wife are currently gainfully employed, and that he has not filed tax returns since 1997. With this information as to Clement's financial situation, all of which is germane to his fitness as a class plaintiff for disposition of the Class Certification Pleadings, Amscot inquired as to where Clement obtained the funds to hire prostitutes and whether Clement used funds from payday advance transactions with Amscot for such purposes. Clement refused to answer the question, and the same was certified with the acquiescence of opposing counsel. Clement and his counsel then indicated that he would refuse to answer any other questions relating to his prostitution. Counsel for Amscot thereafter certified the question for this Court to determine.

8. The information sought from Clement is directly relevant for determining whether Clement is an adequate class representative. First, Clement lied under oath about his criminal past, which directly impacts on his credibility and whether he will be a proper class representative. Accordingly, Amscot is entitled to ask the necessary follow-up questions to further explore this issue. A copy of Certified Question as appearing in the transcript that is being generated for the deposition is attached as Exhibit "B."

9. Clement's conduct is relevant because it goes to the veracity of his testimony in general, as he clearly lied about the incident in question. Clement's conduct is also relevant to the Class Certification Pleadings because Clement's personal characteristics as a proposed class representative are critical under the law of this Circuit for determining whether the proposed class plaintiff is an adequate class representative. Finally, Clement's personal attributes are inconsistent with the requirement that a class plaintiff have "typicality" with the class as a whole so as to fairly represent and act on behalf of the class. For those additional reasons, Amscot is entitled to ask the necessary follow-up questions regarding this issue.

10. If Amscot establishes that Clement engaged in payday advance transactions with Amscot for the purpose of obtaining funds to hire prostitutes, that certainly would call into question whether such transactions would constitute "consumer" transactions for "personal, family or household purposes" intended to be protected by the Truth in Lending Act, and whether transactions to obtain funds for illegal purposes would be entitled to protection under Florida's usury statutes and Deceptive and Unfair Trade Practices Act. At a minimum, it would raise issues that are unique to Clement and which would likely contribute to the conclusion that he is an inadequate class representative. An answer to the Certified Question, and substantial additional follow-up, is required to determine how Clement's unique veracity and lifestyle attributes affect the merits of the Class Certification Pleadings.

WHEREFORE, Amscot respectfully requests the entry of an Order compelling Clement to respond fully and truthfully to the Certified Question, and to matters regarding his involvement with prostitution and the funds used for such practice, within ten (10) days of the date of the Order, and for such other relief as this Court deems just and proper.

MEMORANDUM OF LAW IN SUPPORT OF AMSCOT'S MOTION TO COMPEL CLEMENT TO ANSWER THE CERTIFIED QUESTION

Federal Rule of Civil Procedure 26(b)(1) provides that parties may obtain discovery regarding any matter relevant to the subject matter involved in the pending action which is not privileged or limited by court order. The information sought need not ultimately be admissible at trial. *Id.* Rather, information is discoverable so long as it is reasonably calculated to lead to the discovery of relevant information. *Id.* Accordingly, a party may request, pursuant to Rule 33 of the Federal Rules, information which may lead to the discovery of admissible information.

As set forth above, the information sought by Amscot from Clement is specifically relevant for determining whether Clement is an adequate class plaintiff. Rule 23(a)(4) requires that the named plaintiff will fairly and adequately protect the interests of the class. This Court has found that "it is crucial to consider with great care the suitability of the plaintiff[] to act as class representative[]," as such representative "serves as guardian of the interests of the class and because of this fiduciary relationship he must be held to a high level of responsibility." *Hively v. Northlake Foods, Inc.*, 191 F.R.D. 661, 668 (M.D. Fla. 2000) This Court has further held that such a representative "owes to those whose cause he advocates a duty of the finest loyalty." *Id.*

Specifically, this Court has held that class representatives must have the *personal characteristics* and *integrity* necessary to fulfill the fiduciary role of the class representative. *Hively v. Northlake Foods, Inc.*, 191 F.R.D. 661, 668 (M.D. Fla. 2000); *see also Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 726 (11th Cir. 1987). Moreover, class certification may be denied if there is a strong indication that the plaintiff's testimony might not be credible. *Id.* All of the information sought from Clement relates to the very issues dispositive of the Class Certification Pleadings under the standards set forth above.

Clement's claims against Amscot must be "typical" of those of the class he is seeking to represent, pursuant to Federal Rule of Civil Procedure 23(a). Typicality is not present if the class representative is subject to unique defenses that could be central to the litigation. *Hively v. Northlake Foods, Inc.*, 191 F.R.D. 661, 668 (M.D. Fla. 2000). The existence of even an arguable defense can vitiate the adequacy of representation if it will distract the named plaintiff's attention from the issues common to the class. *Ross*, 837 F.2d at 990-91; *McNichols v. Loeb Rhoades & Co.*, 97 F.R.D. 331, 334 (N.D. Ill.1982) (in order to defeat class certification, possible defense need only be "unique, arguable and likely to usurp a significant portion of the litigant's time and energy"). The certification of a class is questionable "where it is predictable that a major focus of the litigation will be on an arguable defense unique to the named plaintiff or a small subclass." *Ross*, 837 F.2d at 991. Defenses unique to the named plaintiff provide a foreseeable danger which will preoccupy the plaintiff to the detriment of purported class members. *Hively*, 191 F.R.D. at 668.

If Amscot establishes that Clement engaged in payday advance transactions with Amscot for the purpose of obtaining funds to hire prostitutes, that certainly would call into question whether such transactions would constitute "consumer" transactions for "personal, family or household purposes" intended to be protected by the Truth in Lending Act, and whether transactions to obtain funds for illegal purposes would be entitled to protection under Florida's usury statutes and Deceptive and Unfair Trade Practices Act.. At a minimum, it would raise issues that are unique to Clement and which would likely contribute to the conclusion that he is an inadequate class representative.

CONCLUSION

Clement has refused to answer questions that seek information specifically relevant to the determination of whether Clement is an appropriate representative to act on behalf of the proposed

class. Amscot respectfully requests that this Court enter an order compelling Clement to answer the Certified Question regarding his involvement with prostitution and the funds used for such practice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 31st day of August, 2000, to William J. Cook, Esquire, ALPERT, BARKER & RODEMS, P.A., Post Office Box 3270, Tampa, FL 33601-3270.

JOHN A. ANTHONY, ESQUIRE
Lead Trial Counsel
Florida Bar # 731013
CHRISTINE NOWORYTA SMITH
Florida Bar #38164
GRAY, HARRIS, ROBINSON, SHACKLEFORD & FARRIOR
501 E. Kennedy Blvd., Suite 1400
Tampa, FL 33602
(813) 273-5000 - Telephone
(813) 273-5145 - Telecopier

SF:374040/ldw

EXHIBIT "A"

E13558 **CRIMINAL REPORT AFFIDAVIT / NOTICE TO APPEAR**

GRID # 5312

ADMINISTRATION

COURT CASE / J.F. ID # 9930632MM SAO # _____ OBTS # _____

AGENCY REPORT # 99-093225 AGENCY NAME HCSO ORI. # FL0290000

LOCATION OF OFFENSE 12400 N. Nebraska Ave DATE OF OFFENSE 29 OCT 99 TIME OF OFFENSE 1235

WITHIN: Tampa FL

TAMPA ☐ PLANT CITY ☐ TEMPLE TERRACE ☐ UNINCORPORATED AREA ☒

COURT:

TAMPA COURT ☒ PLANT CITY CT ☐

LOCATION OF ARREST 12400 N. Nebraska Ave DATE OF ARREST 29 OCT 99 TIME OF ARREST 1235

Tampa FL

BOOKING # _____ SOID # _____ WEAPON TYPE NONE WEAPON SEIZED Yes ☐ No ☒

ARREST

☒ Probable Cause ☒ Adult
☐ Capias ☐ Juvenile
☐ Fugitive Warrant ☐ Delinquency
☐ VOP ☐ Dependency
☐ Warrant ☐ Felony
☐ Juvenile Pickup ☒ Misdemeanor
☐ Traffic MISD
☐ Traffic FEL
☐ Ordinance
☐ Pickup
☐ Other

REQUEST FOR:

☐ Capias
☐ Warrant
☐ Summons
☐ Juvenile Pickup

NOTICE TO APPEAR:

☒ Arresting officer
☐ Booking supervising officer

PERPETRATOR

NAME CLEMENT, EUGENE ROBERT (Last, First, Middle) ALIAS NONE

RACE: W-White I-American Indian/Alaskan Native HW-Hispanic White HB-Hispanic Black B-Black O-Oriental/Asian

Race W SEX M D.O.B. 03 / 02 / 33 (MO / DAY / YEAR) 66 (APPROXIMATE AGE)

COMPLEXION M BUILD M

HEIGHT 5'11" WEIGHT 260

COLOR: EYES BLU HAIR Brown

LOCAL ADDRESS (Street, Apt. #, City, State, Zip) 13676 FLETCHER REGENCY DR TAMPA FL. Ph #: 977 3990

Permanent Address (Street, Apt. #, City, State, Zip) / Ph #: /

Business Address (Street, Apt. #, City, State, Zip) CHECK point SEE. Ph #: _____

Driver's License No. C455-216-33-082-0 State FL SS # 046-24-8566 PLACE OF BIRTH OT DOC # —

Gang Member: Yes ☐ No ☒ Gang Name _____

SCARS, MARKS, TATOOS, UNIQUE FEATURES (Loc., Type, Desc.) NONE

IF JUVENILE:

School Name _____

Mother/Guardian _____ Address: _____ Ph #: _____

Father/Guardian _____ Address: _____ Ph #: _____

Released To: JAC ☐ Parent ☐ Guardian ☐ Other Relationship ☐ _____ ☐ Other _____

CO-PERPETRATOR(S)

Co-Defendant (Last, First, Middle) _____ Sex: ____ Race: ____ DOB _____

Arrested ☐ At Large ☐ Capias/Warrant Requested ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐

Co-Defendant (Last, First, Middle) _____ Sex: ____ Race: ____ DOB _____

Arrested ☐ At Large ☐ Capias/Warrant Requested ☐ Felony ☐ Misdemeanor ☐ Juvenile ☐

CHARGE(S)

STATUTE (subsec.) / ORD #	DV	CHARGE STATUS	BOND SET	CHARGE	TRAFFIC CITATION #	DRUG ACT/TYPE
796.07		M		Prostitution - Solicitation		

CHARGE STATUS: F-Felony M-Misdemeanor T-Traffic O-Ordinance FT-Felony Traffic

ACTIVITY: N-N/A P-Possess S-Sell B-Buy T-Traffic R-Smuggle D-Deliver E-Use K-Dispense/Distribute M-Manufacture/Produce/Cultivate Z-Other

TYPE: N-N/A A-Amphetamine B-Barbiturate C-Cocaine E-Heroin H-Hallucinogen M-Marijuana O-Opium/Deriv. P-Paraphernalia/Equipment S-Synthetic U-Unknown Z-Other

EVIDENCE LIST

A LIST OF TANGIBLE EVIDENCE (If none, write "None") (Evidence List must be provided for all NOTICES TO APPEAR)

DESCRIPTION/AMOUNT PER UNIT	RECOVERED BY	GIVEN TO	PRESENT LOCATION
tape	GRW 3163	GRW 3163	SOC Evidence

NOTICE TO APPEAR

Mandatory Appearance in Court ☐ You need not appear in Court, but must comply with instructions on Reverse Side. ☐

COURT INFORMATION: You must appear in County Court at the:

COURTHOUSE TOWER ANNEX, 801 E. TWIGGS STREET ☒ (Corner of Jefferson & Twiggs Street), TAMPA, FLORIDA 33602

COUNTY OFFICE BUILDING, MICHIGAN & REYNOLDS STREET ☐ PLANT CITY, FLORIDA 33566

Division D COURTROOM # 19 ON 1-31, 19 2000, AT 830 a.m. ☒ p.m. ☐

I agree to appear at the time and place designated above to answer for the offense(s) charged or to pay the fine subscribed. I understand that if I willfully fail to appear before the Court as required by the Notice to Appear, I may be held in contempt of Court and a warrant for my arrest shall be issued. You may also be charged with the crime of Failure to Appear, F.S. 843.15. I certify that my address as listed above is correct and I further understand that I have a continuing duty to advise the Court of any changes in my address as set forth above.

Signature of Defendant/Juvenile X E. Clement Parent or Guardian (If Juvenile) _____

White - Clerk of Court Green - State Attorney

 255894

AGENCY REPORT # 99-093225 AGENCY NAME HCSO

PROBABLE CAUSE STATEMENT

State facts to establish probable cause that a crime was committed by the defendant or that the child is dependent: ON the above listed date and time the defendant did solicit the affiant for a sex act (ORAL/STRAIGHT) in exchange for $ 20.00 in U.S. currency. This offense occurred within Hillsborough County.

A motor vehicle was used during the commission of this offense and the defendant was the driver of the vehicle used in violation of FSS 322.26(7).

Judgement requested against defendant for agency investigative cost per Florida Statute 939.01: $ 75.00

OFFICER ______ I.D. # ______ Dist. & Squad ______
(Please Print The Above Information)

SWORN TO AND SUBSCRIBED BEFORE ME THIS 29 DAY OF OCT, 1999
[signature] 327
NAME/Title of Person Authorized to Administer Oath

POLICE REPORT WRITTEN: Yes ☒ No ☐
OFFICER M. Grow I.D. # 3163 Dist. & Squad VICE/OCB

I SWEAR THAT THE ABOVE STATEMENTS ARE CORRECT TO THE BEST OF MY KNOWLEDGE. FOR NOTICES TO APPEAR, I ALSO CERTIFY THAT A COMPLETE LIST OF WITNESSES AND EVIDENCE KNOWN TO ME IS ATTACHED.

AFFIANT, Signature: Det. M. Grow 3163
AFFIANT, Print/Type Name: Det. M. Grow 3163

VICTIM NOTIFICATION

NOTE: The WHITE COPY of VICTIM'S / WITNESSES goes to the Clerk's Office ONLY on Notices To Appear. In all other cases, it should be removed. The Jail or JAC personnel will determine this for all defendants turned over to them. In all Notices To Appear issued by the Arresting Officer, the Arresting Officer should leave the WHITE copy of VICTIM'S / WITNESSES attached.

Clerk Of Court SAO FORM-425. 4/97

255894

WITNESSES

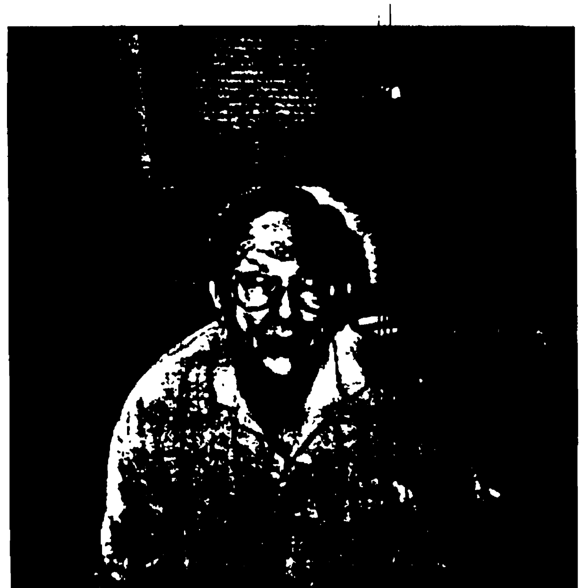
WITNESS STATUS: V-Victim C-Complainant W-All Other Witnesses

STATUS	Last	First	Middle	Race	Sex	Date of Birth
V	Inspectional Services Division					

Address	Street	City	State	Zipcode	Phone
Home Address	2008 E 8th Avenue	Tampa	FL	33605	813 247 8000
Business Address					

STATUS	Last	First	Middle	Race	Sex	Date of Birth
W	Det. A. Bordonaro 408					

Address	Street	City	State	Zipcode	Phone
Home Address	2008 E 8th Avenue	Tampa	FL	33605	813 247 8000
Business Address					



Claimant, Ruslana
03 02 33

EXHIBIT "B"

A Not that I'm aware of.

Q Okay. No other sort of lawsuit of any kind?

A Not that I'm aware of.

Q Okay. No other reason to go to court in the last year?

A No.

Q Okay. So you've had no other involvement in the legal system during the last 12 months? Maybe a couple of years, let's say. I mean, it's not a trick question. Have you had any other involvement in the legal system in the last two years?

A Have I had any -- I don't understand what you mean by "have I."

Q Well, you answered the question to the litigation -- have you had any other litigation as no, and your lawyer reminded you that you actually were involved in other litigation that's somewhat similar to this, and you answered some questions about it. And before I ask you questions about that other litigation that's similar to this, I'm asking is there any other reason that you have been involved in the court system during the last two years?

A You know, I don't remember.

Q Okay.

A I'm sorry.

Q Do you remember being picked up for prostitution

charges?

A Okay, yes, that's true.

Q You do remember that.

A I'm sorry, I apologize.

Q Okay.

A Yeah, yes, that's true.

Q Does that just jog your memory or is that something that you knew about and you weren't telling me?

A As a matter of fact, truthfully, I've kind of, like, put that over there and I tried to forget the whole thing because it was a bad mistake.

Q Okay. Well, I'd like for you not to forget about things when you're under oath answering my questions.

A I apologize.

Q Tell me what you remember about that event.

MR. COOK: I'm going to object. What is the relevance of a prostitution arrest?

MR. ANTHONY: Relevance is not the measure of this line of questioning.

MR. COOK: It's not admissible in evidence.

MR. ANTHONY: You know, I beg to differ as far as -- I strenuously beg to differ, and that is not the line that matters. Is the question calculated to lead to reasonably discoverable evidence? I would be more than happy to certify that question and we can let Magistrate

Jenkins figure it out.

MR. COOK: Why don't we do that.

MR. ANTHONY: Okay. And for the record, I think that particularly in light of the disingenuous responses we have gotten to some of these questions that this is a highly appropriate follow-up question, but we can leave it at that on the prostitution charges.

Is that fair to say that you're going to ask him not to answer any more questions about his prostitution case?

MR. COOK: Well, I was going to say that I would suspend the deposition and seek a protective order on that basis, but if you just want to certify the question and move on, that's fine.

MR. ANTHONY: We'll try to be effective about it --

MR. COOK: Right.

MR. ANTHONY: -- and ask the questions that you don't find to be problematic.

MR. COOK: And just for the record, I'm objecting on grounds that it's the harassing nature of the question, it has no bearing whatsoever to any of the issues in this case including whether or not Mr. Clement is an appropriate class representative.

BY MR. ANTHONY:

Q What did you do with the money that you obtained from Payday Advances, from Amscot Corporation? Do you remember?

A Paid bills.

Q Did you pay any other obligations?

A I don't think I understand what you mean by obligations. That's what a bill is.

Q Well, sometimes you pay somebody something but you don't have a bill. sometimes you pay them in cash, like in your situation with Dwane Griffin. Do you remember what you did with the funds from Amscot?

A Paid the bills for the house, yes.

Q Uh-huh. Do you remember what time of day you did your transactions with Amscot?

A It would vary.

Q Uh-huh. Was it ever late at night?

A I believe it was.

Q Okay. What did you do with the proceeds of the checking transactions late at night?

A Took the money home, paid the bills the next day.

Q Did you give it to Karen?

A Some of it.

Q Uh-huh. Your government check, is that direct deposited or do you cash that somewhere?

A That's direct deposited.

St. Petersburg Times

Attorney's suit says he received coffee in the face

[SOUTH PINELLAS Edition]

St. Petersburg Times - St. Petersburg, Fla.
Author: SUE CARLTON
Date: Jun 6, 2000
Start Page: 4.B
Text Word Count: 402

Document Text

The Bucs' attorney says a season ticket holders' attorney splashed him.

Attorney Arnold Levine assumes that over the years, plenty of lawyers have probably wanted to throw coffee in his face.

In a lawsuit filed Monday, Levine says opposing counsel in a case against the Tampa Bay Buccaneers did just that.

The well-known lawyer alleges that he caught a faceful of coffee Saturday morning, during what was supposed to be an effort to settle a case filed by season ticket holders unhappy with their seats at Raymond James Stadium.

Levine, who represents the Bucs, said there were at least 10 people gathered in the office of a lawyer who had been appointed to mediate the dispute.

On the other side of the conference table sat attorney Jonathan Alpert, who represents the football fans.

Neither Levine nor Alpert would discuss what was said during the meeting, and the mediator could not be reached for comment Monday.

But Levine alleges Alpert suddenly jumped to his feet, yelled at him and then stepped outside the room for a moment. Levine said Alpert returned, "still ranting and raving," and launched the contents of his 20-ounce plastic foam cup into Levine's face.

"It was lukewarm. It had cream," Levine said. "I don't know if it had sugar."

Levine said Alpert and his clients left.

Monday, Alpert would only say that he did not believe the accusations were "accurate." He also said he could not discuss anything that went on in a confidential mediation hearing.

"I'm kind of shocked at this latest stunt," Alpert said.

Levine, who previously filed a defamation lawsuit against Alpert and the fans, sued again Monday, this time asking for civil damages in the alleged coffee incident. Levine said he also filed a battery complaint against Alpert with the Tampa police. He has the short- sleeved green knit shirt he had been wearing, which he says is now stained brown, in his office.

"You never destroy the evidence," Levine said.

For his part, Alpert called it "much ado about coffee," far from the important issues of the lawsuit against the Bucs.

"If Arnie would like me to buy him a cup of coffee," Alpert said, "I'd be happy to buy him a cup of coffee."

[Illustration]
Caption: Attorney Arnold Levine (ran CITY & STATE); Attorney Arnold Levine (ran TAMPA & STATE); Jonathan Alp
(ran TAMPA & STATE); Photo: BLACK AND WHITE PHOTO; COLOR PHOTO, (2)

EXHIBIT
4

Abstract (Document Summary)

[Arnold Levine], who previously filed a defamation lawsuit against [Jonathan Alpert] and the fans, sued again Monday, this time asking for civil damages in the alleged coffee incident. Levine said he also filed a battery complaint against Alpert with the Tampa police. He has the short- sleeved green knit shirt he had been wearing, which he says is now stained brown, in his office.

Levine alleges Alpert suddenly jumped to his feet, yelled at him and then stepped outside the room for a moment. Levine said Alpert returned, "still ranting and raving," and launched the contents of his 20-ounce plastic foam cup into Levine's face.

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St. Petersburg Times

Bucs accused of extortion

[SOUTH PINELLAS Edition]

St. Petersburg Times - St. Petersburg, Fla.
Author: SUE CARLTON
Date: Jun 10, 2000
Start Page: 3.B
Text Word Count: 567

Document Text

Four season ticket holders say they were threatened at a meeting to mediate a dispute with the team over seating assignments.

They sat across a conference table from each other in a downtown high-rise, representatives of the Tampa Bay Buccaneers on one side, the fans suing the team on the other.

The meeting last Saturday was supposed to be an attempt to settle the case of four season ticket holders who say they were treated unfairly because they got less desirable seats when the Bucs moved to a new stadium.

Instead, the meeting exploded almost as soon as it began, leaving a trail of allegations, recriminations and criminal complaints.

The latest: On Friday the lawyer for the fans announced in court that he had asked police to investigate "threats and/or extortion" by the Bucs' lawyer at Saturday's meeting. He said the fans were threatened with losing their seats if they did not agree to a settlement that day.

According to attorney Jonathan Alpert and sworn affidavits from the four fans, Bucs attorney Arnold Levine told them at the beginning of the meeting, "This is not meant as a threat, but if you do not settle this case today, you will not have seats in the stadium in 2001. You will have no seats, and you can watch the games in your living room. The Glazers do not care if you sue them." Malcolm Glazer owns the team; his sons run it.

The four fans already have paid for seats for the 2000 season, and have paid deposits on those seats for 2001 as part of a 10-year agreement.

"I am a longtime Bucs fan, and the seats for 2001 and later football seasons have both financial and emotional value to me," said an affidavit signed by Otha "Gene" Wilson.

Levine, who has accused Alpert of tossing a full cup of coffee in his face that day, said confidentiality rules prevent him from discussing what was said. He did say it is common in such mediation hearings to tell the other side "what's going to happen to you if I win." Levine also said the law is clear that a ticket to an event such as a football game is "a revokable license."

Circuit Judge Sam Pendino denied Levine's motion to dismiss the case.

According to testimony Friday, the Bucs had been prepared to offer a settlement, though no details were discussed in court. Pendino ordered both sides to attend another mediation hearing.

Tampa police detectives are reviewing the extortion complaint, which names Levine, Bucs general manager Rich McKay and Edward and Bryan Glazer.

The Hillsborough State Attorney's Office is deciding whether Alpert should be charged with battery, a misdemeanor, in the coffee incident. Levine also filed a civil suit seeking damages.

Friday, Alpert used the word "spilled" and said the incident occurred as he and his clients abruptly left the room afte

EXHIBIT
5

Levine's threat.

[Illustration]
Caption: Bucs attorney Arnold Levine shows the judge a shirt he says was stained when Jonathan Alpert, the attorney for four fans, tossed a full cup of coffee at him during a mediation hearing., (ran CITY & STATE, SS of METRO & STATE); Jonathan Alpert; says the coffee was spilled as he and his clients abruptly left the room after Arnold Levine's threat., (ran CITY & STATE, SS of METRO & STATE); Photo: BLACK AND WHITE PHOTO, TONY LOPEZ; BLACK AND WHITE PHOTO

Abstract (Document Summary)

Caption: Bucs attorney Arnold Levine shows the judge a shirt he says was stained when Jonathan Alpert, the attorney for four fans, tossed a full cup of coffee at him during a mediation hearing., (ran CITY & STATE, SS of METRO & STATE); Jonathan Alpert; says the coffee was spilled as he and his clients abruptly left the room after Arnold Levine's threat., (ran CITY & STATE, SS of METRO & STATE); Photo: BLACK AND WHITE PHOTO, TONY LOPEZ; BLACK AND WHITE PHOTO

According to attorney Jonathan Alpert and sworn affidavits from the four fans, Bucs attorney Arnold Levine told them at the beginning of the meeting, "This is not meant as a threat, but if you do not settle this case today, you will not have seats in the stadium in 2001. You will have no seats, and you can watch the games in your living room. The Glazers do not care if you sue them." Malcolm Glazer owns the team; his sons run it.

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St. Petersburg Times

Bucs fans win in ticket settlement

[SOUTH PINELLAS Edition]

St. Petersburg Times - St. Petersburg, Fla.
Author: SUE CARLTON
Date: Jun 22, 2000
Start Page: 1.A
Section: NATIONAL
Text Word Count: 802

Document Text

Season ticket holders unhappy with their seats will get to pick new ones closer to the 50-yard line thanks to a plan to end a lawsuit.

Four longtime Bucs fans who sued the team over their seating assignments at Raymond James Stadium may now get their pick of some of the best seats in the house.

Their attorney, Jonathan Alpert, announced in court Wednesday that both sides had reached an amicable settlement after more than 13 hours of court-ordered negotiation that ended around 3 a.m.

If approved, the settlement will end an extraordinary case involving a sports team suing its fans, criminal battery and extortion complaints, and one lawyer accusing another of tossing coffee in his face.

In a somewhat complex arrangement, the Bucs have agreed to make available 120 seats to season ticket holders unhappy with their seats. About one-third of those seats will be in choice sections near the 50-yard line, and the four fans named in the lawsuit will have first pick.

Also, each of the fans named in the class-action suit will be given a $5,000 credit that can be used to pay off tickets or parking in the years to come.

The Bucs also agreed to drop the $1-million defamation suits they filed against three of the fans who complained publicly about the Bucs and their seats after the team moved from Houlihan's Stadium to the newer, smaller stadium in 1998.

The Bucs also agreed to pay $180,000 in attorneys fees and $30,000 in costs.

Both sides agreed to drop pending criminal battery and extortion complaints alleging that one lawyer threw coffee in another lawyer's face, and that the Bucs threatened to revoke the four fans' season tickets.

Wednesday's agreement forbade the usually gregarious Alpert from commenting further on the settlement, which must be approved by Circuit Judge Sam Pendino.

"Instead of a lengthy dispute, we were able to amicably resolve our differences," Alpert said in a joint statement issued by the Bucs on Wednesday. "Both sides are satisfied with the results. My clients and I look forward to cheering the Buccaneers for many years."

Patsy Falcone, a fan for 15 years who found himself moved from the 50-yard line in the old stadium to the 10-yard line in Raymond James, said he too could not discuss the case.

"I'm not going to elaborate on anything," he said.

Bucs lawyer Arnold Levine said, "everybody gave. Everybody made certain adjustments they felt were appropriate to put the matter behind them."

Even though the stadium is "essentially sold out," no ticket holder will be involuntarily moved from a seat, Alpert sa

EXHIBIT
tabbies
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court. According to documents filed Wednesday, the process is expected to work like this:

The Bucs will make available 120 seats, most in upper sections of the stadium. The four fans who sued, who hold 11 tickets among them, will have first choice. They presumably will pick from 32 seats in two sections on the 50-yard line on either side of the stadium.

The remainder of the 120 seats will be available to interested season ticket holders through a random selection process supervised by a court-appointed hearing master. Those fans must be willing to give up their current seats and are only eligible for available seats in the same price category. Season ticket holders are expected to be mailed a letter from the Bucs detailing the arrangement.

The lawsuit, filed one year ago, alleged that instead of using the stated criteria for seat assignments - such as how long someone was a ticket holder and where he sat at the old stadium - the Bucs used "other and secret" factors that may have benefited VIPs and elected officials.

At a previous court-ordered settlement hearing, Levine said Alpert flung a cup of lukewarm coffee in his face and stormed out. Alpert later countered that Levine had threatened that the fans could count on watching the games from their living rooms if they didn't agree to settle that day.

At a recent court hearing, Judge Pendino ordered the lawyers to "cut it out."

Settlement talks began at 1 p.m. Tuesday and stretched past midnight. Those attending nibbled on cookies and kept working even when the air conditioner cut out. Two sons of team owner Malcolm Glazer attended, one in person and one by telephone from California.

The four fans were there, too, though one of them eventually had to leave to get ready for work Wednesday morning.

- Staff writer Roger Mills contributed to this report.

Here's the deal

The fans who sued get their pick of some choice seats at Raymond James Stadium.

Other season-ticket holders can vie for about 100 other seats in different parts of the stadium.

The Bucs pay all legal fees and drop defamation lawsuits against the fans.

[Illustration]
Caption: Bucs' logo; Photo: COLOR DRAWING

Abstract (Document Summary)

The remainder of the 120 seats will be available to interested season ticket holders through a random selection process supervised by a court-appointed hearing master. Those fans must be willing to give up their current seats and are only eligible for available seats in the same price category. Season ticket holders are expected to be mailed a letter from the Bucs detailing the arrangement.

In a somewhat complex arrangement, the Bucs have agreed to make available 120 seats to season ticket holders unhappy with their seats. About one-third of those seats will be in choice sections near the 50-yard line, and the four fans named in the lawsuit will have first pick.

The Bucs also agreed to drop the $1-million defamation suits they filed against three of the fans who complained publicly about the Bucs and their seats after the team moved from Houlihan's Stadium to the newer, smaller stadium in 1998.

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JONATHAN ALPERT

HE'S ON OUR SIDE!!

Jonathan Alpert has spent his life standing up for working people and protecting consumers. Whether it's standing up to HMOs on behalf of patients or taking on large national corporations to ensure that employees get the pay and benefits they deserve, Jonathan Alpert has always been on our side. 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!

VOTE Jonathan Alpert
Democrat for State Attorney

THE ALPERT RECORD:

Jonathan Alpert has a legal career spanning over 30 years with experience prosecuting and defending civil cases, serving as a judge, and teaching at Stetson Law School and Hampton University, as well as authoring more than a half dozen law books.

- Stood up to HMOs on behalf of patients
- Protected working families by taking on payday loan companies
- Fought for elderly fraud victims of major national banks
- Took on large national corporations to make them pay employees the overtime they deserved and provide medical benefits to elderly retirees

THE ALPERT ACTION PLAN:

As State Attorney he'll bring a fresh approach to the office. Alpert will:

- Prosecute HMOs who unfairly deny care
- Target career criminals to ensure that they are convicted and put behind bars
- Vigorously enforce elderly abuse laws
- Crack down on violent juvenile offenders to make our streets and schools safer

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

Telephone and Fax: (727) 823-2390

August 23, 2000

VIA FIRST CLASS MAIL

William J. Cook, Attorney at Law
Alpert, Barker, Rodems, Ferrentino & Cook, PA
100 South Ashley Drive, Suite 2000
Tampa, Florida 33602

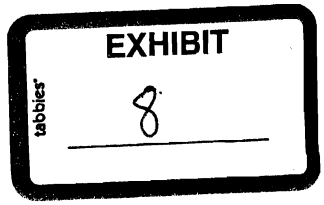
Telephone: (813) 223-4131

Dear Bill,

Enclosed you will find my $25 check supporting Mr. Alpert's run for State Attorney. Kindly forward it to the campaign. Best of luck!

Sincerely,

Neil J. Gillespie



JONATHAN ALPERT
FOR STATE ATTORNEY (D)

August 31, 2000

Mr. Neil J. Gillespie
1121 Beach Dr. N.E.
Apt. C-2
St. Petersburg, FL 33701

Dear Neil,

Thank you so much for supporting my campaign to bring a fresh approach to the State Attorney's Office. We have an important message to communicate to the voters of Hillsborough County and your contribution will go a long way toward reaching them!

The most important way you can get further involved is to spread the word to your friends and neighbors. Please let them know that you're supporting me.

I especially appreciate your support coming from outside Hillsborough County. With your help I know success is ensured.

Again, thank you for your support. I look forward to continuing to work with you toward a better, brighter future for Hillsborough County and Florida.

Best regards,

Jonathan Alpert

Thanks so much

EXHIBIT
tabbies 9

P.O. Box 3270 • Tampa, FL 33601
Phone: 813-223-4131 • Fax: 813-228-9612 • E-mail: JONALPERT@aol.com

JONATHAN ALPERT
FOR STATE ATTORNEY (D)

P.O. Box 3270 • Tampa, FL 33601

Mr. Neil J. Gillespie
1121 Beach Dr. N.E.
Apt. C-2
St. Petersburg, FL 33701

P000000 75354

FILED
AUG -4 AM 10:22
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Chris A. Barker, Esquire
480 West Davis Boulevard
Tampa, Florida 33606

August 2, 2000

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*****70.00 *****70.00

Florida Department of State
Division of Corporations
Post Office Box 6327
Tallahassee, Florida 32314

Re: Articles of Incorporation

Dear Sir or Madam:

Enclosed please find Articles of Incorporation for filing with regard to Barker, Rodems & Cook, P.A.

I have included a check in the amount of $70.00 for the filing fee and for the designation of Registered Agent. Please return to me stamped copies of the Articles of Incorporation. I have enclosed a postage paid return envelope for your convenience.

Thank you for your assistance.

Sincerely,

Chris A. Barker

CAB/tbm
enclosures

E. Chisson AUG 9 2000

EXHIBIT
tabbies
10

ARTICLES OF INCORPORATION

OF

BARKER, RODEMS & COOK, P.A.

FILED
00 AUG -4 AM 10:22
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned incorporator, for the purpose of forming a corporation under the Florida Professional Services Corporation Act, hereby adopts the following Articles of Incorporation:

ARTICLE I
Name

The name of the corporation is BARKER, RODEMS & COOK, P.A.

ARTICLE II
Principal Office

The address of the initial principal place of business of the corporation is 300 W. Platt Street, Tampa, Florida 33606.

ARTICLE III
Stock

The number of shares of stock the corporation is authorized to have outstanding at any one time is one thousand (1000) shares, all of which shall be common shares in one class only, each with a par value of $0.01 per share.

ARTICLE IV
Initial Registered Agent and Address

The Registered Agent of the corporation is Chris A. Barker, and the registered address is 480 W. Davis Blvd., Tampa, Florida 33606.

ARTICLE V
Purpose

The purpose for which the corporation is organized is to engage in the practice of law.

ARTICLE VI
Management

The business of the corporation shall be managed by the shareholders in accordance with the Bylaws of the corporation.

ARTICLE VII
Incorporator

The name and street address of the incorporator is as follows: Chris A. Barker, 480 W. Davis Blvd., Tampa, Florida 33606

The undersigned has executed these Articles of Incorporation this 2nd day of August, 2000.

CHRIS A. BARKER
Incorporator

Having been named as Registered Agent and to accept service of process for the above-stated corporation at the place designated in the certificate, I hereby accept the appointment as Registered Agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and am familiar with and accept the obligations of my position as Registered Agent, this 2nd day of August, 2000.

CHRIS A. BARKER
Registered Agent

FILED
00 AUG -4 AM 10: 22
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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 3270
TAMPA, FL 33601-3270

TELEPHONE (813) 223-4131
FAX (813) 228-9612

September 25, 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 am enclosing a copy of a motion to dismiss we recently received from ACE. I am also enclosing a copy of our motion for class certification. Finally, I am enclosing a copy of an order that we recently received in our case against AMSCOT, which I thought you would find interesting. The Judge denied AMSCOT's motion to dismiss.

Please give me a call if you have any questions regarding these items.

Sincerely,

William J. Cook

WJC:SDW
Enclosure

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

v.

AMSCOT CORPORATION, a Florida corporation,
Defendant.
_____/

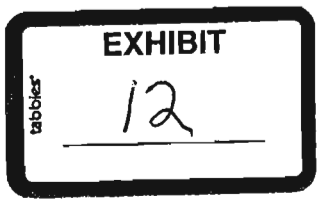
Case No. 99-2795-CIV-T-26C
Jury Trial Demanded
Injunctive Relief Requested

MOTION FOR INTERVENTION AS PLAINTIFFS AND PROPOSED CLASS REPRESENTATIVES with INCORPORATED MEMORANDUM OF LAW

Plaintiffs-in-intervention Gay Ann Blomefield and Neil Gillespie ("Intervenors"), pursuant to Rules 23(d)(2) and 24(b)(2) of the Federal Rules of Civil Procedure, hereby respectfully move to intervene as plaintiffs and proposed Class Representatives in the above-styled cause. In support of this motion, Intervenors rely on the memorandum of law incorporated herein and the [proposed] Class Action Complaint-in-Intervention (attached hereto as Exhibit A), and in support thereof state as follows:

1. Intervenors are members of the putative class defined in the First Amended Complaint filed December 9, 1999 by Plaintiff Eugene Clement by virtue of their deferred deposit transactions with Defendant during the class period.

2. The claims asserted by Intervenors in their proposed complaint-in-intervention are identical to those pled by plaintiff Clement except that Intervenor Gillespie did not conduct any "roll over" transactions, and neither Intervenor is asserting that he or she signed an application falsely threatening criminal prosecution. Otherwise, the complaint-in-intervention and Plaintiff Clement's First Amended Complaint present common questions of law and fact.



3. Intervenors' motion to intervene is timely and, if granted, will neither unduly delay nor prejudice the rights of plaintiff Clement or Defendant.

WHEREFORE, Intervenors respectfully request that the Court grant this motion and permit Gay Ann Blomefield and Neil Gillespie to file the attached proposed complaint-in-intervention and intervene in the above-styled action as named plaintiffs and proposed Class Representatives.

MEMORANDUM OF LAW

Plaintiffs-in-intervention, Gay Ann Blomefield and Neil Gillespie ("Intervenors"), hereby respectfully submit the following Memorandum of Law in support of their motion for leave to intervene in the above-captioned action as plaintiffs and Class Representatives under Rules 23(d)(2) and 24(b)(2) of the Federal Rules of Civil Procedure. As required by Rule 24(c), a proposed Class Action Complaint-in-Intervention is attached hereto. As fully explained below, Intervenors satisfy each of the elements required for permissive intervention.

INTRODUCTION

Intervenors were Amscot customers who entered into "deferred deposit" transactions. Neither intervenor was provided with Truth in Lending disclosures, and both presented non-postdated checks in connection with their transactions. In addition, Intervenor Blomefield was permitted to extend or "roll over" her loans. As such, both are members of a class which is composed of all persons who entered into deferred deposit transactions without receiving TILA disclosures. They are also members of the class seeking damages for Defendant's usury violations in connection with its use of non-postdated checks. Intervenor Blomefield is additionally a member of the usury subclass regarding Defendant's rollovers. They are both also members of the subclass seeking damages pursuant to the FDUTPA for Defendant's failure to disclose the nature of the

transactions and the exorbitant interest rates it charged.

Intervenors are willing and able to vigorously pursue their claims on behalf of the putative class. While Intervenors' qualifications to act as class representatives may be the subject of future discovery, in evaluating this motion to intervene, the Court must accept as true the allegations of the Proposed Complaint. See Lake Investors Dev. Group, Inc. v. Egidi Dev. Group, 715 F.2d 1256, 1258 (7th Cir. 1983).

ARGUMENT

Rule 24(b) allows permissive intervention when: (1) the application is timely; (2) the proposed intervenor and the existing parties present common questions of law or fact; and (3) intervention will neither unduly delay nor prejudice the rights of the original plaintiff or defendants. Fed. R. Civ. P. Rule 24(b).

I. The Intervention is Timely

Rule 24 is silent with regard to what constitutes a timely motion for intervention and thus the determination of timeliness is left to the sound discretion of the Court. Stallworth v. Monsanto Co., 558 F.2d 257, 263 (5th Cir. 1977). Although the Court is bound to consider all relevant circumstances, this element is construed broadly in favor of the party seeking intervention. See 7C Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §1904 (1986); Westlands Water Dist. v. United States, 700 F.2d 561, 563 (9th Cir. 1983). The most important consideration in deciding whether a motion for intervention is timely is whether any delay in bringing this motion has prejudiced the existing parties to the case. See McDonald v. E.J. Lavino Co., 430 F.2d 1065, 1074 (5th Cir. 1970) ("[I]t has been the traditional attitude of the federal courts to allow intervention 'where no one would be hurt and greater justice would be attained.'") (citation omitted). Accord,

Sherman v. Griepentrog, 775 F.Supp. 1383, 1386 (D. Nev. 1991) (class member's motion to intervene as additional named plaintiff granted over defendants' objections as to timelines where no rulings on class certification or merits had occurred).

No prejudice or delay of litigation will result from permitting intervention in the instant case. Intervenors' motion comes at a time when this Court has yet to rule on Plaintiff's motion for class certification and is in part offered because of the adequacy of representation issues Defendant has raised in its opposition to Plaintiff's class certification motion. The motion to intervene accompanies Plaintiff's reply to Defendant's supplemental response to Plaintiff's motion for class certification.[1]

Furthermore, Defendant is well aware of the claims alleged by Intervenors because the Intervenors have adopted Plaintiff's complaint in its entirety, with the exception of his claim regarding the wrongful threat of criminal prosecution contained in one of Plaintiff's application forms. Moreover, because Intervenors are represented by the same counsel as the original plaintiff, there can be no delay in bringing new counsel "up to speed" on the case. In light of these facts, the timeliness of the intervention here cannot be reasonably disputed.

II. Intervenors' Claims and the Original Plaintiff's Claims Raise Common Questions of Law and Fact.

Under the second element of Rule 24(b), intervention is permissible when "an applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b); see also Beckman Indus., Inc. v. International Ins. Co., 966 F.2d 470, 472 (9th Cir. 1992);

---

[1]The mere passage of time between the commencement of an action and the filing of a motion to intervene, even if determined to be inexcusable delay, which it is not in this case, is insufficient to warrant denial of such motion where, as here, the defendant has not suffered any prejudice. See Davis v. Southern Bell Telephone & Telegraph Co., 149 F.R.D. 666, 669 (S.D. Fla. 1993).

McKay v. Heyison, 614 F.2d 899, 906 & n. 10 (3rd Cir. 1980) ("Rule 24(b) requires only that the intervenor share a 'question of law or fact in common' with the original plaintiffs.").

As noted above, Intervenors have adopted plaintiff Clement's complaint almost in its entirety. Thus, Intervenors' Proposed Complaint raises identical issues of law and fact to those asserted in the original complaint. Under these circumstances, the requirements of Rule 24(b) are met. See Deutschman v. Beneficial Corp., 132 F.R.D. 359, 381 (D. Del. 1990); Eley v. Morris, 390 F. Supp. 913, 917 (N.D. Ga. 1975) (similar, if not identical, questions of law and fact were presented by the intervenors' claims); United States Steel Corp. v. Multistate Tax Comm'n, 18 Fed. R. Serv. 2d 287, 290 (S.D.N.Y. 1974)(original plaintiff's complaint adopted in its entirety); Alexander v. Hall, 64 F.R.D. 152, 156 (D.S.C. 1974)(government's motion to intervene, adopting plaintiff's complaint as its complaint-in-intervention, sufficient under liberal construction of Rule).

III. None of the Parties Will be Unduly Prejudiced.

The final element for granting permissive intervention under Rule 24(b) is an analysis of "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." See Degge v. Boulder, 336 F.2d 220, 222 (10th Cir. 1964) (citation omitted).

Generally, where the plaintiff-in-intervention is represented by the same counsel as the original plaintiff, asks for the same form of relief, and alleges common questions of law or fact, no prejudice results from permitting intervention. See Davis v. Smith, 431 F. Supp. 1206, 1209 (S.D.N.Y. 1977) ("The proposed intervenors are represented by the same counsel as the plaintiffs already in this action, and their participation facilitates the effective adjudication of the legal issues in dispute."), aff'd, 607 F.2d 535 (2d Cir. 1978); Demeulanaere v. Rockwell Mfg. Co., 23 F.R.D. 689, 690 (S.D.N.Y. 1957).

The case of Epstein v. Weiss, 50 F.R.D. 387 (E.D. La. 1970), is on point here. In Epstein, the original plaintiffs sued on their own behalf and as representatives of a class of persons similarly situated for alleged violations of Sections 10(b) and 20 of the Securities Exchange Act of 1934. The plaintiff-in-intervention was permitted to intervene under Rule 24(b) because: (1) his complaint was substantially the same as those of the original plaintiffs; (2) his request for relief was identical to those of the original plaintiffs; (3) he was represented by counsel for the original plaintiffs; and (4) the similarity of the claims between those of the intervenor and those of the original plaintiffs clearly presented common questions of law and fact. Id. at 395. After the consideration of all these factors, the court in Epstein found that no prejudice or delay would result in any of the existing parties by permitting intervention.

As in Epstein, Blomefield's and Gillespie's proposed Complaint-in-Intervention raises questions of law and fact virtually identical to those of plaintiff Clement. In addition, both plaintiff parties are represented by the same counsel, and request virtually the same relief. Under these circumstances, the existing parties cannot be prejudiced by intervention. See Weisman v. Darnielle, 89 F.R.D. 47 (S.D.N.Y. 1980) (because there was no prejudice to the existing parties, considerations of judicial economy compelled the court to exercise its discretion to allow intervention).

Given the similarity in claims, no significant delay of litigation will result from permitting intervention. Granting Plaintiffs-in-intervention's motion will not therefore, significantly alter the course of these proceedings. "[B]ecause eleven of the twelve applicants are represented by plaintiff's counsel, defendants need not fear being deluged with 'additional questions, objections, briefs, arguments, motions and the like.'" United States Steel, 18 Fed.R.Serv.2d at 290 (citation omitted).

IV. Intervention is Necessary to Protect the Class.

While the avoidance of delay and prejudice are the "chief factors" in a determination under Rule 24(b) with regard to permissive intervention, courts have considered other factors as well. Accordingly, courts have granted permission to intervene in class suits where the addition of representatives would bolster class representation. See Epstein, 50 F.R.D. at 395, or supply the action with adequate class representation in the event that personal defenses alleged against the original representative should prevail. McCausland v. Shareholder Management Co., 52 F.R.D. 521, 524 (S.D.N.Y. 1971). In fact, Rule 23(d)(2) of the Federal Rules of Civil Procedure specifically authorizes the Court to provide the opportunity for class members "to intervene and present claims or defenses."

The Eleventh Circuit has held that it is error for a district court to refuse to certify a class on grounds of an inadequate representative without first making a finding that would-be intervenors would be inadequate representatives as well. See Cotterall v. Paul, 755 F.2d 777, 781 (11th Cir. 1985) (citing White v. I.T.T., 718 F.2d 994, 998 (11th Cir. 1983)); see also Ford v. U.S. Steel Corp., 638 F.2d 753, 760-62 (5th Cir. 1981) (holding that on remand the district court had the responsibility of determining who is an appropriate representative).

Here, the class is currently represented only by plaintiff Clement, whom Defendant contends is an inadequate representative. Defendant in fact devotes the vast majority of its opposition to class certification to attacking plaintiff Clement's qualifications. Although Defendant's arguments lack merit, in the event that this Court finds plaintiff Clement to be an inadequate class representative, the class will have no representation at all.

Thus, intervention of Gillespie and Blomefield is necessary and proper to further protect the interests of the class. See Trief v. Dun & Bradstreet Corp., 144 F.R.D. 192, 202 (S.D.N.Y. 1992) ("Intervention of class representatives to ensure adequate representation is highly desirable"); 4 Herbert E. Newberg & Alba Conte, Newberg on Class Actions 22.71, at 22-291 to 22-292 (3d ed. 1992) ("[I]f it appears that the representation of the original representative plaintiff may potentially be inadequate, the court may permit intervention by another class member in order to bolster class representation").

In fact, where the class currently has only one class representative, as here, and even if there is no defect with such person's representation, intervention of additional representatives will serve to further protect the class. In Deutschman v. Beneficial Corp., 132 F.R.D. 359, 382 (D. Del. 1990), an action alleging federal securities law violations, that court allowed class member Caffrey to intervene, even though Deutschman had already been certified as a class representative:

> As Caffrey is a member of the plaintiff class, there is no question that his claim has a question of law or fact in common with the claims of the class. The case is still in the preliminary stages. Discovery has been limited to the class certification issue. At this early stage, any delay would not be great and will be outweighed by the fact that allowing Caffrey to intervene will benefit the class. Defendants argue that Caffrey's intervention would contribute nothing to the litigation. As things currently stand, however, Deutschman is the lone class representative. The court has certified the class only tentatively, pending resolution of the common issues. Defendants have made quite clear their intention to subject Deutschman's trading record to question on the reliance issue. Intervention by Caffrey is appropriate in order to protect the interests of the class from defenses applying solely to Deutschman, the only class representative.

Id. at 382. Accord Lubin v. Sybedon Corp., 688 F. Supp. 1425, 1463 (S.D. Cal. 1988) (holding that, under Rule 24, other investors in the defendant limited partnership would be permitted to intervene for the purpose of being designated as class representatives). Intervention of additional class

members can only serve to benefit the class by ensuring that the class is adequately represented.

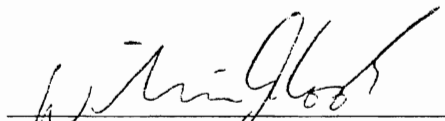
Finally, intervention is the only efficient and judicially economical procedure for a plaintiff to protect his or her rights. The denial of intervention may necessitate the filing of numerous entirely new actions to which Defendant must either respond separately or which must be consolidated by the Court into this action. Either way, the filing of additional actions will needlessly absorb the Court's resources and delay the progress of this litigation which could and should be avoided by allowing intervention.

CONCLUSION

The requested intervention meets all the criteria of Rule 24(b)(2) and is appropriate and necessary under Rule 23(d)(2). The application for intervention is timely and will cause neither delay nor prejudice. The Complaint-in-Intervention and the original Complaint raise identical questions of law and fact. Accordingly, Plaintiffs-in-intervention respectfully request that the Court grant their motion to intervene under Rules 23(d) and 24(b).

CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that I have conferred with counsel for Defendant in a good faith effort to resolve the issues raised in this motion, and counsel were unable to agree on the resolution of the motion.



William J. Cook, Esquire

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

Plaintiff,

v. CASE NO: 8:99-cv-2795-T-26EAJ

AMSCOT CORPORATION,

Defendant.
_____/

ORDER

Before the Court are Plaintiff's Motion for Class Certification with supporting memorandum (Dkts. 26 and 27), Defendant's Response and Supplemental Response in Opposition to Plaintiff's Motion for Class Certification (Dkts. 40 and 52), Plaintiff's Reply to Defendant's Opposition (Dkt. 55), a Motion for Intervention as Plaintiffs and Proposed Class Representatives filed by Gay Ann Blomefield and Neil Gillespie (Dkt. 56), Defendant's response (Dkt. 58), and numerous other supplemental authorities and submissions of the parties. After careful consideration of this case, the Court concludes that intervention should be permitted and the motion for class certification should be denied without prejudice.

Procedural Background

Plaintiff sought to certify a class in this action alleging, among other things, violations of the Truth-in-Lending Act (TILA). In the course of discovery, this Court on September 20, 2000, entered an order compelling Mr. Clement to answer questions asked at his deposition. In that order, this Court emphasized that Mr. Clement's adequacy to represent a class may become a decisive factor in the resolution of the certification and pose an obstacle to certifying a class. (Dkt. 48). "Adequate representation" constitutes the fourth necessary element to establish a class. See Fed.R.Civ.P. 23(a)(4) ("the representative parties will fairly and adequately protect the interests of the class").

Subsequent to the September order, Defendant resumed Mr. Clement's deposition and asked him questions relating to his adequacy as the sole class representative. Mr. Clement answered the questions. Based on Mr. Clement's testimony in his depositions and other materials in the record, Defendant now vehemently contends that Mr. Clement cannot adequately represent a class. On November 9, 2000, Plaintiff responded to the opposition by filing a motion for the intervention of two additional class representatives. (Dkt. 56). Plaintiff argues that the motion is timely and will neither unduly delay nor prejudice the rights of either party. Attached to the motion for intervention is a proposed class action complaint-in-intervention. The plaintiff-intervenors contend that regardless of whether Mr. Clement can adequately represent the class, their intervention is necessary to bolster class representation.

Defendant also attacks the adequacy of the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A. In so doing, Defendant questions the motives of Jonathan Alpert in bringing this action, because Mr. Alpert vowed in his campaign for state attorney to vigorously prosecute the "pay day loan" industry. (Dkt. 40 at pgs. 6-7). On December 19, 2000, however, this Court granted a substitution of counsel which relieved Alpert, Barker, Rodems, Ferrentino & Cook, P.A., from further responsibility in this action. The order substituted Attorney William J. Cook, Esquire of Barker, Rodems & Cook, P.A., as individual counsel for Mr. Clement and the plaintiffs seeking intervention. Whether substituted counsel will adequately represent the class has not been argued to this Court.

Analysis

In a proposed class action in the procedural posture as this case, class certification and intervention issues are essentially "bound together." See Cotterall v. Paul, 755 F.2d 777, 780-81 (11th Cir. 1985) (discussing White v. I.T.T., 718 F.2d 994 (11th Cir. 1983), cert denied, 466 U.S. 938 (1984) and Ford v. United States Steel Corp., 638 F.2d 753, 760-62 (5th Cir. 1981)).[1] If Mr. Clement does not withstand scrutiny under examination

[1] In Cotterall, after finding that the class was inadequately represented, the district court refused to permit intervention of potential class representatives, because a class had not been certified. The Eleventh Circuit ruled "that it was error to deny the motion for class certification on the ground that the named plaintiff was an inadequate class representative without first making a specific finding that the would-be intervenors

of his adequacy to represent the class, then this Court would be remiss in denying class certification when Plaintiff's counsel has sought the intervention of other class representatives.[2] In any event, the holding of Cotterall prevents this Court from denying class certification before resolving the motion for intervention.

Intervention

Anyone may intervene in an action "upon timely application . . . when an applicant's claim and the main action have a question of law or fact in common" and the intervention will not "unduly delay or prejudice the rights of the original parties." See Fed.R.Civ.P. 24(b). Four factors must be analyzed in determining timeliness: (1) the length of time the would-be intervenor knew or reasonably should have known of his or her interest in the case before he or she sought leave to intervene; (2) the prejudice to the existing parties as a result of the intervenor's failure to apply sooner; (3) the prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances. See United States v. Jefferson County, 720 F.2d 1511, 1516 (11th Cir. 1983).[3]

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would be inadequate representatives as well." See Cotterall, 755 F.2d at 781.

[2] Cf. Armour v. City of Anniston, 89 F.R.D. 331 (N.D.Ala. 1980) (court held opinion that sole proposed class representative had perjured herself and therefore did not hold qualities such as honesty and conscientiousness and would not be proper class representative; because no one moved for intervention or substitution as class representative, court dismissed claim).

[3] See also Meek v. Metropolitan Dade County, 985 F.2d 1471, 1478-79 (11th Cir. 1993); Howard v. McLucas, 782 F.2d 956, 959 (11th Cir. 1986).

Applying the four factors to the circumstances of this case, the Court is inclined to find that intervention was sought in a timely manner. Less than two months lapsed between the Court's order articulating a potential problem with Mr. Clement's adequacy to represent the class and the filing of the motion for intervention. The prejudice suffered by Defendant if intervention is granted would be minimal, because this Court has not yet ruled on the motion for class certification. The prejudice to the intervenors if the motion is denied may be great, because, without their intervention, the motion for class certification may not be granted on the basis of adequacy of representation. This case presents the unusual circumstances of potentially losing class certification in a claim brought pursuant to the TILA because the sole class representative has displayed questionable attributes.

Having found that the motion for intervention is timely, the Court further finds that the would-be intervenors share similar claims to those asserted by Mr. Clement. For example, one of the intervenors presented both post-dated and nonpost-dated checks to Defendant and engaged in roll-over transactions. The other intervenor presented nonpost-dated checks to Defendant.

The prejudice and delay factors are essentially subsumed in the timeliness issue. This Court has already found that the delay and prejudice to Defendant do not outweigh the potential harm to this proposed class. The class may need protection to prosecute claims under the TILA, having their claims susceptible to dismissal for lack of an

adequate class representative.

Class Certification

The requirements for adequacy of representation are two-fold: (1) "whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation and . . . [(2)] whether plaintiffs have interests antagonistic to those of the rest of the class." See Kirkpatrick v. J.C. Bradford & Co., 827 F.2d 718, 726 (11th Cir. 1987), cert. denied, 485 U.S. 959 (1988) (quoting Griffin v. Carlin, 755 F.2d 1516, 1532 (11th Cir. 1985)). Even assuming these two requirements are met, another factor must be considered—whether the named plaintiffs "possess the personal characteristics and integrity necessary to fulfill the fiduciary role of class representative." See Kirkpatrick, 827 F.2d at 726. Although there are at least two other factors that may also be considered,[4] the contention in this case centers around Mr. Clement's personal characteristics and integrity.

The record in this case presents a close call on the issue of Mr. Clement's adequacy, but that disposition cannot be made until this Court is in a position to determine whether the would-be intervenors are adequate. Moreover, Plaintiffs must affirmatively show that substitute counsel is adequate. See Shelley v. AmSouth Bank,

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[4] Two other factors are (1) "whether the named plaintiffs have 'demonstrated [s]ufficient participation in and awareness of the litigation,' and (2) whether the named plaintiffs have the ability to fund the litigation." See Shelley v. AmSouth Bank, No. CIV.A.97-1170-RV-C, 2000 WL 1121778, at *5 (S.D.Ala. July 24, 2000) (quoting from Kirkpatrick), aff'd, (11th Cir. Jan. 8, 2001).

No. CIV.A.97-1170-RV-C, 2000 WL 1121778, at *5-6 (S.D.Ala. July 24, 2000) (plaintiff must prove with facts, not conclusions, that class counsel possesses expertise and suitability for representation of the class), aff'd, No. 00-14533 (11th Cir. Jan.8, 2001). Before this Court can make an informed decision on class certification, it must be equipped to make an affirmative finding that the would-be intervenors are adequate to represent the class and that plaintiff's counsel is adequate as that term is defined by case law. The Plaintiffs are therefore permitted to amend their motion for class certification to address the issues raised in this order.

It is therefore **ORDERED AND ADJUDGED** as follows:

1. The Motion for Intervention as Plaintiffs and Proposed Class Representatives (Dkt. 56) is **GRANTED**. Representative Plaintiffs Gay Ann Blomefield and Neil Gillespie shall file a class action complaint in the form attached to their motion to intervene no later than **March 26, 2001**.

2. Plaintiff's Motion for Class Certification (Dkt. 26) is **denied** without prejudice to filing an amended motion for class certification on or before **April 23, 2001.** Any amended motion for class certification must specifically address, in addition to the first three factors under Rule 23(a), the adequacy of representation as to the two plaintiff-intervenors and plaintiff's counsel. All previously filed supplemental authorities must be included and argued in the amended motion.

3. Defendant shall file a response to the motion for class certification on or

before **May 18, 2001.** All previously filed supplemental authorities must be included and argued in the response.

4. The style of this case for all future filings shall be "Eugene R. Clement, Gay Ann Blomefield and Neil Gillespie, individually and on behalf of others similarly situated v. Amscot Corporation, No. 8:99-cv-2795-T-26EAJ."

DONE AND ORDERED at Tampa, Florida, on this 20 day of March, 2001.

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
WILLIAM J. COOK

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Tampa, Florida 33606

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

March 27, 2001

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

Re: Vocational Rehabilitation

Dear Neil:

I am enclosing the material you provided to us. We have reviewed them and, unfortunately, we are not in a position to represent you for any claims you may have. Please understand that our decision does not mean that your claims lack merit, and another attorney might wish to represent you. If you wish to consult with another attorney, we recommend that you do so immediately as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit. Thank you for the opportunity to review your materials.

Sincerely,

William J. Cook

WJC/mss

Enclosures

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

CHRIS A. BARKER
RYAN CHRISTOPHER RODEMS
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Telephone 813/489-1001
Facsimile 813/489-1008

May 25, 2001

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

Re: St. Petersburg Junior College

Dear Neil:

I have and thank you for your May 22, 2001 letter with enclosures. We have reviewed the materials that you provided, and while we do not disagree with your criticisms of the St. Petersburg Junior College, we are not in the position to pursue litigation. Of course, another attorney may have a different opinion. If you wish to consult with another attorney, you should do so immediately, as a statute of limitations will apply to any claims you may have. As you know, a statute of limitations is a legal deadline for filing a lawsuit.

Again, we appreciate the opportunity to review your potential claims.

Sincerely,

William J. Cook

WJC/so

EXHIBIT
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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.

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.

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 _____ My transactions with AMSCOT.

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: 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 [illegible]
TAMPA FL [illegible]

TELEPHONE (813) 223-4[illegible]
FAX (813) 228-[illegible]

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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division

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

v. Case No. 99-2795-Civ-T-26C

AMSCOT CORPORATION, a Florida corporation,
Defendant.
_____/

JOINT STIPULATION FOR SUBSTITUTION OF COUNSEL

The Plaintiff, EUGENE R. CLEMENT and Plaintiffs-in-Intervention, NEIL GILLESPIE and GAY ANN BLOMEFIELD, by their undersigned attorneys, file this Joint Stipulation for Substitution of Counsel in this cause and request that Barker, Rodems & Cook, P.A., be substituted in the place and stead of Alpert, Barker, Rodems, Ferrentino & Cook, P.A., as counsel for Plaintiff and Plaintiffs-in-Intervention in this cause, and that William J. Cook, Esquire, of Barker, Rodems & Cook, P.A., be individual counsel for Plaintiff and Plaintiffs-in-Intervention in this cause, and that Alpert, Barker, Rodems, Ferrentino & Cook, P.A., shall have no further responsibility or obligation in this cause on behalf of said Plaintiff or Plaintiffs-in-Intervention.

RESPECTFULLY SUBMITTED this 12th day of December, 2000.

JONATHAN L. ALPERT, ESQUIRE
Florida Bar No. 121970
ALPERT, BARKER, RODEMS,
FERRENTINO & COOK, P.A.
Post Office Box 3270
Tampa, Florida 33601-3270
(813) 223-4131 Telephone
(813) 228-9612 Fax

WILLIAM J. COOK, ESQUIRE
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300 West Platt Street
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(813) 489-1001 Telephone
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EXHIBIT
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BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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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

EXHIBIT
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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.

AMSCOT CORPORATION,

Defendant.
_____/

CASE NO: 8:99-cv-2793-T-26EAJ

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).

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).[1] 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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[1] 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.[2] 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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[2] 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 (11th 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 (7th Cir. 1993), overruled on other grounds, Johnson v. Apfel, 189 F.3d 561 (7th 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.[3] 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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[3] 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. Theses 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,[4] 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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[4] 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.

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
Tampa, FL 33602

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Telephone 813/489-1001
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August 8, 2001

Eugene R. Clement
13575 Fletcher Regency Drive
Tampa, Florida 33612

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

Gay Ann Blomefield
Apartment A
10204 North Lola Street
Tampa, Florida 33612

Re: Eugene R. Clement v. AMSCOT Corporation
U.S.D.C., Middle District of Florida, Case No. 99-2795-Civ-T-26C
Our File No. : 99.4766

Dear Gene, Ann & Neil:

I am enclosing a copy of Judge Lazzara's Order dismissing the above-referenced lawsuit. The Court dismissed our Federal Truth In Lending claim with prejudice. The state law claims have been dismissed without prejudice. This means that we can appeal the Order dismissing the federal claim to the Eleventh Circuit Court of Appeals. We can also refile the state law claims in state court.

Our initial inclination is to appeal but not refile the state law claims. Once we have made a final recommendation, we will let you know. In the meantime, if you have any questions, please give me a call.

Sincerely,

William J. Cook

WJC/so
Enclosure

BARKER, RODEMS & COOK
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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RYAN CHRISTOPHER RODEMS
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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

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.

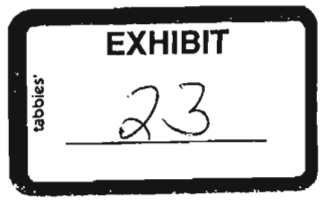
Given your lack of success in this matter thus far, I suggest you ask for $10,000 in attorney's fees and costs. I believe this is a more realistic amount. Given how poorly the case has gone up to now, I believe it is in our interest to settle quickly.

Thank you for your kind consideration.

Sincerely,

Neil J. Gillespie

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



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

Fax: 813-489-1008

Date: August 16, 2001

Pages: 2 including this page

Re: AMSCOT Corporation

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

• **Comments:** See accompanying letter.

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August 21, 2001

Ms. Gay Ann Blomefield
Apartment A
10204 North Lola Street
Tampa, Florida 33612

Mr. Eugene R. Clement
13575 Fletcher Regency Drive
Tampa, Florida 33612

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 Ann and Gene:

I am enclosing a letter I received from Neil Gillespie which he requested that I forward to you.

Sincerely,

William J. Cook

WJC/mss
Enclosure
cc: Mr. Neil J. Gillespie
Apartment C-2
1121 Beach Drive NE
St. Petersburg, Florida 33701-1434

EXHIBIT
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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

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MEMORANDUM

TO	:	File
FROM	:	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

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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

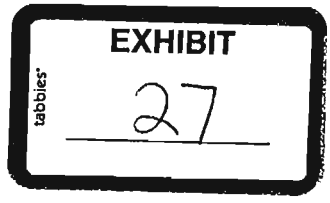
Dear Mr. Anthony:

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.



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,

William J. Cook

WJC/so

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John A. Anthony
(813) 273-5066

August 24, 2001

VIA TELECOFIER 489-1008

William J. Cook, Esquire
Barker, Rodems & Cook
300 West Platt Street, Suite 150
Tampa, FL 33606

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 Bill:

This correspondence is written in response to your letter dated August 20, 2001. On behalf of Amscot Corporation ("Amscot"), your offer of $1,000 to each of the named plaintiffs in the above-referenced district court action as well as payment of $50,000 to your firm is hereby rejected. However, Amscot has authorized this firm to extend to you this counteroffer.

1. Amscot will pay to each of the named plaintiffs the sum of $1,000, together with forgiveness of their outstanding debts owed to Amscot.

2. The parties shall execute mutual releases regarding the District Court Case and any alleged causes of action that could be initiated in state court.

3. Amscot will pay to your firm the sum of $10,000, with the express condition that your firm affirmatively find that Amscot has done no wrongdoing with respect to the transactions involving the three plaintiffs or any other customers of Amscot.

4. A confidentiality agreement will be entered by the parties and counsel regarding the terms and conditions of this settlement.

Although your actual attorneys' fees and costs most likely exceed the amounts that Amscot is willing to settle with you, those expenses are to be borne by your clients and not Amscot. However, in the spirit of settlement, Amscot understands the economic factors that must be considered by your clients as well as your firm. Contrary to your letter, Amscot is confident that the Eleventh Circuit Court of Appeals will affirm the district court's ruling. Leaving, once again only issues governed by state law. In these regards, Amscot is likewise confident that it will prevail on the merits of any action initiated on behalf of

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your clients. In light of the foregoing, I would again request that you consider this counteroffer with great weight.

This counteroffer shall remain open for ten (10) days, which we believe would represent a reasonable time for you to confer with your three clients and your partners. If vacation schedules or other considerations require more time, we would be willing to consider the same; however, we are assuming that while this counteroffer remains open, Amscot will enjoy a tolling of all appellate deadlines subject to court approval.

This communication is obviously subject to the settlement-related privileges that are set forth in Florida Statutes § 90.408 and Federal Rule of Evidence 408. Additionally, no conduct or communication of Amscot will be construed as a waiver, release, or other modification of the full range of options that Amscot enjoys under applicable law at this time. All of the foregoing having been clearly stated, I look forward to the possibility of producing a mutually acceptable settlement of this matter for the benefit of all of our clients. My partner, Lara Fernandez and I look forward to your anticipated follow-up in all of the foregoing regards, I remain

Very truly yours,

John A. Anthony

cc: Ian Mackechnie
Dick Holland
Lara R. Fernandez

#405739/nmg

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Telephone 813/489-1001
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August 28, 2001

VIA FACSIMILE and U.S. MAIL - 273-5145

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

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

Dear Mr. Anthony:

I have and thank you for your response to our settlement demand. Before we can consider your counteroffer, we request one clarification. We do not understand what you mean when you state that your client's offer is made "with the express condition that your firm affirmatively find that AMSCOT has done no wrongdoing with respect to the transactions involving the three plaintiffs or any other customers of AMSCOT." Obviously, my firm's opinion as to whether or not your client committed any "wrongdoing" is clearly reflected in the pleadings we have filed, and our opinion has not changed.

Once we receive clarification, we will consider your counteroffer. We too look forward to producing a mutually acceptable settlement.

Thank you for your attention to this matter.

Sincerely,

William J. Cook

WJC/mss

EXHIBIT
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TAMPA, FLORIDA 33601

John A. Anthony
(813) 273-5066

August 29, 2001

VIA TELECOPIER 489-1008

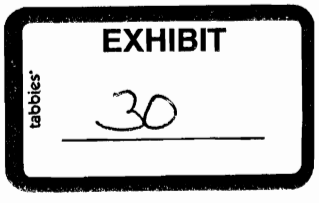
William J. Cook, Esquire
Barker, Rodems & Cook
300 West Platt Street, Suite 150
Tampa, FL 33606

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 Bill:

I am in receipt of your letter of yesterday requesting a clarification of Amscot Corporation's counteroffer with respect to the resolution of the above-referenced action that has now been adjudicated in Amscot's favor and is on appeal. I am uncertain of the basis for your concern, but assume that language can be agreed upon if both your constituencies and Amscot agree that all pending disputes can and will be completely adjudicated by the payment of the referenced sums. Amscot believes that it is pragmatic to pay the sums offered for finality, and strongly contends that it must maintain its position that it has done no wrong whatsoever and that this be agreed. If you would like to discuss your concerns with me, I will be in our offices today and ready to work toward a mutually acceptable solution.

Bill, I hope that you will appreciate that the chances of you prevailing on appeal are very slim at best. The law has all been developing against the interests of your constituencies as this case has progressed. Even in the off-chance that Amscot did not successfully defend its judgment on appeal, your constituency would be back to square one at the trial court level. There, we would meet you with a summary judgment motion and supporting affidavits that we were attempting to finish before we received the dismissal order. These materials would show that there have been no roll-overs, and would show that Amscot affirmatively relied upon the guidelines established by the State of Florida in handling all of the transactions it has handled during the relevant time periods. At this point, I am sharing this information with you so that you will appreciate the futility of going forward and further see that the pending appeal is in fact frivolous. The consequences of pursuing a frivolous appeal could be more serious than just losing at the trial level.



Amscot is readying its motion to task costs and its initial appellate materials. I sincerely hope that you will accept Amscot's counteroffer so that further waste of time and money can be avoided.

This communication is obviously subject to the settlement-related privileges that are set forth in Florida Statutes § 90.408 and Federal Rule of Evidence 408. Additionally, no conduct or communication of Amscot will be construed as a waiver, release, or other modification of the full range of options that Amscot enjoys under applicable law at this time. All of the foregoing having been clearly stated, I look forward to the possibility of producing a mutually acceptable settlement of this matter for the benefit of all of our clients. My client, Lara Fernandez, Stephenie Biernacki, and I look forward to your anticipated follow-up in all of the foregoing regards, I remain

Very truly yours,

John A. Anthony

cc: Ian Mackechnie
Dick Holland
Lara R. Fernandez
Stephenie M. Biernacki

#406380/amg

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

Telephone: (813) 727-4915

FIRST CLASS MAIL

September 15, 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,

At this time I am willing to settle with Amscot for the terms you previously relayed, payment to me of $1000.00 and a signed release of their choosing. While I agree with you that a standard release is more desirable, I understand Amscot rejected this offer. I need the money for housing and medication, and am acting under duress.

Please understand that I regret becoming involved with this lawsuit. I do not owe Amscot any money, and my usury exposure with them was relatively minimal. As such, I regret being pressured into this action by you. Even under the best scenario, I feel the compensation is not worth the trauma of my unrestrained deposition by Mr. Anthony.

Thank you.

Sincerely,

Neil J. Gillespie

EXHIBIT
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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

September 18, 2001

VIA HAND DELIVERY

Neil J. Gillespie

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

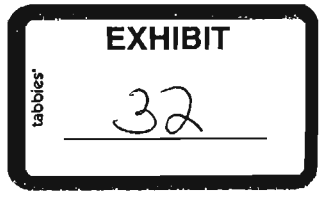
Dear Neil:

I have your letter of September 15, 2001. I am sorry that you regret becoming involved with this lawsuit. You also state that you were pressured into participating in this lawsuit. I do not feel that I pressured you. Based on our prior discussions, I thought that you strongly wished to pursue litigation. That said, I apologize if I did or said anything to make you feel pressured. That certainly was not my intent.

Per your request, I am enclosing copies of correspondence discussing a potential settlement. As we discussed in one of our telephone conversations, I called Mr. Anthony after I received his August 29, 2001, fax. He told me that his client wanted our firm, you, Mr. Clement and Ms. Blomefield to state in writing that Amscot committed no wrongdoing. His client also wanted to pay our firm a "retainer" so that we could not sue Amscot in the future.

As we discussed, I told Mr. Anthony that, while we wished to resolve this case, we could not agree to these terms for a number of reasons, including that the Florida Bar likely would prohibit such an agreement. At the end of our conversation, Mr. Anthony told me that he now understood my concerns, and he would research the issues I raised. I have not yet heard back from him.

We will honor your request and contact Mr. Anthony to see if we can at least resolve your claims in this lawsuit, if not the entire lawsuit. We will advise as to Amscot's response.



In the meantime, if you have any questions or wish to discuss this further, please feel free to call.

Sincerely,

William J. Cook

WJC/mss

Neil J. Gillespie
St. Petersburg, Florida 33701

Telephone: (813) 727-4915

VIA FAX 813-489-1008

September 20, 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,

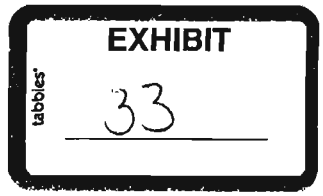
Thank you for the settlement correspondence relative to the above case. I found Mr. Anthony's offer credible, if not unconventional. As such I am disappointed that an agreement was not reached.

Obviously we have different styles, aversion to risk, and opinions about this case. The following is not personal, but I am beginning to lose confidence in your representation because of the missed settlement opportunity.

I will call you tomorrow (Friday, September 20, 2001) to discuss this further.

Sincerely,

Neil J. Gillespie



MEMORANDUM

TO : File

FROM : WJC

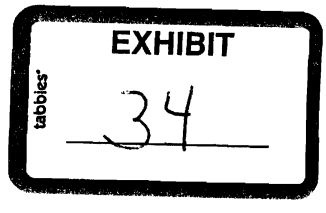
DATE : Monday, September 24, 2001

RE : Clement v. AMSCOT
: 99-4766

On September 21, 2001, Neil Gillespie called. This was after receipt of his September 22, 2001, fax. I advised him that the settlement discussions had not been terminated contrary to his belief. He told me that he thought the settlement discussions had been terminated because no agreement had been reached within ten (10) days per Mr. Anthony's letter. I told him that in my last discussion with Mr. Anthony, Mr. Anthony had advised that he understood my concerns and that he would research the matter. I also told him that Mr. Anthony likely would not address the settlement issue again until it was time for him to write his brief. Neil told me that he thought we should ask for more money if we had to write a brief. Neil also believed that he could not settle because of the class action. I told him that the class action had been dismissed so there was no impediment to an individual settlement. He thanked me for explaining this to him. I also told him that I had a call in to Mr. Anthony to discuss settlement. I assured him that we wished to settle and that settlement discussions were not over. He told me that he understood and asked that I keep him updated.

WJC

WJC/mss



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

October 9, 2001

Mr. Neil J. Gillespie
Post Office Box 11674
St. Petersburg, Florida 33733-1674

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 appeal has been selected for a mediation. As I believe you know, a mediation is a meeting with a lawyer who specializes in resolving disputes to try to settle this case. The mediation is scheduled for **Tuesday, November 13, 2001, at 2:00 p.m.., in Room 1021, United States Courthouse, 801 North Florida Avenue, in Tampa**.

I invite you to attend this mediation in person, but attendance is not mandatory. You will, however, need to be available by telephone so please mark this date and time on your calendar and be sure you are available. Also, please let me know if you wish to attend in person so that I can make the necessary arrangements.

Please give me a call if you have any questions.

Sincerely,

William J. Cook

WJC/mss

EXHIBIT
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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 3270
TAMPA, FL 33601-3270

TELEPHONE (813) 223-4131
FAX (813) 228-9612

September 14, 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:

Pursuant to our recent telephone conversation, I am enclosing a copy of the proposed Broward County ordinance regulating payday lenders. I hope you find this interesting.

Sincerely,

William J. Cook

WJC:SDW
Enclosure

EXHIBIT
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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
PAYMENTS TO CLIENTS	
EUGENE R CLEMENT	$ 2,000.00
GAY ANN BLOMEFIELD	2,000.00
NEIL GILLESPIE	2,000.00
TOTAL	$ 56,000.00

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 J. COOK, ESQUIRE

EXHIBIT
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Neil J. Gillespie
301 W. Platt Street, #155
Tampa, FL 33606

April 30, 2003

Bill Cook, Attorney at Law
Barker, Rodems & Cook, PA
300 W. Platt Street
Tampa, FL 33606

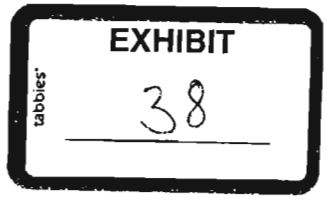
Dear Bill,

While going through the documents in the Amscot case prior to putting it in storage, I noticed that I do not have an expense listing. Can you provide one?

Thanks for your help. Hope you are doing well.

Sincerely,

Neil J. Gillespie



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

Expense Listing

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

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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
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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Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

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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 Copys 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

Expense Listing

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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
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

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
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

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Responsible: All Responsible
Invoicing Status: Invoiced and Not Invoiced

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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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

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-14761-AA

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

Plaintiff-Appellant,

CAY ANN BLOMEFIELD,
NEIL GILLESPIE,

8:99-CV-379-T-26 EAJ

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.

Neil J. Gillespie
301 W. Platt Street, #155
Tampa, FL 33606

June 8, 2003

Bill Cook, Attorney at Law
Barker, Rodems & Cook, PA
300 W. Platt Street
Tampa, FL 33606

Dear Bill,

Thank you for providing an expense listing for the Amscot case. After reviewing the document, I was surprised to see how little cost was incurred. I thought it was much higher. Did you provide Amscot's lawyer with a bill for legal services? If yes, kindly provide a copy. Thanks again.

Sincerely,

Neil J. Gillespie

Neil J. Gillespie
301 W. Platt Street, #155
Tampa, Florida 33606

Telephone: (813) 295-7461
Email: neil77@gte.net

VIA HAND DELIVERY

June 13, 2003

Bill Cook, Attorney at Law
Barker, Rodems & Cook, PA
300 W. Platt Street
Tampa, FL 33606

Dear Bill,

I have legal and ethical concerns about the settlement in the Amscot case. I sought an opinion about this matter from a Tampa law firm. After reviewing the facts they suggested that I contact the *Ethics and Grievance Office* of The Florida Bar.

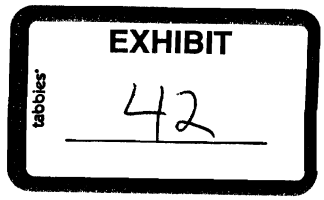
The *Attorney Consumer Assistance Program* (ACAP) of The Florida Bar considered this matter yesterday. As a matter of procedure ACAP noted your name and address, and assigned reference number 03-18867 to this matter. Upon review of the facts, ACAP suggested that I file a complaint with The Florida Bar.

As a courtesy to you I would like to settle this matter prior to filing a complaint. ACAP also suggested this alternative. This is my view of the problem.

The $50,000 paid to your firm by Amscot was a thinly veiled bribe to settle the case, and a conflict of interest with your clients. Also, the *United States Court of Appeals for the Eleventh Circuit* dismissed your appeal saying that the parties will bear their own costs and attorney's fees.

Under the terms of our representation contract, I believe the $50,000 claimed as legal fees is actually part of the "total recovery" along with the $2,000 received by each of the three plaintiffs, for a total recovery of $56,000. Similarly, in the America's Cash Express (ACE) case, the $10,000 total recovery should have been dispersed according to our contract in that matter. Accompanying this letter is an addendum, my computation of the settlement under our contract.

As indicated on the addendum, your firm owes me $4,523.93. Payment of that sum by June 20, 2003, will satisfy my claim and avert a complaint to The Florida Bar.



Concerning the other plaintiffs, Eugene Clement and Gay Blomefield, I have not contacted them, nor do I intend to contact them. Law, ethics, and your conscience should guide your duty to your former clients.

Thank you for your attention to this matter.

Sincerely,

Neil J. Gillespie

Enclosure

Addendum to letter to Bill Cook, June 13, 2003

Amscot Case

Total Recovery	$56,000.00	
Legal Fees (45%) - Barker, Rodems & Cook		$25,200.00
Costs - Barker, Rodems & Cook		$3,580.88
Costs - Alpert		$2,544.79
Net Recovery	$24,674.33	

Net Recovery $24,674.33
Divided by three plaintiffs = $8,224.78 each

Amount due each plaintiff		$8,224.78
Amount paid each plaintiff		$2,000.00
Amount owing to each plaintiff		$6,224.78

America's Cash Express (ACE) Case

Total Recovery	$10,000.00	
Legal Fees (45%) - Barker, Rodems & Cook		$4,500.00
Costs - Barker, Rodems & Cook		$4,901.69
Net Recovery	$598.31	

Net Recovery $598.31
Divided by two plaintiffs = $299.15 each

Neil J. Gillespie payout

Due on Amscot case	$8,224.78
Due on ACE case	299.15
Subtotal	$8,523.93
Received on Amscot case	$2,000.00
Received on ACE case	$2,000.00
Subtotal	$4,000.00

Amount owed on both cases: $4,523.93

Neil J. Gillespie
301 W. Platt Street, #155
Tampa, Florida 33606

Telephone: (813) 295-7461
Email: neil77@gte.net

VIA FAX (813) 489-1008

June 18, 2003

Bill Cook, Attorney at Law
Barker, Rodems & Cook, PA
300 W. Platt Street
Tampa, FL 33606

Dear Bill,

In my June 13, 2003 letter and addendum, I neglected to include the amount for interest. Please forgive my lapse; as you know I am a client under a disability. Florida Statutes ch. 55.03 establishes interest rates, which are calculated by the Comptroller. The following is an interest calculation to June 20, 2003:

Year	Per Annum	Daily Rate	Outstanding Balance	Days	Amount
2003	6%	.0001644	$4,523.93	171	$127.18
2002	9%	.0002466	$4,523.93	190	$211.96
2002	9%	.0002466	$6,224.78	175	$268.63
2001	11%	.0003014	$6,224.78	61	$114.45
				Total:	$722.22

With interest and principal, you/your firm owes me $5,246.15. ($4,523.93 principal + $722.22 = $5,246.15) Payment of that sum by June 20, 2003, will satisfy my claim and avert a complaint to The Florida Bar, and civil litigation. Concerning the other plaintiffs, Eugene Clement and Gay Blomefield, my assertion not to contact them expires Friday June 20, 2003, along with this settlement offer.

Thank you for your attention to this matter.

Sincerely,

Neil J. Gillespie

EXHIBIT
tabbies
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Florida
Department of Financial Services

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Banking
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Accounting & Auditing
Unclaimed Property
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STATUTORY INTEREST RATES PURSUANT TO s. 55.03, FLORIDA STATUTES

INTEREST RATE FOR THE YEAR 2003

Section 55.03(1), Florida Statutes, requires the Comptroller, on December 1 of each year beginning in 1994, to set the rate of interest that shall be payable on judgments and decrees for the year beginning the following January 1. Additionally, Sections 215.422(3)(a), 337.141(3) and 687.01, Florida Statutes, were amended to require the use of interest at the rate established in Section 55.03(1), Florida Statutes, for the payment of interest applicable to the late payments to vendors for goods and services purchased by the State, for late payments on applicable construction or maintenance contracts administered by the Department of Transportation, and for cases where a rate of interest is not specified in a contract. The interest rate for payments to health care providers pursuant to Section 215.422(13), Florida Statutes, remains at 1% per month or .0003333 per day. Rule 3A-25, Florida Administrative Code, establishes the procedures for computing the interest rate on an annual basis.

The year 2003 interest rate established pursuant to Section 55.03, Florida Statutes, has been set at 6% per annum or .0001644 per day.

PRIOR YEAR RATES

YEAR	PER ANNUM	DAILY RATE
2002	9%	.0002466
2001	11%	.0003014
2000	10%	.0002740
1999	10%	.0002740
1998	10%	.0002740
1997	10%	.0002740
1996	10%	.0002740
1995	8%	.0002192

10/01/81 thru 12/31/94: 12% .0003333

Effective 1994, legislation passed granting authority to the Comptroller's Office, DBF to set the interest rate before December 1 of each year and published annually in the Florida Administrative Weekly at least once between the period December 1

Fax

From: Neil J. Gillespie
301 W. Platt St., #155
Tampa, FL 33606
Telephone: (813) 295-7461

To: Bill Cook, Attorney, Barker, Rodems, & Cook law office

Fax: (813) 489-1008

Date: June 18, 2003

Pages: Two (2) including this cover page

Re: interest

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

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

June 19, 2003

Mr. Neil J. Gillespie
301 West Platt Street, No. 155
Tampa, Florida 33606-2292

Dear Mr. Gillespie:

We have received your letters of June 13 and 18, 2003, addressed to Mr. Cook. We have reviewed your accusations, discussed this matter and provide the following response.

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. 5th DCA 2000); Gordon v. Gordon, 625 So. 2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So. 2d 1149 (Fla. 4th DCA 1985).

Nonetheless, we wish to address what appear to be some misperceptions on your part. We began representing you against Amscot several years ago. After the entire case was dismissed, we filed an appeal on your behalf. Specifically, we appealed the dismissal of the Federal Truth In Lending Act claim. Under that law, you were seeking only statutory damages of $1,000.00 and to have your attorneys' fees and costs paid by the Defendant. In other words, if we had prevailed on appeal, tried the case and won, you only would have received $1,000.00, and we would have received a court-awarded attorneys' fee.

During the appeal, you initially insisted that we attempt to negotiate a settlement with the Defendant on unfavorable terms, even though we advised that your chances of prevailing on appeal were strong. Our beliefs were borne out, as we successfully convinced Amscot to pay you $2,000.00 and release any claims it may have had against you. Additionally, Amscot agreed to pay our law firm $50,000.00 for attorneys' fees and costs. To be quite clear, the $50,000.00 Amscot paid to our firm, an amount to which you expressly agreed in writing almost two years ago, was based on our fees and costs for the case.

When we advised you of the offer to settle, you were quite pleased with the settlement offer and directed us to accept it. You then willingly signed both the settlement agreement and the closing statement. The settlement agreement you signed reflects that the Defendant separately paid our law firm a fee in lieu of facing the risk of a court-awarded fee.

Now, nearly two years after the fact, you demand that we pay you a portion of the $50,000.00 attorneys' fees and costs Amscot paid to our law firm. You have threatened to file a Bar complaint against Mr. Cook and communicate with our former clients if we do not comply.

For several reasons, we must reject your demand. First, when this matter was settled, you agreed to Amscot paying our law firm $50,000.00 for attorneys' fees and costs. Our contract provided that this firm was entitled to the full amount of the fee in the event it exceeded 45% of your recovery plus the fee, which it did. You also signed a settlement agreement, a copy of which is enclosed, approving Amscot's separate $50,000.00 payment to our law firm for attorneys' fees and costs. You then signed a closing statement, a copy of which is also enclosed, approving Amscot's payment to our law firm. Thus, your demand that we now pay you more money is a demand that we renegotiate the settlement or face a Bar complaint and defamatory statements. This is not only unreasonable, but unlawful.

Moreover, because you demand that we pay you a portion of the attorneys' fees and costs, we must decline because the Rules Regulating the Florida Bar ethically prohibit us from splitting fees with clients.

In your June 13 letter, you also assert that Amscot's offer was some form of a "bribe" to induce us to settle. We remind you that it was you who demanded that we negotiate a settlement and Mr. Cook confirmed your instructions in writing. Further, approximately 600 hours of legal work was spent on the Amscot case for your benefit. Based on the attorneys' fees paid, we were therefore paid at an effective hourly rate of approximately $42.00 per hour. This is a substantial reduction from our standard hourly rate which ranges from $200.00 to $250.00 for cases such as yours. If the appeal had prevailed, we likely would have been entitled to a fee several times larger than that received. We therefore fail to see how the fee amounts to a "bribe," as you contend. Plainly, the result was that we dramatically reduced our attorneys' fees because you demanded that the case be settled.

That letter also makes reference to the Ace case. We have a letter in our file from you confirming your agreement regarding yours, and Mr. Clement's, respective recoveries, as well as your agreement to the fees to be paid to our firm. You also signed a closing statement agreeing to the fee. That said, we are not sure why you mentioned the Ace case since it appears you are contending that you received too much and we did not receive enough. As you know, we reduced our percentage fee and did not charge for all our costs as an accommodation to you and Mr. Clement. We see no need to revisit those agreements.

We wish to remind you, however, that you diminished the value of your claims against Ace by calling opposing counsel prior to the mediation at which you settled your claims. You may recall telling opposing counsel via voice mail that, "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."

While you subsequently told Mr. Cook that you called opposing counsel, you did not tell him that you expressed any dissatisfaction with our representation. Had you not made that call, we might have been able to recover even more for you in that action.

During the course of your representation, Mr. Cook achieved outstanding results for you and always acted in good faith towards you. And, in spite of many adverse legal rulings in these types of cases throughout the state, he was able to recover all of your statutory damages from Amscot as well as a forgiveness of your then-outstanding loans. Under the circumstances, he could not have done more.

We are unsure why, after almost two years, without any prior contact or discussion regarding these issues, you have threatened to harm Mr. Cook's and our firm's reputation if we do not give you more money. Based on the facts, the law, and Bar regulations discussed herein, we cannot agree to your terms.

Sincerely,

Chris A. Barker
For the Firm

Neil J. Gillespie
301 W. Platt Street, #155
Tampa, Florida 33606

Telephone: (813) 295-7461
Email: neil77@gte.net

VIA FAX (813) 489-1008

June 22, 2003

Chris A. Barker, Attorney at Law
Barker, Rodems & Cook, PA
300 W. Platt Street
Tampa, FL 33606

Dear Chris,

Thank you for your letter dated June 19, 2003. Before I can respond to your comments, kindly provide the following:

1. A detailed itemization of the 600 hours of legal work you claim were spent on the Amscot case;

2. A detailed itemization of the of legal work for the ACE case;

3. A copy of the bill for legal services your firm presented to Amscot. I asked Bill for this in a letter to him dated June 8, 2003, but he did not respond.

As a courtesy to you and Bill, I will forestall any action for a limited time in order for you to provide the above information. Can you respond within 48 hours? Please advise if you need more time.

Again, thanks for your attention to this matter.

Sincerely,

Neil J. Gillespie

Fax

From: Neil J. Gillespie
301 W. Platt St., #155
Tampa, FL 33606
Telephone: (813) 295-7461

To: Chris A. Barker, Attorney, Barker, Rodems, & Cook, PA

Fax: (813) 489-1008

Date: June 22, 2003

Pages: Two (2) including this cover page

Re:

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

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

June 23, 2003

Mr. Neil J. Gillespie
301 West Platt Street, No. 155
Tampa, Florida 33606-2292

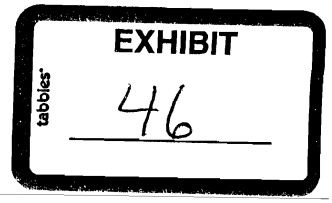
Dear Mr. Gillespie:

I have received your facsimile letter of June 22, 2003. For whatever reason, you have chosen to threaten Mr. Cook with a bar grievance and our Firm with litigation if we do not pay you money to which, for the reasons detailed in my letter of June 19, 2003, you are not legally nor ethically entitled. Therefore, we cannot collect and provide additional information to you at this time. I can confirm, however, that no "bill for legal services", as you reference in paragraph 3 of your letter, was ever sent to Amscot.

As you know, Mr. Cook and our Firm represented you for many years and we were pleased to be able to assist you in obtaining a return of your losses. However, we cannot continue to be subjected to threats and unreasonable requests regarding these long-resolved matters. Please accept this and our letter of June 19, 2003, as our final communication on these issues.

Sincerely,

Chris A. Barker
For the Firm



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

Telephone: (352) 854-7807

VIA CERTIFIED MAIL, RETURN RECEIPT
Article no.: 7002 0510 0003 3420 6887

March 7, 2006

Mark A. Ober, State Attorney
Office of the State Attorney
for the Thirteenth Judicial Circuit
800 East Kennedy Blvd.
Tampa, Florida 33602

RE: Barker, Rodems & Cook, P.A., law firm, 400 N. Ashley Dr., Suite 2100, Tampa

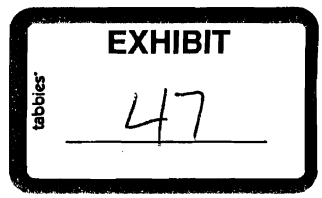
Dear Mr. Ober:

The law firm Barker, Rodems & Cook, PA., is accusing me of committing felony criminal extortion against them, citing section 836.05, Florida Statutes (2000), and Florida case law, for filing a complaint with the Florida Bar. Their accusation began on June 19, 2003, with Christopher A. Barker, and continues today with Ryan C. Rodems.

If you decide to charge me in this matter, I will voluntarily surrender and fully cooperate. You may contact me at the address and phone number listed above.

This law firm represented me as a plaintiff in civil litigation against Amscot Corporation. After the case settled, I found evidence of fraud and breach of contract concerning how the lawyers distributed the settlement dollars. On June 12, 2003, I called the Florida Bar with my concerns. I spoke with Don Spangler, an attorney with the Florida Bar's *Attorney Consumer Assistance Program* (ACAP) and described the problem with my lawyers. Mr. Spangler assigned reference number 03-18867 to my complaint. Mr. Spangler said I could file an ethics complaint, and that I could also contact the lawyers and try to settle the matter. This information is also printed on the Florida Bar complaint form, Part Four, Attempted Resolution. (Exhibit A).

The Florida Bar specifically states that "...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." (Exhibit A, Part Four). I wrote to my lawyer Bill Cook on June 13, 2003. (Exhibit B). Mr. Barker responded on behalf of Mr. Cook with a letter dated June 19, 2003. (Exhibit C). Mr. Barker turned my good-faith efforts into the felony crime of extortion. Mr. Barker's allegation is serious because he is an attorney, and an officer of the court. In his letter to me, Mr. Barker cited § 836.05 Fla. Stat. (2000) and four cases to support his charge of felony criminal extortion.



I filed an ethics complaint against Mr. Cook on June 7, 2004 with the Florida Bar. The initial investigator, William L. Thompson, spent over six months on the complaint, then left employment with the Florida Bar. After changing investigators the Florida Bar wrote on February 9, 2005 that there was insufficient evidence of a violation of the Rules Regulating the Florida Bar to warrant further proceedings, and that its disposition had no effect on any further legal remedy I may choose. During its review, the Florida Bar used an "objective evidence" standard to reach its decision. In essence the Florida Bar merely adopted Mr. Cook's response, which itself was inaccurate and self-serving. Also, the Florida Bar's inquiry was narrow, so narrow that when I asked if John Anthony's "improper payoff attempt" was unethical, or if Mr. Cook was required to report the incident, the Florida Bar responded by saying that the issue was not considered and that a separate complaint must be filed. On June 7, 2005, Susan Bloemendaal, Chief Discipline Counsel wrote that I was "...free to pursue a lawsuit against Mr. Cook and/or his law firm should you so desire." On August 11, 2005, I sued the lawyers. (Exhibit D).

The case is captioned Gillespie v. Barker, Rodems & Cook, P.A., Et. al, Case No.: 2005-CA-7205, Div. F, Thirteenth Judicial Circuit, Tampa. (Exhibit D). The lawsuit survived Defendants Motion to Dismiss and Strike. (See Court Order, Exhibit E).

Now Ryan C. Rodems is accusing me of criminal extortion in court papers he filed in this lawsuit on January 19, 2006. In his Answers, Affirmative Defenses and Counterclaim, Mr. Rodems wrote the following on page 7, paragraph 67: (Exhibit F)

> "...On June 13, 18 and 22, 2003, Plaintiff/Counterdefendant wrote letters to Defendant/Counterclaimants and stated that if they did [not] pay him money, then Plaintiff/Counterdefendant would file a complaint against Defendant/Counterclaimant Cook with the Florida Bar, sue Defendants/Counterclaimants and contact their former clients. Defendants/Counterclaimants advised Plaintiff/Counterdefendant by letters that they considered these threats to be extortion under section 836.05, Fla. Stat. (2000) and the holdings of Carricarte v. State, 384 So.2d 1261 (Fla. 1980); Cooper v. Austin, 750 So.2d 711 (Fla. 5th DCA 2000); Gordon v. Gordon, 625 So.2d 59 (Fla. 4th DCA 1993); Berger v. Berger, 466 So.2d 1149 (Fla. 4th DCA 1985). [relevant portion] (Exhibit F)

In the above paragraph, Mr. Rodems has essentially charged me with a crime in Circuit Civil Court. I think this is wrong because criminal prosecution is the job of the State Attorney. Mr. Rodems is essentially criminalizing the complaint process of the Florida Bar, and this will tend to intimidate witnesses from filing a Bar complaint.

Sincerely,

Neil J. Gillespie
enclosures

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

Telephone: (352) 854-7807

ED737046061US

VIA US EXPRESS MAIL
Article no.: ED 737046061 US

March 16, 2006

Mark A. Ober, State Attorney
Office of the State Attorney
for the Thirteenth Judicial Circuit
800 East Kennedy Blvd.
Tampa, Florida 33602

RE: Barker, Rodems & Cook, P.A., law firm, 400 N. Ashley Dr., Suite 2100, Tampa

Dear Mr. Ober:

This letter is a follow-up to my letter to you dated March 7, 2006, sent to you via US Certified Mail, Return Receipt, Article No.: 7002 0510 0003 3420 6887.

1. Since then I received a motion from Ryan C. Rodems, copy enclosed. (Exhibit G). Mr. Rodems' motion, Defendants' Verified Request For Bailiff and For Sanctions, sets forth a series of false facts to the court that Mr. Rodems swore to under oath.

2. In response I filed Plaintiff's Verified Response to Defendants' Verified Request For Bailiff And For Sanctions, And To Mr. Rodems' Perjury, and Plaintiff's Motion For An Order Of Protection. (Copy enclosed, Exhibit H)

In the event you contact Mr. Rodems or his law firm about my March 7, 2006 letter, you now have what has transpired since, as provided by the enclosed documents.

Sincerely,

Neil J. Gillespie

enclosures

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

Telephone: (352) 854-7807

VIA US CERTIFIED MAIL, RETURN RECEIPT
Article no.: 7005 2570 0000 4274 0522

March 24, 2006

Mark A. Ober, State Attorney
Office of the State Attorney
for the Thirteenth Judicial Circuit
800 East Kennedy Blvd.
Tampa, Florida 33602

RE: Barker, Rodems & Cook, P.A., law firm, 400 N. Ashley Dr., Suite 2100, Tampa

Dear Mr. Ober:

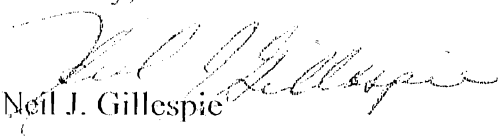
This letter is a follow-up to my letter to you dated March 7, 2006, sent to you via US Certified Mail, Return Receipt, Article No.: 7002 0510 0003 3420 6887, and a second letter of March 16, 2006, sent to you via US Express Mail, Article no.: ED737046061US.

Enclosed you will find a copy of my letter to Gay Ann Blomefield, a co-plaintiff with me in the Amscot lawsuit. This letter is to notify Ms. Blomefield that I sued Mr. Cook, and Barker, Rodems & Cook, P.A., and she may seek legal advice about any rights she may have relative to this lawsuit.

I have provided you a copy of my letter to Ms. Blomefield because in the past the lawyers of Barker, Rodems & Cook, P.A. told me I had committed criminal extortion against them. This letter is not part of a criminal extortion, and is intended to notify Ms. Blomefield of my lawsuit, Gillespie v. Barker, Rodems & Cook, P.A. and William J. Cook, Case No.: 2005-CA-7205, Division F.

There was another co-plaintiff with me in the Amscot lawsuit, Eugene R. Clement, who may have rights relative to my lawsuit. I planned to contact him too, but reconsidered due to his personality.

Sincerely,



Neil J. Gillespie

enclosure

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

Telephone: (352) 854-7807

March 24, 2006

Gay Ann Blomefield
10204 North Lola Street, Apt. A
Tampa, Florida 33612

Gillespie v. Barker, Rodems & Cook, P.A. and William J. Cook
Case No.: 2005-CA-7205, Division F

Dear Ms. Blomefield,

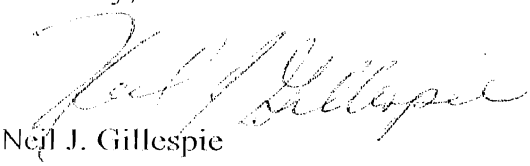
Hello, I hope this letter finds you in good health and doing well.

Some time ago in 2001 we were plaintiffs represented by William Cook of the law firm Barker, Rodems & Cook, P.A. in a lawsuit against Amscot Corporation. Since then I sued Mr. Cook and the law firm about that representation and settlement. My current lawsuit against Mr. Cook and Barker, Rodems & Cook, P.A. is captioned above.

I am not a lawyer and cannot offer legal advice. If you want to know your legal rights relative to this lawsuit, if any, please contact a lawyer. You may take this letter to the lawyer of your choice.

Thank you.

Sincerely,



Neil J. Gillespie

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

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FL 326 3 L
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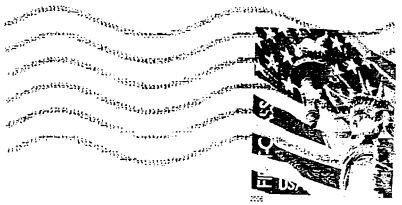

MOVED LONG TIME AGO

Gay Ann Blomefield
10204 North Lola Street, Apt. A
Tampa, Florida 33612

[illegible]

THE FLORIDA BAR

651 EAST JEFFERSON STREET
TALLAHASSEE, FL 32399-2300

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

850/561-5600
WWW.FLORIDABAR.ORG

July 12, 2006

Mr. Neil J. Gillespie
8092 S.W. 115th Loop
Ocala, Florida 34481

Dear Mr. Gillespie:

I received your July 5, 2006 letter asking "if the Florida Bar complaint process can subject a complainant to a charge of criminal extortion?" and "Does a request to a lawyer to resolve a dispute, or face a Bar complaint, amount to the crime of extortion under Florida law?" Those questions involve a legal conclusion of criminal law and I am not in a position to answer them.

Attached is a copy of a case which holds that an unsuccessful complainant cannot be successfully sued for defamation unless the complainant publicizes the complaint.

Sincerely,

Kenneth Lawrence Marvin, Director
Lawyer Regulation

KLM/srw

Enclosure – Copy of Tobkin v. Jarboe, 710 So.2d 975

EXHIBIT
tabbies
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Westlaw.

710 So.2d 975, 23 Fla. L. Weekly S288
(Cite as: 710 So.2d 975)

▷
Briefs and Other Related Documents
Tobkin v. JarboeFla.,1998.

Supreme Court of Florida.
Donald TOBKIN, Petitioner,
v.
Kimberly L. JARBOE, et al., Respondents.
No. 91236.

May 28, 1998.

Attorney brought defamation action based on letters sent, and statements made about attorney, to State Bar. The Circuit Court, Broward County, Patricia W. Cocalis, J., dismissed action with prejudice. Plaintiff appealed. The District Court of Appeal, Fourth District, 695 So.2d 1257, affirmed. Jurisdiction was accepted to resolve apparent conflict. The Supreme Court, Harding, J., held that individual who files complaint against attorney and makes no public announcement of complaint is afforded absolute immunity from defamation action by complained-against attorney.

Decision approved.

Wells, J., dissented and filed opinion.

West Headnotes

Libel and Slander 237 ⚿36

237 Libel and Slander
237II Privileged Communications, and Malice Therein
237k35 Absolute Privilege
237k36 k. In General. Most Cited Cases
(Formerly 237k38(2))

Libel and Slander 237 ⚿50.5

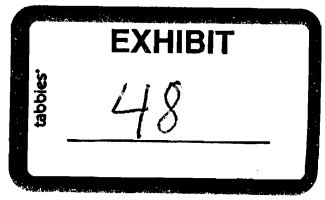
237 Libel and Slander
237II Privileged Communications, and Malice Therein
237k50.5 k. Exceeding Privilege or Right. Most Cited Cases

An individual who files a complaint against an attorney and makes no public announcement of the complaint, thereby allowing the grievance procedure to run its natural course, is afforded absolute immunity from a defamation action by the complained-against attorney; however, if, after filing a complaint, the complainant comments publicly or outside the grievance process, then the afforded immunity ceases to exist. West's F.S.A. Bar Rule 3-7.1.

***975** Richard A. Barnett, Hollywood, and Donald A. Tobkin, Fort Lauderdale, for Petitioner.
Thomas R. Julin, Edward M. Mullins, and Eduardo W. Gonzalez, of Steel, Hector and Davis LLP, Miami, for Respondent.
John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Amicus Curiae.
HARDING, Justice.
We have for review *Tobkin v. Jarboe,* 695 So.2d 1257 (Fla. 4th DCA 1997), based upon apparent conflict with this Court's decision in *Florida Bar Re Amendments to Rules Regulating The Florida Bar (Grievance Procedures and Confidentiality),* 558 So.2d 1008 (Fla.1990) [hereinafter *Bar Rules*]. We have jurisdiction pursuant to article V, section 3(b)(3) of the Florida Constitution.

This Court accepted jurisdiction to resolve apparent conflict between *Tobkin* and *Bar Rules* on the issue of what immunity, if any, is afforded an individual who files a complaint***976** against an attorney with The Florida Bar.

This case arises out of an attorney-client relationship between Donald Tobkin and the Jarboe family. The Jarboes hired Tobkin to represent them in a Pennsylvania probate matter. Kimberly Jarboe complained in letters to The Florida Bar about Tobkin's professional conduct. Linda Jarboe also sent a letter to The Florida Bar allegedly affirming Kimberly Jarboe's allegations of Tobkin's misconduct. The Jarboes' complaints regarding



Tobkin were confined to their letters to the Bar; thus no public announcement of the complaints was made outside of the grievance process by the Jarboes. After The Florida Bar Grievance Committee unanimously found no probable cause to believe that Tobkin was guilty of misconduct justifying disciplinary action, Tobkin filed a civil action against the Jarboes alleging libel stemming from the Jarboes' complaint letters to the Bar. The trial court dismissed Tobkin's fourth amended complaint with prejudice finding that Tobkin had failed to present facts sufficient to state a cause of action for defamation in Florida.

On appeal, the Fourth District Court of Appeal affirmed the trial court's dismissal of Tobkin's complaint holding that statements made to The Florida Bar in a complaint are protected by an absolute privilege under *Stone v. Rosen,* 348 So.2d 387 (Fla. 3d DCA 1977).

Stone involved circumstances similar to those presented in the instant case. Lynne Rosen wrote a letter to The Florida Bar complaining that attorney David Stone was improperly commingling his personal funds with those of his clients. The Florida Bar found no probable cause for further disciplinary proceedings against Stone. Stone then filed an action for malicious prosecution against Rosen claiming that Rosen's accusations to The Florida Bar were false, malicious, and made without probable cause. Rosen asserted the defense of absolute immunity. The trial court entered summary judgment in favor of Rosen finding that Rosen's complaint to The Florida Bar was qualifiedly privileged. *Stone,* 348 So.2d at 388.

On appeal, the Third District Court of Appeal held that there was "an absolute privilege on the part of a citizen to make a complaint against a member of the integrated bar." *Id.* The court reasoned:
For the sake of maintaining the high standards of the profession and disciplining those who violate the Canons of Legal Ethics, one who elects to enjoy the status and benefits as a member of the legal profession must give up certain rights or causes of action which, in this instance, is the right to file an action against a complainant who lodges an unsuccessful complaint with the Grievance Committee of The Florida Bar.

Id. at 389.

We conclude that the Third District Court of Appeal's reasoning in *Stone* remains sound today. Accordingly, we agree with the Fourth District Court of Appeal's conclusion here that Bar complainants are protected by an absolute privilege in so far as the complainant makes no public announcement of the complaint outside of the grievance process, thus allowing the grievance procedure to run its natural course.

In *Bar Rules,* this Court adopted several proposed amendments to the Rules Regulating the Florida Bar. *See Bar Rules,* 558 So.2d 1008 (Fla.1990). In our adoption of rule 3-7.1, we opened the grievance process to public review, limiting disclosure to " information concerning the status of the proceedings and information which is part of the public record." *Id.* at 1010.

In the present case, Tobkin argues that this Court's decision in *Bar Rules* allows an attorney, upon a finding of no probable cause by the Bar Grievance Committee, to sue the complainant for defamation because the *Bar Rules* opinion removed the absolute privilege afforded complainants under *Stone.* Tobkin points out that at the time of the *Stone* opinion, grievance proceedings were confidential; thus, Tobkin asserts that the interest in protecting attorneys from meritless complaints was absent because the confidentiality requirement kept the complaint from public view. Tobkin argues that by opening the grievance process to public review in *Bar Rules,* this Court removed the absolute privilege***977** afforded complainants under *Stone* and, as a result, the *Tobkin* decision from the district court is in conflict with *Bar Rules.*

We resolve this apparent conflict in favor of the district court's decision in *Tobkin.* The changes made to the rules in our *Bar Rules* decision did not remove the absolute immunity afforded an individual who files a Bar complaint against a member of The Florida Bar under the circumstances that exist here.

Inherent in the *Bar Rules* decision was this Court's recognition of the strong public policy reasons for encouraging individuals with knowledge of attorney misconduct to step forward and present such evidence so that this Court may carry out its disciplinary duties. We acknowledge the possibility that groundless or baseless complaints against attorneys may sometimes be filed by individuals. However, Bar complainants must be encouraged to step forward with legitimate complaints, which will further the important public policy of disciplining attorney misconduct.

Florida is not alone in recognizing an absolute immunity for individuals who file complaints against members of an integrated Bar. Most jurisdictions throughout the United States recognize an absolute immunity for Bar complainants. *See, e.g.,* Ala. R. Disc. P. 15(a); Ga. State Bar R. 4-221(g). In addition, the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement recognize an absolute privilege for communications made within grievance procedures. *See* Model Rules For Lawyer Disciplinary Enforcement Rule 12 (1993).[FN1]

> FN1. The ABA Model Rules For Lawyer Disciplinary Enforcement Rule 12 states in relevant part:
> Communications to the board, hearing committees, or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness.

We also recognize the inequitable balance of power that may exist between an attorney who brings a defamation action and the client who must defend against it, which in turn creates the potential for attorney intimidation of Bar complainants. Attorneys schooled in the law have the ability to pursue defamation litigation through their own means and with minimal expense when compared with the Bar complainants. Conversely, the cost of litigation coupled with the risk of liability in defending against such an action could be enough to discourage an individual from bringing a meritorious complaint. The mere possibility of chilling valid complaints would undermine public confidence in this Court's ability to regulate and discipline unethical members of The Florida Bar.

Thus, we hold that an individual who files a complaint against an attorney and makes no public announcement of the complaint, thereby allowing the grievance procedure to run its natural course, is afforded absolute immunity from a defamation action by the complained-against attorney. However, if, after filing a complaint, the complainant comments publicly or outside the grievance process, then the afforded immunity ceases to exist.

Recognizing an absolute immunity for a complainant who follows The Florida Bar grievance procedures when filing a complaint will prevent any chilling effect on Bar complaints while at the same time adequately protect attorneys. If an individual files a complaint against an attorney and the Bar Grievance Committee finds probable cause to believe the attorney is guilty of misconduct justifying disciplinary action, then the attorney is clearly in no position to complain about the absolute immunity afforded the complainant. However, if a baseless Bar complaint is filed against an attorney and the Bar Grievance Committee returns a finding of no probable cause, then public exoneration is a suitable remedy for any negative effects created by the public awareness that a complaint has been made against that attorney. Granting a complainant absolute immunity when filing a complaint against a member of this state's integrated Bar is essential in order for the legal profession, and this Court, to adequately police its members and discipline those who violate the ethical standards of the legal profession. The net result will benefit both the legal profession and the public.

***978** Accordingly, we approve the decision of the Fourth District Court of Appeal in *Tobkin* and, as explained above, resolve any conflict in the *Bar Rules* decision in favor of an absolute immunity for an individual who files a complaint against an

attorney as long as the complainant makes no public announcement of the complaint outside the grievance process.

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, ANSTEAD and PARIENTE, JJ., concur.
WELLS, J., dissents with an opinion.
WELLS, Justice, dissenting.
Conflict exists in this case because in *Florida Bar re Amendments to the Rules Regulating The Florida Bar (Grievance Procedures and Confidentiality),* 558 So.2d 1008 (Fla.1990), this Court stated:
After careful consideration, we approve all amendments proposed by the Board of Governors except those which are in conflict with the above recommendation of the [Florida Bar Disciplinary Review Commission].... *[W]e adopt the confidentiality scheme which opens the grievance process to public review, as recommended by the Commission.*

The Florida Bar, 558 So.2d at 1009 (emphasis added). The recommendation of the Commission was that "[t]he complainant shall not have absolute immunity or privilege from civil liability when he or she files a complaint with The Florida Bar but shall be subject to applicable Florida law." [FN2] The Commission further explained in its commentary that it recommended a rule providing qualified immunity. Loucks Report at 28-29.

> FN2. William E. Loucks, Chairman, *Disciplinary Review Commission Report to Supreme Court of Florida and the Florida Bar Board of Governors* 28-29 (Jan.1989) (Loucks Report).

It is my view that the Loucks Report recommendation was well reasoned in 1990 and that this Court was correct in adopting it in *The Florida Bar.* The majority gives no reason at all for receding from this Court's 1990 decision.

As much as I agree that we should prevent the chilling of grievance filings, I must also consider and weigh the chilling and sometimes devastating effect to an attorney's career and life of an expressly malicious and false grievance filing made with intent to injure the attorney. I believe the majority opinion ignores the reality of this effect when it concludes that "if a baseless Bar complaint is filed against an attorney and the Bar Grievance Committee returns a finding of no probable cause, then public exoneration is a suitable remedy for any negative effects created by the public awareness that a complaint has been made against that attorney. " Majority op. at 977.

Moreover, those who serve in the Bar grievance process on grievance committees and the Board of Governors know that malicious grievance filings are actually a fact of the present practice of law. Such filings can be and have been used as tactical weapons against attorneys to accomplish purposes that have nothing to do with violation of the rules of professional conduct. Attorneys should not be defenseless against this tactic nor should the grievance process be freely available to those who employ this tactic.

I believe that the public, attorneys, and the grievance process are best served by providing a complainant with qualified rather than absolute immunity from civil liability for defamation. In accord with the amicus brief filed on behalf of The Florida Bar in this present case, I would hold that qualified immunity attaches to the initial complaint to The Florida Bar by an individual against an attorney.

Fla.,1998.
Tobkin v. Jarboe
710 So.2d 975, 23 Fla. L. Weekly S288

Briefs and Other Related Documents (Back to top)

• 1998 WL 34087267 (Appellate Brief) Petitioner's Reply Brief (Jan. 30, 1998)
• 1998 WL 34087266 (Appellate Brief) Amended Brief of Amicus Curiae (Jan. 23, 1998)

END OF DOCUMENT

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

Telephone: (813) 810-0151

July 25, 2005

Ian Mackechnie, President
Amscot Corporation
600 N. Westshore Blvd., 12th 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
tabbies
49

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
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THE FLORIDA BAR

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May 4, 2005

Neil J. Gillespie
P. O. Box 82027
Tampa, Florida 33682-2027

Re: Inquiry/Complaint against William John Cook
TFB No. 2004-11,734(13C)

Dear Mr. Gillespie:

Pursuant to Bar policy, a copy of the file in this matter was referred to Allen Von Spiegelfeld, Chair, Thirteenth Judicial Circuit, Grievance Committee "C" for review. Mr. Von Spiegelfeld signified his concurrence with the decision to close this file. The matter was thereafter referred to John F. Rudy, II, Designated Reviewer, and he concurred in the disposition. Ms. Rudy's decision precludes any further proceedings in this matter. This file will therefore remain closed and is scheduled for destruction on February 9, 2006.

Sincerely,

Susan V. Bloemendaal
Chief Branch Disciplinary Counsel

SVB/epg

cc: William John Cook, Respondent

EXHIBIT
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