S. Hrg. 111–691

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE G. THOMAS PORTEOUS, JR.

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE G. THOMAS PORTEOUS, JR., A JUDGE IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

November 16, 2010

Volume 3 of 3, Part B

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Volume 3 of 3, Part B
VIII. EXHIBITS ADMITTED (IN NUMERICAL ORDER)

H. Res. 15

In the House of Representatives, U. S.,

January 13, 2009.

Resolved, That in continuance of the authority conferred in House Resolution 1448 of the One Hundred Tenth Congress adopted by the House of Representatives on September 17, 2008, the Committee on the Judiciary shall inquire whether the House should impeach G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana.

SEC. 2. The Committee on the Judiciary or any subcommittee or task force designated by the Committee may, in connection with the inquiry under this resolution, take affidavits and depositions by a member, counsel, or consultant of the Committee, pursuant to notice or subpoena.

SEC. 3. There shall be paid out of the applicable accounts of the House of Representatives such sums as may be necessary to assist the Committee in conducting the inquiry under this resolution until a primary expense resolution providing for the expenses of the Committee on the Judiciary for the first session of the One Hundred Eleventh Congress is

adopted. Any of the amounts paid under the authority of this section may be used for the procurement of staff or consultant services.

SEC. 4. (a) For the purpose of the inquiry under this resolution, the Committee on the Judiciary is authorized to require by subpoena or otherwise—

(1) the attendance and testimony of any person (including at a taking of a deposition by counsel or consultant of the Committee); and

(2) the production of such things;

as it deems necessary to such inquiry.

(b) The Chairman of the Committee on the Judiciary, after consultation with the ranking minority member, may exercise the authority of the Committee under subsection (a).

(c) The Committee on the Judiciary may adopt a rule regulating the taking of depositions by a member, counsel, or consultant of the Committee, including pursuant to subpoena.

Attest:

Clerk.

111TH CONGRESS
1ST SESSION

Resolution

Establishing a task force of the Committee to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached.

IN THE COMMITTEE ON THE JUDICIARY

RESOLUTION

Establishing a task force of the Committee to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached.

Resolved,

SECTION 1. ESTABLISHMENT OF TASK FORCE.

There is hereby established in the House Committee on the Judiciary (hereinafter referred to as the "Committee") a task force (hereinafter referred to as the "Task Force") to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached.

SEC. 2. FUNCTIONS.

The Task Force shall conduct such hearings and investigations relating to the inquiry described in section 1 as the Chairman of the Committee, in consultation with

the Ranking Minority Member of the Committee, determines to be warranted.

SEC. 3. MEMBERSHIP.

The members of the Task Force shall be chosen from among the members of the Committee as follows:

(1) 7 members shall be chosen by the Chairman of the Committee.

(2) 5 members shall be chosen by the Ranking Minority Member of the Committee.

SEC. 4. CHAIRMAN; RANKING MINORITY MEMBER.

The Chairman of the Committee shall designate one member of the Task Force to be the Chair of the Task Force. The Ranking Minority Member of the Committee shall designate one member of the Task Force to be the Ranking Minority Member of the Task Force.

SEC. 5. AUTHORITY AND PROCEDURES.

(a) IN GENERAL.—Except as otherwise provided in this resolution, the Rules of the House of Representatives applicable to standing committees and the rules of the Committee shall govern the Task Force.

(b) DEPOSITION AUTHORITY.—

(1) CHAIRMAN MAY ORDER.—The Chairman of the Committee, upon consultation with the Ranking Minority Member of Committee, may order the taking of depositions, under oath and pursuant to no-

tice or subpoena. Consultation with the Ranking Minority Member shall include three business days written notice before any deposition is taken. All members of the Task Force shall also receive three business days written notice that a deposition has been scheduled.

(2) MODE FOR TAKING.—Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath administered by a member of the Task Force or a person otherwise authorized to administer oaths. The individual administering the oath, if other than a member, shall certify that the witness was duly sworn. Witnesses may be accompanied at a deposition by counsel to advise them of their rights. No one may be present at depositions except members of the Task Force, Committee staff or consultants designated by the Chairman or Ranking Minority Member of the Committee, an official reporter, the witness, and the witness's counsel. Observers or counsel for other persons may not attend.

(3) CONDUCT OF DEPOSITION.—A deposition shall be conducted by a member of the Task Force or by Committee staff or consultants designated by the Chairman or Ranking Minority Member of the

Committee. Questions in the deposition shall be propounded in rounds, unless the Chairman and Ranking Minority Member of the Committee otherwise agree. A single round shall not exceed 60 minutes per side, unless the persons conducting the deposition agree to a different length of questioning. When depositions are conducted by staff or consultants, there shall be no more than two persons permitted to question a witness per round, one to be designated by the Chairman of the Committee and the other by the Ranking Minority Member of the Committee. Other Committee staff or consultants designated by the Chairman or Ranking Minority Member of the Committee may attend, but may not pose questions to the witness during that round. In each round, the person designated by the Chairman of the Committee shall ask questions first, and the person designated by the Ranking Minority Member shall ask questions second.

(4) OBJECTIONS.—The Chairman of the Committee may rule on any objections raised during a deposition, either during the deposition or after the deposition has been concluded. If a member of the Task Force appeals in writing the ruling of the Chairman, the appeal shall be preserved for Com-

mittee consideration. A witness that refuses to answer a question after being directed to answer by the Chairman may be subject to sanction, except that no sanctions may be imposed if the ruling of the Chairman is reversed on appeal.

(5) TRANSCRIPTION OF TESTIMONY.—Committee staff and designated consultants shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days thereafter, the witness may submit suggested changes to the Chairman of the Committee. Committee staff or designated consultants may make any typographical and technical changes requested by the witness. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript. The transcriber shall certify

that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the Committee in Washington, DC. The Chairman and the Ranking Minority Member of the Committee shall be provided with a copy of the transcripts of the deposition at the same time. The Chairman and Ranking Minority Member shall consult regarding the release of depositions. If either objects in writing to a proposed release of a deposition or a portion thereof, the matter shall be promptly referred to the Committee for resolution.

(6) DEEMED PLACE OF TAKING.—Depositions shall be considered to have been taken in Washington, DC, as well as the location in which actually taken, once filed there with the clerk of the Committee for the Committee's use.

(7) REQUIREMENT TO PROVIDE COPY OF RESOLUTION TO WITNESS.— A witness shall not be required to testify unless the witness has been provided with a copy of this resolution and the resolution of the House of Representatives authorizing and directing the Committee to make the inquiry described in section 1.

SEC. 6. EXPIRATION.

The Task Force shall expire at the end of the 111th Congress.

SEC. 7. EFFECTIVE DATE.

This resolution shall take effect on January 22, 2009.

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111TH CONGRESS
1ST SESSION

Resolution

Expanding the responsibilities of the task force established to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached, to also include conducting an inquiry into whether United States District Judge Samuel B. Kent should be impeached.

IN THE COMMITTEE ON THE JUDICIARY

RESOLUTION

Expanding the responsibilities of the task force established to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached, to also include conducting an inquiry into whether United States District Judge Samuel B. Kent should be impeached.

Resolved, That the resolution adopted in the Committee January 22, 2009, establishing the task force to conduct an inquiry regarding the impeachment of Judge Porteous, is amended as follows:

(1) Section 1 is amended to read as follows:

"SECTION 1. ESTABLISHMENT OF TASK FORCE.

"There is hereby established in the House Committee on the Judiciary (hereinafter referred to as the 'Com-

HP Exhibit 3

mittee') a task force (hereby referred to as the 'Task Force') to conduct—

"(1) an inquiry into whether United States District Judge G. Thomas Porteous should be impeached; and

"(2) an inquiry into whether United States District Judge Samuel B. Kent should be impeached.".

(2) Section 5(a) is amended to read as follows:

"(a) IN GENERAL.—Except as otherwise provided in this resolution, the Rules of the House of Representatives applicable to the Committee on the Judiciary, the rules of the Committee, and the authorities provided in House Resolution 15 and House Resolution 424, shall govern the inquiries conducted by the Task Force.".

SC EXHIBIT - 00034

U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

May 18, 2007

The Honorable Edith H. Jones
Chief Judge
United States Court of Appeals for the Fifth Circuit
515 Rusk Avenue, Room 12505
Houston, Texas 77002-2655

Re: Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr.

Your Honor:

The United States Department of Justice respectfully submits this complaint referring allegations of judicial misconduct concerning the Honorable G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana, pursuant to 28 U.S.C. §§ 351-64 and the Rules Governing Complaints of Judicial Misconduct or Disability (amended July 15, 2003).[1]

For the past several years, the Federal Bureau of Investigation ("FBI") and a grand jury empanelled in the Eastern District of Louisiana investigated whether Judge Porteous and other individuals bribed or conspired to bribe a public official in violation of 18 U.S.C. §§ 201 and 371, committed or conspired to commit honest services mail- or wire-fraud in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1346, submitted false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filed false declarations, concealed assets, and acted in criminal contempt of court during his personal bankruptcy action in violation of 18 U.S.C. §§ 152 and 401.

The Department has determined that it will not seek criminal charges against Judge Porteous. Although the investigation developed evidence that might warrant charging Judge Porteous with violations of criminal law relating to judicial corruption, many of those incidents took place in the 1990s and would be precluded by the relevant statutes of limitations. In reaching its decision not to bring other available charges that are not time barred, the Department weighed the government's heavy burden of proof in a criminal trial, and the obligation to carry that burden to a unanimous jury; concerns about the materiality of some of Judge Porteous's provably false statements; the special difficulties of proving mens rea and intent to deceive beyond a reasonable doubt in a case of this nature; and the need to provide consistency in charging decisions concerning bankruptcy and criminal contempt matters. The Department also

[1] This complaint contains information obtained by the grand jury. The district court has authorized disclosure of matters occurring before the grand jury pursuant to Fed. R. Crim. P. 6(e)(3)(E)(I) solely for use in this complaint and any resulting judicial proceedings.

HP Exhibit 4

gave careful consideration -- as it must -- to the availability of alternative remedies for Judge Porteous's history of misconduct while on the bench, including impeachment and judicial sanctions administered pursuant to 28 U.S.C. §§ 351-64.

Despite the Department's decision not to charge Judge Porteous with violations of federal criminal law, the investigation has uncovered evidence of pervasive misconduct committed by Judge Porteous. The Department also is aware that Judge Porteous and his medical examiners have concluded that he is mentally and psychologically unfit to serve as a federal judge, and that his incompetency is permanent. Collectively, the evidence indicates that Judge Porteous may have violated federal and state criminal laws, controlling canons of judicial conduct, rules of professional responsibility, and conducted himself in a manner antithetical to the constitutional standard of good behavior required of all federal judges. Further, it has come to the Department's attention that Judge Porteous is scheduled to return to the federal bench in June 2007, at which time he may seek to preside over matters involving the Department. The Department accordingly refers this evidence to Your Honor for possible disciplinary proceedings and, if warranted, certification of the allegations to Congress for impeachment.

BACKGROUND

On October 11, 1994, G. Thomas Porteous, Jr., was confirmed by the United States Senate as a United States District Court Judge for the Eastern District of Louisiana. Before his elevation to the federal bench, he served as a judge on the 24th Judicial District Court of the State of Louisiana ("24th JDC") for ten years, from 1984 to 1994.

The New Orleans Division of the FBI conducted an investigation into allegations of judicial corruption in the 24th JDC. That investigation resulted in the convictions of fourteen defendants, including several 24th JDC judges, the owners of a bail bonding business, and other state court litigants and officials. During the investigation, the FBI was informed that Judge Porteous had in the past accepted, and as a federal judge continued to accept things of value, including payments and trips, from local attorneys, allegedly in exchange for favorable rulings. The FBI also was informed that Judge Porteous maintained an improper relationship with Louis and Lori Marcotte, the owners of a bail bonding business, who allegedly provided Judge Porteous as well as other state judges and employees various things of value in exchange for access and assistance on bond-related matters.

In March 2001, Judge Porteous and his wife, Carmella Porteous, filed for bankruptcy under Chapter 13. Gabriel and Carmella Porteous signed and filed a declaration that their bankruptcy schedules and statement of financial affairs were true to the best of their knowledge, information, and belief. Subsequently, the bankruptcy court confirmed a repayment plan based on the information the Porteouses submitted to the court. The bankruptcy judge issued an order providing for repayment to the creditors over a 36-month period and prohibiting the Porteouses from accruing further debt during the bankruptcy. The repayment plan was satisfied and the bankruptcy discharged in July 2004.

EVIDENCE OF MISCONDUCT

I. Evidence that Judge Porteous Violated the Order of the Bankruptcy Court

Judge Porteous and his wife Carmella Porteous filed for bankruptcy on March 28, 2001. The Porteouses' financial records show that they sought protection in bankruptcy in large part because of their substantial gambling activities. For example, between June 1995 and July 2000, while Judge Porteous served on the federal bench, over $66,000 in gaming charges appear on Judge Porteous's credit card statements. Along with those credit card charges, between January 1996 and May 2000 Judge Porteous wrote checks or made cash withdrawals at casinos for an additional $27,739.

Judge William Greendyke, sitting by designation on the Bankruptcy Court for the Eastern District of Louisiana, issued an Order confirming the bankruptcy repayment plan on June 28, 2001. Among other things, Judge Greendyke ordered that "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable."

Judge Porteous violated this order on multiple occasions. Among other debts, he obtained gambling markers and loans from casinos during the pendency of the bankruptcy proceeding.[2] Judge Porteous obtained the following short-term debts from casinos in the aggregate amount of $31,900 in violation of the court's order:

- on August 20 and 21, 2001, Porteous borrowed $8,000 from Treasure Chest Casino in Kenner, Louisiana;
- on September 28, 2001, Porteous borrowed $2,000 from Harrah's Casino in New Orleans, Louisiana;
- on October 13, 2001, Porteous borrowed $1,000 from Treasure Chest Casino in Kenner, Louisiana;
- on October 17 and 18, 2001, Porteous borrowed $5,900 from Treasure Chest Casino in Kenner, Louisiana;
- on October 31, 2001, Porteous borrowed $3,000 from Beau Rivage Casino in Biloxi, Mississippi;
- on November 27, 2001, Porteous borrowed $2,000 from Treasure Chest Casino in Kenner, Louisiana;

[2] A "marker" is a form of credit extended by a casino that enables a customer to borrow money while authorizing the casino to draw any unpaid balance after a fixed period of time from the customer's bank account. Typically, markers are deposited after a few days, but Judge Porteous obtained an agreement from at least one casino that he would be afforded thirty days to repay his markers before the casino would deposit them.

- on December 11, 2001, Porteous borrowed $2,000 from Treasure Chest Casino in Kenner, Louisiana;
- on December 20, 2001, Porteous borrowed $1,000 from Harrah's Casino in New Orleans, Louisiana;
- on February 12, 2002, Porteous borrowed $1,000 from Grand Casino in Gulfport, Mississippi;
- on April 1, 2002, Porteous borrowed $2,500 from Treasure Chest Casino in Kenner, Louisiana;
- on May 26, 2002, Porteous borrowed $1,000 from Grand Casino, Gulfport, Mississippi; and
- on July 4 and 5, 2002, Porteous borrowed $2,500 from Grand Casino, Gulfport, Mississippi.

In addition, the evidence shows that Judge Porteous violated the order prohibiting new debt on several other occasions. On July 4, 2002, Judge Porteous applied successfully to increase his credit limit at Grand Casino Gulfport from $2,000 to $2,500. Judge Porteous and his wife accrued new debt on a credit card in violation of the order, including $734.31 in new charges between May 16 and June 18, 2001; $277.74 in new charges between June 15 and July 18, 2001; and $321.32 between July 16 and August 17, 2001.[3] Further, Judge Porteous and his wife obtained new, low-limited credit cards during the course of the bankruptcy without obtaining trustee approval, also in violation of the order. On several occasions, Judge Porteous signed the checks paying off the debts on credit cards that were obtained in his wife's name.

The evidence indicates that Judge Porteous intended to violate the order of the bankruptcy court. First, Judge Porteous is a federal judge who issues similar orders, and unquestionably expects that they will be obeyed. Claude C. Lightfoot, his bankruptcy attorney, testified that both he and the bankruptcy judge told Judge Porteous that he could not obtain new debt, that the requirement was well known to Judge Porteous, and that it was very clear to Judge Porteous that he would need approval to obtain new debt.[4] During a May 9, 2001 creditors meeting, Judge Porteous was further admonished by the trustee that he could not obtain new debt. The trustee also provided Judge Porteous with a written statement that reiterated the restriction on obtaining debt during bankruptcy, including credit card debt. Finally, Judge Porteous's actions in the bankruptcy show that he knew about the order's prohibition, and violated it willfully: not only

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[3] The Porteouses retained this credit card during the bankruptcy by failing to report on the bankruptcy application that they had paid off the debt on that card immediately before filing, as set forth below.

[4] The district court overseeing this grand jury investigation ruled that the attorney-client and work product privileges did not bar Lightfoot from testifying or producing records about his representation of Judge Porteous, both because the privilege did not apply to much of the requested information and also because the government satisfied its burden of showing that the crime-fraud exception defeated the claim of privilege.

did several of the violations occur soon after the confirmation order was issued, but he complied with the no-debt provision of the order in other instances that he knew were likely to come to the attention of the trustee. Specifically, the Porteouses requested permission from the bankruptcy trustee to refinance their home, which the trustee granted on December 20, 2002, and to obtain two new car leases, which the trustee granted on January 2, 2003. That Judge Porteous knew to request permission for other debts during the pendency of the bankruptcy makes clear that his failure to request permission for gambling and credit card debts was intentional and willful.

II. Evidence that Judge Porteous Filed False Pleadings and Concealed Assets in Bankruptcy

Judge Porteous included numerous false statements in bankruptcy pleadings signed under penalty of perjury and submitted to the court -- statements that closed avenues of inquiry and undermined the administration of the bankruptcy by, among other things, concealing assets and income that potentially could have been made available to creditors, but were not.

A. False Initial Petition

The evidence indicates that Judge Porteous intentionally filed his initial bankruptcy petition using a false name to protect himself from public embarrassment. The docket and various documents from the bankruptcy of Gabriel Thomas Porteous, Jr., and Carmella Porteous, case number 01-12363 in the Eastern District of Louisiana, indicate that a petition was filed on March 28, 2001, listing the debtors as "G.T. Ortous" and "C.A. Ortous" and their "street address" as "P.O. Box 1723, Harvey, LA 70059-1723." The social security numbers listed correspond to Gabriel Thomas Porteous, Jr., and Carmella Porteous. The petition was signed by Gabriel and Carmella Porteous in two places, once each directly over the printed name "Ortous." Those signatures were made under penalty of perjury.

Bankruptcy records also indicate that an amended petition was filed in the same case number on April 9, 2001, providing the debtors' names "Gabriel T. Porteous, Jr.," and "Carmella A. Porteous" and the street address "4801 Neyrey Dr., Metairie, LA 70002." United States Postal Service records include a PS Form 1093 Post Office Box assignment for P.O. Box 1723 in Harvey, Louisiana, which indicates that Gabriel T. Porteous, Jr., rented that box on March 20, 2001, just days before filing for bankruptcy.

The Porteouses' bankruptcy attorney testified that he and Judge Porteous specifically devised this scheme to sign under penalty of perjury an initial petition using a fabricated name and newly-acquired post office box address. The attorney testified that their purpose in falsifying the initial filing was to avoid publicity and humiliation by preventing Porteous's name from being listed in the local newspaper among other bankruptcies filed that week.

B. Concealed Assets and Income

The investigation also obtained evidence that Judge Porteous concealed assets and income during his bankruptcy proceeding. The Chapter 13 Schedules and Plan were signed by Gabriel and Carmella Porteous and Claude Lightfoot and were filed on April 9, 2001. The Porteouses signed a declaration filed with the Schedules indicating that, under penalty of perjury,

the Schedules were true to the best of their knowledge, information, and belief. Judge Porteous also stated under oath in a hearing before the bankruptcy trustee on May 9, 2001, that the materials submitted were true to the best of his knowledge. However, the bankruptcy schedules and other Porteous financial records indicate that the Porteouses concealed from the bankruptcy court several assets and sources of income, including those described below.

1. Concealed Tax Refund – In response to question 17 of Schedule B, filed April 9, 2001, which asks for "other liquidated debts owing debtor including tax refunds," Judge Porteous stated that there were "None." For question 20 of Schedule B, which asks for "other contingent and unliquidated claims of every nature, including tax refunds," Judge Porteous likewise responded, "None." However, records provided by Bank One for accounts of Gabriel and Carmella Porteous indicated that a $4,143.72 tax refund was deposited approximately one week later, on April 13, 2001. In an interview, the bankruptcy trustee indicated that the Porteouses did not notify him about their calendar year 2000 tax refund and did not turn the refund over to him even though they were required to do so. Their attorney, Claude Lightfoot, testified that the Porteouses never told him they were expecting a refund for calendar year 2000 when he went over each line of their schedules with them before signing and filing them.

2. Understated Bank Account Balance – In response to question 2 of Schedule B, which asks for "checking, savings, or other financial accounts, . . . or shares in banks, savings and loan, thrift, building and loan, and homestead associations," the Porteouses listed "Bank One Checking Account No. 002379554" with a current value of $100. However, the Porteouses' Bank One statement for that account, covering the period March 23 to April 23, 2001, indicates that the balance in that account on March 28, 2001, the date the bankruptcy petition was filed, was more than $1,800. The balance on April 9, 2001, the date the schedules were filed, was more than $3,000. Another bank account, which had a balance of more than $280 at the time, was not included in the bankruptcy filings at all. Judge Porteous's bankruptcy attorney testified that the only account Judge Porteous told him about was the account listed in the schedules, and that the $100 figure for that account came from Judge Porteous. By providing counsel with false and incomplete information, Porteous prevented his lawyer from rendering considered advice on what amounts to include, and by failing to disclose the full amount of assets in his bank account, Judge Porteous obstructed the trustee's task of accurately providing a full accounting of the Porteouses' financial condition to the bankruptcy court and interested creditors.

3. Carmella Porteous's Employment – Schedule I requires debtors to list, among other items, current income, occupation, and name of employer for the individual debtors. On Schedule I, the Porteouses listed the employer and take-home pay for Judge Porteous, but provided no employer name or income for Carmella Porteous. However, the Porteouses' bank records indicate that Carmella Porteous worked sporadically for several established employers both before and after the bankruptcy petition was filed. For instance, in the year 2000, she earned at least $864 from Adecco Employment Services and $327 from New Orleans Metropolitan Convention and Visitors, and in 2001, she earned $3,109.50 from R&M Glynn, Inc., and $915 from New Orleans Metropolitan Convention and Visitors. None of this income was indicated on the bankruptcy petition or schedules, nor was it subsequently brought to the attention of the trustee or the court.

C. Concealed Preferred Creditors

The bankruptcy schedules and other Porteous financial records also indicate that the Porteouses apparently concealed from the bankruptcy trustee and creditors the existence of several additional creditors who were paid in full immediately before the bankruptcy was filed.

Gabriel and Carmella Porteous signed under penalty of perjury their Statement of Financial Affairs on April 9, 2001. Question 3 of the Statement stated, "List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case." The Porteouses answered, "Normal installments." That statement was false, as they failed to list full repayments made to Fleet Credit Card Services and Grand Casino Gulfport shortly before they declared bankruptcy. These creditors therefore appear to be secretly preferred creditors, preferences that allowed the Porteouses to retain a credit card and protect their line of credit with a casino during the pendency of their bankruptcy repayment plan.

1. Fleet Credit Card – Credit card records of Carmella Porteous from Fleet Credit Card Services obtained pursuant to a grand jury subpoena indicate that Carmella Porteous held Fleet credit card account # 5447195123210658 prior to the filing of the Porteouses' bankruptcy on March 28, 2001. The records further indicate that the balance on that account, $1,088.41, was paid in full with a March 23, 2001 check from Judge Porteous's secretary, Rhonda Danos. His secretary testified that she made that payment at Judge Porteous's direction. Accordingly, Fleet Credit Card Services was fully paid off, in contrast to the creditors included in the bankruptcy, and the Porteouses retained the Fleet credit card for their own use, all without any disclosure to the bankruptcy trustee, judge, or creditors. Indeed, the Porteouses subsequently used this credit card in violation of the bankruptcy court's order prohibiting them from accruing new debt.

2. Grand Casino Markers – Records obtained from Grand Casino Gulfport pursuant to a grand jury subpoena indicated that Gabriel Porteous obtained two $1,000 markers from the casino on February 27, 2001. According to casino and bank records and interviews, Grand Casino Gulfport attempted to deposit the markers, which Judge Porteous had not repaid, in March 2001, but was unsuccessful due to a change in the ownership of Judge Porteous's bank. Casino records further show that Porteous contacted the casino and provided the new bank information before filing his Statement of Financial Affairs. On April 4, 2001, the markers were successfully deposited. Grand Casino Gulfport was therefore fully paid off, in contrast to the creditors included in the bankruptcy, all without any notification to the bankruptcy trustee, judge, or creditors. In addition, as noted above, Judge Porteous subsequently raised his credit limit with Grand Casino Gulfport during the pendency of his bankruptcy.

D. Undisclosed Gambling Losses

On the Statement of Financial Affairs, Question 8 states, "List all losses from fire, theft other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case." The Porteouses checked the box for "None." However, analyses of casino records indicated that Judge Porteous's gambling losses exceeded $12,700 during the preceding year, or at least $5,700 in net losses. According to the trustee, had

he known about the Porteouses' gambling losses he may have scrutinized more carefully the income and expense figures reported by the Porteouses in their filings.

E. Impact of False Statements and Concealed Assets in Bankruptcy

Judge Porteous, in the series of false statements set out above, subverted the bankruptcy court's ability to properly administer his bankruptcy. His use of a false name and his concealment of his gambling losses in the year preceding his bankruptcy prevented the public from learning about the nature of his public bankruptcy and prevented the trustee, court, and creditors from learning a relevant aspect of his financial condition. His false statements about expected tax refunds, bank accounts, his wife's income, and the existence of preferred creditors all concealed from the court income or assets that could have been distributed to creditors in the bankruptcy or been used to calculate the Porteouses' obligations in the event their assets were to be liquidated. The Porteouses filed a Chapter 13 bankruptcy, in which payments to creditors are based on prospective income. Carmella Porteous's income would have been directly relevant to the calculation of income available to repay creditors. Moreover, in order to determine a fair recovery for creditors under Chapter 13, courts compare the amount that a debtor would pay under Chapter 13 with the amount they would pay were the debtor's assets liquidated. The creditors must fare at least as well in Chapter 13 as they would if the assets were liquidated under Chapter 7. Accordingly, depending on how they were treated by the trustee and bankruptcy judge, concealed assets such as the Porteouses' expected tax refund, money in bank accounts, and money paid to preferred creditors (which the court could order repaid and distributed among all creditors) could have affected the comparative liquidation value of his estate, the amount of the monthly payments the Porteouses were required to make, or the percentage of debt the Porteouses were ultimately obligated to repay.

Even if the value of the hidden assets would not ultimately have affected the amount recovered by any individual creditors, Judge Porteous's false statements nonetheless undermined the bankruptcy process generally. "Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate." In re Yonikus, 974 F.2d 901, 904 (7th Cir. 1992). This is because allowing debtors "the discretion to not report exempt or worthless property usurps the role of the trustee, creditors, and the court by denying them the opportunity to review the factual and legal basis of debtors' claims." In re Bailey, 147 B.R. 157, 163 (Bankr. N.D. Ill. 1992). Judge Porteous's concealment of assets and his filing of a false petition, schedules, and his statement of financial affairs precluded other interested parties from asserting their rights and enjoying a full and fair hearing on any claims they may have made against the estate.[5]

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[5] Despite the evidence recited above, the Department ultimately concluded that it would not seek to charge Judge Porteous with violations of federal criminal law under 18 U.S.C. § 152(1) and (3) (concealed assets and false statements in bankruptcy) and 18 U.S.C. § 401(3) (criminal contempt of court). Several factors informed that decision, including the burdens of proving beyond a reasonable doubt to a unanimous jury the materiality of Judge Porteous's misconduct in the bankruptcy proceeding. The burdens on the government in a criminal prosecution, however, do not apply in judicial misconduct or impeachment proceedings. An

III. Evidence that Judge Porteous Submitted Additional False and Misleading Statements

The investigation obtained evidence that numerous signed documents filed prior to or contemporaneously with the initiation of bankruptcy on which Judge Porteous had a duty to be truthful – including government financial disclosure reports, a casino credit application, and a bank loan renewal application -- also contained false or misleading information.

Porteous's financial disclosure report for calendar year 2000, filed with the Administrative Office in May 2001 just over a month after he filed for bankruptcy, failed to list numerous credit accounts he was obligated to disclose, including most of those listed on his bankruptcy documents. Further, on that disclosure report Judge Porteous indicated liabilities of $15,000 or less on each of two credit cards, while Schedule F to his bankruptcy filings from the same time period reflects that Judge Porteous in fact owed approximately $196,000 in unsecured debt, most of it credit card debt. Judge Porteous also failed to disclose on his annual financial disclosure forms the travel, cash, and gifts he received while a federal judge from attorneys and others with matters before him, as discussed further below. In addition, Judge Porteous reported "0" indebtedness on an April 30, 2001, credit application filed with Harrah's casino just weeks after he noted in his petition to the bankruptcy court that he had incurred $196,000 in unsecured debt.

The investigation also uncovered evidence that Judge Porteous intended to mislead Region's Bank about his financial condition in order to ensure that a $5,000 single-payment loan scheduled to become due shortly before the bankruptcy would be extended and, thus, discharged among other unsecured debts in the bankruptcy. In response to a grand jury subpoena, Claude Lightfoot, the Porteouses' bankruptcy attorney, produced a letter from him to the Porteouses dated December 21, 2000, which discussed additional letters he had sent to all but one of the unsecured creditors that later were included in the bankruptcy. Lightfoot stated, "I enclose a copy of the letters and one copy of the attachments I included with each that I have sent to all of the unsecured creditors, with the exception of Regions Bank which we wanted to exclude, proposing the workout of the debts to each . . . ." (emphasis added). These "workout" letters proposed a 21% payment of the debts the Porteouses owed to each of 13 unsecured creditors "[i]n an effort to provide all of my clients' unsecured creditors with immediate payment now and to avoid the necessity of a Chapter 7 bankruptcy filing." (emphasis added). Region's Bank, to whom the Porteouses owed $5,000 on an unsecured "single payment" loan scheduled to come due January 13, 2001, was not sent a workout letter, nor was the $5,000 Regions loan amount included in the schedule of debts provided in the workout letters to other creditors. Another document Lightfoot produced was a list of the Porteouses' creditors and debts that had been prepared by Judge Porteous and his wife, and which Lightfoot used, along with other worksheets, during his efforts to reduce the Porteouses' debts short of bankruptcy as well as in preparing the bankruptcy petition and schedules. That list includes an entry in what has been identified as Judge Porteous's handwriting that states, "Regions Bank $5000 unsecured loan due 1/13/01."

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impeachable offense is any misconduct that damages the State and the operations of governmental institutions; it is not limited to criminal misconduct.

On January 16, 2001 -- shortly after the workout letters were sent to the unsecured creditors -- Judge Porteous signed an application with Region's Bank to renew his loan and extend the date of repayment on the loan six months. On the application Judge Porteous certified that he was not "in the process of filing bankruptcy" and signed under the acknowledgment that there had been "no material adverse change" in his financial condition "as disclosed in my most recent financial statement to lender." (The relevant loan applications with Region's Bank submitted in January and July 2000 included financial statements, but neither of those statements appears to have been completed.) The loan renewal was approved, and the repayment date was extended to July 17, 2001. The Porteouses then filed their initial voluntary petition for bankruptcy approximately two months later, on March 28, 2001, and the loan from Region's Bank was discharged in the bankruptcy.

The December 21, 2000, letter from their attorney to the Porteouses establishes that Judge Porteous's decision not to disclose his actual financial condition and impending bankruptcy to Region's Bank in the loan renewal application was intentional. Indeed, the letter states that the Porteouses and their attorney decided not to send the workout letter to Region's Bank in particular. As a result, Judge Porteous was able to obtain an extension under the false pretense that his financial condition had not materially worsened and that he was not on the brink of bankruptcy, and was able to include the Region's Bank loan in the bankruptcy even though it was originally set to mature before he filed.

IV. Evidence that Judge Porteous Solicited and Accepted Things of Value from Attorneys and Litigants with Matters Before Him

Among the attorneys identified by FBI sources as the group most closely linked to the corruption allegations surrounding Judge Porteous were Donald Gardner, Robert Creely, Leonard Levenson, and Warren Forstall. Each of those attorneys was interviewed or compelled to testify before the grand jury about their financial dealings with the Judge. The evidence obtained from those witnesses shows that Judge Porteous accepted cash, expensive meals, travel, and other benefits from them, gifts that the Judge failed to disclose to the Administrative Office on his annual financial disclosure reports or to litigants and opposing counsel in cases in which those attorneys were engaged. The Department also has obtained evidence that Judge Porteous received unreimbursed travel and sport hunting trips from litigants with matters before him in federal court, also without disclosing his apparent conflicts to interested parties and counsel.

A. Cash Payments from Attorneys

Robert Creely and Jacob Amato, who represented clients with matters before Judge Porteous in state and federal court, testified that Judge Porteous solicited and accepted cash payments from them while he was a state and federal judge. According to their testimony, none of the payments occurred after 1999.

Robert Creely is a lawyer in New Orleans, Louisiana. He met Judge Porteous in high school, and practiced at the same firm as Judge Porteous for a year after law school. Creely then left the firm with another local attorney, Jacob Amato. Creely and Amato practiced together in

the law firm of Creely & Amato for 29 years. Creely describes himself as a very close personal friend of Judge Porteous, as does Amato.

Creely testified that, beginning in the late 1980s and early 1990s, while Judge Porteous was a state court judge, he began to solicit cash payments from Creely. Creely and Amato had matters before Judge Porteous in state court at that time. Creely testified that he and Amato would each take draws for half the amount from their joint law firm account. Creely would give that money to Judge Porteous in cash. Creely indicated that Judge Porteous would always ask for the money to pay urgent, unforeseen expenses related to his family. However, Creely stated that Judge Porteous drank and gambled excessively, and Creely was concerned he was paying for the Judge's extravagant lifestyle. Creely testified that, as a result, he eventually told Judge Porteous he could not continue to give him money.

After Creely decided to cut off further payments to Judge Porteous, the Judge began to designate Creely as the curator on executory interests in mortgaged property in actions over which he presided as a state court judge. Creely testified that he received approximately $175 from the state court system for each curatorship, and that those cases required very little time or effort on his part. In return, Judge Porteous asked Creely for the money he was paid by the court. Creely testified that he paid Judge Porteous in cash the amount he received, minus his minimal costs, which usually involved simply sending a letter and posting public notice of the pending executory actions. Although PACER records indicate Judge Porteous appointed Creely as the representative for an absent party in at least one forfeiture action in federal court -- that is, United States v. Ratcliff, Civ. No. 95-00224 (filed Jan. 19, 1995) -- Creely testified that the kick-back scheme he described came to an end when Judge Porteous moved from state to federal court in 1994. Jacob Amato also testified about the curatorships and stated that he was aware that Judge Porteous asked Creely for money and explicitly tied those payments to the many cases in which the Judge appointed Creely as a curator.

Creely testified that, in May 1999, Judge Porteous once more asked his law partner, Jacob Amato, for a payment of $2,000, this time to help defray the cost of a wedding for one of his children. This request was made while Amato was counsel on the Liljeberg matter, a multi-million dollar civil action pending before Judge Porteous in federal court, described further below. Jacob Amato also testified about that request for money from Judge Porteous. Amato gave Porteous the money he asked for in cash, again splitting the payment with Creely through personal draw-downs from their law firm account. Creely testified that Judge Porteous has not solicited, and he has not given him, any additional cash since the May 1999 payment of $2,000. Creely testified that Judge Porteous instructed him to give the cash to his secretary, Rhonda Danos, who would pick it up from his office. Creely says he put the money in a sealed envelope and gave it to Danos. Danos testified that she does not recall receiving an envelop with cash in it, although she stated that she did pick up items from time to time for the Judge from Creely's office.

Jacob Amato corroborated Creely's claims that they made cash payments to Judge Porteous both while he was a state and a federal judge. Between them, Creely and Amato represented parties in four actions over which Judge Porteous presided on the federal bench

according to the PACER electronic court records system.[6] Creely testified that in total they may have given Judge Porteous as much as $10,000 over time.

Donald Gardner is also an attorney in New Orleans, Louisiana and a close personal friend of Judge Porteous. Although Gardner testified he does not gamble often, he stated that on occasions when he was at casinos with Judge Porteous, the Judge would ask for money to gamble, and he would give it to him. Gardner testified Judge Porteous would request amounts in the range of $100 to $200. He also testified that he provided Judge Porteous approximately $200 to purchase a gift for his wife. Gardner also paid $300 to a contractor on behalf of Judge Porteous. Gardner testified that his payments to or on behalf of Judge Porteous occurred prior to him taking the federal bench. According to Gardner, he estimated that over the course of their friendship he did not give Judge Porteous more than $3,000 in total. Although the FBI developed sources who believed that Gardner regularly paid Judge Porteous, the investigation was ultimately unable to disprove his testimony about the extent of his cash payments to Judge Porteous.

In addition to cash payments to Judge Porteous, several attorneys testified that they gave money to his secretary, Rhonda Danos, to help support Judge Porteous's son during his externship in Washington, D.C., while Judge Porteous was a federal judge. Leonard Levenson is another local attorney who has been friends with Judge Porteous since the early 1980s. Levenson testified that, although he never gave cash directly to Judge Porteous, he may have contributed a few hundred dollars to Rhonda Danos to be used for Judge Porteous's son's externship. Don Gardner also testified that he gave a couple hundred dollars for the externship.[7]

B. Travel, Meals, and Hunting and Fishing Trips from Lawyers and Litigants

The investigation of the FBI into alleged judicial corruption also led to the discovery of evidence that, on a regular basis, Judge Porteous accepted gifts of travel, expensive meals, drinks, and hunting and fishing trips from attorneys and businesses with matters before him both in state and federal court, and that Judge Porteous failed to disclose his receipt of those benefits to interested counsel and litigants and, for all but two hunting trips, in his financial disclosure reports to the Administrative Office.

Several attorneys who were compelled to testify admitted that they paid for travel for Judge Porteous. In May 1999, Judge Porteous and several others traveled to Las Vegas, Nevada for his son's bachelor party. Credit card records and Caesar's Hotel records indicate that Robert

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[6] See In re. Liljeberg Enters. Inc., Civ. No. 93-01794 (filed June 01, 1993); United States v. Ratcliff, Civ. No. 95-00224 (filed Jan. 19, 1995); Buck v. Candy Fleet Corp., Civ. No. 97-01593 (filed May 16, 1997); and Union Planters Bank, N.A. v. Gavel, Civ. No. 02-01224 (filed Apr. 24, 2002).

[7] Gardner also testified that he, like Creely, was designated by Judge Porteous as a curator in numerous state cases then pending before the Judge. He claimed, however, that the Judge never asked for money in connection with those appointments.

Creely paid $421.90 with his credit card for Porteous's room from May 20 to May 23, 1999. Judge Porteous's credit card records indicate that he took out more than $5,000 on his credit cards at Caesar's Hotel during the trip. Caesar's Hotel records estimate that Judge Porteous lost $1,200 gambling over the course of his stay. Judge Porteous's bank records indicate that he deposited $5,000 into his money market account days after he returned from the trip. The source of that money is unknown. Don Gardner, the New Orleans attorney representing the opposing party in the Lilieberg cases that were then pending before Judge Porteous, also attended the May 1999 Las Vegas bachelor party trip.

In grand jury testimony and an interview with the FBI, Robert Creely admitted that he attended the bachelor party trip, but did not recall paying for Judge Porteous's room. He said that he and two other non lawyers present on the trip also split the bill for an expensive steak dinner for many of the people in attendance, including Judge Porteous. He claimed that he did not give Judge Porteous any money during or immediately following that trip.

Robert Creely also testified that he has taken Judge Porteous on many fishing trips over the years, including while Judge Porteous was a federal judge, and on two or perhaps three hunting trips while Porteous was on the state bench. Creely valued the hunting trips at the time at around $1,500 per person plus airfare, all of which he covered on Judge Porteous's behalf. Judge Porteous never covered any of the costs related to the hunting or fishing trips.

Warren Forstall, Jr. is a lawyer who practices in New Orleans, Louisiana. He and Judge Porteous have been friends for about 20 years. Forstall testified that in September 1999, at Judge Porteous's invitation, Forstall purchased tickets for both of them to San Francisco to attend an attorney conference together. They later cancelled the trip, and Forstall did not know what became of the ticket he purchased for Judge Porteous. Credit card and travel agency records for Forstall show that he paid $238 with his credit card for the airline tickets for Judge Porteous to San Francisco on September 18, 1999, with a return flight from Reno-Tahoe to New Orleans on September 22, 1999, along with an accompanying ticket for himself. Travel records indicate that Judge Porteous traded his California plane ticket for a ticket to Las Vegas in October 1999. Judge Porteous failed to disclose his acceptance of an airline ticket from Forstall on his financial disclosure forms or in any litigation in which Forstall had an interest.[8]

In an interview with the FBI, Leonard Levenson stated that he has paid for hunting trips with Judge Porteous both while the Judge was on the state and federal bench. In October 1999, Levenson and his wife accompanied Judge Porteous to Las Vegas, Nevada. Porteous obtained his airfare for that trip by trading in the unused ticket to San Francisco that he previously had obtained from Warren Forstall. Judge Porteous's secretary, Rhonda Danos, paid for the

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[8] The Court's PACER records indicate that Forstall's firm represented parties in at least six federal actions before Judge Porteous. See Everage v. Fisher, Civ. No. 98-00451 (filed Feb. 11, 1998); McAfee v. Ayers, Civ. No. 98-01415 (filed May 12, 1998); Ford v. United States Postal Serv., Civ. No. 98-02170 (filed July 24, 1998); Wingate v. Brock, Civ. No. 98-03290 (filed Nov. 6, 1998); Coleman v. United States Postal Serv., Civ. No. 99-02017 (filed June 30, 1999); and Minnifield v. Drug Trans. Inc, Civ. No. 02-02516 (filed Aug. 13, 2002).

Levensons' airfare, and was reimbursed by them in November 1999. Levenson has been counsel in at least eleven matters over which Porteous presided in federal court.[9] It does not appear that Judge Porteous provided notice to any party of his acceptance of gifts and benefits from Levenson.

According to evidence obtained from attorneys who were interviewed or testified before the grand jury, Judge Porteous also made it his regular practice to receive gifts of meals and drinks at expensive restaurants from lawyers with matters before him while he was a judge in both state and federal court. Robert Creely, Jacob Amato, Leonard Levenson, Donald Gardner, and Warren Forstall all admitted that they frequently bought meals for Judge Porteous that he did not reimburse. Creely testified that Judge Porteous always expected that the lawyers would pick up the tab, and that the Judge would never offer to pay. Ronald Bodenheimer, a former 24th JDC judge who agreed to be interviewed and testify after pleading guilty to honest services fraud in connection with the investigation of judicial corruption in the 24th JDC, stated that when he was elected to the state bench, Judge Porteous told him that since he was a judge he would never again need to pay for his own lunch. Each of the attorneys who routinely bought meals for Judge Porteous had matters before him both in state and federal court. Judge Porteous apparently never disclosed to any litigant or counsel his receipt of benefits from these lawyers, nor did he disclose any meals valued over $100 in any financial disclosure report filed with the Administrative Office.[10]

The FBI and other investigative agencies also have obtained evidence that, on at least three occasions, Judge Porteous accepted free travel and hunting trips from the Rowan Company and Diamond Offshore. Rowan and Diamond are each frequently named as defendants in maritime actions brought in the Eastern District of Louisiana and, on many occasions, in actions assigned to Judge Porteous. The hunting trips included free air transportation by private plane from New Orleans, Louisiana to Falfurrias, Texas, and sport hunting on property owned or

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[9] See In re. Liljeberg Enters, Inc., Civ. No. 93-01794 (filed June 01, 1993); In re. Owen McManus, Civ. No. 95-01615 (filed May 23, 1995); Alliance General Ins. Co. v. Louisiana Sheriff's Auto. Risk Prog., Civ. No. 96-00961 (filed Mar. 15, 1996); First Natl Bank v. Evans, Civ. No. 96-01006 (filed Mar. 20, 1996); Joseph v. Sears Roebuck & Co., Civ. No. 97-00192 (filed Jan. 21, 1997); Siddiqui Group Enters., Inc. v. Shell Oil Co., Civ. No. 98-00606 (filed Feb. 26, 1998); Liberty Mutual Fire Ins. v. Ravannack, Civ. No. 00-01209 (filed Apr. 19, 2000); Holmes v. Consolidated Cos., Inc., Civ. No. 00-01447 (filed May 17, 2000); Loehn v. Hardin, Civ. No. 02-00257 (filed Jan. 30, 2002); Salatich v. America Online Inc., Civ. No. 03-02943 (filed Oct. 21, 2003); and Morales v. Trippe, Civ. No. 04-02483 (filed Aug. 31, 2004).

[10] For example, although it is difficult to reconstruct the record with certainty, Amato's financial records and testimony indicate that he may have spent at least $1,500 in 1999 and $2,250 in 2000 for dining and beverage expenses at restaurants at which he entertained Judge Porteous. Judge Porteous was required to report to the Administrative Office gifts of food and drink valued at more than $100 on his annual financial disclosure reports. However, Judge Porteous has never reported the receipt of any gift from Amato or any other attorney with matters before him.

controlled by Rowan near the Mariposa Ranch in Falfurrias. The government has also obtained evidence that Judge Porteous traveled from the Falfurrias camp by private plane to a similar hunting camp near San Antonio, Texas owned or controlled by Diamond. Further evidence indicates that, on at least one of the trips paid for by Rowan, Judge Porteous was accompanied on the trip by litigation counsel for Rowan.[11]

Judge Porteous disclosed two of these hunting trips in financial disclosure reports filed with the Administrative Office. On his report for calendar year 2004, filed May 12, 2005, in response to Part V, "Gifts," Judge Porteous reported that he received a hunting trip from Rowan Company, for which he reported a fair market value of $1,000. On his report for calendar year 2005, filed July 24, 2006, in response to Part V, "Gifts," Judge Porteous reported that he received a hunting trip from Diamond Offshore, which he also valued at $1,000. Judge Porteous has yet to file his financial disclosure report for calendar year 2006. Judge Porteous's reports appear to understate the fair market value of the hunting trips. Evidence indicates that the cost to operate the private plane used to transport Judge Porteous to Falfurrias, Texas itself was approximately $1,000 an hour. According to commercial sports hunting locations in the same area, the fee for merely observing a hunt is approximately $200 a day in addition to the cost of the full hunting package for the other hunt participants, while the fee to participate in a Whitetail Buck hunt, which evidence shows was the subject of at least one of the hunting trips, would cost approximately $3,000 to $3,500 per participant. Together, the evidence suggests the total fair market value for each hunting trip would have been in excess of the $1,000 reported by Judge Porteous.

In addition to apparently understating the fair market value of his trips on financial disclosure reports submitted to the Administrative Office, Judge Porteous apparently failed to disclose his receipt of the trips to counsel and parties adverse to Rowan and Diamond in the actions over which he presided. The Court's PACER electronic records system indicates that, since the late 1980s, the Rowan Companies, Inc. and its related companies have been parties in more than a hundred cases filed in the Eastern District of Louisiana. Judge Porteous has presided over at least six such actions.[12] Of those cases, Hanna was an open matter during all of 2004, and therefore was pending when Judge Porteous received a hunting trip from Rowan. About one week after returning from his January 2006 trip with Rowan, he was assigned to preside over the Thomas matter. Despite his obligation to do so, Judge Porteous apparently failed to disclose the benefits he received from Rowan to counsel and the opposing parties in each of those cases.

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[11] There is evidence that one other federal district judge attended at least one of the hunting trips Rowan sponsored.

[12] See Lucas v. Tetra Technologies, Civ. No. 96-03501 (filed Oct. 28, 1996); Grubb v. Rowan Companies, Inc., Civ. No. 00-01075 (filed Apr. 10, 2000); Hoffman v. Rowan Companies, Inc., Civ. No. 01-01285 (filed Apr. 27, 2001); Hanna v. Rowan Company, Inc., Civ. No. 03-03285 (filed Nov. 21, 2003); Thomas v. Rowan Companies, Inc., Civ. No. 06-00166 (filed Jan. 13, 2006); and Cooley v. Crescent Drilling & Production, Inc., Civ. No. 06-01427 (filed Mar. 20, 2006).

Likewise, Diamond and its related companies were frequent litigants in the Eastern District of Louisiana, also parties in more than a hundred actions filed since the early 1990s. According to the PACER system, Judge Porteous presided over seven matters in which Diamond was a party.[13] Of those seven, Johnson was pending for part of, and Jones during all of 2005, the year in which Diamond provided Judge Porteous one of the trips according to Judge Porteous's financial disclosure report. The docket in each case does not reflect that Judge Porteous provided notice to the parties or counsel of the trip he received from Diamond.

C. Effect of Judge Porteous's Misconduct on the Administration of Justice

Judge Porteous's apparent misconduct has had a derogatory effect on the administration of justice in the Eastern District of Louisiana. That impact can be illustrated by the effect his conflicts had specifically on the litigation surrounding the Chapter 11 bankruptcy filing of Liljeberg Enterprises, Inc., and the cloud of suspicion those undisclosed conflicts raised about the validity of Judge Porteous's rulings in that matter. See In re Liljeberg Enterprises, Inc., Civ. Nos. 93-1794, 93-4249, 95-2922, and 94-3993. The bankruptcy action was commenced in 1993, and the matter was transferred and consolidated with related cases before Judge Porteous on January 16, 1996. On September 19, 1996, after Judge Porteous's assignment to the litigation and just weeks before the complex matter was scheduled to be tried to the bench, Liljeberg Enterprises moved to substitute Jacob Amato and Leonard Levenson as counsel of record. Judge Porteous signed the order granting the substitution on September 23, 1996. Amato handled the representation of Liljeberg on behalf of the Creely & Amato law firm. Levenson testified that he was told when he was hired by Liljeberg that he was being retained for strategy and assistance during the trial of the matter. However, based on recent public statements made by his client, Levenson now believes that his apparent close relationship with Judge Porteous influenced his client to hire him. Jacob Amato testified that he also believed his connection to Judge Porteous played a role in his client's decision to engage him.

One of several parties adverse to Liljeberg in these actions was LifeMark Hospitals, Inc. After Amato and Levenson were retained by Liljeberg, Lifemark in turn sought to associate a long-time friend of Porteous, Donald Gardner.

Gardner testified that he did not have experience handling federal litigation matters, and that Lifemark had competent local counsel. Gardner stated that the reason he was asked to associate himself on the case was his known relationship with Judge Porteous. LifeMark's counsel, Joseph Mole, testified that he hired Gardner because his client believed it was necessary to "level the playing field" following the retention by Liljeberg of Amato and Levenson – whose close connections to Judge Porteous were also well known among local attorneys. Indeed, prior

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[13] See Pierce v. Diamond Offshore, Civ. No. 98-01661 (filed June 4, 1998); Gonzalez v. Diamond Offshore, Civ. No. 99-00815 (filed Mar. 11, 1999); Sylve v. Oceaneering Int'l, Inc., Civ. No. 99-00841 (filed Mar. 15, 1999); Dillon v. Diamond Offshore, Civ. No. 99-02026 (filed June 30, 1999); Farrar v. Diamond Offshore Co., Civ. No. 03-00782 (filed Mar. 19, 2003); Johnson v. Diamond Offshore, Civ. No. 03-02505 (filed Sept. 4, 2003); and Jones v. Diamond Offshore, Civ. No. 04-00922 (filed Mar. 31, 2004).

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to hiring Gardner, counsel for LifeMark filed a motion seeking Judge Porteous's recusal because of the appearance of partiality created by the close personal relationship among Porteous, Amato, Creely, and Levenson. LifeMark's counsel testified that he was not aware that Porteous had received cash payments from Amato or his partner Creely, and trips and other benefits from Amato, Creely, and Levenson. He testified that, had he known about those dealings, he would certainly have included that information in his motion to recuse. Judge Porteous denied the motion. In his opinion, Judge Porteous failed to disclose his solicitation and acceptance of cash, travel, and other things of value from Amato, Creely, and Levenson. Counsel for LifeMark filed a mandamus action with the Fifth Circuit, but the Circuit denied LifeMark's requested relief as well -- also without being informed of Judge Porteous's financial dealings with Liljeberg's counsel. Amato testified that his and his partner's gifts of cash and other benefits to Judge Porteous were never disclosed in the litigation, and admitted that they "probably" would have been a basis for recusal. As noted, three years later, while Liljeberg was still pending before him, Judge Porteous again solicited and received $2,000 in cash from Creely and Amato, which Porteous also failed to disclose to the counsel or litigants in the Liljeberg action, as well as the Administrative Office.

The written fee agreement between Gardner and LifeMark provided that Gardner would be paid a $100,000 flat fee for associating himself on the case. The agreement included a provision that, if the case was transferred to another judge, Gardner's engagement would end, but he would be paid an additional $100,000 severance. The fee agreement also contained a sliding-scale of additional fees contingent on various measures of LifeMark's success at trial. According to LifeMark's lead counsel, Joseph Mole, he included that contingent fee component to create an incentive for Gardner to deal honestly with LifeMark and not collude with Amato and Levenson. Mole saw Gardner as part of a circle of friends surrounding Judge Porteous, a circle that included opposing counsel Amato and Levenson. When asked whether Gardner was expected to give any part of his fee to Judge Porteous, both Gardner and Mole testified that he was not. Both also testified that Gardner informed LifeMark up front that he would not be able to influence Judge Porteous to do anything unethical or improper.

Mole testified that Gardner was retained solely because of his close relationship with Judge Porteous, and that his only active role in the case was to attend the bench trial. Gardner testified that he offered advice on how he thought Judge Porteous might react to LifeMark's evidence and strategies, but that counsel for LifeMark disregarded most of that advice. When questioned about the perceived need to pay $100,000 -- and potentially many hundreds of thousands more -- to an attorney who had no relevant federal experience but who was a friend of the Judge so that he would file an appearance and observe the bench trial, Mole testified that he thought his client was a victim of a broken system.

The non-jury trial before Judge Porteous commenced June 16, 1997 and continued with breaks over several weeks until July 23, 1997. Following the bench trial, Judge Porteous failed to rule for nearly three years. During the time that Judge Porteous's judgment was pending, the evidence reflects, as recounted above, that Judge Porteous asked for and received cash payments

from Creely and Amato, and was the beneficiary of numerous meals, trips, and other gifts from Creely, Amato, Levenson, and Gardner.[14]

On April 26, 2000, Judge Porteous ruled in favor of Amato and Levenson's client, Liljeberg Enterprises, Inc., on most of the important contested issues.[15] Porteous's ruling in favor of Liljeberg was partially reversed by the Fifth Circuit in an unusually critical opinion. Regarding Porteous's finding that LifeMark had breached a fiduciary duty it owed to Liljeberg by, among other things, failing to reinscribe a collateral mortgage and mitigate harms caused by not doing so, the Circuit excoriated Judge Porteous:

> . . . The extraordinary duty the district court imposed upon LifeMark . . . is inexplicable. . . .
>
> . . . The right of LifeMark to unilaterally release any part of the property from the mortgage is wholly at odds with the district court's discovery of a "duty" to reinscribe the collateral mortgage. . . .
>
> . . . [Judge Porteous's theory that LifeMark consequently owed a duty to mitigate] is a mere chimera, existing nowhere in Louisiana law. It was apparently constructed out of whole cloth.

In re Liljeberg Enters., Inc., 304 F.3d 410, 428-29 (5th Cir. 2002). Similarly, in finding that Judge Porteous clearly erred in his ruling that the judicial sale of the hospital must be overturned in favor of Amato and Levenson's client, Liljeberg, the Court censured the unsupported conclusions drawn by the Judge:

> . . . the district court's findings of a "conspiracy" to wrest control of the hospital and medical office building from St. Jude and Liljeberg Enterprises border on the absurd. . . .
>
> The district court's "conspiracy theory" conclusion is based, in part, on the view that Liljeberg Enterprises's or St. Jude's losses were caused by Lifemark. . . .

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[14] On May 28, 1999, Judge Porteous granted summary judgment in favor of Levenson's client in Alliance Gen. Ins. Co. v. Louisiana Sheriff's Auto. Risk Prog., Civ. No. 96-00961.

[15] According to American Express credit card records, Amato paid$130 at Commander's Palace – a fine dining restaurant in New Orleans – on April 25, 2000, the day on which Judge Porteous signed his long-pending judgment in favor of Amato's client. The judgement was filed on the docket on April 26, 2000. Amato has informed the government that Rhonda Danos, Porteous's secretary, was present with him at Commander's Palace on April 25, 2000, and that he paid that bill. Danos testified that the pending judgment was not discussed during the April 25, 2000 rendevous at Commander's Palace, that she never received any cash or bribe from Amato, and that the timing of her meeting with Amato at Commander's Palace on the day the judgment was signed was a coincidence.

> These findings turn on the remarkable but largely implicit conclusion . . . that, under Louisiana law, a second mortgagee . . . cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.

Id. at 431.

V. Evidence that Judge Porteous Accepted Things of Value from Bail Bonds Unlimited and Louis and Lori Marcotte in Exchange for Access and Assistance

Louis and Lori Marcotte operated Bail Bonds Unlimited, a bail bonds company with business before the 24th JDC. As a result of the FBI investigation into corruption in the 24th JDC, both Louis and Lori Marcotte pleaded guilty to bribing Louisiana state judges in addition to other offenses. In interviews following their guilty pleas, the Marcottes said they paid for expensive meals, trips, and other benefits for Judge Porteous in exchange for favorable treatment when he was a state judge in the early 1990's, and that they continued to pay for meals while he was a federal judge. The Marcottes estimated the cost of weekly Friday lunches they provided for Judge Porteous and his staff and other invitees at about $500 each. They also stated that they paid for innumerable additional meals and drinks at expensive restaurants that cost hundreds of dollars each. In addition, the Marcottes said they paid for numerous car repairs for Judge Porteous and his family, paid for a fence to be built for him, gave parking privileges to Porteous's son at their office near the courthouse, and provided business to his son's legal courier service.

Other witnesses confirm that Louis Marcotte did numerous favors for and gave many gifts to Judge Porteous while he was a state court judge. Former Marcotte employees say that Marcotte paid for car repairs for Judge Porteous and a fence for Judge Porteous' house. Other witnesses report that Marcotte paid for many meals for Judge Porteous and at least one trip to Las Vegas, Nevada for Judge Porteous. Additional sources report, and the FBI in one instance observed, that Louis Marcotte continued to take Judge Porteous out for meals when he was a federal judge.

In 1992, the Marcottes invited Judge Porteous to Las Vegas with them, but he was unable to attend. Several months later, around August 1992, Rhonda Danos called the Marcottes to inform them that Judge Porteous "was ready to go" to Las Vegas with them. The Marcottes and two local attorneys paid to take Judge Porteous and another state judge to Las Vegas. Danos booked the trip on her credit card and then sought reimbursement from Louis Marcotte. The Marcottes stated that the arrangement was designed to disguise the fact that they and other lawyers were paying for the trip. They also stated that they invited the other attorneys and judge to provide cover for Judge Porteous.

In July 1999, the Professional Bail Agents of America paid $206.80 for lodging for Judge Porteous at their conference at the Beau Rivage in Biloxi, Mississippi. Judge Porteous spoke at the conference. Judge Porteous did not report this payment on his financial disclosure form (there is no minimum value for required reporting of travel reimbursements). The charge for Porteous's lodging was paid by the PBAA out of its "master account." In turn, the Marcottes

made a $7,000 contribution to cover expenses on that master account. The Marcottes also provided the PBAA with a list of people whose charges should be credited against the Marcotte's credit card. That list included Porteous's secretary, Rhonda Danos.

The Marcottes asserted that they also paid for Porteous's secretary to go to Las Vegas, Nevada for many years with them when they were attending annual bail bonding conventions there. This began in 1992 and continued through the first few years Judge Porteous was a federal judge. The Marcottes have provided the FBI with pictures that show the Judge's secretary in their company in Las Vegas. They claimed that they covered all of Danos's costs during the trips. For several years, the Marcottes also provided Danos and Judge Porteous with five to ten tickets each year to an annual police fund-raising party, valued at $100 per ticket. The expenses borne by the Marcottes on behalf of the Judge's secretary tend to corroborate their claim that they provided gifts to Judge Porteous in exchange for access. The Marcottes explained that Danos was the gatekeeper for access to Judge Porteous, and that it was therefore essential to their purpose that they kept Danos happy by plying her with gifts as well.

According to the Marcottes, in exchange for their generosity with Judge Porteous and Danos, while Judge Porteous was a state court judge he gave the Marcottes immediate access to him on bonding whenever they needed him. The Marcottes say he granted most of their requests. Louis Marcotte told the FBI that Judge Porteous was more likely to grant a problematic request after a lunch or a car repair. Judge Porteous also made introductions for the Marcottes to other state judges and lent his support by vouching to other judges that Louis Marcotte was a good person to deal with on bond issues. He also spoke to other state judges about the benefits to the court system of split bonds, a practice that was extremely beneficial to the business of Bail Bonds Unlimited. Following his own agreement to plead guilty to honest services fraud and to cooperate with the government, former 24th JDC judge Ronald Bodenheimer corroborated much of what the Marcottes told the FBI concerning the assistance Judge Porteous provided around the courthouse for their business interests in the 24th JDC.

In addition to making himself accessible and assisting the Marcottes on bonding matters, at Louis Marcotte's request Judge Porteous expunged the felony convictions of two Marcotte employees shortly before Judge Porteous left the state bench in 1994. This permitted the employees to work for the Marcottes in the bail bonding business, which otherwise was prohibited under Louisiana law. It appears that Judge Porteous decision to expunge the convictions was contrary to law. Nonetheless, Porteous claimed in an interview with the New Orleans Metropolitan Crime Commission that an Assistant District Attorney was present during the hearing and failed to object on the record. Even if true, there is no indication that the Assistant District Attorney was aware that Porteous was the recipient of a stream of things of value from the Marcottes, all of which the Marcottes claim they provided with the specific intent to influence Judge Porteous.

Although the Marcottes have made many allegations of improprieties involving Judge Porteous, they have pleaded guilty to charges of extensive fraudulent conduct. They also admit that they never obtained an explicit agreement with Judge Porteous that he would grant bond requests in exchange for favors. They claim instead that the agreement was implicit in the

relationship, and that the Judge knew very well why they lavished him and his long-time secretary with food, drinks, trips, favors, and other things of value.

VI. Further Circumstantial Evidence that Judge Porteous Engaged in Corrupt Activities

The investigation has uncovered large amounts of unexplained cash being deposited in Judge Porteous's accounts. Financial records reveal that Judge Porteous deposited more than $57,000 in cash into his checking account between 1998 and 2000. Additional records received from Fidelity Homestead Association show that five separate deposits of currency totaling approximately $20,000 were also made into the Judge's money market account from 1998 to early 2000. This account was not reported on Judge Porteous's bankruptcy petition. In addition, one of the deposits, made two days after Judge Porteous returned from his Las Vegas trip, was in the amount of $5,000, roughly the amount he withdrew over the "bachelor party" weekend, despite casino records that estimated a $1,200 loss during that trip.

In addition, the investigation has revealed that Judge Porteous's secretary, Rhonda Danos, paid for many of his expenses from her own bank account. While Judge Porteous did write checks to her, the FBI was not able to establish that he fully reimbursed her. In 1999 and 2000, for example, Danos paid $41,621.15 for credit card bills and other expenses for Judge Porteous; during the same period, she received $32,554.51 in checks from him. Over the same two year period, Danos also made $60,027.80 in cash deposits, a greater sum than her payroll and other sources of income for the same period. Focusing on year 1999 in particular, her financial records indicate that she may have received as much as thirty to forty thousand dollars in unexplained deposits. In addition, in her testimony about her 1999 financial activities, Danos could not account for nearly ten thousand dollars in excess of her admitted sources of income that year, even giving her the benefit of dubious, post-hoc explanations for some sources of funds. Together, these facts evidence that Danos – on whom Judge Porteous relied for payment of many of his own expenses -- received additional, unexplained cash during the period that the judgement in Lilieberg was pending. Indeed, the Marcottes stated in interviews with the FBI that Danos was used specifically to disguise their payments in connection with the 1992 trip to Las Vegas for Judge Porteous.

VII. Evidence that Judge Porteous Is Incompetent to Serve

During the course of this investigation the Department has learned that Judge Porteous has obtained the reports of medical examiners concluding that he is incompetent to render decisions as a federal judge because of permanent mental and psychological impairments. In correspondence with Your Honor, Judge Porteous stated that he believes he no longer can meet the responsibilities that fall to him as a judge, and that the reports of a psychologist and psychiatrist confirm that every day he sits on the bench is a disservice to his fellow judges, to the parties who appear before him, and to the people of this country who put their trust in the judiciary. This mental impairment follows a history of alcoholism and reckless gambling, demonstrated in financial records and attested to by witnesses with whom he has had personal relationships. Therefore, in addition to the many allegations of judicial misconduct recited above, Judge Porteous's self-professed inability to render competent and fair decisions as a federal judge and the chronicle of his reckless and dishonorable personal behavior while on the

federal bench also serve as a basis for possible disciplinary action by the Court or referral to Congress for impeachment.

CONCLUSION

As noted earlier, issues of statute of limitations, the materiality of the alleged false statements, the government's twin burdens of proof and unanimity at trial, and the availability of alternative remedies persuaded the Department that criminal prosecution was not warranted. The results of the FBI's investigation into allegations of misconduct concerning Judge Porteous, however, raise serious doubts about his suitability for office under the constitutional standard of good behavior on which that service is contingent. The instances of Judge Porteous's dishonesty in his own sworn statements and court filings, his decade-long course of conduct in soliciting and accepting a stream of payments and gifts from litigants and lawyers with matters before him, and his repeated failures to disclose those dealings to interested parties and the Court all render him unfit as an Article III judge. Based on the evidence of pervasive misconduct described herein, the Department respectfully submits this complaint for any further action Your Honor may deem warranted.

Sincerely,

John C. Keeney

John C. Keeney
Deputy Assistant Attorney General
Criminal Division
United States Department of Justice

REPORT BY THE SPECIAL INVESTIGATORY COMMITTEE
TO THE JUDICIAL COUNCIL
OF THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DOCKET NO. 07-05-351-0085

In the Matter of Judge G. Thomas Porteous, Jr.
United States District Judge
Eastern District of Louisiana

Submitted

November 20, 2007

ACCOMPANIED BY
2 VOLUMES OF EXHIBITS

CONFIDENTIAL

I. Jurisdictional Basis

On May 18, 2007, the Chief Judge of the United States Court of Appeals for the Fifth Circuit received a formal complaint of judicial misconduct involving Judge G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana. (See Exhibit A) Chief Judge Edith H. Jones expeditiously reviewed the complaint under the authority of 28 U.S.C. §352(a), and determined under 28 U.S.C. §352(b) that it was not appropriate for summary dismissal. Accordingly, under 28 U.S.C. §353(a), Chief Judge Jones appointed a special committee to investigate the complaint, composed of Chief Judge Jones, Circuit Judge Fortunato P. Benavides and District Judge Sim Lake. Notice of this action was provided to Judge Porteous. Under 28 U.S.C. §353(c), the Special Investigatory Committee ("the Committee") was required "to conduct an investigation as extensive as it considers necessary" and to file" expeditiously" with the Judicial Council "a comprehensive written report" presenting "both the findings of the investigation and the committee's recommendations for necessary and appropriate action" by the Judicial Council.

The following report describes the Special Investigatory Committee's procedure, the scope of its investigation, the course of dealings with Judge Porteous and his counsel, the Committee's findings of fact and conclusions of law, and a recommendation of appropriate disciplinary action.

Two volumes of exhibits accompany this Report and include documents and testimony the Committee believes are most pertinent. While the exhibits bear initials for purposes of the index hereto, the reader may correlate them with the trial evidence identified in the Findings and Conclusions by looking at the "Hearing Exhibit" column of the Exhibit Index. On request, any member of the Council may review any of the witness statements, correspondence, and documents underlying this report.

II. Course of Proceedings

On May 18, 2007, Chief Judge Jones received from the United States Department of Justice ("DOJ") a Complaint of Misconduct against Judge G. Thomas Porteous, Jr. of the United States District Court for the Eastern District of Louisiana (Exhibit A). The Complaint was filed pursuant to 28 U.S.C. § 351 et seq. by John C. Keeney, Deputy Assistant Attorney General for the Criminal Division of the U.S. Department of Justice.

DOJ stated that it had determined, after a far-ranging investigation, not to prosecute Judge Porteous for various alleged crimes, including but not limited to (a) the filing of false statements under penalty of perjury during his and his wife's personal Chapter 13 bankruptcy case; (b) repeated violations of bankruptcy court orders; (c) deceptive pre-bankruptcy conduct with respect to his unsecured creditor, Regions Bank; and (d) receipt of money and things of value from lawyers

with cases pending before him. The 22-page, single-spaced Complaint alleged detailed facts supporting the charges and was derived from a years-long investigation of Judge Porteous and other persons in the New Orleans/Jefferson Parish area. DOJ obtained an Order permitting the release of grand jury materials for use in this disciplinary investigation pursuant to Federal Criminal Rule 6(e)(3)(E)(i).

Because the Chief Judge is not empowered to resolve factual disputes, Chief Judge Jones appointed Fifth Circuit Judge Fortunato P. Benavides and United States District Judge Sim Lake to assist her as a Special Investigating Committee (the "Committee"). *See* 28 U.S.C. § 353(a)(2); Rules 4(E) and 8(A) of the Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability (hereafter, "5th Cir. Misconduct Rule"). The Committee retained a former United States Attorney for the Southern District of Texas, Mr. Ronald G. Woods, Esquire, of Houston, Texas, as an investigator. 5th Cir. Misconduct Rule 9(C) and (D). Judge Porteous was promptly notified of the Complaint and the appointment of the special committee by letter dated May 24, 2007.[1] 28 U.S.C. § 353 (a)(3); 5th Cir. Misconduct Rule 4(F)(2) (Exhibit D-1).

[1] Nearly all correspondence in this matter has been instantaneously faxed or e-mailed to the recipients and hence was both sent and received on the dates identified throughout.

Through Mr. Woods, the Committee began coordinating with DOJ attorneys to retrieve and organize grand jury testimony of over a dozen witnesses and obtain thousands of documents relevant to the allegations in the Complaint.

On June 11, 2007, Judge Porteous's then-counsel Kyle D. Schonekas and Herbert V. Larson, Jr. of New Orleans, (who represented Judge Porteous during the federal grand jury investigation), communicated an offer by Judge Porteous to retire voluntarily upon his being certified by the Judicial Council of the Fifth Circuit as disabled to continue performing the duties of a federal judge. Judge Porteous sought to receive "all customary retirement benefits" upon waiver of the length of service requirement pursuant to 5th Circuit Misconduct Rule 13(F)(5). (Exhibit D-2) This request was predicated on a petition the Judge had filed in May of 2006, seeking a certificate of disability from Chief Judge Jones. *See* 28 U.S.C. § 372(a).[2] Chief Judge Jones denied the request at that time and again when it was renewed in September of 2006, based on insufficient medical documentation of a permanent mental disability. The June 11, 2007, letter suggested that Chief Judge Jones might have to recuse from the misconduct proceeding because she had

[2] As of May of 2006 Judge Porteous asserted that he was a victim of serious mental depression arising from alcohol abuse, the loss of his house in Hurricane Katrina, his wife's then-recent and sudden death, and the ongoing grand jury investigation.

already ruled adversely to Judge Porteous on his foremost defense —disability by reason of depression.[3]

The Committee declined for two reasons to forward the Judge's offer to the Fifth Circuit Judicial Council. *See* letter of June 25, 2007 (Exhibit D-3). First, to do so would be inconsistent with the Committee's duty to conduct an investigation, which was in its infancy, and to file a comprehensive report with the Fifth Circuit Judicial Council. 28 U.S.C. § 353(c); 5th Cir. Misconduct Rule 9(E). Second, Judge Porteous had misinterpreted the statutory provision that authorizes waiver of length of service but not the minimum age for a judicial disability retirement. 28 U.S.C. §§ 354(a)(2)(B)(ii); 371; and 372(b). In its letter, the Committee also notified Judge Porteous that it would conduct a hearing on the Complaint's allegations on August 27-29, 2007; that he could avail himself of the procedures in 5th Circuit Misconduct Rule 11; and that he must file a formal answer to the Complaint on or before July 10. *See* 5th Cir. Misconduct Rule 10(A) and (B).

On July 2, 2007, Messrs. Schonekas and Larson informed the Committee that they no longer represented Judge Porteous (Exhibit D-4). This letter was followed, on July 5, by a letter from Judge Porteous seeking a continuance of the hearing; appropriate discovery rights; and a dismissal because of the Complaint's

[3] By June of 2007 as counsel's letter reveals, several stressors in Judge Porteous's life had been removed. He had abstained from alcohol for a year; the damage to his house had been fully reimbursed by insurance; and the grand jury investigation against him had terminated with a decision not to prosecute.

failure to be verified under oath (Exhibit D-5). *See* 5th Cir. Misconduct Rule 2(F). Judge Porteous also asserted that he might renew his disability request.

On July 10 the Committee informed Judge Porteous that it agreed to a continuance and reset the hearing for September 26-28. *See* Letter of July 10, 2007 (Exhibit D-6). The Committee explained that its process was being expedited in part to benefit Judge Porteous, who had already been subject to a well-publicized multi-year grand jury investigation. The Committee informed the judge that the final scope of the hearing would depend on his response to the Complaint (the date of which was also extended) and reassured him of adequate advance notice concerning the Committee's use of grand jury witnesses and documents. The Committee also informed Judge Porteous that it had retained another former United States Attorney for the Southern District of Texas, Lawrence D. Finder, Esquire, of Haynes and Boone in Houston, Texas, to assist Mr. Woods.

A new attorney, Michael L. Ellis, notified the Committee on August 2 that he represented Judge Porteous (Exhibit D-7). He requested further extensions of the hearing and response date. On August 3 the Committee refused to continue the hearing but extended the response date to August 17 (Exhibit D-8).

Committee counsel then undertook to obtain orders of immunity from federal prosecution for prospective witnesses who had testified before the grand

jury. These witnesses included friends of Judge Porteous, his secretary, and his bankruptcy counsel.

In a letter dated August 9, Judge Porteous sought dismissal of the Complaint for alleged technical defects[4] and requested the names and addresses of the witnesses identified therein (Exhibit D-9). Most of those witnesses were close friends or associates of Judge Porteous.

Responding on August 14, Committee counsel defended the Complaint's sufficiency as being based on sworn grand jury testimony, business records of casinos, banks, and credit card companies, and official bankruptcy court records (Exhibit D-10).[5] The Committee pointed out that the judge's former attorney had been deeply involved in the grand jury investigation and, in fact, had advised Judge Porteous's bankruptcy counsel to assert attorney-client privilege during his grand jury appearance. (The assertion was ultimately overcome, and the attorney, Mr. Lightfoot testified, after a judicial finding that the crime-fraud exception applied.) The Committee also offered to make all of its documents available for review at counsel's office in Houston, and the Committee named and provided addresses of all prospective witnesses and their attorneys.

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[4] Judge Porteous contended that the DOJ Complaint was unverified, contrary to 5th Cir. Misconduct Rule 2(F) and lacked the names and addresses of witnesses it identified. 5th Cir. Misconduct Rule 2(B)(3).

[5] On August 29, to alleviate any uncertainty, Chief Judge Jones identified a misconduct complaint based on the same facts and allegations articulated in the DOJ Complaint. *See* 5th Cir. Misconduct Rule 2(J).

Two days later, Mr. Ellis, Judge Porteous's new counsel, reasserted that his client claimed to suffer from memory lapses related to mental depression (Exhibit D-11). These conditions allegedly rendered the judge incapable of performing his duties on the federal bench or assisting competently in his own defense. Updated reports from Judge Porteous's psychological advisers were attached. Mr. Ellis also represented that he would call no witnesses on the substance of the Complaint's allegations and would rely solely on Judge Porteous's medical records.

In an abundance of caution, the Committee elected to request a psychiatric evaluation of Judge Porteous under the direction of Dr. Glen O. Gabbard, the Director of Baylor College of Medicine Psychiatric Clinic in Houston. Judge Porteous cooperated by visiting Houston for the evaluation and furnishing all of his prior relevant medical records to the doctor's team. Dr. Gabbard was asked to determine whether Judge Porteous is capable of performing the duties of a federal judge and capable of assisting counsel in a defense against the Complaint. Dr. Gabbard's report, furnished first to Judge Porteous orally and then in written form to the Committee, answered both questions in the affirmative. *See* Exhibit C, page 10. The report concluded that Judge Porteous is fully capable, but at this point in his career he "dislikes" being a judge. *Id.* He looks forward to life off the bench, is enjoying the company of his grandchildren, *See* Exhibit C, p. 4, and is

considering opportunities for mediation, teaching, and speaking, *See* Exhibit C, pp. 4, 10.

The delay occasioned by the psychiatric evaluation required the hearing to be reset to October 29 in New Orleans. The Committee's preparations continued apace in August and September. An order of federal immunity was obtained for Judge Porteous's testimony. Counsel for Judge Porteous was sent copies of significant documents: the judge's financial disclosure reports; the certified bankruptcy court file; Regions Bank loan documents; and bankruptcy attorney Lightfoot's file and correspondence. Committee counsel furnished the DOJ correspondence that identified all grand jury documents, comprising nine bankers' boxes, that the Committee had received. All of these were offered again for inspection by Judge Porteous's attorney. Committee counsel promised and did seasonably furnish pertinent grand jury transcripts and copies of FBI 302 reports of witnesses who would be called at the hearing.[6] (Exhibits D-13-15) Finally, the Committee invoked Local Rule 55.2 of the Southern District of Texas to require any disputes over admissibility of documents to be raised at least three business days before trial.

Counsel for the Committee traveled to New Orleans several times to interview witnesses for the hearing. As the hearing approached Committee

[6] Copies of complete grand jury testimony and/or 302 reports of the witnesses were transmitted to Judge Porteous's attorney beginning October 8, 2007.

counsel raised with Judge Porteous's attorney whether Judge Porteous would voluntarily resign in lieu of continuing with a hearing and disciplinary procedures. Mr. Ellis responded that Judge Porteous was receptive to resigning and it appeared that a deal had been struck whereby Judge Porteous would resign in a short period of time, and the Committee would recommend to the Fifth Circuit Judicial Council that it conclude the proceedings as moot. A Memorandum of Understanding was prepared by the Committee memorializing the proposed agreement.

Late on Monday, October 15, Committee counsel were informed by Mr. Ellis that Judge Porteous had reconsidered over the preceding weekend and refused to sign the Memorandum of Understanding previously executed by Chief Judge Jones for the Committee.

On Tuesday, October 16, Mr. Ellis notified the Committee of his withdrawal because of an "impasse with respect to the future course of my representation" of the judge. Mr. Ellis attached a copy of his resignation letter, which referred to "irreconcilable differences" between him and the judge on how to proceed, and which advised Judge Porteous to prepare for the October 29 hearing (Exhibits D-16 & 17).

On October 18, Committee counsel furnished to the judge updated, specific Charges of Judicial Misconduct, essentially a complete outline of the investigators' proposed proof at the hearing (Exhibit B). The principal subjects of the charges

are ethical and criminal violations related to the actions described at the beginning of this section.

Responding to this letter, which also offered additional witness statements, Judge Porteous requested a continuance of the October 29 hearing (Exhibit D-18).

The Committee denied any further continuance in a letter that recited detailed reasons for the denial (Exhibit D-19). In three additional letters addressed to Judge Porteous on October 19, the Committee listed all of the evidence that had been furnished to the judge or his counsel (Exhibits D-20-22).

On October 24, Committee counsel confirmed their delivery to Judge Porteous's chambers of documents including personal credit card records; financial analyses of his secretary's and his own bank accounts; casino records; and an FBI 302 for Edward F. Butler, former President of Regions Bank (Exhibit D-23).

Committee counsel sent Judge Porteous an exhibit list on Friday, October 26, and recited again the list of document disclosures previously made to Judge Porteous or his counsel (Exhibit D-24).

Members of the Committee, Special Counsel and Chief Judge Jones' assistant arrived in New Orleans over the weekend to complete preparations for the hearing. Evidence was taken on Monday and Tuesday, October 29-30. The Committee investigators presented ten live witnesses, the second of whom was Judge Porteous. 96 documents were admitted into evidence. Two attorneys from

DOJ represented the complainant at the hearing but did not submit oral or written argument. *See* 5th Cir. Misconduct Rule 12(c).

Judge Porteous represented himself. He presented oral argument and offered motions; he cross-examined witnesses; and he presented two defense witnesses (Claude C. Lightfoot, Jr. and Don Gardner). He represented himself competently.[7]

Throughout its investigation leading up to the hearing, the Committee fully apprised Judge Porteous of evidence that would be offered against him and afforded him all rights conferred by 5th Cir. Misconduct Rules 10 and 11.

Having compiled as complete information as it could on the allegations in the charge document dated October 18, the Committee files the following Findings of Fact and Conclusions of Law.

Any member of the Council is welcome to review any or all of the underlying files, which are available both in New Orleans and Houston.

III. Findings of Fact and Conclusions of Law

The Committee commenced its factual investigation following its receipt of the "Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr." on May 21, 2007. The Committee engaged the services of attorneys

[7] Although Judge Porteous continued to assert some type of disability during the hearing, he offered no further evidence of such, and the record belies any defects of memory or legal ability.

Ronald G. Woods and Lawrence D. Finder as Committee Counsel to assist its investigation.

Committee Counsel were tasked with numerous duties, including but not limited to: reviewing thousands of pages of documents which had been subpoenaed by the federal grand jury; reviewing reports of investigation created by the Federal Bureau of Investigation; reviewing the transcripts of numerous witnesses who were subpoenaed and testified before the federal grand jury; conducting numerous independent witness interviews; obtaining the assistance and cooperation of federal prosecutors and law enforcement agents who had worked on the criminal investigation; performing necessary legal research; requesting statutory immunity for witnesses, when appropriate; drafting the charge of judicial misconduct; calling witnesses in the hearing on judicial misconduct; assisting in the drafting of this report; and generally providing legal counsel to the Committee as needed.

The Committee herewith reports its factual findings based on the evaluation of the evidence and the credibility of the witnesses, and its conclusions of law in the following five substantive areas:

1. Bankruptcy Fraud and Violations of the Order of the Bankruptcy Court;
2. Bank Fraud Involving a Loan at Regions Bank;
3. Receipt of Cash, Gifts and Other Forms of Remuneration;

4. Financial Disclosure Report Violations; and

5. Violations of the Canons of the Code of Conduct for United States Judges

Since the factual findings often involve acts of misconduct that simultaneously violated ethical canons, criminal statutes and financial disclosure obligations, there is unavoidably a certain amount of repetition among the five substantive categories of this report.

1. BANKRUPTCY FRAUD AND VIOLATIONS OF THE ORDER OF THE BANKRUPTCY COURT

Judge Porteous chose to be a public servant and support his family on his judicial income. He had a wife, Carmella (now deceased), with whom he had several children. He had a mortgage, car notes, private school tuition expenses, and other normal expenses associated with everyday living. Carmella did not have steady employment outside of the home and did not contribute much to the family's income. Porteous also succumbed to alcohol abuse and excessive gambling, and was not able to support his lifestyle on a judicial salary. By the end of 2000 his credit card debt exceeded his annual income as a United States District Judge.

In June or July of 2000 Porteous engaged bankruptcy counsel Claude Lightfoot (Hearing Transcript, pp. 442 – 448).[8] As will be seen below, Lightfoot

[8] Future references to Hearing Transcript are identified as "p. ___."

and Porteous attempted to "workout" a settlement with certain unsecured creditors (primarily credit card companies), while consciously preferring other unsecured creditors (not all of whom were disclosed to Lightfoot by Porteous). The "workout" attempt failed, and Lightfoot then advised Porteous to file Chapter 13 bankruptcy. When Porteous expressed concern that a public bankruptcy filing would be embarrassing, Lightfoot suggested that the original petition be filed with false names, and later amended with the correct names – an idea that Porteous embraced.

A debtor who files for Chapter 13 bankruptcy assumes certain responsibilities. The debtor must abide by the rules set by the Chapter 13 trustee (11 U.S.C. § 521(a) (2)) and by the order(s) of the Bankruptcy Judge.

A. False Petition

Porteous admitted that on March 28, 2001, he and Carmella filed a Voluntary Ch. 13 Bankruptcy Petition in the Eastern District of Louisiana Bankruptcy Court, Docket No. 01-12363 (from Ex 1; SC122).[9] The Chapter 13 Trustee was S.J. Beaulieu, Jr.

At his hearing before the Committee, Porteous did not dispute that his voluntary petition listed false names for the debtors, i.e., "Ortous, G.T." and joint

[9] On June 4, 2001, then Chief Judge Carolyn King assigned U.S. Bankruptcy Judge William Greendyke of the Southern District of Texas to preside over this case in the Bankruptcy Court for the Eastern District of Louisiana. See EX. 1, SC 65.

debtor "Ortous, C.A.," or that the debtors' listed address was "PO Box 1723, Harvey, LA." (Ex 23) (pp. 52 – 53) instead of the Porteous's home or office address. Porteous also agreed that his application for "PO Box 1723" was dated March 20, 2001, or about eight days prior to filing Chapter 13 (pp. 53 – 55).

Porteous acknowledged that the jurat to the original Chapter 13 petition reads, "I declare under penalty of perjury that the information provided in this petition is true and correct." He admitted that neither his name nor his wife's name is "Ortous" and conceded that the bankruptcy petition that he signed under penalty of perjury contained false information. (p. 55). Porteous filed an Amended Voluntary Chapter 13 Petition (Ex 1; SC 120) on April 9, 2001. This amended pleading contained the correct names of the debtors and the Porteous long-time residential street address.

Lightfoot testified, under questioning by Porteous, that the intentional inclusion of aliases (and presumably the misleading PO Box address) in the bankruptcy petition was his "stupid idea," but that Porteous signed the petition. Lightfoot also testified that the falsifications were not intended to be fraudulent, but to save Porteous the embarrassment of the public's knowing that he was bankrupt (pp. 435 – 436).

This explanation for filing a misleading and false petition in a federal bankruptcy case is inconsistent with Judge Porteous's ethical obligation.

Porteous agreed that under Canon 2A, judges must freely and willingly accept restrictions on their personal conduct and activities. Indeed, the law mandates that judges file annual financial disclosure reports for the very purpose of exhibiting transparency to the public. The scheme to obfuscate the true identities of the debtors not only contravened Porteous's ethical duty as a sitting Article III judge, but was also a false statement made under oath. Porteous's explanation for lying is as irrelevant as Lightfoot's attempt to take responsibility for Porteous's conduct. A lay person might argue that (s)he relied upon the advice of counsel when knowingly putting false information into a court document filed under penalty of perjury, but a federal judge cannot reasonably avail himself of such a defense.

The crime of perjury requires that Porteous willfully subscribed as true a material matter, i.e., his name and that of his wife, which he did not believe to be true. 18 U.S.C. §1621(2). The crime of conspiracy to commit perjury requires one to know of the illegal purpose of the agreement and willfully join it, with an overt act in furtherance of the agreement. 18 U.S.C. §371.

B. Impermissible Debts

Porteous was explicitly warned by the Chapter 13 trustee, S. J. Beaulieu, his own attorney, and Judge Greendyke that he could not incur more debt while in bankruptcy. Examples of incurring debt would include using credit cards

(including credit cards not disclosed to the trustee) and taking out gambling markers. A "gambling marker" is a form of credit.[10]

Following the filing of his Chapter 13 bankruptcy petition, Porteous received a pamphlet from Beaulieu titled, *Your Rights and Responsibilities in Chapter 13* (Ex. 11; SC 399 - 403). Page six of that pamphlet contained the admonition, "you may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy Court." (SC 402). Porteous testified that he recalled receiving the pamphlet from Beaulieu (p. 60). Similarly, Porteous testified that in his "§341 hearing" (first meeting of creditors) of May 9, 2001 (Ex. 22; SC 598), in the presence of Lightfoot, he recalled being told by Mr. Beaulieu that he could not use credit cards any longer and understood that he could not incur more credit while in bankruptcy (pp. 61 – 62). Porteous was also aware of Judge Greendyke's Order of June 28, 2001 (docketed July 2, 2001) confirming Porteous's Chapter 13 plan (from Ex. 1; SC 50), which plainly warned that "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee." (p. 62).

[10] A gambling "marker" is a form of credit extended by a gambling establishment, such as a casino, that enables a customer to borrow money from the casino. The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution should the customer not repay his/her debt to the casino. The marker authorizes the casino to present it to the bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time. Porteous testified that this definition of a "marker" was accurate (p. 64).

In spite of the clear directives against a Chapter 13 debtor incurring more debt, Porteous continued to incur debt through gambling and improper use of credit cards. In fact, according to lead FBI case agent Wayne Horner's testimony, Porteous took out approximately $31,000 in markers from August 20, 2001, through July 5, 2002, at various casinos, including Treasure Chest Casino in Kenner, Louisiana; Harrah's Casino in New Orleans, Louisiana; Beau Rivage Casino in Biloxi, Mississippi; Grand Casino in Gulfport, Mississippi. Out of the $31,000 in markers, Porteous left the casinos owing $14,000, which he paid back at later dates (pp. 294-315) (Ex. 49; SC 1131(Grand Casino); Ex. 51; SC 1198 (Beau Rivage); Ex. 52; SC 1314 (Harrah's); and Ex. 54; SC 1435-1439 (Treasure Chest)).

As further examples, Porteous admitted that from August 20 -21, 2001, he borrowed $8,000 by taking out eight $1,000 markers from the Treasure Chest Casino in Kenner, Louisiana (pp. 65 – 66). Porteous further admitted: taking out a $1,000 marker from Treasure Chest on August 21, 2001 (Ex. 54; SC1438) and not paying it back until September 9, 2001 (p. 67); taking out another $1,000 marker from Treasure Chest on August 21, 2001 (Ex. 54; SC1438) and not paying it back until September 9, 2001 (pp. 67 – 68); and taking out a $1,000 marker from Treasure Chest on August 21 but not paying it back until September 15, 2001 (Ex. 54; SC 1438). Porteous did not dispute that during October 17-18, 2001, he also

borrowed via markers in excess of $5,900 from the Treasure Chest Casino, $4,400 of which was not paid back until November 9, 2001 (p. 70).

Markers were not the only means by which he incurred more debt during the pendency of the bankruptcy. Porteous admitted that his co-debtor wife used a Fleet credit card on March 8, 2001, at Harrah's Casino in New Orleans (p. 73). The Fleet credit card was not listed in on the debtors' Schedule F (Creditors Holding Unsecured Nonpriority Claims, a list including credit cards) of the Amended Bankruptcy Petition, filed April 9 [2001] (from Ex. 1; SC 102-105). As will be discussed below, the balance of the Fleet card was paid in full immediately prior to bankruptcy by Porteous through his secretary, Rhonda Danos, thus making Fleet a preferred creditor and enabling Porteous and/or his wife to have a credit card available for gambling and other uses.[11]

Porteous did not dispute that the Fleet card (Ex. 21) was not listed among the fifteen disclosed credit cards appearing on Schedule F of his Amended Bankruptcy Petition (pp. 74 – 75). He also admitted that use of the Fleet credit card for any purpose post-bankruptcy was an extension of credit and the incurring of additional debt (p. 75). For example, Porteous admitted that the Fleet credit card was used for purchases and cash advances in the amount of $734.31 throughout May and June 2001 (Ex. 21; SC 592) (pp. 76 – 77). These extensions of credit, as indicated

[11] The Fleet credit card was in the name of Carmella Porteous.

by the billing statement, included use at the Treasure Chest casino on May 16, 2001 ($174.99) and the Oasis Hotel in Gulfport, Mississippi on May 28, 2001 ($105.65). Similarly, Porteous admitted that the Fleet credit card was used at Harrah's in New Orleans for $91.99 on June 24, 2001 and Treasure Chest for $68.99 on July 1, 2001 (Ex. 21; SC 593) (pp. 77).

The omission of the Fleet credit card from Schedule F could hardly have been inadvertent. Lightfoot sent out "workout" letters to thirteen unsecured creditors (from Ex. 1; SC 297 - 299) prior to Porteous filing bankruptcy. He notified Judge and Mrs. Porteous of the list of creditors and explicitly stated which credit card companies were contacted ("I enclose a copy of the letters and one copy of the attachments I included with each that I have sent to all of the unsecured creditors, with the exception of Regions Bank, which we wanted to exclude, proposing the workout of the debts to each by settlement and release as opposed to the filing of bankruptcy."). The thirteen unsecured credit card companies are then listed on the attachment (SC 298). Conspicuously absent from the list of thirteen is Fleet. Even had Porteous negligently missed Fleet on Schedule F, the Lightfoot workout letter would have given him prior notice of its omission, and would have created an earlier opportunity for Porteous to have called the omission to Lightfoot's attention.

Incurring additional debt via gambling markers and use of an undisclosed credit card were just two acts of concealment by Porteous during bankruptcy. He also failed to disclose other salient facts to the trustee, such as the impending receipt of a tax refund due and owing him and his wife, the existence of a Fidelity money market account, and the undervaluing of his Bank One checking account. This pattern of concealment is now addressed.

C. Other Bankruptcy Misrepresentations

Porteous admitted that his Amended Bankruptcy Petition of April 9, 2001 contained a "Chapter 13 Schedules and Plan," Schedule B, Question 17 (from EX 1; SC 95) requesting "other liquidated debts owing debtor including tax refunds . . ." and that he answered the question by checking the "**none**" box (pp 80 – 82). Question 20 on Schedule B also asks for disclosure of unliquidated claims, including tax refunds, to which Porteous similarly checked "**none**." The Schedules contain a declaration within the jurat (SC 111) that provides,

> I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 18 sheets plus the summary page, and that they are true and correct to the best of my knowledge, information, and belief.

The jurat was signed by Porteous and his wife on April 9, 2001. In fact, Porteous knew he would be receiving a tax refund in excess of $4,000 when he went into

bankruptcy. On March 23, 2001, just five days before the original Chapter 13 filing of March 28, 2001, Judge Porteous and Mrs. Porteous filed for a federal tax refund on their 2000 1040 tax return in the amount of **$4,143.72** (EX 24; SC 600). Shortly thereafter, that exact amount was deposited into Porteous's Bank One checking account (EX 25) on April 13, 2001, or just four days after the filing of the Amended Chapter 13 Petition on April 9, 2001. Not only was this tax refund concealed from the Bankruptcy Court, but attorney Claude Lightfoot testified on direct examination to Judge Porteous that he had no recollection of discussing the refund with Porteous (p. 437)[12] and that he (Lightfoot) would never have checked off the box (indicating no refund) had he been advised by the client that a refund was expected (pp. 450 – 451).

Porteous testified that the concealment of the tax refund from his bankruptcy schedule, which was signed under penalty of perjury, was an unintentional oversight. What is certain is that if the existence of the refund was an oversight, that oversight was never rectified. The refund was never reported to the Chapter 13 trustee or made part of the bankruptcy estate.

Porteous admitted that Schedule B – Personal Property, Question 2 (from Ex. 1, SC 95), requested information on all "checking, savings or other financial

[12] Lightfoot's testimony seems at odds with Porteous's statement at the hearing that he (Porteous) discussed the receipt of the tax refund with Lightfoot, and that Lightfoot advised him to put the refund into his (Porteous') account (pp. 83 – 84).

accounts," but that he only listed a Bank One checking account valued at $100. (pp. 79 – 80; 85; 94 – 95). In fact, Porteous's Bank One monthly statement (Ex. 27; SC 606) showed a beginning balance of $559.07 as of March 23, 2001 (only five days before the filing of bankruptcy). Porteous also admitted that he owned a Fidelity money market account (Ex. 28; SC 611) that was not listed on his bankruptcy schedules. On March 28, 2001 – the date Porteous filed Chapter 13 – his concealed Fidelity money market account had a balance of $283.42 according to his Fidelity bank statement of April 20, 2001 (Ex. 28; SC 611). That bank statement also showed that Porteous's average balance for the previous 30 days was $320.29. Porteous testified that he thought he told his lawyer about the existence of the Fidelity account (p. 87), but Lightfoot testified that he was never told of other bank accounts (p. 449).

The Special Committee concludes that Porteous intentionally failed to disclose all his nonexempt property on the Schedules while undervaluing other property. His tax return requesting a refund in excess of $4,000 was signed days before bankruptcy. When that omission is considered with his failure to schedule the Fidelity money market account, and his failure to properly value the Bank One account, a pattern of misrepresentation becomes apparent. Each of these acts violated his oath on the "Declaration Concerning Debtor's Schedules" which he signed under penalty of perjury (from Ex. 1; SC 111).

The same pattern of misstatements is evident in the "Statement of Financial Affairs" portion of the Amended Bankruptcy Petition (Ex. 1; SC 112). In Question 3., "Payments to creditors," (Ex. 1; SC 112), debtors were to list all payments on loans and other debts aggregating more than $600 made within 90 days of filing bankruptcy. Instead of accurately identifying creditors, Porteous's response to Question 3. was "Normal Installments." In fact, the March 2001 monthly statement for the previously mentioned Fleet credit card (Ex. 29; SC 618) shows a balance of **$1,088.41**, due April 15, 2001. The following month's statement from Fleet (Ex. 29; SC 620) shows a payment in full of **$1,088.41** being *posted* by Fleet on March 29, 2001 – or one day after the filing of Chapter 13 bankruptcy. The source of that payment was a check from the personal checking account of Porteous's long-time secretary, Rhonda Danos. She wrote a check on her Hibernia Bank account (Ex. 29; SC 619) that was made payable to Fleet on March 23, 2001 (five days before the filing of bankruptcy), in the amount of **$1,088.41**. The notation on the bottom of the check names "Carmella Porteous" and the account number of the above-referenced Fleet credit card account.

Porteous admitted that Danos paid Fleet via a personal check five days prior to his filing bankruptcy, but he could not recall a reason (p. 97). Rhonda Danos later testified that Judge Porteous asked her to pay the bill, as she never spoke with Carmella Porteous about paying her bills (pp 401-403). This payment by Danos of

the Porteous Fleet credit card had several consequences. First, it was a preferred payment to an unsecured creditor (Fleet). Second, since Fleet was not listed as an unsecured creditor, it also was not listed as a creditor to whom more than $600 was owed within 90 days of filing bankruptcy. Third, the omission violated the jurat to the Statement of Financial Affairs, which was signed and dated by the debtors on April 9, 2001 (from Ex. 1; SC 116) provided,

> I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and they are true and correct.

Finally, the sustained post-bankruptcy activity in the Fleet credit card account demonstrates that Porteous or his wife was continuing to incur credit without the required approval of the trustee or bankruptcy court.

Another preferred payment that Judge Porteous made occurred in connection with two $1000.00 markers that Porteous took out February 27, 2001, from Grand Casino in Gulfport, Mississippi. Grand Casino records (EX 49; SC 1105) reflect that the two markers were taken out on February 27, 2001 and were dropped on, i.e., negotiated against, Porteous's account March 24, 2001. Grand Casino records (EX 49; SC 1131) reflect that Judge Porteous requested on March 27, 2001 (the day before Porteous filed for bankruptcy) that his account be changed to a 30 day hold, and that "he prefers to pick up [the markers] – do not deposit." This same

record reflects that the customer (Porteous) called on April 2, 2001 and asked that the fees be waived because the markers were dropped too soon and also to the wrong account number. Judge Porteous did not disclose this preferred payment in the bankruptcy schedules he filed with his Amended Petition on April 9, 2001.

Rhonda Danos was questioned about a $1,000 check she wrote to the Beau Rivage Casino in Biloxi, Mississippi, dated April 30, 2001. She identified it (Ex. 90; SC 403) as the $1000 check she had written to that casino on behalf of Porteous, and admitted that the check had her notation on it as payment for Judge Porteous (p. 402). She explained that Porteous asked her to pay for a marker he had outstanding since she was going to the Beau Rivage (pp. 402-404). Beau Rivage records (Ex. 51; SC 1197) reflect that Porteous had a balance due of $1000 after a two day trip to the casino on April 7 to April 8, 2001. It is important to note that April 8th was just one day before Porteous filed his Amended Chapter 13 Bankruptcy Petition. The casino record (Ex. 51 SC 1197) reflects that a $1000 payment was made at the cashier's cage by personal check on May 4, 2001. This transaction is yet another example of Porteous making an improper preferred payment to a creditor, and also was not reported on the bankruptcy schedules or Statement of Financial Affairs.

Porteous testified that he did not recall having gambling losses exceeding $12,700 during the one year prior to the commencement of filing bankruptcy, but

also did not dispute that fact. He also testified that he could have incorrectly answered "none" to Question 8 on the Statement of Financial Affairs, where debtors were directed to "list all losses from . . . gambling within one year immediately preceding the commencement of this case . . . " (from Ex.1, SC 113). In fact, Agent Wayne Horner testified that he had compiled a summary chart (Ex. 30; SC 621) that listed all of Porteous's losses and winnings for the period of one year prior to the bankruptcy filing of March 28, 2001, and the total gross losses were actually $12,895.35, and the total gross winnings were $5,312.15 (pp. 317-318), resulting in substantial unreported losses.

Judge Greendyke testified that had he been aware of the preferred payments, the omitted tax refund, the understated bank account balances, and the false names on the petition, he would not have signed the confirmation order and would have sua sponte objected to confirming a plan on the basis of good faith (p. 385). Judge Greendyke also testified that his Confirmation Order forbade the debtor from acquiring new debt and that the bankruptcy schedules were signed under penalty of perjury (p. 381).

FBI Financial Analyst Gerald Fink testified (pp. 365-374) that he performed an analysis of Porteous's financial affairs for the years leading up to the bankruptcy in March 2001, and for the period after bankruptcy in years 2001 and 2002. Mr. Fink testified that Porteous understated his income and overstated his

expenses on the bankruptcy schedules he provided to the Chapter 13 Trustee. Fink provided a summary exhibit (Ex. 72) and a detailed explanation of how Porteous had $24,825 available in 2001, over and above what he reported on his bankruptcy schedules, that should have gone to creditors. He provided another summary exhibit (Ex. 73) and a detailed explanation of how Porteous had $36,000 available in 2002, over and above what he reported in his bankruptcy schedules that also should have gone to creditors.

Porteous's bankruptcy lawyer, Claude Lightfoot, testified that Porteous never told him about the tax refund he applied for, or the actual receipt of that tax refund. Similarly, Lightfoot testified he had no knowledge of Porteous's preferred payments to Fleet credit card and to the casinos. Lightfoot testified that he was never aware of Porteous's casino debts or prior gambling losses, and that he was only aware of a single bank account in which Porteous told him had a balance of $100.

Porteous's misconduct leading up to and during the course of his Chapter 13 bankruptcy was not limited to perjury and ethical violations, but also constituted bankruptcy fraud. The evidence conclusively shows that he knowingly concealed property (or undervalued property) from his lawyer, the trustee and the Court. As a result, there were fewer reported assets in the bankruptcy plan for unsecured creditors, while other creditors were being preferred for payment. His pattern of

preferences, omissions and undervaluing assets was deceitful, in bad faith and acted as a fraud upon the Court and most of the unsecured creditors in violation of 18 U.S.C. §152(a). Similarly, his false declarations were not the result of a series of honest mistakes, but an attempt to continue a lifestyle he was no longer entitled to live while under the protection of bankruptcy laws. These false declarations were in violation of 18 U.S.C. §152(3).

2. BANK FRAUD INVOLVING A LOAN AT REGIONS BANK

Porteous had a longstanding relationship with Regions Bank in New Orleans. The bank's former president, Edward "Buddy" Butler (now retired), was a friend or social acquaintance of Porteous for approximately 20 years (p. 112; 274, 289). Butler had a history of providing Porteous with small, unsecured personal bank loans (for tuition and household expenses) in the range of $2,500 to $5,000 (p. 275). Until 2001, these loans had always been paid back (p. 288).

Butler testified that the difference between an unsecured loan and a secured loan is that a secured loan has collateral securing the debt, while an unsecured loan only has the personal signature endorsement of the customer (p. 275). Butler also testified that the reason to collateralize a loan depends on the size of the loan and the creditworthiness of the customer. He stated the bank is in a much better position if it has collateral (pp. 275 – 276)

Porteous contacted Butler for a $5,000 unsecured loan from Regions Bank. On January 27, 2000, Porteous signed an unsecured promissory note for the $5,000 loan that would mature on July 24, 2000. (Ex. 4; SC 277; 279). The loan documents indicate that the stated purpose of the loan was for "TUITION FOR SON" (Ex. 4; SC 274). As part of the loan package, Porteous signed a "Financial Condition" statement on January 17, 2000, that provided,

> By signing this authorization, I represent and warrant to lender that the information provided above is true and correct and that there has been no material adverse change in my financial condition as disclosed in my most recent financial statement to lender.

(Ex. 4; SC 274). Porteous also checked off the word "NO" in a box on the loan form that asked, "In the last ten years, have you been bankrupt or are you in the process of filing bankruptcy?" (Ex. 4; SC276).

On or about July 24, 2000, Porteous again contacted Butler to get the $5,000 promissory note extended or renewed for another six month term, maturing on January 17, 2001. (Ex. 4; SC 279 – 282).

Porteous admitted that bankruptcy attorney Claude Lightfoot was his lawyer by November/December, 2000 (p. 60). In fact, Lightfoot had been engaged to represent Porteous by the summer of 2000 (pp. 442 – 445). Porteous also admitted

that Lightfoot sent "workout" letters to unsecured creditors on December 21, 2000, that read,

> Dear Judge and Mrs. Porteous,
>
> I enclose a copy of the letters and one copy of the attachments. I included with each that I have sent to all of the unsecured creditors, ***with the exception of Regions Bank which we wanted to exclude,*** proposing the workout of the debts to each by settlement and release as opposed to the filing of bankruptcy (italics and boldface added).

(Ex. 5; SC 296).

On or about January 17, 2001, Porteous again contacted Butler to get the same $5,000 promissory note extended or renewed a second time for another six month term (p. 283). The date of the second renewal on January 17, 2001, followed the Lightfoot "workout" letter by 27 days. The January 17th loan renewal was slightly more than two months prior to Porteous filing for bankruptcy.

When filling out the paperwork for the second extension/renewal of the $5,000 promissory note, Porteous again checked off the "NO" box to the question, "In the last ten years, have you been bankrupt ***or are you in the process of filing bankruptcy?*** (italics and boldface added) (from Ex. 1; SC 290). Porteous also signed the "Financial Condition" statement on January 17th that provided,

> By signing this authorization, I represent and warrant to lender that the information provided above is true and correct and that there has been no material adverse change in my financial condition as disclosed in my most recent financial statement to lender.

Porteous defrauded and made false statements to Regions Bank by failing to disclose his deteriorating financial condition to Butler or anyone else at the bank. Porteous admitted that on January 17, 2001, when he signed the second renewal/extension of the promissory note, Regions Bank had no way of knowing he was discussing "workout" and bankruptcy options with attorney Lightfoot (pp. 111 – 112). Porteous admitted that neither Butler nor anyone else at the bank asked him for collateral to secure the note before approving it on January 17, 2001 (p. 112). As a consequence of this omission, Regions Bank failed to take steps to collateralize the loan. Ultimately, Regions Bank was listed among the unsecured creditors and was eligible for only 34.55 percent of its loan in Chapter 13, or $1,782.43 (per the Chapter 13 Trustee's Final Report and Account, dated May 18, 2004) (from Ex. 1; SC 27).

There is no question that by December 21, 2000, Porteous was considering bankruptcy, and no question that his financial condition had adversely changed since he had received the first renewal/extension of the $5,000 note in July 2000. First, the Lightfoot "workout" letter of December 21st twice references the

possibility of Porteous filing bankruptcy (from Ex. 1; SC 296, 297). Second, the "workout" letter listed $182,330.23 in unsecured credit card debt (from Ex. 1; SC 298). Common experience teaches that credit card interest compounds daily, and with the passing of each day Porteous's financial condition was getting worse. Third, the "workout" letter only listed thirteen credit cards, while Schedule F to the Amended Bankruptcy Petition, filed several months later on April 9, 2001, listed fifteen credit cards with unsecured debt totaling $191,246.73 (exclusive of the Regions Bank promissory note) (from Ex. 1; SC 102 –105). Porteous was in a downward financial spiral that existed well before January 17, 2001, yet he consciously failed to tell his friend "Buddy" Butler and Regions Bank about the severity of his situation (p. 112).

Butler admitted that he had never seen the Lightfoot "workout" letter of December 21, 2000, prior to testifying in court before the Special Committee (pp. 280 – 282). Butler stated that he had no knowledge of any adverse change in Porteous's financial condition as of January 17, 2001 (p. 284). Butler admitted that had he known in advance of Porteous's worsening financial condition, engagement of bankruptcy counsel and mailing of the "workout" letters, he would have followed his bank's loan procedures and would have tried to obtain collateral to secure the loan in order to improve the bank's financial position in the event of a bankruptcy (pp. 287; 291 – 292). When asked about other creditors being paid in

full as preferred creditors, Butler stated "well, I think I would have . . . I think we would have been upset if someone else had gotten paid in full, a hundred percent, and we had been partially paid or not paid at all."

Lightfoot testified that had Regions Bank known of the true financial situation of Porteous in January, 2001, it would have concluded that there was a material change in his financial condition (436-456).

In his testimony, Porteous absurdly suggested a "good faith" type defense in purposely excluding Regions Bank from the December 21, 2000 "workout" in order to benefit the bank. He testified that it was his desire, to the extent possible, "to try and pay Buddy back all of his money" (p. 159), while consciously deciding "in the workout agreements not to include the bank . . ." (p. 159). Porteous testified that the reason for excluding Regions Bank from the "workout" letter was to attempt to work out a solution with the other unsecured creditors in order to pay back Regions Bank 100 percent (p. 288). Stated another way, it was Porteous's plan to make the bank a preferred creditor by making it whole to the exclusion of the other unsecured creditors (p. 289). But it is illogical to suggest that Regions Bank was benefited by being kept in the dark, thus depriving it of the opportunity to collateralize Porteous's note before renewing same in January 2001.

Because Porteous made false statements on his January 2001 loan application, he committed bank fraud under 18 U.S.C. §1344, and made a false

statement on a loan application under 18 U.S.C. §1014. He also violated various judicial canons of ethics in the process.

3. RECEIPT OF CASH, GIFTS AND OTHER FORMS OF REMUNERATION

Porteous has a history of accepting cash, gifts and other forms of remuneration from individuals – mostly his lawyer friends – while sitting as a judge on the state and federal benches. These friends include Jacob "Jake" Amato, Warren A. "Chip" Forstall, Jr., Robert G. Creely, Don C. Gardner and Leonard L. "Lenny" Levenson.

A. The Creely & Amato Cash Infusions

Porteous admitted receiving cash from Jacob Amato, Robert Creely and/or their law firm, Creely & Amato, from the time he was a state judge, and continuing beyond the time he took the federal bench, but he could not recall how much he has received from them over the years (p. 119). The recollections of Creely and Amato were somewhat better. Creely testified that he started giving Porteous cash when Porteous was sitting as a state court judge. The money was ostensibly for things that Porteous needed in his personal life, like tuition expense payments (p. 199). Creely testified that Porteous started asking him for cash while Creely was a partner in the Creely & Amato law firm (p. 200). Creely admitted that when Porteous would ask for cash, the routine was for Creely and Amato to "take a draw" from the firm, i.e., they would go to the law firm bookkeeper, and each

would get a check in the same amount, and each would then cash their respective checks before turning over the money to Porteous (pp. 200 – 201). Creely testified that only cash, not checks, was given to Porteous (p. 201). Creely estimated that he and Amato gave Porteous no less than $10,000 cash over time (p. 201) and there was no expectation of Porteous ever paying the money back, i.e., the money was a gift (p. 202).

Amato's recollection of giving cash to Porteous differs from Creely's as to when the payments commenced as well as other details. However, Amato also recalls that he and Creely gave Porteous about $10,000 to $20,000 over a period of time (pp. 239, 247).

Porteous initially testified that he never considered the cash he received from Amato or Creely (or their firm) to be income; it was either a loan or a gift (p. 119). Porteous then admitted that since he never paid back the cash, any loan would become income to him unless it was forgiven as a gift (p. 119). Porteous then admitted that he neither reported the cash on his income tax return as income (p. 120), nor on his judicial Financial Disclosure Reports as gifts during years 1994 – 1999 (from Ex. 3, SC 215 – 238), despite the fact that Porteous certified each year's Financial Disclosure Report as being true and accurate.

B. <u>The Curatorship Scheme</u>

The manner and means of Amato, Creely and their law firm supplying Porteous with cash evolved over the years. Creely testified there came a time when Porteous was on the state bench that "we [Creely and Amato] just couldn't keep giving him money." (pp. 202 – 203). Porteous solved that problem by sending "curatorship" cases, or simply "curatorships" over to the Creely & Amato law firm, then exacted a kickback of sorts in cash. Creely explained that a curator "is a court appointed attorney that the . . . district court, Jefferson Parish . . . would appoint an attorney to represent an absentee defendant." (p. 204). These curatorships came to the firm "often," (p. 204), and each had a set fee of $175.00 per defendant plus expenses (p. 205). Creely testified that Porteous would then request back a "good portion" of the curatorship fees that were paid by the court, which he estimated to be more than 50 percent of the fees (pp. 206 – 209). Creely also characterized the curatorship arrangement as a method for him to give Porteous cash "without coming out of my pocket." (pp. 208 – 209). Although the curatorship fees were paid to Creely & Amato by the state district court, the sources of the money were the lending institutions that had filed the foreclosure lawsuits and had to post the curatorships (p. 210). On cross-examination by Porteous, Creely would not characterize the curatorships as "kickbacks," but instead characterized the arrangement as "a continuation of what had gone on the years or year before that, that you wanted money." (p. 229). When Porteous

attempted to get Creely to agree that the purpose of the curatorships he sent to the firm was to "help defray some" of the costs of employing a young lawyer named Gary Raphael,[13] Creely refused to agree with that characterization. (pp. 232 – 233).

Amato's recollection of the curatorship fee arrangement is similar to Creely's, except Amato does not recall Porteous ever asking for cash prior to the curator arrangement (p. 237). Amato testified that he learned of the curatorship scheme from Creely, and while he did not like the idea, he felt it was something they had to do (p. 239). Amato did not recall himself ever giving Porteous cash back from curatorships, as the payments were made through Creely as the conduit (p. 239).

C. <u>The Fishing Trip Request for Cash</u>

Porteous testified that he could not recall asking Amato for thousands of dollars during a fishing trip on a friend's boat around May/June 1999 to help pay for Timmy Porteous's wedding later that summer (p. 135). However, Porteous did admit sending Rhonda Danos to the Creely & Amato law firm during that time period to pick up an envelope with cash inside. Porteous did not dispute that the amount of cash could have been $2,000 (pp. 136 – 137). Porteous characterized this money as a loan (p. 137), but admitted that he never paid it back (p. 138). Porteous also admitted that when he filed for bankruptcy in 2001, he did not list

[13] Porteous suggested that Mr. Raphael was hired by Creely & Amato on his (Porteous') recommendation, but had not worked out to Creely's satisfaction.

the "loan" as an outstanding debt (p. 138). Porteous also admitted since the loan was never paid back, it became income; but that he never reported that "income" on his federal tax return and never reported the income as "other income" on his Financial Disclosure Report for calendar year 1999 (Ex. 3, SC 235 – 238) (p. 138). (If the "loan" was a "gift," Porteous did not list it in the gift section of that Financial Disclosure Report (SC 236).)

Creely and Amato have better recollections of the fishing trip request. Amato testified that he was fishing with Porteous around the time that one of Porteous's sons was getting married or had just been married (p. 240). Porteous became emotional about being "set back" financially for the wedding, and said that he needed help (p. 240). Within two or three days of that request, Amato cashed a check – or he and Creely each cashed checks – and then Amato handed Porteous $2,000 or $3,000 in cash (pp. 241, 244).

Creely recalls the incident differently, assuming it was the same incident. Creely testified that Amato told him that he (Amato) had been on an overnight fishing trip with Porteous in the May/June time frame. Porteous became emotional and asked Amato for financial help for assistance with the tuition payment for one of his (Porteous's) children (pp. 211 – 212). Creely and Amato agreed to take equal $1,000 draws from the firm and then make the cash available to Porteous (p. 213). Creely then testified that Rhonda Danos came to the firm to pick up an

envelope with the cash inside, and that he and Amato thereafter expressed their displeasure to Porteous for inappropriately sending over his secretary over to pick up money; that it was too "blatant." (pp. 214 – 215).

Amato testified that he believes the $2,000 or $3,000 that he gave Porteous may have been a different incident from what Creely recalled (p. 244), and was not even certain whether he told Creely about it or got a contribution from Creely (p. 244). If Amato is correct, and the incidents are separate, then in the May/June 2001 time period Porteous received somewhere between $4,000 - $5,000 from Creely and/or Amato and/or the Creely & Amato law firm.

As is discussed elsewhere in this Report, the cash payment(s) ranging from $4,000 to $5,000 that Porteous received in May/June 1999 from Creely and/or Amato and/or the Creely & Amato law firm occurred at a time when Amato was representing a party in the *Liljeberg* case, a hotly contested matter pending before Porteous.

D. <u>The Las Vegas Bachelor Party Trip</u>

In May of 1999, Porteous's son Timmy was having a three day bachelor party in Las Vegas. Among those who attended were Porteous's lawyer friends Creely and Don Gardner. Porteous admitted that he used an airline ticket provided by Warren A. "Chip" Forstall for his (Porteous's) transportation to his son's

bachelor party in Las Vegas in May 1999 (p. 139).[14] Porteous admitted the hotel room he stayed in at Caesar's Palace was paid for by Mr. Creely, and the value of that lodging exceeded $250 (p. 140). Porteous also admitted that he never reported that gift on his Financial Disclosure Report for calendar year 1999 (p. 140). Porteous admitted that the food he ate on that trip was also paid for by Creely "and maybe some other people . . ." (p. 141), but the value of the meals was not reported on his Financial Disclosure Report for calendar year 1999 (p. 141). Porteous admitted that the *Liljeberg* case was pending before him in May 1999 when he went to Las Vegas accompanied by Creely, Gardner and others (pp. 154 – 156). While Creely was not an attorney of record in *Liljeberg*, his partner Jacob Amato was a counsel for Liljeberg. Gardner was also an attorney in the *Liljeberg* case as a counsel for the another party, Tenant/Lifemark. (Ex. 82). Creely admitted attending the Las Vegas bachelor party with Porteous in May 1999, and did not dispute paying for Porteous's lodging (p. 219).

E. <u>Unexplained Cash Balances and Transactions</u>

FBI Financial Analyst Gerald Fink testified that he examined the subpoenaed bank records of Porteous and secretary Rhonda Danos. Fink testified that Porteous had cash deposits (over and above his direct deposit judicial salary) into his bank accounts of $80,429.08 for the years 1998, 1999 and 2000 (Ex. 94)

[14] It is important to note that the value of the airline ticket originally given to Porteous by Forstall is not reflected in any Financial Disclosure Report for calendar years 1994 through 1999 inclusive. See EX. 3.

(pp. 354 – 355). Fink testified that Rhonda Danos had cash deposits (over and above her direct deposit federal salary) into her account of $49,120.77 in 1999, and $10,907.03 in 2000 (Ex. 93) (pp. 353-354).

Since Porteous, Robert Creely, Joseph Amato, and Don Gardner all testified that there was cash given to Porteous, but few could remember with much certainty when cash was given or the amounts, Fink's testimony is probative in confirming that unexplained cash was deposited into the accounts of Porteous and Danos.

Danos testified that in 1999 and 2000 she was paying Porteous's bills and that he would reimburse her for those payments. When asked why the checks Porteous wrote to reimburse her did not match the total she had spent paying his bills, she testified that the balance was paid in cash (401-419).

Fink analyzed Rhonda Danos' bank account and produced summary exhibits (Ex. 91 and Ex. 92) showing that Danos paid $41,176.97 for Porteous's bills in 1999 and 2000. She was reimbursed by Porteous's checks in the amount of $32,555 in 1999 and 2000, thus leaving a shortfall of approximately $9000. Danos' take home pay as Porteous's secretary in 1999 was approximately $29,000 (pp 350-354).

4. FINANCIAL DISCLOSURE REPORT VIOLATIONS

Article III and other federal judges have statutory financial disclosure reporting obligations. Title 5, United States Code Appendix, §§ 101 et seq., the

Ethics in Government Act of 1978, or, the "Act," requires judges to file annual financial disclosure reports as of May 15 of the succeeding year.

Section 101 (f) (11) of the Act includes a "judicial officer" within its purview.

Section 102(a) (1) (A) of the Act provides in pertinent part, that each report filed -

> "shall include a full and complete statement with respect to . . . the source, type, and amount or value of income . . . from any source (other than from current employment by the United States Government) received during the preceding calendar year, aggregating $200 or more in value .."

Section 102 (a) (2) (A) of the Act provides in pertinent part that for each report filed there shall be disclosure of -

> "the identity of the source, a brief description, and the value of all gifts aggregating more than . . . $250 . . . received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of

> $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

Section 109 (10) of the Act defines "judicial officer" to include –

> "the . . . United States district courts . . . and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior."

Porteous is and has been statutory obligated to file complete, true and accurate annual financial disclosures since assuming Article III status in 1994.

Porteous acknowledged awareness of Canon 5(C)(1)'s proscription against a judge's financial and business dealings that reflect adversely on his impartiality or involve the judge in frequent transactions with lawyers likely to come before the judge; Canon 5(C)(4)'s proscription against a judge soliciting or accepting anything of value from anyone seeking official action or doing business with the court served by that judge; as well as a duty to endeavor to prevent a member of the judge's family from accepting such gifts except to the extent the judge is so allowed by the Judicial Conference gift regulations (pp. 43 – 44).

Porteous acknowledged his awareness of the requirement to report the value of any gift, favor or loan as required by statutes or the Judicial Conference as per Canon 6(C) (p. 45). Indeed, Porteous did report as gifts two hunting trips on his

Financial Disclosure Reports for calendar years 2004 (from Ex. 3; SC261) and 2005 (from Ex. 3; SC 267). But, he never reported any gifts prior to 2004.

Every one of Porteous's judicial Financial Disclosure Reports for calendar years 1994 through 2005 (Ex. 3) contain a jurat that reads as follows,

> I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Below the signature line for the subscribing judge is a cautionary note that provides,

> ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

The evidence detailed in the preceding sections of this report is incorporated herein by reference. That evidence includes the testimonial admissions by Porteous, as well as the testimonial admissions of Creely and Amato, of cash payments made to Porteous following the fishing trip of May/June 1999 (during the pendency of the *Liljeberg* case). Porteous received from $4,000

to $5,000 from Creely and/or Amato and/or the law firm of Creely & Amato. Had that cash been a loan, it should have been reported in the "LIABILITIES" section of the Financial Disclosure Report for Calendar Year 1999 (from Ex. 3; SC 236). Had that cash been a gift, it should have been reported in the "GIFTS" section of that same report. Had that cash been a loan that was made with expectation of repayment, and had not been repaid, then it would have become income and should have been reported in the "NON-INVESTMENT INCOME" section of that same report (and his federal 1040 income tax return). If Porteous could have divined another characterization for the cash that he surreptitiously received, he had the opportunity to report it in the catchall section of the report titled, "ADDITIONAL INFORMATION OR EXPLANATIONS." If Porteous needed advice from the Administrative Office for United States Courts or the Committee on the Code of Conduct on how or whether to report this cash, he could have requested an advisory opinion, but did not do so (p. 40).

Similarly, Porteous did not disclose the gifts he received leading up to and including his son's bachelor party in Las Vegas during May 1999. The airline ticket that was originally purchased by Warren Forstall and given to Porteous was not listed; the cost of the hotel room for the three-day stay courtesy of Robert Creely was not listed. The cost of the meals provided by any of the other hosts, including Don Gardner, was not listed. Anyone who might have examined

Porteous's Financial Disclosure Report for Calendar Year 1999 would have been ignorant that Porteous was treated to a three day sojourn in Las Vegas.

When Porteous signed the Financial Disclosure Report for Calendar Year 1999 on May 5, 2000, and certified that it was "accurate, true, and complete" to the best of his knowledge, he not only falsified the report in violation of Canon 6 (C), but also made a false statement to the judicial branch of the government of the United States in violation of 18 U.S.C. §1001.

Porteous's Financial Disclosure Report For Calendar Year 2000 suffers from other, but equally serious infirmities. Porteous signed and certified this official government report on May 10, 2001 (from Ex. 3; SC 242).

It should be remembered that Calendar year 2000 is the year immediately before Porteous filed Chapter 13 bankruptcy. As mentioned elsewhere in this report, Porteous was in a downward financial spiral by the time he had engaged Lightfoot in the summer of 2000, and was on the brink of bankruptcy when Lightfoot sent out the "workout" letter to unsecured creditors on December 21, 2000 (Ex. 5; SC 296). The "workout" letter listed thirteen separate credit card companies with balances ranging from $5,349.47 on the low end (First USA Bank) to $28,708.98 on the high end (MBNA America), for total liabilities of $182,330.23. When Porteous filed his Amended Bankruptcy Petition on April 9,

2001, he listed fifteen separate credit cards (excluding his debt to Regions Bank) with total liabilities of $191,246.73 (from Ex. 1; SC 105).

One would therefore have expected Porteous's Financial Disclosure Report For Calendar Year 2000 to reflect the liabilities and debt that he had accrued in the year immediately prior to filing bankruptcy. But such is not the case.

In the "LIABILITIES" section of that report (from Ex. 3; SC240), Porteous listed just two credit cards, a single MBNA account and a single Citibank account, each of which was ascribed a Value Code of "J," which according to the legend at the bottom of the page means $15,000 or less. (SC 240). In other words, Porteous reported that his total liabilities for calendar year 2000 did not exceed $30,000 (pp. 115 – 116).

Porteous admitted that Schedule F of the Amended Bankruptcy Petition (from Ex. 1; SC 102 – 103), filed April 9, 2001 (a month before Porteous signed and certified his Financial Disclosure Report for Calendar Year 2000), listed three separate Citibank credit card accounts in the amounts of $23,987.39, $20,719.58, and $17,711.35. Furthermore, each of these Citibank credit card accounts, standing alone, represented a liability greater than Value Code J ($15,000), and the total of the three Citibank credit cards represented liabilities of $62,418.86 (or at least $47,418.86 more in liability than Porteous reported as owing to Citibank on his certified Financial Disclosure Report).

Porteous also admitted that while he reported a single MBNA credit card liability on his Financial Disclosure Report for 2000, there were in fact three MBNA accounts (pp. 117 – 118).

The credit card accounts appearing on Schedule F of the Amended Bankruptcy Petition (from Ex. 1, SC 104-105) list three separate MBNA credit cards in the amounts of $3,212.80, $30,931.02 and $29,443.71, for total MBNA liabilities of $63,587.53. Only one of the these MBNA accounts was within the "J" range of "$15,000 or less," as reported by Porteous on his Financial Disclosure Report, while the other two MBNA credit cards each represented liabilities greater than $15,000. The total MBNA credit card liability was at least $48,587.53 greater than Porteous reported on his certified Financial Disclosure Report for Calendar Year 2000.

When Porteous was asked to agree that his certification for this report was "false," he replied that "it was not accurate" (p. 118). Whatever words are used to describe his false statements, it is beyond dispute that the report required its subscriber to provide "accurate, true and complete" information. Porteous provided inaccurate, false and incomplete information. In so doing, he not only falsified the report in violation of Canon 6 (C), but also made a false statement to the judicial branch of the government of the United States in violation of 18 U.S.C. §1001.

5. VIOLATIONS OF THE CANONS OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

The evidence detailed in the preceding sections of this report is incorporated herein by reference.

Judge Porteous was a Louisiana state trial judge for a decade before receiving his commission as a United States District Judge on October 11, 1994. Porteous admitted that as a state judge, he was subject to the strictures of the Louisiana Code of Judicial Conduct ("Louisiana Code") (Ex. 85), and that the Louisiana Code imposed obligations and restrictions upon his conduct and activities similar to its counterpart, the Code of Conduct for United States Judges ("the Code" or "the Canons") (pp. 49–51). This admission is important for two reasons: first, Porteous's state court experience placed him generally on notice of what constituted acceptable or unacceptable judicial conduct; and second, the state court experience precluded him from claiming ignorance of the general rules of judicial conduct which carried over to the federal realm.

Porteous testified that he was familiar with the July 1997 booklet published by the Administrative Office of the United States Courts, *Getting Started As A Federal Judge*, and (p. 36 / Ex. 80 for identification). During questioning about the substance of that booklet, Porteous was asked whether he agreed with certain of its instructions. For example, Porteous agreed that new judges should review the ethical guidelines set forth in the Code of Conduct. He agreed that a judge has

a continuing obligation to examine his/her personal/financial interests and those of the family (p. 38). He agreed that federal judges must be vigilant when continuing relationships with former colleagues (p. 39). He agreed that under Canon 3, judges are required to disqualify themselves in proceedings where their impartiality might reasonably be questioned (p. 39). He agreed that under Canon 2A, judges must freely and willingly accept restrictions on their personal conduct and activities (p. 39). He admitted that he was familiar with the Code of Conduct for United States Judges (p. 40 / Ex. 18).

Porteous admitted that he never asked for an ethical advisory opinion from the Committee on the Code of Conduct (p. 40).

Porteous admitted familiarity with **Canon 1**, which requires judges to uphold the integrity and independence of the judiciary (p. 40). He agreed that judges should comply with the law as well as the provisions of the Code (of Conduct) (p. 41).

Porteous agreed with **Canon 2** that a judge should respect and comply with the law (p. 41). He agreed with **Canon 2A** that judges must accept certain restrictions in their personal lives after taking the federal bench, and that actual improprieties include violations of law as well as court rules (pp. 41 – 42).

Porteous acknowledged familiarity with **Canon 3(C)**'s statement that a judge shall disqualify himself in a proceeding where his partiality might reasonably

be questioned, or in the alternative under **Canon 3(D)**, that the judge may disclose the basis of disqualification to the parties (42 – 43).

Porteous acknowledged awareness of **Canon 5(C)(1)**'s proscription against a judge's financial and business dealings that reflect adversely on his impartiality or involve the judge in frequent transactions with lawyers likely to come before the judge, and **Canon 5(C)(4)**'s proscription against a judge soliciting or accepting anything of value from anyone seeking official action or doing business with the court served by that judge; and required that a judge must endeavor to prevent a member of the judge's family from accepting such gifts except to the extent the judge is so allowed by the Judicial Conference gift regulations (pp. 43 – 44).

Porteous acknowledged his awareness of the requirement to report the value of any gift, favor or loan as required by statutes or the Judicial Conference as per **Canon 6(C)** (p. 45).

Of the numerous ethical violations committed by Porteous and detailed elsewhere in this report, arguably none was more egregious than Porteous's misconduct during the *Liljeberg* case.

In Re: Liljeberg Enterprises Inc., et al. v. Lifemark Hospitals, Inc., Case #2:93-cv-01784 was originally filed on June 1, 1993, and assigned to United States District Judge Marcel Livaudais (Ex. 82) (p. 147). After assignments to various other District Judges, the case was eventually reassigned to Porteous on January

16, 1996. This very complicated lawsuit concerned a property rights dispute between the owners of a pharmacy and a hospital.

To explain the context in which Porteous's ethical lapses occurred, a brief chronology of the case, along with the identity of some it its attorneys, is required. Prominent among the many lawyers that appeared in the case were Porteous's long-time friends, Jacob Amato, Don Gardner and Lenny Levenson. Amato and Levenson were on the Liljeberg side, while Gardner was hired by the Lifemark team only 3 months before trial. Notably, none of these three lawyers was considered a regular federal court practitioner. Porteous considered his friend Gardner to be a "divorce lawyer" (pp. 147, 152). Porteous admitted that his friend Jacob "Jake" Amato, elsewhere described as a personal injury lawyer, did not typically try this type of case in federal court (p. 149). Finally, Porteous admitted that Leonard "Lenny" Levenson, described elsewhere as personal injury lawyer, also did not typically try cases in federal court (p. 149). Attorney Joseph Mole, a lead counsel for Lifemark, was not a friend of Porteous (p. 59).

The relevant chronology for the *Liljeberg* case is as follows:

January 16, 1996 – the case is assigned to Porteous (Ex. 82, page 20).

April 4, 1996 - Joseph Mole became an attorney of record for Plaintiff Lifemark. (Ex. 82, page 21).

September 12, 1996 and September 19, 1996 – Leonard Levenson and Jacob Amato, respectively, became attorneys of record for Defendant Liljeberg. (Ex. 82, page 25). These lawyers first appeared 39 months into the case, just nine months after the case was reassigned to Porteous, and less than two months before the case was supposed to go to bench trial on November 4, 1996.

October 2, 1996 - Lifemark filed its motion to recuse Porteous based on Porteous's close relationship with Amato and Levenson (Ex. 19; SC 555) (Ex. 82; page 27).

October 16 or 17, 1996 - Porteous held a hearing on Lifemark's recusal motion, and denied it.

March 11, 1997 - Don Gardner became an attorney of record for Lifemark (Ex. 82; page 37). It is important to note that Gardner made his appearance 45 months into the case, and five months after Porteous ruled against Lifemark in its recusal motion. Joseph Mole testified that he sent a fee agreement letter (Ex. 10) to Don Gardner which had unusual contingencies and different fee levels but guaranteed a fee of at least $100,000 for Gardner. In explaining the fee agreement, Mole stated "I didn't want my client to be made a fool of, and I wanted his loyalty to be a hundred percent to us and not

distracted. I wanted him to be interested in the outcome." (pp. 177-181)

June 16, 1997 – The bench trial commenced before Porteous (Ex. 8; pages 39 – 41)

July 23, 1997 - Porteous took the case under submission.

May 1999 – While the *Liljeberg* case was under submission, Creely, Gardner and others took Porteous to Las Vegas for Timmy Porteous's bachelor party.

May/June 1999 – While the *Liljeberg* case was under submission, Porteous asked Amato for money to help pay for a child-related event (wedding or tuition). Creely recalled that he and Amato each took $1,000 draws from the law firm, placed the cash in an envelope, and Rhonda Danos picked up the cash on behalf of Porteous. Amato recalled directly paying Porteous $2,000 or $3,000 in cash, and believed this was a separate incident from any cash that Rhonda Danos may have picked up in an envelope from the firm.

April 26, 2000 - Porteous rendered findings of facts and conclusions of law (primarily in favor of Liljeberg) (Ex. 82; page 44).

Porteous admitted that it was unusual that three of his friends, who were not considered federal court practitioners, were appearing before him in *Liljeberg*. When asked whether he was concerned or troubled by their collective appearances, he replied, "No, only to the extent that somebody thought they needed to bring somebody else in." (p. 152).

One person who expressed alarm was Joseph Mole. In his Memorandum In Support Of Motion To Recuse, Mole wrote in pertinent part,

> (1) this litigation has a decade-long history; (2) trial in this matter, without a jury is set for **November 4, 1996**; (3) **the Liljebergs already had five long-standing counsel of record when, on September 12, 1996 they added Jacob Amato and Leonard Levenson, two of the Court's closest friends, as additional counsel;** (4) the Liljebergs seek at least $110 million as damages in this extremely complex case, and **they gave Messrs. Levenson and Amato an 11% contingency fee for less than three months involvement;** and (5) the Liljebergs have a documented and clear history of attempting to use political influence and they have accused others of attempting to acquire improper influence over the judiciary. (boldface added).

(from Ex. 19; SC 555-556).

Mole testified that after Amato and Levenson appeared in the lawsuit, he spoke to people in the legal community and in Jefferson Parish politics and his "concerns were substantiated that Jake and Lenny were close to Judge Porteous and that there was a risk that their presence in the case would be a problem for my client." (p. 168).

Porteous totally disregarded his ethical obligations. For example, he should have advised the parties of his financial relationship with Amato and the Creely & Amato law firm as soon as the recusal motion was filed. He should have granted the motion to recuse or given the parties the choice of keeping him as trial judge.

Porteous admitted that he did not disclose to any party in *Liljeberg* that Amato (and his partner Creely) had given him money in the past (p. 152). Amato also admitted that he never disclosed to Lifemark that he had given money to Porteous (pp. 245 – 246).

Mole testified that his client insisted he find another lawyer to add to his team that was close to Porteous in order to "level the playing field," and ultimately Mole was directed to Gardner (p. 174). Gardner and Porteous are still close friends, and Porteous is the godfather to Gardner's daughter (p. 154). Mole felt that having close friends on both sides of the lawsuit would make it more difficult for Porteous to (unfairly) decide the lawsuit (p. 186). Mole testified that he was unaware that Gardner accompanied Porteous to Las Vegas (for the bachelor party)

while the case was under advisement, and was troubled "with the whole system that allows that to happen" (p. 194).

There is nothing in the *Liljeberg* record to suggest that Porteous ever disclosed the closeness of his relationship with Levenson. In his testimony before the grand jury on April 7, 2006, Levenson admitted that he provided travel or living expenses to one of Porteous's sons who was serving a Congressional externship in Washington, D.C. (Levenson Grand Jury, p. 65). Levenson also admitted that during the times when he had matters pending before Porteous in federal court, he would continue to take Porteous out to lunch and pay for the meals (Levenson Grand Jury, pp. 33 – 34). Nevertheless, in the Liljeberg reply memorandum to Lifemark's motion to recuse, which Levenson signed, Levenson calls Lifemark's claims "unsubstantiated and cynical innuendos" and "wild speculation" (from Ex. 19; SC 581). Levenson revealed neither the fact that he often took Porteous to lunch or that he had helped subsidize a Washington, D.C. externship for Porteous's son (from Ex. 19; SC 581 - 584).

Mole testified that when he signed the recusal motion in *Liljeberg* (Ex. 19), he was unaware of any financial relationship between Amato and Porteous or between Levenson and Porteous (p. 169). He also testified that prior to ruling on the recusal motion, Porteous never disclosed his receipt of cash from Amato or Levenson (p. 170). The Canons pertinent to Porteous's misconduct surrounding

the recusal motion in *Liljeberg* are: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

Porteous's ethical lapses in the context of the *Liljeberg* recusal incident were compounded by Porteous's failure to disclose to the *Liljeberg* parties his trip to the Las Vegas bachelor party in May 1999 (in which Creely and Gardner participated), and his receipt of $4,000 - $5,000 from Amato and/or Creely and/or the Creely & Amato law firm in the same time period – all of which occurred while the *Liljeberg* case was in submission before him awaiting decision (pp. 154 – 156). (The evidence pertaining to these events is thoroughly covered above, in the section titled "Receipt of Cash, Gifts and Other Forms of Remuneration.") The Canons pertinent to Porteous's receipt of cash during *Liljeberg* and the Las Vegas trip during *Liljeberg* are: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Bankruptcy Fraud and Violations of the Order of the Bankruptcy Court," which are incorporated by reference herein, show a flagrant disregard by Porteous of the Chapter 13 requirements, not the least of which was Judge Greendyke's court order to Porteous not to incur more debt. Porteous was generally contemptuous of the restrictions imposed upon him by Chapter 13 bankruptcy. William Heitkamp,

Chapter 13 trustee in the Southern District of Texas, testified that the Chapter 13 system depends upon the good faith of the debtor and the debtor's obligation to report his financial data truly and accurately (p. 399). Porteous did everything he could to show bad faith. He filed a petition under a fictitious name; used a newly obtained Post Office box instead of a residential address; failed to disclose the impending receipt of a tax return; omitted a money market account from the Schedules; undervalued a checking account listed in the Schedules; omitted gambling losses from the Statement of Financial Affairs; preferred certain creditors; understated income and overstated living expenses to the trustee; continued to incur debt through the use of gambling markers; continued to incur debt through the use of an undisclosed credit card; and committed perjury on the jurats of the Schedules and Statement of Financial Affairs. The Canons pertinent to Porteous's conduct leading up to and subsequent to the filing of Chapter 13 bankruptcy and his fraudulent activities include: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Receipt of Cash, Gifts and Other Forms of Remuneration," which are incorporated by reference herein, cover a long period of time. An undetermined amount of cash, as well as the curatorship kickback scheme, predate Porteous's

tenure as a federal judge. That Porteous undoubtedly violated the Louisiana Code of Judicial Conduct is relevant to show a common scheme and absence of mistake by Porteous when he continued business as usual after ascending to the federal bench. When Porteous's job changed, his receipt of cash payments from Creely & Amato continued as did the practice of trips and other forms of entertainment from his lawyer friends who sometimes practiced before him. The Canons pertinent to Porteous's receipt of cash, gifts and other forms of remuneration during his tenure as a federal judge, including favors received during *Liljeberg* include: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Bank Fraud Involving a Loan At Regions Bank" are incorporated herein by reference. Porteous's conscious decision to conceal from Regions Bank the adverse changes in his financial condition, while asserting that he intended to benefit the bank, is as disingenuous as it is absurd. The facts support the conclusion that in addition to violating the bank fraud statute and filing false statements on a loan application, Porteous also violated Canon 1, Comm. to Canon 1, Canon 2.A., and Comm. to Canon 2.A.

Another area of ethical violations, also explained above, concerns Porteous knowingly filing false and inaccurate Financial Disclosure Reports. See section

titled "Financial Disclosure Report Violations", which is incorporated herein by reference. Porteous never accounted for the Las Vegas jaunt or the cash ($4,000 - $5,000) he received from Amato and/or Creely and/or the Creely & Amato law firm on his disclosure report for calendar year 1999. In the disclosure report for calendar year 2000, Porteous seriously underreported liabilities by approximately $160,000. In addition to making a false statement when signing the jurats on these disclosure reports, Porteous also violated Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C. and Canon 6(c).

There are two other issues that should be addressed. The first has to do with Porteous's opinion that he properly fulfilled his judicial oath as a federal judge (p. 157). In support of that statement, he testified that, "I've been fair and impartial in every proceeding that comes before me." (p. 157). The lawyers who lost the recusal motion in *Liljeberg* would probably take issue with that statement.

The second issue has to do with Porteous's lack of contrition and almost total denial of judicial misconduct on his part. He testified that, "maybe I have breached a canon now; but I've not violated the laws of this country, and I've not committed any crime." (p. 483). Porteous did not specify which Canon he breached, although there are many from which he could have chosen. He made that statement on October 30, 2007, at the conclusion of his hearing before the

Special Committee. He made that statement after the testimony of a dozen witnesses, most of whom testified in corroboration of the allegations set out in the Charge of Judicial Misconduct. He made that statement after one of those witnesses, G. Thomas Porteous, Jr., made admission after admission in support of the allegations of misconduct as detailed in the Charge.

IV. CONCLUSION

As the foregoing findings of fact and conclusions of law demonstrate, the Special Committee strongly believes that grounds exist for the Judicial Council to refer this matter to the Judicial Conference of the United States, pursuant to 28 U.S.C. Sec. 354(b)(2)(A), because Judge G. Thomas Porteous has engaged in conduct "which might constitute one or more grounds for impeachment under Article II of the Constitution." Such conduct might also constitute grounds for impeachment pursuant to Article III because Judge Porteous has not demonstrated "good behavior" in his violation of laws, ethical standards, and financial disclosure requirements.

The Committee recommends that the Council so certify this matter and, in addition, that pending a ruling by the JCUS, Judge Porteous be removed from his handling or assignment of any cases involving the U. S. Government and, if necessary to the preparation of his defense to these charges, all other cases; and that Judge Porteous be publicly reprimanded for his misconduct. See 28 U.S.C,

Secs. 354(a)(1)(C), (a)(2)(i), and (a)(2)(iii). Judge Porteous should receive a copy of the Committee's report.

The Committee seeks the advice of the Council on the extent to which the order and statement of written reasons be made available to the public under 28 U.S.C. Sec. 360(b); whether the DOJ as "complainant" should receive a copy of the Committee's report pursuant to 28 U.S.C. 360(a)(1); and whether the Council should refer certain witnesses, including Amato and Gardner, to the Louisiana State Bar for professional discipline, notwithstanding their grants of immunity prior to their testimony to the Committee.

The foregoing report is respectfully submitted by the unanimous vote of the three members of the Special Investigatory Committee, as evidenced by their signatures below.

Edith H. Jones, Chief Judge

Jerry E. Smith

Sim Lake, U.S. District Judge*

Date of Signatures: November 19, 2007.

* Signature by permission

THE JUDICIAL COUNCIL
OF THE FIFTH CIRCUIT
FILED
DEC 20 2007
Gregory A. Nussel
Secretary to the Council

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Jacques L. Wiener, Jr., U. S. Circuit Judge; Rhesa H. Barksdale, U. S. Circuit Judge; Emilio M. Garza, U. S. Circuit Judge; Fortunato P. Benavides, U. S. Circuit Judge; Carl E. Stewart, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melançon, U. S. District Judge; Michael P. Mills, U. S. District Judge; Louis Guirola, Jr., U. S. District Judge; Sam R. Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

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DOCKET NO. 07-05-351-0085

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

MEMORANDUM ORDER AND CERTIFICATION

A Special Investigatory Committee was appointed by the Chief Judge pursuant to 28 U.S.C. § 353(a) to investigate a complaint filed on May 18, 2007, by the United States Department of Justice alleging that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The Special Investigatory Committee conducted an extensive investigation

culminating in an adversary hearing on October 29 and 30, 2007. Judge Porteous appeared at the hearing and offered motions, oral argument, his own testimony, and the testimony of witnesses in his defense.

Thereafter, on November 20, 2007, the Special Investigatory Committee forwarded to the Judicial Council a comprehensive written Report presenting both the findings of the investigation and the Committee's recommendation for necessary and appropriate action by the Judicial Council. In addition to the Report, hyperlinks to relevant testimony, and two volumes of accompanying exhibits, the Special Investigatory Committee also filed the entire record before it, including grand jury records, business records of certain casinos, bank, and credit card companies, and testimony presented during the adversary hearing.

On November 20, 2007, the Judicial Council informed Judge Porteous that he could examine the Report and re-examine the evidence on which it is based at the headquarters of the Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, and could file a written reply on or before December 4, 2007. Judge Porteous filed a timely Reply to the Report. In addition, on November 21, 2007, Judge Porteous was notified that he could appear at a meeting of the Judicial Council on December 13, 2007.

The Special Investigatory Committee filed its Response to Judge Porteous's Reply on December 10, 2007, and delivered a copy to the Judge.

At a meeting in New Orleans, Louisiana, on December 13, 2007, the Judicial Council of the Fifth Circuit fully considered the Report, Reply, and Response, and the record of proceedings before the Special Investigatory Committee. Judge Porteous appeared before the Council and spoke in his own defense.

By a majority vote, the Council determines that the Report and the record contain substantial evidence supporting the allegations listed in the Special Investigatory Committee Report, including the following:

(a) Judge Porteous filed numerous false statements under oath during his and his wife's Chapter 13 bankruptcy, including filing the petition under a false name; concealing assets of the bankruptcy estate; failing to identify gambling losses; and failing to list all creditors. Judge Porteous additionally violated bankruptcy court orders forbidding him from incurring debt during the course of the Chapter 13 case without approval of the trustee or bankruptcy judge, in that he continued regularly to incur short-term extensions of credit from various casinos. Judge Porteous additionally made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy case.

(b) Judge Porteous engaged in fraudulent and deceptive conduct concerning the debt he owed to Regions Bank prior to bankruptcy.

(c) Judge Porteous received gifts and things of value from attorneys who had cases pending before him. During one particular case (*Liljeberg*), Judge Porteous was requested to recuse from the case but instead ruled against the movant without disclosing to any party his history of financial

relationships with at least one counsel for the movant in the case.

(d) Judge Porteous's financial disclosure statements for the years 1994-2000 are inaccurate and misleading because they fail to report the gifts and things of value he received from attorneys, and in the year 2000 failed to report accurately significant amounts of reportable indebtedness owed by Judge Porteous.

Based on the foregoing, the Judicial Council, by a majority vote, accepts and approves the Report of the Special Investigatory Committee, and the Judicial Council, by a majority vote, determines on the basis of the Complaint, the Report, and the record of the proceedings, that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution for the above-described violations of law and ethical canons.

The Judicial Council further finds by a majority vote that, with respect to the Complaint, and the matters described therein, a certification should be made to the Judicial Conference of the United States in accordance with 28 U.S.C. § 354(b)(2)(A).

ACCORDINGLY, pursuant to 28 U.S.C. § 354(b)(2)(A), the Judicial Council of the Fifth Circuit CERTIFIES to the Judicial Conference of the United States its determination that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct, described above, which might constitute one or more

grounds for impeachment under Article II of the Constitution. Together with such determination, the Judicial Council CERTIFIES to the Judicial Conference the Complaint filed by the United States Department of Justice, supplemented by the Complaint identified by the Chief Judge, and the record of associated proceedings and exhibits received by the Special Investigatory Committee and with the Judicial Council.

The Judicial Council sends forward to the Chief Justice of the United States, as presiding officer of the Judicial Conference: (1) the Complaints; (2) three copies of the Report and Recommendations of the Special Investigatory Committee, Judge Porteous's Reply and the Committee's Response; (3) the record of orders, notices, correspondence and other documents of the Special Investigatory Committee; (4) the record of grand jury proceedings received by the Special Investigatory Committee; (5) the record of the adversary hearing, including exhibits, before the Special Investigatory Committee; and (6) the record of proceedings before the Judicial Council. Item numbers (4) and (5) will be indexed and placed in numbered sealed boxes, and the indices will be forwarded to the Judicial Conference of the United States. The sealed materials will be retained by the Judicial Council of the Fifth Circuit pending shipping instructions from the Judicial Conference of the United States.

The Judicial Council further CERTIFIES that, pursuant to 28 U.S.C. § 354(b)(3), the delivery of copies of this Memorandum Order and Certification will constitute notice to the complainant and to Judge G. Thomas Porteous, Jr. of the action taken under 28 U.S.C. § 354(b)(2)(A).

The Judicial Council further ORDERS that pending a decision by the Judicial Conference of the United States, no bankruptcy cases or appeals or criminal or civil cases to which the United States is a party will be assigned to Judge Porteous, and he may continue his civil docket and administrative duties until it is determined that he must devote his time primarily to his defense.

Pursuant to Rule 16(E) of the Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability, materials relating to this complaint "will be made public only as may be ordered by the Judicial Conference [of the United States]."

DONE this 20th day of December, 2007.

FOR THE COUNCIL:

Edith H. Jones

Chief Judge

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Jacques L. Wiener, Jr., U. S. Circuit Judge; Rhesa H. Barksdale, U. S. Circuit Judge; Emilio M. Garza, U. S. Circuit Judge; Fortunato P. Benavides, U. S. Circuit Judge; Carl E. Stewart, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melançon, U. S. District Judge; Michael P. Mills, U. S. District Judge; Louis Guirola, Jr., U. S. District Judge; Sam R. Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

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DOCKET NO. 07-05-351-0085

CONFIDENTIAL

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

DENNIS, Circuit Judge, joined by MELANÇON, HEARTFIELD, and BRADY, District Judges, concurring in part and dissenting in part:

I agree that this judicial council must publicly reprimand Judge Porteous for legal and ethical misconduct during his tenure as a federal judge. But I disagree with the council majority's conclusion that the evidence demonstrates a possible ground for his impeachment and removal from office.

The Framers of the Constitution provided that federal judges, both of the supreme and inferior courts, shall

hold their offices during good behavior and shall be removed from office only upon impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors; that the House of Representatives shall have the sole power of impeachment; that the Senate shall have the sole power to try all impeachments; and that no person shall be convicted without the concurrence of two thirds of the Senate members present. These requirements make removal by impeachment a difficult process, reserved only for the most egregious cases. Thus, the founders intended for judges to have a high degree of independence and to be removable only upon constitutionally specified grounds; they did not intend for judges to serve simply at the pleasure of a majority of the Congress.

Congress has authorized a judicial council to take the initial step towards invoking the impeachment process only when there is a possibility that the foregoing requirements can be met. Accordingly, in fidelity to the Constitution and in the interest of judicial independence, as well as fairness to individual judges, a judicial council should not certify a case for consideration of impeachment unless it has carefully and judiciously weighed the evidence and determined that the judge committed specified acts of possible "Treason, Bribery, or other high Crimes or Misdemeanors." Because the Constitution mandates only this one definition of impeachable conduct, a judicial council may not create its own definition of impeachable offenses, either by

aggregating non-impeachable conduct or otherwise. "Treason, Bribery, or other high Crimes and Misdemeanors" are the only grounds.

A careful and judicious analysis of the evidence in the present case fails to demonstrate that Judge Porteous committed possible treason, bribery, or a high crime or misdemeanor. As an initial matter, it is undisputed that the evidence does not support a finding of any possibility that Judge Porteous committed treason or bribery. Further, the evidence does not support a finding that Judge Porteous committed a possible high crime or high misdemeanor as the terms have been understood by the Framers and ratifiers of the Constitution and by the members of Congress. The constitutional convention proceedings, the ratification history, and the congressional precedents demonstrate that finding a high crime or high misdemeanor requires a showing that the subject judge abused or violated the constitutional judicial power entrusted to him. The evidence here does not support a finding that Judge Porteous possibly abused or violated the federal constitutional judicial power entrusted to him. Instead, the evidence shows that in one case he allowed the appearances of serious improprieties but that he did not commit an actual abuse or violation of the constitutional power entrusted to him. The other offenses and improprieties alleged against Judge Porteous relate to his actions and omissions as a private citizen and his

failure to accurately disclose personal financial data. None of these alleged improprieties amount to an abuse or violation of constitutional judicial powers.

Moreover, neither the special investigating committee nor the judicial council majority performed the difficult tasks of making a careful, judicious analysis of the evidence, determining the definition of "high Crimes and [high] Misdemeanors," applying that constitutional concept to the evidence, and making specific findings that particular acts or omissions by Judge Porteous possibly constituted such impeachable offenses. Consequently, neither the committee nor the council majority actually made a principled determination that any particular act or omission by Judge Porteous constituted a possible high crime or misdemeanor. Instead, the special investigating committee presented a report setting forth, in the manner of a charging document or prosecutorial brief, each ethical and statutory violation that it thought the evidence possibly supported and concluded, without making the constitutional interpretation and analysis called for, that the record might contain one or more grounds for possible impeachment. The judicial council majority, in its Memorandum Order and Certification, simply summarized the special committee report's allegations and findings, determined that there was "substantial evidence" to support them, and determined, without making its own written analysis of the evidence or applying the

constitutional test of high crime or high misdemeanor, that Judge Porteous engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution. Thus, it is evident that the committee and the council majority approved the certification of possible impeachment without reaching an agreement as to what constitutes an impeachable offense or as to which particular high crime or high misdemeanor, if any, was adequately supported by the evidence. Consequently, in my opinion, the council majority fell into error by certifying the existence of possible grounds for impeachment without carefully and judiciously analyzing the evidence, determining the constitutional meaning or definition of "high Crimes and Misdemeanors," applying that definition to a judicious assessment of the evidence, and making specific findings that particular and certain conduct met the definition of "high Crimes and [high] Misdemeanors," *i.e.*, actual abuses and violations of constitutional judicial powers.

Finally, the record in this case does not present a reliable basis upon which to carefully and judiciously assess the evidence of whether specific high crimes or high misdemeanors were possibly committed because Judge Porteous was not afforded all minimal due process rights required by law. Because Judge Porteous's attorney resigned two weeks prior to the special committee hearing and he was denied a continuance to employ new counsel with which to prepare for the hearing, he was denied his

right to counsel in these proceedings. Further, the special investigating committee and judicial council majority determinations were in part based on alleged misconduct by Judge Porteous as a state judge before he was commissioned as a federal judicial officer, which does not constitute grounds for impeachment.

Accordingly, I respectfully suggest that the Judicial Conference should vacate the judicial council majority's order of certification and enter in its place a public reprimand with appropriate precautionary conditions, or, in the alternative, vacate the judicial council's actions and order it to grant Judge Porteous a rehearing and to afford him full rights of minimal due process, including an opportunity to employ an attorney and to adequately prepare for the rehearing.

1.

The Constitution's founders intended for impeachment and removal of a federal officer to be difficult and reserved for the most egregious crimes against the United States, which they named as "Treason, Bribery, or other high Crimes and Misdemeanors." They believed that, if our American system of democracy and justice was to survive, and respect for the rule of law to flourish, judges must be free to interpret and apply the law with neither the fear of retribution nor the influence of favor.[1] The

[1] *See* H.R. Rep. No. 96-1313, at 2 (1980) (*citing* The Federalist Nos. 78 and 79 (Hamilton 502, 512 (Mod Lib.); Montesquieu, 1 Spirit of the Laws 152 (Nugent ed. 1823)).

founders intended that an independent federal judiciary would serve as a check against unconstitutional conduct by executive and legislative officers and as fair and impartial fora for all litigants.[2] Thus, they designed the Constitution's clauses to give federal judges maximum freedom from possible coercion or influence by factions or the other branches of government.

Congress reaffirmed these values in enacting the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, recognizing that the framers meant for impeachment to be used to rectify only the most egregious cases, those that cannot be remedied by any other means.[3] In explaining that Act, which governs these proceedings, the House of Representatives Committee on the Judiciary stated:

> Impeachment . . . is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.[4]

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[2] *See, e.g.*, The Federalist Nos. 78 and 79 (Alexander Hamilton).

[3] *Id.* (citing House Hearings before the Subcommittee on Courts, Civil Liberties and the Administration of Justice, (96th Cong. 1st and 2nd Sess.) at 136 (testimony of Peter W. Rodino,Jr.)).

[4] H.R. Rep. No. 96-1313, at 2 (1980) (*quoting* J. Bryce, 1 American Commonwealth 212 (1920)).

Accordingly, Congress provided in the Act[5] that a judicial council must certify a complaint against a judge to the Judicial Conference for consideration of impeachment only when there is a possibility that a judge has committed one of the impeachable crimes named by Article II, section 4, of the Constitution.[6] In the Act, Congress anticipated that the vast majority of complaints would be dismissed by Chief Circuit Judges as frivolous, irrelevant, or as collateral attacks on final court decisions;[7] that a relatively fewer number of complaints would be referred by the Chief Circuit Judge to a special committee of the circuit judicial council; and that only the rare and most egregious case would be certified by judicial councils to the Judicial Conference for referral and consideration of possible impeachment.[8]

This is not one of those rare and egregious cases presenting the possibility of an impeachable offense against the nation. Under a proper application of the Constitution and the Act, Judge Porteous's misconduct is serious and clearly warrants his public reprimand, as

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[5] 28 U.S.C. §§ 354 (b)(2).

[6] "It is the view of the Committee that impeachment is a cumberome and unwieldy process, but this was not unintentional since the framers of the Constitution expressly attempted to provide independence to the federal juriciary." H.R. Rep. No. 96-1313, at 19 (1980).

[7] 28 U.S.C. §§ 354 (a)(2)(A); H.R. Rep. No. 96-1313, at 10 (1980).

[8] *See* H.R. Rep. No. 96-1313, at 2 (1980) ("Over the past 200 years, articles of impeachment have been voted against nine federal judges, four of whom have been convicted and removed from the bench. An additional 46 federal judges have been investigated by the House of Representatives under accusations of unfitness.")(footnote omitted); *see also id.* at 12 (offering examples of the extreme instances in which certification is proper).

well as his willingness to accept and obey strict precautionary conditions for his continuation in office; but it does not amount to a case of possible treason, bribery, or other high crimes or misdemeanors as those terms have been understood by the founders and Congress as the exclusive grounds for impeachment and removal.

2.

The Constitution limits Congress when it makes a choice for or against impeachment to that very particular class of cases: "Treason, Bribery, or other high Crimes and Misdemeanors."[9] Similarly, when judges serve as members of a judicial council in making a choice for or against possible impeachment, they, by virtue of their oaths and the enabling statute, have an obligation of fidelity to the fundamental design of the Constitution to limit the possible instrument of impeachment to that same narrow class of cases.[10]

Bound by the constitutional impeachment standards, a judicial council does not have authority to create its own definition of impeachable offenses or to consider a cumulation of non-impeachable offenses as grounds for possible impeachment. As the statutory text and the legislative history of the act authorizing this council

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[9]U.S. Const. art. II, § 4.

[10]*See* Frank O. Bowman, III & Stephen L. Sepinuck, *"High Crimes & Misdemeanors": Defining the Constitutional Limits on Presidential Impeachment*, 72 S. Cal. L. Rev. 1517, 1519-20 & n.5 (1999) ("Bowman & Sepinuck").

make clear, judicial councils may not alter or interfere with the constitutionally defined impeachment process.[11] Rather, the concept underlying the act was to allow the judicial council to deal with matters falling short of impeachment but that could affect the administration of justice.[12] Therefore, Congress did not authorize judicial councils to create their own definitions of impeachable offenses or suggest removal for offenses falling short of the Article II "Treason, Bribery, or other high Crimes and Misdemeanors" standard.[13]

In contravention of these principles, this council

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[11] *See* 28 U.S.C. § 354(b)(2)(A) (prompting certification of a complaint to the Judicial Conferences when it "might constitute one or more grounds for *impeachment under article II of the Constitution*") (emphasis added).

The legislative history underlying this act confirms this reading. For example, the Senate report terms the act "a supplement to, but not a substitute for, the seldom used process of impeachment" and states "nor is any effort made to alter or modify the constitutional impeachment process." S. Rep. No. 96-362, at 3-4 (1979). The Senate Report reiterated this limitation, noting that the primary purpose of the act was to "deal with matters which for the most part fall short of being subject to impeachment. And, where impeachment may be appropriate, traditional constitutional procedures continue to govern." *Id.* at 4.

[12] The act intended judicial councils "to deal with those matters which do not rise to the level of impeachable offenses . . . . Complaints relating to the conduct of a member of the judiciary which are not connected with the judicial office or which do not affect the administration of justice are without jurisdiction and therefore outside the scope of this legislation." S. Rep. No. 96-362, at 3 (1979). As the Senate report re-emphasized, the act was intended to "deal with matters which for the most part fall short of being subject to impeachment," to "fill in the void which currently exists in the law between the impeachable offenses and doing nothing at all." *Id.* at 4-5. *See also Hastings v. Judicial Conference of U.S.*, 593 F. Supp. 1371, 1382 (D.D.C. 1984).

[13] *Cf. Hastings v. Judicial Conference of U.S.*, 593 F. Supp. 1371, 1382 (D.D.C. 1984) ("[In light of Congress's expressed intent], this Court holds that Congress therefore did not intend to authorize investigation and formal proceedings against a judge for one or two isolated instances of possibly unethical or inappropriate official conduct unless such conduct, by itself, could amount to an impeachable offense.").

may have overstepped its constitutional and congressionally intended bounds by mistakenly proceeding under the erroneous assumption that it may properly accumulate non-impeachable offenses to find the possibility of impeachment for an aggregate of less serious crimes. Such a practice, though, exceeds the council's congressional authorization and defies the Constitution because it essentially creates an anomalous and eccentric definition of an impeachable offense.[14]

To avoid such errors and to evaluate possible impeachable offenses intelligently and constitutionally, members of both Congress and judicial councils must address the difficult problem of ascertaining what qualifies as treason, bribery, and other high crimes and misdemeanors for which a judge may constitutionally be impeached and removed from office.[15] Accordingly, in determining the limits of the constitutional phrase "treason, bribery, or other high crimes and misdemeanors," congressional and judicial council members should generally conform to the historical practice of relying on the same sources courts have consulted in construing other constitutional provisions: the language of the Constitution; the evident intent of the framers and ratifiers; the body of precedent created by prior impeachment proceedings; and the views of scholars and

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[14] *See id.*

[15] *See* U.S. Const. art. II, § 4; 28 U.S.C. § 354(b)(2)(A).

other commentators.[16]

A.

The Framers were influenced by the law and practice of England in deciding that "Treason, Bribery, or other high Crimes and Misdemeanors" would be the only offenses for which a federal judge or other constitutional officer could be impeached. In the preceding English experience, impeachable offenses were political crimes, impeachment was a political proceeding, and "high crimes and misdemeanors" was a category of political crimes against the state.[17] Initially in the constitutional convention, Mason proposed to expand the Constitution's definition of impeachable offense by adding the word "maladministration" to follow the words "treason and bribery."[18] Madison objected to this proposal, arguing that "[s]o vague a term [would] be equivalent to a tenure during the pleasure of the Senate."[19] Mason then withdrew "maladministration," substituting instead "other high

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[16] *See* Bowman & Sepinuck, *supra* note 10, at 1521. *See also* Daniel H. Pollitt, *Sex in the Oval Office and Cover-Up Under Oath: Impeachable Offense?*, 77 N.C. L. Rev. 259, 262 (1998) ("Pollitt"); Michael J. Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 Tex. L. Rev. 1, 9, 41 (1989) ("Constitutional Limits to Impeachment").

[17] *See* Michael J. Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis, 103 (2d ed. 2000) ("The Federal Impeachment Process"); Bowman & Sepinuck, *supra* note 10, at 1529; Pollitt, *supra* note 16, at 265.

[18] *See* Bowman & Sepinuck, *supra* note 10, at 1524; Pollitt, *supra* note 16, at 265.

[19] Pollitt, *supra* note 16, at 265.

crimes and misdemeanors agst. the State."[20] The ratification debates confirm that "other high Crimes and Misdemeanors" include only "great offenses" against the federal government.[21] Thus, delegates to state ratification conventions often referred to impeachable offenses as "great" offenses and said impeachment should apply if the official "deviates from his duty" or if he "dare to abuse the powers vested in him by the people."[22]

Alexander Hamilton similarly observed that:

> The subject [of the Senate's] jurisdiction [in an impeachment trial] are those offenses which proceed from the misconduct of public men, or, in other words, from the *abuse or violation of some public trust*. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.[23]

In sum, although the framers and ratifiers of the Constitution saw the need, in extraordinary cases, for a vehicle to remove a president, judge, or other constitutional civil officer, they sought to ensure that those officers would retain a high degree of independence

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[20] *Id.*

[21] The Federal Impeachment Process, *supra* note 17, at 104-05; Bowman & Sepinuck, *supra* note 10, at 1530.

[22] *See* Constitutional Limits to Impeachment, *supra* note 16, at 65 & n.378-79 (emphasis added).

[23] *Id.* at 85-86 (*citing* THE FEDERALIST NO. 65, at 396 (A. Hamilton) (C. Rossiter ed. 1961).

and not be subjected to removal simply at the pleasure of Congress. Accordingly, they provided for removal of judges and other officers only upon impeachment by the House and conviction by a super-majority of the Senate for a specific class of offenses, "Treason, Bribery, or other high Crimes or Misdemeanors," that include only those political or public crimes which constitute an abuse or violation of the constitutional powers entrusted to the officer.

B.

Congress, when dealing with federal judges, has faithfully restricted its use of the impeachment power to the core of the constitutional impeachable offenses as intended by the framers and ratifiers.[24] Accordingly, throughout United States history, a total of twelve federal judges have been impeached, and an analysis of their cases shows that Congress has only voted to impeach in instances of judges abusing their official, constitutional powers.[25] Of the twelve judges impeached, only seven have been convicted and removed from office by

[24] *See* Pollitt, *supra* note 16, at 277; The Federal Impeachment Process, *supra* note 17, at xii ("The seven federal officials whom the Senate has convicted and removed — all judges — shared misconduct that caused serious injury to the republic and had a nexus with the official's formal duties."); *see also id.* at 194 ("[I]n over two hundred years Congress has impeached only sixteen officials (including two presidents) but removed only seven judges. Close cases do not produce removals; only compelling ones do."); Pollitt, *supra* note 16, at 267 ("Since 1796, although some sixty or more impeachment proceedings have been filed, the House has voted to impeach only fifteen persons.").

[25] *See generally*, Bowman & Sepinuck, *supra* note 10, at 1566-98; Pollitt, *supra* note 16, at 268-77.

the Senate. Four have been acquitted in Senate hearings, and one resigned before the Senate could act.[26]

i.

Judge John Pickering was impeached in 1803 and convicted by the Senate in 1804 for improper rulings, drunkenness on the bench, and blasphemy.[27] Pickering allegedly rendered judgment on the merits of a case while refusing to hear relevant testimony offered by the attorney general, disregarded and attempted to evade federal law, and refused to permit an appeal; further, he appeared on the bench while intoxicated and apparently suffered from insanity.[28]

Judge West H. Humphreys was impeached and convicted by the Senate in 1862 for actions most akin to treason, *i.e.*, incitement to revolt and rebellion.[29] Humphreys joined the Tennessee secession and served as a District Court Judge in the Confederate States of America without retiring from the federal bench; during his impeachment he made no appearance and offered no defense.[30]

Judge Robert W. Archbald was impeached in 1912 and convicted by the Senate in 1913 for bribery, using his

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[26] *See* Bowman & Sepinuck, *supra* note 10, at 1566-98.

[27] *Id.* at 1567-68.

[28] *Id.*; Pollitt, *supra* note 16, at 270.

[29] Bowman & Sepinuck, *supra* note 10, at 1571-72.

[30] *Id.*; Pollitt, *supra* note 16, at 272.

position as a judge to induce numerous litigants to allow him profitable financial deals, and hearing cases in which he had a financial interest.[31] In a number of instances, Archbald coerced a railroad company, which had several cases pending before him, and a series of other litigants to sell or lease him and a partner certain profitable property.[32] Archbald also received a $500 bribe in exchange for attempting to induce other litigants to lease profitable property to Archbald's associate.[33]

Judge Halstead L. Ritter was impeached and convicted by the Senate in 1936 for creating kickback schemes, continuing to work on a case as a lawyer while already a judge, evading federal income tax, bartering his judicial authority for a vote of confidence, and bringing his court into scandal and disrepute.[34] Among his articles of impeachment were findings that he awarded a receivership to a former partner and increased the receivership fees by $75,000 in return for a $4,500 kickback, which led to the income-tax evasion because he failed to report the sum.[35]

Judge Harry Claiborne was impeached and convicted by

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[31] Bowman & Sepinuck, *supra* note 10, at 1581-84.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 1588.

[35] *Id.*; Pollitt, *supra* note 16, at 274-75.

the Senate for tax evasion in 1986.[36] Prior to his impeachment, Claiborne had been judicially convicted of criminal tax evasion for substantially under-reporting his income in 1979 and 1980; the income he failed to report was profit from bribes.[37] He was sent to prison but refused to resign, so he continued to draw his federal salary while serving jail time.[38] This apparently prompted his impeachment proceedings.

Judge Alcee L. Hastings was impeached in 1988 and convicted by the Senate in 1989 for conspiracy to solicit a bribe and perjury after having been criminally indicted and acquitted for bribery and conspiracy.[39] Hastings allegedly attempted to obtain $150,000 from a defendant in a case before him in exchange for a sentence not requiring jail time and then allegedly lied to a grand jury about the matter.[40] Though Hastings was acquitted in his criminal trial for bribery and conspiracy, Hastings' alleged co-conspirator was convicted in a separate trial.[41]

Finally, Judge Walter L. Nixon was impeached and

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[36] Bowman & Sepinuck, *supra* note 10, at 1590-91.

[37] Pollitt, *supra* note 16, at 275.

[38] *Id.*; Bowman & Sepinuck, *supra* note 10, at 1590-91.

[39] Bowman & Sepinuck, *supra* note 10, at 1591.

[40] *Id.*

[41] *Id.*

convicted by the Senate for perjury in 1989.[42] Prior to his impeachment, Nixon had been judicially convicted on federal criminal charges of perjury and was serving a five-year sentence.[43] Nixon's perjury conviction arose out of statements he made to a grand jury, which was investigating bribery charges alleging that Nixon accepted a gratuity in exchange for attempting to influence a state's drug prosecution against a business partner's son.[44] Like Judge Claiborne, Nixon was sentenced to imprisonment and refused to resign, so that he continued to receive federal judicial compensation while in prison, prompting Congress to institute impeachment proceedings.[45]

ii.

Supreme Court Justice Samuel Chase was impeached but acquitted by the Senate in 1804 for bias in charging a grand jury and other action from the bench.[46] The articles of impeachment against Chase state that he attempted to prejudice juries before defense counsel could be heard, prohibited defense counsel from addressing the jury on the law, seated a juror who had

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[42] *Id.* at 1595.

[43] *Id.*

[44] *Id.*; Pollitt, *supra* note 16, at 276.

[45] Pollitt, *supra* note 16, at 276.

[46] Bowman & Sepinuck, *supra* note 10, at 1569-71.

already decided that a defendant was guilty, and delivered political speeches from the bench.[47]

Judge James H. Peck was impeached 1830 but acquitted by the Senate in 1831 for holding a lawyer who criticized his rulings in contempt.[48] When a local newspaper printed a letter, written by a lawyer, criticizing one of Peck's rulings, Peck had the lawyer arrested, held him in contempt, ordered him imprisoned for 24 hours, and suspended him from practicing before the court for eighteen months.[49] The impeachment was based on "[Peck's] unjust, oppressive, and arbitrary contempt order and his general gross abuse of power as a judge," but "the Senate voted not to convict because criminal intent had neither been charged nor proved."[50]

Judge Charles H. Swayne was impeached in 1904 but acquitted by the Senate in 1905 for falsifying expense accounts and using property held in receivership.[51] The articles of impeachment alleged three instances of Swayne falsely inflating his travel expenses in an attempt to defraud the federal government into over-paying him; in two separate instances, Swayne also appropriated the use of a railroad car, which was held under receivership, to

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[47] *Id.*

[48] *Id.* at 1571.

[49] *Id.*

[50] Pollitt, *supra* note 16, at 271-72.

[51] Bowman & Sepinuck, *supra* note 10, at 1578-79.

transport himself, his family, and friends from Delaware to Florida and from Florida to California.[52] Swayne then allowed the receiver to claim these expenses as necessary costs of operating the railroad.[53] The Senate ultimately acquitted Swayne, whose "defense was that even if the charges against him were accepted as true, those acts did not satisfy the constitutional definition of high crimes and misdemeanors."[54]

Judge George English was impeached in 1926 for favoritism, improper conduct, and improper use of bankruptcy funds in his court; he resigned before the Senate could take action on the matter.[55] Among English's articles of impeachment were allegations that he disbarred two lawyers without giving notice, proffering charges, or allowing them to speak in their own defense.[56] He also allegedly threatened to incarcerate jurors if they did not return guilty verdicts and constructed a fake trial for the purpose of summoning and berating local officials.[57]

Judge Harold Louderback was impeached but acquitted by the Senate in 1933 for using favoritism in appointing

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[52] *Id.*

[53] *Id.*

[54] Pollitt, *supra* note 16, at 273.

[55] Bowman & Sepinuck, *supra* note 10, at 1585-86.

[56] *Id.*

[57] *Id.*

receivers.[58] The articles of impeachment against Louderback alleged four separate instances of Louderback creating kickback schemes to enrich his friends at Litigants' expense; "lacking evidence that Louderback had received any direct personal financial gain from these appointments, however, the Senate voted to acquit him."[59]

iii.

As the examples above demonstrate, Congress has applied the meaning of "high crimes and misdemeanors" by voting to impeach judges only when their alleged conduct has included abuses of constitutionally entrusted powers. Among the judges convicted by the Senate, for example, Judges Nixon's and Claiborne's convictions for perjury to cover up bribery before a grand jury and tax evasion, respectively, demonstrate their abuse of their judicial power. Both also allegedly engaged in bribery, a specifically identified impeachable offense. Similarly, Judge Hastings was alleged to have accepted bribes, and Judge Ritter's kickback schemes and Archbald's financial manipulations, both of which arguably involved bribery, also hinged on their abuse of official judicial power. The allegations that Judge Pickering took the bench while intoxicated, improperly denied an appeal, refused to allow the attorney general to present witnesses' testimony, and arbitrarily entered judgment without

[58] *Id.* at 1586-87.

[59] *Id.*; Pollitt, *supra* note 16, at 274.

conducting trial or hearing witnesses similarly implicate abuse of his official judicial duty and power. Finally, Judge Humphreys' actions essentially constituted treason, another specifically identified impeachable offense.

Even for those judges impeached but not convicted by the Senate, the impeachment grounds hinged on abuses of official constitutional powers. Judges Louderback and Swayne, acting in their official federal capacities, allegedly abused the receivership process and, in Swayne's case, attempted to defraud the federal government into over-paying judicial expenses. Judge Peck acted in his official capacity by ordering arrest and contempt charges; and all of the allegations against Justice Chase and Judge English similarly implicate abusive conduct from the bench toward litigants and jurors.

C.

According to the constitutional text, the evident intent of the framers and ratifiers, the body of precedent created by prior judicial impeachment proceedings, and the views of scholars and other commentators, impeachable high crimes and misdemeanors are limited to abuses or violations of constitutional judicial power. Thus, any conduct short of an abuse or violation of constitutionally entrusted power cannot constitute a possible impeachable offense.

3.

The special investigating committee and the judicial council majority neither alleged nor found that Judge Porteous had committed treason, bribery, or other high crimes or misdemeanors, or that he had engaged in misconduct which constituted an abuse or violation of constitutional judicial power. The only violations of law or canons of judicial conduct that the committee or the council majority alleged or found Judge Porteous to have committed do not amount to impeachable offenses because they do not amount to an abuse or violation of the constitutional judicial powers entrusted to him. Accordingly, although the misconduct which the committee and council majority attributed to Judge Porteous warrants a public reprimand, it does not constitute any of the constitutional grounds for impeachment, and the council majority therefore erroneously certified this case for possible impeachment.

The DOJ as complainant, the special investigatory committee, and the judicial council majority have never alleged that Judge Porteous committed treason or bribery.[60] In fact, the special committee expressly concedes that there is no allegation of bribery in the complaint or charge against Judge Porteous.[61] Although

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[60] *See* U.S. Department of Justice Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr. ("Complaint"); The Special Committee for the Fifth Circuit Judicial Council Charges of Judicial Misconduct; Special Committee Response to Reply Memorandum at 9.

[61] Special Committee Response to Reply Memorandum at 9 ("no specific allegations of bribery appear in the Complaint or in the Charge").

the committee introduced evidence of alleged misconduct by Judge Porteous while he was a state judge, the committee admitted that it has no authority over such non-federal judicial conduct.[62] Furthermore, because the only constitutional grounds for impeachment of a federal judge are his commission, while on the federal bench, of treason, bribery and other high crimes and misdemeanors against the United States, the Congress lacks jurisdiction to impeach, and the judicial council lacks authority to certify for possible impeachment, Judge Porteous for any misconduct prior to his appointment as a federal judge.[63]

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[62] The Special Committee concedes that it has "never taken the position that it has authority over Judge Porteous's judicial misconduct as a state judge." Special Committee Response to Reply Memorandum at 4.

[63] *See* The Federal Impeachment Process, *supra* note 17, at 108-09. *See also* Special Committee Response to Reply Memorandum at 4 (conceding that the committee has "never taken the position that it has authority over Judge Porteous's judicial misconduct as a state judge.").

Records of past impeachment proceedings also demonstrate that evidence relating to state-level judicial misconduct falls outside the proper scope of an impeachment inquiry into misconduct as a federal judge. During the Senate conviction proceedings for Judge Archbald in 1913, the Judge's counsel presented an extensive brief arguing why the last six articles of impeachment should not stand. Counsel argued that because those articles related to Judge Archbald's tenure as a district court judge and the impeachment concerned his position as a judge on the Commerce Court, the evidence of conduct occurring during Archbald's district court tenure, *i.e.*, prior to his then-current federal office, was irrelevant and outside the scope of a proper impeachment inquiry. In response, the senate found Archbald "not guilty" for all six articles wholly concerned with his actions during his district court tenure though they convicted Archbald on the other articles.

The argument in Judge Archbald's case, equally applicable here, revolved around Article I, section 3, of the Constitution, which states "Judgment in the Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States." As primary legal authority, Judge Archbald's counsel cited to Justice Story's Commentaries on the Constitution of the United States, which interprets the relevant clause as follows:

Thus, the special committee and council majority erred in certifying this matter, having found only non-impeachable offenses but mistakenly averring that there might be an impeachable offense among them. The council majority's Memorandum Order and Certification describes the offenses it found as follows:

> As it is declared in one clause of the Constitution, that 'judgment, in cases of impeachment, shall not extend further, than a removal from office, and disqualification to hold any office of honour, trust, or profit, under the United States;" and in another clause, that "the president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanours;" it would seem to follow, that the Senate, on the conviction, were bound, in all cases, to enter a judgment of removal from office, though it has a discretion, as to inflicting the punishment of disqualification. *If, then, there must be a judgment of removal from office, it would seem to follow, that the Constitution contemplated, that the party was still in office at the time of the impeachment. If he was not, his offence was still liable to be tried and punished in the ordinary tribunals of justice.* And it might be argued with some force, that it would be a vain exercise of authority to try a delinquent for an impeachable offence, when the most important object, for which the remedy was given, was no longer necessary, or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt, whether it can be pronounced without being coupled with a removal from office. There is also much force in the remark, that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the state against gross official misdemeanors. It touches neither his person, nor his property; but simply divests of his political capacity.

Story, Commentaries on the Constitution § 801 (1833) (emphasis added).

Since Judge Porteous is no longer a state court judge, it is up to the "tribunals of justice" to hold Judge Porteous liable for his actions in that capacity-- which they have not. The scope of the current impeachment inquiry only pertains to Judge Porteous's actions consonant to the remedy at issue-- removal of Judge Porteous from his current federal judicial capacity for abuse of constitutional power related to his current position-- not to actions taken while in state-level positions he no longer holds.

(a) Porteous filed numerous false statements under oath during his and his wife's Chapter 13 bankruptcy, including filing the petition under a false name; concealing assets of the bankruptcy estate; failing to identify gambling losses; and failing to list all creditors. Porteous additionally violated bankruptcy court orders forbidding him from incurring debt during the course of the Chapter 13 case without approval of the trustee or bankruptcy judge, in that he continued regularly to incur short-term extensions of credit from various casinos. Porteous additionally made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy case.

(b) Porteous engaged in fraudulent and deceptive conduct concerning the debt he owed to Regions Bank prior to bankruptcy.

(c) Porteous received gifts and things of value from attorneys who had cases pending before him. During one particular case (*Liljeberg*), Porteous was requested to recuse from the case but instead ruled against the movant without disclosing to any party his history of financial relationships with at least one counsel in the case.

(d) Porteous's financial disclosure statements for the years 1994-2000 are inaccurate and misleading insofar as they fail to report the gifts and things of value he received from attorneys, and in the year 2000 failed to report accurately significant amounts of reportable indebtedness owed by Judge Porteous.

None of these offenses or ethical violations constitutes a high crime or other impeachable offense because none represents an abuse or violation of constitutional judicial power.

A. Appearances of Impropries in Connection with the *Liljeberg* Case

In essence, the judicial council majority finds that Judge Porteous committed several serious appearances of improprieties under the Code of Conduct. I agree with that finding and think that Judge Porteous should be given the most severe sanction at the council's disposal for these infractions, a public reprimand. I emphatically disagree with the council majority, however, if, without specifically finding or saying so, it believes that these appearances of improprieties are high crimes or misdemeanors.

Judge Porteous presided over the *Liljeberg* case, in which Judge Porteous's long-time friends Amato, Levenson, and Gardner represented opposing parties.[64] Arising out of these circumstances, the judicial council found several appearance-of-impropriety violations of the Code of Conduct: first the council found that, before Gardner

[64]Though the special committee report mentions Levenson, he is not the primary focus of the allegations because his role in the appearances of improprieties during the *Liljeburg* case is less significant than those of Amato, Creely, or Gardner. The special committee report notes that Levenson paid for some expenses related to one of Judge Porteous's son's externships in Washington, D.C. prior to the *Liljeberg* case and also often took Judge Porteous out to lunch and paid for the meals. Special Committee Report at 60. Such conduct appears fitting with Judge Porteous's and Levenson's relationship because, like Amato, Creely, and Gardner, Levenson is also a long-time friend of Judge Porteous's. Levenson Grand Jury Testimony at 6-8.

At the outset of their relationship, Levenson treated Judge Porteous to lunch, which Levenson testified was often the case in social relationships between judges and lawyers, and this practice continued when Judge Porteous became a federal judge. *Id.* at 11-12. Levenson testified that though he paid for lunches during the pendency of the *Liljeburg* case, he never did so during the actual trial. *Id.* at 44. Furthermore, Levenson testified that his payment of expenses for Judge Porteous's son was a "long time ago," hence before, and unrelated to, the *Liljeburg* case, and amounted to "a couple of hundred dollars." *Id.* at 65-6.

entered the case as an attorney, Judge Porteous declined to either recuse himself or disclose to the parties the closeness of his thirty-year friendships with Amato and Levenson, and second the council found that during the pendency of *Liljeberg*, Judge Porteous received financial assistance from Amato and Amato's partner Creely, another long-time friend, to help pay for his son's wedding and also attended his son's bachelor party in Las Vegas with Gardner and Creely, among a score of other guests, where Creely paid for his hotel room.

In the absence of Judge Porteous's and his lawyer friends' involvement in the *Liljeberg* case, of course, there would have been nothing wrong with his receiving gifts from them in connection with his son's wedding. This would have been the natural result of their 30 year relationship during which their families regularly celebrated such occasions together.[65] But because of the serious appearance of impropriety that these gifts presented in light of *Liljeberg*, Judge Porteous should have avoided the situation entirely by recusal or disclosure.

Thus, because of the intersection between the close

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[65] Judge Porteous, Amato, Gardner, and Creely have been close friends for over 30 years. *See* Special Committee Hearing Transcript ("SCHT") at 461. Amato, Creely, and Judge Porteous met as young lawyers practicing together. *See* SCHT at 198, 236-37. All four frequently enjoyed such diversions as hunting, fishing, or having lunch together. *See* SCHT at 229. Over time their families also became close. *See* SCHT at 259. They attend each others' various parties, birthdays, weddings, and other events. *See* SCHT at 154. In fact, Judge Porteous is godfather to one of Gardner's daughters. *See* SCHT at 154. In connection with this social interchange, they engaged in the customary mutual benevolence of reciprocal gift-giving and funding of costs of celebrations and social events. *See* SCHT at 461-62.

friendships, the *Liljeberg* case, and Judge Porteous's son's wedding, Judge Porteous's failure to take corrective action resulted in serious appearance-of-impropriety ethical violations. However, because all of the sworn testimony indicates without dispute that Judge Porteous did not commit bribery, *i.e.*, he did not solicit or accept any private favor or benefit in exchange for official action, Judge Porteous's ethical infractions during the *Liljeberg* case did not amount to a high crime or high misdemeanor because he did not abuse or violate the constitutional judicial power entrusted to him. Further, because Judge Porteous created only appearances of improprieties, his misconduct was not as serious as actual ethical improprieties under the Code.[66]

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[66] The creation of an appearance of impropriety is distinguishable from an actual impropriety or actual misconduct under the Code of Conduct for United States Judges. As the Commentary to Canon 2A notes, "actual improprieties . . . include violations of law, court rules, or other specific provisions of this code," whereas "the test for appearance of impropriety is whether the conduct would create in reasonable minds . . . a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."

Here, there is no evidence, allegation, or finding that Judge Porteous violated a law or court rule through his actions during the *Liljeberg* case because there is no evidence or allegation that Judge Porteous's relationship with lawyers on either side of the case influenced his impartial judgment or disposition in the matter. Further, in light of this lack of evidence of bribery or other actual bias during *Liljeberg*, the only canonical violations alleged against Judge Porteous, violations of Canons 1, 2, 3, 5, and 6, are necessarily limited to his creating only an appearance of partiality. Thus, his failure to recuse or disclose his relationship constitutes a mere appearance of impropriety rather than actual impropriety under the canons.

As evidenced by the remedies often awarded to litigants, a Judge's appearance of impropriety is less serious than an actual impropriety. For example, a finding that a judge failed to recuse for an actual impropriety generally requires the remedy of vacatur, whereas a finding of failure to recuse for appearance of impropriety often calls only for prospective recusal. *See In re Cargill, Inc.*, 66 F.3d 1256, 1264 (1st Cir. 1995) (holding that an appearance of impropriety does not require immediate relief whereas actual impropriety would); *In re Allied-Signal Inc.* 891 F.2d 967, 973 (1st Cir. 1989) (reasoning that because no actual impropriety was alleged, retroactive relief was unnecessary in a case of appearance of impropriety); *U.S. v. Widgery*, 778 F.2d 325, 328 (7th Cir. 1985) ("Disqualification for the appearance of impropriety runs

Equally important here, Congress's impeachment precedents demonstrate that Judge Porteous's *Liljeberg* conduct falls far short of impeachable crimes under the Constitution. The congressional impeachments of Judges Nixon, Hastings, Claiborne, Archbald, and Humphreys, for example, resulted in their removal for treason and bribery. Judge Porteous engaged in no treason or bribery at anytime, either in connection with *Liljeberg* or otherwise.[67] Also unlike the cases of Judges Ritter, Louderback, and Swayne, no evidence here suggests that the gifts Judge Porteous received during *Liljeberg* constituted a quid pro quo for official action or in any way connected to his official powers.

During the pendency of *Liljeberg*, Judge Porteous accepted gifts from Creely and Amato to defray his adult son's wedding expenses and attended his son's bachelor party with Creely and Gardner, and both of these instances fit within the context of their extensive social relationships and had nothing to do with the *Liljeburg* case. Thus, the difference between Judge Porteous's conduct during *Liljeberg* and the impeachable conduct of Ritter, Archbald, Louderback, and Swayne, is that all the impeached judges' conduct involved abuses of

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prospectively only; even a successful motion does not vitiate acts taken before the motion was filed . . . . Disqualification under . . . for an actual impropriety would indeed require a new hearing") (internal citation omitted).

As such, the appearance of an impropriety is deserving of a lesser sanction, if any, than an actual impropriety or actual misconduct.

[67] *See* Special Committee Response to Reply Memorandum at 9 ("no specific allegations of bribery appear in the Complaint or in the Charge").

official power, *viz.*, awarding receiverships, using property in receivership, accepting bribes, influencing litigants' financial decisions, and falsifying expense accounts,[68] whereas it is undisputed that Judge Porteous never acted out of fear or favor of any litigant or attorney and never abused or violated the constitutional power entrusted to him.[69] Finally, the violations alleged against the impeached judges spanned multiple cases, whereas the committee and council's allegations against Judge Porteous center on only the *Liljeberg* case.

Furthermore, the special committee and council majority do not dispute, but, in effect, concede that Judge Porteous's conduct amounted only to a non-impeachable appearance of impropriety. They never find that Judge Porteous's conduct constituted an actual impropriety, much less an abuse or violation of official constitutional judicial power. The special investigating committee's report finds that none of Judge Porteous's ethical violations was more egregious than his conduct

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[68] Judges Ritter and Louderback allegedly concocted numerous kickback schemes across many cases, Judge Archbald wielded his office for financial advantage against a number of litigants throughout his docket, and Judge Swayne attempted to swindle the federal government on at least three different occasions and commandeered a railroad car in receivership for two different trips.

[69] In unrebutted testimony, 1) Judge Porteous stated that he has "been fair and impartial in every proceeding [before him]," SCHT at 157; 2) Creely stated that he never thought that his gifts to Judge Porteous would influence his decision in *Liljeberg* or any other case and that he did not believe Judge Porteous's rulings to rely "one way or the other" on these gifts, SCHT at 229, 231; and 3) Amato testified that there was no quid pro quo or expectation of judgment tied to his gifts to Judge Porteous, SCHT at 256, and that any money given to Judge Porteous was "because we're friends and we've been friends for 35 years," rather than because Judge Porteous is a judge or to influence his decisions. SCHT at 258-59.

during the *Liljeberg* case but concludes 1) that Judge Porteous should have advised the parties of his financial relationship with Amato and the Creely & Amato law firm as soon as the recusal motion was filed; and 2) that Judge Porteous should have granted the motion to recuse or given the parties the choice of keeping him as a trial judge. The committee further found that Judge Porteous's asking for and receiving Amato's and Creely's financial assistance with his son's wedding and allowing Creely to pay for his hotel room in connection with his son's bachelor party compounded the appearances of improprieties. But the committee correctly did not find that anything other than appearances of improprieties, rather than actual improprieties,[70] resulted from this conduct under the Code. Thus, the committee found that the failure to recuse, Judge Porteous's worst ethical offense, was not an irremediable actual impropriety under the Code but rather an appearance of impropriety, which, if disclosed, the parties could have cured by agreement. The appearances of serious improprieties allowed by Judge Porteous warrant the most severe sanction that the judicial council can impose, a public reprimand, but because Judge Porteous did not commit an actual abuse or violation of the constitutional judicial power entrusted to him, he did not commit a high crime or high misdemeanor for which he may be impeached and removed from office.

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[70] *See supra* note 66.

B. Offenses Related to Personal Bankruptcy, Personal Bank Loan, and Personal Financial Disclosure

The committee's and council majority's findings that Judge Porteous violated criminal statutes relating to his bankruptcy, bank loan, and financial disclosure statements do not constitute findings of possible impeachable offenses, because, rather than constituting the exercise of the constitutional judicial power entrusted to Judge Porteous, his misconduct in these respects was restricted to private conduct and reporting of private financial affairs.[71] These alleged crimes implicate no bribery or treason on Judge Porteous's part. Moreover, they involve neither Judge Porteous's actions from the bench nor any litigants or lawyers involved in cases before Judge Porteous. So, unlike the conduct underlying the charges against every federal judge ever impeached, Judge Porteous's conduct in his bankruptcy, bank loan, and financial disclosure statements neither depended upon nor utilized his constitutionally entrusted powers. In sum, these offenses involve only Judge Porteous the private citizen and disclosure of his

[71] In *Duplantier v. United States*, 606 F.2d 654 (5th Cir. 1979), the Fifth Circuit examined the statutory financial disclosure obligations that Judge Porteous allegedly violated. The disclosure obligation entails filing a "personal financial report," *id.* at 659 and its statutory intent was to require judges to report for public disclosure judges' *private* financial interests, *id.* at 668 n.30. In *Duplantier*, The Fifth Circuit concluded: "Judges should not be harassed in the legitimate exercise of their duties, and we should tread softly before imposing publicity on their *private financial affairs* which may be a serious threat to judicial independence and may erode that independence so necessary to the proper functioning of the judiciary. Federal judges may properly inquire what necessity brought about the provisions of the Act of Congress which will cause many of their intimate personal and confidential financial affairs to be open to public inspection." *Id.* at 672.

private wealth and financial affairs, not Judge Porteous's use or abuse of constitutional judicial power. As such, because these allegations entail no abuse of official constitutional power, these alleged offenses involving personal, private conduct generically and categorically fall outside the scope of impeachable offenses.

4.

For the foregoing reasons, a detailed examination of the evidence may be unnecessary to a determination that this case does not present a possible treason, bribery, high crime or misdemeanor, or an abuse or violation of constitutional judicial power. Nevertheless, every judge participating in deciding whether to refer this or any case to the House of Representatives for consideration of possible impeachment will wish to have a good understanding of the evidence and record in the case. Accordingly, in the interest of aiding other judges in reviewing and evaluating the evidence, I respectfully suggest that a fair and impartial assessment of the evidence reveals that the case against Judge Porteous, while still warranting a public reprimand, is not as formidable as the committee report represents for many of the same reasons that the DOJ or the grand jury, or both, decided that a criminal prosecution of Judge Porteous was not warranted.

The Federal Bureau of Investigation ("FBI") and a grand jury empaneled in the Eastern District of Louisiana

spent nearly five years investigating Judge Porteous in connection with a number of potential criminal charges.[72] Specifically, the FBI investigated Judge Porteous for conspiracy to bribe a public official in violation of 18 U.S.C. §§ 201 and 371, commission or conspiracy to commit honest services mail- or wire-fraud in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1346, submission of false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filing false declarations, concealing assets, and acting in criminal contempt of court during his personal bankruptcy action in violation of 18 U.S.C. §§ 152 and 401.[73]

After this extensive investigation, the DOJ decided to press no criminal charges against Judge Porteous based both on statute of limitations bars to certain charges and on determination that the government could not meet its burden of proof for the non-barred charges.[74] It is unclear whether the DOJ decided not to continue or the grand jury returned submitted charges without an indictment. The DOJ specifically said "the government's heavy burden of proof in a criminal trial, and the obligation to carry that burden to a unanimous jury; concerns about the materiality of some of Judge Porteous's provably false statements; the special difficulties in proving mens rea and intent to deceive

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[72] Complaint at 1.

[73] *Id.* at 1-2.

[74] *Id.*

beyond a reasonable doubt in a case of this nature" led to a decision not to prosecute.

The same evidence presented to the grand jury was before the judicial council, and considered under any reasonable standard of proof,[75] it still arguably cannot support a conclusion that Judge Porteous should be held responsible for the alleged criminal offenses to the extent claimed by the committee because the record cannot support an essential element of the criminal allegations, *viz.*, intent to deceive or defraud, save for the least serious offense which does not require proof of this element. The Complaint alleges, and the Special Committee agreed, that the pertinent allegations of criminal offenses are violations of 18 U.S.C. § 1621, perjury; § 152, bankruptcy fraud; § 1001, false statements to federal agencies; § 1014, false statements to a financial institution; § 1344, bank fraud; and § 371, conspiracy.

To prove a violation of 18 U.S.C. §§ 1621, 152, or 1344 requires proof of a specific intent to defraud; and 18 U.S.C. § 1014 requires proof of a specific intent to influence the bank.[76] "The requisite intent to defraud is

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[75] Another problem in the Special Committee's treatment of the allegations is the failure to identify the standard of proof required to substantiate these allegations. As noted earlier, the DOJ concedes these allegations probably can not be proved beyond a reasonable doubt.

[76] For perjury under § 1621(2), "in order to constitute perjury, a false statement must be made with criminal intent, that is, with intent to deceive, and must be wilfully, deliberately, knowingly and corruptly false." *Beckanstin v. United States,* 232 F.2d 1, 4 (5th Cir. 1956). For bankruptcy fraud under § 152, according to the Fifth Circuit pattern jury instructions, to convict under Section 152(1), the Government must prove: (1) "That there existed a proceeding in bankruptcy"; (2) "That certain property or assets belonged to the bankrupt estate"; (3) "That defendant concealed such property from the creditors [custodian] [trustee] [marshal] [some person] charged with control or custody of such property"; and (4) "That the defendant *did so*

established if the defendant acted knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to himself."[77] As I discuss in the balance of this section, the record evidence forms an arguably insufficient foundation for the conclusion that Judge Porteous harbored the requisite specific intent for the aforementioned alleged criminal offenses.

The Special Committee finds a violation of 18 U.S.C. § 1621(2), the general perjury statute, because Judge Porteous submitted a bankruptcy petition using an alias ("Orteous") as suggested by his attorney to avoid negative publicity. However, the record shows that Judge Porteous and his attorney intended to correct the name soon after the petition was filed and, in fact, did correct it just twenty days later. Since (1) Judge Porteous relied on his lawyer's advice[78] and (2) corrected

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knowingly and fraudulently." (emphasis added); *see United States v. Maturin*, 488 F.3d 657, 662 n.3 (5th Cir. 2007). For bank fraud under 18 U.S.C. § 1344, the prosecution must show beyond a reasonable doubt that the defendant (1) engaged in a scheme or artifice to defraud, or made false statements or misrepresentations to obtain money from; (2) a federally insured financial institution; and (3) *did so knowingly*. *United States v. Brandon*, 17 F.3d 409, 424 (1st Cir. 1994). For § 1014, "the only specific intent that matters for purposes of § 1014 is the intent to influence the bank's actions." *United States v. Sparks*, 67 F.3d 1145, 1152 (4th Cir. 1995).

The last alleged infraction, § 1001, false statement to a federal agency, does not require an "intent to defraud." While Section 1001 proscribes only deliberate, knowing, willful false statements," it "does not require an intent to defraud-that is, the intent to deprive someone of something by means of deceit." *United States v. Lichenstein*, 610 F.2d 1272, 1276-77 (5th Cir. 1980).

[77] *United States v. Doke*, 171 F.3d 240, 243 (5th Cir. 1999).

[78] Generally, a debtor is entitled to rely on the advice of his bankruptcy counsel where the reliance is reasonable and in good faith. *See Hibernia Nat'l Bank v. Perez*, 124 B.R. 704, 710-11 (E.D. La. 1991), aff'd 954 F.2d 1026 (5th Cir. 1992); *see also First Beverly Bank v. Adeeb* (*In re*

the name within twenty days,[79] arguably a neutral finder of fact could follow our criminal law precedents and infer a lack of bad faith or no intent to defraud.[80]

Judge Porteous's assertion of a good-faith belief in his conduct, and thus a lack of intent to defraud, also tends to weaken the evidentiary basis for the other allegations of fraud relating to his bankruptcy. In fact, no direct evidence of intent to defraud, a necessary element for the bankruptcy fraud allegation under 18 U.S.C. § 152, rebuts the testimony about Judge Porteous's "good-faith."

For example, the record arguably contravenes a finding of intent to defraud for the allegation that Judge Porteous improperly obtained credit during his bankruptcy by using gambling markers and intentionally concealed this credit from his bankruptcy proceedings.

Adeeb), 787 F.2d 1339, 1343 (9th Cir. 1986) (noting that reasonable and good faith reliance on advice of counsel sufficient to show debtor lacked requisite fraudulent intent to revoke or deny discharge); *Beckanstein v. United States*, 232 F.2d 1, 4 (5th Cir. 1956) ("The advice of counsel is also important in determining whether appellant made the statement with a corrupt motive.").

The Special Committee attempts to strip Judge Porteous of this defense by declaring "a federal judge cannot reasonably avail himself of such a defense," Special Committee Report at 18, but this statement appears contrary to the Code of Conduct for United States Judges. According to the Commentary to Canon 5C of the Code of Conduct for United States Judges, "[a] judge has the rights of an ordinary citizen with respect to financial affairs," which arguably includes the right to rely on bankruptcy counsel when such reliance is reasonable and in good faith.

[79] "Recantation may have a bearing on whether an accused perjurer intended to commit the crime." *United States v. McAfee*, 8 F.3d 1010, 1017 (5th Cir. 1993) (internal citations omitted).

[80] Further evidence of a lack of bad faith may be inferred from the facts that Judge Porteous's bankruptcy was completed, all creditors were paid a percentage of their claims, and no creditor opposed Judge Porteous's discharge from bankruptcy. *See* Porteous Hearing Exhibit 1 part 1, Bates No. SC00009-10, SC00015.

The FBI agents noted in their testimony that the casino records involving markers are "very confusing" and "there's certain nuances to each casino,"[81] so good faith disagreement or confusion over the financial definition of a marker seems possible. Judge Porteous testified that he understood casino markers as equivalent to checks, which could be held by a casino for as much as 10 to 30 days before being presented for payment, and not "credit" in the sense intended by the bankruptcy court order. Under Louisiana commercial law, markers are considered "checks" as defined by Louisiana statute.[82] Whether each marker was, under the varying underlying circumstances, an actual extension of credit is debatable; thus, whether Judge Porteous knew or should have known each marker was a forbidden extension of credit within the intention of the court's order is also debatable. Based on the complexity of the marker system, the varying circumstances, and the opportunity for misunderstanding, the evidence may support an inference that Judge Porteous did not knowingly incur credit or intend to deceive the bankruptcy court.

As for Mrs. Porteous's use of the Fleet credit card to charge around $1,100 during bankruptcy, Judge

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[81] SCHT at 296.

[82] *TeleRecovery of Louisiana, Inc. v. Gaulon,* 738 So.2d 662, 667 (La. Ct. App. 1999). I do not suggest that "markers" are necessarily treated as checks and not loans in the bankruptcy context, *see In re Armstrong*, 291 F.3d 517, 523 (8th Cir. 2002), however legal authority for the position that markers should be considered "checks" (even if not in the bankruptcy context) is some support for a good-faith understanding that "markers" would be treated as checks and not credit in the bankruptcy context within Louisiana and the Fifth Circuit.

Porteous's testimony of his ignorance arguably demonstrates a lack of intent to defraud. Judge Porteous, in unrebutted testimony, stated that "my understanding was all the cards were torn up. I did not know she had kept that card active until well after the fact."[83] It is undisputed that Judge Porteous relied heavily upon Mrs. Porteous, who is now deceased, and his secretary to handle his personal bank accounts, credit cards, and personal financial affairs.

Similarly, regarding the failure to disclose assets, Judge Porteous repeatedly noted that he did not fully understand his financial status, and therefore never knowingly misrepresented his bank accounts. First, explaining his non-disclosure of less that $900 total in various accounts, Judge Porteous stated, "[i]t was just inadvertence, not any intent to hide my finances."[84] Other factors corroborate that Judge Porteous was not fully aware of his financial situation; his wife handled their bank accounts and his secretary often paid his bills from her personal account before seeking reimbursement from him. Second, Judge Porteous testified that his failure to report a tax refund of $4143.72, like his use of an alias, was in reliance on the advice of his attorney.[85]

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[83] SCHT at 161.

[84] SCHT at 158. Judge Porteous's non-disclosure of $900 in assets arises out of his representation that a bank account was valued at $100 when it actually contained $559.07, Special Committee Report at 25, and his failure to disclose a Fidelity money market account containing a balance somewhere between $283.42 and $320.29. Special Committee Report at 25.

[85] SCHT at 84.

Judge Porteous testified that this omission, done on the advice of his attorney, was "no intentional act to try and defraud somebody. It just got omitted. I don't know why."[86] His attorney could not recall giving advice on this subject, but his testimony indirectly supports Judge Porteous's contentions. His attorney, in response to a question about his standard practice under these circumstances, stated that "at the time [of Judge Porteous's bankruptcy] . . . [as part of my standard practice,] it was not included in the confirmation order that the debtor turn over either tax returns or tax refunds from year to year as the plan progresses."[87]

The same lack of evidence regarding specific intent also applies to allegations of submitting false statements to Regions bank and bank fraud regarding the renewal of a $5,000 signature loan.[88] Judge Porteous made two statements: (1) that he was not "in the process of filing bankruptcy" and (2) that there had been no "material adverse change in [his] financial condition *as disclosed* in [his] most recent financial statement to lender" (emphasis added). In both of these statements, Judge Porteous arguably did not intend to defraud or influence the bank because, in unrebutted testimony, he

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[86] SCHT at 84.

[87] SCHT at 438.

[88] Alleged against Judge Porteous are violations of both 18 U.S.C. § 1014, false statements to a financial institution, and 18 U.S.C. § 1344, bank fraud; the evidence is insufficient to support these charges' respective specific intent requirements, *i.e.*, the evidence does not support a finding of specific intent to influence the bank or specific intent to defraud.

testified that he actually believed the two statements were true when he filed the renewal form with the bank, and the record tends to supports this "good-faith" assertion. The loan renewal form was completed "a couple of months before [he filed] bankruptcy,"[89] during a period when Judge Porteous and his lawyer were actively pursuing a work-out with debtors, *so as to avoid bankruptcy*. Judge Porteous testified: "I didn't mean [the statement] to be false, because I wasn't in the process of declaring - I was doing everything I could not to file a bankruptcy. That's why I attempted for so long to do a workout."[90] There is evidence and legal authority establishing Judge Porteous's correct understanding that the work-out is an alternative to avoid bankruptcy.[91]

Similarly, Judge Porteous's statement to Regions Bank that there was "no material adverse change" to his financial status as disclosed by financial statements also appears to have been true; though his finances were

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[89] SCHT at 108.

[90] SCHT at 109.

[91] In fact, the very "workout" letter that the Special Committee points to as evidence of Judge Porteous's intent to file bankruptcy specifically stated that it was an attempt to "workout of the debts . . . by settlement and release *as opposed to the filing of bankruptcy*." SCHT at 280 (emphasis added). The very purpose of a "work-out" agreement is for use outside bankruptcy. *See In re Colonial Ford, Inc.*, 24 B.R. 1014 (Bankr. Utah 1982) ("Congress designed the Code, in large measure, to encourage workouts in the first instance, with refuge in bankruptcy as a last resort."); *see also In re Pengo Indus., Inc.*, 962 F.2d 543, 549 (5th Cir. 1992) ("We strongly disfavor a judicial interpretation of the Bankruptcy Code that contravenes the substantial congressional policy favoring out-of-court consensual workouts."). The testimony of Judge Porteous's bankruptcy attorney, Lightfoot, corroborates Judge Porteous's: "we first started on a workout proposal . . . hoping to avoid bankruptcy" by looking into leveraging home equity and other possible strategies. SCHT at 433-34.

in poor shape at the time he renewed the loan, the same was true at the time he initially sought the loan. Therefore, he may not have believed his financial condition was any worse in respect to his ability to repay a $5000 bank loan than it was a year before when the loan was first made. Moreover, his statement appears to have been literally true; the financial statement forms were never filled out in the initial loan application or in the renewal application. He was only obliged to provide financial statements "as Lender may reasonably request," and there is no evidence showing the Lender so requested. Thus, no material change was technically reflected in the financial condition information *as disclosed* to the Lender, since both initial and renewal applications contained identical blank financial statement forms.

In respect to each of these criminal allegations above, the evidence permits and supports the argument that the record lacks evidence to support these allegations on a critical element: evidence of an intent to defraud or intent to influence the bank.

Further, the record demonstrates several mitigating considerations in respect to the remaining allegation and finding that Judge Porteous failed to carefully update his financial disclosure statements to provide an accurate picture of his debt and gifts from friends in the required financial disclosures under 5 U.S.C. App. 4 § 101, or the "Ethics in Government Act," in violation of 18 U.S.C. § 1001. This statute does not require an intent

to deceive for its violation. Without an intent to deceive element, violations of this statute do not entail the moral culpability associated with the previous alleged criminal violations.[92] Moreover, Judge Porteous's violation of this provision arguably does not arise to a level of seriousness that would trigger a criminal investigation and/or indictment.[93] The Department of Justice Manual restricts discretion to prosecute to violations of 18 U.S.C. § 1001 when nondisclosures "conceal significant underlying wrongdoing."[94] It is not alleged that any impropriety was concealed other than a possible appearance of impropriety (not actual impropriety) created by the unreported gifts and the level of his already-substantial reported private debt.

As I have discussed above, the evidentiary support for the specific intent element is weak in these criminal allegations,[95] save the least serious alleged violation. As for the least serious infraction, it arguably does not even warrant criminal investigation. Moreover, the DOJ and a grand jury investigated similar charges involving

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[92] *McBride v. United States*, 225 F.2d 249, 254-55 (5th Cir. 1955) (noting that § 1001 does not require proof of an "evil" intent).

[93] That Judge Porteous's actions did not, in fact, trigger an investigation further supports this conclusion.

[94] *United States v. Blackley*, 986 F. Supp. 607, 613 (D.D.C. 1997). While the probable lack of criminal prosecution for the violation in this case does not excuse a finding of a violation, a violation that fails to trigger criminal prosecution under DOJ internal policy is persuasive evidence that such a violation is not an impeachable high crime or misdemeanor.

[95] The final allegation of conspiracy is subject to the same analysis as the independent charges.

the same evidence for nearly five years and did not find sufficient evidence to submit or obtain an indictment on any of the charges.

5.

There is reason to conclude that due process concerns render the entire record compiled by the special committee, and considered by the judicial council majority, an unreliable basis for a certification of possible impeachment.

Each judicial council must demonstrate that it has fully protected the values of judicial independence and integrity in every disciplinary proceeding; otherwise, the prospect of judges evaluating each other's integrity risks chilling to an extreme degree individual judges' exercise of independent judgment as a matter of fairness to litigants.[96] In recognition of this, Congress drafted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 to control "potential excesses" of a circuit council by "requir[ing] that minimal due process rights be accorded any judicial officer whose actions or state of health are being investigated by a circuit council."[97] Accordingly, each judicial council must adopt rules requiring that adequate prior notice of any investigation be given to the judge complained against and that the judge be afforded an opportunity to

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[96] The Federal Impeachment Process, *supra* note 17, at 101-02.

[97] H.R. Rep. No. 96-1313, at 14 (1980).

appear in person or by counsel at investigating panel proceedings, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing.[98] Additionally, this judicial council, prior to this case, adopted other rules designed to lend fairness and due process to the judicial disciplinary proceedings.[99]

Judge Porteous was afforded most of these rights, but he was not provided with all that would appear to be required for minimal due process and fairness. First, Judge Porteous was not represented by an attorney at either the Special Committee hearing or the Judicial Council hearing.[100] Judge Porteous's former attorney resigned two weeks before the Special Committee hearings in which all of the evidence was taken; the judge's motion for continuance and for time to obtain new counsel was denied; and he was forced to appear without the assistance of counsel before the committee, which retained two former United States Attorneys to present the case for Judge Porteous's sanctioning and possible

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[98] 28 U.S.C. § 358(a)&(b); H.R. Rep. No. 96-1313, at 14 (1980) ("The net effect is . . . that the possibility of one group of federal judges arbitrarily 'ganging up' or 'hazing' another is prevented." (citing *Chandler v. Judicial Council*, *supra* 398 U.S. at 140 (Douglas, dissenting).)

[99] *See* Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability, Rule 11.

[100] *See id.* at 11(e); *see also* Judicial Conference Draft Rules Governing Judicial Conduct and Disability Proceedings, Rule 15(e) ("Representation by Counsel. The subject judge may choose to be represented by counsel in the exercise of any of the rights enumerated in this Rule. The costs of such representation may be borne by the United States as provided in Rule 20(e).")

impeachment. Before the Special Committee, the attorneys compiled a voluminous record in an effort to prove violations of the Code of Judicial Conduct canons and several complex federal criminal statutes. Judge Porteous, representing himself, presented very little evidence and failed to cross examine vigorously the witnesses called by the committee.

Second, at the beginning of the Special Committee hearing, Judge Porteous moved to exclude from the proceedings any evidence of his alleged misconduct that occurred prior to his appointment and confirmation as a federal district court judge in 1994. The Chief Judge, for the Special Committee, denied his motion, and as a result the record, upon which the Special Committee's recommendations are made and the Judicial Council's determinations are based, improperly contains evidence of his alleged misconduct between 1984 and 1994, when he was a state judge and before he took office as an Article III judge. As discussed above and conceded by the special committee, this conduct is beyond the authority of the judicial council[101] and cannot be considered by Congress as grounds for its impeachment decision.[102] Thus, this evidence did nothing but prejudice the record against Judge Porteous by raising extraneous allegations.

5.

[101] *See* Special Committee Response to Reply Memorandum at 4.

[102] *See supra* note 63.

For these reasons, I respectfully dissent from the Judicial Council majority's certification of possible grounds for impeachment and instead would issue a public reprimand subject to strict precautionary conditions.[103]

[103] For these same reasons, I had, prior to the certification of this issue, respectfully recommended to the Judicial Council that Judge Porteous's conduct warrants a public reprimand but not certification to the Judicial Conference as possible grounds for impeachment. Accordingly, I recommend 1) that Judge Porteous be reprimanded by means of public announcement; 2) that on a temporary basis for a period of two years no criminal matters in which the United States is a party be assigned to him; 3) that he be required to enter a contract with the Lawyer Assistance Program of the Louisiana State Bar Association for counseling, monitoring, and such programs as it may require for recovery and rehabilitation from alcohol abuse and gambling addiction for a period of not less than five (5) years; 4) that, if such restrictions are not already imposed by the Lawyer Assistance Program, he be required to undergo alcohol testing and treatment and be prohibited from entering any gambling establishment, and 5) that he be required to make such written and personal reports to a monitor to be appointed by the Chief Circuit Judge in respect to his recovery, rehabilitation and financial condition, upon terms and conditions to be specified by the monitor during his tenure in office. This resolution was ultimately rejected, though Judge Porteous was amenable to such measures, *See* Judge Porteous's Reply Memorandum at 13.

It is unfortunate that the Judicial Council did not reach such a collegial settlement on this basis because a Judicial Council should strive to resolve these matters collegially when it can. *See Hastings,* 593 F. Supp. at 1383. Moreover, a resolution by reprimand is consonant with the circumstances surrounding Judge Porteous's transgressions, his contrition for those transgressions, and his strong commitment to turning his life around. Judge Porteous admits he committed non-impeachable transgressions; he "sincerely apologizes" for that conduct, and acknowledges he is "ultimately responsible for [his] actions and lapses." Judge Porteous's Reply Memorandum at 13. However, a number of undiscussed tragic mitigating factors surround Judge Porteous's actions. His transgressions occurred at a time when he was beset by undiagnosed depression, alcoholism, and gambling addiction. *Id.* at 2. These problems were exacerbated by the worsening state of his finances, his loss of his home to Hurricane Katrina, and his wife's sudden death soon thereafter. *Id.* at 12.

In reaction to this string of misfortune, though, Judge Porteous's conduct in the two years after his wife's death in 2005 displays Judge Porteous' strong commitment to change his life and eliminate the causes of his past indiscretions. *Id.* at 2. He has not gambled for over two years and has been free from alcohol for at least twenty months. *Id.* at 2; *see also* SCHT at 481. He also is continuing his over two-year treatment for his depression. Judge Porteous's Reply Memorandum at 2. At the time of he filed his Reply Memorandum, Judge Porteous was in the process of signing a five-year contract with the Louisiana Bar's Lawyers Assistance Program, which involves weekly Alcoholics Anonymous meetings, meetings with support groups, meetings with a monitor, and random alcohol testing. *Id.* at 2. The Chief Judge and other judges of the Eastern District of Louisiana have expressed their belief that Judge Porteous has always performed his judicial duty with integrity and their confidence in his ability to carry out his

judicial responsibilities with fairness, impartiality and competence. They also note Judge Porteous's commitment to turning his life around. For these reasons, I believe that a public reprimand subject to strict precautionary conditions is the appropriate sanction in this case.

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REPORT BY THE SPECIAL INVESTIGATORY COMMITTEE
TO THE JUDICIAL COUNCIL
OF THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DOCKET NO. 07-05-351-0085

In the Matter of Judge G. Thomas Porteous, Jr.
United States District Judge
Eastern District of Louisiana

REPLY MEMORANDUM

Submitted

December 5, 2007

CONFIDENTIAL

EXHIBIT 3

HP Exhibit 6(c)

MAY IT PLEASE THE COMMITTEE:

At the very outset let me state my sincere apology and regret for my actions which have brought me before the Committee.

After two years of therapy following my wife's death, I am just beginning to understand my difficulties. My health care professionals are of the opinion that I had a pre-disposition and genetic cause for my depression. This is evidenced based upon my father's suicide and one of my son's need for in patient treatment. My attempts to ease the situation led to my dependence on alcohol, itself a depressant, which eased the pain only until the next morning when the vicious cycle would begin anew. These problems became exacerbated because of financial difficulties and gambling. Each and every day of my life the vicious cycle kept repeating itself. I bring this up not as an excuse for my actions, but to give the Committee and the Judicial Council some insight into my history. The bottom line is that my therapist believes I have suffered from anxiety and depression for a substantial period of my life.

That being said, I have finally begun putting my life back in order. I have not gambled for over two years and have been free from alcohol for twenty months. I recognize this will be a continuing battle, but with firm determination and the support of my family, I am committed to changing my life for the better.

As part of my lifestyle changes, I am signing a contract with the Lawyers Assistance Program. This contract will be for five years and will require weekly AA meetings, weekly meeting with the lawyer support group, monthly meeting with my monitor, and random blood and/or urine specimen testing. If the Council should decide that a reprimand is an appropriate sanction, the contract will provide appropriate monitoring well past my point of retirement and

ensure that my commitment to sobriety is real.

PRELIMINARY ISSUES

First, as raised before the Committee initially, I re-urge dismissal of several of the charges as being untimely. Rule 1 (D) of the Rules Governing Complaints of Judicial Misconduct or Disability provides for dismissal if the delay in filing prevents fair consideration of the matter. The portion of the complaint involving my actions on the state bench are at the best thirteen years ago back to twenty-three years ago. I respectfully suggest that these allegations are clearly time-barred.

Additionally, the allegation of misconduct in 1999 is eight years old and also appears to be untimely. Further, it appears that the Department of Justice had this material as far back as 2001, and their actions caused the delay in bringing this charge to the Committee.

Second, during the Committee hearings, I was required to undergo hand-wanding each time I entered the building. I asked the Committee if this was due to some information of a threat or because of a concern about my mental stability. No satisfactory answer was provided. I raise this issue because the Committee several times in its opinion suggested I had no disability. If, however, the reason for the searching was because of my mental instability this would clearly have relevance to my request for disability retirement.

Third, at the start of the hearing, I moved to have the prosecutors from the Department of Justice Office of Public Integrity removed from the hearing, as well as, the FBI agents. The Committee response was that they represented the complainant. The opinion of the Committee also references the Public Integrity Section as the complainant. However, when I asked to call a Department of Justice representative as a witness that request was denied. This despite Rule

10 (C) which states the complainant will be a witness. This action by the Committee precluded me from inquiring about the length of the investigation, my cooperation in agreeing to extend the statute of limitations, their reasons for their decision not to prosecute, whether they had favorable evidence, their contacts with the Chief Judge of the Circuit wherein no objection to my disability was discussed, their contacts with the bankruptcy trustee, and many other areas. This denial was clearly contrary to the plain language of the Rules Governing Complaints.

Fourth, in the course of the opinion, the Committee at various times made reference to various resolutions which would have eliminated the need for a hearing. While believing that references to compromise are inappropriate under the Rules of Evidence which are applicable to this proceeding, I must comment on the last suggestion that I would resign and the matter would be closed as moot. The Committee fails to mention that the offer also required a consent to a Federal disbarment.

Finally, I again respectfully submit that the opinions of my health care professionals support a finding of disability pursuant to the Rules. The only difference is that I am not fighting a finding of disability. I make this suggestion in spite of the findings of Dr. Gabbard, the psychiatrist for the Committee. Dr. Gabbard's findings are the result of a two and a half day evaluation and only reflect my condition during that time period. His findings fail to take into consideration the findings of my doctors that at multiple times during my twenty month treatment I have appeared quite depressed and anxious. Their opinion is that I am disabled. When one considers the sudden death of my wife, the loss and rebuilding of my home, my separation from my family during the rebuilding, the pressures of an investigation which lasted for approximately five years and the daily pressures of the bench it is not hard to recognize that these stressors have

taken a toll on me. Accordingly, I renew my request that the Committee and the Council make a finding of disability and so certify the matter. This finding will mean my immediate removal from the bench.

BANKRUPTCY FRAUD AND VIOLATIONS OF THE ORDER OF THE BANKRUPTCY COURT

In its original complaint, the U.S. Department of Justice set out numerous grounds for their decision not to prosecute. The bottom line in their decision simply put is that they could not prove a crime was committed. Importantly, they recognized that intent to deceive could not be proven. This would also suggest that intent to defraud could not be proven. Heavy burden of proof, unanimous verdict, and materiality were also mentioned. Again, this is simply legal linguistics for being unable to prove a crime was committed. By filing a complaint, they seek to avoid their constitutionally mandated burden of proof as is applicable in every case and attempt to prove criminal conduct via a civil proceeding.

The incorrect names in the original filing were not done to defraud any creditor, but rather to avoid the embarrassment of news articles. The articles were printed anyway. No creditor was defrauded by the original petition, indeed no creditor even received the incorrect filing. Hence, there was no illegal purpose for the filing. Also the names were corrected within two weeks of the original filing.

The impermissible debt allegations deal with gambling markers. By its own definition, the Committee recognizes that the marker operates as a check. Using this definition, there is no extension of credit. The markers did not affect the net payout to the creditors.

At the time of the filing, I did have a gambling problem. Upon filing of the petition, I did

not immediately stop gambling. Such is the nature of this addiction. However, even with analysis by the FBI, they could not establish that winnings from other casinos actually offset the markers they found. Such was their admission upon questioning by Judge Benavides.

With respect to the Fleet Credit Card, I must admit that it was in my wife's name and I did not know she was using it post bankruptcy. I also did not recall paying off the card immediately prior to filing for bankruptcy. In any event, gambling addiction was my wife's only vice. She also did not turn off the gambling switch with the filing of the bankruptcy.

The other bankruptcy misrepresentations involve tax refunds, omission of the Fidelity money market account, payment of the Fleet Credit Card, understating income (higher net income when FICA maximum is met), markers, and gambling losses.

As to the tax refund, I maintain my position that I told Mr. Lightfoot about it and he said to place it in my account, but if requested by the bankruptcy trustee, I would have to surrender it. As to this area, Lightfoot could only say he did not recall the conversation.

Fidelity was an oversight of an account containing $283.42. This was not intentionally omitted with the intent to defraud any creditor and did alter the percentage payback.

The Fleet Credit Card was omitted and I did not recall paying it off or my wife's continued use of it.

The understating of income was not intentional. Although, a pay stub was included prior to paying of the maximum FICA, that same pay stub showed my ultimate gross income for the year. In any event, the nominal increase in income would not have affected the ultimate percentage payout as is reflected in the Beaulieu letter.

The issue of gambling markers and losses has previously been discussed. It is important

to note that when a person brings chips to the cashier for cash, the cashier does not require any form of identification. Hence, no record of the customers winnings is actually recorded.

The Department of Justice brought all of these areas to the attention of the bankruptcy trustee prior to my discharge (Beaulieu's 302's and accompanying letters). In his staff attorney's letter of April 1, 2004, to Wayne Horner of the FBI he stated, "You may file an objection to the Trustee's Final Account or you may provide Mr. Beaulieu with evidence of wrongdoing and same will be investigated." Neither option was selected by the FBI and/or Department of Justice. Had they really believed that bankruptcy fraud existed or wanted to help the creditors obtain a greater payout, they had every opportunity to do so. Additionally, no action was taken by the trustee even with the information provided by the Department of Justice. Again, this would appear to indicate that they felt there was insufficient evidence of bankruptcy fraud. Quite to the contrary after an additional three years, they reached the same conclusion that no prosecution was warranted.

BANK FRAUD INVOLVING A LOAN AT REGIONS BANK

Despite the findings of the Committee, it was never my intention to harm Regions Bank. When the potential payout letters were sent to the other creditors, it was my honest intention to negotiate a settlement with them and still pay the bank 100% of my debt. The simple reason for this was my friendship with Buddy Butler and my longstanding relationship with the bank. This was not part of a bankruptcy payout, but rather an attempt to avoid bankruptcy if at all possible. These efforts continued until early 2001 when it was obvious a resolution could not be accomplished. The loan extension application did not result in any additional funds being disbursed.

Although the Committee has questioned my reasons for my actions, there was never any ill purpose or attempt to defraud.

In hindsight, I now understand how converting my loan to a secured debt in January, 2001, would have accomplished my intentions. However, had that occurred, I am positive I would now stand accused of granting the bank a preference to the detriment of the other creditors.

Essentially, I found myself in a Catch 22 position. However, again I must state that I never had any intention to harm the bank. By declining prosecution the Department of Justice undoubtedly has reached the same conclusion. However, now it appears that the Committee has found a criminal violation in a civil proceeding.

Again, in hindsight, my attempts to pay the bank my full debt may have been confusing and illogical. However, at the time, I fully believed I could work out my other debts and still pay the bank 100%. Defrauding the bank was never my intention.

RECEIPT OF CASH, GIFTS AND OTHER FORMS OF REMUNERATION

I have never seriously disputed the fact that at different times during my tenure on the State bench that Amato & Creely periodically helped me by giving me financial assistance. There never has been any suggestion or claim that their help in any way constituted a bribe. Indeed, at the beginning of the hearing before the Committee, Mr. Woods stated, upon questioning:

Judge Porteous: You make no claim alleging bribery.

Mr. Woods: That's correct. (p. 21)

During the course of the hearing and after almost five years of investigation by the FBI, there has been no evidence or information gathered which indicates that my dealings with Amato & Creely in court were anything but fair and impartial. No evidence of favoritism or impropriety has been found or presented. Indeed, subsequent to the 1999 event, Mr. Creely admitted he had lost a decision in my Court but that decision was later reversed by the Fifth Circuit.

Even in the Liljeberg matter, there has been no claim of a lack of fairness or impartiality. During Mr. Mole's testimony, he unequivocally stated that I was a gentleman, professional, polite and let him argue his case. He also testified that I was a "very good trial judge". (p.187) Even when I lost my temper at one point during the trial, I returned to Court after the weekend recess and allowed Mr. Mole to ask additional questions without interruption.

At the conclusion of the trial, a judgment was rendered in favor of the plaintiff but there has been no evidence that my friendship with the lawyers on both sides played any part in that decision.

With respect to the 1999 event, I have not disputed that they helped me. The Committee, however, has attempted to suggest that the event involved $4000.00 - $5000.00. I believe this is because when I returned from the bachelor party I deposited $5000.00 in winnings from that trip. Actually, the $5000.00 was used to pay advances on my credit cards that were obtained during the trip. Since the Committee has no direct evidence of receiving that amount from Amato or Creely, they have tried to infer that the amount came from them. In fact, during his questioning, Mr. Creely never gave any indication that he had given me $5000.00 during the bachelor party.

With respect to paying for my room and one dinner with the whole group, I never considered this as anything but friendship. Indeed, during the trip, I am sure I bought drinks at

various times and believe I bought one lunch when we were all together. In any event, Creely also testified that my rulings on the bench had no relationship to my dealings with them. (p.231)

There never was a Curatorship Scheme. During my questioning, Creely testified he had no reason to doubt that I sent curatorships to him in order to help him in giving Raphael something to do and in an attempt to help defray some of his costs. (p. 232 - 233)

The unexplained cash balances and transactions have been presented in an attempt to suggest that I received unaccounted for cash. The FBI, after years of investigation and analysis, has been unable to link the alleged amounts to any criminal or unlawful activities and now is attempting to simply assert they were improper. I did not receive any cash from any illegal source at any time.

As for Mrs. Danos, she tried to explain during her testimony the differences. Her testimony revealed that she was placing reimbursement for her sons' bills into her account and paying their bills because they did not have checking accounts at that time. This same testimony was provided during Mrs. Danos' grand jury testimony and the Department of Justice still elected not to prosecute.

FINANCIAL DISCLOSURE REPORT VIOLATIONS

VIOLATIONS OF THE CANONS OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

Since there is much crossover in the above referenced sections, I will address both in this section.

I agree completely with the Committee when it found, "Porteous was in a downward

financial spiral by the time he had engaged Lightfoot in the summer of 2000, and was on the brink of bankruptcy..."

The reality is that the darkest and most distressing period in my life began in 1999 and tragically continued with the loss of my family home in Hurricane Katrina, physical separation from our family and the sudden death of my wife in December, 2005. It was also during this period when the criminal investigation was occurring.

During this period, my gambling was clearly a problem and my self medication with alcohol increased. This had the effect of me neglecting my duties and paying little, if any, attention to the requirements of my work and reporting requirements. The impending embarrassment of filing what did become a well reported bankruptcy served to worsen my condition. I am only beginning to understand my situation after almost two years of therapy.

Again, I have no excuse for the inaccurate reports, but respectfully ask the Committee and the Council to at least look at my worsening mental status during this period. It was never my intention to commit a fraud or willfully ignore my responsibilities.

All of my dealings with the attorneys listed in the Report of the Committee were as a friend to a friend. No gift was given as a lawyer to a judge. I have been friends with all of the attorneys for my entire legal and judicial career. As noted, I am the godfather to one of Don Gardner's daughters. I performed the wedding ceremony for one of Creely's marriages. I have known Amato for thirty plus years and knew his children from an early age. In fact, his daughter clerked for me for the 2002 – 2003 term. Levenson is likewise a longtime friend. I also know his family. I helped him have his daughter appear in the Washington Mardi Gras Ball as a princess. My friendship with Forstall is similar. I bring this up not to justify my actions, but to show that

my contact with all of the lawyers was predominantly as friend helping friend with no expectation of receiving anything in return. Clearly, this again does not justify my lapses in filing the financial reports or adherence to the Code of Conduct, but it should provide a picture of our real relationships.

On page 64 of the Report of the Committee when discussing whether I've been fair and impartial in every proceeding before me, the Committee stated, "The lawyers who lost the recusal motion in Liljiberg would probably take issue with that statement". However, as previously discussed, Mr. Mole agreed that I was a gentlemen, professional, polite and let him argue his case. In conclusion, he stated, "I thought you were a very good trial judge". (p.187).

Why do I deserve mercy and a chance to finish my judicial career and when did my life change? As tragic as Hurricane Katrina was on life, it was during the four months post the storm when my wife and I got the chance to truly share our life and discuss what we needed to do in order to make our life together better. From August, 2005, through December, 2005, my wife and I were inseparable and spent more time together than almost any point in our lives. We cried together, laughed together and generally renewed our commitments and love for one another. Tragically, this ended with her sudden death on December 22, 2005, one day before her birthday. What helped with this sad situation was the four months we did share together. In April, 2006, I took the first steps in permanently changing my life for the better. As the remaining parent, I wanted to make sure that the remainder of my life was clean, sober and of help to my children and grandchildren. My continuing therapy has opened my eyes to my past and given me hope for the future. What is important in my life are my children, grandchildren, family and career. I now realize that I have been given a second chance to be a better person. I do not intend to squander

that chance.

I beg the Committee and the Council to please give me a second chance and recommend a reprimand. I sincerely apologize for all of my transgressions. I am ultimately responsible for my actions and lapses.

If a reprimand, whether public or private, is ordered, I would agree to a Judge Monitor to whom I would report and who could supervise my activities. This would give the Committee an extra level of supervision to ensure that my commitments and intentions are not shallow promises. This would also be in conjunction with my AA monitor's duties.

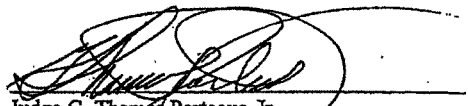
The portion of the report dealing with removal of cases involving the United States Government is unnecessary since I voluntarily withdrew from those cases several years ago and did not intend to take them again until this matter was terminated. Also, if the Committee or Council believe I should be removed from all cases pending a final ruling herein, I will abide by that decision.

In conclusion, let me again apologize and ask this Committee to recognize my commitment to change for the better. I can only pray that the Committee and Council will allow me the opportunity to prove my worth and complete my tenure on the Bench.

I am comforted by the fact that since my return to the Bench in June, 2007, pursuant to Chief Judge Jones' order, I have been contacted by innumerable attorneys who have expressed their support for me and said how happy they were that I am back. Clearly, I have not lost the support and trust of the bar as a whole. With your mercy and help, I beg that I be allowed to

continue earning and keeping their support and trust.

Respectfully Submitted,



Judge G. Thomas Porteous, Jr.
United States District Court, EDLA
500 Poydras St., C206
New Orleans, La. 70130
(504) 589-7585

COPY

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

June 18, 2008

BY HAND

Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

Dear Madam Speaker:

At a special session held yesterday, the Judicial Conference of the United States by its members present determined unanimously, upon recommendation of its Committee on Judicial Conduct and Disability, to transmit the enclosed Certificate, report, and record of proceedings in a judicial misconduct matter to the House of Representatives, in accordance with 28 U.S.C. § 355(b)(1). Two members were not present and did not participate in the Conference's deliberations on this matter.

Please be advised that the Certificate is a "determination" within the meaning of the following provision in section 355(b)(1): "Upon receipt of the determination and record of proceedings in the House of Representatives, the Clerk of the House of Representatives shall make available to the public the determination and any reasons for the determination." The Judicial Conference will make no public statement on this matter, but has transmitted the Certificate and report to the subject judge and to the chief judge of the Fifth Circuit Court of Appeals in her capacity as chair of the Judicial Council of the Fifth Circuit.

Sincerely,

James C. Duff

James C. Duff
Secretary

Enclosures

HP Exhibit 7(a)

COPY

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

CERTIFICATE

TO THE SPEAKER, UNITED STATES HOUSE OF REPRESENTATIVES:

Pursuant to 28 U.S.C. § 355(b)(1), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted. This determination is based on evidence provided in the Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit and the Report and Recommendations of the Committee on Judicial Conduct and Disability. Said certification is transmitted with the entire record of the proceeding in the Judicial Council of the Fifth Circuit and in the Judicial Conference of the United States.

The determination is based on substantial evidence that:

a) Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him. Parts F(1)(a), (2)(a), and G of Report of the Committee are incorporated by reference.

b) Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621 as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard of the bankruptcy court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1). Parts F(1)(c), (2)(c), and G of the Report of the Committee are incorporated by reference.

c) Judge Porteous wilfully and systematically concealed from litigants and the public financial transactions, including but not limited to those designated in (d), by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in cases in which lawyers who appeared before him had given him cash and other things of value and for the Fifth Circuit Judicial Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value. Parts F(1)(a), (b), (2)(a), (b), and G of the Report of the Committee are incorporated by reference.

d) Judge Porteous violated several criminal statutes and ethical canons by presiding over In re: Liljeberg Enters. Inc. v. Lifemark Hosps. Inc., No. 2:93-cv-01784, *rev'd in part by* 304 F.3d 410 (5th Cir. 2002). In that matter, which was tried without a jury, he denied a motion to recuse based on his relationship with lawyers in the case, in violation of 28 U.S.C. § 455 and Canons 3C(1) and 3D of the Code of Conduct for United States Judges. In denying the motion, he failed to disclose that the lawyers in question had often provided him with cash. Thereafter, while a bench verdict was pending, he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and other things of value in violation of 18 U.S.C. § 201(c)(1)(B). This conduct, undertaken in a concealed manner, deprived the public of its right to his honest services in violation of 18 U.S.C. §§ 1341, 1343, and 1346, and constituted an abuse of his judicial office in violation of Canons 5C(1) and 5C(4) of the Code of Conduct for United States Judges.

Parts F(1)(b), (2)(b), and G of the Report of the Committee are incorporated by reference.

e) Judge Porteous made false representations to gain the extension of a bank loan with the intent to defraud the bank and causing the bank to incur losses in violation of 18 U.S.C. §§ 1014 and 1344. Parts F(1)(d), (2)(d), and G of the Report of the Committee are incorporated by reference.

f) The conduct described in (a) through (e) has individually and collectively brought disrepute to the federal judiciary.

Executed this 17th day of June, 2008.

James C. Duff
Secretary

REPORT AND RECOMMENDATIONS

OF THE JUDICIAL CONFERENCE

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

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TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee on Judicial Conduct and Disability submits the following report and recommendations. This matter, In Re: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous Jr. under the Judicial Conduct and Disability Act of 1980, No. 07-05-351-0085 ("Act"), was certified to the Conference by the Judicial Council of the Fifth Circuit pursuant to 28 U.S.C. § 354(b)(2)(A) upon the Council's determination that Judge Porteous may have engaged in conduct that might constitute one or more grounds for impeachment under Article II of the United States Constitution. On February 13, 2008, the Executive Committee referred that Certification to the Committee on Judicial Conduct and Disability.

The Committee finds substantial evidence that Judge Porteous has engaged in misconduct that may warrant consideration by the Congress of impeachment under Article II of the United States Constitution. As detailed below, there is substantial evidence that Judge Porteous made numerous false statements under oath, including on his financial disclosure forms; solicited and received cash and things of value from lawyers appearing in cases before him; in soliciting and receiving the cash and things of value, used means that avoided a direct paper trail and did not report these benefits as required on his financial disclosure forms; committed fraud and perjury in his personal bankruptcy action; and secured renewal of a bank loan through fraud. There is substantial reason to conclude that these acts constituted serious crimes, abuses of judicial power, and brought disrepute on the judiciary. The Committee therefore recommends to the Conference that pursuant to 28 U.S.C. § 355(b)(1), it certify and transmit to the House of Representatives the records of this proceeding and the Conference's determination that consideration of impeachment may be warranted. A proposed certification can be found at Part H of this report.

The Committee also recommends that it be authorized to invite the Judicial Council of the Fifth Circuit to: (i) make an express decision on whether to continue at this time or suspend

proceedings pursuant to 28 U.S.C. § 354 regarding sanctions for misconduct by Judge Porteous under the Judicial Conduct and Disability Act; and (ii) consider whether to direct that, under Section 354(a)(2)(A)(i), no further cases be assigned to Judge Porteous for two years or until final action regarding impeachment and removal from office by the Congress, if earlier than two years.

Because of the seriousness of the matter, the lack of direct precedents in the Conference's history, and the existence of a dissent by members of the Fifth Circuit Judicial Council filed after the Council's certification, the Committee has compiled an extensive Report and Recommendations.

The Report and Recommendations is self-contained and comprehensive and the accompanying exhibits are transmitted principally for reference purposes. Those exhibits are as follows: (1) the Report of the Special Committee of the Fifth Circuit Judicial Council, (2) Judge Porteous's response thereto, (3) the Special Committee's ("SC") response to him, (4) the certification of the Fifth Circuit Judicial Council, (5) a dissenting statement by members of the Council, and (6) a Memorandum and Supplemental Memorandum filed on behalf of Judge Porteous with the Conference. Additional transcripts and other documents too voluminous to copy and transmit are available in the General Counsel's Office in the Administrative Office. Conference Rule 10 states that the Report of this Committee is an internal document - - analogous to a clerk's memorandum to an appellate court - - and need not be provided to the subject judge. Rules for the Processing of Certificates from Judicial Councils that a Judicial Officer Might Have Engaged in Impeachable Conduct R. 10. Because the Committee's Report and Recommendations is based entirely on the record compiled by the Special Committee and does not expand on the allegations in the original complaint, the Committee will not, absent a contrary direction from the Conference, transmit a copy to, or seek comment from, Judge Porteous.

A. PROCEDURAL BACKGROUND

On May 18, 2007, the United States Department of Justice ("DOJ") completed a twenty-two-page complaint, pursuant to 28 U.S.C. § 351(a), alleging that Judge G. Thomas Porteous Jr., United States District Judge for the Eastern District of Louisiana, "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" under the Act.[1] [SCR. 2; DOJ Cmplt. dated 5.18.2007] The complaint was filed by John C. Keeney, Deputy Assistant Attorney General for the Criminal Division of the DOJ. [SCR. 3; DOJ Cmplt. at 22] The DOJ complaint detailed several allegations of serious misconduct. The underlying information was obtained through an investigation by the Federal Bureau of Investigation ("FBI") and a grand jury empaneled in the Eastern District of Louisiana. [DOJ Cmplt. at 1] The investigation concerned whether Judge Porteous had committed or conspired to commit a number of crimes, including bribery of, or receipt of illegal gratuities by, a public official in violation of 18 U.S.C. §§ 201 and 371, the deprivation of honest services through mail- or wire-fraud in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1346, submitting false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filing false declarations, concealing assets, and acting in criminal contempt of court during his personal Chapter 13 bankruptcy proceeding in violation of 18 U.S.C. §§ 152 and 401. [DOJ Cmplt. at 1] Ultimately, the DOJ decided not to prosecute Judge Porteous. [SCR. 3]

After receiving the complaint, Chief Judge Edith Hollan Jones of the Fifth Circuit appointed the SC, pursuant to 28 U.S.C. § 353(a), to investigate the complaint. The committee consisted of Chief Judge Jones, Circuit Judge Fortunato P. Benavides, and District Judge Sim Lake. Judge Porteous was provided notice of this action. [SCR. 2] Ronald G. Woods, investigative counsel for the SC, coordinated with the DOJ attorneys to obtain and organize grand jury testimony and other documents compiled by the government that were relevant to the SC's investigation. [SCR. 5; SCHT. 269]

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[1]The DOJ complaint was finalized on May 18, 2007 but was not actually filed until May 21, 2007. Because the report is referred to as the May 18 report elsewhere in the record, we adopt the same terminology.

In May 2006, Judge Porteous had sought a certificate of disability from Chief Judge Jones. In his request, he cited his alcohol abuse, the loss of his home in Hurricane Katrina, his wife's sudden death, and the grand jury investigation. [SCR. 5 n.2; SC. 851-56] That request was denied. Chief Judge Jones denied a subsequent request that she reconsider her initial denial because the documentation of a permanent medical disability was insufficient. [SC. 853; SCR. 5] On June 11, 2007, Judge Porteous,[2] through counsel, offered to retire voluntarily if he was certified by the Fifth Circuit's Judicial Council as disabled and unable to continue his duties as a federal judge. Judge Porteous wanted to receive "all customary retirement benefits" upon waiver of the length-of-service requirement, as permitted by 28 U.S.C. § 354(a)(2)(B)(ii) and Rule 13(f)(5) of the Fifth Circuit's Rules Governing Complaints of Judicial Misconduct or Disability. [SC. 851-56]

By letter dated June 25, 2007, the SC declined to recommend Judge Porteous's disability proposal to the Fifth Circuit Judicial Council. [SC. 857-58] Because the SC's investigation was in its beginning stages and because it wanted to file a comprehensive report with the Fifth Circuit's Judicial Council, the SC declined to recommend what it considered to be a "preemptive settlement." [SC. 857] The SC also declined to recommend the disability proposal because it was unauthorized under the Act. The statutory provisions authorize waiver only of the length-of-service requirement but not of the minimum age for disability retirement. See 28 U.S.C. §§ 354(a)(2)(B)(ii), 371, and 372. [SCR. 6] Judge Porteous was also notified that the SC would be holding an evidentiary hearing in New Orleans, that he would be afforded procedural rights in accord with Rule 11 of the Fifth Circuit's misconduct rules, and that he was to file a response -- which would determine the scope of the hearing -- by July 10, 2007. [SC. 858]

In July 2007, Judge Porteous requested a continuance because he was in the process of obtaining new counsel. [SCR. 6; SC. 859, 860-61] Judge Porteous also requested a discovery

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[2]To the extent that the ensuing discussion relates to Judge Porteous's claims of disability, claimed psychiatric conditions, or offers to resign, the Committee includes such details only because they are relevant to the argument that his due process rights were violated by deprivation of counsel and lack of time to prepare for the SC's hearing.

schedule, and that the DOJ complaint be dismissed as legally insufficient because it was not verified under oath.

The SC scheduled its hearing for September 26-28, 2007. [SC. 862-63] Judge Porteous was again advised that his response would determine the scope of the hearing and that he would receive notice of the SC's use of grand-jury witnesses and documents. [Id.] On August 2, 2007, Judge Porteous retained a new attorney and requested a further continuance of the hearing and response date. The SC extended his response deadline by one week but refused to reschedule the hearing. [SC. 864-65] The SC also obtained immunity from federal prosecution for prospective witnesses, including Judge Porteous's friends, his secretary and his bankruptcy counsel, all of whom had testified before the grand jury. [SCR. 7-8; SC. 799-848]

By letter dated August 9, through his then-counsel, Michael Ellis, Judge Porteous raised a number of objections to the DOJ Complaint, including the argument that it was legally insufficient because it was unverified, in violation of Rule 2(F), and lacked the names and addresses of the witnesses it identified, in violation of Rule 2(B)(3) of the Fifth Circuit's Misconduct Rules. [SC. 866-68]

The SC, through its investigative attorney Ronald Woods, responded by letter dated August 14. [SC. 869-72] The SC concluded that the Complaint satisfied the requirements of 28 U.S.C. § 351(a) as well as the Fifth Circuit's own misconduct rules because the facts summarized by the DOJ were based on sworn grand jury testimony, public bankruptcy court documents, subpoenaed business records, and filings and statements, some of which were made under penalty of perjury by Judge Porteous himself. [Id.] The SC also provided the names and addresses of the individuals named in the DOJ Complaint -- including Judge Porteous's secretary of approximately twenty years, his bankruptcy counsel, and persons with whom he claimed to have very close friendships. [Id.] The SC emphasized that Judge Porteous, along with his prior counsel, Kyle Schonekas, were both aware of the federal grand jury investigation that had been conducted by the Public Integrity division of the DOJ. [SC. 869-70] Schonekas had advised

Claude Lightfoot, Judge Porteous's bankruptcy counsel, to assert the attorney-client privilege during his grand jury appearance. [Id.] Schonekas had also negotiated with the DOJ on behalf of Judge Porteous through 2007, when the Department decided not to indict Judge Porteous but to file the Misconduct Complaint. [SC. 870] Finally, the SC offered to make all of its documentary evidence available for inspection at an office located in Houston, Texas. [SC. 870]

Two days later, on August 16, Ellis asserted that Judge Porteous suffered from psychiatric conditions, such as depression, anxiety, and memory lapses related to mental depression that substantially interfered with Judge Porteous's ability to perform his judicial duties or assist competently in his own defense. [SC. 874-76] Updated medical reports accompanied the letter that urged Chief Judge Jones to certify Judge Porteous as disabled. [SC. 876-92]

On August 29, 2007, to negate any claim of insufficiency as to the DOJ Complaint, Chief Judge Jones initiated a complaint of judicial misconduct, nunc pro tunc, pursuant to 28 U.S.C. § 351(b), against Judge Porteous to be effective May 21, 2007. The complaint was based on the same facts and circumstances described in the DOJ's Complaint.

The SC then requested a psychiatric evaluation of Judge Porteous under the direction of Dr. Glen O. Gabbard, Director of Baylor College of Medicine Psychiatry Clinic in Houston. [SCR. 9] Dr. Gabbard's report, provided first to Judge Porteous then to the SC, determined that Judge Porteous was capable of both performing his judicial duties and assisting in his defense against the DOJ Complaint. [SC. 200-11] Gabbard reported that Judge Porteous had stopped drinking in April 2006, that he was not clinically depressed, but that he disliked being a judge at this point in his life and expressed a strong interest in pursuing other functions "such as mediation, speaking, and teaching." [SC. 210]

As a result of the time needed for the psychiatric evaluation, the SC's hearing was postponed until October 29, 2007. [SCR. 10; SCHT. 1, 269] Federal immunity was then

obtained for Judge Porteous's own testimony. [SCR. 10] Ellis was provided with the following: Judge Porteous's financial disclosure reports filed with the Administrative Office of the U.S. Courts; the certified bankruptcy court file; documents from Regions Bank concerning a single-payment loan Judge Porteous obtained; and the file and correspondence of Claude Lightfoot, Judge Porteous's bankruptcy counsel. [SC. 893-94] The SC also provided Judge Porteous the opportunity to review nine boxes of grand jury documents that the DOJ had produced to the SC. [SC. 909] The SC also furnished relevant grand jury transcripts and copies of "FBI 302" reports of witnesses who would be called at the hearing. [SCR. 10; SC. 895-907] Finally, the SC requested that any disputes over the admissibility of evidence be raised at least three business days before the hearing. [SCR. 10]

Prior to the start of the hearing, Ellis indicated that Judge Porteous would consider resigning and the SC prepared a "Memorandum of Understanding" to memorialize the proposed resignation agreement. [SCR. 11] Judge Porteous, however, changed his mind, and on October 15, Ellis informed the SC that Judge Porteous would not resign. [SCR. 11] The next day, on October 16, Ellis notified the SC that he was withdrawing as Judge Porteous's counsel because of an "impasse with respect to the future course of [his] representation." [SC. 911] Ellis's resignation letter advised Judge Porteous to prepare for the October 29 hearing. [SC. 912]

On October 18, the SC provided Judge Porteous with a twenty-one page document entitled "Charges of Judicial Misconduct," which outlined Porteous's alleged ethical and criminal violations, as well as the proof to be presented at the hearing. [SC. Exhibit B] On the same day, Judge Porteous requested a 90-day continuance to obtain new counsel and prepare his defense. [SC. 936-37] His request was denied. The SC cited the fact that Judge Porteous had received the DOJ Complaint in May 2007, was on notice, as of June 25, 2007, that the Committee was going to hold a hearing to investigate the allegations contained therein, and had already received two continuances based on a prior change of counsel and the medical examination related to his claim of disability. [SC. 941-42] The SC, by way of additional letters to Judge Porteous dated October 19, listed all of the evidence that had been provided to Judge Porteous or his counsel. [SC. 945-48] On October 24, the SC confirmed delivery to, and receipt

by, Judge Porteous of the following documents: personal credit card records; financial analyses of his bank accounts as well as those of his secretary; an "FBI 302" for Edward F. Butler, the former president of Regions Bank; and other records. [SC. 950-55]

On October 26, the Friday before the hearing was set to begin, the SC sent Judge Porteous an exhibit list and recited, again, the list of documents previously furnished to either Judge Porteous or to his counsel. [SC. Exhibit D-24]

The SC held its hearing on Monday and Tuesday, October 29-30, in New Orleans, Louisiana. [SCHT. 1, 269] The SC's investigative counsel presented ten witnesses, including Judge Porteous. Judge Porteous presented two witnesses. [SCHT. 3, 271-72] Ninety-six documents were admitted into evidence. Two DOJ attorneys appeared at the hearing but did not submit written or oral argument. [SCR. 12-13] Judge Porteous represented himself. [Id.] Judge Porteous presented oral argument and motions. [Id.] He cross-examined the Committee's witnesses and presented the testimony of Claude Lightfoot, Jr. and Don Gardner on his behalf. [SCR. 13]

On November 20, 2007, the SC filed a report with the Judicial Council, containing findings of fact, conclusions of law, and a recommendation of disciplinary action. [SCR. 2] Briefly stated, the SC found that: (i) Judge Porteous had solicited and/or received cash payments and things of value from lawyers who appeared before him, (ii) had not recused himself in cases in which such lawyers appeared before him, (iii) in one such case had denied a recusal motion based on his relationship with lawyers in the case and then solicited cash and things of value from the lawyers, (iv) never disclosed the cash and things of value received from lawyers on his financial disclosure forms, (v) committed fraud in his personal bankruptcy, and (vi) committed bank fraud.

The SC recommended that Judge Porteous be publicly reprimanded for his misconduct and that the Judicial Council of the Fifth Circuit certify the matter to the Judicial Conference of the United States on the ground that Judge Porteous had engaged in conduct "which might constitute one or more grounds for impeachment under Article II of the Constitution," 28 U.S.C. § 354(b)(2)(A). [SCR. 65] The report was accompanied by two volumes of exhibits as well as

the entire record, "including grand jury records, business records of certain casinos, bank and credit card companies, and testimony presented during the adversary hearing." [Jud. Council MO&C at 1] On the same day, the Council informed Judge Porteous that he could examine the report as well as the evidence on which it is based at the Court of Appeals for the Fifth Circuit in New Orleans, and that he could file a written reply on or before December 4, 2007. Judge Porteous was also notified that he could appear at a Judicial Council meeting on December 13, 2007. [Jud. Council MO&C at 2]

Judge Porteous submitted a "Reply Memorandum" on December 5, 2007, which set forth alleged procedural defects and substantive claims. On December 10, 2007, the SC submitted a Response to Judge Porteous's Reply Memorandum, and delivered a copy to Judge Porteous. The Response noted that Judge Porteous broke "no new legal or factual ground," rejected Porteous's arguments, and "re-urge[d] its original Report." [Jud. Council MO&C at 2; SC Response to Reply at 2]

At its meeting on December 13, 2007, in New Orleans, the Fifth Circuit's Judicial Council considered the SC Report, Judge Porteous's Reply, and the Committee Response, as well as the record of the proceedings before the SC. [Jud. Council MO&C 3] Judge Porteous appeared before the Council and spoke in his own defense.

By a Memorandum and Certification dated December 20, 2007, the Council determined, by a majority vote, that there was substantial evidence supporting the allegations listed in the SC Report. Accordingly, it accepted the SC's Report, and determined that Judge Porteous had "engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution." [Jud. Council MO&C at 4] The Council certified the matter to the Judicial Conference of the United States, pursuant to 28 U.S.C. § 354(b)(2)(A), and forwarded all accompanying papers, documents, and records related to the proceeding. [Jud. Council MO&C at 4-5] Four members of the Council submitted a lengthy dissent after the Council's certification.

The Council permitted Judge Porteous to continue his civil docket and administrative duties but ordered that pending a decision by the Judicial Conference, "no bankruptcy cases or

appeals or criminal or civil cases to which the United States is a party" were to be assigned to him. [Jud. Council MO&C at 6]

On January 8, 2008, Judge Porteous was provided with a copy of all relevant papers and notified of his right to file with the Conference, by March 10, 2008, a written response to the Certificate. On February 13, 2008, the Executive Committee of the Judicial Conference of the United States referred this matter to its Committee on Judicial Conduct and Disability, pursuant to Conference Rule 2 of the Judicial Conference's Rules for the Processing of Certificates from Judicial Councils That a Judicial Officer Might Have Engaged in Impeachable Conduct. The Committee was charged with preparing this Report with Recommendations.

Judge Porteous received an approximately 30-day extension to obtain counsel and prepare his response. On April 9, 2008, through newly-retained counsel -- Lewis O. Unglesby, Samuel S. Dalton, and Remy Voisin Starns -- Judge Porteous submitted a response to the Fifth Circuit Council's Certification, styled a "Petition for Review," with accompanying exhibits. On April 16, Judge Porteous, again through his counsel, filed a "Supplemental Memorandum of Law and Argument."

B. THE ISSUE BEFORE THE CONFERENCE

This is only the second occasion upon which the Judicial Conference has considered certification under Section 355(b)(1).[3] On the other occasion, see Judicial Conference of the United States, Certificate Regarding Alcee L. Hastings (March 17, 1987), the principal issue appears to have arisen from the fact that the judge in question had been indicted and acquitted. That proceeding was therefore dominated by factual disputes and by the issue regarding the effect of a jury acquittal. In contrast, in the present matter most of the pertinent facts are largely undisputed, although inferences regarding intent are in dispute. A host of other issues have been raised, however. The dissenters on the Judicial Council of the Fifth Circuit and Judge Porteous argue that the misconduct shown does not rise to the level of an impeachable offense. They also claim that the proceedings in the Fifth Circuit were legally flawed, namely that evidence of Judge Porteous's misconduct as a state court judge was improperly considered, that he was denied due process, and that Chief Judge Jones was disqualified from sitting on the SC or presiding over the Judicial Council's consideration of the matter. These concerns require a discussion based on an analysis of the nature of certification proceedings and the Conference's role under Section 355(b)(1).

When a judicial council determines that a judge "may have engaged in conduct . . . which might constitute one or more grounds for impeachment under Article II of the Constitution," the council "shall promptly certify such determination to the Conference." 28 U.S.C. § 354(b)(2)(A) (emphasis added). If the Conference determines "that consideration of impeachment may be warranted," it must certify that determination to the House of Representatives. See 28 U.S.C. § 355(b)(1).

Under these provisions, certification is neither a sanction nor a final adjudication of impeachment. Certification is not intended to serve as a sanction for misconduct under the Act.

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[3]There have been two occasions on which the Conference has acted under Section 355(b)(2) after a felony conviction of a federal judge had become final. See Judicial Conference of the United States, Certificate Regarding Harry E. Claiborne (June 30, 1986); Judicial Conference of the United States, Certificate Regarding Walter L. Nixon (March 15, 1988).

Section 355's language clearly reflects only an intent to keep Congress informed rather than to punish a miscreant judge when there is evidence of misconduct that might warrant consideration of impeachment and removal from office. These measures are reserved by the Constitution exclusively to the Congress.

The statutory language does not call upon judicial councils or the Conference either to find facts as to what a subject judge did or to find that such conduct constitutes an impeachable offense. Final findings of fact and a definitive conclusion as to whether the subject judge's conduct meets the standards for impeachment are to be made by the Congress. Therefore, when the Conference determines that there is sufficient evidence to support factual findings that a subject judge engaged in conduct of a kind that Congress might deem sufficient to warrant impeachment, the Conference has a mandatory duty to certify that determination to the House of Representatives.

In determining whether the evidence before it meets the relevant standard, the Conference is not bound by, and does not defer to, the certification of a judicial council. Under Section 355(b)(1), certification by the Conference is mandatory if the Conference "concurs" in the council's determination(s) or makes "its own determination." In "concur[ring]" or making "its own determination," the Conference must "consider[]" the proceedings before the Council and make "such additional investigation as it considers appropriate." Id. at § 355(a). The statutory language indicates, therefore, that the Conference's consideration of a council's certification under Section 354 is de novo. "Concur" generally means "agree," in contrast to, say, "I might have made a different decision but I accept yours as being within the realm of reason or your area of discretion." Furthermore, the Conference is authorized to make "its own determination" and conduct any "additional investigation as it considers appropriate." Id. De novo review of factual and legal issues, therefore, is required.

C. PROCEDURAL CONCERNS

A number of concerns have been raised regarding whether: (i) Judge Porteous was accorded all his procedural rights; (ii) inadmissible evidence was admitted by the SC; (iii) the DOJ Complaint was defective; or (iv) Chief Judge Jones was disqualified from the proceeding. The Committee finds no basis for these concerns.

Claims have been made that Judge Porteous was deprived of his due process rights. Although certification proceedings differ in many respects from adversary litigation between private parties, the Committee sees no profit in an extended discussion of whether the constitutional requirement of due process applies to a certification proceeding. Although certification is not a sanction, it is an act of utmost seriousness. Before certifying a record under Section 355(b)(1) to the House of Representatives, the subject judge should be given due process rights, namely notice and an opportunity to be heard through counsel. Indeed, the Act and Conference Rules provide those rights, and the Committee finds no deprivation of statutory or constitutional procedural rights in any of the proceedings.

In Section 358(b)(2), the Act provides that rules promulgated pursuant to its provisions accord judges who are the "subject of a complaint" the right to counsel "at proceedings conducted by the investigating panel." This language would certainly include the hearing conducted in the Fifth Circuit by the SC, and, if an "additional investigation" were conducted by the Conference, the hearing conducted by whatever body was designated to undertake the investigation.[4]

Judge Porteous and the dissenters maintain that Judge Porteous was not afforded procedural due process at the SC and Judicial Council hearings in October and December 2007, respectively. [JCD. 5, 45-47] Specifically, they argue that when Judge Porteous's counsel withdrew on October 16, he was denied a postponement of the SC hearing, which was scheduled to begin October 29, and was forced to represent himself. [JCD. 46-47; SC. 912, 936, 941-42]

[4]The Committee believes an additional investigation to be unnecessary. The SC developed a fully adequate record.

The Committee finds no deprivation of procedural due process rights. Judge Porteous had appropriate notice of the proceedings at every significant stage. By letter dated May 24, 2007, Chief Judge Jones sent Judge Porteous a copy of the DOJ Complaint as well as notice that she was appointing the SC. On June 25, 2007, Judge Porteous was notified that the SC would hold an evidentiary hearing beginning on August 27. [SC. 857-58]

With regard to the opportunity to be heard, adequate time for preparation, and the right to counsel, Judge Porteous had two different counsel, was given several extensions of time to respond to the complaint, and obtained two postponements of the SC hearing. After Judge Porteous notified the SC that his first counsel, Kyle Schonekas, had withdrawn, he received an extension of time in which to submit his response, and the hearing was postponed until the end of September. [SC. 862] He also received an additional week in which to submit his response after retaining Michael Ellis. [SC. 865, 941] The SC hearing was postponed until October 29 in light of the need for a psychiatric examination to evaluate Judge Porteous's claim of disability, which was asserted in his August 16 reply. [SC. 874-92]

The present claim of a due process violation arises from the denial of a further continuance when Ellis resigned, and Judge Porteous thereafter proceeded pro se. However, Judge Porteous had by then been represented by two different counsel and had received two continuances based on the change of counsel and the medical examination needed to evaluate his claim of disability. [SC. 941-42] By that time, he had also ample opportunity to review the documentary evidence later introduced at the SC hearing and the prior testimony of the witnesses called.

Any lack of preparation time or of counsel to represent him was the result of Judge Porteous's indecision as to his future course of action rather than a failure by the SC to accord sufficient time. There is no reason to conclude that Judge Porteous was caught unaware by the evidence or charges against him or that additional time would have altered the record in even a trivial, much less material, way. The hearing and evidence drew upon the long DOJ investigation in which he had been represented by counsel. The salient issues concern evidence

of conduct about which there is little dispute. Judge Porteous does not deny that there were false statements in his financial disclosure forms, that he solicited and received cash and things of value from lawyers who appeared before him, that he failed to recuse in matters where such lawyers appeared, that he made false statements in personal bankruptcy proceedings, or that he made false statements to a bank when seeking renewal of a loan. To be sure, Judge Porteous and the Fifth Circuit dissenters assert an innocent or negligent state of mind, dispute how consequential the conduct was, question whether the acts were of an impeachable nature, and assert that he has been punished enough. On these matters, however, he was fully heard.

Judge Porteous also had ample time to respond to the SC Report before the Judicial Council meeting. After the SC hearing, Judge Porteous was hand-delivered a copy of the SC Report on the same day it was issued -- November 20, 2007. [5th Cir. Certification Ex. 25] On the following day, via fax and email, Judge Porteous was notified that the Judicial Council would be meeting in New Orleans on December 13 and that he had the right to appear at that meeting. [5th Cir. Certification Ex. 26] He was also referred to Rule 14 of the Fifth Circuit's Rules Governing Complaints of Judicial Misconduct and Disability. [Id.] Under that Rule, Judge Porteous had ten days in which to file a response to the SC's Report, and he was given until December 5 to do so. [Ex. 27] During the approximately forty-five days from the conclusion of the SC hearing until the Judicial Council meeting, Judge Porteous did not retain new counsel to represent him at the December 13 meeting or to assist in drafting his response to the SC Report.

Therefore, in the Fifth Circuit proceedings, Judge Porteous had the full opportunity to exercise the rights traditionally afforded to a litigant. He had the right to counsel, though he appears to have had difficulty keeping attorneys. He and his counsel also had notice of, and access to, the evidence against him, as well as the right to present whatever evidence he desired. In fact, he presented witnesses and cross-examined those presented by the SC. He presented oral and written argument. See Rule 15 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (describing the rights afforded to subject judges at special-committee hearings).

After certification by the Fifth Circuit Judicial Council and transmittal of the record of proceedings to the Conference, Judge Porteous was given 60 days to present his views in writing to the Conference, pursuant to Conference Rule 4. Near the end of that period, he retained counsel, Lewis O. Unglesby, who sought and was given a 30-day extension. Judge Porteous's response and supplemental response have been carefully considered by the Committee. Accordingly, the process afforded to Judge Porteous easily met the due process standard.

D. VALIDITY OF THE FIFTH CIRCUIT PROCEEDINGS

In the view of the Committee, the various substantive concerns raised regarding the proceedings in the SC and certification by the Fifth Circuit Judicial Council -- admissibility of evidence, defects in the DOJ Complaint, or Chief Judge Jones's participation -- are unfounded. As noted, the Conference must make its own de novo determination to certify a matter to the House of Representatives whether by way of agreeing with a Council's certification or sending its own certification. Error in a special committee investigation or council proceeding is relevant only to the extent it goes to the validity or accuracy of the evidence before the Conference and thereby affects the ability of the Conference to make its own determination regarding certification. None of the concerns expressed have any such effect.

As to the admissibility of certain evidence, evidentiary rules play little or no role in certification proceedings where review by the Conference is de novo. To the extent that Judge Porteous and the dissenting judges in the Fifth Circuit Council argue that Judge Porteous's financial relationships with lawyers appearing before him as a state court judge are not impeachable offenses, the Committee does not disagree. Indeed, the SC itself disclaimed any intent to rely upon that evidence for that purpose. [SC. 62-63] However, where those financial relationships continued after Judge Porteous became a federal judge, evidence of them may be relevant as showing a common scheme and his knowledge and intent, which he has put in dispute, regarding those relationships. Cf. Fed. R. Evid. 404(b) (permitting the introduction of evidence of uncharged conduct "as proof of . . . motive, . . . intent, preparation, plan, [or] . . . knowledge").

With regard to the unverified DOJ Complaint, a chief circuit judge can act on information from any source and identify a complaint under Section 351(b) whether or not the document containing the information satisfies the various local rules then in effect or the new national rules. Chief Judge Jones identified a complaint in the present matter. Any claimed procedural defects in the DOJ Complaint are thus red herrings.[5]

Finally, Chief Judge Jones was not disqualified. Chief circuit judges have various roles to play with regard to disability and misconduct proceedings, which are administrative and inquisitional in their nature. See In re Memorandum of Decision of Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, 517 F.3d 563, 567 (U.S. Jud. Conf. 2008) (recognizing that "although misconduct proceedings have an adjudicatory aspect, they also have an administrative and managerial character not present in traditional adjudication by courts" (internal quotation marks omitted)); see also Rule 14 cmt. of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (characterizing such proceedings as "primarily inquisitorial rather than adversarial"). The performance of one function does not render a chief circuit judge disqualified to perform the others. For example, a chief circuit judge may identify a complaint against a judge, serve on the special committee investigating it, preside over the judicial council's consideration of the Committee's report and investigation, and act as a member of the Judicial Conference on the proceeding. See generally Rule 25 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (discussing disqualification). Therefore, the Committee sees no reason to view Chief Judge Jones as disqualified in this matter.

E. DEFINITION OF IMPEACHABLE CONDUCT

The Committee does not believe that a detailed discussion of the nature of those acts that warrant impeachment, which have been debated since the very beginning of the Republic, is necessary. As discussed above, the Conference's duty to certify under Section 355(b)(1) arises upon a determination that "consideration of impeachment may be warranted." Both the statute and history of impeachment teach that this standard is met in the present matter.

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[5]The DOJ is correct, however, that the underlying material was either under oath or was otherwise clearly reliable.

The dissenters in the Fifth Circuit Council argue in part that Judge Porteous's acts did not amount even to arguably impeachable conduct because they did not involve an abuse of judicial power. Although the Committee believes that some of his acts were most assuredly abuses of his power as a federal judge, as discussed in Part F(2) and G, Section 355 clearly embodies no such requirement as to certification.

Section 355(b)(2) authorizes the Conference to transmit to the House of Representatives "a determination that consideration of impeachment may be warranted" if a federal judge has been convicted of any state or federal felony. The statute imposes no restriction upon the nature of the felony, such as an abuse of judicial power requirement. Section 355(b)(1) applies where there has been no conviction but there is evidence deemed by the Conference to warrant consideration of impeachment. It would be anomalous to read into Section 355(b)(1) a limitation not in Section 355(b)(2) that would prevent certification on the ground that, while the evidence was of a serious felony, the felony did not involve a direct abuse of judicial power. Indeed, even without the inference drawn from Section 355(b)(2), it is difficult to conceive that Congress would deem many felonies -- for example, masterminding bank robberies -- not to warrant impeachment and removal if committed by a federal judge.

History also indicates that arguably impeachable acts are not limited to direct abuses of judicial power. On July 22, 1986, the House adopted four articles of impeachment against Judge Harry Claiborne, District Judge for the District of Nevada. Frank O. Bowman & Stephen L. Spinuck, *"High Crimes & Misdemeanors": Defining the Constitutional Limits on Presidential Impeachment*, 72 S. Cal. L. Rev. 1517, 1590 (1999). The misconduct charged was income tax evasion. Id. For example, Article 4 charged that "[b]y willfully and knowingly falsifying his income on his federal tax return . . . Claiborne betrayed the trust of the people of the United States and reduced confidence in the integrity and impartiality of the judiciary, thereby bringing disrepute on the federal courts and the administration of justice by the courts." Id. (internal quotation marks omitted). On October 9, 1986, Claiborne was convicted on three of the four

articles of impeachment, including Article Four. Id. at 1591. Although the dissenters in the Fifth Circuit Council argued that Claiborne's misconduct involved bribes, it is indisputable that the acts for which he was removed involved precisely the sort of "private conduct and reporting of private financial affairs" that the Fifth Circuit dissenters maintained cannot serve as the basis for an impeachment. [JCD. 33] The Committee therefore believes that substantial evidence of a serious crime calls for certification under Section 355(b)(1), leaving the ultimate judgment to the Congress.

Judge Porteous has not been indicted or convicted of a felony, but indictment and conviction are not prerequisites to certification under Section 355(b)(1). Indeed, Section 355(b)(2) provides for certification "in case of felony conviction," while Section 355(b)(1) expressly provides for certification in the absence of a conviction. See Hastings v. Jud. Conf. of the United States, 829 F.2d 91, 95, 97 (2d Cir. 1987) (describing how although former district judge Alcee L. Hastings was acquitted of bribery charges, the Judicial Conference nonetheless certified to the House of Representatives its determination "that consideration of Hastings' impeachment may be warranted").

The Committee is cognizant that certification has extremely serious consequences for the subject judge and that Congress is not likely to welcome certifications based on evidence of relatively inconsequential acts that might technically be crimes. Not every omission from a financial disclosure form of a gift from a judge's close friend who has no connection with the judge's court work calls for consideration of a Section 355(b)(1) certification. Only substantial evidence of a serious crime suffices. Criminal activity involving a direct abuse of judicial power is always serious. However, it is also the case that crimes bringing disrepute upon the federal courts have been deemed sufficient to warrant removal from office in the past.

F. CONDUCT BY JUDGE PORTEOUS THAT MIGHT WARRANT CONSIDERATION OF IMPEACHMENT

1) The Evidence

We summarize our view of the evidence here. A full and detailed description with citations to the record can be found in Appendix A.

a) Financial Disclosure Forms

Judge Porteous's annual financial disclosure forms repeatedly made false statements that were material to the integrity of his office. It is undisputed that Judge Porteous solicited and received cash and things of value from attorneys appearing in litigation before him. It is also undisputed that none of these benefits were listed as "Income," "Gifts," "Loans," or "Liabilities" on his financial disclosure forms, which he signed and attested to as accurate under oath.

Judge Porteous's failure to comply with financial disclosure requirements served to conceal his solicitation and receipt of cash or other benefits from lawyers who appeared before him. It also had the effect of depriving opposing lawyers of information that could have been used to compel Judge Porteous's recusal in such cases.

The systematic false statements in Judge Porteous's financial disclosure forms has made it impossible to determine the full extent of Judge Porteous's solicitation and receipt of monetary benefits from lawyers appearing before him or of other sources of income. There is evidence of other income not reflected in his financial disclosure forms. During the years 1998-2000, Judge Porteous's bank account showed over $80,000 in unexplained deposits that were over and above his direct deposit judicial salary. Judge Porteous also used his secretary's bank account for deposits and the payment of his personal expenses. These transactions amounted to at least $41,000 in bills paid through her account.

Judge Porteous also substantially understated his liabilities on his financial disclosure form for the year 2000.

b) Solicitation and Receipt of Cash and Things of Value

It is undisputed that Judge Porteous solicited and received cash and other things of value from law firms and attorneys who appeared before him in litigation.[6] These included, at a minimum, cash payments, numerous lunches, payments for travel, meals, and hotel rooms in Las Vegas, and payments for the expenses of a congressional externship for Judge Porteous's son. It is impossible to determine exact details as to the amounts, methods used, or sources of such payments because Judge Porteous concealed these transactions, as detailed below. However, there is evidence of substantial and unexplained cash income deposited in his bank account and in his secretary's bank account.

Judge Porteous stated that all of these payments were gifts or loans from close friends. All of the lawyers testified that they were gifts based on friendship. However, there is considerable evidence that the payments were related to his office.

Much of the available evidence concerns Judge Porteous's solicitation and receipt of cash payments from a law firm, Amato & Creely, with business before him as a federal judge. This was a continuation of a relationship begun when Judge Porteous was a state court judge. While he was a state court judge, the law firm had indicated to Judge Porteous that it was unhappy with having to bear the expenses of repeated payments to him. In response, Judge Porteous frequently appointed the firm to curatorship proceedings and, at Judge Porteous's suggestion, received in return a portion of the fees paid. In such cases, lending institutions bore the expenses of the firm's payments to him. This prior relationship, while not included as an arguably impeachable act, sheds light on Judge Porteous's knowledge of the firm's unhappiness regarding payments to him when he continued soliciting cash and things of value after he became a federal judge. This relationship became less regular at that time but an unknown amount of payments was made.

There was also testimony that Creely described Judge Porteous as a "rotten bastard" for soliciting money for his son's congressional externship after Judge Porteous became a federal

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[6]If the payments he received were loans, as Judge Porteous stated on one occasion, they were never repaid. As he admitted, this failure to repay would require reporting as taxable income. They were not so reported.

judge. Creely was described as routinely using very rough language, but the remark was, in any conceivable context, negative.

Judge Porteous and his benefactors used methods of payment that left no paper trail. The gifts described above were always either in cash or direct payment of expenses to vendors. No checks to Judge Porteous were used. When Judge Porteous sent his secretary to pick up an envelope of cash, Creely told Judge Porteous that this was not "appropriate." Creely felt this method was too "blatant." Judge Porteous's financial disclosure forms contain no record of these benefits. Had they been disclosed, opposing parties could have sought recusal, and were it denied, could have sought appellate relief. See, e.g., Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 850, 855-58 (1988) (affirming the vacatur a judgment where a district judge failed to disclose that he was a trustee of a university that had substantial business dealings with the litigant before his court).

Judge Porteous never recused himself in any matter in which donors appeared as counsel. A failure to recuse in such circumstances may be viewed as evidence of a fear that recusal would expose his long term relationship with these lawyers and/or dry up sources of income. In Liljeberg Enters. Inc. v. Lifemark Hosps. Inc., No. 2:93-cv-01784, *rev'd in part by* 304 F.3d 410 (5th Cir. 2002), his friends Jacob Amato and Lenny Levenson appeared as counsel after the case was assigned to him. Amato had given money to Judge Porteous. Levenson had helped pay Judge Porteous's son's living expenses during an externship in Washington D.C. and had treated Judge Porteous to lunch while he had matters pending before Judge Porteous. Although Amato and Levenson did not typically practice in federal court or frequently handle complex litigation, they were brought into Liljeberg with an 11% contingency fee to represent a client seeking a judgment of $110 million. Moreover, they had joined the case 39 months after it was originally filed and just two months before it was to go to trial before Judge Porteous.[7]

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[7]Amato and Levenson became attorneys of record in September 1996, approximately eight months after Liljeberg was assigned to Judge Porteous. [SC. Ex. 82 at 26] In October 1996, the opposing party filed a motion to recuse; Judge Porteous denied the motion. [Id. at 27, 29] In March 1997, the opposing party hired Gardner [id. at 37].

An opposing party moved to recuse Judge Porteous, in part on the ground that he had too close a relationship with Amato and Levenson. Judge Porteous denied the recusal motion without disclosing his longstanding financial relationship with Amato and Levenson. After denying the motion, and while a bench verdict was pending, Judge Porteous solicited cash from Amato. One delivery of cash was in an envelope picked up at Amato & Creely by Judge Porteous's secretary. Creely told Judge Porteous that this was not "appropriate." Creely felt this practice was too "blatant." Also, after the denial of the motion, the party opposing Amato and Levenson's client hired Don Gardner. Gardner similarly had little federal court experience, but was a close friend of Judge Porteous who had given him cash and helped pay for Judge Porteous's son's externship in Washington, D.C.. The lawyer who hired Gardner said he did so to level the playing field. Gardner's fee agreement guaranteed him a retainer of $100,000. He was also entitled to a contingency fee of $100,000 if Judge Porteous withdrew from the case or the case was settled. Judge Porteous admitted that he thought it was odd that new lawyers, all of whom he had to have recognized as friends and benefactors, were being hired after Liljeberg was assigned to him.

c) Bankruptcy Fraud

In the course of filing for personal bankruptcy under Chapter 13, Judge Porteous supplied false information, omitted required information, and incurred unauthorized additional debt, as follows:

- Judge Porteous filed a bankruptcy petition using a false name and a recently-acquired post office box as his residential address. This was rectified shortly thereafter.
- Despite being explicitly warned by his lawyer, the Bankruptcy Trustee, and the Bankruptcy Judge that he, as a bankruptcy debtor, could not legally incur more debt during the bankruptcy proceeding, Judge Porteous continued to incur and conceal debt through gambling markers and the use of a credit card. There is evidence that Judge Porteous planned to incur this debt before he filed for bankruptcy. Judge Porteous paid off a Fleet credit card in full immediately before filing the bankruptcy petition and then failed to list the credit card on the

relevant schedule of unsecured creditors. His wife then used the credit card to incur debt after the petition was filed.

- Because this payment to his Fleet credit card was made within 90 days of his filing for bankruptcy and the amount paid was more than $600, he was required to list it on his bankruptcy form. He failed to do so. He also failed to list a debt payment made to cover gambling losses that was made within 90 days of his filing for bankruptcy for which the amount paid was also more than $600. These payments constituted an undisclosed, impermissible preference among creditors. See 11 U.S.C. § 547 (empowering bankruptcy trustees with the authority to avoid debtors' preferential transfers to creditors). Notably, both of these payments were routed through his secretary's bank account.
- Judge Porteous did not reveal an upcoming tax refund on the relevant bankruptcy form even though he filed a tax return seeking the refund five days before he filed the bankruptcy petition and the form explicitly requested information related to tax refunds. After he received the refund, he made no attempt to correct the omission in his bankruptcy papers.
- Judge Porteous's bankruptcy papers understated the amount in a bank account and failed to disclose the existence of a money market account.
- Judge Porteous failed to disclose gambling losses incurred before the bankruptcy proceedings.
- An analysis of Judge Porteous's financial affairs leading up to the bankruptcy and in the two years following indicated a substantial understating of his income and overstating of his expenses in his bankruptcy filings.
- As a result of the foregoing, Judge Porteous's creditors suffered losses when he eventually received a discharge from the bankruptcy court.

d) Bank Fraud

Judge Porteous renewed a loan based in part on false representations that there had been no material, adverse change in his financial condition when he had in fact hired a bankruptcy lawyer who was attempting an unsuccessful pre-bankruptcy workout with his unsecured creditors.

2) Nature of the Offenses

The Committee finds that there is substantial evidence of serious crimes, some of which involve a direct abuse of judicial office, and all of which bring disrepute on the federal judiciary and on the administration of justice by the federal courts.

a) Financial Disclosure Violations; Perjury; Abuse of Judicial Power

The Committee finds overwhelming evidence that Judge Porteous committed perjury, 18 U.S.C. § 1621, and violated 5 U.S.C. App. 4 § 104 (failure to file or filing false reports), 18 U.S.C. § 1001 (false statements and entries generally), and abused his judicial office by signing and filing false financial disclosure documents. The Committee also finds overwhelming evidence that Judge Porteous violated Canons 2A and 5C(6) of the Code of Conduct for United States Judges. Judge Porteous's conduct in this regard meets the statutory standard "that consideration of impeachment may be warranted." 28 U.S.C. § 355(b)(1).

Pursuant to the Ethics in Government Act of 1978, codified at 5 U.S.C. App. 4 §§ 101 et. seq., Article III judges have a clearly-defined statutory obligation to report annually certain financial information as of May 15 for each preceding year. [SCR. 44-45] The Act requires "judicial officers," which includes judges of the United States district courts, see 5 U.S.C. App. 4 §§ 101(f)(11) and 109(10), to provide a full and complete statement regarding "[t]he source, type, and amount or value of income . . . from any source (other than from current employment by the United States Government) . . . received during the preceding calendar year, aggregating $200 or more in value . . . ." Id. at § 102(a)(1)(A). With respect to gifts, judges are required to provide

> The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

Id. at § 102(a)(2)(A). With respect to loans, judges are required to provide "[t]he identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent,

brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $10,000 at any time during the preceding calendar year." Id. at § 102(a)(4). Judge Porteous has been obligated to comply with these statutory requirements since assuming status as a United States district judge in 1994.

Judge Porteous signed a jurat for each year's report that certified that all information provided was "accurate, true and complete" to the best of his knowledge and "that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure." [SCR. 47]

The reports for these many years were false in highly material respects, as detailed in Part F(1)(a). These falsities also brought disrepute upon the federal judiciary and abused the power of Judge Porteous's office. The financial affairs of federal judges are required by law to be transparent, and Judge Porteous's efforts at concealment have rendered impossible full examination and disclosure regarding his financial arrangements with lawyers. Had Judge Porteous complied with his obligations, he would have had to recuse himself in cases involving those lawyers who paid him cash and things of value because opposing lawyers would have had the information to which they were entitled and could have used it in support of a request for recusal.

b) Solicitation and Receipt of Illegal Gratuities; Deprivation of the Right to Honest Services; Abuse of Judicial Power

The Committee further concludes there is substantial reason to believe that Judge Porteous, by soliciting and receiving cash and other benefits from lawyers, violated those statutes prohibiting illegal gratuities and committed mail or wire fraud by depriving the public of the right to honest services. This conduct involved an abuse of judicial power and meets the statutory standard that "consideration of impeachment may be warranted." 28 U.S.C. 355(b)(1).

Title 18 U.S.C. § 201(c)(1)(B) prohibits a public official from directly or indirectly demanding, seeking, receiving, accepting, or agreeing "to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or

person." See United States v. Sun-Diamond Growers of Cal., 526 U.S. 398, 405 (1999) (holding that an illegal gratuity "may constitute merely a reward for some future act that the public official will take (and may already have determined to take), or for a past act that he has already taken"); Valdes v. United States, 475 F.3d 1319, 1322 (D.C. Cir. 2007) ("Unlike most of § 201's anti-bribery provisions, the anti-gratuity provision has no requirement that the payment actually influence[ ] . . . the performance of an official act.") (internal quotation marks omitted; alteration in the original); United States v. Alfisi, 308 F.3d 144, 149 (2d Cir. 2002) ("The element of a quid pro quo or a direct exchange is absent from the offense of paying an unlawful gratuity. To commit that offense, it is enough that the payment be a reward for a past official act or made in the hope of obtaining general good will in the payee's performance of official acts off in the future.").

Title 18 U.S.C §§ 1341 and 1343, the mail and wire fraud statutes respectively, criminalize "the use of both means of transmission in furtherance of any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." Fountain v. United States, 357 F.3d 250, 255 (2d Cir. 2004) (internal quotation marks omitted). A "'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services," 18 U.S.C. § 1346. "Section 1346 was added to the Criminal Code in 1988 to equate a deprivation of honest services with deprivation of money or property." United States v. Orsburn, ___ F.3d ___, 2008 WL 1976557, at *2 (7th Cir. 2008).

Generally, honest-services fraud occurs when "an employer is defrauded of its employee's honest services by the employee or by another," or when "the citizenry is defrauded of its right to the honest services of a public servant, again, by that servant or by someone else." United States v. Sorich, ___ F.3d ___, 2008 WL 1723670, at *3 (7th Cir. 2008). A public official can deprive the public of his honest services in several ways, two of which are as follows: He can (1) "be influenced or otherwise improperly affected in the performance of his

duties," or (2) "fail to disclose a conflict of interest, resulting in personal gain." United States v. Woodward, 149 F.3d 46, 55, 57 (1st Cir. 1998) (citing United States v. Sawyer, 85 F.3d 713, 724, 729 (1st Cir. 1996)). "When an official fails to disclose a personal interest in a matter over which [he] has decision-making power, the public is deprived of its right either to disinterested decision making itself or, as the case may be, to full disclosure as to the official's potential motivation." Id. at 55 (internal citations omitted); see also United States v. Urciuoli, 513 F.3d 290, 298 n.5 (1st Cir. 2008) (stating that the "concealment of a material conflict of interest" can constitute honest-services fraud, and citing United States v. Panarella, 277 F.3d 678, 691 (3d Cir. 2002) (dealing with facts where a Pennsylvania legislator lied on his financial disclosure forms while voting to benefit a company that secretly paid him)).

For example, in United States v. Woodward, the defendant, a state legislator, was charged with and convicted of engaging "in a scheme to deprive the Commonwealth of Massachusetts and its citizens . . . of their right to his honest services as a state legislator, performed free from deceit, fraud, dishonesty, conflict of interest, and self-enrichment," 149 F.3d at 54. The conviction stemmed from "his acceptance of illegal gratuities from [a lobbyist] and others, with the intent of depriving [his] constituents of his honest services as a legislator," id. at 51. The First Circuit affirmed his conviction, finding that a rational jury could infer from the circumstances that the defendant accepted meals and entertainment from the lobbyist "with the intent to perform official acts to favor [the lobbyist's] legislative interests." Id. at 57 (internal citations omitted).

The Committee finds that Judge Porteous's conduct in the Liljeberg case warrants consideration of impeachment as a violation of the prohibition on soliciting and receiving gratuities and mail and wire fraud. A judge soliciting payments from a lawyer with business in the judge's court cannot reasonably conclude that compliance with the request is based on pure generosity rather than fear or hope related to court business. That is why judges cannot engage in fundraising for even the most worthy of causes. Canon 5B(2) of the Code of Conduct for

United States Judges. Moreover, when Judge Porteous solicited payments while the Liljeberg verdict was pending, he knew that Amato & Creely had earlier (when he was a state court judge) expressed unhappiness at having to bear the expenses of the cash payments to him. He could not reasonably believe that he could enrich himself at the firm's expense for no reason other than personal generosity. Moreover, if the payments were purely gifts, there was no reason to make them in cash or as direct payments to vendors or to omit them from his financial disclosure forms. When Judge Porteous sent his secretary to pick up an envelope with cash in it, Creely warned Porteous that this was "inappropriate." Creely felt this method was too "blatant." There was also little reason to deny the motion for recusal, or to conceal relevant information from the movant, unless Judge Porteous feared that recusal expose his relationship with the lawyers and would stop the benefits from being paid. Finally, he admitted knowing that all parties to Liljeberg believed it necessary to hire new lawyers, whom he had to recognize as his friends and benefactors, after the case was assigned to him.

Judge Porteous's misconduct in soliciting, receiving, and concealing payments of cash and things of value from lawyers appearing before him constituted an abuse of judicial power. The Code of Conduct for United States Judges makes this clear. Canon 1 states "[a] Judge Should Uphold the Integrity and Independence of the Judiciary," while Canon 2A directs that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Judge Porteous clearly violated Canon 3C(1), which states "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . . ." and Canon 5C(1), which states "[a] judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves." Finally, he violated Canon 5C(4), which states "a judge should not solicit or accept anything of value from anyone

seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties . . . ."

c) Bankruptcy Fraud; Perjury

The Committee concludes that Judge Porteous's conduct during the course of his bankruptcy proceedings warrants "consideration of impeachment," the statutory standard under 28 U.S.C. § 355(b)(1). Judge Porteous filed for bankruptcy under a false name. In sworn court documents, he understated his income, overstated his expenses, and failed to disclose gambling losses and an anticipated tax refund. Likewise, he failed to disclose the existence of various financial accounts, including a credit card. By using this credit card and by taking out markers at various casinos, he continued to accumulate debt in violation of court orders. Finally, he failed to report payments routed through his secretary's checking account to preferred creditors. As a result of the foregoing, his creditors incurred unwarranted losses, and he was enriched.

In view of these facts, Judge Porteous violated several federal statutes concerning perjury and bankruptcy fraud. See 11 U.S.C. § 521(a)(3) (providing that "if a trustee is serving in the case [the debtor] . . . shall cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title"); 18 U.S.C. §§ 152(1) - (3) (prohibiting generally the concealment of assets and the making of false oaths in any Title 11 bankruptcy case), 371 (conspiracy to commit offense or to defraud United States), 401(i) (giving "[a] court of the United States" the "power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as . . . Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice"), and 1621 (making guilty of perjury, whoever . . . in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true").

d) Bank Fraud

The Committee further concludes that Judge Porteous's dealings concerning a personal bank loan meet the applicable statutory standard. When seeking an extension on the date of maturity of the loan from a federally-insured bank, Judge Porteous attested that there had been no material change in his financial state. During this same period, however, he had employed bankruptcy counsel to negotiate workout agreements with his various creditors to whom he owed over $180,000.

In view of these facts, Judge Porteous may be criminally liable for bank fraud under 18 U.S.C. §§ 1014 (prohibiting one from knowingly making a false statement to, inter alia, a federally-insured bank, for the purpose of influencing the bank's action in any way), 1344 (bank fraud).

G. CONCLUSION; RESPONSE TO THE FIFTH CIRCUIT DISSENT

Respectfully, the Committee disagrees with the dissenters on the Fifth Circuit Council -- James L. Dennis, United States Circuit Judge for the Fifth Circuit; James J. Brady, United States District Judge for the Middle District of Louisiana; Tucker L. Melancon, United States District Judge for the Western District of Louisiana; Thad Heartfield, United States District Judge for the Eastern District of Texas -- with respect to the evidence. Many of the points made by the dissenters have been discussed in other portions of this Report. The dissenters, however, also took a very different view of the evidence from that taken by the Committee, differences that require a detailed discussion.

In the dissenters' view, Judge Porteous's acts did not constitute serious criminal offenses and direct abuses of judicial power. The Committee disagrees. In fact, there is substantial evidence, outlined above, that Judge Porteous violated a number of criminal statutes and canons of the Code of Conduct for United States Judges.

Part of our disagreement stems from the fact that the Fifth Circuit dissenters tend to view each of Judge Porteous's acts and the applicable rules in isolation from the others. In their view,

the cash payments and payments to vendors were simple gifts from friends, and the failure to disclose that the gifts or loans were never repaid as required by law was an innocent or negligent mistake involving only "private conduct and reporting of private financial affairs." [JCD. 33] In addition, they view the failure to recuse in cases in which the donors appeared as counsel, even when the adversary moved for recusal, as simply a mistake causing only an appearance of impropriety.

In the Committee's view, the various acts must be viewed as a whole and the applicable laws and Canons as a coordinated scheme. A judge's soliciting and receiving cash and things of value from lawyers appearing before the judge is so obviously a questionable practice that it is subject to numerous substantive, disclosure, and ethical regulations. Were it not so regulated, judges could ask for and take money from lawyers, sit on cases involving those lawyers, and deny any impropriety. Those who would claim otherwise would be left with the burden of proving the judge's and lawyer's contrary states of mind.

A judge may accept a substantial gift from a lawyer with business in the judge's court only if the gift is disclosed under the statutes discussed in Part F(2)(a) and if the judge recuses himself or herself from all such business. See 28 U.S.C. § 455; Canon 5C(4) of the Code of Conduct for United States Judges ("A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties . . . ."); Canon 5C(6) of the Code of Conduct for United States Judges ("A judge should report the value of any gift, bequest, favor, or loan as required by statute or by the Judicial Conference of the United States.").

The disclosure and recusal requirements work in tandem. Disclosure provides the impetus for carrying out the required recusal, and the failure to disclose provides a ground for criminal prosecution not dependent upon showing the intent behind the solicitation and receipt of cash. Failing to disclose while accepting money is treated as a form of fraud in the deprivation

of honest services. See, e.g., Urciuoli, 513 F.3d at 298 n.5 (concealing a "material conflict of interest" can constitute honest-services fraud). Recusal not only cleans the slate of the appearance of bias. It also ensures that the cash is indeed a gift because recusal eliminates any motive to provide the benefit for reasons other than friendly generosity. A judge who violates this scheme abuses judicial power. As detailed in Part F(2), Congress has outlawed not just quid pro quo arrangements but all payments with any job-related motive. 18 U.S.C. § 201(c)(1)(B). This is a critical distinction because a judge who solicits monetary benefits from a lawyer with business before him can hardly conclude that the lawyer's compliance with the request is out of generosity alone. Moreover, by failing to disclose and to recuse, a judge deprives opposing litigants of information necessary to seek the mandated recusal and to be heard by a judge untainted by a serious conflict of interest.

Contrary to the views of the Fifth Circuit dissenters, the evidence of crimes is powerful, again as detailed in Part F(2). The dissenters do not seriously dispute the salient facts but minimize them as purely "private." This view ignores the evidence that Amato & Creely had objected to giving cash out of its own funds to Judge Porteous, that the payments were concealed, that Judge Porteous was warned that the methods of payment were "inappropriate," and that the solicitation of benefits from lawyers in Lilieberg followed Judge Porteous's denial of a recusal motion that was based on his relationship with the lawyers for one of the parties. Similarly, the dissenters excuse Judge Porteous's incursion of approximately $14,000 worth of additional debt after the commencement of his bankruptcy proceeding as a good faith misunderstanding of the correct characterization of gambling markers even though Judge Porteous agreed at the SC hearing that a gambling marker was "a form of credit extended by a gambling establishment." [SCHT. 64]

The Committee also concludes that Judge Porteous's acts were not relatively harmless but had serious consequences. In the Committee's view, short of a violent crime causing permanent injury or an express quid pro quo arrangement, the solicitation and acceptance of cash

from lawyers with court business without disclosure or recusal is among the most serious offenses a judge can commit. The evidence shows that lawyers were the targets of solicitations that were not entirely welcome, litigants were deprived of information needed to obtain a judge free of any conflict of interest, and litigants had to bear the extra cost of hiring lawyers believed to have influence with Judge Porteous. His bankruptcy fraud caused losses to his creditors, enriched him, and allowed him to continue his lifestyle while obtaining a discharge. We cannot agree with the Fifth Circuit dissenters that because the fraud was in their view no more than is typical in bankruptcy cases, it is not sufficiently serious to warrant consideration of impeachment. Such a justification is untenable. Finally, the fraud on the bank caused the bank to extend a loan at a loss to itself.

The dissenters, echoed by letters to the Committee from persons familiar with Judge Porteous, claim that certification is unwarranted because he has suffered enough. Under the circumstances of this case, this is a matter that is more appropriately considered by Congress.

H. CERTIFICATION

The Committee recommends that the Judicial Conference send the following certification to the House of Representatives:

> Pursuant to 28 U.S.C. § 355(b)(1), the Judicial Conference of the United States certifies to the House of Representatives its determination that consideration of impeachment of United States District Judge G. Thomas Porteous (E.D. La.) may be warranted. This determination is based on evidence provided in the Report By the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit and the Report and Recommendations of the Committee on Judicial Conduct and Disability. Said certification is transmitted with the entire record of the proceeding in the Judicial Council of the Fifth Circuit and in the Judicial Conference of the United States.
>
> The determination is based on substantial evidence that:
>
> a) Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him. Parts F(1)(a), (2)(a), and G of Report of the Committee is incorporated by reference.
>
> b) Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621 as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard of the bankruptcy court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1). Parts F(1)(c), (2)(c), and G of the Report of the Committee are incorporated by reference.
>
> c) Judge Porteous wilfully and systematically concealed from litigants and the public financial transactions, including but not limited to those designated in (d), by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in

cases in which lawyers who appeared before him had given him cash and other things of value and for the Fifth Circuit Judicial Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value. Parts F(1)(a), (b), (2)(a), (b), and G of the Report of the Committee is incorporated by reference.

d) Judge Porteous violated several criminal statutes and ethical canons by presiding over In re: Liljeberg Enters. Inc. v. Lifemark Hosps. Inc., No. 2:93-cv-01784, *rev'd in part by* 304 F.3d 410 (5th Cir. 2002). In that matter, which was tried without a jury, he denied a motion to recuse based on his relationship with lawyers in the case, in violation of 28 U.S.C. § 455 and Canons 3C(1) and 3D of the Code of Conduct for United States Judges. In denying the motion, he failed to disclose that the lawyers in question had often provided him with cash. Thereafter, while a bench verdict was pending, he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and other things of value in violation of 18 U.S.C. § 201(c)(1)(B). This conduct, undertaken in a concealed manner, deprived the public of its right to his honest services in violation of 18 U.S.C. §§ 1341, 1343, and 1346, and constituted an abuse of his judicial office in violation of Canons 5C(1) and 5C(4) of the Code of Conduct for United States Judges.

Parts F(1)(b), (2)(b), and G of the Report of the Committee are incorporated by reference.

e) Judge Porteous made false representations to gain the extension of a bank loan with the intent to defraud the bank and causing the bank to incur losses in violation of 18 U.S.C. §§ 1014 and 1344. Parts F(1)(d), (2)(d), and G of the Report of the Committee are incorporated by reference.

f) The conduct described in (a) through (e) has individually and collectively brought disrepute to the federal judiciary.

I. MISCONDUCT PROCEEDING

This portion of the Report and Recommendations concerns a discrete issue arising out of this proceeding.

In the course of the Committee's consideration of this matter, the Committee has concluded that the Fifth Circuit Judicial Council did not expressly determine whether the misconduct proceeding should continue while the certification process is ongoing. Rather, the Council appears to have assumed that it has no further responsibilities. The Committee believes, however, that a certificate under 28 U.S.C. § 354(b)(2)(A) does not automatically conclude or

suspend an ongoing misconduct proceeding before a judicial council. The Committee recommends that it be authorized to ask the Fifth Circuit Judicial Council to make a considered judgment as to whether the misconduct proceeding should continue or be suspended at this time.

The certification by the Fifth Circuit Judicial Council is an act that informs the Conference of evidence that the Council came upon in the course of a misconduct proceeding. The certification is not a sanction, much less an exclusive sanction, which brings closure to an ongoing misconduct proceeding under the Act. With regard to certification, the Fifth Circuit Council determined only that the judge "may have engaged in conduct . . . which might constitute" grounds for impeachment, see 28 U.S.C. § 354(b)(2)(A), a determination of relevance only to an area of exclusive congressional authority. Certification is, therefore, simply an information-sharing mechanism to aid the Congress in carrying out its exclusive responsibilities with regard to impeachment and removal from office. It is not an act that has any role under the statute as either a sanction or conclusion of a misconduct proceeding.

It is inconsistent with the Act's purposes to view certification as automatically concluding or suspending a misconduct proceeding. If the Conference certifies the matter to the House, congressional adjournments, elections, and the need for a Congress to organize at the beginning of each session create a high probability of delay in certified proceedings. Moreover, a certification may not result in impeachment and removal from office even though a subject judge clearly engaged in misconduct. To stay misconduct proceedings automatically upon a council certification therefore allows a judge who has engaged in serious misconduct to avoid any sanction for a considerable period of time or perhaps entirely were the judge to become eligible to retire under the statutory age plus years of service. This would effectively end the impeachment process and leave the subject judge free of any sanction under the Act. Moreover, automatic suspension of misconduct proceedings leaves the judge free to hear cases even though impeachment proceedings are ongoing.

Nevertheless, the Committee also believes that a council might determine that suspension of action on a misconduct complaint is appropriate while a certification works its way through the stipulated processes. That may have been the thinking in the Hastings matter (the only prior certification under 28 U.S.C. § 352(b)(2)(A), Judicial Conference of the United States, Certificate Regarding Alcee L. Hastings (Mar. 17, 1987)), where the certification followed a jury acquittal on the main charges.

Accordingly, the Committee recommends that it be authorized to request the Fifth Circuit Judicial Council to make a considered judgment on the continuance or suspension of the underlying misconduct proceeding. If the Council determines to continue the proceeding, it should consider the propriety of a public reprimand under Rule 20(b)(1)(D)(i) and an order that no new cases be assigned to Judge Porteous for two years or until the Congress takes final action on impeachment and removal proceedings under Rule 20(b)(1)(D)(ii).

Respectfully submitted,

Ralph K. Winter, Chair
Pasco M. Bowman II
Joseph A. DiClerico, Jr.
Carolyn R. Dimmick
Dolores K. Sloviter

Appendix A

Exhibit 1:	Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, Docket No. 07-05-351-0085, Submitted November 20, 2007
Exhibit 2:	Reply Memorandum to the Report by the Special Investigatory Committee, Submitted December 5, 2007
Exhibit 3:	Response to Reply Memorandum, Submitted December 10, 2007
Exhibit 4:	Memorandum Order and Certification of the Judicial Council of the Fifth Circuit, dated December 20, 2007
Exhibit 5:	Dissenting Statement to the Memorandum Order and Certification of the Judicial Council of the Fifth Circuit
Exhibit 6:	Petition for Review of the Memorandum Order and Certification et al. and Incorporated Memorandum of Law and Argument; Supplemental Memorandum of Law and Argument

APPENDIX A

A) Acceptance of Cash and Other Things of Value from Attorneys With Matters Before Judge Porteous

During his tenure as both a state and federal judge, Judge Porteous received cash and other things of value from lawyers who appeared before him. These friends include Jacob Amato, Warren A. "Chip" Forstall, Jr., Robert G. Creely, Don C. Gardner, and Leonard Levenson. [SCHT. 58-59] Although much of the following occurred while Judge Porteous was a state court judge, the relationship he cultivated with these individuals is relevant to the present proceeding.

1) Cash Gifts From Creely & Amato

Judge Porteous admitted that he received cash from Creely, Amato, and/or their law firm, Creely & Amato, while he was on the state bench, and that the practice continued after he was commissioned as a federal judge. [SCR. 37; SCHT. 118-19] Judge Porteous testified that while he did not know precisely how much he received from the men or their law firm over the years, he never considered these payments as income. [SCHT. 119] Rather he consider the payments to be gifts or loans, which he admittedly never repaid. [SCHT. 119-20] He stated that he considered these payments either loans or gifts, but conceded that by not paying Creely and Amato back, the undischarged "loans" would be considered income unless forgiven as gifts. [SCHT. 119] Judge Porteous admitted that he never reported any of these cash payments from Amato or Creely on his income tax return. [SCHT. 120] Moreover, Judge Porteous testified that these cash payments continued when he became a federal judge, but he did not report these gifts on his financial disclosure forms, despite certifying that the forms were true and accurate to the best of his knowledge. [SCHT. 120-21; SC. 215-70; SCR. 38]

The testimony of Creely and Amato detail their history of giving cash to Judge Porteous. Creely testified that there came a time when Judge Porteous, a state court judge, started asking him for cash to help with his personal living expenses. [SCHT. 199-200; GJT. 43-45] Creely

explained that he and Amato, his partner, would split the payments. [SCHT. 200] They would ask their firm's bookkeeper for checks, which would be charged to them as income, then they would cash the checks and give the money to Judge Porteous, with no expectation that the money would ever be repaid. [SCHT. 200-02] Although Creely could not recall the amount of cash that he and Amato gave Judge Porteous over the "number of years" this arrangement continued, he speculated that it was "approximately $10,000" or more. [SCHT. 201] Eventually Creely became frustrated with Judge Porteous's demands as well as suspicious that he was no longer supporting Judge Porteous's family, but his drinking and gambling.[1] [SCHT. 203; GJT. 51-52]. Creely told Judge Porteous that he and Amato could not continue giving him money. [SCHT. 202-03]

Amato's testimony largely confirms Creely's. Apparently Judge Porteous preferred to make his cash requests through Creely. [GJT. 25-26] However, Amato confirmed that he and Creely typically split the payments and estimated that they had given Judge Porteous approximately $10,000 to $20,000. [SCHT. 239, 247; GJT. 25-26]

2) Curatorship Scheme

The evidence indicates that Judge Porteous, while on the state bench, had an arrangement with Creely and Amato whereby he would refer certain cases to their law firm in exchange for cash payments. Creely testified that after he told Judge Porteous that he could not keep giving him cash, Judge Porteous started sending curator cases to Creely and Amato's firm. [SCHT. 202-03, 238, 243; GJT. 52-54] A curator is an attorney who is appointed, by the state district court, to represent an absentee defendant. In the type of curator cases that Judge Porteous sent to Creely & Amato, the defendant was generally the subject of a foreclosure. [SCHT. 204-06, 210] Creely testified that these types of cases came to his firm often, that each had a set fee of $175.00

[1]After Judge Porteous became a federal judge, Creely complained to a colleague, "[t]hat rotten bastard" had asked for money for his son's congressional externship. [SCHT. 468; GJT. 51] There was testimony, however, that Creely frequently spoke in such rough terms. [SCHT. 475]

per defendant plus expenses, and that Judge Porteous would request a "good portion" -- more than fifty percent -- of the curatorship fees. [SCHT. 204-09; GJT. 54] Judge Porteous took the initiative in suggesting that he receive part of the curatorship fees and would call the firm to get the money. [SCHT. 202-10; GJT. 52-54] Although the curator fees were paid to Creely & Amato by the state district court, "the sources of the money were the lending institutions that had filed the foreclosure lawsuits and thus had to post the curatorships." [SCHT. 210] Creely characterized the curatorship arrangement not as a quid pro quo, but as a continuation of the previous arrangement whereby he could give Judge Porteous cash but without having the money coming directly out of his pocket. [SCHT. 208-09, 228-29]

Again, Amato's testimony supports Creely's. [SCHT. 237-38] Amato testified that he learned of the scheme from Creely, who was the conduit for the payments, and that although he was not happy with the arrangement, he felt obligated to participate. [SCHT. 237-39] He also described the manner in which Judge Porteous received curatorship fees as being nearly identical to Creely's description of the manner in which Judge Porteous was given pre-curatorship cash payments: when Judge Porteous needed cash from the curatorships, Creely and Amato would draw checks of equal amounts, cash them, and Creely would give the money to Judge Porteous. [SCHT. 238-39, 241-42]

3) Fishing Trip & Las Vegas Bachelor Party

Sometime in the spring or summer of 1999, Judge Porteous's son, Timmy, got married. The following two incidents or transactions involving Judge Porteous, Creely, and Amato occurred in connection with Timmy's wedding. At this time Judge Porteous was a federal judge. In re: Liljeberg Enters., Inc. v. Lifemark Hosps., Inc., No. 2:93-cv-01784, had been assigned to him for trial, after which Amato had been hired as counsel for Liljeberg.

Amato and Judge Porteous went on a fishing trip in May or June of 1999. [SCHT. 240; GJT. 19-20] During this trip, Judge Porteous asked Amato for money, claiming that he could not pay for his son's wedding. Amato testified that Judge Porteous seemed emotional and

embarrassed about the request, and that within two or three days of the trip, Amato (or, Creely and Amato, he could not recall how, exactly, the payment had been arranged) cashed a check and personally gave Judge Porteous approximately $2,000 or $3,000 in cash. [SCHT. 240-41, 244]

According to Creely, the payment was arranged differently: Amato told him that he had been on a fishing trip with Judge Porteous and that he had requested money for personal expenses, either for tuition or Timmy's wedding. [SCHT. 211-13] Creely and Amato each agreed to withdraw $1,000 or $2,000 from their firm's account and make the cash available to Judge Porteous. [SCHT. 211-13] Creely testified that Rhoda Danos, Judge Porteous's secretary, was sent to the firm to pick up the envelope of cash. Creely told Judge Porteous that this was inappropriate. Creely believed this method was too "blatant." [SCHT. 214-15] Amato testified that the $2,000 or $3,000 cash payment he gave to Judge Porteous may have been a different incident from that described by Creely. [SCHT. 244] He could not recall whether he told Creely about the fishing trip request. [Id.] If the incidents were separate, then Judge Porteous received over $4,000 from Creely & Amato in May or June of 1999. In any event, it is undisputed that Judge Porteous received at least $2,000 from them at that time.

Judge Porteous testified that he could not recall asking Amato for money during the 1999 fishing trip. [SCHT. 135] He did, however, testify that "there may have been an envelope," but he did not remember any specifics. [SCHT. 137] Judge Porteous conceded that the amount of cash could have been $2,000. [SCHT. 136-37] Although Judge Porteous characterized this transaction as a loan, he admitted that when he filed for bankruptcy, he did not list it as such, nor was it ever repaid. [SCHT. 137-38] The payment was never reported as income on his federal tax return, nor was it reported as either income or a gift or liability on his Financial Disclosure Report for the year 1999. [SCHT. 138; SCR. 41; SC. 235-38]

Also in May 1999, Timmy Porteous had a three-day bachelor party in Las Vegas, Nevada. [SCR. 42] Among those in attendance were Creely and another lawyer-friend of Judge Porteous, Don Gardner. [Id.] Judge Porteous admitted that his flight to Las Vegas was paid for

by Warren A. "Chip" Forstall, that the cost of his hotel room at Caesar's Palace -- which exceeded $250 -- was paid by Creely, and that many of his meals on the trip were paid for by Creely and "maybe some other people." [SCHT. 139-41] Judge Porteous reported none of these gifts on his Financial Disclosure Report for the calendar year 1999. [SC. 235-38; SCR. 43; SCHT. 141-42]

B) Financial Disclosure Violations

1) 1999 Cash Payments and Las Vegas Trip

Judge Porteous failed to report the cash he received in connection with the 1999 fishing trip as either a gift, a loan or liability, non-investment income, or some other characterization appropriate for the "additional information or explanations" catch-all portion of the report. [SC. 238] Instead, Judge Porteous withheld all information concerning the cash payment. [SCHT. 40]

Judge Porteous also failed to report any of the expenses paid for in connection with his Las Vegas trip, including his airfare, hotel, and meals. [SC. 235-38]

2) 2000 Financial Disclosure Report

Judge Porteous's Financial Disclosure Report for the calendar year 2000 -- the year preceding his declaration of bankruptcy -- is also seriously deficient. [SC. 239-42] As of December 2000, after several months of attempting a workout with his unsecured creditors, Judge Porteous had accumulated $182,330.23 of unsecured debt with thirteen different credit card companies. [SC. 296-98; SCR. 49] Although he completed his disclosure report on May 10, 2001, after he had filed for Chapter 13 bankruptcy, Judge Porteous listed only two credit cards -- an MBNA and a Citibank account -- under the "Liabilities" section of the report. [SC. 240] He valued each at "$15,000 or less." [SC. 240] Judge Porteous conceded that this report was "not accurate." [SCHT. 115-18] Judge Porteous's April 9 amended bankruptcy petition listed three separate Citibank credit card accounts with balances of $23,987.39, $20,719.58, and $17,711.35. Thus, Judge Porteous's liabilities to Citibank alone exceeded what he disclosed by

approximately $47,418.86. [SCR. 50; SC. 102-03] Judge Porteous also conceded that he actually had three separate MBNA accounts with an aggregate balance of $63,587.53, a fact not accurately reported in his 2000 report. [SCR. 51; SC. 104-05, 240; SCHT. 116-18] Only one of these MBNA accounts had a balance less than $15,000. [SCR. 51; SCHT. 117-18]

The omission of over $150,000 of credit card liabilities from his 2000 Financial Disclosure Report cannot be characterized as unintentional in light of the fact that Judge Porteous had been aware of and actively trying to resolve his unsecured debt during the nine or ten months preceding the filing of the Report.

3) Unexplained Cash Deposits Between 1998 and 2000

Judge Porteous also failed to report substantial sums of cash that were deposited into his bank account and that of his secretary. According to the testimony of FBI Financial Analyst Gerald Fink, the bank records of Judge Porteous and Rhonda Danos show substantial unexplained cash deposits. [SCR. 43] Judge Porteous's accounts reflected cash deposits, over and above his direct-deposit judicial salary, totaling $80,492 between January 1998 and December 2000. [SCR. 43-44; SCHT. 354-55; SC. Ex. 94] Danos's account showed cash deposits, well above her direct-deposit federal salary of approximately $29,000, of $49,120.77 in 1999 and $10,907.03 in 2000. [SCR. 44; SC. Ex. 93] These unexplained deposits are significant in light of the evidence that Creely, Amato, and others gave Judge Porteous cash, although none can recall precisely how much.

Danos testified that in 1999 and 2000, she paid some of Judge Porteous's bills. [SCR. 44] According to Fink's analysis, these payments totaled $41,176.97. [SCR. 44; SC. Exs. 91, 92] Danos also testified that Judge Porteous repaid her by writing checks, which totaled approximately $32,555. [SCHT. 350-54, 401-19; SCR. 44]

C) Abuse of Judicial Power

One of the most disturbing examples of Judge Porteous's misconduct involves his handling of In Re: Liljeberg Enters. Inc. v. Lifemark Hosps., Inc., No. 2:93-cv-01784, a

complex property-rights dispute which consisted of four consolidated cases "arising from a failed relationship formed to build and manage a hospital and medical office building in Kenner, Louisiana." See In re Liljeberg Enters., Inc., 304 F.3d 410, 417 (5th Cir. 2002) (describing what the Court of Appeals characterized as "the latest round in the parties' protracted litigation"). Although originally filed in June 1993, the case was assigned to several district judges before being assigned to Judge Porteous on January 16, 1996. [SCR. 54-55; SCHT. 147; SC. Ex. 82 at 1, 20] Among the lawyers involved in the case were Amato, Gardner, and Lenny Levenson. Joseph Mole, who was not a close friend of Judge Porteous, became the lead counsel and attorney of record for one of the plaintiffs, Lifemark Hospitals, in April 1996. [SCHT. 59; SC. Ex. 82 at 21] Amato and Levenson became attorneys of record for the defendant, Liljeberg, in September 1996. [SC. Ex. 82 at 26] Neither Amato nor Levenson was a regular federal-court practitioner who handled this sort of complex litigation. [SCR. 55, SCHT.149] Both, however, joined the case thirty-nine months after it had originally been filed and less than two months before the case was supposed to be tried before Judge Porteous on November 4, 1996. [SCR. 56; SC. Ex. 82 at 25-26]

Judge Porteous's relationship with Amato is described above, but the record demonstrates that he had an equally close relationship with Levenson. According to Levenson's grand jury testimony, he provided "a couple of hundred dollars" to one of Judge Porteous's sons for travel and living expenses while the son served as a congressional extern in Washington, D.C. [SCR. 60; GJT. 65-66] Levenson also treated Judge Porteous to lunches while he had matters pending before Judge Porteous. [SCR. 60; GJT. 33-34]

On October 2, 1996, Lifemark filed a motion to recuse Judge Porteous based on his close relationship with Amato and Levenson. [SC. 553-65; SC. Ex. 82 at 27] Although apparently unaware of a financial relationship between Amato, Levenson, and Judge Porteous, Mole, counsel for the opposing party, expressed concern over the fact that the litigation had "a decade-long history" and "the Liljebergs already had five long-standing counsel of record," when they

"added Jacob Amato and Leonard Levenson, two of the Court's closest friends, as additional counsel." [SC. 555-56; SCHT. 169] Mole also noted that the Liljebergs were seeking approximately $110 million in damages and had given Amato and Levenson "an 11% contingency fee for less than three months involvement," and alleged that the Liljebergs had "a documented and clear history of attempting to use political influence" to their advantage. [SC. 555-56] In response to Lifemark's motion to recuse, however, Levenson dismissed Lifemark's allegations as "wild speculation," without revealing the meals to which he treated Judge Porteous nor the financial assistance he gave Judge Porteous's son. [SC. 581-84; SCR. 60] On or about October 16, Judge Porteous held a hearing on the motion and denied it without any disclosure of his financial transactions with Amato and Levenson. [SC. Ex. 82 at 29]

In March 1997, Don Gardner became an attorney of record for Plaintiff Lifemark. [SCR 56; SC. Ex. 82 at 37] This appearance came forty-five months into the case and five months after Judge Porteous denied Lifemark's recusal motion. [Id.] Mole testified that he sent a fee agreement letter to Gardner which guaranteed him a $100,000 retainer "payable upon enrollment of counsel of record." [SCR. 56; SC. 397-98] Mole testified that the fee arrangement, which contained some unusual contingencies -- an entitlement to $100,000 if Judge Porteous withdrew or the case was settled -- was to make sure his client was not embarrassed and to ensure that Gardner, whom Mole did not know very well, remained "interested in the outcome" and loyal to Lifemark. [SCHT. 177-81] Mole testified that he was aware of Judge Porteous's close friendship with Gardner as well as with Amato and Levenson. [Id.] He testified that after Amato and Levenson made their appearances, he became concerned that their presence in the case, in addition to the Liljebergs' reputation for trying to "influence the judicial process through whatever means they could," would be a problem for his client. [SCHT. 168] According to Mole, his conversations with members of the legal community who knew "Jefferson Parish politics" substantiated his concerns. [Id.] He also testified that his client insisted that he level

the playing field by adding to the team a lawyer who was close to Judge Porteous. [SCHT. 173-74, 186] Mole, however, testified that he was unaware that Gardner attended the Las Vegas bachelor party trip while the case was pending. [SCHT. 194]

Although Judge Porteous admittedly found it unusual that three of his close friends, none of whom regularly practiced complex litigation in federal court, were involved in the case, he was troubled by these circumstances "only to the extent that somebody thought they needed to bring somebody else in." [SCHT. 151-52]

On June 16, 1997, the bench trial commenced and on July 23, 1997, Judge Porteous took the case under submission. [SCR. 57; SC. Ex. 82 at 39, 41] As discussed above, in May or June 1999, while Liljeberg was still under submission, Judge Porteous sought and received at least $2,000 from Creely and Amato after a fishing trip. Again, the actual amount of cash Judge Porteous received may have been more, as Creely and Amato seemed to recall different incidents: Creely recalled one in which Danos picked up an envelope of cash from their firm, while Amato remembered personally handing Judge Porteous the cash. [SCHT. 212-15, 240-41] Moreover, Judge Porteous attended his son's bachelor party in Las Vegas along with Creely and Gardner. [SCHT. 154-56]

On April 26, 2000, Judge Porteous rendered findings of fact and conclusions of law primarily in favor of Liljeberg. [SCR. 57; SCHT. 246; SC. Ex. 82 at 44] At no point during the litigation did he disclose to the parties his relationship with Amato, Creely, Levenson, or his relationship with Gardner who had given him cash in the past and helped pay for his son's externship in Washington, D.C. [SCR. 59; SCHT. 153-54, 461, 465-68] Amato testified that he had never disclosed this information either. [SCHT. 245-46]

D) Bankruptcy Fraud

In or around June 2000, Judge Porteous retained bankruptcy counsel Claude C. Lightfoot to attempt to workout a settlement with his creditors. [SCHT. 52, 442-48] The workout period, however, proved unsuccessful and on March 28, 2001, Judge Porteous and his wife Carmella

filed for bankruptcy under Chapter 13 in the Eastern District of Louisiana, case number 01-12363. [SCR. 16; SC. 2, 122-24] In connection with their bankruptcy proceeding, the Porteouses knowingly filed false statements made under oath, concealed assets from the bankruptcy trustee, disobeyed bankruptcy court orders by incurring additional debt, and made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy proceeding.

Judge Porteous's bankruptcy case was assigned to Judge William R. Greendyke of the Southern District of Texas, who was sitting by designation in the Eastern District of Louisiana. [SCHT. 57; SC. 64-65] The Chapter 13 Trustee was S.J. Beaulieu Jr. [SCHT. 52; SC. 68]

1) False Initial Petition

Judge Porteous does not dispute that he and his wife purposely filed their initial bankruptcy petition under the false names of "G.T. Ortous" and "C.A. Ortous," and used as their residential address a post office box rented on March 20, 2001, approximately eight days before the bankruptcy filing. [SCHT. 52-55; SC. 122-24] The Porteouses had signed this petition, under penalty of perjury, above the printed names "Ortous." [SC. 123-24; SCHT. 55] At the Special Committee's hearing, Judge Porteous conceded that "Ortous" was not his name nor his wife's, and that the petition he signed contained false information. [SCHT. 55; SCR. 16-17]

On April 9, 2001, Judge Porteous filed an amended voluntary petition providing his name as "Gabriel T. Porteous, Jr." and his wife's name as "Carmella A. Porteous." [SCHT. 56-57] The amended petition also provided the Porteouses's residential street address in place of the post office box initially used. [SCR. 17; SCHT. 56-57]

According to Lightfoot's testimony, the false names (and presumably the use of the recently-acquired post office box) was his "stupid idea" designed not to mislead, but to help Judge Porteous avoid the negative publicity and humiliation that would necessarily accompany his bankruptcy filing. [SCHT. 435-36]

2) Incurring Impermissible Debts

Despite being warned by the trustee, Judge Greendyke, and Lightfoot, Judge Porteous violated bankruptcy court orders forbidding him from incurring additional debt during the course of his Chapter 13 case. Specifically, Judge Porteous, regularly incurred extensions of credit from various casinos despite (1) receiving a pamphlet from Beaulieu entitled "Your Rights and Responsibilities in Chapter 13" that stated "you may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy court"; (2) being told by Beaulieu at a first meeting of creditors held on May 9, 2001, that he could no longer use credit cards or incur more credit; and (3) Judge Greendyke's June 28, 2001 order that stated, inter alia, "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee." [SCHT. 60-62; SCR. 19; SC. 399-403]

According to the testimony of FBI case agent Wayne Horner, between August 20, 2001 and July 5, 2002, Judge Porteous took out approximately $31,000 in gambling markers -- a form of credit extended by gaming establishments -- from various casinos in Louisiana and Mississippi. [SCR. 19 n.10, 19-20; SCHT. 298-316] Judge Porteous admitted to specific instances of obtaining gambling markers: For example, he testified that on August 20 and 21, 2001, he took out eight $1,000 markers from the Treasure Chest Casino in Kenner, Louisiana. [SCHT. 65-66] Although Judge Porteous once contested whether the markers could be characterized as "credit," he also admitted that they were a form of "credit." [SCHT. 64-65] The record indicates that out of the $31,000 worth of markers obtained, Judge Porteous left the casinos owing approximately $14,000, which he eventually paid back at later dates. [SCHT. 65-70, 315-16; SCR. 20]

In addition, Judge Porteous conceded that his wife and co-debtor used a Fleet credit card, which was in her name, on March 8, 2001 at a casino in New Orleans. [SCHT. 73] This particular credit card, however, was not listed on the debtors' schedule of creditors holding unsecured, nonpriority claims ("Schedule F") -- a list filed on April 9, 2001 that required the

disclosure of all credit cards. [SC. 102-05; SCR. 21; SCHT. 74-75] In addition to failing to disclose Fleet as an unsecured creditor, the Porteouses used the card for purchases and cash advances after both the initial and amended bankruptcy petitions were filed. [SCHT. 75-76] Among the $734.31 of debt incurred on the Fleet card in May and June of 2001, were charges from casinos in Louisiana and Mississippi. [SCHT. 76-77; SCR. 21-22; SC. 592-93]

3) Other Bankruptcy Misrepresentations

On April 9, 2001, the Porteouses and Lightfoot submitted Chapter 13 Schedules, a Plan, and a "Declaration Concerning Debtor's Schedules," signed under penalty of perjury, indicating that the Schedules were true to the best of their knowledge, information, and belief. [SCR. 25; SC. 111] The record indicates, however, that Judge Porteous made a number of misrepresentations on these Schedules.

Specifically, on April 9, 2001, Judge Porteous submitted a "Schedule B," concerning personal property, which required the disclosure of "liquidated debts owing debtor including tax refunds" as well as unliquidated claims "including tax refunds." [SC. 96] The Porteouses denied having either by checking the relevant boxes marked "none." [SC. 96, 111; SCHT. 79-80] At the time Judge Porteous responded to these questions, however, he was expecting a tax refund in excess of $4,000. [SCR. 23-24; SCHT. 82-83] On March 23, 2001, the Porteouses had filed for a federal tax refund on their 2000 tax return in the amount of $4,143.72. [SC. 600-01; SCR. 24; SCHT. 80-81] Nevertheless, Judge Porteous and his wife both signed, under penalty of perjury, the jurat accompanying Schedule B which asserted that the information it contained was true and accurate to the best of their knowledge, information, and belief. [SC. 111] On April 13, 2001, exactly $4,143.72 was deposited in Judge Porteous's Bank One checking account. [SCR. 24; SCHT. 82-83; SC. 602] Judge Porteous could not recall why the refund was omitted from his bankruptcy filings. [SCHT. 84] Lightfoot testified that he had not discussed the refund with Judge Porteous prior to the filing of the amended petition and stated that if a refund were expected, the forms should so indicate. [SCHT. 437, 450-51] Although Judge Porteous

contends that this omission was merely an oversight, the refund was never reported to Beaulieu or made part of the bankruptcy estate. [SCR. 24]

In response to another question on Schedule B, Judge Porteous failed to truthfully report information regarding his "checking, savings or other financial accounts." [SCR. 24-25] Judge Porteous listed only a Bank One checking account valued at $100. [SCHT. 79-80, 85, 94-95] His statement from Bank One, however, showed a balance of $559.07 on March 23, 2001. [SC. 606; SCR. 25] Judge Porteous also conceded that he had an unlisted Fidelity money market account, which, on March 28, 2001, had a balance of $283.42. [SC. 611; SCR. 25; SCHT. 86-87] Judge Porteous's Fidelity statement from April 20, 2001 indicated an average balance for the previous thirty days of $320.29. [SCR. 25] Although Judge Porteous "could have sworn" that he told Lightfoot about the Fidelity account, Lightfoot testified to the contrary. [SCHT. 87, 449]

Next, Judge Porteous indicated in the "Statement of Financial Affairs" portion of his amended petition that his payments to creditors made within 90 days of the filing of the petition consisted of normal installments. [SC. 112; SCR. 26] Though he had been asked to list all payments on loans and debts aggregating more than $600 in the 90 days prior to the bankruptcy filing, Judge Porteous failed to disclose the fact that his Fleet credit card balance of $1,088.41 was paid in full on March 29, 2001. [SC. 618-20; SCR. 26] The source of the payment was a check in the amount of $1,088.41 from Rhonda Danos, drawn from her Hibernia National Bank account and dated March 23, 2001. [SC. 619] On the memorandum line of the check was the name "Carmella Porteous" along with the Fleet credit card account number. [Id.] Judge Porteous conceded that Danos made the payment, but could not recall why. [SCHT. 97] Danos testified that she assumed she paid the bill after Judge Porteous requested her to do so because she had never spoken to Carmella Porteous about paying her bills. [SCHT. 401-03] Thus, Fleet had not been identified as an unsecured creditor, or as a creditor to whom more than $600 was paid within 90 days of the bankruptcy filing. Danos's payment constituted a preferred payment

to an unsecured creditor which was not disclosed on the Porteouses' "Statement of Financial Affairs" signed under penalty of perjury on April 9. [SC. 116; SCR. 27]

The record reflects that Judge Porteous made another preferred payment with respect to gambling markers from a casino in Gulfport, Mississippi. [SCR. 27-28] On February 27, 2001, Judge Porteous took out two $1,000 markers from the Grand Casino in Gulfport. [SC 1105; SCR 27] These markers were negotiated against Judge Porteous's account on March 24, 2001. [SC. 1131; SCR. 27] On March 27, the day before Judge Porteous filed his initial bankruptcy petition, he requested that his account be changed to a 30-day hold, stating that he preferred to pick up the markers and not have them deposited. [SCR. 27; SC. 1099, 1105] Judge Porteous called the casino on April 2, 2001, to request that any fees be waived because the markers were "dropped too soon" and to the wrong account number. [SCR. 27-28; SC. 1105] This payment was not disclosed on any statement filed in connection with his amended petition. [SCR. 28]

In addition, Rhonda Danos wrote a $1,000 check, dated April 30, 2001, to the Beau Rivage Casino in Biloxi, Mississippi on behalf of Judge Porteous. [SCHT. 403-04] According to Danos, Judge Porteous had asked her to pay off a $1,000 outstanding marker he had with the casino probably because she was going there anyway. [SCHT. 403-04] Casino records indicate that Judge Porteous in fact had a $1,000 balance after a two-day trip to the Beau Rivage on April 7-8, 2001. [SCR. 28; SC. 1197] This payment was not reported on Judge Porteous's bankruptcy schedules or his Statement of Financial Affairs filed on April 9, 2001. [SCR. 28]

Finally, Judge Porteous misrepresented the gambling losses he incurred during the one year preceding his bankruptcy filing. Though he could not recall having incurred losses exceeding $12,700, he did not dispute that the number could be accurate. [SCR. 28-29] He testified that he could have incorrectly answered "none" on the Statement of Financial Affairs in response to a request to list "all losses from . . . gambling within one year immediately preceding the commencement of [the bankruptcy] case . . . ." [SCR. 29; SC. 113] According to FBI Agent Horner, Judge Porteous's total gross losses for the year preceding his filing were $12,895.35 and

his total gross winnings were $5,312.15. [SCHT. 317-18; SCR. 29] In sum, Judge Porteous failed to disclose substantial losses to the bankruptcy court.

Significantly, Judge Porteous continued to misrepresent his financial affairs after filing for bankruptcy. According to FBI Financial Analyst Gerald Fink, during 2001 and 2002, Judge Porteous understated his income and overstated his expenses on the relevant bankruptcy schedules. [SCR. 29-30; SCHT. 365-74] Specifically, Judge Porteous stated that his income for the year 2001 would total $67,784, but over a nine-month period, a total of $88,865 went through his bank accounts. [SCHT. 366] In other words, Judge Porteous understated his income by approximately $21,081. [Id.] Porteous also inflated his expenses by approximately $13,000. [SCHT. 366-67] Combined, the understatement of his income and the inflation of his expenses left Judge Porteous with approximately $24,825 available in 2001 and $36,000 in 2002 -- amounts of which the bankruptcy court and trustee remained unaware. [SCHT. 367-70; SC. Exs. 72-73]

Judge Greendyke testified that had he or his trustee been aware of Judge Porteous's omissions and misrepresentations, he would not have signed the confirmation order, but would have objected on the basis of a lack of good faith -- a confirmation requirement. [SCHT. 385]

E) Bank Fraud

The record indicates that Judge Porteous willfully engaged in fraudulent and deceptive conduct concerning a debt he owed to Regions Bank in New Orleans, a federally insured institution with which he enjoyed a longstanding relationship prior to his bankruptcy proceeding. [SCR. 31] Edward Butler, the former president of Regions, was a friend of Judge Porteous for approximately twenty years. [SCR. 31; SCHT. 112, 273-75] Regions had regularly provided Judge Porteous with small, unsecured loans ranging from $2,500 to $5,000. [SCR. 31; SCHT. 112, 273-75] Until 2001, Judge Porteous had always repaid these loans. [SCR. 31; SCHT. 288]

In January 2000, Judge Porteous requested a $5,000 unsecured loan from Regions, the stated purpose of which was tuition for one of his sons. [SCR. 32; SC. 274] On January 27, he

signed an unsecured promissory note for the loan that was set to mature on July 24, 2000. [SC. 272-73; SCR. 32] As part of the loan package, Judge Porteous also signed a "Disbursement Request and Authorization" statement in which he asserted, in a portion entitled "financial disclosure," that he was representing true and correct information to Regions in connection with the loan and that there had been "no material adverse change" in his financial condition as disclosed in his more recent financial statements to the bank. [SCR. 32; SC. 274] Judge Porteous also indicated that he was not in the process of filing for bankruptcy. [SC. 276] When payment on the loan became due on July 24, Judge Porteous contacted Butler to request that the note be extended for an additional six-month term. [SCR. 32] This would make the payment due on January 17, 2001. [SC. 279-83; SCR. 32]

However, by the fall of 2000, if not earlier, Judge Porteous had retained Lightfoot as his bankruptcy counsel. [SCR. 32; SCHT. 442-43] By December 21, 2000, Lightfoot had sent workout letters to Judge Porteous's unsecured creditors, with the exception of Regions, in a final attempt to avoid bankruptcy. [SCHT. 443; SC. 296]

Meanwhile, on January 17, 2001, Judge Porteous again requested a six-month extension of the promissory note. [SCHT. 282-83] When completing the paperwork for the second extension, Judge Porteous again indicated that he was not in the process of filing for bankruptcy and that there had been no material adverse change in his financial condition. [SC. 290-91; SCHT. 112, 283-84]

Although Judge Porteous was not in the process of filing for bankruptcy in January 2001, when he requested his second six-month extension, he had been trying to achieve a workout with his unsecured creditors with the help of his bankruptcy attorney, whom he hired around the time he requested his first extension. Thus, his financial condition had changed materially and the possibility of bankruptcy was on the horizon. As of December 2000, Judge Porteous had $182,330.23 in unsecured credit card debt. [SC. 298] As of April 2001, his unsecured credit card debt totaled $191,246.73. [SC. 102-05] Butler testified that had he known about Judge

Porteous's deteriorating financial condition, that he had been negotiating a workout settlement with his creditors for approximately six months, and the possibility of bankruptcy, he would have, according to the bank's standard policy in such situations, attempted to secure the loan with collateral before granting an additional six-month extension on the promissory note. [SCHT. 287, 291-92] Even Lightfoot conceded that the change in Judge Porteous's finances were what a bank in Regions' position would characterize as "material." [SCHT. 456]

Judge Porteous contends that he purposely excluded Regions from the list of creditors who received workout letters in December 2000 because he wanted to ensure that his friend, Edward Butler, received payment in full. [SCHT. 158-59, 288-89] In other words, he wanted to make Regions a preferred creditor. This plan, however, failed: Regions ultimately received only $1,782.43, or 34.55 percent of its original loan. [SCR. 34; SC. 27; SCHT. 111-12]

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U.S. Circuit Judge; Carolyn Dineen King, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Rhesa H. Barksdale, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Edith Brown Clement, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Jennifer Walker Elrod, U. S. Circuit Judge; Leslie H. Southwick, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melancon, U. S. District Judge; Neal B. Biggers, U. S. District Judge; Louis G. Guirola, Jr., U. S. District Judge; Sam Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

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DOCKET NO. 07-05-351-0085

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

ORDER AND PUBLIC REPRIMAND

WHEREAS, on June 17, 2008, the Judicial Conference of the United States unanimously adopted the Report and Recommendations of the Committee on Judicial Conduct and Disability concerning United States District Judge G. Thomas Porteous, Jr.;

WHEREAS, in accordance with a recommendation contained in the Report and Recommendations of the Committee on Conduct and Disability requesting

that the Fifth Circuit Judicial Council make a considered judgment on the continuation or suspension of the underlying misconduct proceeding relating to Judge Porteous;

NOW, having considered the aforementioned recommendation from the Committee on Conduct and Disability, the Council, by a clear majority vote, takes the following action:

1. The Council hereby PUBLICLY REPRIMANDS Judge Porteous under Rule 20(b)(1)(D)(i) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings for the following conduct that is prejudicial to the effective and expeditious administration of the business of the courts within the Circuit:

Judge Porteous repeatedly committed perjury by signing false financial disclosure forms under oath in violation of 18 U.S.C. § 1621. This perjury concealed the cash and things of value that he solicited and received from lawyers appearing in litigation before him.

Judge Porteous repeatedly committed perjury by signing false statements under oath in a personal bankruptcy proceeding in violation of 18 U.S.C. §§ 152(1)-(3), 1621 as well as Canons 1 and 2A of the Code of Conduct for United States Judges. This perjury allowed him to obtain a discharge of his debts while continuing his lifestyle at the expense of his creditors. His systematic disregard

of the Bankruptcy Court's orders also implicates 11 U.S.C. § 521(a)(3) and 18 U.S.C. § 401(1).

Judge Porteous wilfully and systematically concealed from litigants and the public certain financial transactions by filing false financial disclosure forms in violation of 18 U.S.C. § 1001, 5 U.S.C. App. 4 § 104, and Canon 5C(6) of the Code of Conduct for United States Judges, which require the disclosure of income, gifts, loans, and liabilities. This conduct made it impossible for litigants to seek recusal or to challenge his failure to recuse himself in cases in which lawyers who appeared before him had given him cash and other things of value and for the Council and the Judicial Conference to determine the full extent of his solicitation and receipt of such cash and things of value.

Judge Porteous violated several criminal statutes and ethical canons by presiding over *In Re: Liljeberg Enter. Inc. v. Lifemark Hosps. Inc.*, No. 2:93-cv-01784, rev'd in part by 304 F. 3d 410 (5th Cir. 2002). In that matter, which was tried without a jury, he denied a motion to recuse based on his relationship with lawyers in the case, in violation of 28 U.S.C. § 455 and Canons 3C(1) and 3D of the Code of Conduct for United States Judges. In denying the motion, he failed to disclose that the lawyers in question had often provided him with cash. Thereafter, while a bench verdict was pending, he solicited and received from the lawyers appearing before him illegal gratuities in the form of cash and other

things of value in violation of 18 U.S.C. § 201(c)(1)(B). This conduct, undertaken in a concealed manner, deprived the public of its right to his honest services in violation of 18 U.S.C. §§ 1341, 1343, and 1346, and constituted an abuse of his judicial office in violation of Canons 5C(1) and 5C(4) of the Codes of Conduct for United States Judges.

Judge Porteous made false representations to gain the extension of a bank loan with the intent to defraud the bank and causing the bank to incur losses in violation of 18 U.S.C. §§ 1014 and 1344.

Judge Porteous, in his conduct described above individually and collectively, brought disrepute to the federal judiciary.

2. The Council, pursuant to Rule 20(b)(1)(D)(ii) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings and 28 U.S.C. § 354(a)(2)(A)(i), orders that no new cases be assigned to Judge Porteous for two years from the date of this Order and Public Reprimand or until Congress takes final action on the impeachment proceedings, whichever occurs earlier.

3. The Council, pursuant to 28 U.S.C. §§ 332(d)(1), orders that Judge Porteous's authority to employ staff be suspended for the period of time encompassed in paragraph 2 above.

4. The Council, consistent with 28 U.S.C. §§ 332(d)(2), directs all judicial officers and employees within the Circuit, particularly the Chief Judge

of the Eastern District of Louisiana and the Clerk of Court for the Eastern District of Louisiana, to take all necessary steps to carry into effect the above orders of the Council.

In issuing this Order and Public Reprimand and executing the actions contained herein, the Council is taking the maximum disciplinary steps allowed by law against Judge Porteous. Any further action to remove Judge Porteous from office and the emoluments thereof is the responsibility of Congress.

In conjunction with the issuance of this Order and Public Reprimand, the following documents are being made available for public access:

1. Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, Docket No. 07-05-351-0085, submitted November 20, 2007 and Volume 1 of 2 Volumes of Exhibits and Volume 2 of 2 Volumes of Exhibits;

2. Reply Memorandum to the Report by the Special Investigatory Committee, submitted December 5, 2007;

3. Response to Reply Memorandum, submitted December 10, 2007;

4. Memorandum Order and Certification of the Judicial Council of the Fifth Circuit, dated December 20, 2007;

5. Dissenting Statement to the Memorandum Order and Certification of the Judicial Council of the Fifth Circuit;

6. Petition for Review of the Memorandum Order and Certification, The Proceedings Conducted by the Special Investigatory Committee, The Fifth Circuit Judicial Council

Report, and Judge Dennis' Dissent From the Memorandum Order and Certification Pursuant to 28 U.S.C. § 357(A) and Incorporated Memorandum of Law and Argument and Exhibit 1A, Exhibit 1B, Exhibit 1C, Exhibit 2A, Exhibit 2B, Exhibit 2C, Exhibit 3, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7, Exhibit 7A, Exhibit 8, Exhibit 9, and Exhibit List;

7. Certificate to Speaker, United States House of Representatives and Report and Recommendations of the Judicial Conference Committee on Judicial Conduct and Disability, and;

8. Crime Fraud Order dated June 21, 2004, and Crime Fraud Order dated October 19, 2004.

This Order and Public Reprimand is effective immediately and concludes the matter IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980 before the Council.

DONE this 10th day of September, 2008.

FOR THE COUNCIL:

Edith H. Jones

Chief Judge

Links to publicly available documents:

Report by the Special Investigatory Committee to the Judicial Council of the United States Court of Appeals for the Fifth Circuit, Docket No. 07-05-351-0085, submitted November 20, 2007
Volume 1 of 2 Volumes of Exhibits
Volume 2 of 2 Volumes of Exhibits

Reply Memorandum to the Report by the Special Investigatory Committee, submitted December 5, 2007

Response to Reply Memorandum, submitted December 10, 2007

Memorandum Order and Certification of the Judicial Council of the Fifth Circuit, dated December 20, 2007

Dissenting Statement to the Memorandum Order and Certification of the Judicial Council of the Fifth Circuit

Petition for Review of the Memorandum Order and Certification, The Proceedings Conducted by the Special Investigatory Committee, The Fifth Circuit Judicial Council Report, and Judge Dennis' Dissent From the Memorandum Order and Certification Pursuant to 28 U.S.C. § 357(A) and Incorporated Memorandum of Law and Argument
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Certificate to Speaker, United States House of Representatives and Report and Recommendations of the Judicial Conference Committee on Judicial Conduct and Disability

Crime Fraud Order dated June 21, 2004
Crime Fraud Order dated October 19, 2004

Statement on Senate Action on Crime Legislation

August 25, 1994

The United States Senate made history today. The long, hard wait is finally over, and the American people are going to get the action against crime they have been demanding for over 6 years.

I want to thank the members of both parties, in the House and Senate, who answered the call of ordinary Americans to get this job done.

With a little good faith and a lot of hard work, Republicans and Democrats overcame the partisan divisions and false choices that have blocked anticrime efforts time and time again.

And because they did, children will be safer and parents will breathe a little easier. Police officers will no longer be threatened by gangs and thugs with easy access to deadly assault weapons designed only for war. Violent criminals are going to learn quickly that the revolving door on our prisons has been locked and bolted shut.

This crime bill is going to make every neighborhood in America safer, and the bipartisan spirit that produced it should give every American hope that we can come together to do the job they sent us here to do.

Nomination for Federal Judges

August 25, 1994

The President today nominated Fred I. Parker to the U.S. Court of Appeals for the Second Circuit. The President also nominated six individuals to serve on the U.S. District Court: Helen Gillmor for the District of Hawaii; John R. Tait for the District of Idaho; Okla Jones II and G. Thomas Porteous, Jr., for the Eastern District of Louisiana; James A. Beaty for the Middle District of North Carolina; and David Briones for the Western District of Texas.

"These nominees will bring legal talent and dedication to the Federal bench," the President said. "I know they will serve our country with distinction."

NOTE: Biographies of the nominees were made available by the Office of the Press Secretary.

Statement on Signing the Energy and Water Development Appropriations Act, 1995

August 26, 1994

Today I have signed into law H.R. 4506, the "Energy and Water Development Appropriations Act, FY 1995."

The Act provides a total of $20.5 billion in discretionary budget authority for various programs in the Departments of Energy and the Interior, the Army Corps of Engineers, and several smaller agencies.

I am pleased that the Act substantially funds most of my budget requests for priority investment programs within the Departments of Energy and the Interior and the Army Corps of Engineers, including full funding for the renewable energy portions of the Climate Change Action Plan.

William J. Clinton

The White House,
August 26, 1994.

NOTE: H.R. 4506, approved August 26, was assigned Public Law No. 103-316.

Digest of Other White House Announcements

The following list includes the President's public schedule and other items of general interest announced by the Office of the Press Secretary and not included elsewhere in this issue.

August 22

The White House announced the President will attend the summit of the Asia-Pacific Economic Cooperation forum in Indonesia on November 14–16. The President also has accepted the invitations of President Fidel Ramos of the Philippines for a state visit in Manila on November 13 and of President Soeharto of Indonesia for a state visit in Jakarta on November 16.

August 24

The White House announced that President Nelson Mandela of South Africa has accepted the President's invitation to make a state visit to Washington, DC, October 4–6.

The President announced his intention to nominate Yerker Andersson, Audrey McCrimmon, Debra Robinson, and Irving Zola as members of the National Council on Disability.

The President announced his intention to nominate Rhea L. Graham to be Director of the U.S. Bureau of Mines at the Department of the Interior.

August 26

In the evening, the President and Hillary and Chelsea Clinton traveled to Martha's Vineyard, MA, for their vacation.

The White House announced the President has nominated Gen. Ronald R. Fogelman, USAF, to be Chief of Staff of the Air Force.

The White House announced the President has asked a delegation of Americans, headed by C. Payne Lucas, president of Africare, to travel on his behalf to Burundi, Rwanda, and eastern Zaire, August 27–31. The delegation will urge resolution of the political crisis in Burundi and review relief efforts for Rwandan refugees.

Nominations Submitted to the Senate

The following list does not include promotions of members of the Uniformed Services, nominations to the Service Academies, or nominations of Foreign Service officers.

Submitted August 22

Martin Jay Dickman,
of Illinois, to be Inspector General, Railroad Retirement Board, vice William J. Doyle III.

Celeste Pinto McLain,
of California, to be a member of the Amtrak Board of Directors for the remainder of the term expiring March 20, 1995, vice Carl W. Vogt.

Celeste Pinto McLain,
of California, to be a member of the Amtrak Board of Directors for a term of 4 years (reappointment).

Frederick F. Y. Pang,
of Hawaii, to be an Assistant Secretary of Defense, vice Chas. W. Freeman.

Submitted August 23

Gil Coronado,
of Texas, to be Director of Selective Service, vice Robert William Gambino, resigned.

Marc Lincoln Marks,
of Pennsylvania, to be a member of the Federal Mine Safety and Health Review Commission for a term of 6 years expiring August 30, 2000, vice L. Clair Nelson, deceased.

Submitted August 25

Clifford B. O'Hara,
of Connecticut, to be a member of the Board of Directors of the Panama Canal Commission, vice William Carl.

Reginald B. Madsen,
of Oregon, to be U.S. Marshal for the District of Oregon for the term of 4 years, vice Kernan H. Bagley, resigned.

Eve L. Menger,
of New York, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2000, vice Arden L. Bement, Jr., term expired.

Alfred H. Moses,
of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the Untied States of America to Romania.

Robert M. Solow,
of Massachusetts, to be a member of the National Science Board, National Science Foundation, for a term expiring May 10, 2000, vice Peter H. Raven, term expired.

Anne Jeanette Udall,
of North Carolina, to be a member of the Board of Trustees of the Morris K. Udall

Scholarship and Excellence in National Environmental Policy Foundation for a term of 4 years (new position).

Richard Thomas White,
of Michigan, to be a member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 1996, vice Frank H. Conway, term expired.

Timothy M. Barnicle,
of Maryland, to be an Assistant Secretary of Labor, vice John D. Donahue.

James A. Beaty, Jr.,
of North Carolina, to be U.S. District Judge for the Middle District of North Carolina, vice Richard C. Ervin, retired.

David Briones,
of Texas, to be U.S. District Judge for the Western District of Texas, vice Lucius Desha Bunton III, retired.

Peter Jon de Vos,
of Florida, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Costa Rica.

John A. Gannon,
of Ohio, to be a member of the National Council on Disability for a term expiring September 17, 1995 (reappointment).

Helen W. Gillmor,
of Hawaii, to be U.S. District Judge for the District of Hawaii (new position).

Okla Jones II,
of Louisiana, to be U.S. District Judge for the Eastern District of Louisiana, vice Frederick J. R. Heebe, retired.

Bruce A. Morrison,
of Connecticut, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2000, vice William C. Perkins, resigned.

Fred I. Parker,
of Vermont, to be U.S. Circuit Judge for the Second Circuit, vice James L. Oakes, retired.

Joe Bradley Pigott,
of Mississippi, to be U.S. Attorney for the Southern District of Mississippi, vice George L. Phillips.

G. Thomas Porteous, Jr.,
of Louisiana, to be U.S. District Judge for the Eastern District of Louisiana, vice Robert F. Collins, resigned.

John R. Tait,
of Idaho, to be U.S. District Judge for the District of Idaho, vice Harold L. Ryan, retired.

Vincent J. Sorrentino,
of New York, to be a member of the Advisory Board of the Saint Lawrence Seaway Development Corporation, vice Leo C. McKenna.

Checklist of White House Press Releases

The following list contains releases of the Office of the Press Secretary that are neither printed as items nor covered by entries in the Digest of Other White House Announcements.

Released August 22

Transcript of a press briefing by Press Secretary Dee Dee Myers

Statement by Press Secretary Dee Dee Myers announcing that the President will attend the second summit of the Asia-Pacific Economic Cooperation forum in Indonesia, November 14–15

Released August 23

Transcript of a press briefing by Press Secretary Dee Dee Myers

Statement by Press Secretary Dee Dee Myers announcing that a delegation of senior officials will visit Florida to consult on Cuban migrants

Released August 24

Transcript of a press briefing by Press Secretary Dee Dee Myers

S. HRG. 103-

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

CONFIRMATIONS OF APPOINTEES TO THE FEDERAL JUDICIARY

SEPTEMBER 28; OCTOBER 4 AND 6, 1994

Part 6 of 6

Serial No. J-103-28

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CATHERINE M. RUSSELL, *Staff Director*
MARK R. DISLER, *Minority Staff Director*
SHARON PROST, *Minority Chief Counsel*

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Judge JONES. Senator, I would follow the Constitution and the laws. My personal belief would have no effect on my abidance with the law.

Senator HATCH. I think it is essential that under the rule of law, judges not act politically. If we have judges act politically, then it undermines the whole basis of law, and it undermines the whole reason why these are lifetime appointments. So do we have your commitment that you will decide the cases based upon the law and the facts and not let political considerations influence your judgment?

Judge JONES. You have my commitment, Senator.

Senator HATCH. All right. Well, I am proud of you and proud to have you here before the committee, and I look forward to seeing you confirmed before tomorrow, hopefully. We hope we can get that done. We are doing our best. In these last few dog days, it takes a lot of work to make sure that we don't have holds on people and that we get as many judges through as we can, so we can fill these positions and do them properly. We are glad to have you here.

Judge JONES. Well, I certainly hope and pray that that occurs, too, Senator.

Senator HATCH. Thank you.

Senator METZENBAUM. Your turn to question. Do you have any questions?

[No response.]

Senator METZENBAUM. How about if I ask you a question?

Senator HATCH. No, no; let him ask one.

Senator METZENBAUM. Do you have one for him?

[No response.]

Judge JONES. This is the first time that he has been without questions since I can recall. [Laughter.]

Senator HATCH. He is a fine-looking young man is all I can say. We are proud to have him here.

Senator METZENBAUM. I have a question for you. In his decisions that he makes at home, do you think he is a fair judge?

Judge JONES. Yes.

Senator METZENBAUM. OK. That is good enough. You have passed the test. Thank you very much and you may leave if you like and we will have a few questions for Judge Porteous.

Judge JONES. Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much.

Judge Porteous, do you have any opening statement you care to make?

TESTIMONY OF G. THOMAS PORTEOUS, JR., METAIRIE, LA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

Judge PORTEOUS. Other than to thank the committee for allowing us to come up and try to expedite this process, as I know you have done the entire time.

QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. Much of the expediting reflects the cooperation of the minority, headed up by Senator Hatch.

Judge Porteous, what would you do if faced with a fifth circuit precedent that controlled a matter before you, but with which you personally disagreed? You just think that the decision is absolutely wrong. What would you do?

Judge PORTEOUS. My oath and my obligation and what I would do are the same. I would follow that precedent.

Senator METZENBAUM. As a judge, you have worked with judicial law clerks. In some cases, judges have their law clerks write the first draft of opinions, and then the judge edits the result. Some people believe that judicial law clerks should not play the role of judge because of the importance of a first draft and the extent to which that draft becomes the final product. We are all aware, however, of the huge Federal docket that judges face and the resulting time constraints.

How would you respond to those concerns, and how much of a problem do you think that is?

Judge PORTEOUS. It would appear to be on an individual basis, Mr. Chairman, but in my experience I will go over the particular facts and circumstances of a case either prior to that case coming to me or post the submission of that case, give my clerk an assignment of what my thoughts and concepts are on it so that I can obtain the research available to write my own decision.

I am not saying that I don't give it back to my clerk for further editing and modification, but I think it is on an individual basis. I think Federal judges are given law clerks for a valuable purpose, and that is to help them expedite their way through the Federal laws that are on the books.

Senator METZENBAUM. Now, you have served on the 24th Judicial District Court bench in the State of Louisiana for about 9 years. Are you sure you want to move to the Federal bench?

Judge PORTEOUS. Absolutely, Senator.

Senator METZENBAUM. Why?

Judge PORTEOUS. I have always thought that I can be of valuable service to the community as a judge. That is why I ran for judge in the first place. I think going from the State bench to the Federal bench, I can likewise provide whatever service I can give to the Federal judiciary, and I would very much like to move to the Federal bench, Senator.

Senator METZENBAUM. Well, I think you are going to.

Senator Hatch.

QUESTIONING BY SENATOR HATCH

Senator HATCH. Well, we congratulate you for this opportunity to serve, and congratulate your Senators for supporting your opportunity.

As a district judge, you would be bound to follow precedent laid down by the Supreme Court and by the court of appeals in which you sit. However, you are going to be faced with a lot of cases of first impression through the years. What principles are going to guide you, and what methods would you use to be able to decide those cases of first impression?

Judge PORTEOUS. If there is no Supreme Court precedent, Senator, I would then go to my circuit. Failing precedent from either of those sources, I would look to other circuits to see if they have

had analogous litigation and rendered any particular judgments thereon; likewise look to other district courts to see if they have had any analogous type litigation and judgments thereon.

Failing all that, if it is a question of interpretation of law and the law is clear as written, the process would seem to end at that point in time. And then if there are other questions that require inquiring as to the legislative intent, I would make that inquiry also.

Senator HATCH. Well, that is good. Well, I think that is fine for me.

Senator METZENBAUM. Thank you very much, Senator Hatch.

Thank you very much, and we look forward to seeing if we can't expedite your confirmation.

Senator HATCH. We will sure try.

Judge PORTEOUS. Mr. Chairman and Senator Hatch, thank you.

Senator METZENBAUM. I see Delegate Eleanor Holmes Norton, one of the most respected colleagues we have over on the other side in the House, and one who is constantly providing a leadership role in our community, and a good friend.

Would you like to present Mr. Robertson?

STATEMENT OF HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Delegate NORTON. Thank you very much, Mr. Chairman. It is my great pleasure to recommend to you James Robertson to be a judge on the U.S. District Court for the District of Columbia. I recommended Mr. Robertson after he was recommended to me in a list of very distinguished lawyers by my 17-member judicial commission.

Mr. Robertson is an especially distinguished lawyer in the District of Columbia. He is a deeply experienced litigator and a past president of the District of Columbia Bar, but Mr. Robertson has refused to live his professional life solely within the private bar. Early in his career, he was staff director for the Lawyers Committee for Civil Rights Under Law. Throughout his professional life, he has been a leader of the private bar in every relevant respect, including a leader of the pro bono bar, setting an example for how the private bar should involve itself in the lives of the people of this city.

As you are aware, the U.S. District Court for the District of Columbia is already a very distinguished court. I believe it will shine brighter with the addition of Mr. Robertson. I am here, therefore, this morning to strongly recommend him to you.

Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Ms. Norton, and I think we will proceed forward through the hearing with respect to Mr. Robertson.

Mr. Robertson, would you be good enough to stand, please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. ROBERTSON. I do.

Senator METZENBAUM. Mr. Robertson, do you have an opening statement?

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

G. THOMAS PORTEOUS, JR.
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es).

   Residence: 4801 Neyrey Drive
   Metairie, LA 70002

   Office: 24th Judicial District Court
   Division "A"
   Gretna Courthouse Annex Bldg.
   2nd Floor, Room 200
   Gretna, LA 70053

3. Date and place of birth.

   December 15, 1946 New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

   Carmella Ann Giardina Porteous
   Vascular Technician
   Vascular Laboratory, Inc.
   3939 Houma Blvd., Suite 20
   Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Louisiana State University (New Orleans) 1964-1968
Bachelor of Arts - Economics
Degree Awarded: May, 1968

Louisiana State University Law School 1968-1971
Baton Rouge, LA
Juris Doctor
Degree Awarded: May, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

District Court Judge January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law Spring 1990
Civil Procedure Spring 1991

District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

District Attorney's Office Assistant District Attorney
Parish of Jefferson Supervisor:February 1,1975-August 6,1984
District Atty. John Mamoulides Chief Felony Complaint Div.:
Gretna Courthouse Annex Bldg. October 8,1973-January 31,1975
5th Floor
Gretna, LA 70053

St. Mary Dominican College
Instructor: Criminal law and procedure 1982

Porteous & Mustakas 3445 North Causeway Blvd. Metairie, LA 70002	Partner April 1980 - August 1984
City Attorney's Office City of Harahan 6437 Jefferson Hwy. Harahan, LA 70123	City Attorney July 1,1982 - August 23,1984
Porteous, Lee & Mustakas 139 Huey P. Long Ave. Gretna, LA 70053	Partner February 1976 - April 1980
Edwards, Porteous & Lee 139 Huey P. Long Ave. Gretna, LA 70053	Partner August 1974 - January 1976
Edwards, Porteous & Amato 139 Huey P. Long Ave. Gretna, LA 70053	Partner October 1973 - July 1974
Attorney General State of Louisiana P.O.Box 94005 Baton Rouge, LA 70804	Special Counsel September 10, 1971 - October 7, 1973
B & L Associates Dick Barrios 512 Acadia Baton Rouge, LA 70806 (800) 673-0545 (504) 751-4791 Position: Clerk/Assistant	1970 - 1971

Baker Shoe Stores 1968 - 1971
Westside Shopping Center
Gretna, LA 70053
(no longer at that location)
main branch - 837 Canal St.
New Orleans, LA 70112
(504) 524-7904
Position: Shoe Salesman

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

La. State Bar Association
4th & 5th Circuit Judges Association President - 1991
Chief Judge - 24th Judicial district Court - 1992
American Bar Association
Jefferson Bar Association
American Judges Association
American Judicature Society
La. District Attorney's Association President Assistant - 1974
District Attorney Section

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. please explain the reason for any lapse of member ship. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Louisiana	September 7, 1971
United States District Court, Eastern District of Louisiana	September 19, 1972
United States Supreme Court	April 18, 1977
United States Court of Appeals, 5th Circuit	October 1, 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you please supply them.

See Attachment "A".

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - May, 1990.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction. Other specific courts dispose of these two areas.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

(1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La. App 5 Cir., June 1988)
(2) In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

See Attachment "B-1"

(3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (LA 1988)
(4) Paul Fuller v. William Barattini, 574 So.2d 412, (La. App. 5 Cir., Jan.,1991)
(5) Paul Hidding v. Dr. Randall Williams, 578 So.2d 1192, (La. App. 5 Cir., April,1991)
(6) Karen Jewell v. The Bershire Development, 612 So.2d 749, (La. App. 5 Cir. Dec.,1992)
(7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La. App. 5 Cir., May,1993)
(8) Betty Ann Dunn v. Kreutziger, D.D.S., et al., 625 So.2d 672, (La. App. 5 Cir., Oct., 1993)
(9) Judy Watts on behalf of minor, Polly Watts v. J.C. Penny et al., App.Ct. # _____, (La. App 5 Cir.,1994)(Not designated for publication)

See Attachment "B-2"

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 632 So.2d 1170, (La. App. 5 Cir.,Feb.,1994)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Abadie, 612 So.2d 1 (LA 1993). Defendant made a statement implicating himself in the murder of a seven year old girl, Raquel Fabre. The issue of right to counsel was involved on appeal from ruling that the statement was admissible. The Supreme Court found that defendant sufficiently invoked right to counsel by unsuccessfully attempting to obtain legal advice on telephone, and defendant did not "initiate " or "reopen" interrogation by expressing his possible willingness to talk to particular officer in response to police's chief's request that he submit to lie detector test.

State v. Lindsey, 491 So.2d 371 (LA 1986). LSA-R.S. 14:71 (A)(2) Issuing worthless checks - presumption. The statute provides that a presumption exists, as follows: if an offender fails to pay a check within ten days after notice of its nonpayment, it shall be presumptive evidence of his intent to defraud. Prior rulings by the Supreme Court led me to believe that this presumption would be a mandatory presumption, as opposed to a permissive presumption, hence, unconstitutional. The Supreme Court ruled that the statute was ambiguous as to whether it created a mandatory or permissive presumption; therefore, it is interpreted as constitutional and with lenity toward the defendant. The Court recognized that its holding in this case was in conflict with its prior holdings in State v. Williams, 400 So.2d 575, (LA 1981) and State v. McCoy, 395 So.2d 319 (La. 1980). It explained how those cases could be reconciled and interpreted. My lower court ruling was vacated and the matter remanded.

Yount v. Maisano, 616 So.2d 1382, (La. App. 5 Cir. 1993); 620 So.2d 823 (LA 1993). Jury award against homeowner's policy reversed. Exclusion in policy for bodily injury "expected or intended by the insured." Supreme Court reversed, finding the actions of defendant to be an intentional act and excluded from coverage.

Marshall v. Citicorp Mortgage, Inc., 601 So.2d 669, (La. App. 5 Cir. 1992). Summary judgment reversed finding issue of material facts existed. Issue of decreasing credit life for less than loan balance when combined with rule of '78's in rebating finance charge.

Succession of Ziifle, 595 So.2d 776, (La. App. 5 Cir. 1992). Protracted litigation since 1978. A default judgment, taken before Judge Price, the previous judge of Division A, was found to be a nullity; hence, subsequent judgments were set aside.

Tracy v. Travelers Ins. Companies, 594 So.2d 541, (La. App. 5 Cir 1992) reversed trial court on exclusion of coverage on comprehensive general liability policy.

Wills v. State Farm Auto, 578 So.2d 1006, (La. App. 5 Cir. 1991). Reversed granting of summary judgment on whether insured had offered choice of limits for uninsured motorist coverage and affirmatively selected lower limits.

Kuebler v. Martin, 578 So.2d 113, (LA 1991). This is one of two cases argued before me on the same day. In the first, Autin v. Martin, I granted the defendant's relief on all claims and dismissed plaintiff's claims against the banks. The 5th Circuit Court of Appeals affirmed my decision at 576 So.2d 72, writs were denied by the Louisiana Supreme Court on April 11, 1991.

The second case is the one cited. In that case I granted the bank's motions. Likewise, this was affirmed by the appellate court but reversed by the Supreme Court only as to one of the banks finding the general language in plaintiff's petition did state a cause of action as to that one bank.

American Motorist Ins. Co., 579 So.2d 429, (LA 1991); 566 So.2d 121, (La. App. 5 Cir. 1990). Court of Appeals changed the amount of quantum on portions of the award. Supreme Court reversed the Court of Appeals, in part, and the trial court, in part, on different elements of damage award.

Lutz v. Jefferson Parish School, 565 So.2d 1071, (La. App. 5. Cir 1990); 503 So.2d 106, (La. App. 5 Cir. 1987). Judgment granting reduction in workman compensation payments based upon claimant receiving disability

retirement benefits. Reversed, finding statute was prospective only.

Cabral v. National Fire Ins.Co., 563 So S.2d 533, (La. App. 5 Cir 1990); writ denied, 567 So.2d 1129. Reversed default judgment because insufficient trial record made by plaintiff.

Succession of Austin, 527 So.2d 483, (La. App. 5 Cir. 1988). Foreign will modified by the trial court to reduce the portion that impinged on the legitime. Court of Appeals reversed finding that subsequent birth and legitimation of children revoked the will.

Augustine v. Griffen, 525 So.2d 540, (La. App. 5 Cir. 1988); writ denied, 532 So.2d 118. Twelve-year old on bike hit by auto. I reduced award by 20% for comparative negligence of child. Court of Appeals changed percentage of negligence on child to 80%.

First National Bank v. Verheugen, et al., 527 So.2d 453, (La. App. 5 Cir. 1988); writ denied 530 So.2d 576. Reversed in part on issue of attorney's fees.

Thibodeaux v. Burton, 525 So.2d 1103, (La. App. 5 Cir.1988); 531 So.2d 767, (LA 1989). Plaintiff left a quadriplegic after an auto accident. Pacific Employer Insurance Company failed to answer. Plaintiff obtained default judgment. Court of Appeals upheld default judgment and refusal of new trial. Supreme Court reversed with 3 dissents, finding an incomplete record was made by plaintiff when he confirmed the default.

Southern States Masonry, Inc. v. J.A. Jones Construction Co., et al., 507 So.2d 198, (LA 1987). Granted exception of prematurity. "Pay when paid" clause of contract between contractor and subcontractor.

Cooper v. Brownlow, 491 So.2d 693, (La. App. 5 Cir. 1986). Ruled Levee District was immune from liability under provision of LSA-R.S. 9:2791 and 2795, on a summary judgment. Court of Appeals ruled question of material facts in dispute which precluded summary judgment.

Administration of Tulane Education, 497 So.2d 27, (La. App. 5, 1986). Suit on tuition. Directed verdict for defendant was reversed finding university's

records admissible. Remanded.

Markey v. Howard, 484 So.2d 165, (La. App. 5 Cir. 1986). Jury's assessment of 30% negligence to plaintiff driver was manifestly erroneous. Appellate Court removed this allocation, in all other particulars affirmed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State v. Manuel Caballero, 472 So.2d 85, (La. App 5 Cir., June,1985); 492 So.2d 1215
State v. Edward Parr, 498 So.2d 103, (La. App 5 Cir., Nov.,1986); writ denied 532 So.2d 113
State v. Antoinne Williams, 483 So.2d 626, (La. App 5 Cir., Feb.,1986)
State v. Nolan Grant, 517 So.2d 1151, (La. App 5 Cir., Dec.,1987)
State v. Karen Copeland, 631 So.2d 1223, (La. App. 5 Cir., Jan.,1994)
State v. Darrell Williams, 545 So.2d 651, (La. App. 5 Cir.) writ denied 556 So.2d 53 and 584 So.2d 1157
State v. Jessie Head, 598 So.2d 1202, (La. App. 5 Cir., April,1992)
State v. Lane Nelson, 105 S.Ct 2050; 459 So.2d 510; *post conviction relief*
See Attachment "B-3"

16. Public office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Attorney General — 9/10/71 - 10/7/73
State of Louisiana

Assistant District Attorney — 2/1/73 - 8/6/84
Parish of Jefferson

Both were appointed positions

No unsuccessful candidacies for elective public office

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

District Court Judge — January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law — Spring 1990
Civil Procedure — Spring 1991

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

Instructor: Criminal law and procedure
St. Mary Dominican College — 1982

District Attorney's Office Parish of Jefferson District Atty. John Mamoulides Gretna Courthouse Annex Bldg., 5th Floor Gretna, LA 70053	Assistant District Attorney Supervisor: 2/1/75 - 8/6/84 Chief Felony Complaint Div.: 10/8/73 - 1/31/75
City Attorney's Office City of Harahan 6437 Jefferson Hwy. Harahan, LA 70123	City Attorney 7/1/82 - 8/23/84
Porteous & Mustakas 3445 North Causeway Blvd. Metairie, LA 70002	Partner April 1980 - August 1984
Porteous, Lee & Mustakas 139 Huey P. Long Ave. Gretna, LA 70053	Partner February 1976 - April 1980
Edwards, Porteous & Lee 139 Huey P. Long Ave. Gretna, LA 70053	Partner August 1974 - January 1976
Edwards, Porteous & Amato 139 Huey P. Long Ave. Gretna, LA 70053	Partner October 1973 - July 1974
Attorney General State of Louisiana P.O. Box 94005 Baton Rouge, LA 70804	Special Counsel 9/10/71 -10/7/73

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General Civil Practice - in private practice & City Attorney
Criminal Prosecution - Attorney General & District Attorney

2. Describe the typical former clients, and mention the areas, if any, in which you have specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan & also prosecuted municipal violations, in the Mayor's Court

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
   (a) federal courts - 20%
   (b) state courts of record - 80%
   (c) other courts - 0%

3. What percentage of your litigation was;
   (a) civil - 50%
   (b) criminal - 50%

4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus cases - Sole Counsel, 80%; Chief Counsel, 15%; Associate Counsel, 5%.

5. What percentage of these trials were:
   (a) jury 40%
   (b) non-jury 60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the names of the court and name of the judge or judges before whom the case was litigated; and
(c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. I handled this case through all pre-trial discovery and pleadings and participated in all conferences with Judge Alvin Rubin with respect to the case. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.

Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terriberry, Carroll, Yancey & Farrell
Walter Carroll, Jr.(retired)
3100 Energy Centre

1100 Poydras St.
New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. I was associated to try this matter because of my extensive litigation experience. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140
(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a ten-year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. When I initially met the victim and her mother, she would not comment. Then, she later made only isolated statements. The child had to be shown the courtroom, where she would be seated and where all the lawyers, defendant and judge would be seated. In advanced preparation for trial, D.A. personnel were placed in the courtroom to simulate the public. Great efforts were made to make the child understand what was about to happen and to make her comfortable and responsive. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
Sam Dalton
2001 Jefferson Hwy.
Jefferson, LA 70121
(504) 835-4289

Co-Defense Counsel:
George Troxell
4330 Canal Street
New Orleans,LA 70119
(504) 488-8800

4. State of Louisiana v. Leonard J. Fagot
Criminal # 76-2116, 24th Judicial District Court
Division "J", Judge Patrick E. Carr
Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy. My participation was from the inception of this case. This matter required appearances in Federal Court, prior to trial in State District Court, because of defendant's claim of denial of due process based on his state of health. The Federal District Court denied defendant's claim and favorably commended our procedures and precautionary measures.
Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
Assistant District Attorney William Hall
3500 N. Hullen Street

Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May,1985); 475 So.2d 314,(La. Sept.,1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder and Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the victim/wife by the police. I handled this matter from the initial motion to reduce the bond. This was critical because at this stage we were able to positively connect the defendant with the weapon. Trial preparation was very time consuming because out of state trips were required to secure the presence of a witness. An appearance before a District Court Judge in Annapolis was required to secure the immediate apprehension and transportation of the witness to Louisiana, along with returning this witness to Annapolis.
Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:
Ralph Whalen
3170 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 582-2333

6. State of Louisiana v. James Nolen
Criminal # 81-4045, 24th Judicial District Court
Division "J", Judge Jacob Karno
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victim's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restrains were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir Ct of Appeals - Affirmed.

Defense Counsel:
Phil Johnson
(inactive) The Louisiana Bar Association reports no current address for this attorney and could only provide the following telephone number:
(714) 275-6066

7. State of Louisiana v. Joseph Batiste
Criminal #71-1081, 24th Judicial District Court
Division "A", Judge Louis DeSonier
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact. Multiple motions to suppress were argued. A photographic line up was suppressed, but the victim's in-court identification was allowed because a sufficient predicate was established to show an independent basis for the identification. Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, life imprisonment.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to police. There were two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights.
Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
Division "A ", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Eppling v. Jon-T Chemical, Inc.
Civil Action # , 24th Judicial District Court, State of Louisiana
Division "B", Judge Zaccaria
Citations: 363 So.2d 1263

Trial on the summary judgment

Sole Counsel: G. Thomas Porteous, Jr. for Defendant

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Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.
Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:
Thomas Loop
(deceased)

Additionally, the following ten individuals have recently dealt with me on legal matters within the last five years:

Scott W. McQuaig
1500 One Galleria Blvd.
Metairie, LA 70001
(504) 836-5070

Edward J. Rice, Jr.
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234

Lawrence J. Centola, Jr.
650 Poydras St., Ste. 2100
New Orleans, LA 70130
(504) 523-1385

Raymond A. Pelleteri
1539 Jackson Ave., 6th Floor
New Orleans, LA 70130
(504) 561-5000

Jay Zainey
2543 Metairie Road
Metairie, LA 70001
(504) 831-6766

Robert Glass
530 Natchez Street
New Orleans, LA 70130
(504) 581-9083

Patricia LeBlanc
1615 Metairie Road
Metairie, LA 70005
(504) 834-2612

Kathryn T. Wiedorn
3421 N. Causeway Blvd., 9th Floor
Metairie, LA 70002
(504) 831-4091

Allan Berger
4173 Canal Street
New Orleans, LA 70119
(504) 486-9481

Joseph R. McMahon, Jr.
111 Veterans Blvd.
Heritage Plaza, Ste. 740
Metairie, LA 70005
(504) 837-1844

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently pled guilty to first degree and he was resentence to life in prison, without

capital punishment. (Attachment "B-3")

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C., State of Louisiana, Division "A", Judge Louis G. DeSonier,Jr.

The brief represents my sole personal work. Trial on the summary judgment, December 18, 1980. Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Instructor: Criminal Law/Criminal Procedure
For three years, I taught at St. Mary Dominican College. The class was a required course in the Criminal Justice program.

Co-instructor: Civil Procedure.
In conjunction with another attorney, I volunteered my time to teach third-year law students at Loyola School of Law. The emphasis was not only on the written and codified law, but also on the practical application of the law during trial proceedings. I taught the course during the Spring term in 1990 and 1991.

Speaker - Continuing Legal Education. I appeared as a speaker for numerous CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

District Court Judge
State of Louisiana
Division A, 24th Judicial District Court

District Court Judge, Ad Hoc
State of Louisiana
Division A, 24th Judicial District Court

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Louisiana State Employee Retirement System. If I am appointed prior to the end of my term, i.e., December 31, 1996, the benefits can only be drawn when I attain age 60.

2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the mandates of the Federal Rules of Civil & Criminal Procedure. I will also follow the guidelines of the Code of Judicial Conduct. I will also consider the model codes and recommendation of the ABA which are pertinent.

The only possible areas of conflict of interest would be reviewing cases from Louisiana State Court, 24th Judicial District Court, Division A, during the time I sat or a challenge to the Louisiana State Employee Retirement System. As to the retirement, a conflict could arise only if I remained on the Jefferson bench twelve (12) years, until 1996. If I took the Federal bench prior to this point, I would not be eligible for retirement proceeds until age sixty (60).

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment "C"

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment "D"

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only the campaign wherein I was elected District Court Judge.

III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Speaker - Continuing Legal Education. I appear as a speaker for numerous

CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

Since I took the bench, I invited field trips to Division "A", 24th J.D.C. for school children about once a month. The students would observe the docket and I then speak with them on the working of the court system. Afterwards, I entertain questions to explain either the particular case or the function of the courts.

I have also visited many schools in Orleans and Jefferson Parish to speak on the court systems, the functions and the duties of a judge.

Judging Moot Court Competitions on numerous occasions at Tulane School of Law and Loyola Law School.

I recently participated in the National Institute of Trial Advocacy program at Louisiana State University School of Law

At Loyola School of Law, I volunteered as co-instructor for Civil Procedure for two terms.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your

nomination?

No.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initially, I met with Senator John Breaux to discuss the possibility of being recommended for the federal bench. Both Senators Breaux and Johnston sent my name to the White House and I was recommended.

After completing multiple questionnaires, I was interviewed in Washington by members of the Justice Department, Office of Policy Development.

The FBI and the ABA have also conducted extensive reviews of my credentials and qualifications, along with conducting interviews.

On August 25, 1994, I was officially nominated by the President for the United States District Court, Eastern District of Louisiana.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our country, with its three separate and distinct branches of government, has withstood the test of time and the criticism of some. Even though the branches are separate, there will always be occasions when there is interaction among them while still preserving the separation of powers.

We, in the judiciary, have a duty to listen to the facts of a case and render a decision according to law pertinent to those issues. The presentation of the facts are for the litigants and we should always guard against participating in that presentation. A trier of fact should in no way devise, invent or concoct facts; it should rule on the case before it. Unless a question is certified before the court by the Louisiana Supreme Court or any other tribunal properly, it may not render an advisory opinion. Novel questions of law occasionally arise, and they must be dealt with according to the facts before the court. The judiciary must decide cases according to the facts and law as an impartial arbitrator.

In performing our duties there are occasions when our judgments may

be interpreted as judicial activism. When we declare a law unconstitutional and unenforceable that may be interpreted by some as interfering with the legislative function. However, such action is part of our duty and responsibility and is far different from actually legislating.

When we deal with individual grievances, we must be ever mindful to follow judicial precedent and constitutional interpretation. The personal feelings of a judge should never replace sound, established judicial precedent and constitutional interpretation. In instructing juries, I always remind them that "your decision must not be based on bias, prejudice, sympathy or public opinion." We in the judiciary must be ever mindful of this guideline when we are the trier of the facts.

Once a matter is before a court on a trial on the merits, the judiciary's duty is to render our decision solely based on the law and evidence. Prior to trial, a judge may be called upon to counsel or intervene as an unbiased peacemaker, encouraging the parties to be open minded and understanding.

If we attempt to go beyond our role, we may in fact infringe on areas reserved to the other branches of government. If we attempt to do less, we will not be adhering to our oaths and weakening the judicial branch of government. It is always a careful balance.

AO-19
Rev. 1/93

FINANCIAL DISCLOSURE REPORT

Report Required Attachment
Before Act of 19[illegible]
101-194, Novem[illegible]
(5 U.S.C.A. App.[illegible]

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Porteous (Jr.), Gabriel T.	United States District Court Eastern District of Louisiana	8-29-94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) United States District Court Judge	5. Report Type (check appropriate type) X Nomination, Date 8-25-94 __ Initial __ Annual __ Final	6. Reporting Period 1-1-93 - 8-25-94
7. Chambers or Office Address Division A, 24th Judicial District Ct. Gretna Courthouse - Annex Bldg. Gretna, Louisiana 70053	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reviewing Officer Signature _____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed.* **Complete all parts, checking the NONE box for each section where you have no reportable information.** *Sign on last page.*

I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
X NONE (No reportable positions)	

II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE	PARTIES AND TERMS
X NONE (No reportable agreements)	

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income)		
1	1994 Year to Date Judicial State of Louisiana	$ 49,206.00
2	Vascular Laboratory, Inc. (S)	$
3	1993 Judicial State of Louisiana	$ 72,830.58
4	Southern Baptist Hospital (Final balance of annuity, retirement, of my deceased mother)	$ 381.39
5	Vascular Laboratory, Inc. (S) (See Attachment I)	$

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ATTACHMENT I

FINANCIAL DISCLOSURE REPORT (cont'd) PORTEOUS (JR.), Gabriel T. 8-29-94

III. NON-INVESTMENT INCOME

1992 Judicial State of Louisiana	$74,384.26
Southern Baptist Hospital (Retirement annuity deceased mother)	1,652.64
Executive Life Insurance of California (Retirement annuity deceased mother)	3,287.40
Vascular Laboratory, Inc. (S)	

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Porteous (Jr.), Gabriel T.	8-29-94

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	Exempt	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; use the parentheticals '(S)' and '(DC)' to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts)		
1	Exempt		$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical '(S)' for separate liability of spouse, '(J)' for joint liability of reporting individual and spouse, and '(DC)' for liability of a dependent child. See pp.16-18 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VALUE CODES: J = $15,000 or less; K = $15,001 to $50,000; L = $50,001 to $100,000; M = $100,001 to $250,000; N = $250,001 to $500,000; O = $500,001 to $1,000,000; P = More than $1,000,000

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Porteous (Jr.), Gabriel T.	8-29-94

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (Including trust assets) Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period (1) Amt. Code (A-E)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period Exempt (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month Day	(3) Value Code (J-P)	(4) Gain Code (A-E)	(5) Identity of buyer/seller (if private transaction)
X NONE (No reportable income, assets, or transactions)									
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)
A=$1,000 or less
B=$1,001 to $2,500
C=$2,501 to 5,000
D=$5,001 to $15,000
E=$15,001 to $50,000
F=$50,001 to $100,000
G=$100,001 to $1,000,000
H=More than $1,000,000
I=$15,000 or less
J=$15,001 to $50,000
K=$50,001 to $100,000
L=$100,001 to $1,000,000
M=$1,000,001 to $5,000,000
N=$5,000,001 to $25,000,000
O=$25,000,001 to $50,000,000
P=More than $50,000,000
2 Value Codes: (See Col. C1 & D3)
Q=Appraisal
R=Cost (real estate only)
S=Assessment
T=Cash/Market
U=Book Value
V=Other
W=Estimated
3 Value Method Codes: (See Col. C2)

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FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Porteous (Jr.), Gabriel T.	8-29-94

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature _____ Date September 6, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

FILING INSTRUCTIONS:

Judicial Ethics Committee
Administrative Office of the
United States Courts
Washington, DC 20544

FIRST NATIONAL BANK OF COMMERCE
(HEREINAFTER REFERRED TO AS "BANK")
P. O. BOX 60279
210 BARONNE STREET
NEW ORLEANS, LOUISIANA 70160

PERSONAL FINANCIAL STATEMENT

NOTICE - This statement is designed for use by residents of Louisiana or another com[redacted] this statement only your own financial condition. List all of your separate assets and any [redacted] in which you have an interest, as well as all debts which may be satisfied out of ath[redacted] property. If you are seeking credit jointly with your spouse and your spouse has separ[redacted] income, your spouse should submit a separate Personal Financial Statement and attach[redacted]

FOR BANK USE ONLY: OFFICER _____ CL# _____ CL# _____ IL# _____

Please do not leave any questions unanswered. Mark N/A ("Not Applicable") in any space which would otherwise be left blank.

INDIVIDUAL INFORMATION

Name Gabriel Thomas Porteous, Jr.	Employer Name Judicial Branch, State of Louisiana
Address	Employer Address 301 Loyola Ave.
City, State & Zip	City, State & Zip New Orleans, Louisiana 70112
Date of Birth 12-15-46	Years with Present Employer 10
Social Security #	Position or Occupation Judge
Residential Phone	Business Phone

STATEMENT OF FINANCIAL CONDITION AS OF April 26, 1994

ASSETS (Do not include assets of questionable value)	In Dollars (omit cents)	LIABILITIES	In Dollars (omit cents)
Cash - (See Schedule 1)		Notes Payable - (See Schedule 8)	
Cash in This Institution	1,500	Notes Payable to This Institution - Secured	
Cash in Other Institutions	1,700	Notes Payable to This Institution - Unsecured	3,614
U.S. Gov't & Marketable Securities - (See Schedule 2)		Other Notes Payable - Secured	
U.S. Gov't Securities		Other Notes Payable - Unsecured	
Money Market Funds and Mutual Funds		Automobile Loans	
Listed Securities (NYSE, ASE, OTC)		Loans Against Margin Accounts - (See Schedule 2)	
Closely Held or Not Actively Traded Securities - (See Schedule 2)		Life Insurance Policy Loans - (See Schedule 3)	2,000
		Real Estate Mortgages Payable - (See Schedule 5)	
Cash Surrender Value - Life Insurance Policies - (See Schedule 3)	5,000	Personal Residence	94,000
		Other Wholly Owned Real Estate	
IRA's, Keoghs, Profit Sharing & Other Vested Retirement Accounts - (See Schedule 4)	92,408	Partially Owned Real Estate	
		Oil and Gas Liabilities - (See Schedule 7)	
Real Estate - (See Schedule 5)		Credit Card Accounts and Bills Due	37,853
Personal Residence	225,000	Loans Due to Partnerships	
Other Wholly Owned Real Estate		Unpaid Income Tax	
Partially Owned Real Estate		Other Unpaid Taxes and Interest	
Real Estate Mortgages Owned - (See Schedule 6)		Estimated Tax Liability on Assets If Liquidated	
Accounts Receivable & Notes Receivable - (See Schedule 6)		Other Debts - Itemize below	
Oil and Gas Interests - (See Schedule 7)			
Deferred Income			
Automobiles	15,000		
Other Assets:			
Personal Property	25,000		
Partnership Interests			
		Total Liabilities	137,467
		Net Worth	228,141
Total Assets	365,608	Total Liabilities and Net Worth	365,608

GENERAL INFORMATION

Number of Dependents (not including Spouse): 4 Ages: 23, 21, 19, 13 Marital Status: ☒ Married ☐ Unmarried ☐ Separated

Spouse Information:

Name Carmella Giardina Porteous

Address (if different from applicant) _____

Employer Name Vascular Laboratory, Inc. Position or Occupation Technician

Employer Address 4320 Houma Blvd., Metairie, Louisiana 70006

Social Security # _____ Date of Birth 12-23-48 Business Phone _____

If married and domiciled in Louisiana, have you and your spouse executed a contract which varies the legal (Community Property) regime?

☐ Yes ☒ No If "Yes", attach a copy of such contract.

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SOURCES OF CASH	LAST YEAR 19__	THIS YEAR 19__	USES OF CASH	LAST YEAR 19__	THIS YEAR 19__
RECURRING SOURCES:			DEBT SERVICE:		
Gross Salary			Interest and Principal Payments on:		
Bonuses & Commissions			Personal Residence		
Dividend & Interest			Other Real Estate Loans		
Gross Real Estate Income			Other Loans		
Gross Oil/Gas Income			EXPENSES:		
Royalties & Trust			Rental Pmts, Co-op/Condo Maint.		
Other Business Income			Property Taxes		
Payments from Notes Rec.			Federal Income Taxes		
Other Income (Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation)			State Income Taxes		
			Other Taxes		
			Insurance Expense		
			Alimony/Child Support		
			Tuition Expense		
			Utility Expense		
			Oil/Gas Property Expense		
NON-RECURRING SOURCES:			Partnership Contribution		
Bonuses & Commissions			Medical Expense		
Sale of Assets			Credit Card Expense		
Distributions from Estate & Trusts			Other Expenses		
Other			TOTAL CASH USES		
TOTAL CASH SOURCES			CASH SOURCES LESS CASH USES		

Do you expect any significant changes in income or expenses in the next 12 months? ☐ Yes ☐ No (If "Yes", explain in space below)

SCHEDULE 1 - Depository Accounts - If not enough space, please attach separate schedule.

TYPE OF ACCOUNT	FINANCIAL INSTITUTION	BALANCE	MATURITY DATE (If Applicable)	IS IT PLEDGED?
Checking	First NBC	1,500		
Checking	Fidelity Homestead	1,700		
	Total in This Institution	1,500		
	Total in Other Institutions	1,700		

SCHEDULE 2 - All Securities - If not enough space, please attach separate schedule.

NO. OF SHARES (Stock) OR FACE VALUE (Bonds)	DESCRIPTION	OWNERS(S)	WHERE TRADED (NYSE, OTC, ETC.) OR BASIS/SOURCE OF VALUE	ARE THESE RESTRICTED, CONTROLLED, PLEDGED OR HELD BY OTHERS? (If so, by whom?)	CURRENT MARKET VALUE
READILY MARKETABLE SECURITIES (INCLUDING U.S. GOVERNMENTS, MUNICIPALS, MONEY MARKET FUNDS, MUTUAL FUNDS AND LISTED SECURITIES).					
NON-READILY MARKETABLE SECURITIES (CLOSELY HELD OR NOT ACTIVELY TRADED SECURITIES).					
				Total Readily Marketable Securities	
				Total Non-Readily Marketable Securities	

SCHEDULE 3 - Life Insurance Carried, Including Group Insurance - If not enough space, please attach separate schedule.

NAME OF INSURANCE COMPANY	OWNER OF POLICY	TYPE OF POLICY	BENEFICIARY & RELATIONSHIP	FACE AMOUNT	PLEDGED OR POLICY LOANS? (To whom & amount?)	CASH SURRENDER VALUE
Life of Virginia	Self	Life	Carmella Porteous (wife)	20,000	Self 2,000	5,000
				Totals		

SCHEDULE 4 - IRAs, Keoghs, Profit Sharing & Other Vested Retirement Accounts - If not enough space, please attach separate schedule.

TRUSTEE OR PLAN ADMINISTRATOR	IN THE NAME OF	TYPE OF ACCOUNT	BENEFICIARY	MARKET VALUE	AMOUNT OF PLAN LOANS	MARKET VALUE LESS PLAN LOANS	ACCESS DATE
State of La.	G. Thomas	Ret.	Carmella Porteous	92,408	0	0	12/15/06
Employees	Porteous, Jr						or
Retirement							separation
System							from service
					Total		

SCHEDULE 5 - Real Estate Owned - If not enough space, please attach separate schedule.

ADDRESS & TYPE OF PROPERTY	% OWNED	TITLE IN NAME OF	YR. ACQ'D	COST & IMPRVMTS.	PRESENT MARKET VALUE	MORTGAGE BALANCE	LENDER	LOAN MATURITY	ANNUAL LOAN PMT. AMT.	GROSS ANNUAL INCOME	ANNUAL OPER. EXP. (not incl. loan)
PERSONAL RESIDENCE		Mr. & Mrs. C. T.									
Metairie, La.	100	Porteous, Jr.	77	105,000	225,000	94,000	Fidelity	9/2008	9981.84		
OTHER WHOLLY OWNED REAL ESTATE (Residential or Commercial)											
PARTIALLY OWNED REAL ESTATE											
				Totals					Totals		
				Your Portion of Market Value and Debt			Your Portion of Income & Expenses				

SCHEDULE 6 - Accounts Receivable, Mortgage Receivable & Notes Receivable - If not enough space, please attach separate schedule.

DUE FROM	ORIGINAL AMOUNT	PRESENT BALANCE	INT. RATE	MATURITY	PAYMENT TERMS	ARE PMTS. CURRENT?	COLLATERAL
	Total						

SCHEDULE 7 - Oil and Gas Interests (Including General Partnership Interests) - If not enough space, please attach separate schedule.

FIELD NAME, PARISH / COUNTY & STATE	TYPE OF INTEREST	SOURCE OF VALUATION	VALUATION AMT / DATE	PRESENT LOAN BAL.	LENDER	ANNUAL PMT. AMOUNT	GROSS ANNUAL INCOME	ANNUAL CASH OPER. EXP.
			Totals			Totals		

SCHEDULE 8 - Notes Payable (Including all loans, active lines of credit and inactive lines of credit.) - If not enough space, please attach separate schedule.

NAME OF CREDITOR	TYPE OF FACILITY (Loan or Line)	ORIGINAL LOAN OR LINE AMOUNT	UNPAID BALANCE	INTEREST RATE	MATURITY DATE	UNSECURED OR SECURED (List Collateral)	ACCOUNT NUMBER
First NBC	Loan	3,614	3,614	6	*	unsecured	
		Total	3,614				

* Parent Plus Loan for son's education. Payment deferred until graduation.

Please do not leave any questions unanswered. Mark N / A ("Not Applicable") in any space which would otherwise be left blank. Do you or your spouse have any...

	YES	NO	With Whom?	Amount
1. Contingent liabilities (as endorser, co-maker or guarantor) on loans to individuals, corporations, partnerships or other business entities?	X		First National Bank of St. Bernard	$ 4,500
2. Outstanding letters of credit or surety bonds?				$
3. Contingent liabilities on any leases or contracts?				$
4. Involvement in any pending legal action?				$
5. Tax obligations past due or contested income tax liens?				$
6. Judgments, garnishments and attachments pending?				$
7. Other special debt or circumstances?				$

"If you answered "yes" to any question in this section, please attach a separate sheet giving complete details.

Total Contingent Liabilities $ 4,500

GENERAL QUESTIONS

Please do not leave any questions unanswered. Mark N / A ("Not Applicable") in any space which would otherwise be left blank.

	YES	NO
1. Have you or your spouse or any firm in which you were a major owner ever been adjudicated a bankrupt or made a settlement with creditors? If yes, please provide details:		X
2. Are any of the assets held in trust, in an estate or in any other name or capacity?		X
3. Do any of your assets secure any debts which have not been reported in the preceding schedules?		X
4. Do you have a will? If "yes", please indicate name of executor of the estate:		X
5. Do you have disability insurance? If "yes", please indicate in the space provided:		X

Benefit Coverage Terms (Mos.) _____ Benefit Coverage Terms (Mos.) _____

Monthly Coverage $ _____ Monthly Coverage $ _____

Provider _____ Provider _____

Group or Individual Policy? _____ Group or Individual Policy? _____

6. Do you have professional liability insurance coverage? If "yes", please indicate in the space provided:		X	
Coverage $1,000,000	Provider Herbert L. Jamison & Co.		
7. Income tax returns filed through (date): 1993			
Are any returns currently being audited? If "yes", what year(s)?			

"If you answered "yes" to any question in this section, please attach a separate sheet giving complete details.

My signature below indicates that I have completed this Personal Financial Statement in consideration of Bank extending or continuing to extend credit to me and/or to others upon my guarantee. I understand that by signing this statement or by submitting it to Bank I have promised and certified that all of the information it contains is true and complete, that all of the assets I have listed are my own property, whether separate or community, and that the valuation of land, property or securities is accurate to the best of my belief.

I agree to give Bank written notice immediately of any change in my name, address or employment, and of any adverse change in the information in this statement or in my financial condition or in my ability to perform my obligations to Bank. If I have not given such written notice, or if I have not submitted a revised version of this statement, then Bank is entitled to conclude that this is a continuing statement, which may be relied upon as a fair and true picture of my financial condition. I further agree that as long as my relationship with Bank continues, I will furnish an updated Personal Financial Statement on at least an annual basis.

I authorize Bank to verify the information contained in this statement by contacting my spouse, my employer and others. You may exchange with, or furnish information to others regarding your credit experience with me and I agree to release you from all liability which may result. I understand that this statement, when submitted, becomes your property, and that you will retain this statement whether or not credit is granted.

Date Signed September 6, 19 94 Signature _____

Date Signed _____, 19____ _____

Signature of spouse, if spouse is a joint applicant

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4924) was deemed read the third time, and passed.

THOMAS PAINE MEMORIAL JOINT RESOLUTION—MESSAGE FROM THE HOUSE

Mr. FEINGOLD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a joint resolution (S.J. Res. 227) to approve the location of a Thomas Paine Memorial.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 227) entitled "Joint resolution to approve the location of a Thomas Paine Memorial", do pass with the following amendments:

Strike all after the resolving clause, and insert:

That (a) the location of a Thomas Paine Memorial, authorized by Public Law 102-407, as amended by Public Law 103-459, within either Area I or Area II as described in Public Law 99-652 (100 Stat. 3650), is approved and (b) the location of a World War II Memorial, authorized by Public Law 103-32, within either Area I or Area II as described in Public Law 99-652 (100 Stat. 3650), is hereby approved.

Strike the preamble, and insert:

Whereas section 8(a) of the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes," approved November 14, 1965 (Public Law 99-652; 100 Stat. 3650) provides that the location of a commemorative work in the area described as Area I shall be deemed disapproved unless the location is approved by law not later than 150 days after notification of Congress that the commemorative work may be located in Area I; and

Whereas Public Law 102-407, as amended by Public Law 102-459, authorized the Thomas Paine National Historical Association U.S.A. Memorial Foundation to establish a memorial on Federal land in the District of Columbia to Thomas Paine; and

Whereas Public Law 103-32, approved May 25, 1993 (107 Stat. 90), authorized the American Battle Monuments Commission to establish a memorial on Federal land in the District of Columbia to members of the Armed Forces who served in World War II; and

Whereas the Secretary of the Interior has notified the Congress of his determination that such memorials should be located in Area I: Now, therefore, be it

Amend the title so as to read as follows: "Joint resolution approving the location of a Thomas Paine Memorial and a World War II Memorial in the Nation's Capitol".

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the Senate concur in the House amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

WARREN B. RUDMAN UNITED STATES COURTHOUSE—MESSAGE FROM THE HOUSE

Mr. FEINGOLD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2073.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2073) entitled "An Act to designate the United States courthouse that is scheduled to be constructed in Concord, New Hampshire, as the "Warren B. Rudman United States Courthouse", and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. WARREN B. RUDMAN UNITED STATES COURTHOUSE.

(a) DESIGNATION.—The United States courthouse to be constructed in Concord, New Hampshire, shall be known and designated as the "Warren B. Rudman United States Courthouse".

(b) LEGAL REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in subsection (a) shall be deemed to be a reference to the "Warren B. Rudman United States Courthouse".

SEC. 2. JAMIE L. WHITTEN FEDERAL BUILDING.

(a) DESIGNATION.—The Federal building located at the northeast corner of the intersection of 14th Street and Independence Avenue, Southwest, in Washington, District of Columbia, shall be known and designated as the "Jamie L. Whitten Federal Building".

(b) LEGAL REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in subsection (a) shall be deemed to be a reference to the "Jamie L. Whitten Federal Building".

SEC. 3. WILLIAM H. NATCHER FEDERAL BUILDING AND UNITED STATES COURTHOUSE.

(a) DESIGNATION.—The Federal building and United States courthouse located at 242 East Main Street in Bowling Green, Kentucky, shall be known and designated as the "William H. Natcher Federal Building and United States Courthouse".

(b) LEAGAL REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in subsection (a) shall be deemed to be a reference to the "William H. Natcher Federal Building and United States Courthouse".

Amend the title so as to read: "An Act to designate the Warren B. Rudman United States Courthouse, the Jamie L. Whitten Federal Building, and the William H. Natcher Federal Building and United States Courthouse,".

Mr. FEINGOLD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FEINGOLD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURES INDEFINITELY POSTPONED—H.R. 4576 AND H.R. 4577

Mr. FEINGOLD. I now ask unanimous consent that Calendar No. 572 and 573 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL SATURDAY, OCTOBER 8, 1994 AT 9 A.M.

Mr. FEINGOLD. Mr. President, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 12:34 a.m., recessed until tomorrow, Saturday, October 8, 1994, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 7, 1994:

EXECUTIVE OFFICE OF THE PRESIDENT

G. EDWARD DESEVE, OF PENNSYLVANIA, TO BE CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET, VICE EDWARD JOSEPH MAZUR, RESIGNED.

MARTIN NEIL BAILY, OF MARYLAND, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE ALAN S. BLINDER, RESIGNED.

SECURITIES INVESTOR PROTECTION CORPORATION

CHARLES L. MARINACCIO, OF THE DISTRICT OF COLUMBIA, TO BE A DIRECTOR OF THE SECURITIES INVESTOR PROTECTION CORPORATION FOR A TERM EXPIRING DECEMBER 31, 1994, VICE GEORGE H. PFAU, JR., TERM EXPIRED.

FEDERAL TRADE COMMISSION

ROBERT PITOFSKY, OF MARYLAND, TO BE A FEDERAL TRADE COMMISSIONER FOR THE TERM OF 7 YEARS FROM SEPTEMBER 26, 1994, VICE DEBORAH KAYE OWEN, TERM EXPIRED.

NUCLEAR REGULATORY COMMISSION

ROBERT M. GUSSMAN, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM OF 5 YEARS EXPIRING JUNE 30, 1998, VICE JAMES R. CURTISS, TERM EXPIRED.

COMMUNICATIONS SATELLITE CORPORATION

CHARLES T. MANATT, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNICATIONS SATELLITE CORPORATION UNTIL THE DATE OF THE ANNUAL MEETING OF THE CORPORATION IN 1997, VICE RUDY BOSCHWITZ.

IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

To be lieutenant general

LT. GEN. SAMUEL E. EBBESEN, 000-30-1327

CONFIRMATIONS

Executive Nominations Confirmed by the Senate October 7, 1994:

DEPARTMENT OF THE TREASURY

VALERIE LAU, OF CALIFORNIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF THE TREASURY.

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HP Exhibit 9(c)

DEPARTMENT OF STATE

THOMAS E. MCNAMARA, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AN ASSISTANT SECRETARY OF STATE.

THE JUDICIARY

VANESSA RUIZ, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS FOR THE TERM OF 15 YEARS.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

ALAN J. DIXON, OF ILLINOIS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS.

ALAN J. DIXON, OF ILLINOIS, TO BE CHAIRMAN OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION.

ENVIRONMENTAL PROTECTION AGENCY

FREDERIC JAMES HANSEN, OF OREGON, TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF EDUCATION

G. MARIO MORENO, OF TEXAS, TO BE ASSISTANT SECRETARY FOR INTERGOVERNMENTAL AND INTERAGENCY AFFAIRS, DEPARTMENT OF EDUCATION.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

JOEL DAVID VALDEZ, OF ARIZONA, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 1998.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

JORGE M. PEREZ, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL COUNCIL ON THE ARTS FOR A TERM EXPIRING SEPTEMBER 3, 1998.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF JUSTICE

CHARLES R. WILSON, OF FLORIDA, TO BE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF FLORIDA FOR THE TERM OF 4 YEARS.

STEVEN SCOTT ALM OF HAWAII FOR THE TERM OF 4 YEARS.

EISENHOWER DURR, OF MISSISSIPPI, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF 4 YEARS.

MICHAEL R. RAMON, OF CALIFORNIA, TO BE U.S. MARSHAL FOR THE CENTRAL DISTRICT OF CALIFORNIA.

MICHAEL D. CARRINGTON, OF INDIANA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF INDIANA FOR THE TERM OF 4 YEARS.

ROBERT BRADFORD ENGLISH, OF MISSOURI, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF MISSOURI FOR THE TERM OF 4 YEARS.

JOHN R. MURPHY, OF ALASKA, TO BE U.S. MARSHAL FOR THE DISTRICT OF ALASKA FOR THE TERM OF 4 YEARS.

HERBERT M. RUTHERFORD III, TO THE DISTRICT OF COLUMBIA, TO THE U.S. MARSHAL FOR THE DISTRICT OF COLUMBIA FOR THE TERM OF 4 YEARS.

ROBERT MOORE, OF ILLINOIS, TO BE U.S. MARSHAL FOR THE CENTRAL DISTRICT OF ILLINOIS FOR THE TERM OF 4 YEARS.

SHELDON C. BILCHIK, OF MARYLAND, TO BE ADMINISTRATOR OF THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

STATE JUSTICE INSTITUTE

JOSEPH FRANCIS BACA, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995.

ROBERT NELSON BALDWIN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995.

FLORENCE K. MURRAY, OF RHODE ISLAND, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995.

THE JUDICIARY

JAMES A. BEATY, JR., OF NORTH CAROLINA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA.

DAVID BRIONES, OF TEXAS, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS.

OKLA JONES II, OF LOUISIANA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA.

G. THOMAS PORTEOUS, JR., OF LOUISIANA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA.

JAMES ROBERTSON, OF MARYLAND, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA.

THOMAS B. RUSSELL, OF KENTUCKY, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY.

KATHLEEN M. O'MALLEY, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

DAVID F. HAMILTON, OF INDIANA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA.

DIANE E. MURPHY, OF MINNESOTA, TO BE U.S. CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT.

FRED I. PARKER, OF VERMONT, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT.

WILLIAM T. MOORE, JR., OF GEORGIA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF GEORGIA.

DAVID A. KATZ, OF OHIO, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

SEAN J. MCLAUGHLIN, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

BLAINE F. BUCKLO, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

ROBERT W. GETTLEMAN, OF ILLINOIS, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS.

HELEN W. GILLMOR, OF HAWAII, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF HAWAII.

ROSLYN MOORE-SILVER, OF ARIZONA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA.

ALVIN W. THOMPSON, OF CONNECTICUT, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT.

WILLIAM H. WALLS, OF NEW JERSEY, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY.

SVEN E. HOLMES, OF OKLAHOMA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA.

VICKI MILES-LAGRANGE, OF OKLAHOMA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA.

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STANDARD FORM 61
REVISED SEPTEMBER 1970
U.S. CIVIL SERVICE COMMISSION
F.P.M. CHAPTER 295
61-107

OMB APPROVAL NO. 50-R0118

APPOINTMENT AFFIDAVITS

UNITED STATES DISTRICT JUDGE	October 28, 1994
(Position to which appointed)	*(Date of appointment)*

UNITED STATES COURTS		NEW ORLEANS, LA.
(Department or agency)	*(Bureau or division)*	*(Place of employment)*

I, G. THOMAS PORTEOUS, JR., do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

(Signature of appointee)

Subscribed and sworn (or affirmed) before me this 28th day of October A.D. 19 94,

at New Orleans *(City)* Louisiana *(State)*

[SEAL]

(Signature of officer)

Commission expires
(If by a Notary Public, the date of expiration of his Commission should be shown)

CHIEF UNITED SATES DISTRICT JUDGE
(Title)

NOTE.—*The oath of office must be administered by a person specified in 5 U.S.C. 2903. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.*

☆U.S. G.P.O. 1983-381-526/8281

HP Exhibit 9(d)

Jon Gegenheimer
CLERK OF COURT

PARISH OF JEFFERSON
24TH JUDICIAL DISTRICT COURT

P.O. BOX 10
GRETNA, LA 70054-0010
PHONE: (504) 364-2900

April 9, 2010

ATTN: Wayne Horner, Agent
Federal Bureau of Investigation
2901 Leon C. Simon Dr.
New Orleans LA 70126

Re: Resignation of G. Thomas Porteous from La. 24th JDC

Dear Mr. Horner:

Enclosed is the certified copy of Judge Porteous's 1994 resignation letter from the Louisiana 24th Judicial District Court.

If you need further assistance, please do not hesitate to contact us.

Sincerely,

Frank J. Borne, Jr.
Administrative Assistant

HP Exhibit 9(e)

Printed on Recycled Pap

BATON ROUGE, LOUISIANA

UNITED STATES OF AMERICA

State of Louisiana

Jay Dardenne
SECRETARY OF STATE

As Secretary of State, of the State of Louisiana, I do hereby Certify that

attached is a true copy of the resignation for G. THOMAS PORTEOUS, JR., DISTRICT JUDGE, 24TH JUDICIAL DISTRICT, DIVISION A, in the State of Louisiana, as shown on file in the office of the Secretary of State.

In testimony whereof, I have hereunto set my hand and caused the Seal of my Office to be affixed at the City of Baton Rouge on,

APRIL 6, 2010

Secretary of State

STATE OF LOUISIANA
UNION JUSTICE
CONFIDENCE
SECRETARY OF STATE

CERTIFICATE SS 102 PRINTED SEAL (Rev. 11/06)

JUDGES
G. THOMAS PORTEOUS, JR., DIVISION A
ERNEST V. RICHARDS, IV, DIVISION B
ALAN J. GREEN, DIVISION C
WALTER E. KOLLIN, DIVISION D
CLARENCE E. MCMANUS, DIVISION E
PATRICK J. MCCABE, DIVISION F
M. JOSEPH TIEMANN, DIVISION G
DOUGLAS A. ALLEN, PRO TEMPORE, DIVISION H
JO ELLEN GRANT, DIVISION I
JACOB L. KARNO, DIVISION J
MARTHA E. SABBONE, DIVISION K
CHARLES V. CUSIMANO, II, DIVISION L
ROBERT J. BURNS, DIVISION M
SUSAN M. CHEHAROV, DIVISION N
RONALD P. LOUMIET, DIVISION O
MELVIN C. ZENO, DIVISION P

OFFICE OF DISTRICT JUDGES
24TH JUDICIAL DISTRICT
PARISH OF JEFFERSON
GRETNA, LOUISIANA

TELEPHONE
364-3984

October 25th, 1994
Certified Mail No. Z 698 858 269
Return Receipt Requested

Secretary of State
Fox McKeithen
P.O. Box 94125
Baton Rouge, Louisiana 70809

Dear Secretary McKeithen,

Pursuant to my appointment to the U..S. District Court, for the Eastern District of Louisiana, I will take my oath of office on October 28, 1994, after completing my state court docket for that day.

Upon taking the oath, it will cause a vacancy to exist in Division "A", 24th Judicial District Court, Parish of Jefferson, State of Louisiana.

Thank you for your consideration in this matter.

Sincerely,

G. Thomas Porteous, Jr.

Sworn to and subscribed before me, notary, this 25 day of October, 1994.

NOTARY

RECEIVED
COMMISSIONS DEPT.
OCT 31 1994
W. FOX McKEITHEN
SECRETARY OF STATE

:genheimer
CLERK OF COURT
TH JUDICIAL DISTRICT
ARISH OF JEFFERSON
URTHOUSE - P.O. BOX 10
NA, LOUISIANA 70054-0010

661

ATTN: Wayne Horner, Agent
Federal Bureau of Investigation
2901 Leon C. Simon Dr.
New Orleans LA 70126

CERTIFICATION

I, Roslyne Turner, Chief Clerk of the United States Senate Committee on the Judiciary, hereby certify that the attached document is a true and correct copy of the completed Questionnaire for Judicial Nominees, numbering 35 pages, executed by G. Thomas Porteous, Jr. on September 6, 1994, and submitted to the United States Senate Committee on the Judiciary and maintained within the official files of the Committee on the Judiciary.

Executed this 14 day of April, 2010.

Roslyne Turner

HP Exhibit 9(f)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

G. THOMAS PORTEOUS, JR.
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es).

Residence: 4801 Neyrey Drive
Metairie, LA 70002

Office: 24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
2nd Floor, Room 200
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946 New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

Carmella Ann Giardina Porteous
Vascular Technician
Vascular Laboratory, Inc.
3939 Houma Blvd., Suite 20
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Louisiana State University (New Orleans) 1964-1968
Bachelor of Arts - Economics
Degree Awarded: May, 1968

Louisiana State University Law School 1968-1971
Baton Rouge, LA
Juris Doctor
Degree Awarded: May, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

District Court Judge January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law Spring 1990
Civil Procedure Spring 1991

District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

District Attorney's Office Assistant District Attorney
Parish of Jefferson Supervisor:February 1,1975-August 6,1984
District Atty. John Mamoulides Chief Felony Complaint Div.:
Gretna Courthouse Annex Bldg. October 8,1973-January 31,1975
5th Floor
Gretna, LA 70053

St. Mary Dominican College
Instructor: Criminal law and procedure 1982

Porteous & Mustakas
3445 North Causeway Blvd.
Metairie, LA 70002

Partner
April 1980 - August 1984

City Attorney's Office
City of Harahan
6437 Jefferson Hwy.
Harahan, LA 70123

City Attorney
July 1,1982 - August 23,1984

Porteous, Lee & Mustakas
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
February 1976 - April 1980

Edwards, Porteous & Lee
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
August 1974 - January 1976

Edwards, Porteous & Amato
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
October 1973 - July 1974

Attorney General
State of Louisiana
P.O.Box 94005
Baton Rouge, LA 70804

Special Counsel
September 10, 1971 - October 7, 1973

B & L Associates
Dick Barrios
512 Acadia
Baton Rouge, LA 70806
(800) 673-0545
(504) 751-4791
Position: Clerk/Assistant

1970 - 1971

Baker Shoe Stores 1968 - 1971
Westside Shopping Center
Gretna, LA 70053
(no longer at that location)
main branch - 837 Canal St.
New Orleans, LA 70112
(504) 524-7904
Position: Shoe Salesman

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

La. State Bar Association
4th & 5th Circuit Judges Association President - 1991
Chief Judge - 24th Judicial district Court - 1992
American Bar Association
Jefferson Bar Association
American Judges Association
American Judicature Society
La. District Attorney's Association President Assistant - 1974
District Attorney Section

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. please explain the reason for any lapse of member ship. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Louisiana	September 7, 1971
United States District Court, Eastern District of Louisiana	September 19, 1972
United States Supreme Court	April 18, 1977
United States Court of Appeals, 5th Circuit	October 1, 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you please supply them.

See Attachment "A".

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - May, 1990.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction. Other specific courts dispose of these two areas.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

(1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La. App 5 Cir., June 1988)
(2) In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

See Attachment "B-1"

(3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (LA 1988)
(4) Paul Fuller v. William Barattini, 574 So.2d 412, (La. App. 5 Cir., Jan.,1991)
(5) Paul Hidding v. Dr. Randall Williams, 578 So.2d 1192, (La. App. 5 Cir., April,1991)
(6) Karen Jewell v. The Bershire Development, 612 So.2d 749, (La. App. 5 Cir. Dec.,1992)
(7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La. App. 5 Cir., May,1993)
(8) Betty Ann Dunn v. Kreutziger, D.D.S., et al., 625 So.2d 672, (La. App. 5 Cir., Oct., 1993)
(9) Judy Watts on behalf of minor, Polly Watts v. J.C. Penny et al., App.Ct. # _____, (La. App 5 Cir.,1994)(Not designated for publication)

See Attachment "B-2"

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 632 So.2d 1170, (La. App. 5 Cir.,Feb.,1994)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Abadie, 612 So.2d 1 (LA 1993). Defendant made a statement implicating himself in the murder of a seven year old girl, Raquel Fabre. The issue of right to counsel was involved on appeal from ruling that the statement was admissible. The Supreme Court found that defendant sufficiently invoked right to counsel by unsuccessfully attempting to obtain legal advice on telephone, and defendant did not "initiate " or "reopen" interrogation by expressing his possible willingness to talk to particular officer in response to police's chief's request that he submit to lie detector test.

State v. Lindsey, 491 So.2d 371 (LA 1986). LSA-R.S. 14:71 (A)(2) Issuing worthless checks - presumption. The statute provides that a presumption exists, as follows: if an offender fails to pay a check within ten days after notice of its nonpayment, it shall be presumptive evidence of his intent to defraud. Prior rulings by the Supreme Court led me to believe that this presumption would be a mandatory presumption, as opposed to a permissive presumption, hence, unconstitutional. The Supreme Court ruled that the statute was ambiguous as to whether it created a mandatory or permissive presumption; therefore, it is interpreted as constitutional and with lenity toward the defendant. The Court recognized that its holding in this case was in conflict with its prior holdings in State v. Williams, 400 So.2d 575, (LA 1981) and State v. McCoy, 395 So.2d 319 (La. 1980). It explained how those cases could be reconciled and interpreted. My lower court ruling was vacated and the matter remanded.

Yount v. Maisano, 616 So.2d 1382, (La. App. 5 Cir. 1993); 620 So.2d 823 (LA 1993). Jury award against homeowner's policy reversed. Exclusion in policy for bodily injury "expected or intended by the insured." Supreme Court reversed, finding the actions of defendant to be an intentional act and excluded from coverage.

Marshall v. Citicorp Mortgage, Inc., 601 So.2d 669, (La. App. 5 Cir. 1992). Summary judgment reversed finding issue of material facts existed. Issue of decreasing credit life for less than loan balance when combined with rule of '78's in rebating finance charge.

Succession of Ziifle, 595 So.2d 776, (La. App. 5 Cir. 1992). Protracted litigation since 1978. A default judgment, taken before Judge Price, the previous judge of Division A, was found to be a nullity; hence, subsequent judgments were set aside.

Tracy v. Travelers Ins. Companies, 594 So.2d 541, (La. App. 5 Cir 1992) reversed trial court on exclusion of coverage on comprehensive general liability policy.

Wills v. State Farm Auto, 578 So.2d 1006, (La. App. 5 Cir. 1991). Reversed granting of summary judgment on whether insured had offered choice of limits for uninsured motorist coverage and affirmatively selected lower limits.

Kuebler v. Martin, 578 So.2d 113, (LA 1991). This is one of two cases argued before me on the same day. In the first, Autin v. Martin, I granted the defendant's relief on all claims and dismissed plaintiff's claims against the banks. The 5th Circuit Court of Appeals affirmed my decision at 576 So.2d 72, writs were denied by the Louisiana Supreme Court on April 11, 1991.

The second case is the one cited. In that case I granted the bank's motions. Likewise, this was affirmed by the appellate court but reversed by the Supreme Court only as to one of the banks finding the general language in plaintiff's petition did state a cause of action as to that one bank.

American Motorist Ins. Co., 579 So.2d 429, (LA 1991); 566 So.2d 121, (La. App. 5 Cir. 1990). Court of Appeals changed the amount of quantum on portions of the award. Supreme Court reversed the Court of Appeals, in part, and the trial court, in part, on different elements of damage award.

Lutz v. Jefferson Parish School, 565 So.2d 1071, (La. App. 5. Cir 1990); 503 So.2d 106, (La. App. 5 Cir. 1987). Judgment granting reduction in workman compensation payments based upon claimant receiving disability

retirement benefits. Reversed, finding statute was prospective only.

Cabral v. National Fire Ins.Co., 563 So S.2d 533, (La. App. 5 Cir 1990); writ denied, 567 So.2d 1129. Reversed default judgment because insufficient trial record made by plaintiff.

Succession of Austin, 527 So.2d 483, (La. App. 5 Cir. 1988). Foreign will modified by the trial court to reduce the portion that impinged on the legitime. Court of Appeals reversed finding that subsequent birth and legitimation of children revoked the will.

Augustine v. Griffen, 525 So.2d 540, (La. App. 5 Cir. 1988); writ denied, 532 So.2d 118. Twelve-year old on bike hit by auto. I reduced award by 20% for comparative negligence of child. Court of Appeals changed percentage of negligence on child to 80%.

First National Bank v. Verheugen, et al., 527 So.2d 453, (La. App. 5 Cir. 1988); writ denied 530 So.2d 576. Reversed in part on issue of attorney's fees.

Thibodeaux v. Burton, 525 So.2d 1103, (La. App. 5 Cir.1988); 531 So.2d 767, (LA 1989). Plaintiff left a quadriplegic after an auto accident. Pacific Employer Insurance Company failed to answer. Plaintiff obtained default judgment. Court of Appeals upheld default judgment and refusal of new trial. Supreme Court reversed with 3 dissents, finding an incomplete record was made by plaintiff when he confirmed the default.

Southern States Masonry, Inc. v. J.A. Jones Construction Co., et al., 507 So.2d 198, (LA 1987). Granted exception of prematurity. "Pay when paid" clause of contract between contractor and subcontractor.

Cooper v. Brownlow, 491 So.2d 693, (La. App. 5 Cir. 1986). Ruled Levee District was immune from liability under provision of LSA-R.S. 9:2791 and 2795, on a summary judgment. Court of Appeals ruled question of material facts in dispute which precluded summary judgment.

Administration of Tulane Education, 497 So.2d 27, (La. App. 5, 1986). Suit on tuition. Directed verdict for defendant was reversed finding university's

records admissible. Remanded.

Markey v. Howard, 484 So.2d 165, (La. App. 5 Cir. 1986). Jury's assessment of 30% negligence to plaintiff driver was manifestly erroneous. Appellate Court removed this allocation, in all other particulars affirmed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State v. Manuel Caballero, 472 So.2d 85, (La. App 5 Cir., June,1985); 492 So.2d 1215
State v. Edward Parr, 498 So.2d 103, (La. App 5 Cir., Nov.,1986); writ denied 532 So.2d 113
State v. Antoinne Williams, 483 So.2d 626, (La. App 5 Cir., Feb.,1986)
State v. Nolan Grant, 517 So.2d 1151, (La. App 5 Cir., Dec.,1987)
State v. Karen Copeland, 631 So.2d 1223, (La. App. 5 Cir., Jan.,1994)
State v. Darrell Williams, 545 So.2d 651, (La. App. 5 Cir.) writ denied 556 So.2d 53 and 584 So.2d 1157
State v. Jessie Head, 598 So.2d 1202, (La. App. 5 Cir., April,1992)
State v. Lane Nelson, 105 S.Ct 2050; 459 So.2d 510; *post conviction relief*
See Attachment "B-3"

16. Public office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Attorney General State of Louisiana	9/10/71 - 10/7/73
Assistant District Attorney Parish of Jefferson	2/1/73 - 8/6/84

Both were appointed positions

No unsuccessful candidacies for elective public office

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

District Court Judge — January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law — Spring 1990
Civil Procedure — Spring 1991

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

Instructor: Criminal law and procedure
St. Mary Dominican College — 1982

District Attorney's Office
Parish of Jefferson
District Atty. John Mamoulides
Gretna Courthouse Annex Bldg., 5th Floor
Gretna, LA 70053

Assistant District Attorney
Supervisor: 2/1/75 - 8/6/84
Chief Felony Complaint Div.:
10/8/73 - 1/31/75

City Attorney's Office
City of Harahan
6437 Jefferson Hwy.
Harahan, LA 70123

City Attorney
7/1/82 - 8/23/84

Porteous & Mustakas
3445 North Causeway Blvd.
Metairie, LA 70002

Partner
April 1980 - August 1984

Porteous, Lee & Mustakas
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
February 1976 - April 1980

Edwards, Porteous & Lee
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
August 1974 - January 1976

Edwards, Porteous & Amato
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
October 1973 - July 1974

Attorney General
State of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804

Special Counsel
9/10/71 -10/7/73

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General Civil Practice - in private practice & City Attorney
Criminal Prosecution - Attorney General & District Attorney

2. Describe the typical former clients, and mention the areas, if any, in which you have specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan & also prosecuted municipal violations, in the Mayor's Court

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
   (a) federal courts - 20%
   (b) state courts of record - 80%
   (c) other courts - 0%

3. What percentage of your litigation was;
   (a) civil - 50%
   (b) criminal - 50%

4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus cases - Sole Counsel, 80%; Chief Counsel, 15%; Associate Counsel, 5%.

5. What percentage of these trials were:
   (a) jury 40%
   (b) non-jury 60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the names of the court and name of the judge or judges before whom the case was litigated; and
(c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. I handled this case through all pre-trial discovery and pleadings and participated in all conferences with Judge Alvin Rubin with respect to the case. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.

Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terriberry, Carroll, Yancey & Farrell
Walter Carroll, Jr.(retired)
3100 Energy Centre

1100 Poydras St.
New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. I was associated to try this matter because of my extensive litigation experience. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140
(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a ten-year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. When I initially met the victim and her mother, she would not comment. Then, she later made only isolated statements. The child had to be shown the courtroom, where she would be seated and where all the lawyers, defendant and judge would be seated. In advanced preparation for trial, D.A. personnel were placed in the courtroom to simulate the public. Great efforts were made to make the child understand what was about to happen and to make her comfortable and responsive. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
Sam Dalton
2001 Jefferson Hwy.
Jefferson, LA 70121
(504) 835-4289

Co-Defense Counsel:
George Troxell
4330 Canal Street
New Orleans,LA 70119
(504) 488-8800

4. State of Louisiana v. Leonard J. Fagot
Criminal # 76-2116, 24th Judicial District Court
Division "J", Judge Patrick E. Carr
Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy. My participation was from the inception of this case. This matter required appearances in Federal Court, prior to trial in State District Court, because of defendant's claim of denial of due process based on his state of health. The Federal District Court denied defendant's claim and favorably commended our procedures and precautionary measures.
Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
Assistant District Attorney William Hall
3500 N. Hullen Street

Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May,1985); 475 So.2d 314,(La. Sept.,1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder and Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the victim/wife by the police. I handled this matter from the initial motion to reduce the bond. This was critical because at this stage we were able to positively connect the defendant with the weapon. Trial preparation was very time consuming because out of state trips were required to secure the presence of a witness. An appearance before a District Court Judge in Annapolis was required to secure the immediate apprehension and transportation of the witness to Louisiana, along with returning this witness to Annapolis.
Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:
Ralph Whalen
3170 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 582-2333

6. State of Louisiana v. James Nolen
Criminal # 81-4045, 24th Judicial District Court
Division "J", Judge Jacob Karno
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victim's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restrains were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:
Phil Johnson
(inactive) The Louisiana Bar Association reports no current address for this attorney and could only provide the following telephone number:
(714) 275-6066

7. State of Louisiana v. Joseph Batiste
Criminal #71-1081, 24th Judicial District Court
Division "A", Judge Louis DeSonier
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact. Multiple motions to suppress were argued. A photographic line up was suppressed, but the victim's in-court identification was allowed because a sufficient predicate was established to show an independent basis for the identification. Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, life imprisonment.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to police. There were two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights.
Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
Division "A ", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Eppling v. Jon-T Chemical, Inc.
Civil Action # , 24th Judicial District Court, State of Louisiana
Division "B", Judge Zaccaria
Citations: 363 So.2d 1263

Trial on the summary judgment

Sole Counsel: G. Thomas Porteous, Jr. for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.
Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:
Thomas Loop
(deceased)

Additionally, the following ten individuals have recently dealt with me on legal matters within the last five years:

Scott W. McQuaig
1500 One Galleria Blvd.
Metairie, LA 70001
(504) 836-5070

Edward J. Rice, Jr.
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234

Lawrence J. Centola, Jr.
650 Poydras St., Ste. 2100
New Orleans, LA 70130
(504) 523-1385

Raymond A. Pelleteri
1539 Jackson Ave., 6th Floor
New Orleans, LA 70130
(504) 561-5000

Jay Zainey
2543 Metairie Road
Metairie, LA 70001
(504) 831-6766

Robert Glass
530 Natchez Street
New Orleans, LA 70130
(504) 581-9083

Patricia LeBlanc
1615 Metairie Road
Metairie, LA 70005
(504) 834-2612

Kathryn T. Wiedorn
3421 N. Causeway Blvd., 9th Floor
Metairie, LA 70002
(504) 831-4091

Allan Berger
4173 Canal Street
New Orleans, LA 70119
(504) 486-9481

Joseph R. McMahon, Jr.
111 Veterans Blvd.
Heritage Plaza, Ste. 740
Metairie, LA 70005
(504) 837-1844

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently pled guilty to first degree and he was resentence to life in prison, without

capital punishment. (Attachment "B-3")

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C., State of Louisiana, Division "A", Judge Louis G. DeSonier,Jr.

The brief represents my sole personal work. Trial on the summary judgment, December 18, 1980. Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Instructor: Criminal Law/Criminal Procedure
For three years, I taught at St. Mary Dominican College. The class was a required course in the Criminal Justice program.

Co-instructor: Civil Procedure.
In conjunction with another attorney, I volunteered my time to teach third-year law students at Loyola School of Law. The emphasis was not only on the written and codified law, but also on the practical application of the law during trial proceedings. I taught the course during the Spring term in 1990 and 1991.

Speaker - Continuing Legal Education. I appeared as a speaker for numerous CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

District Court Judge
State of Louisiana
Division A, 24th Judicial District Court

District Court Judge, Ad Hoc
State of Louisiana
Division A, 24th Judicial District Court

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Louisiana State Employee Retirement System. If I am appointed prior to the end of my term, i.e., December 31, 1996, the benefits can only be drawn when I attain age 60.

2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the mandates of the Federal Rules of Civil & Criminal Procedure. I will also follow the guidelines of the Code of Judicial Conduct. I will also consider the model codes and recommendation of the ABA which are pertinent.

The only possible areas of conflict of interest would be reviewing cases from Louisiana State Court, 24th Judicial District Court, Division A, during the time I sat or a challenge to the Louisiana State Employee Retirement System. As to the retirement, a conflict could arise only if I remained on the Jefferson bench twelve (12) years, until 1996. If I took the Federal bench prior to this point, I would not be eligible for retirement proceeds until age sixty (60).

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment "C"

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment "D"

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only the campaign wherein I was elected District Court Judge.

III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Speaker - Continuing Legal Education. I appear as a speaker for numerous

CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

Since I took the bench, I invited field trips to Division "A", 24th J.D.C. for school children about once a month. The students would observe the docket and I then speak with them on the working of the court system. Afterwards, I entertain questions to explain either the particular case or the function of the courts.

I have also visited many schools in Orleans and Jefferson Parish to speak on the court systems, the functions and the duties of a judge.

Judging Moot Court Competitions on numerous occasions at Tulane School of Law and Loyola Law School.

I recently participated in the National Institute of Trial Advocacy program at Louisiana State University School of Law

At Loyola School of Law, I volunteered as co-instructor for Civil Procedure for two terms.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your

nomination?

No.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initially, I met with Senator John Breaux to discuss the possibility of being recommended for the federal bench. Both Senators Breaux and Johnston sent my name to the White House and I was recommended.

After completing multiple questionnaires, I was interviewed in Washington by members of the Justice Department, Office of Policy Development.

The FBI and the ABA have also conducted extensive reviews of my credentials and qualifications, along with conducting interviews.

On August 25, 1994, I was officially nominated by the President for the United States District Court, Eastern District of Louisiana.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our country, with its three separate and distinct branches of government, has withstood the test of time and the criticism of some. Even though the branches are separate, there will always be occasions when there is interaction among them while still preserving the separation of powers.

We, in the judiciary, have a duty to listen to the facts of a case and render a decision according to law pertinent to those issues. The presentation of the facts are for the litigants and we should always guard against participating in that presentation. A trier of fact should in no way devise, invent or concoct facts; it should rule on the case before it. Unless a question is certified before the court by the Louisiana Supreme Court or any other tribunal properly, it may not render an advisory opinion. Novel questions of law occasionally arise, and they must be dealt with according to the facts before the court. The judiciary must decide cases according to the facts and law as an impartial arbitrator.

In performing our duties there are occasions when our judgments may

be interpreted as judicial activism. When we declare a law unconstitutional and unenforceable that may be interpreted by some as interfering with the legislative function. However, such action is part of our duty and responsibility and is far different from actually legislating.

When we deal with individual grievances, we must be ever mindful to follow judicial precedent and constitutional interpretation. The personal feelings of a judge should never replace sound, established judicial precedent and constitutional interpretation. In instructing juries, I always remind them that "your decision must not be based on bias, prejudice, sympathy or public opinion." We in the judiciary must be ever mindful of this guideline when we are the trier of the facts.

Once a matter is before a court on a trial on the merits, the judiciary's duty is to render our decision solely based on the law and evidence. Prior to trial, a judge may be called upon to counsel or intervene as an unbiased peacemaker, encouraging the parties to be open minded and understanding.

If we attempt to go beyond our role, we may in fact infringe on areas reserved to the other branches of government. If we attempt to do less, we will not be adhering to our oaths and weakening the judicial branch of government. It is always a careful balance.

IV CONFIDENTIAL

1. Full name (include names used).

   Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Residence:	4801 Neyrey Drive Metairie, LA 70002	(504) 455-5879
Office:	Division "A" Gretna Courthouse Annex Bldg. 2nd floor, Room 200 Gretna, LA 70053	(504) 364-3850

3. Have you ever been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?

   No.

4. Were all your taxes (federal, state, and local) current (filed and paid) as of the date of your nomination?

   Yes.

5. Has a tax lien or other collection procedure (to include receipt of computer balance due notices) ever been instituted against you by federal, state, or local authorities? If so, give full details.

   No.

6. Have you or your spouse ever been the subject of any audit, investigation or inquiry for either federal, state, or local taxes? If so, give full details.

   No.

7. Have you or your spouse ever declared bankruptcy? If so, give particulars.

No.

8. Have you to your knowledge ever been under federal, state, or local investigation for a possible violation of either a civil or criminal statute or administrative agency regulation? If so, give full details. Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, give full details.

No.

9. Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, give particulars.

No.

10. Have you ever been sued by a client or other party? Have you ever been a party to any litigation? If so, give full particulars.

Clark, et al v. Edwards, et al.
86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity. Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.
413-728, 24th Judicial District Court
Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature. The Indigent Defender Board has stated that they will voluntarily dismiss this suit within the next 30 days.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al, except it was filed in Federal court.

Injunction granted, statute declared unconstitutional.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court
All judges were sued as nominal parties in their official capacity. Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). Post Augustus ruling, parties petitioned in state court for refunds of the fees collected to date. Refunds denied by the trial and appellate courts. The Louisiana Supreme Court denied plaintiffs' writs on June 24, 1994.

DeGrange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine DeGrange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

11. Please advise the Committee of any unfavorable information that may affect your nomination.

To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

AFFIDAVIT

I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Gretna, Louisiana this 6 day of September, 1994.

Gabriel Thomas Porteous, Jr.

Notary

10:35 Justice had other documents under that grand jury subpoena log, which weren't really relevant to this complaint.

JUDGE PORTEOUS: See, I have no way to know that because I've never seen them.

10:35 CHIEF JUDGE JONES: As you know, Judge Porteous, the grand jury investigation included a lot of people over a course of years. So, we have no reason to question if the Justice Department has produced those that are relevant to you.

JUDGE PORTEOUS: You mean people on call here for this

10:36 hearing?

CHIEF JUDGE JONES: There were people, I'm sure, who are on call. There are people who pled guilty and served jail time as a result of this investigation. So, I don't see why those documents have anything to do with you or why they should

10:36 have been produced.

JUDGE PORTEOUS: Well, again, we're using -- I understand. I'll -- okay, your Honor.

CHIEF JUDGE JONES: All right, sir.

MR. WOODS: We would call as our next witness Judge

10:36 Porteous.

JUDGE PORTEOUS: And, Judge, on that issue, I just on Friday realized I was going to be given immunity and just hadn't had time to adequately contemplate the testimony. I mean, I've been working on everything else.

10:36 I would simply ask that I be given through today

10:36 to at least get my thoughts together before I am compelled to testify. Mr. Woods had that immunity notice; and I just saw it today, just saw it for the first time today.

MR. WOODS: It was provided on Friday, your Honor.

10:36 JUDGE PORTEOUS: Yeah, on Friday. I understand. No. The log was provided on Friday.

MR. WOODS: Right.

JUDGE PORTEOUS: The document was not provided on Friday, and you know that.

10:37 MR. WOODS: That's correct.

CHIEF JUDGE JONES: All right, sir. We're not going to go crosswise with each other. Thank you very much.

JUDGE PORTEOUS: I'm sorry, Judge.

CHIEF JUDGE JONES: Mr. Finder will to respond.

10:37 MR. FINDER: Yes, thank you, Judge. Under the rules under which we're operating, Rule 10C, Special Committee Witness.

CHIEF JUDGE JONES: You want to speak up there?

MR. FINDER: Yeah, I'm sorry. I'll use the podium.

10:37 Is this better?

CHIEF JUDGE JONES: Yes.

MR. FINDER: "All persons who are believed to have substantial information will be called as Special Committee witnesses, including the complainant and the subject judge."

10:37 So, I think that there is no surprise here. It's

10:37 in the rules, which were provided a long, long time ago.

JUDGE PORTEOUS: I don't doubt that that's what the rules say, your Honor. I'm not taking issue with that. I'm taking issue with the fact that it's the first time I've been given immunity, without ever seeing the document.

CHIEF JUDGE JONES: Well, with --

JUDGE PORTEOUS: I'm only asking for the rest of the day.

CHIEF JUDGE JONES: -- immunity is better than non immunity, sir. Continuance is denied. You may take the stand.

JUDGE PORTEOUS: All right.

CHIEF JUDGE JONES: Thank you.

JUDGE LAKE: Raise your right hand to be sworn.

You do solemnly swear that the testimony you shall give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

JUDGE PORTEOUS: I do.

GABRIEL THOMAS PORTEOUS, JR., DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. FINDER:

Q. Judge Porteous, a little background information, please.

You were a judge in the 24th Judicial District Court in the State of Louisiana from approximately 1984 to October 1994. Is that correct?

A. That's correct.

10:38 Q. And prior to taking that judicial office, you were employed as special counsel to the office of the Louisiana Attorney General from approximately 1971 to approximately 1973. Is that correct?

10:38 A. I believe that's correct.

Q. You were also a prosecutor and assistant district attorney of Jefferson Parish, Louisiana, from approximately 1973 to 1975. Is that correct?

A. I'm sorry. Would you -- I'm sorry.

10:39 Q. I'm sorry. 1973 to approximately 1975?

A. I was what? I'm sorry.

Q. An assistant district attorney of Jefferson Parish?

A. I was an assistant DA from -- until I took the state bench.

Q. Okay. So, I'm incorrect, then?

10:39 A. I was an assistant DA from some -- some period of time, probably '73 through '84.

Q. Okay. And you were also city attorney for Harahan, Louisiana, from 1982 to 1984?

A. That sounds correct.

10:39 Q. Okay. You were nominated by the President of the United States on August 25th, 1994, to become a United States district judge. Is that correct?

A. Right.

Q. You were confirmed by the Senate on October 7th, 1994; and

10:39 at that time received your commission as a US district judge on

October 11th. Is that correct?
A. That is correct.
Q. And from that date to the present, you have been bound by the Code of Conduct for United States Judges, correct?
A. Correct.
MR. FINDER: Your Honors, I'm going to be walking up and back to use the Elmo; so, that's the reason I'm going to be a little mobile here.
THE WITNESS: Put it right here if you want.
MR. FINDER: Okay. Thank you, sir.
BY MR. FINDER:
Q. Judge Porteous, I've marked for identification --
JUDGE BENAVIDES: Mr. Finder, you're going to have to speak a little louder since you'll have your back to the reporter.
MR. FINDER: Oh, forgive me. All right.
BY MR. FINDER:
Q. I've marked for identification purposes only as Exhibit 80, a book called "Getting Started as a Federal Judge."
Judge Porteous, I'm going to -- this book, as you'll see, bears a date of July of 1997, approximately three years after you took the bench, correct?
A. It says that, yes.
Q. After you received your commission, Judge Porteous, you took an oath of office, correct?

10:41 A. Yes.
Q. And that's a statutory oath, is it not?
A. Correct.
Q. I'd ask you to read along with me.
10:41 A. I cannot -- well, go ahead.
Q. Okay. Well, let's try and make it --
A. Just read it. I can --
Q. Okay. "I, your name, do solemnly swear or affirm that I will administer justice without respect to persons and do equal
10:41 right to the poor and to the rich and that I will faithfully and impartially discharge or perform all the duties incumbent on me as a United States District Judge under the Constitution and laws of the United States and that I will support and defend the Constitution of the United States against all
10:41 enemies, foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of which I am about to enter, so help me God."
10:42 Sir, is that the oath that you took?
A. Yes, it is.
Q. Are you familiar with this book or an earlier edition of it, sir?
A. I know we all have them in our chambers. I don't know that
10:42 I can tell you I've read every page of it.

10:42 Q. Okay. Let's go through a few provisions.
MR. FINDER: Can your Honors see that?
CHIEF JUDGE JONES: Barely.
MR. FINDER: Let me --
10:42 JUDGE LAKE: It's all right. No, that's better.
MR. FINDER: It's a little temperamental.
THE WITNESS: Oh, now that's much better.
MR. FINDER:
BY MR. FINDER:
10:42 Q. Okay. Your Honor, would you agree or disagree with these statements, "New judges should review the ethical guidelines set forth in the Code of Conduct for United States Judges and the financial disclosure requirements of the Ethics Reform Act of 1989"?
10:43 A. It says that.
Q. Do you agree with that?
A. Yes.
Q. Do you agree that once judges are assigned cases they have a continuing obligation to examine periodically their own
10:43 personal and fiduciary financial interests and those of their spouses and minor children?
A. I agree that's quoting what's in the paragraph.
Q. I know it's in there, but do you agree with what it says?
A. Yeah.
10:43 Q. Do you agree that, as a general matter, although judges are

not required to sever all ties to former clients and colleagues, they clearly must be vigilant if they continue such relationships?

A. I agree with that.

Q. Do you agree, under Canon 3 of the code of conduct, which addresses a judge's obligation to perform the duties of the judicial office impartially and diligently, requires judges to disqualify themselves in any proceeding in which their impartiality might be reasonably questioned?

A. I agree with that.

Q. Do you agree with Canon 3C of the code of conduct, that it addresses the general issue of disqualification and states that judges must disqualify themselves from all cases in which their impartiality might be reasonably questioned?

A. I agree.

Q. And, Judge Porteous, do you agree that all new judges should be mindful that they continue to be the subject of public attention in their activities after their appointment to the bench, thus, they should consider carefully whether participation in outside activities impinges upon their performance of their judicial responsibilities; as noted in commentary to Canon 2A of the Code of Conduct for US Judges, that judges must accept freely and willingly restrictions on their personal conduct and activities that might be viewed as burdensome by the ordinary citizen?

10:44 A. I agree.
Q. Sir, I'm going to show you what's Exhibit 18, which has been offered and accepted, the Code of Conduct for United States Judges, which I believe you said you're familiar with,
10:45 correct?
A. Yes.
JUDGE BENAVIDES: Speak up.
MR. FINDER: I'm sorry. Did I do it again?
BY MR. FINDER:
10:46 Q. The question was you are familiar with Exhibit 18, which is the Code of Conduct for US Judges. Correct?
A. Yes, sir.
Q. And this code applies to district judges, correct?
A. Right.
10:46 Q. And the judicial conference has authorized the Committee on the code of conduct to render advisory opinions concerning the application and interpretation of the code when requested by a judge to whom the code applies.
Have you ever asked that Committee for an
10:46 advisory opinion?
A. No.
Q. Are you familiar with Canon 1, your Honor, that a judge should uphold the integrity and independence of the judiciary?
A. Yes.
10:46 Q. And that an independent and honorable judiciary is

10:46 indispensable to justice in our society?
A. Yes.
Q. There's a commentary here, your Honor, "Deference to the judges and rulings of courts depends upon public confidence and
10:46 the integrity and independence of judges."
Skipping a line, "Although judges should be independent, they should comply with the law, as well as the provisions of this code."
Do you have any dispute with that statement --
10:47 those statements?
A. No, sir.
Q. Canon 2, "A judge should avoid the appearance of impropriety."
MR. FINDER: Can you try and make this -- can you all
10:47 see?
BY MR. FINDER:
Q. "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Do you agree
10:47 with that statement, sir?
A. Yes, sir.
Q. Canon 2A, which you can read, was fairly summarized in the book we just talked about. Do you agree with that, about accepting -- that judges must accept certain restrictions in
10:47 their personal lives once they take the bench?

10:48 A. It seems to say that, yes.

JUDGE LAKE: Sir, I didn't hear your answer.

THE WITNESS: It seems to say that.

I'm sorry, Judge Lake.

10:48 JUDGE LAKE: Thank you.

BY MR. FINDER:

Q. And, then, in Canon 2A, a commentary, "Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this code."Do you agree with that?

10:48 A. Yes, sir.

Q. Canon 3 says, "A judge should perform the duties of the office impartially and diligently."

Can you follow along with me to read this?

"The judicial duties of a judge takes precedence

10:48 over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards."

And, then, let's move over to Section C, under Disqualification. "A judge shall -- shall disqualify himself or herself in a proceeding in which the judge's impartiality

10:49 might reasonably be questioned."

A. Right.

Q. Okay. And then D, Remittal of Disqualification, "A judge disqualified by the terms of 3C(1) may, instead of withdrawing from the proceeding, disclose on the record the basis of

10:49 disqualification. If the parties and their lawyers, after such

10:49 disclosure and an opportunity to confer outside of the presence of the judge, all agree, in writing or on the record, that the judge should not be disqualified and the judge then is willing to participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding."

Did I read that accurately?

A. Yes.

Q. Were you familiar with this prior to the reading of this?

A. Yes.

Q. Okay. Canon 5, "A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties."

Section C, A judge should -- under Financial Activities, "A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves."

Were you aware of this provision before reading it today?

A. Yes, sir.

Q. Is that a "yes," sir?

A. Yes, sir. I'm sorry.

10:50 Q. Okay. "A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge or from anyone whose interests may be substantially affected by
10:51 the performance or nonperformance of official duties."Did I read that accurately?

A. You did.

Q. "Except that a judge may accept a gift as permitted by the Judicial Conference gift regulations. A judge should endeavor
10:51 to prevent a member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference gift regulations."

Did I read that accurately?

10:51 A. You did.

Q. And were you aware of this provision before reading it in court today?

A. In general, yes.

Q. And for purposes -- under (5), "For purposes of this
10:51 section, 'members of the judge's family residing in the judge's household' means any relative of a judge by blood or marriage or person treated by a judge as a member of the judge's family, who resides in the judge's household."

Did I read that correctly?

10:52 A. Yes, sir.

10:52 Q. And Number 6, "A judge should report" --
A. I can't see that.
Q. Oh, I'm sorry. Can you read that?
A. Yes.
10:52 Q. "A judge should report the value of any gift, bequest, favor, or loan as required by the statutes or by the Judicial Conference of the United States."
Did I read that correctly?
A. You absolutely did.
10:52 Q. And were you aware of that provision before?
A. Yes, sir.
Q. Under commentary to Rule 5, Canon -- it says, "Canon 5C. Canon 3 requires a judge to disqualify in any proceeding in which the judge has a financial interest, however small; 10:52 Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties; Canon 6 requires a judge to report all compensation received for activities outside the judicial office."
10:52 Did I read that accurately?
A. You did.
Q. And were you aware of that prior to today?
A. I'm sure I was. I'm sure I was. I'm sorry.
Q. Canon 6, "A judge should regularly file reports of
10:53 compensation received for law-related and extra-judicial

activities."

Section C, "Public Reports, A judge should make required financial disclosures in compliance with applicable statutes and Judicial Conference regulations and directives."

Did I read that accurately, sir?

A. You did.

Q. And you were aware of that prior to today, correct?

A. Yes, sir.

Q. And, in fact, you have filed reports with the Administrative Office of the United States courts, haven't you?

A. I have.

Q. Now, these canons of ethics for judges, that I read to you, that you said you are familiar with, were not unlike the canons of ethics that you were bound by as a state district judge in Louisiana, correct?

A. I believe that's correct.

JUDGE BENAVIDES: Counsel, can I interrupt you just for a little while --

MR. FINDER: Yes, sir.

JUDGE BENAVIDES: -- and question Judge Porteous?

It struck me that we discussed immunity, and it struck me that Judge Porteous was advised that he would be granted immunity. And it struck me that this is going on, I think, in the belief that, but for that, he would not be testifying. But we have not, in the record, actually presented

10:54 his testimony with the understanding -- with the explicit understanding that immunity has been extended. And I don't want to get down the road where we don't have that in the record. But out of fairness, it would seem that is the reason 10:54 that Judge Porteous is testifying.

So, for the record, you are proceeding with the request and asking for immunity for Judge Porteous?

MR. FINDER: You're absolutely correct, your Honor. I do have the actual original application for compulsion as well 10:55 as the order of compulsion. Judge Porteous has a true and accurate copy, but I'm happy to give him the originals.

THE WITNESS: I've seen it, if it's the same one you gave me a copy of.

JUDGE BENAVIDES: I just want to get that straight 10:55 because there is some formality usually associated with taking the Fifth Amendment.

MR. FINDER: Right. Right.

JUDGE BENAVIDES: But we've been going a long time on that basis, and I didn't want to have any misunderstanding.

10:55 MR. FINDER: As long as you bring it up, your Honor, I do need, without -- hopefully, without sounding didactic, I do need to make certain that the witness knows that, while this is a grant of use immunity coextensive with his Fifth Amendment rights, it would not prevent him any kind of immunity from 10:55 false statement or perjury, just as in any case under 6001 and

6002 of the United States Code.

JUDGE BENAVIDES: All right.

CHIEF JUDGE JONES: And you're aware of that, Judge Porteous?

THE WITNESS: Yes, ma'am.

MR. FINDER: May I proceed, your Honors?

CHIEF JUDGE JONES: Yes, sir.

MR. FINDER: What exhibit number is the Louisiana Code of Judicial Conduct? 86?

THE WITNESS: Can I just get a cup of water real quick?

CHIEF JUDGE JONES: Sure.

JUDGE BENAVIDES: Yes, Judge, you can bring the pitcher with you.

THE WITNESS: Oh, thank you. I don't want to knock something over.

MR. FINDER: I may have misspoke. It's Exhibit 85. Forgive me.

THE WITNESS: The list, other than this morning, that I was provided, only went to Exhibit 84 as of Friday.

MR. WOODS: Right, and I gave you the updated list this morning.

THE WITNESS: Well, it's in the box somewhere.

MR. WOODS: No. It's on top of the box.

THE WITNESS: Maybe it is.

10:57 Okay. All right.

BY MR. FINDER:

Q. Mr. Porteous, I'm calling your attention to the Louisiana Code of Judicial Conduct, Canon 1. I believe you testified you're familiar with these.

It states, "The Judge shall uphold the integrity and independence of the judiciary. An independent and honorable judiciary is indispensable to justice in our society."

And without taking up all the Court's time, I believe you -- will you agree with me that this language is almost verbatim of the language we just read from the canons of federal judicial --

A. It seems to be. Certainly similar.

Q. Very similar.

Secondly, Canon 2, "A judge shall avoid impropriety and the appearance of impropriety in all activities."

And I believe that language is also very similar to what we just read, correct?

A. Yes.

Q. Canon 3, "A judge shall perform the duties of office impartially and diligently."

And, then, moving on to page -- to Section C of that rule, which in the Louisiana version is titled

10:58 "Recusation, To Recuse."

It states, "A judge shall disqualify himself or herself in a proceeding to which the judge's impartiality might reasonably be questioned and shall disqualify himself or
10:58 herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule."

Did I read that accurately?

A. You did.

Q. And you are -- and these were the rules that you were bound
10:58 by as a judge in Louisiana, correct?

A. I believe that's correct.

Q. Canon 5, titled Extra-Judicial Activities, Section C, "A judge shall refrain from financial and business dealings that tend to reflect aversely on the judge's impartiality, interfere
10:59 with the proper performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which he or she serves."

Did I read that accurately?

10:59 A. You did.

Q. That's also similar to the canons of federal ethics, isn't it?

A. It is.

Q. Canon 6, "A judge shall not accept compensation or gifts
11:00 for quasi-judicial and extra-judicial activities, only under

restricted circumstances."

Section C, "Gifts. A judge, a judge's spouse, or member of the judge's immediate family residing in the judge's household shall not accept any gifts or favors which might reasonably appear as designed to affect the judgment of the judge or influence the judge's official conduct."

Did I read that accurately?

A. You did.

Q. And then there's also the Louisiana version of annual financial reporting, correct?

A. Yes.

Q. Okay. And I believe the amount was raised effective 2006. But even when you were a judge, it was a lower amount, correct?

A. I believe that's correct.

Q. The point is, Judge Porteous, in the more than two decades that you have been a judge, whether state or federal, you have been bound by very, very similar terms of judicial ethics canons, correct?

A. Yes, somewhat, of course.

Q. Judge Porteous, you were married to Carmella Porteous, who passed away December 22nd, 2005, correct?

A. Yes, sir.

Q. How long were you married, approximately?

A. Got married in '69. Thirty-six years.

Q. Isn't it true, Judge Porteous, that on March 28th, 2001,

11:01 you and your wife filed a voluntary Chapter 13 bankruptcy petition in this district, the Eastern District of Louisiana, in Docket Number 01-12363?

A. I know we filed, and I'm assuming that is the date number and the record number.

Q. I'll show you the actual petition.

A. That's okay. I mean --

Q. And is it also true that the trustee assigned to the file was SJ Beaulieu -- spelled B-E-A-U-L-I-E-U -- Jr.?

A. Correct.

Q. And your lawyer at the time was Claude C. Lightfoot -- spelled L-I-G-H-T-F-O-O-T -- Jr. Is that correct?

A. Correct.

Q. And you filed -- I'll show you what's part of Exhibit 1, Bates Number SC122.

A. What's the Bates number? I'm sorry.

Q. SC12 -- 00122. One of these days I'll get the hang of this.

A. That's fine.

Q. This is a voluntary petition that you filed. Isn't that correct, Judge?

And please look it over.

A. It appears to be.

Q. Okay. Under "Name of Debtor," it says "Ortous" -- spelled O-R-T-O-U-S -- comma, G, period, T, period, correct?

11:03 A. It does.
Q. And under "Name of Joint Debtor, Spouse," it's "Ortous" -- O-R-T-O-U-S -- comma, capital C, period, capital A, period, correct?
11:03 A. That's correct.
Q. It has as the street address of the debtor PO Box 1723 in Harvey, Louisiana, ZIP Code 70059-1723, correct?
A. Yes, sir.
Q. And the case number, the docket number, 01-12363, which I
11:03 believe I mentioned a few moments ago, correct?
A. I believe you did.
Q. Let me show you, Judge Porteous -- I'll come back to that.
Do you recognize this as an application for a PO box, Judge Porteous?
11:04 It's SC exhibit -- Special Committee Exhibit 23, Bates Number SC00599.
Do you recognize that, sir?
A. Yeah. If you tell me that's what it is, I agree. I mean --
11:04 Q. Well, but I can't testify; so, I have to ask you those questions.
A. I'm assuming it is an application for a post office box. I can't read the print, but I have no reason to doubt what you represent. I'm not trying to take issue. I agree.
11:04 Q. I know. I'm trying to be fair.

11:04 There's a signature here. Do you recognize that signature?

A. That's mine.

Q. That is your signature.

11:04 And it's dated March 20th, 2001, correct?

A. It is.

Q. Now, March 20th, 2001, was -- and we'll get to this in a moment -- just about a week before you filed your Chapter 13, correct?

11:05 A. What was the date?

Yeah. I agree. I mean --

Q. All right. And on your PO box request, you have an address here, 4801 --

A. "Neyrey."

11:05 Q. -- Neyrey -- N-E-Y-R-E-Y -- Drive in Metairie, Louisiana. That's your residence, correct?

A. That's correct.

Q. So, going back to Exhibit 1, the voluntary petition -- oh, wrong one -- the PO box that you have on here, you put in lieu

11:05 of your home address, correct?

A. That's correct.

Q. Now, this voluntary petition --

MR. WOODS: Larry, it's off.

MR. FINDER: Oh, thank you.

11:06 Can your Honors read that?

11:06 BY MR. FINDER:
Q. "Signature of debtor, individual" -- tell me if I'm reading this accurately -- "I declare under penalty of perjury that the information provided in this petition is true and correct."
11:06 And there are two signatures with the date 3-28-01, correct?
A. That's correct.
Q. And 3-28-01 was about eight days after the PO box was taken out, correct?
A. That's correct.
11:06 Q. Your name is not Ortous, is it?
A. No, sir.
Q. Your wife's name is not Ortous?
A. No, sir.
Q. So, those statements that were signed -- so, this petition
11:06 that was signed under penalty of perjury had false information, correct?
A. Yes, sir, it appears to.
Q. I'll show you something else on this petition, Judge Porteous. There's a list of unsecured creditors, and I'm
11:07 referring now to Bates Number Page SC00126.
A. All right.
Q. Regions Bank?
A. Yes, sir.
Q. That's a bank you've done business with?
11:07 A. Yeah, I did some business with them.

11:07 1 Q. Right. And Regions Bank is on this voluntary petition,
2 correct?
3 A. I assume that's the petition, yes, sir. I mean --
4 Q. Well, we'll go back to the first page.
11:07 5 A. Okay.
6 Q. Voluntary petition?
7 A. All right. Yeah, it's on there.
8 Q. But if Regions Bank or any other unsecured creditor such as
9 these were to get word that a GT Ortous had filed bankruptcy,
11:08 10 they wouldn't necessarily know it was you, would they, unless
11 they ran the Social Security number?
12 A. If they had have got notice, you're correct.
13 Q. Now, let's jump ahead a little bit. Still in Exhibit 1 --
14 A. All right.
11:08 15 Q. -- and I'm going to refer you and the Court to Bates
16 Number SC120. This is an amended voluntary petition, is it
17 not?
18 A. Yes, sir.
19 Q. This time the name of the debtor is Gabriel T. Porteous,
11:08 20 Jr. That's you, correct?
21 A. Yes, sir.
22 Q. And Carmella A. Porteous, the joint debtor, your wife,
23 correct, sir?
24 A. Yes, sir.
11:08 25 Q. This time the address is 4801 Neyrey Drive, Metairie,

11:08 Louisiana, correct?
A. Yes, sir.
Q. This petition -- blow this up a little bit; that's about as clear as I can make it -- was signed by you and your wife on
11:09 April 9th. Those are your signatures, correct?
A. Yes, sir.
Q. And the date is April 9th, correct?
A. Yes, sir.
Q. And your attorney's name, Claude Lightfoot, is on there,
11:09 also?
A. Right.
Q. So, between -- strike that.
After your voluntary -- your amended petition was filed, there was an order of recusal entered in your bankruptcy
11:09 case, in the matter of Gabriel T. Porteous, Jr. and Carmella A. Porteous, an order of recusal -- I'm going to have to -- and the order, which was dated June 1st, 2001, says it is ordered that the three judges of the US Bankruptcy Court for the Eastern District of Louisiana, naming the three judges, are
11:10 hereby recused from the case, correct?
A. Yes, sir.
Q. And then procedurally, your case was temporarily assigned to Judge William R. Greendyke on assignment to the Eastern District of Louisiana, correct?
11:10 A. Right.

11:10 Q. And that's the same cause number?
A. Yes, sir.
Q. Signed by then Chief Judge Carolyn Dineen King of the Fifth Circuit, correct?
11:10 A. Right.
Q. I don't believe I stated the date. Judge Greendyke was assigned to this -- at least the order of Judge King assigns Judge Greendyke June 4th, 2001. Is that accurate?
A. Yes, sir.
11:11 Q. Judge Porteous, we've already talked about Claude Lightfoot being your attorney.
Jacob J. Amato, do you know Jacob Amato, Jake Amato?
A. Absolutely.
11:11 Q. He is a lawyer, correct?
A. Yes, sir.
Q. And he is a friend of yours. Isn't that correct?
A. Yes, sir.
Q. Warren A. Forstall, Jr., also known as Chip?
11:11 A. Yes, sir.
Q. He is a lawyer?
A. Yes, sir.
Q. And he is your friend, correct?
A. Yes, sir.
1:11 Q. Robert G. Creely, again, a lawyer and a friend of yours?

11:11 A. Yes, sir.
Q. Don C. Gardner, a lawyer and a friend of yours?
A. Yes, sir.
Q. Leonard L. -- also known as Lenny -- Levenson, your friend
11:11 and an attorney, right?
A. Yes, sir.
Q. Joseph Mole, an attorney?
A. Yes, sir.
Q. Not one of your close friends?
11:12 A. We've never gone anywhere together. That would be a
correct statement.
Q. And Rhonda Danos has been your -- D-A-N-O-S -- has been
your secretary and assistant for more than 20 years now,
correct?
11:12 A. Since I was on the state bench. Twenty-three years.
Q. Twenty-three years.
Okay. Judge Porteous, before you filed your
voluntary petition for bankruptcy in March of 2001, let's go
back to the year -- calendar year 2000.
11:13 A. All right.
Q. You had engaged Mr. Lightfoot as your counsel in the latter
part of 2000, correct?
A. I knew it was in 2000. I don't remember the exact date;
but if that's what you say, I'm sure it is.
11:13 Q. Well, I will refresh your recollection.

11:13 But would you agree with me that at least by November, December of 2000 he was your lawyer?

A. I believe that's correct, yeah.

Q. Now, after bankruptcy, you had a meeting with the trustee, SJ Beaulieu, correct?

11:13

A. After what?

Q. After bankruptcy was filed.

A. After it was filed, that's correct.

Q. And you recall that Mr. Beaulieu handed you a pamphlet called "Your Rights and Responsibilities in Chapter 13," which we have marked as the Committee's Exhibit 11?

11:13

A. I believe that's -- yeah, right.

Q. And it bears the name of Mr. Beaulieu and has his local New Orleans phone number?

A. Yes, sir.

11:14

Q. That is on Bates Page 399.

I'm sorry. I have my back to you.

A. All right.

Q. Calling your attention to this exhibit, there are enumerated paragraphs. Paragraph 6, follow me while I read. "Credit While in Chapter 13. You may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy court. This includes the use of credit cards or charge accounts of any kind."

11:14

Did I read that accurately, sir?

11:14 A. You did.
Q. And do you recall reading that and discussing that with Mr. Beaulieu?
A. I don't specifically recall it, but I'm not saying it
11:14 didn't happen.
Q. All right. Do you recall, on or about May 9th, 2001, having a -- what's called a 341 bankruptcy hearing, where Mr. Beaulieu as trustee was present; your attorney, Mr. Lightfoot, was present; and you were present?
11:15 A. Yes, sir, I remember meeting with Mr. Beaulieu.
Q. And that meeting was recorded, if you -- do you recall that?
A. I believe that's correct, yeah, tape recorded.
Q. Right.
11:15 Do you recall Mr. Beaulieu stating the following? "Any charge cards that you may -- you have you cannot use any longer. So, basically, you're on a cash basis now.
"I have no further questions except have you made your first payments."
11:15 Did I read that accurately?
A. Yes, sir.
Q. So, you were told by Mr. Beaulieu that you couldn't incur any more credit there, on credit cards, correct?
A. I'm not sure it was there, but I'm sure it was part of the
11:16 explanation at some point.

11:16 Q. Well, going back to --
A. When you ask -- I only meant in reference to the statement.
Yes, it's --
Q. Right.
11:16 A. -- contained in there, and I knew that.
Q. And it was your understanding -- and that's what I'm trying to find out, sir -- that you couldn't incur more credit while in bankruptcy, correct?
A. That's correct.
11:16 Q. Okay. Now, on June 2nd, are you familiar with the order signed by Bankruptcy Judge Greendyke?
And this is from Exhibit 1, Bates Number SC50, Exhibit 1 being the certified copy of the bankruptcy file.
"It is ordered that," going down to Number 4,
11:16 "the debtors shall not incur additional debt during the term of this plan except upon written approval of the trustee."
Did I read that correctly?
A. You did.
Q. Was that your understanding at the time?
11:17 A. In the order, it was.
JUDGE LAKE: What's the date of that document?
MR. FINDER: July 2nd, 2001, was the docket date. It was signed by Judge Greendyke June 28th, 2001.
JUDGE LAKE: Thank you.
11:17 BY MR. FINDER:

11:18 Q. Judge Porteous, we talked a little bit about the Ethics in Government Act earlier, the Ethics in Government Act of 1978, which has to do with your judicial filings. Under Title 5, United States Code Appendix Section 101, et seq., "Judicial officers" -- and tell me if you agree with this -- "Judicial officers shall include a full and complete statement with respect to the source, type, and amount or value of income from any source, other than the current employment by the United States, received during the preceding calendar year aggregating $200 or more in value."

Is that your understanding, sir?

A. Right.

Q. And the law goes on to state that it must be reported -- "the identity of the source, a brief description, and the value of all gifts aggregating more than $250, received from any source other than a relative of the reporting individual during the preceding calendar year."

A. Yes, sir.

JUDGE BENAVIDES: For what year is that?

MR. FINDER: This is just from the statute, your Honor.

JUDGE BENAVIDES: All right. I think those gift amounts vary from year to year.

MR. FINDER: Actually, they were lower; and these are the current amounts.

11:19 BY MR. FINDER:
Q. So, what -- the amounts I just read to you apply to today. When you first took the bench, presumably they were slightly lower?
11:19 A. Presumably, yes.
Q. Okay. And these have to do with income and gifts?
A. Right.
Q. As I just read?
A. Yes, sir.
11:20 Q. Judge Porteous, you're familiar with the term "marker," aren't you?
A. Yes, sir.
Q. Would it be fair to state that, "A marker is a form of credit extended by a gambling establishment, such as a casino,
11:20 that enables the customer to borrow money from the casino. The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution. Should the customer not repay his or her debt to the casino, the marker authorizes the casino to present it to the financial
11:20 institution or bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time." Is that accurate?
A. I believe that's correct and probably was contained in the complaint or -- or the second complaint. There's a definition
11:20 contained.

11:20 1 Q. And you have no quarrel with the definition?
2 A. No, sir.
3 Q. Okay. Judge Porteous, if markers are a form of borrowing
4 or an extension of credit, by definition, would you agree that
11:21 5 from approximately August 20th to 21st, a two day period in
6 2001, you borrowed approximately $8,000 from Treasure Chest
7 Casino in Kenner, Louisiana, by taking out approximately eight
8 1,000-dollar markers over a two day period?
9 A. Well, did I sign $8,000 worth of markers? You have records
11:21 10 that suggest I did that. I agree with you.
11 Q. Okay.
12 A. The issue is that we haven't -- I have an issue with
13 whether that's credit. The statement itself says it acts like
14 a check against your account. Now, I did not have an
11:21 15 8,000-dollar line of credit at -- where was that? Treasure
16 Chest?
17 Q. Treasure Chest. I didn't ask you about a line of credit,
18 though.
19 A. I understand, but I'm explaining to you why that's
11:21 20 misrepresentative.
21 Q. Okay. Well --
22 A. Those are just repetitive 1,000 -- had I written a check
23 for a thousand, I do not believe I would have been in violation
24 of any court order.
11:22 25 JUDGE BENAVIDES: But you're saying that you didn't

not -- for instance, you could not sign a marker for $8,000 because that was above your limit but that would not have precluded you from making out eight different markers for $1,000 during a two day period?

THE WITNESS: Only if that line -- only if I had the funds for the line of credit. In other words, I may have signed a thousand dollar marker, played a little while, won, paid it back. That's what it sounds like to me.

I have no specific recollection of that, Judge. But that's what I'm saying, yes, sir.

JUDGE BENAVIDES: So, you're not disputing that there may have been eight markers for $1,000. What you're saying is that at any one time you dispute that you owed $8,000.

THE WITNESS: That's correct, your Honor. I couldn't get it. I mean --

JUDGE BENAVIDES: I understand what you mean.

BY MR. FINDER:

Q. Judge Porteous, I'm going to show you what's from Exhibit 54, Bates Number SC1436. These are records from the Treasure Chest Casino in Kenner, Louisiana. And we'll have more testimony about this later through Agent Horner.

But just by way of illustration, you see where it has "MRK," "marker"?

A. Right.

Q. And it shows various 1,000-dollar markers?

11:23 A. Uh-huh.
Q. And remember, these were taken out August 20 and 21, the dates --
A. Well, that's not those dates.
11:23 Q. That's the wrong page. Here we go.
JUDGE LAKE: What exhibit is that?
MR. FINDER: It's SC1438. I had the wrong page.
MR. WOODS: Exhibit 54.
MR. FINDER: Exhibit 54.
11:23 BY MR. FINDER:
Q. August 21st, '01, you were in Chapter 13 bankruptcy, correct?
A. Yes, sir.
Q. Let's look at this entry. "MK" for "marker"?
11:23 A. Uh-huh.
Q. Taken out August 21 in the amount of a thousand dollars?
A. Uh-huh.
Q. Paid back September 9th, correct?
A. If that's what it says, yeah.
11:24 Q. That's what it says.
Next entry highlighted, marker, 8-21-01, apparently paid back right way?
A. Right.
Q. Next marker, also -- also for a thousand dollars, not paid
11:24 back till September 9th?

11:24 A. All right.
Q. Next marker, August 21, a thousand dollars, not paid back till September 15, correct?
A. It looks like that, yeah. Yeah.
11:24 Q. This is --
A. Yes. I got it.
Q. I don't think it's going to --
JUDGE LAKE: So, the net effect of this was that $3,000 of the 8,000 was paid back at a later date. Is that
11:24 what the document shows?
MR. FINDER: Yes, sir.
JUDGE LAKE: Approximately within a month of that?
MR. FINDER: That's correct. It wasn't just taking out a marker and paying it back within hours or the same day.
11:25 JUDGE LAKE: So, 5,000 was paid back; 3,000 was some -- some form of extension of credit?
MR. FINDER: That's correct, that's what this record tends to show.
JUDGE BENAVIDES: So, let's say on March 21st at the
11:25 end of the day there would have been outstanding balance on the markers --
MR. FINDER: That's correct.
JUDGE BENAVIDES: -- for a debt exceeding the $1,000?
MR. FINDER: Yes, sir.
11:25 JUDGE BENAVIDES: And you could actually figure this

11:25 out on a daily basis?

MR. FINDER: Yes, sir. And we'll get into greater detail on that later but this is an introduction to it and that is correct.

11:25 BY MR. FINDER:

Q. We could do the same exercise for all of them for -- that are listed in the charge. For example, on October 13th, 2001, you borrowed approximately a thousand dollars Treasure Chest in the form of two 500-dollar markers.

11:26 Yeah, here it is.

MR. FINDER: That's the best I can do. I hope you can read it.

BY MR. FINDER:

Q. And those apparently were paid back the same day, correct?

11:26 A. Yes, sir.

CHIEF JUDGE JONES: What page number is that?

MR. FINDER: This is Page 1437.

CHIEF JUDGE JONES: Okay.

BY MR. FINDER:

11:27 Q. But, then, on October 17th and 18th -- and I'm talking about the same exhibit, Pages 1436 and '37 -- there were -- can you read this, Judge Porteous?

A. If you'll stop moving it, I might be able to.

Q. I don't mean to get you dizzy.

11:27 A. Yeah. Two 500. Well, five --

11:27 Q. Okay. On October 17th and 18th, you borrowed in excess of $5900 from Treasure Chest, taking out approximately ten markers of various denominations over the two days, 4400 of which was paid back on November 9th. Do you recall that?

11:27 A. I don't recall it. I'm sorry.

That's what year?

Q. If that's what the records show, though, you don't dispute it?

A. If that's what the record says, the record says it.

11:28 Q. Okay. We'll go into that with Agent Horner.

JUDGE LAKE: Do you have a summary exhibit which shows what the -- the dates the items were paid? In other words, there's a portion of this 5900 apparently was repaid the same day and the balance was paid the next month?

11:28 MR. FINDER: We believe our FBI witnesses will be able to summarize that. This was just an introduction to it.

MR. WOODS: To answer your question, we do not have a specific chart summarizing that but we do have charts summarizing gambling debt.

11:28 JUDGE BENAVIDES: But the records themselves reflect the date of payment?

MR. WOODS: Yes, sir.

JUDGE BENAVIDES: So, whether we have a summary person or not, we could figure those things out?

11:28 MR. FINDER: They're all --

11:28 MR. WOODS: The agent will tell us.

JUDGE LAKE: You might ask the agent to be attuned to do that.

MR. FINDER: I think he's been so instructed.

11:29 BY MR. FINDER:

Q. We've talked about the filing of your bankruptcy, your Honor, and not incurring new debt. That was in the pamphlet, that was in the court order, and that was in the recorded hearing. Do you remember those?

11:29 A. Yes, sir.

Q. Okay. Judge Porteous, on March 28th --

A. What year?

Q. 2001.

A. Okay.

11:29 Q. Following the filing of your Chapter 13 bankruptcy petition, you and Mrs. Porteous did, in fact, incur additional credit card debt on your Fleet Credit Card. Do you recall that?

A. I do not recall that. I believe the exhibit says it's my

11:29 wife's card, but I don't remember that.

Q. Your wife was your co-debtor on the bankruptcy petition, was she not?

A. She was.

Q. And the bankruptcy -- we'll get into this later; but the

11:29 bankruptcy schedule required all credit cards, everything, to

11:30 be scheduled, to be listed, correct?
A. Right.
And what date was that? March 28th, you said? I'm sorry.
11:30 Q. March 28th, 2001 --
A. Yes.
Q. -- following the bankruptcy, the original petition, correct?
A. Yes.
11:30 Q. All right. Now, as of March 5th -- and I'm referring to Exhibit 21 -- okay. Showing you what's Exhibit 21, a statement from Fleet Credit Card, Judge.
A. Right.
Q. You'll notice that it's Account Number [redacted], correct?
11:30 A. Yes, sir.
Q. And from Fleet Credit Card Service for the account of Carmella Porteous, right?
A. Right.
11:31 Q. Now, if you look at these dates under the account transactions, you'll see from March 5th through March 19th, correct?
A. I can't see it, but I'm satisfied it says that. I just can't see --
11:31 Q. Well --

11:31 A. I'm not disputing it says that, counsel.
Q. All right. This is -- March 5th is right before the bankruptcy, right?
A. Yes, sir.
11:31 Q. March 19th we're in the bankruptcy -- we're into the bankruptcy period, correct?
A. Well, before the bankruptcy was filed; but you're right.
Q. March 28th. If you'll look at March 8th, you'll see that this credit card in the amount of $157.99 was used at Harrah's
11:31 Casino in New Orleans.
Well, maybe you can't see it; but I'll be happy to show you.
A. No. I'm satisfied you're not misrepresenting it.
MR. WOODS: Your Honor, you have documents in the
11:32 boxes, that he's using, if you want to refer to them.
THE WITNESS: Well, I don't want to -- I have to stay up here. I don't want to necessarily -- I mean, I'm not --
MR. WOODS: I could move them there if you want me to.
THE WITNESS: I don't dispute he's reading this
11:32 correctly. I jut -- he asked me could I see it, and I just can't see it.
BY MR. FINDER:
Q. Now, again, bankruptcy was March 28th, the amended petition was April 9th, correct?
11:32 A. Right.

11:32 Q. I'm going to show you now, Judge Porteous, from Exhibit 1 the Chapter 13 schedules and plan.

A. All right.

Q. This will be a little bigger and easier to read, hopefully.

11:32 This is in your case, with your docket number, submitted by Claude Lightfoot, your attorney, correct?

A. Yes, sir.

Q. And I wish you did have it in front of you, and I'll show you mine.

11:33 A. I'll pull it out if it's --

Q. But I would like you to tell me where Fleet Credit Card is listed in here on the schedule of your credit cards.

A. Well, if it's not listed, it's not listed.

Q. So, you'll take my word it's not listed?

11:33 A. Yeah.

Q. Okay.

A. I don't know whether it was in existence, whether it was paid off or not. I don't know anything about that. I mean, as I'm sitting here, I don't recall.

11:33 Q. Well, whether it was paid off or not -- let's look at the schedule -- I believe it's at Schedule F -- which lists numerous credit cards --

A. All right.

Q. -- such as American Express at Surety Bank, Bank of

11:34 Louisiana MasterCard, Chase Platinum MasterCard, Citibank

11:34 Advantage, Citibank Advantage. The list goes on.
A. Right.
Q. This is in alphabetical order. Fleet does not appear, correct?
11:34 A. Does not appear.
Q. And is it your testimony that if it was paid off it wouldn't have to be on this list? If you had a zero balance on the date this was filed, it wouldn't have to be on the list?
A. Well, it was not a -- if there was no debt, they weren't a
11:34 credit, to my understanding. It says "creditors' names." The ones you -- as I understood, the instruction was that you owed money to.
Q. Well, when you use a credit card, it's an extension of credit, correct?
11:34 A. Correct.
Q. So, you pay it?
A. Right.
Q. So, if it's not on this list because it has a zero balance and then you use it to go to JC Penney or the casino and you
11:34 rack up credit on it, that's incurring credit, incurring debt?
A. That's incurring additional credit, correct.
Q. Okay.
JUDGE LAKE: Was credit extended on that account after the date of the bankruptcy filing?
11:35 MR. FINDER: I think the evidence -- they were

showing, Judge, that the card was not listed but was used as a credit card after the date of the bankruptcy and the amended petition of bankruptcy.

JUDGE BENAVIDES: So, it wasn't included in the list of creditors while the card had been used before and -- before the petition was filed and prior to the payment that was made for the charge upon the card?

MR. FINDER: That's correct.

JUDGE BENAVIDES: So, you're contending there was a transaction existing --

MR. FINDER: That's my next exhibit.

JUDGE LAKE: It was used -- I guess to follow up, and it was used after the bankruptcy filing? Is that what you said?

MR. FINDER: Yes, sir. That's my next exhibit.

JUDGE LAKE: All right. Sorry.

BY MR. FINDER:

Q. From Exhibit 21, also --

A. All right.

Q. -- Bates Page 592, again, same account number, Fleet Credit Card, your wife's name?

A. Right.

Q. Now, it shows here purchases and cash advances, $734.31, correct?

A. Yes, sir.

11:36 Q. Do you see that?

Okay. And this credit card was used throughout the month of May and June, correct?

You can see the entries on the left-hand side, highlighted in the yellow, one of whom -- one entry which is in red for the Treasure Chest, which is a casino, is it not?

A. Yes, sir.

Q. And that's $174.99, correct?

A. That's what it says.

11:36 Q. So, if it's on this statement, that means there was an extension of credit, correct?

A. That appears to be correct.

Q. Okay. Moving on to the next month's statement, also from Exhibit 21, Bates Page 593, would you agree, Judge Porteous, this is the same account, same account number?

A. (Nodding head.)

Q. Is that a "yes"?

A. Yeah.

Q. Okay. And from June 15th to July 18th -- and this is the best copy we have. So, I know it's a little hard to read. This card was used, including for Harrah's in New Orleans, for $91.99 and Treasure Chest for $68.99. I'll be happy to show you this.

A. No. I'm satisfied that's what you're reading.

11:37 Q. All right. Judge Porteous, are you aware that -- strike

11:38 that.

Let's go back to the Chapter 13 schedules and plans, which, again, is from Exhibit 1, starting with Bates Number 91.

11:38 Judge Porteous, would you agree that you did conceal assets and income from the bankruptcy estate and from your attorney by filing false and misleading schedules with the bankruptcy court and signing them under penalty of perjury?

A. I would not agree with that.

11:39 Q. All right.

JUDGE BENAVIDES: Counsel, I hesitate to interrupt you. And perhaps you will get into this at a later time; but before we leave Fleet, your record evidence suggests that a number of charges on Mrs. Porteous' card prior to and during

11:39 the time that the bankruptcy petition or case was on file --

MR. FINDER: Yes.

JUDGE BENAVIDES: -- with the bankruptcy judge. Do you intend at a later time or not to present evidence with respect to payments made with -- during that period of time and

11:39 when the payments were made and how the -- and who made those payments?

MR. FINDER: We do intend to show evidence that the card was paid off in full through a check by Rhonda Danos. But I'm just not there yet, but I will get there.

11:40 JUDGE BENAVIDES: All right. So, you'll get to that

11:40 and who -- who authorized payments and things like that?

MR. FINDER: Yes, sir.

JUDGE BENAVIDES: The judge had mentioned something about it was his wife's account, and I wanted to --

11:40 MR. FINDER: That's correct.

JUDGE BENAVIDES: All right.

BY MR. FINDER:

Q. All right. Judge Porteous, again, from the Exhibit 1, starting with Bates Number 91 --

11:40 A. All right.

Q. -- the Chapter 13 schedule and plan, we've already talked about?

A. Yes, sir.

Q. Okay. Let's go through this for a moment.

11:40 Under Schedule B, "Personal Property."

A. All right.

Q. "Type of property, checking, savings, or other financial accounts, certificates of deposit, shares in banks, savings and loan, thrift, building and loan, homestead association, or

11:41 credit unions, brokerage houses, or cooperatives."Did I read that accurately?

A. Yes, sir.

Q. And you listed Bank One Checking Account [redacted]. Is that correct?

11:41 A. That's correct.

Q. And the current value of that interest is $100, correct?
A. Yes, sir.
Q. And that's on Page 95?
A. Bates Page 95.
Q. Bates Page 95. Bates Page 96, Schedule B, Question 17, "Other liquidated debts -- other liquidated debts owing debtor, including tax refunds, give particulars." And in the next box, it's checked off "none," correct?
A. Yes, sir.
Q. Attached to this exhibit, starting on Bates Page 112, the statement of financial affairs, are you familiar with that, sir?
A. Yes, sir.
Q. And on the last page of that statement of financial affairs, with Bates Number SC116?
A. Right.
Q. "I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and they are true and correct," dated April 9th, '01, the date of the amended petition, signed by you and your wife, correct?
A. Yes, sir.
Q. So, you would agree with me, Judge Porteous, this is a document that had a jurat that required that it be signed -- well, that it be signed under penalty of perjury, correct?

A. Yes, sir. You just read that.
Q. Right. There was another one. This -- that had to do with statement of financial affairs.
On Page 111, "Declaration concerning debtors' schedules," just about the schedules. Now, "Declaration under penalty of perjury by individual debtor," it states, "I declare under penalty of perjury that I have read the foregoing summary and schedules consisting of 16 sheets plus the line summary page and that they are true and correct to the best of my knowledge, information, and belief," dated April 9th, '01, signed by you and your wife, correct?
A. Right.
Q. Isn't it true, Judge Porteous, that although you replied "none" to "tax returns," that you and your wife filed for a federal tax refund on March 23rd, 2001, in the amount of $4,143.72, which was just five days before your original Chapter 13 petition was filed? Do you recall that?
A. I know we filed for a tax refund.
Q. All right. Let me show it to you.
Exhibit 24, do you recognize this as being your 1040 return?
A. Yes, sir.
Q. For tax year -- for 2000 --
A. 2000.
Q. -- correct?

11:44 And this is Bates Page 600?
A. Right.
Q. This is going to be tough to read, but feel free to look at your copy.
11:45 Under the section "Refund," which is sort of cut off on my copy, Line 67a, "Amount of Line 66 you want refunded to you, $4,143.72" --
A. Yes, sir.
Q. -- correct?
11:45 It's signed, again under penalty of perjury, by you and your wife on March 23rd, 2001, correct?
A. Yes, sir.
Q. And has your occupation as judge and your wife -- your wife's occupation as housewife?
11:45 A. Right.
Q. And this is on Page 601, correct, Bates page?
A. Yes, sir.
Q. March 23rd, 2001, less than a week before you filed Chapter 13, correct?
11:45 A. Yes, sir.
Q. And on your schedule, you put that you had no refund?
A. When that was listed, you're right.
Q. Okay. From your Exhibit 25, from your Bank One bank account, Judge G. Thomas Porteous, Jr., Account [redacted]
11:46 actually, that number is a little bit different than the one

11:46 that was on the schedule. Maybe there was a typo.

If you look on Schedule B that we've read before, this account starts with [redacted] but the actual statement has a different few numbers that start. Probably just a typo, 11:46 don't you think?

A. I know there's bottom numbers on those checks. I always called that account, I think, 00.

Q. All right. Now, going back to this Exhibit 25 --

A. Uh-huh.

11:47 Q. And I regret that I can't get this clearer; but it shows on April 13th, a deposit of an IRS tax refund of $4,143.72, correct?

A. Yes, sir.

Q. And that deposit was April 13th?

11:47 A. Yes, sir.

Q. Just four days after your amended return was filed, correct?

A. Yes, sir.

Q. Your amended return was April 9th?

11:47 A. Yes, April 9th.

Q. But nothing was mentioned on that return?

A. No. I know I called my -- I called Claude when I got it. And by Claude, I meant Mr. Lightfoot. I'm sorry.

Q. You discussed that with Mr. Lightfoot?

11:47 A. I did.

11:48 Q. Did he tell you not to put it on the return?
A. No, no. I discussed that I received the refund, what should I do with it.
Q. What did Mr. Lightfoot tell you?
11:48 A. Said, "If the trustee didn't put a lien on it, put it in your account; but they may -- they may ask for it back."
Q. But, Judge Porteous, that schedule was signed under penalty of perjury.
A. It was omitted. I don't know how it got omitted. There
11:48 was no intentional act to try and defraud somebody. It just got omitted. I don't know why.
We had been fighting this, trying not to go into bankruptcy for a long time. And I don't know. It just didn't appear on the schedule.
11:48 Q. Okay.
JUDGE BENAVIDES: How many days before the schedule was made that omitted that was the request for refund made of the filing?
MR. FINDER: About five days, five days from the
11:49 original petition, your Honor. The schedule was on the amended petition and --
JUDGE BENAVIDES: Well, I'm trying to get the difference in date between the date he signs the statement saying he has no refund coming --
11:49 MR. FINDER: Right.

11:49 JUDGE BENAVIDES: -- and the date that he asked for a refund from -- on his tax return.

MR. FINDER: Right. The original petition was filed -- it was about five days before the original petition.

11:49 JUDGE BENAVIDES: All right.

MR. FINDER: Right. And the schedule was April 9th, but -- and it was listed -- it was not listed on it. It was listed as "none."

BY MR. FINDER:

11:49 Q. Okay. Judge Porteous, let's go back to Schedule B, Question 2 --

A. All right.

Q. -- where it says, "checking, savings or other financial accounts."

11:50 A. Right.

Q. And you listed a hundred dollars?

A. Right.

Q. Can you see -- okay. And again, this was in April, right?

A. Yeah.

11:50 Q. Okay. April 9th?

A. Yes, sir.

Q. And we have -- do you recall, Judge Porteous, owning a Fidelity money market account, Account Number [redacted]

A. Right.

11:50 Q. Okay. Let me show you, Judge Porteous, Exhibit 28.

11:51 A. All right.
Q. Which is your Fidelity money market account, correct?
A. Yes, sir.
Q. And this is for you and your wife, correct?
11:51 A. Right.
Q. The account number I just read, correct?
A. Right.
Q. Statement period March 21, 2000, through April 20th, 2000 -- I'm sorry, 2001 through April 20th, 2001, correct?
11:51 A. Right.
Q. And you see on March 28th, Check Number 581 for $283.42, your balance, right? That was your balance in that account?
A. That's what it says, that's correct.
Q. Okay. Yet, on your bankruptcy schedule, you put that the
11:51 account -- this was the day before bankruptcy; and on your bankruptcy schedule you put you only had a hundred dollars in the account, correct?
A. It appears this is the Fidelity account.
Q. Right.
11:51 A. And since it's not listed, for some reason it didn't appear, apparently, on my bankruptcy, because only Bank One appeared, it looks like.
Q. Okay.
A. Although, I thought I told Claude about all the -- I only
11:52 had two.

11:52 Q. Well, your attorney told you to get all your records --
A. Right.
Q. -- and make --
A. I could have sworn --
11:52 Q. Correct.
A. I honestly believed we told Claude about Fidelity. There was really no reason not to tell him about Fidelity. The account at any given time which would have had the most money would have been the Bank One account because my checks were
11:52 deposited in there.
JUDGE LAKE: Mr. Finder, I'm not clear. Are we talking about the difference in the Bank One disclosure and --
MR. FINDER: No. It wasn't listed, Judge, and was an account -- there was more money than was listed on the
11:52 schedule.
JUDGE LAKE: You're saying the account was not disclosed at all?
MR. FINDER: I don't believe it was.
CHIEF JUDGE JONES: Fidelity or Bank One?
11:52 MR. FINDER: Bank One was -- Bank One was disclosed.
CHIEF JUDGE JONES: For too small an amount?
MR. FINDER: Right.
CHIEF JUDGE JONES: Fidelity was not disclosed?
MR. FINDER: Correct.
11:53 JUDGE LAKE: And where in the charge is Fidelity

referred to? That's the question.

MR. FINDER: I believe it was in -- on Page 12. It's not -- the name of the institution isn't in there, but that's --

JUDGE BENAVIDES: How much was in Fidelity at the time of the filing?

MR. FINDER: The balance on the day before bankruptcy was $283.42.

JUDGE LAKE: So, that's the last bullet point on Page 12, is the Fidelity account?

MR. FINDER: Yes, sir.

JUDGE BENAVIDES: And, then, the one that was listed --

MR. FINDER: The Bank One for a hundred, I believe we'll have more evidence later on that.

JUDGE BENAVIDES: Okay. That's not here yet.

THE COURT REPORTER: I'm sorry, Judge?

JUDGE BENAVIDES: That's not presently before us. I think Mr. Finder is saying he's getting to that later.

MR. FINDER: Actually, in the charge, we had a balance of 280 and the actual amount was $283.42; so, there was a $3.42 variance.

BY MR. FINDER:

Q. Now, Judge Porteous, we already discussed, from Exhibit 1, Bates Page 112, the statement of financial affairs and the

11:54 jurat that had to be -- it was being signed under penalty of perjury. Do you remember that?

A. Right.

Q. Okay. And on this page it says, "Payments to creditors. List all payments on loans, installment purchases of goods or services, and other debts aggregating more than $600 to any creditor made within 90 days immediately preceding the commencement of this case."

And then in parenthesis, "Married debtors filing under Chapter 12 or Chapter 13 must include payments by either/or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed."

Did I read that accurately?

A. You did.

Q. And where it requests the name and address of the creditors, it just says "Normal Installments," correct?

A. Yes, sir.

Q. Let's go back to our Fleet Credit Card, Exhibit 29.

And, again, here is a -- sorry. I had the wrong page. Give me a moment. Here it is.

This is the account number we discussed before, correct, from the Fleet Credit Card for Mrs. Porteous?

A. Yes, sir.

Q. The balance of $1,088.41, correct?

11:56 A. That's what it says, yes, sir.
Q. That's what it says.
And the date of this statement -- under the account number, it has payment due date April 15th, 2001, with
11:56 a new balance of 1088.41, correct?
A. Yes, sir.
Q. Now, the next statement, for the end of March and April, shows past due amount zero because of the previous balance a thousand -- there was a previous balance of 1,088.41. Do you
11:57 see that?
A. All right. Yes, sir.
Q. And then there was a payment recorded by the credit card company on March 29th, 2001?
A. All right.
11:57 Q. Of 1,088.41?
A. Right.
MR. FINDER: Your Honor, this is what you were getting at a little earlier.
BY MR. FINDER:
11:57 Q. Plus charges -- new charges for GameCash. Is that a casino?
A. Is what? I'm sorry.
Q. GameCash?
A. I'm sure it is.
11:57 Q. Biloxi, Mississippi?

11:57 A. Sounds like it.
Q. And Beau Rivage Hotel in Biloxi, that's a casino, isn't it?
A. It is.
Q. For $215.99 and $231, respectively, correct?
11:57 A. Yes, sir, that's what it reflects.
Q. So, that was not listed on your schedule, was it, that payment?
A. No, sir.
JUDGE LAKE: Which payment?
11:58 MR. FINDER: The Fleet.
JUDGE LAKE: Where --
MR. FINDER: I'm sorry?
JUDGE LAKE: Where are you referring when you say, "That payment was not listed on your schedule"?
11:58 MR. FINDER: On page --
JUDGE LAKE: Are you referring to the 1,088 payment?
MR. FINDER: That's correct.
JUDGE LAKE: What about the subsequent payments?
MR. FINDER: Well, the 1,088, which was paid right
11:58 before the bankruptcy was filed -- at the time of the bankruptcy filing, was not listed even though the schedule called for all such payments prior to the filing of bankruptcy. And this is the payment that --
CHIEF JUDGE JONES: Well, then new charges were
11:58 incurred at the casino?

11:58 MR. FINDER: Among other places.

CHIEF JUDGE JONES: After -- yes, after.

Mr. Finder, we're going to take a break around noon; so, you have about five minutes.

11:58 MR. FINDER: Okay. Thank you.

BY MR. FINDER:

Q. Judge Porteous, do you recall obtaining two 1,000-dollar markers -- we may have -- we touched on this earlier -- 2,000 -- two 1,000-dollar markers from Grand Casino Gulfport on

11:59 or about February 27th, 2001, which were deposited against your bank account on April 4th, one week after the filing of your Chapter 13 petition?

Do you have an independent recollection of that?

A. No, I do not have an independent recollection.

11:59 Q. Or five days before the amended voluntary petition?

A. I do not have an independent recollection of that.

Q. All right.

MR. FINDER: Judges, this may be a good place to stop before I go on to the next area, as long as we're going to

11:59 break for lunch.

CHIEF JUDGE JONES: Okay. We'll take about an hour.

THE WITNESS: 1:00 o'clock, your Honor?

CHIEF JUDGE JONES: Yes, sir.

THE WITNESS: Judge, just for my own information, what

12:00 time will we be going till today? I'm not --

12:00 1 CHIEF JUDGE JONES: We think until around 5:00.
2 THE WITNESS: Okay. I just was asking. That's all.
3 CHIEF JUDGE JONES: Yes.
4 THE WITNESS: Thank you.
12:00 5 CHIEF JUDGE JONES: All right. Thank you.
6 We'll be in recess.
7 *(Recess taken from 12:00 p.m. to 1:05 p.m.)*
8 CHIEF JUDGE JONES: Be seated, please. We're ready to
9 resume.
01:04 10 MR. FINDER: Your Honors, I would like to clarify a
11 couple questions you had asked me at the bench.
12 BY MR. FINDER:
13 Q. Judge Porteous, let me call your attention again to
14 Schedule B.
01:05 15 JUDGE LAKE: I can't hear you.
16 MR. FINDER: Oh, I'm sorry.
17 JUDGE LAKE: Just pretend there is a whole platoon out
18 here awaiting your instructions.
19 JUDGE BENAVIDES: You may proceed. She has indicated
01:05 20 she'll be right back.
21 MR. FINDER: Oh, okay. Okay. Your Honors had asked
22 me a question regarding one of the matters about the Bank One
23 bank account, the hundred dollars. I don't recall which one of
24 you asked me, but it was in regard to Number 22 in the charge
01:05 25 on Page 12; and I wanted to clarify that.

01:05 BY MR. FINDER:
Q. Judge Porteous, let me call your attention again, please, to Schedule B --
A. Okay.
01:05 Q. -- Number 2, the check where you were asked to list your checking accounts.
JUDGE BENAVIDES: I'm sorry, counsel. I can't hear you.
MR. FINDER: I'm sorry, Judge.
11:59 BY MR. FINDER:
Q. Call your attention to Schedule B, where you're asked -- Number 2, where you're asked to list your checking accounts and I believe you put Bank One and a checking account number for $100. I believe we established that the account number had a
01:06 typographical error and was close but not exact.
Do you recall that?
A. All I think that meant was that the -- at the bottom of the check, the banks use additional numbers. I think it was 690 would have been left out is all.
01:06 Q. That's fine. You're correct.
I'm going to show you now from Exhibit 27, which we've already referenced but I -- there's a line on here I had not referenced. This is from your Bank One statement. You can see your name on there with the actual account number; and the
01:06 date of the statement is March 23rd to April 23rd, 2001.

01:06 It says, "Summary of Account Balance." The balance as of April 23rd, which is the last day of the statement period, was $5,493.91. April 23rd being five days before the amended petition was filed, correct?

01:07 A. Correct.

Q. Moving up a little bit, I believe it says --

A. Wait. I'm sorry. You said April 23rd being five days before the amended petition was filed?

Q. I'm sorry. I'm wrong. It was after the amended petition

01:07 was filed. Forgive me.

Beginning balance, five fifty-nine oh seven; ending balance 5493.91, correct?

A. Yes, sir.

MR. FINDER: Your Honors asked me to -- a question

01:07 about Number 23 in the charge, appearing on Pages 13 and 14, having to do with who paid the Fleet Credit Card.

BY MR. FINDER:

Q. Judge Porteous, I'm going to show you Exhibit 29. And, again, to refresh your recollection, this is the account number

01:08 to your Fleet Credit Card with a balance of $1,088.41 on a statement that is for the month of March.

You can see the account transactions, March 5th through March 19th, correct?

A. Yes, sir.

01:08 Q. And the end -- and the new balance as of the -- this

01:08 statement is $1,088.41. Did I --
A. Yes.
Q. -- state that correctly?
Okay. That's Page 618.
01:08 A. All right.
Q. Page 620, another Fleet Credit Card statement for the same account shows the payment of $1088.41, which Fleet recorded on March 29th, correct?
A. Yes, sir.
01:09 Q. And that's one day after you filed the voluntary petition, the first -- the original petition, correct?
A. The date they recorded it, yes.
Q. All right. Now showing you from Bates Number 619 --
MR. FINDER: What's the exhibit number for this?
01:09 MR. WOODS: Twenty-nine, I believe.
MR. FINDER: Exhibit --
MR. WOODS: Twenty-nine.
MR. FINDER: -- 29. Right, 29.
BY MR. FINDER:
01:09 Q. Check Number 1660 on the account of Rhonda F. Danos, dated 3-23-01, right -- five days before bankruptcy?
A. All right.
Q. Payable to Fleet in the same amount, $1088.41, correct?
A. Yes, sir.
01:10 Q. And here in the highlighted portion for the memo, where it

says "For," "Carmella Porteous." And it has the Fleet bank account number, correct?

A. Yes.

Q. So, it appears that Ms. Danos paid off Fleet, correct?

A. Well, her check did, yes.

Q. Her check did.

Which would have preferred Fleet as -- which was paid off right before bankruptcy, as opposed to the other -- other creditors, correct?

A. I presuppose [sic] so. I'm not --

Q. Now, why was it, sir, that Rhonda Danos happened to pay off your wife's credit card days before you filed bankruptcy?

A. I have no idea. I'm sorry.

MR. FINDER: Did your Honors have any more questions about --

A. What date was that? I'm sorry, counselor.

BY MR. FINDER:

Q. The date of --

A. I have no idea.

Q. Judge Porteous, was Rhonda Danos in the habit of paying off your wife's bills?

A. No, not that I'm aware of. I mean, she's paid some bills for me, though.

Q. But you're not aware of her paying your wife's bills?

A. No. She didn't pay my wife's bill. A check paid it.

01:11 Q. Well, the check is made payable to your wife's creditor, Fleet.

A. Right, a check paid it.

JUDGE BENAVIDES: Can I see that check again?

01:11 MR. FINDER: Yes, your Honor.

JUDGE BENAVIDES: All right.

MR. FINDER: Can you see?

BY MR. FINDER:

Q. Judge Porteous, did you ask Rhonda Danos to write that 01:11 check for payment of the Fleet account?

A. I have no recollection of asking her to do that.

Q. All right. Judge Porteous, on April 9th, 2001, when you signed the statement of financial affairs in your bankruptcy under penalty of perjury, which was on Exhibit 1, Bates 01:12 Number 116, Item 8 talks about losses.

Do you -- do you recall that independently, sir, or do you have it in front of you?

A. I do not have that in front of me.

Q. All right. Can you read that?

01:12 A. Yes, sir.

Q. Okay. It asks you to list all losses for fire, theft, other casualty, gambling within one year immediately preceding the commencement of this case -- meaning your case -- or since the commencement of this case. And I believe we read this 01:13 before, about married debtors filing under Chapter 12 and

01:13 Chapter 13.

And you list "none," correct?

A. That's what's listed, correct.

Q. Judge Porteous, do you recall that in the -- that your
01:13 gambling losses exceeded $12,700 during the preceding year?

A. I was not aware of it at the time, but now I see your documentation and that -- and that's what it reflects.

Q. So, you -- you don't dispute that?

A. I don't dispute that.

01:13 Q. Therefore, the answer "no" was incorrect, correct?

A. Apparently, yes.

Q. Even though this was signed under oath, under penalty of perjury, correct?

A. Right.

01:13 The casino, you don't get a gratuitous statement every year from them. I mean, you would have to get it from them.

Q. You would have to ask for it?

A. Yes.

01:13 JUDGE LAKE: I couldn't hear. What you did you say?

THE WITNESS: You have to ask -- they don't send a statement or anything, Judge. If you want to know your status, you can go ask them; but they don't routinely send -- in fact, they never send it out.

01:14 JUDGE LAKE: Okay. But they -- if you call them, they

will tell you?

THE WITNESS: What's that? I'm sorry.

JUDGE LAKE: If you call them, then they will tell you?

THE WITNESS: Yes, sir. I assume they would.

JUDGE LAKE: Okay. Thank you.

JUDGE BENAVIDES: How much was owing?

MR. FINDER: Sir? I'm sorry.

JUDGE PORTEOUS: Gambling losses.

JUDGE BENAVIDES: How much was the amount owing?

JUDGE LAKE: He said 12,700 the previous year.

MR. FINDER: Twelve thousand seven hundred.

And we'll -- through our summary witness, we'll get into more detail about gross versus net; but for the present purpose, that's -- that's the information.

BY MR. FINDER:

Q. Judge Porteous, we've talked about your bankruptcy lawyer, Claude Lightfoot, right?

A. Yes, sir.

Q. And we also mentioned earlier in our examination the fact that Regions Bank, where you had done some business, was listed as an unsecured creditor in the original voluntary petition, correct?

A. Right.

Q. Is it a fact, sir, that Circuit Judge W. Eugene Davis made

01:15 a finding of crime fraud as to attorney-client privilege as to discussions between you -- discussions and documents between you and Mr. Lightfoot regarding the Regions Bank?

A. That's my understanding, correct.

01:15 Q. Let me show you what's been marked as Exhibit 12, an order, which at the time it was under seal, the order of crime fraud. Have you seen this order before?

A. I believe so.

Q. Okay. And the actual order for crime fraud was signed by

01:16 Judge Davis on October 19th, 2004. Is that correct?

A. That -- if that's what it says, of course.

Q. October 19th, 2004?

A. That's what it says.

Q. Okay. Therefore -- I wanted to establish that before I ask

01:16 you questions --

A. I understand.

Q. -- about this transaction.

You and Mr. Lightfoot agreed, at least by December 21st, 2000 --

01:16 MR. FINDER: I'm sorry. Can you hear me?

BY MR. FINDER:

Q. -- by December 21st, 2000, to send out workout letters to your various unsecured creditors, correct?

A. We talked about that, that's correct.

01:16 Q. And the decision was made between you and Mr. Lightfoot to

01:17 exclude Regions Bank, which was an unsecured creditor in the amount of $5,000 plus finance charges, from the list of unsecured creditors that received the workout letter, correct?

A. That's correct.

01:17 Q. Showing you, sir, what's been marked as Exhibit 5, on the stationery of Claude Lightfoot to you and Mrs. Porteous, dated December 21st, 2000, "Regarding workout proposal."

"Dear Judge and Mrs. Porteous, I enclose a copy of the letters and one copy of the attachments. I included

01:17 with each that have sent -- that I have sent to all the unsecured creditors with the exception of Regions Bank, which we wanted to exclude."

Did I read that accurately?

A. You did.

01:17 Q. Signed by Mr. Lightfoot, correct?

A. Right.

Q. On -- on a copy. This is Bates Number 296.

297, Bates Number 297, is a sample letter that went to Bank of Louisiana MasterCard. Are you familiar with

01:18 that?

A. I've seen -- I don't know if I'm familiar with that exactly, but I think they all said the same thing.

Q. Now, we've talked about the Fleet Credit Card, also; and here are the lists of credit -- unsecured creditors that were

01:18 listed in Mr. Lightfoot's letter.

01:18 Fleet is not on here, is it?
A. It is not.
Q. Okay. But of those that are listed, the 13, Mr. Lightfoot totals them up to a sum of $182,330.23 in credit card debt,
01:18 correct?
A. Right.
Q. Mr. Lightfoot goes on in his letter to tell these unsecured creditors they should accept the workout proposal and there would be a -- the universe of cash available to pay them out is
01:19 $39,398.90, which represents about 21 percent of the balances, correct?
A. That's what it says, correct.
Q. Right.
Also, it says Regions Bank was being excluded.
01:19 And, in fact, Regions Bank is not listed anywhere in the letter, is it?
A. That's right.
Q. The loan with Regions Bank -- and I'll show you Exhibit 4.
A. All right.
01:19 Q. The loan with Regions Bank, the original loan --
A. Yes, sir.
Q. -- was for $5,000 plus a finance charge of $30; and it was taken out on January 27, 2000, correct?
Boy, it's hard to read.
01:20 A. You're right.

01:20 Oh, yeah, that's better.

Yes, sir, it says --

MR. FINDER: Can you all see?

BY MR. FINDER:

01:20 Q. And this Account [redacted] represents the account for that loan, right?

A. Yes, sir.

Q. And you are the borrower?

A. That's correct.

01:20 Q. You are the borrower, and the lender is Regions Bank. Have I read that correctly?

A. Yes, sir.

Q. All right. And this is on Bates Number 272.

A. All right.

01:20 Q. In fact, sir, you signed the note, correct?

A. Yes, sir.

Q. That's your signature, right?

A. Yes, sir.

Q. And that's on Page 273.

01:20 On the workup papers for this loan, it says the -- again, same account number, same principal, loan date, etcetera, which matures July 24th, 2000.

A. All right.

Q. Primary purpose of the loan is a personal loan, correct?

01:21 A. Uh-huh.

01:21 Q. Stated purpose, "Tuition for son," correct?
A. Uh-huh.
Q. Now, who was the son for whom you were asking for tuition?
A. Timmy or Tommy, I would think.
01:21 THE REPORTER: I'm sorry?
JUDGE PORTEOUS: Timothy or Tommy.
BY MR. FINDER:
Q. But you're not sure sitting here today?
A. Sitting here today, I don't know.
01:21 Q. Okay. There was a statement in the middle of the workout paper -- I'm sorry -- the loan application paper, "Financial Condition."
I'll read it. "By signing this authorization, I represent and warrant to lender that the information provided
01:21 above is true and correct and that there has been no federal material adverse change in my financial condition as disclosed in my most recent financial statement to lender."
This authorization is dated June -- January 27, 2000, signed by you, correct?
01:22 A. Yes, sir.
Q. And that's on Page 274 --
A. Yes, sir.
Q. -- right?
CHIEF JUDGE JONES: Is that 2000 or 2001?
01:22 MR. FINDER: 2000.

01:22 THE WITNESS: 2000.

MR. FINDER: I'm building up to it.

CHIEF JUDGE JONES: I see.

BY MR. FINDER:

01:22 Q. On this other loan -- page to the loan application, dated January 24th, it says -- and this is a little hard to read, but follow with me -- "In the last ten years, have you been bankrupt or are you in the process of filing bankruptcy?" And it's checked off, "No."

01:22 A. Right.

Q. And that's accurate, correct?

A. I believe so.

Q. That was Page 276.

A. Yes, sir.

01:22 Q. Now, this loan got extended a couple of times, right?

A. I don't recall, but was that a 60 -- a six --

Q. Six months.

A. Six months. Had to have gotten renewed at least once.

Q. Okay. Well, let's talk about the renewal.

01:23 Here's the loan date, 7-24. It's the same amount plus another $30 for the loan fee?

A. Right.

Q. So, it's the same loan because -- I believe it's the same account number.

01:23 A. It is.

01:23 Q. All right. To you from Regions Bank. Everything else is pretty much the same on this page, correct?

A. Right.

Q. And that page being 279?

01:23 A. Yes, sir.

MR. FINDER: I'm sorry, Judges. It's 279.

BY MR. FINDER:

Q. This loan is also signed by you, correct?

A. Yes, sir.

01:23 Q. And on the loan request it says, "Renewal of existing," right?

A. Yes, sir.

Q. And the loan officer -- or the branch -- who happens to be the branch manager, I believe, Loretta Young, correct?

01:23 A. Yes, sir.

Q. As part of this loan package, you filled out the information page, for, again, personal loan?

A. Right.

Q. "Specific Purpose," now it says, "Refinance existing." So

01:24 that's still for your son's tuition, correct?

A. Yes, sir.

Q. And the financial condition, you have still signed it?

A. Yes, sir.

Q. And this is July 24th, 2000?

01:24 A. Right.

01:24 Q. Let's jump ahead.
That was the first extension?
A. Yes, sir.
Q. Showing you now Bates 288, the second extension.
01:24 A. Yes.
Q. This loan is dated January 17th, 2001, correct?
A. Yes, sir.
Q. Matures July 17th, 2001?
A. Yes, sir.
01:25 Q. Now, January 17th, 2001, was a couple months before bankruptcy, correct?
A. Ultimately, yes.
Q. Yes.
And, again, the rest of the terms are very
01:25 similar to the original and first extension, right?
A. Yes, sir, it appears to be.
Q. Okay. However, on January 17th, you had already engaged Mr. Lightfoot to be your bankruptcy attorney, correct, because we just saw the letters that went out for December?
01:25 A. I retained him to try and work out my debt and, if it couldn't be worked out, to maybe consider bankruptcy.
Q. Right.
A. Correct.
Q. And on this loan, the second extension, you signed it?
01:25 A. Yes.

01:25 Q. And on the workup sheet to process the loan, again, by Loretta Young?
A. Right.
Q. Your name?
01:26 A. Right.
Q. Same account number but here it says, "In the last -- In the last ten years, have you been bankrupt or are you in the process of filing bankruptcy?" And now it's checked "No"?
A. Right.
01:26 Q. In fact, by this time you had already -- as you just stated, you had already talked to Mr. Lightfoot about trying to work it out or going bankrupt, correct?
A. That's correct.
Q. So, that's a false statement, is it not?
01:26 A. I didn't mean it to be false, because I wasn't in the process of declaring -- I was doing everything I could not to file a bankruptcy. That's why I attempted for so long to do a workout.
Q. But this is dated in January?
01:26 A. Right. We had not filed the bankruptcy.
Q. You hadn't filed yet.
A. I think the letters may have just gone out previous to that.
Q. Okay. Let's look at the next page, Page 291 -- sorry.
01:26 The page we just referenced was Page 290?

01:26 A. Right.
Q. Let's move to the next page.
"Financial condition, by signing this authorization, I represent and warrant to lender that the
01:27 information provided above is true and correct and there has been no material adverse change in my financial condition."
Now, there had been a material adverse change in your financial condition, hadn't there, since the last time you received the loan from the bank?
01:27 A. I probably stood at the same amount of debt that I had when I got the loan, but was I now in the process of trying to work out a settle -- a payoff, yes.
Q. I'm sorry, sir. Maybe it's the way I asked the question. Let me try it again.
01:27 Since your last -- since the last time you took an extension on this loan, your financial condition had stayed the same or deteriorated; it hadn't gotten any better, had it?
A. Hadn't gotten any better, that's correct.
Q. So, if you were in the banker's shoes, you would have no
01:27 reason to know that you were contemplating bankruptcy or contacting bankruptcy counsel, because you have checked off on this sheet that there's been no material change, correct?
A. I would have to object to that question. You're asking me to presuppose my --
01:28 Q. You're right and -- you're correct, and I withdraw the

01:28 question.
A. Thank you.
Q. That is Page 291.
A. Right.
01:28 Q. Well, we know that Regions Bank eventually was given notice of the bankruptcy, as were all --
A. They were.
Q. -- the other unsecured creditors, correct?
A. They were.
01:28 Q. But by then, Regions Bank had already given you a loan and two extensions, correct?
A. Yes, sir.
Q. And when your bankruptcy --
MR. FINDER: I'm referring to Exhibit 1, Bates
01:28 Number 27.
BY MR. FINDER:
Q. When the trustee filed its final report in your bankruptcy, where it says this case is completed, final meeting of creditors, et cetera, it lists Regions Bank, does it not,
01:29 Number 23?
A. Yes, sir.
Q. And Regions Bank is getting a percentage of its outstanding debt as an unsecured creditor at 34.55 percent, correct?
A. Right.
01:29 Q. Which means Regions Bank only got $1,782.43 in this

01:29 bankruptcy, correct?
A. That's -- that's exactly what those documents show.
Q. But, again, when you applied for the last extension, Regions Bank had no idea that you were -- that you were
01:29 discussing your financial condition with bankruptcy counsel, correct?
A. They did not.
Q. Regions Bank didn't ask you for any kind of collateral to collateralize the loan or move itself up from an unsecured
01:29 creditor to a higher level, did it?
A. No. Mr. Butler was a friend. No, they didn't.
Q. Mr. Butler, for the record, is Ed Buddy Butler, correct?
A. Yes.
Q. And you didn't tell him Mr. -- even though he was a friend,
01:29 you didn't tell him that you were having financial problems, did you?
A. No, I did not.
Q. In fact, you and Mr. Butler even go to the same church, right?
01:30 A. I can't say we haven't been to a church together. I don't know that we go to the same church. It's possible.
Q. Okay.
A. I may have seen Buddy.
Q. Moving on, back to the workout letters that Mr. Lightfoot
01:30 sent out -- and, again, we're talking about Exhibit 5.

01:30 A. Uh-huh.
Q. With the exception of Regions Bank?
A. Right.
JUDGE LAKE: What exhibit are you looking at now?
01:30 MR. FINDER: Exhibit 5.
JUDGE LAKE: Okay.
MR. FINDER: I am going to work backwards. We just talked about 5, and we're on it again.
JUDGE LAKE: All right.
01:31 A. Is that Exhibit 5, counselor?
BY MR. FINDER:
Q. Yes, sir.
A. Or your Bates Number 5?
Q. No. Exhibit 5, Bates Number 296.
01:31 A. Okay. I just -- I saw an "SC" up at the top.
Q. And I think we may have discussed this briefly; but Mr. Lightfoot listed approximately a hundred eighty -- a little over $182,000 in unsecured credit card --
A. Right. Right.
01:31 Q. Right?
When bankruptcy was filed and then your amended bankruptcy, you have Schedule F --
A. Right.
Q. -- from Exhibit 1, Bates Number 102; and here Mr. Lightfoot
01:31 actually lists every single credit card that you've told him

01:31 about, right?
A. Yes, sir.
Q. Because he can't list credit cards that he doesn't know about, he relies on you and/or Mrs. Porteous to give him the
01:32 financial picture so he can make a true and correct listing on here?
A. That's correct.
Q. Of course, Fleet, as we determined earlier, is not on it?
A. It's not on it.
01:32 Q. Okay. I believe -- and just by manual counting, there are now 15 credit cards. And I -- you can take my word for it or I'll hand you the exhibit and you can count them up.
A. I have no reason to doubt your representation.
Q. And now -- and now Regions Bank --
01:32 A. Right.
Q. -- is also listed, for $5,000, correct?
A. Yes, sir.
Q. More importantly, the amount of unsecured debt has gone up to 196,000, correct?
01:32 A. Yes, sir, that's what it says.
Q. That's from the workout letter, where it was less?
A. Whatever it was, yeah.
Q. You were a federal judge at this time, of course?
A. Right.
01:32 Q. And you filed a financial disclosure report for calendar

01:32 year 2000 and -- on May 10th, '01, correct?
A. Right.
Q. I'm referring to Exhibit 3, Bates Number 20 -- I'm sorry, 2 --
01:33 A. 00239.
Q. 239.
And this is your disclosure, is it not, sir?
A. Appears to be, of course.
Q. Well --
01:33 A. It is. I mean, it says it's me.
Q. Let's look at the last page, Bates Number 242.
A. That's me.
Q. That's your signature, right?
A. (Nodding head).
01:33 Q. Okay. Now, here, under Section VI -- Roman Numeral VI, I believe, "Liabilities" --
A. Yes, sir.
Q. -- you list but two credit cards: MBNA credit card, Value Code J; and Citibank credit card, Value Code J?
01:33 A. Right.
Q. And the legend on the bottom that has "Value Code" says, "J, $15,000 or less," correct?
A. Right.
Q. So, according to your financial disclosure, your
01:34 liabilities did not exceed $30,000, correct?

01:34 A. According to the disclosure.
Q. Okay. Now, according to the disclosure, you have to certify these. Isn't that right, Judge?
A. Right. Right.
01:34 Q. And I believe it says, "I certify that all information given above, including information pertaining to my spouse and minor dependent children, if any, is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable
01:34 statutory provisions permitting nondisclosure," with your signature and signed on the 10th of May, 2001, correct?
A. Yes, sir.
Q. It also says that, "Any individual who knowingly and willfully falsifies or fails to file this report may be subject
01:35 to civil and criminal sanctions," citing -- citing 5 United States Code Appendix, Section 104, which I believe we covered earlier this morning, correct?
A. I believe we did.
Q. All right. Well, Judge Porteous, you listed, as I said,
01:35 two credit cards, which you have admitted to, MBNA and Citi?
A. Right.
Q. In fact, if we go back to Schedule F of Exhibit 1, starting on Bates Number 102, you have not just a Citibank account; but you have -- one, two -- three Citibank accounts, right?
01:35 A. There are three accounts. I don't know if they were in my

name or my wife's; but, yeah, there were three Citi. That's what listed.

Q. Right. But, again, you filed jointly?

A. Yeah. But I'm just saying I -- there are three accounts listed. You're correct.

Q. The first one under Number 4 -- the next one under 4, is $23,987 and change, correct?

A. I can't see it because your arm is there.

Q. I'm sorry.

A. But, again, whatever is reflected is reflected.

Q. The second one to Citi is $20,719.58?

A. Right.

Q. The third one is -- the third Citi account --

A. Right.

Q. -- 17,711.35.

These are both on Pages 102 and 103 of the exhibit, that being Exhibit 1.

Similarly, going back, you say -- you list an MBNA credit card, again, just like Citi, $15,000 or less debt.

Now, the debts for all of the three Citi accounts exceeded 15,000, didn't they?

A. Yes, sir.

Q. MBNA does have one less than 15,000. It has one for $3,212.80, right?

A. Yes.

01:37 Q. But it also has a second one at $30,931.02, correct?
A. Yes, sir.
Q. Therefore, Judge Porteous, your certification of the -- of your liabilities that you signed on April 10th --
01:37 A. May 10th.
Q. I'm sorry. May 10th. Forgive me.
-- was false, correct?
A. It was not correct. It was not accurate, correct.
JUDGE BENAVIDES: Which of the financial reports --
01:38 which year are you --
CHIEF JUDGE JONES: Year 2000.
JUDGE BENAVIDES: 2000 -- of course, if it was filed in 2001, it would refer to the calendar year ending 2000.
MR. FINDER: Correct.
01:38 JUDGE BENAVIDES: All right.
MR. FINDER: For calendar year 2000, that is on Page 239. That is correct, your Honor.
BY MR. FINDER:
Q. Judge Porteous, over the years, how much cash have you
01:38 received from Jake Amato and Bob Creely or their law firm?
A. I have no earthly idea.
THE REPORTER: I'm sorry?
MR. FINDER: I'm sorry. Jake Amato, A-M-A-T-O. Jacob Amato, Robert Creely, C-R-E-E-L-Y, or their law firm.
01:39 BY MR. FINDER:

01:39 Q. Amato & Creely, I believe they are called.
A. Right.
Q. Is that correct?
A. Yeah.
01:39 Q. You do not know how much you've received from them?
A. I do not.
Q. Those men or their -- and/or their firm, correct?
A. That's correct.
Q. It could have been $10,000 or more. Isn't that right?
01:39 A. Again, you're asking me to speculate. I have no idea is all I can tell you.
Q. When did you first start getting cash from Messrs. Amato, Creely, or their law firm?
A. Probably when I was on state bench.
01:39 Q. And that practice continued into 1994, when you became a federal judge, did it not?
A. I believe that's correct.
Q. Now, when Messrs. Amato and Creely -- and I'm only talking about them right now --
01:39 A. I understand.
Q. -- and their law firm, not -- we'll talk about others later. But when those men gave you money, did you consider it a gift or a loan or income?
A. I never considered it income. It was either a gift or a
01:40 loan.

01:40 Q. Okay. If it was a loan, did you ever pay it back?
A. No, I didn't.
Q. Then, it became income, correct?
A. I don't know.
01:40 Q. Well, again, your Honor, I don't want to argue with you; but --
A. I'm not arguing with you.
Q. -- if I loan you a hundred dollars and you don't pay it back, that becomes income, correct?
01:40 A. It still may be a gift.
Q. If it was a loan and it's not forgiven as a gift, then it's income, correct?
A. Right.
Q. But none of that ever appeared in your federal tax
01:40 return --
A. No --
Q. -- as income, correct?
A. -- it did not.
Q. Now, if it was a gift, it would have been on your financial
01:40 disclosure reports for 1994, which starts at Bates 215; 1995, which starts at Bates 219; 1996, which starts at Bates 223; 1997, which starts at Bates 227; 1998, Bates 231; through 1999, Bates 235, which we already reviewed.
I could show you these, Judge Porteous; but I'll
01:41 just ask you the question. Did you ever list any gifts from

01:41 Amato or Creely, cash gifts, in any of these financial disclosures?
A. No.
Q. But you certified every one as being true and correct?
01:41 A. Correct.
Q. And there was an omission, then, correct?
A. Not that I'm aware of.
Q. Well, if someone gave you money during those years and it was more than $250, wouldn't that be reportable?
01:41 A. I do not recall receiving any cash from them during that --
Q. Do you recall in 1999, in the summer, May, June, receiving $2,000 for them?
A. I've read Mr. Amato's grand jury testimony. It says we were fishing and I made some representation that I was having
01:42 difficulties and that they loaned me some money or gave me some money.
Q. You don't -- you're not denying it; you just don't remember it?
A. I just don't have any recollection of it, but that would
01:42 have fallen in the category of a loan from a friend. That's all.
Q. Has the loan ever been paid back --
A. No.
Q. -- if you got it?
01:42 A. No.

01:42 JUDGE BENAVIDES: Were any loans reported on the disclosure statements?

MR. FINDER: No, sir.

THE WITNESS: I believe -- I'm not sure, but I don't know the reported amount on the loans.

01:42 JUDGE BENAVIDES: But whether a loan or a gift, it wasn't -- it wasn't --

THE WITNESS: It wasn't reported.

JUDGE BENAVIDES: -- to the extent that they might exist, they weren't reported, either as a loan or a gift?

01:42 THE WITNESS: That's correct, Judge.

MR. FINDER: Right.

BY MR. FINDER:

Q. The exhibits that I just talked about, the years 1994 through '99, all have sections on liabilities and those are not reported?

A. That's right.

Q. If I misstate, please correct me.

A. No. You're correct.

01:43 Q. Other than gifts of cash, did you ever fail to report -- from lawyers or others, not just Creely and Amato or their law firm, but anybody else, not including your personal family members -- cash gifts for entertainment or family needs, including but not limited to hunting trips, fishing trips, airfare, lodging, dining, trips out of the country or out of

state, such as Washington, D.C. or Las Vegas, parties for your children, stipends for your children, tuition for your children, car notes, mortgage payments, or gambling expenses for you or your wife?

A. I'm sure I didn't include anything on that.

Q. And I have the reports here if you want to refresh your recollection.

A. I understand.

Q. Did you ever report gifts that your court staff may have received along with you, such as dining, travel, or entertainment?

A. I'm sure I didn't.

Q. And I could go through that for every one of these reporting years, but would that be -- your answer be the same for years 1994, 19 -- through 1999 inclusive?

A. I absolutely agree that that's what those documents show and certify.

JUDGE BENAVIDES: You're referring to the same questions as to reporting on those other years?

MR. FINDER: Yes, sir.

JUDGE BENAVIDES: All right. Counsel, with respect to that last question, was -- was there an exception -- I thought there was a report of a couple of fishing -- hunting trips or fishing trips.

MR. FINDER: I believe those were Bar -- related to

01:45 Bar associations, but let me look quickly so I don't make a mistake.

JUDGE BENAVIDES: I thought there were a couple of trips that he reported, at least in the exhibits that I saw.

01:45 MR. WOODS: Two hunting trips.

JUDGE BENAVIDES: Two hunting trips.

MR. WOODS: Rowan and the other --

THE REPORTER: I'm sorry?

MR. WOODS: I'm sorry.

01:45 THE WITNESS: There were two included in the original complaint filed by Justice, but not included in the ultimate charge from the Court.

BY MR. FINDER:

Q. In the documents that I referred to, I didn't see hunting

01:46 trips. I've seen reimbursements from Bar associations, but not hunting trips; and if I missed it, please correct me.

A. We had --

MR. WOODS: Judge Porteous is correct. There are two instances on his financial disclosure forms where he reports a

01:46 Rowan -- Rowan Drilling Company trip.

THE WITNESS: "Rowan." Yeah.

MR. WOODS: And one other, Diamond.

THE REPORTER: I'm sorry?

THE WITNESS: Diamond.

01:46 MR. WOODS: Diamond Drilling Company.

01:46 JUDGE BENAVIDES: So, with those exceptions, there was no reports --

MR. WOODS: Yes.

JUDGE BENAVIDES: -- of loans or gifts or anything 01:46 with respect to hunting trips or any of these other things, with the exceptions of those ones?

MR. WOODS: That's correct. There are none except those two.

MR. FINDER: And I'm still looking, and I haven't seen 01:47 them. So, I'm not sure if it's for these years or not; but I think --

JUDGE BENAVIDES: I don't know. It may be a different reporting period.

(Sotto voce discussion between counsel)

11:59 BY MR. FINDER:

Q. Judge Porteous, I'm going to show you from Exhibit 20 --

MR. FINDER: Bates Number 585, your Honors. Let me make this smaller.

BY MR. FINDER:

01:48 Q. Do you recognize this, sir, a casino credit application for Harrah's casino?

A. Yes, sir, that's what it says.

Q. Okay. And the purpose of this is what?

A. To be able to sign markers.

01:48 Q. Correct.

01:48 And it is dated April 30th, 2001, correct?
A. Right.
Q. And that is just two days -- three days -- March has 31 days -- three days after bankruptcy, correct?
01:48 A. Yes, sir.
No. Wait.
MR. WOODS: April.
BY MR. FINDER:
Q. April. I'm sorry.
01:48 After your -- forgive me. After your amended petition, it was a couple -- two and half, three weeks after your amended petition?
A. Yes, sir.
Q. You list under "Financial Information" income of over a
01:48 hundred thousand --
A. Right.
Q. -- in salary.
Over $250,000 in a home?
A. Right.
01:48 Q. Indebtedness, zero, correct?
A. That's not my handwriting. I don't -- I don't know who filled that out.
Q. Is this your handwriting?
A. That is.
01:49 Q. So, you don't know --

01:49 A. That is not my handwriting.
Q. Well, when you signed this, was there anything on there? Did somebody put it on there after you signed it?
A. I have -- cannot tell you that. I don't know that. But
01:49 that is not my handwriting.
Q. And --
A. If I look at the rest of it, I can tell you if it is.
Q. Well -- (Indicating).
A. The rest of it -- now, don't -- okay. You get towards the
01:49 top, that's --
JUDGE BENAVIDES: There's a certification above your handwriting. "I certify that I reviewed all the information provided above and it is true and accurate."
THE WITNESS: I don't -- yeah, Judge. I'm just saying
01:49 it's not my handwriting is all.
BY MR. FINDER:
Q. So, even though it's certified as being true and correct, you don't take responsibility for the indebtedness --
A. I don't know that that was on there when I signed it. I
01:49 just don't have any recollection.
Q. We talked about Messrs. Creely and Amato and their law firm, the law firm of Creely & Amato.
A. Right.
Q. Mr. Creely is what kind of a lawyer? What kind of a
01:50 practice would you say he has?

01:50 A. Over the years, I think it's changed. Now he -- he was in -- for awhile into multidistrict litigation, complex litigation, class action type litigation.

Q. Mr. Amato started off pretty much as a personal injury lawyer, didn't he?

A. Yeah.

Q. And throughout most of his career considered himself --

A. I think he was a personal injury lawyer. I never knew Jake to take a divorce case or anything like that.

Q. And nor did he practice that often in federal court, correct? As far as you know?

A. As far as I know.

Q. Other than Messrs. Creely and Amato and their law firm, we talked about other lawyers in this case, such as Mr. Levenson. Have you received any cash from Mr. Levenson?

A. No, not that I -- to the best of my knowledge, I have never received any cash from Mr. Levenson.

Q. But Mr. Levenson, along with Messrs. Creely and Amato, it would not be uncommon for them to take you out to lunch?

A. That's correct.

Q. And -- or dinners?

A. Yeah. On an occasion, I would think, yeah.

Q. Well, Mr. Levenson took you out to some places for lunch or -- and/or dinner, such as Ruth's Chris or, before Hurricane Katrina, Smith & Wollensky's. Isn't that correct?

01:51 A. I'm sure that's correct.
Q. And some -- and you were never -- you never paid, did you?
A. No.
Q. Now, other than Messrs. Amato and Creely, who else had --
01:52 what other lawyers -- lawyer friends of yours have given you money over the years?
A. Given me money?
Q. Money, cash.
A. Gardner may have. Probably did.
01:52 Q. Let's talk about --
A. But I don't recall any others.
Q. Let's talk about Mr. Gardner.
A. All right.
Q. He's also a -- he was a divorce lawyer, wasn't he?
01:52 A. Mr. Gardner tries to do everything.
Q. So, if he said that he's a family lawyer, he -- that would be --
A. I think that's what his practice is now.
Q. But not -- as far as you know, his practice is not
01:52 primarily in federal court?
A. No, not that I'm aware of.
Q. And when is the last time Mr. Gardner gave you money?
A. Before I took the federal bench, I'm sure.
Q. Okay. And do you recall how much?
01:52 A. Absolutely not.

01:52 Q. Now, when you were a state judge, did you ever report any of these cash gifts on your Louisiana disclosure forms?
A. No. I don't think we actually received forms, but I don't remember that.
01:53 Q. Okay.
A. Whether you received a form like the federal government, where you have to fill it out, I don't believe they had reporting forms at the time. I know what the statute says, but I don't think it's like it is in federal court.
01:53 Q. Before you became a federal judge, you used -- as a state judge, you used to send something called "curatorships" over to the Creely-Amato firm, did you not?
A. And Gardner and all those, yeah.
Q. Just talking about Creely and Amato and their law firm
01:53 right now. You would occasionally, after sending them curatorships -- and for the record, what is a -- how would you describe a curatorship?
A. It's for an absent defendant. It could be in a variety of situations. The most common two are executory process and then
01:53 interdiction.
Q. And after receiving curatorships, Mr. -- Messrs. Creely and/or Amato and/or their law firm would give you money, correct?
A. Occasionally.
01:54 Q. You mentioned before that you read the grand jury

transcript of Mr. Amato and were familiar with his allegations about a fishing trip?

A. Right.

JUDGE BENAVIDES: Are you leaving the curatorship?

MR. FINDER: Yes, sir.

JUDGE BENAVIDES: You had an open-ended question about whether he received money from these people after they were appointed a curatorship.

MR. FINDER: Yes, sir.

JUDGE BENAVIDES: Do you intend to establish any relationship between the receipt of money and the curatorship?

MR. FINDER: Not through this witness.

JUDGE BENAVIDES: Okay.

MR. FINDER: But if the Court has questions --

JUDGE BENAVIDES: I just didn't know whether to -- I don't want to interrupt you --

MR. FINDER: That's all right.

JUDGE BENAVIDES: -- or your train of thought about it but --

MR. FINDER: Okay. Well, let -- well, we'll -- so I won't have it open-ended, let me ask the question.

JUDGE BENAVIDES: Go ahead.

BY MR. FINDER:

Q. During the time you were giving Creely and Amato and the law firm curatorships and you were getting cash back, was that

01:55 cash that you received a kickback for the curatorship, in your mind?

A. No, sir.

Q. Not in your mind?

01:55 A. Not in my mind.

JUDGE BENAVIDES: Let me ask a question. According -- and it's -- you have been afforded the grand jury testimony, we have seen the grand jury testimony, everybody has seen the grand jury testimony. But it would seem that there is

01:55 testimony before the grand jury that there was a return in the exact same amount, minus expenses, of the curatorship that was returned to you, according to one of the witnesses.

THE WITNESS: That's apparently what it says. I agree.

01:55 JUDGE BENAVIDES: Is that true or not?

THE WITNESS: Not -- to the best of my knowledge, that is not correct.

JUDGE BENAVIDES: You would not know whether you would receive the same money after appointing someone a curator that

01:55 he would get, minus his expenses?

THE WITNESS: I don't recall that occurring. You're ask -- again, we're back to 1994 and before. I know I sent them curators --

JUDGE BENAVIDES: You know, you have immunity --

01:56 THE WITNESS: I know.

01:56 JUDGE BENAVIDES: -- from all criminal prosecution --
THE WITNESS: I understand.
JUDGE BENAVIDES: -- except perjury.
THE WITNESS: I understand that.
01:56 JUDGE BENAVIDES: And your -- and, so, that would be -- if it matched the expense -- the amount each time --
THE WITNESS: I don't --
JUDGE BENAVIDES: -- except for expenses, that would be a coincidence?
01:56 THE WITNESS: I don't know if it matched each time. That's all I can tell you, Judge. I don't know.
JUDGE BENAVIDES: I understand.
BY MR. FINDER:
Q. Didn't you start sending -- Judge Porteous, didn't you
01:56 start sending curatorships over to Mr. Creely when he demurred to get -- give you more money?
A. I've read his testimony. I know that's what he says. I just -- he "demurred."
Q. Maybe I'll use a different word instead of "demurred."
01:57 A. "Refused."
Q. Objected to or refused to give you more money, isn't that when the curatorships started?
A. I don't know the date the curatorships started; so, I can't tell you that.
01:57 Q. Do you recall --

01:57 A. I don't remember when I first started sending them.
Q. Do you recall calling Mr. Creely's secretary and saying, "How much have you received in curatorships" before asking for money?
01:57 A. I don't recall calling her. I'm not saying I've never spoken with his secretary.
Q. Do you recall Mr. Creely refusing to pay you money before the curatorships started?
A. He may have said I needed to get my finances under control,
01:57 yeah.
Q. And the curatorships, therefore, would be a source of income for Mr. Creely -- to pass through Mr. Creely and his firm to you, correct?
A. That's a speculation or opinion. I don't -- I don't know
01:57 what you want to call it.
Q. What is your recollection in May or June of 1999 of going on a fishing trip with Mr. Amato? Do you recall going on a fishing trip?
A. I know I went with Jake on a trip with Mitch Mullin.
01:58 Q. Actually, you went on a lot of fishing trips with Amato and Creely, mainly Creely.
Have you heard of a place called Delacroix?
A. Oh, yeah, "Delacroix."
Q. "Delacroix." Excuse me for my mispronunciation.
01:58 That's property that he either owned or had a

01:58 lease on, correct?
A. Correct.
Q. And fishing would often take place there, correct?
A. Oh, yeah.
01:58 Q. And not just you but other elected officials would be invited?
A. The judges, yes.
Q. And you went fishing there numerous times?
A. Over the years?
01:58 Q. Yes.
A. Yeah.
Q. You never were charged for any mode of --
A. No, sir.
Q. -- transportation, any refreshments, things of that nature?
01:58 A. No, sir.
Q. All right. So, getting back to the fishing trip with Mr. Amato in May or June of 1999, which you -- which you referenced, you brought up, Mr. Amato -- do you recall telling Mr. Amato in a very emotional way that you had a wedding coming
01:59 up and you needed cash?
A. I did have a wedding coming up. You're asking me if I -- I don't recall a conversation with Jake.
Q. Who was getting married?
A. Timmy.
01:59 In '99?

01:59 Q. Yes.
A. Timmy.
Q. Your son Timmy?
A. Right.
01:59 Q. And that's the bachelor party you also went to in Las Vegas. We'll get --
A. That's correct.
Q. -- to in a moment. Correct?
A. Correct.
01:59 Q. Well, whether or not you recall asking Mr. Amato for money during this fishing trip, do you recall getting an envelope with $2,000 shortly thereafter?
A. Yeah. Something seems to suggest that there may have been an envelope. I don't remember the size of an envelope, how I
01:59 got the envelope, or anything about it.
Q. Do you recall sending Rhonda Danos over to get the envelope?
A. Rhonda has gone to Jake and Bob's office on numerous occasions. I don't even know if she went in '99.
02:00 Q. Judge, I know 1999 was almost a decade ago; but if you received an envelope from lawyers -- a sealed envelope that had a couple thousand dollars cash in it, do you think you would remember that?
A. That's what I'm saying. I don't know if it was a sealed
02:00 envelope, a bank envelope, or what.

Q. Okay. Let me --

JUDGE LAKE: Wait a second. Is it the nature of the envelope you're disputing?

THE WITNESS: No. Money was received in envelope.

JUDGE LAKE: And had cash in it?

THE WITNESS: Yes, sir.

JUDGE LAKE: And it was from Creely and/or --

THE WITNESS: Amato.

JUDGE LAKE: -- Amato?

THE WITNESS: Yes.

JUDGE LAKE: And it was used to pay for your son's wedding?

THE WITNESS: To help defray the cost, yeah.

JUDGE LAKE: And was used --

THE WITNESS: They loaned -- my impression was it was a loan.

JUDGE LAKE: And would you dispute that the amount was $2,000?

THE WITNESS: I don't have any basis to dispute it.

JUDGE LAKE: All right. Thank you.

BY MR. FINDER:

Q. Your impression was that it was a loan was what you just said, correct?

A. Yes.

Q. Did you ever pay back the loan?

A. No, I didn't. I declared bankruptcy in 2001; and, of course, I didn't list it.
Q. But it wasn't listed as paid --
A. No, it wasn't listed.
Q. So, did you ever pay back the loan --
A. No.
Q. -- was my question.
A. No.
Q. Then, it was income. Is that right?
A. You're saying it's income. If that's what the rules provide --
Q. Sir, I don't say anything. I'm asking you a question. If it's a loan and it's not paid back, you're a federal judge, you know some law --
A. It's income.
Q. -- it's income, right?
A. All right.
Q. But it was never reported on your tax returns, was it?
A. No, it was not.
Q. It was never reported on the judicial disclosure form under "Other Income," was it?
A. No.
Q. Let's talk about the bachelor party.
A. All right.
Q. In approximately May of 1999, your son Timmy was going to

get married that summer, correct?
A. Right.
Q. And Rhonda, I believe, even helped with the arrangements for a party, for you, some of your lawyer and non-lawyer friends, and Timmy to go to Las Vegas, correct?
I believe you stayed at New York-New York?
A. No. I believe we stayed at Caesars.
Q. Was it Caesars? Maybe it was just the ride at New York-New York. There was a picture taken. Do you remember that?
A. Yeah, there was a -- some kind of amusement there.
Q. Now, lawyers paid for you to go, did they not? They gave you money to go on that trip, did they not?
A. I believe the allegations are that there was a ticket that Forstall had purchased at some point, that I used.
Q. Mr. Forstall is Chip Forstall, right?
A. Right.
Q. He gave you a ticket; and then he ended up not going, correct?
A. Not for this trip. This was another trip.
Q. Okay. The other trip was to San Francisco, I believe; and he didn't go?
A. None of us went.
Q. Okay. But you had the ticket?
A. Right.
Q. And you used that ticket, you're saying, to go to

Las Vegas?
A. I may have.
Q. Well, once you get to Las Vegas, you have to stay in a room, right?
02:02 A. Right.
Q. You didn't pay for the room, did you?
A. It appears I did not.
Q. And do you know who paid for it?
A. It appears Mr. Creely paid for it.
02:02 Q. Mr. Creely, that's right.
Now, that was over a period of approximately four days, as I recall, from the records?
A. Three or four.
Q. Three or four.
02:03 That exceeded $250 total for the room, correct?
A. Yeah.
Q. Did that ever appear on your judicial --
A. No, it did not.
Q. -- your form that you file with the administrative office?
02:03 A. No, it did not.
Q. It did not.
Although you considered that a gift, correct?
A. Yeah, it was a gift. I mean, Creely got there before we all did. I know he checked me in.
02:03 Q. And it wasn't just for you. It was also for Timmy?

02:03 A. What?
Q. Timmy stayed for free?
A. Not because of Mr. Creely.
Q. Well, somebody paid for Timmy, right?
02:03 A. I went down and asked the casino to comp their room, and I think they did.
Q. So, if -- so, it's your testimony here today it was not Mr. Creely or one of your other friends that picked up the tab for his room?
02:03 A. Not that I -- for Timmy's room?
Q. For Timmy.
A. No, sir, not that I'm aware of.
I'm trying to remember who was in that room. Probably all my sons were in that room.
02:04 Q. And when you were in Las Vegas, you had to eat?
A. Yes.
Q. And you didn't just eat in the hotel you were staying at; you ate in other places, too, correct?
A. We had one outside meal that I can recall.
02:04 Q. But you didn't pay for that meal, did you?
A. No, I did not.
Q. Who paid for it?
A. A variety -- I think Creely did and maybe some other people picked up various portions.
02:04 Q. But the bottom line is that wasn't comped?

02:04 A. That was not comped.
Q. And when I say "comped," I'm talking about complimentary --
A. No.
Q. -- where a hotel --
02:04 A. No.
Q. -- would pick up the fee, correct?
A. No.
Q. And nothing from that trip to Las Vegas, for you and your sons -- who was your other son, by the way, that went?
02:04 A. Michael.
Q. Michael.
Nothing that went to you or your two children, in your immediate family, was ever reported under a judicial disclosure form, correct?
02:05 A. No, sir.
JUDGE BENAVIDES: How old were the children at that time?
MR. FINDER: I'm sorry?
JUDGE BENAVIDES: How old were the boys at that time?
02:05 THE WITNESS: Give me a second, Judge. '99?
JUDGE BENAVIDES: Oh, let me ask --
THE WITNESS: 28, 26, and 23.
JUDGE BENAVIDES: Okay. They weren't dependents living at home?
02:05 THE WITNESS: Oh, no, sir.

02:05 JUDGE BENAVIDES: All right.

JUDGE LAKE: Did Mr. Creely or Mr. Amato or the other attorneys reimburse the casino for any gambling losses you had, Judge?

02:05 THE WITNESS: Absolutely not.

BY MR. FINDER:

Q. Let me jump ahead, then, in light of that question. On Exhibit 48 -- I believe it's 48 -- yeah, Bates Number 997, 998, the records from Caesar -- I believe that is from Caesars

02:06 Palace.

A. All right.

Q. May 20th, 1999, that's when you were in Las Vegas for the bachelor party, correct?

A. I believe so.

02:06 Q. Okay. Well --

A. May -- I know we went '99. It's before the wedding. That's the right date.

Q. I mean --

A. It's before the wedding.

02:06 Q. For the record, that's your name, correct?

A. Right.

Q. And that's the city where you live, correct?

A. Right.

Q. And were you also there in October of '99?

02:06 A. Certainly appears that I was.

Q. Okay. Well, let's talk about May.
A. All right.
Q. May 20th, 1999, looks like gambling losses of $1200, correct?
MR. FINDER: And we're going to follow up with a summary witness on this, but I wanted to jump ahead.
JUDGE BENAVIDES: I don't know if you got a response to that last question.
MR. FINDER: I'm going to clarify it with the next page.
BY MR. FINDER:
Q. In all fairness, since -- I should have asked you this question, Judge. Forgive me.
A. All right.
Q. Have you ever seen this record before?
A. If it's one of the exhibits, I know you sent it to me.
Q. Yes. It's from Exhibit 48.
A. Okay. But I don't recall -- I didn't look at it. If you sent it to me, I've got it.
Q. Okay. The very next page, Bates Number 998 --
A. All right.
Q. -- the same exhibit, 48 --
A. Fine.
Q. -- it shows from the period May 20 to May 22. And on the prior page, we were talking about May 20. So, that's

consistent, correct?
A. All right. All right.
Q. "Win/loss," and it shows negative -- or 1,200 with a minus sign, correct?
02:08 A. Yeah.
Q. Would that suggest to you that's a loss of $1200?
A. It appears to be.
Q. Okay.
A. Okay. Wait. Let me just see something.
02:08 Okay. All right.
Q. For the record, that's the number, "998"?
A. Yeah.
Q. Now, as you said, you were only in Las Vegas for about three or four days, right?
02:08 A. Yeah.
Q. Okay. Let's look at your Fidelity Bank statement for May 25th. Shows a deposit of $5,000?
A. Correct.
Q. Was that -- were those winnings?
02:08 A. They were.
Q. So, you won at some casino, even though it wasn't the one we just looked at?
A. I was able to bring that much money home, but it was still owed on credit cards. So, I -- when you say it was a winning,
02:08 I basically broke even when you added it all up.

02:08 Q. So, let's get this straight. You've -- your amended petition was filed -- or your bankruptcy, was filed in 2000. About six months -- or nine months, perhaps, before that, you were in Las Vegas, gambling, and you came back with $5,000 after you lost about 1200 at a different casino, correct?

02:09 A. I don't know if it's a different casino.

Q. It could have been the same one?

A. Could have been the same one.

Q. Well, but the records don't show winnings, do they?

02:09 A. You know -- well, when you're playing at a table and winning, casinos do not traditionally keep track of that.

That trip, if you have those records, I think would probably establish that the markers I signed on the very first night there were paid off that very same day; but they

02:09 don't show the -- how the money was given out. They just don't do it that way. That's between the casinos and how they transact business. You're not given a 1099.

So, all I can tell you is I did win.

Q. So, it's your testimony that that money, the 5,000, was

02:10 from gaming; it wasn't from lawyers or friends?

A. Came from no one.

Q. Okay.

JUDGE BENAVIDES: What was the difference? 3800, roughly?

02:10 MR. FINDER: Yes, sir.

BY MR. FINDER:
Q. Judge, do you remember a case called "Liljeberg"?
A. I do.
Q. Very complex litigation, wasn't it?
A. I would say.
Q. As a matter of fact, before you got it, I think it went through several district judges.
A. Oh, it went through a bunch of different judges.
Q. And, then, one day it ended up in your court; and you were ultimately the trial judge, correct?
A. Right.
Q. That lawsuit, sir, was filed -- well, let's not guess.
Let me show you what's been marked as Exhibit 82. Do you recognize this as the docket sheet for Liljeberg?
A. Exhibit 82.
Q. That's what I have up on the screen.
A. Yeah, that would be the docket sheet, which seems to indicate it was filed in '93.
Q. What did I say?
A. May --
Q. I'm sorry. June 1, 1993. What did I say?
A. I don't know.
Q. I thought you --
A. No, no.
Q. -- said I misspoke.

Okay. Does this appear to be the docket sheet?
I'm happy to show it to you.
A. Yeah, it appears to be the docket sheet.
Q. All right. Let's look at the some of the lawyers on there.
We already talked about this gentleman, Joe -- Joseph Mole --
A. Right.
Q. -- correct?
A. Right.
Q. And Don Gardner?
A. Right.
Q. Now, Don Gardner, as you said, as far as you know, isn't a federal court practitioner?
A. No, as far as I know.
Q. And this is a complex case?
A. Very complex.
Q. But he's your buddy and he's appearing for the plaintiff, correct?
A. Correct.
Q. Let's look at some of the defense lawyers.
MR. WOODS: Appearing for the defense.
MR. FINDER: "Plaintiff, Lifemark."
MR. WOODS: Okay.
BY MR. FINDER:
Q. For the defendant in Liljeberg -- on -- this docket sheet says "Defendant Liljeberg," correct?

02:12 A. Right.
Q. Jacob Amato?
A. Right.
Q. Who was -- unlike his partner Mr. Creely, who did MDL
02:12 cases, Mr. Amato typically didn't do this kind of case, did he?
A. I would think that's correct.
Q. You don't think I'm correct?
A. No. I would think that was correct.
Q. Oh, forgive me.
02:12 Lenny Levenson?
A. Correct.
Q. Also not typically trying these type of cases in federal
court, correct?
A. He -- maybe not federal court, but he did some fairly
02:12 complex litigation.
Q. Both of whom are your friends, correct?
A. Absolutely.
Q. And I believe, according to the docket sheet, the case was
originally filed June 1, 1993. That's what it says, right?
02:12 A. That's what it says.
Q. June 1, 1993.
A. All right.
Q. Now, let's jump ahead to September 19th, 1996. The case
has been around for two years, right?
02:13 A. Right.

02:13 Q. Motion by Party Liljeberg to bring in, among the following attorneys, Jacob Amato and Lenny Levenson, correct?
A. Right.
Q. You're the judge at this point, right?
02:13 A. Right.
Q. And you allow them in?
A. Yeah.
Q. Okay. I skipped one.
Let's go back to April 4th, 1996. Lifemark
02:13 brings in Joe Mole --
A. All right.
Q. -- to be one of their lawyers, right?
A. Yeah, right.
JUDGE BENAVIDES: What was the name? Was that Mole?
02:13 MR. FINDER: M-O-L-E, Joe Mole, Joseph Mole.
BY MR. FINDER:
Q. Then, on September 12th -- and I think we covered this on September 19th, but on September 12th it looks like St. Jude Hospital brings in Lenny Levenson, correct?
02:14 A. Right.
Q. But St. Jude was affiliated with Liljeberg, right?
A. I believe that's correct.
Q. And that's why a week later, on September 19th, Levenson is joined by Jake Amato, right?
02:14 A. Yeah.

Q. Okay. Both of whom I believe you said typically wouldn't be in this kind of case.

A. I'm not saying Levenson wouldn't, but Amato typically would not be in this kind of case. Not that he didn't have the capacity, he just typically wouldn't be in this kind of case.

Q. Okay. Then October 2nd, 1996 --

A. All right.

Q. -- Plaintiff Lifemark files a motion to recuse you, correct?

A. Right.

Q. And that is scheduled for a hearing, if I'm reading this docket order right, on October 16th, 1996, correct?

A. Correct.

Q. All right. Frankly, I can't figure out what day you heard the motion to recuse. Maybe it was by submission. But it looks like on October 17th -- on -- I'm sorry. October 17th the hearing was held.

You deny Lifemark's motion to recuse, correct?

A. Right.

Q. I'm sorry?

A. Yes.

Q. All right. After Lifemark loses -- well after -- on March 11th, 1997, they bring in your other friend, Don Gardner, right?

A. Correct.

02:15 Q. Who also, as I believe you testified before, typically wouldn't be in this kind of case?
A. Absolutely.
Q. He's a divorce lawyer, right?
02:16 A. Right.
Q. Or family lawyer. I don't mean to disparage any area -- kind of practice.
A. Call him a divorce lawyer.
Q. Okay. I'm only saying what he calls himself.
02:16 A. I understand.
Q. And did you think it was unusual for lawyers that don't typically practice in this kind of complex litigation to, all of a sudden, appear before you?
A. Yeah, sure do.
02:16 Q. Did that concern you or trouble you?
A. No, only to the extent that somebody thought they needed to bring somebody else in.
Q. Well, did you ever bring it to the attention of any party that, "Hey, guys, here's -- here's Amato and Creely. They've
02:16 given me money in the past. I want you to know about that because under the canons of ethics I'm supposed to avoid the appearance of impropriety and tell you about these kind of things and recuse myself if the parties have an objection"?
A. I didn't do that.
02:16 Q. So, looks like Mr. Mole, on behalf of Lifemark, brings in

02:17 Don Gardner to kind of even the playing field, so to speak, correct?
A. That's --
Q. For whatever reason he had, he brought in Mr. Gardner,
02:17 right?
A. Correct.
Q. Because he's already lost the recusal motion, right?
A. I don't know if that's why, but he -- he brought him in.
Q. Well, it followed the recusal?
02:17 A. It followed the recusal.
Q. Now, we have a non-jury trial, a bench trial, correct?
A. Yeah.
Q. And that starts June 16th, 1997?
A. Right.
02:17 Q. And that's some years after this lawsuit has been filed, correct?
A. Yeah.
Q. Moving ahead to April 26th -- tried June 16th, and it looks like the trial went, according to -- if I'm reading this right,
02:17 Smoothman --
A. It ran on for a period of time.
Q. At least until July 23rd, 1997, correct, because it says, "matter taken under submission" --
A. Yes. Yes.
02:18 Q. -- 1997. And judgment was not rendered until April 26,

2000, if I'm reading this right --
A. You're reading correctly.
Q. -- when you had your findings of fact, conclusions of law?
A. Right.
02:18 Q. Not to beat a dead horse, Judge Porteous, but you've told this panel that Amato and Creely have given you money, although you can't remember specifics, and you think that Gardner has given you money, but that was not disclosed to any of the other lawyers in this case, correct?
02:18 A. That was not.
Q. Lenny Levenson -- I'm sorry.
Don Gardner was -- you stood up at his wedding, correct?
A. I went to his wedding. I don't know if I was in it; but, yeah, I went to his wedding.
02:19 Q. And you're the godfather of his daughter -- one of his daughters, right?
A. Uh-huh.
Q. And, Judge Porteous, as we just looked on the docket sheet, Liljeberg was pending in 19 -- in May, June, 1999 --
02:19 A. It was.
Q. -- when you went to Vegas courtesy of Creely and others and when you got an envelope, whether it's a banker's envelope or manila, some kind of envelope from the Creely-Amato law firm, right?

02:19 A. Yes, sir, it was pending.
Q. That was during the pendency of that lawsuit?
A. Right.
Q. You didn't tell anybody about that, did you?
02:20 A. I did not.
MR. FINDER: May I have a moment to confer with my co-counsel?
CHIEF JUDGE JONES: Sure.
(Sotto voce discussion between counsel)
02:20 MR. FINDER: Judge, may we -- Judges -- excuse me -- may we have a ten minute break?
CHIEF JUDGE JONES: Yes.
MR. FINDER: Thank you.
CHIEF JUDGE JONES: Sure. Ten minutes?
02:20 THE WITNESS: I -- at 2:30? I mean --
CHIEF JUDGE JONES: Yes, till 2:30.
THE WITNESS: Okay.
CHIEF JUDGE JONES: Thank you.
(Recess taken from 2:20 p.m. to 2:35 p.m.)
02:35 MR. WOODS: We're excusing Claude Lightfoot from our witness list, but Judge Porteous may want to call him; so, he's going to be on call for --
MR. WINSBERG: We'll be available if there's any need.
CHIEF JUDGE JONES: All right.
02:36 MR. WOODS: And we are also excusing Don Gardner.

02:36 JUDGE LAKE: I want to ask -- may I ask Judge Porteous a question about Mr. Gardner?

MR. WOODS: Yes, your Honor. I think Mr. Finder was going to finish up; and then we were going to allow him to either testify or for you-all to ask questions, however -- what procedure do you want to follow?

JUDGE LAKE: Let me just ask him a question.

Judge Porteous, during the Liljeberg case, while you were assigned to the case, did Mr. Gardner give you any money or give you any consideration of any type, in the form of expenses for trips or anything of that nature?

THE WITNESS: No, Judge, not to my recollection, he did not. Now, the bachelor party, of course, being at the same time, I'm not saying that when we were in Vegas he didn't buy a round of drinks or something; but to the best of my knowledge, no.

JUDGE LAKE: Okay. So, other than the bachelor party, you don't recall Gardner giving you anything of value during the pendency of the Liljeberg case?

02:37 THE WITNESS: No, I do not, Judge.

JUDGE LAKE: Thank you.

THE WITNESS: He and I have been friends for a long --

JUDGE BENAVIDES: And you're fixing to let Gardner leave?

02:37 MR. WOODS: Yes, your Honor.

02:37 JUDGE BENAVIDES: What do we have with respect to Gardner's role, if any, in the bachelor party and the time period for that?

MR. WOODS: Merely the fact that he attended, your Honor. We have no testimony from Gardner that he gave him money during that period of time.

JUDGE BENAVIDES: During the time that he was associated with the Liljeberg case?

MR. WOODS: Yes, your Honor. Yes, your Honor.

02:37 MR. FINDER: All right. May I finish up now?

JUDGE LAKE: Yes.

BY MR. FINDER:

Q. Judge Porteous, I showed you Exhibit 80 when we started off this morning --

02:38 A. You did.

Q. -- your oath. Do you feel you have given true faith and allegiance to the United States since you've been a United States District Judge?

A. Yes, because I've been fair and impartial in every

02:38 proceeding that comes before me.

MR. FINDER: No further questions of the witness.

CHIEF JUDGE JONES: Are you going to ask some more questions about the casino markers?

MR. FINDER: About what, your Honor?

02:38 CHIEF JUDGE JONES: Are you going to ask more

02:38 questions about the casino markers?

MR. WOODS: We're going to have a witness testify about those.

MR. FINDER: Not of this witness, but we are going to ask more questions of other witnesses.

02:38 CHIEF JUDGE JONES: Okay.

Judge Porteous, if you had all this to do over again, would you have filed different financial disclosure statements?

02:39 THE WITNESS: Likely, Judge. I mean, maybe now in hindsight some of it was -- should have been included. The debt was -- the failure to list the correct debt, that was right after the bankruptcy. It was like the end of the world. I mean, my wife was nervous, a wreck, upset. My finances were 02:39 all over the paper. Everybody in America knew my finances. It was just inadvertence, not any intent to hide my finances.

Hell, they were part of the bankruptcy record. They were all over the newspaper.

JUDGE BENAVIDES: All right. The letter from 02:39 Lightfoot to the creditors made specific reference to the exclusion of the -- to exclude this bank with the $5,000 loan. Why was there a specific reference to exclude them from those unsecured creditors that you and Lightfoot were seeking a workout agreement with?

02:40 THE WITNESS: Buddy Butler, as I said before, was --

02:40 is and was a friend of mine. To the extent possible, I wanted to try and pay Buddy back all of his money.

JUDGE BENAVIDES: So, you don't, then, disagree that -- that this bank was not put -- or reported in your 02:40 bankruptcy proceeding as an unsecured creditor, that that was purposefully done?

It was done because you wanted to take care of what you thought was an obligation to a good friend; but there was a specific, conscious decision to exclude it from -- 02:41 exclude them as -- from your list of unsecured creditors?

THE WITNESS: No, no, not from my ultimate list of unsecured creditors. They were listed as -- when I filed the bankruptcy. But in the potential attempt to avoid bankruptcy, Claude Lightfoot attempted to work out payoffs with all of 02:41 these creditors where I would pay them X percentage, but I was omitting Regions from that.

JUDGE BENAVIDES: You conscious -- it seems like there was a conscious desire in the workout agreements not to include the bank with the $5,000 loan to it.

02:41 THE WITNESS: That's correct.

JUDGE BENAVIDES: And then -- and, then, there was a provision, with respect to payments made prior to the bankruptcy filing, which would have been -- which would have shown that -- well, it's kind of like they weren't there but 02:42 they -- did you actually pay them off?

02:42 Actually, they wound up not protected, right, with the rest of the unsecured creditors?

THE WITNESS: Who is that, Judge?

CHIEF JUDGE JONES: The Regions Bank.

02:42 JUDGE BENAVIDES: Regions Bank.

THE WITNESS: They were always an unsecured creditor.

JUDGE BENAVIDES: And you're saying that every application that you've had, everything that you had in the -- in the bankruptcy court listed the bank?

02:42 THE WITNESS: Oh, in the bankruptcy court? Absolutely.

CHIEF JUDGE JONES: I guess what rings a bit hollow -- and maybe you can comment on this, because it's not quite a question. But you say you thought -- were thinking you wanted 02:42 to treat your friend fairly. Well, you didn't write down the Fleet Credit Card, and that got paid off so you could maintain that while the bankruptcy was going on. And, then, you also continued to pay off some of the gambling debts. But you could have -- you could have excluded Fleet and paid that one on the 02:42 side, too, even though that wouldn't be standard bankruptcy.

THE WITNESS: Judge, I've read Mr. Lightfoot's grand jury testimony; and I see that Fleet was paid off. I see that.

CHIEF JUDGE JONES: By your secretary.

THE WITNESS: Yeah, it appears it was paid by my 02:43 secretary. It was. That is a card -- it was my wife's card.

02:43 My understanding --

JUDGE BENAVIDES: Did you --

THE WITNESS: My understanding was all the cards were torn up. I did not know she had kept that card active until 02:43 well after the fact. And that is something she should not have done, but she did. And I've got no defense for her, but she did.

JUDGE BENAVIDES: Who is that that shouldn't have done that?

02:43 THE WITNESS: My wife.

JUDGE BENAVIDES: Not the secretary? It wasn't the secretary that shouldn't have paid it?

THE WITNESS: No, I'm not talking about the payment. I'm talking about the use of the card thereafter, Judge.

02:43 That is just something I regret her doing. As you can tell, it had some casino charges on it, probably several. I don't know when that card was ultimately ended. But I thought she had torn up and cut up all the cards, but that apparently did not happen.

02:44 CHIEF JUDGE JONES: So, she paid that with her separate income?

THE WITNESS: I don't know how it got paid, Judge. It probably came out of my checking -- most of the times checks written on my checking account -- I know you-all find this 02:44 incredible but -- I may have some checks there that I signed,

but the -- my wife dealt with paying the bills. So, I just --

CHIEF JUDGE JONES: That's not what Rhonda Danos said.

THE WITNESS: My home bills, my wife -- all you had -- I'm sure they have the checks. You'll find that her name appears on 90 percent of them. So, I don't know what Rhonda Danos may say about that.

JUDGE BENAVIDES: Well, how would -- how would Ms. Danos -- I'm just trying to understand. If your wife normally took care of those type of bills, how would have Danos been authorized or why she would -- why would she have paid that bill?

THE WITNESS: I don't -- I didn't know that -- till I just saw it, I didn't realize it happened. I don't know, Judge. I can't give you an answer. I'm just being straightforward with you. I can't tell you why. I don't know.

What I would like to do is make a statement in response to that, but I'd rather wait till they complete their case before I do that.

CHIEF JUDGE JONES: That's fine.

THE WITNESS: Okay?

CHIEF JUDGE JONES: Yes.

MR. WOODS: Our next witness is Joseph Mole, and Robert Creely and Amato are on their way. They were ten minutes away, and they were called five minutes ago. So, they -- those are our next three witness.

02:45 JUDGE BENAVIDES: Mole will be a short witness?

MR. WOODS: Joseph Mole will be a very short witness, your Honor.

And I have offered -- based on Judge Porteous' 02:45 testimony, I have offered whether or not he wants to stipulate to the grand jury testimony of Creely and Amato -- and I think he wanted to consider that -- in lieu of -- in lieu of their testimony.

JUDGE LAKE: Why don't you call Mr. Mole, then?

02:46 MR. WOODS: Yes, sir. He's just right here in the hall. It will just take a moment.

Will you ask Mr. Mole in Room 204 to come in?

(Witness being summoned to the stand)

CHIEF JUDGE JONES: Is Ms. Danos coming on as a 02:46 witness?

MR. WOODS: Yes, your Honor.

Mr. Mole, if you would, come up here, sir.

The witness is going to be seated here.

And that's his counsel, Pat Fanning, that is with 02:47 him, your Honor. He's seated back there.

JUDGE LAKE: Raise your right hand.

Do you solemnly swear that the testimony that you shall give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

02:47 THE WITNESS: I so swear.

10:09 we'll take a ten-minute break. Then you can ask questions.

JUDGE PORTEOUS: Thank you.

JUDGE LAKE: Are you through -- are you through with the witness, Judge Porteous? I thought you were.

10:09 JUDGE PORTEOUS: Well, I thought that's what -- I'm finished with the witness.

JUDGE LAKE: Okay.

JUDGE PORTEOUS: May I ask a question?

CHIEF JUDGE JONES: Yes.

10:09 JUDGE PORTEOUS: I intended to call -- well, first, do you want to get into the stipulations?

MR. WOODS: Sure.

Judge Porteous has agreed to stipulate to the grand jury testimony of Leonard Levenson and Chip Forstall

10:10 rather than we calling them as witnesses. And I believe he's agreed also to stipulate to the 302, or the FBI memorandum of interview, of SJ Beaulieu.

JUDGE PORTEOUS: With attached correspondence.

MR. WOODS: And with attached correspondence. Rather

10:10 than us calling Beaulieu, the trustee.

JUDGE PORTEOUS: I was just trying to make inquiry -- I do have a couple of witnesses I would like to call, but I don't know when to possibly tell these folks to be available.

MR. WOODS: Our plan is to put on Jerry Fink next to

10:10 get into similar records; and we hope to do that within, you

01:32 And Judge Porteous has some objections he wants to raise as to the grand jury testimony.

CHIEF JUDGE JONES: All right.

JUDGE LAKE: So, 1 through 96, you're offering?

01:33 MR. WOODS: Yes, your Honor.

JUDGE PORTEOUS: Only two objections in general. One is to the admissibility of those grand jury transcripts. People have come in and testified. Now, the ones that are stipulated to, obviously they'll go in, Mr. Levenson --

01:33 MR. WOODS: Forstall.

JUDGE PORTEOUS: -- Forstall, and Mr. Beaulieu, which is a 302. But the others, I would object to. They clearly are hearsay, and they were not subject to cross-examination.

And on 91 through 96, which are the summaries, I 01:33 would like the underlying documentation, the forms and stuff, made part of the record.

MR. WOODS: We have no objection to that. He's speaking of the exhibits against the wall, which are on a separate exhibit list that's been provided, called "Underlying 01:33 Documents." We have no objection to those being admitted into evidence.

JUDGE LAKE: Where do you intend to keep -- to lodge the universe of admitted documents for purposes of the record?

MR. WOODS: I presume it's going to have to be here, 01:33 in the Fifth Circuit somewhere, your Honor.

03:26 Mr. Creely, the witness box is right here, sir.
And, Ralph, if you'd have a seat inside the rail.
JUDGE LAKE: Please raise your right hand to be sworn.
Do you solemnly swear that the testimony you
03:27 shall give in this proceeding will be the truth, the whole
truth, and nothing but the truth, so help you God?
THE WITNESS: Yes, sir.
JUDGE LAKE: Before we proceed, this courtroom is
large and voices do not travel well. So, please try to speak
03:27 up and speak directly into the microphone.
THE WITNESS: May I sit down?
JUDGE LAKE: Yes.
THE WITNESS: All right. And I -- I have a hearing
difficulty, and I apologize. I have a hearing --
03:27 JUDGE LAKE: We'll try to speak loudly, as well.
THE WITNESS: Okay. Okay. Thank you. I just --
CHIEF JUDGE JONES: Speak up.
THE WITNESS: All right.

ROBERT G. CREELY, DULY SWORN, TESTIFIED:

03:27 **DIRECT EXAMINATION**

BY MR. WOODS:
Q. Mr. Creely, would you state your name to the Special
Committee, please.
A. Yes. Robert G. Creely.
03:27 Q. Okay. I want to show you and hand you what is marked as

03:27 Exhibit 39, which is an immunity order for you. And you've seen a copy of that before, have you not?

A. Yes, sir, I have.

Q. Okay. And you and your counsel, Ralph Capitelli, have met with Mr. Finder and myself; and we've gone over your grand jury testimony and your 302's. Is that correct?

A. I don't know what the 302 is but --

Q. A 302 is a memorandum of interview by the FBI.

A. Yes, sir.

03:28 Q. And you've looked at those, and those are accurate as to your recollection. Is that correct?

A. Yes, sir.

Q. Okay. Tell the Special Committee what your profession is, sir.

03:28 A. I'm a lawyer.

Q. Okay. And where do you presently practice?

A. My practice is from Colorado. I -- I'm admitted to the Colorado Bar, but I -- I don't have any case -- cases in Colorado. I purely practice here in Louisiana. I'm shutting 03:28 down my practice, so to speak; and I am -- I'm working from Colorado, trying cases here in Louisiana.

So, in the last year, I've probably flown back and forth 67,000 miles of travel time to handle litigation matters here in Louisiana.

03:29 Q. How long have you been a licensed attorney?

03:29 A. Since 1974.
Q. Okay. Would you tell the Committee when you first met Judge Porteous and what your relationship was with him in the early part of your career before you formed the partnership
03:29 with Jake Amato?
A. Well, it's hard to say when I first met the judge. We went to the same high school together. We became, I think, friendly when I was employed by him and Jake Amato, Judge Marion Edwards -- not the Marion Edwards related to the governor. And
03:29 I was given a job in Judge Porteous' law firm.
Q. What year was that?
A. I would say that was in 1974.
Q. Okay. And how long did you stay there?
A. Two years. I'm guessing two years.
03:30 Q. And Judge Porteous was there at the time --
A. Yes, sir.
Q. -- for those two years?
A. Yes, sir.
Q. How many people were in the firm?
03:30 A. I think there were -- including myself, there was Judge Porteous -- there was four. Another lawyer came along, and then Jake and I left.
Q. Okay.
A. So --
03:30 Q. And you left in '75?

03:30 A. I'm -- if I'm trying to be as close as I can, it would be '75.
Q. Okay.
A. '76, up in that range.
03:30 Q. And formed a partnership with Jake Amato, and it was the two of you practicing together?
A. Yes, sir.
Q. And what type of law did you practice?
A. Initially, I did real estate work for a good number years.
03:31 Then I did domestic work for about ten years. Then I've started doing personal injury work for the past about ten years.
Q. Okay. Did there come a time when Judge Porteous, while he was on the state bench, began to ask you for cash to assist in
03:31 his expenses?
A. Yes, sir.
Q. What reason did he state that he needed the money, initially?
A. Initially -- and we're going back, I mean years and
03:31 years -- it was various problems, various personal issues that he needed money for.
Q. Such as?
A. I hate to speculate; but it would be things like tuition, different things that he needed in his -- in his personal life.
03:32 Q. Okay. Do you recall approximately when the first time was

03:32 that he asked you for cash?
A. It was when he was on the district bench.
Q. Okay.
A. I don't know the first time that that occurred, but it did
03:32 occur.
Q. Are you aware that he took the state bench in '84 and moved to the federal bench in '94?
A. If those are the dates, then that -- I would have no reason to disagree with that.
03:32 Q. And when you were asked for cash, was it during the period when you were partners with Jake Amato?
A. Yes, sir.
Q. And how did you arrange to provide the cash to Judge Porteous when he would make the request?
03:32 A. Generally speaking, I mean, I don't want to -- I can't specifically tell you each time it happened, but we would take a draw.
Q. Okay. Explain to the Committee what you mean by "take a draw."
03:32 A. Well, we would -- we would go to our bookkeeper and say, "I need X amount of dollars. I need money. I need a check." And she would give us a check, one for me and one for Jake; and we would cash the check.
Q. You didn't give --
03:33 A. That -- that would be charged to us as income, and then it

would be turned over to the Judge.

Q. I take it you didn't give the check to the judge, but you cashed the check and gave the cash to the judge?

A. Yes, sir.

03:33 Q. Okay. How long a period did that go on for?

A. Mr. Woods, I know -- you know, I'll go back -- it went on for a number of years.

Q. Can you give the Committee an idea of approximately how much cash you and Jake Amato, together, gave to the judge?

03:33 A. I would be guessing. I would be guessing.

JUDGE PORTEOUS: Well, your Honor, I'm sorry. If he's guessing, it's speculation. I don't mean to be offensive, but it's pure speculation.

CHIEF JUDGE JONES: I think the Court can take that

03:34 into consideration.

JUDGE LAKE: Just give us your -- the best recollection of the total amount you and your partner paid him.

THE WITNESS: I would say approximately $10,000, thereabout. Maybe more than that but at least 10,000.

03:34 JUDGE BENAVIDES: Mr. Creely, you have -- I'm sorry. I'll speak up.

You have used the term "give" on several occasions, and I assume that you meant that literally. You had no agreement, did you or did you not, with respect to these

03:34 requests being made? You didn't -- did you expect or have any

agreement that you would be paid back?

THE WITNESS: No.

JUDGE BENAVIDES: So, it was a -- a gift?

THE WITNESS: Yes.

JUDGE BENAVIDES: So, you treated it correctly as income and then just made a gift?

THE WITNESS: I paid income taxes on it and that -- it was not to be paid back. I had no intentions on that.

BY MR. WOODS:

Q. Mr. Creely, am I accurate in saying that each time a request was made through you or Jake Amato, the two of you jointly withdrew draws from your firm and gave to the judge in a cash form?

A. Speaking for myself, that's the way it occurred, yes.

Q. Okay.

A. Now, every now and then, you know, he may have -- I don't want to speculate to that either; but, yeah, that's basically the way it worked.

Q. All right. Did there come a period of time while he was on -- still on the state bench that you told him that you couldn't continue to support his lifestyle?

A. Well, when you say "lifestyle," I couldn't -- I couldn't -- we just couldn't keep giving him money is the better way to put it.

Whatever his lifestyle was, it was his lifestyle;

but we just couldn't keep giving him money.
Q. Well, I understand; but I believe you remarked to us earlier that giving him money for car payments or house payments was one thing but you were concerned about whether or not it was gambling and drinking and that lifestyle. Is that an accurate statement --
A. Yes, sir. Yes, sir.
Q. -- of what you related to us?
A. (Nodding head).
Q. And did you tell the judge that?
A. I don't recall if I specifically told him that it was because of his lifestyle, but I told him that I -- we could not continue giving him money, I couldn't continue giving him money.
Q. All right. And that's while he was still on the state bench. Is that correct?
A. Yes, sir.
Q. What happened as a result of that, between you and Judge Porteous, on the issue of giving money?
A. I don't think anything happened.
In our friendship?
Q. No. I'm speaking more of the curatorships.
A. Oh, if you're speaking about curatorships, the curators started coming to my office.
Q. Would you explain to the Committee what a curatorship is?

03:36 A. Yeah. As briefly as I can, it is a court appointed attorney that the -- that the district court, Jefferson Parish, or surrounding parishes or counties would appoint an attorney to represent an absentee defendant.

03:37 JUDGE BENAVIDES: Had Judge Porteous ever appointed you as a -- or assigned you a curatorship prior to the time that you indicated to him that you were not going to give him any more money?

THE WITNESS: Judge, I'm sorry. I didn't hear that.

03:37 Did -- was the question did Judge Porteous ever do that?

JUDGE BENAVIDES: Yeah. Had he assigned you to be a curator or would he make you a curator prior to the time that you told him that you were not going to give him any more money?

03:37 THE WITNESS: I don't recall. I'm sure he may have sent me a curator or two, you know, as a -- but I don't recall specifically getting any. And -- okay.

JUDGE BENAVIDES: And, then, after that time -- I think we're to the point where Mr. Woods is talking about those

03:37 curatorships. How often would you then -- after you told him you weren't going to give money, how frequently would you receive these curatorships from --

THE WITNESS: I think I indicated they were often. Okay? I can't tell you exactly how many there were. There

03:38 were a bunch of them. Not a "bunch," but there were a lot of

them.
BY MR. WOODS:
Q. What was the fee for a curatorship that you would be paid?
A. There was a set fee by the court. And I know we went over that, discussions of, I believe, $175 for -- per defendant.
And the only curators that he would send to me would be what was foreclosure properties that -- properties that were going into foreclosure and that I -- I didn't even know how to do one of those type curators.
But it is a curatorship in which you run an ad and you write a letter and you submit a note of evidence. No court appearance is necessary. Whereas the other types of curators that I've done as a young lawyer would require you to make a court appearance and to make formal notification to -- it would be a little more involved. I don't remember the process.
JUDGE BENAVIDES: Were these, I guess, cases where you didn't know where the defendant was and --
THE WITNESS: Yes, sir.
JUDGE BENAVIDES: And so you would give out a kind of a notice?
THE WITNESS: And even if you were to find the defendant, you would just file a note of evidence, and that would be the last of it.
JUDGE BENAVIDES: And that ended that.

03:39 THE WITNESS: And you would submit to the clerk your request for payment, the clerk of court.

BY MR. WOODS:

Q. And the majority of the curatorships that you received, were those the foreclosure types?

03:39 A. I don't know. I think just about all of them were. Yeah. Yes, sir.

Q. And what expenses would you incur out of a fee of approximately 175?

03:39 A. Whatever it would cost to run an ad in the Times-Picayune newspaper or the newspaper in the area in which their last known address was, and I believe that's it. Then I would file a note of evidence.

And we would be -- we would be reimbursed the 03:40 costs of -- that we spent, also, not just getting a fee but we would also get --

Q. Oh, you'd get the expenses on top of that?

A. Yes, sir.

Q. Okay. And was that something that your secretary could 03:40 handle --

A. Yeah.

Q. -- filing all of those for you?

A. Did -- she handled basically all of that. It's pure clerical.

03:40 Q. Did Judge Porteous make a request of you, after sending you

curatorships, for a portion of the fees that you were being paid by the Court?

A. Yes, sir.

Q. And how did that -- how did he do that?

A. I don't recall how it came about, but it came about. And he got -- and I can't -- I can't tell you that he got all of the curator fees that we generated, but he got a good portion of the fees that we generated from the curators.

Q. What period of time did that cover?

A. I would -- I would be guessing. And it would have to -- as I indicated earlier, when I went to the grand jury, they wanted me to focus on '99 to two thousand -- well, '99 to a period of time. And I spent a lot of effort trying to focus on that time period. But as I recall, it would be before 1999. It would probably be in '98, '97, up in that range.

And the reason that I -- I put that time frame is my secretary of 18 years, Diane Lamule, left my employ in 1999; and she handled all of that.

Q. Okay.

A. So, nothing came after '99 that I'm aware of, that I can -- that I can speak to. So, it would have to have been either '96, '97, '98, up in -- up in that range.

Q. Okay. Keeping in mind that he went on the federal bench in '94.

CHIEF JUDGE JONES: Don't you mean '88, '89?

03:42 A. '94.
BY MR. WOODS:
Q. Yeah. Judge Porteous took the --
A. Okay. Yeah. Right.
03:42 Q. -- federal bench in '94.
A. I'm trying to -- I said definitely after she left, but no more -- no more after that.
So, yeah, it would be before he came to the federal bench, obviously.
03:42 Q. All right. Now, on the federal bench, after '94, were there occasions --
JUDGE BENAVIDES: Before we -- excuse me.
MR. WOODS: Excuse me.
JUDGE BENAVIDES: I have some questions I just want to
03:42 get cleared up before we go on to the time period of the federal bench.
One thing, you said a "goodly portion." Are you talking -- if we want to get more specific, was it more than 50 percent or more than 75 percent of the fee would be paid
03:42 back?
THE WITNESS: Judge, I can't -- I didn't hear that. I am very sorry.
JUDGE BENAVIDES: Would it be more than 50 percent or more than 75 percent of the curatorship fee?
03:42 THE WITNESS: Be more than 50 percent.

03:42 JUDGE BENAVIDES: More than 50 percent?

THE WITNESS: (Nodding head).

JUDGE BENAVIDES: And that was the rule rather than the exception?

03:42 THE WITNESS: That's just my estimation.

JUDGE BENAVIDES: Okay.

THE WITNESS: It's the best I can tell you. It was done. To tell you exactly how much it was done, I couldn't give you that.

03:43 JUDGE BENAVIDES: And was that done at his request or did you volunteer to do that?

THE WITNESS: As I recall, it was his request.

JUDGE BENAVIDES: All right. Thank you.

JUDGE LAKE: Did you understand you were being 03:43 provided the curatorships by Judge Porteous so that you would then be able to reimburse him a portion of your fees? Was the quid pro quo relationship made clear to you?

THE WITNESS: When you say "quid pro quo," do you mean --

03:43 JUDGE LAKE: He would appoint you as curator -- assign you to represent a curatorship and you would then pay him back a portion of your fees; was that your understanding of the arrangement?

THE WITNESS: Yes. But it wasn't -- it was -- it was 03:43 basically a way for me to supply him funds as before instead of

03:43 coming out of my pocket. It was being provided through the curatorships.

It had nothing to do with, "Look, why don't you give me these and I'll give you that back," or "Do something for me and -- you know, and I'll give you this back." It was just -- it just occurred that he -- you know, he got the curator money.

JUDGE BENAVIDES: Now, you said that it was a way for you to provide him money; but, in fact, that money came from the court. So, I assume that there was a plaintiff or a taxing body or someone that was paying the costs.

THE WITNESS: Yes, sir. The plaintiff -- I would assume the plaintiff who filed the suit for the foreclosure would have to post a curator -- fee for a curator.

JUDGE BENAVIDES: So, it was the plaintiff in foreclosure that, in fact, was providing the funds that would ultimately go back?

THE WITNESS: The lending institution that was foreclosing upon the person.

JUDGE BENAVIDES: Thank you.

BY MR. WOODS:

Q. Mr. Creely, after the judge took the federal bench in '94, were there continued requests for cash from you and Jake Amato?

A. I couldn't say "continued," but there was requests, at least one request that I recall.

03:45 Q. Okay. And which one is that?
A. Well, there was some confusion when we met in preparation for this about a particular payment that I thought took -- occurred in '99. And I believe I supplied you or Mr. Capitelli
03:45 supplied you with deposit slips from the -- when I took a draw.
It was an odd number. I think $1,400 -- 1447. And what that was was a $1,000 draw and a $400 plus expense. And I deposited both of those into my personal checking account. I think Mr. Capitelli may have given you those
03:46 deposit slips.
So, the question originally was when did you last do this. And I was either mistaken with my dates -- but the deposit that I thought went to him in '99, in fact, was deposited. So, sometime while he was on the federal bench I
03:46 did give him funds.
Q. I think you're relating to the incident concerning two draws that you and Jake made in May or June of '99, and we had exhibits to show you, showing a deposit by the judge the next day. And you're correct, those didn't match up.
03:46 But do you recall telling us -- and if you would, tell the Committee in your own words. Was there a request to Jake Amato by the judge, to help him on some wedding expenses, and that Jake relayed to you and the two of you then funded?
A. I was advised, the way I recall, that it was for tuition
03:47 expenses. I don't recall wedding expenses.

03:47 Q. Okay. What --

JUDGE BENAVIDES: Who advised you of that? Mr. Amato or the judge?

THE WITNESS: Amato.

03:47 JUDGE BENAVIDES: All right.

BY MR. WOODS:

Q. Okay. And what do you recall he advised you?

A. What I recall about the situation is there was a fishing trip that they went on with a client of ours, on a -- on an

03:47 overnight fishing trip, and that Jake -- I didn't go on this trip.

And Jake came back and said that the judge was emotional in that he couldn't afford to pay a tuition expense and that he wanted to give him some money to help him pay for

03:47 one of his kids' tuitions.

That's the way I recall that. So, there was a draw made and a payment.

Q. Do you recall telling the grand jury that it was for wedding expenses?

03:48 A. If I said it was for wedding expenses, I remember the -- like I say, my recollection today is I thought it was for tuition expenses. But I did give him money.

Q. Have I provided you the grand jury testimony to review?

A. You did, and I read it today. And I think I also read that

03:48 other form from the FBI, and I think there may be some

03:48 conflicts. But my best recollection, whether it was for wedding or whether it was for tuition, I did give him money. Okay? Whatever it was for.

JUDGE LAKE: How much money did you and your partner 03:48 pay him?

THE WITNESS: Judge I don't remember. I thought that it was a thousand dollars apiece. I don't remember the -- the amount. It could have been $2,000 apiece; but I thought it was $1,000 apiece.

03:49 JUDGE BENAVIDES: What time frame is this, Mr. Woods?

MR. WOODS: It's my understanding and Mr. Creely has testified this was in June, '99.

BY MR. WOODS:

Q. Do you not recall this now?

03:49 You've had your grand jury testimony, and you've reviewed it today. Is that correct?

A. I read it this morning, yeah.

Q. Okay.

A. Yes, sir.

03:49 Q. Now, do you recall stating in June, '99, that Judge Porteous asked Jake Amato for $2,000 to pay for his daughter's wedding or something to do with the kids?

A. Something to do with what?

Q. The kids.

03:49 A. Yeah. That's what I'm saying.

03:49 Q. He and Amato split the hundred -- 1,000 each?
A. Okay. That's what I'm saying. It was either a wedding or something to do with the kids. And my recollection was it was a tuition deal. And I think -- I may have read that in that
03:49 interview with the FBI. I don't recall. I can't say word for word.

This isn't a real pleasant thing for me to be here today, and I know I brought this on myself. But whatever it was for -- tuition, wedding whatever, for his kids, personal
03:50 things -- I did it. Okay? I gave him the money.
Q. Can you explain to the Committee what the circumstances were, how the money was given to the judge on that occasion?
A. I think Ms. Danos came by, his secretary, and picked it up.
Q. How -- picked up what?
03:50 A. An envelope with money in it.
Q. It had two checks in it --
A. Oh, no.
Q. -- or did you put cash in it?
A. I'm sorry. It was cash. It was never checks.
03:50 Q. And she picked it up for the judge?
A. That's my recollection, yes.
Q. Did you have a discussion with the judge, expressing some displeasure, the fact that it had gotten so bad that he's sending Rhonda over for it?
03:50 A. If I recall, yeah. We mentioned something to him about

that.
Q. Tell the Committee what you recall telling the judge.
A. I didn't think it was appropriate for him to be sending his secretary over there to pick this up.
Q. And why not?
A. Pardon me?
Q. Why not?
A. Well, I mean, it's quite obvious. It was getting -- I mean, you know -- you know, it's blatant almost -- that you send your secretary over, I mean --
Q. Was that the last time that you and Jake gave cash to the judge?
A. That I recall. But I could have given him -- if he would -- if he would have asked me for something and told me he had a problem, I could have very well have given him cash again. And I -- I may have.
Q. And may have after that time?
A. I could have. I'm not -- I don't know that I did, but I'm not denying the fact that I did. It's just hard for me to put all the pieces together.
I mean, that period of time was a bad part of my life, too. And I'm trying to be as cooperative as I can, as I think I've always been, with you and with the grand jury.
Q. You have been cooperative. Your memory is a little vague.
Do you have trouble remembering the times that

03:52 you gave cash to the judge?
A. Well, yeah, I do. I have problems remembering that.
Q. And why is that?
A. Well, in 2003 my mother died. It's a very emotional thing
03:52 for me. My daughter was admitted into a drug rehabilitation facility for an extended period of time, and I went through a divorce. And my life has been sort of confused, personally confused; and I may not get every fact, every detail. Okay?
Q. Is it also because there were a number of occasions that
03:52 you were giving the judge and you have difficulty remembering -- remembering the specific ones?
A. When he was on the district court bench, I would agree with that. When he became -- got onto the federal bench, as I'm telling you, it was not -- it was not as it was when he was on
03:52 the state bench is what I'm trying to tell you.
Q. But are you also stating that it did continue to some extent?
A. Yes, sir.
Q. And can you give the Committee any idea of how many dollars
03:53 that you and Jake Amato gave to the judge while he was on the federal bench?
A. No.
Q. Can you recall --
A. I specifically recall the incident we just discussed. That
03:53 stuck out in my mind.

03:53 Q. All right. And this was in the summer of '99?
A. If -- I can't give you a date; but it was -- it was in that area, I would imagine. I don't know the exact date. I mean --
Q. And were you aware -- excuse me. I didn't mean to step on
03:53 your answer.
A. That's okay.
Q. Were you aware that Jake Amato had a large case pending in front of Judge Porteous at that time?
A. Yes.
03:53 MR. WOODS: May I have one moment, your Honors?
(Sotto voce discussion between counsel)
BY MR. WOODS:
Q. Mr. Creely, are you aware of the name or the style of that case that Mr. Amato had pending in front of Judge Porteous?
03:54 A. Liljeberg versus Tenet, something to that effect.
Q. And you had attended some of those hearings and watched as a spectator?
A. Probably very brief periods, yes. I would come in and out of -- and, you know -- and if you -- do you want to know the
03:54 reason why?
Q. Well, the point I'm trying to make is you were not an attorney on the case, even though you were law partners with Amato; and you did attend and were familiar with the fact that he was representing one of the parties?
03:54 A. I didn't understand the theory of the case. Nobody has

03:54 ever discussed that case with me; that is, Liljebergs, no one.
Q. We're not -- we're not trying to attribute any of the facts of that case to you.
A. I'm sorry?
03:54 Q. We're not attributing any of the facts to your knowledge.
It's your understanding, though, that Jake Amato had a case pending in front of Judge Porteous that had not been ruled on when that $2,000 was given?
A. If it was given to him before he did rule, obviously, yes.
03:55 I mean, you know -- and that -- that case I -- it was coming to this court no matter what. No matter who won or who lost, that case was coming to this court.
And the reason I stuck my head in from time to time was that Mr. Amato would tell me his version of what was
03:55 going on and Mr. Gardner, who was one of the defense lawyers, would give me his version and I was getting a hundred and eighty degree read on how the facts were bleeding out into the record.
And, so, every now and then, I would stick my
03:55 head into the room to see what the heck was going on.
Q. So, you were familiar with the case, the fact that it was pending and Jake Amato was a party and that the judgment had not been rendered in the summer of '99?
A. I don't know when it was rendered; but I know it was under
03:56 advisement for a year, I believe.

03:56 Q. During this period of time while the judge is on the federal bench, had you taken him hunting and fishing to your fishing place?

A. Yes.

03:56 Q. Did you take him to -- or not "take" him. But did you pay for his expenses in Vegas, at the bachelor party?

A. I don't believe I paid for all of his expenses. And that is confusing. And I believe I explained that to you, and I thought I explained it to the grand jury.

03:56 Q. Did you pay for his room?

A. I could have. I don't --

Q. If the charge records reflect that you paid for the room at Caesars Palace, would that be accurate?

A. Yeah. Okay. If that's --

03:56 Q. Go ahead. You wanted to volunteer something?

A. When I went on the trip, my brother-in-law came, my law partner's son came, I went. And when we went to check in, my brother-in-law's credit card didn't work.

So, he said, "Bob, would you mind paying for my

03:57 room? I'll reimburse you."

I said, "No problem." Same thing with his airfare. I purchased my airfare and my brother-in-law's airfare. And there was some confusion as to amounts because the brother-in-law didn't get invited -- or didn't say he was

03:57 coming until the last minute. So, I know I paid for myself, my

03:57 brother-in-law.

I don't really know how Jake's son's ticket was paid. I know we -- the law office paid it. So, when I checked into the hotel, I checked into the hotel with a lot of baggage, so to speak, myself, my brother-in-law, I think Trey.

And if the records say I paid for his room, then I paid for his room.

Q. Okay.

A. But --

Q. Did you take -- we covered fishing trips.

Did you take Judge Porteous on hunting trips out of the state?

A. Yes.

Q. And what value would you place on those trips?

A. Well, the value on the trips were -- the trip, itself, back in the early Nineties whenever we were going to Mexico was not that expensive. The trip was, if I remember, the $1500 range.

Q. What about after '94?

A. I'm sorry?

Q. What about after he was on the federal bench? You've continued to take him fishing and hunting, haven't you?

A. I think when -- when I went through that information, I tried to go by passport entry and -- in and out of the country; and also I went extensively through my records from '99. The grand jury lawyers asked me to get -- focus on this period of

time.

So, if -- if it was between '99 and whatever time they told me to do it and I -- yeah, there's no secret about that. I took him, I think, on three hunting trips.

Q. Yes, sir.

A. All right.

Q. And what value would you place on those?

A. Oh, the hunting trips would be airfare, whatever that was, the trip itself, some shotgun shells.

Q. Yes, sir.

A. And food and drink was -- went along with the price to go hunting.

Q. Okay. And that was during the period that they asked you to focus on at the grand jury, between '99 and whatever?

A. Yeah. And I think we went before that. I think we went hunting before that, too.

Q. Yes. You went on a lot of trips?

A. I'm sorry?

Q. You went on a lot of trips, right?

A. No. I only went on -- well, you say "a lot of trips." I went on three hunting trips with him, if that's what you're asking me, out of the country.

MR. WOODS: All right. Thank you.

We pass the witness, your Honors.

JUDGE BENAVIDES: Before you pass that --

03:59 MR. WOODS: Yes.

CHIEF JUDGE JONES: Okay. Yeah. Can we take a break?

JUDGE BENAVIDES: Sure.

CHIEF JUDGE JONES: Okay. But, I mean, we can --

03:59 JUDGE BENAVIDES: All right. It's going to be real short.

CHIEF JUDGE JONES: We're going to have to --

JUDGE BENAVIDES: You indicated that you would talk to Mr. Gardner and Mr. Levenson or Mr. Amato about the case and

04:00 you would hear two different sides. And I assume that you were friends with Mr. Gardner and you knew that Mr. Gardner was a friend of the judge's.

And you-all were concerned and cared for the judge, and you knew that you-all were friends of the judge of

04:00 long-standing. Is that correct?

THE WITNESS: Well, I knew -- the judge knew we were friends.

JUDGE BENAVIDES: And you knew Gardner was a friend of the judge's?

04:00 THE WITNESS: Yes, sir.

JUDGE BENAVIDES: And Gardner has testified before the grand jury that he also, over a period of time, gave money to the judge. So, did you-all ever have a chance to commiserate or talk about the judge's problems with respect to gambling and

04:00 needing money; and did you ever have discussions with

04:01 Mr. Gardner about the judge's need for money because of his lifestyle or whatever?

THE WITNESS: Don would bring that up quite often, Don Gardner. And, yes, we did speak about that.

04:01 JUDGE BENAVIDES: So, was it your impression, then, that Mr. Gardner was also giving money to the judge?

THE WITNESS: The only question I have that Gardner -- Mr. Gardner may have given the judge money was that he mentioned on one occasion that I can recall that he -- and this 04:01 is his words -- he gave the judge a "great white," which is, my understanding, a thousand dollars. That was his way of saying that and --

JUDGE BENAVIDES: Was that after he became a federal judge that you had this conversation?

04:01 THE WITNESS: I'm sorry. I don't remember. It may have been from '94 to two thousand and -- I guess, '3 is when everybody -- these problems started coming down. During that period of time, it could have been, yeah.

JUDGE BENAVIDES: Thank you.

04:02 BY MR. WOODS:

Q. Following up on Judge Benavides' question, you also indicated in your testimony that Lenny Levenson made a similar indication to you that he was paying money?

A. Well, the -- what I said about Lenny was that the only 04:02 words Lenny used to me is, "This guy is killing me." And I

think I --

JUDGE LAKE: What word did he use?

THE WITNESS: "Killing me," "wearing me out," was his words. And I think what that meant was -- the judge and Lenny would hang out together more than any of us, and I think that Lenny and he were going out a lot. But I don't believe -- I didn't take that to mean money.

JUDGE BENAVIDES: I'm sorry. Were out of what?

CHIEF JUDGE JONES: Going out a lot.

JUDGE BENAVIDES: Okay. Going out a lot.

BY MR. WOODS:

Q. I'm not sure Judge Lake got the answer he was asking. You said, "The guy is killing me," that's what Lenny said?

A. Yeah.

Q. Okay. And then you had your own meaning to that?

A. Yeah. I had my own meaning. I didn't -- I didn't ask the question of him, "Are you giving him money?" I didn't ask him that.

JUDGE BENAVIDES: Is that like -- let me see if I can parlay it into something that it might mean to me. It's like -- would that mean, like, "The judge is leaning on me too much?"

CHIEF JUDGE JONES: No. It meant drinking and carousing.

04:03 JUDGE BENAVIDES: Oh, that.
CHIEF JUDGE JONES: Right?
JUDGE BENAVIDES: You mean keeping him out late or --
THE WITNESS: I got the impression that they were
04:03 partying, so to speak, together quite often. That's my impression from that. And -- that's my impression from that.
BY MR. WOODS:
Q. But from Gardner, you didn't have that impression about the "great white," right?
04:03 A. That's what Mr. Gardner told me, but I don't -- I didn't ask because I didn't want to know all of the other facts. But I -- my personal opinion means nothing, but -- so, yeah, that answers -- that's my answer.
Q. Okay.
04:03 CHIEF JUDGE JONES: We'll take -- we'll take a ten minute break here.
(Recess taken from 4:03 p.m. to 4:16 p.m.)
CHIEF JUDGE JONES: Be seated, please.
Were you finished?
04:16 MR. WOODS: I had passed the witness, your Honor.
CHIEF JUDGE JONES: All right. Well, I had one question, Mr. Creely.
In that Liljeberg case, did your partner's compensation depend in any way on the outcome of the trial?
04:16 THE WITNESS: With Gardner or the judge?

04:16 CHIEF JUDGE JONES: The Liljeberg, your -- Amato, did his compensation depend in any way on the outcome of the case?

THE WITNESS: My conversations with Amato?

CHIEF JUDGE JONES: Yes, sir.

04:17 THE WITNESS: Okay. My conversations were with Amato, was -- any partner with someone with -- spending a tremendous amount of time as he did in preparing for this case, was, "How is the case going?"

And he would tell me, "It's going great."

04:17 JUDGE LAKE: I don't think you understood the question.

Did Mr. Amato's compensation in the case depend on the outcome?

THE WITNESS: Oh, no, I don't believe so. It's a 04:17 straight contingency fee contract. I have not seen the contract, but I would --

CHIEF JUDGE JONES: Well, it was a contingency, though?

THE WITNESS: Well, a percentage.

04:17 CHIEF JUDGE JONES: Yeah. So, if they -- so, if your client -- if the Liljebergs won, then Mr. Amato would get a bunch more money?

THE WITNESS: Yes, ma'am.

CHIEF JUDGE JONES: That's all I --

04:17 THE WITNESS: It wasn't any kind of scale thing if

they won. It was just a flat contingency fee.

CHIEF JUDGE JONES: Right.

THE WITNESS: And I don't remember what the number was. It was a small percentage, I believe. I want to say, 4 percent or Levenson and our firm split 10 percent, something like that. I don't remember the exact amounts.

So, please don't hold me to that. Mr. Amato could probably better tell you that.

CHIEF JUDGE JONES: All right. Judge Porteous, do you have questions?

JUDGE PORTEOUS: Just briefly, your Honor. If the witness doesn't mind -- I've known him this long. If the Court doesn't mind, I have a hard time calling him Mr. Creely. Do you mind if I call him Bob?

CHIEF JUDGE JONES: Whatever you want.

CROSS-EXAMINATION

BY JUDGE PORTEOUS:

Q. Is that comfortable with you, Bob?

A. Yes.

Q. Okay. I know you're uncomfortable, and rightfully so.

Let me ask you this. Were you interviewed by the FBI when I was applying for this job?

A. Yes, sir.

Q. And did they ask you about my background?

A. Yes, sir.

04:18 1 Q. And anything adverse to report?
2 A. No.
3 Q. Did they ask you those kind of questions? Did you have
4 anything adverse to report?
04:18 5 A. No.
6 Q. Did they ask if I had financial problems or that you were
7 aware of, any of those kinds of questions?
8 A. They didn't ask those questions.
9 Q. Did they ask at the very end -- very end of the interview,
04:19 10 which they always do, "Is there anything you want to tell us
11 about Judge Porteous?"Did they ask the generic question like
12 that or do you remember?
13 A. I don't remember.
14 Q. Well, you certainly didn't tell them I was getting money
04:19 15 from you?
16 A. No.
17 Q. And when you did your interview with the FBI -- am I
18 talking loud enough, Bob? Can you hear me?
19 A. Yeah, I can. I can. Yes, sir.
04:19 20 Q. When you did your interview with the FBI on December 8th of
21 2003 -- in fact, as I'm looking at this, apparently you
22 reported to them the following, "Judge Porteous did not ask for
23 a kickback from the curatorships."
24 A. For what?
04:19 25 Q. A kickback from the curatorships. That's what you told

04:20 A. Yeah.

And you ruled against me, and this court had to overrule you. I don't know if you remember that.

Q. I do remember it. But what I'm saying is that suggests 04:21 that what you did for me didn't have any influence on if I thought the position was right or wrong.

A. I did not give you money for anything. And as you know, I tried one case in front of you, my first jury trial; and it was a big to do. Everybody was making fun of me because I 04:21 primarily did domestic work. And I tried one jury trial in front of you on the district bench.

I didn't -- I had one interdiction that I tried in front of you. And I believe somebody asked me to go over to the courthouse because somebody had discharged with a weapon in 04:21 Kenner. And you made fun of me in front of the courtroom because the individual didn't show up and I must have had to plead him to get him out.

And I said, "Look, I'm leaving."

You said, "You can't leave. You just can't."

04:21 And I said, "Well, I'm leaving." Somebody asked me to do a favor, and the person doesn't even show up; and it brought laughter to the courtroom.

But I never did -- I think I put a consent judgment on your record in a divorce case, but I don't recall 04:22 trying anything in your -- in your division, other than those

limited matters, while you were in the district court.
Q. What I'm getting to, Bob -- and I'm not trying to make this complex. My rulings on the bench, in cases you did have or your firm participated in, did it rely one way or the other on what was being given to me?
A. That's correct.
Q. It did or it didn't?
A. Did not.
Q. Did not.
You mentioned a hunting trip. The Mexico trips, I think we talked about.
A. Yes, sir.
Q. Do you know that I -- when I -- from the time I took the federal bench in '94, do you have specific recollection of me going on a hunting trip in Mexico?
After I took the federal bench, not on the state bench.
A. And all I can say is the financial records that I provided to the gentlemen in -- back at the grand jury record -- proceeding and copies of my passport were the only ways I could go back that far in order to make a determination.
So, if I could have those records, I could tell you. And the records would reflect -- we kept pretty good records. Up to the grand jury proceeding, I was able to go into my old files. I had calendars back to 1984.

04:23 And, so, I would look at the calendars. And it would say, "Duck hunt"; and I would have -- I mean, "Dove hunt" and I had three or four days blocked out. I would then refer to my passport to see if I had entry and exit into the country 04:23 at that period. And if I did, then I aligned the two.

To give you a specific year, I can't do it. Okay?

Q. I understand.

A. All right.

04:24 Q. Let me ask you another question.

Did you not hire an individual, Amato Creely, at my request, a young man named Raphael, Gary Raphael?

A. Oh, Gary Raphael?

Q. Raphael.

04:24 A. Yeah, Raphael, correct.

Q. And you were not overly impressed with his abilities, as I recall?

A. (Indicating).

Q. Is that a fair statement?

04:24 A. Yeah, that's a fair statement.

Q. And you-all were paying him?

A. Yeah.

Q. Did not I send some curators to you-all also in an effort to help at least give him something to do and help defray some 04:24 of his cost? Isn't that a fair statement?

04:24 A. I would assume it -- I don't know. I can't -- I can't -- I can't answer that question. So, I'm sorry.

Q. You don't recall that?

A. No.

04:24 Q. If I told you I did that, would that surprise you? I mean, you have no reason to doubt it?

A. No, I don't. I don't have specific recollection.

Q. Okay.

A. I haven't had the most -- great last five or six years

04:25 while this was going on.

Q. Yeah.

A. And I apologize. And last night I didn't sleep. I have a five-day old child. And, so, I'm very tired today and I -- it may sound at my age a little awkward, but that's the way it is.

04:25 But I --

Q. I believe you have two now, Bob.

A. I have two.

Q. Congratulations, by the way. I never have seen either one of them.

04:25 Let me just think, Bob, just for a second.

CHIEF JUDGE JONES: Judge Porteous, you said you gave him what to defray the cost of Mr. Raphael?

JUDGE PORTEOUS: Curators.

CHIEF JUDGE JONES: What?

04:25 JUDGE PORTEOUS: Curators.

JUDGE LAKE: Curatorships.

CHIEF JUDGE JONES: Oh, curatorships.

JUDGE PORTEOUS: I'm sorry. I had shortened it.

CHIEF JUDGE JONES: That's okay.

JUDGE PORTEOUS: I'm just thinking, Bob. I really don't have much more for you, if anything.

No, I don't, Bob.

Thanks. I have nothing else.

MR. WOODS: Does the Court have any questions?

CHIEF JUDGE JONES: No, sir.

MR. WOODS: May he be excused?

CHIEF JUDGE JONES: Yes.

MR. WOODS: We would call Jake Amato.

(Witness being summoned to the stand)

MR. WOODS: Mr. Amato, if you would, come right up here, sir. The witness table is going to be right here.

THE WITNESS: Good afternoon.

JUDGE LAKE: Please raise your right hand to be sworn.

Do you solemnly swear that the testimony you shall give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

JACOB J. AMATO, JR., DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. WOODS:

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE MATTERS INVOLVING U.S. DISTRICT JUDGE G. THOMAS PORTEOUS, JR.	:	Docket MISC. NO. 07-05-351-0085
	:	UNDER SEAL

ORDER

This matter coming to be heard upon the application of the United States of America, by and through applicant Daniel A. Petalas, Trial Attorney, Public Integrity Section, Criminal Division, United States Department of Justice, for an order compelling the witness, the Honorable G. Thomas Porteous, Jr., to testify and provide other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit, it is hereby:

ORDERED, in compliance with 18 U.S.C. §§ 6002-6003 and pursuant to 28 U.S.C. § 353, that the witness, the Honorable G. Thomas Porteous, Jr., shall provide testimony and other information as to all matters about which he may be interrogated in a proceeding before or ancillary to the United States Court of Appeals for the Fifth Circuit; and that no testimony or other information that he provides under this order and no information directly or indirectly derived from such testimony or other information shall be used against him in any criminal case, except in a prosecution for perjury, making a false statement, or failure to comply with this order.

ORDERED, in accordance with Rule 6(e) of the Federal Rules of Criminal Procedure, that the United States' application for immunity be sealed, except that a certified copy shall be provided to Daniel A. Petalas, Trial Attorney, Public Integrity Section, Criminal Division, U.S. Department of Justice.

DATED this 5th day of October, 2007.

Edith H. Jones
UNITED STATES CIRCUIT JUDGE

SC00848

JUDGE LAKE: Curatorships.

CHIEF JUDGE JONES: Oh, curatorships.

JUDGE PORTEOUS: I'm sorry. I had shortened it.

CHIEF JUDGE JONES: That's okay.

JUDGE PORTEOUS: I'm just thinking, Bob. I really don't have much more for you, if anything.

No, I don't, Bob.

Thanks. I have nothing else.

MR. WOODS: Does the Court have any questions?

CHIEF JUDGE JONES: No, sir.

MR. WOODS: May he be excused?

CHIEF JUDGE JONES: Yes.

MR. WOODS: We would call Jake Amato.

(Witness being summoned to the stand)

MR. WOODS: Mr. Amato, if you would, come right up here, sir. The witness table is going to be right here.

THE WITNESS: Good afternoon.

JUDGE LAKE: Please raise your right hand to be sworn.

Do you solemnly swear that the testimony you shall give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

JACOB J. AMATO, JR., DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY MR. WOODS:

HP Exhibit 20

04:28 Q. Mr. Amato, would you state your full name to the Committee, please?

A. Jacob J. Amato, Jr.

Q. Mr. Amato, let me show you an immunity order, which you 04:28 have previously seen, which is Exhibit Number 38.

A. Yes, I've seen this before.

Q. Okay. And that's been provided to your counsel.

You realize that you have immunity for what you testify to here today, but not for any false statements or 04:28 perjury?

A. Yes, sir.

Q. Okay. You have previously testified in front of the federal grand jury. Is that correct?

A. Yes, I have.

04:28 Q. And you were under a grant of immunity at that time?

A. Yes, I was.

Q. Okay. And you've been given an opportunity to review that grand jury testimony once with Mr. Finder and myself and your counsel; and then also on Friday, I believe, I provided your 04:29 counsel with a copy.

You've had a chance to review it today before you testified?

A. I have reviewed the grand jury testimony.

Q. Okay.

04:29 A. My grand jury testimony.

04:29 Q. Is that testimony accurate?
A. Yes.
Q. Okay. Tell the Committee what your occupation is.
A. I'm an attorney.
04:29 Q. How long have you been licensed?
A. Since 1970.
Q. Okay. Tell the Committee what relationship you have had with Judge Porteous, starting back in -- when you first started practicing.
04:29 A. I was in the district attorney's office and Judge Porteous was with the attorney general's office and he was sent to Jefferson Parish as a special counsel to help out the Jefferson Parish district attorney's office. And he was assigned to me -- or I was assigned to him to show him the ropes of how the
04:30 DA's office worked.
Q. And did there come a period of time when you then officed with Judge Porteous?
A. Yes. There was a time that we practiced law together with Marion Edwards, Tom Porteous, and myself.
04:30 Q. What years were those?
A. I would have to say in the early Seventies for --
Q. How many years?
A. Probably two to three years.
Q. Okay. Did Bob Creely join you when the four of you were
04:30 together?

04:30 A. Yes, he did. He joined us when he was in law school, as a law clerk.
Q. And did he join you after he became licensed to practice in the state?
04:30 A. He did.
Q. And how long did he stay with that group before the two of you then set up your own partnership?
A. I really can't say. It's been 35 years ago, and Bob and I practiced as partners up until April of 2005.
04:30 Q. 2005?
A. Some period of time from '73, '74, '75 till 2005.
Q. Okay. And are you aware that Judge Porteous was on the state bench from 1984 to 1994?
A. Of course.
04:31 Q. And are you aware that he's been on the federal bench since 1994?
A. Sure.
Q. Did there come a time when Judge Porteous was on the state bench, from '84 to '94, when he asked you or your partner for
04:31 cash?
A. He never asked me; but I know he -- from talking with Bob, that he had asked Bob to split curator fees with him some sort of way. I don't know how that came about, but --
Q. Let's go back before the curatorships. Was there a time
04:31 when you and Bob Creely would make draws -- both of you make

04:31 equal draws and the cash be given to Judge Porteous before the curatorships?

A. Before the curatorships?

Q. Yes, sir.

04:31 A. No.

Q. Not that you recall?

A. Not that I recall.

Q. Okay. Tell the Committee, then, about the curatorships.

A. It's kind of hard for me to say. At some point in time

04:32 when Judge Porteous was on the state bench, Bob Creely started getting a number of curator cases. And after a period of time that that went on, Bob came to me and said that, "The judge is -- Judge Porteous wants some of the curator fees. What should we do?"

04:32 Q. And what did you tell him?

A. Well, I told him I didn't like the idea but I guess it's something we had to do.

Q. All right. What did you do?

A. Any time that he would need cash from the curatorships, Bob

04:33 and I would each draw a check of an equal amount, cash it, and somehow or another the money got to Judge Porteous.

Q. Okay. And did you handle the transfer to Judge Porteous or did Bob Creely?

A. I -- I don't recall ever giving Judge Porteous any money

04:33 from the curatorships. I might have, but I don't recall any.

04:33 Q. Okay. But you gave the money to Creely to give to him?
A. Yes.
Q. Do you know what precipitated the sending curatorships over to your law firm? Was that something you normally did at your
04:33 firm?
A. We received curatorships from other judges, but I don't know what precipitated Judge Porteous to send them to us.
Q. Was that your practice that -- one of the areas that -- in your practice, that you handled curatorships?
04:33 A. Well, I think every young lawyer got curatorships at some point in his career.
Q. Okay. Do you recall approximately how much money you and Bob Creely have given to Judge Porteous over the period of time that you were giving money to him?
04:34 A. I can't be specific on it. I can't -- I really -- I really can't.
Q. Do you recall telling the grand jury that it was possibly $10,000?
A. That's probably about correct.
04:34 Q. You did review the testimony this morning?
A. I did.
Q. And did you state that in grand jury?
A. Yes, I did.
Q. Okay. Did there come a period of time when Judge Porteous
04:34 asked you personally for money?

04:34 A. Once.
Q. And when was that?
A. It was on a fishing trip right before -- or right after one of his sons was -- was to be married or was married. And he
04:35 asked me if I could help him out because the bride -- he invited too many guests to the wedding and could I help him with the wedding arrangements.
Q. Okay. Where were you when that request was made?
A. We were sitting on -- standing on the bow of Mitch Mullin's
04:35 boat between Grand Isle and Lafitte.
Q. Why is it that you remember those specifics like that that you related to the grand jury?
A. Because I had my calendar and that was the -- there was a notation that we went fishing that day and that was -- that
04:35 that was how I remembered that.
Q. All right. Was Judge Porteous emotional when he made the request?
A. Yes.
Q. Would you tell the Committee what you observed?
04:35 A. I think he was intoxicated, and I think he was somewhat embarrassed to ask me and was to the point of -- I don't want to say "tears," but I would say he was very emotional about how the wedding had really set him back and he needed to do something to correct it.
04:36 Q. Okay. And what did you do pursuant to that request?

04:36 A. I -- I don't know if I cashed a check of my own or it was Bob and I each had a check; but I think I gave him, within a few days after the fishing trip -- I think it was a Friday night fishing trip or a Thursday night fishing trip --
04:36 something between two and three thousand dollars in cash.
Q. You personally gave it to the judge?
A. I did.
Q. Do you recall an instance wherein you and Creely made a draw and then put it in an envelope and Rhonda Danos came to
04:37 pick it up?
A. I don't -- I don't recall that, but I don't say that it didn't happen. You know, it well may have happened.
Q. How many times can you recall that you and Creely made draws of approximately a thousand each and converted that to
04:37 cash to give to the judge?
A. I couldn't answer that.
Q. Can you give us a rough estimation?
A. No. No, I really -- it wasn't $50,000 or anything like that. I would say it was close to --
04:37 Q. I'm speaking of how many times did it occur.
A. Sometimes it didn't occur for six months. Sometimes it occurred, you know, two or three weeks; but it wasn't consistent.
Q. Sometimes it went that long, six months, between requests
04:37 for money?

04:37 A. Yeah, I would imagine.
Q. But most of the times it was less than that?
A. I can't really -- I can't really tell you.
It has just -- it's been so long ago and so much
04:38 water under the bridge since then, I can't tell you
specifically how many draws we took, how much money we gave,
and when did we give it to him.
JUDGE BENAVIDES: All we need is an amount.
THE WITNESS: It was never an amount that was
04:38 astonishing. It was always a couple thousand dollars.
JUDGE BENAVIDES: A couple thousand dollars sometimes
every six months and sometimes every three or four weeks?
THE WITNESS: Yeah, but, I mean, it wasn't a constant
thing. It wasn't, you know, "Look, I expect a check every
04:38 Thursday" or Friday for two weeks or anything like that, no.
CHIEF JUDGE JONES: Is that besides the curatorships?
THE WITNESS: I'm sorry?
CHIEF JUDGE JONES: In addition to the arrangement
with the curatorships?
04:38 THE WITNESS: As far -- as far as I -- I thought they
were all related to the curatorships.
JUDGE LAKE: Well, this is what my question related
to. The event Mr. Woods asked you about concerning the wedding
we learned from prior testimony occurred in 1999, which would
04:39 have been five years after Judge Porteous became a federal

judge. The curatorships obviously existed while he was a state judge.

THE WITNESS: Right.

JUDGE LAKE: You just told us about a number of occasions in which you and your partner, Mr. Creely, made draws to give cash to Judge Porteous.

Were those occasions that you just related to us the ones that occurred while he was a federal judge?

THE WITNESS: The only time I can recall me giving him any cash as a federal judge was for his son's wedding.

I'm not saying that we might not have given him some between the time he was on -- from state and on the federal bench. I just don't recall. I just don't know.

BY MR. WOODS:

Q. I take it you didn't make a note in your books when you made a draw, that this is for Judge Porteous.

A. No.

Q. So, you've gone back and looked at your books to see the draws. Is that correct?

And there's no reference to Judge Porteous?

A. No.

Q. And you and Bob Creely made draws frequently?

A. We -- every Friday, we would take a -- we would cash a check and have cash for the weekend. And if we had extra money in the accounts, we would have extra draws.

04:40 Q. Okay. Now, if you would, just relate -- because I was not familiar with this separate incident you're talking about where you personally gave two or three thousand dollars to the judge. I thought it was a joint thing between you and Creely.

04:40 Would you tell the Committee how that came about? You got the request on the boat, from the judge?

A. Yeah. I don't know if -- if I told Bob about it or not. I just don't -- I just do not know. I -- you know, probably I did. I just don't recall how the two or three thousand dollars

04:41 got together.

Q. But it came from the law firm, is that correct, as a draw?

A. Yes. All my income is from the law firm.

Q. And you're paying income tax on the draws?

A. Absolutely.

04:41 Q. And then you gave two or three thousand dollars, you personally gave that to Judge Porteous?

A. Right.

Q. Okay. And this wasn't one where you and Creely put it in an envelope and gave it to Rhonda Danos; that's a separate

04:41 incident?

A. I can't -- I don't -- no, I don't think that's the same incident.

Q. Okay. Now, Mr. Amato, did you become involved in a case called the Liljeberg?

04:41 A. I sure did.

04:41 Q. Do you recall when you got on that case?
A. No. I know it was in the mid Nineties, but I don't know --
Q. Okay. If I refresh your memory as to certain dates, that a motion to recuse was filed in October of '96 --
04:42 A. Okay.
Q. -- and that the docket entry reflects you entered the case in September, '96 --
A. All right.
Q. -- does that refresh your memory?
04:42 A. No. But I have no reason not to believe that those dates are correct. That sounds about right.
Q. Do you recall that Joseph Mole, the attorney for the other side, the Tenet subsidiary, filed a motion to recuse, basically stating that your relationship with Judge Porteous, along with
04:42 Lenny Levenson's relationship with Judge Porteous, created an appearance of impropriety and that the judge should recuse himself?
A. I recall that there was a motion to recuse filed by Joe Mole asking that Judge Porteous be recused, yes.
04:43 Q. Did you, during the pendency of that motion or at the hearing on the motion, relate to the other side or ask the judge to relate to the other side that you had given cash to the judge previously?
A. No.
04:43 Q. Was there any mention at any time during the pendency of

04:43 that case that you had given cash to the judge?
A. (No response).
Q. By "mention," I mean to -- the other side or on the record anywhere --
04:43 A. No. No, I didn't mention that I had given cash to the judge at any time during the pendency of this.
Q. Do you recall the case being tried in June and July of '97 before the bench?
A. Yes. That sounds -- I can't recall the exact dates, but
04:43 that sounds about right.
Q. Okay. And, then, do you recall the case -- the judgment being entered on April 26, 2000?
A. I knew it was some period of time after the case was tried that the judgment came out.
04:44 Q. Approximately three years. Is that correct?
A. Could well have been.
Q. And during that period from '97 to 2000, did you give the judge cash?
A. I've testified before that I gave him cash for the -- his
04:44 son's wedding.
Q. And was that disclosed to the other side?
A. No.
JUDGE BENAVIDES: But you had given him cash -- the 1990 -- the boat trip was in '99?
04:44 THE WITNESS: Right.

04:44 1 JUDGE BENAVIDES: All right. Now, you had indicated
2 that the curatorships -- that you thought that the two or three
3 thousand dollars that was given out periodically every six
4 months, every three months in the past had to do with the
04:44 5 curatorships.
6 THE WITNESS: Right.
7 JUDGE BENAVIDES: All right. But there's no doubt
8 that there had been, you say, not more than $50,000; but would
9 it be fair to say ten to twenty thousand dollars in cash?
04:45 10 THE WITNESS: I would say, yes, close to that.
11 JUDGE BENAVIDES: And -- and you were familiar and
12 aware of the motion to recuse?
13 THE WITNESS: I was.
14 JUDGE BENAVIDES: And you have litigated quite a bit,
04:45 15 I assume, over the years.
16 THE WITNESS: I have a number of battle scars, yes.
17 JUDGE BENAVIDES: All right. And you're probably
18 aware that the test for recusal is kind of an objective test;
19 that is, a person fully aware of the circumstances of the
04:45 20 relationship between the judge and the party, the one who is
21 fully informed, whether there was -- whether there be
22 objectively that -- that would give the appearance of
23 impropriety or give a bad appearance with respect to the
24 proceeding. Is that correct? You're familiar with that, I
04:45 25 understand.

04:45 THE WITNESS: Yes, I am.

JUDGE BENAVIDES: All right. If you take your relationship away in this case, as an experienced lawyer, and you had another judge that was involved in a case where that
04:46 judge had been a partner with opposing counsel, where opposing counsel had given money over the years, twenty to thirty thousand, never repaid, had assigned curatorships over time with the understanding that the money that was coming from those court cases was going to be returned and you were aware
04:46 and knew that the judge had that relationship with your opposing counsel, would you not file a motion to recuse?

THE WITNESS: I'm sure I would.

JUDGE BENAVIDES: And would you expect that a reasonable person, fully aware of all the information, would
04:46 have -- could draw a conclusion, a reasonable and probable conclusion not necessarily that there is bias but -- but that it would certainly give an appearance of impropriety and that the judge should recuse himself?

THE WITNESS: Yes.

04:47 JUDGE BENAVIDES: All right. So, in your circumstances now, putting yourself in that Liljeberg case, you were in -- kind of in a box there. You had received a copy of the motion and you knew that they were trying to recuse him and you knew that in their memorandum of their support of their
04:47 motion to recuse they had reflected and written down the

04:47 1 standard for recusal.
2 And you must have been aware -- Mr. Amato, you
3 must have been aware that to an objective person fully informed
4 of all the circumstances of the case that that objective person
04:47 5 would know that -- and would get and draw the conclusion that
6 it would be improper for that judge to sit over the case.
7 THE WITNESS: Yes.
8 JUDGE BENAVIDES: Isn't that fair?
9 THE WITNESS: That's fair.
04:48 10 JUDGE BENAVIDES: Nothing else.
11 MR. WOODS: Thank you. May I have one moment to
12 gather some exhibits?
13 BY MR. WOODS:
14 Q. Mr. Amato, while I get the Court's copies, you provided the
04:48 15 grand jury with copies of your calendar; and you even cataloged
16 the dates that you had lunch with Rhonda or the judge.
17 Are those your calendars, sir?
18 A. Yeah.
19 MR. WOODS: May I have just one moment, your Honors,
04:48 20 to get the --
21 *(Sotto voce discussion between counsel)*
22 BY MR. WOODS:
23 Q. Now, Mr. Amato, I've received the documents that are
24 exhibit numbers; and I want to go to those calendars, which are
04:49 25 going to be Exhibit 17. And I will refer to Bates Number

04:49 SC00485 on Exhibit 17.
A. Okay.
Q. Now, if I may, I'm going to put this up.
Is this the list of the dates that you had lunch
04:49 with Judge Porteous?
A. Right.
Q. And we're looking at the year 2000?
A. Uh-huh.
Q. And the judgment was entered on April 26. Do you recall
04:50 that?
A. I'm sure that that's correct.
Q. Okay. I want to then also refer to your calendar that --
where you had lunch with Rhonda Danos. And you have got a
separate sheet in here relating to her, right, as -- for that?
04:50 I want you to refer to your calendar here. Did
you have lunch with Rhonda Danos on April the 25th, 2000?
And if you would, look at your calendar for
April. This is Bates Number SC00512.
A. I think I'm looking at the wrong -- wrong thing.
04:51 Q. It would be April --
A. That's April.
Q. -- 25th.
A. Okay. It doesn't --
Q. Let me put this up on the Elmo.
04:51 And can you explain -- you keep a fairly detailed

04:51 calendar. And as you explained to us, it's your parking expenses that you keep mainly, right?

And this is April. And we'll go to the 25th, and you've got an entry there of $15. Was that your parking 04:51 expenses that day?

A. It could have been the -- could have been parking, could have been rolls and donuts. It could have been -- you know, I just don't know.

Q. What's the entry for "Rhonda Danos"?

04:52 A. I don't know if I had lunch with her that day or not. I really don't.

Q. Okay. We'll go to your American Express records reflecting a lunch at Commander's Palace. Do you recall that?

A. I don't.

04:52 Q. Well, let me just ask you. Do you recall getting a copy of the judgment from Rhonda Danos on April 25th, the day before it was entered on April 26?

A. No, I don't recall that.

Q. Do you recall --

04:52 A. I recall -- I recall getting it on the day it was signed. I don't recall getting it the day before.

Q. Where did you get it?

A. I don't -- I don't know if -- if the judge's clerk called us and said the judge has signed the judgment or not. I don't 04:52 recall. I really -- I just don't recall. I mean, you're

talking about eight years ago.
Q. Well, we're also talking about a multimillion dollar judgment, aren't we?
A. Yes.
Q. And do you recall how you got the judgment and when?
A. I got it the day it was signed.
How did I get it, I don't know.
Q. Okay.
A. But it didn't come through the mail. Either Don -- Rhonda brought it to us or Ricky called us and told us that the judge had signed the judgment and we sent somebody down to pick it up. Some sort of way, we got it.
MR. WOODS: May I have just one moment, your Honor, to find this one exhibit of the Commander's Palace receipt?
CHIEF JUDGE JONES: Yes.
BY MR. WOODS:
Q. On Exhibit Number 15, Bates Numbers 463 and 464, looking at this calendar, is "Rhonda Danos" on April 25th. Is that correct?
A. Okay.
Q. All right. Now I want to show you -- if you'll look over here on the right-hand column, we have the dates of charges. And you'll see April 25th at Commander's Palace. And I'll tie this back in to being your credit card in just a second.
A. Sure, it is.

04:54 Q. Do you see that entry --
A. Uh-huh.
Q. -- on Bates Stamp Number 463, a luncheon at Commander's Palace on April 25th, $140?
04:55 A. Right.
Q. Does that refresh your recollection as to that calendar entry on April 25th?
A. I can't tell from that. I can't tell if I had lunch with Tom Reagan or if I had lunch with somebody else who was on that
04:55 slip.
Q. And on Page 464 of that exhibit, we have the Commander's Palace, the American Express records. The meal was 110 and the tip was 30. Is that --
A. Still doesn't help.
04:55 Q. Is doesn't refresh your recollection as to the luncheon?
A. No. I -- I ate a lot out. I eat a lot of lunches out, and I just can't tell that -- who was there. I might have given my secretary my credit card to go to Commander's Palace. I just can't answer it. I just -- I'm trying the best I can.
04:56 Q. And it's just coincidence it's the day before the judgment is entered on the 26th?
If Rhonda Danos testified that she brought the judgment to you, that doesn't refresh your memory?
A. No, it doesn't; but it doesn't mean it didn't happen. I
04:56 just don't recall.

04:56 Q. Okay. Now, your calendar entries indicate a lot of lunches with the judge. Is that correct?
A. Yeah. We -- we spent a good deal of time together.
Q. And for the year -- you had a '99 in here.
04:56 A. Yeah, I've got '99 right here.
Q. Yeah, but I'm looking for the Bates stamp exhibit number.
A. Is this it? No.
Q. And did you always pay for lunches?
A. No. Judge Porteous paid for lunches on occasion.
04:57 Q. How frequently?
A. Not very often.
Q. Well, we're going to go through the number of times you have here and, if you can recall, how many times he paid for these lunches. You're not eating just at the corner drugstore.
04:57 You're eating at nice places, weren't you?
A. I didn't get this big going to the drugstore.
Q. All right. I'm going to use this, and we'll tie it back in to the -- this is your calendar for 1999 --
A. All right.
04:58 Q. -- with Judge Porteous. If you don't mind, I'm going to put it on the Elmo.
During the pendency of this Liljeberg trial in 1999 -- this comes out of Exhibit Number 17. And I'll get the Bates stamps later.
04:58 You had lunch a couple of times a month, pretty

much, May, June, July, August, September, October, November, December?

A. Yes.

Q. How many times did Judge Porteous pay?

A. I don't know. I don't -- I just don't know.

Q. Where did you normally go?

A. We would go to Red Maple. We would go to the Beef Connection. We would go to Chris'. We would go to Mother's Restaurant. We would go --

Q. Smith & Wollensky? Ruth's Chris?

A. I think -- I think we've been to Smith & Wollensky, if I'm not mistaken. I think we -- we used to like to go to Fitzgerald's. There's a couple places on the West Bank; but, I mean, I --

Q. Were the bills usually a hundred or more?

A. Whatever lunch was. I --

Q. And did Porteous -- Judge Porteous pay for half those?

A. No.

Q. Did he pay for one fourth of those?

A. No. He probably paid for one or two of them.

Q. Okay. Thanks.

MR. WOODS: That document that we just used was Bates Stamped 522 out of Exhibit 17. Thank you.

BY MR. WOODS:

Q. And, Mr. Amato, the closest you can estimate is

approximately $10,000 that you and your partner Bob Creely gave to the judge?

A. Yes.

Q. And on the Liljeberg case, you had a contingency fee. Is that correct? If you won --

A. Right.

Q. -- you got a percentage?

A. (Nodding head).

Q. And that percentage would be split with Mr. Creely as your law partner?

A. Yes.

MR. WOODS: Thank you. I pass the witness.

CHIEF JUDGE JONES: Judge Porteous?

JUDGE PORTEOUS: Just briefly. Again, the same thing with this witness as the previous witness. If you don't mind and he doesn't mind, I'll call him Jake because we've known each other that long.

THE WITNESS: Yes, Tom, it's been a long time, been a long road.

CROSS-EXAMINATION

BY JUDGE PORTEOUS:

Q. Just a couple things, Jake. On these lunches or any monies, did that any way have a quid pro quo where, you did that, I was going to give you a judgment?

A. No.

05:01 Q. In fact, I think you've categorized during some of your grand jury testimony that I was going to do the right thing.
A. I always told my clients, other lawyers, and people I have dealt with that I have always known you to do the right thing.
05:01 Q. And in this case I did ultimately rule in Liljeberg's favor?
A. That's correct.
Q. Now, would you categorize this as a fairly complex case?
A. Extremely complex.
05:01 Q. And it probably had hundreds, if not thousands, of pages of exhibits?
A. When the case was over with, they came to my office. I told them I didn't want the file anymore, and they brought a -- not a tractor trailer but the next size smaller to get all the
05:01 records. I told them I didn't want any -- I'm out, I'm finished, take it, git rid of it, I don't want to ever see it again.
But there were thousands of documents. There were thousands of chart audits. It was a very complicated
05:02 case. Tenet did everything possible to hide the facts, hide how they were stealing from the Liljebergs, how they manipulated the transfer of the hospital, and how they were trying to steal the pharmacy contract.
Q. Now, ultimately, post trial memoranda were filed?
05:02 A. Absolutely.

05:02 Q. And, ultimately, I ruled?
A. What?
Q. Ultimately, I ruled?
A. Yeah, uh-huh.
05:02 Q. Was this ruling outside of what the position of the plaintiff was? Albeit I've been determined to be wrong, wasn't that the position the plaintiffs were arguing?
A. Yes.
Q. And I found in favor of the plaintiffs.
05:02 A. Yes.
Q. I didn't come up with some new theory of law, at least pursuant to what was pled?
A. Not that I know of.
Q. And I think most of the trial, in fact, Don Richard did the
05:03 vast majority, did he not?
A. Don did a lot of it; I did a lot of it; and Doug Draper did some of it. So did Lenny Levenson did some of it.
Q. It lasted quite awhile?
A. I think it was about six weeks. Seemed -- seemed like it
05:03 went on for years but --
Q. Yeah.
And just so I'm clear, this money that was given to me, was it done because I'm a judge, to influence me, or just because we're friends?
05:03 A. Tom, it's because we were friends and we've been friends

for 35 years. And it breaks my heart to be here.
Q. I know. Me, too. But we're still friends.
A. We're still friends. Our kids were friends. Our wives were friends.
Q. In fact, while we're on that, when you got in Liljeberg, I couldn't hire your son?
A. That's correct.
Q. Because I wanted to hire Trey as my law clerk?
A. That's correct.
Q. And your daughter ultimately worked for me?
A. Yes.
Q. This is well after Liljeberg?
A. Well after Liljeberg.
Q. All right.
A. And I still think your decision in Liljeberg was correct.
Q. Well, thanks, Jake.
JUDGE PORTEOUS: I don't have any other questions.
JUDGE BENAVIDES: I have a couple questions. You indicated your strong friendship with the judge. Your partner testified with respect to a certain person that you hired at your firm at the recommendation and request of Judge Porteous.
Do you remember that young man?
THE WITNESS: On occasions, Judge Porteous would send us law clerks who had applied to his office --
JUDGE BENAVIDES: Uh-huh.

THE WITNESS: -- for work and they --

JUDGE BENAVIDES: Do you recall the name, Mr. Woods, of the gentleman referred to by Mr. Creely?

THE WITNESS: Gary Raphael?

JUDGE BENAVIDES: Yes, Gary Raphael.

THE WITNESS: Yeah, we hired him.

JUDGE BENAVIDES: And as I understood your law partner's testimony, at least Mr. Creely may have been a little bit underwhelmed by his performance. Were you of the same view?

THE WITNESS: No. I thought Gary was a fairly decent lawyer. I never had any complaints as to his work. In fact, I was really upset when we let him go because --

JUDGE BENAVIDES: But he was -- he was hired because of your friendship, because he was recommended by --

THE WITNESS: Judge Porteous asked us if we could have --

JUDGE BENAVIDES: And Mr. Creely also indicated -- your partner indicated that with respect to his dissatisfaction, not being completely satisfied with this gentleman's services, that Judge Porteous suggested that he would help the firm -- kind of keep him on the firm and help you with his compensation by providing curatorships to you.

Were you aware of that or did you --

THE WITNESS: No, I was not. I was not aware of that.

05:06 JUDGE BENAVIDES: All right. And how do -- how would you -- how do you feel about the propriety of having a judge use his authority to provide funds through -- to you from court costs from plaintiffs to keep someone employed in your firm and 05:06 to provide money to your firm from his docket, so to speak, so that you could keep someone on that he wanted you to keep in his firm -- in your firm?

THE WITNESS: Judge, I really don't know how to answer the question. I really thought Gary was a decent guy.

05:06 JUDGE BENAVIDES: Well, assuming that he was a great employee --

THE WITNESS: All right.

JUDGE BENAVIDES: -- do you think that it would be proper to have curatorships assigned to you and money supplied 05:07 to you from a docket of a district judge so that it would help you keep and support and pay for the employment and salary of someone on your staff?

THE WITNESS: I would answer yes and no. I would say that it happens every day in the real legal world, that people 05:07 hire --

JUDGE BENAVIDES: In the real world judges --

THE WITNESS: No, no. That --

JUDGE BENAVIDES: -- judges support law firms with a stated goal of giving them money from the court costs in 05:07 their -- in their cases so that they can keep particular

employees employed at a law firm?

THE WITNESS: No. I think you didn't allow me to finish answering the question. I think that a number of people are hired at law firms for reasons other than their ability, because of the business they can bring and the business they can keep.

As to Gary, I had no idea that -- that Porteous felt it was necessary to send curatorships to keep Gary on the payroll, since I thought Gary was a good employee.

JUDGE BENAVIDES: So, you have no knowledge of that?

THE WITNESS: I really don't. I really -- you know, I really can't answer. I mean, I'm just not in a position to answer that question.

CHIEF JUDGE JONES: So, as far as you're concerned, it's okay to keep giving your friend money if he's on the bench and then occasionally appear in his court and nobody is the worse off for it?

THE WITNESS: Well, Judge, I think every lawyer has friends who are on the bench.

CHIEF JUDGE JONES: How many judges take money from lawyers who are their friends?

THE WITNESS: In the state court, they run for office and you make political contributions and you go to cocktail parties and things like that. So, here again, is that --

CHIEF JUDGE JONES: Well, we aren't in --

05:09 THE WITNESS: -- proper or is that not proper?

CHIEF JUDGE JONES: Well, we're talking 2000; we're not talking the state bench; with a multimillion dollar case pending.

05:09 THE WITNESS: With a multimillion dollar case pending that was prepared, that was tried, that was tried for six weeks, that we proved, and that this Fifth Circuit court -- or members of the Fifth Circuit court didn't feel like it was appropriate -- an appropriate --

05:09 CHIEF JUDGE JONES: Well, you're not answering my question, sir. But anyway --

THE WITNESS: I'm sorry. I can't -- I can't help you.

CHIEF JUDGE JONES: Suppose -- suppose counsel for -- suppose Mr. Mole had been going out four times a week with

05:10 Judge Porteous for lunch. Would that have looked good?

THE WITNESS: I don't know if he wasn't going out with him four times a week.

CHIEF JUDGE JONES: Well, suppose he had been. What would you -- you would have wanted to take him out even more,

05:10 wouldn't you?

THE WITNESS: No.

CHIEF JUDGE JONES: So, it's perfectly all right to go to lunch, pay for lunches at fancy places with judges before which you have big, big cases pending? Is that your view of

05:10 ethics?

05:10 THE WITNESS: My view of ethics is that my friend is my friend is my friend.

CHIEF JUDGE JONES: Well, I understand that. I'm afraid to say that this -- you know, there --

05:10 JUDGE BENAVIDES: Our view may be --

CHIEF JUDGE JONES: -- there's some ethics committees that are going to have to look at it, I suppose.

THE WITNESS: I guess I made -- made a mistake.

CHIEF JUDGE JONES: Well, none of us enjoys being in

05:11 this position.

All right, sir. I don't have any other questions.

THE WITNESS: Thank you.

CHIEF JUDGE JONES: I guess you can be excused.

05:11 MR. WOODS: May he be excused, your Honor?

CHIEF JUDGE JONES: Yes, sir.

THE WITNESS: Thank you.

MR. WOODS: It's five after -- or it's eleven after 5:00.

05:11 CHIEF JUDGE JONES: All right. Well, shall we recess until tomorrow morning?

JUDGE BENAVIDES: Could you give us an indication of how many witnesses do we have left that you intend --

MR. WOODS: Your Honor, I wanted to discuss a couple

05:11 matters with Judge Porteous about stipulating to some grand

jury testimony, which -- from some minor witnesses. And it might cut down on the number of witnesses.

And then we would just have our summary witnesses and Rhonda Danos and either Judge Greendyke or Heitkamp, depending on which one we can get over here.

Judge Greendyke was in a hearing today, and he thought it might go tomorrow.

JUDGE BENAVIDES: Even anticipating that you don't agree to the stipulations with respect to the grand jury testimony, you-all have been really good about working some of these things out; and we appreciate it.

How long do you think that -- that it would take to --

MR. WOODS: Well, I think we'll finish tomorrow, for sure, with our side, and maybe even in the morning. We do have Buddy Butler for, like, five minutes.

JUDGE BENAVIDES: All right.

MR. WOODS: He's the Regions loan -- bank president, former.

JUDGE BENAVIDES: Judge Porteous, on the other side, how long do you anticipate it would take to --

JUDGE PORTEOUS: At present, Judge, I may only be calling that one witness that they tell me they're not calling, Mr. Beaulieu.

JUDGE BENAVIDES: All right.

05:12 JUDGE PORTEOUS: I may call Mr. Beaulieu, and I may call Mr. Lightfoot. I mean, that's just been presented to me. So --

JUDGE BENAVIDES: Without binding -- without binding 05:12 everybody, it's reasonable to conclude that we will conclude tomorrow?

MR. WOODS: I think so, your Honor.

JUDGE PORTEOUS: Their side.

Mine, too? I don't know if you mean the entire 05:12 case.

I haven't been given an opportunity now yet to talk to Mr. Beaulieu or Mr. Lightfoot, because we -- just informed me they're not calling them. And I didn't want to go interfere and try to talk with a witness.

05:13 So, I mean, if they finish tomorrow, Judge, I would like to at least start off Wednesday morning if worse came to worst.

JUDGE BENAVIDES: Mr. Beaulieu is available?

MR. WOODS: Yes, he's available. And there's no 05:13 restriction on -- you know, Claude Lightfoot is his attorney; so, he certainly wouldn't be interfering by talking with him. And Beaulieu is the trustee; so, he's not interfering by talking with him.

JUDGE PORTEOUS: I'm not saying -- I'm just saying I 05:13 don't know what time we'll finish. And I -- I'm just asking,

05:13 if they finish in the morning -- I'd like to be able to tell you I could go right into it, but I don't know that --

JUDGE BENAVIDES: It's not binding. I just wanted for my purposes. It's not -- not to bind you --

05:13 JUDGE LAKE: Judge, my experience, like yours, is probably most trials finish sooner than later.

JUDGE PORTEOUS: I agree with you.

JUDGE LAKE: So, I would presume they're going to finish in the morning. You should be prepared to go after

05:13 they're concluded.

JUDGE PORTEOUS: If we're talking -- okay. I understand your position, Judge. Thank you.

Anything further? Will we be able to start at 9:00 so I could potentially fit in a meeting in the morning

05:14 with these folks?

CHIEF JUDGE JONES: Is that all right?

(Sotto voce discussion at bench)

CHIEF JUDGE JONES: We would like to start at 8:30.

JUDGE PORTEOUS: Okay.

05:14 CHIEF JUDGE JONES: Thank you.

(Proceedings recessed for evening)

* * * * *

COURT REPORTER'S CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause.

Date: November 1, 2007

Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter

SC EXHIBIT - 00017

2000

JAN. 12
JAN. 25

FEB. 9

MARCH 1
MARCH 23
MARCH 24
MARCH 29

APRIL 5
APRIL 17
APRIL 19

MAY 4
MAY 23

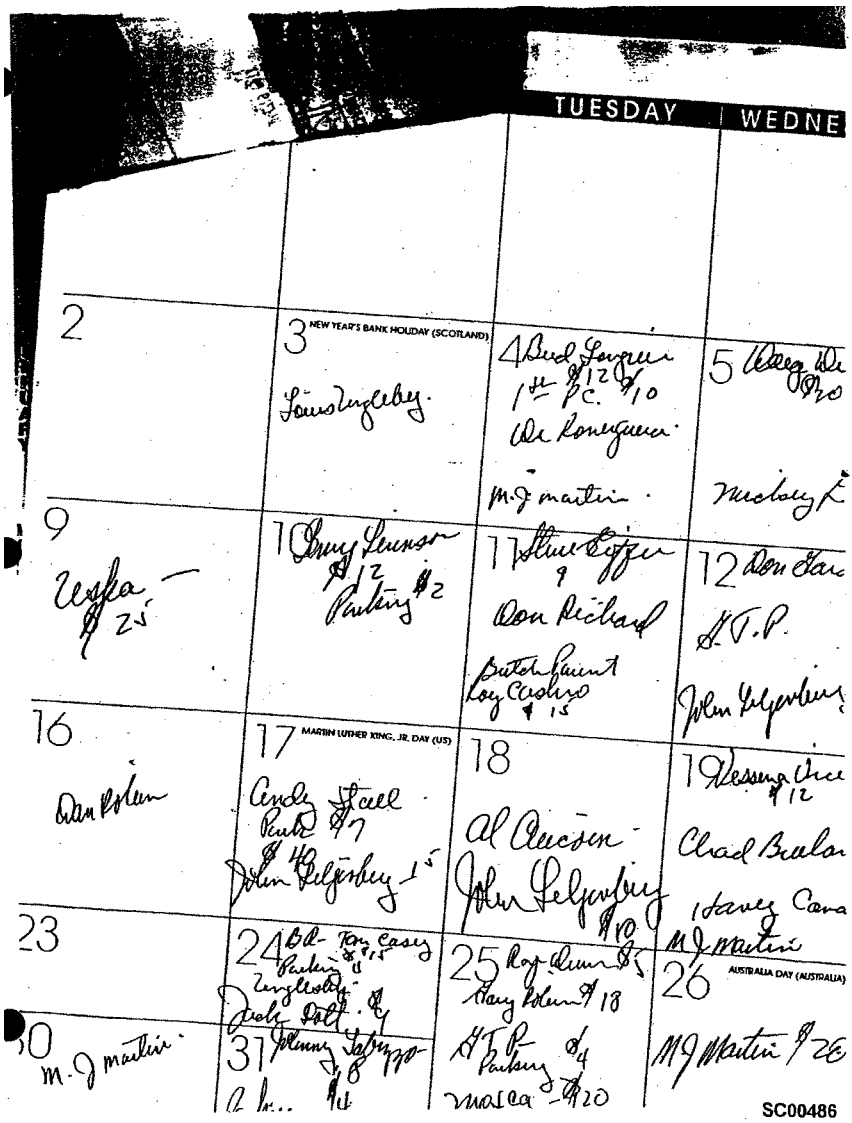
JUNE 1
JUNE 21

JULY 19
JULY 31

AUG. 10
AUG. 15
AUG. 24
AUG. 31

SEPT. 20

OCT. 11


TUESDAY
WEDNE
2
3 NEW YEAR'S BANK HOLIDAY (SCOTLAND)
4
5
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17 MARTIN LUTHER KING, JR. DAY (US)
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26 AUSTRALIA DAY (AUSTRALIA)
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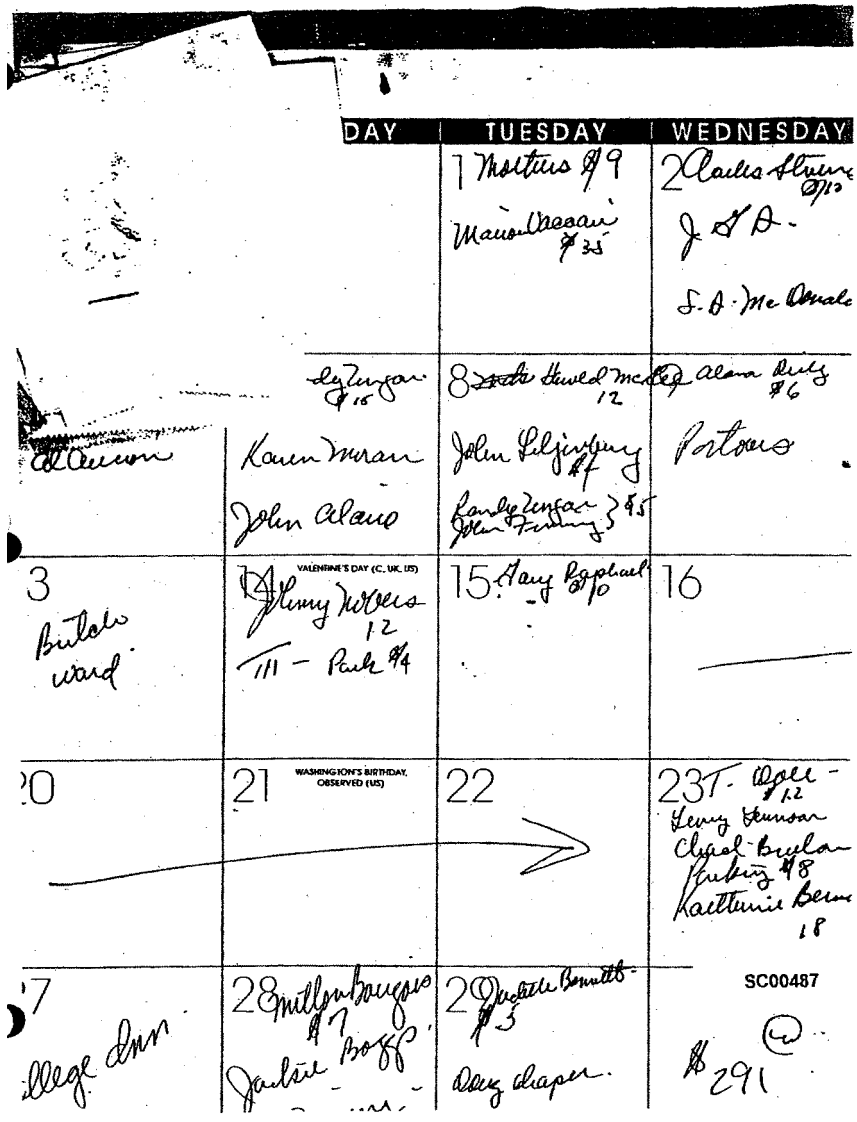
SC00486



	DAY	TUESDAY	WEDNESDAY
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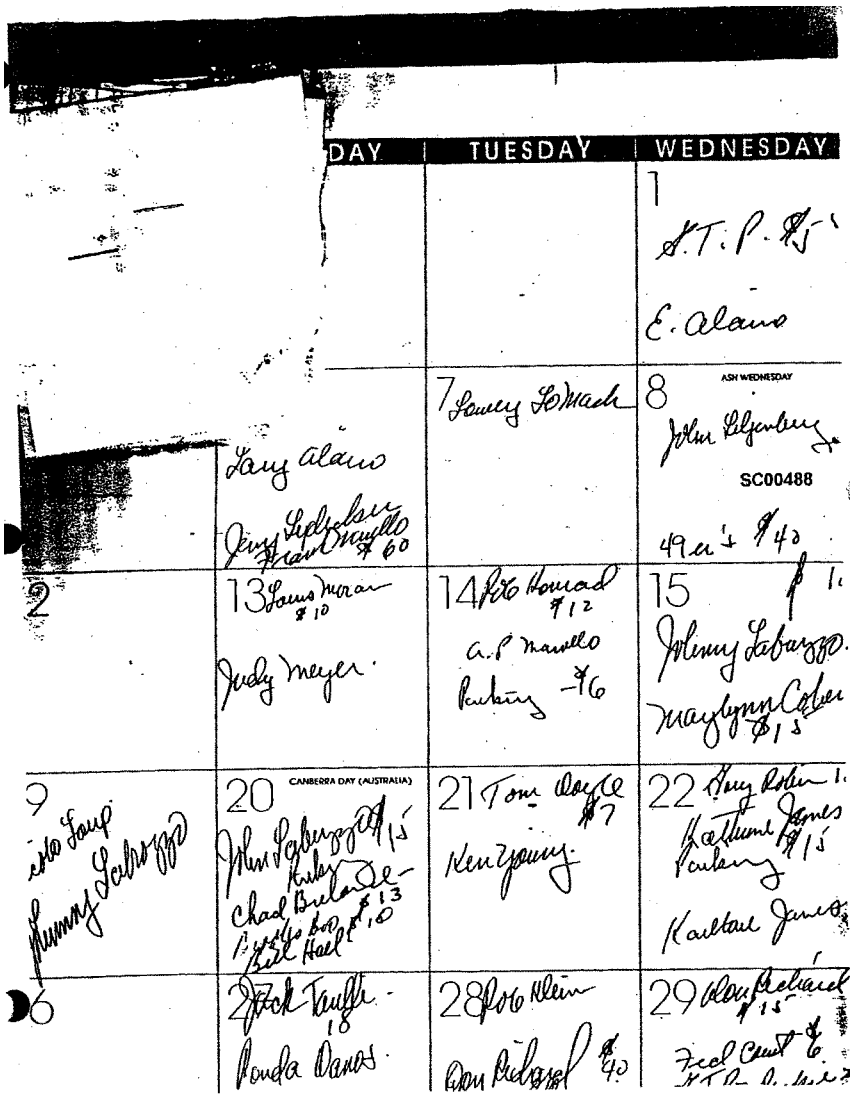
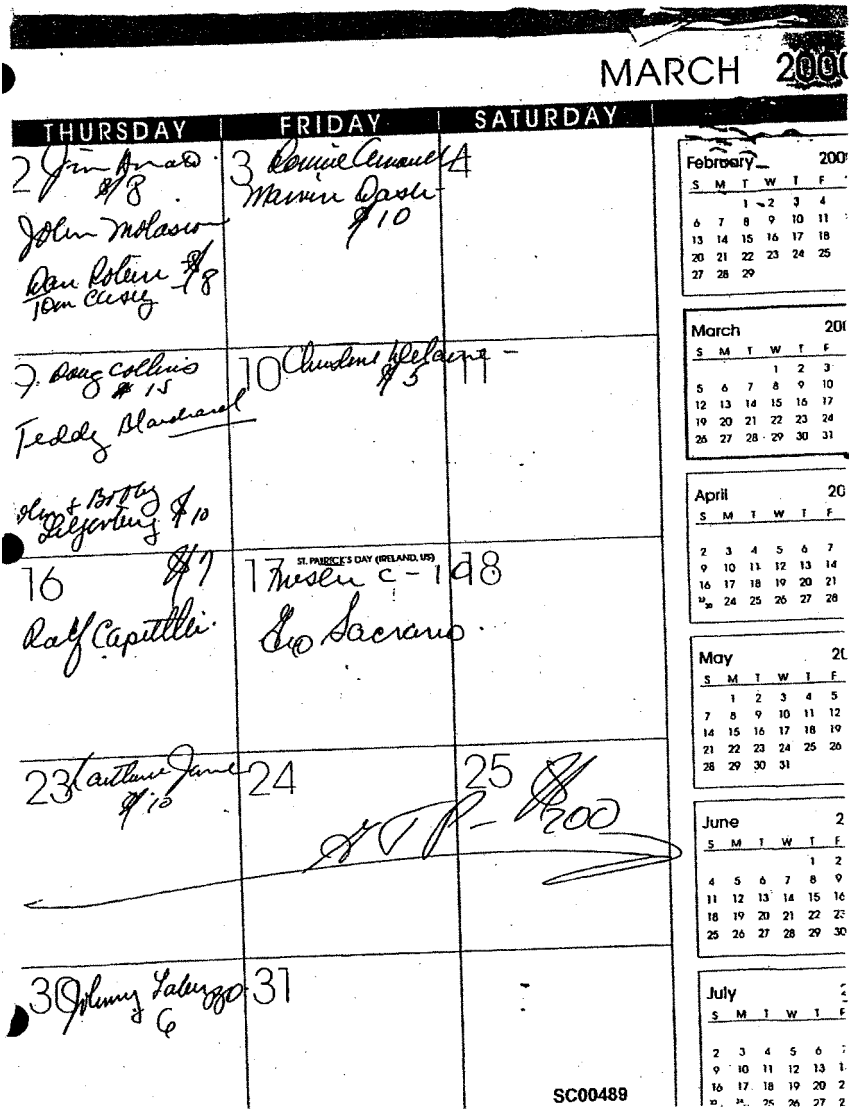
Al Aucon	...dy Tingar $15 Karen Moran John Alano	8 ~~[illegible]~~ Harold McCleg 12 John Siljenberg $4 Randy Tingar John Fleming } $5	Alana Duty $6 Portours
3 Butch ward	14 VALENTINE'S DAY (C, UK, US) Jimmy Nobers 12 TTI - Park $4	15 Gary Raphael $10	16
20	21 WASHINGTON'S BIRTHDAY, OBSERVED (US)	22	23 T. Doll - $12 Lenny Hunsar Chad Brulan Parking $8 Kathleen Berm 18
27 ...llege Inn	28 Milton Bourgois $7 Jackie Boggs	29 Judith Bennett $5 Doug Draper	SC00487 $291



	DAY	TUESDAY	WEDNESDAY
			1 S.T.P. $5 E. Alano
	Larry Alano Jerry Lydecker Frank Murillo $60	7 Lowery LoMach	8 ASH WEDNESDAY John Lilienberg SC00488 49er's $40
2	13 Louis Moran $10 Judy Meyer	14 Rob Honrad $12 A.P. Marillo Parking $6	15 $1 Johnny Labruzzo Marylynn Cohen $15
9 Cisco Loup Johnny Labruzzo	20 CANBERRA DAY (AUSTRALIA) John Labruzzo $15 Chad Bielandel $13 Bill Hall $10	21 Tom Doyle $7 Ken Young	22 Gary Robin 1 Kathleen James Parking $15 Kathleen James
6	27 Jack Taufle 18 Ronda Danos	28 Rob Klein Don Richard $40	29 Don Richard $15 Fred Court $6



MARCH 200

THURSDAY	FRIDAY	SATURDAY
2 Jim Arnold $8. John Molasco Dan Polere $8 Tom Casey	3 Ronnie Cunard 4 Marion Dash $10	
9. Doug Collins $15 Teddy Blanchard Hugh & Betty Lafferty $10	10 Chuckie Delaney $5	11
16 $7 Ralf Capitelli	17 ST. PATRICK'S DAY (IRELAND, US) Musen c - 18 Lo Sacramo	
23 Kathleen Jane $15	24	25 $200
30 Henry Talenzo 6	31	

SC00489

February 200

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March 200

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April 20

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June 2

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11	12	13	14	15	16
18	19	20	21	22	23
25	26	27	28	29	30

July

S	M	T	W	T	F
2	3	4	5	6	7
9	10	11	12	13	14
16	17	18	19	20	21
23 30	24 31	25	26	27	28

NDAY	TUESDAY	WEDNESDAY
J Fancena $12 C Klein	4 Nina Loup 9- Alfred $10 S.A McDonald	5 R. J Fanchu Crumpton $ GTP + Crew $145 Bob Dagley
10 Dan Robin Tan-casey $15 Parking etc	11 1st P.C. $10 Bob Wyllace	12 Charlie Fredric $15 Pete Vaccan
6 PALM SUNDAY Paula Alaino	17 Ken Mugina $10 G.T.P. A.P. Marcelo	18 Lee Meighie $12 Dan Robin Parking $7 John Alaino
3 EASTER SUNDAY	24 EASTER MONDAY (A. C. I. NZ. UK) Dalen Copland Jack Lott $25	25 ANZAC DAY (A. NZ) Con Hagen $15 Ronda Davos Marion Edward [illegible] $10
0		

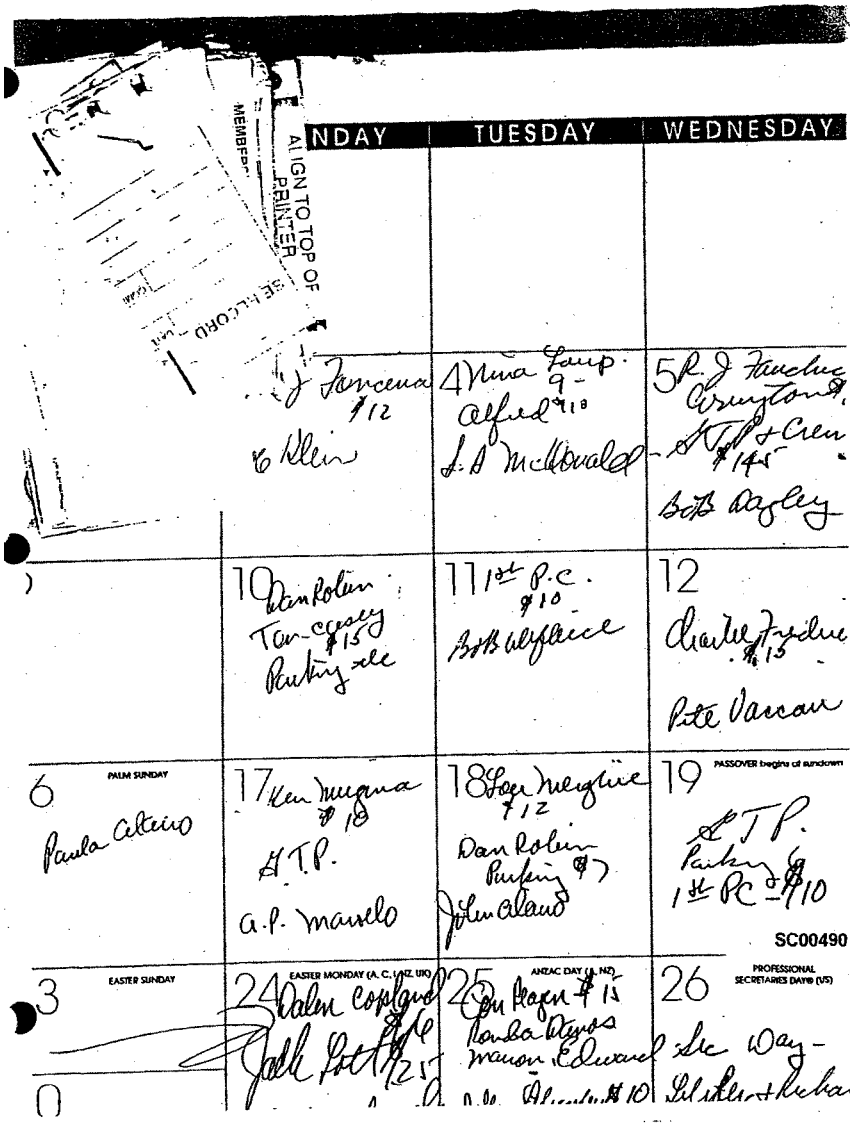
PASSOVER begins at sundown

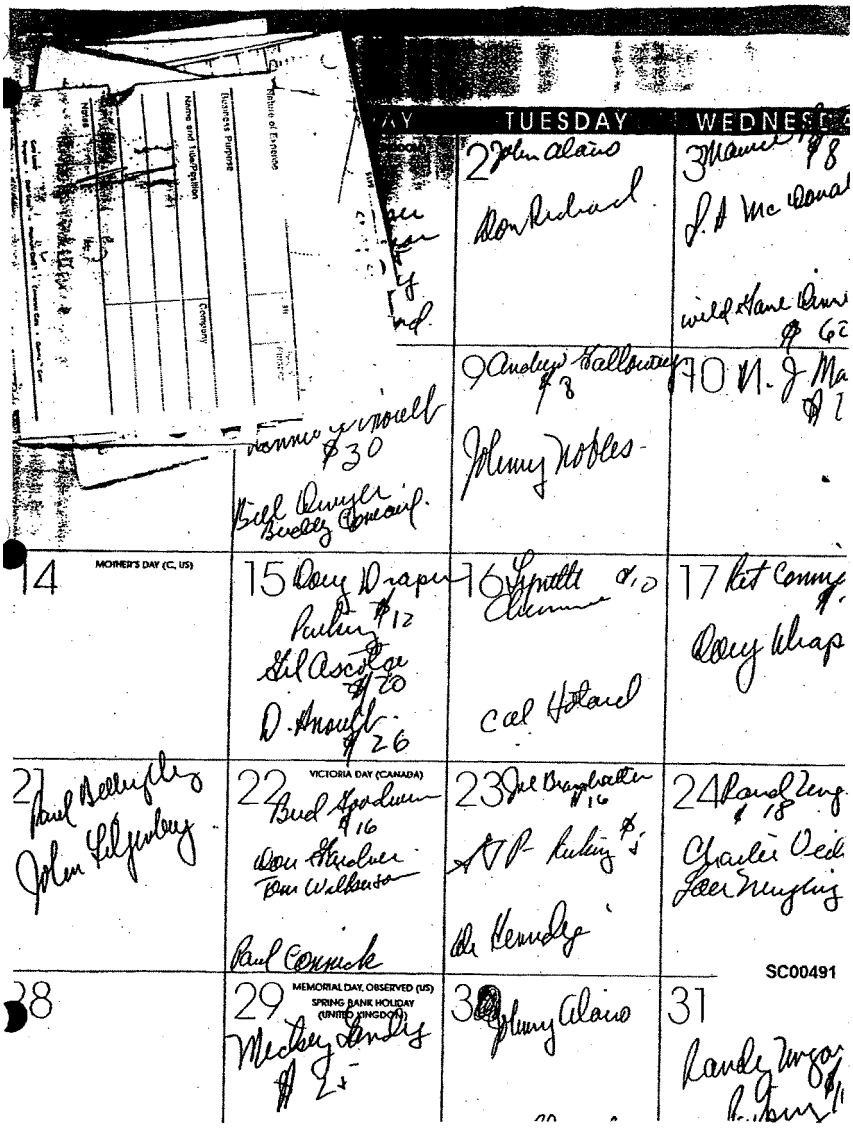
19
GTP.
Parking $
1st PC - $10

SC00490

PROFESSIONAL SECRETARIES DAY® (US)

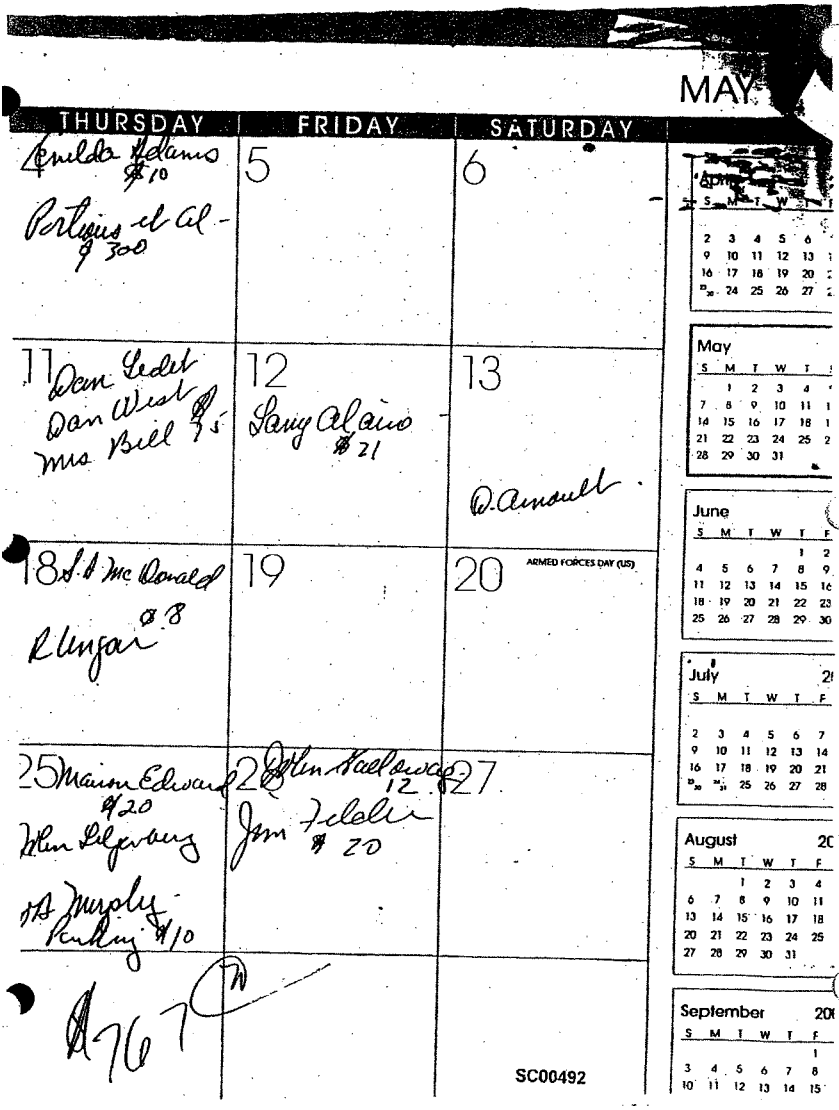
26
Sec Day -
[illegible]





		TUESDAY	WEDNES
		2 John Alaino Don Richard	3 Manuel $8 J. A. McDonal wild Gane Dinn $ 62
	Connie Arnoult $30 Bill Dwyer Buddy Concaif	9 Andrew Galloway $8 Johnny Nobles	10 N. J. Ma $ 1
14 MOTHER'S DAY (C, US)	15 Doug Draper Parking $12 Gil Ascolta $20 D. Arnoult $26	16 Lynette Chemmie $10 Cal Holand	17 Pat Conn $ Doug Wrap
21 Paul Bellingley John Lilgenberg	22 VICTORIA DAY (CANADA) Bud Goodwin $16 Don Gardner Tom Wilkinson Paul Connick	23 Joe Brandstetter $16 A T P Parking $5 Dr Hennedy	24 Randy Ung $18 Charles Veil Lee Neugling
28	29 MEMORIAL DAY, OBSERVED (US) SPRING BANK HOLIDAY (UNITED KINGDOM) Mickey Lindsey $ 25	30 Johnny Alaino	31 Randy Ungar Parking $1

SC00491



MAY

THURSDAY	FRIDAY	SATURDAY
4 Amelda Adams $10 Portions et al - $300	5	6
11 Dan Ledet Dan West $75 Mrs Bill	12 Lang Alaino $21	13 D. Arnoult
18 S.A. McDonald R Ungar $8	19	20 ARMED FORCES DAY (US)
25 Marion Edward $20 John Lilgerberg J.A. Murphy Parking $10	26 John Kallowaz 12 Jim Felder $20	27
$767		

SC00492

April

S	M	T	W	T	F
2	3	4	5	6	
9	10	11	12	13	
16	17	18	19	20	
23/30	24	25	26	27	

May

S	M	T	W	T	F
	1	2	3	4	
7	8	9	10	11	1
14	15	16	17	18	1
21	22	23	24	25	2
28	29	30	31		

June

S	M	T	W	T	F
				1	2
4	5	6	7	8	9
11	12	13	14	15	16
18	19	20	21	22	23
25	26	27	28	29	30

July 2

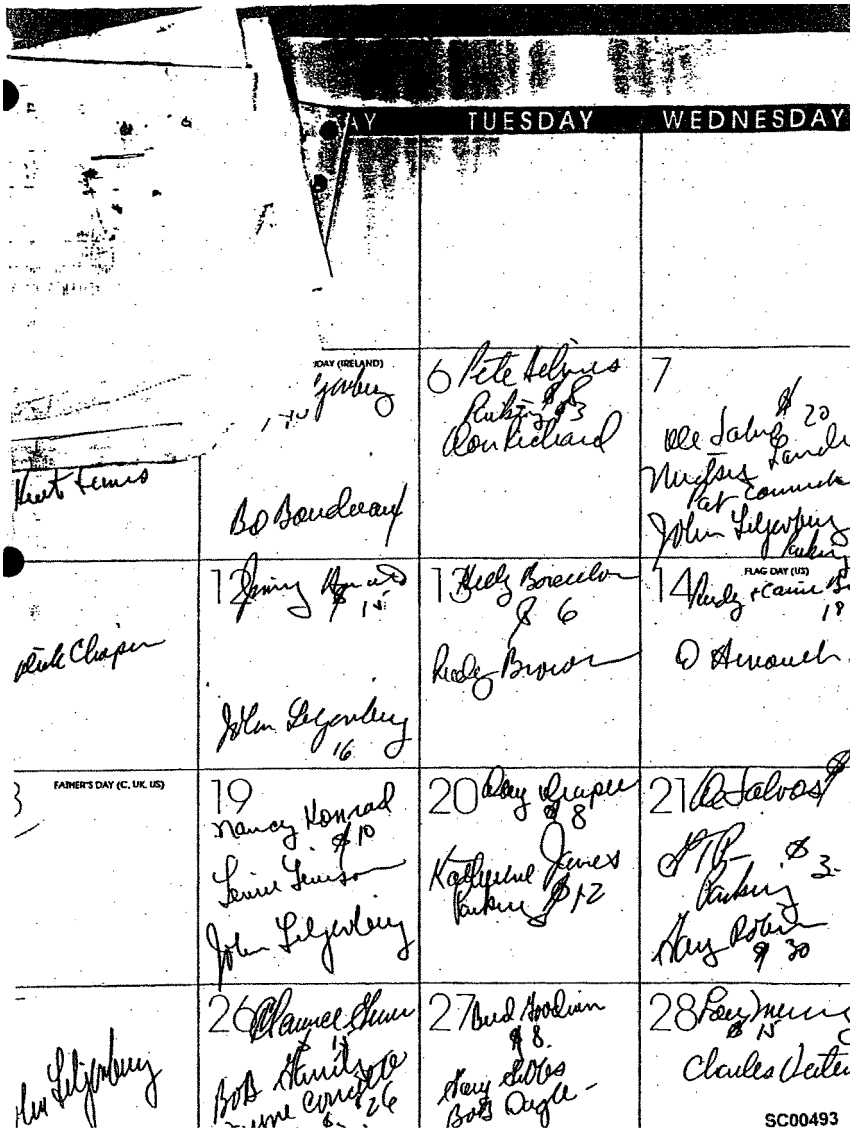
S	M	T	W	T	F
2	3	4	5	6	7
9	10	11	12	13	14
16	17	18	19	20	21
23/30	24/31	25	26	27	28

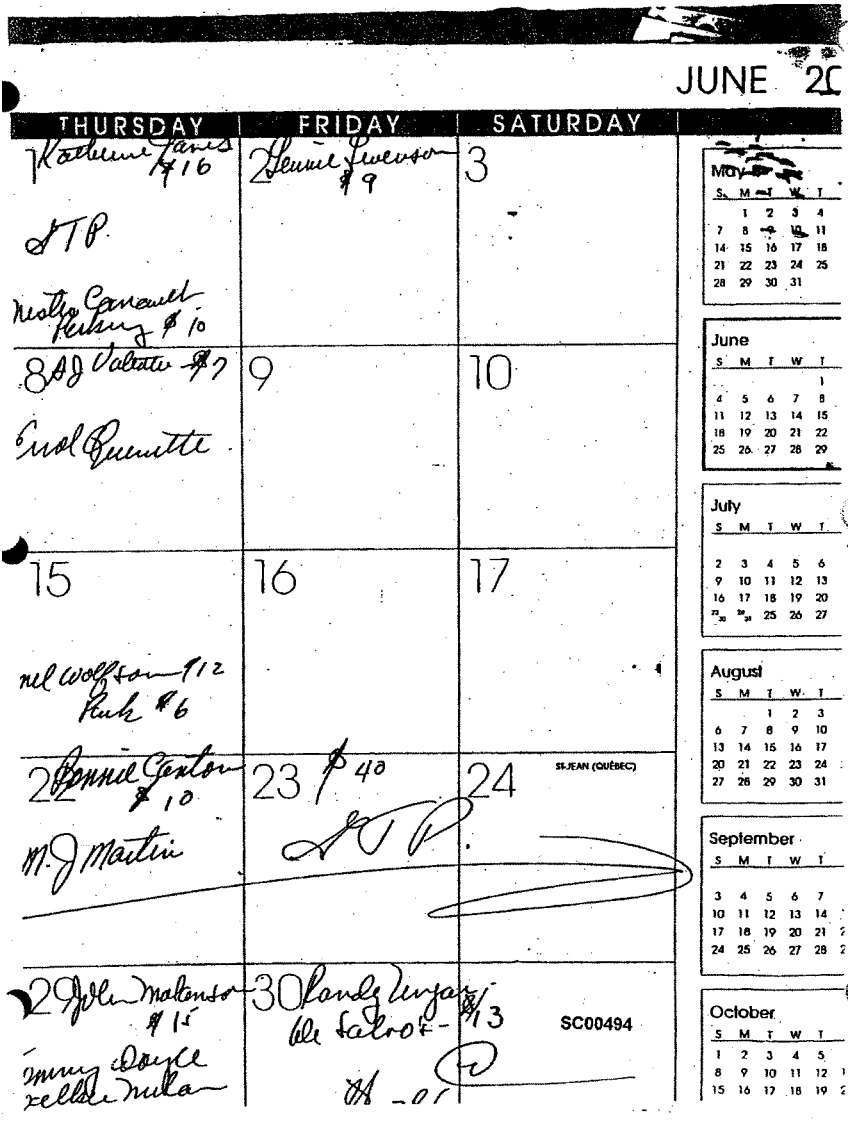
August 20

S	M	T	W	T	F
		1	2	3	4
6	7	8	9	10	11
13	14	15	16	17	18
20	21	22	23	24	25
27	28	29	30	31	

September 20

S	M	T	W	T	F
					1
3	4	5	6	7	8
10	11	12	13	14	15


TUESDAY
WEDNESDAY
6
7
13
14
FLAG DAY (US)
FATHER'S DAY (C, UK, US)
19
20
21
26
27
28
SC00493



JUNE 20

THURSDAY	FRIDAY	SATURDAY
1 Katherine Jones $16 STP Nestor Carrault Parking $10	2 Lennie Levenson $9	3
8 AJ Valette $7 Errol Quenette	9	10
15 Mel Wolfson $12 Park $6	16	17
22 Bonnie Genton $10 M.J. Martin	23 $40 STP	24 ST-JEAN (QUÉBEC)
29 John Mattenson $15 Tommy Doyle Zellie Milan	30 Randy Ungar Ole Salvo's - $13 [illegible]	SC00494

May

S	M	T	W	T
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30	31	

June

S	M	T	W	T
				1
4	5	6	7	8
11	12	13	14	15
18	19	20	21	22
25	26	27	28	29

July

S	M	T	W	T
2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
22 30	29 31	25	26	27

August

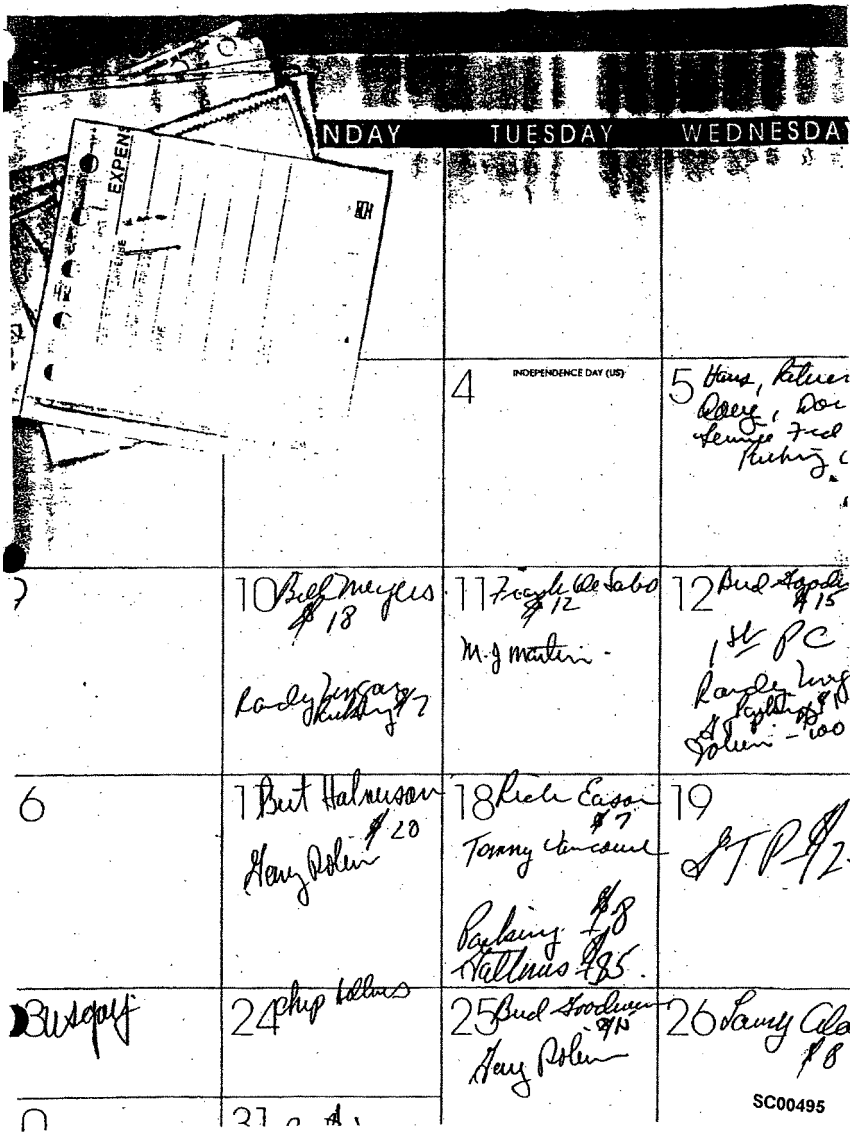
S	M	T	W	T
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

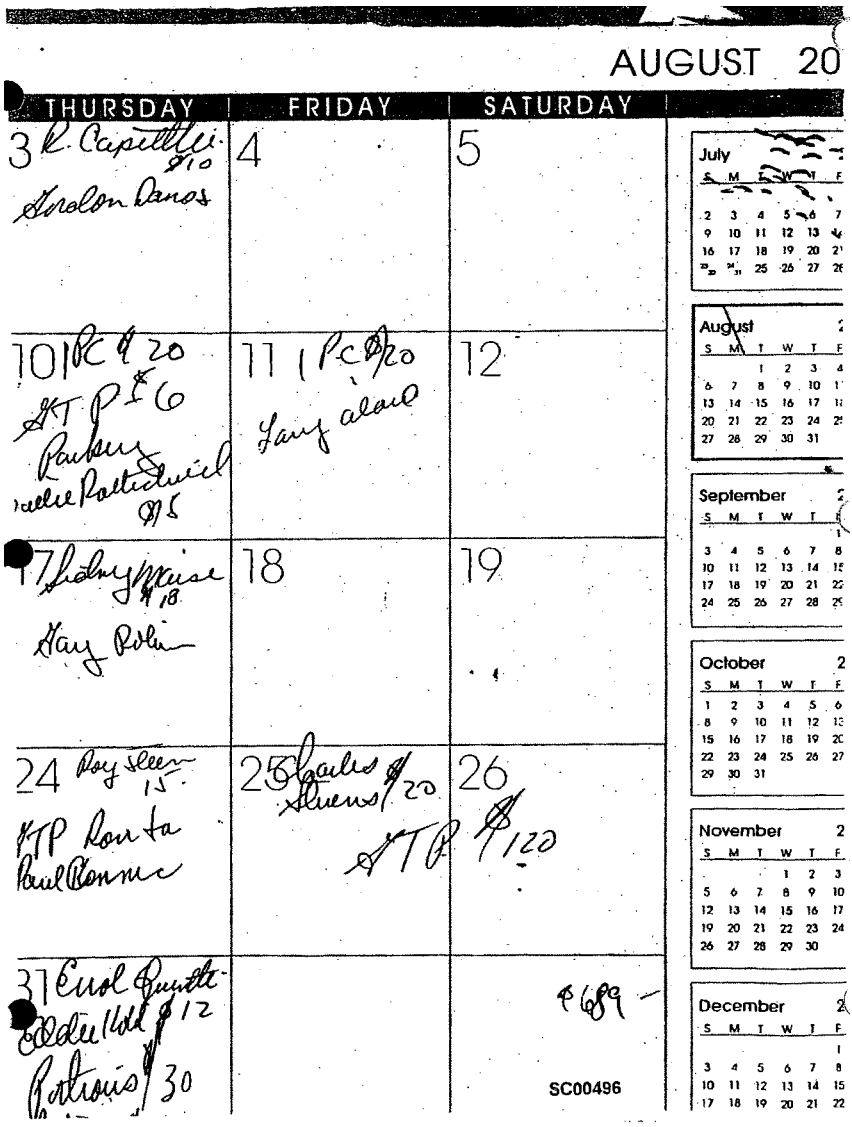
September

S	M	T	W	T
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

October

S	M	T	W	T
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19


NDAY
TUESDAY
WEDNESDA
EXPEN
4
INDEPENDENCE DAY (US)
5
10
11
12
6
17
18
19
24
25
26
SC00495



AUGUST 20

THURSDAY	FRIDAY	SATURDAY
3 R. Capitelli $10 Arolon Banos	4	5
10 RC $20 JT $6 Parker Callie Pettidwick $15	11 PC $20 Gary Alan	12
17 Sidney Price $18 Mary Robin	18	19
24 Roy Sleen $15 PTP Rosita Paul Connie	25 Charles Stevens $20 JTP	26 $120
31 Enol Pruitt Eddie Ward $12 Patricia $30		$689 SC00496

July

S	M	T	W	T	F
2	3	4	5	6	7
9	10	11	12	13	
16	17	18	19	20	21
23 30	24 31	25	26	27	28

August

S	M	T	W	T	F
		1	2	3	4
6	7	8	9	10	11
13	14	15	16	17	18
20	21	22	23	24	25
27	28	29	30	31	

September

S	M	T	W	T	F
					1
3	4	5	6	7	8
10	11	12	13	14	15
17	18	19	20	21	22
24	25	26	27	28	29

October

S	M	T	W	T	F
1	2	3	4	5	6
8	9	10	11	12	13
15	16	17	18	19	20
22	23	24	25	26	27
29	30	31			

November

S	M	T	W	T	F
			1	2	3
5	6	7	8	9	10
12	13	14	15	16	17
19	20	21	22	23	24
26	27	28	29	30	

December

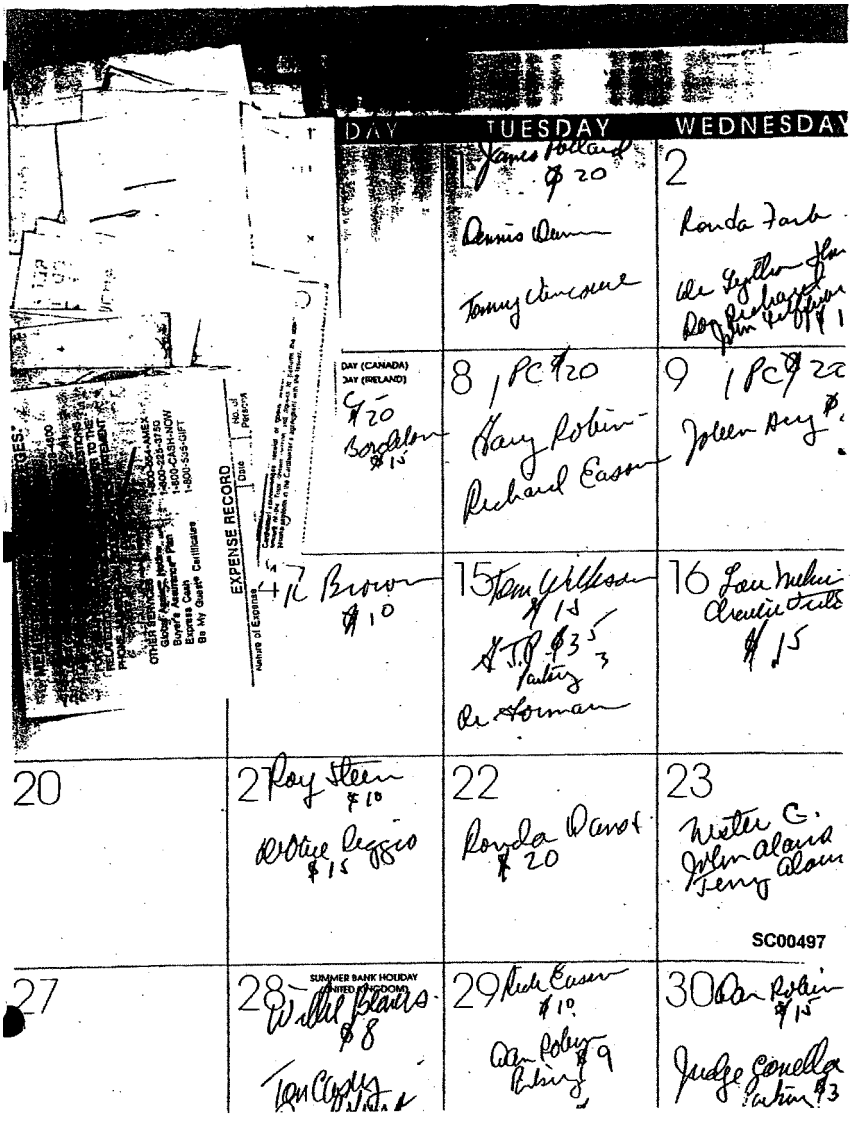
S	M	T	W	T	F
					1
3	4	5	6	7	8
10	11	12	13	14	15
17	18	19	20	21	22

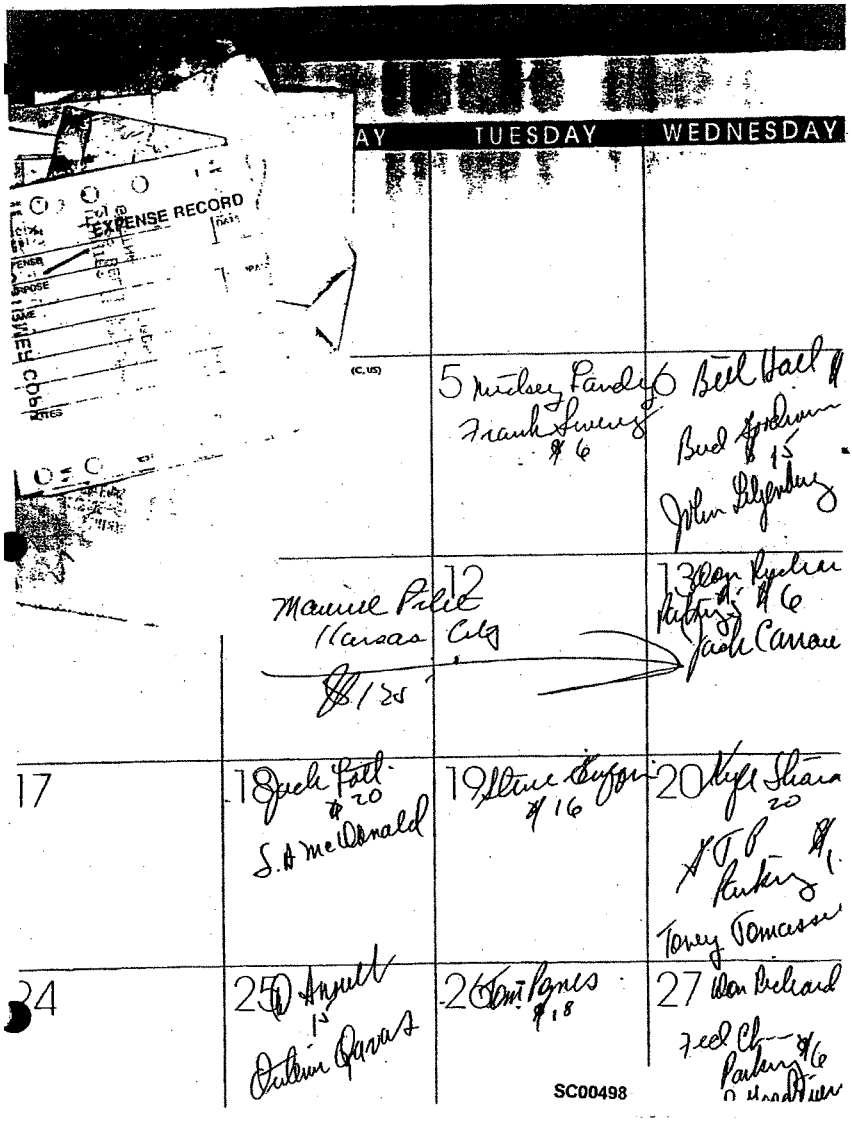
DAY	TUESDAY	WEDNESDAY
	1 James Pollard $20 Dennis Dunn Tommy Vincenne	2 Ronda Farb Wm Lytton Jr Roy Richard John Jeffries $1
DAY (CANADA) DAY (IRELAND) C $20 Bordalon $15	8 1 PC $20 Gary Robin Richard Eason	9 1 PC $20 Joleen Ary $
4 R Brown $10	15 Tom Wilkson $15 G.T.P. $35 Parking 3 Dr Norman	16 Lou Mehu Charlie Fritz $15
20	21 Roy Steen $10 Debbie Reggio $15	22 Ronda Dunst $20	23 Nestor C. John Alaria Terry Alaria SC00497
27	28 SUMMER BANK HOLIDAY (UNITED KINGDOM) Willie Blaiers $8 Tom Casey	29 Rick Eason $10 Dan Robin $9 Parking	30 Dan Robin $15 Judge Conella Parking $3

EXPENSE RECORD

Nature of Expense | Date | No. of Persons

OTHER SERVICES
Global Assistance Plan 1-800-554-AMEX
Buyer's Assurance Plan 1-800-225-3750
Express Cash 1-800-CASH-NOW
Be My Guest® Certificates 1-800-535-GIFT




EXPENSE RECORD
TUESDAY
WEDNESDAY
5
6
12
13
17
18
19
20
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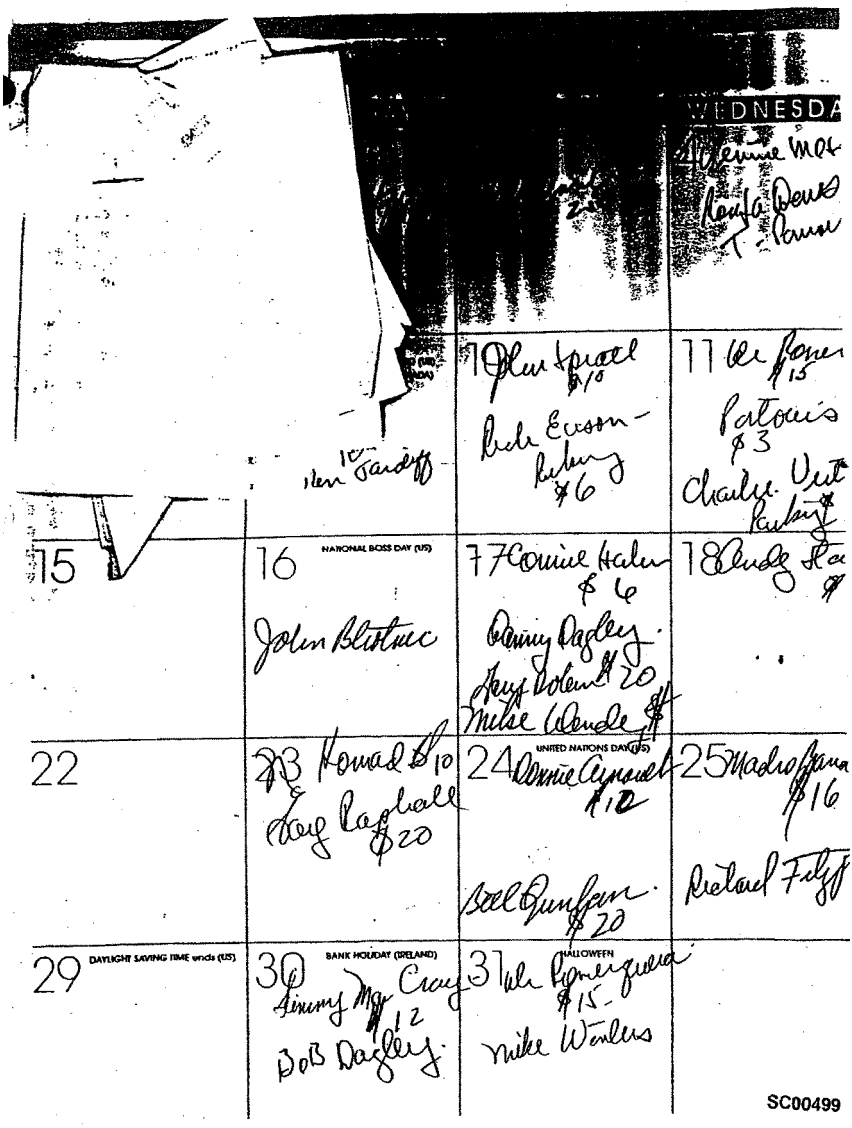
25
26
27
SC00498



			WEDNESDA Dennie Mo Renfa Dens T. Parm
	10 Ken Jardiff	10 John Sprott $10 Rich Ewson - Parking $6	11 Ur Rome $15 Patouis $3 Charlie Vert Parking $
15	16 NATIONAL BOSS DAY (US) John Blistnic	17 Connie Hahn $6 Danny Dagley Gary Dolan $20 Mike Wende $	18 Andy Sta $
22	23 Howard $10 Gary Raphall $20	24 UNITED NATIONS DAY (US) Donnie Aymard $12 Bill Gunfan $20	25 Madro Jana $16 Richard Fitzg
29 DAYLIGHT SAVING TIME ends (US)	30 BANK HOLIDAY (IRELAND) Jimmy Mc Cray $12 BoB Dagley	31 HALLOWEEN Ur Romerquera $15 Mike Winters	

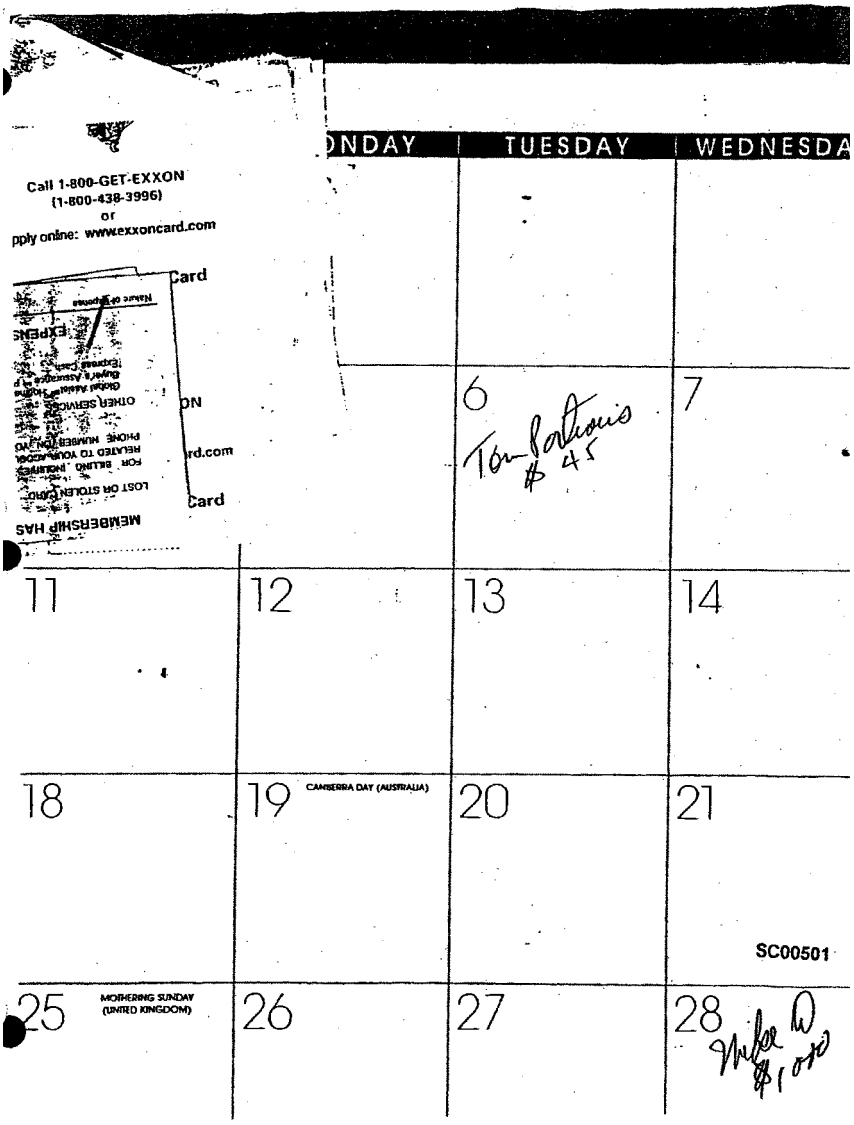
SC00499

2001

FEB. 6

MARCH 6

SC00500


Call 1-800-GET-EXXON
(1-800-438-3996)
or
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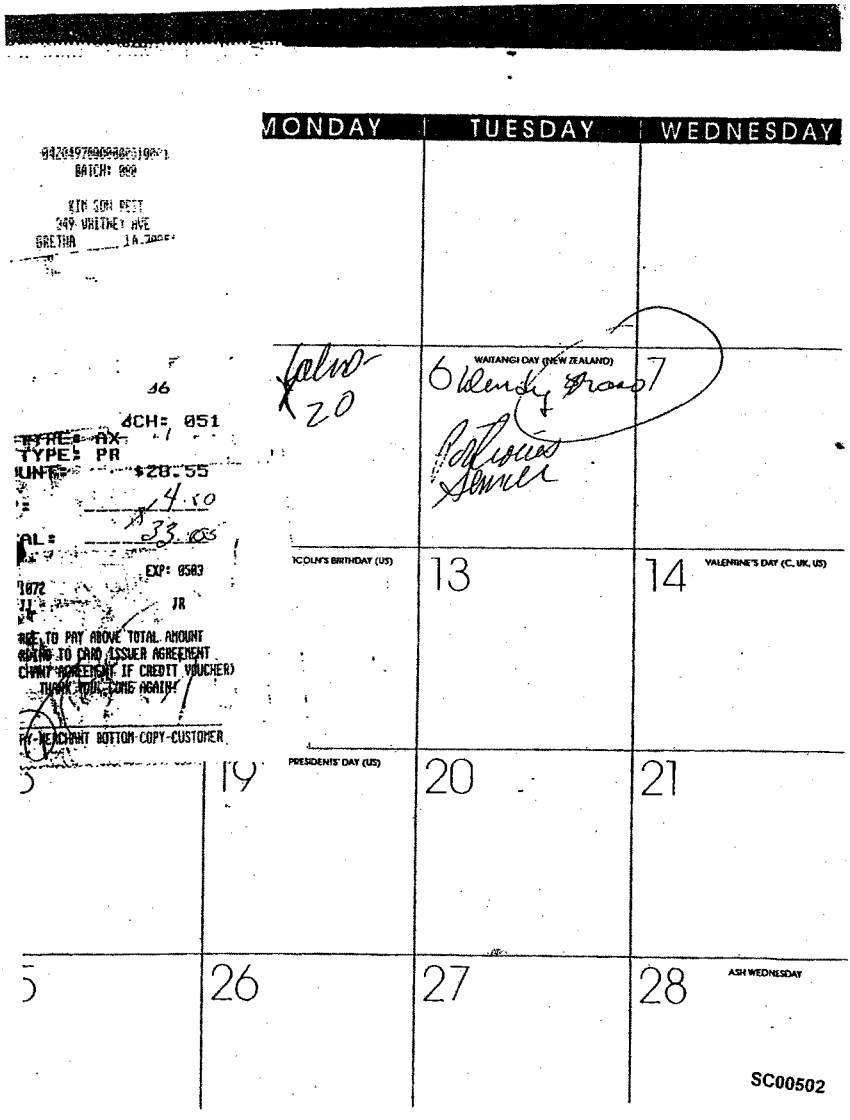
Card
ON
rd.com
Card
MEMBERSHIP HAS
NDAY
TUESDAY
WEDNESDA
6
7
11
12
13
14
18
19
CANBERRA DAY (AUSTRALIA)
20
21
SC00501
25
MOTHERING SUNDAY
(UNITED KINGDOM)
26
27
28



MONDAY	TUESDAY	WEDNESDAY
20	6 WAITANGI DAY (NEW ZEALAND) Wendy Grass Patricia Semler	7
ICOLN'S BIRTHDAY (US)	13	14 VALENTINE'S DAY (C, UK, US)
19 PRESIDENTS' DAY (US)	20	21
26	27	28 ASH WEDNESDAY

BATCH: 000

KIM SON PEST
349 WHITNEY AVE
GRETNA LA 70056

36

ACH: 051
TYPE: AX
TYPE: PR
UNT: $28.55
4.50
AL: 33.05
EXP: 0503
1072
JR
RE TO PAY ABOVE TOTAL AMOUNT
RDING TO CARD ISSUER AGREEMENT
CHANT AGREEMENT IF CREDIT VOUCHER)
THANK YOU, COME AGAIN!
PY-MERCHANT BOTTOM COPY-CUSTOMER

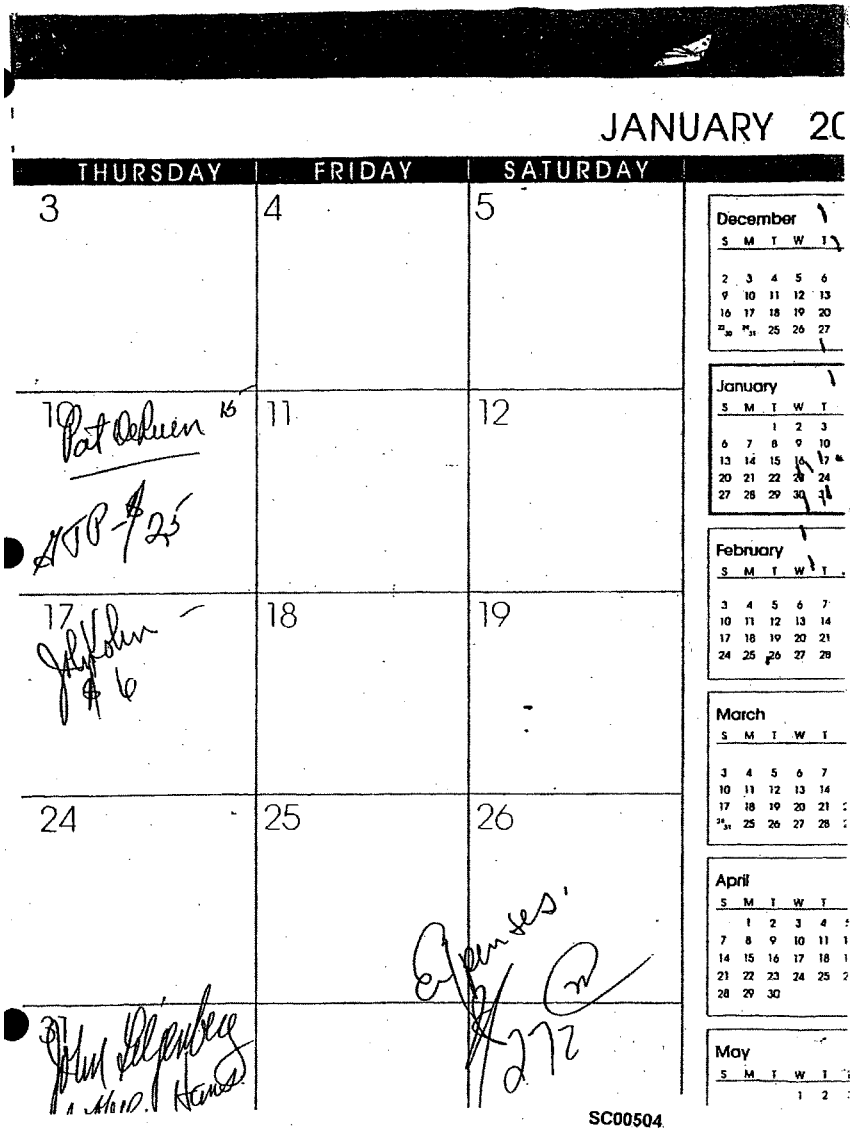
SC00502

2002

JAN. 10
JAN. 15

MARCH 12
MARCH 23

MAY 21



JANUARY 20

THURSDAY	FRIDAY	SATURDAY
3	4	5
10 Pat DeLuen 15 GTP $25	11	12
17 John Kohn $6	18	19
24	25	26
31 John Seljenberg [illegible] Hans		Expenses $272

December

S	M	T	W	T
2	3	4	5	6
9	10	11	12	13
16	17	18	19	20
23 30	24 31	25	26	27

January

S	M	T	W	T
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

February

S	M	T	W	T
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

March

S	M	T	W	T
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24 31	25	26	27	28

April

S	M	T	W	T
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25
28	29	30		

May

S	M	T	W	T
			1	2

SC00504

MEMBERSHIP HAS ITS PRIVILEGES.

LOST OR STOLEN CARD
FOR BILLING STATEMENTS OR OTHER QUESTIONS RELATED TO YOUR ACCOUNT PLEASE REFER TO THE PHONE NUMBER ON THE FACE OF THE STATEMENT.

OTHER SERVICES
Global Assist™ Hotline 1-800-554-AMEX
Buyer's Assurance™ Plan 1-800-225-3750
Express Cash 1-800-CASH-NOW

EXPENSE RECORD

Nature of Expense	Date	No. of Persons

TUESDAY	WEDNESD
1 New Year's	2
8 Mr Raphael 6 Parking $10	9 Neel 8.61 Sandy McC $2
15 STP. KW Ronta $50 Parking $10	16 Ron Vincent $ Ron Villa
22 Mickey Santy $8 Henry Sauveac	23 R Ungar Parking $7
27	28 Madero Banderas $40
29 Joe Fallo	30

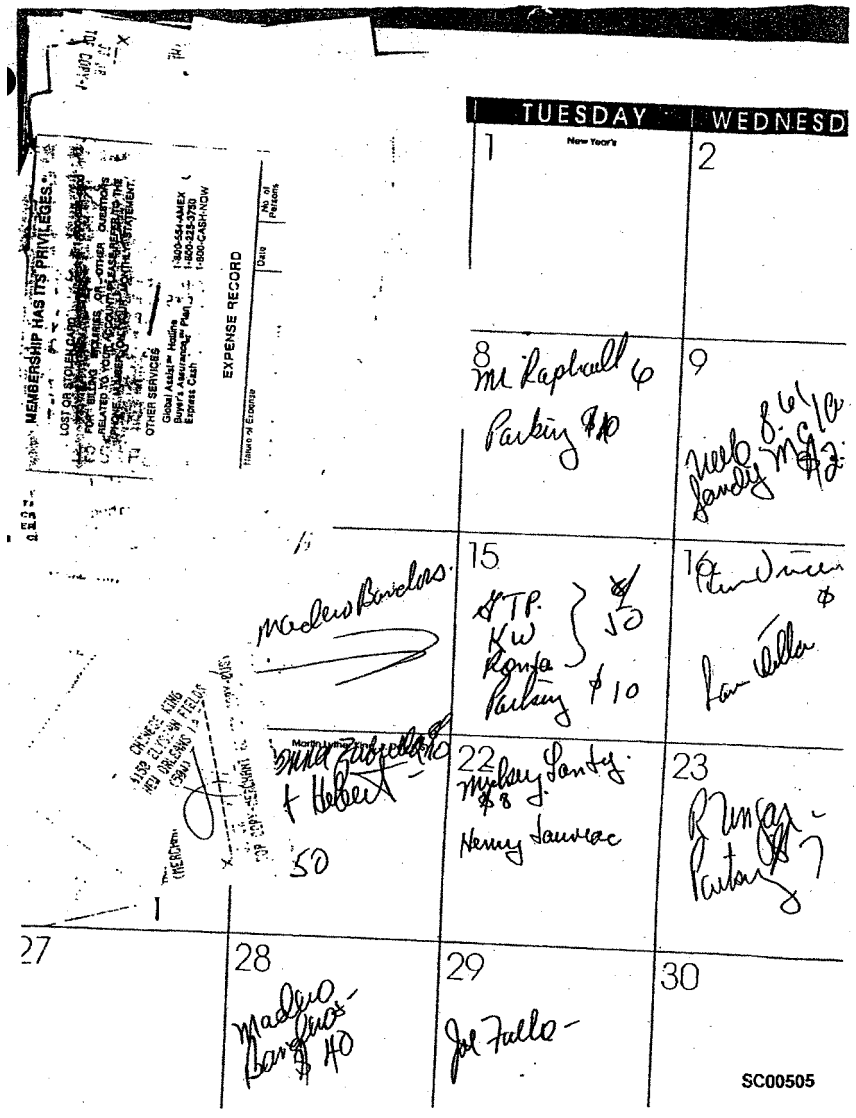
Madero Banderas

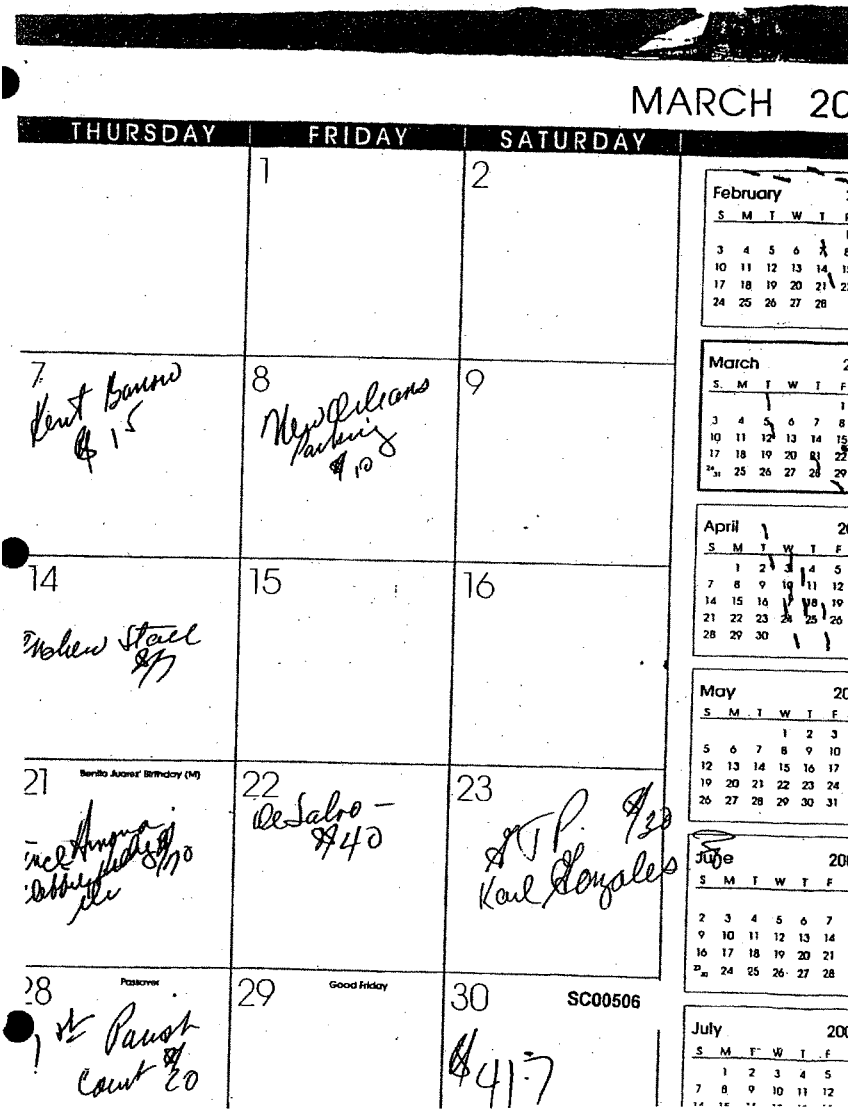
Martin Luther

Donna Zubrecht
+ Hebert
50

CHANCE KING
4150 ELYSIAN FIELDS
NEW ORLEANS 1-4
(504)

SC00505





MARCH 20

THURSDAY	FRIDAY	SATURDAY
	1	2
7 Kent Barnes @ 15	8 Mr. Gilcrease Parking @ 10	9
14 Mabel Stark @7	15	16
21 Benita Juarez' Birthday (M) Uncle Angus @10 Debbie Hale	22 DeSalvo - @40	23 ATP @28 Karl Gonzales
28 Passover 1st Parish Court @20	29 Good Friday	30 SC00506 @41-7

February

S	M	T	W	T	F
3	4	5	6	7	8
10	11	12	13	14	15
17	18	19	20	21	22
24	25	26	27	28	

March

S	M	T	W	T	F
					1
3	4	5	6	7	8
10	11	12	13	14	15
17	18	19	20	21	22
24/31	25	26	27	28	29

April

S	M	T	W	T	F
	1	2	3	4	5
7	8	9	10	11	12
14	15	16	17	18	19
21	22	23	24	25	26
28	29	30			

May

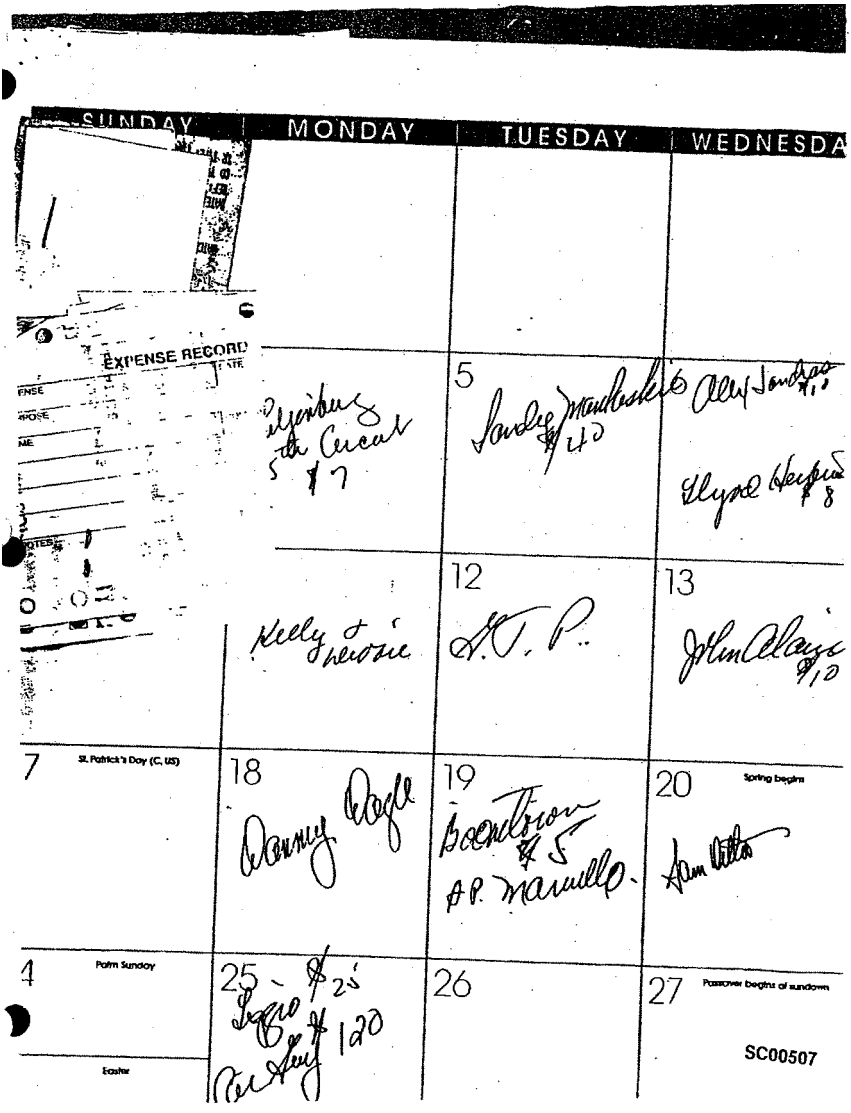
S	M	T	W	T	F
			1	2	3
5	6	7	8	9	10
12	13	14	15	16	17
19	20	21	22	23	24
26	27	28	29	30	31

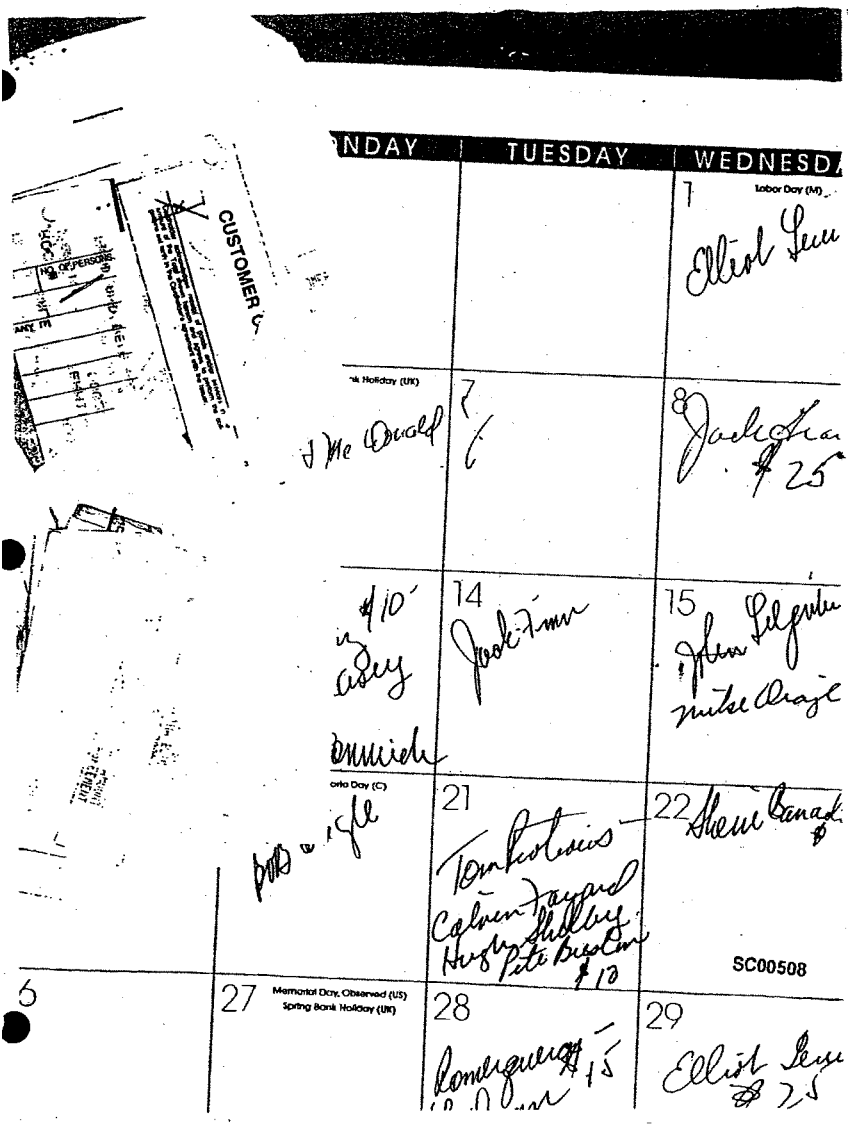
June

S	M	T	W	T	F
2	3	4	5	6	7
9	10	11	12	13	14
16	17	18	19	20	21
23/30	24	25	26	27	28

July

S	M	T	W	T	F
	1	2	3	4	5
7	8	9	10	11	12


SUNDAY
MONDAY
TUESDAY
WEDNESDA
EXPENSE RECORD
5
12
13
7
St. Patrick's Day (C, US)
18
19
20
Spring begins
4
Palm Sunday
Easter
25
26
27
Passover begins at sundown
SC00507

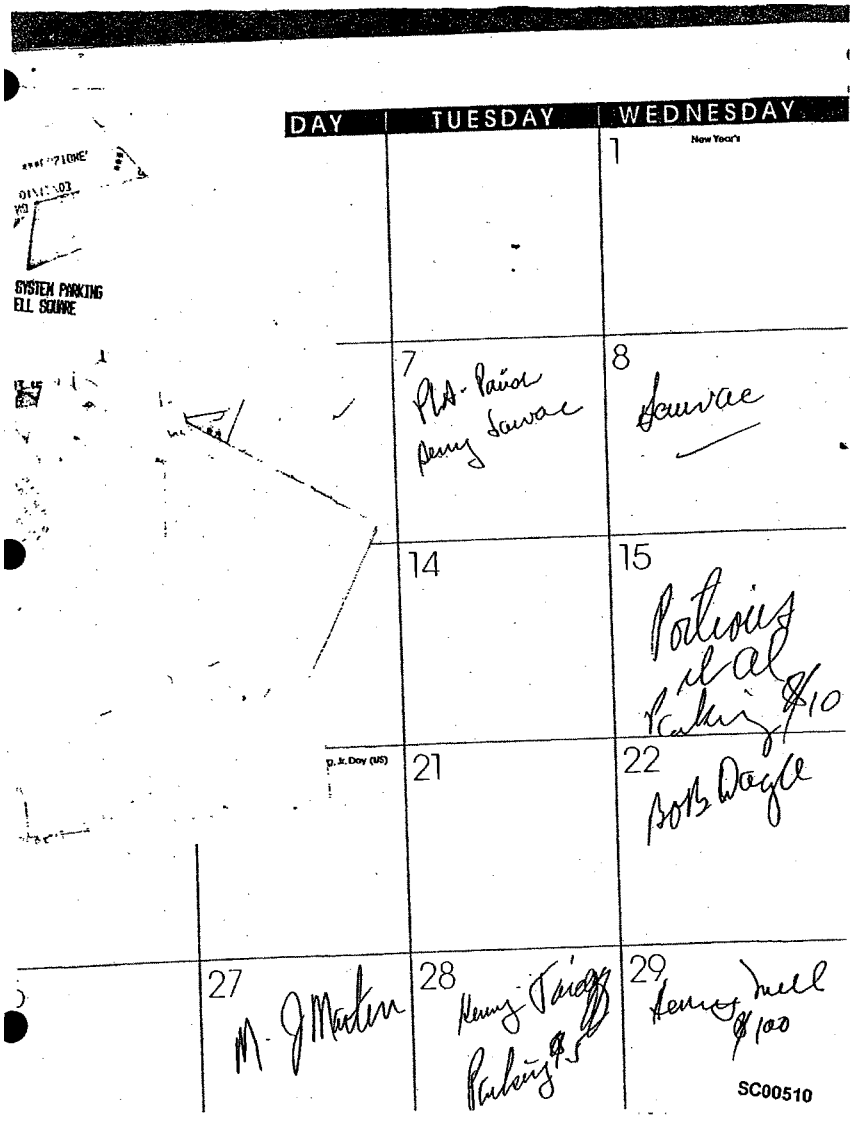

NDAY
TUESDAY
WEDNESD
Labor Day (M)
Elliot Lew
Holiday (UK)
McDonald
Jack Fran
$25
$10
Jack Finn
John Silgenbu
Mike Orage
Day (C)
Tom Protious
Calvin Fayard
Hugh Shelby
Pete Breslin
$10
Sherri Banad
SC00508
Memorial Day, Observed (US)
Spring Bank Holiday (UK)
Romerguera
$15
Elliot Lew
$25
CUSTOMER

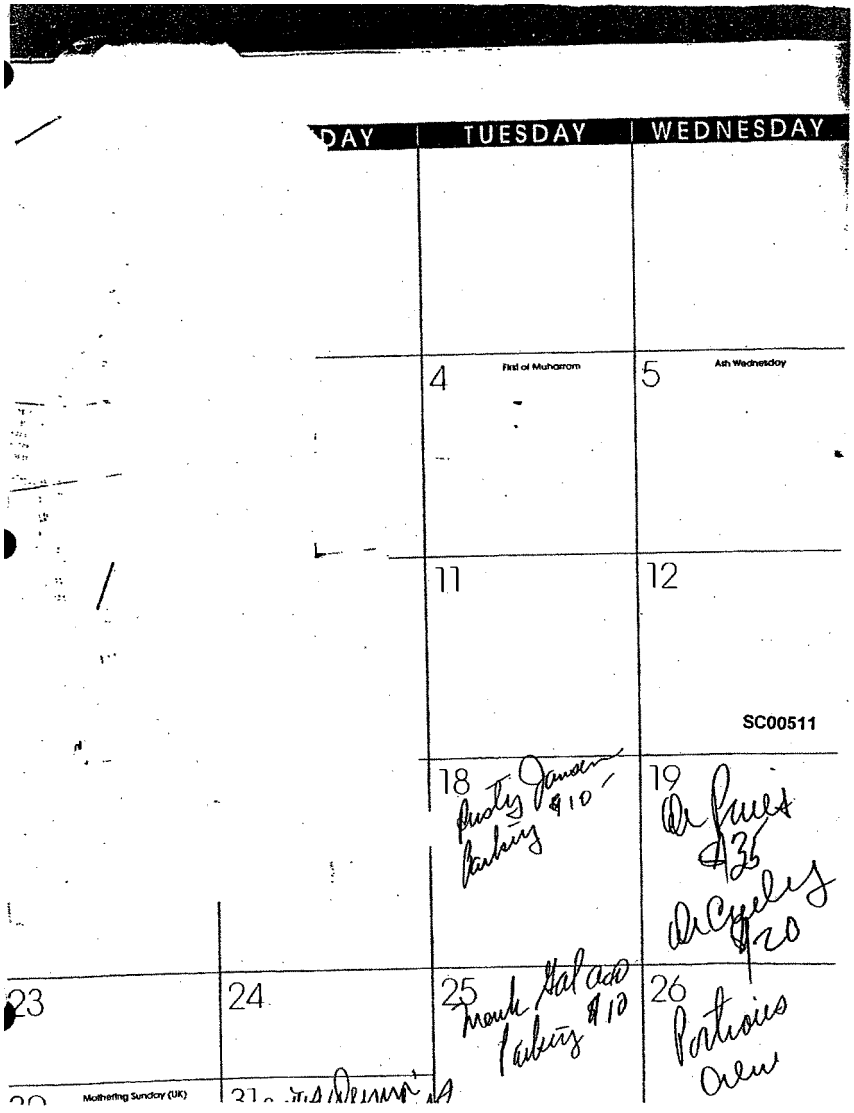
2003

JAN. 15

MARCH 26

SC00509


DAY
TUESDAY
WEDNESDAY
1
New Year's
7
8
14
15
21
22
27
28
29
SYSTEM PARKING
ELL SQUARE
SC00510



DAY	TUESDAY	WEDNESDAY
	4 First of Muharram	5 Ash Wednesday
	11	12 SC00511
	18 Rusty Jansen Parking $10	19 Dr Pines $35 Dr Cyrley $20
23	24	25 Mark Galaxo Parking $10	26 Portions Crew
30 Mothering Sunday (UK)	31 [illegible]	

RHONDA

1999

OCT. 28

2000

JAN. 6

MARCH 27

APRIL 6

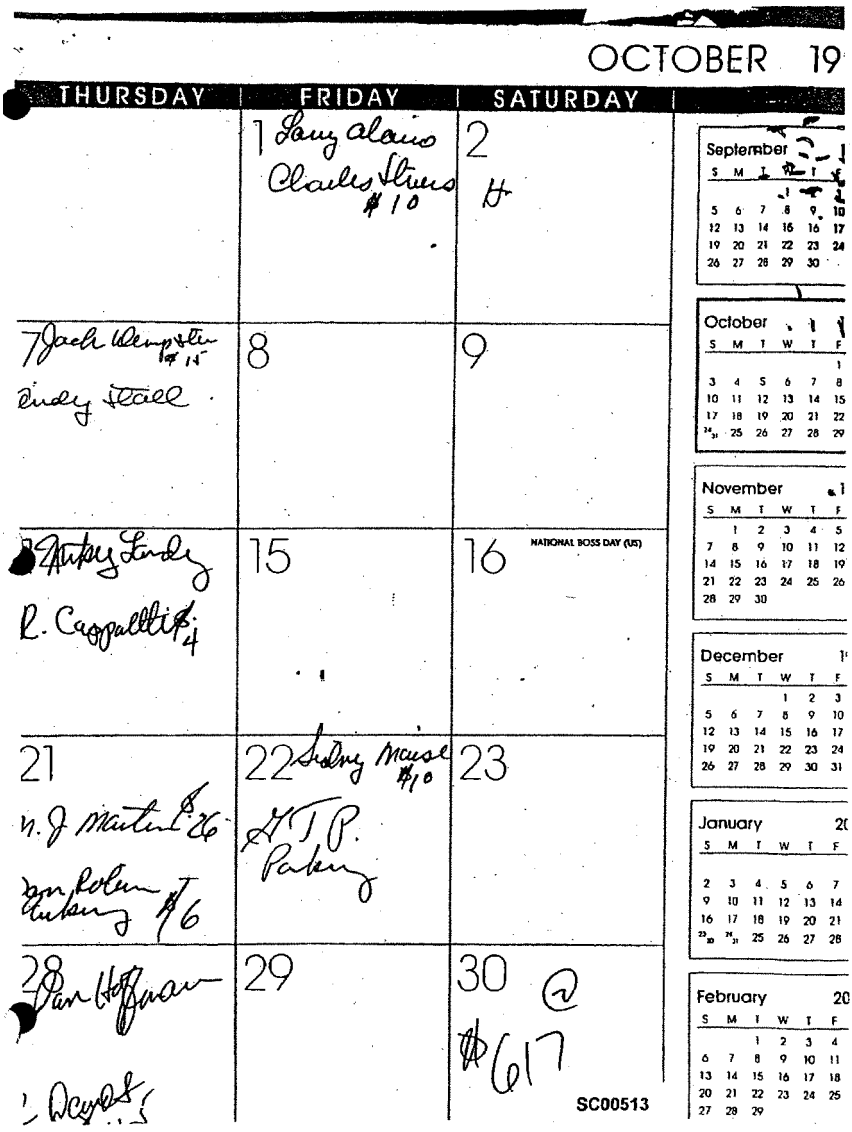
APRIL 25

AUG. 22

OCT. 4

NOV. 9

DEC. 20



OCTOBER 19

THURSDAY	FRIDAY	SATURDAY
	1 Larry Alaino Charles Stivers $10	2 H
7 Jack Wempster $15 Andy Stall	8	9
8 Mickey Landy R. Cappelletti $4	15	16 NATIONAL BOSS DAY (US)
21 N. J. Martin $26 Dan Robin Parking $6	22 Sidney Maise $10 G T P. Parking	23
28 Dan Hoffman L. Dewitt	29	30 @ $617

SC00513

September

S	M	T	W	T	F
			1		1
5	6	7	8	9	10
12	13	14	15	16	17
19	20	21	22	23	24
26	27	28	29	30	

October

S	M	T	W	T	F
					1
3	4	5	6	7	8
10	11	12	13	14	15
17	18	19	20	21	22
24 31	25	26	27	28	29

November

S	M	T	W	T	F
	1	2	3	4	5
7	8	9	10	11	12
14	15	16	17	18	19
21	22	23	24	25	26
28	29	30			

December

S	M	T	W	T	F
			1	2	3
5	6	7	8	9	10
12	13	14	15	16	17
19	20	21	22	23	24
26	27	28	29	30	31

January

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February

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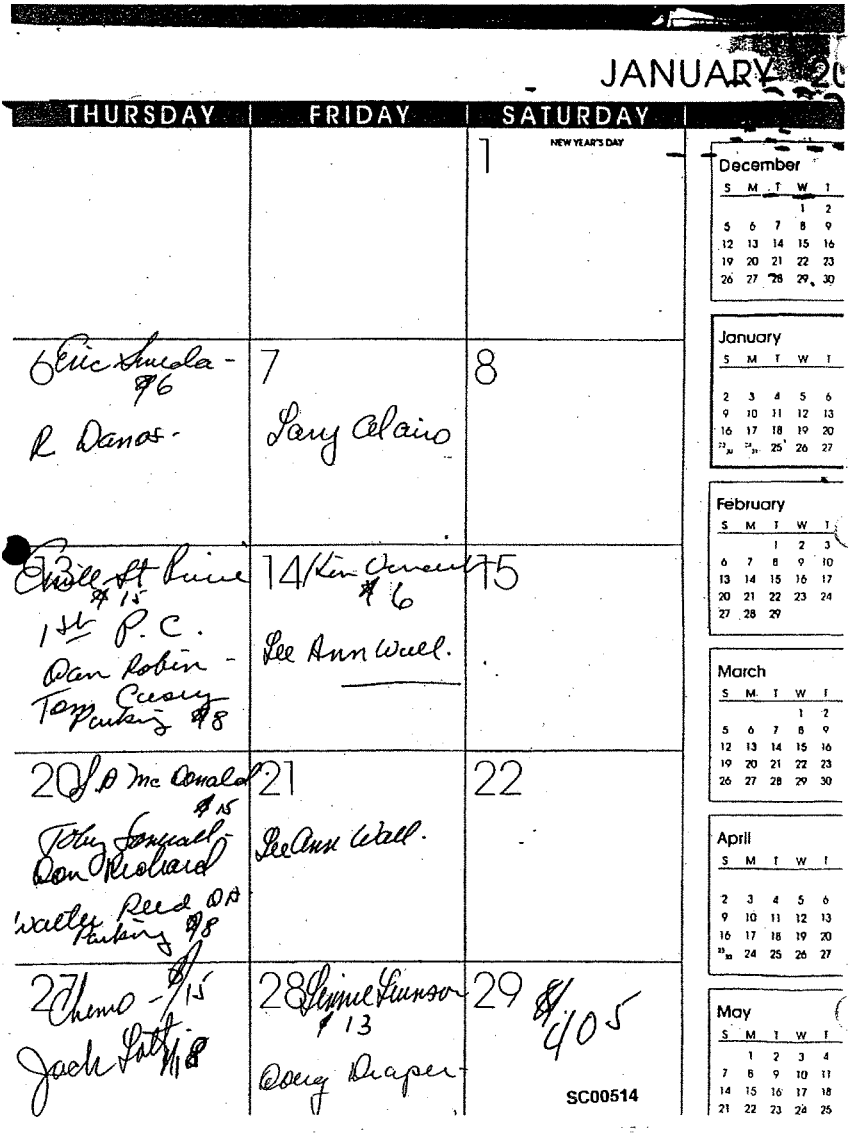

JANUARY 20

THURSDAY	FRIDAY	SATURDAY
		1 NEW YEAR'S DAY
6 Eric Smeda - $6 R. Danos -	7 Gary Alaino	8
13 Bill St Pierre $15 1st P.C. Dan Robin - Tom Casey Parking $8	14 Ken Vincent $6 Lee Ann Wall.	15
20 S.A. McDonald $15 Toby Sonnall - Don Richard Walter Reed DA Parking $8	21 Lee Ann Wall.	22
27 Chemo - $15 Jack Lott $18	28 Lennie Lunson $13 Doug Draper -	29 $405

SC00514

December

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January

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February

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27	28	29		

March

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April

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May

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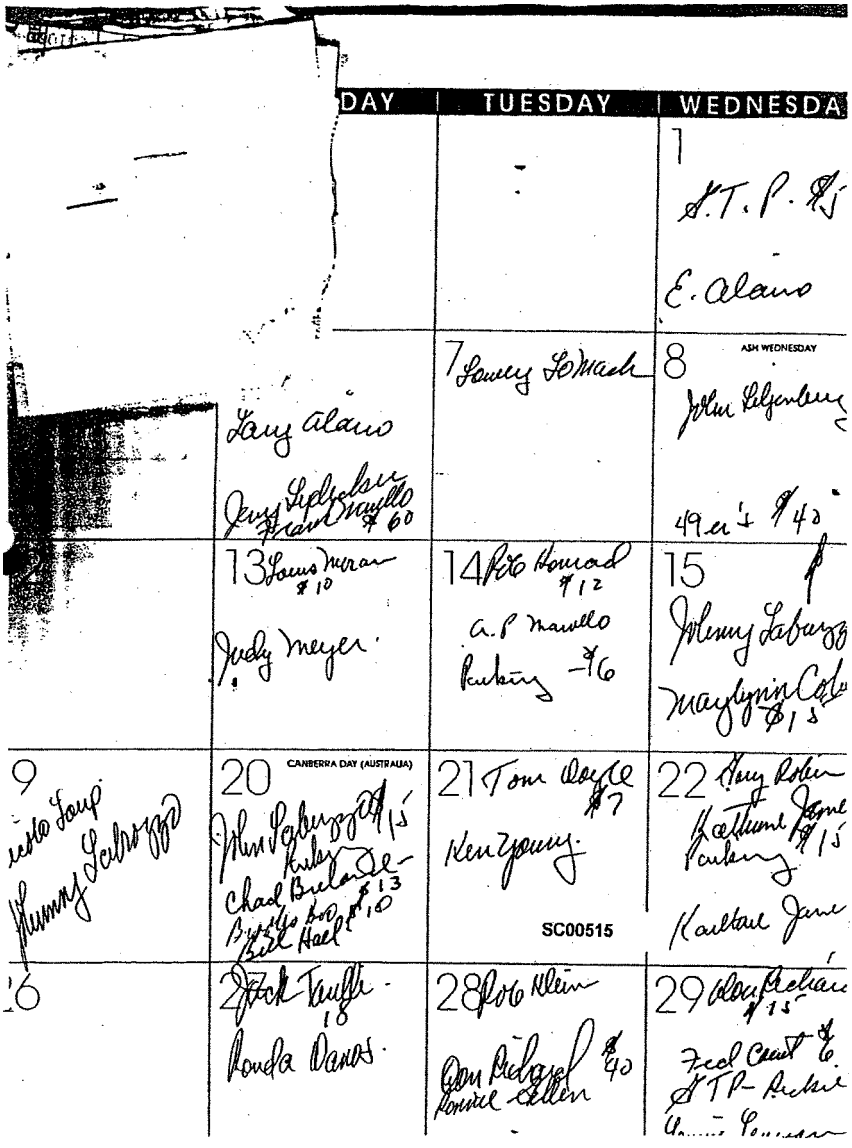

	DAY	TUESDAY	WEDNESDA
			1 S.T.P. $5 E. Alano
	Larry Alano Jerry Lipchicker Frank Marullo $60	7 Lowery LoMach	8 ASH WEDNESDAY John Lilgenberg 49er's $40
	13 Louis Moran $10 Judy Meyer	14 Rob Honrad $12 A.P. Marullo Parking $6	15 Johnny Labruzzo Marylynn Col $15
9 ...ecto Loup Johnny Labruzzo	20 CANBERRA DAY (AUSTRALIA) John Labruzzo $15 Kirby Chad Bulandel $13 Bruno Boo $10 Bill Hall	21 Tom Doyle $7 Ken Young SC00515	22 Gary Robin Kathleen Jane Parking $15 Kathleen Jane
26	27 Jack Taufle 18 Ronda Danos	28 Rob Klein Don Richard $40 Ronnie Allen	29 Don Richard $15 Fred Court $6 STP Archie ...

APRIL 2(

THURSDAY	FRIDAY	SATURDAY
		1
6 Sonda Demos Aldin Wendhast	7 Ernie Alain $200	8
13	14	15
20 PASSOVER	21 GOOD FRIDAY	22
27 2nd P.C. $10 John Lefebvre Parking $4	28 NATIONAL DAY OF MOURNING (CANADA) 621	29

SC00516

March

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April

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23/30	24	25	26	27

May

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June

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July

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16	17	18	19	20
23/30	24/31	25	26	27

August

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27	28	29	30	31

April

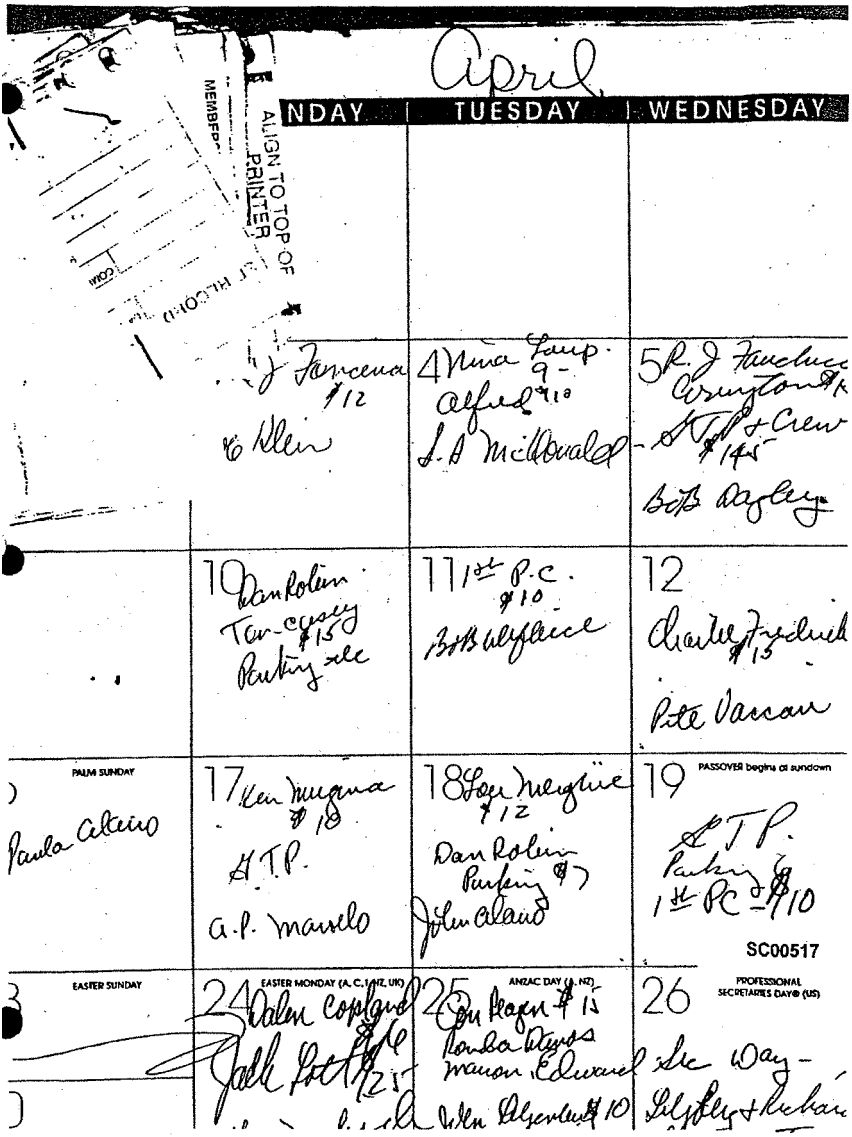
NDAY	TUESDAY	WEDNESDAY
J Fancena $12 C Klein	4 Nina Loup 9- Alfred $10 S.A McDonald	5 R. J Fanchuc Covington $1 S T P + Crew $145 Bob Dagley
10 Dan Robin Tan-casey $15 Parking etc	11 1st P.C. $10 Bob Wyllace	12 Charlie Fredrick $15 Pete Vaccan
PALM SUNDAY Paula Alaino	17 Ken Mugana $10 S.T.P. A.P. Marcello	18 Lou Meighne $12 Dan Robin Parking $7 John Alaino
EASTER SUNDAY	24 EASTER MONDAY (A, C, I, NZ, UK) Dalen Copland $6 Jack Lott $25	25 ANZAC DAY (A, NZ) Con Reagan $15 Ronda Davos Marion Edward John Sylvester $10

PASSOVER begins at sundown

19 S T P. Parking 6 1st PC - $10

SC00517

26 PROFESSIONAL SECRETARIES DAY® (US) Sec Day - Lil Ley + Richard



Aug.

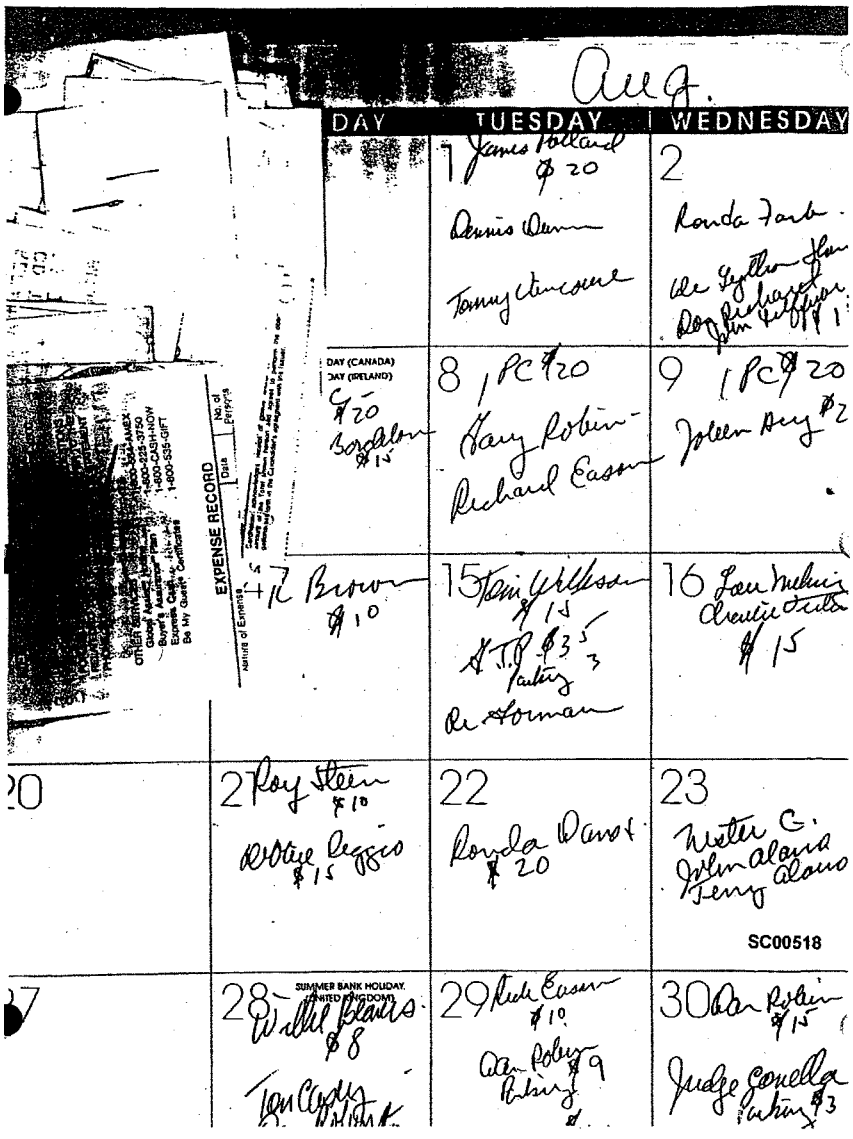
DAY	TUESDAY	WEDNESDAY
	1 James Pollard $20 Dennis Dunn Tommy Vancouver	2 Ronda Farb Wm Lytton Flan Roy Richard John Kiffner $1
DAY (CANADA) DAY (IRELAND) C $20 Bordalon $15	8 1 PC $20 Gary Robin Richard Eason	9 1 PC $20 Joleen Ary $2
7 R Brown $10	15 Tom Wilkson $15 S.T.P. $3 5 Parking 3 Ri Norman	16 Lou Melvin Charlie Fuller $15
20	21 Roy Steen $10 Debbie Reggio $15	22 Ronda Dans $20	23 Nestor G. John Alaria Terry Alaria SC00518
27	28 SUMMER BANK HOLIDAY (UNITED KINGDOM) Willie Beavers $8 Tom Cassy Parking	29 Rick Eason $10 Dan Robin $9 Parking	30 Dan Robin $15 Judge Gonella Parking $3

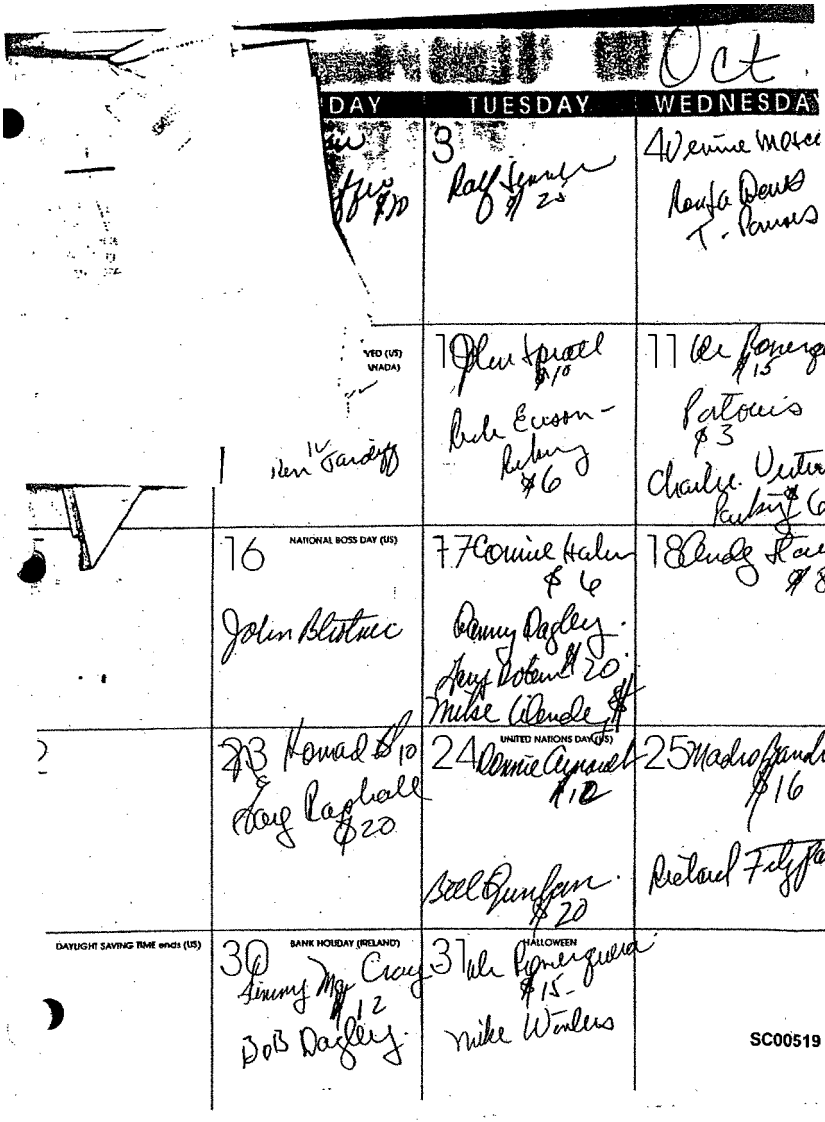
EXPENSE RECORD

Date | No. of Persons

Nature of Expense

OTHER SERVICES
Global Assist Hotline 1-800-364-AMEX
Buyer's Assistance Plan 1-800-225-3750
Express Cash 1-800-CASH-NOW
Be My Guest Certificates 1-800-535-GIFT

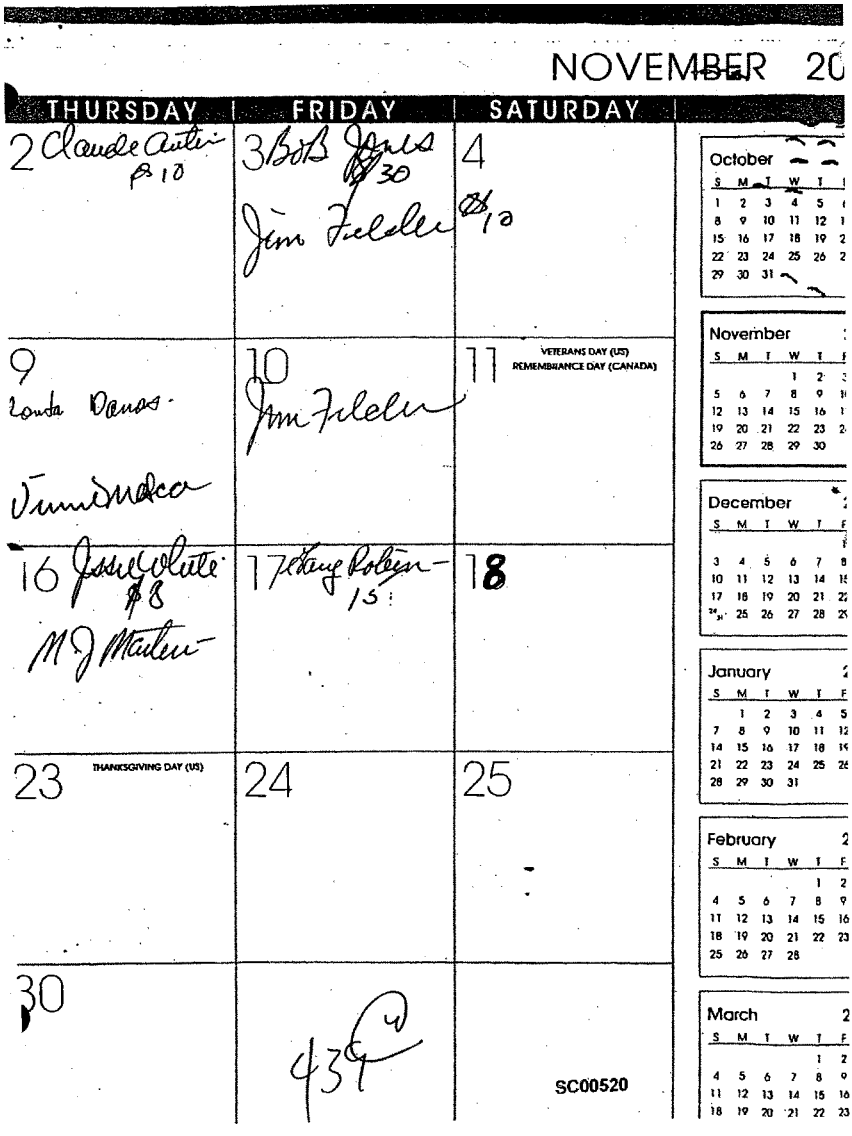




Oct

	DAY	TUESDAY	WEDNESDA
	...ffie $10	3 Ralf Sennel $25	4 Vernine Mosca Ronda Davis T. Parnes
	...YED (US) ...NADA) 1 Ken Gardiff	10 John Sprott $10 Rick Ericson - Parking $6	11 Ole Romerg... $15 Patouris $3 Charlie Vertin Parking $6
	16 NATIONAL BOSS DAY (US) John Blistner	17 Connie Hahn $6 Danny Dagley. Gary Robert $20 Mike Wendel $	18 Andy Stall $8
	23 Howard $10 Gary Raphall $20	24 UNITED NATIONS DAY (US) Donnie Arnold $10 Bill Gunfan. $20	25 Madro Gandros $16 Richard Fitzpatri
DAYLIGHT SAVING TIME ends (US)	30 BANK HOLIDAY (IRELAND) Jimmy Mc Cray $12 BoB Dagley.	31 HALLOWEEN Ole Romerguera $15 Mike Winters	

SC00519



NOVEMBER 20

THURSDAY	FRIDAY	SATURDAY
2 Claude Autin $10	3 Bob Jones $30 Jim Fielder	4 $10
9 Ronda Danos Jimmie Mack	10 Jim Fielder	11 VETERANS DAY (US) REMEMBRANCE DAY (CANADA)
16 Jessie White $8 M J Martin	17 Betsy Robin 15	18
23 THANKSGIVING DAY (US)	24	25
30	439	SC00520

October

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15	16	17	18	19	2[illegible]
22	23	24	25	26	2[illegible]
29	30	31			

November

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19	20	21	22	23	2[illegible]
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December

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10	11	12	13	14	1[illegible]
17	18	19	20	21	2[illegible]
24 31	25	26	27	28	2[illegible]

January

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February

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25	26	27	28		

March

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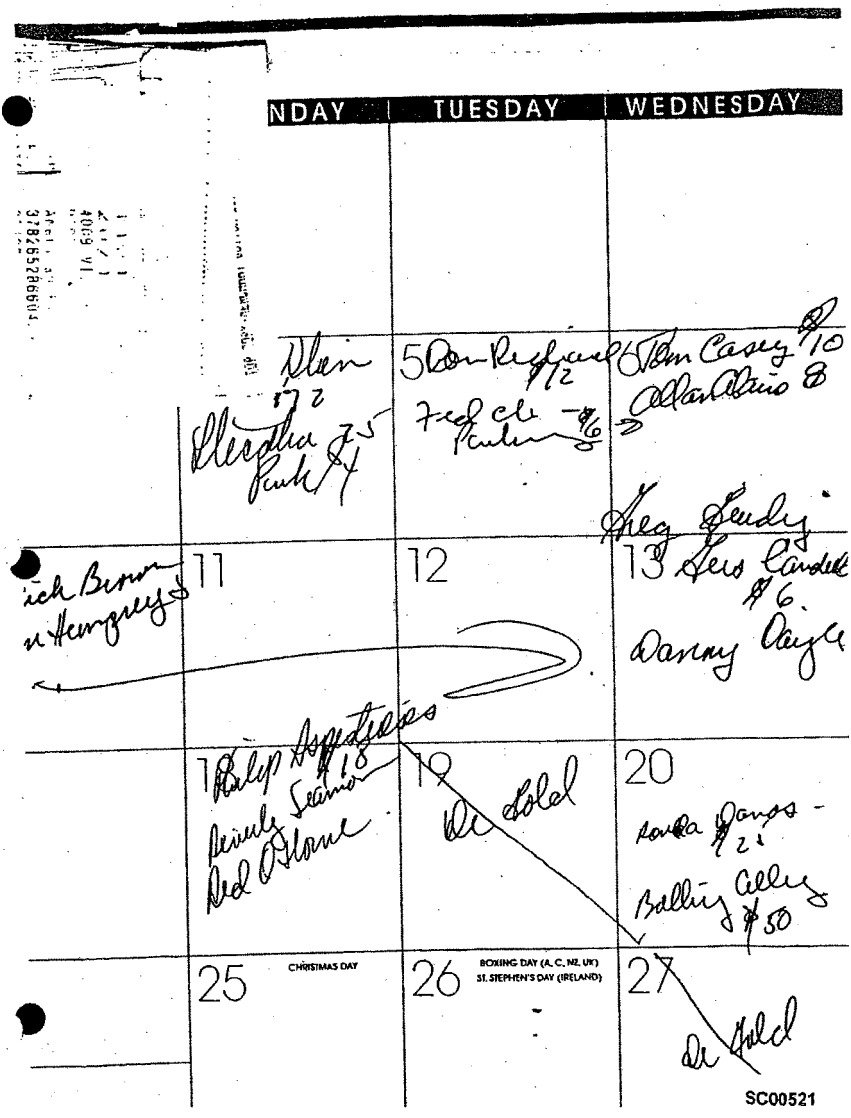
NDAY
TUESDAY
WEDNESDAY
11
12
13
19
20
25
CHRISTMAS DAY
26
BOXING DAY (A, C, NZ, UK)
ST. STEPHEN'S DAY (IRELAND)
27
SC00521

GTP

1999

MAY 5
MAY 26

JUNE 16
JUNE 22
JUNE 29

JULY 7
JULY 24

AUG. 2
AUG. 12

SEPT. 9
SEPT. 13

OCT. 4
OCT. 6
OCT. 22

NOV. 5
NOV. 10

DEC. 6
DEC. 28
DEC. 29

SC00522

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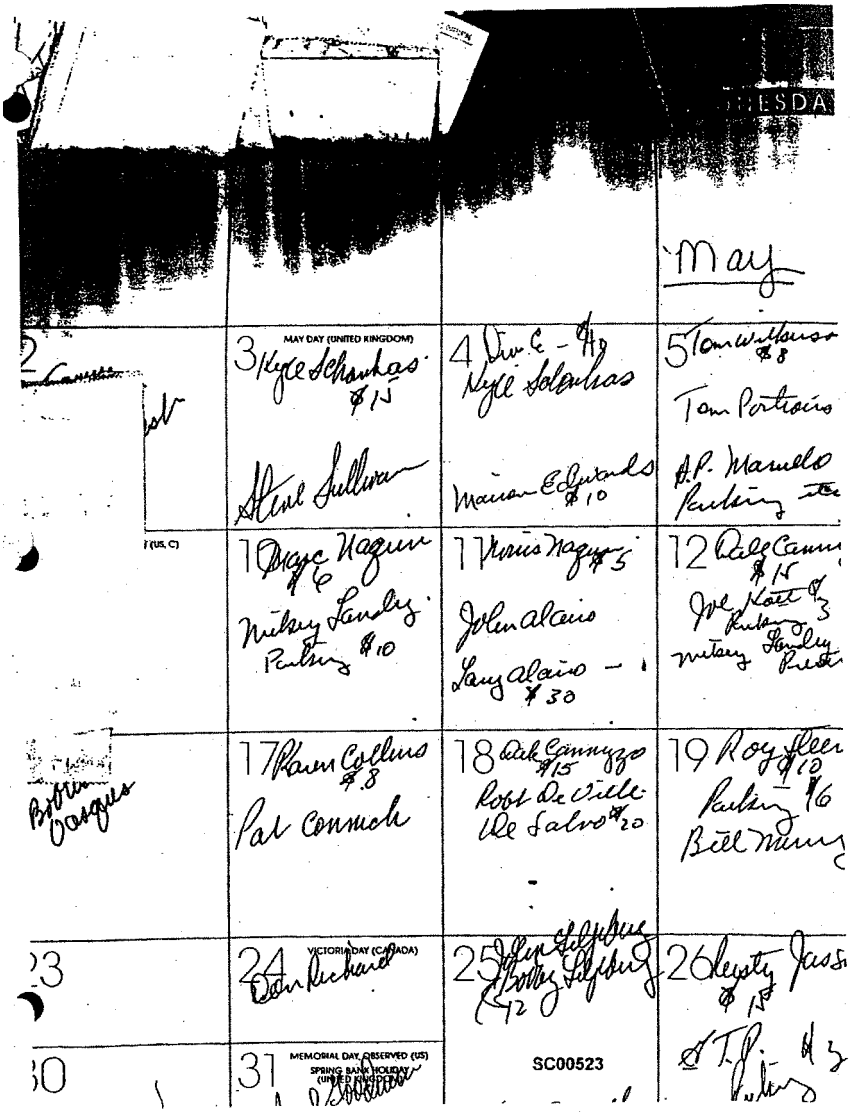
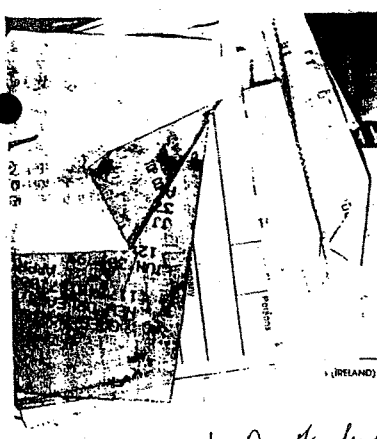


TUESDA

May

MAY DAY (UNITED KINGDOM)

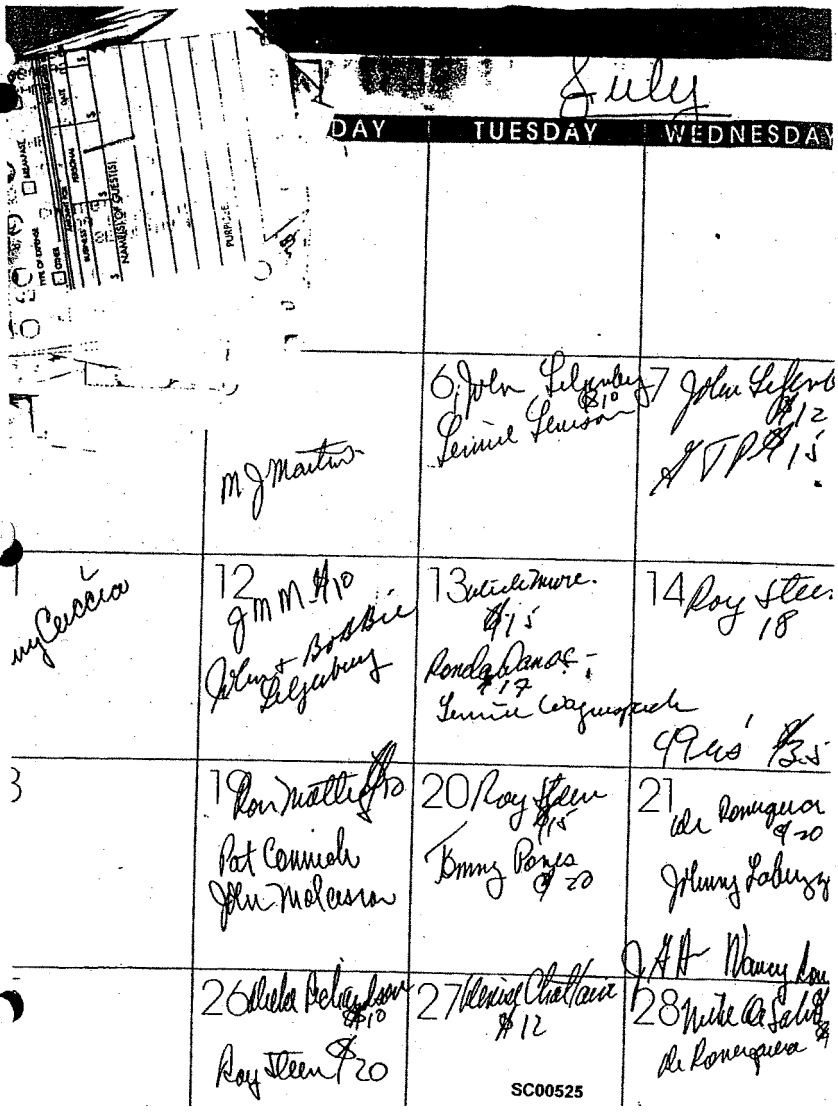
SC00523



June

	AY	TUESDAY	WEDNESDAY
		7 Dukes - $6 Bud Goodwin	2 J.A. McDonald $7 R Capitelli - $ Parking Parking Harry Morel
	(IRELAND) John Spratt Don Gardner $15 Karl Sommer	8 F Morgan Tommy Dolt $4 Parking $3 Minet	9 Karen Morgan Jack Hunter 49er's - $62
3	14 FLAG DAY (US) Pat Connick Ronnie Boudelhamer Roxann Minet $10	15 Tony Bergeron $5 Bud Goodwin M J Martin $28	16 Roy Steen G T P. Parking $7 Paul Minet
0 FATHER'S DAY (US, C, UK) oy Steen	21 Minet $5 Parking $7 Stewart Mills $6 Lafferty $6 Allen Pelgenberg	22 Tom Portions Parking $3 -	23 Vic Lora $6 M J Martin
7	28 Marion Edward $6 John Alfano $3	29 Dan Pfeiffer $8 G T P.	30

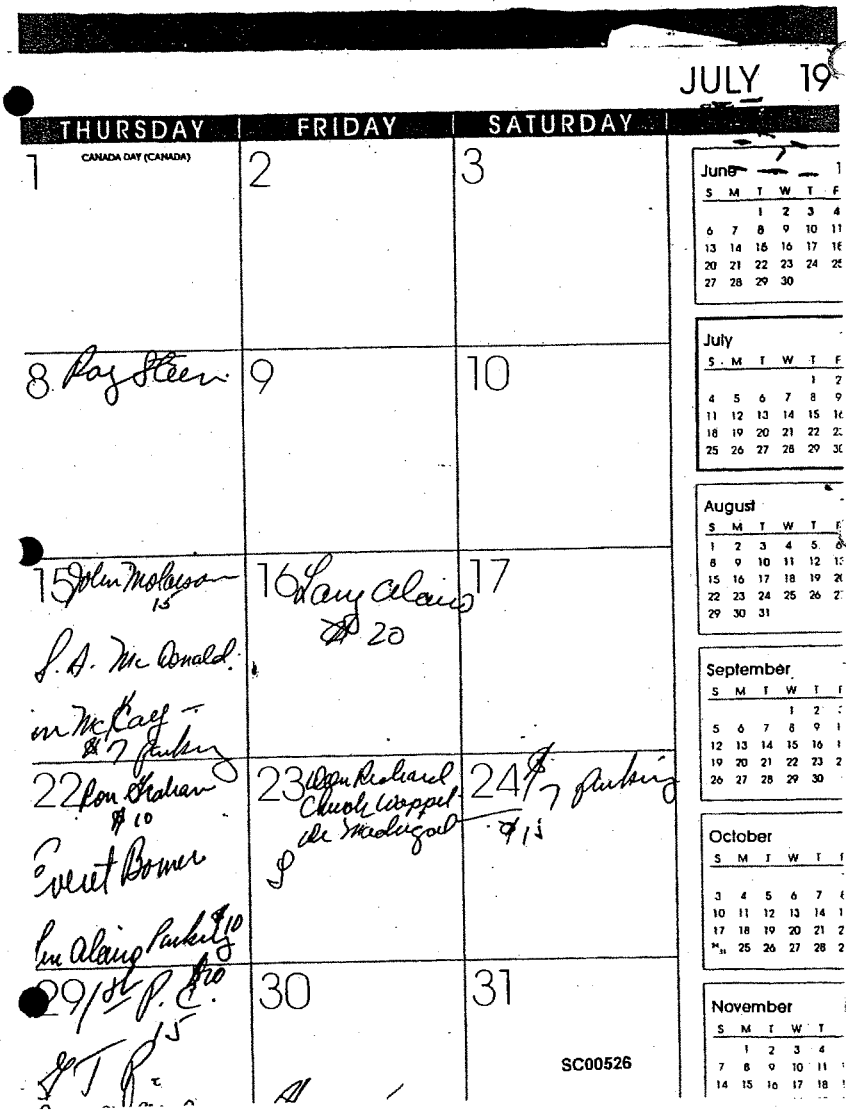
SC00524



July

	DAY	TUESDAY	WEDNESDAY
	M J Martin	6 John Lefevre $10 Lennie Lenson	7 John Lefevre $12 ATP $15
ny Ceccia	12 JMM $10 John & Bobbie Lefevre	13 Wilde Moore $15 Ronda Dana $17 Lennie Wagnerpeck	14 Roy Steen 18 Ques $35
3	19 Ron Mattie $10 Pat Connich John Malcasson	20 Roy Steen $15 Tommy Pones $20	21 Ole Romeguera $20 Johnny Laberge JAA Nancy Lou
	26 Delia Richardson $10 Roy Steen $20	27 Denise Chatlain $12	28 Mike de Salvo Ole Romeguera $

SC00525



JULY 19

THURSDAY	FRIDAY	SATURDAY
1 CANADA DAY (CANADA)	2	3
8 Ray Steen	9	10
15 John Mokeson 15 L. A. McDonald on McKay — #7 parking	16 Larry Adams #20	17
22 Don Graham #10 Everett Bowser Lou Adams Parking #10	23 Allan Richard Chuck Coppel de Medicine	24 #7 parking #15
29 St. P. C. #10 J.T. R.	30	31

SC00526

June

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July

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August

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September

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October

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November

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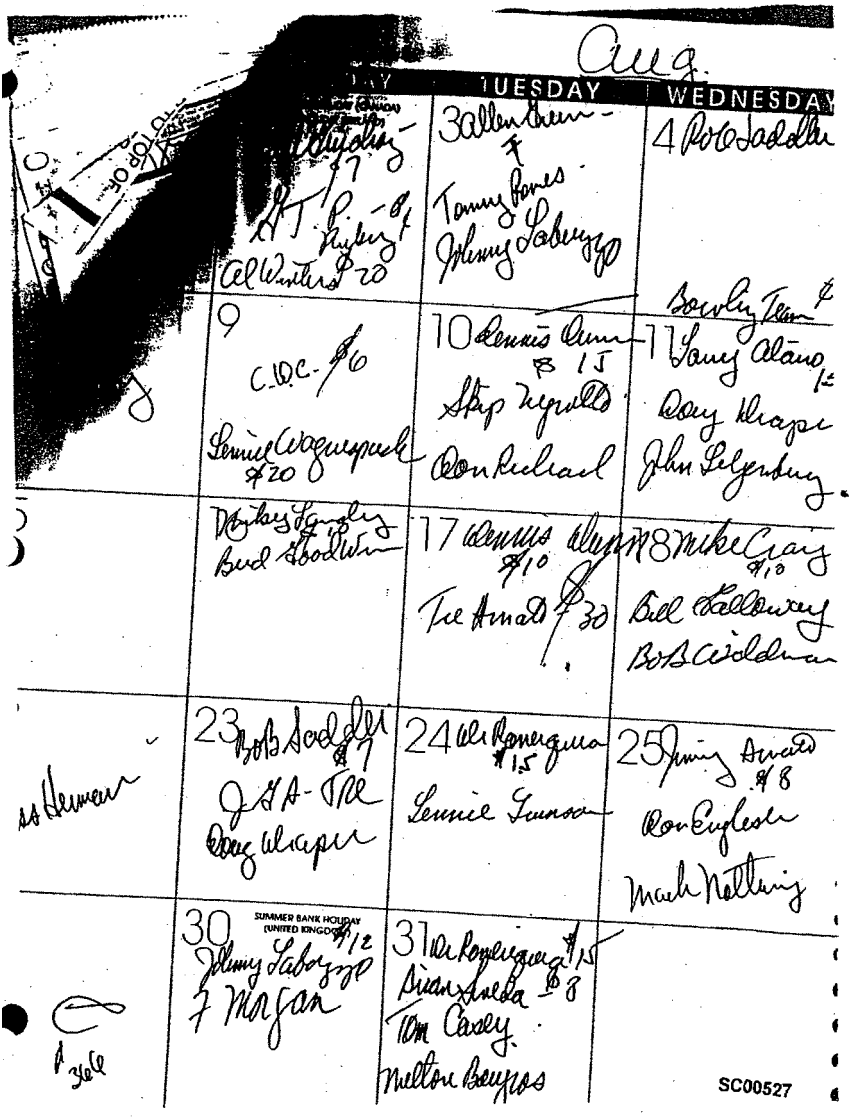

Aug.

	[illegible]DAY	TUESDAY	WEDNESDAY
	[illegible] $7 H.T.P. - $7 Rigby Al Winters $20	3 Allen Green - $7 Tommy Pones Johnny Laboyzzo	4 Rob Saddler Bowling Team $
	9 C.W.C. - $6 Lennie Wagnerpuck $20	10 Dennis Dunn $15 Skip Nigrotto Don Richard	11 Larry Alano $15 Doug Draper John Selgenberg
	Mickey Langley $10 Bud Goodwin	17 Dennis Dunn $10 Tee Amato $30	18 Mike Craig $10 Bill Galloway Bob Wildman
ss Herman	23 Bob Saddler $7 J.G.A. - Tee Doug Draper	24 Wm Romerquera $15 Lennie Gunson	25 Jimmy Amato $8 Don English Mark Nottering
366	30 SUMMER BANK HOLIDAY (UNITED KINGDOM) $12 Johnny Laboyzzo F Morgan	31 Wm Romerquera $15 Brian Aneda $8 Tom Casey Melton Bourgeois	

SC00527

AUGUST 199

THURSDAY	FRIDAY	SATURDAY
5 Jol Pascasio $14 O. Arnold. Mc Manus Paulin $7	6 Lang alano Milton Bayona $5	7
12 Allan Alano $10 T.P. $8 Lang $8 Paulin $40 Teodoro Rasa	13 Milton Bayona $10 Lang alano	14 $20
19 Brian Jurado $7 Jan Robins $12 Jack Holt.	20 Mona Nagar $15 Sidney Prologue	21
26 Rod Martin $7 Jan Edwards J. Martin	27 Mike Alcala $10 C Oc - Paulin Lang Jenson	28 $8 $415

SC00528

July 199

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August 199

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September 199

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October 199

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November 199

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December 1999

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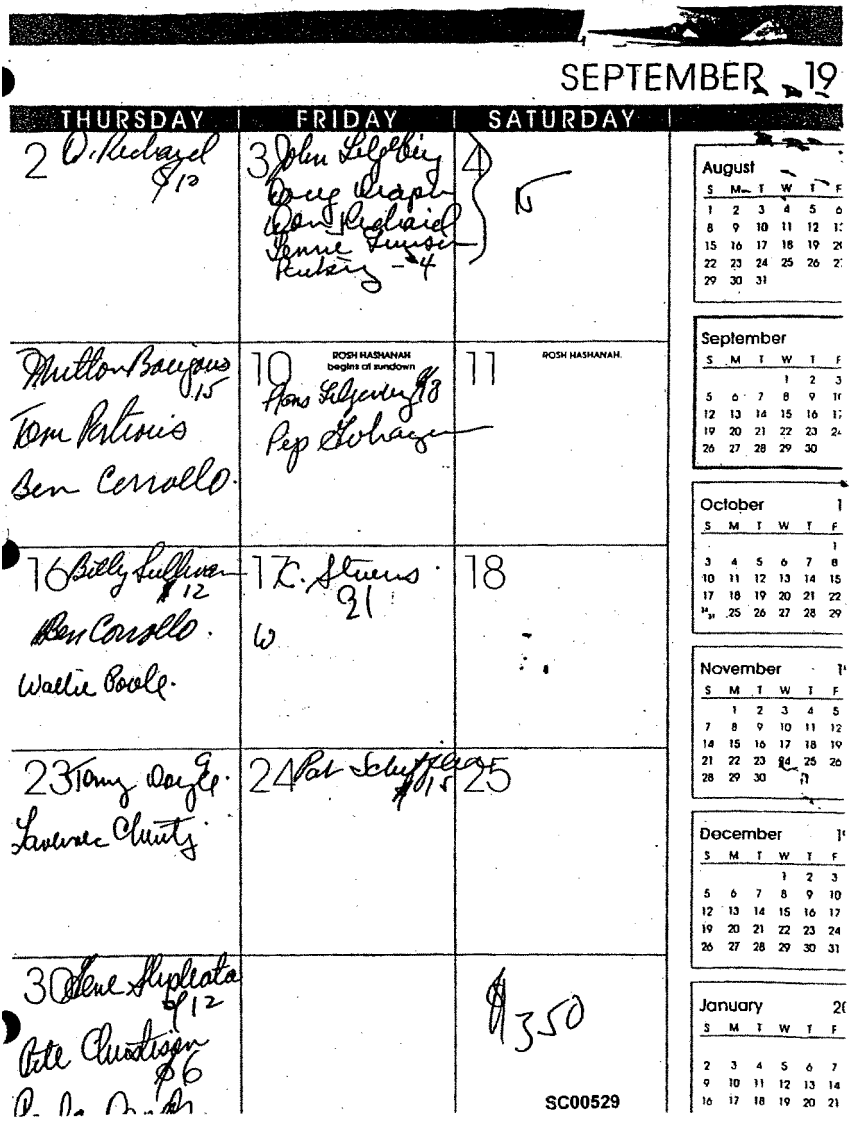

SEPTEMBER 19

THURSDAY	FRIDAY	SATURDAY
2 D. Richard $10	3 John Lilybridge Doug Draper Don Richard Jennie Turner Rubin -4	4 5
Mutton Bayous $15 Tom Perkins Ben Carroll	10 ROSH HASHANAH begins at sundown Hans Lilyenberg $8 Pep Lobaugh	11 ROSH HASHANAH
16 Billy Sullivan $12 Ben Carroll Wallie Poole	17 K. Stevens $21 W	18
23 Tony Doyle Lawrence County	24 Pat Schuppert $15	25
30 Gene Shipleata $12 Pete Chadwick $6 R. Ne Ne		$350 SC00529

August

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September

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October

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November

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December

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January

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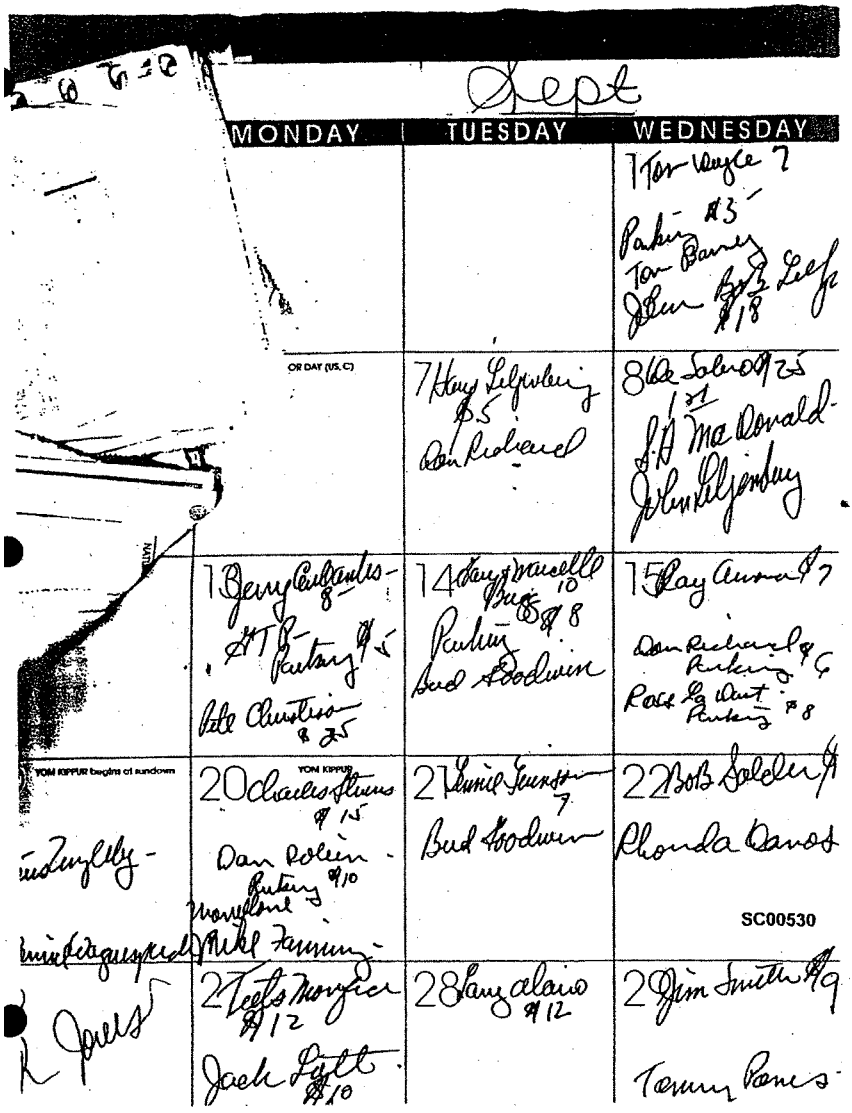


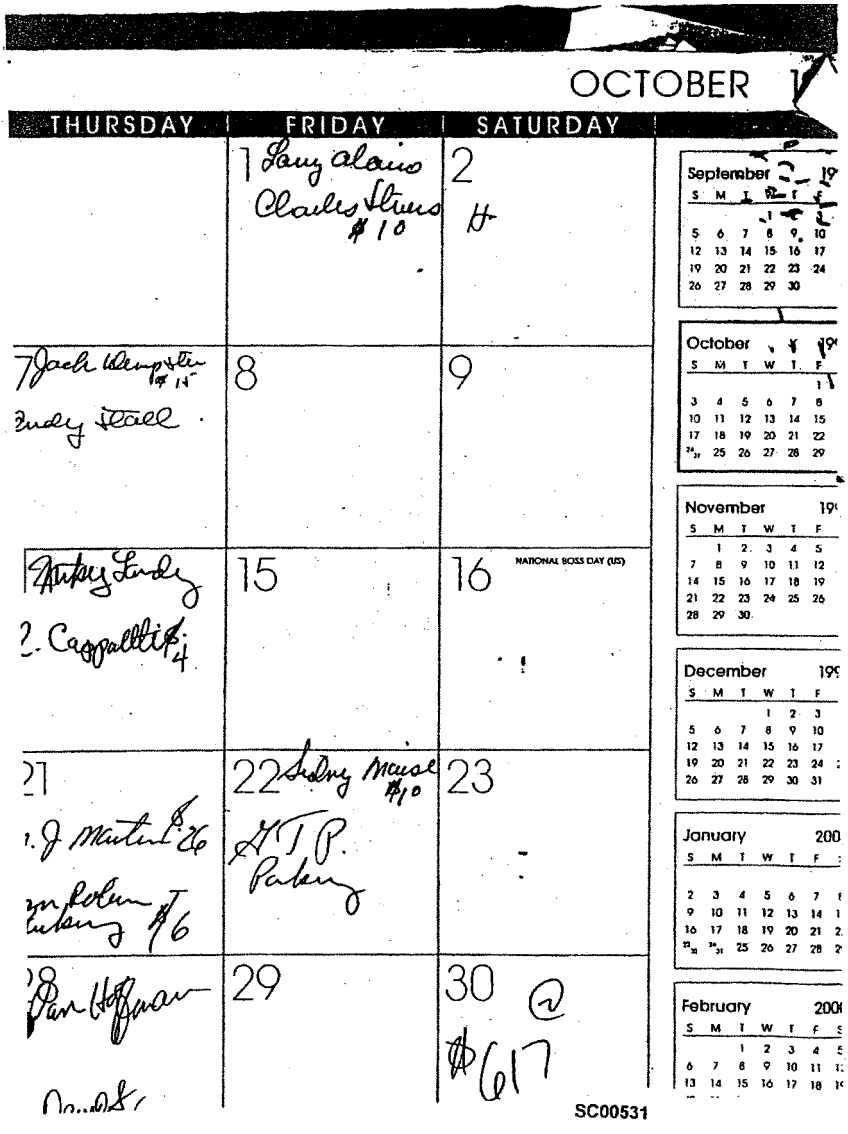
Sept

MONDAY	TUESDAY	WEDNESDAY
		7 Tom Wayle 7 Parking $3 Tom Barney John Bob Leif $18
OR DAY (US, C)	7 Harry Lilienberg $5 Don Richard	8 De Salvo $25 1st J.H. McDonald John Liljenberg
13 Jerry Carbanks 8 GTP Parking $5 Pete Christison $25	14 Larry Marcelle Bug 10 $8 Parking Bud Goodwin	15 Ray Amman $7 Don Richard Parking $6 Ross Ga Dust Parking $8
YOM KIPPUR begins at sundown Tuesday Jennie Wagner	20 YOM KIPPUR Charles Stevens $15 Dan Rolein Parking $10 Mary Lane Mike Fanning	21 Jennie Gunson 7 Bud Goodwin
R Jones	27 Teets Morgan $12 Jack Lott $10	28 Larry Alaino $12

22 Bob Salder $
Rhonda Danos

SC00530

29 Jim Smith $9
Tommy Pones



OCTOBER 1

THURSDAY	FRIDAY	SATURDAY
	1 Larry Alains Charles Stevens $10	2 H
7 Jack Kempster $15 Andy Stall	8	9
1 Mickey Lindy 2. Cappelletti $4	15	16 NATIONAL BOSS DAY (US)
21 1. J Martin $26 Jim Robin Parking $6	22 Sidney Maise $10 G T P. Parking	23
28 Dan Hoffman [illegible]	29	30 @ $617

September 19

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October 19

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November 19

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December 19

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January 200

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February 200

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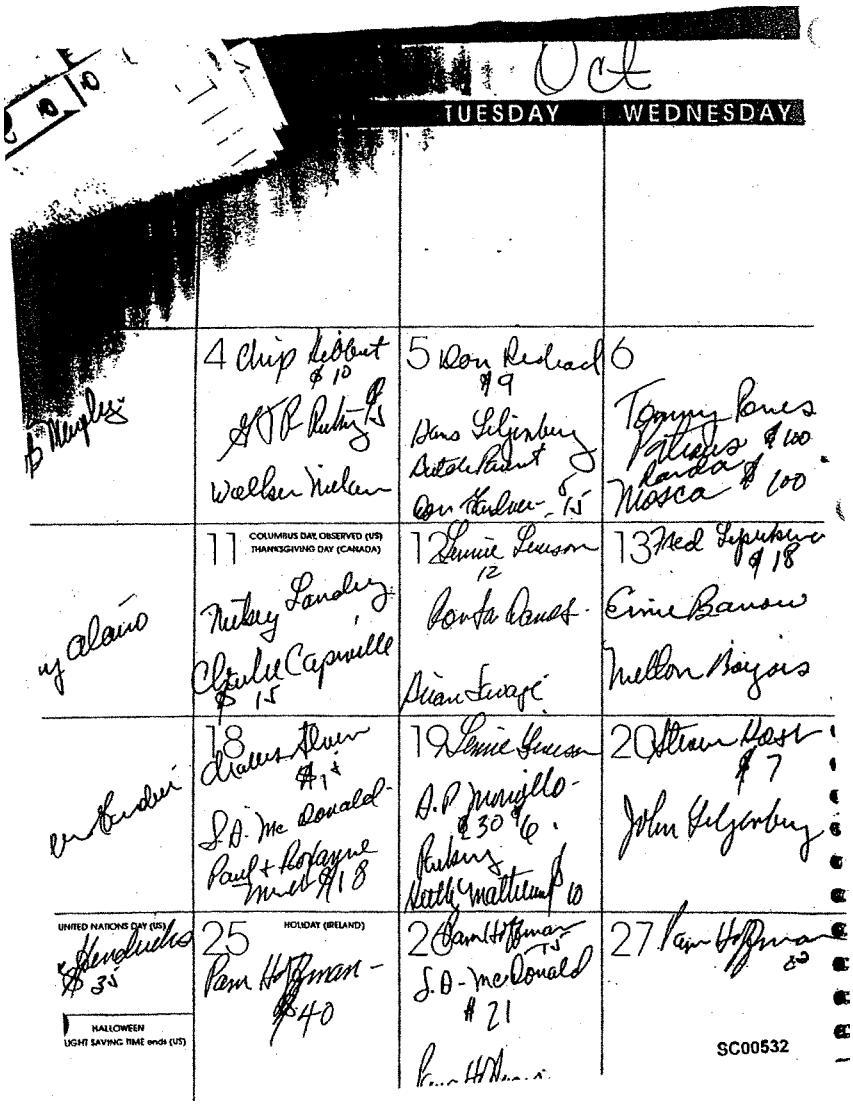
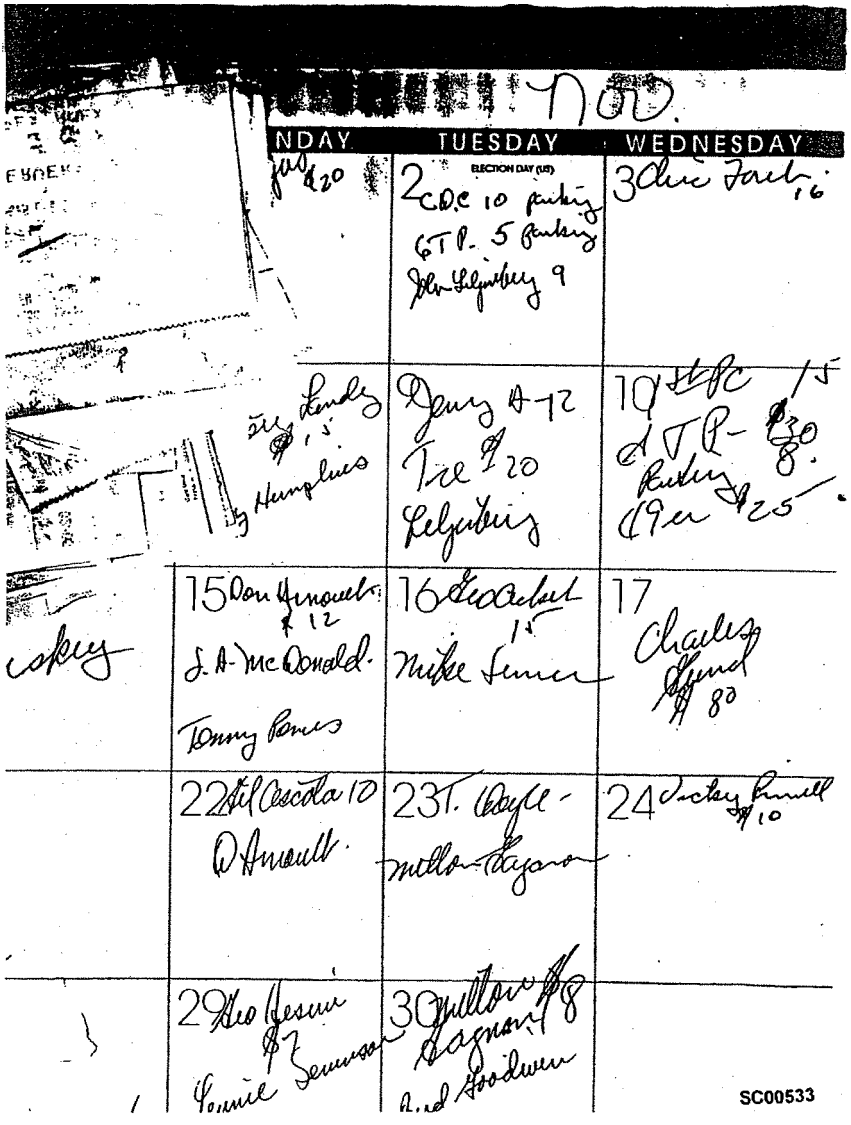
SC00531



Oct

		TUESDAY	WEDNESDAY
	4 Chip Hibbert $10 G T R Rutherford $15 Walker Nielsen	5 Don Redhead $9 Hans Siljenberg Butch Parent Don Gardner 15	6 Tommy Pones Patricia $100 Randa Mosca $100
	11 COLUMBUS DAY OBSERVED (US) THANKSGIVING DAY (CANADA) Mickey Landry Charlie Capinville $15	12 Lennie Lewison 12 Ronda Daniels Brian Savage	13 Fred Lipskin $18 Ernie Barrow Melton Boyers
	18 Charles Stevens $1 S.A. McDonald Paul + Roxanne Mills $18	19 Lennie Lewison A.P. Morillo $30 $6 Rutherford Kathy Matthews $10	20 Steven Host $7 John Siljenberg
UNITED NATIONS DAY (US) Hendricks $35 HALLOWEEN LIGHT SAVING TIME ends (US)	25 HOLIDAY (IRELAND) Pam Hoffman $40	26 Pam Hoffman 15 S.A. McDonald $21 Pam Hoffman	27 Pam Hoffman 20

SC00532



Nov.

NDAY	TUESDAY	WEDNESDAY
jus $20	2 ELECTION DAY (US) C.D.C 10 parking GTP. 5 parking John Lilyenberg 9	3 Chic Fort 16
...ry Landry $15 ...y Humphries	Jerry A 12 Tre $20 Lilyenberg	10 1st PC 15 GTP - $30 8. Parking $25 19er
...skey	15 Don Arnoult $12 S.A. McDonald. Tommy Ponces	16 Geo Aubert 15 Mike Simon	17 Charles Lund $80
	22 Gil Ascola 10 D Arnoult.	23 T. Doyle - Milton Lagarone	24 Vicky Powell $10
	29 Geo Hesini $7 Lonnie Severson	30 Milton Lagarone $8 Bud Goodwin	

SC00533

NOVEMBER 199

THURSDAY	FRIDAY	SATURDAY
4 Gary Cribbs - 12 - Wayne Freeman. Genessa Smith.	5 Rob Conrad 9 Sidney Prolong	6
11 VETERANS DAY (US) REMEMBRANCE DAY (CANADA) Lennie Lennson	12 M. Bourgeois 9	13
18 Stuart Jennie 6 Lisa Barnes	19 Pat Cormack Hans Delfeny 18	20
25 THANKSGIVING DAY (US)	26	27

SC00534

October 199

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November 19

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December 19

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January 20

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23/30	24/31	25	26	27	28

February 20

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March 20

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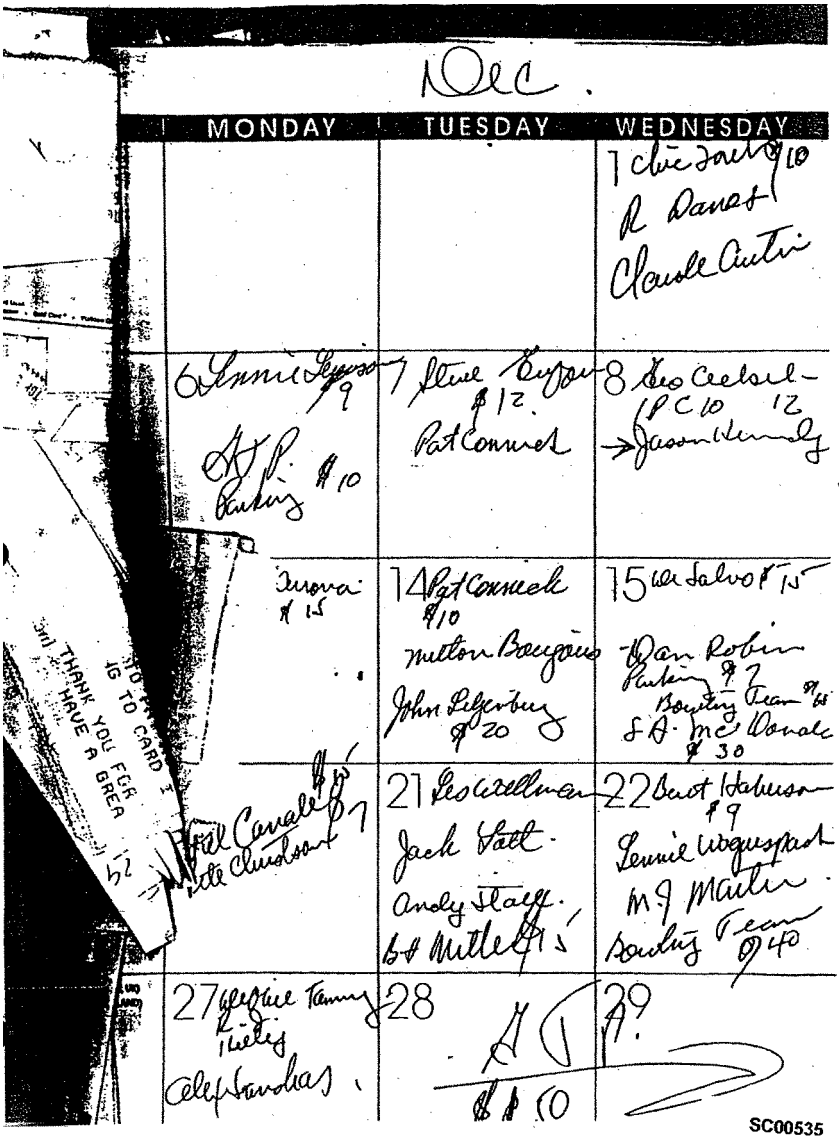


Dec.

MONDAY	TUESDAY	WEDNESDAY
		7 Chic Jones $10 R Danes Claude Austin
6 Lennie Lyons $9 A.J.P. Parking $10	7 Steve Gryson $12. Pat Connick	8 Geo Cecksel - PC 10 12 → Jason Hennedy
Aurora $15	14 Pat Connick $10 Milton Bourgeois John Lilienberg $20	15 Wm Salvo $15 Dan Robin Parking $7 Bowling Team $15 S.A. McDonald $30
Phil Canale $15 Pete Christson $7	21 Leo Wellman Jack Lott Andy Stagg B.H. Miller $15	22 Bert Haberson $9 Lennie Wagenspach M.J. Martin Bowling Team $40
27 Wayne Tanning Kelly Alex Sandras	28 A.J.P. $10	29

SC00535

SC EXHIBIT - 00013

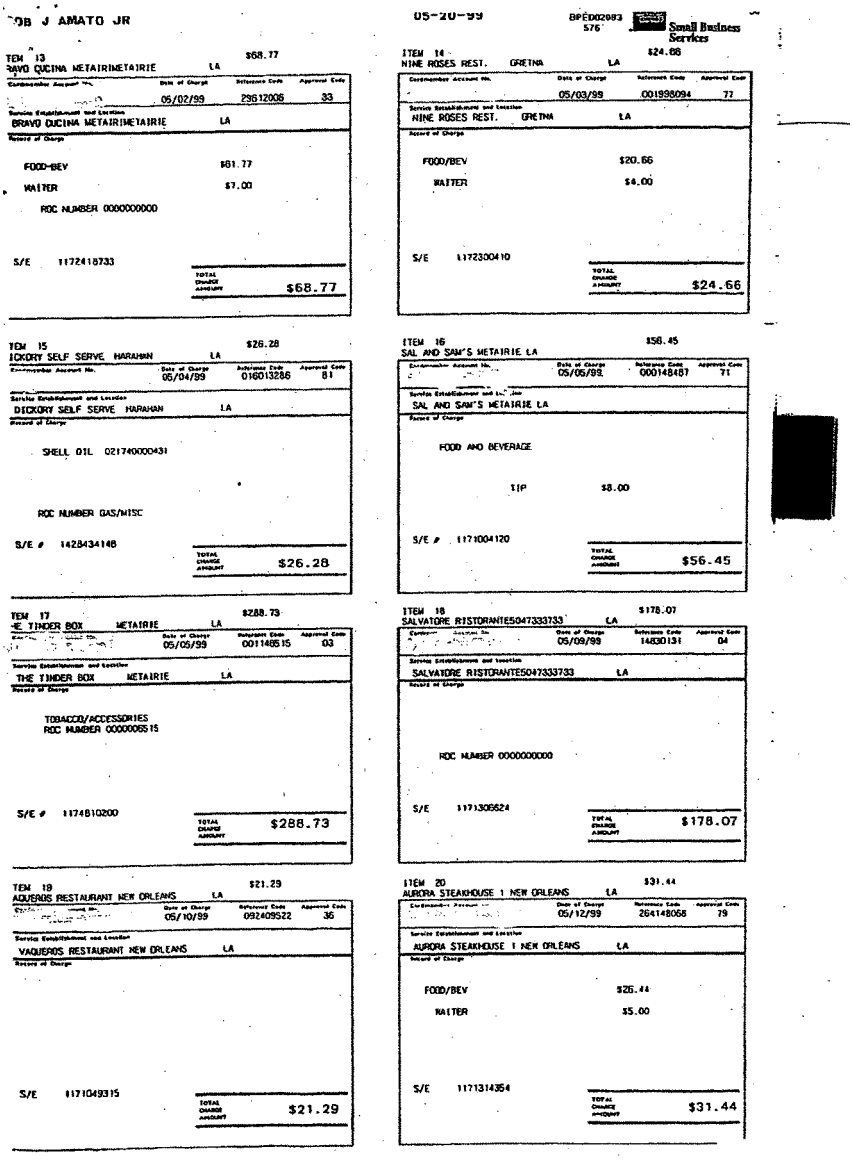
JB J AMATO JR

BPED02083 573 — Small Business Services — 53

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
135122		PAYMENT RECEIVED - THANK YOU 05/02		5,263.99
122109		ANNUAL MEMBERSHIP FEE JACOB J AMATO JR PERIOD 06/99 THRU 05/00	55.00	
101110	1	VAQUEROS RESTAURANT NEW ORLEANS LA 099922792 FOOD/BEVERAGE 04/19/99	21.29	
101110	2	MING PALCE RESTAURANMETAIRIE LA 264934707 RESTAURANT 04/18/99	80.00	
101111	3	NINE ROSES REST. GRETNA LA 001887833 FOOD/BEV 04/20/99	28.00	
131112	4	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#433553	40.65	
101113	5	SOFT TOUCH CAR WASH HARVEY LA 051950747 CAR WASH 04/22/99	49.95	
101115	6	BRICK OVEN CAFE KENNER LA 000359738 FOOD AND BEVERAGE 04/25/99	57.14	
101116	7	LOUISIANA GRILL MANDEVILLE LA 090655585 RESTAURANT 04/25/99	35.42	
101118	8	LIBORIO RESTAURANT NEW ORLEANS LA 0000-0428 FOOD/BEVERAGE 04/27/99	41.65	
101118	9	RED MAPLE RESTAURANTGRETNA LA 043955833 FOOD 04/26/99	32.41	
101119	10	AURORA STEAKHOUSE 1 NEW ORLEANS LA 264037716 FOOD/BEVERAGE 04/28/99	57.60	
101120	11	NEW ORLEANS CIGAR CONEW ORLEANS LA 001210002 CIGAR STORES/STANDS 04/29/99	86.44	
101124	12	J ALEXANDERS RESTAURBATON ROUGHT LA 012300051 FOOD-BEV 05/03/99	36.28	
101124	13	BRAVO CUCINA METAIRIMETAIRIE LA 29612006 FOOD-BEV 05/02/99	68.77	
101124	14	NINE ROSES REST. GRETNA LA 001998094 FOOD/BEV 05/03/99	24.66	
101125	15	DICKORY SELF SERVE HARAHAN LA 016013286 SHELL OIL 0217400000431 05/04/99	26.28	
101125	16	SAL AND SAM'S METAIRIE LA 000148487 FOOD AND BEVERAGE 05/05/99	56.45	
101126	17	THE TINDER BOX METAIRIE LA 001146515 TOBACCO/ACCESSORIES 05/05/99	288.73	
101131	18	SALVATORE RISTORANTE5047333733 LA 14830131 RESTAURANT 05/09/99	178.07	
101131	19	VAQUEROS RESTAURANT NEW ORLEANS LA 092409522 FOOD/BEVERAGE 05/10/99	21.29	
101133	20	AURORA STEAKHOUSE 1 NEW ORLEANS LA 264148068 FOOD/BEVERAGE 05/12/99	31.44	
101133	21	NEW ORLEANS CIGAR CONEW ORLEANS LA 001330006 CIGAR STORES/STANDS 05/12/99	428.64	
101134	22	DICKIE BRENNAN STEAKNEW ORLEANS LA 001770036 FOOD/BEV 05/12/99	63.96	
101136	23	SAL & JUDY INC LACOMBE LA 000505553 FOOD AND BEVERAGE 05/16/99	41.35	
101139	24	DOS JEFES ENTERPRISES LL NEW ORLEANS LA 000487756 GENERAL MDSE 05/19/99	37.88	
101139	25	AURORA STEAKHOUSE 1 NEW ORLEANS LA 264188217 FOOD/BEVERAGE 05/18/99	32.21	
		TOTAL FOR JACOB J AMATO JR	$1,921.56	$5,263.99
		CARD NUMBER		
122109		ANNUAL MEMBERSHIP FEE ROBERT G CREELY PERIOD 06/99 THRU 05/00	55.00	
101111	26	MACS & COMPANY HARVEY LA GE0011384 FOOD/BEVERAGE 04/20/99	23.23	
101113	27	BOOMTOWN WESTBANK HARVEY LA 020591050 FOOD/BEVERAGE 04/22/99	22.67	
101114	28	BY BLOS INC. METERIE LA 0000-0424 FOOD/BEVERAGE 04/23/99	63.12	
101115	29	THE HOME DEPOT 359 GRENTA LA 011524998 HOME IMPROV/ACCES 04/24/99	59.97	
101116	30	JAEGERS SEAFOOD BEERNEW ORLEANS LA 001563508 FOOD/BEVERAGE 04/25/99	123.04	
101116	31	ATLA PAC WASHINGTON DC 000313841 C005PACC0091788CREELY, 04/23/99	83.33	
101119	32	SMITH & WOLLSKY NEW ORLEANS LA 001118043 FOOD-BEV 04/28/99	94.46	
101119	33	BROOKS BROTHERS 050 EDISON NJ 000018961 LEATHER GOODS 04/28/99	370.47	

HP Exhibit 21(c)

SC00428



ROB J AMATO JR

ITEM 13 $68.77
BAYO CUCINA METAIRIMETAIRIE LA
Cardmember Account No. | Date of Charge 05/02/99 | Reference Code 29612006 | Approval Code 33
Service Establishment and Location
BRAVO CUCINA METAIRIMETAIRIE LA
Record of Charge
FOOD-BEV $61.77
WAITER $7.00
ROC NUMBER 0000000000
S/E 1172418733
TOTAL CHARGE AMOUNT $68.77

05-20-99 BPED02083 576 Small Business Services

ITEM 14 $24.66
NINE ROSES REST. GRETNA LA
Cardmember Account No. | Date of Charge 05/03/99 | Reference Code 001998094 | Approval Code 72
Service Establishment and Location
NINE ROSES REST. GRETNA LA
Record of Charge
FOOD/BEV $20.66
WAITER $4.00
S/E 1172300410
TOTAL CHARGE AMOUNT $24.66

ITEM 15 $26.28
DICKORY SELF SERVE HARAHAN LA
Cardmember Account No. | Date of Charge 05/04/99 | Reference Code 016013286 | Approval Code 81
Service Establishment and Location
DICKORY SELF SERVE HARAHAN LA
Record of Charge
SHELL OIL 021740000431
ROC NUMBER GAS/MISC
S/E # 1428434148
TOTAL CHARGE AMOUNT $26.28

ITEM 16 $56.45
SAL AND SAM'S METAIRIE LA
Cardmember Account No. | Date of Charge 05/05/99 | Reference Code 000148487 | Approval Code 71
Service Establishment and Location
SAL AND SAM'S METAIRIE LA
Record of Charge
FOOD AND BEVERAGE
TIP $8.00
S/E # 1171004120
TOTAL CHARGE AMOUNT $56.45

ITEM 17 $288.73
THE TINDER BOX METAIRIE LA
Cardmember Account No. | Date of Charge 05/05/99 | Reference Code 001148515 | Approval Code 03
Service Establishment and Location
THE TINDER BOX METAIRIE LA
Record of Charge
TOBACCO/ACCESSORIES
ROC NUMBER 0000006515
S/E # 1174810200
TOTAL CHARGE AMOUNT $288.73

ITEM 18 $178.07
SALVATORE RISTORANTE5047333733 LA
Cardmember Account No. | Date of Charge 05/09/99 | Reference Code 14030131 | Approval Code 04
Service Establishment and Location
SALVATORE RISTORANTE5047333733 LA
Record of Charge
ROC NUMBER 0000000000
S/E 1171306524
TOTAL CHARGE AMOUNT $178.07

ITEM 19 $21.29
AQUEROS RESTAURANT NEW ORLEANS LA
Cardmember Account No. | Date of Charge 05/10/99 | Reference Code 092409522 | Approval Code 36
Service Establishment and Location
VAQUEROS RESTAURANT NEW ORLEANS LA
Record of Charge
S/E 1171049315
TOTAL CHARGE AMOUNT $21.29

ITEM 20 $31.44
AURORA STEAKHOUSE 1 NEW ORLEANS LA
Cardmember Account No. | Date of Charge 05/12/99 | Reference Code 264148068 | Approval Code 79
Service Establishment and Location
AURORA STEAKHOUSE 1 NEW ORLEANS LA
Record of Charge
FOOD/BEV $26.44
WAITER $5.00
S/E 1171314354
TOTAL CHARGE AMOUNT $31.44

SC00429

BPE002079 2048 Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
501173	1	FIVE HAPPINESS RSTR NEW ORLEANS LA 47363500 FOOD-BEV 06/20/99	104.91	
501174	2	DOS JEFES UPTOWN CIGNEW ORLEANS LA 097444166 5973/00 GEN MDSE 06/22/99	35.97	-5450
501175	3	RUTHS CHRIS #1 NEW ORLEANS LA 077646607 FOOD/BEV 06/22/99	98.06	
501176	4	MOONLIGHT CAFE NEW ORLEANS LA 001610003 FOOD/BEV 06/23/99	23.17	
501176	5	ROADHOUSE GRILL #39 MARRERO LA 017674944 FOOD/BEV 06/24/99	25.32	
501179	6	VINCENTS ITALIAN CUINEW ORLEANS LA 001030011 FOOD/BEV 06/27/98	80.41	
501180	7	NEW ORLEANS CIGAR CONEW ORLEANS LA 001800027 CIGAR STORES/STANDS 06/28/99	256.33	-5450
501181	8	OMNI HOTELS F/B NEW ORLEANS LA 018136507 FOOD/BEV 06/28/99	234.66	
501182	9	CAFE MARIGNY NEW ORLEANS LA 000104492 FOOD AND BEVERAGE 06/30/99	32.58	
501187	10	SAL AND SAM'S METAIRIE LA 000151505 FOOD AND BEVERAGE 07/05/99	89.85	
501188	11	ODYSSEY GRILL NEW ORLEANS LA 079094178 FOOD/BEVERAGE 07/06/99	27.38	
501188	12	AOL*SERVICE 888-265-9269 VA 00a2df662 ONLINE 07/07/99	21.95	-5450
501189	13	NEW ORLEANS CIGAR CONEW ORLEANS LA 001890022 CIGAR STORES/STANDS 07/07/99	269.78	-5450
025190	14	LA PENICHE INC NEW ORLEANS LA INV#205646	33.35	
501190	15	SEMOLINA'S #5 GRETNA LA 001952921 5812/01 FOOD/BEVERAGE 07/08/99	39.37	
006191	16	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#233355	47.40	
501194	17	RUTH CHRIS #2 METAIRIE LA 079773555 FOOD/BEV 07/11/99	279.22	
501195	18	CHINA JADE, INC. CHALMETTE LA 001200858 FOOD/BEV 07/13/99	24.20	
501195	19	MOONLIGHT CAFE NEW ORLEANS LA 001800011 FOOD/BEV 07/12/99	22.58	
501196	20	1700 HICKORY AVE NEW ORLEANS LA TEXACO 4439843217519633201527 6 07/14/99	44.00	-5150
501196	21	NEW ORLEANS CIGAR CONEW ORLEANS LA 001960010 CIGAR STORES/STANDS 07/14/99	155.60	-5450
501196	22	REALWORLD MANCHESTER NH 00000*SSS EQUIP/SOFTWARE 07/14/99	50.00	-5450
669196	23	US AIR METAIRIE LA TKT# 0377942111444 07/14	474.00	
128196		FLIGHT INSURANCE CURRENT $474.00	14.00	
669196	24	US AIR METAIRIE LA TKT# 0377942111446 07/14	474.00	
128196		FLIGHT INSURANCE CURRENT $474.00	14.00	
501197	25	HORIZON TRAVEL GROUPMETAIRIE LA 00010249 FEES/SERVICES 07/15/99	20.00	
501197	26	MACS & COMPANY HARVEY LA 071501004 FOOD/BEVERAGE 07/15/99	40.51	
01201	27	FIVE HAPPINESS RSTR NEW ORLEANS LA 47363576 FOOD-BEV 07/18/99	60.72	
01201	28	BRUNING'S RESTAURANTNEW ORLEANS LA 070598441 5812/01 FOOD/BEVERAGE 07/19/99	36.43	
		TOTAL FOR JACOB J AMATO JR	$3,132.55	$.00

SC0043

JACOB J AMATO JR 07-20-99 BPED02079 2049 Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
501172	29	MANHATTAN AMOCO HARVEY LA 779268201 AMOCO GAS / SERV 15023 06/21/99	16.54	~~$150~~
501173	30	MANHATTAN AMOCO HARVEY LA 779268201 AMOCO GAS / SERV 16016 06/21/99	50.00	~~$150~~
501175	31	ATLA PAC WASHINGTON DC 000332298 C005PACC0091788CREELY, 06/23/99	83.33	~~$270~~
501175	32	SMITH & WOLLSKY NEW ORLEANS LA 001174045 FOOD-BEV 06/23/99	119.92	
501176	33	DICKIE BRENNAN STEAKNEW ORLEANS LA 001130049 FOOD/BEV 06/17/99	170.03	
501177	34	BERTUCCI'S RESTAURANHARVEY LA 001560001 FOOD/BEV 06/25/99	132.29	
600177	35	SOUTHWEST AIRLINES DALLAS TX TKT# 5262786570703 06/25	226.00	
828177		FLIGHT INSURANCE CURRENT $226.00	14.00	
600177	36	SOUTHWEST AIRLINES DALLAS TX TKT# 5262786570704 06/25	226.00	
828177		FLIGHT INSURANCE CURRENT $226.00	14.00	
669177	37	US AIR MARRERO LA TKT# 0377941694064 06/25	374.35	
828177		FLIGHT INSURANCE CURRENT $374.35	14.00	
669177	38	US AIR MARRERO LA TKT# 0377941694065 06/25	374.35	
828177		FLIGHT INSURANCE CURRENT $374.35	14.00	
501179	39	JAEGERS SEAFOOD BEERNEW ORLEANS LA 001016025 FOOD/BEVERAGE 06/27/99	79.28	
501179	40	COMMON GROUNDS GRETNA LA 281422922 RESTAURANT 06/28/99	30.31	
501180	41	MACS & COMPANY HARVEY LA GE0080130 FOOD/BEVERAGE 06/28/99	33.33	
501180	42	MICROSOFT NTWK 800-386-5550 WA 786653162 MSN*ONLINE BILLING 6/99 06/29/99	19.95	~~$150~~
501182	43	KIM SON REST GRETNA LA 001626038 FOOD/BEV 06/30/99	33.32	
501182	44	RED MAPLE RESTAURANTGRETNA LA 011828702 FOOD 06/29/99	52.48	
501182	45	CITGO1388 EZ SERVE #MARRERO LA CITGO GAS/MSC3618070141388143 06/30/99	49.72	~~$150~~
501183	46	CHINA DOLL HARVEY LA 001900002 FOOD/BEVERAGE 07/01/99	82.95	
501184	47	MACS & COMPANY HARVEY LA 070201004 FOOD/BEVERAGE 07/02/99	38.15	
501185	48	1700 HICKORY AVE NEW ORLEANS LA TEXACO 443984321751853970008998 07/03/99	15.70	~~$150~~
501186	49	THE HOME DEPOT 362 HARAHAN LA 018615430 HOME IMPROV/ACCES 07/04/99	108.75	~~$450~~
501188	50	MACS & COMPANY HARVEY LA 070601003 FOOD/BEVERAGE 07/06/99	31.92	
501191	51	ROCK N SAKE NEW ORLEANS LA 099390427 RESTAURANT 07/09/99	87.96	
501193	52	BRENNANS RSTR NEW ORLEANS LA 079656607 FOOD/BEVERAGE 07/11/99	272.49	
501193	53	JACKSON SQUARE CAFE NEW ORLEANS LA 001530007 FOOD/BEVERAGE 07/10/99	28.52	
501193	54	LANDRY'S SFD HSE/NEWNEW ORLEANS LA 86894652 FOOD-BEV 07/10/99	64.55	
501194	55	HOUSE OF BLUES NEW ORLEANS LA 012193175 FOOD/BEVERAGE 07/12/99	88.74	
501194	56	SEMOLINA'S #5 GRETNA LA 001993249 5B12/01 FOOD/BEVERAGE 07/12/99	28.36	
501195	57	1700 HICKORY AVE NEW ORLEANS LA TEXACO 443984321751953280464 69 07/13/99	35.57	~~$150~~
501195	58	SMILIES RESTAURANT NEW ORLEANS LA 079894868 FOOD/BEVERAGE 07/13/99	67.96	
501196	59	ALLEGRO RESTAURANT NEW ORLEANS LA 000317166 FOOD AND BEVERAGE 07/15/99	53.50	
501197	60	IRENES CUISINE NEW ORLEANS LA 022599730 FOOD/BEVERAGE 07/15/99	225.50	
501198	61	CHARLES SEAFOOD HARAHAN LA 000491089 FOOD AND BEVERAGE 07/17/99	58.07	
501199	62	LINENS N THINGS #520HARAHAN LA 52008391 BED/BATH/LINENS 07/16/99	132.59	~~$450~~
501200	63	PINK LOTUS CHINESE NEW ORLEANS LA 000375431 FOOD AND BEVERAGE 07/19/99	64.05	
501200	64	CLAY ORIGINALS NEW ORLEANS LA 043701197 BUSINESS SERVICES 07/18/99	32.61	~~$450~~
501201	65	ANTHONY'S SEAFOOD HONEW ORLEANS LA 019200019 FOOD/BEVERAGE 07/19/99	306.90	

SC00431

07-20-99 BPED02079 2050 Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
501201	66	WINNERS OF HARAHAN HARAHAN LA 001075689 FOOD/BEVERAGE 07/19/99	16.38	
		TOTAL FOR ROBERT G CREELY	$3,968.42	$.00

ITEM 1 $104.91
FIVE HAPPINESS RSTR NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
06/20/99	47363500	23

Service Establishment and Location: FIVE HAPPINESS RSTR NEW ORLEANS LA
Record of Charge:
FOOD-BEV $92.91
WAITER $12.00
ROC NUMBER 0000000000
S/E 1171015431
TOTAL CHARGE AMOUNT $104.91

ITEM 2 $35.97
DOS JEFES UPTOWN CIGNEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
06/22/99	097444166	72

Service Establishment and Location: DOS JEFES UPTOWN CIGNEW ORLEANS LA
Record of Charge:
5973/00 BEN MOSE
S/E # 1174700047
TOTAL CHARGE AMOUNT $35.97

ITEM 3 $98.06
RUTHS CHRIS #1 NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
06/22/99	077646607	15

Service Establishment and Location: RUTHS CHRIS #1 NEW ORLEANS LA
Record of Charge:
FOOD/BEV $83.06
TIP $15.00
ROC NUMBER 8609
S/E 1171011935
TOTAL CHARGE AMOUNT $98.06

ITEM 4 $23.17
MOONLIGHT CAFE NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
06/23/99	001810003	54

Service Establishment and Location: MOONLIGHT CAFE NEW ORLEANS LA
Record of Charge:
FOOD/BEV $20.17
WAITER $3.00
S/E 1171301858
TOTAL CHARGE AMOUNT $23.17

ITEM 5 $25.82
ROADHOUSE GRILL #39 MARRERO LA

Date of Charge	Reference Code	Approval Code
06/24/99	017674944	05

Service Establishment and Location: ROADHOUSE GRILL #39 MARRERO LA
Record of Charge:
FOOD/BEV $22.82
TIP $3.00
S/E 1172403354
TOTAL CHARGE AMOUNT $25.82

ITEM 6 $80.41
VINCENTS ITALIAN CUINEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
06/27/99	001030011	09

Service Establishment and Location: VINCENTS ITALIAN CUINEW ORLEANS LA
Record of Charge:
FOOD/BEV $70.41
WAITER $10.00
S/E 1172407934
TOTAL CHARGE AMOUNT $80.41

SC00432

2955 Small Business Services

ITEM 39 $79.28
JAEGERS SEAFOOD BEERNEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
06/27/99	001016025	24

Service Establishment and Location: JAEGERS SEAFOOD BEERNEW ORLEANS LA

Nature of Charge: FOOD/BEV $79.28

S/E 1171029861

TOTAL CHARGE AMOUNT $79.28

ITEM 40 $30.31
COMMON GROUNDS GRETNA LA

Date of Charge	Reference Code	Approval Code
06/28/99	281422922	15

Service Establishment and Location: COMMON GROUNDS GRETNA LA

Nature of Charge: FOOD/BEV $26.31; TIP $4.00

S/E 1172401808

TOTAL CHARGE AMOUNT $30.31

ITEM 41 $33.33
MACS & COMPANY HARVEY LA

Date of Charge	Reference Code	Approval Code
06/28/99	GE0030130	

Service Establishment and Location: MACS & COMPANY HARVEY LA

Nature of Charge: FOOD/BEV $33.33

S/E 1171020654

TOTAL CHARGE AMOUNT $33.33

ITEM 42 $19.95
MICROSOFT MTHK 800-386-5550 WA

Date of Charge	Reference Code	Approval Code
06/29/99	786653162	86

Service Establishment and Location: MICROSOFT MTHK 800-386-5550 WA

Nature of Charge: MSN*ONLINE BILLING 6/99

S/E 5464819184

TOTAL CHARGE AMOUNT $19.95

ITEM 43 $33.32
KIM SON REST GRETNA LA

Date of Charge	Reference Code	Approval Code
06/30/99	001626038	97

Service Establishment and Location: KIM SON REST GRETNA LA

Nature of Charge: FOOD/BEV $27.32; WAITER $6.00

S/E 1171032352

TOTAL CHARGE AMOUNT $33.32

ITEM 44 $52.48
RED MAPLE RESTAURANTGRETNA LA

Date of Charge	Reference Code	Approval Code
06/29/99	011828702	24

Service Establishment and Location: RED MAPLE RESTAURANTGRETNA LA

Nature of Charge: FOOD $44.48; TIP $8.00

S/E 1171001613

TOTAL CHARGE AMOUNT $52.48

ITEM 45 $49.72
[illegible]

Date of Charge	Reference Code	Approval Code
06/30/99	[illegible]	AS

Service Establishment and Location: [illegible]

Nature of Charge: [illegible]

S/E [illegible]

TOTAL CHARGE AMOUNT $49.72

ITEM 46 $82.95
CHINA [illegible] HARVEY LA

Date of Charge	Reference Code	Approval Code
07/01/99	001560032	09

Service Establishment and Location: [illegible] HARVEY LA

Nature of Charge: FOOD $82.95

S/E [illegible]

TOTAL CHARGE AMOUNT $82.95

SC00433

Citibank Diamond Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
835203		PAYMENT RECEIVED - THANK YOU 07/22		3,486.22
501202	1	THE PRALINE CONNECTION NEW ORLEANS LA 000345016 FOOD AND BEVERAGE 07/21/99	22.05	
501204	2	TREY YUEN MANDEVILLE LA 000199068 FOOD AND BEVERAGE 07/23/99	40.63	
501204	3	EXXON COMPANY USA HARVEY LA EXXON FUEL/MISC 8357452252 07/22/99	45.00	-5150
501204	4	SEMOLINA'S #5 GRETNA LA 001083986 5812/01 FOOD/BEVERAGE 07/22/99	28.09	
501209	5	MACS & COMPANY HARVEY LA 07270101G FOOD/BEVERAGE 07/27/99	19.97	
501209	6	EXXON COMPANY USA GRETNA LA EXXON FUEL/MISC 8357452237 07/27/99	44.20	-5150
501209	7	NINE ROSES REST. GRETNA LA 001739932 FOOD/BEV 07/27/99	20.71	
501210	8	SAL AND SAM'S METAIRIE LA 000152716 FOOD AND BEVERAGE 07/29/99	37.50	
501212	9	SEMOLINA #1 504898O004 LA 29640048 EATING PLACES RESTAURAN 07/29/99	26.25	
501215	10	THE PRALINE CONNECTION NEW ORLEANS LA 000345404 FOOD AND BEVERAGE 08/03/99	34.81	
501216	11	OMNI HOTELS F/B NEW ORLEANS LA 021625494 FOOD/BEV 08/02/99	45.82	
501216	12	SEMOLINA'S #5 GRETNA LA 001204980 5812/01 FOOD/BEVERAGE 08/03/99	42.86	
501218	13	KIM SON REST GRETNA LA 001776843 FOOD/BEV 08/05/99	32.12	
501218	14	FIVE HAPPINESS RSTR NEW ORLEANS LA 47363560 FOOD-BEV 08/04/99	62.59	
501219	15	AOL*SERVICE 888-265-9269 VA 00a2df662 ONLINE 08/07/99	21.95	-5450
501221	16	LITTLE TOKYO RESTAURMETAIRIE LA 043825368 FOOD/BEVERAGE 08/08/99	120.27	
501223	17	MARY MAHONEYS BILOXI MS 102726995 FOOD/BEV 08/10/99	29.54	
501223	18	CHINESE KING NEW ORLEANS LA 154010026 FOOD/BEVERAGE 08/10/99	25.80	
501224	19	CRESCENT CITY BRWHSE NEW ORLEANS LA 000130628 FOOD AND BEVERAGE 08/12/99	30.46	
501224	20	CRESCENT CITY BRWHSE NEW ORLEANS LA 000430736 FOOD AND BEVERAGE 08/12/99	242.03	
501224	21	CRESCENT CITY BRWHSE NEW ORLEANS LA 000430741 FOOD AND BEVERAGE 08/12/99	29.64	
501226	22	BOOMTOWN WESTBANK HARVEY LA 020591098 FOOD/BEVERAGE 08/13/99	38.99	
14228	23	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#732855	81.60	
501229	24	KYOTO INC NEW ORLEANS LA 001588035 FOOD/BEVERAGE 08/16/99	36.15	
501230	25	3355EARS ROEBUCK GRETNA LA 001095532 70053 08/17/99	156.53	-5450
501230	26	CHINESE KING NEW ORLEANS LA 161010026 FOOD/BEVERAGE 08/17/99	23.17	
501231	27	SOFT TOUCH CAR WASH HARVEY LA 52062129 TOWING SRVS 08/17/99	26.05	-5150
		TOTAL FOR JACOB J AMATO JR	$1,364.78	$3,486.22
		CARD NUMBER		
501202	28	9320 JEFFERSON HWY HARAHAN TEXACO 4439822203520232505603G 07/20/99	14.47	-5150
501202	29	MACS & COMPANY HARVEY LA 07200100S FOOD/BEVERAGE 07/20/99	16.90	
501203	30	ATLA PAC WASHINGTON DC 000347009 C005PACC0091788CREELY, 07/21/99	83.33	-5270
1203	31	WINNERS OF HARAHAN HARAHAN LA 001135731 FOOD/BEVERAGE 07/21/99	55.31	
1204	32	1700 HICKORY AVE NEW ORLEANS LA TEXACO 4439843217520433G038279 07/22/99	39.03	-5150
1204	33	ROCK N SAKE NEW ORLEANS LA 090901186 RESTAURANT 07/22/99	97.70	
1204	34	CHINA DOLL HARVEY LA 001080012 FOOD/BEVERAGE 07/22/99	38.90	
1205	35	DRAGOS METAIRIE LA 001250041 FOOD/BEV 07/23/99	139.95	
1206	36	CAFE GIOVANNI'S NEW ORLEANS LA 030415816 FOOD/BEVERAGE 07/24/99	143.14	

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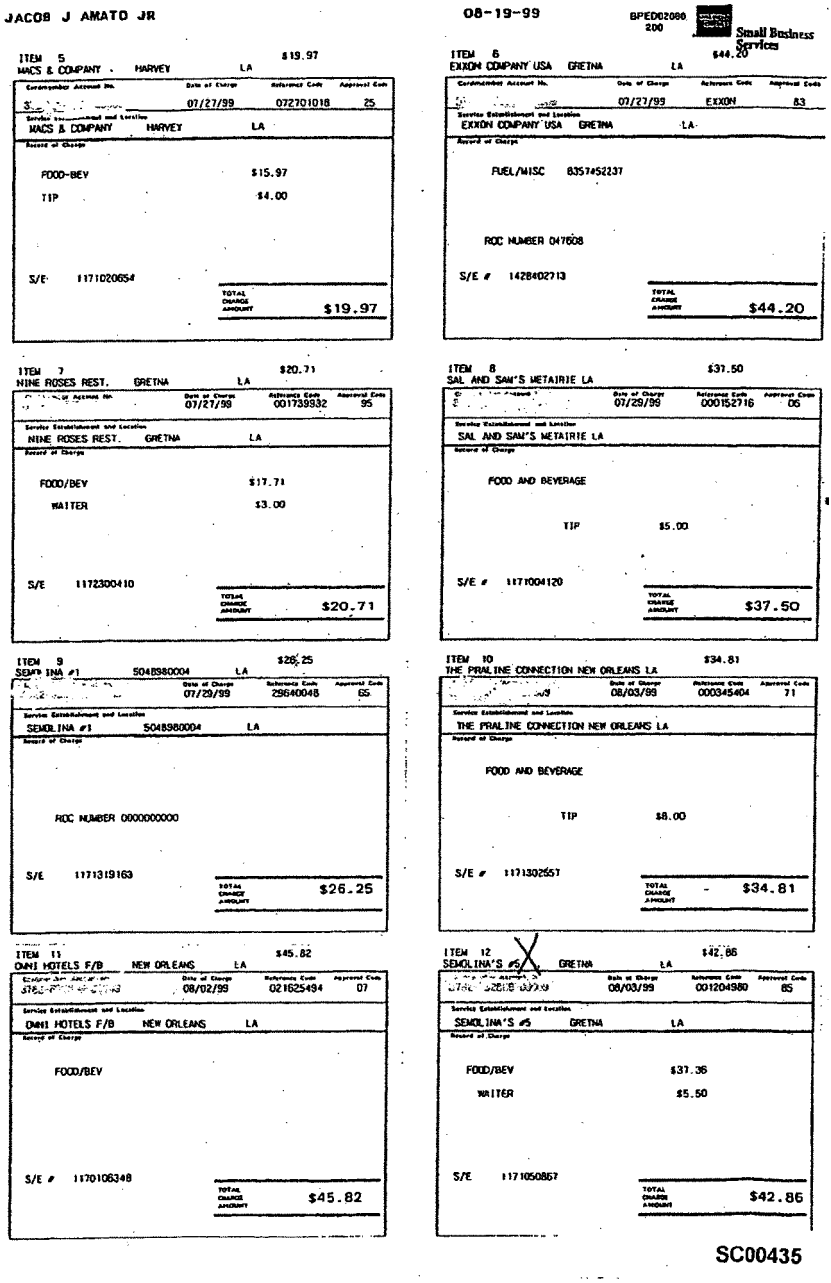
SC00434



JACOB J AMATO JR

08-19-99

BPED02000
200

Small Business Services

ITEM 5 $19.97
MACS & COMPANY HARVEY LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	07/27/99	072701018	25

Service Establishment and Location
MACS & COMPANY HARVEY LA

Record of Charge

FOOD-BEV $15.97
TIP $4.00

S/E 1171020654

TOTAL CHARGE AMOUNT $19.97

ITEM 6 $44.20
EXXON COMPANY USA GRETNA LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	07/27/99	EXXON	83

Service Establishment and Location
EXXON COMPANY USA GRETNA LA

Record of Charge

FUEL/MISC 6357452237

ROC NUMBER 047608

S/E # 1428402713

TOTAL CHARGE AMOUNT $44.20

ITEM 7 $20.71
NINE ROSES REST. GRETNA LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	07/27/99	001739932	95

Service Establishment and Location
NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV $17.71
WAITER $3.00

S/E 1172300410

TOTAL CHARGE AMOUNT $20.71

ITEM 8 $37.50
SAL AND SAM'S METAIRIE LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	07/29/99	000152716	06

Service Establishment and Location
SAL AND SAM'S METAIRIE LA

Record of Charge

FOOD AND BEVERAGE

TIP $5.00

S/E # 1171004120

TOTAL CHARGE AMOUNT $37.50

ITEM 9 $26.25
SEMOLINA #1 5048980004 LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	07/29/99	29640048	65

Service Establishment and Location
SEMOLINA #1 5048980004 LA

Record of Charge

ROC NUMBER 0000000000

S/E 1171319163

TOTAL CHARGE AMOUNT $26.25

ITEM 10 $34.81
THE PRALINE CONNECTION NEW ORLEANS LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	08/03/99	000345404	71

Service Establishment and Location
THE PRALINE CONNECTION NEW ORLEANS LA

Record of Charge

FOOD AND BEVERAGE

TIP $8.00

S/E # 1171302557

TOTAL CHARGE AMOUNT $34.81

ITEM 11 $45.82
OMNI HOTELS F/B NEW ORLEANS LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	08/02/99	021625494	07

Service Establishment and Location
OMNI HOTELS F/B NEW ORLEANS LA

Record of Charge

FOOD/BEV

S/E # 1170106348

TOTAL CHARGE AMOUNT $45.82

ITEM 12 $42.86
SEMOLINA'S #5 GRETNA LA

Corresponder Account No.	Date of Charge	Reference Code	Approval Code
[illegible]	08/03/99	001204980	85

Service Establishment and Location
SEMOLINA'S #5 GRETNA LA

Record of Charge

FOOD/BEV $37.36
WAITER $5.50

S/E 1171050867

TOTAL CHARGE AMOUNT $42.86

SC00435

JACOB J AMATO JR

08-19-99

BPED02089
201

Small Business Services

ITEM 13 $32.12
KIM SON REST GRETNA LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/05/99	001776843	08

Service Establishment and Location
KIM SON REST GRETNA LA

Record of Charge

FOOD/BEV $27.12
WAITER $5.00

S/E 1171032352

TOTAL CHARGE AMOUNT $32.12

ITEM 14 $62.59
FIVE HAPPINESS RSTR NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/04/99	47363560	25

Service Establishment and Location
FIVE HAPPINESS RSTR NEW ORLEANS LA

Record of Charge

FOOD-BEV $54.59
WAITER $8.00
ROC NUMBER 0000000000

S/E 1171015431

TOTAL CHARGE AMOUNT $62.59

ITEM 15 $21.95
AOL*SERVICE 888-265-9269 VA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/07/99	00a2df662	67

Service Establishment and Location
AOL*SERVICE 888-265-9269 VA

Record of Charge

ONLINE
AOL*ONLINE SERVICE 0899

ROC NUMBER 0003191683

S/E # 4453400780

TOTAL CHARGE AMOUNT $21.95

ITEM 16 $120.27
LITTLE TOKYO RESTAURMETAIRIE LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/08/99	043825358	02

Service Establishment and Location
LITTLE TOKYO RESTAURMETAIRIE LA

Record of Charge

FOOD $105.27
TIP $15.00

S/E 1171010226

TOTAL CHARGE AMOUNT $120.27

ITEM 17 $29.54
MARY MAHONEYS BILOXI MS

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/10/99	102728995	25

Service Establishment and Location
MARY MAHONEYS BILOXI MS

Record of Charge

FOOD/BEV $25.04
TIP $4.50

S/E 4231000670

TOTAL CHARGE AMOUNT $29.54

ITEM 18 $25.80
CHINESE KING NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/10/99	154010026	82

Service Establishment and Location
CHINESE KING NEW ORLEANS LA

Record of Charge

FOOD/BEV $21.80
TIP $4.00

S/E 1171017254

TOTAL CHARGE AMOUNT $25.80

ITEM 19 $30.46
CRESCENT CITY BRWHSE NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/12/99	000130628	69

Service Establishment and Location
CRESCENT CITY BRWHSE NEW ORLEANS LA

Record of Charge

FOOD AND BEVERAGE

TIP $5.00

S/E # 1171043748

TOTAL CHARGE AMOUNT $30.46

ITEM 20 $242.03
CRESCENT CITY BRWHSE NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/12/99	000430735	87

Service Establishment and Location
CRESCENT CITY BRWHSE NEW ORLEANS LA

Record of Charge

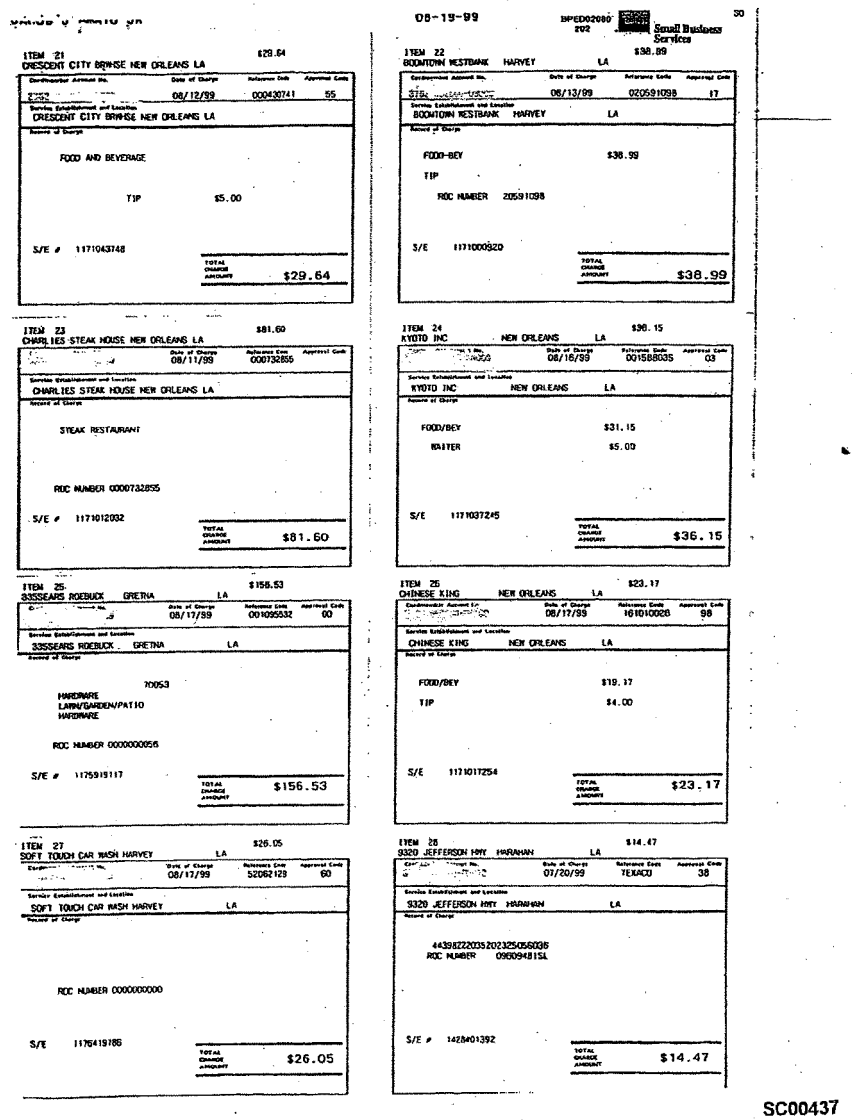
FOOD AND BEVERAGE

TIP $31.57

S/E # 1171043748

TOTAL CHARGE AMOUNT $242.03

SC00436



ITEM 21 $29.64
CRESCENT CITY BRWHSE NEW ORLEANS LA
08/12/99 000430741 55
CRESCENT CITY BRWHSE NEW ORLEANS LA
FOOD AND BEVERAGE
TIP $5.00
S/E # 1171043748
TOTAL CHARGE AMOUNT $29.64

ITEM 22 $38.99
BOOMTOWN WESTBANK HARVEY LA
08/13/99 020591098 17
BOOMTOWN WESTBANK HARVEY LA
FOOD-BEV $38.99
TIP
ROC NUMBER 20591098
S/E 1171000920
TOTAL CHARGE AMOUNT $38.99

ITEM 23 $81.60
CHARLIES STEAK HOUSE NEW ORLEANS LA
08/11/99 000732855
CHARLIES STEAK HOUSE NEW ORLEANS LA
STEAK RESTAURANT
ROC NUMBER 0000732855
S/E # 1171012092
TOTAL CHARGE AMOUNT $81.60

ITEM 24 $36.15
KYOTO INC NEW ORLEANS LA
08/16/99 001588035 03
KYOTO INC NEW ORLEANS LA
FOOD/BEV $31.15
WAITER $5.00
S/E 1171037245
TOTAL CHARGE AMOUNT $36.15

ITEM 25 $156.53
SEARS ROEBUCK GRETNA LA
08/17/99 001095532 00
SEARS ROEBUCK GRETNA LA
70053
HARDWARE
LAWN/GARDEN/PATIO
HARDWARE
ROC NUMBER 0000000056
S/E # 1175919117
TOTAL CHARGE AMOUNT $156.53

ITEM 26 $23.17
CHINESE KING NEW ORLEANS LA
08/17/99 161010028 98
CHINESE KING NEW ORLEANS LA
FOOD/BEV $19.17
TIP $4.00
S/E 1171017254
TOTAL CHARGE AMOUNT $23.17

ITEM 27 $26.05
SOFT TOUCH CAR WASH HARVEY LA
08/17/99 52062128 60
SOFT TOUCH CAR WASH HARVEY LA
ROC NUMBER 0000000000
S/E 1175419786
TOTAL CHARGE AMOUNT $26.05

ITEM 28 $14.47
9320 JEFFERSON HWY HARAHAN LA
07/20/99 TEXACO 38
9320 JEFFERSON HWY HARAHAN LA
4439822203520232505600 36
ROC NUMBER 0960948151
S/E # 1428401392
TOTAL CHARGE AMOUNT $14.47

SC00437

ITEM 29 $16.90
MACS & COMPANY HARVEY LA
Date of Charge 07/20/99 Reference Code 072001005 Approval Code 76
Service Establishment and Location
MACS & COMPANY HARVEY LA
Record of Charge
FOOD-BEV $16.90
TIP
S/E 1171020654
TOTAL CHARGE AMOUNT $16.90

08-19-99 6PED02099 203 Small Business Services

ITEM 30 $83.33
ATLA PAC WASHINGTON DC
Date of Charge 07/21/99 Reference Code 000347009
Service Establishment and Location
ATLA PAC WASHINGTON DC
Record of Charge
0005PACC0091788CREELY.
ROC NUMBER 347009
S/E # 4088700333
TOTAL CHARGE AMOUNT $83.33

ITEM 31 $55.31
WINNERS OF HARAHAN HARAHAN LA
Date of Charge 07/21/99 Reference Code 001135731 Approval Code 49
Service Establishment and Location
WINNERS OF HARAHAN HARAHAN LA
Record of Charge
FOOD/BEV $47.31
WAITER $8.00
S/E 1171318801
TOTAL CHARGE AMOUNT $55.31

ITEM 32 $39.03
1700 HICKORY AVE NEW ORLEANS LA
Date of Charge 07/22/99 Reference Code TERACO Approval Code 99
Service Establishment and Location
1700 HICKORY AVE NEW ORLEANS LA
Record of Charge
4439843217520433303827 9
ROC NUMBER 02837211SL
S/E # 1428401392
TOTAL CHARGE AMOUNT $39.03

ITEM 33 $97.70
ROCK N SAKE NEW ORLEANS LA
Date of Charge 07/22/99 Reference Code 090901186 Approval Code 48
Service Establishment and Location
ROCK N SAKE NEW ORLEANS LA
Record of Charge
S/E 1172413403
TOTAL CHARGE AMOUNT $97.70

ITEM 34 $38.90
CHINA DOLL HARVEY LA
Date of Charge 07/22/99 Reference Code 001080012 Approval Code 25
Service Establishment and Location
CHINA DOLL HARVEY LA
Record of Charge
FOOD/BEV $38.90
S/E 1171018124
TOTAL CHARGE AMOUNT $38.90

ITEM 35 $139.95
DRAGOS METAIRIE LA
Date of Charge 07/23/99 Reference Code 001250041 Approval Code 25
Service Establishment and Location
DRAGOS METAIRIE LA
Record of Charge
FOOD/BEV $119.95
WAITER $20.00
S/E 1171011430
TOTAL CHARGE AMOUNT $139.95

ITEM 36 $143.14
CAFE GIOVANNI'S NEW ORLEANS LA
Date of Charge 07/24/99 Reference Code 030415816 Approval Code 30
Service Establishment and Location
CAFE GIOVANNI'S NEW ORLEANS LA
Record of Charge
FOOD-BEV $119.14
TIP $24.00
ROC NUMBER 30415816
S/E 1171320351
TOTAL CHARGE AMOUNT $143.14

[redacted]

SC00438

3608 Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
835239		PAYMENT RECEIVED - THANK YOU 08/27		7,100.97
835260		PAYMENT RECEIVED - THANK YOU 09/17		3,198.54
501232	1	OUTBACK #1913 MARRERO LA 014010509 FOOD/BEVERAGE 08/18/99	29.96	
501233	2	MANHATTAN AMOCO HARVEY LA 77926820 1 AMOCO GAS / SERV 04011 08/20/99	23.50	— 5150
501233	3	SOUTH CHINA RESTAURACOVINGTON LA 012858555 FOOD 08/20/99	18.77	
501233	4	NEW ORLEANS FOOD/SPIHARVEY LA 001370055 FOOD AND BEVERAGE 08/19/99	22.65	
501234	5	BRICK OVEN CAFE KENNER LA 000366902 FOOD AND BEVERAGE 08/22/99	96.84	
501238	6	MACS & COMPANY HARVEY LA 082501008 FOOD/BEVERAGE 08/25/99	50.05	
501239	7	THOUNG SERVICES INC GRETNA LA 106351356 SHELL OIL 021738610621 08/26/99	50.30	— 5150
501239	8	NINE ROSES REST. GRETNA LA 001980519 FOOD/BEV 08/26/99	30.44	
501243	9	CHINESE KING RESTAURANT LA PLACE LA 000216444 RESTAURANT 08/25/99	31.36	
501243	10	FIVE HAPPINESS RSTR NEW ORLEANS LA 47363511 FOOD-BEV 08/29/99	87.91	
001244	11	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#346705	51.00	
008245	12	LA PENICHE INC NEW ORLEANS LA INV#592355	31.15	
501245	13	111 boudreauxs restaharvey LA 075814060 FOOD/BEV 08/31/99	27.81	
501245	14	EXXON COMPANY USA HARVEY LA EXXON FUEL/MISC 8357452252 09/01/99	26.58	— 5150
501246	15	RUTHS CHRIS #1 NEW ORLEANS LA 075945831 FOOD/BEV 09/01/99	105.94	
501246	16	TREY YUEN MANDEVILLE LA 000203602 FOOD AND BEVERAGE 09/03/99	44.82	
501246	17	NEW ORLEANS FOOD/SPIHARVEY LA 001490046 FOOD AND BEVERAGE 09/02/99	41.59	
501247	18	BACCO RISTORANTE NEW ORLEANS LA 076082991 FOOD/BEV 09/02/99	140.45	
501249	19	DICKORY SELF SERVE HARAHAN LA 016013266 SHELL OIL 021740000431 09/05/99	25.00	— 5150
501250	20	CREOLA MONDEVILLE LA 074906002 FOOD-BEV 09/06/99	25.84	
501250	21	SERVICE 888-265-9269 VA 00a2df662 ONLINE 09/07/99	21.95	— 3450
005251	22	LA PENICHE INC NEW ORLEANS LA INV#592360	21.60	
501251	23	KYOTO INC NEW ORLEANS LA 001769448 FOOD/BEVERAGE 09/07/99	39.95	
501251	24	GOLDEN DRAGON METAIRIE LA 69887149 FOOD/BEVERAGE 09/06/99	40.60	
501253	25	BERTUCCI'S RESTAURANHARVEY LA 001070004 FOOD/BEV 09/09/99	62.80	
501253	26	CHINESE KING NEW ORLEANS LA 180010029 FOOD/BEVERAGE 09/09/99	20.96	
501255	27	SEMOLINA #1 504898004 LA 29670017 EATING PLACES RESTAURAN 09/10/99	27.00	
501255	28	DAKOTA WINE & FEED STORE MANDEVILLE LA 000233482 FOOD AND BEVERAGE 09/12/99	26.73	
501257	29	METRO BISTRO NEW ORLEANS LA 130990004 FOOD/BEV 09/13/99	44.00	
501258	30	NINE ROSES REST. GRETNA LA 001150910 FOOD/BEV 09/14/99	37.79	
501259	31	TREY YUEN MANDEVILLE LA 000204926 FOOD AND BEVERAGE 09/16/99	30.44	
027261	32	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#340113	49.40	
		TOTAL FOR JACOB J AMATO JR	$1,385.18	$10,299.51

SC00439

3609 Small Business Services

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
		CARD NUMBER			
501232	33	WINNERS OF HARAHAN HARAHAN	LA		
		001220301 FOOD/BEVERAGE	08/19/99	62.58	
501233	34	BERTUCCI'S RESTAURANHARVEY	LA		
		001940001 FOOD/BEV	08/20/99	118.43	
501234	35	BARACCA'S LAFAYETTE	LA		
		074549809 FOOD/BEV	08/21/99	134.17	
501234	36	1700 HICKORY AVE NEW ORLEANS	LA		
		TEXACO 4439843217523432405146O	08/21/99	43.47	-5150
501234	37	CHILI'S RESTAURANT CLAFAYETTE	LA		
		023468387 FOOD/BEV	08/21/99	145.03	
501235	38	WINNERS OF HARAHAN HARAHAN	LA		
		001260372 FOOD/BEVERAGE	08/21/99	40.98	-2150
501235	39	EXXON COMPANY USA BREAUX BRIDGE	LA		
		EXXON FUEL/MISC 7558130329	08/22/99	12.94	-5150
501235	40	EXXON COMPANY USA BREAUX BRIDGE	LA		
		EXXON FUEL/MISC 7558130329	08/22/99	25.12	-5150
501235	41	HILTON HOTELS FOOD &LAFAYETTE	LA		
		400816336 RESTAURANT	08/22/99	26.41	
501236	42	ATLA PAC WASHINGTON	DC		
		000354409 C005PACC0091788CREELY,	08/23/99	83.33	-5270
501240	43	1700 HICKORY AVE NEW ORLEANS	LA		
		TEXACO 4439843217524033505274	08/27/99	43.47	-5150
501241	44	MUTT'S FAMILY SEAFOODVIOLET	LA		
		027118054 FOOD/BEVERAGE	08/27/99	85.02	
501241	45	MICROSOFT NTWK 800-386-5550	WA		
		665203735 MSN*ONLINE BILLING 8/99	08/29/99	19.95	-5450
501243	46	DRAGOS METAIRIE	LA		
		001580025 FOOD/BEV	08/30/99	257.95	
501246	47	1700 HICKORY AVE NEW ORLEANS	LA		
		TEXACO 4439843217524632605565	09/02/99	43.47	-5150
501246	48	CHINA DOLL HARVEY	LA		
		001440019 FOOD/BEVERAGE	09/02/99	27.95	
501249	49	WINNERS OF HARAHAN HARAHAN	LA		
		001600839 FOOD/BEVERAGE	09/04/99	37.86	
501249	50	LE BLANC'S RESTAURANGRETNA	LA		
		001930003 RESTAURANT	09/03/99	33.98	
501249	51	BRAVO CUCINA METAIRIMETAIRIE	LA		
		29612046 FOOD-BEV	09/04/99	129.84	
501253	52	MACS & COMPANY HARVEY	LA		
		090801004 FOOD/BEVERAGE	09/08/99	20.30	
501254	53	9320 JEFFERSON HWY HARAHAN	LA		
		TEXACO 4439822203525433101871O	09/10/99	30.08	-5150
501256	54	SAKURA RESTAURANT METAIRIE	LA		
		001883186 RESTAURANT	09/11/99	48.55	
501257	55	COMMANDER'S PALACE NEW ORLEANS	LA		
		001313601 FOOD/BEVERAGE	09/10/99	329.25	
501257	56	MACS & COMPANY HARVEY	LA		
		091301002 FOOD/BEVERAGE	09/13/99	34.09	
501258	57	CHINA DOLL HARVEY	LA		
		001530009 FOOD/BEVERAGE	09/14/99	25.35	
501258	58	9320 JEFFERSON HWY HARAHAN	LA		
		TEXACO 4439822203525833800O247	09/14/99	47.26	-5150
501259	59	WINNERS OF HARAHAN HARAHAN	LA		
		001871162 FOOD/BEVERAGE	09/15/99	74.80	
		TOTAL FOR ROBERT G CREELY		$1,981.63	$.00

[redacted]

ITEM 1 $29.96
OUTBACK #1913 MARRERO LA
08/18/99 014010509 36
OUTBACK #1913 MARRERO LA
FOOD $24.96
TIP $5.00
$29.96

ITEM 2 $23.50
MANHATTAN AMOCO HARVEY LA
08/20/99 27926820I OC
MANHATTAN AMOCO HARVEY LA
AMOCO GAS / SERV 04011
$23.50

SC00440

3612 Small Business Services

ITEM 19 $25.00
DICKORY SLF SERVE HARAHAN LA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
3	09/05/99	016013266	56

Service Establishment and Location: DICKORY SELF SERVE HARAHAN LA

Record of Charge:
SHELL OIL 021740000431
ROC NUMBER GAS/MISC
S/E # 1428434146

TOTAL CHARGE AMOUNT $25.00

ITEM 20 $25.84
CREOLA MONDEVILLE LA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
	09/06/99	024906002	99

Service Establishment and Location: CREOLA MONDEVILLE LA

Record of Charge:
FOOD-BEV $22.34
TIP $3.50
ROC NUMBER 24906002
S/E 1172406695

TOTAL CHARGE AMOUNT $25.84

ITEM 21 $21.95
SERVICE 888-265-9269 VA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
	09/07/99	00a2af652	97

Service Establishment and Location: SERVICE 888-265-9269 VA

Record of Charge:
ONLINE
AOL*ONLINE SERVICE 0999
ROC NUMBER 0010142900
S/E # 4453400780

TOTAL CHARGE AMOUNT $21.95

ITEM 22 $21.60
LA PENICHE INC NEW ORLEANS LA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
09	08/30/99	000592360	

Service Establishment and Location: LA PENICHE INC NEW ORLEANS LA

Record of Charge:
CASUAL DINING
ROC NUMBER 0000592360
S/E # 1171041601

TOTAL CHARGE AMOUNT $21.60

ITEM 23 $39.95
KYOTO INC NEW ORLEANS LA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
	08/07/99	001769448	26

Service Establishment and Location: KYOTO INC NEW ORLEANS LA

Record of Charge:
FOOD/BEV $33.95
WAITER $6.00
S/E 1171037245

TOTAL CHARGE AMOUNT $39.95

ITEM 24 $40.60
GOLDEN DRAGON METAIRIE LA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
	09/06/99	69887149	68

Service Establishment and Location: GOLDEN DRAGON METAIRIE LA

Record of Charge:
FOOD-BEV $40.60
ROC NUMBER 0000000000
S/E 1171043524

TOTAL CHARGE AMOUNT $40.60

ITEM 25 $62.80
BERTUCCI'S RESTAURANHARVEY LA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
	09/09/99	001070008	75

Service Establishment and Location: BERTUCCI'S RESTAURANHARVEY LA

Record of Charge:
FOOD/BEV $55.30
WAITER $7.50
S/E 1171010976

TOTAL CHARGE AMOUNT $62.80

ITEM 26 $20.96
CHINESE KING NEW ORLEANS LA

Card Member Account No.	Date of Charge	Reference Code	Approval Code
	09/09/99	180010029	05

Service Establishment and Location: CHINESE KING NEW ORLEANS LA

Record of Charge:
FOOD/BEV $17.96
TIP $3.00
S/E 1171017254

TOTAL CHARGE AMOUNT $20.96

SC00441

3616 Small Business Services

ITEM 51 $129.84
BRAVO CUCINA METAIRIMETAIRIE LA

Date of Charge	Reference Code	Approval Code
09/04/99	Z9612046	98

Service Establishment and Location
BRAVO CUCINA METAIRIMETAIRIE LA

Record of Charge

FOOD-BEV	$109.84
WAITER	$20.00

ROC NUMBER 0000000000

S/E 1172418733

TOTAL CHARGE AMOUNT $129.84

ITEM 52 $20.30
MACS & COMPANY HARVEY LA

Date of Charge	Reference Code	Approval Code
09/08/99	090801004	98

Service Establishment and Location
MACS & COMPANY HARVEY LA

Record of Charge

FOOD-BEV	$16.30
TIP	$4.00

S/E 1171020654

TOTAL CHARGE AMOUNT $20.30

ITEM 53 $30.08
9320 JEFFERSON HWY HARAHAN LA

Date of Charge	Reference Code	Approval Code
09/10/99	TEXACO	30

Service Establishment and Location
9320 JEFFERSON HWY HARAHAN LA

Record of Charge

4439822203525433101671B
ROC NUMBER 021194615L

S/E # 1428401392

TOTAL CHARGE AMOUNT $30.08

ITEM 54 $48.55
SAKURA RESTAURANT METAIRIE LA

Date of Charge	Reference Code	Approval Code
09/11/99	001883186	85

Service Establishment and Location
SAKURA RESTAURANT METAIRIE LA

Record of Charge

FOOD/BEV	$40.55
WAITER	$8.00

S/E 1172407454

TOTAL CHARGE AMOUNT $48.55

ITEM 55 $329.25
COMMANDER'S PALACE NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
09/10/99	001313601	48

Service Establishment and Location
COMMANDER'S PALACE NEW ORLEANS LA

Record of Charge

FOOD/BEV	$279.25
WAITER	$50.00

S/E 1171115017

TOTAL CHARGE AMOUNT $329.25

ITEM 56 $34.09
MACS & COMPANY HARVEY LA

Date of Charge	Reference Code	Approval Code
09/13/99	091301002	45

Service Establishment and Location
MACS & COMPANY HARVEY LA

Record of Charge

FOOD-BEV	$34.09
TIP	

S/E 1171020654

TOTAL CHARGE AMOUNT $34.09

ITEM 57 $25.35
CHINA DOLL HARVEY LA

Date of Charge	Reference Code	Approval Code
09/14/99	001530009	32

Service Establishment and Location
CHINA DOLL HARVEY LA

Record of Charge

FOOD/BEV	$25.35

S/E 1171016124

TOTAL CHARGE AMOUNT $25.35

ITEM 58 $47.26
9320 JEFFERSON HWY HARAHAN LA

Date of Charge	Reference Code	Approval Code
09/14/99	TEXACO	49

Service Establishment and Location
9320 JEFFERSON HWY HARAHAN LA

Record of Charge

A435522202525833800247
ROC NUMBER 023572115L

S/E # 1428401392

TOTAL CHARGE AMOUNT $47.26

SC00442

SC EXHIBIT - 00014

Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
335289		PAYMENT RECEIVED - THANK YOU 10/16		3,366.81
501263	1	MING PALCE RESTAURANMETAIRIE LA 264437372 RESTAURANT 09/19/99	57.31	
501264	2	SEMOLINA'S #5 GRETNA LA 001688717 5812/01 FOOD/BEVERAGE 09/20/99	38.01	
501264	3	J ALEXANDERS RESTAURBATON ROUGHT LA 026300218 FOOD-BEV 09/20/99	26.27	
501265	4	CLEAR VIEW CAR WASH QUIK JEFFERSON LA ZIONS GAS/MISC 000154700001 09/21/99	24.65	5150
501265	5	BRUNING'S RESTAURANTNEW ORLEANS LA 077999981 5812/01 FOOD/BEVERAGE 09/21/99	37.41	
501266	6	BERTUCCI'S RESTAURANHARVEY LA 001150004 FOOD/BEV 09/22/99	71.91	
501266	7	CHINA DOLL HARVEY LA 001600072 FOOD/BEVERAGE 09/22/99	31.35	
501267	8	DRAGOS METAIRIE LA 001790005 FOOD/BEV 09/23/99	66.30	
501267	9	1700 HICKORY AVE NEW ORLEANS LA TEXACO 44398432175267326047136 09/23/99	14.51	5150
523268	10	LA PENICHE INC NEW ORLEANS LA INV#512342	21.55	
501270	11	JOHNSON SMIT* 1-941-747-5566 061254000 SURFER WIG 09/27/99	13.93	
501270	12	SAKE CAFE METAIRIE LA 00010140 EATING PLACES AND RESTA 09/26/99	115.16	
501272	13	OUTBACK #1913 MARRERO LA 054010143 FOOD/BEVERAGE 09/27/99	39.76	
501272	14	SOFT TOUCH CAR WASH GRETNA LA 65833170 TOWING SRVS 09/27/99	17.95	5150
501273	15	TASTE OF BAVARIA SKRPONCHATOULA LA 296010003 FOOD/BEVERAGE 09/29/99	25.84	
501274	16	NEW ORLEANS CIGAR CONEW ORLEANS LA 001300020 CIGAR STORES/STANDS 09/30/99	29.43	5450
501274	17	BRUNING'S RESTAURANTNEW ORLEANS LA 079053079 5812/01 FOOD/BEVERAGE 09/30/99	67.11	
501275	18	SOUTH CHINA RESTAURACOVINGTON LA 026879508 FOOD 10/01/99	18.33	
501277	19	ANDREAS RESTAURANT METAIRIE LA 0000-1004 FOOD/BEVERAGE 10/04/99	244.78	
501278	20	CHINA DOLL HARVEY LA 001700053 FOOD/BEVERAGE 10/04/99	25.10	
514279	21	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#033564	48.00	
501279	22	CAFE MARIGNY NEW ORLEANS LA 000106135 FOOD AND BEVERAGE 10/05/99	36.07	
501279	23	TREY YUEN HAMMOND LA 000403768 FOOD AND BEVERAGE 10/06/99	32.25	
501279	24	AURORA STEAKHOUSE 1 NEW ORLEANS LA 264381560 FOOD/BEVERAGE 10/05/99	36.65	
501280	25	SERVICE 800-679-9444 VA 00a2df662 ONLINE 10/07/99	21.95	5450
501282	26	MANHATTAN AMOCO HARVEY LA 779268201 AMOCO GAS / SERV 40011 10/08/99	35.40	5150
501284	27	LITTLE TOKYO RESTAURMETAIRIE LA 040538082 FOOD/BEVERAGE 10/10/99	123.58	
501286	28	SEMOLINA'S #5 GRETNA LA 001910202 5812/01 FOOD/BEVERAGE 10/12/99	55.20	
501287	29	CHINESE KING NEW ORLEANS LA 213010022 FOOD/BEVERAGE 10/13/99	25.85	
501288	30	GROUND PATI GRETNA LA 001180002 FOOD/BEVERAGE 10/13/99	27.27	
501289	31	MANHATTAN AMOCO HARVEY LA 779268201 AMOCO GAS / SERV 73005 10/15/99	31.01	5150
501289	32	NEW ORLEANS CIGAR CONEW ORLEANS LA 001450004 CIGAR STORES/STANDS 10/15/99	44.15	5450
501291	33	9320 JEFFERSON HWY HARAHAN LA TEXACO 44398222035291304031086 10/17/99	34.00	5150
501291	34	MING PALCE RESTAURANMETAIRIE LA 264717885 RESTAURANT 10/17/99	44.33	
501292	35	MACS & COMPANY HARVEY LA 101801006 FOOD/BEVERAGE 10/18/99	20.90	
501292	36	FUNNY SIDE UP 215-361-5142 PA 000617613 GIFTS/MISC 10/16/99	22.92	5450
		TOTAL FOR JACOB J AMATO JR	$1,636.19	$3,366.81

SC00443

JACOB J AMATO JR

0-19-99

BPED02080 2341 Small Business Services

ITEM 17 $67.11
BRUNING'S RESTAURANTNEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
09	09/30/99	079053079	89

Service Establishment and Location: BRUNING'S RESTAURANTNEW ORLEANS LA

Record of Charge

FOOD/BEV $59.11

TIP $8.00

ROC NUMBER 0000000007

S/E 1171010960

TOTAL CHARGE AMOUNT $67.11

ITEM 18 $18.33
SOUTH CHINA RESTAURACOVINGTON LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	10/01/99	026879506	63

Service Establishment and Location: SOUTH CHINA RESTAURACOVINGTON LA

Record of Charge

FOOD $15.33

TIP $3.00

S/E 1171022502

TOTAL CHARGE AMOUNT $18.33

ITEM 19 $244.78
ANDREAS RESTAURANT METAIRIE LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	10/04/99	0000-1004	80

Service Establishment and Location: ANDREAS RESTAURANT METAIRIE LA

Record of Charge

FOOD/BEV $214.78

WAITER $30.00

S/E 1171007131

TOTAL CHARGE AMOUNT $244.78

ITEM 20 $25.10
CHINA DOLL HARVEY LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	10/04/99	001700053	27

Service Establishment and Location: CHINA DOLL HARVEY LA

Record of Charge

FOOD/BEV $21.10

WAITER $4.00

S/E 1171015124

TOTAL CHARGE AMOUNT $25.10

ITEM 21 $48.00
CHARLIES STEAK HOUSE NEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	09/28/99	000033564	

Service Establishment and Location: CHARLIES STEAK HOUSE NEW ORLEANS LA

Record of Charge

FINE DINING

ROC NUMBER 0000033564

S/E # 1171012032

TOTAL CHARGE AMOUNT $48.00

ITEM 22 $36.07
CAFE MARIGNY NEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	10/05/99	000106135	81

Service Establishment and Location: CAFE MARIGNY NEW ORLEANS LA

Record of Charge

FOOD AND BEVERAGE

TIP $5.00

S/E # 1172401671

TOTAL CHARGE AMOUNT $36.07

ITEM 23 $32.25
TREY YUEN HAMMOND LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	10/06/99	000403768	27

Service Establishment and Location: TREY YUEN HAMMOND LA

Record of Charge

FOOD AND BEVERAGE

TIP $5.00

S/E # 1171012040

TOTAL CHARGE AMOUNT $32.25

ITEM 24 $36.65
AURORA STEAKHOUSE 1 NEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	10/05/99	264381560	63

Service Establishment and Location: AURORA STEAKHOUSE 1 NEW ORLEANS LA

Record of Charge

FOOD/BEV $31.65

WAITER $5.00

SC00444

S/E 1171314354

TOTAL CHARGE AMOUNT $36.65

BPED02080 2342 Small Business Services

ITEM 25 $21.95
SERVICE 800-679-9444 VA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
B	10/07/99	00a2df662	75

Service Establishment and Location: SERVICE 800-679-9444 VA

Record of Charge:

ONLINE
AOL*ONLINE SERVICE 1099

ROC NUMBER 0017259116

S/E # 4453400780

TOTAL CHARGE AMOUNT $21.95

ITEM 26 $35.40
MANHATTAN AMOCO HARVEY LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	10/08/99	77926820 1	00

Service Establishment and Location: MANHATTAN AMOCO HARVEY LA

Record of Charge:

AMOCO GAS / SERV 40011

S/E # 3128403631

TOTAL CHARGE AMOUNT $35.40

ITEM 27 $123.58
LITTLE TOKYO RESTAURNETAIRIE LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
B	10/10/99	040538082	82

Service Establishment and Location: LITTLE TOKYO RESTAURNETAIRIE LA

Record of Charge:

FOOD	$108.58
TIP	$15.00

S/E 1171010226

TOTAL CHARGE AMOUNT $123.58

ITEM 28 $65.20
SEMOLINA'S #5 GRETNA LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	10/12/99	001310202	57

Service Establishment and Location: SEMOLINA'S #5 GRETNA LA

Record of Charge:

FOOD/BEV	$55.20
WAITER	$10.00

S/E 1171050867

TOTAL CHARGE AMOUNT $65.20

ITEM 29 $25.85
CHINESE KING NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	10/13/99	213010022	91

Service Establishment and Location: CHINESE KING NEW ORLEANS LA

Record of Charge:

FOOD/BEV	$21.85
TIP	$4.00

S/E 1171017254

TOTAL CHARGE AMOUNT $25.85

ITEM 30 $27.27
GROUND PATI GRETNA LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	10/13/99	001180002	84

Service Establishment and Location: GROUND PATI GRETNA LA

Record of Charge:

FOOD/BEV	$23.27
WAITER	$4.00

S/E 1171069602

TOTAL CHARGE AMOUNT $27.27

ITEM 31 $31.01
MANHATTAN AMOCO HARVEY LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	10/15/99	77926820 1	00

Service Establishment and Location: MANHATTAN AMOCO HARVEY LA

Record of Charge:

AMOCO GAS / SERV 73005

S/E # 3128403631

TOTAL CHARGE AMOUNT $31.01

ITEM 32 $44.15
NEW ORLEANS CIGAR CONEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	10/15/99	001450004	07

Service Establishment and Location: NEW ORLEANS CIGAR CONEW ORLEANS LA

Record of Charge:

CIGAR STORES/STANDS
ROC NUMBER 0000000004

S/E # 1178846875

TOTAL CHARGE AMOUNT $44.15

SC00445

661 Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
835323		PAYMENT RECEIVED - THANK YOU 11/19		3,365.80
501294	1	CIGAR FACTORY NEW ORLEANS LA 000220009 LYNK-SYSTEMS RETAIL PUR 10/19/99	32.70	
501294	2	THE PRALINE CONNECTION NEW ORLEANS LA 000096185 FOOD AND BEVERAGE 10/21/99	32.72	
669295	3	NORTHWEST AIRLINES MARRERO LA TKT# 0127948215433 10/21	717.50	
828295		FLIGHT INSURANCE CURRENT $717.50	14.00	
501296	4	NEW ORLEANS CIGAR CONEW ORLEANS LA 001520017 CIGAR STORES/STANDS 10/22/99	51.50	
501296	5	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 000206800001 10/22/99	45.25	
501296	6	MANHATTAN AMOCO HARVEY LA 77926820I AMOCO GAS / SERV 06025 10/22/99	14.00	
501300	7	CHINA DOLL HARVEY LA 001890072 FOOD/BEVERAGE 10/26/99	32.10	
501301	8	MACS & COMPANY HARVEY LA 102701007 FOOD/BEVERAGE 10/27/99	28.87	
501303	9	EXXON COMPANY USA HARVEY LA EXXON FUEL/MISC 8357452252 10/29/99	20.25	
501306	10	BRUNING'S RESTAURANTNEW ORLEANS LA 072732627 5812/01 FOOD/BEVERAGE 11/01/99	37.46	
501307	11	CHINESE KING NEW ORLEANS LA 231010031 FOOD/BEVERAGE 11/02/99	35.78	
501308	12	KYOTO INC NEW ORLEANS LA 001253304 FOOD/BEVERAGE 11/03/99	39.51	
034309	13	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#633845	47.95	
501309	14	LOUISIANA PIZZA KITCGRETNA LA 073102773 FOOD/BEV 11/04/99	32.02	
501310	15	SOUTH CHINA RESTAURACOVINGTON LA 076841343 FOOD 11/05/99	23.28	
501311	16	SERVICE 800-679-9444 VA 00a2df662 ONLINE 11/07/99	21.95	
501313	17	CHINESE KING NEW ORLEANS LA 237010024 FOOD/BEVERAGE 11/08/99	28.00	
501315	18	THE PRALINE CONNECTION NEW ORLEANS LA 000096891 FOOD AND BEVERAGE 11/11/99	23.05	
501315	19	CHINA DOLL HARVEY LA 001020054 FOOD/BEVERAGE 11/10/99	36.40	
501317	20	SEMOLINA MANDEVILLE LA 001940175 FOOD/BEV 11/07/99	25.14	
501319	21	LITTLE TOKYO RESTAURMETAIRIE LA 073250617 FOOD/BEVERAGE 11/14/99	112.55	
501319	22	MANHATTAN AMOCO HARVEY LA 77926820I AMOCO GAS / SERV 04014 11/12/99	10.51	
501320	23	J ALEXANDERS RESTAURBATON ROUGHT LA 03190008O FOOD-BEV 11/15/99	37.03	
501320	24	CHINESE KING NEW ORLEANS LA 243010018 FOOD/BEVERAGE 11/15/99	30.19	
501322	25	SOFT TOUCH CAR WASH HARVEY LA 5206120 TOWING SRVS 11/16/99	61.95	
501322	26	CANNON'S RSTR GRETNA LA 000458959 FOOD AND BEVERAGE 11/18/99	22.10	
199323	27	DILLARDS-OAKWOOD GRETNA LA 286015053 COMFTRS/DUST RUFFLES 11/18/99	184.88	
199323	28	DILLARDS-OAKWOOD GRETNA LA 286015054 DELIVERY FEES 11/18/99	6.00	
199323	29	DILLARDS-OAKWOOD GRETNA LA 286015055 SPEC ORDER DEPOSIT 11/18/99	163.13	
		TOTAL FOR JACOB J AMATO JR	$1,967.77	$3,365.80

SC00446

JACOB J AMATO JR 11-19-99

GPED02079 665 Small Business Services

ITEM 15 $23.28
SOUTH CHINA RESTAURACOVINGTON LA

Commercial Account No.	Date of Charge	Reference Code	Approval Code
	11/05/99	076841343	43

Service Establishment and Location: SOUTH CHINA RESTAURACOVINGTON LA

Record of Charge

FOOD	$20.28
TIP	$3.00

S/E 1171022502

TOTAL CHARGE AMOUNT $23.28

ITEM 16 $21.95
SERVICE 800-679-9444 VA.

Commercial Account No.	Date of Charge	Reference Code	Approval Code
	11/07/99	00a2af662	39

Service Establishment and Location: SERVICE 800-679-9444 VA

Record of Charge

ONLINE
AOL *ONLINE SERVICE 1199

ROC NUMBER 0024938724

S/E # 4453400780

TOTAL CHARGE AMOUNT $21.95

ITEM 17 $28.00
CHINESE KING NEW ORLEANS LA

Commercial Account No.	Date of Charge	Reference Code	Approval Code
	11/08/99	237010024	80

Service Establishment and Location: CHINESE KING NEW ORLEANS LA

Record of Charge

FOOD/BEV	$23.00
TIP	$5.00

S/E 1171017254

TOTAL CHARGE AMOUNT $28.00

ITEM 18 $23.05
THE PRALINE CONNECTION NEW ORLEANS LA

	Date of Charge	Reference Code	Approval Code
	11/11/99	000096891	60

Service Establishment and Location: THE PRALINE CONNECTION NEW ORLEANS LA

Record of Charge

FOOD AND BEVERAGE	
TIP	$3.00

S/E # 1171302557

TOTAL CHARGE AMOUNT $23.05

ITEM 18 $36.40
CHINA DOLL HARVEY LA

	Date of Charge	Reference Code	Approval Code
	11/10/99	001020054	45

Service Establishment and Location: CHINA DOLL HARVEY LA

Record of Charge

FOOD/BEV	$31.40
WAITER	$5.00

S/E 1171016124

TOTAL CHARGE AMOUNT $36.40

ITEM 20 $25.14
SEMOLINA MANDEVILLE LA

	Date of Charge	Reference Code	Approval Code
	11/07/99	001940175	78

Service Establishment and Location: SEMOLINA MANDEVILLE LA

Record of Charge

FOOD/BEV	$21.64
WAITER	$3.50

S/E 1171303860

TOTAL CHARGE AMOUNT $25.14

ITEM 21 $112.55
LITTLE TOKYO RESTAURMETAIRIE LA

Commercial Account No.	Date of Charge	Reference Code	Approval Code
09	11/14/99	07325061?	45

Service Establishment and Location: LITTLE TOKYO RESTAURMETAIRIE LA

Record of Charge

FOOD	$97.55
TIP	$15.00

S/E 1171010225

TOTAL CHARGE AMOUNT $112.55

ITEM 22 $10.51
MANHATTAN AMOCO HARVEY LA

Commercial Account No.	Date of Charge	Reference Code	Approval Code
JB	11/12/99	779268201	00

Service Establishment and Location: MANHATTAN AMOCO HARVEY LA

Record of Charge

AMOCO GAS / SERV 04014

SC00447

S/E # 3128403631

TOTAL CHARGE AMOUNT $10.51

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
		CARD NUMBER			
501327	1	NINE ROSES REST. GRETNA 001441583 FOOD/BEV	LA 11/22/99	33.71	
016328	2	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#633782		49.60	
501328	3	SEMOLINA'S #5 GRETNA 001333504 5812/01 FOOD/BEVERAGE	LA 11/23/99	28.85	
501328	4	MANHATTAN AMOCO HARVEY 779268201 AMOCO GAS / SERV 53024	LA 11/23/99	48.00	5150
501334	5	MING PALCE RESTAURANMETAIRIE 264118673 RESTAURANT	LA 11/28/99	86.90	
501335	6	BRUNING'S RESTAURANTNEW ORLEANS 076071651 5812/01 FOOD/BEVERAGE	LA 11/30/99	45.77	
501335	7	AURORA STEAKHOUSE 1 NEW ORLEANS 264773024 FOOD/BEVERAGE	LA 11/30/99	43.23	
501336	8	TONY & GRACE MANDI GRETNA 120101013 FOOD/BEVERAGE	LA 12/01/99	33.98	
501337	9	CRESCENT CITY RSTR NEW ORLEANS 076331129 FOOD/BEVERAGE	LA 12/02/99	60.39	
569337	10	UNITED AIRLINES MARRERO TKT# 0167950666676	LA 12/02	372.50	
328337		FLIGHT INSURANCE CURRENT $372.50		14.00	
010341	11	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#139870		54.60	
501341	12	CHINESE KING NEW ORLEANS 261010023 FOOD/BEVERAGE	LA 12/06/99	26.18	
501341	13	AOL SERVICE 800-679-9444 00a2df662 ONLINE	VA 12/07/99	21.95	5450
002342	14	LA PENICHE INC NEW ORLEANS LA INV#566852		26.45	
501342	15	RUTHS CHRIS #1 NEW ORLEANS 076959884 FOOD/BEV	LA 12/06/99	299.41	
501343	16	ODYSSEY GRILL NEW ORLEANS 077098204 FOOD/BEVERAGE	LA 12/08/99	45.38	
501343	17	MOONLIGHT CAFE NEW ORLEANS 001260004 FOOD/BEV	LA 12/07/99	23.71	
501343	18	SOFT TOUCH CAR WASH HARVEY 52062141 TOWING SRVS	LA 12/07/99	65.95	5150
501343	19	SANTA FE RSTR NEW ORLEANS LA 000622171 FOOD AND BEVERAGE	12/08/99	40.05	
501344	20	NINE ROSES REST. GRETNA 001581953 FOOD/BEV	LA 12/09/99	32.94	
501345	21	VAQUEROS RESTAURANT NEW ORLEANS 097163383 FOOD & BEVERAGE	LA 12/09/99	27.27	
501346	22	GROUND PATTI RESTAURCOVINGTON 48633110 FOOD/BEVERAGE	LA 12/10/99	26.77	
501347	23	ZEA CAFE HARAHAN 001308387 FOOD/BEV	LA 12/12/99	65.46	
501348	24	ELMO'S CAJUN CUISINEGRETNA 001250002 01 FOOD & BEVERAGE	LA 12/13/99	50.47	
01349	25	MACS & COMPANY HARVEY 121401006 FOOD/BEVERAGE	LA 12/14/99	20.61	
01351	26	PAELLA TAPAS REST. NEW ORLEANS 000282001 RESTAURANT	LA 12/16/99	38.56	
01351	27	9320 JEFFERSON HWY HARAHAN TEXACO 4439822203535132104100	LA 12/16/99	19.26	5.50
		TOTAL FOR JACOB J AMATO JR		$1,701.95	$.00
		CARD NUMBER			
01324	28	HUGH'S WINE CELLAR MANDEVILLE 00010232 GROCERIES	LA 11/18/99	230.08	5450
01326	29	SEMOLINA'S #5 GRETNA 001293123 5812/01 FOOD/BEVERAGE	LA 11/19/99	57.56	
01327	30	ATLA PAC WASHINGTON 000395802 C005PACC0091788CREELY.	DC 11/22/99	83.33	5270
01329	31	JAZZ CASINO-FOOD/BEVNEW ORLEANS 032929706 FOOD/BEV OR OTHER	LA 11/23/99	52.29	
01329	32	EXXON COMPANY USA METAIRIE EXXON FUEL/MISC 8351763852	LA 11/24/99	49.00	5 [illegible]
01332	33	ACME OYSTER HOUSE NEW ORLEANS LA 000001468 RESTAURANT	11/27/99	23.60	
01333	34	HOOTERS OF FRENCH NEW ORLEANS 52558701 FOOD & BEVERAGE	LA 11/27/99	29.42	
01333	35	ZEA CAFE HARAHAN 001167159 FOOD/BEV	LA 11/28/99	32.80	
01334	36	KANPAI JAPANESE RESTNEW ORLEANS 033495091 000UNDEFINED	LA 11/29/99	51.87	

SC00448

Services

)309

Amt

58

ITEM 6 $86.90
MING PALCE RESTAURANNETAIRIE LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
19	11/28/99	364116673	68

Service Establishment and Location
MING PALCE RESTAURANNETAIRIE LA

Record of Charge

FOOD/BEV $76.90
WAITER $10.00

S/E 1172407272

TOTAL CHARGE AMOUNT $86.90

ITEM 7 $43.23
AURORA STEAKHOUSE 1 NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
19	11/30/99	264773024	58

Service Establishment and Location
AURORA STEAKHOUSE 1 NEW ORLEANS LA

Record of Charge

FOOD/BEV $37.23
WAITER $6.00

S/E 1171314354

TOTAL CHARGE AMOUNT $43.23

ITEM 9 $60.39
CRESCENT CITY RSTR NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	12/02/99	076331129	58

Service Establishment and Location
CRESCENT CITY RSTR NEW ORLEANS LA

Record of Charge

FOOD/BEV $53.39
TIP $7.00
ROC NUMBER 0000000000

S/E 1171000227

TOTAL CHARGE AMOUNT $60.39

ITEM 11 $54.60
CHARLIES STEAK HOUSE NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	12/01/99	000139870	

Service Establishment and Location
CHARLIES STEAK HOUSE NEW ORLEANS LA

Record of Charge

FINE DINING

ROC NUMBER 0000139870

S/E # 1171012032

TOTAL CHARGE AMOUNT $54.60

ITEM 6 $45.77
BRUNING'S RESTAURANTNEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
108	11/30/99	076071651	33

Service Establishment and Location
BRUNING'S RESTAURANTNEW ORLEANS LA

Record of Charge

FOOD/BEV $38.77
TIP $7.00
ROC NUMBER 0000000007

S/E 1171010860

TOTAL CHARGE AMOUNT $45.77

ITEM 8 $33.98
TONY & GRACE MANDI GRETNA LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
8	12/01/99	120101013	15

Service Establishment and Location
TONY & GRACE MANDI GRETNA LA

Record of Charge

FOOD-BEV $28.98
TIP $5.00

S/E 1171023831

TOTAL CHARGE AMOUNT $33.98

ITEM 10 $372.50
UNITED AIRLINES MARRERO LA

Cardmember Account No.	Transaction Date	Ticket Number
	12/02/99	01879506668782

Passenger	Ticketing Airline
AMATO JR/J	UNITED AIRLINES
Travel Name	Travel Address
TRIPS UNLIMITED	MARRERO

From	Carrier	Class	Transaction Amount
NEW ORLEANS LA			$372.50
To: SAN FRANCISCO CA			
To: SANTA BARBARA CA	UA	WE	
To: LOS ANGELES CA	UA	WE	Amount Use Only 93379012438 037000 16 337003
To: NEW ORLEANS LA			

PASSENGER TICKET
S/E # 7992700096

ITEM 12 $26.18
CHINESE KING NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	12/06/99	261010023	63

Service Establishment and Location
CHINESE KING NEW ORLEANS LA

Record of Charge

FOOD/BEV $22.18
TIP $4.00

S/E 1171017254

TOTAL CHARGE AMOUNT $26.18

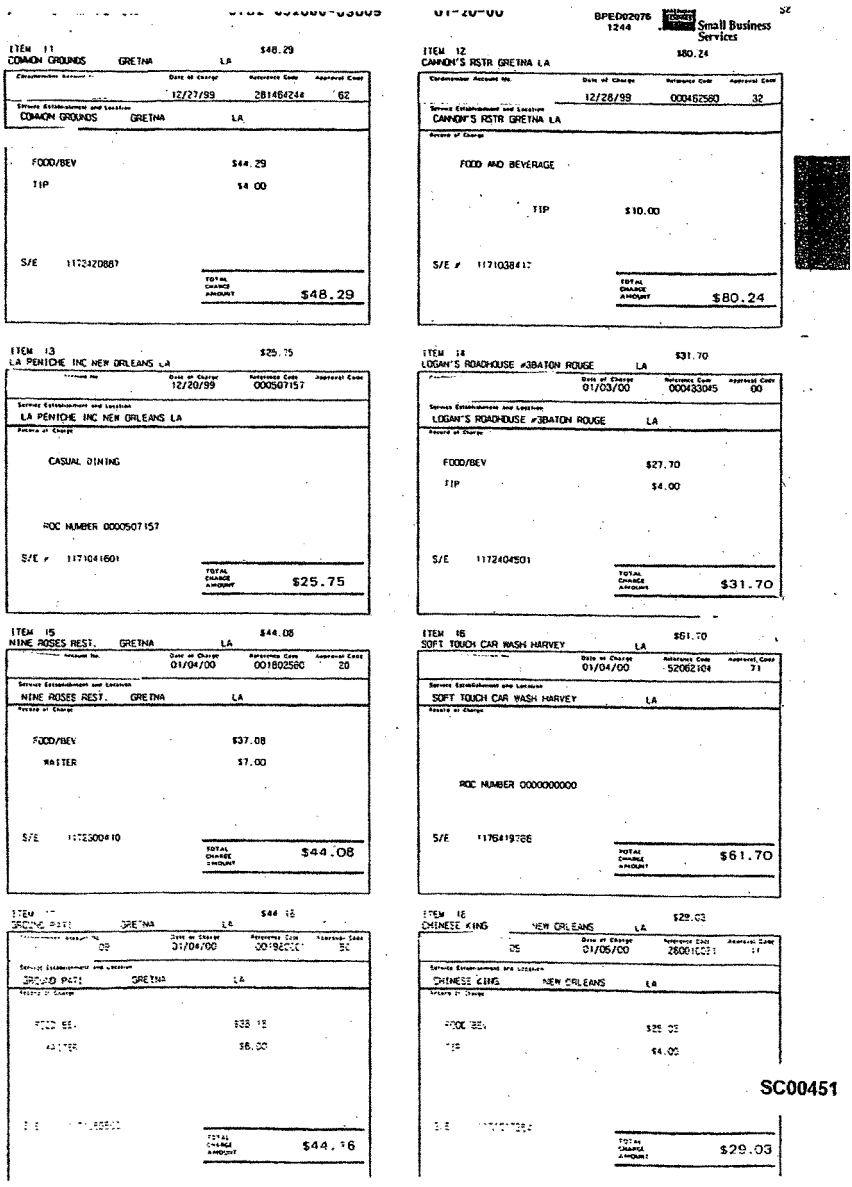
SC00449

SC EXHIBIT - 00015

Small Business Services

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
		CARD NUMBER 3782-652666-03009			
835365		PAYMENT RECEIVED - THANK YOU	12/31		6,722.89
835009		PAYMENT RECEIVED - THANK YOU	01/09		6,029.58
499354	1	DILLARDS-HAMMOND SORHAMMOND LA 288042034 TIES	12/19/99	75.90	54.50
501355	2	COMMON GROUNDS GRETNA LA 281464244 REST	12/21/99	23.10	
501355	3	NINE ROSES REST. GRETNA LA 001872235 FOOD/BEV	12/20/99	46.78	
501355	4	ALONSO & SON RSTR JEFFERSON LA 098638939 RESTAURANT	12/20/99	46.40	
501356	5	ODYSSEY GRILL NEW ORLEANS LA 078883045 FOOD/BEVERAGE	12/21/99	41.75	
501358	6	CAFE CREOLE HOUMA LA 27331203 FOOD-BEV	12/22/99	19.48	
501358	7	CROZIER'S METAIRIE LA 000154216 FOOD AND BEVERAGE	12/23/99	348.14	
501358	8	1700 HICKORY AVE NEW ORLEANS LA TEXACO 4439843217535833503950l	12/23/99	28.00	4.50
501359	9	oriental triangle Jefferson LA 079320135 FOOD/BEV	12/24/99	49.00	
501359	10	DICKORY SELF SERVE HARAHAN LA 016013706 SHELL OIL 021"40000431	12/24/99	24.75	5.50
501361	11	COMMON GROUNDS GRETNA LA 281464244 REST	12/27/99	48.29	
501362	12	CANNON'S RSTR GRETNA LA 000462560 FOOD AND BEVERAGE	12/28/99	80.24	
001364	13	LA PENICHE INC NEW ORLEANS LA INV#507157		25.75	
501004	14	LOGAN'S ROADHOUSE #3BATON ROUGE LA 000433045 FOOD/BEV	01/03/00	31.70	
501005	15	NINE ROSES REST. GRETNA LA 001802560 FOOD/BEV	01/04/00	44.08	
501006	16	SOFT TOUCH CAR WASH HARVEY LA 52062104 TOWING SRVS	01/04/00	61.70	5.50
501006	17	GROUND PATI GRETNA LA 001880001 FOOD/BEVERAGE	01/04/00	44.18	
501006	18	CHINESE KING LA 280010021 FOOD/BEVERAGE	01/05/00	29.03	
501007	19	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE	01/07/00	21.95	54.50
501008	20	LOUISIANA GRILL MANDEVILLE LA 090494804 RESTAURANT	01/07/00	33.30	
501009	21	DAKOTA WINE & FEED STORE MANDEVILLE LA 000237335 FOOD AND BEVERAGE	01/09/00	30.86	5.50
501012	22	BEEF CONNECTION GRETNA LA 000119314 FOOD AND BEVERAGE	01/12/00	206.68	
501012	23	CHINA DOLL HARVEY LA 001520056 FOOD/BEVERAGE	01/11/00	29.45	
501013	24	VAQUEROS RESTAURANT NEW ORLEANS LA 52970005 FOOD & BEVERAGE	01/11/00	26.25	
002014	25	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#139947		54.55	
501014	26	NINE ROSES REST. GRETNA LA 001872707 FOOD/BEV	01/13/00	32.62	
501015	27	LA RIVIERA RESTAURANMETAIRIE LA 001810011 FOOD/BEVERAGE	01/13/00	219.33	
501018	28	NINE ROSES REST. GRETNA LA 001912809 FOOD/BEV	01/17/00	36.97	
501018	29	MING PALCE RESTAURANMETAIRIE LA 264579546 RESTAURANT	01/16/00	63.46	
501020	30	AURORA STEAKHOUSE 1 NEW ORLEANS LA 264114237 FOOD/BEVERAGE	01/19/00	45.08	
		TOTAL FOR JACOB J AMATO JR		$1,868.77	$12,752.47

SC00450



ITEM 11
COMMON GROUNDS GRETNA LA $48.29
12/27/99 281464244 62
COMMON GROUNDS GRETNA LA
FOOD/BEV $44.29
TIP $4.00
S/E 1172420887
TOTAL CHARGE AMOUNT $48.29

ITEM 12
CANNON'S RSTR GRETNA LA $80.24
12/28/99 000462580 32
CANNON'S RSTR GRETNA LA
FOOD AND BEVERAGE
TIP $10.00
S/E # 1171038412
TOTAL CHARGE AMOUNT $80.24

ITEM 13
LA PENTCHE INC NEW ORLEANS LA $25.75
12/20/99 000507157
LA PENTCHE INC NEW ORLEANS LA
CASUAL DINING
ROC NUMBER 0000507157
S/E # 1171041601
TOTAL CHARGE AMOUNT $25.75

ITEM 14
LOGAN'S ROADHOUSE #3BATON ROUGE LA $31.70
01/03/00 000433045 00
LOGAN'S ROADHOUSE #3BATON ROUGE LA
FOOD/BEV $27.70
TIP $4.00
S/E 1172404501
TOTAL CHARGE AMOUNT $31.70

ITEM 15
NINE ROSES REST. GRETNA LA $44.08
01/04/00 001802560 20
NINE ROSES REST. GRETNA LA
FOOD/BEV $37.08
WAITER $7.00
S/E 1172300410
TOTAL CHARGE AMOUNT $44.08

ITEM 16
SOFT TOUCH CAR WASH HARVEY LA $61.70
01/04/00 52062104 71
SOFT TOUCH CAR WASH HARVEY LA
ROC NUMBER 0000000000
S/E 1176419786
TOTAL CHARGE AMOUNT $61.70

ITEM 17
GROUND PATI GRETNA LA $44.16
09 01/04/00
GROUND PATI GRETNA LA
FOOD SER. $38.16
WAITER $6.00
TOTAL CHARGE AMOUNT $44.16

ITEM 18
CHINESE KING NEW ORLEANS LA $29.03
05 01/05/00
CHINESE KING NEW ORLEANS LA
FOOD SER. $25.03
TIP $4.00
TOTAL CHARGE AMOUNT $29.03

SC00451

1805 Small Business Services

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
		CARD NUMBER			
835036		PAYMENT RECEIVED - THANK YOU	02/05		3,124.72
501050		2% CREDIT FOR $21.15 02/18 MOBIL CHARGE IT PAYS TO BUY GASOLINE AT MOBIL			.42
501023	1	TREY YUEN HAMMOND LA 000408236 FOOD AND BEVERAGE	01/23/00	36.70	
501025	2	NINE ROSES REST. GRETNA LA 001972953 FOOD/BEV	01/24/00	25.15	
501027	3	DICKIE BRENNAN STEAKNEW ORLEANS LA 001290058 FOOD/BEV	01/25/00	223.50	
048031	4	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#140511		82.55	
501031	5	MING PALCE RESTAURANMETAIRIE LA 264719852 RESTAURANT	01/30/00	46.09	
501031	6	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS	01/30/00	31.92	
501032	7	OUTBACK #1913 MARRERO LA 178010925 FOOD/BEVERAGE	01/31/00	29.31	
006034	8	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#140548		51.30	
501034	9	BRUNING'S RESTAURANTNEW ORLEANS LA 073299437 5812/01 FOOD/BEVERAGE	02/02/00	112.82	
501034	10	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS	02/02/00	45.32	
501035	11	THE RED MAPLE GRETNA LA 00043863 FOOD AND BEVERAGE	02/03/00	22.28	
501038	12	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE	02/07/00	21.95	5150
501038	13	VENEZIA RESTAURANT NEW ORLEANS LA 001630011 5812/01 FOOD/BEVERAGE	02/06/00	102.55	
501039	14	NINE ROSES REST. GRETNA LA 001093252 FOOD/BEV	02/07/00	47.23	
501040	15	LA PENICHE RESTAURANNEW ORLEANS LA 13222214 FOOD-BEV	02/07/00	24.35	
501041	16	BRUNING'S RESTAURANTNEW ORLEANS LA 074100855 5812/01 FOOD/BEVERAGE	02/09/00	60.61	
501042	17	MACS & COMPANY HARVEY LA 020903006 FOOD/BEVERAGE	02/10/00	35.25	
501042	18	NEW ORLEANS CIGAR CONEW ORLEANS LA 001610027 CIGAR STORES/STANDS	02/10/00	146.87	5150
501042	19	NINE ROSES REST. GRETNA LA 001113304 FOOD/BEV	02/10/00	45.45	
501044	20	OAKOTA WINE & FEED STORE MANDEVILLE LA 000238390 FOOD AND BEVERAGE	02/13/00	22.98	
501045	21	SAL AND SAM'S METAIRIE LA 000162824 FOOD AND BEVERAGE	02/13/00	116.05	
501046	22	BEEF CONNECTION GRETNA LA 000120382 FOOD AND BEVERAGE	02/15/00	90.12	
501046	23	CHINESE KING NEW ORLEANS LA 315010022 FOOD/BEVERAGE	02/14/00	26.00	
501048	24	SOFT TOUCH CAR WASH HARVEY LA 52062146 TOWING SRVS	02/15/00	67.10	5.50
501049	25	WESTIN HOTELS FB 415-3977000 CA 400176700 FOOD/BEVERAGE	02/16/00	40.08	
501050	26	KHATCHK ACHADJ ARYO GRN CA MOBIL OIL GAS OR OTHER JM13096	02/18/00	21.15	5150
501050	27	WESTIN HOTELS ST FRA415-3977000 CA 400556942 LODGING	02/18/00	12.79	
501050	28	WESTIN HOTELS ST FRA415-3977000 CA 400556942 LODGING	02/19/00	334.10	
501050	29	WESTIN HOTELS ST FRA415-3977000 CA 400556942 LODGING	02/18/00	835.91	
		TOTAL FOR JACOB J AMATO JR		$2,758.48	$3,125.14

SC00452

1809 [redacted] Small Business Services

ITEM 9 $112.82
BRUNING'S RESTAURANTNEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
09	02/02/00	073299437	45

Service Establishment and Location
BRUNING'S RESTAURANTNEW ORLEANS LA

Record of Charge

FOOD/BEV $97 82
TIP $15.00
ROC NUMBER 0000000007

S/E 1171010960

TOTAL CHARGE AMOUNT $112.82

ITEM 10 $45.32
HOUSE OF DANG HARVEY LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
.009	02/02/00	821423608	90

Service Establishment and Location
HOUSE OF DANG HARVEY LA

Record of Charge

FOOD/BEV $38.82
TIP $6.50

S/E 1172410763

TOTAL CHARGE AMOUNT $45.32

ITEM 11 $22.28
THE RED MAPLE GRETNA LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
9	02/03/00	000438863	35

Service Establishment and Location
THE RED MAPLE GRETNA LA

Record of Charge

FOOD AND BEVERAGE
TIP $3.50

S/E # 1171001613

TOTAL CHARGE AMOUNT $22.28

ITEM 12 $21.95
AOL SERVICE 800-679-9444 VA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	02/07/00	00a2df662	19

Service Establishment and Location
AOL SERVICE 800-679-9444 VA

Record of Charge

ONLINE
AOL*ONLINE SERVICE 0200

ROC NUMBER 0051130138

S/E # 4453400780

TOTAL CHARGE AMOUNT $21.95

ITEM 13 $102.55
VENEZIA RESTAURANT NEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
.009	02/06/00	001630011	20

Service Establishment and Location
VENEZIA RESTAURANT NEW ORLEANS LA

Record of Charge

FOOD/BEV $87.55
WAITER $15.00

S/E 1171015092

TOTAL CHARGE AMOUNT $102.55

ITEM 14 $47.23
NINE ROSES REST. GRETNA LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	02/07/00	001092[illegible]	79

Service Establishment and Location
NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV $40.[illegible]
WAITER $6.50

S/E 1172300410

TOTAL CHARGE AMOUNT $47.23

ITEM 15 $24 35
LA PENICHE RESTAURANNEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	02/07/00	13222214	79

Service Establishment and Location
LA PENICHE RESTAURANNEW ORLEANS LA

Record of Charge

FOOD-BEV $2[illegible] 35
WAITER $2 [illegible]
ROC NUMBER 000000000[illegible]

S/E 1771041601

TOTAL CHARGE AMOUNT $24.35

ITEM 16 $60.61
BRUNING'S RESTAURANTNEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	02/09/00	[illegible]	66

Service Establishment and Location
BRUNING'S RESTAURANTNEW ORLEANS LA

Record of Charge

FOOD/BEV $53 61
TIP $7 00
ROC NUMBER 0000000011

S/E 1171010960

TOTAL CHARGE AMOUNT $60.61

SC00453

BPEU02074
3774 Small Business Services

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
		CARD NUMBER			
335063		PAYMENT RECEIVED - THANK YOU 03/03			5,270.57
501050	1	BISTRO DE LA GARE SANTA BARBARA CA 000000346 FOOD AND BEVERAGE	02/19/00	68.66	
501051	2	SANTA BARBARA INN SANTA BARBARA CA 401740392 LODGING	02/19/00	472.64	
501052	3	CHINA CASTLE RESTAURSANTA BARBARA CA 603044260 FOOD/BEVERAGE	02/20/00	46.35	
501052	4	KEEPERS LIGHTHOUSE #SANTA BARBARA CA 001290007 FOOD/BEV	02/19/00	32.15	
501053	5	CHEVRON #0093865 SANTA CRUZ CA 118833379 DICK COLE CHEV	02/18/00	18.80	- 5150
501053	6	BUCATINI TRATTORIA SANTA BARBARA CA 029010256 01 FOOD/BEVERAGE	02/21/00	64.09	
495054	7	HERTZ CAR RENTAL SAN FRANCISCO CA R/A# 296284645 HERTZ CAR RENTAL	02/16/00	529.12	5150
501054	8	CHEVRON #0090421 SANTA BARBARA CA 118889715 CHEVRON STATION	02/21/00	9.60	- 5150
501054	9	CHEVRON #0090421 SANTA BARBARA CA 118951508 CHEVRON STATION	02/20/00	20.25	5150
501054	10	DOUBLETREE HOTELS 805-5644333 CA 054000000 LODGING	02/22/00	822.44	
501056	11	NINE ROSES REST. GRETNA LA 001233655 FOOD/BEV	02/24/00	21.21	
501059	12	TASTE OF BAVARIA PONCHATOULA LA 055329015 FOOD/BEVERAGE	02/27/00	22.42	
501059	13	GTE AIRFONE, OAK BROOK IL 054027566 TO TEL NO. 504-367-8181	02/22/00	14.00	- 5570
501061	14	CRESCENT CITY RSTR NEW ORLEANS LA 076467543 FOOD/BEVERAGE	02/29/00	114.37	
501062	15	CHINA DOLL HARVEY LA 001150068 FOOD/BEVERAGE	03/01/00	26.75	
501063	16	DICKIE BRENNAN STEAKNEW ORLEANS LA 001650053 FOOD/BEV	03/01/00	124.29	
501064	17	GROUND PATI GRETNA LA 001560003 FOOD/BEVERAGE	03/02/00	30.04	
501067	18	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE	03/07/00	21.95	5450
501068	19	CHOUNGS PALACE PASCAGOULA MS 536010017 RESTAURANT	03/07/00	41.33	
501068	20	CREOLA MONDEVILLE LA 006707002 FOOD-BEV	03/07/00	28.61	
501069	21	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS	03/08/00	27.76	
505070	22	ARROYO VILLAGE INN B&B ARROYO GRANDE CA FOL# 000000301823 INV# 938691		350.90	
501070	23	KANPAI JAPANESE RESTNEW ORLEANS LA 007097048 OOUNDEFINED	03/09/00	26.80	
01074	24	BRUNING'S RESTAURANTNEW ORLEANS LA 078003729 5812/01 FOOD/BEVERAGE	03/13/00	73.73	
01074	25	NINE ROSES REST. GRETNA LA 001404109 FOOD/BEV	03/13/00	51.40	
01075	26	MACS & COMPANY HARVEY LA 031303007 FOOD/BEVERAGE	03/14/00	30.28	
01075	27	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS	03/14/00	33.15	
503077	28	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#833264		39.70	
01079	29	CREOLA MONDEVILLE LA 007818004 FOOD-BEV	03/18/00	32.91	
01080	30	ROCK N SAKE NEW ORLEANS LA 098673843 RESTAURANT	03/19/00	115.33	
01080	31	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS	03/19/00	33.06	
		TOTAL FOR JACOB J AMATO JR		$3,344.09	$5,270.57

SC00454

BPED02074
3777

Small Business Services

ITEM 11 $21.21
NINE ROSES REST. GRETNA LA

Date of Charge	Reference Code	Approval Code
02/24/00	001233655	00

Service Establishment and Location
NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV $18.21

WAITER $3.00

S/E 1172300410

TOTAL CHARGE AMOUNT $21.21

ITEM 12 $22.42
TASTE OF BAVARIA PONCHATOULA LA

Date of Charge	Reference Code	Approval Code
02/27/00	055329015	40

Service Establishment and Location
TASTE OF BAVARIA PONCHATOULA LA

Record of Charge

FOOD/BEVERAGE

S/E # 1171038882

TOTAL CHARGE AMOUNT $22.42

ITEM 13 $14.00
GTE AIRFONE, OAK BROOK IL

Date of Charge	Reference Code	Approval Code
02/22/00	054027566	00

Service Establishment and Location
GTE AIRFONE, OAK BROOK IL

Record of Charge

TO TEL NO. 504-367-8181
003 MINS $14.00

FROM UNITED
FOR INQUIRY 800 AIRFONE

S/E # 3126525112

TOTAL CHARGE AMOUNT $14.00

ITEM 14 $114.37
CRESCENT CITY RSTR NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
009 02/29/00	076467543	76

Service Establishment and Location
CRESCENT CITY RSTR NEW ORLEANS LA

Record of Charge

FOOD/BEV $99.37

TIP $15.00

ROC NUMBER 0000000000

S/E 1171000227

TOTAL CHARGE AMOUNT $114.37

ITEM 15 $26.75
CHINA DOLL HARVEY LA

Date of Charge	Reference Code	Approval Code
03/01/00	001150068	55

Service Establishment and Location
CHINA DOLL HARVEY LA

Record of Charge

FOOD/BEV $22.75

WAITER $4.00

S/E 1171016124

TOTAL CHARGE AMOUNT $26.75

ITEM 16 $124.29
DICKIE BRENNAN STEAKNEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
09 03/01/00	001650053	85

Service Establishment and Location
DICKIE BRENNAN STEAKNEW ORLEANS LA

Record of Charge

FOOD/BEV $109.29

WAITER $15.00

S/E 1172415275

TOTAL CHARGE AMOUNT $124.29

ITEM 17 $30.04
GROUND PATI GRETNA LA

Date of Charge	Reference Code	Approval Code
03/02/00	001560003	40

Service Establishment and Location
GROUND PATI GRETNA LA

Record of Charge

FOOD/BEV $26.54

WAITER $3.50

S/E 1171069602

TOTAL CHARGE AMOUNT $30.04

ITEM 18 $21.95
AOL SERVICE 800-679-9444 VA

Date of Charge	Reference Code	Approval Code
03/07/00	00[illegible]f662	61

Service Establishment and Location
AOL SERVICE 800-679-9444 VA

Record of Charge

ONLINE
AOL ONLINE SERVICE 0300

ROC NUMBER 0059249517

S/E # [illegible]

TOTAL CHARGE AMOUNT $21.95

SC00455

BPED02037 605 — Small Business Services — S5

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
501081	1	CHINESE KING NEW ORLEANS LA 345010022 FOOD/BEVERAGE 03/20/00	23.72	
501082	2	MACS & COMPANY HARVEY LA 032101007 FOOD/BEVERAGE 03/21/00	25.69	
501082	3	THE HOME DEPOT 359 GRENTA LA 00824452I HOME IMPROV/ACCES 03/21/00	133.74	-$450
004083	4	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#833286	52.40	
501083	5	KIM SON REST GRETNA LA 001866803 FOOD/BEV 03/22/00	53.13	
501083	6	SOFT TOUCH CAR WASH HARVEY LA 52062181 TOWING SRVS 03/21/00	66.50	-$150
501083	7	NEW ORLEANS CIGAR CONEW ORLEANS LA 001010018 CIGAR STORES/STANDS 03/22/00	147.15	-$450
501086	8	BRUNING'S RESTAURANTNEW ORLEANS LA 07967623 5812/01 FOOD/BEVERAGE 03/27/00	66.99	
501088	9	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS 03/27/00	40.62	R
501090	10	THE RED MAPLE GRETNA LA 000439953 FOOD AND BEVERAGE 03/29/00	160.83	
501091	11	MACS & COMPANY HARVEY LA 033001005 FOOD/BEVERAGE 03/30/00	19.30	
501091	12	NINE ROSES REST. GRETNA LA 001544481 FOOD/BEV 03/30/00	37.29	
501091	13	MANHATTAN AMOCO HARVEY LA 7792682O1 PAY AT THE PUMP 03/31/00	34.50	-$150
501094	14	RIGATONI NEW ORLEANS LA 000070148 FOOD AND BEVERAGE 04/03/00	34.96	
501095	15	SAKE CAFE METAIRIE LA 00010253 EATING PLACES AND RESTA 04/02/00	118.10	
501096	16	MACS & COMPANY HARVEY LA 040302008 FOOD/BEVERAGE 04/04/00	33.72	
501096	17	AURORA STEAKHOUSE 1 NEW ORLEANS LA 264636251 FOOD/BEVERAGE 04/04/00	34.51	
501097	18	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS 04/05/00	27.65	
501098	19	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE 04/07/00	21.95	-$450
003101	20	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#233492	43.50	
501102	21	PASCALS MANALE RSTR NEW ORLEANS LA 000544263 FOOD AND BEVERAGE 04/11/00	58.22	
501102	22	CHINA DOLL HARVEY LA 001480052 FOOD/BEVERAGE 04/10/00	27.75	
501104	23	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS 04/12/00	25.09	
501109	24	THE HOME DEPOT #0368MARRERO LA 010977896 HARDWARE/HOME IMPROV 04/17/00	129.47	-$450
501109	25	SOUTH CHINA RESTAURACOVINGTON LA 041482538 FOOD 04/17/00	23.45	
501110	26	NINE ROSES REST GRETNA LA 001704896 FOOD/BEV 04/18/00	30.17	
		TOTAL FOR JACOB J AMATO JR	$1,470.40	$.00
		CARD NUMBER		
501081	27	1700 HICKORY AVE NEW ORLEANS LA TEXACO 4439843217508I302052378 03/20/00	23.10	-$150
501082	28	BOOMTOWN WESTBANK HARVEY LA 020591062 FOOD/BEVERAGE 03/21/00	15.12	
501085	29	ROCK N SAKE NEW ORLEANS LA 099261083 RESTAURANT 03/25/00	175.09	
501086	30	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 0002D6800001 03/25/00	47.83	-$150
501066	31	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 0002D6800001 03/25/00	28.38	-$150
501087	32	PF CHANG'S METAIRIE LA 000000071 FOOD AND BEVERAGE 03/27/00	26.40	
501068	33	QUICK CHECK FOOD STRVIOLET LA CONOCO 0006704 087965221674 03/24/00	18.79	-$150
501086	34	ATLA PAC WASHINGTON DC 000440325 COOSPACC0091788CREELY. 03/27/00	83.33	
501089	35	MICROSOFT NTWK 800-386-5550 WA 231749286 MSN*ONLINE BILLING 3/0 03/29/00	19.95	

SC00456

BPED02037 607 Small Business Services

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
501091	36	RUTH CHRIS #2 METAIRIE LA 070056183 FOOD/BEV	03/29/00	161.44	
501091	37	JEFFERSON TRUCK STOPNEW ORLEANS LA 000009761 GAS/SERVICE	03/29/00	21.50	-$150
501092	38	CRESCENT CITY BRWHSE NEW ORLEANS LA 000237870 FOOD AND BEVERAGE	04/01/00	33.27	
501092	39	MACS & COMPANY HARVEY LA 033003004 FOOD/BEVERAGE	03/31/00	43.60	
501093	40	IRENES CUISINE NEW ORLEANS LA 062842844 FOOD/BEVERAGE	04/01/00	390.30	
501093	41	NAPOLEAN HOUSE NEW ORLEANS LA 001092035 FOOD/BEVERAGE	04/01/00	52.29	
501095	42	PORT OF CALL NEW ORLEANS LA 090446303 5812/01 FOOD/BEVERAGE	04/02/00	43.23	
501095	43	MACS & COMPANY HARVEY LA 040301002 FOOD/BEVERAGE	04/03/00	41.75	
501097	44	MANHATTAN AMOCO HARVEY LA 779268201 PAY AT THE PUMP	04/05/00	22.77	-$150
501098	45	CHINA DOLL HARVEY LA 001450022 FOOD/BEVERAGE	04/06/00	41.00	
501100	46	SEMOLINA INT'L PASTAGRETNA LA 28080006 5812/01 FOOD/BEVERAGE	04/07/00	59.70	
501102	47	CANNON'S RSTR GRETNA LA 000472073 FOOD AND BEVERAGE	04/11/00	63.00	
501102	48	EXXON COMPANY USA METAIRIE LA EXXON FUEL/MISC 8351763852	04/10/00	26.62	-$150
501103	49	THE HOME DEPOT 359 GRENTA LA 010346509 HOME IMPROV/ACCES	04/11/00	47.88	-$450
501108	50	EXXON COMPANY USA MERAUX LA EXXON FUEL/MISC 9153334215	04/16/00	18.48	-$150
501108	51	BEEF CONNECTION GRETNA LA 000122130 FOOD AND BEVERAGE	04/17/00	101.37	
501109	52	THE HOME DEPOT 362 HARAHAN LA 010955395 HOME IMPROV/ACCES	04/17/00	59.43	-$450
501109	53	VERONA RESTAURANT HARAHAN LA 092133172 FOOD & BEV	04/17/00	109.19	
501110	54	WINNERS OF HARAHAN HARAHAN LA 041802009 FOOD/BEVERAGE	04/18/00	25.10	
501110	55	THE HOME DEPOT 362 HARAHAN LA 011056169 HOME IMPROV/ACCES	04/18/00	132.71	-$450
		TOTAL FOR ROBERT G CREELY		$1,932.62	$.00

ITEM 1 $23.72
CHINESE KING NEW ORLEANS LA
Date of Charge 03/30/00 Reference Code 345010022 Approval Code 9C
CHINESE KING NEW ORLEANS LA
FOOD/BEV $19.72
TIP $4.00
S/E
TOTAL CHARGE AMOUNT $23.72

ITEM 2 $25.69
MACS & COMPANY HARVEY LA
Date of Charge 03/31/00 Reference Code 332010007 Approval Code 84
MACS & COMPANY HARVEY LA
FOOD/BEVERAGE
Misc. Retail Stores
TOTAL CHARGE AMOUNT $25.69

SC00457

Small Business Services

ITEM 3 $133.74
THE HOME DEPOT 359 GRENTA LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	03/21/00	00824452I	80

Service Establishment and Location: THE HOME DEPOT 359 GRENTA LA

Record of Charge: HOME IMPROV/ACCES

S/E # 1174845360

TOTAL CHARGE AMOUNT $133.74

ITEM 4 $52.40
CHARLIES STEAK HOUSE NEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	03/15/00	000833286	

Service Establishment and Location: CHARLIES STEAK HOUSE NEW ORLEANS LA

Record of Charge: FINE DINING

ROC-NUMBER 0000833286

S/E # 1171012032

TOTAL CHARGE AMOUNT $52.40

ITEM 5 $53.13
KIM SON REST GRETNA LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	03/22/00	001866803	72

Service Establishment and Location: KIM SON REST GRETNA LA

Record of Charge:

FOOD/BEV	$46.13
WAITER	$7.00

S/E 1171032352

TOTAL CHARGE AMOUNT $53.13

ITEM 6 $66.50
SOFT TOUCH CAR WASH HARVEY LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	03/21/00	52062181	52

Service Establishment and Location: SOFT TOUCH CAR WASH HARVEY LA

Record of Charge:

6

ROC NUMBER 0000000000

S/E 1176419786

TOTAL CHARGE AMOUNT $66.50

ITEM 7 $147.15
NEW ORLEANS CIGAR CONEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
18	03/22/00	001010018	93

Service Establishment and Location: NEW ORLEANS CIGAR CONEW ORLEANS LA

Record of Charge:

CIGAR STORES/STANDS
ROC NUMBER 0000000018

S/E # 1174546675

TOTAL CHARGE AMOUNT $147.15

ITEM 8 $66.99
BRUNING'S RESTAURANTNEW ORLEANS LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
3	03/27/00	079676423	37

Service Establishment and Location: BRUNING'S RESTAURANTNEW ORLEANS LA

Record of Charge:

FOOD/BEV	$56.99
TIP	$10.00

ROC NUMBER 0000000003

S/E 1171010960

TOTAL CHARGE AMOUNT $66.99

ITEM 9 $40.62
HOUSE OF DANG HARVEY LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
3	03/27/00	8214238CE	02

Service Establishment and Location: HOUSE OF DANG HARVEY LA

Record of Charge:

FOOD/BEV	$35.62
TIP	$5.00

S/E 1172410953

TOTAL CHARGE AMOUNT $40.62

ITEM 10 $160.83
THE RED MAPLE GRETNA LA

Cardmember Account No	Date of Charge	Reference Code	Approval Code
8	03/25/00	000439953	22

Service Establishment and Location: THE RED MAPLE GRETNA LA

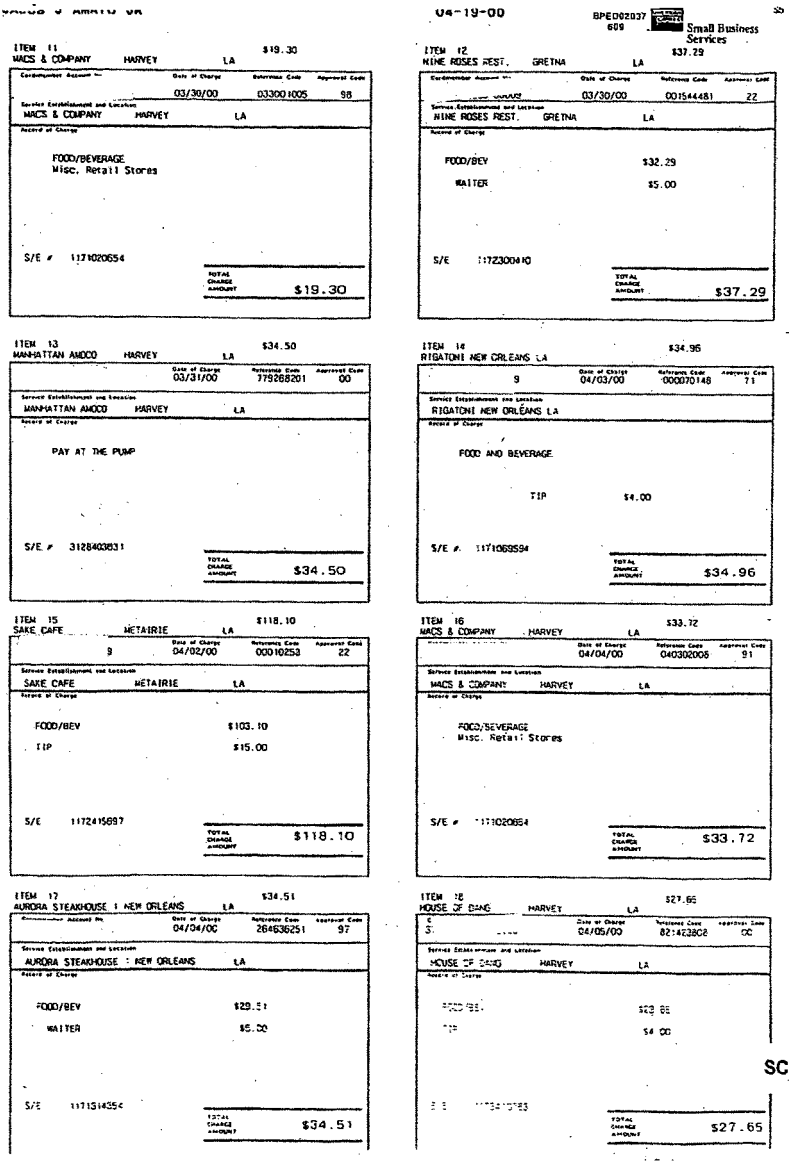
Record of Charge: FOOD AND BEVERAGE

TIP $25.00

S/E # 1171001833

TOTAL CHARGE AMOUNT $160.83

SC00458



ITEM 11
MACS & COMPANY HARVEY LA $19.30
Date of Charge 03/30/00 Reference Code 03300 H005 Approval Code 98
Service Establishment and Location MACS & COMPANY HARVEY LA
Record of Charge
FOOD/BEVERAGE
Misc. Retail Stores
S/E # 1171020654
TOTAL CHARGE AMOUNT $19.30

ITEM 12
NINE ROSES REST. GRETNA LA $37.29
Date of Charge 03/30/00 Reference Code 001544481 Approval Code 22
Service Establishment and Location NINE ROSES REST. GRETNA LA
Record of Charge
FOOD/BEV $32.29
WAITER $5.00
S/E 11723004 HO
TOTAL CHARGE AMOUNT $37.29

ITEM 13
MANHATTAN AMOCO HARVEY LA $34.50
Date of Charge 03/31/00 Reference Code 779268201 Approval Code 00
Service Establishment and Location MANHATTAN AMOCO HARVEY LA
Record of Charge
PAY AT THE PUMP
S/E # 3128403831
TOTAL CHARGE AMOUNT $34.50

ITEM 14
RIGATONI NEW ORLEANS LA $34.96
9 Date of Charge 04/03/00 Reference Code 000070148 Approval Code 71
Service Establishment and Location RIGATONI NEW ORLEANS LA
Record of Charge
FOOD AND BEVERAGE
TIP $4.00
S/E # 1171069594
TOTAL CHARGE AMOUNT $34.96

ITEM 15
SAKE CAFE METAIRIE LA $118.10
9 Date of Charge 04/02/00 Reference Code 00010253 Approval Code 22
Service Establishment and Location SAKE CAFE METAIRIE LA
Record of Charge
FOOD/BEV $103.10
TIP $15.00
S/E 1172415697
TOTAL CHARGE AMOUNT $118.10

ITEM 16
MACS & COMPANY HARVEY LA $33.72
Date of Charge 04/04/00 Reference Code 040302006 Approval Code 91
Service Establishment and Location MACS & COMPANY HARVEY LA
Record of Charge
FOOD/BEVERAGE
Misc. Retail Stores
S/E # 1171020654
TOTAL CHARGE AMOUNT $33.72

ITEM 17
AURORA STEAKHOUSE : NEW ORLEANS LA $34.51
Date of Charge 04/04/00 Reference Code 264636251 Approval Code 97
Service Establishment and Location AURORA STEAKHOUSE : NEW ORLEANS LA
Record of Charge
FOOD/BEV $29.51
WAITER $5.00
S/E 1171514554
TOTAL CHARGE AMOUNT $34.51

ITEM 18
HOUSE OF DANS HARVEY LA $27.65
Date of Charge 04/05/00 Reference Code 82142382 Approval Code 00
Service Establishment and Location HOUSE OF DANS HARVEY LA
Record of Charge
FOOD/BEV $23.65
TIP $4.00
TOTAL CHARGE AMOUNT $27.65

SC00459

JACOB J AMATO JR

04-19-00

BPED02037
610

Small Business Services

ITEM 19
AOL SERVICE 800-679-9444 VA $21.95

Cardmember Account No	Date of Charge	Reference Code	Approval Code
	04/07/00	00a2df66C	94

Service Establishment and Location
AOL SERVICE 800-679-9444 VA

Record of Charge

ONLINE
AOL*ONLINE SERVICE 0400

ROC NUMBER 0067540394

S/E # 1453#00360

TOTAL CHARGE AMOUNT $21.95

ITEM 20
CHARLIES STEAK HOUSE NEW ORLEANS LA $43.50

Cardmember Account No	Date of Charge	Reference Code	Approval Code
309	04/06/00	000233492	

Service Establishment and Location
CHARLIES STEAK HOUSE NEW ORLEANS LA

Record of Charge

FINE DINING

ROC NUMBER 0000233492

S/E # 1171012032

TOTAL CHARGE AMOUNT $43.50

ITEM 21
PASCALS MANALE RSTR NEW ORLEANS LA $58.22

Date of Charge	Reference Code	Approval Code
04/11/00	000544263	22

Service Establishment and Location
PASCALS MANALE RSTR NEW ORLEANS LA

Record of Charge

FOOD AND BEVERAGE

TIP $9.00

S/E # 1171000458

TOTAL CHARGE AMOUNT $58.22

ITEM 22
CHINA DOLL HARVEY LA $27.75

Date of Charge	Reference Code	Approval Code
04/10/00	001480052	31

Service Establishment and Location
CHINA DOLL HARVEY LA

Record of Charge

FOOD/BEV $23.75

WAITER $4.00

S/E 1171018124

TOTAL CHARGE AMOUNT $27.75

ITEM 23
HOUSE OF DANG HARVEY LA $25.09

Date of Charge	Reference Code	Approval Code
04/12/00	821423808	01

Service Establishment and Location
HOUSE OF DANG HARVEY LA

Record of Charge

FOOD/BEV $21.59

TIP $3.50

S/E 1172410763

TOTAL CHARGE AMOUNT $25.09

ITEM 24
THE HOME DEPOT #0368MARRERO LA $129.47

Date of Charge	Reference Code	Approval Code
04/17/00	010977896	61

Service Establishment and Location
THE HOME DEPOT #0368MARRERO LA

Record of Charge

HARDWARE/HOME IMPROV

S/E # 1173065418

TOTAL CHARGE AMOUNT $129.47

ITEM 25
SOUTH CHINA RESTAURACOVINGTON LA $23.45

Date of Charge	Reference Code	Approval Code
04/17/00	041482536	22

Service Establishment and Location
SOUTH CHINA RESTAURACOVINGTON LA

Record of Charge

FOOD $23.45

TIP

S/E 1171022502

TOTAL CHARGE AMOUNT $23.45

ITEM 26
NINE ROSES REST GRETNA LA $30.17

Date of Charge	Reference Code	Approval Code
04/18/00	001704895	79

Service Establishment and Location
NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV $25.17

WAITER $5.00

SC00460

S/E 1172300410

TOTAL CHARGE AMOUNT $30.17

ITEM 35
MICROSOFT NTWK 800-386-5550 WA $19.95

Date of Charge	Reference Code	Approval Code
03/29/00	231749286	02

MICROSOFT NTWK 800-386-5550 WA

MSNONLINE BILLING 3/0

S/E # 5464819184

TOTAL CHARGE AMOUNT $19.95

ITEM 36
RUTH CRIS #2 METAIRIE LA $161.44

Date of Charge	Reference Code	Approval Code
03/29/00	070056183	26

RUTH CRIS #2 METAIRIE LA

FOOD/BEV $135.44
TIP $26.00
ROC NUMBER 1658

S/E 1171004237

TOTAL CHARGE AMOUNT $161.44

ITEM 37
JEFFERSON TRUCK STOPNEW ORLEANS LA $21.50

Date of Charge	Reference Code	Approval Code
03/29/00	000009761	12

JEFFERSON TRUCK STOPNEW ORLEANS LA

GAS/SERVICE

S/E # 1178403473

TOTAL CHARGE AMOUNT $21.50

ITEM 38
CRESCENT CITY BRWHSE NEW ORLEANS LA $33.27

Date of Charge	Reference Code	Approval Code
04/01/00	000237870	06

CRESCENT CITY BRWHSE NEW ORLEANS LA

FOOD AND BEVERAGE

TIP $6.00

S/E # 1171043748

TOTAL CHARGE AMOUNT $33.27

ITEM 39
MACS & COMPANY HARVEY LA $43.60

Date of Charge	Reference Code	Approval Code
03/31/00	033003004	3a

012

MACS & COMPANY HARVEY LA

FOOD/BEVERAGE
Misc. Retail Stores

S/E # 1171020654

TOTAL CHARGE AMOUNT $43.60

ITEM 40
IRENES CUISINE NEW ORLEANS LA $390.30

Date of Charge	Reference Code	Approval Code
04/01/00	062842844	99

IRENES CUISINE NEW ORLEANS LA

FOOD $330.30
TIP $60.00

S/E 1171902331

TOTAL CHARGE AMOUNT $390.30

ITEM 41
NAPOLEAN HOUSE NEW ORLEANS LA $52.29

Date of Charge	Reference Code	Approval Code
04/01/00	004092035	65

012

NAPOLEAN HOUSE NEW ORLEANS LA

FOOD-BEV $44.29
TIP $8.00
ROC NUMBER 004092035

S/E 1171015027

TOTAL CHARGE AMOUNT $52.29

ITEM 42
PORT OF CALL NEW ORLEANS LA $43.23

Date of Charge	Reference Code	Approval Code
04/02/00	090445303	03

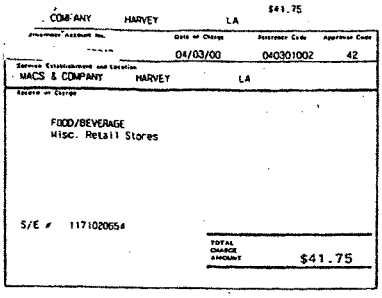
PORT OF CALL NEW ORLEANS LA

FOOD/BEV $37.23
TIP $6.00
ROC NUMBER 39

S/E 1171015852

TOTAL CHARGE AMOUNT $43.23

SC00461



COMPANY HARVEY LA $41.75

Date of Charge 04/03/00 Reference Code 040301002 Approval Code 42

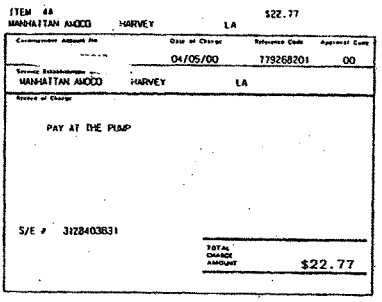
Service Establishment and Location MACS & COMPANY HARVEY LA

Record of Charge

FOOD/BEVERAGE
Misc. Retail Stores

S/E # 117102065#

TOTAL CHARGE AMOUNT $41.75



ITEM 44
MANHATTAN AMOCO HARVEY LA $22.77

Date of Charge 04/05/00 Reference Code 779268201 Approval Code 00

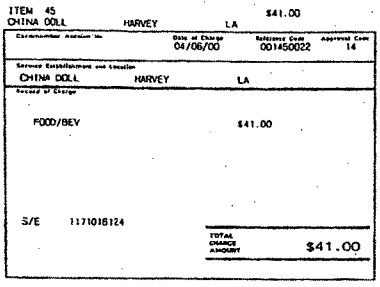
Service Establishment and Location MANHATTAN AMOCO HARVEY LA

Record of Charge

PAY AT THE PUMP

S/E # 3128403831

TOTAL CHARGE AMOUNT $22.77



ITEM 45
CHINA DOLL HARVEY LA $41.00

Date of Charge 04/06/00 Reference Code 001450022 Approval Code 14

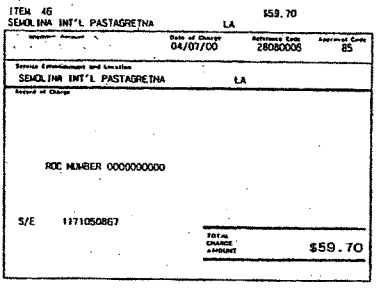
Service Establishment and Location CHINA DOLL HARVEY LA

Record of Charge

FOOD/BEV $41.00

S/E 1171018124

TOTAL CHARGE AMOUNT $41.00



ITEM 46
SEMOLINA INT'L PASTAGRETNA LA $59.70

Date of Charge 04/07/00 Reference Code 26080006 Approval Code 85

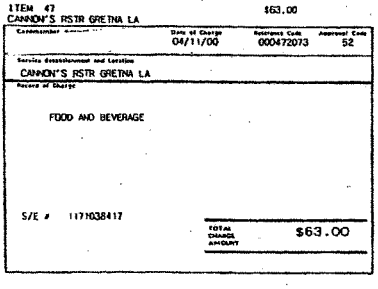
Service Establishment and Location SEMOLINA INT'L PASTAGRETNA LA

Record of Charge

ROC NUMBER 0000000000

S/E 1171050867

TOTAL CHARGE AMOUNT $59.70



ITEM 47
CANNON'S RSTR GRETNA LA $63.00

Date of Charge 04/11/00 Reference Code 000472073 Approval Code 52

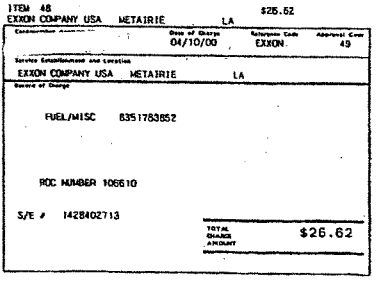
Service Establishment and Location CANNON'S RSTR GRETNA LA

Record of Charge

FOOD AND BEVERAGE

S/E # 1171038417

TOTAL CHARGE AMOUNT $63.00



ITEM 48
EXXON COMPANY USA METAIRIE LA $26.62

Date of Charge 04/10/00 Reference Code EXXON Approval Code 49

Service Establishment and Location EXXON COMPANY USA METAIRIE LA

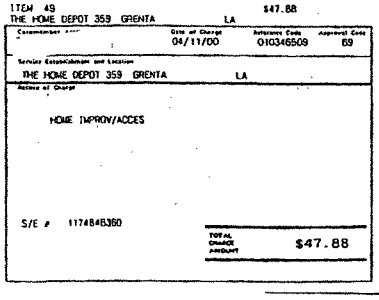
Record of Charge

FUEL/MISC 8351783852

ROC NUMBER 106610

S/E # 1428402713

TOTAL CHARGE AMOUNT $26.62



ITEM 49
THE HOME DEPOT 359 GRENTA LA $47.88

Date of Charge 04/11/00 Reference Code 010346509 Approval Code 69

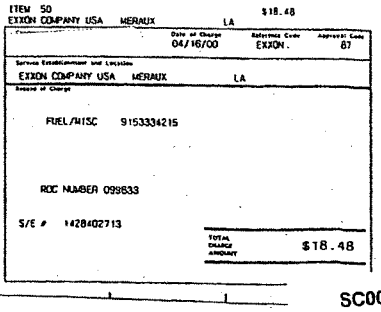
Service Establishment and Location THE HOME DEPOT 359 GRENTA LA

Record of Charge

HOME IMPROV/ACCES

S/E # 1174846360

TOTAL CHARGE AMOUNT $47.88



ITEM 50
EXXON COMPANY USA MERAUX LA $18.48

Date of Charge 04/16/00 Reference Code EXXON Approval Code 87

Service Establishment and Location EXXON COMPANY USA MERAUX LA

Record of Charge

FUEL/MISC 9153334215

ROC NUMBER 099833

S/E # 1428402713

TOTAL CHARGE AMOUNT $18.48

SC00462

05-15-00 BPED02037 539 Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER [redacted]		
835124		PAYMENT RECEIVED - THANK YOU 05/03		5,177.15
822110		ANNUAL MEMBERSHIP FEE JACOB J AMATO JR PERIOD 06/00 THRU 05/01	55.00	
501111	1	9320 JEFFERSON HWY HARAHAN LA TEXACO 4439822203511311051218 04/19/00	20.51	
007116	2	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#233518	118.65	
501116	3	BENNIGAN'S RESTAURANT NEW ORLEANS LA 000000038 FOOD AND BEVERAGE 04/24/00	28.27	
501118	4	CHINA DOLL HARVEY LA 001620039 FOOD/BEVERAGE 04/26/00	64.25	
501118	5	COMMANDER'S PALACE NEW ORLEANS LA 001193848 FOOD/BEVERAGE 04/25/00	140.60	
501119	6	MANHATTAN AMOCO HARVEY LA 779268201 PAY AT THE PUMP 04/28/00	42.25	
501123	7	HONG KONG RESTAURANTNEW ORLEANS LA 024113989 FOOD/BEVERAGE 05/01/00	56.40	
501124	8	OASIS CAR WASH HARVEY LA 123010010 CAR WASH 05/02/00	68.95	
501124	9	THE PRALINE CONNECTION NEW ORLEANS LA 000102834 FOOD AND BEVERAGE 05/02/00	21.83	
501125	10	MACS & COMPANY HARVEY LA 050301010 FOOD/BEVERAGE 05/03/00	24.38	
501128	11	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE 05/07/00	21.95	
501131	12	NINE ROSES REST. GRETNA LA 001885390 FOOD/BEV 05/09/00	33.87	
501131	13	SALVATORE RISTORANTES047333733 LA 14830034 EATING PLACES RESTAURAN 05/08/00	211.83	
501132	14	1700 HICKORY AVE NEW ORLEANS LA TEXACO 4439843217513231605846l 05/10/00	29.25	
501132	15	HOUSE OF DANG HARVEY LA 821423808 RESTAURANTS 05/10/00	45.97	
01133	16	NINO'S ITALIAN RESTABATON ROUGE LA 095100866 EATING PLACES AND RESTA 05/11/00	43.69	
501133	17	ROY'S CATFISH HUT KINDER LA 095095559 RESTAURANT 05/10/00	23.54	
501134	18	17545 SIDNEY ROAD GROSSE TETE LA TEXACO 4459417003113433305419Z 05/11/00	50.00	
501136	19	1 JEFFERSON LA 001040009 FOOD/BEV 05/13/00	43.35	
501137	20	MAYAN IMPORTS COMPANNEW ORLEANS LA 095624819 GIFT SHOP 05/15/00	28.34	
501138	21	KYOTO INC NEW ORLEANS LA 000002933 GENERAL MERCH 05/17/00	36.10	
		TOTAL FOR JACOB J AMATO JR	$1,208.98	$5,177.15
		CARD NUMBER		
822110		ANNUAL MEMBERSHIP FEE ROBERT G CREELY PERIOD 06/00 THRU 05/01	55.00	
501111	22	DICKORY SELF SERVE HARAHAN LA 016013176 SHELL OIL 021740000431 04/20/00	19.83	
501112	23	THE HOME DEPOT 362 HARAHAN LA 011261339 HOME IMPROV/ACCES 04/20/00	159.02	
501113	24	SMITH & WOLLSKY NEW ORLEANS LA 001112035 FOOD-BEV 04/21/00	61.19	
501114	25	PRINCE CONTI HOTEL NEW ORLEANS LA 0000-0423 LODGING 04/23/00	195.31	
501115	26	CASH'S TRUCK PLAZA PORT ALLEN LA 95958016 AUTOMATED FUEL PUMP 04/23/00	22.48	
01115	27	SUTTERFIELDS RIVERWANEW ROADS LA 011401003 FOOD-BEV 04/23/00	71.53	
501116	28	VERONA RESTAURANT HARAHAN LA 092961077 FOOD & BEV 04/24/00	84.37	
501117	29	ATLA PAC WASHINGTON DC 000451531 CD05PACC0091788CREELY. 04/25/00	83.33	

SC00463

05-13-00 BPED02037 541 Small Business Services

ITEM 3 $28.27
BENNIGAN'S RESTAURANT NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
04/24/00	000000038	08

BENNIGAN'S RESTAURANT NEW ORLEANS LA

FOOD AND BEVERAGE

TIP $3.00

S/E # 1171308240

TOTAL CHARGE AMOUNT $28.27

ITEM 4 $64.25
CHINA DOLL HARVEY LA

Date of Charge	Reference Code	Approval Code
04/26/00	001620039	39

CHINA DOLL HARVEY LA

FOOD/BEV $55.85

WAITER $8.40

S/E 1171016124

TOTAL CHARGE AMOUNT $64.25

ITEM 5 $140.60
COMMANDER'S PALACE NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
04/25/00	001193848	22

COMMANDER'S PALACE NEW ORLEANS LA

FOOD/BEV $110.60

WAITER $30.00

S/E 1171115017

TOTAL CHARGE AMOUNT $140.60

ITEM 6 $42.25
MANHATTAN AMOCO HARVEY LA

Date of Charge	Reference Code	Approval Code
04/28/00	779268201	00

MANHATTAN AMOCO HARVEY LA

PAY AT THE PUMP

S/E # 3128403631

TOTAL CHARGE AMOUNT $42.25

ITEM 7 $56.40
HONG KONG RESTAURANTNEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
05/01/00	024113999	38

HONG KONG RESTAURANTNEW ORLEANS LA

FOOD $48.90

TIP $7.50

S/E 1171000532

TOTAL CHARGE AMOUNT $56.40

ITEM 8 $68.95
OASIS CAR WASH HARVEY LA

Date of Charge	Reference Code	Approval Code
05/02/00	123010010	09

OASIS CAR WASH HARVEY LA

CAR WASH

ROC NUMBER 000123

S/E # 1173095191

TOTAL CHARGE AMOUNT $68.95

ITEM 9 $21.83
THE PRALINE CONNECTION NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
05/02/00	000102834	05

THE PRALINE CONNECTION NEW ORLEANS LA

FOOD AND BEVERAGE

TIP $3.00

S/E # 1171302557

TOTAL CHARGE AMOUNT $21.83

ITEM 10 $24.38
MACS & COMPANY HARVEY LA

Date of Charge	Reference Code	Approval Code
05/03/00	05030101G	47

MACS & COMPANY HARVEY LA

FOOD/BEVERAGE
Misc. Retail Stores

S/E # 1171020654

TOTAL CHARGE AMOUNT $24.38

SC00464

Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
835204		PAYMENT RECEIVED - THANK YOU 07/22		3,382.16
501206	1	SCLAFANI'S SEAFOOD RSTR NEW ORLEANS LA 000605598 FOOD AND BEVERAGE 07/24/00	27.16	
501207	2	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 000206800001 07/24/00	61.95	
501207	3	LITTLE TOKYO RESTAURMETAIRIE LA 264181066 FOOD/BEVERAGE 07/23/00	96.13	
501208	4	CHINESE KING NEW ORLEANS LA 439599126 FOOD, SERVICE RESTAURAN 07/25/00	24.85	
501210	5	MANHATTAN AMOCO HARVEY LA 779268201 PAY AT THE PUMP 07/28/00	31.01	
501210	6	1 JEFFERSON LA 001850020 FOOD/BEV 07/27/00	45.05	
501211	7	NEW ORLEANS CIGAR CONEW ORLEANS LA 001460004 CIGAR STORES/STANDS 07/28/00	115.27	
501214	8	BACCO RESTAURANT NEW ORLEANS LA 105010204 FOOD 07/31/00	113.55	
501215	9	CANNON'S RSTR GRETNA LA 000482516 FOOD AND BEVERAGE 08/02/00	62.32	
501215	10	MANHATTAN AMOCO HARVEY LA 779268201 PAY AT THE PUMP 08/01/00	22.35	
501216	11	GRDUNO PATI GRETNA LA 001080002 FOOD/BEVERAGE 08/01/00	26.77	
501216	12	HOUSE OF DANG HARVEY LA 000022572 RESTAURANTS 08/01/00	37.35	
501220	13	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE 08/07/00	21.95	
501221	14	MING PALCE RESTAURANMETAIRIE LA 264593866 RESTAURANT 08/06/00	66.86	
501222	15	LA PENICHE RESTAURANNEW ORLEANS LA 13222202 FOOD/BEVERAGE 08/07/00	24.10	
023223	16	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#833363	47.70	
501223	17	CHINESE KING NEW ORLEANS LA 00090353 FOOD, SERVICE RESTAURAN 08/08/00	29.05	
501224	18	MANHATTAN AMOCO HARVEY LA 779268201 PAY AT THE PUMP 08/10/00	53.75	
501225	19	DICKIE BRENNAN STEAKNEW ORLEANS LA 001270042 FOOD/BEV 08/10/00	146.54	
501226	20	MACARONI GRILL MANDEMANDEVILLE LA 022669162 FOOD/BEV 08/11/00	33.43	
501228	21	FIVE HAPPINESS RSTR NEW ORLEANS LA 47363512 FOOD-BEV 08/13/00	69.16	
501229	22	OASIS CAR WASH HARVEY LA 228010008 CAR WASH 08/15/00	68.95	
501229	23	CHINA FORTUNE RESTA LA 228191941 FOOD/BEVERAGE 08/15/00	35.85	
501230	24	ZACHARYS NEW ORLEANS LA 031597342 FOOD/BEVERAGE 08/16/00	4.00	
501230	25	ZACHARYS NEW ORLEANS LA 011664247 FOOD/BEVERAGE 08/16/00	5.00	
501230	26	ZACHARYS NEW ORLEANS LA 041663360 FOOD/BEVERAGE 08/16/00	6.00	
501230	27	ZACHARYS NEW ORLEANS LA 031682343 FOOD/BEVERAGE 08/16/00	3.00	
501230	28	CHINA DOLL HARVEY LA 001570062 FOOD/BEVERAGE 08/16/00	28.70	
69230	29	CONTINENTAL AIRLINES MARRERO LA TKT# 0057012983991 08/16	169.00	
28230		FLIGHT INSURANCE CURRENT $169.00	14.00	
69230	30	CONTINENTAL AIRLINES MARRERO LA TKT# 0057012983992 08/16	169.00	
28230		FLIGHT INSURANCE CURRENT $169.00	14.00	
69230	31	CONTINENTAL AIRLINES MARRERO LA TKT# 0057012983993 08/16	169.00	
28230		FLIGHT INSURANCE CURRENT $169.00	14.00	
59230	32	CONTINENTAL AIRLINES MARRERO LA TKT# 0057012983994 08/16	169.00	
28230		FLIGHT INSURANCE CURRENT $169.00	14.00	
01231	33	MANHATTAN AMOCO HARVEY LA 779268201 PAY AT THE PUMP 08/17/00	34.00	
01231	34	MACS AND COMPANY HARVEY LA 060949891 FOOD/BEVERAGE 08/17/00	22.24	
		TOTAL FOR JACOB J AMATO JR	$2,096.04	$3,382.16

SC00465

[redacted] Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
501203	35	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 000206800001 07/20/00	25.30	- 5150
501203	36	EXXON COMPANY USA MERAUX LA EXXON FUEL/MISC 9153334215 07/19/00	19.80	- 5150
501203	37	ROCK N SAKE NEW ORLEANS LA 093781505 RESTAURANT 07/20/00	74.35	
501204	38	CHINA DOLL HARVEY LA 001350009 FOOD/BEVERAGE 07/21/00	35.75	
501206	39	EXXON COMPANY USA GULFPORT MS EXXON FUEL/MISC 7551592459 07/23/00	19.80	- 5150
501206	40	BEAU RIVAGE CAFE JARBILOXI MS 0000-0724 FOOD/BEV 07/24/00	29.61	
501208	41	CHINA DOLL HARVEY LA 001360013 FOOD/BEVERAGE 07/25/00	43.45	
501208	42	ATLA PAC WASHINGTON DC 000493907 C005PACC0091788CREELY, 07/25/00	83.33	-
501209	43	MICROSOFT NTWK 800-386-5550 WA 37166511 MSN*ONLINE BILLING 7/0 07/27/00	19.95	- 5450
501209	44	HOUSE OF BLUES NEW ORLEANS LA 026208111 FOOD/BEVERAGE 07/26/00	189.75	
501210	45	TAQUERIA CORONA II NEW ORLEANS LA 094751863 RESTAURANT 07/27/00	43.94	
501210	46	1700 HICKORY AVE NEW ORLEANS LA TEXACO 44398432175210325019425 07/27/00	24.79	- 5150
501212	47	1700 HICKORY AVE NEW ORLEANS LA TEXACO 44398432175212315058637 07/29/00	10.31	- 5150
501212	48	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 000206800001 07/29/00	19.95	- 5150
501212	49	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 000206800001 07/29/00	29.95	- 5150
501212	50	SEMOLINA INT'L PASTAGRETNA LA 2B090003 5812/01 FOOD/BEVERAGE 07/28/00	74.84	
501218	51	133 LOBDELL HWY PORT ALLEN LA TEXACO 44535197168218337008559 08/04/00	23.30	- 5150
501218	52	EXXON COMPANY USA METAIRIE LA EXXON FUEL/MISC 8351763852 08/04/00	19.01	- 5150
501219	53	DICKORY SELF SERVE HARAHAN LA 016013306 SHELL OIL 021740000431 08/05/00	21.69	- 5150
501219	54	CHARLEY G'S SEAFOOD LAFAYETTE LA 021964899 FOOD/BEVERAGE 08/04/00	441.26	
501219	55	BARACCA'S LAFAYETTE LA 076016562 FOOD/BEV 08/05/00	37.55	
501219	56	HILTON HOTELS LAFAY 318-2356111 LA 400166430 LODGING 08/05/00	110.19	
501220	57	WINNERS OF HARAHAN HARAHAN LA 080601017 FOOD/BEVERAGE 08/06/00	42.88	
501221	58	PF CHANG'S METARIE LA 000000021 FOOD AND BEVERAGE 08/08/00	27.67	
501222	59	SAKE CAFE METAIRIE LA 00010280 EATING PLACES AND RESTA 08/07/00	63.07	
501223	60	CHINA DOLL HARVEY LA 001510009 FOOD/BEVERAGE 08/09/00	85.95	
501223	61	SHELL OIL GRETNA LA 116054916 SHELL OIL 021736610357 08/10/00	27.20	- 5150
501224	62	COPELANDS CHEESECAKEMETAIRIE LA 096436984 FOOD/BEV 08/09/00	61.01	
501226	63	VERONA RESTAURANT HARAHAN LA 096881107 FOOD & BEV 08/12/00	57.50	
501226	64	DICKORY SELF SERVE HARAHAN LA 016013636 SHELL OIL 021740000431 08/12/00	22.69	- 5150
01228	65	SAFARI CAR WASH INC METAIRIE LA 000171897 CAR WASH 08/15/00	43.05	- 5150
01230	66	RUTH CHRIS #2 METAIRIE LA 077462105 FOOD/BEV 08/15/00	319.39	
01232	67	SAKE CAFE METAIRIE LA 00010290 EATING PLACES AND RESTA 08/17/00	81.38	
01232	68	MANHATTAN AMOCO HARVEY LA 779268201 AMOCO GAS / SERV 30001 08/18/00	27.00	- 5150
		TOTAL FOR ROBERT G CREELY	$2,256.66	$.00

08-19-00 BPED02038 599 Small Business Services 57

ITEM 1 $27.16
SCLAFANI'S SEAFOOD RSTR NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
07/24/00	000605598	12

Service Establishment and Location: SCLAFANI'S SEAFOOD RSTR NEW ORLEANS LA

Record of Charge:
FOOD AND BEVERAGE
TIP $4.00

S/E # 117101246 1

TOTAL CHARGE AMOUNT $27.16

ITEM 2 $61.95
CLASSIC CLEAR VIEW AUTO JEFFERSON LA

Date of Charge	Reference Code	Approval Code
07/24/00	210NS	48

Service Establishment and Location: JEFFERSON LA

Record of Charge:
GAS/MISC 00020680000
ROC NUMBER 1110N10725

S/E # 1173081306

TOTAL CHARGE AMOUNT $61.95

ITEM 3 $96.13
LITTLE TOKYO RESTAURMETAIRIE LA

Date of Charge	Reference Code	Approval Code
07/23/00	264181066	31

Service Establishment and Location: LITTLE TOKYO RESTAURMETAIRIE LA

Record of Charge:
FOOD/BEV $81.13
WAITER $15.00

S/E 1171010226

TOTAL CHARGE AMOUNT $96.13

ITEM 4 $24.85
CHINESE KING NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
07/25/00	439599126	55

Service Establishment and Location: CHINESE KING NEW ORLEANS LA

Record of Charge:
FOOD/BEV $21.35
TIP $3.50

S/E 1172519134

TOTAL CHARGE AMOUNT $24.85

ITEM 5 $31.01
MANHATTAN AMOCO HARVEY LA

Date of Charge	Reference Code	Approval Code
07/28/00	779268201	00

Service Establishment and Location: MANHATTAN AMOCO HARVEY LA

Record of Charge:
PAY AT THE PUMP

S/E # 3128403631

TOTAL CHARGE AMOUNT $31.01

ITEM 6 $45.05
JEFFERSON LA

Date of Charge	Reference Code	Approval Code
07/27/00	001850020	32

Service Establishment and Location: JEFFERSON LA

Record of Charge:
FOOD/BEV $39.05
WAITER $6.00

S/E 1173312994

TOTAL CHARGE AMOUNT $45.05

ITEM 7 $115.27
NEW ORLEANS CIGAR CONEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
07/28/00	001460004	25

Service Establishment and Location: NEW ORLEANS CIGAR CONEW ORLEANS LA

Record of Charge:
CIGAR STORES/STANDS
ROC NUMBER 0000000004

S/E # 1174845675

TOTAL CHARGE AMOUNT $115.27

ITEM 8 $113.55
BACCO RESTAURANT NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
07/31/00	105010204	25

Service Establishment and Location: BACCO RESTAURANT NEW ORLEANS LA

Record of Charge:
FOOD $98.55
TIP $15.00

S/E 1171305352

TOTAL CHARGE AMOUNT $113.55

SC00467

JACOB J AMATO JR

08-19-00

8PE002038
592

Small Business Services

ITEM 17
CHINESE KING NEW ORLEANS LA $29.05

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/08/00	00090353	33

Service Establishment and Location: CHINESE KING NEW ORLEANS LA

Nature of Charge: FOOD, SERVICE RESTAURAN

ROC NUMBER 0000000000

S/E # 1172519134

TOTAL CHARGE AMOUNT $29.05

ITEM 18
MANHATTAN AMOCO HARVEY LA $53.75

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/10/00	779268201	00

Service Establishment and Location: MANHATTAN AMOCO HARVEY LA

Nature of Charge: PAY AT THE PUMP

S/E # 3128403631

TOTAL CHARGE AMOUNT $53.75

ITEM 19
DICKIE BRENNAN STEAKNEW ORLEANS LA $146.54

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/10/00	001270042	57

Service Establishment and Location: DICKIE BRENNAN STEAKNEW ORLEANS LA

Nature of Charge:

FOOD/BEV	$121.54
WAITER	$25.00

S/E 1172415275

TOTAL CHARGE AMOUNT $146.54

ITEM 20
MACARONI GRILL MANDEMANDEVILLE LA $33.43

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/11/00	022669162	25

Service Establishment and Location: MACARONI GRILL MANDEMANDEVILLE LA

Nature of Charge: FOOD/BEV

S/E # 1171321135

TOTAL CHARGE AMOUNT $33.43

ITEM 21
FIVE HAPPINESS RSTR NEW ORLEANS LA $69.16

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/13/00	47363512	24

Service Establishment and Location: FIVE HAPPINESS RSTR NEW ORLEANS LA

Nature of Charge:

FOOD-BEV	$61.16
WAITER	$8.00

ROC NUMBER 0000000000

S/E 1171015431

TOTAL CHARGE AMOUNT $69.16

ITEM 22
OASIS CAR WASH HARVEY LA $68.95

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/15/00	228010008	31

Service Establishment and Location: OASIS CAR WASH HARVEY LA

Nature of Charge: CAR WASH

ROC NUMBER 000228

S/E # 1173095191

TOTAL CHARGE AMOUNT $68.95

ITEM 23
CHINA FORTUNE RESTA LA $35.85

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/15/00	22819341	85

Service Establishment and Location: CHINA FORTUNE RESTA LA

Nature of Charge: FOOD/BEVERAGE

ROC NUMBER 0001603009

S/E # 1171014384

TOTAL CHARGE AMOUNT $35.85

ITEM 24
ZACHARYS NEW ORLEANS LA $4.00

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
	08/16/00	031597342	18

Service Establishment and Location: ZACHARYS NEW ORLEANS LA

Nature of Charge:

FOOD	$3.00
TIP	$1.00

SC00468

S/E 1171902505

TOTAL CHARGE AMOUNT $4.00

08-19-00 BPED02078 598 Small Business Services S7

ITEM 65 $43.05
SAFARI CAR WASH-INC METAIRIE LA

Date of Charge	Reference Code	Approval Code
08/15/00	000171897	75

Service Establishment and Location: SAFARI CAR WASH INC METAIRIE LA

Record of Charge: CAR WASH

S/E # 1178415930

TOTAL CHARGE AMOUNT $43.05

ITEM 66 $319.39
RUTH CHRIS #2 METAIRIE LA

Date of Charge	Reference Code	Approval Code
08/15/00	077462105	28

Service Establishment and Location: RUTH CHRIS #2 METAIRIE LA

Record of Charge:
FOOD/BEV $266.39
TIP $53.00
ROC NUMBER 4321

S/E 1171004237

TOTAL CHARGE AMOUNT $319.39

ITEM 67 $81.38
SAKE CAFE METAIRIE LA

Date of Charge	Reference Code	Approval Code
08/17/00	00010290	19

Service Establishment and Location: SAKE CAFE METAIRIE LA

Record of Charge:
FOOD/BEV $69.38
TIP $12.00

S/E 1172415687

TOTAL CHARGE AMOUNT $81.38

ITEM 68 $27.00
MANHATTAN AMOCO HARVEY LA

Date of Charge	Reference Code	Approval Code
08/18/00	779268201	00

Service Establishment and Location: MANHATTAN AMOCO HARVEY LA

Record of Charge: AMOCO GAS / SERV 30001

S/E # 3128403623

TOTAL CHARGE AMOUNT $27.00

Flight Insurance Premium Refund Form

Account Number: 3782-652866-03009

If you have been charged a flight insurance premium for one of the reasons listed at the bottom of this form, please 1) provide the airline information requested and 2) check a reason for your refund.* Attach additional paper if necessary.

Airline Name	Ticket Amount	Month Billed	# of Premiums
		TOTAL	

X $14.00 Premium = $ Total Refund

Deduct the total premium refund from your monthly payment and return this form with your payment. Do not use this form to request an airline ticket credit, instead call the customer service number shown on the front of your statement.

*Check reason for refund: (See reverse side of your statement for explanation)

___ Cancelled trip
___ Uninsured person
___ Baggage or cargo
___ Non-scheduled airline
___ Itinerary change
___ Non-air transportation charge
___ Upgrade of ticket class
___ Other _____

SC00469

BPE002037 797 Small Business Services

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
835240		PAYMENT RECEIVED - THANK YOU 08/27		4,334.14
501234	1	ODYSSEY GRILL METAIRIE LA 097915235 FOOD/BEVERAGE 08/20/00	80.30	
501236	2	1700 HICKORY AVE NEW ORLEANS LA TEXACO 443984321752363180328O2 08/22/00	23.50	-5150
501236	3	NINE ROSES REST. GRETNA LA 001778118 FOOD/BEV 08/22/00	30.26	
501237	4	BEEF CONNECTION GRETNA LA 000125822 FOOD AND BEVERAGE 08/24/00	126.85	
501237	5	AURORA STEAKHOUSE 1 NEW ORLEANS LA 264630088 FOOD/BEVERAGE 08/23/00	40.04	
501238	6	COPELANDS #4 HARVEY LA 098387466 FOOD/BEVERAGE 08/23/00	100.79	
501242	7	LITTLE TOKYO RESTAURMETAIRIE LA 264533191 FOOD/BEVERAGE 08/27/00	82.92	
501243	8	GROUND PATI GRETNA LA 00135O003 FOOD/BEVERAGE 08/28/00	24.99	
501244	9	DON JUAN CIGAR CO. METAIRIE LA 001475115 CIGAR STORES/STANDS 08/30/00	143.09	-5450
501250	10	NINE ROSES REST. GRETNA LA 001888451 FOOD/BEV 09/05/00	29.78	
501251	11	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE 09/07/00	21.95	-5450
032252	12	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#760223	44.70	
501252	13	MACS AND COMPANY HARVEY LA 025660582 FOOD/BEVERAGE 09/07/00	21.15	
501257	14	NATIONAL CAR RENTAL KANSAS CITY MO 202847132 NATIONAL CAR RENTAL 09/12/00	173.95	-5150
501258	15	MARRIOTT HOTELS KANSKANSAS CITY MO 025815259 LODGING 09/13/00	208.32	
501258	16	MARRIOTT HOTELS KANSKANSAS CITY MO 025815260 LODGING 09/13/00	221.50	
501258	17	MARRIOTT HOTELS KANSKANSAS CITY MO 025815261 LODGING 09/13/00	300.75	
501259	18	MARRIOTT HOTELS KANSKANSAS CITY MO 025917349 LODGING 09/14/00	9.25	
003263	19	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#760283	42.30	
501263	20	1 JEFFERSON LA 001330021 FOOD/BEV 09/18/00	34.20	
501263	21	MACS AND COMPANY HARVEY LA 084181154 FOOD/BEVERAGE 09/18/00	23.28	
		TOTAL FOR JACOB J AMATO JR	$1,783.87	$4,334.14
		CARD NUMBER		
501233	22	DERBIGNY STREET GRILGRETNA LA 001640004 RESTAURANT 08/18/00	35.82	
501233	23	1700 HICKORY AVE NEW ORLEANS LA TEXACO 443984321752333140532339 08/19/00	24.32	-5150
501233	24	ROCK N SAKE NEW ORLEANS LA 097795222 RESTAURANT 08/18/00	191.52	
501236	25	LANDRY'S - LAFAYETTEBREAUX BRIDGE LA 86894409 FOOD-BEV 08/21/00	55.45	
501237	26	ATLA PAC WASHINGTON DC 000500634 CO05PACC0091788CREELY. 08/23/00	83.33	
501238	27	HOUSE OF BLUES NEW ORLEANS LA 024237152 FOOD/BEVERAGE 08/24/00	290.98	
501238	28	THE HOME DEPOT 359 GRENTA LA 023847490 HOME IMPROV/ACCES 08/24/00	269.64	-5450
501239	29	9320 JEFFERSON HWY HARAHAN LA TEXACO 443982220352393260465S2 08/25/00	28.99	-5150
501240	30	THE HOME DEPOT 362 HARAHAN LA 024056012 HOME IMPROV/ACCES 08/25/00	52.06	-5.06

SC00470

09-19-00 BPED02037 799 Small Business Services

ITEM 3 $30.26
NINE ROSES REST. GRETNA LA

Date of Charge	Reference Code	Approval Code
08/22/00	001778118	26

Service Establishment and Location: NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV	$26.26
WAITER	$4.00

S/E 1172300410

TOTAL CHARGE AMOUNT $30.26

ITEM 4 $126.85
BEEF CONNECTION GRETNA LA

Date of Charge	Reference Code	Approval Code
08/24/00	000125822	63

Service Establishment and Location: BEEF CONNECTION GRETNA LA

Record of Charge

FOOD AND BEVERAGE	
TIP	$20.00

S/E # 1171041460

TOTAL CHARGE AMOUNT $126.85

ITEM 5 $40.04
AURORA STEAKHOUSE I NEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
08/23/00	264630088	97

Service Establishment and Location: AURORA STEAKHOUSE I NEW ORLEANS LA

Record of Charge

FOOD/BEV	$35.04
WAITER	$5.00

S/E 1171314354

TOTAL CHARGE AMOUNT $40.04

ITEM 6 $100.79
COPELANDS #4 HARVEY LA

Date of Charge	Reference Code	Approval Code
08/23/00	096387466	75

Service Establishment and Location: COPELANDS #4 HARVEY LA

Record of Charge

FOOD/BEV	$88.79
TIP	$12.00
ROC NUMBER	5

S/E 1171029259

TOTAL CHARGE AMOUNT $100.79

ITEM 7 $82.92
LITTLE TOKYO RESTAURMETAIRIE LA

Date of Charge	Reference Code	Approval Code
08/27/00	264533191	90

Service Establishment and Location: LITTLE TOKYO RESTAURMETAIRIE LA

Record of Charge

FOOD/BEV	$72.92
WAITER	$10.00

S/E 1171010226

TOTAL CHARGE AMOUNT $82.92

ITEM 8 $24.99
GROUND PATI GRETNA LA

Date of Charge	Reference Code	Approval Code
08/28/00	001350003	61

Service Establishment and Location: GROUND PATI GRETNA LA

Record of Charge

FOOD/BEV	$20.99
WAITER	$4.00

S/E 1171059602

TOTAL CHARGE AMOUNT $24.99

ITEM 9 $143.09
DON JUAN CIGAR CO. METAIRIE LA

Date of Charge	Reference Code	Approval Code
08/30/00	001475115	82

Service Establishment and Location: DON JUAN CIGAR CO. METAIRIE LA

Record of Charge

CIGAR STORES/STANDS
ROC NUMBER 0000005115

S/E # 1173025899

TOTAL CHARGE AMOUNT $143.09

ITEM 10 $29.78
NINE ROSES REST. GRETNA LA

Date of Charge	Reference Code	Approval Code
09/05/00	001886451	13

Service Establishment and Location: NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV	$25.78
WAITER	$4.00

S/E 1172530410

TOTAL CHARGE AMOUNT $29.78

SC00471

JACOB J AMATO JR

09-19-00

BPE002037
002

Small Business Services

ITEM 27
HOUSE OF BLUES NEW ORLEANS LA $290.98

Customer Account No	Date of Charge	Reference Code	Approval Code
	08/24/00	024237152	90

Service Establishment and Location: HOUSE OF BLUES NEW ORLEANS LA

Record of Charge:
FOOD-BEV $245.98
TIP $45.00
ROC NUMBER 24237152

S/E 1171069073

TOTAL CHARGE AMOUNT $290.98

ITEM 25
THE HOME DEPOT 359 GRENTA LA $269.64

Customer Account No	Date of Charge	Reference Code	Approval Co
	08/24/00	023647490	26

Service Establishment and Location: THE HOME DEPOT 359 GRENTA LA

Record of Charge:
HOME IMPROV/ACCES

S/E # 1174846360

TOTAL CHARGE AMOUNT $269.64

ITEM 29
9320 JEFFERSON HWY HARAHAN LA $28.99

Customer Account No	Date of Charge	Reference Code	Approval Code
	08/25/00	TEXACO	79

Service Establishment and Location: 9320 JEFFERSON HWY HARAHAN LA

Record of Charge:
4439822203523932504658 2
ROC NUMBER 0877720151

S/E # 1428401392

TOTAL CHARGE AMOUNT $28.99

ITEM 30
THE HOME DEPOT 362 HARAHAN LA $52.06

Customer Account No	Date of Charge	Reference Code	Approval Code
	08/25/00	024058012	94

Service Establishment and Location: THE HOME DEPOT 362 HARAHAN LA

Record of Charge:
HOME IMPROV/ACCES

S/E # 1173008558

TOTAL CHARGE AMOUNT $52.06

ITEM 31
MICROSOFT MTWK 800-386-5550 WA $19.95

Customer Account No	Date of Charge	Reference Code	Approval Code
	08/29/00	115551805	92

Service Establishment and Location: MICROSOFT MTWK 800-386-5550 WA

Record of Charge:
MSN*ONLINE BILLING B/O

S/E # 5484819184

TOTAL CHARGE AMOUNT $19.95

ITEM 32
WINNERS OF HARAHAN HARAHAN LA $54.60

Customer Account No	Date of Charge	Reference Code	Approval Code
	08/29/00	082902007	78

Service Establishment and Location: WINNERS OF HARAHAN HARAHAN LA

Record of Charge:
FOOD-BEV $54.60
TIP

S/E 1171316501

TOTAL CHARGE AMOUNT $54.60

ITEM 33
CHINA DOLL HARVEY LA $66.50

Customer Account No	Date of Charge	Reference Code	Approval Code
	08/30/00	001690011	97

Service Establishment and Location: CHINA DOLL HARVEY LA

Record of Charge:
FOOD/BEV $66.50

S/E 1171016124

TOTAL CHARGE AMOUNT $66.50

ITEM 34
JEFFERSON TRUCK STOPNEW ORLEANS LA $22.86

Customer Account No	Date of Charge	Reference Code	Approval Code
	08/30/00	000000880	60

Service Establishment and Location: JEFFERSON TRUCK STOPNEW ORLEANS LA

Record of Charge:
GAS/SERVICE

SC00472

S/E # 1178403473

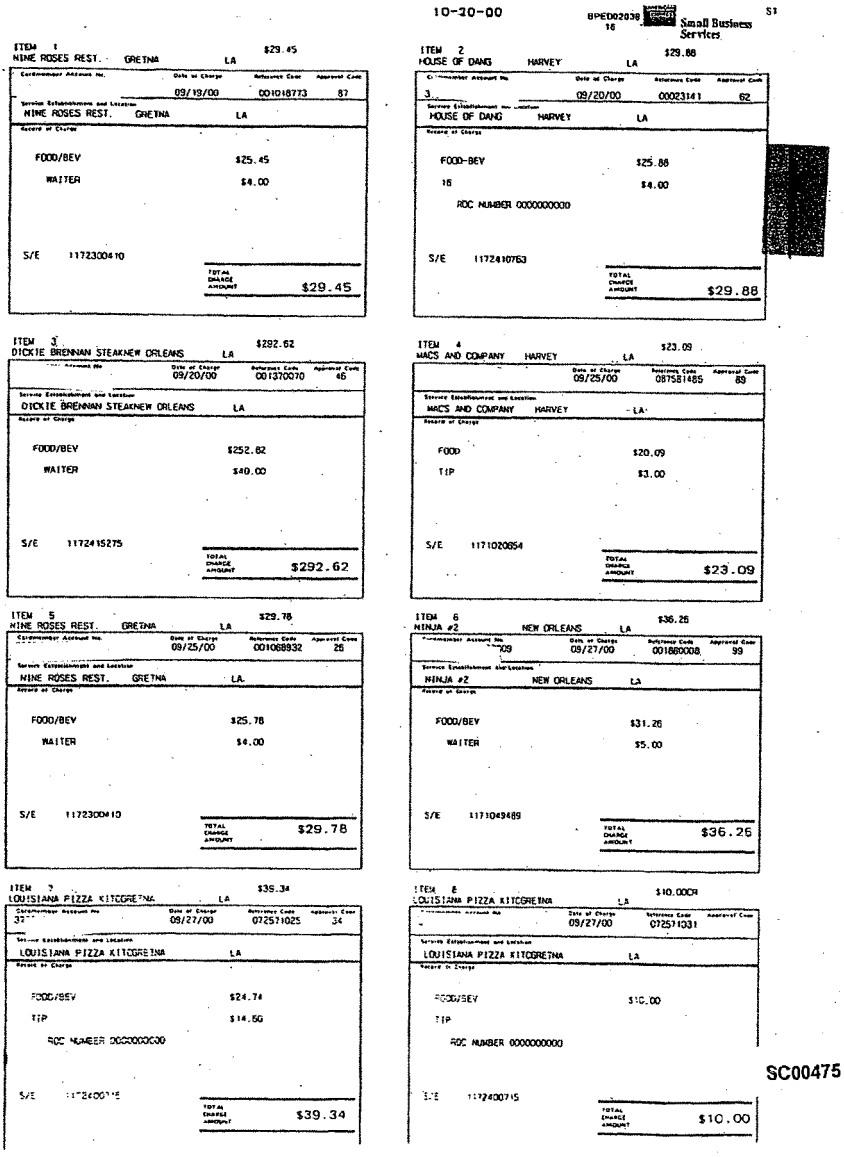
TOTAL CHARGE AMOUNT $22.86

10-20-00 8PED02038 14 Small Business Services S1

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
		CARD NUMBER [redacted]			
835273		PAYMENT RECEIVED - THANK YOU 09/29			4,352.70
501264	1	NINE ROSES REST. GRETNA 001018773 FOOD/BEV	LA 09/19/00	29.45	
501266	2	HOUSE OF DANG HARVEY 00023141 RESTAURANTS	LA 09/20/00	29.88	
501266	3	DICKIE BRENNAN STEAKNEW ORLEANS 001370070 FOOD/BEV	LA 09/20/00	292.62	
501270	4	MACS AND COMPANY HARVEY 087581485 FOOD/BEVERAGE	LA 09/25/00	23.09	
501270	5	NINE ROSES REST. GRETNA 001068932 FOOD/BEV	LA 09/25/00	29.78	
501272	6	NINJA #2 NEW ORLEANS 001860008 FOOD/BEVERAGE	LA 09/27/00	36.26	
501272	7	LOUISIANA PIZZA KITCGRETNA 072571025 FOOD/BEV	LA 09/27/00	39.34	
501272	8	LOUISIANA PIZZA KITCGRETNA 072571031 FOOD/BEV	LA 09/27/00		10.00
501273	9	DON JUAN CIGAR CO. METAIRIE 001715398 CIGAR STORES/STANDS	LA 09/28/00	123.62	-5450
501274	10	VINNIES SPORTS BAR AGRETNA 079416914 FOOD/BEVERAGE	LA 09/28/00	71.25	
501277	11	OASIS CAR WASH HARVEY 276010061 CAR WASH	LA 10/02/00	64.79	-5150
501277	12	CHINA DOLL HARVEY 001960068 FOOD/BEVERAGE	LA 10/02/00	34.60	
501279	13	CRESCENT CITY RSTR NEW ORLEANS 073430103 FOOD/BEVERAGE	LA 10/04/00	90.21	
501281	14	THE PLACE HARVEY 042674792 BAR	LA 10/06/00	225.00	
501281	15	AOL SERVICE 800-679-9444 00a2df862 ONLINE	VA 10/07/00	21.95	-5450
501284	16	CLASSIC CLEAR VIEW AUTO JEFFERSON LA ZIONS GAS/MISC 00020680000	10/09/00	26.20	-5150
501285	17	LA PENICHE RESTAURANNEW ORLEANS 13222206 FOOD/BEVERAGE	LA 10/09/00	20.95	
501285	18	NINE ROSES REST. GRETNA 001209305 FOOD/BEV	LA 10/10/00	29.42	
501287	19	HYDE PARK GRILLE NEW ORLEANS 59174501 FOOD/BEVERAGE	LA 10/11/00	47.01	
501289	20	TREY YUEN HAMMOND LA 000421586 FOOD AND BEVERAGE	10/15/00	36.66	
501290	21	GROUND PATI GRETNA 001810001 FOOD/BEVERAGE	LA 10/13/00	33.09	
501291	22	NINE ROSES REST. GRETNA 001259435 FOOD/BEV	LA 10/16/00	29.00	
501292	23	MACS AND COMPANY HARVEY 017898499 FOOD/BEVERAGE	LA 10/17/00	25.09	
501294	24	CHINA DOLL HARVEY 001110084 FOOD/BEVERAGE	LA 10/19/00	34.90	
		TOTAL FOR JACOB J AMATO JR		$1,394.16	$4,362.70
		CARD NUMBER [redacted]			
501264	25	SEMOLINA INT'L PASTAGRETNA 28010003 5812/01 FOOD/BEVERAGE	LA 09/18/00	38.30	
501265	26	DICKORY SELF SERVE HARAHAN 016013556 SHELL OIL 021740000431	LA 09/21/00	5.52	-5150
501265	27	STOP N SAVE GRETNA 000467001 MISCELLANEOUS FOOD	LA 09/20/00	22.03	
501265	28	W HTL FB ZOE WHISKEY504-5259444 400213664 FOOD/BEV	LA 09/20/00	68.00	
501265	29	W HTL FB ZOE WHISKEY504-5259444 400213664 FOOD/BEV	LA 09/20/00	86.00	
501265	30	MANHATTAN AMOCO HARVEY 77926820I PAY AT THE PUMP	LA 09/20/00	24.52	-5150
501266	31	PLANC COFFEE & TEA HARAHAN 00010177 EATING PLACES RESTAURAN	LA 09/21/00	20.18	
501266	32	THE HOME DEPOT 362 HARAHAN 026650755 HOME IMPROV/ACCES	LA 09/21/00	231.01	
501266	33	THE HOME DEPOT 359 GRETNA 026644577 HOME IMPROV/ACCES	LA 09/21/00	651.14	

SC00473

Reference Number	Item Number	Description of Monthly Activity		Charges	Credits
501267	34	RUTH'S CHRIS STKHSE METAIRIE 026750192 FOOD/BEV	LA 09/21/00	90.85	
501267	35	BRUNING'S RESTAURANTNEW ORLEANS 071990733 5812/01 FOOD/BEVERAGE	LA 09/22/00	40.91	
501267	36	VERONA RESTAURANT HARAHAN 091907247 FOOD & BEV	LA 09/22/00	113.21	
501269	37	THE HOME DEPOT 362 HARAHAN 026964778 HOME IMPROV/ACCES	LA 09/24/00	46.74	-5450
501269	38	L & D INVESTMENTS INJEFFERSON EXXON PAY AT PUMP8356527666	LA 09/24/00	27.67	-5150
501270	39	CHINA BLOSSOM INC GRETNA LA 000422857 FOOD AND BEVERAGE	09/26/00	26.51	
501271	40	ATLA PAC WASHINGTON 000511694 C005PACC0091788CREELY,	DC 09/26/00	83.33	-5270
501272	41	MICROSOFT NTWK 800-386-5550 175639365 MSN*ONLINE BILLING 9/0	WA 09/27/00	19.95	-5450
501272	42	STOP N SAVE GRETNA 000473002 MISCELLANEOUS FOOD	LA 09/27/00	19.85	
501274	43	HOUSE OF BLUES NEW ORLEANS 029273238 FOOD/BEVERAGE	LA 09/29/00	204.74	
501274	44	9320 JEFFERSON HWY HARAHAN TEXACO 4439822203527432404570 8	LA 09/29/00	28.23	-5150
501274	45	REGINELLIS PIZZERIA HARAHAN 092764671 EATING PLACES AND RESTA	LA 09/30/00	29.58	
501275	46	1700 HICKORY AVE NEW ORLEANS TEXACO 4439843217527531103283 1	LA 09/30/00	24.98	-5150
501276	47	ROADHOUSE GRILL #41 KENNER 027660468 FOOD/BEV	LA 09/30/00	60.53	
501276	48	THE HOME DEPOT 362 HARAHAN 027675783 HOME IMPROV/ACCES	LA 10/01/00	82.22	-5150
501277	49	MACS AND COMPANY HARVEY 070882825 FOOD/BEVERAGE	LA 10/02/00	21.87	
501279	50	CHINA DOLL HARVEY 001980016 FOOD/BEVERAGE	LA 10/04/00	36.75	
501280	51	OICKORY SELF SERVE HARAHAN 016013286 SHELL OIL 021740000431	LA 10/05/00	20.80	-5150
501281	52	MIMI'S ITALIAN/SEAFOHARAHAN 001420011 FOOD/BEV	LA 10/06/00	27.00	
501281	53	MIMI'S ITALIAN/SEAFOHARAHAN 001420018 FOOD/BEV	LA 10/06/00	27.00	
501282	54	REGINELLIS PIZZERIA HARAHAN 093755791 EATING PLACES AND RESTA	LA 10/08/00	55.84	
501283	55	PF CHANG'S METARIE LA 000000059 FOOD AND BEVERAGE	10/09/00	30.31	
501285	56	OANISH INC. GRETNA 078839186 SHELL OIL 021736611033	LA 10/10/00	10.79	-5150
501286	57	CHINA DOLL HARVEY 001040015 FOOD/BEVERAGE	LA 10/11/00	42.45	
501286	58	SAKE CAFE METAIRIE 00010244 EATING PLACES AND RESTA	LA 10/10/00	42.21	
501287	59	SKIPJACK'S BOSTON 010132026 01 FOOD/BEVERAGE	MA 10/13/00	159.56	
501288	60	TRATTORIA IL PANINO BOSTON 001287112 FOOD/BEVERAGE	MA 10/13/00	183.30	
501289	61	DERBY FISH & LOBSTERSALEM 036733294 FOOD/BEVERAGE	MA 10/14/00	29.97	
501290	62	REMINGTONS OF BOSTONBOSTON 029070013 FOOD/BEV	MA 10/16/00	26.21	
501290	63	REMINGTONS OF BOSTONBOSTON 029070014 FOOD/BEV	MA 10/16/00	26.42	
501290	64	LYCEUM SALEM 001440002 FOOD/BEVERAGE	MA 10/14/00	70.12	
501290	65	MARSHALL HOUSE BOSTON 001200008 FOOD/BEVERAGE	MA 10/13/00	51.73	
501291	66	75 CHESTNUT BOSTON 89758841 FOOD-BEV	MA 10/15/00	160.45	
501291	67	OMNI PARKER HOUSE HOBOSTON 029188274 LODGING	MA 10/17/00	1,849.99	
501292	68	OMNI HOTELS F/B BOSTON 029286965 LODGING	MA 10/16/00	23.95	
501292	69	OMNI HOTELS F/B BOSTON 029286966 LODGING	MA 10/16/00	110.87	
501292	70	1700 HICKORY AVE NEW ORLEANS TEXACO 4439843217529230E059570	LA 10/17/00	25.92	-5150
501294	71	BOURRE'S BAR BQ GRETNA 081652117 FOOD	LA 10/19/00	42.16	
		TOTAL FOR ROBERT G CREELY		$5,121.67	$.00



10-30-00 BPE002038 16 Small Business Services S1

ITEM 1
NINE ROSES REST. GRETNA LA $29.45
Cardmember Account No. | Date of Charge 09/19/00 | Reference Code 001018773 | Approval Code 87
Service Establishment and Location: NINE ROSES REST. GRETNA LA
Record of Charge
FOOD/BEV $25.45
WAITER $4.00
S/E 1172300410
TOTAL CHARGE AMOUNT $29.45

ITEM 2
HOUSE OF DANG HARVEY LA $29.88
Cardmember Account No. 3 | Date of Charge 09/20/00 | Reference Code 00023141 | Approval Code 62
Service Establishment and Location: HOUSE OF DANG HARVEY LA
Record of Charge
FOOD-BEV $25.88
16 $4.00
ROC NUMBER 0000000000
S/E 1172410763
TOTAL CHARGE AMOUNT $29.88

ITEM 3
DICKIE BRENNAN STEAKNEW ORLEANS LA $292.62
Cardmember Account No. | Date of Charge 09/20/00 | Reference Code 001370070 | Approval Code 46
Service Establishment and Location: DICKIE BRENNAN STEAKNEW ORLEANS LA
Record of Charge
FOOD/BEV $252.62
WAITER $40.00
S/E 1172415275
TOTAL CHARGE AMOUNT $292.62

ITEM 4
MACS AND COMPANY HARVEY LA $23.09
Cardmember Account No. | Date of Charge 09/25/00 | Reference Code 087581485 | Approval Code 89
Service Establishment and Location: MACS AND COMPANY HARVEY LA
Record of Charge
FOOD $20.09
TIP $3.00
S/E 1171020854
TOTAL CHARGE AMOUNT $23.09

ITEM 5
NINE ROSES REST. GRETNA LA $29.78
Cardmember Account No. | Date of Charge 09/25/00 | Reference Code 001068932 | Approval Code 25
Service Establishment and Location: NINE ROSES REST. GRETNA LA
Record of Charge
FOOD/BEV $25.78
WAITER $4.00
S/E 1172300410
TOTAL CHARGE AMOUNT $29.78

ITEM 6
NINJA #2 NEW ORLEANS LA $36.26
Cardmember Account No. 709 | Date of Charge 09/27/00 | Reference Code 001860008 | Approval Code 99
Service Establishment and Location: NINJA #2 NEW ORLEANS LA
Record of Charge
FOOD/BEV $31.26
WAITER $5.00
S/E 1171049489
TOTAL CHARGE AMOUNT $36.26

ITEM 7
LOUISIANA PIZZA KITCGRETNA LA $39.34
Cardmember Account No. 37 | Date of Charge 09/27/00 | Reference Code 072571025 | Approval Code 34
Service Establishment and Location: LOUISIANA PIZZA KITCGRETNA LA
Record of Charge
FOOD/BEV $24.74
TIP $14.60
ROC NUMBER 0000000000
S/E 1172400715
TOTAL CHARGE AMOUNT $39.34

ITEM 8
LOUISIANA PIZZA KITCGRETNA LA $10.00
Cardmember Account No. | Date of Charge 09/27/00 | Reference Code 072571031 | Approval Code
Service Establishment and Location: LOUISIANA PIZZA KITCGRETNA LA
Record of Charge
FOOD/BEV $10.00
TIP
ROC NUMBER 0000000000
S/E 1172400715
TOTAL CHARGE AMOUNT $10.00

SC00475

JACOB J AMATO JR

Closing Date 10-20-00 — Page 6 of 12 — BPED02038 18 — Small Business Services

ITEM 17 — $20.95
LA PENICHE RESTAURANNEW ORLEANS LA

Date of Charge	Reference Code	Approval Code
10/09/00	13222206	00

Service Establishment and Location: LA PENICHE RESTAURANNEW ORLEANS LA

Record of Charge

FOOD-BEV	$17.95
WAITER	$3.00

ROC NUMBER 0000000000

S/E 1171041601

TOTAL CHARGE AMOUNT $20.95

ITEM 18 — $29.42
NINE ROSES REST. GRETNA LA

Date of Charge	Reference Code	Approval Co
10/10/00	001209305	47

Service Establishment and Location: NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV	$24.42
WAITER	$5.00

S/E 1172300410

TOTAL CHARGE AMOUNT $29.42

ITEM 19 — $47.01
HYDE PARK GRILLE NEW ORLEANS LA

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
3782-652868-03009	10/11/00	59174501	83

Service Establishment and Location: HYDE PARK GRILLE NEW ORLEANS LA

Record of Charge

ROC NUMBER 0000000000

S/E 3342441698

TOTAL CHARGE AMOUNT $47.01

ITEM 20 — $36.66
TREY YUEN HAMMOND LA

Account No.	Date of Charge	Reference Code	Approval Co
09	10/15/00	000421586	84

Service Establishment and Location: TREY YUEN HAMMOND LA

Record of Charge

FOOD AND BEVERAGE

TIP	$4.50

S/E # 1171012040

TOTAL CHARGE AMOUNT $36.66

ITEM 21 — $33.09
GROUND PATI GRETNA LA

Date of Charge	Reference Code	Approval Code
10/13/00	001810001	95

Service Establishment and Location: GROUND PATI GRETNA LA

Record of Charge

FOOD/BEV	$29.09
WAITER	$4.00

S/E 1171069802

TOTAL CHARGE AMOUNT $33.09

ITEM 22 — $29.00
NINE ROSES REST. GRETNA LA

Account No.	Date of Charge	Reference Code	Approval Code
09	10/16/00	001259435	67

Service Establishment and Location: NINE ROSES REST. GRETNA LA

Record of Charge

FOOD/BEV	$24.00
WAITER	$5.00

S/E 1172300410

TOTAL CHARGE AMOUNT $29.00

ITEM 23 — $25.09
MACS AND COMPANY HARVEY LA

Date of Charge	Reference Code	Approval Code
10/17/00	017898499	14

Service Establishment and Location: MACS AND COMPANY HARVEY LA

Record of Charge

FOOD	$21.09
TIP	$4.00

S/E 1171020654

TOTAL CHARGE AMOUNT $25.09

ITEM 24 — $34.90
CHINA DOLL HARVEY LA

Date of Charge	Reference Code	Approval Code
10/19/00	001110084	01

Service Establishment and Location: CHINA DOLL HARVEY LA

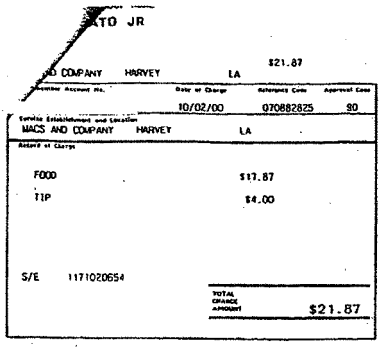
Record of Charge

FOOD/BEV	$29.90
WAITER	$5.00

SC00476

S/E 1171016124

TOTAL CHARGE AMOUNT $34.90



TO JR

$21.87

D COMPANY HARVEY LA

Date of Charge 10/02/00 | Reference Code 070882825 | Approval Code 90

Service Establishment and Location
MACS AND COMPANY HARVEY LA

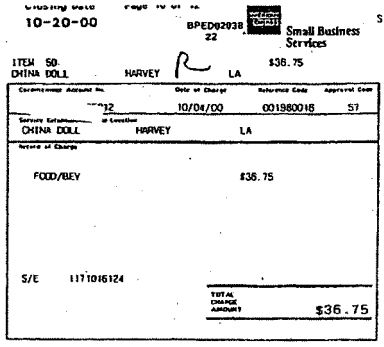
Record of Charge

FOOD $17.87

TIP $4.00

S/E 1171020654

TOTAL CHARGE AMOUNT $21.87



10-20-00

BPED02038 22

Small Business Services

ITEM 50
CHINA DOLL HARVEY LA $36.75

Date of Charge 10/04/00 | Reference Code 001980016 | Approval Code 57

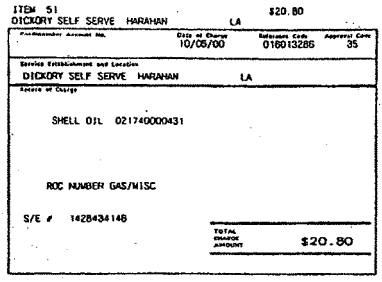
Service Establishment and Location
CHINA DOLL HARVEY LA

Record of Charge

FOOD/BEV $36.75

S/E 1171016124

TOTAL CHARGE AMOUNT $36.75



ITEM 51
DICKORY SELF SERVE HARAHAN LA $20.80

Date of Charge 10/06/00 | Reference Code 016013286 | Approval Code 35

Service Establishment and Location
DICKORY SELF SERVE HARAHAN LA

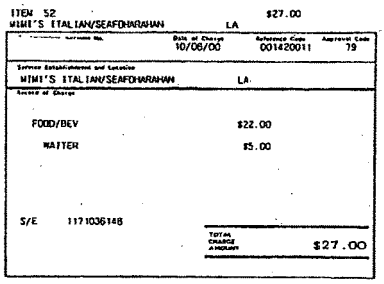
Record of Charge

SHELL OIL 021740000431

ROC NUMBER GAS/MISC

S/E # 1428434146

TOTAL CHARGE AMOUNT $20.80



ITEM 52
MIMI'S ITALIAN/SEAFOHARAHAN LA $27.00

Date of Charge 10/06/00 | Reference Code 001420011 | Approval Code 79

Service Establishment and Location
MIMI'S ITALIAN/SEAFOHARAHAN LA

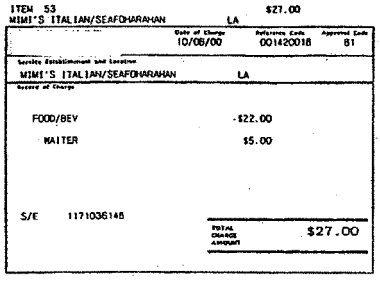
Record of Charge

FOOD/BEV $22.00

WAITER $5.00

S/E 1171036148

TOTAL CHARGE AMOUNT $27.00



ITEM 53
MIMI'S ITALIAN/SEAFOHARAHAN LA $27.00

Date of Charge 10/06/00 | Reference Code 001420018 | Approval Code 81

Service Establishment and Location
MIMI'S ITALIAN/SEAFOHARAHAN LA

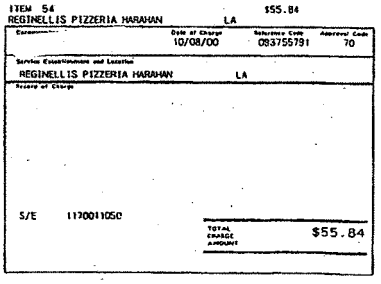
Record of Charge

FOOD/BEV $22.00

WAITER $5.00

S/E 1171036148

TOTAL CHARGE AMOUNT $27.00



ITEM 54
REGINELLIS PIZZERIA HARAHAN LA $55.84

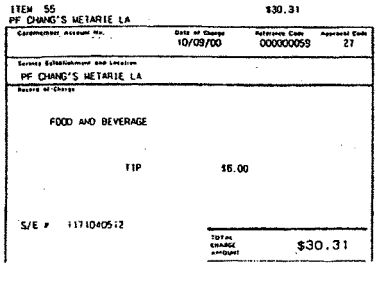
Date of Charge 10/08/00 | Reference Code 083755791 | Approval Code 70

Service Establishment and Location
REGINELLIS PIZZERIA HARAHAN LA

Record of Charge

S/E 1170011050

TOTAL CHARGE AMOUNT $55.84



ITEM 55
PF CHANG'S METAIRIE LA $30.31

Date of Charge 10/09/00 | Reference Code 000000059 | Approval Code 27

Service Establishment and Location
PF CHANG'S METAIRIE LA

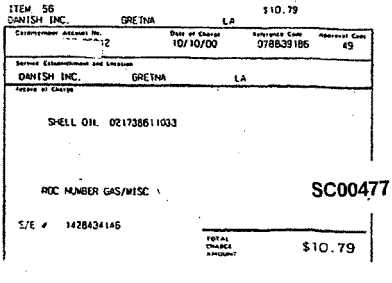
Record of Charge

FOOD AND BEVERAGE

TIP $6.00

S/E # 1171040512

TOTAL CHARGE AMOUNT $30.31



ITEM 56
DANISH INC. GRETNA LA $10.79

Date of Charge 10/10/00 | Reference Code 078839186 | Approval Code 49

Service Establishment and Location
DANISH INC. GRETNA LA

Record of Charge

SHELL OIL 021738611033

ROC NUMBER GAS/MISC

S/E # 1428434146

TOTAL CHARGE AMOUNT $10.79

SC00477

11-19-00 BPED02037 7831 Small Business Services SS

Reference Number	Item Number	Description of Monthly Activity	Charges	Credits
		CARD NUMBER		
835302		PAYMENT RECEIVED - THANK YOU 10/28		4,136.11
835310		PAYMENT RECEIVED - THANK YOU 11/05		6,515.83
501298	1	ODYSSEY GRILL METAIRIE LA 095695206 FOOD/BEVERAGE 10/22/00	45.13	
501299	2	ASSN TRIAL LAWYERS WASHINGTON DC 020007012 LAWYERS 10/24/00	495.00	
501300	3	BELLSOUTH MOBILI 800-533-2476 LA 39F755450 CELLULARSERV 10/25/00	701.26	
501301	4	ZACHARYS NEW ORLEANS LA 011606920 FOOD/BEVERAGE 10/26/00	49.60	
501302	5	GROUND PATI GRETNA LA 001130003 FOOD/BEVERAGE 10/26/00	47.33	
501302	6	1700 HICKORY AVE NEW ORLEANS LA TEXACO 44398432175302324033992 10/27/00	51.50	
501305	7	MACS AND COMPANY HARVEY LA 022715715 FOOD/BEVERAGE 10/30/00	21.38	
501306	8	NINE ROSES REST. GRETNA LA 00389824 FOOD/BEV 10/31/00	35.62	
501306	9	LIBORIO RESTAURANT NEW ORLEANS LA 001090007 FOOD/BEV 10/31/00	26.06	
501306	10	OASIS CAR WASH HARVEY LA 305010046 CAR WASH 10/31/00	65.95	
501307	11	1700 HICKORY AVE NEW ORLEANS LA TEXACO 44398432175307311021504 11/01/00	56.50	
501308	12	CHINESE KING NEW ORLEANS LA 00090262 FOOD, SERVICE RESTAURAN 11/01/00	22.94	
501312	13	AOL SERVICE 800-679-9444 VA 00a2df662 ONLINE 11/07/00	21.95	
501313	14	NEW ORLEANS CABLE NEW ORLEANS LA 000380089 CABLE SVCS 11/08/00	133.10	
501313	15	SOUTH CHINA RESTAURACOVINGTON LA 081076713 FOOD 11/07/00	15.62	
501314	16	BRICK OVEN CAFE KENNER LA 000392846 FOOD AND BEVERAGE 11/09/00	70.95	
501315	17	THE HOME DEPOT 359 GRENTA LA 031545265 HOME IMPROV/ACCES 11/09/00	65.36	
501316	18	MOONLIGHT CAFE NEW ORLEANS LA 001840001 FOOD/BEV 11/09/00	23.81	
169316	19	CONTINENTAL AIRLINES METAIRIE LA TKT# 0057017932495 11/10	692.73	
128316		FLIGHT INSURANCE CURRENT $692.73	14.00	
169316	20	DELTA AIR LINES METAIRIE LA TKT# 0067017932496 11/10	864.40	
128316		FLIGHT INSURANCE CURRENT $864.40	14.00	
101317	21	SEMOLINA INT'L PASTACOVINGTON LA 29870054 EATING PLACES RESTAURAN 11/10/00	21.96	
106319	22	CHARLIES STEAK HOUSE NEW ORLEANS LA INV#384458	69.15	
101319	23	ZEA ROTISSIERE METAIRIE LA 53744611 RESTAURANT 11/12/00	36.64	
01320	24	HORIZON TRAVEL GROUPMETAIRIE LA 00010204 FEES/SERVICES 11/14/00	30.00	
95321	25	HEROMAN'S BILLY FLOWBATON ROUGE LA 180539816 FLORAL PURCHASE 11/14/00	136.20	
01321	26	PLANET BEACH TANNINGMARRERO LA 073137285 BARBER & BEAUTY 11/15/00	59.16	
01322	27	1700 HICKORY AVE NEW ORLEANS LA TEXACO 44398432175322313023044 11/16/00	42.50	
		TOTAL FOR JACOB J AMATO JR	$3,929.80	$10,651.94

SC00478

BPED02037 7934 Small Business Services

$56.50
NEW ORLEANS LA

Customer Account No.	Date of Charge	Reference Code	Approval Code
009	11/01/00	TEXACO	54

Service Establishment and Location: 1700 HICKORY AVE NEW ORLEANS LA

Record of Charge:
4439843217530731102150 4
ROC NUMBER 0910737151

S/E # 1428401392

TOTAL CHARGE AMOUNT $56.50

ITEM 12 $22.94
CHINESE KING NEW ORLEANS LA

Customer Account No.	Date of Charge	Reference Code	Approval Code
	11/01/00	00090262	52

Service Establishment and Location: CHINESE KING NEW ORLEANS LA

Record of Charge:
FOOD, SERVICE RESTAURAN

ROC NUMBER 0000000000

S/E # 1172519134

TOTAL CHARGE AMOUNT $22.94

ITEM 13 $21.95
AOL SERVICE 800-679-9444 VA

Customer Account No.	Date of Charge	Reference Code	Approval Code
39	11/07/00	00a2af662	14

Service Establishment and Location: AOL SERVICE 800-679-9444 VA

Record of Charge:
ONLINE
AOL *ONLINE SERVICE 1100

ROC NUMBER 0025848425

S/E # 4453400780

TOTAL CHARGE AMOUNT $21.95

ITEM 14 $133.10
NEW ORLEANS CABLE NEW ORLEANS LA

Customer Account No.	Date of Charge	Reference Code	Approval Code
	11/08/00	000380089	14

Service Establishment and Location: NEW ORLEANS CABLE NEW ORLEANS LA

Record of Charge:
CABLE SVCS

ROC NUMBER 0026190294

S/E # 1176102653

TOTAL CHARGE AMOUNT $133.10

ITEM 15 $15.62
SOUTH CHINA RESTAURACOVINGTON LA

No.	Date of Charge	Reference Code	Approval Code
3009	11/07/00	081076713	54

Service Establishment and Location: SOUTH CHINA RESTAURACOVINGTON LA

Record of Charge:
FOOD $12.62
TIP $3.00

S/E 1171022562

TOTAL CHARGE AMOUNT $15.62

ITEM 16 $70.95
BRICK OVEN CAFE KENNER LA

Customer Account No.	Date of Charge	Reference Code	Approval Code
	11/09/00	000382848	56

Service Establishment and Location: BRICK OVEN CAFE KENNER LA

Record of Charge:
FOOD AND BEVERAGE
TIP $10.00

S/E # 1171304462

TOTAL CHARGE AMOUNT $70.95

ITEM 17 $65.36
THE HOME DEPOT 359 GRENTA LA

Customer Account No.	Date of Charge	Reference Code	Approval Code
	11/09/00	031545265	5E

Service Establishment and Location: THE HOME DEPOT 359 GRENTA LA

Record of Charge:
HOME IMPROV/ACCES

S/E # 1174548360

TOTAL CHARGE AMOUNT $65.36

ITEM 18 $23.81
MOONLIGHT CAFE NEW ORLEANS LA

Customer Account No.	Date of Charge	Reference Code	Approval Code
	11/09/00	001840001	56

Service Establishment and Location: MOONLIGHT CAFE NEW ORLEANS LA

Record of Charge:
FOOD/BEV $20.81
WAITER $3.00

S/E 1171301658

TOTAL CHARGE AMOUNT $23.81

SC00479

SC EXHIBIT - 00016

5150 - [illegible]
5150 736.91
5270 83.33
5600 - 1150.11

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SC00480

The Gold Corporate Card for Small Business

Prepared For
JACOB J AMATO JR
AMATO & CREELY

Closing Date
January 20, 2002

Account Number

Previous Card Balance $	Card Payments/Credits $	New Card Charges $	New Card Balance $
4,519.32	-4,519.32	2,252.39	2,252.39

Please Pay By February 5, 2002

* Indicates posting date.

Terms - Payable in full on receipt of Statement.

Please refer to page 6 for important information regarding your account

Card Transactions for JACOB J AMATO JR

Card 3782-652656-04007

		Amount $	
January 2, 2002* PAYMENT RECEIVED - THANK YOU		-4,519.32	
December 19, 2001 CHARLIES STEAK HOUSE NEW ORLEANS LA FINE DINING Reference: 000000511260 Rec Number: 0000511260		50.60	
December 20, 2001 VINCENT'S ITALIAN NEW ORLEANS LA FOOD/BEVERAGE		48.60	
FOOD/BEV	42.60		
TIP	6.00		
Reference: 810000817			
December 21, 2001 SHELL METAIRIE LA SHELL OIL 027526705804 Reference: 168180866 Rec Number: GAS/MISC		14.00	- 5150
December 23, 2001 1700 HICKORY AVE NEW ORLEANS LA TEXACO 44398432175358287003448 Reference: 358287003448		30.00	- 5150
December 24, 2001 NINE ROSES REST. GRETNA LA FOOD/BEVERAGE		29.20	
FOOD/BEV	24.20		
TIP	5.00		
Reference: WS0100A31			

Please fold on the perforation below, detach and return with your payment

Continued on reverse

Transactions Continued — Amount $

anuary 3, 2002 HINESE KING NEW ORLEANS LA OOD, SERVICE RESTAURAN ference: 00051574	20.03	
anuary 7, 2002 OL SERVICE 800-679-9444 VA NLINE OL*ONLINE SERVICE 0102 ference: 00028682 Acc Number: 0055884566	23.90	-5450
anuary 7, 2002 ACS AND COMPANY HARVEY LA OOD/BEVERAGE OOD 19.78 P 4.00 ference: 040474664	23.78	
anuary 7, 2002 '00 HICKORY AVE NEW ORLEANS LA EXACO 39843217500828201214 8 erence: 00828201214 8	24.75	-5150
anuary 8, 2002 LEGRO RESTAURANT NEW ORLEANS LA OOD AND BEVERAGE P 00000700 erence: 000332818	44.01	
anuary 8, 2002 ALEXANDERS RESTAURBATON ROUGHT LA OOD-BEV OOD-BEV 25.72 ? 5.00 erence: 000800079	30.72	
nuary 10, 2002 WES METAIRIE LA OME IMPROVEMENT erence: 26815	81.13	-5450
nuary 10, 2002 IINESE KING NEW ORLEANS LA OD, SERVICE RESTAURAN erence: 00048397	22.27	
nuary 14, 2002 PENICHE RESTAURANNEW ORLEANS LA OD/BEVERAGE OD-BEV 22.30 ATER 3.00 rence: 13222243	25.30	
nuary 14, 2002 0 HICKORY AVE NEW ORLEANS LA XACO 9843217501528202913 9 ence: 01528202913 9	25.07	-5150
nuary 16, 2002 CS AND COMPANY HARVEY LA OD/BEVERAGE OD 27.96 5.00 ence: 051241728	32.96	
nuary 17, 2002 0 HICKORY AVE NEW ORLEANS LA XACO 98432175018295017067 ence: 01829501 7067	30.00	-5450
ivity for JACOB J AMATO JR	New Charges 917.06 Payments/Credits -4,519.32	

Continued on reverse

American Express Small Business Services

Prepared For
JACOB J AMATO JR
AMATO & CREELY

Account Number

January 20, 2002

Transactions Continued — Amount $

January 8, 2002 EFFERSON TRUCK STOPNEW ORLEANS LA AS/SERVICE ference: 000003112		17.01
January 10, 2002 INKO'S # 1568 JEFFERSON LA 0121 ference: 651995		201.26
January 10, 2002 INNIES SPORTS BAR AGRETNA LA OOD/BEVERAGE OOD 39.50 IP 4.00 ference: 041736156		43.50
January 15, 2002 TORE #7451 JEFFERSON LA AY AT THE PUMP ference: 811084301		19.54
January 15, 2002 /INNER'S HARAHAN LA OOD/BEVERAGE OOD/BEV 28.00 P 10.00 ference: DC0000005		38.00
January 16, 2002 TOP N SAVE GRETNA LA ISCELLANEOUS FOOD ISC FOOD STRS, CONV,SPEC,VEND ference: 000082001		28.75
January 17, 2002 INNER'S HARAHAN LA OOD/BEVERAGE OOD/BEV 64.05 P 15.00 ference: G7000025A		79.05
January 18, 2002 ADIO SHACK RIVER RIDGE LA 1123 ference: 000104225 Rec Number: 104225		120.03
January 19, 2002 HE HOME DEPOT 362 HARAHAN LA OME IMPROV/ACCES ference: 002073277		109.64
Activity for ROBERT G CREELY	New Charges Payments/Credits	1,335.33 0.00
Total of Card Activity	New Charges Payments/Credits	2,252.39 -4,519.32

Continued on reverse

SC00482

Transactions Continued

Amount $

March 22, 2002 ATLA PAC WASHINGTON DC CO05PACC0091788CREELY, Reference: 020708506 Roc Number: 708506	83.33	*
March 23, 2002 CRACKER BARREL #353 GONZALES LA RESTAURANT/GIFT SHOP Reference: 000008167 Roc Number: 8167	31.88	
March 24, 2002 406 AMBASSADOR CAFFRSCOTT LA TEXACO 44535197051084286048958 Reference: 084286048958	18.23	5150
March 25, 2002 PF CHANG'S # 1900 METAIRIE LA FOOD/BEVERAGE FOOD/BEV 32.03 TIP 7.00 Reference: QT0100082	39.03	
March 25, 2002 BRAVO CUCINA METAIRIMETAIRIE LA FOOD/BEVERAGE FOOD-BEV 40.18 WAITER 8.00 Reference: 29612000	48.18	
March 27, 2002 MSN ONLINE SERVICES 800-386-5550 WA MSN*ONLINE BILLING Reference: 18958793	19.95	5450
March 27, 2002 BEEF CONNECTION STK GRETNA LA RESTAURANT FOOD FOOD 65.25 TIP 14.00 Reference: 373010444	79.25	
March 28, 2002 LITTLE ANNIE'S ASPEN CO FOOD/BEVERAGE FOOD/BEV 84.40 TIP 16.00 Reference: 0C00001F7	100.40	
March 29, 2002 CIRQUE CAFE 800-5256200 CO FOOD AND BEVERAGE Reference: 860320940	50.90	
April 1, 2002 THE FRONT PORCH EUNICE LA BEER AND WINE Reference: 091970218	53.75	
April 1, 2002 SNOWMASS CLB SAGE RE970-9235600 CO FOOD/BEVERAGE Reference: 880013050	224.77	Avoid no-show charge Get a cancellation nur when canceling hotel reservations.
April 2, 2002 AIRPORT SHELL KENNER LA SHELL OIL 027522543704 Reference: 12092026 Roc Number: GASMISC	18.76	5150
April 2, 2002 435 E MAIN ASPEN CO TEXACO 51511285377093308039796 Reference: 083308035796	27.50	5150
April 8, 2002 VERONA RESTAURANT HARAHAN LA FOOD & BEV FOOD/BEV 41.22 TIP 8.00 Reference: EYC000F61	49.22	

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Business Gold Card

Prepared For
AMATO & CREELY

Closing Date
June 19, 2002

Account Number

Previous Card Balance $	Card Payments/Credits $	New Card Charges $	New Card Balance $
4,543.90	-4,543.90	2,227.17	2,227.17

Please Pay By
July 4, 2002

* Indicates posting date.

Terms - Payable in full on receipt of Statement.

Please refer to page 6 for important information regarding your account

Cardmember Snapshot

Cardmember Name	Card Number	Total Payments/Credits $	Total New Charges $
JACOB J AMATO JR		-4,543.90	1,022.47
ROBERT G CREELY		0.00	1,204.70
Total		-4,543.90	2,227.17

Card Transactions for JACOB J AMATO JR

Card 3782-652666-04007

			Amount $
June 9, 2002* PAYMENT RECEIVED - THANK YOU			-4,543.90
May 20, 2002			21.70
MACS AND COMPANY	HARVEY	LA	
FOOD/BEVERAGE			
FOOD		18.20	
TIP		3.50	
Reference: 025583274			
May 21, 2002			121.04
BEEF CONNECTION STK GRETNA		LA	
RESTAURANT FOOD			
FOOD		106.04	
TIP		15.00	
Reference: 425B16060			
May 23, 2002			52.58
CANNON'S RSTR GRETNA LA			
FOOD AND BEVERAGE			
TIP 00000600			
Reference: 000240456			

Please fold on the perforation below, detach and return with your payment

Continued on reverse

SC00484

Do you solemnly swear that the testimony you shall give in this proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

JUDGE LAKE: Be seated, please. Right there.

DON GARDNER, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

BY JUDGE PORTEOUS:

Q. State your name for the record, please.

A. Don Gardner, G-A-R-D-N-E-R.

JUDGE PORTEOUS: Now, again, Mr. Woods, I assume Mr. Gardner is likewise testifying with a grant of immunity.

MR. WOODS: Yes. And here it is, for your --

JUDGE PORTEOUS: Give it to Mr. Gardner.

MR. WOODS: He's been provided a copy of that previously. We've never been able to meet and discuss; but he's been provided a copy of that, and he understands that any interview that we would have conducted with him today would have been under that immunity.

BY JUDGE PORTEOUS:

Q. Do you understand, Mr. Gardner?

A. I do.

Q. The only thing you -- you must tell the truth. You understand that?

A. I do.

02:14 Q. All right. You and I have been friends for what?
Thirty years?
A. More like 35 plus.
Q. All right. And it's been established in the grand jury
02:14 that during my state court days, either as a judge or as a DA,
that monies were given to me. Is that correct, that you have
giving me money?
A. That I've given you money?
Q. (Nodding head).
02:15 A. Yeah.
Q. And you estimated that to be 3,000?
A. Probably less than 3,000.
Q. All right. And was that just me coming up and whining you
or how did -- you know, just different times?
02:15 A. When we were practicing lawyers, we were Christmas shopping
for the wives; and I believe that you had bought a gift and you
were short. And you asked me if I had some money on me. You
wanted to buy some glasses -- glasses, and I think I gave you
some money then.
02:15 At various times, you'd asked me for this or that
when we were out either eating or drinking and I'd advance it
to you or give it to you. I did so as a friend.
Q. And I had parties for you. I think you even mentioned
that.
02:15 A. You had lots of parties for me. I believe you held my

02:15 bachelor party at your house. You held our reception at your house. You entertained all of the out-of-town guests. You did a lot for my wife and I.

Q. And that was as a friend?

02:16 A. That was.

Q. That wasn't as the judge?

A. No.

Q. The Liljeberg case which you became involved in, you got involved, I believe -- and correct me if I'm wrong -- through

02:16 Mr. Wilkinson, Tom Wilkinson?

A. I did.

Q. You spoke with Mr. Mole?

A. I did.

Q. This was after, I believe, speaking with Mr. Wilkinson?

02:16 A. Yes.

Q. And what did you tell Mr. Mole about your friendship with me and how that would affect anything?

A. I think I twice or three times declined representation because -- I told them -- they were concerned about, I believe,

02:16 you on their case. Because they asked to recuse you and they weren't successful, and they wanted to have a friendly face.

And they kept on me. And I told them that I didn't think that my presence in the case would in any way determine the outcome one way or the other, that I thought you

02:17 would listen to the evidence and rule accordingly, based upon

02:17 all my years of having dealt with you as a friend, as a judge, as a DA.

Q. Did you tell them that it made no difference that Amato was on the other side, or Levenson?

02:17 A. I told them that I didn't think -- they thought it would influence them. I didn't -- I told them I didn't think that it in any way would affect the outcome of the case.

Q. All right. And you had -- and we've seen it, it's in the record -- a contract with Mr. Mole for your fee?

02:17 A. I did. It was a unilateral contract presented to me by the firm.

Q. And one of the elements was that if you -- you got a hundred straight up?

A. Correct.

02:17 Q. And if I withdrew, you got another hundred?

A. I believe that's correct, but I haven't looked at the contract in awhile. There was a provision for that.

Q. Did you ever make me aware of that --

A. No.

02:17 Q. -- so that you could get this extra hundred?

A. I never discussed that contract with you or made you aware of any of that.

Q. And during the course of your practice, did I appoint you as a curator a lot of times?

02:18 A. You did.

02:18 Q. When I was on state bench?
A. You did.
Q. I believe it -- it got to the point where I appointed you a lot on interdiction cases?
02:18 A. You did. We were friends; but I believe you liked the fact that I always did my job, that I would see the people who were being interdicted, that I would always file my returns promptly, and I was always there to handle the curators.
Q. And you would, in fact, talk to these people?
02:18 A. Oh, absolutely. I would either write letters, run ads, talk to people in hospitals, nursing homes, in connection with the curators involving people who needed interdiction.
Q. Did I ever ask for any of that money back from the curators?
02:18 A. Not a penny.
Q. Ultimately, during the trial the Liljeberg trial -- which was kind of convoluted. Fair statement?
A. Yes.
Q. Were there various points in time where the parties and I
02:19 sat down with respect to settlement negotiations?
A. Yes.
Q. And during those times, did I tend to favor -- did it appear that I was hammering something down your throat?
A. No. I wouldn't use the word "hammering." I think that you
2:19 were -- on a number of occasions at different points in the

trial, you brought us back and you discussed the various strengths and weaknesses of everybody's side and strongly recommended on a number of occasions that we get to a dollar figure.

You stayed the proceedings when we were close and sent us down to the magistrate, at which time we discussed settlement with the magistrate; and I think we went on to half of the next day, discussing settlement at your recommendation. And it didn't end in settlement, and you proceeded with the trial.

Q. That's right.

A. I don't think you wanted to be part of those settlement discussions.

Q. I didn't, and I wasn't. I didn't know numbers, did I?

A. But you did recommend that there was some avenue to pursue settlement.

Q. Correct. And during the time period that that case was under submission, did you, in fact, go with me in -- with a bunch of people to Vegas for one of my son's bachelors parties?

A. With 20-plus other people, I did.

Q. Lawyers and non-lawyers?

A. Lawyers and non-lawyers alike.

Q. Did you pay for any of my trip?

A. Not a penny.

Q. Did you give me any money when I was there?

02:20 A. None.
Q. Now, we did go ride the roller coaster or something together.
A. I remember a number of us rode the roller coaster at one of
02:20 the casinos. It was a 52 hour trip that happened very fast.
Q. Okay. And since I've been on the federal bench, have I ever taken anything from you?
A. Since you've been on the federal bench, I've not seen you as previous, when you were a lawyer or DA or a state court
02:20 judge. I've had so limited contact with you in this court.
Q. But we have gone to lunch together?
A. We have gone to lunch together. And birthday lunches in December.
Q. We all -- yours is the 12th, mine is the 15th?
02:21 A. I'm sorry?
Q. Mine is the 15th, yours is the 12th?
A. It is.
Q. And I think you've always paid for those.
A. I usually -- I pay for a lot of lunches.
02:21 Q. Okay. Did you feel like you were being muled?
A. By you?
Q. Yeah.
A. Never.
Q. And one of the witnesses said that you indicated to him
02:21 that you gave me a "great white," meaning you gave me a

thousand dollars. Is that correct?
A. I have never given you a thousand dollars or any sum close to that. At one time it may have been a couple of hundred dollars, and I distinctly remember giving $200 to your son's externship when he was in Washington. I don't know the year.
JUDGE PORTEOUS: I don't have any other questions.

CROSS-EXAMINATION

BY MR. WOODS:
Q. Mr. Gardner, you requested a copy of your grand jury testimony since we weren't able to arrange to get together. And I sent that to you last week?
A. Mr. Woods, you were very kind. You provided it for me. I've got it right here.
Q. You have had a chance to review it?
A. Thank you.
Q. In the grand jury testimony, you stated that you've given Judge Porteous cash of approximately 2,000 to 3,000 dollars over the past year. Is that correct?
A. Over the past 35 years, I would estimate that that would probably be correct.
Q. And it would be in small amounts, like $300 or a hundred dollars, when he would ask?
A. Yes.
Q. And you also related that you had sent workers to Judge Porteous' house and that Judge Porteous paid for all of

them except for the Sheetrock guy for $321 which you paid for?
A. That is correct.
Q. Okay.
A. I did not know why the Sheetrock guy was not; but he refused to do work for me, and my secretary ended up paying him.
Q. Okay. Then you related an incident when Bob Creely called you and said, "That rotten bastard called me up today, and he wants some money for his son to help him extern"; and you said, "He asked me, too; and I gave him some -- I don't know -- a couple of hundred dollars," and that you tried to look for a -- for a check or something to verify that but you weren't sure if you could find a check. Is that correct?
A. I looked. I didn't find one. But I did give a couple of hundred dollars for the extern, yes, sir.
Q. Okay. Who did you give that to?
A. I can't remember if I gave it to Judge Porteous or his secretary or Timmy. I really cannot, but I did give it.
Q. Was Rhonda collecting the money for that externship? Do you recall that?
A. To be honest, I don't know if she was collecting it.
Q. Okay. Did you ever give her cash for Porteous?
A. As I stated in my grand jury, there were always raffle tickets to St. Clement of Rome, there was tickets for Tom's kids, for Rhonda's children, and I gave cash for those tickets

throughout the year and bought raffle tickets. And I would give those -- that money to Rhonda. And most of the time it would be -- all the time, I think, it would be cash. I would give them $20 for five raffle tickets or whatever.

Q. Okay. That's the only occasion you can recall giving the cash to Rhonda Danos rather than the cash to Judge Porteous when he would ask for it?

A. Yes, sir, I believe so.

Q. Now, you told the grand jury that Judge Porteous and his wife gambled a lot. What do you mean by "a lot"?

A. They liked to gamble.

Q. Did you ever go with Judge Porteous when he was gambling?

A. I did. I do not like to gamble.

Q. Okay. Did you ever give him money when he was gambling and would ask for it?

A. On a couple of occasions I've given Tom a hundred dollars. If I would lose a hundred dollars, I would quit. And he would ask me if I had some money on me, and I would hand him a few dollars if I had it on me.

Q. "A few dollars" being what? A hundred or so?

A. A couple of twenties, a hundred, whatever.

Q. Okay.

A. Nothing of any moment that I would think.

Q. You didn't like to lose personally, but you didn't mind giving it to Judge Porteous to gamble with?

02:25 A. I don't like to gamble; but if they found enjoyment in it, it wasn't mine to question.

Q. Just yours to give?

A. Yes, sir. I gave it to him as a friend.

02:25 Q. Yes, sir. Thank you.

MR. WOODS: Pass the witness, your Honor.

CHIEF JUDGE JONES: Well, I had a question, Mr. Gardner. Did you know -- didn't you know that Creely and Amato, for instance, were giving Judge Porteous money from time

02:25 to time?

THE WITNESS: I didn't know that till after all this came about. I found out that, you know, they were -- I know that Bob Creely would spend $400 filling up his gas tank to take everybody fishing.

02:25 I'm sorry I didn't like to fish, either; so, I didn't go on those.

JUDGE BENAVIDES: When were you aware of that?

THE WITNESS: That they gave money?

JUDGE BENAVIDES: Yes.

02:25 THE WITNESS: When all of this came about and I started to hear the rumor mill that surrounded them, saying that they had given cash or whatever.

JUDGE BENAVIDES: Okay. How about -- how about the fishing trips and things like that? When were you aware

02:26 that --

02:26 THE WITNESS: Oh, I knew they went on fishing and hunting trips; and I didn't inquire as to who paid what or who sponsored who or if Judge Porteous paid a pro rata share or bought his shells or bought his transportation. I never asked
02:26 anybody about that.

CHIEF JUDGE JONES: Well, when was his son doing an internship for Judge -- I mean, Senator Breaux?

THE WITNESS: I'm sorry, your Honor. I didn't hear that.

02:26 CHIEF JUDGE JONES: When was Timmy doing the internship for Senator Breaux?

THE WITNESS: Oh, your Honor, the end of '98, '99, 2000, somewhere along there.

CHIEF JUDGE JONES: Well, let me ask you this. You
02:26 were retained because -- you said, by St. Jude, right, the --

THE WITNESS: Lifemark, yes, ma'am.

CHIEF JUDGE JONES: Lifemark. Excuse me.

And as you know, at that point a motion to recuse had been denied.

02:27 THE WITNESS: When I got in, that had already been completed.

CHIEF JUDGE JONES: Did the allegations of that -- did you ever review the motion to recuse?

THE WITNESS: Your Honor, I am so sorry. I'm not
02:27 having a good hearing.

02:27 CHIEF JUDGE JONES: Did you ever review the motion to recuse?

THE WITNESS: I did not.

CHIEF JUDGE JONES: Nobody asked you to?

02:27 THE WITNESS: No one asked me to, your Honor.

CHIEF JUDGE JONES: And you did not feel that you had any ethical obligation to inquire whether there had been any kind of relationship between the judge and the attorneys on the other side, that should have been disclosed?

02:27 THE WITNESS: Your Honor, when I got in, the motion had already been ruled on. And counsel had not filed any other and they didn't ask me if I knew of any other facts that would help them with a new motion and --

CHIEF JUDGE JONES: Well, suppose you did know of such 02:27 facts. Wouldn't you have had an ethical obligation to tell your client about them?

THE WITNESS: Your Honor, I knew that Judge Porteous was going to rule on the facts, having known him all these years.

02:28 CHIEF JUDGE JONES: No, sir. I'm asking you a question.

If you had known of facts that would -- of a relationship between Judge Porteous and counsel for the other side, that would have required him to make a disclosure for 02:28 purposes of a recusal motion, would you not have had an ethical

02:28 obligation to tell your client?
THE WITNESS: My client already knew that Judge Porteous --
CHIEF JUDGE JONES: Would you not have had an ethical
02:28 obligation? Answer "yes" or "no," sir.
THE WITNESS: No, ma'am.
JUDGE BENAVIDES: All right. You had --
CHIEF JUDGE JONES: For a hundred --
JUDGE BENAVIDES: You had indicated at one point, I
02:28 believe -- and I could be wrong about the attorney's name, but I thought you said Creely called you and made reference to the judge calling him and asking him for money. Is that correct?
THE WITNESS: For the externship?
JUDGE BENAVIDES: Yes.
02:28 THE WITNESS: Yes.
JUDGE BENAVIDES: All right. Do you recall when that was?
THE WITNESS: I don't. I'm so sorry. It would be about the time that he got the extern appointment in
02:29 Washington, DC. It was around that time.
JUDGE BENAVIDES: At that time, was the Liljeberg case still pending?
CHIEF JUDGE JONES: Sure.
JUDGE BENAVIDES: Was it prior to or during the time
02:29 that that case was pending?

02:29 THE WITNESS: I'm not trying to be deceptive. I didn't -- I wouldn't know those dates. I would have to go back --

JUDGE BENAVIDES: Well, if it turns out that it was 02:29 before that time and you had a client -- your client was not Creely, it was not Amato, it was not Porteous, it was a client that you owed fealty and allegiance to and you took an oath to represent to the best of your ability when you got sworn in to the Bar in Louisiana, and you knew that an attorney on the 02:29 other side had told you that he had been asked for money, you knew that he had been given -- that he had given him money, that he had given -- in fact, from the way that you described it as he described Judge Porteous, you would gather that even this attorney did it and didn't like Judge Porteous or maybe 02:30 loved Judge Porteous but he didn't like having doing it because he called him "rotten," you would not feel that you owed a duty to your client to tell your client that an attorney on the other side was giving money to the judge?

THE WITNESS: The question --

02:30 JUDGE BENAVIDES: Do you have any doubt in your mind, any doubt in your mind as a professional that you would have no duty to tell your client?

THE WITNESS: Your Honor, if I --

JUDGE BENAVIDES: Any doubt in your mind? That's my 02:30 question.

02:30 THE WITNESS: No, sir. But if I can add to my answer by saying, when Judge Jones asked me a relationship that would alter the outcome --

CHIEF JUDGE JONES: No, sir. I didn't say "outcome."

02:30 JUDGE BENAVIDES: I didn't say "relationship." I said your "duty," you would not feel any duty at all to tell a client that is paying you money to represent them that you know that an attorney on the other side of the same case is giving money to a judge; and you say no doubt in your mind that

02:31 there's nothing wrong with telling -- not telling your client.

THE WITNESS: I knew they went on fishing trips. I knew they went on hunting trips. I did not know --

JUDGE BENAVIDES: You just told us that Creely called you and said that that "rotten guy" had asked him for money.

02:31 THE WITNESS: That's the way Creely talks. He didn't mean a "rotten guy." He's dramatic like that.

JUDGE BENAVIDES: And asked -- did he mean he asked him for money?

THE WITNESS: We were giving it to Timmy Porteous,

02:31 because he knew the young man as long as I did, your Honor. This had nothing to do with influencing Judge Porteous in a case or anything like that. It was a social thing.

JUDGE BENAVIDES: I can't understand that. I just cannot understand that a professional, held to the standards

02:31 that we're supposed to be held to -- I'm not talking about as a

judge.

I'm talking about as a lawyer, that if I had a client and I had information like that, that I wouldn't feel that it was my duty to tell my client or to tell the lead counsel in the case, who had previously filed motion to recuse and had not had that particular information in his motion, which would have triggered at least -- even if he forgot it -- a responsibility to advise all counsel that he had received money from these lawyers in the past, including you, which was never done. And you're acting like it's no big deal, like -- like this is some kind of a culture. I can't understand it. I can't understand why you're not shocked or ashamed.

I have nothing else.

MR. WOODS: Nothing further, your Honor.

JUDGE PORTEOUS: Nothing further, your Honor.

CHIEF JUDGE JONES: All right.

JUDGE LAKE: Thank you, Mr. Gardner. You're excused.

THE WITNESS: Thank you, your Honor.

JUDGE PORTEOUS: The only other witness I had considered calling is Mr. Petalas, and I specifically wanted to call Mr. Petalas just to go over a portion of the complaint that they filed, referencing why they didn't choose to proceed. I want that -- I'd like to make the point. I know it's in the complaint, but I have some questions with reference to it. That's all.

02:33 MR. WOODS: Your Honor, I'm happy to stipulate to that paragraph. The Department of Justice has certain regulations that they have to go through, the Touhey regulations, before a Department of Justice person can testify. I'm happy to 02:33 stipulate to that paragraph he wants, that the reasons why the Department of Justice did not decide to prosecute -- the reasons why they decided not to prosecute.

CHIEF JUDGE JONES: I really don't think that's material, Judge Porteous. I mean, if anything, you ought to be 02:33 praying to God every night in thanks. So --

JUDGE PORTEOUS: Well, I just wanted to make clear that those provisions they raise were not just particular because I was a federal court judge. These things they allege are for any defendant. They couldn't prove anything is what 02:34 they say in here.

CHIEF JUDGE JONES: Well, I think that the judge and jury to whom you are making that case, which consists of us and possibly people in Washington, pretty much understand that.

JUDGE BENAVIDES: Don't we have the complaint that was 02:34 filed with us as part of the record?

MR. WOODS: Yes, your Honor.

JUDGE BENAVIDES: So, that's -- that's there.

CHIEF JUDGE JONES: It speaks for itself.

MR. WOODS: Yes. But if he wants to emphasize that 02:34 point, we're happy to stipulate to it.

02:34 JUDGE PORTEOUS: If they'll stipulated to it, I'm satisfied.

JUDGE LAKE: Well, it's in the record. Whether you stipulate to it or not, it's in the records of this proceeding.

02:34 JUDGE PORTEOUS: Well, what I'm saying, Judge, is the only portion that's not is that all those concerns are no more different to me than they are any other defendant that the United States Justice Department chooses to proceed against.

MR. WOODS: Your Honor, maybe counsel from the DOJ can 02:34 answer that.

MR. AINSWORTH: Peter Ainsworth on behalf of the Department.

Mr. Keeney has written a letter that's been signed by Mr. Keeney. Obviously, this Committee can take 02:35 judicial notice of the fact that he has not been charged criminally. And some -- and the letter states some of the considerations.

To go beyond that, in our view, is to get into the deliberative process of the executive branch, which is, 02:35 quite frankly, irrelevant, I think, to this Committee's proceeding.

JUDGE PORTEOUS: Counsel has indicated he's prepared to stipulate that these burdens are no different to me than any other defendant.

02:35 Is that not what I just heard you say, Mr. Woods?

02:35 CHIEF JUDGE JONES: Well, he can't -- Mr. Woods is not in a position to make that stipulation because Mr. Woods is not the Justice Department at this point in time. So --

MR. WOODS: I will was stipulate to the paragraph 02:35 that's referenced in the complaint --

CHIEF JUDGE JONES: In the complaint.

MR. WOODS: -- not DOJ's reasons.

JUDGE LAKE: The record is what it is.

CHIEF JUDGE JONES: It is what it is.

02:35 JUDGE LAKE: We don't need the best evidence of that.

CHIEF JUDGE JONES: That's fine.

JUDGE PORTEOUS: Well, I just wanted to make it clear that I intended to call him since you had said they are the representative of the Justice Department.

02:36 CHIEF JUDGE JONES: And they -- at this time we would invite you, Judge Porteous, to make a statement; but I think the complainant also has the opportunity to make a statement if they so choose.

MR. AINSWORTH: No, your Honors, we don't choose to. 02:36 Mr. Woods and everyone has done an adequate job presenting this.

CHIEF JUDGE JONES: Let me just make a little prefatory remark, Judge Porteous, because, of course, this is a very difficult matter that we're dealing with. It's very 02:36 unpleasant to us.

02:36 If the -- if we conclude that the allegations stated in this charging document are correct, it sullies the reputation of the entire federal judiciary. And the last thing the judiciary needs right now is for one of its members to be 02:36 held up as a person who has abused his power and abused the -- abused one of our federal courts, being the bankruptcy court.

What will happen from here is that you're entitled to make your statement; and then the lawyers for the Committee and we will go back and we will prepare a report to 02:37 the Judicial Council of the Fifth Circuit. We hope to do that in an extremely short period of time.

The chickens have come home to roost. We have put the -- we have gotten the evidence out, and we -- we plan to make a report well before the end of the year.

02:37 When we do that, under the rules, you will have ten days to respond. There will be no continuance granted.

JUDGE PORTEOUS: I understand.

CHIEF JUDGE JONES: None. And, therefore, we will intend to move on that very quickly. And if we must refer the 02:37 matter up to the Judicial Conference of the United States in Washington, I can pretty well guarantee you that it is going to be on a very expedited basis up there, as well.

So, what I'm saying is that this is your last, best hope to try to persuade us that there are not very, very 02:37 serious offenses of ethics and, arguably, of the law that have

been committed.

JUDGE PORTEOUS: Judge, the only comments I now have, since I've been on cross and answered all the questions, I think, you had concerns whether I was still gambling. The answer is a definitive no. And I only bring it up because you asked. I'm the only one that can answer that question.

I think you know now, from reading Dr. Gabbard's reports and from the reports of my treating doctors, that I have quit drinking, both of which were just horrible addictions. I don't look for any favoritism. You had inquired, and I wanted you to know that both of those things no longer exist, the second one probably brought about because of the death of my wife, who -- I should have done it a long time ago. But one thing about alcoholism that I've learned is everybody has got a reason why they're not an alcoholic. Clearly, I was wrong. So, I understand that.

With respect to the conduct that was committed, all I can say is I understand what it looks like. I am also -- I am absolutely giving -- and I understand the appearance of impropriety. But absolutely no unfair or improper judgment was rendered by me, no suggestion that it's ever been rendered by me.

I have a lot of friends. I've gone to lunches with these people, a lot of them. Maybe, in hindsight, I shouldn't have; but I didn't consider it, to be perfectly

candid, an attempt to buy my decisions or in any way to influence my decisions.

In hindsight, if I had it to do all over again, hindsight is always 20/20, Judge. We always do better the second time around.

So, I don't really have any further statements, your Honor. I think you all conducted the hearing, and you have the evidence. Thank you.

CHIEF JUDGE JONES: May I ask why you've offered to resign twice before?

JUDGE PORTEOUS: I offered -- I never offered to resign. I considered it. It came to us, as I understand it, from Mr. Woods. Or from you. I'm not sure where it came.

CHIEF JUDGE JONES: Well --

JUDGE PORTEOUS: I certainly considered it.

CHIEF JUDGE JONES: Let met put it this way. One of the first letters we received from your counsel in May, from Mr. Schonekas, was that you would accept a public reprimand and would agree to resign if you were certified as disabled.

JUDGE PORTEOUS: That's correct, ma'am.

CHIEF JUDGE JONES: So, that would suggest some level of knowledge that what you had done was of very serious magnitude.

JUDGE PORTEOUS: Well, ma'am, that just suggested that as a resolution to this matter I would accept a public

02:40 reprimand and take disability retirement. I mean, it's --

CHIEF JUDGE JONES: Well, I understand. I'd accept a public reprimand and take disability retirement, too, especially if it I wasn't disabled.

02:41 But I guess what I'm saying is that it seems to me that there was -- you know, you've been -- you've realized the gravity of this matter from back in May when the charge was filed, because nobody would offer to resign unless they knew that they were potentially guilty of some very serious

02:41 infractions.

So, it just struck me as -- now, the business last week, where your attorney resigned, also seems to me very difficult to justify from a standpoint of fair dealing with this Committee, because it appeared to us that you clearly

02:41 discussed resignation with your attorney and that you had only two conditions on it at that point in time, which seemed to us reasonable and acceptable. Then you thought about it for a weekend, and you decided to prolong things little longer.

JUDGE PORTEOUS: No, I didn't decide to prolong

02:41 things, ma'am. I decided that -- that I didn't -- that all of my actions may appear -- appear wrong, that they're not, that -- that nothing herein suggests that -- maybe I have breached a canon now; but I've not violated the laws of this country, and I've not committed any crime. I'm certainly not

02:42 even being alleged to have committed bribery.

02:42 CHIEF JUDGE JONES: No, but you may be getting your friends into a lot of trouble the further this goes.

JUDGE PORTEOUS: Well, ma'am, I don't know that. But again, these are all issues that I guess I've looked at and 02:42 decided to go forward.

I don't think -- I mean, the resolution sounds like an awful compromise, which in most litigation it isn't even part of a record. It just didn't come to pass in this matter. That's the only answer I can give you.

02:42 CHIEF JUDGE JONES: Well, all right. I mean, you -- as somebody said, you do what you think you have to do and we'll do what we think we have to do.

But I -- but I do hope that you will consider in the recesses of your conscience that it is not a good thing for 02:43 the judiciary that -- if these charges bear out, amounting to essentially bankruptcy fraud, repeated filing of false statements under oath, and accepting gratuities from lawyers who are appearing before you in very significant cases, whether they're your best friends or not, that that isn't going to cast 02:43 dirt on all the rest of us.

And it's going to cast a long shadow for a long time. And, you know, we will live with that; and we will all have to move forward. But it is -- it is no fun to be involved in a proceeding where all of our reputations are going to be 02:43 tarnished.

So, with that, I guess we'll be dismissed.

JUDGE PORTEOUS: I take it the Court is not going to take, your Honor --

THE COURT REPORTER: I'm sorry?

JUDGE PORTEOUS: Post hearing memos?

JUDGE BENAVIDES: No.

CHIEF JUDGE JONES: I don't see the point in it.

JUDGE PORTEOUS: Okay.

CHIEF JUDGE JONES: Thank you.

(End of requested proceedings)

* * * * *

COURT REPORTER'S CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause.

Date: November 2, 2007

Cheryll K. Barron, CSR, CMR, FCRR
Official Court Reporter

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WRITER'S DIRECT DIAL FAX NUMBER

February 18, 1997

Don C. Gardner, Esq.
c/o Thomas G. Wilkinson, Esq.
320 Huey P. Long Ave.
Gretna, LA 70053

Re: Lifemark Hospitals of Louisiana, Inc.
v. Liljeberg Enterprises, Inc.
Our File: 203-960142

Dear Don:

Lifemark is willing to offer you a fee for assisting with the Liljeberg case as follows:

1. Retainer of $100,000 payable upon enrollment of counsel of record.

2. A fee of $200,000 if after trial there is a judgment allowing Lifemark to terminate the pharmacy agreement with no liability for future damages.

The following sums would be added to the above retainer and fee based upon the level of damages contained in a judgment, provided that the judgment allows Lifemark to terminate the pharmacy agreement with no liability for future damages:

3. A fee $100,000 if the damages for past actions are less than $15 million in principal. (Total fee of $400,000)

4. A fee of $200,000 if the damages are less than $5 million in principal. (Total fee of $500,000)

5. A fee of $300,000 if the damages are zero. (Total fee of $600,000)

Further, Lifemark will pay you $100,000 as a severance fee in the event that Judge Porteous withdraws or if the case settles prior to trial. This would result in a total of $200,000 ($100,000 retainer plus $100,000) if the case settles or if Judge Porteous ceases to be our judge. This is to satisfy your concern that involvement in

[redacted]

HP Exhibit 35(b)

SC00397

this time consuming case will harm your present practice. As you explained, if the trial is continued beyond June because Judge Porteous withdraws and gives the case to a new judge, you will not be able to remain involved. Also, Lifemark wants to give you some incentive to be involved, even if the case settles.

To reiterate, Lifemark is willing to offer you an outcome determinative fee. You would receive the following fees based upon the results described:

1. $200,000 if Judge Porteous withdraws, or if the case settles prior to trial ($100,000 retainer plus $100,000 severance).

2. $300,000. This would be the minimum payable for any result that allows Lifemark to terminate the pharmacy agreement with no liability for future damages.

3. $400,000 for a judgment or other result allowing Lifemark to terminate the contract with no liability for future damages, and with damages for past actions in an amount less than $15 million in principal.

4. $500,000. This sum would be payable if the damages are less than $5 million in principal, and Lifemark is able to terminate the contract as described above.

5. $600,000. This fee would be payable if the trial resulted in a judgment allowing Lifemark to terminate the contract and damages are zero.

I look forward to meeting with you later this week.

Very truly yours,

Joseph N. Mole

JNM:kcb

cc: Gary K. Ruff, Esq.

12:06 last?

MR. WOODS: Ms. Danos? Just very few questions.

JUDGE LAKE: Okay. Please come forward, ma'am, to be sworn as a witness.

12:07 Would you please raise your right hand to be sworn, ma'am?

Do you solemnly swear that the testimony that you shall give in the proceeding will be the truth, the whole truth, and nothing but the truth, so help you God?

12:07 THE WITNESS: I do.

JUDGE BENAVIDES: And she is also testifying with immunity --

MR. WOODS: She is, your Honor.

JUDGE BENAVIDES: -- and she has the understanding

12:07 that she is only -- that she is subject to perjury charges?

MR. WOODS: I was about to get into that, your Honor, yes.

RHONDA F. DANOS, DULY SWORN, TESTIFIED:

DIRECT EXAMINATION

12:07 BY MR. WOODS:

Q. Ms. Danos, would you state your name for the record, please?

Have a seat.

A. Rhonda F. Danos.

12:07 Q. All right. I'm going to show you what has been previously

admitted into evidence as Exhibit Number 40, which is an application and an order for immunity for you.

You've been provided a copy of that prior to this morning. Is that correct?

A. I think my attorney has that.

Q. Okay. And you understand that anything you say here cannot be used against you in any proceeding unless you state something that is false or untrue and then you could be prosecuted for false statements or perjury?

A. Yes, sir.

Q. And your attorney, Pat Fanning, is present in the courtroom?

A. Yes, sir, he is.

Q. Okay. Where do you presently work?

A. For Judge G. Thomas Porteous, Jr.

Q. And how long have you worked for him in the federal system?

A. In the federal system, 13 years.

Q. And in the state system, when did you start working for him?

A. Ten years prior.

Q. So, 23 years you've been with Judge Porteous?

A. I believe so.

Q. Okay. Do you have -- or in the past, prior to the filing of the bankruptcy, did you pay Judge Porteous' bills for him?

A. Yes, sir, I did.

12:08 Q. And why did you do that?
A. Well, lots -- sometimes he just didn't bring a check into the office and he -- I just did it as a convenience.
Q. But he brought the bills into the office. Is that correct?
12:09 A. Yes.
Q. But he didn't bring a check, and then you wrote checks?
A. Yes, I did.
Q. And you got reimbursement for some of the checks from Judge Porteous. Is that correct?
12:09 A. Yes.
Q. And you tried to keep count of it in your ledger?
A. Yes, I did.
Q. All right. Did you have -- let me show you what has been already in evidence as Exhibit Number 29, Bates stamped 619.
12:09 If you'll look at that for a second, and then I'm going to put it up on the screen.
A. Okay.
Q. This is out of Exhibit 29, Bates stamped 619. This appears to be two copies of the same check. Is that your check?
12:09 A. Yes, sir, it is.
Q. And you make a notation on it on March 23rd, '01, in the amount of 1,088.41, that it's for Carmella Porteous?
A. Yes, sir.
Q. Okay. Who asked you to write that check?
12:10 A. I'm assuming that the judge did.

12:10 Q. Okay. In fact, you've never talked with Carmella Porteous about paying her bills, did you?
A. No, not really. I mean, she would send her -- sometimes she would send bills that she wrote checks for into the office, and I would just post -- put the postage on them and mail them for her.
Q. All right. That the judge brought in to mail?
A. Yes, sir.
Q. But you never talked to Carmella about paying her bills, did you?
A. I don't recall. I mean, it was just like I said, the ones that she sent in. And sometimes she would ask me, "Did Tom give you the -- give you the bills I sent?"
Q. I want to show you one further exhibit, which is Exhibit Number 90. And I'll put this on the Elmo, also. And disregard that "RD6" because that was the number in the grand jury when you were testifying, Rhonda Danos Exhibit Number 6, at your first grand jury appearance.
This is a check dated -- let me turn it this way -- this is a check dated April 30th, '01, to Beau Rivage?
A. Yes, sir.
Q. And you've got a notation there that it's for Judge Porteous?
A. Yes.
Q. Do you recall the circumstances of why you paid Beau Rivage

12:11 a thousand dollars for Judge Porteous?
A. I was probably going over there. He probably had a marker and just asked, since I was going there, if I would pay them.
Q. And what do you mean by "he had a marker"?
12:11 A. Well, for me to pay -- to go and pay Beau Rivage, he must have played there and got a marker from where they had advanced him a thousand dollars.
Q. So, he owed a thousand dollars to Beau Rivage as of April the 30th of '01?
12:12 A. If that's the date on it, yes.
Q. Okay. And by paying that and making that notation, that paid off his debt?
A. Yes, sir.
Q. Okay. Likewise, in the check I'd shown you before, this
12:12 one paying off Fleet Credit Card, that was on March 23rd, five days before the bankruptcy?
A. I don't know the exact date that he filed bankruptcy.
Q. Okay.
A. I know that it was in March of '01, but I don't know the
12:12 exact date.
Q. Okay. Do you recall, that bill of 1,088.41, did that pay off the balance of the credit card?
A. Oh, I really don't know. I don't recall.
Q. Okay. Do you recall why you would have picked an unusual
12:12 figure like 1,088.41 if it were not the balance owing?

12:12 A. I would assume it probably was, but I can't really tell you for sure. I don't recall.
Q. And over the years, you paid Judge Porteous' bills up until the bankruptcy; and then it -- then you paid less of the bills
12:13 after the bankruptcy. Is that your recollection?
A. The ones that I had at the office, I paid.
Q. The records will reflect that you spent a lot less money after '01 when he filed bankruptcy than you did previous years in paying his bills. Is that correct?
12:13 A. That's correct.
Q. And you were reimbursed for some of the amount, but it didn't quite meet -- match. Is that correct?
A. I don't understand. What do you mean "for some of them"?
Q. Well, did you keep in your ledger the amount of
12:13 reimbursements that Judge Porteous paid you by check?
A. Yes, I did.
Q. And you would match those against the checks you had written for Judge Porteous?
A. Correct.
12:13 Q. Did you ever balance them out yourself?
A. You mean like if he would have -- wouldn't have given me enough money to pay one of them?
Q. Yes.
A. If that happened, I don't think it would have happened a
12:14 lot of times.

12:14 Q. Okay. You just didn't -- you didn't do it. Is that correct?

A. Well, normally, I -- normally, it would be the full amount; and I would just go ahead and record the check number and how much it was for.

Q. Ms. Danos, if Judge Porteous leaves the bench, you would be without a job. Is that correct?

A. Unless they would decide to keep me. I mean, they have kept some of the secretaries prior to when judges retire and something.

Q. Okay.

MR. WOODS: Thank you. I pass the witness, your Honor.

JUDGE BENAVIDES: Judge Porteous?

JUDGE PORTEOUS: Just one or two. I'll be brief.

CROSS-EXAMINATION

BY JUDGE PORTEOUS:

Q. Rhonda, in the entire time, is it an accurate statement whatever you wrote on my behalf you got paid?

A. Yes, sir.

Q. Is there any doubt that I still owe you $7,000 or something?

A. No, sir.

Q. Did you ever pay a -- did I ask you to pay my bill and not reimburse you?

12:15 A. No.

JUDGE PORTEOUS: Okay. I don't have any questions.

JUDGE BENAVIDES: I have some questions along that line.

12:15 Would he pay you in anything other than a check?

THE WITNESS: Sometimes.

JUDGE BENAVIDES: Was that frequently or infrequently?

THE WITNESS: I wouldn't say it was frequently, no.

JUDGE BENAVIDES: Would you say that that would be a 12:15 small amount or large amount over time?

THE WITNESS: Really, it's kind of hard to -- hard to -- sometimes he would bring a --

JUDGE BENAVIDES: Do you think it would be --

THE WITNESS: -- he would bring a check to --

12:15 JUDGE BENAVIDES: Do you think that more -- that, for instance, in terms of the times that you wrote checks for him and made notations that it was for one of his accounts or whatever, that it would be -- that the cash payments that he might have made to you for -- for what he owed you exceeded a 12:16 thousand dollars in cash, that you received from him in cash?

THE WITNESS: Very few times I remember ever getting --

JUDGE BENAVIDES: Okay.

THE WITNESS: -- cash over a thousand.

12:16 JUDGE BENAVIDES: Okay. Wouldn't have -- so, you

12:16 wouldn't have exceeded a thousand or 2,000 dollars?

THE WITNESS: I think only one time that I can recall I got -- it might have been, like, $2100. And that was -- after looking through things for this investigation, I recall 12:16 finding something where I think it was payment for two markers that might have been on a credit card, that he evidently must have won. So, rather than him keeping the money, he gave it to me to hold so that when the bills came in I would have the money. So, I just put it in my checking account because I knew 12:16 the bills would be coming in shortly.

JUDGE BENAVIDES: But in terms of reimbursing you for the checks that you wrote for him or at his request, for his account or for his wife's account, if that occurred, that -- over that period of time that you did it, it wouldn't have been 12:17 more than that, $2100 or $3,000 of the payments?

THE WITNESS: At one time?

JUDGE BENAVIDES: No. Over the period of time.

JUDGE LAKE: Total.

JUDGE BENAVIDES: Other than cash -- other than 12:17 checks -- other than checks to reimburse you for what you paid for --

THE WITNESS: Okay.

JUDGE BENAVIDES: -- where we're just talking about cash, you've reflected one time that he may have given you 12:17 $2100 in cash?

12:17 THE WITNESS: Right. I think that was --

JUDGE BENAVIDES: And other than that $2100, do you recall any other cash payments to reimburse you for what you had paid for him?

12:17 THE WITNESS: Oh, he -- at times he'd give me cash, but it wasn't thousands of dollars.

JUDGE BENAVIDES: All right. Over that period of time, would it have reached a thousand dollars?

THE WITNESS: Which period are you talking about? The 12:17 entire time I've been working for him?

JUDGE BENAVIDES: Yes, to reimburse you.

THE WITNESS: To reimburse me during all the years I worked for him, if he would have given me more than a thousand dollars in cash?

12:18 JUDGE BENAVIDES: Yes.

THE WITNESS: Oh, I would think so.

JUDGE BENAVIDES: You think over 5,000 -- you seem -- you've indicated that he would pay you back in a check and for -- and that you would deposit those in the account --

12:18 THE WITNESS: Uh-huh.

JUDGE BENAVIDES: -- in your account, right?

THE WITNESS: Yes, sir.

JUDGE BENAVIDES: So, now you're saying that he also paid you -- sometimes paid you back in cash?

12:18 THE WITNESS: Yes, sir.

12:18 JUDGE BENAVIDES: And you remember one time that it was $2100?

THE WITNESS: Yes, sir.

JUDGE BENAVIDES: And, then, you also said a little 12:18 while ago that it was infrequent or very few occasions that he would pay you in cash for what he owed you?

THE WITNESS: Well, it was a minimal bill. If it was only, like, a few hundred dollars, maybe he would give me -- he would give me cash.

12:18 JUDGE BENAVIDES: I have no further questions.

CHIEF JUDGE JONES: Ms. Danos, did you see the summaries that the FBI agent prepared based on your bank records?

THE WITNESS: Yes, I did.

12:19 CHIEF JUDGE JONES: Of your income and your expenditures?

THE WITNESS: Yes, ma'am.

CHIEF JUDGE JONES: Now, remembering that you are now testifying under immunity, as opposed to when you were before 12:19 the grand jury, could you explain to us where these extraordinary amounts of cash, 40,000 or 30,000 a year, were coming from?

THE WITNESS: Well, as I recall in what I read on the transcripts, I think they said, like, 110,000. After I had 12:19 gone before the grand jury, I went through my check register

12:19 for '99 and listed everything. And I think I had a total of over 75,000 and -- but as I recall, that was without -- they had stated I had cleared, like, 29. So, 75 and 29, is that 104,000?

12:19 But I had it broken down into how much I had paid for the judge.

At that time, my sons didn't have a checking account; and, so, they would give me the cash to pay for their, like, car notes, their car insurance, their student loans,

12:20 which I'm sure they must have given --

CHIEF JUDGE JONES: Did they have regular income?

THE WITNESS: Yes.

CHIEF JUDGE JONES: So, basically -- and you didn't remember this when you were testifying for the grand jury?

12:20 THE WITNESS: Well, no, ma'am. It was back in '99, and I just forgot that I had -- was paying all of Gordon's and --

CHIEF JUDGE JONES: I'm a mother, and I don't forget when I pay -- you know, if I was taking in my sons' income and

12:20 paying out their checks -- or allowing them to use my account, I certainly would not have forgotten that.

THE WITNESS: Well, it was eight years ago; and I just -- I didn't think of it. They --

CHIEF JUDGE JONES: Well, when you testified, it was

12:20 only seven years ago.

12:20 THE WITNESS: Well, seven years ago.

CHIEF JUDGE JONES: But, basically, the amount of cash deposits that they list for you for the year 2000 is, like, 13, 15 -- well, it's a total of 20 some thousand dollars, 13,000 of 12:21 which are -- these are deposits from Judge Porteous -- but 11,000 in cash for one year and something like 50,000 for another year.

THE WITNESS: In cash just for him?

CHIEF JUDGE JONES: No. This is in 1999, total cash. 12:21 So, that's a lot of money.

THE WITNESS: Well, I don't have the breakdown in --

CHIEF JUDGE JONES: Your sons must have been pretty well paid?

THE WITNESS: I don't have the breakdown in front of 12:21 me, but they gave me a copy.

CHIEF JUDGE JONES: So, you -- and you looked that over and compared it with your records?

THE WITNESS: Yes, ma'am.

CHIEF JUDGE JONES: Well, I'm just -- you know, so, 12:21 how much were your sons making at this time, now that you recall?

THE WITNESS: I have no idea; but like I said, I think my attorney has the copy of it.

CHIEF JUDGE JONES: Did you get any money from any 12:22 lawyers, in cash?

12:22 THE WITNESS: No. No, ma'am.
CHIEF JUDGE JONES: None ever?
THE WITNESS: Well, I mean, one of them might have bought, like, raffle tickets or something that his kids had or
12:22 sponsored them for something that they were going to, but --
CHIEF JUDGE JONES: Never got any money from Jake Amato or Mr. Creely or Mr. Levenson or Mr. Gardner?
THE WITNESS: In cash?
CHIEF JUDGE JONES: Yes, ma'am.
12:22 THE WITNESS: If it would have been, it would have been something, like, for when he was the president of St. Clement's Men's Club. I used to do the golf tournament for him and get hole sponsors. So, I mean, I'm sure some of them might have given me cash for it, or, like I said, if it was
12:22 something for the kids, if it was a sponsorship.
CHIEF JUDGE JONES: You didn't get money -- well, it lists here that you got money from Mr. Levenson once.
THE WITNESS: Well, I -- at one time I was doing outside sales for a travel agency, and Lenny -- Lenny Levenson
12:23 was one of my clients. So, he may have reimbursed me for a ticket in either cash or a check that -- you do see deposits in my account relative to that.
CHIEF JUDGE JONES: That's all I have. Is there anything else you think you need to tell us about this cash?
12:23 THE WITNESS: Well, if -- I mean, like I said, my

12:23 attorney has the breakdown, which I went ahead and -- for that entire year. Now, insofar as whether or not -- how much was cash and how much were checks, I mean, that's not indicated in my checkbook. I mean, I really don't remember the exact amount
12:23 I would have received in cash.

CHIEF JUDGE JONES: Well, it reminds me of a famous musical called "Fiorello" about a little tin box, because basically your net salary is 29,000 a year and then you're having expenditures of 70, 80, 90 thousand per year. So,
12:24 there's something a little bit out of kilter. So, you can -- and given that Judge Porteous also has a similar disparity, we, you know --

THE WITNESS: Well, that's why I went and took check by check as to who I wrote them for.

12:24 CHIEF JUDGE JONES: Where did all the money come from?

THE WITNESS: Well, I was reimbursed for everything -- everything I wrote. And like I said, if they would provide you with that copy that I made, it shows exactly how much -- you know, how much I wrote for other people. Now, there was --
12:24 JUDGE BENAVIDES: The checks that you received from Judge Porteous, would you always deposit in your account?

THE WITNESS: Yes.

JUDGE BENAVIDES: So, if you were, in fact, balanced out --

12:24 THE WITNESS: Uh-huh.

12:24 JUDGE BENAVIDES: -- and your bank records don't reflect the checks from Judge Porteous to offset the amount that you claimed that you -- where you wrote checks for him, then that difference was -- would have been made up in cash,
12:25 right?

THE WITNESS: Everything I wrote for him, he reimbursed me for. I -- whether or not they were all in -- and I can't really remember back in -- from 1999 how much was cash, how much was --

12:25 JUDGE BENAVIDES: Well, if there was thousands of dollars of discrepancy between the amounts that you deposited in your account from checks from Judge -- drawn from Judge Porteous, if there's a thousand -- if there's thousands of dollars of difference between how much of his money you
12:25 deposited, which was lower than the checks that you wrote for Judge Porteous, then you're saying that any of that discrepancy was made up in cash payments?

THE WITNESS: Well, whether or not he paid it in cash or check, I don't really -- I couldn't tell you how much. But
12:25 everything I wrote for him, he reimbursed me for, every single, solitary thing.

CHIEF JUDGE JONES: Well, this is it here. In 1999, this table reflects you receiving over 19,000 from Judge Porteous.

12:26 THE WITNESS: Okay.

12:26 CHIEF JUDGE JONES: And it shows you making over 26,000 in payments, nearly $10,000 more paid out on his behalf. Now, if we do simple math and he repaid you -- that's why I asked you if --

12:26 THE WITNESS: That is not accounted for in my checkbook?

CHIEF JUDGE JONES: Yes, ma'am, that's correct.

THE WITNESS: Well, that's not what I came up with.

CHIEF JUDGE JONES: Well, why didn't you tell the

12:26 grand jury that?

THE WITNESS: Well, I wasn't aware that there was a discrepancy like that.

CHIEF JUDGE JONES: You went -- you went before the grand jury two times.

12:26 THE WITNESS: He said there was -- he said something about $10,000; but I didn't realize that he meant that I paid $10,000 for Judge Porteous, because I didn't.

CHIEF JUDGE JONES: Well, then it had to come from cash.

12:26 THE WITNESS: That he gave me 10,000 in cash?

CHIEF JUDGE JONES: That's what he would --

THE WITNESS: To make up for what it was -- for what was paid?

CHIEF JUDGE JONES: That's what one would have to draw

12:27 the conclusion if you ended up even with him.

12:27 THE WITNESS: Well, then, he must have given me that much in cash. But, I mean, I don't recall that much cash.

CHIEF JUDGE JONES: But just a few minutes ago you could hardly recall receiving any cash. And this is --

12:27 THE WITNESS: Well, I don't. Because it was so long ago, I really don't remember how much he would have given me in '99 --

CHIEF JUDGE JONES: Are you still doing that today?

THE WITNESS: I'm sorry, ma'am?

12:27 CHIEF JUDGE JONES: Are you still doing that today for Judge Porteous?

THE WITNESS: Paying his bills?

CHIEF JUDGE JONES: Yes, ma'am.

THE WITNESS: No, ma'am.

12:27 CHIEF JUDGE JONES: None?

THE WITNESS: If I do, it's like maybe for the linen account or if I go pick up stamps or something like that. It's all -- it would all be minimal.

JUDGE BENAVIDES: And in the year 2000, if your

12:27 records from your check -- checking account and Judge Porteous' accounts reflect that you paid bills for him in excess of the amount of checks that he gave you, that would also be because, if you're even, that he made it up in cash. Is that correct?

THE WITNESS: I guess it would have to be if it

12:27 doesn't show in checks.

12:28 JUDGE BENAVIDES: All right.

THE WITNESS: But everything -- like I said, everything I wrote for him, I have it all detailed as to, you know, the check numbers, how much the checks were, and how much 12:28 the total deposit was.

JUDGE BENAVIDES: But you didn't detail any cash payments that he may have made?

THE WITNESS: No, that you could -- I don't know if the bank would still have that.

12:28 JUDGE BENAVIDES: So, then, how would you know whether he was caught up or not?

THE WITNESS: Caught up in what he -- what he owed me?

JUDGE BENAVIDES: What he owed you.

THE WITNESS: Because, normally, he would pay me what 12:28 the checks were that I wrote.

CHIEF JUDGE JONES: Except when he didn't?

THE WITNESS: But he did.

CHIEF JUDGE JONES: Well, what we're telling you is that they don't correlate by $10,000.

12:28 THE WITNESS: What you're asking me -- what you're saying is that whether or not he paid everything to me in -- in checks that I have in my account?

JUDGE LAKE: No. Listen. You said that every expenditure that you paid for Judge Porteous in writing a 12:29 check, he reimbursed you for. Is that your testimony?

12:29 THE WITNESS: Yes. I mean, there may have been, like --

JUDGE LAKE: Listen to my question. I didn't ask you to ramble. These questions can be answered by a "yes" or "no."

12:29 I'll remind you that you're under oath and if you give untrue answers you're going to be prosecuted for perjury. Now listen carefully.

THE WITNESS: I understand.

JUDGE LAKE: Is it your testimony that, of all the

12:29 checks you wrote on Judge Porteous' behalf, you were reimbursed by him?

THE WITNESS: Yes.

JUDGE LAKE: And part of that reimbursement was in the form of checks written by Judge Porteous to you. Is that

12:29 correct?

THE WITNESS: Yes.

JUDGE LAKE: All right. Therefore, necessarily, the balance of the funds you wrote, the checks you wrote for him, would have been paid by Judge Porteous to you in cash, "yes" or

12:29 "no"?

THE WITNESS: Yes.

JUDGE LAKE: And that would be true for the years 1999 and 2000. Is that correct?

THE WITNESS: Yes, sir.

12:30 JUDGE LAKE: Thank you.

12:30 CHIEF JUDGE JONES: Let me just ask you a couple of other questions. Are you -- is Judge Porteous still gambling?

THE WITNESS: Not that I know of.

CHIEF JUDGE JONES: Well, you know him very well, don't you?

12:30 THE WITNESS: Yes.

CHIEF JUDGE JONES: And back before the bankruptcy, it looks as if he was gambling almost every weekend or a couple of times a month or something like that.

12:30 THE WITNESS: Well, I mean, he did gamble. How often --

CHIEF JUDGE JONES: Well, he gambled so much that he got into bankruptcy, right? You know that?

THE WITNESS: Well, I don't know if that's what caused 12:30 him to go into bankruptcy.

CHIEF JUDGE JONES: Well, let's -- please don't play games. All right?

THE WITNESS: I'm not, ma'am.

CHIEF JUDGE JONES: All right.

12:30 JUDGE BENAVIDES: You would go down and take checks and pay off -- you paid off several casinos, you paid markers?

THE WITNESS: But I don't know if that's what caused him to go into --

CHIEF JUDGE JONES: He owed $192,000 in credit card 12:30 debt, most of which was from gambling. Did you know that?

12:30 THE WITNESS: I didn't know anything about the bankruptcy.

CHIEF JUDGE JONES: All right. Fine. You didn't know anything. My question is, is he gambling as much today as he

12:31 was back then?

THE WITNESS: Not that I know of.

CHIEF JUDGE JONES: Thank you.

MR. WOODS: Your Honor, I have just one small area to cover just for a couple of minutes.

12:31 **REDIRECT EXAMINATION**

BY MR. WOODS:

Q. Ms. Danos, you testified in grand jury about an event in the summer of '99, May, June of '99, when you went to the law office of Creely & Amato to pick up an envelope at the

12:31 instruction of Judge Porteous?

A. Yes, sir.

Q. And you recalled an incident where the secretary to Creely & Amato brought an envelope to you?

A. Yes.

12:31 Q. You testified in grand jury that you asked what it was about and then she rolled her eyes and you said, "I don't want to know anything about it."

A. That's right.

Q. Is that accurate testimony?

12:31 A. I asked -- I asked something like, "What's this?"

12:31 And she rolled her eyes back; and I said, "Never mind. I don't want to know."

Q. All right. What did you do with the envelope then?

A. Brought it back to the office and gave it to him.

12:31 Q. Would you describe the envelope as being thick with a lot of documents or was it very thin with just one document in it or how do you recall?

A. I don't recall it being very thick, you know.

Q. Okay. And did you open it?

12:32 A. No.

Q. What did you do with it?

A. Just brought it back to the office.

Q. And what did you do with it after you brought it to the office?

12:32 A. Gave it to him.

Q. "To him" being Judge Porteous?

A. I don't recall if he was there or if I just put it on the desk, but I brought it back to the office.

Q. Okay. And that was an errand you ran at the instructions

12:32 of Judge Porteous, to Creely & Amato's law office?

A. Yes.

Q. Thank you. And you do recall the date being May or June, '99?

A. I really don't remember when it was.

12:32 Q. Okay. In your grand jury testimony, you recalled that

12:32 being the period of time.
A. I remember him -- asking him -- I said it was within five years.
Q. Did you do that on more than one occasion, go to their
12:32 office to pick up envelopes?
A. I had one of the attorneys over there doing work for me that I had to go and pick stuff up from. And I'm not going to say I've never, ever gone to pick up anything from there, because I was good friends with the secretary over there. And,
12:33 like I said, I had Gary Raphael doing some work for my family; and I had gone to pick up things from him.
Q. All right. And then there was one other example. We questioned you before about your recollection of a lunch on April the 25th of 2000 at Commander's Palace, the day before
12:33 the judgment was entered in the Liljeberg case on April 26, 2000.
A. I remember.
Q. And you didn't have a recollection.
Have you thought about that? Do you have a
12:33 recollection of having lunch on April 25th with Jake Amato at Commander's Palace?
A. I don't remember ever -- as I recall, Mr. Petalas asked me about me going to lunch with Jake, just he and I. I don't recall of ever going to lunch just Jake and I. The Commander's
12:34 Palace lunch, I thought maybe they had confused with his son,

because his son, before he left to go to New York, had taken Debbie and I to lunch at Commander's Palace.

Q. Do you recall getting a copy of the judgment and taking it to Jake Amato?

A. When -- everybody and his brother was waiting for -- waiting for that judgment. Okay? When it did -- when it did come out, I might be wrong, but I think Debbie had called and asked and I told Ricky, our courtroom deputy, that, you know, I didn't know if I could give it to her. And he replied that it was public record.

And if I recall, he -- either he or I called the judge. The judge was at lunch and said it was okay. All right? But Ricky told me it was public record.

JUDGE BENAVIDES: Now, let me ask you, when you say when you "got it," what do you mean when you "got it"?

THE WITNESS: Like, when he --

JUDGE BENAVIDES: Who did you receive it from?

THE WITNESS: Well, Ricky would have had to get a copy of it.

JUDGE BENAVIDES: All right. Who did Ricky receive it from?

THE WITNESS: Well, Ricky is the docket clerk; so, he would have, I guess --

CHIEF JUDGE JONES: I know, but don't you do Judge Porteous' typing?

12:35 THE WITNESS: He's got two law clerks that do the judgments and stuff.

CHIEF JUDGE JONES: So, they do -- well, it wasn't just a judgment. There was an opinion, wasn't there?

12:35 THE WITNESS: The law clerks --

CHIEF JUDGE JONES: Had to be findings and conclusions from a bench trial.

THE WITNESS: The law clerks do all of that.

CHIEF JUDGE JONES: So, you don't do any business

12:35 related typing for the judge?

THE WITNESS: Yes, I do; but the court related decisions and stuff, the law clerks do that.

BY MR. WOODS:

Q. At any rate, you delivered a copy of the opinion to Jake

12:36 Amato?

A. But I don't recall it being at Commander's Palace. If I'm not mistaken, I think Ricky and I had lunch with he and Debbie at Beef Connection on the West Bank. I don't remember it being Commander's Palace.

12:36 Q. At any rate, you delivered it to him?

A. Yes, I did.

Q. Okay.

MR. WOODS: Thank you.

No further questions.

12:36 JUDGE BENAVIDES: Did you deliver a copy to any other

attorney in that case?

THE WITNESS: No, sir.

MR. WOODS: I have no further questions, Ms. Danos.

JUDGE PORTEOUS: I have none.

CHIEF JUDGE JONES: All right. Well, then we'll stand in recess for lunch; and we'll recommence at 1:00 o'clock.

MR. WOODS: With that, we rest our case, your Honor.

(Sotto voce discussion at bench)

CHIEF JUDGE JONES: Okay. 1:15, how about that?

MR. WOODS: That's fine.

JUDGE PORTEOUS: Thank you, your Honor.

(Recess taken from 12:36 to 1:32 p.m.)

CHIEF JUDGE JONES: Be seated, please.

MR. WOODS: Your Honor, may it please the Court, there's several matters on the exhibit list that weren't identified as the records through the grand jury subpoena list for authenticity purposes. And I checked with Judge Porteous. He wants his medical records in, for example. We have no objection to that.

JUDGE PORTEOUS: Well, they're listed on the exhibit list.

MR. WOODS: Yes, they're on the exhibit list.

And just for purposes of the record, we would like everything on the exhibit list to be offered and admitted into evidence.

01:32 And Judge Porteous has some objections he wants to raise as to the grand jury testimony.

CHIEF JUDGE JONES: All right.

JUDGE LAKE: So, 1 through 96, you're offering?

01:33 MR. WOODS: Yes, your Honor.

JUDGE PORTEOUS: Only two objections in general. One is to the admissibility of those grand jury transcripts. People have come in and testified. Now, the ones that are stipulated to, obviously they'll go in, Mr. Levenson --

01:33 MR. WOODS: Forstall.

JUDGE PORTEOUS: -- Forstall, and Mr. Beaulieu, which is a 302. But the others, I would object to. They clearly are hearsay, and they were not subject to cross-examination.

And on 91 through 96, which are the summaries, I 01:33 would like the underlying documentation, the forms and stuff, made part of the record.

MR. WOODS: We have no objection to that. He's speaking of the exhibits against the wall, which are on a separate exhibit list that's been provided, called "Underlying 01:33 Documents." We have no objection to those being admitted into evidence.

JUDGE LAKE: Where do you intend to keep -- to lodge the universe of admitted documents for purposes of the record?

MR. WOODS: I presume it's going to have to be here, 01:33 in the Fifth Circuit somewhere, your Honor.

01:34 JUDGE LAKE: All right. Before you leave --

You have no objection to the underlying documents, do you?

CHIEF JUDGE JONES: No.

01:34 JUDGE BENAVIDES: No.

JUDGE LAKE: Before you leave, put the underlying documents and go -- and Exhibits 1 through 96 in a particular place and point out to the designated representative of the Special Committee where those will be kept.

01:34 MR. WOODS: Yes, your Honor. We will.

(Sotto voce discussion at bench)

JUDGE LAKE: Well, what was your -- did you want to respond on the grand jury?

MR. WOODS: Yes, your Honor. As to the grand jury

01:35 transcripts, specifically of those individuals who appeared here, Creely and Amato, Joseph Mole --

JUDGE BENAVIDES: Those are the only ones he's objecting to, I guess, the ones -- the ones where the -- where the witness appeared?

01:35 MR. WOODS: Right.

JUDGE PORTEOUS: And Danos.

MR. WOODS: And Danos, Rhonda Danos.

They were subject to cross-examination if he wished to get into the grand jury testimony, which he's had for

01:35 a lengthy amount of time to review and examine and could have

01:35 questioned the witness about statements made.

We think that this Committee is charged with gathering all the evidence it can to make a proper decision, and that's a part of the evidence that the Department of 01:35 Justice gathered and provided to this Committee under court order, disclosing the grand jury testimony to the Committee for its use. We feel that the Committee should be able to make use of that.

Judge Porteous had a right and an opportunity to 01:36 cross-examine witnesses from -- about their statements.

JUDGE BENAVIDES: And Judge Porteous is also aware of the grand jury testimony; in other words, before he cross-examined those witnesses, he was -- their grand jury testimony had been made available to him?

01:36 MR. WOODS: It has been made available to him. He has copies of all of it, and he's made several references during the course of this hearing to the testimony that he has reviewed.

CHIEF JUDGE JONES: And his counsel was actively 01:36 involved during the course of the grand jury?

MR. WOODS: His first counsel, Kyle Schonekas, appeared at grand jury and instructed Clyde -- Claude Lightfoot not to answer certain questions, and then a court order had to be obtained on the crime fraud exception to allow that 01:36 testimony.

So, Judge Porteous' counsel was on top of the grand jury investigation.

CHIEF JUDGE JONES: Judge Porteous, I think we can say that we are -- what the Committee is mostly looking at are charges that have been enumerated a couple of weeks ago in the charge document filed by the Special Committee and that were illuminated by the evidence that we've heard in the last few days.

We will not exclude the grand jury testimony, per se; however, I'm quite certain that the Committee report is going to be focusing principally on the evidence of the witnesses who have been here as subject to cross-examination and the ones that you've stipulated to. So, as a practical matter, I don't think it's something that you're -- that is going to come up and bite you from behind.

JUDGE PORTEOUS: Okay. I understand, your Honor.

MR. WOODS: And further, your Honor, the underlying exhibits that Judge Porteous wants into evidence, he has been provided with a separate exhibit list listing those underlying documents.

Pam informs me that she has a copy for the bench but did not provide those to the judge. We will give that to you.

JUDGE PORTEOUS: I don't recall that I got that supplemental. So, if I could just get another one -- I may

have. I'm not saying you didn't do it.

MR. WOODS: It was on Friday.

JUDGE PORTEOUS: If I could -- that was your original exhibit list?

MR. WOODS: The exhibit list that was sent to you Friday, that had your immunity order on it, there were two lists there, one for these documents and one for the underlying documents.

JUDGE PORTEOUS: And it said "Box"? I think that was --

MR. WOODS: Yes.

JUDGE PORTEOUS: Okay. Well, I received that.

Judge, I only have three witnesses; and I promise you they'll all be brief.

CHIEF JUDGE JONES: All right.

JUDGE PORTEOUS: Could we have Mr. Lightfoot come in?

(Witness being summoned to the stand)

JUDGE PORTEOUS: Mr. Lightfoot, I think has been granted immunity.

MR. WOODS: Yes.

JUDGE PORTEOUS: Is that still --

CHIEF JUDGE JONES: I'm sorry?

JUDGE PORTEOUS: Mr. Lightfoot, has been given immunity previously. I am assuming it's still applicable today. Is that right?

Due to publishing constraints, Exhibit # 48, a video file of F.B.I surveillance, is only available for Senators to review.

BKCY, CLOSED, MAG-2, MASTER, PROTO

U. S. District Court
Eastern District of Louisiana (New Orleans)
CIVIL DOCKET FOR CASE #: 2:93-cv-01794-GTP

In Re: Liljeberg Ent Inc, et al v.
Assigned to: Judge G. Thomas Porteous, Jr
Demand: $0
Member case: (View Member Case)
Case in other court: Bankruptcy Court, 93-10295
Cause: 28:0157 Motion for Withdrawal of Reference

Date Filed: 06/01/1993
Date Terminated: 12/06/2002
Jury Demand: None
Nature of Suit: 423 Bankruptcy Withdrawl
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
06/01/1993	1	MISCELLANEOUS BANKRUPTCY MATTER: motion to withdraw the reference of the debtor's mtn to assume executory contract by plaintiff Lifemark Hospitals (sw) (Entered: 06/02/1993)
06/02/1993	2	ORDERED that a hearing on mtn to w/draw the reference of debtor's mtn to assume executory contract will be held at 10:00 6/23/93; that any objection to said mtn shall be made in writing on or bfr 6/16/93 by Judge Marcel Livaudais (sw) (Entered: 06/02/1993)
06/16/1993	3	Motion by defendant Liljeberg Ent Inc and ORDER that hrg on mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] originally set for 6/23/93 is continued at 10:00 7/7/93; that any objection to said mtn shall be filed on or bfr 6-30-93 by Judge Livaudais Date Signed: 6/17/93 (sw) (Entered: 06/17/1993)
06/25/1993	4	Motion by plaintiff Lifemark Hospitals and ORDER that debtor's mtn to w/draw the reference of debtor's mtn to assume executory contract is continued at 10:00 8/4/93 by Judge Livaudais Date Signed: 6/29/93 (sw) (Entered: 06/29/1993)
06/30/1993	5	MINUTE ENTRY 6/29/93: ORDERED that mtns set for hrg at 10:00 7/7/93 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (sw) (Entered: 06/30/1993)
07/07/1993	6	Motion by plaintiff Lifemark Hospitals and ORDER for attorney John Flowers to appear pro hac vice by Judge Marcel Livaudais Date Signed: 7/8/93 (sw) (Entered: 07/09/1993)
07/19/1993	7	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file response to amd memo in opp to mtn to w/draw reference of mtn to

		assume by Judge Marcel Livaudais Date Signed: 7/20/93 (sw) Modified on 07/21/1993 (Entered: 07/21/1993)
07/20/1993	8	Reply by plaintiff Lifemark Hospitals to amd memo in opp to mtn to w/draw reference of mtn to assume (sw) (Entered: 07/21/1993)
07/20/1993	9	Motion by defendant Liljeberg Ent Inc and ORDER that hrg on mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] is cont until 10:00 8/18/93 by Judge Marcel Livaudais Date Signed: 7/21/93 (sw) Modified on 07/26/1993 (Entered: 07/22/1993)
08/10/1993	10	MINUTE ENTRY 8/10/93: ORDERED that mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] set for hrg at 10:00 8/18/93 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (sw) (Entered: 08/11/1993)
10/19/1993	11	ORDER AND REASONS: granting LHL's mtn for withdrawal of reference on the debtor's mtn to assume [1-1] ; Status Conf set 3:00 10/29/93 in chambers by Judge Marcel Livaudais (br) Modified on 10/20/1993 (Entered: 10/20/1993)
11/01/1993	12	MINUTE ENTRY 10/29/93: A Status Conf was held this date. Next status conf is scheduled at 3:00 11/19/93 by Judge Marcel Livaudais (sw) (Entered: 11/02/1993)
11/22/1993	13	MINUTE ENTRY 11/22/93: A Status Conf was held 11/19/93; A Pre-Trial Conference will be held at 9:00 6/17/94; the Non-jury Trial will be held at 9:30 7/18/94. Counsel are to confer & develop a proposed discovery scheduled for this matter & are to present said schedule to the Court on or bfr 1/17/94 by Judge Marcel Livaudais (sw) (Entered: 11/23/1993)
11/22/1993	14	MINUTE ENTRY 11/22/93: Clerk is directed to file the documents listed below (from U.S. Bankruptcy Court) & attached herewith into the record by Judge Marcel Livaudais (sw) (Entered: 11/23/1993)
12/14/1993	15	MOTION by plaintiff Lifemark Hospitals to make all adversary rules applicable to debtor's mtn to assume executory contract (sw) (Entered: 12/14/1993)
12/14/1993	16	ORDERED that motion by Lifemark Hospitals of LA to make all adversary rules applicable to debtor's mtn to assume executory contract [15-1] is granted, reserving the right to the ptys to object to application of specific rules if appropriate by Judge Marcel Livaudais Date Signed: 12/13/93 (sw) (Entered: 12/14/1993)
01/04/1994	17	Motion by defendant Liljeberg Ent Inc and ORDER that same be granted an extension of 20 days in which to file responsive pleadings by Judge Marcel Livaudais Date Signed: 1/5/94 (sw) (Entered: 01/06/1994)
01/06/1994	19	Joint Motion by debtor Liljeberg Ent Inc, plaintiff Lifemark Hospitals and ORDER for withdrawal of reference of the debtor's obj to Lifemark Hospital of Louisiana, Inc.'s proof of claim and the trial of the claim obj is consolidated w/the trial of the assumption mtn. Parties to file copies of Lifemark's proofs of claim and debtor's obj to Lifemark's claims; by Judge Marcel Livaudais Date Signed: 1/7/94 (rg) (Entered: 01/10/1994)

01/07/1994	18	MTN by pla Lifemark Hospitals to compel debtor Liljeberg Ent Inc to respond to discovery propounded by pla. referred to Magistrate Ivan L. Lemelle at 9:00 1/26/94 (dno) (Entered: 01/10/1994)
01/12/1994	20	Motion by plaintiff Lifemark Hospitals and ORDER Motion by plaintiff Lifemark Hospitals and ORDER consolidating cases 2:93-cv-1794 with member cases consolidating cases 2:93-cv-1794 with member cases 2:93-cv-4249 ; by Judge Marcel Livaudais Date Signed: 2:93-cv-4249 ; by Judge Marcel Livaudais Date Signed: 1/13/93 (REF: 93-1794 & 93-4249) 1/13/93 (REF: 93-1794 & 93-4249) (rg) (Entered: 01/13/1994)
01/12/1994	21	Motion by plaintiff Lifemark Hospitals and ORDER for attorney, John Flowers to appear pro hac vice for same is GRANTED by Judge Marcel Livaudais Date Signed: 1/13/94 (REF 93-4249) (dp) (Entered: 01/13/1994)
01/19/1994	22	MINUTE ENTRY 1/19/94: ORDERED that mtns set for hrg on 1/26/94 will be on the briefs by Magistrate Ivan L. Lemelle (Ref: 93-1794) (sw) (Entered: 01/20/1994)
01/24/1994	23	Objection by debtor Liljeberg Ent Inc to further extension (Ref: Both cases) (sw) (Entered: 01/24/1994)
01/24/1994	24	MOTION by defendant Liljeberg Ent Inc to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. to be heard before Judge at 10:00 2/16/94 (RE: 93-1794) (br) (Entered: 01/25/1994)
01/26/1994	25	MINUTE ENTRY 1/26/94: At a previous conf with the court, the court suggested that counsel for Lifemark Hospitals file a proposed schedule, trial date having been fixed for 7/18/94. A final pre-trial conf will be held at 9:15 6/17/94; non-jury trial will commence at 9:30 7/18/94 by Judge Marcel Livaudais (Ref: Both cases) (sw) Modified on 03/08/1994 (Entered: 01/26/1994)
01/26/1994	26	Motion by plaintiff Lifemark Hospitals and ORDER continuing hrg on motion by Liljeberg Ent Inc to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] at 10:00 3/2/94 by Judge Marcel Livaudais Date Signed: 1/28/94 (Ref: Both cases) (sw) Modified on 01/28/1994 (Entered: 01/28/1994)
01/28/1994	27	MOTION by debtor Liljeberg Ent Inc to remand case to Civil District Court, Parish of Orleans to be heard before Judge at 10:00 2/16/94 (Ref: Both cases) (sw) (Entered: 01/31/1994)
02/03/1994	29	MINUTE ENTRY 2/3/94: The M.E. entered 1/26/94 [25-1], setting forth the scheduling order in this consoidated action is amd to include the following: written reports of experts who may be witnesses for defendant (s) shall be obtained & delivered to counsel for plaintiff(2) as soon as possible, but in no event later than 60 days prior to the pre-trial conf date by Judge Marcel Livaudais (Ref: Both cases) (sw) (Entered: 02/07/1994)
02/04/1994	28	MINUTE ENTRY 2/4/94: ORDERED that mtns set for hrg at 10:00 2/16/94 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (Ref: Both cases) (sw) (Entered: 02/07/1994)

02/07/1994	30	Motion by defendant Liljeberg Ent Inc and ORDER that Jack Mark Stolier's name be removed from the court's records as counsel for same by Judge Marcel Livaudais Date Signed: 2/8/94 (Ref: Both cases) (sw) (Entered: 02/08/1994)
02/08/1994	31	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDERED that the hrg on the mtn by dft, Liljeberg Ent Inc to remand to CDC, Parish of Orleans [27-1] is reset to 3/2/94 at 10am by Judge Marcel Livaudais Date Signed: 2-9-94 (REF 93-1794) (jlb) (Entered: 02/10/1994)
02/14/1994	32	MOTION by plaintiff Lifemark Hospitals for partial summary judgment to be heard before Judge at 10:00 3/2/94 (Ref: Both cases) (sw) (Entered: 02/16/1994)
02/14/1994	34	Notice of Partial Dismissal by Lifemark Hospitals, counterclaimant, to dismiss, withut prej, its claims agst dfts-in-counterclaim, John Liljeberg, Robert Liljebert, and St. Jude Hospital of Kenner, La but reserving its claims agst debtor, Liljeberg Enterprises, Inc. (Re: Both Cases) (br) (Entered: 02/17/1994)
02/17/1994	33	MINUTE ENTRY 2/17/94: ORDERED that mtns set for hrg at 10:00 3/2/94 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (Ref: Both cases) (sw) (Entered: 02/17/1994)
02/17/1994	35	Reply Memo in opposition by pla Lifemark Hospitals to mtn to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) (Entered: 02/18/1994)
02/22/1994	36	Memo in opposition by plaintiff Lifemark Hospitals to motion to remand case to Civil District Court, Parish of Orleans [27-1] filed by debtor Liljeberg Ent Inc Ref 93-1794 & 93-4249 (kh) (Entered: 02/22/1994)
02/23/1994	37	Mtn by dft Liljeberg Ent Inc and ORDERED that the mtn by pla, Lifemark Hospital of LA, Inc. for partial sum jgm [32-1] is cont to 10:00 3/30/94 by Judge Marcel Livaudais Date Signed: 2-23-94 (REF 93-1794) (jlb) (Entered: 02/24/1994)
02/28/1994	38	Motion by debtor Liljeberg Ent Inc and ORDER for leave to file suppl memo in support of mtn for remand by Judge Marcel Livaudais Date Signed: 3/1/94 (Ref: Both cases) (sw) (Entered: 03/02/1994)
03/02/1994	39	Supplemental Memorandum by debtor Liljeberg Ent Inc in support of their motion to remand case to Civil District Court, Parish of Orleans [27-1] (Ref: Both cases) (sw) (Entered: 03/02/1994)
03/04/1994	40	MINUTE ENTRY 3/1/94: Hrg held on mtn by Lifemark Hospitals to compel debtor Liljeberg Ent Inc to respond to discovery propounded by [18-1]; ORDERED granted. Full disc responses shall be given by "LEI" no later than 3/11/94 by Magistrate Ivan L. Lemelle (Ref: Both cases) (sw) (Entered: 03/07/1994)
03/09/1994	41	Motion by plaintiff Lifemark Hospitals and ORDER that trial scheduled for 7/18/94 be rescheduled by Judge Marcel Livaudais (Ref: Both cases) (sw) (Entered: 03/10/1994)

03/09/1994	42	NOTICE/ORDER that a preliminary conference is scheduled before Courtroom Deputy at 8:40 4/19/94 by phone to set pre-trial & trial dates (Ref: Both cases) (sw) (Entered: 03/10/1994)
03/21/1994	43	ORDER Case reassigned to Judge Ginger Berrigan by Judge Marcel Livaudais Date Signed: 3/21/94 (Ref: Both Cases) (cp) (Entered: 03/21/1994)
03/24/1994	44	ORDER that matters be dktd in lead case only except for dispositives by Judge Ginger Berrigan Ref 93-1794 & 93-4249 (kh) (Entered: 03/24/1994)
03/28/1994	45	ORDER: By 4/4/94, counsel shall notify the court of the following: special priority cases, moot mtns, waiver of oral argument w/briefs due 4/8/94. by Judge Ginger Berrigan (REF: ALL CASES) (rg) (Entered: 03/30/1994)
04/28/1994	46	Mtn by pla, Lifemark Hosp & ORDERED that attys Howard Sinor, Jr. & Edward D. Wegmann are withdrawn as counsel for said pla by Judge Ginger Berrigan Date Signed: 4-28-94 (REF BOTH CASES) (jlb) (Entered: 05/02/1994)
06/09/1994	47	MINUTE ENTRY(6/8/94): ORDER that briefs as to Liljeberg's motion for partial summary judgment [32-1], the motion to remand case to Civil District Court, Parish of Orleans [27-1], the motion to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] are to be filed by 7/1/94 at which time the mtns are taken under advisement by Judge Ginger Berrigan Ref 93-1794 & 93-4249 (kh) (Entered: 06/09/1994)
06/21/1994	48	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file suppl breif by Judge Ginger Berrigan Date Signed: 6/22/94 Ref 93-1794, 93-4249 (kh) (Entered: 06/23/1994)
06/23/1994	49	Supplemental memorandum by plaintiff Lifemark Hospitals to motion for partial summary judgment [32-1] Ref 93-1794 & 93-4249 (kh) (Entered: 06/23/1994)
06/29/1994	50	Mtn by debtor & dft Liljeberg Ent Inc, John Liljeberg & Robert L Liljeberg and ORDER extending time until 7/8/94 at 5:00pm to file all briefs & memos directed to mtns described by Court's M.E. dtd 6/8/94, entered 6/9/94. by Judge Ginger Berrigan Date Signed: 6/30/94 (REF BOTH CASES) (dno) (Entered: 07/01/1994)
06/30/1994	51	RETURN OF SERVICE of subps to Lifemark Hospitals of LA & American Med Intl Inc svd 6/28/94. (REF BOTH CASES) (dno) (Entered: 07/01/1994)
07/08/1994	53	Motion by plaintiff Lifemark Hospitals and ORDER extending time to file resp to memo anticip[ated to be filed by Liljeberg until 7/15/94 by Judge Ginger Berrigan Ref 93-1794, 93-4249 (kh) (Entered: 07/12/1994)
07/11/1994	52	Memo in opposition by debtor Liljeberg Ent Inc to motion for partial summary judgment [32-1] filed by plaintiff Lifemark Hospitals Ref 93-1794 (kh) (Entered: 07/11/1994)
07/15/1994	54	Reply by plaintiff Lifemark Hospitals to response to Lifemark's motion

		for partial summary judgment [32-1] Ref 93-1794 & 93-4249 (kh) (Entered: 07/18/1994)
07/19/1994	56	Motion by Lifemark for exp hrg and ORDER finding the motion for protective order [55-1] dismissed as moot as stip by Magistrate Ivan L. Lemelle Date Signed: 7/26/94 Ref 93-1794 & 93-4249 (kh) (Entered: 07/27/1994)
07/27/1994	55	MOTION by Lifemark for protective order Ref 93-1794 & 93-4249 (kh) Modified on 07/27/1994 (Entered: 07/27/1994)
07/29/1994	57	ORDER Case 93-1794, 93-4249 & 92-1234 are reassigned to Judge Marcel Livaudais by Judge Ginger Berrigan Ref 93-1794, 93-4249 (kh) (Entered: 07/29/1994)
08/15/1994	58	MINUTE ENTRY (8/15/94): Status Conf will be held on 8/23/94 at 9:15 am by Judge Marcel Livaudais (REF: 93-1794 & 93-4249) (gw) (Entered: 08/15/1994)
08/24/1994	59	MINUTE ENTRY 8/23/94: A conf was held this date. ORDERED that mtn by Lifemark Hospital for partial summary judgment [32-1] & mtn by Liljeberg Ent Inc to dism the antitrust & unfair trade practices counterclaims of Lifemark Hospitals [24-1] be cont until completion of disc. The mtn to remand case to Civil District Court, Parish of Orleans [27-1] remains submitted; cases are reassigned to Judge Edith B. Clement by Judge Marcel Livaudais (Ref: Both cases) (sw) Modified on 08/25/1994 (Entered: 08/25/1994)
08/31/1994	60	ORDER Case reassigned to Judge Ginger Berrigan by Judge Edith B. Clement (Ref: 93-1794, 93-4249) (ps) Modified on 08/31/1994 (Entered: 08/31/1994)
09/09/1994	61	NOTICE that a preliminary conference is scheduled by telephone before courtroom deputy at 10:00 9/27/94 by Clerk (REF: Both Cases) (kc) (Entered: 09/09/1994)
09/23/1994	62	MOTION by defendant Liljeberg Ent Inc to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents referred to Magistrate Ivan L. Lemelle to be heard before Mag/Judge Lemelle at 9:00 a.m. on 10/19/94. (REF BOTH CASES) (dp) Modified on 09/26/1994 (Entered: 09/26/1994)
09/27/1994	63	MINUTE ENTRY (9/27/94): Preliminary Conference held; amendments due w/in 30 days from court's ruling on motion by Liljeberg to dismiss ; pretrial conf set 9:00 5/31/95 & non-jury trial set 10:00 6/19/95 bfr Judge; by Clerk for by Judge Ginger Berrigan (REF: BOTH CASES) (kc) (Entered: 09/27/1994)
09/30/1994	64	ORDER that all pleadings be filed in the lead case only except for documents which terminate a party or a case, by Clerk (REF: All Cases) (jd) (Entered: 09/30/1994)
10/04/1994	65	Motion of Liljeberg Enterprise Inc and ORDER for appearance of co-counsel Don M. Richard by Judge Ginger Berrigan Date Signed: 10/5/94 Ref all cases (kh) (Entered: 10/06/1994)
10/11/1994	66	Memo in opposition by plaintiff Lifemark Hospitals to motion to compel

		pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents [62-1] filed by Liljeberg Ref 93-1794 & 93-4249 (kh) (Entered: 10/13/1994)
10/14/1994	67	MINUTE ENTRY(10/14/94): that the motion of Liljeberg to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents [62-1] set for hrg on 10/19/94 will be decided on the brief & is submitted by Magistrate Ivan L. Lemelle Ref 93-1794 (kh) (Entered: 10/14/1994)
10/21/1994	68	MINUTE ENTRY(10/20/94): ORDER granting in part & denying in part dft Liljeberg Ent Inc's motion to compel pla, Lifemark Hosptials of Louisiana & American Medical International for prod of documents [62-1]. by Magistrate Ivan L. Lemelle (REF 93-1794) (dno) (Entered: 10/21/1994)
10/25/1994	69	MINUTE ENTRY(10/25/94): Case reassigned to Judge Stanwood R. Duval Jr. by Judge Ginger Berrigan (REF: All Cases) (jd) (Entered: 10/25/1994)
11/01/1994	70	MINUTE ENTRY(10/31/94): Case reassigned to Judge Okla Jones II by Judge Stanwood R. Duval Jr. (REF: Both Cases) (jd) (Entered: 11/02/1994)
11/14/1994	71	Joint Mtn by pla Lifemark Hospitals & dft Liljeberg Ent Inc and ORDER for protective order limiting disclosure of confidential information as stip. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) (Entered: 11/15/1994)
12/06/1994	72	MINUTE ENTRY(12/2/94): Dft Liljeberg Ent's mtns to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] & to remand case to Civil District Court, Parish of Orleans [27-1] & pla Lifemark Hospital's mtn for partial sum jgm [32-1] are re-noticed for 8:30 2/15/95 by ORAL ARGUMENT. by Judge Okla Jones II (RF BOTH CASES) (dno) (Entered: 12/07/1994)
12/13/1994	73	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl & amended answer to debtor's mtn to assume executory contract. by Judge Okla Jones II Date Signed: 12/15/94 (REF BOTH CASES) (dno) (Entered: 12/15/1994)
12/15/1994	74	AMENDED ANSWER by pla Lifemark Hospitals to debtor's mtn to assume executory contract. (REF BOTH CASES) (dno) (Entered: 12/15/1994)
12/30/1994	75	Mtn by atty Jack Stolier and ORDER withdrawing atty same from record as counsel for Liljeberg Enterprises. by Judge Okla Jones II Date Signed: 1/4/95 (REF BOTH CASES) (dno) (Entered: 01/05/1995)
01/10/1995	76	Notice of Deposition by pla Lifemark Hospitals of John Liljeberg on 1/18/95. (REF BOTH CASES) (dno) (Entered: 01/11/1995)
01/10/1995	77	Notice of Deposition by pla Lifemark Hospitals of Robert Liljeberg on 1/19/95. (REF BOTH CASES) (dno) (Entered: 01/11/1995)
01/31/1995	78	MTN by pla Lifemark Hospitals for partial sum jgm to be heard before Judge at 8:30 3/15/95 (REF BOTH CASES) (dno) (Entered: 01/31/1995)

02/02/1995	79	Motion by plaintiff Lifemark Hospitals and ORDER that the original affidavit of Walter Earl Bissex be filed into the record by Judge Okla Jones II Date Signed: 2/6/95 (REF: 93-1794 & 93-4249) (gw) (Entered: 02/06/1995)
02/06/1995	80	Introductory & explanatory guide to phases of suppl memo by pla Lifemark Hospitals in support of its mtn for partial sum jgm [78-1] (REF BOTH CASES) (dno) (Entered: 02/09/1995)
02/07/1995	90	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file suppl memo & Exhibit numbers 47 through 53 thereof, under seal as stip. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
02/07/1995	91	Sealed Document (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
02/09/1995	92	Mtn by pla Lifemark Hospitals and ORDER that same is allowed to substitute suppl memo in lieu of suppl memo filed previously filed. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
02/13/1995	81	Mtn by pla Lifemark Hospitals and ORDER expediting its mtn for protective order to 2/13/95 at 9:30am. FURTHER ORDERED after teleconference that depo is hereby cont to be reset after ptys' counsel meet & attempt amicable resolution of issues herein. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) (Entered: 02/15/1995)
02/14/1995	93	Mtn by dft Liljeberg Ent Inc & ORDER for leave to file 1) 2nd suppl memo in opp to Lifemark's mtn for sum jgm: response to Lifemark's Appendix E; 2) Exhibit 57; & 3) Exhibit 58. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
02/15/1995	82	MTN by pla Lifemark Hospitals for protective order referred to Magistrate Ivan L. Lemelle at 9:30 2/13/95 (REF BOTH CASES) (dno) (Entered: 02/15/1995)
02/15/1995	83	Mtn by dft & debtor Liljeberg Ent Inc and ORDER that its mtn to remand case to Civil District Court, Parish of Orleans [27-1] s WITHDRAWN. by Judge Okla Jones II Date Signed: 2/16/95 (REF BOTH CASES) (dno) (Entered: 02/16/1995)
02/21/1995	84	MINUTE ENTRY(2/15/95): ORDER granting dft Liljeberg's mtn to dismiss the unfair trade practices & denied as to antitrust claims [24-1] withdrawing dft Liljeberg's mtn to remand case to Civil District Court, Parish of Orleans [27-1] & denying pla Lifemark's mtn for partial sum jgm [32-1]. by Judge Okla Jones II (REF BOTH CASES) (dno) Modified on 02/22/1995 (Entered: 02/22/1995)
02/21/1995	87	Mtn by debtor Liljeberg Ent Inc and ORDER extending time an addl 15 days for ptys to file expert reports. by Magistrate Ivan L. Lemelle Signed: 2/24/95 (REF BOTH CASES) (dno) Modified on 02/27/1995 (Entered: 02/27/1995)
02/22/1995	85	Memo in opposition by pla Lifemark Hospitals to ex parte mtn for extension of time to file expert reports filed by dft Liljeberg Ent Inc.

		(REF BOTH CASES) (dno) (Entered: 02/23/1995)
02/23/1995	86	Memorandum by dft Liljeberg Ent Inc in support of its mtn for extension of time to file expert reports. (REF BOTH CASES) (dno) (Entered: 02/24/1995)
02/24/1995	88	Notice of Deposition by pla Lifemark Hospitals of Wendy Neeb on 3/9/95. (REF BOTH CASES) (dno) (Entered: 02/27/1995)
02/24/1995	89	Notice of Deposition by pla Lifemark Hospitals of Warren Arms on 3/14/95. (REF BOTH CASES) (dno) (Entered: 02/27/1995)
02/24/1995	95	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn for extension of time to file expert reports. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
03/03/1995	94	2nd suppl memo in opposition by dft Liljeberg Ent Inc to mtn for sum jgm: response to Lifemark's appendix E [78-1] filed by pla Lifemark Hospitals (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
03/03/1995	96	Suppl Memo by pla Lifemark Hospitals in opposition to dft Liljeberg's mtn for extension of time to file expert reports. (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
03/03/1995	97	Introductory & explanatory guide to phases of suppl memo by pla Lifemark Hospitals in support of its mtn for partial sum jgm [78-1] (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/06/1995)
03/07/1995	98	Mtn by dft Liljeberg Ent Inc & ORDER extending time until 3/10/95 at 5:00pm to file its opp to pla Lifemark's mtn for sum jgm set for 3/15/95. by Judge Okla Jones II Date Signed: 3/8/95 (REF BOTH CASES) (dno) Modified on 03/17/1995 (Entered: 03/09/1995)
03/10/1995	101	Memo in opposition by dft Liljeberg Ent Inc to mtn for partial sum jgm [78-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) (Entered: 03/17/1995)
03/13/1995	99	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file a suppl memo in support of its mtn for partial sum jgm by Judge Okla Jones II Date Signed: 3/15/95 (REF: 93-1794 & 93-4249) (gw) Modified on 03/17/1995 (Entered: 03/16/1995)
03/15/1995	100	Suppl Memorandum by plaintiff Lifemark Hospitals in in support of its motion for partial sum jgm [78-1] (REF: 93-1794 & 93-4249) (gw) Modified on 03/17/1995 (Entered: 03/16/1995)
03/16/1995	102	MINUTE ENTRY(3/15/95): ORDERED that pla Lifemark Hospitals' mtn for partial sum jgm [78-1] set for this date cont to 8:30 3/29/95. by Judge Okla Jones II (REF BOTH CASES) (dno) (Entered: 03/17/1995)
03/24/1995	105	Mtn by dft Liljeberg Ent Inc and ORDER that original ex parte mtn for leave to file 2nd suppl memo in opp to mtn for sum jgm. Exhibit 57 & 58 be substituted w/corrected Exhibit 58 & 59 as stip. by Judge Edith B. Clement Date Signed: 3/29/95 (REF BOTH CASES) (dno) Modified on 03/29/1995 (Entered: 03/29/1995)

03/24/1995	114	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file its suppl memo in oppostion to Lifemark's mtn for partial sum jgm. by Judge Ginger Berrigan Date Signed: 4/6/95 (REF BOTH CASES) (dno) (Entered: 04/10/1995)
03/27/1995	103	MINUTE ENTRY(3/27/95): Pla Lifemark Hospitals' mtn for partial sum jgm [78-1] set for 3/29/95 reset for 8:30 4/12/95. by Judge Ginger Berrigan (REF BOTH CASES) (dno) (Entered: 03/28/1995)
03/27/1995	104	MTN by dft Liljeberg Ent Inc to compel prod of further documentation from plas to complete discovery referred to Magistrate Ivan L. Lemelle at 9:00 4/12/95 (REF BOTH CASES) (dno) (Entered: 03/28/1995)
04/03/1995	106	Witness list submitted by pla Lifemark Hospitals (REF BOTH CASES) (dno) Modified on 08/31/2000 (Entered: 04/04/1995)
04/03/1995	107	Exhibit list by pla Lifemark Hospitals (REF BOTH CASES) (dno) (Entered: 04/04/1995)
04/04/1995	108	Memo in opposition by pla Lifemark Hospitals to mtn to compel prod of further documentation from plas to complete discovery [104-1] filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) (Entered: 04/04/1995)
04/04/1995	109	MINUTE ENTRY (4/4/95): ORDERED that the mtn set for hrg on 4/12/95 will be on the briefs by Magistrate Ivan L. Lemelle (REF: both cases) (gw) Modified on 04/05/1995 (Entered: 04/05/1995)
04/04/1995	110	Exhibit list by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) (Entered: 04/05/1995)
04/04/1995	111	Witness list submitted by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) (Entered: 04/05/1995)
04/05/1995	112	NOTICE case reallotted to Magistrate Judge 2 by Clerk (Ref: all cases) (ps) (Entered: 04/05/1995)
04/06/1995	113	ANSWER by dft Liljeberg Ent Inc to amended counterclaim & counterclaims in response thereto of Lifemark Hospitals. (REF BOTH CASES) (dno) (Entered: 04/06/1995)
04/07/1995	115	Suppl Memo in opposition by dft Liljeberg Ent Inc to mtn for partial sum jgm [78-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) (Entered: 04/10/1995)
04/10/1995	116	MINUTE ENTRY(4/7/95): Pla Lifemark Hosp's mtn for partial sum jgm [78-1] set for 4/12/95 is reset for 8:30 5/10/95. by Judge Ginger Berrigan (REF BOTH CASES) (dno) (Entered: 04/10/1995)
04/11/1995	118	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file reply to pla's memo in opp to dft's mtn to compel. by Judge Ginger Berrigan Date Signed: 4/12/95 (REF BOTH CASES) (dno) (Entered: 04/13/1995)
04/12/1995	117	MINUTE ENTRY(4/12/95): ORDER granting pla Liljeberg's mtn to compel prod of further documentation from plas to complete discovery [104-1] AS STIP. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) (Entered: 04/12/1995)
04/13/1995	119	Reply by dft Liljeberg Ent Inc to pla Lifemark's response to same's mtn

		to compel. (REF BOTH CASES) (dno) (Entered: 04/13/1995)
04/18/1995	123	Mtn by pla Lifemark Hospitals and ORDER expediting its mtn to dismiss counterclaims & to strike related affirmative defenses or for separate trial of counterclaims to 5/10/95 at 8:30am. by Judge Ginger Berrigan (REF BOTH CASES) (dno) (Entered: 04/21/1995)
04/19/1995	120	Notice of Deposition by pla Lifemark Hospitals of Peggy Mire on 4/26/95. (REF BOTH CASES) (dno) (Entered: 04/19/1995)
04/19/1995	121	Notice of Deposition by pla Lifemark Hospitals of Tom Rasor on 4/28/95. (REF BOTH CASES) (dno) (Entered: 04/19/1995)
04/19/1995	122	Notice of Deposition by pla Lifemark Hospitals of Shirley Ellisor on 4/27/95. (REF BOTH CASES) (dno) (Entered: 04/19/1995)
04/20/1995	124	MTN by pla Lifemark Hospitals to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & related affirmative defenses to be heard before Judge at 8:30 5/10/95 (REF BOTH CASES) (dno) (Entered: 04/21/1995)
04/21/1995	128	Motion by plaintiff Lifemark Hospitals for exp hrg on mtn for review of Mag's order and ORDER that the mtn to review will be submitted on briefs by Judge Okla Jones II Date Signed: 5/2/95 (REF: ALL CASES) (pck) Modified on 05/03/1995 (Entered: 05/03/1995)
04/24/1995	131	Motion by plaintiff Lifemark Hospitals for exp hrg and ORDER that pla's mtn for partial sum jgm will be submitted on briefs only by Judge Okla Jones II Date Signed: 5/2/95 (REF: BOTH CASES) (pck) (Entered: 05/03/1995)
05/02/1995	125	Memorandum by defendant Liljeberg Ent Inc in opposition to Lifemark's mtn for exped hrg on its 2nd mtn for partial sum jgm (REF: BOTH CASES) (bb) (Entered: 05/03/1995)
05/02/1995	126	Memo in opposition by defendant Liljeberg Ent Inc to motion of Lifemark to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & related affirmative defenses [124-1] filed by plaintiff Lifemark Hospitals (REF: BOTH CASES) (bb) (Entered: 05/03/1995)
05/02/1995	127	Reply memorandum by defendant Liljeberg Ent Inc to pla's memo in support of mtn for review of Mag's order (REF: BOTH CASES) (bb) (Entered: 05/03/1995)
05/03/1995	129	MOTION by plaintiff Lifemark Hospitals for review of Mag's order issd on 4/12/95 to be heard before Judge Jones on briefs (REF: ALL CASES) (pck) (Entered: 05/03/1995)
05/03/1995	130	MOTION by plaintiff Lifemark Hospitals for partial summary judgment to be heard before Judge Jones on briefs (REF: ALL CASES) (pck) (Entered: 05/03/1995)
05/04/1995	133	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn to dismiss counterclaims & to strike. by Judge Okla Jones II (REF BOTH CASES) (dno) (Entered: 05/11/1995)

05/05/1995	132	MINUTE ENTRY(5/4/95): ORDERED that pla Lifemark's mtn for partial sum jgm & to dismiss counterclaims set for 5/10/95 are taken under submission to be decided w/o oral argument. by Judge Okla Jones II (REF BOTH CASES) (dno) (Entered: 05/05/1995)
05/11/1995	134	Suppl Memo by pla Lifemark Hospitals in support of its mtn to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for trial of counterclaims & related affirmative defenses [124-1] (REF BOTH CASES) (dno) (Entered: 05/11/1995)
05/15/1995	135	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file the attached suppl memo in support of the 2nd mtn for partial sum jgm is granted. by Judge Okla Jones II Date Signed: 5/19/95 (Ref: Both Cases) (cp) (Entered: 05/19/1995)
05/16/1995	137	Mtn by pla Lifemark Hospitals and ORDER expediting its mtn to strike jury demand. Matter will be submitted on briefs only. Opp to mtn due by noon on 6/2/95. by Judge Okla Jones II Date Signed: 5/19/95 (REF BOTH CASES) (dno) (Entered: 05/23/1995)
05/16/1995	139	Mtn by pla Lifemark Hospitals and ORDER that all briefs in support & in opp to the mtn for partial sum jgm filed by same on 4/24/95 be filed w/Court by 5/31/95 at noon. by Judge Okla Jones II Date Signed: 5/19/95 (REF BOTH CASES) (dno) (Entered: 05/23/1995)
05/19/1995	136	Memorandum by plaintiff Lifemark Hospitals in 2:93-cv-01794 in support of motion for partial summary judgment (Ref: Both Cases) [130-1] (cp) (Entered: 05/19/1995)
05/19/1995	138	MTN by pla Lifemark Hospitals to strike jury demand to be heard before Judge on briefs only (REF BOTH CASES) (dno) (Entered: 05/23/1995)
05/23/1995	140	Memo in opposition by dft Liljeberg Ent Inc to mtn to strike jury demand [138-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) (Entered: 05/24/1995)
05/25/1995	141	MINUTE ENTRY(5/25/95): ORDERED that Non-jury Trial set for 6/19/95 is CONT to 8:30 12/4/95. A conf to discuss preliminary trial matters is set for 8:00am on same day. Final pre-trial conf set for 8:30 11/21/95 as stip. by Judge Okla Jones II (REF 93-1794) (dno) Modified on 05/26/1995 (Entered: 05/26/1995)
06/02/1995	142	Memo in opposition by dft Liljeberg Ent Inc to renewed mtn for sum jgm [130-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) (Entered: 06/06/1995)
06/13/1995	143	Mtn by pla Lifemark Hospitals and ORDER for leave to file response to brief of Liljeberg Ent Inc. by Judge Okla Jones II Date Signed: 6/16/95 (REF BOTH CASES) (dno) (Entered: 06/19/1995)
06/16/1995	144	Memo by pla Lifemark Hospitals in response to Liljeberg's memo in opp to pla's mtn for partial sum jgm [130-1] (REF BOTH CASES) (dno) (Entered: 06/19/1995)
06/27/1995	145	Mtn by pla Lifemark Hospitals and ORDER for leave to file addl docs to supp its mtn for sum jgm. by Judge Okla Jones II Date Signed: 6/29/95 (REF BOTH CASES) (dno) (Entered: 06/30/1995)

07/06/1995	146	MTN by debtor Liljeberg Ent Inc for partial sum jgm to be heard before Judge at 8:30 8/2/95 (REF BOTH CASES) (dno) (Entered: 07/10/1995)
07/11/1995	147	MTN by dft Liljeberg Ent Inc for partial sum jgm to be heard before Judge at 8:30 8/16/95 (REF BOTH CASES) (dno) (Entered: 07/12/1995)
07/25/1995	148	Memo in opposition by pla Lifemark Hospitals to both mtns for partial sum jgm [147-1] [146-1] filed by dft Liljeberg Inc. (REF BOTH CASES) (dno) (Entered: 07/25/1995)
07/27/1995	149	MINUTE ENTRY(7/25/95): ORDER & REASONS denying Lifemark Hospitals' mtn for review of Mag's order issd on 4/12/95 [129-1]. by Judge Okla Jones II (REF BOTH CASES) (dno) (Entered: 07/28/1995)
08/02/1995	150	MINUTE ENTRY (7/31/95): Ordered that the mtn of Liljeberg Enterprises' mtn for partial sum jgm set for 8/2/95 will be submitted on briefs only without oral argument. by Judge Eldon E. Fallon Date Signed: 7/31/95 (Ref: 93-1794) (cp) (Entered: 08/02/1995)
08/07/1995	153	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file suppl memo in support of its mtn for partial sum jgm. by Judge Okla Jones II Date Signed: 8/15/95 (REF BOTH CASES) (dno) (Entered: 08/16/1995)
08/11/1995	151	MINUTE ENTRY(8/10/95): Ordered that mtn of Liljeberg Ent will be submitted on briefs w/o oral argument on 8/16/95 by Judge Okla Jones II Date Signed: 8/10/95 (bb) (Entered: 08/11/1995)
08/11/1995	155	Mtn by pla Lifemark Hospitals and ORDER for entry of a protective order as listed. by Judge Okla Jones II Date Signed: 8/15/95 (REF BOTH CASES) (dno) (Entered: 08/16/1995)
08/14/1995	152	MTN by pla Lifemark Hospitals for leave to file 2nd suppl answer to debtor's mtn to assume executory contract referred to Magistrate Joseph C. Wilkinson Jr. at 11:00 8/30/95 (REF BOTH CASES) (dno) (Entered: 08/14/1995)
08/15/1995	154	Suppl Memorandum by dft Liljeberg Ent Inc in support of its mtn for partial sum jgm [147-1]. (REF BOTH CASES) (dno) (Entered: 08/16/1995)
08/15/1995	156	Re-notice of Hearing by pla Lifemark Hospitals setting its mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1] at 11:00 8/30/95 bfr Mag Wilkinson. (REF BOTH CASES) (dno) (Entered: 08/16/1995)
08/21/1995	157	Letter to MAg Lemelle from atty Don Richard dtd 8/4/95 re 7/25/95 order issued by Judge Jones. (REF 93-1794) (dno) (Entered: 08/21/1995)
08/22/1995	158	Memo in opposition by defendant Liljeberg Ent Inc to motion for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1] filed by plaintiff Lifemark Hospitals (REF: BOTH CASES) (pck) (Entered: 08/22/1995)
08/25/1995	159	MINUTE ENTRY(8/24/95): ORDERED that pla Lifemark's mtn for leave to file 2nd suppl answer set for 8/30/95 is submitted on briefs as stip. by Magistrate Joseph C. Wilkinson Jr. (REF BOTH CASES) (dno) (Entered: 08/25/1995)

08/25/1995	161	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn for leave to file 2nd suppl and amended answer. by Magistrate Ivan L. Lemelle Date Signed: 8/28/95 (REF BOTH CASES) (dno) (Entered: 08/30/1995)
08/29/1995	160	MINUTE ENTRY(8/28/95): ORDER & REASONS denying pla Lifemark Hospital's mtn for partial sum jgm [78-1]. by Judge Okla Jones II Date Signed: 8/28/95 (REF 93-1794) (dno) (Entered: 08/29/1995)
08/29/1995	162	Suppl Memo by pla Lifemark Hospitals in support of its mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1]. (REF BOTH CASES) (dno) (Entered: 08/30/1995)
08/30/1995	163	MINUTE ENTRY(8/28/95): ORDER granting pla Lifemark Hospital's mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1]. by Magistrate Ronald Fonseca (REF BOTH CASES) (dno) (Entered: 08/30/1995)
09/06/1995	164	MINUTE ENTRY(9/5/95): ORDER & REASONS denying pla Lifemark Hospitals' 2nd mtn for partial sum jgm [130-1] by Judge Okla Jones II Date Signed: 9/5/95 (REF BOTH CASES) (dno) (Entered: 09/06/1995)
09/08/1995	165	MINUTE ENTRY(9/7/95): ORDER & REASONS denying pla Lifemark Hospital's mtn to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & affirmative defenses [124-1]. FURTHER ORDERED that the alternative mtn to sever issues is DENIED. by Judge Okla Jones II Date Signed: 9/7/95 (REF 93-1794) (dno) (Entered: 09/08/1995)
09/15/1995	166	MINUTE ENTRY(9/15/95): ORDERED that audit of 1,000 of Lifemark's patient charts by Liljeberg will be conducted in a room at hospital location to be selected & prepared by Lifemark on dates to be arranged by counsel primarily between hours of 3:00pm & 4:30pm only on Mondays though Fridays as stip. FURTHER ORDERED as stip. by Magistrate Joseph C. Wilkinson Jr. (REF BOTH CASES) (dno) (Entered: 09/18/1995)
09/25/1995	167	MINUTE ENTRY(9/22/95): Pre-Trial Conf set for 11/21/95 at 8:30am is rescheduled for 11/21/95 at 9:15am bfr Judge Sear as stip. by Judge Morey L. Sear (REF BOTH CASES) (dno) (Entered: 09/26/1995)
10/02/1995	168	1st amended Exhibit list by dft & debtor Liljeberg Ent Inc. (REF BOTH CASES) (dno) (Entered: 10/02/1995)
10/02/1995	169	Suppl Witness list submitted by dft & debtor Liljeberg Ent Inc. (REF BOTH CASES) (dno) (Entered: 10/02/1995)
10/12/1995	170	MINUTE ENTRY(10/11/95): ORDERED that all proceedings in this matter, including pre-trial conf set for 11/21/95 set before Judge, shall be conducted by Section "S" of this Court as stip. by Judge Morey L. Sear (REF BOTH CASES) (dno) (Entered: 10/~~12~~/1995)
10/13/1995	171	MINUTE ENTRY(10/11/95): Pretrial conf set for 11/8/95 at 9:15am will be conducted by Judge Duplantier in his chambers. All other proceedings to be conducted by Section "S" by Judge Adrian G. Duplantier (originally

		dktd 10/16/95) (dno) (Entered: 10/18/1995)
10/20/1995	172	Reply by dfts in counterclaim Lifemark Hospitals of LA, Lifemark Hospitals & Amer Med Intl to counterclaims of Liljeberg. (REF BOTH CASES) (dno) (Entered: 10/23/1995)
10/23/1995	175	Sealed Document (dno) (Entered: 11/07/1995)
10/25/1995	173	MINUTE ENTRY(10/25/95): ORDERED that a Status Conf is set for 2:00 10/27/95 in chambers. by Judge Okla Jones II (REF BOTH CASES) (dno) (Entered: 10/26/1995)
10/30/1995	174	Sealed Document (dno) (Entered: 10/30/1995)
10/31/1995	177	MINUTE ENTRY(10/27/95): A Conf was held this date in chambers. ORDERED that C.A. 94-3993 is consolidated w/C.A. 93-1794. Non-jury Trial set for 12/4/95 is cont to 8:30 6/3/96 as stip. FURTHER ORDERED that Pre-Trial Conf set for 11/8/95 bfr Judge Duplantier is cont to 8:30 5/16/96 bfr Judge Jones as stip. AMENDMENTS pleadings due w/in 30 days as stip. by Judge Okla Jones II (REF ALL CASES) (dno) (Entered: 10/31/1995)
10/31/1995	176	Sealed Document (dno) (Entered: 11/07/1995)
11/03/1995	178	Sealed Document (dno) (Entered: 11/07/1995)
11/07/1995	179	Sealed Document (dno) (Entered: 11/07/1995)
11/07/1995	180	Sealed Document (dno) (Entered: 11/07/1995)
11/07/1995	181	MINUTE ENTRY(11/7/95): ORDERED that dft Liljeberg Ent Inc's mtns for partial sum jgm [146-1] & for partial sum jgm [147-1] are RESET for 8:30 2/7/96 as stip. by Judge Okla Jones II (REF 93-1794) (dno) (Entered: 11/08/1995)
11/14/1995	182	MINUTE ENTRY(11/14/95): Dft Liljeberg Ent Inc's mtn for suppl relief & sanctions in connection w/ongoing audit by same of 1,000 patient charts in possession of Lifemark Hospitals, Inc. is DENIED in part & GRANTED in part as stip. by Magistrate Joseph C. Wilkinson, Jr. (REF 93-1794 & 93-4249) (dno) (Entered: 11/15/1995)
11/22/1995	183	Sealed Document (dno) (Entered: 11/22/1995)
12/04/1995	184	MINUTE ENTRY(11/30/95): A status conf was held this date bfr Mag. by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794) (dno) (Entered: 12/04/1995)
12/13/1995	185	MINUTE ENTRY(12/13/95): consolidating cases 2:93-cv-1794 MINUTE ENTRY(12/13/95): consolidating cases 2:93-cv-1794 with member cases 2:95-cv-2922. All docketing to be with member cases 2:95-cv-2922. All docketing to be docketed in Master Case only as stip in order. by Judge docketed in Master Case only as stip in order. by Judge Okla Jones II Date Signed: 12/13/95 (Ref: 93-1794 & Okla Jones II Date Signed: 12/13/95 (Ref: 93-1794 & 95-2922) 95-2922) (cp) (Entered: 12/14/1995)
12/15/1995	186	Mtn by pla Lifemark Hospitals for exp hrg on its mtn for contempt of, alternatively, for modification of protective order and ORDER DENIED.

		Dfts are ordered to file an opp by 12/26/95 at 5:00pm. by Judge Okla Jones II Date Signed: 12/19/95 (REF ALL CASES) (dno) Modified on 12/20/1995 (Entered: 12/20/1995)
12/26/1995	187	Reply by dft Liljeberg Ent Inc to mtn for contempt or, alternatively, for modification of protective order filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) (Entered: 12/27/1995)
01/02/1996	188	Memo in opposition by pla Lifemark Hospitals to mtn for review of Mag Wilkinson's 11/15/95 order filed by dft Liljeberg Ent Inc. (REF ALL CASES) (dno) (Entered: 01/03/1996)
01/12/1996	189	RETURN OF SERVICE of subps to Maxicare, Bergen Brunswig Drug Company & Louisiana Health Service & Indemnity Company svd 12/27/95. (REF 93-1794 & 93-4249) (dno) (Entered: 01/17/1996)
01/16/1996	190	NOTICE case reallotted to Judge G. T. Porteous Jr. by Clerk (tbl) (Entered: 01/17/1996)
01/19/1996	191	MINUTE ENTRY(1/17/96): Court's m.e. of 10/27/96 is amended to have C.A. 94-3993 re-allotted to Mag-2. All other aspects reamins in effect. by Judge G. T. Porteous Jr. (REF BOTH CASES) (dno) (Entered: 01/22/1996)
01/23/1996	192	MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for protective order pursuant to Rule 26(c)(1) & 30(a)(2)(B) for an order quashing notices served upon dft, Liljeberg Enterprises, Inc., scheduling repeat depositions of Charlotte Arras, Bonnie Bicocchi & Kenny Buttone referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 2/7/96 (REF ALL CASES)(dp) Modified on 01/24/1996 (Entered: 01/24/1996)
01/31/1996	193	ORDER that a Status Conf is set for 10:00 a.m. on 3/1/96 bfr Judge in chambers to reschedule mtns set in these cases by Judge G. T. Porteous Jr. (REF 93-1794) (dp) (Entered: 02/01/1996)
02/08/1996	194	MINUTE ENTRY (2/6/96): ORDER granting motion by dft, Lijebeg Enterprises for protective order pursuant to Rule 26(c)(1) & 30(a)(2)(B) for an order quashing notices served upon dft, Liljeberg Enterprises, Inc., scheduling repeat depositions of Charlotte Arras, Bonnie Bicocchi & Kenny Buttone [192-1] by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794 & 93-4249) (dp) Modified on 02/08/1996 (Entered: 02/08/1996)
02/09/1996	195	RETURN OF SERVICE of subp to Mediguip; svd 2/9/96. (dp) (Entered: 02/12/1996)
02/09/1996	196	RETURN OF SERVICE of subp to Lifemark Hospitals of LA. Inc; svd 2/9/96. (dp) (Entered: 02/12/1996)
02/12/1996	199	RETURN OF SERVICE of subp to Venacare USA, Inc; svd 2/13/96. (RE 93-1794 & 93-4249) (dp) (Entered: 02/13/1996)
02/13/1996	197	RETURN OF SERVICE of subp to Physician Sales & Service, Inc.; svd 2/12/96. (REF 93-1794 & 93-4249) (dp) (Entered: 02/13/1996)
02/13/1996	198	RETURN OF SERVICE of subp to Patio Drugs, Inc; svd 2/13/96. (dp) (Entered: 02/13/1996)

02/21/1996	200	Objections by plaintiff Lifemark Hospitals in 2:93-cv-01794 to deposition subp. (dp) (Entered: 02/21/1996)
02/21/1996	201	RETURN OF SERVICE of subp to Brian Hannah; svd 2/16/96. (dp) (Entered: 02/22/1996)
02/21/1996	202	RETURN OF SERVICE of subp to Joann Slocolm; svd 2/19/96. (dp) (Entered: 02/22/1996)
02/22/1996	203	RETURN OF SERVICE of subp to Bristol-Myers Squibb Co., Inc on 2/16/96. (dp) (Entered: 02/22/1996)
03/01/1996	205	Motion by dfts Lifemark Hosp of LA Inc, Lifemark Hosp Inc, Amer Med Intl Inc & Stephen Faucheaux and ORDER for leave to file amd answer to cmp for TRO & prelim inj by Liljeberg Ent Inc by Judge G. T. Porteous Jr. Date Signed: 3/4/96 (REF: 95-2922) (gw) (Entered: 03/06/1996)
03/04/1996	204	ORDER Pre-Trial Conference cont to 9:00 10/18/96; Non-jury Trial cont to 10:00 11/4/96 ; all deadlines are to be rescheduled with reference to this new trial date by Judge G. T. Porteous Jr. Date Signed: 3/4/96 (REF: 93-1794) (gw) Modified on 03/06/1996 (Entered: 03/06/1996)
03/04/1996	206	AMENDED ANSWER by dfts Lifemark Hosp of LA Inc, Lifemark Hosp Inc, Amer Med Intl Inc & Stephen Faucheaux. (REF: 95-2922) (gw) (Entered: 03/06/1996)
03/06/1996	207	Amd Witness list submitted by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) (Entered: 03/06/1996)
03/18/1996	208	Motion by Lifemark Hospitals & Lifemark Hospitals of Louisiana, Inc and ORDER withdrawing attorney (attorney Moise S. Steeg Jr., attorney Charles L. Stern & & Steeg & O'Connor) by Judge G. T. Porteous Jr. Date Signed: 3/18/96 (REF: ALL CASES) (pck) Modified on 03/21/1996 (Entered: 03/21/1996)
03/18/1996	209	Motion by plaintiff Lifemark Hospitals and ORDER to withdraw attorneys, Moise S. Steeg, Jr. & Charles L. Stern, Jr. of the firm of Steeg & O'Connor for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 3/19/96 (REF 94-3993) (dp) Modified on 05/10/1996 (Entered: 03/21/1996)
04/04/1996	210	Motion by plaintiff Lifemark Hospitals and ORDER that attorneys Miles Paul Clements, Joseph Nicholas Mole, Michael Raudon Phillips be enrolled as counsel for same by Judge G. T. Porteous Jr. Date Signed: 4/9/96 (REF: 93-1794, 93-4249, 95-2922) (jd) (Entered: 04/10/1996)
04/12/1996	211	Motion by plaintiff Lifemark Hospitals and ORDER to enroll Miles P Clements, Joseph N Mole & Michael R Phillips as counsels of record by Judge G. T. Porteous Jr. Date Signed: 4/15/96 (REF: 94-3993) (gw) (Entered: 04/16/1996)
04/19/1996	212	Motion by defendant Liljeberg Ent Inc and ORDER for appearance of Hans Joseph Liljeberg as additional co-counsel for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 4/22/96 (dp) (Entered: 04/23/1996)

04/22/1996	215	Motion by plaintiff Lifemark Hospitals and ORDER for expediting hrg on same's mtn for reconsideration & for partial summary judgment is GRANTED & set for 6/12/96 at 9:30 a.m. by Judge G. T. Porteous Jr. Date Signed: 5/9/96 (dp) Modified on 07/11/1996 (Entered: 05/10/1996)
04/29/1996	213	Motion by plaintiff Lifemark Hospitals and ORDER for appearance of Kenneth Anthony Mayeaux as additional counsel for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 4/30/96 (REF 94-3993) (dp) (Entered: 05/02/1996)
05/10/1996	214	ORDER rescheduling motion by dft, Liljeberg Enterprises for partial sum jgm [146-1] & the motion by dft, Liljeberg Enterprises by for partial sum jgm [147-1] previously set for 5/16/96 to 6/12/96 at 9:30 a.m. by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) Modified on 07/11/1996 (Entered: 05/10/1996)
05/10/1996	216	MOTION by plaintiff Lifemark Hospitals for reconsideration and for mtn for partial summary judgment to be heard before Judge Porteous at 9:30 a.m. on 6/12/96. (REF 93-1794) (dp) (Entered: 05/10/1996)
05/15/1996	217	Motion by defendant Liljeberg Ent Inc and ORDER for appearance of Stephen T. Wimberly & William Peter Connick as additional counsel of record for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 5/16/96 (REF 93-1794, 93-4249, 95-2922) (dp) Modified on 05/17/1996 (Entered: 05/17/1996)
05/29/1996	219	Motion by plaintiff Lifemark Hospitals and ORDER withdrawing attorney John Flowers r for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 6/3/96 (dp) (Entered: 06/05/1996)
05/30/1996	218	Memo in opposition by defendant Liljeberg Ent Inc to motion for partial sum jgm [146-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) (Entered: 05/30/1996)
06/07/1996	221	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file reply brief to dft's memo in opp to same's mtn for partial summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 6/10/96 (dp) Modified on 07/23/1996 (Entered: 06/11/1996)
06/10/1996	220	ORDER re- setting motion by pla, Life Mark for reconsideration and for mtn for partial summary judgment [216-1] motion by dft, Liljeberg for partial sum jgm [146-1] ; motion by pla Life Mark to strike jury demand [138-1] to 9:30 a.m. on 6/25/96, w/oral argument by Judge G. T. Porteous Jr. (REF 93-1794) (dp) Modified on 07/11/1996 (Entered: 06/11/1996)
06/10/1996	222	Reply by plaintiff Lifemark Hospitals to opp by dft, Liljeberg Enterprisest to same's motion for reconsideration and for mtn for partial summary judgment [216-1] (dp) (Entered: 06/11/1996)
06/19/1996	223	RETURN OF SERVICE of supbs to Lifemark Hosptials of LA; svd 6/18/96. (dp) (Entered: 06/19/1996)
06/25/1996	224	ORDER setting motion by pla, Life Mark for reconsideration and for mtn for partial summary judgment [216-1] previously set for 6/25/96 to 9:30 a.m. on 6/28/96 by Judge G. T. Porteous Jr. Date Signed: 6/24/96 (dp)

		(Entered: 06/26/1996)
07/01/1996	225	SMOOTH MINUTES: Hrg held 6/28/96 bfr Judge denying motion by pla, Lifemark Hosptials for reconsideration and for mtn for partial summary judgment [216-1] & the motion by dft, Liljeberg for partial sum jgm [146-1] is taken under submission by Judge G. T. Porteous Jr. (dp) (Entered: 07/02/1996)
07/02/1996	226	MOTION by plaintiff Lifemark Hospitals to compel discovery referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag at 11:00 7/17/96 (REF: all cases) (gw) (Entered: 07/02/1996)
07/02/1996	227	MOTION by plaintiff Lifemark Hospitals for leave to take the deposition of ptys who have already been deposed in case referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. (REF ALL CASES) (dp) Modified on 07/03/1996 (Entered: 07/03/1996)
07/09/1996	229	Motion by defendants, Liljeberg Ent Inc and ORDER for exped hrg on same's mtn to continue the mtn filed by pla to compel discovery agst dfts Lijeberg Enterprises & St. Jude is unncessary; dfts, Liljeberg Enterprises & St. Jude may file their oppositions to pla, Lifemark's mtn compel on or bfr 7/17/96; mtn will be decided w/out oral argument by Magistrate Joseph C. Wilkinson Jr. Date Signed: 7/10/96 (REF ALL CASES) (dp) (Entered: 07/12/1996)
07/09/1996	231	Motion by defendants, Liljeberg Ent Inc & St. Jude and ORDER for exped hrg is unnecessary; dfts, Liljeberg & St. Jude may file their written report to pla's mtn for leave to take the deposition of ptys who have already been deposed by 7/17/96; said mtn will be be decided w/out on the briefs w/out oral argument by Magistrate Joseph C. Wilkinson Jr. Date Signed: 7/19/96. (REF ALL CASES) (dp) (Entered: 07/12/1996)
07/10/1996	228	Memo in opposition by plaintiff Lifemark Hospitals to mtn to continue same's mtn to compel discovery filed by defendant Liljeberg Ent Inc (dp) (Entered: 07/10/1996)
07/10/1996	230	MOTION by defendants, Liljeberg Ent Inc & St. Jude to continue mtn by pla, Lifemark to compel discovery agst Liljeberg & St. Jude referred to Magistrate Joseph C. Wilkinson Jr.; no hrg date set - matter will be heard on the briefs, w/out oral argument. (dp) (Entered: 07/12/1996)
07/10/1996	232	MOTION by defendants, Liljeberg Ent Inc & St. Jude to continue mtn for leave to take the deposition of ptys who have already been deposed by pla, Lifemark referred to Magistrate Joseph C. Wilkinson Jr. No hrg date is set (Matter will be heard on the briefs w/out oral argument. (REF ALL CASES) (dp) Modified on 07/23/1996 (Entered: 07/12/1996)
07/12/1996	237	Motion by defendant Liljeberg Ent Inc and ORDER for leave to file supplemental brief is GRANTED by Judge G. T. Porteous Jr. Date Signed: 7/22/96 (RF 93-1794) (dp) Modified on 07/23/1996 (Entered: 07/23/1996)
07/17/1996	233	Memo in opposition by defendant Liljeberg Ent Inc to motion to compel discovery [226-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 07/17/1996)

07/17/1996	234	MOTION by plaintiff Lifemark Hospitals for leave to file 3rd supplemental & amended answer to debtor's mtn to assume executory contract to be heard before Judge Porteous at 9:30 a.m. on 8/21/96. (REF 93-1794) (dp) Modified on 07/18/1996 (Entered: 07/18/1996)
07/18/1996	235	MINUTE ENTRY (7/17/96): Hrg held this date dismissing the motion by pla, Lifemark for leave to take the deposition of ptys who have already been deposed in case [227-1] by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794 (dp) Modified on 07/19/1996 (Entered: 07/19/1996)
07/19/1996	236	Memo in opposition by plaintiff Lifemark Hospitals to motion for partial sum jgm [146-1] filed by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) (Entered: 07/22/1996)
07/22/1996	238	Memorandum by defendant Liljeberg Ent Inc in support of same's motion to continue mtn for leave to take the deposition of ptys who have already been deposed by pla, Lifemark [232-1]. (RF 93-1794) (dp) (Entered: 07/23/1996)
07/22/1996	239	Motion by defendant Liljeberg Ent Inc in 2:93-cv-01794 and ORDER extending time to provide dft Lifemark Hospital with its final expert reports is GRANTED by Judge G. T. Porteous Jr. (REF 93-1794) (dp) Modified on 07/24/1996 (Entered: 07/24/1996)
07/22/1996	240	Supplemental Memorandum by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) (Entered: 07/24/1996)
08/06/1996	241	MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 8/21/96 (REF 94-3993) (dp) (Entered: 08/07/1996)
08/13/1996	242	Notice of Deposition by plaintiff Lifemark Hospitals of John McDaniel on 9/12/96. (REF 93-1794, 93-4249, 95-2922, 95-3993) (dp) (Entered: 08/14/1996)
08/13/1996	243	Motion by dft, St. Jude Hospital of Kenner and ORDER to continue motion by pla, Lifemark for partial summary judgment pursuant to Rule 56 [241-1] previously set for 8/21/96 to 9:30 a.m. on 9/4/96 is GRANTED by Judge G. T. Porteous Jr. Date Signed: 8/15/96 (REF 94-3993) (dp) Modified on 08/16/1996 (Entered: 08/16/1996)
08/14/1996	249	Motion by defendant Liljeberg Ent Inc and ORDER to extend time to respond to pla, Lifemark's mtn for leave of court to file an amended answer is GRANTED until 8/21/96 by Judge G. T. Porteous Jr. Date Signed: 8/15/96 (REF 94-3993) (dp) Modified on 08/23/1996 (Entered: 08/23/1996)
08/19/1996	244	Witness list submitted by plaintiffs, Lifemark Hospitals. & AMI (REF 93-1794) (dp) Modified on 08/20/1996 (Entered: 08/20/1996)
08/19/1996	245	Exhibit list by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 08/20/1996)
08/19/1996	246	Amended Witness list submitted by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) (Entered: 08/20/1996)

08/20/1996	247	RETURN OF SERVICE of subp to John McDaniel; svd 8/16/96. (REF 93-1794) (dp) Modified on 08/21/1996 (Entered: 08/21/1996)
08/21/1996	248	Memo in opposition by defendant Liljeberg Ent Inc to motion for leave to file 3rd supplemental & amended answer to debtor's mtn to assume executory contract [234-1] filed by plaintiff Lifemark Hospitals. (REF 94-3993) (dp) (Entered: 08/22/1996)
08/22/1996	250	RETURN OF SERVICE of subp to Kathleen V. Gaudet, LA. Board of Pharmacy; svd 8/21/96. (REF ALL CASES) (dp) Modified on 08/23/1996 (Entered: 08/23/1996)
08/23/1996	251	MINUTE ENTRY (8/23/96): ORDERED that no later than 8/238/96 counsel must confer & submit to the Court separate letters as sitp by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) (Entered: 08/26/1996)
08/27/1996	252	Motion by dft, St. Jude Hospital and ORDER to extend time to file their opposition to mtn by pla, Lifemark's mtn for partial summary judgment is GRANTED until 8/28/96 by Judge G. T. Porteous Jr. Date Signed: 8/28/96 (REF 94-3993) (dp) Modified on 08/29/1996 (Entered: 08/29/1996)
08/28/1996	253	Amended Witness list submitted by plaintiffs, Lifemark Hospitals & AMI. (REF 93-1794) (dp) (Entered: 08/29/1996)
08/28/1996	254	Memo by dft, St. Jude Hospital in opposition to motion for partial sum jgm [146-1] filed by plaintiff Lifemark Hospitals. (REF 94-3993) (dp) (Entered: 08/29/1996)
09/03/1996	333	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply to dft, St. Jude's memo in opposition to same's mtn for summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/18/96 (REF 94-3993) (dp) (Entered: 01/10/1997)
09/06/1996	255	MINUTE ENTRY (9/3/96): A Status Conf is set for 3:00 p.m. on 9/19/96 bfr Judge in chambers by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) Modified on 09/09/1996 (Entered: 09/09/1996)
09/06/1996	262	Motion by dft, St. Jude Hospital and ORDER for leave to file response to pla, Lifemark's reply memo concerning pla, Lifemark's mtn for summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/18/96 (REF 94-3993) (dp) Modified on 09/23/1996 (Entered: 09/23/1996)
09/12/1996	256	Stipulation by defendants, Liljeberg Ent Inc et al. (REF 93-1794) (dp) (Entered: 09/13/1996)
09/12/1996	261	Motion by dft St. Jude Hospital of Kenner, LA and ORDER for appearance of Leonard L. Le venson to enroll as additional counsel for record of same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/18/96 (REF 94-3993) (dp) Modified on 09/23/1996 (Entered: 09/19/1996)
09/13/1996	343	Motion by plaintiff Lifemark Hospitals for exped hrg on same's mtn to terminate chart audit and UNSIGNED ORDER. (REF 93-1794) (dp) Modified on 08/31/2000 (Entered: 01/13/1997)

09/17/1996	258	MOTION by plaintiff Lifemark Hospitals for summary judgment pursuant to Rule 56 on the circumvention claims to be heard before Judge Porteous at 9:30 a.m. on 10/2/96. (REF ALL CASES) (dp) Modified on 11/20/1996 (Entered: 09/18/1996)
09/17/1996	259	MOTION by plaintiff Lifemark Hospitals for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 10/2/96 (dp) (Entered: 09/18/1996)
09/17/1996	260	MOTION by plaintiff Lifemark Hospitals for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 10/2/96 (dp) (Entered: 09/18/1996)
09/18/1996	257	MOTION by plaintiff Lifemark Hospitals to withdraw the reference and to consolidate with respect to its mtn to dismiss the Chapter 11 proceedings of dft Liljeberg Enterprises, Inc. to be heard before Judge Porteous at 9:30 a.m. on 10/2/96. (REF ALL CASES) (dp) (Entered: 09/18/1996)
09/19/1996	268	Motion by Liljeberg Ent Inc and ORDER withdrawing attorneys, William Peter Connick & Stephen T. Wimberly & substituting attorneys, Jacob J. Amato Jr & Leonard Louis Levenson for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/23/96 (REF 93-1794) (dp) Modified on 09/25/1996 (Entered: 09/25/1996)
09/20/1996	263	Supplemental memo by dft, St. Jude Hospital in response to pla, Lifemark's reply memo concering pla, Lifemark's mtn for partial summary judgment. (dp) (Entered: 09/23/1996)
09/20/1996	344	Reply by plaintiff Lifemark Hospitals to memo by dft, St. Jude's opposition to same's mtn for summary judgment. (REF 94-3993) (dp) Modified on 01/13/1997 (Entered: 01/13/1997)
09/23/1996	266	Witness list submitted by defendants, Liljeberg Ent Inci & St. Jude Hospital. (dp) (Entered: 09/24/1996)
09/24/1996	264	MINUTE ENTRY (9/23/96): A Status Conf was held on 9/19/96 ; dft, Liljeberg was given until 9/27/96 to respond to pla, Lifemark's 3 mtns for summary judgment, mtn to withdraw the reference & to consoldiate with respect to its mtn to dismiss the Chapter 11 proceedings; pla's expert reports are due 10/1/96; dft's expert reports are due 10/15/96; dft is given until 9/27/96 to submit its witness list by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) (Entered: 09/24/1996)
09/24/1996	265	RETURN OF SERVICE of subps to St. Charles General Hospital, Meadowcrest Professional Bldg, Doctor's Hospital of Jefferson, Lifemark Hospitals of LA., Lakewview Regional Medical Center Auxiliary, Highland Park Hospital, Inc., Northshore Medical Associates, Northshore Hospital Management Corp; svd 9/23/96. (REF ALL CASES) (dp) Modified on 09/24/1996 (Entered: 09/24/1996)
09/24/1996	267	Memo in opposition by defendant Liljeberg Ent Inc to motion to withdraw the reference and to consolidate with respect to its mtn to dismiss the Chapter 11 proceedings of dft Liljeberg Enterprises, Inc. [257-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 09/24/1996)

09/25/1996	269	RETURN OF SERVICE of subp to Tenet Health System Hospital, Inc; svd 9/24/96. (REF 93-1794) (dp) Modified on 09/25/1996 (Entered: 09/25/1996)
09/27/1996	270	Motion by defendant Liljeberg Ent Inc and ORDER for expediting hrg on same's mtn for extension of time to file oppositions to pla, Lifemark's mtns for partial summary judgment is GRANTED & set for 9/27/96 at 1:00 p.m. by Judge Ginger Berrigan. (REF ALL CASES) (dp) Modified on 09/30/1996 (Entered: 09/30/1996)
09/27/1996	272	Opposition by plaintiff Lifemark Hospitals to mtn by dft, Liljeberg Enterprises. (REF 93-1794) (dp) (Entered: 09/30/1996)
09/27/1996	273	Witness list submitted by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 09/30/1996)
09/30/1996	271	Motion by defendant Liljeberg Ent Inc and ORDER for an extension of time to respond to 3 mtns by pla, Lifemark Hospitals for summary judgment is GRANTED until 10/2/96 by Judge Ginger Berrigan. Date Signed: 9/27/96 (dp) Modified on 09/30/1996 (Entered: 09/30/1996)
10/01/1996	274	Stipulation by defendants, Liljeberg Ent Inc plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 10/01/1996)
10/01/1996	275	Amended Witness list submitted by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 10/01/1996)
10/01/1996	276	Motion by plaintiff Lifemark Hospitals and ORDER for expediting hrg on same's mtn to recuse is GRANTED & is set for 10/16/96 at 10:30 a.m. by Judge G. T. Porteous Jr. Date Signed: 10/2/96 (REF ALL CASES) (dp) (Entered: 10/03/1996)
10/01/1996	282	MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 to compel payment of audit costs referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 10/16/96 (dp) (Entered: 10/03/1996)
10/01/1996	284	Motion by Lifemark Hosp of LA Inc and ORDER that expm hrg on its mtn to quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystem by dft Hosp Liljeberg is set for determination on the briefs w/o oral argument; Counsel for Liljeberg Ent Inc has filed its resp om 10/4/96 by Magistrate Joseph C. Wilkinson Jr. Date Signed: 10/7/96 (REF: all cases) (gw) Modified on 10/10/1996 (Entered: 10/10/1996)
10/02/1996	277	MOTION by plaintiff Lifemark Hospitals to recuse to be heard before Judge Porteous at 10:30 a.m. on 10/16/96. (REF ALL CASES) (dp) Modified on 10/03/1996 (Entered: 10/03/1996)
10/02/1996	279	Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [260-1], motion for partial summary judgment pursuant to Rule 56 [259-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) (Entered: 10/03/1996)
10/02/1996	280	Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [259-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) (Entered: 10/03/1996)

10/02/1996	281	Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [241-1] filed by plaintiff Lifemark Hospitals (REF ALL CASES) (dp) (Entered: 10/03/1996)
10/02/1996	334	Motion by plaintiff Lifemark Hospitals and ORDER to supplement trial exhibits and memo in support is GRANTED by Judge G. T. Porteous Jr. Date Signed: 1/8/97 (REF 93-1794)(dp) Modified on 01/10/1997 (Entered: 01/10/1997)
10/03/1996	278	MINUTE ENTRY (10/2/96): Having received the plas' mtn to recuse, the Court finds that in the best interest of justice all mtns are deferred pending resolution of the mtn to recuse by Judge G. T. Porteous Jr. (dp) (Entered: 10/03/1996)
10/04/1996	286	Memo in opposition by defendant Liljeberg Ent Inc to motion to quash 30(b)(6) ntc of depo & subp d/t of Tenet HealthSystem Hosp Inc [285-1] filed by plaintiff Lifemark Hospitals (REF: all cases) (gw) (Entered: 10/10/1996)
10/07/1996	283	RETURN OF SERVICE of subp to Liljeberg Enterprises, Inc; svd 10/3/96. (dp) (Entered: 10/08/1996)
10/08/1996	289	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file a supplemental memo in support of mtn to quash 30(b)(6) deposition & subpoena duces tecum is GRANTED by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) Modified on 10/11/1996 (Entered: 10/11/1996)
10/09/1996	285	MOTION by Lifemark Hosp of LA Inc to quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystems Hosp Inc by dft Liljeberg referred to Magistrate Joseph C. Wilkinson Jr. for determination on the briefs w/o oral argument. (REF: all cases) (gw) Modified on 10/10/1996 (Entered: 10/10/1996)
10/09/1996	287	MINUTE ENTRY (10/8/96): granting Lifemark Hosp of LA Inc's motion to quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystems Hosp Inc by dft Liljeberg [285-1] by Magistrate Joseph C. Wilkinson Jr. (REF: all cases) (gw) (Entered: 10/10/1996)
10/09/1996	288	Memo in opposition by defendants Liljeberg Ent Inc & St Jude Hosp of Kenner to motion to recuse [277-1] filed by plaintiff Lifemark Hospitals (REF: all cases) (gw) (Entered: 10/10/1996)
10/10/1996	290	Memorandum by plaintiff Lifemark Hospitals in support of same's motion to quash 30(b)(6) ntc of depo & subp d/t served on Tenet Health Systems Hosp Inc by dft Liljeberg [285-1] (REF ALL CASES) (dp) Modified on 10/11/1996 (Entered: 10/11/1996)
10/10/1996	293	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file supplemental memo in support of same's mtn to compel payment of audit costs is GRANTED by Magistrate Joseph C. Wilkinson Jr. Date Signed: 10/15/96 (dp) (Entered: 10/16/1996)
10/10/1996	299	Motion by debtor Liljeberg Ent Inc for exped hrg on mtn to review Mag's Order and - Rule continued & to be reset at a stat conf on 10/23/96 by Judge G. T. Porteous Jr. Date 10/17/96 (REF ALL CASES) (dp)

		Modified on 10/21/1996 (Entered: 10/21/1996)
10/11/1996	291	Memo in opposition by plaintiff Lifemark Hospitals to mtn by dft, Liljeberg Enterprises for review of Mag/Judge's order by defendant Liljeberg Ent Inc. (REF ALL CASES) (dp) (Entered: 10/11/1996)
10/11/1996	292	Trial deposition designations by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) (Entered: 10/11/1996)
10/11/1996	296	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply memo to Liljeberg Ent Inc's opp to its mtn to recuse by Judge G. T. Porteous Jr. Date Signed: 10/15/96 (REF: ALL CASES) (gw) (Entered: 10/17/1996)
10/15/1996	295	RETURN OF SERVICE of subp to Lifemark Hospitals of LA, Inc. svd 10/15/96. (REF ALL CASES) (dp) Modified on 10/16/1996 (Entered: 10/16/1996)
10/15/1996	300	Motion by debtor Liljeberg Ent Inc and ORDER for leave to file response to pla, Lifemark's reply memo on mtn to recuse is GRANTED by Judge G. T. Porteous Jr. Date Signed: 10/17/96 (REF ALL CASES) (dp) (Entered: 10/21/1996)
10/15/1996	301	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply briefs is GRANTED by Judge G. T. Porteous Jr. Date Signed: 10/17/96 (REF ALL CASES) (dp) (Entered: 10/21/1996)
10/16/1996	294	Memorandum by plaintiff Lifemark Hospitals in support of same's motion to compel payment of audit costs [282-1] (REF ALL CASES) (dp) (Entered: 10/16/1996)
10/16/1996	297	Reply memo by plaintiff Lifemark Hospitals to Liljeberg's opp to its motion to recuse [277-1] (REF: ALL CASES) (gw) (Entered: 10/17/1996)
10/16/1996	335	Motion by debtor Liljeberg Ent Inc and ORDER for leave to file reply memo for partial summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 1/8/97 (REF 93-1794)(dp) Modified on 01/10/1997 (Entered: 01/10/1997)
10/17/1996	298	SMOOTH MINUTES: Hrg held 10/16/96 bfr Judge denying motion by pla, Lifemark Hospitals to recuse [277-1] by Judge G. T. Porteous Jr. (dp) (Entered: 10/18/1996)
10/17/1996	303	MOTION by debtor Liljeberg Ent Inc in 2:93-cv-01794 for review Mag's order quashing the deposition of Tenet Health System Hospital to be heard before Judge Porteous at 9:30 a.m. on 10/23/96 (REF ALL CASES) (dp) Modified on 10/21/1996 (Entered: 10/21/1996)
10/17/1996	306	Memo in opposition by Liljeberg Ent Inc to reply memo of plaintiff Lifemark Hospitals on mtn to recuse. (dp) (Entered: 10/21/1996)
10/17/1996	307	Reply BRIEF FILED by plaintiff Lifemark Hospitals to same's mtn for partial summary judgment on the issue of damage to Liljeberg's business reputation. (REF ALL CASES) (dp) Modified on 10/22/1996 (Entered: 10/22/1996)

10/17/1996	308	Memorandum by plaintiff Lifemark Hospitals in 2:93-cv-01794 in support of same's motion for partial summary judgment pursuant to Rule 56 [260-1]. (REF ALL CASES) (dp) (Entered: 10/22/1996)
10/17/1996	309	Reply BRIEF FILED by plaintiff Lifemark Hospitals to mtn for summary judgment by dft, Liljeberg Enterprises. (REF ALL CASES) (dp) (Entered: 10/22/1996)
10/18/1996	302	MINUTE ENTRY (10/18/96): A phone conf ws held this date bfr Mag/Judge in re: dipsuted costs; counsel must report to Mag/Judge by 11/12/96 on the mtn to compel payment of the audit costs by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) Modified on 10/21/1996 (Entered: 10/21/1996)
10/21/1996	304	MINUTE ENTRY (10/17/96): ORDERED that the pre-trial conf set for 10/23/96 at 3:00 p.m. is converted t a stat conf; each pty is to submit a list of all mtns, materials & attachments that have been filed with the clerk and/or submitted to the court by that pty by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) (Entered: 10/21/1996)
10/21/1996	305	JUDGMENT: denying motion by pla, Lifemark Hospital to recuse [277-1] is DENIED by Judge G. T. Porteous Jr. Date signed: 10/17/96 (REF ALL CASES) (dp) Modified on 10/21/1996 (Entered: 10/21/1996)
10/22/1996	310	MINUTE ENTRY (10/16/96): As stated in open court in the presence of all ptys, excluding any depositons presently noticed with this court, all discovery is closed as of this date by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) Modified on 10/23/1996 (Entered: 10/23/1996)
10/23/1996	311	Letter to Judge from counsel, Jan M. Hayden for John Liljeberg dated 10/22/96 in re: deleting counsel Jan M. Hayden of the law firm of Bronfin & Heller from the mailing list. (REF ALL CASES) (dp) Modified on 10/23/1996 (Entered: 10/23/1996)
10/23/1996	336	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file supplemental reply in support of same's mtn for partial summary judgment on circumvention is GRANTED by Judge G. T. Porteous Jr. Date Signed: 1/8/97 (REF 93-1794) (dp) (Entered: 01/10/1997)
10/28/1996	312	MINUTE ENTRY (10/23/96): Status Conf held; Non-jury Trial set 6/16/97; Counsel was informed that upon Lifemark's filing a writ of mandamus on the mtn to recuse, a 30 day stay will be issd; Telephone Status Conf set 11:45 10/31/96 by Judge G. T. Porteous Jr. (REF: all cases) (gw) Modified on 11/01/1996 (Entered: 11/01/1996)
11/01/1996	313	MINUTE ENTRY (10/31/96): Telephone Status Conf held ; Telephone Status Conf set 10:30 11/4/96 to schedule a settlement conf & choosing an arbitrator ; Counsel for Lifemark Hosp Inc stated that it would not seek an appeal & req a stay of the proceedings since no further relief would be taken on the writ of mandamus denied by the Fifth Circuit Court of Appeals on 10/28/96 by Judge G. T. Porteous Jr. (REF: all cases) (gw) (Entered: 11/04/1996)
11/04/1996	314	ORDER from 5th Circuit Court of Appeals that the petition for wirt of mandamus is DENIED. (Garwood, Jolly & Dennis), Circuit Judges.

		(REF ALL CASES) (dp) (Entered: 11/05/1996)
11/07/1996	316	MOTION by dft, St. Jude Hospital of Kenner, LA. Inc. under all writs act to require Lifemark Hospitals, Inc. to cause unsealing of record of civil aciton agst Jones, Walker, Waechter, et al and for alternative relief to be heard before Judge Porteous at 10:00 a.m. on 11/27/96. (REF ALL CASES) (dp) Modified on 11/26/1996 (Entered: 11/26/1996)
11/07/1996	318	ORDER that the motion by dft, St. Jude under all writs act to require Lifemark Hospitals, Inc. to cause unsealing of record of civil aciton agst Jones, Walker, Waechter, et al and for alternative relief [316-1] previously set for 11/27/96 is REET to 9:00 a.m. on 12/18/96 bfr Judge Fallon w/oral argument is GRANTED by Judge Eldon E. Fallon Date Signed: 11/26/96 (dp) (Entered: 11/29/1996)
11/13/1996	315	MINUTE ENTRY (11/12/96): Hrg on Lifemark's motion to compel payment of audit costs [282-1] is dismissed as moot by Magistrate Joseph C. Wilkinson Jr. (REF: all cases) (gw) (Entered: 11/13/1996)
11/19/1996	317	Memo in opposition by plaintiff Lifemark Hospitals to motion under all writs act to require Lifemark Hospitals, Inc. to cause unsealing of record of civil aciton agst Jones, Walker, Waechter, et al and for alternative relief [316-1] filed by dft, St. Jude. (REF ALL CASES) (dp) Modified on 11/26/1996 (Entered: 11/26/1996)
11/25/1996	319	MINUTE ENTRY (11/25/96): ORDER that the Mtn by dft, St. Jude under all writs act to require Lifemark Hospitals to cause unsealing of record of Civil Aciton agst, Jones, Walker, et al & for alternative relief is CANCELLED & is referred to Sec "L" Judge Fallon for disposition & to be reset at a later date & the mtn for oral argument filed 11/7/96 is referred to Sec "L" by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) Modified on 11/29/1996 (Entered: 11/29/1996)
12/04/1996	320	MOTION by defendant Liljeberg Ent Inc to amend order entered 11/29/96 and alternatively for relief from order to be heard before Judge Porteous at 10:00 a.m. on 1/8/97. (REF 93-1794) (dp) (Entered: 12/09/1996)
12/11/1996	321	MINUTE ENTRY (12/10/96): The record shall hereby reflect that the notation "upon the consent of all ptys" which was made in the minute entry of 11/25/96 was done to note the ptys consent to the Court's acting on its own mtn and is in no way an indication that any of the ptys acquiesce to the mtns filed by any of the other ptys or waives any other objections filed to date by Judge G. T. Porteous Jr. (dp) (Entered: 12/11/1996)
12/11/1996	326	MOTION by plaintiff Lifemark Hospitals for entry of preliminary injunction or for alter relief to be heard before Judge Porteous w/ORAL ARGUMENT at 10:00 1/22/97 Ref all cases (kh) (Entered: 12/31/1996)
12/11/1996	327	Motion of Lifemark Hospital and ORDER Granting ORAL ARGUMENT ON their mtn for entry of prelim inj or for alter relief; set 1/22/97 at 10:00 a.m.by Judge G. T. Porteous Jr. Date Signed: 12/30/96 Ref all cases (kh) (Entered: 12/31/1996)
12/17/1996	322	Motion by defendant Liljeberg Ent Inc and ORDER for expediting hrg on

		same's mtn for additional - limited chart audit - will be heard on the briefs w/out oral argument - written opposition, if any, must be filed on 1/3/97 is GRANTED by by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794) (dp) Modified on 12/19/1996 (Entered: 12/19/1996)
12/18/1996	323	MOTION by defendant Liljeberg Ent Inc for additional - limited chart audit referred to Magistrate Joseph C. Wilkinson Jr.; no hrg date set matter will be heard on the briefs. (See doc #322) (REF 93-1794) (dp) Modified on 12/19/1996 (Entered: 12/19/1996)
12/23/1996	324	MINUTE ENTRY (12/17/96): ORDER that the motion by Liljeberg Enterprises & St. Judge under all writs act to require Lifemark Hospitals, Inc. to cause unsealing of record of civil aciton agst Jones, Walker, Waechter, et al and for alternative relief [316-1] previously set for 12/18/96 to 9:00 a.m. on 1/15/97 is GRANTED by Judge Eldon E. Fallon. (REF 93-1794) (dp) Modified on 12/23/1996 (Entered: 12/23/1996)
12/23/1996	325	MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for summary judgment on dft's mitigation of damages counterclaim to be heard before Judge Porteous at 10:00 a.m. on 1/8/97. (REF 94-3993) (dp) (Entered: 12/26/1996)
12/30/1996	330	Motion by dft, St. Jude Hospital and ORDER to continue the motion by pla, Lifemark for summary judgment on dft's mitigation of damages counterclaim [325-1] previously set for 1/8/97 is reset to 10:00 a.m. on 1/22/97 is GRANTED by Judge G. T. Porteous Jr. Date Signed: 1/6/97 (REF 94-3993) (dp) Modified on 01/08/1997 (Entered: 01/08/1997)
01/02/1997	329	MOTION by defendant Liljeberg Ent Inc in 2:93-cv-01794 in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital to be heard before Judge Porteous at 10:00 a.m. on 1/22/97. (REF ALL CASES) (dp) (Entered: 01/03/1997)
01/03/1997	328	Memo in opposition by plaintiff Lifemark Hospitals to mtn by dts, Liljeberg for additional chart audit filed by defendants, Liljeberg Ent Inc (REF 93-1794) (dp) (Entered: 01/03/1997)
01/07/1997	338	Motion by defendant Liljeberg Ent Inc and ORDER to continue the motion by same under all writs act to require Lifemark Hospitals, Inc. to cause unsealing of record of civil aciton agst Jones, Walker, Waechter, et al and for alternative relief [316-1] previously set for 1/15/97 at 9:00 to 1/15/97 at 3:30 p.m. is GRANTED by Judge Eldon E. Fallon. (REF 93-1794) (dp) (Entered: 01/10/1997)
01/07/1997	339	Motion by plaintiff Lifemark Hospitals and ORDER to continue same's motion for entry of preliminary injunction or for alter relief [326-1] previously se tfor 1/22/97 to 2/5/97 at 10:00 a.m. is GRANTED by Judge G. T. Porteous Jr. Date Signed: 1/8/97 (dp) (Entered: 01/10/1997)
01/08/1997	331	RETURN OF SERVICE of subp to Lifemark Hospitals; svd 1/7/97. (REF 93-1794) (dp) (Entered: 01/08/1997)
01/08/1997	341	Supplemental Response by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 01/13/1997)

01/08/1997	342	Response by defendant Liljeberg Ent Inc to reply brief of pla, Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 01/13/1997)
01/09/1997	332	MOTION by plaintiff Lifemark Hospitals to quash subpoena of Douglas Draper on 1/8/97 referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 1/29/97. (REF 93-1794) (dp) (Entered: 01/09/1997)
01/09/1997	337	MINUTE ENTRY (1/8/97): Hr gheld this date denying motion by dft, Liljeberg Enteprises for additional limited chart audit [323-1] by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) Modified on 01/10/1997 (Entered: 01/10/1997)
01/09/1997	340	Motion by plaintiff Lifemark Hospitals and ORDER to continue the motion by dfts, Liljeberg, et al in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital [329-1] previously set for 1/22/97 to 10:00 a.m. on 2/5/97 is GRANTED by Judge G. T. Porteous Jr. Date Signed: 1/10/97 (REF 93-1794) (dp) Modified on 01/10/1997 (Entered: 01/10/1997)
01/14/1997	345	Motion by pla and ORDER resetting hrg on their motion for summary judgment on dft's mitigation of damages counterclaim [325-1] at 10:00 2/5/97 by Judge G. T. Porteous Jr. Date Signed: 1/14/97 (REF: 94-3993) (nn) (Entered: 01/15/1997)
01/15/1997	348	SMOOTH MINUTES: Hrg held this date bfr Judge Fallon denying motion by dfts, St. Jude, et al under all writs act to require Lifemark Hospitals, Inc. to cause unsealing of record of civil aciton agst Jones, Walker, Waechter, et al and for alternative relief [316-1]; Leave of Court msut be obtained bfr any transcript of this proceeding can be made; if a transcript is prepared, it shall be filed under seal by Judge Eldon E. Fallon. (RF 93-1794) (dp) Modified on 01/24/1997 (Entered: 01/24/1997)
01/21/1997	346	MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for leave to terminate contract to be heard before Judge Porteous at 10:00 a.m. on 2/5/97. (REF 93-1794) (dp) Modified on 01/22/1997 (Entered: 01/22/1997)
01/21/1997	347	MOTION by defendant Liljeberg Ent Inc in 2:93-cv-01794 for review of Mag/Judge's order of 1/9/97 or, alternatively for leave to file supplemental expert report to be heard before Judge Porteous at 10:00 a.m. on 2/19/97. (REF 93-1793) (dp) Modified on 01/23/1997 (Entered: 01/23/1997)
01/24/1997	351	Motion by defendant Liljeberg Ent Inc and ORDER to withdraw attorneys, Stephen T. Wimberly & William P. Connick for same is GRANTED by Judge G. T. Porteous Jr. (REF 94-3393) Date Signed: 1/27/97 (dp) (Entered: 01/29/1997)
01/27/1997	349	Notice by movant Donna E Erb of appearance of Michael S. Fawer representing same. (REF 93-1794) (dp) (Entered: 01/28/1997)
01/28/1997	350	Memo in opposition by plaintiff Lifemark Hospitals to motion in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital [329-1] filed by defendant

		Liljeberg Ent Inc. (REF 93-1794) (dp) (Entered: 01/28/1997)
01/28/1997	352	MOTION by plaintiff Lifemark Hospitals to compel dft, Liljeberg Enterprises and its expert Dr. Arnold Levine to produce computer data files referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 2/19/97. (REF 93-1793) (dp) (Entered: 01/29/1997)
01/28/1997	353	Memo in opposition by defendant Liljeberg Ent Inc motion for leave to terminate contract [346-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 01/29/1997)
01/28/1997	354	Memo in opposition by movant Donna E Erb to motion in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital [329-1] filed by defendant Liljeberg Ent Inc (REF 93-1794) (dp) (Entered: 01/29/1997)
01/28/1997	355	Memo in opposition by dft, St. Jude Hospital to motion for summary judgment on dft's mitigation of damages counterclaim [325-1] filed by plaintiff Lifemark Hospitals (REF 94-3993) (dp) (Entered: 01/29/1997)
01/29/1997	356	MINUTE ENTRY (1/28/97): Hrg held this date DISMISSING AS MOOT - the motion by pla, Lifemark Hospitals to quash subpoena of Douglas Draper on 1/8/97 [332-1] - counsel for moval has advised the Court that the ptys have resolved their discovery dispute; by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794) (dp) Modified on 01/30/1997 (Entered: 01/30/1997)
01/30/1997	357	Motion by dfts, Liability Assurance Society and ORDER to release transcript of the proceedings in the Mtn to unseal record heard on 1/15/97 is GRANTED by Judge Eldon E. Fallon. (REF 94-1258) (dp) (Entered: 02/03/1997)
01/31/1997	358	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER to continue motion by same for entry of preliminary injunction or for alter relief [326-1] previously set for 2/5/97 to 2/27/97 & 2/28/97 at 10:00 a.m. is GRANTED by Judge G. T. Porteous Jr. Date Signed: 2/3/97 (dp) (Entered: 02/04/1997)
02/03/1997	359	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply memo to pla's opposition to dft's mtn for summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 2/4/97. (REF 94-3393) (dp) Modified on 05/15/1997 (Entered: 02/05/1997)
02/03/1997	398	Motion by plaintiff Lifemark Hospitals for exped hrg on same's mtn to strike sections of pla-in-counterclaim's memo in opposition to same's mtn for summary judgment and UNSIGNED ORDER. (REF 94-3993) (dp) Modified on 08/31/2000 (Entered: 05/15/1997)
02/03/1997	399	MOTION by plaintiff Lifemark Hospitals to strike, sections II, III, IV & V of dft, Liljeberg Enterprises's memo in opposition to same's mtn for summary judgment to dismiss mitgiation of damages counterclaim ; no hrg date set. (REF 94-3993) (dp) Modified on 05/15/1997 (Entered: 05/15/1997)
02/04/1997	360	Reply Memorandum by plaintiff Lifemark Hospitals. (REF 94-3993) (dp)

		(Entered: 02/05/1997)
02/04/1997	361	Motion by defendant Liljeberg Ent Inc and ORDER to continue same's motion in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital [329-1] presently set for 2/5/97 to 10:00 a.m. on 2/28/97 is GRANTED by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) Modified on 02/05/1997 (Entered: 02/05/1997)
02/04/1997	362	Motion by dft, St. Jude Hospital and ORDER to continue the motion by pla, Lifemark for summary judgment on dft's mitigation of damages counterclaim [325-1] previously set for 2/5/97 to 10:00 a.m. on 2/27/97 is GRANTED by Judge G. T. Porteous Jr. (REF 94-3993) (dp) (Entered: 02/05/1997)
02/04/1997	363	MOTION by plaintiff Lifemark Hospitals to compel dft, Liljeberg Enterprises for production of documents referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 2/19/97 (dp) Modified on 02/19/1997 (Entered: 02/05/1997)
02/06/1997	364	Motion by defendant Liljeberg Ent Inc and ORDER to release transcript of hrg held 1/15/97 is GRANTED by Judge Eldon E. Fallon. Date Signed: 2/12/97 (dp) (Entered: 02/14/1997)
02/10/1997	381	Motion by defendant Liljeberg Ent Inc & plaintiff Lifemark Hospitals and ORDER for modification of scheduling order to allow supplemental expert reports is GRANTED as stip by Judge G. T. Porteous Jr. Date Signed: 3/3/97 (REF ALL CASES) (dp) (Entered: 03/04/1997)
02/10/1997	386	Motion by defendant Liljeberg Ent Inc & plaintiff Lifemark Hospitals and ORDER that the 30 day time period for a preliminary hrg set is WAIVED by Judge G. T. Porteous Jr. Date Signed: 3/11/97 (REF 93-1793) (dp) Modified on 03/13/1997 (Entered: 03/13/1997)
02/12/1997	365	Memo in opposition by defendant Liljeberg Ent Inc to motion to compel dft, Liljebrg Enterprises for production of documents [363-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 02/14/1997)
02/18/1997	366	Letter to Clerk of Court from counsel, William P. Connick & Stephen T. Wimberly of the lawfirm of Connick, Lentini, Wimberly & Delaup for defendant Liljeberg Ent Inc dated 2/10/97 in re: removal of name from mailing list. (REF ALL CASES) (dp) Modified on 02/18/1997 (Entered: 02/18/1997)
02/18/1997	368	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply memo in opp to memo by Liljeberg Enterprises to mtn by same to compel production of documents is GRANTED by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794) (dp) (Entered: 02/19/1997)
02/19/1997	367	MINUTE ENTRY (2/18/97): ORDER that the motion by pla, Lifemark Hospitals to compel dft, Liljeberg Enterprises for production of documents [363-1] is DISMISSED AS MOOT by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794) (dp) (Entered: 02/19/1997)
02/19/1997	369	Reply by plaintiff Lifemark Hospitals to opposition by dft, Liljeberg Enterprises to same's mtn to compel production of document. (REF 93-

		1794) (dp) Modified on 08/31/2000 (Entered: 02/19/1997)
02/19/1997	370	Memo in opposition by plaintiff Lifemark Hospitals to mtn to strike patently false accusation by dft, St. Jude Hospital of Kenner, La., Inc. (REF 95-3993) (dp) Modified on 02/20/1997 (Entered: 02/20/1997)
02/19/1997	371	Memo in opposition by dft, St. Jude to mtn by pla, Lifemark's mtn to strike secitons II, III, IV & V of LEI's memo in opposition to pla, Lifemark's mtn for summary judgment to dismiss mitigation of damages counterclaim. (REF 94-3993). (dp) (Entered: 02/20/1997)
02/19/1997	372	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file repy brief to oppositon of dft, Liljeberg to same's mtn to terminate the contract & mtn for entry of a preliminary injunction or for alternative relief is GRANTED by Judge G. T. Porteous Jr. Date Signed: 2/20/97 (REF ALL CASES) (dp) Modified on 02/21/1997 (Entered: 02/21/1997)
02/19/1997	377	Motion by defendant Liljeberg Ent Inc and ORDER for expediting hrg on same's mtn to remand is GRANTED & set for 3/5/97 at 10:00 a.m.; All opositions to mtn to remand is due at least 48 hours prior to hrg on the said mtn; by Judge G. T. Porteous Jr. Date Signed: 2/25/97 (dp) (Entered: 02/28/1997)
02/20/1997	373	Reply by plaintiff Lifemark Hospitals to opposition of dft, Liljeberg Enterprises' to same's motion for leave to terminate contract [346-1] (REF ALL CASES) (dp) Modified on 02/21/1997 (Entered: 02/21/1997)
02/20/1997	374	MINUTE ENTRY (2/19/97): ORDER denying as stip motion by pla, Lifemark to compel dft, Liljeberg Enterprises and its expert Dr. Arnold Levine to produce computer data files [352-1] by Magistrate Joseph C. Wilkinson Jr. (REF 93-1793) (dp) (Entered: 02/21/1997)
02/24/1997	375	Memo in opposition by plaintiff Lifemark Hospitals to mtn to remand filed by defendant Liljeberg Ent Inc (REF 93-1794) (dp) (Entered: 02/26/1997)
02/26/1997	379	MINUTE ENTRY (2/25/97): ORDER that theg motion by dft, Liljeberg to remand US Bankruptcy Court the mtn to terminate contract filed by pla Lifemark of LA [378-1] & the motion by dft, Liljeberg in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital [329-1] are CONT to 10:00 a.m. on 3/26/97 by Judge G. T. Porteous Jr. (REF 93-1794) (dp) (Entered: 02/28/1997)
02/27/1997	376	MINUTE ENTRY (2/26/97): ORDER CONTINUING motion by dft, Lileberg Enterprise in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital [329-1] previously set for 2/27/97 to 3/26/97 at 10:00 a.m. 3/26/97 by Judge G. T. Porteous Jr. (dp) (Entered: 02/27/1997)
02/27/1997	378	MOTION by defendant Liljeberg Ent Inc to remand US Bankruptcy Court the mtn to terminate contract filed by pla Lifemark of LA to be heard before Judge Porteous at 10:00 3/5/97. (REF 93-1794) (dp) (Entered: 02/28/1997)

02/27/1997	380	Opposition by plaintiff Lifemark Hospitals to Joint waiver of 11 USC 362. (REF ALL CASES) (dp) (Entered: 02/28/1997)
02/28/1997	382	Motion by defendant Liljeberg Ent Inc and ORDER for leave to file supplemental memo in response to opposition by pla, Lifemark to mtn to remand is GRANTEDby Judge G. T. Porteous Jr. Date Signed: 3/4/97 (REF 93-1794) (dp) (Entered: 03/05/1997)
03/04/1997	383	Supplemental memo in response by defendant Liljeberg Ent Inc to opposition of pla, Lifemark's to same's motion to remand US Bankruptcy Court the mtn to terminate contract filed by pla Lifemark of LA [378-1]. (REF 93-1704) (dp) (Entered: 03/05/1997)
03/06/1997	384	SMOOTH MINUTES: Hrg held 3/5/97 bfr Judge granting motion by pla, Lifemark to remand US Bankruptcy Court the mtn to terminate contract filed by pla Lifemark of LA [378-1] by Judge G. T. Porteous Jr. (REF 93-1794) (dp) (Entered: 03/07/1997)
03/07/1997	385	Motion by plaintiff Lifemark Hospitals and ORDER to withdraw motion by pla, Lifemark for leave to terminate contract [346-1] & withdrawing motion by pla, Lifemarkfor entry of preliminary injunction or for alter relief [326-1] is GRANTED & considered MOOT for all purposes by Judge G. T. Porteous Jr. Date Signed: 3/10/97 (REF 93-1794) (dp) Modified on 03/12/1997 (Entered: 03/12/1997)
03/11/1997	387	Motion by plaintiff Lifemark Hospitals and ORDER for appearance of Don C. Gardner as additional counsel of record for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 3/12/97 (REF ALL CASES) (dp) (Entered: 03/13/1997)
03/20/1997	388	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply memo to opposition of dft St. Judge Hospital to mtn by pla, Lifemark Hospitals to strike portions of St. Jude's opposition to pla, Lifemark's mtn for summary judgment to disimiss mitigation of damages counterclaim is GRANTED by Judge G. T. Porteous Jr. (REF 94-3993) (dp) Modified on 03/21/1997 (Entered: 03/21/1997)
03/20/1997	389	Reply memo by plaintiff Lifemark Hospital to opposition of dft, St. Jude Hospital to Lifemark's portion of St. Jude's opposition to Lifemark's mtn for summary judgment to dismiss mitigation of damages counterclaim. (REF 94-3993) (dp) (Entered: 03/21/1997)
03/24/1997	390	Motion by dft, St. Jude Hospital and ORDER for leave to file rebuttal memo of same opposing mtn by pla, Lifemark to strike portions of St. Jude's response to mtn for summary judgment to dismiss counterclaim is GRANTED by Judge G. T. Porteous Jr. (REF 94-3993) (dp) Modified on 03/26/1997 (Entered: 03/26/1997)
03/25/1997	391	Memo in opposition by defendant Liljeberg Ent Inc to mtn to lift automatic stay & for entry of injunction by dft, Lifemark Hospitals. (REF 93-1794) (dp) Modified on 03/26/1997 (Entered: 03/26/1997)
03/25/1997	392	Rebuttal Memo by dft, St. Jude opposing mtn by pla, Lifemark Hospitals to strike portions of same's response to mtn for summary judgment to dismiss counterclaim. (dp) (Entered: 03/26/1997)

03/25/1997	393	Motion by defendant Liljeberg Ent Inc and ORDER for leave to file reply to pla, Lifemark opposition to mtn in limine to require Donna Erb to testify at trial about her involvement in the bid rigging of the judicial sale of the hospital is GRANTED by Judge G. T. Porteous Jr. Date Signed: 3/26/97 (REF 93-1794) (dp) (Entered: 03/27/1997)
03/26/1997	394	Reply by defendant Liljeberg Ent Inc to opposition by pla, Lifemark to same's motion in limine to require Donna Erb to testify at trial about her involvement in the Bid-Rigging of the Judicial sale of the hospital. [329-1] (REF 93-1794) (dp) Modified on 03/27/1997 (Entered: 03/27/1997)
04/03/1997	395	PROCEEDING: denying Liljeberg's motion in limine to require Donna Erb to testify at trial about her involvement in the bid-rigging of the judical sale of the hospital [329-1] by Judge G. T. Porteous Jr. (REF: 93-1794) (pck) (Entered: 04/03/1997)
04/08/1997		Mail Returned [395-1] minute entry addressed to counsel, Kenneth Charles Fonte for defendant Liljeberg Ent Inc. (REF 93-1794) (dp) (Entered: 04/17/1997)
04/10/1997	396	Letter to Clerk of court from counsel, Michael S. Fawer for movant Donna E Erb dated 4/8/97 in re: change of address. (REF 93-1794) (dp) Modified on 04/15/1997 (Entered: 04/15/1997)
04/25/1997	397	Joint Motion by defendant Liljeberg Ent Inc & plaintiff Lifemark Hospitals and ORDER for modificaiton of agreed order concerning supplemental expert discovery is GRANTED as stip by Judge G. T. Porteous Jr. Date Signed: 4/28/97 (REF ALL CASES) (dp) (Entered: 04/29/1997)
05/13/1997	400	Amended Witness list submitted by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) (Entered: 05/15/1997)
05/19/1997	401	MINUTE ENTRY (5/19/97): ORDERED that a Pre-Trial Conference is set for 2:30 p.m. on 6/11/97 bfr Judge by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) Modified on 05/20/1997 (Entered: 05/20/1997)
05/20/1997	402	Amended Witness list submitted by plaintiff Lifemark Hospitals. (dp) (Entered: 05/20/1997)
05/30/1997	403	2nd amended Witness list submitted by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) (Entered: 06/02/1997)
06/04/1997	406	Motion by defendant Liljeberg Ent Inc and ORDER for expediting hrg on same's mtn to strike Joan G. Hayworth & G. Hossein Borhani as expert witnesses is GRANTED by Judge G. T. Porteous Jr. Date Signed: 6/9/97 (dp) (Entered: 06/13/1997)
06/10/1997	404	Memo in opposition by plaintiff Lifemark Hospitals to mtn to strike experts filed by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) Modified on 06/11/1997 (Entered: 06/11/1997)
06/11/1997	405	RETURN OF SERVICE of subps to Fred Matherne on 6/2/97; to Fred Grosz, Steven Greene & Mitchell Duracher on 6/3/97; to John McDanie on 6/4/97; to Vincent Messino & Joan Landry on 6/6/97 & to J Larry Lidell on 6/9/97 (tbl) (Entered: 06/12/1997)

06/12/1997	408	MINUTE ENTRY (6/12/97): ORDER that the mtn to strike expert witnesses, Joan G. Hayworth & G. Hossein Bohani will be heard bfr Mag/Judge w/o oral argument; counsel for both ptys are to provide Mag/Judge with written statements as sitp by Magistrate Joseph C. Wilkinson. (REF 93-1794) Jr. (dp) (Entered: 06/13/1997)
06/13/1997	407	MOTION by defendant Liljeberg Ent Inc to strike John G. Hayworth & G. Hossein Borhani as expert witnesses referred to Magistrate Joseph C. Wilkinson Jr. w/out oral argument; no hrg date set. (REF 93-1794) (dp) (Entered: 06/13/1997)
06/13/1997	409	Response by plaintiff Lifemark Hospitals [408-1] to minute entry of 6/12/97. (REF 93-1794) (dp) Modified on 06/13/1997 (Entered: 06/13/1997)
06/13/1997	410	MINUTE ENTRY (6/13/97): Hrg held this date granting as stip motion by dft, Liljeberg Enterprises to strike John G. Hayworth & G. Hossein Borhani as expert witnesses [407-1] by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) Modified on 06/16/1997 (Entered: 06/16/1997)
06/16/1997	411	Objections by plaintiff Lifemark Hospitals to trial exhibits by Liljeberg Enterprises. (REF 93-1794) (dp) (Entered: 06/16/1997)
06/16/1997	412	Letter to Mag/Judge Wilkinson dated 6/13/97 from counsel for defendant Liljeberg Ent Inc in re: minute entry of 6/12/97. (REF ALL CASES) (dp) (Entered: 06/17/1997)
06/16/1997	414	Motion by plaintiff Lifemark Hospitals for exped hrg on sam'es mtn for reconsideration of mtn to strike expert witnesses and ORDER - MOOT. (dp) (Entered: 06/18/1997)
06/16/1997	420	SMOOTH MINUTES: Non-Jury trial held 6/16/97 bfr Judge; Reported/Recorded by Elizabeth Spong; by Judge G. T. Porteous Jr. (REF 93-1794) (dp) Modified on 07/14/1997 (Entered: 07/14/1997)
06/17/1997	413	PRE-TRIAL ORDER: PTC held 6/11/97 bfr Judge; Non-jury trial set for 6/16/97 at 10:00 a.m. bfr Judge by Judge G. T. Porteous Jr. Date Signed: 6/16/97 (REF ALL CASES) (dp) Modified on 06/17/1997 (Entered: 06/17/1997)
06/17/1997	421	SMOOTH MINUTESG: Non-jury trial cont 6/17/97 bfr Judge; Reported/Recorded by Elizabeth Spong. (REF 93-1794) (dp) (Entered: 07/14/1997)
06/18/1997	415	Amended Objections by plaintiff Lifemark Hospitals to trial exhibits by dft, Liljeberg Enterprises. (REF ALL CASES) (dp) (Entered: 06/18/1997)
06/18/1997	422	SMOOTH MINUTES: Non-jury trial 6/18/97 bfr Judge; Reported/Recorded by Elizabeth Spong. (REF 93-1794) (dp) (Entered: 07/14/1997)
06/19/1997	423	SMOOTH MINUTES: Non-Jury trial held 6/19/97 bfr Judge; Reported/Recorded by Elizabeth Spong; (REF 93-1794) (dp) (Entered: 07/14/1997)

06/23/1997	424	SMOOTH MINUTES: Non-jury trial held 6/23/97 bfr Judge; Reported/Recorded by Elizabeth Spong; (REF (93-1794) (dp) (Entered: 07/14/1997)
06/24/1997	425	SMOOTH MINUTES: Non-jury trial held 6/24/97 bfr Judge; Reported/Recorded by Elizabeth Spong; (REF 93-1794) (dp) (Entered: 07/14/1997)
06/25/1997	416	MINUTE ENTRY (6/24/97): A settlement conf was held on 6/20/97; no settlement was reached by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) Modified on 06/25/1997 (Entered: 06/25/1997)
06/25/1997	417	Bench BRIEF FILED by plaintiff Lifemark Hospitals. (ALL CASES) (dp) (Entered: 06/25/1997)
06/25/1997	418	Memorandum by St. Judge Hospital regarding duty of pla, Lifemark Hospitals to timely reinscribe the collateral mortgage. (REF ALL CASES) (dp) (Entered: 06/25/1997)
06/25/1997	426	SMOOTH MINUTES: Non-Jury trial held 6/25/97 bfr Judge; Reported/Recorded by Elizabeth Spong. (REF 93-1794) (dp) (Entered: 07/14/1997)
06/26/1997	427	SMOOTH MINUTES: Non-jury trial held 6/26/97 bfr Judge; Reported/Recorded by Elizabeth Spong. (REF 93-1794) (dp) (Entered: 07/14/1997)
06/27/1997	428	SMOOTH MINUTES: Non-jury trial held 6/27/97 bfr Judge; Reported/Recorded by Elizabeth Spong. (REF 93-1794) (dp) (Entered: 07/14/1997)
06/27/1997	429	SMOOTH MINUES: Non-Jury trial held 6/27/97 br Judge; Reported/Recorded by Elizabeth Spong; by Judge G. T. Porteous Jr. (dp) Modified on 07/28/1997 (Entered: 07/21/1997)
07/09/1997	419	MINUTE ENTRY (7/7/97): A phone conf was held this date; Non-jury Trial will resume at 10:00 a.m. on 7/14/97 bfr Judge by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) (Entered: 07/10/1997)
07/14/1997	432	SMOOTH MINUTES: Non-Jury trial 7/14/97 bfr Judge; Reported/Recorded by Elizabeth Spong; dft moves for judgment of law; ORDERED; submitted until the end of trial by Judge G. T. Porteous Jr. (REF 93-1794) (dp) Modified on 07/28/1997 (Entered: 07/28/1997)
07/15/1997	433	SMOOTH MINUTES: Non-jury held 7/15/97 at 10:00 a.m. bfr Judge; Reported/Recorded by Vic Digiorgio; by Judge G. T. Porteous Jr. (dp) (Entered: 07/28/1997)
07/18/1997	430	Notice by defendants, Liljeberg Ent Inc & St Jude Hospital of Kenner of hypothetical questions requiring calculations. (REF ALL CASES) (dp) Modified on 07/21/1997 (Entered: 07/21/1997)
07/21/1997	434	SMOOTH MINUTES: Non-Jury trial held 7/21/7 at 10:00 a.m. bfr Judge; Reported/Recorded by Elizabeth Spong; by Judge G. T. Porteous Jr. (REF 93-1794) (dp) (Entered: 07/28/1997)
07/22/1997	431	MOTION by plaintiff Lifemark Hospitals for judgment, in favor of pla,

		Lifemark & agst Liljeberg Enterprises Inc. & St. Jude Hospital, dismissing their claims & counterclaims for loss of the hospital & dismissing Liljeberg Enterprises' mtn to assuume executory contract to be heard before Judge Porteous at 10:00 a.m. on 8/6/97 (dp) Modified on 08/05/1997 (Entered: 07/23/1997)
07/22/1997	435	SMOOTH MINUTES: Non-jury held 7/22/97 at 10:00 a.m. bfr Judge; Reported/Recorded by Elizabeth Spong; by Judge G. T. Porteous Jr. (dp) (Entered: 07/28/1997)
07/23/1997	436	SMOOTH MINUTES: Non-jury trial held 7/23/97 at 10:00 a.m. bfr Judge; Reported/Recorded by Elizabeth Spong; matter taken under submission; counsel to complete exhibit lists w/in 10 days by Judge G. T. Porteous Jr. (dp) (Entered: 07/28/1997)
08/04/1997	437	Joint statement regarding claims asserted in consolidated civil action. (REF ALL CASES) (dp) Modified on 08/05/1997 (Entered: 08/05/1997)
08/04/1997	438	Letter to Judge dated 7/30/97 from counsel for defendant Liljeberg Ent Inc in re: no written response is due from dfts, Liljeberg Enterprises & St. Jude Hospital to mtn by pla, Lifemark for judgment as a matter of law. (REF ALL CASES) (dp) Modified on 08/05/1997 (Entered: 08/05/1997)
08/04/1997	439	Exhibit list by defendants, Liljeberg Ent Inc & St. Jude Hospital of Kenner. (REF ALL CASES) (dp) (Entered: 08/05/1997)
08/06/1997	440	ORDER denying motion by plas, Lifemark Hospitals Inc & Lifemark Hospitals of LA. Inc. for judgment, in favor of pla, Lifemark & agst Liljeberg Enterprises Inc. & St. Jude Hospital, dismissing their claims & counterclaims for loss of the hospital & dismissing Liljeberg Enterprises' mtn to assuume executory contract [431-1] by Judge G. T. Porteous Jr. Date Signed: 8/5/97 (dp) (Entered: 08/07/1997)
09/04/1997	441	Copy of a Letter to Kenneth Fonte of Golden & Fontet from counsel, Joseph N. Nole for plaintiff Lifemark Hospitals in ree: findings & conclusions. (REF ALL CASES) (dp) Modified on 09/05/1997 (Entered: 09/05/1997)
09/18/1997	442	Motion by defendant Liljeberg Ent Inc and ORDER that Lifemark Hospitals et al, plas & Liljeberg Ent Inc et al, dfts & dfts are granted a one week extension of time from 9/18/97 w/in which to file their proposed findings of fact & conclusions of law by Judge G. T. Porteous Jr. Date Signed: 9/23/97 (REF: all cases) (gw) (Entered: 09/23/1997)
10/06/1997	443	MOTION by plaintiff Lifemark Hospitals to strike evidence and findings of fact by dft, Liljeberg Inc. to be heard before Judge Porteous at 10:00 a.m. on 10/29/97. (REF ALL CASES) (dp) Modified on 10/31/1997 (Entered: 10/07/1997)
10/10/1997	445	Transcript Volume 14 of non-jury trial held 7/21/97 at 10:00 a.m. bfr Judge. (REF ALL CASES) (dp) Modified on 10/15/1997 (Entered: 10/15/1997)
10/14/1997	444	Memo in opposition by defendant Liljeberg Ent Inc to motion to strike evidence and findings of fact by dft, Liljeberg Inc. [443-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) (Entered:

		10/15/1997)
10/29/1997	446	ORDER & REASONS denying motion by Lifemark Hospital to strike evidence and findings of fact by dft, Liljeberg Inc. [443-1] by Judge G. T. Porteous Jr. (dp) (Entered: 10/29/1997)
11/20/1997	447	Motion by defendant Liljeberg Ent Inc in 2:93-cv-01794 and ORDER extending time until 12/15/97 to wile brief by Judge G. T. Porteous Jr. Date Signed: 11/25/97 Ref all cases (kh) Modified on 11/26/1997 (Entered: 11/26/1997)
01/06/1999	448	MINUTE ENTRY (1/5/99): Although the Court is satisfied with the issues of liability, the Court requests each pty to submit an additional post-trial brief only on their respective claims of quantum w/in 30 days from today's date; briefs must not exceed 35 pages & must be submitted in 12 point Times New Roman font on standard 8 1/2 x 11 paper with one inch margins & double spaced lines; any deviation will not be considered; by Judge G. T. Porteous Jr. (REF 93-1794, 93-4249, 94-3993, 95-2922) (dp) (Entered: 01/06/1999)
02/04/1999	449	Memorandum by plaintiff Lifemark Hospitals of LA & Lifemark Hospitals, Inc in support of damages in favor of same in the amount of $87,785,339.47. (REF ALL CASES) (dp) Modified on 02/08/1999 (Entered: 02/05/1999)
02/05/1999	450	Post trial Memorandum by defendants Liljeberg Ent Inc & St. Judge Hospital concerning quantum per the minute entry filed and entered 1/6/99 . (REF ALL CASES) (dp) Modified on 02/09/1999 (Entered: 02/08/1999)
04/12/1999	451	NOTICE by counsel Don M. Richard for defendant Liljeberg Ent Inc of same's change of address. (REF 93-1794, 93-4249, 94-3993, 95-2922) (dp) Modified on 04/13/1999 (Entered: 04/12/1999)
06/16/1999	452	MOTION by defendant Lifemark Hospitals to reopen the record in this matter for the submission of additional evidence to be heard before Judge Porteous at 10:00 7/7/99 (REF: ALL CASES) (tbl) (Entered: 06/16/1999)
06/24/1999	453	Reply/Memo in opposition by defendant Liljeberg Ent Inc to motion to reopen the record in this matter for the submission of additional evidence [452-1] filed by plaintiff Lifemark Hospitals (REF: ALL CASES) (rg) (Entered: 06/25/1999)
06/30/1999	454	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn to reopen ; by Judge G. T. Porteous Jr. Date Signed: 7/1/99 (REF: ALL CASES) (rg) (Entered: 07/02/1999)
07/02/1999	455	Suppl Memorandum by plaintiff Lifemark Hospitals in support [452-1] of their motion to reopen the record in this matter for the submission of additional evidence. (REF: ALL CASES) (rg) (Entered: 07/02/1999)
07/07/1999	456	ORDER AND REASONS: ORDERED that Lifemark's motion to reopen the record in this matter for the submission of additional evidence is DENIED. [452-1] by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 07/08/1999)
07/12/1999	457	MINUTE ENTRY (7/9/99): The Court AMENDS its Order & Reasons,

		doc # 456 to reflect a signature date of 7/7/99 instead of the erroneous date of 7/7/97. by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 07/12/1999)
07/19/1999		Mail Returned [454-1] motion & order addressed to John Flowers. (rg) (Entered: 07/21/1999)
01/18/2000	458	MOTION by defendant Liljeberg Ent Inc to supplement evidence to be heard before Judge Porteous at 10:00 2/2/00. (REF: ALL CASES) (rg) (Entered: 01/19/2000)
01/24/2000	459	Motion by plaintiff Lifemark Hospitals and ORDER to cont Liljeberg Ent's motion to supplement evidence [458-1] to 10:00 3/1/00; by Judge G. T. Porteous Jr. Date Signed: 1/25/00 (REF: ALL CASES) (rg) (Entered: 01/26/2000)
01/25/2000	460	Motion by plaintiff Lifemark Hospitals and ORDER that oral argument will be heard on Liljeberg's mtn to suppl the evidence; by Judge G. T. Porteous Jr. Date Signed: 1/26/00 (REF: ALL CASES) (rg) (Entered: 01/26/2000)
01/25/2000	461	Memo in opposition by plaintiff Lifemark Hospitals to motion to supplement evidence [458-1] filed by debtor Liljeberg Ent Inc (REF: ALL CASES) (rg) (Entered: 01/26/2000)
02/15/2000	462	Motion by plaintiff Lifemark Hospitals and ORDER that dft's mtn for oral argument on their mtn for partial final jgm under Rule 54 (b); by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 02/16/2000)
02/15/2000	463	MOTION by plaintiff Lifemark Hospitals for partial final judgment to be heard before Judge Porteous at 10:00 3/29/00. (REF: ALL CASES) (rg) (Entered: 02/16/2000)
02/17/2000	464	MINUTE ENTRY (2/17/00): ORDERED that Liljeberg Ent Inc & St. Judge Hospital's motion to supplement evidence [458-1] is CONT & reset for 10:00 3/29/00 w/oral argument at the same time Lifemark's mtn for partial final jgm is noticed for hrg w/oral argument [463-1]; by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) Modified on 02/17/2000 (Entered: 02/17/2000)
03/02/2000		Mail Returned [464-1] minute entry addressed to John Flowers. (REF: 93-1794) (rg) (Entered: 03/02/2000)
03/06/2000		Mail Returned [462-1] order addressed to John Flowers (rg) (Entered: 03/08/2000)
03/13/2000	465	Memo in opposition by defendant Liljeberg Ent Inc & St. Jude Hospital of Kenner to motion for partial final judgment [463-1] filed by plaintiff Lifemark Hospitals (REF: ALL CASES) (rg) (Entered: 03/14/2000)
03/17/2000	466	Motion by defendant Liljeberg Ent Inc and ORDER for leave to file reply memo to Lifemark's memo in opp to mtn to suppl evidence ; by Judge G. T. Porteous Jr. Date Signed: 3/20/00 (REF: ALL CASES) (rg) (Entered: 03/21/2000)
03/21/2000	467	Reply by defendant Liljeberg Ent Inc to Lifemark's opp response to Liljeberg's motion to supplement evidence [458-1]. (REF: ALL CASES)

		(rg) (Entered: 03/21/2000)
03/21/2000	468	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply memo in support of mtn for partial final jgm ; by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 03/22/2000)
03/22/2000	469	Reply Memorandum by plaintiff Lifemark Hospitals in support of their motion for partial final judgment [463-1] (REF: ALL CASES) (rg) (Entered: 03/22/2000)
04/04/2000	470	PROCEEDING: Reported/Recorded by Karen Ibos; Hrg held 3/29/00 on Lifemark's motion for partial final judgment [463-1] & Liljeberg's motion to supplement evidence [458-1]; ORDERED: mtns taken under submission; By Judge G. T. Porteous Jr. (REF: 93-1794) (rg) (Entered: 04/05/2000)
04/26/2000	471	Findings of fact and conclusions of law; by Judge G. T. Porteous Jr. Date signed: 4/25/00 (REF: ALL CASES) (rg) (Entered: 04/26/2000)
04/26/2000	472	JUDGMENT: Judgement is rendered as stated herein; by Judge G. T. Porteous Jr. Date signed: 4/25/00 (CASE CLOSED) (REF: ALL CASES) (rg) Modified on 05/15/2000 (Entered: 04/26/2000)
04/26/2000	473	ORDER: As the Findings of Fact & Conclusions of Law & the Final Jgm have been rendered, ORDERED that Lifemark's mtn for partial final jgm under Rule 54(b) is rendered MOOT. FURTHER ORDERED that Liljeberg Enterprises, Inc.'s and St. Jude Hospital's mtn to suppl evidence is also rendered MOOT; by Judge G. T. Porteous Jr. Date Signed: 4/25/00 (REF: ALL CASES) (rg) (Entered: 04/27/2000)
05/08/2000	474	MOTION by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc., Amer Med Intl and Tenet Healthcare Corp for new trial to be heard before Judge Porteous at 10:00 5/24/00. (REF: ALL CASES) (rg) (Entered: 05/08/2000)
05/08/2000	475	Motion by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Amer Med Intl & Tenet Healthcare Corp and ORDER to stay the execution of the jgm entered 4/26/00 and any proceedings to enforce the jgm pending disposition of the mtn for new trial. The Court approves the supersedeas bond ; by Judge Marcel Livaudais (REF: ALL CASES) (rg) (Entered: 05/08/2000)
05/08/2000	476	Supersedeas Bond in amount of $ 15,000,000.00 filed by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc., Amer Med Intl, & Tenet Healthcare (REF: ALL CASES) (rg) Modified on 06/13/2000 (Entered: 05/08/2000)
05/08/2000	477	MOTION by debtor Liljeberg Ent Inc & St. Jude Hospital to alter & amend findings & jgm to be heard before Judge Porteous at 10:00 5/24/00. (REF: ALL CASES) (rg) (Entered: 05/09/2000)
05/15/2000		Mail Returned [472-1] judgment, [471-1] findings of fact addressed to John Flowers. (REF: ALL CASES) (rg) (Entered: 05/15/2000)
05/16/2000	478	Memo in opposition by plaintiff Lifemark Hospitals, Tenet Healthcare Corp, Lifemark Hospitals of Louisiana, & Amer Medical Intl to motion to alter & amend findings & jgm [477-1] filed by defendant Liljeberg Ent

		Inc & St. Jude (REF: ALL CASES) (rg) (Entered: 05/16/2000)
05/16/2000		Mail Returned [473-1] order addressed to John Flowers. (REF: ALL CASES) (rg) (Entered: 05/16/2000)
05/16/2000	479	Memo in opposition by defendant Liljeberg Ent Inc & St. Jude Hospital to motion for new trial [474-1] filed by plaintiff Lifemark Hospitals, et al. (REF: ALL CASES) (rg) (Entered: 05/17/2000)
05/19/2000		Mail Returned [475-1] motion & order addressed to John Flowers (REF: 93-1794) (rg) (Entered: 05/22/2000)
05/25/2000	480	Notice of appeal by Lifemark Hosp of LA Inc, Lifemark Hosp Inc, Amer Med Intl & Tenet Healthcare Corp from Dist. Court judgment [472-2] entered on 4/26/00. (REF: all cases) (gw) Modified on 05/25/2000 (Entered: 05/25/2000)
05/26/2000	481	MOTION by debtor Liljeberg Ent Inc & St. Judge Hospital of Kenner to set addl damages, compel docs & increase supersedeas bond to be heard before Judge Porteous at 10:00 6/21/00. (REF: ALL CASES) (rg) (Entered: 05/30/2000)
06/02/2000	488	TRANSCRIPT Order Form by plaintiff Lifemark Hospitals for dates: 6/16/97 through 7/23/97. (REF: ALL CASES) (rg) (Entered: 06/19/2000)
06/08/2000	489	Motion by defendant Liljeberg Ent Inc & St. Jude Hospital and ORDER for leave to file mtn to supplement & for oral argument; hrg set for 6/21/00 at 10:00 a.m. ; by Judge G. T. Porteous Jr. Date Signed: 7/5/00 (REF: ALL CASES) (rg) (Entered: 07/06/2000)
06/12/2000	483	Motion by plaintiff Lifemark Hospitals of Louisiana, Inc. for exp hrg on their mtn to continue the hrg on Liljeberg's mtn to set addl damages, compel docs & increase supersedeas bond and UNSIGNED ORDER, see m.e. entered 6/14/00. (REF: ALL CASES) (rg) (Entered: 06/14/2000)
06/13/2000	482	Memo in opposition by plaintiff Lifemark Hospitals, Inc., Lifemark Hospitals of LA, Amer Med Intl, Inc. and Tenet Healthcare Corp to motion to set addl damages, compel docs & increase supersedeas bond [481-1] filed by defendant Liljeberg Ent Inc & St. Judge Hospital of Kenner. (REF: ALL CASES) (rg) (Entered: 06/14/2000)
06/14/2000	484	Motion by plaintiff Lifemark Hospitals to cont hrg on Liljeberg's mtn to set addl damages, compel docs & increase supersedeas bond and UNSIGNED ORDER, see m.e. entered 6/14/00. (REF: ALL CASES) (rg) (Entered: 06/14/2000)
06/14/2000	485	MINUTE ENTRY (6/12/00): ORDERED that counsel attend a Status Conf at 10:00 7/5/00, in chambers. FURTHER ORDERED that Liljeberg's motion to set addl damages, compel docs & increase supersedeas bond is CONT W/O DATE pending discussions at conf. [481-1] by Judge Carl J. Barbier for G. Thomas Porteous, Jr. (REF: ALL CASES) (rg) (Entered: 06/14/2000)
06/15/2000	486	RETURN OF SERVICE of subp upon Liljeberg Enterprises; svd 6/12/00. (REF: ALL CASES) (rg) (Entered: 06/19/2000)
06/15/2000	487	RETURN OF SERVICE of subp upon Lifemark Hospitals of Louisiana

		on 6/7/00 & upon Tenet Healthcare Corp on 6/8/00. (REF: ALL CASES) (rg) (Entered: 06/19/2000)
06/27/2000		Mail Returned [485-1] minute entry addressed to John Flowers. (rg) (Entered: 06/27/2000)
06/28/2000		Mail Returned [480-1] ntc of appeal addressed to John Flowers. (rg) (Entered: 06/28/2000)
07/03/2000	490	Motion by plaintiff Lifemark Hospitals, Amer Med Intl Lifemark Hospitals and Tenet Healthcare and ORDER for leave to file suppl memo in support of its memo in opp to Liljeberg's mtn to award addl damages ; by Judge G. T. Porteous Jr. Date Signed: 7/5/00 (REF: ALL CASES) (rg) Modified on 07/27/2000 (Entered: 07/06/2000)
07/05/2000	491	Memorandum by plaintiff Lifemark Hospitals, Amer Med Intl & Tenet Healthcare in support of their opp response to mtn to award addl damages [482-1] (REF: ALL CASES) (rg) (Entered: 07/06/2000)
07/05/2000	492	MINUTE ENTRY (7/5/00): Status Conf held 10:00 7/5/00 ; Re Liljeberg's motion to set addl damages, compel docs & increase supersedeas bond [481-1], the parties agreed that no further action be taken re setting these addl damages pending resolution of the Court's initial determination of liability & damages. by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 07/06/2000)
07/14/2000	493	Motion by St. Jude Hospital of Kenner, La., L.L.C. and ORDER to substitute St. Jude Hospital of Kenner, La., L.L.C. as the proper party to the suit ; by Judge G. T. Porteous Jr. Date Signed: 7/17/00 (REF: ALL CASES) (rg) (Entered: 07/18/2000)
07/18/2000		Payment of appeal fee [480-1] by plaintiff Lifemark Hospitals, et al, in amount of $ 105.00 (REF: ALL CASES) (rg) (Entered: 07/19/2000)
07/19/2000		Mail Returned [489-1] order addressed to attorney John Flowers (rg) (Entered: 07/19/2000)
07/20/2000	494	ORDER & REASONS: ORDERED that the motion of plas Lifemark of LA, Lifemark Hospitals, Inc., Amer Med Intl, & Tenet Healthcare Corp to alter or amd jgm is DENIED. FURTHER ORDERED that the mtn of dfts Liljeberg Ent & St. Jude Hospitals to alter/amd findings/jgm is DENIED. [477-1]; [474-1]; by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) Modified on 08/07/2000 (Entered: 07/20/2000)
07/20/2000		Mail Returned [490-2] order addressed to attorney John Flowers (REF: ALL CASES) (ck) Modified on 07/21/2000 (Entered: 07/21/2000)
07/28/2000		Mail Returned [493-1] order addressed to attorney John Flowers (rg) (Entered: 07/31/2000)
07/31/2000	495	MINUTE ENTRY (7/31/00): ORDERED that the attached amended jgm pursuant to Rule 54(b) is made jgm of this Court; by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 08/01/2000)
08/01/2000		Mail Returned [494-1] order addressed to attorney John Flowers (rg) (Entered: 08/01/2000)

08/02/2000	496	Notice of appeal by defendant Liljeberg Ent Inc from Dist. Court [495-1] minute entry amending jgm entered 8/1/00, [494-1] order to amd jgm entered 7/20/00, [472-1] and jgm entered 4/26/00. (REF: ALL CASES) (rg) (Entered: 08/02/2000)
08/02/2000		Payment of appeal fee by defendant Liljeberg Ent Inc in the amount of $ 105.00 [496-1] (REF: ALL CASES) (rg) (Entered: 08/07/2000)
08/14/2000	497	MOTION by plaintiff Lifemark Hospitals, Inc., dft Lifemark Hospitals of LA, dft American Med International and Tenet Healthcare Corp for new trial to be heard before Judge at 10:00 9/27/00 (REF: ALL CASES) (pck) (Entered: 08/15/2000)
08/14/2000		Mail Returned [495-1] minute entry addressed to attorney John Flowers (gw) (Entered: 08/15/2000)
08/15/2000	498	MOTION by plas Liljeberg Ent Inc, St Jude Hosp Kenner for protective order to be heard before Judge at 10:00 8/30/00 (Ref all cases) (ijg) (Entered: 08/16/2000)
08/15/2000	499	Request for Oral Argument by plas Liljeberg Ent Inc, St Jude Hosp Kenner re their motion for protective order [498-1] (Ref all cases) (ijg) (Entered: 08/16/2000)
08/16/2000		Mail Returned [496-1] appeal addressed to attorney John Flowers (gw) (Entered: 08/17/2000)
08/18/2000	500	Amended Notice of appeal by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc, American Med Intl & Tenet Healthcare of the Dist Court jgms & orders listed herein. (REF: 93-1794) (rg) Modified on 08/22/2000 (Entered: 08/22/2000)
08/18/2000	501	Amended Notice of appeal by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc, Amer Med Intl, Tenet Healthcare from Dist. Court jgms & orders listed herein. [495-1] [494-1]; [471-1]; [456-1] (REF: ALL CASES) (rg) Modified on 08/22/2000 (Entered: 08/22/2000)
08/18/2000	505	Motion by plaintiffs Lifemark Hospitals of LA, Lifemark Hospitals, Amer Med Intl, & Tenet Healthcare to expedite the hrg on their mtn to cont hrg on plas' mtn for proto and ORDER-see m.e.; by Judge G. T. Porteous Jr. Date Signed: 8/22/00 (REF: ALL CASES) (rg) Modified on 09/12/2000 (Entered: 08/24/2000)
08/21/2000	503	MOTION by defendant Liljeberg Ent Inc to stay execution of jgm & to dispense w/supersedeas bond to be heard before Judge Porteous at 10:00 9/13/00. (REF: ALL CASES) (rg) (Entered: 08/22/2000)
08/22/2000	502	Memo in opposition by defendant Liljeberg Ent Inc & St Jude Hospital of Kenner to mtn to cont plas' mtn for proto filed by plaintiff Lifemark Hospitals, et al (REF: ALL CASES) (rg) Modified on 08/22/2000 (Entered: 08/22/2000)
08/22/2000	504	Memo in opposition by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc, Amer Med Intl & Tenet Healthcare Corp to motion for protective order [498-1] filed by defendant Liljeberg Ent Inc (REF: ALL CASES) (rg) (Entered: 08/23/2000)

08/23/2000	506	MOTION by plaintiff Lifemark Hospitals to continue hrg on plas' mtn for proto ; no hrg set. (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/23/2000	507	MINUTE ENTRY (8/22/00) In response to Lifemark Hospitals, et al motion to continue hrg on plas' mtn for proto [506-1], ORDERED that Liljeberg Ent's motion for protective order [498-1] & Lifemark Hospitals, et al, motion for new trial [497-1] is reset for 10:00 9/13/00 w/oral argument; by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	508	Transcript of trial held 6/16/97 before Judge Porteous. Volume I (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	509	Transcript of trial held 6/17/97 before Judge G. Thomas Porteous, Jr. Volume II (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	510	Transcript of trial held 6/18/97 before Judge G. Thomas Porteous, Jr. Volume III (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	511	Transcript of trial held 6/19/97 before Judge G. Thomas Porteous, Jr. Volume IV (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	512	Transcript of trial held 6/23/97 before Judge G. Thomas Porteous, Jr. Volume V (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	513	Transcript of trial held 6/24/97 before Judge G. Thomas Porteous, Jr. Volume VI (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	514	Transcript of trial held 6/25/97 before Judge G. Thomas Porteous, Jr. Volume VII (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	515	Transcript of trial held 6/26/97 before Judge G. Thomas Porteous, Jr. Volume VIII (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	516	Transcript of trial held 6/27/97 before Judge G. Thomas Porteous, Jr. Volume IX (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	517	Transcript of trial held 7/14/97 before Judge G. Thomas Porteous, Jr. Volume X (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	518	Transcript of trial held 7/15/97 before Judge G. Thomas Porteous, Jr. Volume XI (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	519	Transcript of trial held 7/16/97 before Judge G. Thomas Porteous, Jr. Volume XII (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	520	Transcript of trial held 7/17/97 before Judge G. Thomas Porteous, Jr. Volume XIII (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	521	Transcript of trial held 7/21/97 before Judge G. Thomas Porteous, Jr. Volume XIV (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	522	Transcript of trial held 7/22/97 before Judge G. Thomas Porteous, Jr. Volume XV (REF: ALL CASES) (rg) (Entered: 08/24/2000)
08/24/2000	523	Transcript of trial held 7/23/97 before Judge G. Thomas Porteous, Jr. Volume XVI (REF: ALL CASES) (rg) (Entered: 08/24/2000)
09/02/2000	524	Memo in opposition by St. Jude Hospital of Kenner to motion for new

		trial [497-1] filed by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc. Tenet Healthcare, & Amer Medical Intl. (REF: ALL CASES) (rg) (Entered: 09/05/2000)
09/07/2000	525	MOTION by debtor Liljeberg Ent Inc and St. Jude Hospital to execute judgment & alter to increase dfts' security for stay of execution of enforcement to be heard before Judge Porteous at 10:00 9/27/00. (REF: ALL CASES) (rg) (Entered: 09/08/2000)
09/07/2000	526	Motion by defendant Liljeberg Ent Inc and ORDER for leave to file reply to dfts' opp to pla's mtn for proto ; by Judge G. T. Porteous Jr. Date Signed: 9/11/00 (REF: ALL CASES) (rg) (Entered: 09/12/2000)
09/08/2000		Mail Returned [500-1] appeal addressed to attorney John Flowers (rg) (Entered: 09/08/2000)
09/11/2000	527	Reply by defendant Liljeberg Ent Inc to opp response to motion for protective order [498-1] (REF: ALL CASES) (rg) (Entered: 09/12/2000)
09/12/2000	528	Motion by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc, Amer Med Intl, & Tenet Healthcare and ORDER for leave to file response memo in support of mtn for new trial ; by Judge G. T. Porteous Jr. Date Signed: 9/13/00 (REF: ALL CASES) (rg) (Entered: 09/14/2000)
09/13/2000		Mail Returned [507-1] minute entry addressed to attorney John Flowers (rg) (Entered: 09/14/2000)
09/14/2000	529	Response Memorandum by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc, Amer Med Intl, & Tenet Healthcare Corporation in support of [497-1] their motion for new trial (REF: ALL CASES) (rg) (Entered: 09/14/2000)
09/19/2000	530	SMOOTH MINUTES: Reported/Recorded by Karen Ibos; Hrg held 9/13/00 on motions: Liljeberg's motion to stay execution of jgm & to dispense w/supersedeas bond [503-1]; ORDERED: the execution & all proceedings for the enforcement of the portion of the amd jgm entered 8/1/00 agst Liljeberg Ent is stayed w/o a supersedeas bond until the Court enters final jgm adjudicating the post trial damage claims; Pla Lifemark Hospitals, Inc., Lifemark of LA, Amer Med Intl, & Tenet Healthcare's mtn for a new trial or alter to amd findings & jgm; ORDERED: pla's mtn for new trial is denied; pla's mtn to amd findings & jgm is denied [497-1]; Liljeberg's motion for protective order; ORDERED: taken under submission. [498-1]; by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 09/19/2000)
09/19/2000	531	Motion by Lifemark Hospitals of LA Inc, Lifemark Hospitals Inc, Amer Med Intl & Tenet Healthcare Corp and ORDER that exp hrg on their mtn to approve supersedeas bond will be heard on 9/27/00 at 10:00 am by Judge G. T. Porteous Jr. Date Signed: 9/20/00 (REF: all cases) (gw) Modified on 10/13/2000 (Entered: 09/21/2000)
09/20/2000	532	MOTION by Lifemark Hospitals of LA Inc, Lifemark Hospitals Inc, Amer Med Intl & Tenet Healthcare Corp to approve supersedeas bond to be heard before Judge at 10:00 9/27/00 (REF: all cases) (gw) (Entered: 09/21/2000)

09/22/2000	533	Motion by plaintiff Lifemark Hospitals of Louisiana, Lifemark Hospitals, Amer Med Intl, & Tenet Healthcare and ORDER withdrawing attorney Mack Barham & Barham & Arceneaux as counsel for movants ; by Judge G. T. Porteous Jr. Date Signed: 9/26/00 (REF: ALL CASES) (rg) (Entered: 09/28/2000)
09/26/2000	534	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file to file a copy of Lifemark's Proposed Findings of Fact and Conclusions of Law w/the Judge's chambers received stamp ; by Judge G. T. Porteous Jr. Date Signed: 9/28/00 (REF: ALL CASES) (rg) (Entered: 09/28/2000)
09/29/2000	535	DESIGNATION OF RECORD on Appeal by plaintiff Lifemark Hospitals, Inc., Lifemark Hospitals of LA, Amer Med Intl, & Tenet Healthcare. (REF: ALL CASES) (rg) (Entered: 10/02/2000)
10/02/2000	536	Objections by defendant Liljeberg Ent Inc & St. Jude Hospital of Kenner to [535-1] partial designation of record on appeal (REF: 94-3933) (rg) (Entered: 10/03/2000)
10/02/2000		Mail Returned [530-1] minute entry addressed to attorney John Flowers (rg) (Entered: 10/03/2000)
10/02/2000		Mail Returned [526-1] order addressed to attorney John Flowers (rg) (Entered: 10/03/2000)
10/04/2000	537	Response by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc., Amer Med Intl, & Tenet Healthcare Corp to [536-1] objection to partial designation of record on appeal by Liljeberg Ent, Inc. and St. Jude Hospital of Kenner. (REF: ALL CASES) (rg) (Entered: 10/05/2000)
10/05/2000	538	Motion by plaintiff Lifemark Hospitals, Lifemark of Louisiana, Amer Med Intl and Tenet Healthcare and ORDER withdrawing the law firm of Steeg & O'Connor ; by Judge G. T. Porteous Jr. Date Signed: 10/6/00 (REF: ALL CASES) (rg) (Entered: 10/11/2000)
10/10/2000		Record on Appeal sent to Circuit Court [501-1], [500-1], [496-1], [480-1] USCA Number: 00-30645 (rg) (Entered: 10/11/2000)
10/13/2000	539	PROTECTIVE ORDER: Hrg held 9/13/00 in court on Liljeberg Enterprises, Inc's & St. Jude Hospital's motion for protective order [498-1]; ORDERED that Lifemark Hospitals of LA, Amer Med Intl Inc, Tenet Healthcare, Tenet LA Healthsystems shall maintain the listed docs & records as stated herein; by Judge G. T. Porteous Jr. Date Signed: 10/11/00 (REF: ALL CASES) (rg) (Entered: 10/16/2000)
10/13/2000	540	2nd Amended Notice of appeal by plaintiff Lifemark Hospitals Inc, Lifemark Hospitals of LA, Amer Med Intl, Tenet Healthcare from Dist. Court rulings: amended jgm, jgm, orders denying mtns for new trial, mtn to reopen, mtn for jgm as a matter of law. (REF: ALL CASES) (rg) (Entered: 10/16/2000)
10/13/2000	541	2nd Amended Notice of appeal by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc., Amer Med Intl, & Tenet Healthcare from Dist. Court rulings: amd jgm, jgm, orders denying mtns for new trial, mtn to reopen, mtn for jgm as a matter of law. (REF: 93-1794) (rg) Modified on 10/16/2000 (Entered: 10/16/2000)

11/03/2000		Payment of appeal fee by plaintiff Lifemark Hospitals in amount of $ 105.00 (rg) (Entered: 11/06/2000)
11/06/2000		Payment of appeal fee by plaintiff Lifemark Hospitals in amount of $945.00 [541-1], [540-1], [501-1], [500-1], [480-1] (REF: ALL CASES) (rg) (Entered: 11/07/2000)
11/06/2000		Payment of copy fee by plaintiff Lifemark Hospitals in amount of $945.00 (REF: ALL CASES) (rg) (Entered: 11/07/2000)
11/13/2000	542	MOTION by defendant Liljeberg Ent Inc & St. Jude Hospital for emergency status conf to be heard before Judge Porteous at 10:00 12/6/00 (REF: ALL CASES) (rg) Modified on 11/30/2000 (Entered: 11/14/2000)
11/21/2000	543	ORDER & REASONS: ORDERED that the mtn to stay execution filed by Lifemark Hospitals of LA, Lifemark Hospitals, Amer Med Intl, and Tenet Healthcare Corp is PROVISIONALLY GRANTED. Lifemark has 10 days to file supersedeas bond in the amt of $18,840,000.00 w/this Court. Lifemark, et al, mtn to approve supersedeas bond is DENIED. Liljeberg Ent Inc's & St. Jude Hospital's mtn for leave to execute jgm is DENIED & the alter mtn to increase security for stay of execution of enforcement is GRANTED. Lifemark has 10 days to post said security; [532-1], denying motion to execute judgment & alter to increase dfts' security for stay of execution of enforcement [525-1] by Judge G. T. Porteous Jr. Date Signed: 11/17/00 (REF: ALL CASES) (rg) Modified on 01/26/2001 (Entered: 11/21/2000)
11/28/2000	544	Memo in Response by plaintiffs Lifemark Hospitals of LA, Lifemark Hospitals, Amer Med Intl, Tenet Healthcare to [542-1] Liljeberg Ent and St. Jude's motion for emergency status conf (REF: ALL CASES) (rg) (Entered: 11/30/2000)
11/29/2000		Transmitted supplemental record on appeal to USCA (rg) (Entered: 11/30/2000)
12/04/2000	545	Supersedeas Bond in amount of $ 18,840,000.00 filed by Tenet Healthcare Corporation, Lifemark Hospitals of LA, Inc., Lifemark Hospitals, Inc., American Medical International and surety American Motorists Insurance Company (REF: ALL CASES) (rg) (Entered: 12/05/2000)
12/04/2000	546	Motion by defendant Liljeberg Ent Inc & St. Jude Hospital of Kenner and ORDER for leave to file reply to Lifemark's memo in response to mtn for emergency status conf; by Judge G. T. Porteous Jr. Date Signed: 12/5/00 (REF: ALL CASES) (rg) (Entered: 12/06/2000)
12/05/2000	548	MINUTE ENTRY (12/5/00) Status conf held this day at the req of Liljeberg Ent; Court advised all parties that it is w/o juris to address Liljeberg Ent's concerns as the matter is pending bfr the USCA; by Judge G. T. Porteous Jr. (REF: ALL CASES) (rg) (Entered: 12/06/2000)
12/05/2000	549	Motion by plaintiff Lifemark Hospitals of LA, Lifemark Hospitals, Inc., Amer Med Intl, and Tenet Healthcare Corp and ORDER that the supersedeas bond filed 5/8/00 in the amt of $15,000,000.00 is null and void & said bond be delivered to Lifemark upon counsel's req ; by Judge

		G. T. Porteous Jr. (REF: ALL CASES) (rg) Modified on 02/12/2001 (Entered: 12/08/2000)
12/06/2000	547	Reply by defendant Liljeberg Ent Inc and St. Jude Hospital to Lifemark's opp response to motion for emergency status conf [542-1] (REF: ALL CASES) (rg) (Entered: 12/06/2000)
12/05/2002		Record on appeal returned from U.S. Court of Appeals [0-0] (rg) (Entered: 12/10/2002)
12/05/2002	550	Judgment from Court of Appeals: the jgm of the Dist Court is affirmed in part & reversed in part, & the cause is remanded for further proceedings in accordance w/the opinion of this Court. [541-1]; [540-1]; [501-1]; [500-1]; [496-1]; [480-1]; Issued as mandate on 12/5/02 (HIGGINBOTHAM, DEMOSS, BENAVIDES) (REF: 93-1794, 93-4249, 94-3993, & 95-2922) (rg) (Entered: 12/10/2002)
12/06/2002	551	Joint Motion by defendant Liljeberg Ent Inc, plaintiff Lifemark Hospitals, Lifemark Hospitals of Louisiana, Inc., American Medical International, Inc. and Tenet HealthSystems, Inc. and St. Jude Hospital of Kenner, Louisiana and ORDER that civil action numbers 93-1794, 93-4249, 95-2922, & 94-3993 are dism w/prej, all parties to bear their own costs; by Judge G. T. Porteous Jr. Date Signed: 12/9/02 (CASE CLOSED) (REF: ALL CASES) (rg) Modified on 12/11/2002 (Entered: 12/10/2002)
12/06/2002	552	Joint Motion by defendant Liljeberg Ent Inc, plaintiff Lifemark Hospitals Inc., Lifemark Hospitals of Louisiana, Inc., Amer Med Intl Inc, Tenet HealthSystems, Inc., St. Judge Hospital of Kenner and ORDER that the bond posted pursuant to the Court's 11/21/00 order in the amt of $18,840,000.00 by Lifemark Hospitals of Louisiana, Inc., Lifemark Hospitals, Inc., American Medical International, Inc. and Tenet HealthSystems, Inc. is released; by Judge G. T. Porteous Jr. Date Signed: 12/9/02 (REF: ALL CASES) (rg) (Entered: 12/11/2002)

PACER Service Center			
Transaction Receipt			
10/22/2007 14:39:03			
PACER Login:	hb0034	Client Code:	0097900.00080
Description:	Docket Report	Search Criteria:	2:93-cv-01794-GTP
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SEP 19 2 49 PM '96

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 94-3993 94-4249 94-2922
LILJEBERG ENTERPRISES, INC.	*	
* * * * * * *		SECTION "T"

EX PARTE MOTION OF LILJEBERG ENTERPRISES, INC. TO SUBSTITUTE COUNSEL

NOW INTO COURT comes Liljeberg Enterprises, Inc., ("LEI") Jacob Amato, Leonard Levenson, William P. Connick and Stephen Wimberly, who moves this Honorable Court to allow William P. Connick and Stephen Wimberly to withdraw as attorneys of record for LEI herein, and to allow Jacob Amato and Leonard Levenson to be substituted as attorneys of record for LEI herein. LEI has consented to such substitution.

Respectfully submitted,

William Peter Connick (#14158)
Stephen Wimberly (#10985)
CONNICK, LENTINI, WIMBERLY & deLAUP
2551 Metairie Road
Metairie, Louisiana 70001
Telephone: (504) 838-8777

SEP 25 1996

006356

FEE
PROCESS
X CHARGE
INDEX
ORDER
HEARING
DOCUMENT No. 408

HP Exhibit 51(a)

Jacob Amato
AMATO & CREELY, P.C.
901 Derbigny Street
Gretna, Louisiana 70054-0441
Telephone: (504) 367-8181

Leonard Levenson (#8675)
Attorney at Law
427 Graver Street
New Orleans, Louisiana
Telephone: (504) 586-0066

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon Joseph N. Mole at 3600 Energy Center, 1100 Poydras Street, New Orleans, Louisiana, 70163, by ~~placing the~~ hand same in the United States Mail, postage prepaid, on this 12th day of September, 1996.

JACOB J. AMATO, JR.

006357

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 94-3993 94-4249 94-2922
LILJEBERG ENTERPRISES, INC.	*	
* * * * * * *		SECTION "T"

ORDER

Considering the foregoing Ex Parte Motion to Substitute Counsel of Record of Liljeberg Enterprises, Inc.:

IT IS HEREBY ORDERED that William P. Connick and Stephen Wimberly be hereby permitted to withdraw; and that Jacob Amato and Leonard Levenson be enrolled as additional counsel of record, for Liljeberg Enterprises Inc. herein.

New Orleans, Louisiana, this 23rd day of September, 1996.

UNITED STATES DISTRICT JUDGE

006358

HP Exhibit 51(b)

FILE COPY

Notice sent to:

Don M. Richard, Esq.
Douglas Scott Draper, Esq.
Kenneth Charles Fonte, Esq.
Stephen T. Wimberly, Esq.
Jacob J. Amato Jr., Esq.
Leonard Louis Levenson, Esq.
Hans Joseph Liljeberg, Esq.
John Flowers, Esq.
Gary Ruff, Esq.
Joseph Nicholas Mole, Esq.
Jan Marie Hayden, Esq.
Brent Bennett Barriere, Esq.
Mack E. Barham, Esq.
William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

006359

SC EXHIBIT - 00019

DC 30
(Rev. 1/82)

CERTIFIED COPY

May 30, 2007 — United States of America — Civil Action 93-1794 "T" Mag. 2

EASTERN DISTRICT OF LOUISIANA } SS:

Lifemark Hospitals of Louisiana, Inc., ET AL
v
Liljeberg Enterprises, Inc.

I, Loretta G. Whyte, Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify that the annexed and foregoing is a true and full copy of the original document numbers 277, 288, 297, 305 and 306 of U.S. District, Eastern District of Louisiana, Civil Action 93-1794, Section T, Magistrate 2.

now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at New Orleans, Louisiana this 30th day of May, A.D. 2007

LORETTA G. WHYTE, CLERK

By Erin McNamara
Erin McNamara, Deputy Clerk

SC00552

HP Exhibit 52

10/16/96

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

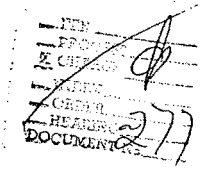
LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"
	*	

FILED
OCT 2 10 35 AM '96
LORETTA G. WHYTE
CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Lifemark Hospitals of Louisiana, Inc. ("Lifemark"), who respectfully submits that Liljeberg Enterprises, Inc.'s ("LEI") last minute enrollment of Jacob Amato and Leonard Levenson as trial counsel in this matter creates an appearance of impropriety prohibited under 28 U.S.C. §455(a).

Lifemark is in no way suggesting that this Court could not be impartial in determining this matter. But, as set forth fully in the Memorandum in Support attached hereto, the mere appearance of impropriety requires recusal. Thus, for the foregoing reasons and the reasons set forth in the memorandum, Lifemark respectfully requests that this Court recuse itself from this matter prusuant to 28 U.S.C. §455(a).



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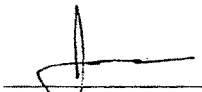
Respectfully submitted,



Miles P. Clements (La. #4184)
Joseph N. Mole, T.A. (La. #09538)
Michael R. Phillips (La. #21020)
Stephanie A. May (La. #24166)
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& CLEMENTS, L.C.
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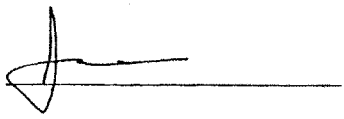
New Orleans, Louisiana 70163-3600
Telephone: (504) 599-8000
Telecopy: (504) 599-8100
ATTORNEYS FOR PLAINTIFF,
LIFEMARK HOSPITALS OF
LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 1st day of October, 1996 by hand delivery on all counsel of record.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

MEMORANDUM IN SUPPORT OF MOTION TO RECUSE

With great reluctance, Lifemark Hospitals of Louisiana, Inc. ("Lifemark") finds it necessary to request that this Court exercise the discretion granted it under 28 U.S.C. §455 and recuse itself from further handling of this matter.

QUESTION PRESENTED

The question presented by this motion is as follows. The standard of recusal under 28 U.S.C. §455(a) is this: Does the situation at hand create an appearance of impropriety "to the well-informed, thoughtful and objective observer, rather than the hypersensitive,cynical and suspicious person?" United States v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). This is an objective test - the Court's actual bias is not at issue. Id. The facts of this case that create a §455(a) appearance are these: (1) this litigation has a decade-long history; (2) trial in this matter, without a jury is set for November 4, 1996; (3) the Liljebergs already had five long-standing counsel of record when, on September 12, 1996 they added Jacob Amato and Leonard Levenson, two of the Court's closest friends, as additional counsel; (4) the Liljebergs seek at least $110 million as damages in this extremely complex case, and they gave Messrs.

Levenson and Amato an 11% contingency fee for less than three months involvement; and (5) the Liljebergs have a documented and clear history of attempting to use political influence and they have accused others of attempting to acquire improper influence over the judiciary. Given these facts, Lifemark believes that the answer to the §455(a) question as posed by the Fifth Circuit in United States v. Jordan is a clear yes.

BACKGROUND

This lawsuit had its genesis in a lawsuit filed in the Civil District Court in New Orleans in 1987 by Liljeberg Enterprises, Inc. ("LEI") against Lifemark concerning the interpretation of a contract between Lifemark and LEI. When LEI filed bankruptcy in January 1993, it also filed a motion to force assumption of this contract pursuant to 11 U.S.C. §365. Thereafter, Lifemark counterclaimed, removed the CDC litigation to the Bankruptcy Court, and successfully moved for withdrawal of the reference so that the entire controversy concerning LEI and Lifemark moved to the District Court. LEI's original pleading in this case in this Court was filed in May 1993. Thus, if the history of this litigation is measured by the Civil District Court filings, it is almost ten years old. If it is measured by the original pleading filed in Federal Court, it is over three years old. Trial without a jury is scheduled to begin on November 4, 1996. The Liljebergs seek over $110 million in damages from Lifemark and its parent AMI.

LEI has had numerous lawyers during the history of this controversy. As of one month ago, it had five lawyers signed on to this case, most of whom have been involved for years in the specific controversy that is set to go to trial before this Court on November 4, 1996. Nonetheless, on September 12, 1996, LEI sought and was

granted leave to add two more attorneys, Jacob J. Amato, Jr. and Leonard L. Levenson. Messrs. Levenson and Amato were given an 11% contingency fee. The Liljebergs have given none of their other lawyers a contingency fee. The Liljebergs also apparently have asked one of their other lawyers, William Connick, to withdraw, leaving six counsel of record. This is an extremely complicated lawsuit involving numerous issues that have been in discovery and litigation for almost ten years. The addition at the very last minute of two lawyers who are unfamiliar with the file is of questionable value as to potential contribution to the preparation and presentation of the evidence. The circumstances of their addition as counsel create concern because of their personal relationship with Your Honor.

Your Honor's relationship with Messrs. Amato and Levenson is well known to the legal community. It needs no elaboration in this memorandum. This would be of no concern were it not for the timing of their addition, and the fact that the Liljebergs and LEI clearly believe that influence with governmental bodies, including judges, can be bought. Attached hereto as Exhibit "A" is the Fifth Circuit's unpublished opinion in the controversy between Travelers and LEI. In that litigation, following an adverse result, LEI accused Judge Mentz of being influenced by his membership in social organizations whose membership included attorneys for Travelers. The Fifth Circuit characterized the Liljebergs' accusations as "lengthy, unsworn, and extremely intemperate (if not contemptuous) . . . ." They alleged that Judge Mentz' membership in the Boston Club along with "several attorneys" from law firms representing Travelers

supposedly created "a situation in which a reasonable person would question the judge's impartiality, mandating disqualification and vacation of the judgments." See Exhibit A at pp. 7-8. The Liljebergs further attacked Judge Mentz by alleging that "two of the partners of the law firm representing Travelers had a reputation in the New Orleans area community as being . . . influential Republican Party patron[s] who had significant contact with party officials responsible for making recommendations for federal appointments.'" Id. at note 5.

Attached as Exhibit "B" is an Affidavit signed by J. Larry Lidell. In 1986, Mr. Lidell was terminated by Lifemark as its director of public relations of the St. Jude Hospital after four months employment. In 1995 he signed the Affidavit attached as Exhibit B while in the offices of the Liljebergs' attorney and before a court reporter. At his deposition, it became obvious that the Affidavit was framed by the Liljebergs and their counsel. Significantly, on the second page of the Affidavit, Mr. Lidell recited the following: "Mr. Scott Athens [an executive of Lifemark's parent, AMI] also bragged repeatedly how well-connected their attorneys, Mr. Harry Hardin and his associate, Mr. Dirk Wegman, both with Jones, Walker, were with the courts and how strong they were with certain judges. Lifemark/AMI was confident they could get a favorable ruling for Lifemark/AMI against the Liljebergs."

Finally, attached as Exhibit "C" is a memorandum authored by John McDaniel, who was employed by Lifemark as the chief executive officer of the hospital from 1985 to 1990. On May 24, 1988 he wrote this memo to Donna Erb, an in-house lawyer at

AMI, concerning the never-ending controversy with the Liljebergs and their multifarious demands, most of which are still part of this litigation. Mr. McDaniel identified the document at his deposition. On page 5 he recited the following:

> Donna, Mr. Liljeberg was adamant about negatively impacting AMI if these issues could not be resolved through settlement efforts and indicated his intentions to cause a "public movement" against AMI involving both mayorial and city council resolutions, key community leader and physician support against AMI. He indicated that he would enlist civic organizations, federal, state and parish politicians, and even the Catholic Church in his effort to discredit AMI.

Clearly, the Liljebergs believe that public officials, including judges, can be influenced through social contact. They have accused others of doing it, and they have threatened to do it themselves.

ARGUMENT

Neither Mr. Amato nor Mr. Levenson have any particular expertise in cases of this sort. Both are primarily personal injury lawyers. The case has a long and complicated history, and it is unlikely that they can be of significant assistance at trial. It is respectfully submitted that the Liljebergs ostensibly believe, albeit mistakenly, that they can influence Your Honor by hiring two of Your Honor's closest social, political and professional friends immediately before trial. They seek to gain the Court's favor and achieve partiality, a tactic not foreign to their personal concepts of achieving results by that means. Indeed, they have been the subject of two Fifth Circuit opinions on the subject, one of which has reached the Supreme Court. Travelers Insurance Company v. St. Jude Hospital of Kenner, La., Inc., attached as Exhibit A;

Liljeberg v. Health Service Acquisition Corp., 486 U.S. 847; 108 S.Ct. 2194 (1988). As observed by the Fifth Circuit in Travelers, their litigation tactics are intemperate and they have only contempt for the judicial system. Their cynicism is again on display in this case.

While Lifemark does not suggest that Your Honor could or would be influenced through the last minute hiring of two apparently unnecessary lawyers who are both extremely close to the Court, it is clear, based upon their own incredible record of litigation tactics, that the Liljebergs believe the opposite to be true. Under the circumstances, it is respectfully submitted that Your Honor is duty bound to remove any appearance of impropriety. In spite of Your Honor's attempts to be fair, the obviousness of the Liljebergs' intentions, coupled with the timing of the hiring of these lawyers, will always leave questions in the eyes of any objective observer, the "man in the street", who is aware of the Court's relationships with Messrs. Amato and Levenson and the Liljebergs' attitudes toward the political and judicial systems. See Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1111 (5th Cir. 1980). Under such circumstances, Lifemark suggests that Your Honor, the federal courts, and the litigants in this case (including the Liljebergs) are all best served by Your Honor's recusal.

The legal standard for recusal under these circumstances is set forth in 28 U.S.C. §455:

§455. Disqualification of justice, judge, or magistrate

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

As the Fifth Circuit has recently held, the appropriate inquiry under Section 455 "is an objective inquiry." The question is "how things appear to the well informed, thoughtful and objective observer, rather than the hypersensitive, cynical and suspicious person." United States v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). The Fifth Circuit noted that it has established a body of case law applying the Section 455(a) standard, but that "no case is precisely on point; after all, each Section 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence." As in this case, United States v. Jordan involved a close personal relationship between the judge and a lawyer involved in the case. The Court noted that there was absolutely no question of the judge's bias, but that nonetheless, an objective observer, fully informed of the relationships and facts involved in that case might harbor some suspicion of impropriety. As the Fifth Circuit has noted in another case on this subject:

> Because 28 U.S.C. §455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street. Use of the word "might" in the statute was intended to indicate that disqualification should follow if the reasonable man, were he to know all

> of the circumstances, would harbor doubts about the judge's impartiality. (Emphasis Added)

Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1111 (5th Cir. 1980). In United States v. Jordan, the Fifth Circuit relied heavily upon Liljeberg v. Health Services Acquisition Corp. In that case, the Supreme Court noted that a judge does not even have to have knowledge of the facts that create an appearance of impropriety "so long as the public might reasonably believe that he or she knew." 108 S.Ct. at 2194.

In this case, Your Honor's relationships with Mr. Levenson and Mr. Amato are very well known. It is unfortunate that the Liljebergs have attempted to capitalize on those personal relationships in an apparent attempt to achieve an unfair advantage. An impartial observer aware of the nature of the Court's relationships with these gentlemen, and aware of the implications of the timing of LEI's enrollment of them as counsel in this long and complicated litigation, would understandably believe that the Liljebergs were attempting to acquire influence over the Court. This would be reinforced by the knowledge that the Liljebergs have accused others of using, and have themselves threatened to use, improper judicial and political influence.

One of the reasons cited by the Fifth Circuit for denying the Liljebergs' request for recusal of Judge Mentz in the Travelers litigation was the Liljebergs' timing. "Only after being unsuccessful [in a jury trial in one of three cases they lost] did they seek recusal in all three." The cynicism of the timing of their attack on Judge Mentz reinforced the Fifth Circuit's result. See Exhibit A at pp. 11 and 13. The Fifth Circuit

noted that "a party feeling there is a basis for disqualification must make that known to the Court at the earliest possible moment." Id. at pp. 13-14. The Fifth Circuit specifically refused to "reward the Liljebergs" for their calculated timing. Once again, the Liljebergs' "calculated" timing, in this case in hiring two unneeded lawyers at the last minute, has revealed their intent. That timing should not be rewarded. In Travelers, the Liljebergs simply waited too late to alert the judge of their alleged concerns. "Had the Liljebergs acted promptly, the district judge could have considered disqualification before entering judgment . . ." Id. Unlike the Liljebergs, Lifemark has filed this motion as soon as practicable, before the Court has taken any substantive action of which either party could complain.

CONCLUSION

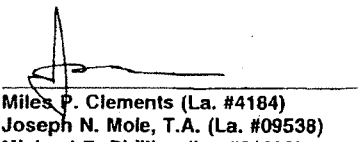
Lifemark regrets that this has occurred, and in the event this motion is granted, believes that the parties have been deprived of a competent judge who is well suited to try this case:

> [Our] stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice."

United States v. Jordan, supra, 49 F.3d at 157. Lifemark finds it offensive that because LEI has put Your Honor in this position, it has been forced to file this motion. However, given the standards set forth by the Fifth Circuit and Supreme Court under 28 U.S.C. §455, and given the risk that the result of this case would be questioned by

the "average person on the street" regardless of the Court's unbiased decisions, it is necessary that Lifemark ask Your Honor to recuse himself.

Respectfully submitted,



Miles P. Clements (La. #4184)
Joseph N. Mole, T.A. (La. #09538)
Michael R. Phillips (La. #21020)
Stephanie A. May (La. #24166)
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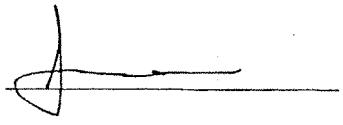
Telephone: (504) 599-8000
Telecopy: (504) 599-8100
ATTORNEYS FOR PLAINTIFF, LIFEMARK HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 1st day of October, 1996 by hand delivery on all counsel of record.



FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
Oct 9 4 24 PM '96
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL	*	CIVIL ACTION
	*	NO. 93-1794
VERSUS		C/W 93-4249
	*	C/W 94-3993
LILJEBERG ENTERPRISES, INC.		C/W 95-2922
	*	
		SECTION "T" (3)
* * * * * * * *		

MEMORANDUM IN OPPOSITION TO LIFEMARK'S MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes the defendants, Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which oppose the Motion to Recuse of Lifemark Hospitals of Louisiana, Inc. ("Lifemark") for the following reasons:

> "[i]n today's legal culture friendships among judges and lawyers are common. They are more than common; they are desirable. A judge need not cut himself off from the rest of the legal community. Social as well as official communications among judges and lawyers may improve the quality of legal decisions. Social interactions also make service on the bench, quite isolated as a rule, more tolerable to judges. Many well-qualified people would hesitate to become judge if they knew that wearing the robe meant either discharging one's friends or risking disqualifications in substantial numbers of cases. Many courts therefore have held that a judge need not disqualify himself just because a friend -- even a close friend -- appears as a lawyer." United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985), cert. denied, 475 U.S. 1012 (1986). [Quoted with approval in Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1411-1412 at footnote 13 (5th Cir. 1994)].

While Lifemark has made the opinion issued by the Fifth Circuit in Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404 (5th Cir. 1994), an exhibit to its recusal motion (see Exhibit "A"), the failure to abide by the legal principles set forth therein demonstrates the bad faith with which it now proceeds. Alleging only five "facts" to support its claim that the Court would violate 28 USC 455(a) in the absence of disqualification, only one of those allegations has any bearing

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whatsoever upon the Court's duty under the statute: the indefinite and conclusory charge that Jacob J. Amato, Jr. and Leonard Levenson are "two of the Court's closest friends". Even assuming that the Court considers Messrs. Amato and Levenson to be friends; in the absence of proof that the Court's attitude about those attorneys would demonstrate bias favoring their clients, the jurisprudence does not mandate disqualification under 28 USC 455(a). ["Partiality for or against an attorney, who is not a party, is not enough to require disqualification unless it can be shown that such a controversy would demonstrate bias for or against the party itself." Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1412 (5th Cir. 1994) (see: Lifemark Exhibit "A")]; Henderson v. Dept. of Public Safety and Corrections, 901 F.2d 1288, 1296 (5th Cir. 1990). Lifemark's motion includes no evidence whatsoever pertaining to the Court's alleged affinity for Messrs. Amato and Levenson, and absolutely none suggesting that any such friendship would extend to sacrificing the Court's impartiality for the benefit of a party represented by those lawyers. Instead, Lifemark merely sprinkles obtuse references to friendship throughout the memorandum as a talisman of innuendo. However, one of the obvious lessons of Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404 (5th Cir. 1994), is that reliance upon innuendo to support a motion for disqualification under 28 USC 455(a) results not only in rejection and disfavor, but also invites sanctions.

A party proceeding under 28 USC 455(a) "must show that, if a reasonable man **knew of all of the circumstances**, he would harbor doubts about the judge's impartiality." Chitimacha Tribe v. Harry L. Laws Co., 690 F.2d 1157, 1165 (5th Cir. 1982); Matter of Billedeaux, 972 F.2d 104, 105 (5th Cir. 1992). In deciding this issue the Court need not view the facts from the perspective of a hypersensitive, cynical and suspicious person. U.S. v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995).

Instead, the Court should "ask how things appear to the well-informed, thoughtful and objective observer." U.S. v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995).

If, as alleged without substantiation by Lifemark, the Court's "relationship with Messrs. Amato and Levenson is well known to the legal community" (Lifemark memo at p. 3), then it has no excuse for failing to identify the allegedly "well known" circumstances which would lead a reasonable man to question the impartiality of the Court in dealing with the parties to this dispute. Whatever those "well known" circumstances may be, they apparently do not cause Lifemark to question the Court's impartiality: "Lifemark is in no way suggesting that this Court could not be impartial in determining this matter." (Lifemark Motion to Recuse). If Lifemark believes that the Court can be impartial notwithstanding any friendship with Messrs. Amato and Levenson; then it is hard to imagine that an objective third party, aware of Lifemark's confidence in the impartiality of the Court, could reasonably conclude otherwise.

Henderson v. Dept. of Public Safety and Corrections, 901 F.2d 1288 (5th Cir. 1990) provides a close analogy to Lifemark's argument in the present recusal motion. A concise summary of the Henderson opinion is set forth at footnote 15 of Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1412 (5th Cir. 1994) as follows:

> "A party alleged that the trial judge was required to recuse himself because, inter alia, "the judge presiding over this case . . . has known the opposing counsel since he was a kid and that the judge presiding over this case was friends of opposing counsel and opposing counsel's father . . ." *Henderson*, 901 F.2d at 1295. **We recognized that these circumstances did not require disqualification under § 455 and that "even the most superficial research would have put [counsel] on notice that the factual circumstances he alleged were not grounds for recusal . . .. The trial judge was well within his discretion in finding that the motion for recusal was not well founded, either in fact or in law." Id. at 1296.** (Emphasis supplied).

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On the other hand, the facts underlying the decision in U.S. v. Jordan, 49 F.3d 152 (5th Cir. 1995) are easily distinguishable from the contentions raised herein by Lifemark. The Jordan opinion, supra, does not consider whether friendship between a judge and counsel of record for a party in a civil proceeding constitutes grounds for disqualification under 28 USC 455(a). Jordan, supra, is a criminal case, and the judge's friend, although a lawyer, plays no role therein as a prosecutor or defense counsel. Instead, the criminal defendant and the judge's close personal friend had been embroiled in a series of vindictive legal actions resulting in a great deal of publicity, potentially besmirching the judge's friend's name. U.S. v. Jordan, supra, at p. 157. Additionally, Jordan had acted in concert with her daughter to cause the judge's friend to be incarcerated and charged with criminal assault. U.S. v. Jordan, supra, at p. 157. Thus, personal hostility between the judge's friend and the criminal defendant, resulting in extensive negative publicity and incarceration of the judge's friend, are the outcome determinative circumstances of U.S. v. Jordan, supra, at p. 157-158. In explanation of its view about how a reasonable man might react to those circumstances, the Court in U.S. v. Jordan, supra at p. 157 at footnote 8, comments:

> "How many times has one heard the following statement: "He can say anything he wants about me, but he can't talk about my friend." Michael Wood [the judge's friend] may not care what Appellant said about him, but a good friend may forever harbor animosity against someone who has taken a prominent lawyer and put him through unwarranted criminal proceedings and negative publicity."

Unlike Jordan, supra, Lifemark had not personally engaged Messrs. Amato and Levenson in vindictive litigation, resulting in negative publicity, and Lifemark has not caused them to be incarcerated or charged with a crime. Messrs. Amato and Levenson are not parties to the present litigation; and the dispute between Lifemark and Liljeberg Enterprises, Inc. offers no opportunity to reflect negatively upon their respective personal reputations.

The other jurisprudence upon which Lifemark relies, Potashnick v. Port City Const. Co., 609 F.2d 1101 (5th Cir. 1980), is also factually distinct from the present recusal motion. In Potashnick, supra, counsel of record for one party to a civil action is the judge's: a) former law partner; b) business partner in real estate investments; and c) personal attorney. Potashnick, supra, at p.1107 and p. 1111. Lifemark offers no evidence suggesting Messrs. Amato and Levenson, or either of them, share any such business relationships with the Court. Although the Potashnick opinion, supra, comments about the friendship between the judge and counsel, the outcome determinative circumstances concern their ongoing business relationship: "The judge's business dealings with Paul Brock constituted a ground for disqualification under section 455(a)." Potashnick v. Port City Const. Co., supra, at p. 1114.

It is also noteworthy that a more recent decision of the Fifth Circuit, Matter of Billadeaux, 972 F.2d 104 (5th Cir. 1992), adopts a more narrow interpretation of 28 USC 455 than Potashnick, supra, at least on the application of the statute to circumstances in which a relative of the judge is a partner in a law firm representing a party before the Court. Potashnick, supra, holds that 28 USC 455(b)(5)(iii) requires disqualification when a judge's relative within the third degree is a partner in a law firm representing a party before the Court, even though the relative has no involvement in the representation. However, the opinion in Matter of Billedeaux, supra, rejects a similar argument relying upon 28 USC 455(a). The analytical differences between the respective opinions on that common subject calls into question whether the Fifth Circuit would now consider Potashnick, supra, as binding precedent.

Lifemark claims that the Court's alleged relationship with Messrs. Amato and Levenson "would be of no concern were it not for the timing of their addition" (Lifemark memo, at p. 3).

007052

According to Lifemark, Jacob J. Amato, Jr. and Leonard Levenson are either pawns or co-conspirators in a scheme by Liljeberg Enterprises, Inc. to peddle influence with the Court. The sole basis for drawing such a scurrilous conclusion is Lifemark's unsubstantiated innuendo concerning the "timing" of hiring Messrs. Amato and Levenson. Lifemark offers no proof that, prior to filing this motion, it inquired about the reason for recently hiring Messrs. Amato and Levenson for a contingency fee. Had such an inquiry (as required by Rule 11) been undertaken, Lifemark would have discovered that:

a) Neither Liljeberg Enterprises, Inc. nor St. Jude Hospital of Kenner La., Inc. have sufficient financial resources to fund the legal manpower necessary to complete trial preparation and conduct the trial on a time billing basis;

b) Lead counsel for St. Jude Hospital of Kenner La., Inc., Kenneth C. Fonte, does not have available the resources necessary to fund the additional lawyers needed to complete trial preparation and conduct the trial in the absence of a substantial likelihood that the client had the ability to promptly pay time billing invoices for such additional work;

c) Lead counsel for Liljeberg Enterprises, Inc., Douglas Draper, does not have available the resources necessary to fund the additional lawyers needed to complete trial preparation and conduct the trial in the absence of a substantial likelihood that the client has the ability to promptly pay time billing invoices for such additional work;

d) Liljeberg Enterprises, Inc. did not have sufficient financial resources to maintain the involvement of the Connick firm on a time billing basis;

007053

e) Lifemark recently informed lead counsel for St. Jude Hospital of Kenner La., Inc. and assistant trial counsel for Liljeberg Enterprises, Inc., Kenneth C. Fonte, that it intended to call him to testify as a material witness at the trial of the case;

f) Lifemark recently informed lead counsel for Liljeberg Enterprises, Inc., Douglas Draper, that it intended to call him to testify as a material witness at the trial of the case.

None of the exhibits accompanying Lifemark's motion support its false charge that Liljeberg Enterprises, Inc. has a propensity for attempting to manipulate the judicial system by buying influence. For example, Exhibit "A" concerns an unsuccessful effort by Liljeberg Enterprises, Inc. to disqualify Judge Henry Mentz from a case on the same grounds urged by Lifemark herein. While the Fifth Circuit's opinion rebukes those efforts, none of the criticism suggests that Liljeberg Enterprises, Inc. ever attempted to purchase judicial influence. Furthermore, the Fifth Circuit opinion set forth by Exhibit "A" does not find, or otherwise remark, that Liljeberg Enterprises, Inc. accused Travelers of purchasing judicial influence.

Exhibit "B" also sheds no light upon Lifemark's ridiculous claim that Liljeberg Enterprises, Inc. believes this Court can be corrupted by hiring Messrs. Amato and Levenson. Exhibit "B" is an affidavit of a former Lifemark (AMI) employee reporting that other Lifemark representatives had bragged about their influence with certain judges. The affidavit does not say anything whatsoever about Liljeberg Enterprises, Inc. attempting to buy judicial influence.

Likewise, Exhibit "C" does not prove that Liljeberg Enterprises, Inc. hired Messrs. Amato and Levenson with the intent of purchasing the partiality of this Court. The portion of Exhibit "C" cited by Lifemark does not state that Liljeberg Enterprises, Inc. threatened Lifemark with purchasing

judicial influence. In fact, those remarks in Exhibit "C" do not even mention judges or judicial influence.

Liljeberg Enterprises, Inc. has NEVER attempted to purchase judicial influence; and there is no evidence to the contrary.

Lifemark makes numerous unsubstantiated claims about the qualifications of Messrs. Amato and Levenson to meaningfully contribute to the preparation, and trial, of this dispute on behalf of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc.. Lifemark presents the Court with no evidence whatsoever in support of these claims concerning the abilities of these attorneys.

While full of innuendo, Lifemark's recusal motion is not supported by proof, as required by FED. R. CIV. P. 43(e) and ULLR 2.05.

FED. R. CIV. P. 43(e) provides in pertinent part, "When a motion is based on facts not appearing of record **the court may hear the matter on affidavits presented by the respective parties**, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition."

Likewise, ULLR 2.05 states in relevant part, ". . . if the motion requires the consideration of facts not appearing of record, **the movant shall also file with the clerk and serve upon opposing counsel a copy of all documentary evidence he or she intends to submit in support of the motion.**"

For the reasons set forth hereinabove, Lifemark's Motion to Recuse should be denied.

Respectfully submitted,

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(504) 455-0039

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by hand delivery this 9 day of October, 1996.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* * * * * * * * * * * * * * * *

MOTION FOR LEAVE TO FILE
LIFEMARK'S REPLY MEMORANDUM TO LILJEBERG'S
ENTERPRISES, INC.'S OPPOSITION TO MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Lifemark Hospitals of Louisiana, Inc. ("Lifemark") and respectfully moves this Court for leave to file the attached Reply Memorandum addressing points raised in Liljeberg Enterprises, Inc.'s ("LEI") Memorandum in Opposition to Lifemark's Motion to Recuse.

Respectfully submitted,

MILES P. CLEMENTS, (La #4184)
JOSEPH N. MOLE, (La #09538)
KENNETH A. MAYEAUX, (La #17674)
MICHAEL R. PHILLIPS (#La 21020)
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1100 Poydras Street
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007004 DATE OF ENTRY OCT 17 1996
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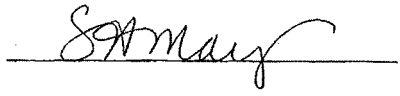
HP Exhibit 54

ATTORNEYS FOR LIFEMARK
HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 11th day of October, 1996 served a copy of the foregoing on all counsel of record via the United States Postal Service properly addressed and postage prepaid.



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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* * * * * * * * * * * * * * * *

ORDER

Considering the foregoing Motion for Leave to File Lifemark's Reply Memorandum to Liljeberg's Enterprises, Inc.'s Opposition to Motion to Recuse;

IT IS ORDERED that Lifemark Hospitals of Louisiana, Inc. ("Lifemark") be and is hereby GRANTED leave to file the attached Lifemark's Reply Memorandum to Liljeberg's Enterprises, Inc.'s Opposition to Motion to Recuse.

New Orleans, Louisiana this 15 day of October, 1996.

UNITED STATES MAGISTRATE JUDGE

007006

FILE COPY

Notice sent to:

Don M. Richard, Esq.
Douglas Scott Draper, Esq.
Kenneth Charles Fonte, Esq.
Stephen T. Wimberly, Esq.
Jacob J. Amato Jr., Esq.
Leonard Louis Levenson, Esq.
Hans Joseph Liljeberg, Esq.
John Flowers, Esq.
Gary Ruff, Esq.
Joseph Nicholas Mole, Esq.
Jan Marie Hayden, Esq.
Brent Bennett Barriere, Esq.
Mack E. Barham, Esq.
William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

007001

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

LIFEMARK'S REPLY MEMORANDUM TO LILJEBERG ENTERPRISES, INC.'S OPPOSITION TO MOTION TO RECUSE

This memorandum is submitted on behalf of Lifemark Hospitals of Louisiana,Inc. ("Lifemark") in response to the opposition filed by Liljeberg Enterprises, Inc. ("LEI") to Lifemark's Motion to Recuse.

Lifemark does not believe that LEI's opposition has addressed the central point of Lifemark's motion. Rather, it makes two irrelevant points; first, that Lifemark has not challenged the Court's actual bias and second, that Lifemark has submitted "no evidence whatsoever pertaining to the Court's alleged affinity for Messrs. Amato and Levenson . . ."

In response to LEI's first point, that Lifemark has not proven actual bias, Lifemark can only refer the Court to its original brief on this matter. Under applicable Fifth Circuit and Supreme Court jurisprudence, actual bias is not an issue under 28 U.S.C. §455. Rather, it is whether or not, given all the circumstances, there would be an appearance of impropriety to the "average person on the street." Lifemark believes

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that it is obvious that the Liljebergs have hired Messrs. Levenson and Amato in order to achieve a forbidden result. There is no other explanation for the addition of two lawyers at the very last minute to a ten-year old case that is already staffed by five separate counsel from five separate firms. Messrs. Levenson and Amato are not members of the same firm, they do not practice law together, they have not previously been involved in this case, and all they have in common is that they are indeed very close friends of Your Honor's. The impropriety in this case resides in what the Liljebergs have attempted to do, not in whether or not they have achieved their goal.

With respect to LEI's accusation that Lifemark has failed to list every item of which it may be aware concerning the relationship between Your Honor and Messrs. Levenson and Amato, Lifemark would only point out that the best parties to address the details of these relationships are Messrs. Levenson and Amato. Lifemark has merely stated what is true, and it has not indulged in innuendo. It has stated that it is well known that Your Honor is very close to both of these gentlemen. LEI has not denied that because it is obviously true. It is not Lifemark's place to make the Court aware of what it already knows, nor to supplement LEI's disingenuous statement that Lifemark has not come forward with the details of Mr. Levenson's and Mr. Amato's relationship.

On pages 6 and 7 of its brief, LEI lists the alleged reasons for its hiring of two lawyers at the very last minute. These points are addressed in the order in which they are presented:

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a) LEI states that it does not have the financial resources to fund the completion of trial preparation and conduct the trial itself. This is untrue. As evidenced by the Motion to Dismiss LEI's Chapter 11 bankruptcy filed herein by Lifemark, LEI has ample resources. It is earning approximately $1.8 million per year in operating profits; it has been spending over $600,000 per year on attorneys; and it is has had no problem in pursuing this litigation for the last ten years with lawyers retained solely on an hourly basis.

b) In support of its statement that Kenneth Fonte, formerly lead counsel for LEI, has insufficient resources to fund additional legal work, LEI submits no affidavit or other proof. Mr. Fonte has earned ample funds over the years representing LEI and its affiliated companies. His bills have been routinely approved by the Bankruptcy Court, which has the sole authority to perform that task, and he has made no complaint. There is no evidence that he was offered, but refused, a contingency fee arrangement.

c) LEI makes the same unsupported allegations with respect to Douglas Draper. Mr. Draper has represented LEI and its affiliated companies since at least 1993 in their bankruptcy proceedings, and he has earned substantial funds in doing so. He has made no complaint about being untimely paid. In fact, he is the counsel in charge of having his own bills routinely approved by the Bankruptcy Court. There is no evidence in the record of the bankruptcy that there has been an objection to Mr. Draper's applications for fees.

d) LEI alleges that it had insufficient resources to maintain the involvement of the Connick law firm on a time billing basis. However, it has submitted no evidence to contradict the overwhelming record of LEI's profitable operations. Since the beginning of this fiscal year, LEI has continued to spend exorbitant sums on lawyers for numerous litigations. It has continued to pay $150,000 per year in rent to its affiliates. It has continued to pay the Liljeberg brothers' lavish salaries and to provide them with automobiles, insurance, personal staffs, and other amenities that have no relationship to the production of revenue. In any event, the Connick firm never participated actively in this case; the absence of the Connick firm would still leave LEI and St. Jude with four lawyers who have adequately managed this case for years.

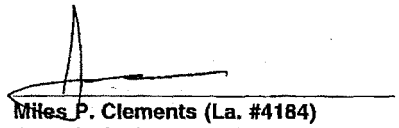
e) & f) LEI's argument that Lifemark's listing of Doug Draper and Ken Fonte as possible witnesses is hollow. Both Mr. Fonte and Mr. Draper have been informed that the sole reason for listing them as witnesses is to confirm their testimony in Bankruptcy Court concerning the cause for the filing of LEI's and St. Jude's Chapter 11 proceedings. They have also been informed that if they are willing to stipulate to sworn and transcribed testimony, there will be no need for their appearance as witnesses. In any event, it is Lifemark's and not LEI's role to object to their appearance as both counsel and as possible witnesses, and it has not done so. It has no intention of objecting. There is no need to add two lawyers inexperienced in this case solely to cover for those gentlemen in the unlikely event they opt to take the

stand rather than to acknowledge or stipulate to their testimony given in Bankruptcy Court.

In conclusion, Lifemark would note that contrary to LEI's accusations, it has not engaged in innuendo. It has stated what is obvious and well known; namely, that Messrs. Levenson and Amato have nothing in common with each other or with this case other than that they are the Court's closest friends. LEI has not denied this, rather it has challenged Lifemark to present proof of what Your Honor knows to be true. As noted by the Fifth Circuit in Travelers Insurance Co. v. St. Jude Hospital of Kenner, La., Inc., (attached to Lifemark's original brief as Exhibit A): "A §455(a) recusal is self-executing . . . no affidavit (or in this case, "opinion poll"), is necessary to present the claimed basis for disqualification to the court." Travelers, at page 14. (emphasis added). In Travelers, the Liljebergs had engaged in just the sort of innuendo that they now challenge Lifemark to reproduce. The Fifth Circuit found that distasteful, and condemned the Liljebergs for their cynical timing in waiting until they had lost three separate matters in front of Judge Mentz before raising the issue of recusal by way of a Rule 60 motion. Moreover, the lawyers who were alleged by the Liljebergs to be the source of the Judge Mentz' bias in the Travelers litigation had been in that case from its very beginning, obvious to the Liljebergs and the entire world. In this case, there is no need for innuendo. If Mr. Amato and Mr. Levenson had come with the case in 1987 or 1993, when it was filed in state or federal court, respectively, Lifemark would have no complaint. The Liljebergs, by cynically hiring not

one but two of the Court's closest friends immediately before trial, have made their intentions obvious. The relevant test is the whether this creates the appearance of impropriety. Lifemark respectfully suggests that the answer is yes and that the impropriety is not the Court's but rather that of the Liljebergs, and that it ought not be rewarded by creating even the appearance that they might be successful.

Respectfully submitted,



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Stephanie A. May (La. #24166)
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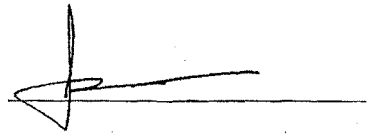
Telecopy: (504) 599-8100
ATTORNEYS FOR PLAINTIFF, LIFEMARK HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 11th day of October, 1996 by United States mail, properly addressed, and first class postage prepaid on all counsel of record.



FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.
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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 93-4249
LILJEBERG ENTERPRISES, INC.	*	94-3993
	*	95-2922
* * * * * * * *		SECTION "T" (3)

MOTION FOR LEAVE OF COURT TO FILE RESPONSE TO LIFEMARK'S REPLY MEMORANDUM ON MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which respectfully moves for leave of Court to file the attached response to the Reply Memorandum filed by Lifemark, for the reasons set forth in the accompanying Memorandum in Support of Motion for Leave of Court.

Respectfully submitted,

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Attorneys for Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc.

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DOCUMENT No. 300

DATE OF ENTRY OCT 21 1996
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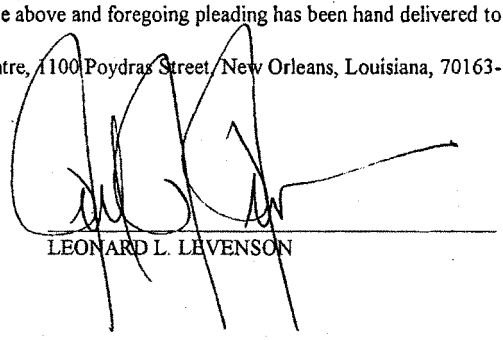
HP Exhibit 55

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been hand delivered to Joseph N. Mole, Esq., 3600 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana, 70163-3600 this 15th day of October, 1996.



LEONARD L. LEVENSON

006983

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 93-4249
LILJEBERG ENTERPRISES, INC.	*	94-3993 95-2922
* * * * * * * *		SECTION "T" (3)

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE OF COURT TO FILE RESPONSE TO LIFEMARK'S REPLY MEMORANDUM ON MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which submit that the Court should grant leave to file a response to Lifemark's Reply Memorandum concerning the Motion to Recuse for the following reasons:

A fair application of ULLR 2.07E presupposes that the opponent to a motion has been given prior notice of all reasons advanced in support of a motion. Obviously, an opponent to a motion cannot be expected to respond to an argument not presented through the mover's supporting memorandum. ULLR 2.05, which governs memorandums in support of a motion, does not grant the proponent of a motion a right to file a "reply" memorandum. Consequently, when the Court grants the proponent of a motion leave to file a "reply"; it should be treated as supplementing the original memorandum, and the opponent should be given an opportunity to respond thereto.

As a matter of practice, counsel in this case previously have called each other in advance of filing "reply" memorandums to determine the existence of any opposition to such relief; and a statement of "no opposition" has routinely been authorized with the condition that there would be no opposition to the filing of a response to the reply memorandum. This time, however, Lifemark

has not contacted undersigned counsel concerning the "reply" memorandum, and has not offered Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. an opportunity with "no opposition" to respond thereto. As a result, leave of court is hereby sought to obtain such relief.

Respectfully submitted,

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(504) 455-0039

Attorneys for Liljeberg Enterprises, Inc. and
St. Jude Hospital of Kenner La., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been hand delivered to Joseph N. Mole, Esq., 3600 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana, 70163-3600 this 15th day of October, 1996.

LEONARD L. LEVENSON

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 93-4249
LILJEBERG ENTERPRISES, INC.	*	94-3993 95-2922
* * * * * * * *		SECTION "T" (3)

ORDER

Considering the Motion of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. for leave of Court to file an opposition to the Reply Memorandum of Lifemark on the Motion to Recuse,

IT IS ORDERED that Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. are hereby granted leave of Court to file a response memorandum in opposition to Lifemark's Reply Memorandum concerning the Motion to Recuse.

New Orleans, Louisiana, this 17 day of October, 1996.

JUDGE

006986

FILE COPY

Notice sent to:

Don M. Richard, Esq.
Douglas Scott Draper, Esq.
Kenneth Charles Fonte, Esq.
Stephen T. Wimberly, Esq.
Jacob J. Amato Jr., Esq.
Leonard Louis Levenson, Esq.
Hans Joseph Liljeberg, Esq.
John Flowers, Esq.
Gary Ruff, Esq.
Joseph Nicholas Mole, Esq.
Jan Marie Hayden, Esq.
Brent Bennett Barriere, Esq.
Mack E. Barham, Esq.
William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

Mary Wilkinson

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

UNITED STATES DISTRICT COURT OCT 17 4 20 PM '95

EASTERN DISTRICT OF LOUISIANA LORETTA G. WHYTE
CLERK

LIFEMARK HOSPITALS OF LOUISIANA, INC.	*	CIVIL ACTION
VERSUS	*	NO. 93-1794 c/w 93-4249
LILJEBERG ENTERPRISES, INC.	*	94-3993
	*	95-2922
* * * * * * * *		SECTION "T" (3)

MEMORANDUM OF LILJEBERG ENTERPRISES, INC. AND ST. JUDE HOSPITAL OF KENNER LA., INC. IN OPPOSITION TO REPLY MEMORANDUM OF LIFEMARK ON MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Liljeberg Enterprises, Inc. ("LEI") and St. Jude Hospital of Kenner La., Inc. ("St. Jude"), which submit the following opposition to the Reply Memorandum of Lifemark concerning the Motion to Recuse:

Lifemark argues in its reply memorandum that "[t]he impropriety in this case resides in what the Liljeberg's have attempted to do". However, Lifemark has not submitted a single scrap of evidence concerning the "intent" of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. in hiring Messrs. Amato and Levenson as additional counsel. Furthermore, Lifemark cites no jurisprudence in support of its contention that the hiring of an attorney who may be a friend of the judge manifests an intent by the employer to enlist the aid of such attorney to cause the judge to violate his duty of impartiality. Lifemark's unsubstantiated and cynical innuendos focusing upon the alleged motives of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. completely miss the benchmark for analysis applicable to this motion: "We ask how things appear to the well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person". U.S. v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). Lifemark's wild speculation about the

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expectations of Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. with regard to the work of Messrs. Amato and Levenson on this case simply does not answer the foregoing question.

According to Lifemark's reply memorandum, it is relieved of the burden of proving the particular circumstances that would lead a reasonable person to question the Court's impartiality; because Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. have not denied that Messrs. Amato and Levenson have a friendly relationship with the Court. Such reasoning assumes, without basis in fact or law, that the mere existence of a friendly relationship between a lawyer and a judge mandates disqualification under 28 USC 455(a).[1]

In its original supporting memorandum, Lifemark uses terms such as "close", "extremely close" and "closest" to characterize the relationship between the Court and Messrs. Amato and Levenson. The reply memorandum calls the relationship "very close". However, such vague superlatives provide absolutely no information upon which an objective, thoughtful and well-informed person could reasonably rely in determining whether grounds exist to question the Court's impartiality.

Lifemark presents no evidence that a reasonable person would attribute to the mere existence of a friendly relationship a significant likelihood that a judge would violate federal law and subordinate his oath of office just to help a lawyer earn a fee.

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[1]Despite the fact that it appears in Exhibit "A" of Lifemark's original memorandum, and notwithstanding that the opposition memorandum directly quotes it; Lifemark persists in closing its eyes to footnote 13 of Travelers Insurance Company v. Liljeberg Enterprises, Inc., 38 F.3d 1404, 1411-1412 (5th Cir. 1994); in which the Fifth Circuit clearly rejects the argument that friendship, even close friendship, between a counsel of record and a judge necessarily requires disqualification. Amazingly, Lifemark's reply memorandum [as well as its original memorandum] also completely ignores the plainly analogous decision in Henderson v. Dept. of Public Safety and Corrections, 901 F.2d 1288 (5th Cir. 1990); which also addresses the issue of friendship between a lawyer and a judge as it pertains to the application of 28 USC 455(a).

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The reply memorandum contains an oblique acknowledgement by Lifemark that the circumstances of the relationship between the Court and Messrs. Amato and Levenson do not support disqualification under 28 USC 455(a), to-wit: "If Mr. Amato and Mr. Levenson had come with the case in 1987 or 1993, when it was filed in state or federal court, respectively, Lifemark would have no complaint." If the nature of the friendly relationship between the Court and Messrs. Amato and Levenson is such that a reasonable person would question the Court's impartiality for purposes of 28 USC 455(a); then it should make no difference whether Messrs. Amato and Levenson have been involved in the case for ten minutes or ten years. Nevertheless, Lifemark, without citing any supporting authority, claims that if Messrs. Amato and Levenson had been involved in the case for at least three years, then 28 USC 455(a) would not require disqualification.

Both Lifemark's reply memorandum and the original memorandum cast innuendos about the role of Messrs. Amato and Levenson based upon their alleged brief tenure as counsel in this case. Although they have only recently enrolled as counsel of record, Messrs. Amato and Levenson have spent a significant portion of the past summer educating themselves about the case before agreeing to serve as trial counsel. In fact, their involvement in the case postdates that of Frilot, Partridge, Kohnke & Clements, L.C. by only a few months. The record shows that Frilot, Partridge, Kohnke & Clements, L.C. enrolled as counsel of record on April 15, 1996. Considering the Frilot's firm equally brief tenure in this case, the audacious aspersions cast by Lifemark upon the abilities of Messrs. Amato and Levenson to meaningfully prepare for, and participate in, the trial of this case manifest insincerity.

Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. believe that Lifemark's sniping at the competency and role of Messrs. Amato and Levenson is a tactic designed to provoke the application of the factual predicate of U.S. v. Jordan, 49 F.3d 152 (5th Cir. 1995) to the circumstances of this case. In U.S. v. Jordan, supra, it is the vicious personal attack against the judge's friend by the party seeking recusal, and not the existence of the friendship, which proves to

be outcome determinative. However, Messrs. Amato and Levenson take comfort, and not offense, from Lifemark's underestimation of their abilities. Discounting the strengths of your opponent is a serious mistake in litigation.

For the reasons set forth hereinabove, together with those provided in their first opposition memorandum, Liljeberg Enterprises, Inc. and St. Jude Hospital of Kenner La., Inc. seek dismissal of the Motion to Recuse and the imposition of sanctions against Lifemark.

Respectfully submitted,

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Attorneys for Liljeberg Enterprises, Inc. and
St. Jude Hospital of Kenner La., Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been hand delivered to Joseph N. Mole, Esq., 3600 Energy Centre, 1100 Poydras Street, New Orleans, Louisiana, 70163-3600 this 15th day of October, 1996.

LEONARD L. LEVENSON

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS, LOUISIANA

LIFEMARK HOSPITALS, INC. Docket No. 93-179-4-"T"

Plaintiff,

v. New Orleans, Louisiana
Wednesday, October 16, 1996
LILJEBERG ENTERPRISES, INC. 10:17 a.m.

Defendant.

PLAINTIFF'S MOTION TO RECUSE
BEFORE THE HONORABLE G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:
Frilot, Partridge, Kohnke & Clements
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For the Defendant:
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Amato & Creely
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Gretna, Louisiana 70054

BY: HANS LILJEBERG, ESQ.
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APPEARANCES (CON'T):

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501 Magazine Street, Room 406
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Proceedings recorded by mechanical stenography; transcript produced by dictation.

P R O C E E D I N G S

MORNING SESSION

(Wednesday, October 16, 1996)

THE COURT: Let's take up this next matter, which is 93-1794 and all consolidated cases also. This is the motion filed with respect to all of the particular cases to recuse. Let me dictate one thing into the record before everybody commences so that everybody is not necessarily on edge as they might think. Bernard v. Coyne, which is 31 F.3d 842 involved the request to disqualify a circuit court judge of the 9th circuit. In that decision that Judge wrote, and I cite and "this" (reading) with full acquiescence counsel for a party who believes Judge's impartiality is reasonably subject to question has not only a professional duty to his client to raise the matter but an independent responsibility as an officer of the court. Judges are not omniscient, and despite safeguards overlook a conflict of interest. A lawyer who reasonably believes that the Judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest. Any other course would risk undermining public confidence in our judicial system." I cite that so that everyone understands that I recognize my duty and obligations, and I am fully prepared to listen. All right, go ahead.

MR. MOLE: I appreciate your remarks. It is not a very

easy thing to confront the federal judge with the suspicion that he probably doesn't want to hear. I am sure that in the course of trying -- I don't know you very well, Judge, and I have gotten to learn about you only through this case --

THE COURT: You told me the last time we graduated from Cor Jesu.

MR. MOLE: That's about all we have in common. What I learned about you from trying to investigate what I should do about what I have raised that you probably did read briefs and gave it some intelligent thought. So I don't want to go back through everything I have said.

What I would like to emphasize is mainly by what has been established in response to my motion to recuse. I have gotten to know Mr. Levenson and Mr. Amato.

THE COURT: Let me make also one other statement for the record if anyone wants to decide whether I am a friend with Mr. Amato and Mr. Levenson, I will put that to rest for the answer is affirmative, yes. Mr. Amato and I practiced the law together probably 20-plus years ago. Is that sufficient?

MR. MOLE: Yes.

THE COURT: 20-plus is sufficient. So if that is an issue at all, it is a non-issue.

MR. MOLE: What prompted us to file the motion is the

timing of what happened. This case is 10 years old, the oldest part is 10 years old. The lawyers who are in the case now are these previous to September 12th when you granted leave to add Mr. Amato and Mr. Levenson, who has been in for years. The case was set for trial, and you had an emphasis about keeping the trial date. They were added within two months of the trial date. And the case with that length I don't know Mr. Levenson or Mr. Amato very well. I know they are fun to practice against; they have a sense of humor, and they have given me by doing this quite literally none to my knowledge other than they are your friends. They have been given 11 percent contingency fee in a case that the Liljebergs, everybody -- I disagreed -- value at $140 million, at least part of this we have a percentage of. And I think that bears even more weight when you consider Mr. Liljeberg has taken the position that he doesn't give contingency fees. Jim Cobb has sued him in Bankruptcy Court for a fee claiming he had continued standing of plaintiff Liljeberg as a matter of the plaintiff doesn't give those away. This is like how we do it at the last minute. Mr. Levenson in his response to my reply brief says he has been in the case for a lot longer than the time when he showed up. It raises additional questions. Mr. Levenson is also, indeed, your friend: Has he discussed the case with us before at that time he appeared when he was investigating

it? Did he wait to see when you would hold on to the case rather than pass it on to Judge Lemmon? Those are the sort of questions that are going to be in the case no matter what happens forever if you be the Judge.

Mr. Levenson has accused me and my client of engaging innuendo. I looked up the word. Innuendo is a generally derogatory and witty way of making accusations indirectly. I don't think I have done that. I have been very direct. Mr. Levenson, and I think it is a good tactic, has tried to dare me to say what I think is the nature of the relationship between you and him and you and Mr. Amato, that are the two gentlemen behind me. And if they have something to contradict the statement that I made, which is that you all are indeed very, very close friends, I would have assumed that he would have made it. I am happy to tell the Judge what the public perception is of the relationship.

THE COURT: Well, the case you cite by the way involved the judge's wife. So I assume they were fairly close friends, too.

MR. MOLE: Probably. You don't have to stipulate.

THE COURT: Well, it could be a question sometimes.

MR. MOLE: I understand, Your Honor. I don't know what the Court wants to do with that issue, whether or not the Court wants to make a statement or accept the statement.

THE COURT: No, I have made the statement. Yes, Mr.

Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive answer yes. Have I been going to lunch with all of the members of the bar? The answer is yes.

MR. MOLE: I understand.

THE COURT: Has, in fact, at the last status conference I had I saw Mr. Lane here I think in reality aligned with your side who spoke with me, and Mr. Lane and I have been to lunch together. I mean there is not a hell of a lot of lawyers in this city I haven't maintained a very open, friendly relationship with. So if you want to explore in detail, feel free to explore it. I don't have a problem with exploring it. But I don't know what you want to make with it.

MR. MOLE: Well, Your Honor --

THE COURT: And I also must say something for the record I think other than connecting the dots that the last status conference I had I virtually told everyone I was continuing this case. So this rush to trial that you suggest I am maintaining, I did all but connect the dots the last time.

MR. MOLE: Well, I understand.

THE COURT: The lawyers have come to this case like a

storm cloud through Louisiana. Look at the list. I ran a chaser sheet. Up until I think maybe Mr. Steeg and Mr. O'Connor. Mr. O'Connor were attorneys and they are out for whatever reason. They had a conflict situation. I have no idea what it was. Then you all got in it. Welcome, jump in. I mean I tried to make it clear at the last conference I don't care how many people are on the side or "X" amount of people are talking. Did I not say that?

MR. MOLE: It was pretty clear, Your Honor. Well, I would emphasize, Your Honor, that the standard is what a reasonable person would perceive if they knew all the facts. I think the timing of the appearance of Mr. Amato and Mr. Levenson creates the biggest concern along with the fact that they did not practice law together. All they have in common is that they are your close friends. The public perception is that they do dine with you, travel with you, that they have contributed to your campaigns.

THE COURT: Well, luckily I didn't have any campaigns. So I'm interested to find out how you know that. I never had any campaigns, counsel. I have never had an opponent. One time I had an opponent --

MR. MOLE: I had a campaign return from the --

THE COURT: The first time I ran, 1984, I think is the only time when they gave me money.

MR. MOLE: 1990 is what I have.

THE COURT: 1990 that was the Justice for All Program where they gave to every judge probably, but I could be wrong there.

MR. MOLE: I'm sorry if I'm wrong.

THE COURT: I don't know. You got the record. What did it say? Let me see them. Don't hide them if there is something in there that's deeply devious, tell me about it.

MR. MOLE: May I approach the bench?

THE COURT: Sure.

(Counsel Mole hands document to the Court.)

THE COURT: Yeah, I think if you look at this, you will find that whatever those numbers total, and I'm not a mathematician, but I think those numbers on these pages total more than $6,794. I am fairly certain adding that up. Did you?

MR. MOLE: I did not, Your Honor.

THE COURT: Well, let's go to the, pick a page at random starting with the firm of Anderson Tranthene and Mateern. There is over $200 on that page, one page out of I don't know how many it is. I think you will find that that was a function that was thrown by the entire judiciary of Jefferson Parish for which I received I forget whatever my portion was, but I reported it, which was $6,794 is what it looks like what it says here. And that's what it was. So, yes, I don't doubt that they contributed. I mean I don't

know. Maybe it is pertinent. Maybe microscopes and maybe that's why we shouldn't have it. But, yeah, okay, it's there.

MR. MOLE: Your Honor, I appreciate the Court's remarks at the beginning. What I have done again is in an effort to represent my client at the risk of offending the Court --

THE COURT: You haven't offended me. But don't misstate, don't come up with a document that clearly shows well in excess of $6700 with some innuendo that that means that they gave that money to me. If you would have checked your homework, you would have found that that was a Justice for all Program for all judges in Jefferson Parish. But go ahead. I don't dispute that I received funding from lawyers.

MR. MOLE: Right, Your Honor.

THE COURT: No question.

MR. MOLE: If the perception is that my client, and I have it that Mr. Levenson and Mr. Amato are not any more sinister than any other member of the bar, then we would be happy to have them or you dispel that. I think you have been honest with us. There is not much more I can say.

THE COURT: I understand. Let me tell you, no, it is a uncomfortable position you find yourself in, counselor. You know, I have been doing this for awhile. With all candor I must admit this is the first time a motion for my recusal

has ever been filed. Did it get my attention? Yeah, I guess it got my attention. But does that mean that any time a person I perceive to be friends who I have dinner with or whatever that I must disqualify myself? I don't think that's what the rule suggests. I, likewise, don't think that's what the Court had in mind. And even in your own pleadings and even in the case, it is the Travelers case from the Fifth Circuit published opinion which you gave, me that courts even recognized in citing from Murphy in its cite, and I think it is important to state (reading) "In today's legal culture friendship among judges and lawyers are common. They are more than common, they are desirable. A judge need not cut himself off from the rest of the legal community. Social as well as official communications among judges and lawyers may improve the quality of the legal decisions. Social interaction also makes some on the bench quite isolated and as a rule more tolerable to judges. Well qualified people would hesitate to become judges if they knew that wearing the robe meant either discharging one's friends or risking disqualification in a substantial number of cases. Courts have held that a judge need not disqualify himself just because a friend, even a close friend, appears as a lawyer." And that is a Seventh Circuit case but was cited in the Fifth Circuit decision.

Now that's a predicament all of us find ourselves in.

Mr. Amato and Mr. Levenson have both appeared before me and they have both won and both lost.

MR. MOLE: Your Honor, it is again it is not the fact of the friendship, it is the timing. Anyone who you would describe the situation to I think would generally be concerned that the timing is odd that a case of this length amply lawyered when other lawyers appear within the contingency fee in the way they have and that's why we made the motion.

THE COURT: I understand it, and it is a perception, clearly it is perception. I agree with you, but again even before this motion was even urged because I believe the status I had before you filed the motion, in fact, I know it was I made it plain that this November 4th date was probably fixed in everybody's mind. I mean I don't know what else to tell you. That was a near fix. We will see what we have got, but I understand, counselor and appreciate your position. And you have to urge these things, and I understand that. I take no animus toward you on that. If you did that, I don't need to repeat that.

MR. MOLE: Judge, what you said -- it is the first time I have had to do this myself. I would think one of the lawyers opposing me asked me how many times did you sit around discussing this with your client or your partners, and his answer was to a political extent easy to do. But we

convinced ourselves we had to do it.

THE COURT: All right.

MR. MOLE: Only after great deliberation.

THE COURT: All right.

MR. LEVENSON: Judge, I feel a little peculiar in this situation as well. I don't recall in the twenty years I have practiced law being in this situation. I think that you must take into consideration the admission by Lifemark in their pleading that they do not question your impartiality. And if they had done any investigation in connection with this matter, they could come up with no other result but that. And that is the test in this type of situation. It is the appearance to a well-informed, thoughtful, objective observer as stated in Jordan. And I think the key point there is well informed. Both well informed about our friendship, well informed about our reputation, well informed about the reputation and experience of Mr. Amato as well as that of myself.

Mr. Mole stated that the timing is odd. Well, I think it is correct that from the time that I was originally contacted by the Liljeberg attorneys in connection with this matter the Frilot firm has been involved in this case a very short period of time longer than I.

Mr. Mole brought up that when he first learned of that

yesterday he questioned why I waited so long to get into the case. Well, when I saw file cabinet upon file cabinet upon file cabinet of the paper, it wasn't candidly a very easy thing to assess for myself nor for Mr. Amato to take and became quite a bit of work to determine whether or not I wanted to dedicate a substantial portion of my future effort to this case which would deprive me of other income and other work as well. Mr. Mole didn't know that because he didn't ask me.

The next point Mr. Mole made was that there is nothing in common between Mr. Amato and myself except your friendship. That is incorrect. Another question Mr. Mole should have perhaps inquired into.

In Mr. Mole's brief he somewhat criticized my experience or perhaps the lack thereof in his mind in matters of this sort. Mr. Amato and myself have acted as primarily personal injury lawyers. That, of course, is not true. Mr. Amato and myself have tried hundreds if not thousands of cases and rules before juries, judges, state and federal, bankruptcy and federal court and just about every other court I can think of. In fact, at the risk of blowing my own horn, I think that I am probably the only lawyer in this room and maybe the only lawyer with all of the firms combined who has been written up in the WALL STREET JOURNAL in connection with litigation I had handled,

and it was not personal injury cases. My experience involves personal injury admittedly in recent years due to the change in the economy this year but also involved commercial litigation, bankruptcy, real estate and title law expertise which I think will become very important in this litigation.

Mr. Mole has alluded that in his pleadings that Mr. Amato and myself are your two closest friends. I find it interesting that Mr. Amato and myself are your closest friends that we were not contacted in connection with the background check which must be performed in connection with your appointment. Maybe other people don't think our friendship is viewed the same as Mr. Mole.

Finally, Mr. Mole says that we have contributed money to your campaign. Your Honor, as you know I didn't even know you when you ran for office. I only met you in the course of litigating cases in your court. To the best of my knowledge I have never given a campaign contribution to you. To the best of my knowledge you have never had a campaign to which to contribute to. The Justice for All Ball was something that was put together so that all of the judges of the 24th Judicial District Court could have a single fund-raiser, and I think the intent of that was to make it easier on lawyers who contributed to judge's campaigns, and there was some particular form as to how those proceeds were

divided up. I don't think they were divided up equally, although how they were distributed I wasn't part of.

THE COURT: I don't remember the breakdown, but I do know I was the smallest for what that's worth.

MR. LEVENSON: Judge, I think that the rule under Section 455 in the cases make it clear that whether or not we are your friend or even your close friend that is not ground for recusation, and I think that the motion should properly be denied.

THE COURT: Mr. Mole anything else you would like to add again?

MR. MOLE: Yes, Your Honor. One of the difficult decisions to make is how much of a record should I try to make on this without a balance of the fact that I have to practice law with these gentlemen and before you the rest of my life but that I have a duty to my client. But I think that the record that is made here today is enough, because I don't think Mr. Levenson and Mr. Amato, they have said that they dared me to say what I think are rumors. I don't want to do that. They have not denied what I have said about the relationship between you and them.

THE COURT: I have not denied it, and I don't think they deny it.

MR. MOLE: Then the fact of the matter is Mr. Levenson could very well deny it if he wanted to, and he has chosen

not to do that. That speaks more loudly than anything I could say.

THE COURT: Well, you know the issue becomes one of, I guess the confidence of the parties, not the attorneys. Because when it is all said and done you all have been but the spokesperson for the true people in interest and that's the litigants. My concern is not with whether or not lawyers are friends and for whatever value that contribution is to a group as a whole. My concern is that the parties are given a day in court which they can through you present their case, and they can be adjudicated thoroughly without bias, favor, prejudice, public opinion, sympathy, anything else, just on law and facts. That's basically the charge we give juries. We are no longer the juries, but if it was a non-jury trial, we are the trier of fact. And there is a ton of case law that says that I should charge myself according to the same way I would charge a jury.

I have always taken the position that if there was ever any question in my mind that this Court should recuse itself that I would notify counsel and give them the opportunity if they wanted to ask me to get off. That includes a case wherein my cousin, Billy, Billy Porteous tries a case in front of me in Gretna, and the plaintiff's lawyer is absolutely delited. And I have got to go fully explain to the jury that I never practiced with him and that they are

not to read anything into it. I don't fault you for your filing. I think it is a situation where because of this upward ongoing quick activity of this case because of dates approaching that on its face it appears to be evil or bad or improper. The reality is that none of the above are true. The reality is that if anyone thinks they gain favor from me because someone is in a case need only basically look at what I have done in the past to know that that is a fiction.

The question is again in that Bernard case the court said Section 450 requires not only that a Judge be subjectively confident of his ability to be even handed but there is a informed, rational objective observer would not doubt his impartiality. Well, everything we do in the judiciary is under a microscope anyhow. But if the rules were such that every time a contributor and you take a case with current contributions have been made, not 1990 contributions, have allowed the Judge to sit where friendship, even "Close friendships are not to be considered," I don't have any difficulty trying this case.

Now, after I rule can a party feel that they were wronged? I can't stop that feeling. There is no tie: somebody wins, somebody loses. Are they then upset? Possibly. But that's not for me to concern myself with because again whichever side wins by the evidence and the law will win by the evidence and the law. And as I have

told plaintiff lawyers in the past, if 40 percent of zero is zero, I assure you eleven percent of zero is still zero. Now, does that ease your client's mind? I don't know. I can't help you there. Does that make the informed observer satisfied? I don't know. But in my mind I am satisfied because if I had any question as to my ability, I would have called and said, "Look, you're right." Do not think for one moment that this Court went out and solicited this case. This case this Court drew because some other members of the bench couldn't hear it. The pool of judges was very small, and I drew it.

Now, I ran the chaser sheet on this, and the reason I talk about a flurry of activity up until the time I drew this case, which was on January 16, 1996, document No. 190 or entry 190 in the case re-alloted Judge G.T. Porteous, Jr., since that day when only 190 over a 3-year period entries had been made we have to date, now we have had 102 entries made. It always happens that when we get close to trial people get real, real interested. I can't explain it. It just happens. I don't read anything devious or bad about it. In fact, since the time you have come into the case or your firm which was entry No. 210, we have had 82 of them. So there has been a lot of activity, and I will attend to it.

I received a multitude of pleadings to find out in

taking up other issues today, and I had issued an order and I am hoping everyone got a copy of it. And if they didn't, I don't know what happened. But entry no. 278 says, "Having received the plaintiff's Motion to Recuse, the Court finds it is in the best interest of justice that all motions are deferred pending resolution of the motion to recuse.

MR. MOLE: I got that.

THE COURT: So I don't know what to tell you all other than I do not believe this is a case where 28 USC 455 is applicable. I don't think a well-informed individual can question my impartiality in this case. Part of me has to sit here and make sure that I don't over help or hurt either one of you. That's always going to be a problem if you know somebody on one side. I'm human, but I assure you I have done this long enough that it won't bother me at all. Saying no is the easiest thing. Saying zero is just a number. Whether it is worth $140 million as you suggest, I don't know. I don't know enough about this case. I don't even know if you all know enough about this case given the rash of pleadings that go back and forth. I'm not even sure it is that complex, but it is sure being made fairly complex.

Now, having said all of the above, I tell you now that there is no way on this earth that I can get through any of the motions pending and have a trial date by November 4th.

You all can forget it. It is actually impossible, which is exactly what I virtually said when we had the status. I won't be pushing anybody to trial on November 4th. I do want, however, that these things remain in effect. The requirements, those witness lists are cast in stone. I think you all both submitted them. That much is a finished deal. We are not going to be adding witnesses absent a hearing for good cause shown why they should be added. Now, I am not going to say that, I guess something could come up. But that's cast in stone. Both Magistrate Wilkinson and I have told you all that we are available for whatever assistance you need because this is a non-jury trial. I don't intend to enter into any discussions with you all on that. I told you that I believe that Magistrate Wilkinson did. My input is over at that point then. He acts as an arbitrator or mediator if that ever gets to that. If it doesn't, we try your case.

Because I know this is an important issue for you and an important issue for your client, I am, in fact, going to issue a judgment denying your motion to recuse myself. It is significant, it is important. If you think it deserves attention by the Fifth Circuit, that's why I am giving you the judgment. If you go there, you do it with no offense to me. And if they disagree with me, then they disagree with me. I don't have a problem with that, counselor. I don't

want the issue to be left that you didn't have a mechanism, and I don't think any of you want to do this thing twice.

So if you choose to go there, go there. Would I conceive of any grant of a stay? Yes. Would I ask that they expedite it? Probably, yes. And I would hope that you would ask that they expedite it because that does not innure to either side's benefit in this case.

MR. MOLE: One of the things that occurred to us and that is that we have a remedy for a writ of mandamus, and we haven't decided to do that.

THE COURT: That's why I thought a judgment was necessary, and I don't know if an order would have given you that ability. I am issuing it as a judgment denying your motion to recuse for the reasons I stated on the record, which you can get a transcript of it, of course. But, yes, I told you now that's what I am going to do is give you the guidance to do that.

MR. MOLE: One of my concerns is that we have a November 4th trial date. I would have to try to get discovery before then.

THE COURT: Does anyone here really believe I can dispose of all of your motions before November 4th? I'm not super human. I have continued all your motions because of this motion to recuse myself.

MR. MOLE: We didn't file them to delay things. But I

understand Your Honor.

THE COURT: I didn't take it for that, but I'm saying I did that on my own motion. Nobody asked me to stay it. I could have done it, but I think whenever somebody asks for a judge to recuse themselves, although technically I can continue a proceeding and particularly in the ruling I had made I think they are entitled for me not to do anything more until we take up the issue. We took the issue up. If you want to go across and do that, I am giving you the procedural tool to do it.

MR. MOLE: I appreciate that.

THE COURT: Okay, anything else I can dispose of?

MR. LEVINSON: On October the 23rd it is scheduled to appear for a pretrial conference.

THE COURT: Ignore it. Ignore it. There is no way on earth I am going to do your pretrial. You have got too many motions especially that you would have in the pretrial that the motions are open.

MR. LEVENSON: I understand that, Judge. But would you consider making it as a status conference so we can proceed?

THE COURT: I will do that as a status conference with you all.

MR. MOLE: And no pretrial order?

THE COURT: No, obviously not. They will issue an order that the pretrial order is hereby converted to a

status conference for whatever time I had it set. Just whatever if that time is blocked out, we keep it at that time.

MR. LEVENSON: That's fine, Judge.

THE COURT: Discovery I suggest that I believe should be closed at this point in time.

MR. MOLE: I think we have everything scheduled that needs to be scheduled, but we still have depositions going on through the last one is October 28th.

THE COURT: That's fine. But that's by agreement?

MR. MOLE: That's by agreement.

THE COURT: That's by agreement. And then as I understand it discovery will be closed?

MR. MOLE: Yes, Your Honor. We are cooperating pretty much.

THE COURT: Depending on what you do, whether you will be going to go forward and whether there is a stay over there or request for expedited hearing, will depend on when I give you a trial date. Maybe by the 23rd I would ask you and if you are not in position to do it, counselor, I understand. But on the 23rd it is a status conference. If it is your client's desire to proceed with a mandamus or appeal or whatever procedural remedy that is at his disposal with the Fifth Circuit, if you will simply notify me to that effect whether I would or would not set a date. I'm going

to set a date with that pending, I am not going to pass on this case while the ruling of mine which may have some impact on whether to recuse myself on this case. So if you could let me know by that date.

MR. MOLE: We will do that, Judge.

THE COURT: Okay, all right. Thank you all.

MR. MOLE: Thank you, Judge.

(Hearing concludes.)

REPORTER'S CERTIFICATE

The undersigned certifies, in his capacity of Official Court Reporter, United States District Court, Eastern District of Louisiana, the foregoing to be a true and accurate transcription of his Stenograph notes taken Wednesday, October 16, 1996.

New Orleans, Louisiana, this 21st day of October, 1996.

David A. Zarek
Official Reporter, Section "A"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

FILED
Oct 21 9 29 AM '96
CLERK

LIFEMARK HOSPITALS, INC.	CIVIL ACTION
	NO. 93-1794 c/w 94-3993,
VERSUS	93-4249,
	95-2922
LILJEBERG ENTERPRISES, INC.	SECTION "T"

JUDGMENT

On Wednesday, October 16, 1996, the court heard oral argument on Lifemark Hospitals, Inc.'s Motion to Recuse. The Court, having reviewed the motion to recuse, the opposition, the reply, and the response to the reply and having heard oral argument, for reasons stated in open court denies the Motion to Recuse. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment entered denying Lifemark Hospitals, Inc.'s Motion to Recuse.

New Orleans, Louisiana, this 17th day of October, 1996.

G. Thomas Porteous, Jr.
United States District Judge

cc: Magistrate Judge Wilkinson
Clerk to Notify all Counsel

OCT 21 1996
007500 DATE OF ENTRY
18

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Notice sent to:

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William F. Wessel, Esq.
William Kearney Christovich, Esq.
Charles Louis Stern Jr., Esq.
Moise S. Steeg Jr., Esq.

Mary Wilkinson
Judge

IN THE UNITED STATES COURT OF APPEALS

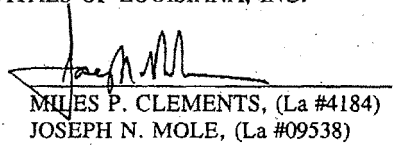
FOR THE FIFTH CIRCUIT

NO. _____

LIFEMARK HOSPITALS OF LOUISIANA, INC. ET AL.
VERSUS
LILJEBERG ENTERPRISES, INC.
C.A. NO. 93-1794 C/W
93-4249
95-2922
95-3993

IN RE: LIFEMARK HOSPITALS OF LOUISIANA, INC.
PETITIONER

PETITION FOR WRIT OF MANDAMUS
BRIEF OF PETITIONER
LIFEMARK HOSPITALS OF LOUISIANA, INC.



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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

CERTIFICATE OF INTERESTED PARTIES

Pursuant to Loc.R. 28.2.1, the undersigned counsel of record certified that the following listed persons have an interest in the outcome of this case. These representations are made in order that judges of this Court may evaluate possible disqualification or recusal.

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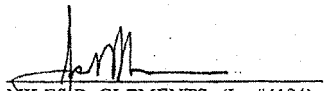
Respectfully submitted,



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ATTORNEYS FOR LIFEMARK
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REQUEST FOR ORAL ARGUMENT

Petitioner requests oral argument pursuant to Fed.R.App.P. 34(a) and Loc.R. 28.2.4, and submits that oral argument would be helpful to this Court in its resolution of this matter. This Writ Petition presents the Court with a unique case involving the standard for recusal of a federal judge whose two closest personal friends were retained as trial counsel for the plaintiff, on a contingency fee basis, on the eve of a multi-million dollar non-jury trial. Oral argument should be allowed in this case because this writ is not frivolous; the issue presented has not been authoritatively decided; and the decisional process would be significantly aided by oral argument. Fed.R.App.P. 34(a).

The issue presented in this case involves whether the appearance of impropriety standard set forth in 28 U.S.C. § 455(a) warrants disqualification of the district court judge. This Court has established a body of case law applying 28 U.S.C. § 455(a). However, as this Court has eloquently stated regarding Section 455(a):

> . . . [N]o case is precisely on point; after all, each § 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence.

United States v. Jordan, 49 F.3d 152, 157 (5th Cir. 1995). For this reason, the facts and issue presented here have not been authoritatively decided; and accordingly, oral argument would aid this Court in its determination.

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STATEMENT OF JURISDICTION

I. Subject Matter Jurisdiction

The United States District Court for the Eastern District of Louisiana has jurisdiction of this matter pursuant to 28 U.S.C. § 1334. This controversy originated in federal court when Liljeberg Enterprises, Inc. (hereinafter "LEI") filed bankruptcy in January 1993 and also filed a Motion to Assume an Executory Contract in its Chapter 11 proceeding. LEI and Lifemark Hospitals of Louisiana, Inc. (hereinafter "Lifemark") are parties to this contract. Lifemark successfully moved for withdrawal of the bankruptcy reference so that the entire controversy moved to the district court. Additionally, a lawsuit that LEI had initiated against Lifemark in 1987 in state court was removed to bankruptcy court and then to the district court, where it has been consolidated with several other lawsuits between the parties and their affiliates.

The district court also has independent federal question jurisdiction of these consolidated cases pursuant to 28 U.S.C. § 1337. Lifemark has asserted claims against LEI for violations of federal antitrust laws. The district court has supplemental jurisdiction of all of the other claims in this matter pursuant to 28 U.S.C. § 1367(a). The non-antitrust claims are so related to the antitrust claims that they form part of the same case or controversy under Article III of the United States Constitution.

II. Appellate Jurisdiction

Lifemark filed a Motion to Recuse the Honorable G. Thomas Porteous on October 1, 1996. Judge Porteous denied that Motion on October 16, 1996 and issued a Judgment denying said motion on October 17, 1996. (See Lifemark's Motion to Recuse and the District Court's Judgment, Exhibits "B" and "C", respectively). Lifemark files this Writ of Mandamus pursuant to Fed. R. App. P. 21, and on the grounds that the district court abused its discretion in denying Lifemark's motion.

This Court has the authority to issue extraordinary writs pursuant to 28 U.S.C. § 1651(a), which provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." See In Re: Billedeaux, 972 F.2d 104 (5th Cir. 1992) (petition for writ of mandamus is appropriate remedy for denial of motion to recuse).

STATEMENT OF THE ISSUE

In a case that has been pending for ten years (the last three of which have been in federal court where the case has been presided over by several district judges), the plaintiff, Liljeberg Enterprises, Inc., just two months before the bench trial of this complex $140 million commercial dispute, hired on a contingency fee basis two additional trial counsel, Jacob J. Amato and Leonard L. Levenson, whose sole prior relationship to each other is their admitted longstanding personal friendship with the latest presiding Judge, the Honorable G. Thomas Porteous, Jr. The District Court improperly denied defendant, Lifemark's, Motion to Recuse pursuant to 28 U.S.C. § 455(a) on grounds that the Court felt that it could be fair and impartial. This Court must determine whether in the eyes of a reasonable person LEI's actions could create the mere "appearance of impropriety" under 28 U.S.C. § 455(a) such that a reasonable person "might" harbor doubts about Judge Porteous' impartiality.

Recusal motions are committed to the sound discretion of the district court. The issue on appeal, therefore, is whether the district court abused its discretion in determining that LEI's conduct would not create even an appearance of impropriety in the eyes of an objective, well-informed observer. United States v. Jordan, 49 F.3d 152, 157 (5th Cir. 1995).

STATEMENT OF THE CASE

I. Course of Proceedings and Disposition in the District Court

This case had its genesis in a lawsuit filed in the Civil District Court for the Parish of Orleans in 1987 by LEI against Lifemark concerning the interpretation of a contract between Lifemark and LEI. When LEI filed bankruptcy in January 1993, it also filed a motion to force assumption of this contract pursuant to 11 U.S.C. § 365. Thereafter, Lifemark counterclaimed, removed the Civil District Court litigation to the bankruptcy court, and successfully moved for withdrawal of the bankruptcy reference so that the entire controversy concerning LEI and Lifemark moved to the district court.

LEI has had several lawyers during the history of this controversy. As of September 1, 1996, LEI had five lawyers signed on to this case, most of whom have been involved for years in the specific controversy that was[1] set to go to trial in the district court on November 4, 1996. Nevertheless, on September 12, 1996, less than two months prior to trial, LEI sought leave to add two more attorneys to this case, Jacob J. Amato, Jr. and Leonard L. Levenson. (See St. Jude Hospital of Kenner, La., Inc.'s Motion to Enroll Additional Counsel of Record, Exhibit "D"). LEI's Motion was granted in the district court's order of September 18, 1996. (See district court's order, Exhibit "E"). In sharp contrast to the hourly fee schedule of LEI's other longstanding counsel, Messrs. Amato and Levenson were given an 11% contingency fee. (See Application to Employ Attorney for Special Assignment

[1] At the hearing on Lifemark's Motion to Recuse on October 16, 1996, Judge Porteous announced that he would continue the trial date. It has since been continued until June, 1997.

on a Contingency Basis and Order Authorizing Appointment of Attorneys, Exhibit "F").

On October 1, 1996, Lifemark filed a Motion to Recuse Judge Porteous on the grounds that LEI's last-minute hiring of Messrs. Amato and Levenson, admittedly two of Judge Porteous' closest friends, is violative of 28 U.S.C. § 455(a). Lifemark's Motion to Recuse was heard by Judge Porteous on October 16, 1996. Judge Porteous, for the reasons orally assigned, denied Lifemark's Motion and rendered a Judgment to that effect. (See Judgment, Exhibit "C"). (See Transcript of Hearing on Motion to Recuse, dated October 16, 1996, Exhibit "G"). Lifemark now files this Petition for Writ of Mandamus, seeking relief from this Court because the facts and law warrant Judge Porteous' disqualification from this case. Briefly stated, the district court abused its discretion in denying Lifemark's Motion to Recuse because LEI's eleventh-hour hiring of the district court's two closest friends, on a contingency fee basis, and in a complex multi-million dollar non-jury case, all create an appearance of impropriety expressly proscribed by 28 U.S.C. § 455(a).

II. Statement of the Facts

In 1983, LEI and Lifemark entered into a contract, entitled Clinical Pharmacy Management Agreement (hereinafter the "Pharmacy Agreement"). Under the Pharmacy Agreement, LEI supplies substantially all of the pharmacy requirements for the Kenner Regional Medical Center, now owned by Lifemark. This litigation originated in 1987 when LEI filed suit against Lifemark in the Civil District Court for the Parish of Orleans regarding the interpretation of the Pharmacy Agreement. LEI subsequently filed bankruptcy in 1993, and in accordance with that filing, LEI also filed a motion to force assumption of the Pharmacy Agreement pursuant to 11 U.S.C. § 365. This motion to assume was filed as an

adversary proceeding, in Bankruptcy Court. Lifemark counterclaimed against LEI and removed the Civil District Court suit to the bankruptcy court. Thereafter, both Lifemark and LEI added various claims and defenses. At the heart of the dispute, however, is the enforceability of the Pharmacy Agreement. Lifemark then successfully moved for withdrawal of the bankruptcy reference, and the entire litigation concerning LEI and Lifemark was accordingly moved to the federal district court. The first pleading was filed in the federal district court in May 1993. Therefore, this litigation has almost a ten-year long history, with more than three of those years pending in federal court. As of the date of the addition of Messrs. Levenson and Amato as counsel, the case was set for a November 4, 1996 trial, without a jury.

Over the course of this litigation, LEI has been represented by a team of attorneys, most of whom have been involved in this case for years. As of one and a half months ago, this team consisted of five lawyers, each of whom has actively participated at some point in this complex case. However, on September 12, 1996, with just one and a half months left prior to trial, LEI requested leave to add two new attorneys to its already adequate list of counsel. LEI also requested to remove the firm of Connick, Lentini, Wimberly & deLaup from its list, a firm that never actively participated in this case. The new attorneys are Jacob J. Amato, Jr. and Leonard L. Levenson. The only thing these two attorneys have in common is that they are, and have been for a long time, two of Judge Porteous' best friends. This fact is undisputed. (See Transcript of Motion to Recuse hearing, Exhibit "G").

Messrs. Amato and Levenson were also given an 11% contingency fee by LEI. Considered alone, this fact might not raise an eyebrow; however, in light of the totality of

the circumstances, LEI's motivations become highly circumspect. None of LEI's other counsel of record have contingency fee arrangements. Furthermore, LEI is seeking over $140 million in damages from Lifemark and its parent, AMI. Though Lifemark believes these damages are ludicrous and completely unsupported, they are nonetheless a measure of the value LEI places on the services of Mr. Amato and Mr. Levenson. Given that this is an extremely complicated lawsuit, involving byzantine accounting issues that have been in litigation for almost ten years, the potential contribution of Messrs. Amato and Levenson to LEI's case at this late stage is questionable.

As stated earlier, there is no doubt that Messrs. Amato and Levenson are extremely close, if not best friends with Judge Porteous. Neither Amato, Levenson, nor Judge Porteous has denied that fact. In fact, both Judge Porteous and Mr. Levenson admitted it in open court. (See Transcript, Exhibit "G"). Moreover, Mr. Levenson, in his oral argument before Judge Porteous opposing Lifemark's Motion to Recuse, went to great lengths to contradict several points made by Lifemark, but made no effort to discount his relationship with Judge Porteous. The relationship between them is also well known in the legal community. The public perception is that Messrs. Amato and Levenson frequently dine with Judge Porteous, at their expense, and that they travel and socialize with Judge Porteous on a very frequent basis. Both gentlemen feel free to visit the Judge in chambers as his friends. Mr. Amato was Judge Porteous' law partner in the 1970's, comes from the same political camp in Jefferson Parish, and has continued to be a close friend. Mr. Levenson was Judge Porteous' personal guest at the most recent Fifth Circuit Judicial Conference. Significantly, these gentlemen do not practice law together. In fact, they have nothing in

common as lawyers save their longstanding friendship with Judge Porteous. All of this was left undisputed[2] by Judge Porteous and by Messrs. Amato and Levenson at the October 16 hearing:

> **[Counsel for Lifemark]** . . . They have not denied what I have said about the relationship between you and them.
>
> **The Court:** I have not denied it, and I don't think they'd deny it.

(See Transcript, Exhibit "G" at p.16).

In its Memorandum in Opposition to Lifemark's Motion to Recuse, authored by Mr. Levenson, LEI took issue with Lifemark's assertions that he and Mr. Amato had only recently become involved in this decade-long, complex dispute:

> Although they have only recently become involved as counsel of record, Messrs. Amato and Levenson have spent a significant portion of the past summer educating themselves about the case before agreeing to serve as trial counsel.

This is an interesting admission. Messrs. Amato and Levenson made their first appearance in this controversy on September 3, 1996, by way of LEI's motion to employ them in its

---

[2] The only fact disputed by Judge Porteous was the assertion that Messrs. Amato and Levenson contributed in 1990 to his campaigns for election as state district judge. (See Transcript, Exhibit "G" at p.8). The Court explained that what appeared on Judge Porteous' 1990 state campaign finance report as contributions from Messrs. Amato and Levenson were, in reality, contributions at a fundraiser for all 13 incumbent judges then running for reelection in Jefferson Parish. Since Judge Porteous was unopposed, he asserted that he received only a small share of the funds raised. He admitted, however, that "The first time I ran, 1984, I think is the only time they gave me money." (See Transcript, Exhibit "G" at p.8). Mr. Levenson clarified that he did not contribute in 1984. Mr. Amato did not deny that he contributed in 1984, as stated by Judge Porteous.

Chapter 11 proceedings. At that time, Judge Porteous' November 4, 1996 trial date had been long established. Their admitted delay in appearing can be explained by a desire to make sure that Judge Porteous would try the case. On July 26, 1996, as expected, Judge Porteous reallotted 22 of his oldest and most difficult cases to the newly confirmed Judge Lemmon. (See Judge Porteous' Order, dated July 26, 1996, Exhibit "H"). This was in accordance with the custom and practice in the Eastern District of Louisiana. He did not reallot this case, which had already been passed on or handled by six other federal judges (Judges Livaudais, Berrigan, Duval, Clement, Sear, and Jones). It was only after their long-time friend decided not to dump this case that Messrs. Amato and Levenson decided to formally sign on.

The record is also clear that LEI and the Liljebergs believe that influence with governmental bodies, including judges, can be bought. In this Court's unpublished opinion, Travelers Insurance Co. v. St. Jude Hospital of Kenner, Louisiana, Inc., Exhibit "J", it was noted that LEI accused Judge Mentz, the district court judge presiding, of being influenced by his membership in social organizations whose membership included attorneys for Travelers. They also alleged that "two of the partners of the law firm representing Travelers "had a reputation in the New Orleans area community as being . . . influential Republican Party patron[s] who had significant contact with party officials responsible for making recommendations for federal appointments.'" Id. at p.7.

In addition, attached hereto as Exhibit "I" is a memorandum authored by John McDaniel, who was employed by Lifemark as the chief executive officer of the hospital, now Kenner Regional Medical Center, where LEI managed the pharmacy, from 1985-1990. In

this Memorandum he recounted John Liljeberg's threats to use all and any political means to see Lifemark/AMI discredited:

> Mr. Liljeberg was adamant about negatively impacting AMI if these issues could not be resolved through settlement efforts and indicated his intentions to cause a "public movement" against AMI involving both mayoral and city council resolutions, key community leader and physician support against AMI. He indicated that he would enlist civic organizations, federal, state and parish politicians, and even the Catholic Church in his effort to discredit AMI.

Clearly, then, the Liljebergs and LEI believe that public officials, including judges, can be influenced through social contact. They have accused others of doing it and, more importantly, have threatened to do it themselves. It is obvious to Lifemark, and now should be obvious to this Court, what LEI's intentions are in hiring not one, but two of the judge's life-long friends and giving them lucrative contingency fee retainers on the eve of a multi-million dollar non-jury trial.

SUMMARY OF ARGUMENT

The facts of this case that create a § 455(a) appearance of impropriety are these: (1) this litigation has been ongoing for almost ten years; (2) trial in this matter, without a jury, was set for November 4, 1996; (3) LEI already had five longstanding counsel of record when, on September 12, 1996, they added Messrs. Amato and Levenson as additional counsel; (4) although Messrs. Amato and Levenson have claimed they were involved several months earlier than their appearance, they only appeared after Judge Porteous chose not to reallot this case on July 26, 1996; (5) Messrs. Amato and Levenson are, admittedly, two of Judge Porteous' best friends; (6) LEI seeks at least $140 million in damages in this extremely complex case; (7) Messrs. Amato and Levenson have been given an 11% contingency fee arrangement for less than three months involvement; and (8) LEI has a documented history of accusing others of attempting to acquire improper influence over the judiciary and has threatened to use its own political influence to attain its goals. None of these facts are disputed. As set forth more fully below, these facts would make a reasonable person harbor doubts about the district court's partiality, which is proscribed by § 455(a). Thus, the District Court abused its discretion in refusing to disqualify itself in this matter.

ARGUMENT

It is respectfully submitted that LEI firmly believes it can influence Judge Porteous by hiring two of his best friends on the eve of trial. They seek to gain partiality, a tactic not foreign to their history of achieving results by that means. In fact, they have been the subject of two Fifth Circuit opinions on the subject. Travelers Insurance Co. v. St. Jude Hospital of Kenner, La., Inc., Exhibit "J"; Liljeberg v. Health Service Acquisition Corp., 486 U.S. 847 (1988). As observed by this Court in Travelers, their litigation tactics are intemperate and they have displayed only contempt for the judicial system.

Recusal is warranted because LEI's actions have created an appearance of impropriety which will infect doubt in any judgment Judge Porteous enters. The legal standard for recusal under the circumstances is provided in 28 U.S.C. § 455(a):

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

As this Court has recently held, the appropriate inquiry under § 455 is an objective one. Simply put, the issue is "how things appear to the well informed, thoughtful and objective observer, rather than the hypersensitive, cynical and suspicious person." United States v. Jordan, 49 F.3d 152, 156 (5th Cir. 1995). This Court has elaborated further:

> Because 28 U.S.C. § 455(a) focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street. Use of the word "might" in the statute was intended to indicate that disqualification should follow if the reasonable man, were he to know all of the circumstances, would harbor doubts about the judge's impartiality.

Potashnick v. Port City Construction Co., 609 F.2d 1101, 1111 (5th Cir. 1980). This standard set forth in § 455(a) must be applied on a case by case basis. "No case is precisely

on point; . . . each Section 455(a) case is extremely fact intensive and fact bound, and must be judged on its unique facts and circumstances more than by comparison to situations considered in prior jurisprudence." Jordan, 49 F.3d at 156.

Even though Judge Porteous is a competent judge who is well suited to try this case, there is no question that a reasonable person would harbor doubts about his partiality based upon LEI's transparent attempt to manipulate the judicial system. As this Court has opined:

> [Our] stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice."

Jordan, 49 F.3d at 157. Thus, recusal is mandated by the very standard set forth by this Court . The district court accordingly abused its discretion by denying Lifemark's motion.

It has been established that Messrs. Amato and Levenson are Judge Porteous' close friends. As LEI has pointed out, friendship by itself is insufficient grounds for a judge to disqualify himself. United States v. Murphy, 768 F.2d 1518, 1537 (7th Cir. 1985). However, in this case it is not just the fact of friendship, but rather the Liljebergs' patent attempt to manipulate these two very close friendships which creates an appearance this Court cannot ignore. An impartial observer aware of Judge Porteous' relationships with Messrs. Amato and Levenson, aware of the ten year history of this case, aware of the last minute enrollment of them as counsel, aware of the complexity of the case, aware of the contingency fee arrangement, and aware of the Liljebergs' attitudes regarding influencing people in power, would undoubtedly believe that LEI is attempting to acquire improper influence in this case. This Court is, therefore, bound by Section 455(a) to dispel the

appearance of impropriety by curing the district court's abuse of its discretion.

LEI has completely failed to adequately explain away any of these suspect circumstances surrounding the hiring of Amato and Levenson. Nevertheless, even if LEI could come up with plausible reasons for the last minute hiring of Messrs. Amato and Levenson, their reasons would be irrelevant. The damage is already done - the appearance of impropriety has been created.

LEI, both in briefs and at oral argument, made much of the fact that Lifemark did not provide specifics to show Judge Porteous' close relationships with Messrs. Amato and Levenson. However, as this Court has stated, "[a] § 455(a) recusal is self-executing . . . no affidavit (or in this case "opinion poll"), is necessary to present the claimed basis for disqualification to the Court." Travelers, Exhibit "J", at p.14. Moreover, even if the rule did require Lifemark to give specifics, neither Judge Porteous nor Mr. Levenson has denied the extent of their relationship. (See Transcript, Exhibit "G" at p.16).

At the hearing on Lifemark's Motion to Recuse, Judge Porteous made the observation that he thought he could be fair:

> Does that make the uninformed observer satisfied? I don't know. But in my mind I am satisfied because if I had any question as to my ability, I would have called and said, "Look, you're right."

(See Transcript, Exhibit "G" at p.9).

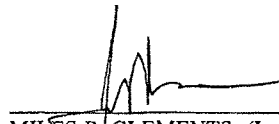
It is respectfully submitted that this is not the appropriate standard for a § 455(a) recusal. Judge Porteous also observed that he is human. That is why the Fifth Circuit Court's standard is not what the judge thinks, but what "the average person on the street" or the fully informed objective observer thinks.

Lifemark has clearly presented its basis for disqualification under § 455(a). Application of the appearance of impropriety standard to the facts presented can produce no other result than recusal. The hiring of two of the judge's best friends on the eve of a bench trial in a complex, decade long case, for a contingency fee, where claims of over $100 million are being made, reeks of impropriety. This Court must, under the clear standard of § 455(a), reverse Judge Porteous' decision.

CONCLUSION

This Court has long held that the "appearance of impropriety" under § 455(a) must be judged by whether the average person on the street might have doubts about the Court's impartiality under the circumstances in this case. Such an observer, fully informed of the Liljebergs' past attempts to misuse and abuse the system, aware of the Court's relationship to the two lawyers in question, aware of the implications of the timing of Messrs. Amato and Levenson's appearance, and aware of the fact that these gentlemen have no professional relationship other than their long friendship with Judge Porteous, would undoubtedly perceive the obvious: the Liljebergs are attempting to obtain an improper advantage. Whether Judge Porteous believes he can be impartial or not, whatever judgment he enters will always be subject to the doubt created by the Liljebergs' cynical attempt to manipulate the system. Section 455(a) recusal is designed to prevent that doubt, and is therefore mandated in this case.

Respectfully submitted,



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ATTORNEYS FOR LIFEMARK
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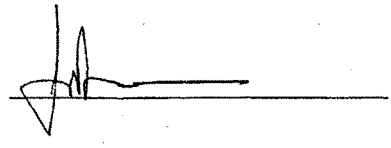
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the Honorable G. Thomas Porteous and upon counsel of record for Liljeberg Enterprises, Inc. by hand delivery.

New Orleans, Louisiana this 24th day of October, 1996.



IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. _____

LIFEMARK HOSPITALS OF LOUISIANA, INC. ET AL.
VERSUS
LILJEBERG ENTERPRISES, INC.
C.A. NO. 93-1794 C/W
93-4249
95-2922
95-3993

IN RE: LIFEMARK HOSPITALS OF LOUISIANA, INC.
PETITIONER

APPENDIX TO BRIEF OF PETITIONER LIFEMARK HOSPITALS OF LOUISIANA, INC.

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INDEX TO APPENDIX

"A" Docket Sheet - In Re: Liljeberg Enterprises, Inc.

"B" Lifemark Hospitals of Louisiana, Inc.'s Motion to Recuse

"C" Honorable G. Thomas Porteous, Jr.'s Judgment on Lifemark Hospitals of Louisiana, Inc.'s Motion to Recuse

"D" Ex Parte Motion of St. Jude Hospital of Kenner LA., Inc. to Enroll Additional Counsel of Record

"E" Order Granting St. Jude Hospital of Kenner La., Inc.'s Ex Parte Motion to Enroll as Counsel

"F" Liljeberg Enterprises, Inc.'s Application by Debtor to Employ Attorney for Special Assignment on a Contingent Fee Basis

"G" Transcript of Hearing on Plaintiff's Motion to Recuse before the Honorable G. Thomas Porteous, Jr., October 16, 1996

"H" Minute Entry Reallotting Judge Porteous' cases to Judge Lemmon dated July 26, 1996

"I" Memorandum from John W. McDaniel to Donna Erb dated May 24, 1988

"J" Travelers Insurance Co. v. St. Jude Hospital of Kenner, Louisiana, Inc., No. 93-3891 (5th Cir. Nov. 21, 1994).

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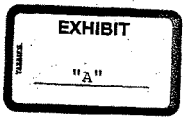

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Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
BKCY

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Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
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6/1/93	1	MISCELLANEOUS BANKRUPTCY MATTER: motion to withdraw the reference of the debtor's mtn to assume executory contract by plaintiff Lifemark Hospitals (sw) [Entry date 06/02/93] [2:93cv1794]
6/2/93	2	ORDERED that a hearing on mtn to w/draw the reference of debtor's mtn to assume executory contract will be held at 10:00 6/23/93; that any objection to said mtn shall be made in writing on or bfr 6/16/93 by Judge Marcel Livaudais (sw) [2:93cv1794]
6/16/93	3	Motion by defendant Liljeberg Ent Inc and ORDER that hrg on mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] originally set for 6/23/93 is continued at 10:00 7/7/93; that any objection to said mtn shall be filed on or bfr 6-30-93 by Judge Livaudais Date Signed: 6/17/93 (sw) [Entry date 06/17/93] [2:93cv1794]
6/25/93	4	Motion by plaintiff Lifemark Hospitals and ORDER that debtor's mtn to w/draw the reference of debtor's mtn to assume executory contract is continued at 10:00 8/4/93 by Judge Livaudais Date Signed: 6/29/93 (sw) [Entry date 06/29/93] [2:93cv1794]
6/30/93	5	MINUTE ENTRY 6/29/93: ORDERED that mtns set for hrg at 10:00 7/7/93 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (sw) [2:93cv1794]
7/7/93	6	Motion by plaintiff Lifemark Hospitals and ORDER for attorney John Flowers to appear pro hac vice by Judge Marcel Livaudais Date Signed: 7/8/93 (sw) [Entry date 07/09/93] [2:93cv1794]
7/19/93	7	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file response to amd memo in opp to mtn to w/draw reference of mtn to assume by Judge Marcel Livaudais Date Signed: 7/20/93 (sw) [Entry date 07/21/93] [Edit date 07/21/93] [2:93cv1794]
7/20/93	8	Reply by plaintiff Lifemark Hospitals to amd memo in opp to mtn to w/draw reference of mtn to assume (sw) [Entry date 07/21/93] [2:93cv1794]
7/20/93	9	Motion by defendant Liljeberg Ent Inc and ORDER that hrg on mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] is cont until 10:00 8/18/93 by Judge Marcel Livaudais Date Signed: 7/21/93 (sw) [Entry date 07/22/93] [Edit date 07/26/93] [2:93cv1794]
8/10/93	10	MINUTE ENTRY 8/10/93: ORDERED that mtn to w/draw the reference of debtor's mtn to assume executory contract [2-1] set for hrg at 10:00 8/18/93 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (sw) [Entry date 08/11/93] [2:93cv1794]

Proceedings include all events. MASTER PROTO
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BKCY

10/19/93	11	ORDER AND REASONS: granting LHL's mtn for withdrawal of reference on the debtor's mtn to assume [1-1] ; Status Conf set 3:00 10/29/93 in chambers by Judge Marcel Livaudais (br) [Entry date 10/20/93] [Edit date 10/20/93] [2:93cv1794]
11/1/93	12	MINUTE ENTRY 10/29/93: A Status Conf was held this date. Next status conf is scheduled at 3:00 11/19/93 by Judge Marcel Livaudais (sw) [Entry date 11/02/93] [2:93cv1794]
11/22/93	13	MINUTE ENTRY 11/22/93: A Status Conf was held 11/19/93; A Pre-Trial Conference will be held at 9:00 6/17/94; the Non-jury Trial will be held at 9:30 7/18/94. Counsel are to confer & develop a proposed discovery scheduled for this matter & are to present said schedule to the Court on or bfr 1/17/94 by Judge Marcel Livaudais (sw) [Entry date 11/23/93] [2:93cv1794]
11/22/93	14	MINUTE ENTRY 11/22/93: Clerk is directed to file the documents listed below (from U.S. Bankruptcy Court) & attached herewith into the record by Judge Marcel Livaudais (sw) [Entry date 11/23/93] [2:93cv1794]
12/14/93	15	MOTION by plaintiff Lifemark Hospitals to make all adversary rules applicable to debtor's mtn to assume executory contract (sw) [2:93cv1794]
12/14/93	16	ORDERED that motion by Lifemark Hospitals of LA to make all adversary rules applicable to debtor's mtn to assume executory contract [15-1] is granted, reserving the right to the ptys to object to application of specific rules if appropriate by Judge Marcel Livaudais Date Signed: 12/13/93 (sw) [2:93cv1794]
1/4/94	17	Motion by defendant Liljeberg Ent Inc and ORDER that same be granted an extension of 20 days in which to file responsive pleadings by Judge Marcel Livaudais Date Signed: 1/5/94 (sw) [Entry date 01/06/94] [2:93cv1794]
1/6/94	19	Joint Motion by debtor Liljeberg Ent Inc, plaintiff Lifemark Hospitals and ORDER for withdrawal of reference of the debtor's obj to Lifemark Hospital of Louisiana, Inc.'s proof of claim and the trial of the claim obj is consolidated w/the trial of the assumption mtn. Parties to file copies of Lifemark's proofs of claim and debtor's obj to Lifemark's claims; by Judge Marcel Livaudais Date Signed: 1/7/94 (rg) [Entry date 01/10/94] [2:93cv1794]
1/7/94	18	MTN by pla Lifemark Hospitals to compel debtor Liljeberg Ent Inc to respond to discovery propounded by pla. referred to Magistrate Ivan L. Lemelle at 9:00 1/26/94 (dno) [Entry date 01/10/94] [2:93cv1794]

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1/12/94	20	Motion by plaintiff Lifemark Hospitals and ORDER consolidating cases 2:93-cv-1794 with member cases 2:93-cv-4249; by Judge Marcel Livaudais Date Signed: 1/13/93 (REF: 93-1794 & 93-4249) (rg) [Entry date 01/13/94] [2:93cv1794]
1/12/94	21	Motion by plaintiff Lifemark Hospitals and ORDER for attorney, John Flowers to appear pro hac vice for same is GRANTED by Judge Marcel Livaudais Date Signed: 1/13/94 (REF 93-4249) (dp) [Entry date 01/13/94] [2:93cv1794]
1/19/94	22	MINUTE ENTRY 1/19/94: ORDERED that mtns set for hrg on 1/26/94 will be on the briefs by Magistrate Ivan L. Lemelle (Ref: 93-1794) (sw) [Entry date 01/20/94] [2:93cv1794]
1/24/94	23	Objection by debtor Liljeberg Ent Inc to further extension (Ref: Both cases) (sw) [2:93cv1794]
1/24/94	24	MOTION by defendant Liljeberg Ent Inc to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. to be heard before Judge at 10:00 2/16/94 (RE: 93-1794) (br) [Entry date 01/25/94] [2:93cv1794]
1/26/94	25	MINUTE ENTRY 1/26/94: At a previous conf with the court, the court suggested that counsel for Lifemark Hospitals file a proposed schedule, trial date having been fixed for 7/18/94. A final pre-trial conf will be held at 9:15 6/17/94; non-jury trial will commence at 9:30 7/18/94 by Judge Marcel Livaudais (Ref: Both cases) (sw) [Edit date 03/08/94] [2:93cv1794]
1/26/94	26	Motion by plaintiff Lifemark Hospitals and ORDER continuing hrg on motion by Liljeberg Ent Inc to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] at 10:00 3/2/94 by Judge Marcel Livaudais Date Signed: 1/28/94 (Ref: Both cases) (sw) [Entry date 01/28/94] [Edit date 01/28/94] [2:93cv1794]
1/28/94	27	MOTION by debtor Liljeberg Ent Inc to remand case to Civil District Court, Parish of Orleans to be heard before Judge at 10:00 2/16/94 (Ref: Both cases) (sw) [Entry date 01/31/94] [2:93cv1794]
2/3/94	29	MINUTE ENTRY 2/3/94: The M.E. entered 1/26/94 [25-1], setting forth the scheduling order in this consoidated action is amd to include the following: written reports of experts who may be witnesses for defendant(s) shall be obtained & delivered to counsel for plaintiff(2) as soon as possible, but in no event later than 60 days prior to the pre-trial conf date by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 02/07/94] [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
BKCY

2/4/94	28	MINUTE ENTRY 2/4/94: ORDERED that mtns set for hrg at 10:00 2/16/94 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 02/07/94] [2:93cv1794]
2/7/94	30	Motion by defendant Liljeberg Ent Inc and ORDER that Jack Mark Stolier's name be removed from the court's records as counsel for same by Judge Marcel Livaudais Date Signed: 2/8/94 (Ref: Both cases) (sw) [Entry date 02/08/94] [2:93cv1794]
2/8/94	31	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDERED that the hrg on the mtn by dft, Liljeberg Ent Inc to remand to CDC, Parish of Orleans [27-1] is reset to 3/2/94 at 10am by Judge Marcel Livaudais Date Signed: 2-9-94 (REF 93-1794) (jlb) [Entry date 02/10/94] [2:93cv1794]
2/14/94	32	MOTION by plaintiff Lifemark Hospitals for partial summary judgment to be heard before Judge at 10:00 3/2/94 (Ref: Both cases) (sw) [Entry date 02/16/94] [2:93cv1794]
2/14/94	34	Notice of Partial Dismissal by Lifemark Hospitals, counterclaimant, to dismiss, withut prej, its claims agst dfts-in-counterclaim, John Liljeberg, Robert Liljebert, and St. Jude Hospital of Kenner, La but reserving its claims agst debtor, Liljeberg Enterprises, Inc. (Re: Both Cases) (br) [Entry date 02/17/94] [2:93cv1794]
2/17/94	33	MINUTE ENTRY 2/17/94: ORDERED that mtns set for hrg at 10:00 3/2/94 bfr Judge will be submitted w/o oral argument by Judge Marcel Livaudais (Ref: Both cases) (sw) [2:93cv1794]
2/17/94	35	Reply Memo in opposition by pla Lifemark Hospitals to mtn to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) [Entry date 02/18/94] [2:93cv1794]
2/22/94	36	Memo in opposition by plaintiff Lifemark Hospitals to motion to remand case to Civil District Court, Parish of Orleans [27-1] filed by debtor Liljeberg Ent Inc Ref 93-1794 & 93-4249 (kh) [2:93cv1794]
2/23/94	37	Mtn by dft Liljeberg Ent Inc and ORDERED that the mtn by pla, Lifemark Hospital of LA, Inc. for partial sum jgm [32-1] is cont to 10:00 3/30/94 by Judge Marcel Livaudais Date Signed: 2-23-94 (REF 93-1794) (jlb) [Entry date 02/24/94] [2:93cv1794]
2/28/94	38	Motion by debtor Liljeberg Ent Inc and ORDER for leave to file suppl memo in support of mtn for remand by Judge Marcel Livaudais Date Signed: 3/1/94 (Ref: Both cases) (sw)

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2:93cv1794 In re: Liljeberg Ent Inc

[Entry date 03/02/94] [2:93cv1794]

3/2/94 39 Supplemental Memorandum by debtor Liljeberg Ent Inc in support of their motion to remand case to Civil District Court, Parish of Orleans [27-1] (Ref: Both cases) (sw) [2:93cv1794]

3/4/94 40 MINUTE ENTRY 3/1/94: Hrg held on mtn by Lifemark Hospitals to compel debtor Liljeberg Ent Inc to respond to discovery propounded by [18-1]; ORDERED granted. Full disc responses shall be given by "LEI" no later than 3/11/94 by Magistrate Ivan L. Lemelle (Ref: Both cases) (sw) [Entry date 03/07/94] [2:93cv1794]

3/9/94 41 Motion by plaintiff Lifemark Hospitals and ORDER that trial scheduled for 7/18/94 be rescheduled by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 03/10/94] [2:93cv1794]

3/9/94 42 NOTICE/ORDER that a preliminary conference is scheduled before Courtroom Deputy at 8:40 4/19/94 by phone to set pre-trial & trial dates (Ref: Both cases) (sw) [Entry date 03/10/94] [2:93cv1794]

3/21/94 43 ORDER Case reassigned to Judge Ginger Berrigan by Judge Marcel Livaudais Date Signed: 3/21/94 (Ref: Both Cases) (cp) [2:93cv1794]

3/24/94 44 ORDER that matters be dktd in lead case only except for dispositives by Judge Ginger Berrigan Ref 93-1794 & 93-4249 (kh) [2:93cv1794 2:93cv4249]

3/28/94 45 ORDER: By 4/4/94, counsel shall notify the court of the following: special priority cases, moot mtns, waiver of oral argument w/briefs due 4/8/94. by Judge Ginger Berrigan (REF: ALL CASES) (rg) [Entry date 03/30/94] [2:93cv1794]

4/3/94 106 Witness list submitted by pla Lifemark Hospitals (REF BOTH CASES) (dno) [Entry date 04/04/95] [2:93cv1794]

4/28/94 46 Mtn by pla, Lifemark Hosp & ORDERED that attys Howard Sinor, Jr. & Edward D. Wegmann are withdrawn as counsel for said pla by Judge Ginger Berrigan Date Signed: 4-28-94 (REF BOTH CASES) (jlb) [Entry date 05/02/94] [2:93cv1794]

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2:93cv1794 In re: Liljeberg Ent Inc

6/9/94	47	MINUTE ENTRY(6/8/94): ORDER that briefs as to Liljeberg's motion for partial summary judgment [32-1], the motion to remand case to Civil District Court, Parish of Orleans [27-1], the motion to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] are to be filed by 7/1/94 at which time the mtns are taken under advisement by Judge Ginger Berrigan Ref 93-1794 & 93-4249 (kh) [2:93cv1794]
6/21/94	48	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file suppl breif by Judge Ginger Berrigan Date Signed: 6/22/94 Ref 93-1794, 93-4249 (kh) [Entry date 06/23/94] [2:93cv1794]
6/23/94	49	Supplemental memorandum by plaintiff Lifemark Hospitals to motion for partial summary judgment [32-1] Ref 93-1794 & 93-4249 (kh) [2:93cv1794]
6/29/94	50	Mtn by debtor & dft Liljeberg Ent Inc, John Liljeberg & Robert L Liljeberg and ORDER extending time until 7/8/94 at 5:00pm to file all briefs & memos directed to mtns described by Court's M.E. dtd 6/8/94, entered 6/9/94. by Judge Ginger Berrigan Date Signed: 6/30/94 (REF BOTH CASES) (dno) [Entry date 07/01/94] [2:93cv1794]
6/30/94	51	RETURN OF SERVICE of subps to Lifemark Hospitals of LA & American Med Intl Inc svd 6/28/94. (REF BOTH CASES) (dno) [Entry date 07/01/94] [2:93cv1794]
7/8/94	53	Motion by plaintiff Lifemark Hospitals and ORDER extending time to file resp to memo anticip[ated to be filed by Liljeberg until 7/15/94 by Judge Ginger Berrigan Ref 93-1794, 93-4249 (kh) [Entry date 07/12/94] [2:93cv1794]
7/11/94	52	Memo in opposition by debtor Liljeberg Ent Inc to motion for partial summary judgment [32-1] filed by plaintiff Lifemark Hospitals Ref 93-1794 (kh) [2:93cv1794]
7/15/94	54	Reply by plaintiff Lifemark Hospitals to response to Lifemark's motion for partial summary judgment [32-1] Ref 93-1794 & 93-4249 (kh) [Entry date 07/18/94] [2:93cv1794]
7/19/94	56	Motion by Lifemark for exp hrg and ORDER finding the motion for protective order [55-1] dismissed as moot as stip by Magistrate Ivan L. Lemelle Date Signed: 7/26/94 Ref 93-1794 & 93-4249 (kh) [Entry date 07/27/94] [2:93cv1794]
7/27/94	55	MOTION by Lifemark for protective order Ref 93-1794 & 93-4249 (kh) [Edit date 07/27/94] [2:93cv1794]

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7/29/94	57	ORDER Case 93-1794, 93-4249 & 92-1234 are reassigned to Judge Marcel Livaudais by Judge Ginger Berrigan Ref 93-1794, 93-4249 (kh) [2:93cv1794 2:93cv4249]
8/15/94	58	MINUTE ENTRY (8/15/94): Status Conf will be held on 8/23/94 at 9:15 am by Judge Marcel Livaudais (REF: 93-1794 & 93-4249) (gw) [2:93cv1794]
8/24/94	59	MINUTE ENTRY 8/23/94: A conf was held this date. ORDERED that mtn by Lifemark Hospital for partial summary judgment [32-1] & mtn by Liljeberg Ent Inc to dism the antitrust & unfair trade practices counterclaims of Lifemark Hospitals [24-1] be cont until completion of disc. The mtn to remand case to Civil District Court, Parish of Orleans [27-1] remains submitted; cases are reassigned to Judge Edith B. Clement by Judge Marcel Livaudais (Ref: Both cases) (sw) [Entry date 08/25/94] [Edit date 08/25/94] [2:93cv1794]
8/31/94	60	ORDER Case reassigned to Judge Ginger Berrigan by Judge Edith B. Clement (Ref: 93-1794, 93-4249) (ps) [Edit date 08/31/94] [2:93cv1794]
9/9/94	61	NOTICE that a preliminary conference is scheduled by telephone before courtroom deputy at 10:00 9/27/94 by Clerk (REF: Both Cases) (kc) [2:93cv1794]
9/23/94	62	MOTION by defendant Liljeberg Ent Inc to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents referred to Magistrate Ivan L. Lemelle to be heard before Mag/Judge Lemelle at 9:00 a.m. on 10/19/94. (REF BOTH CASES) (dp) [Entry date 09/26/94] [Edit date 09/26/94] [2:93cv1794]
9/27/94	63	MINUTE ENTRY (9/27/94): Preliminary Conference held; amendments due w/in 30 days from court's ruling on motion by Liljeberg to dismiss ; pretrial conf set 9:00 5/31/95 & non-jury trial set 10:00 6/19/95 bfr Judge; by Clerk for by Judge Ginger Berrigan (REF: BOTH CASES) (kc) [2:93cv1794]
9/30/94	64	ORDER that all pleadings be filed in the lead case only except for documents which terminate a party or a case, by Clerk (REF: All Cases) (jd) [2:93cv1794]
10/4/94	65	Motion of Liljeberg Enterprise Inc and ORDER for appearance of co-counsel Don M. Richard by Judge Ginger Berrigan Date Signed: 10/5/94 Ref all cases (kh) [Entry date 10/06/94] [2:93cv1794]
10/11/94	66	Memo in opposition by plaintiff Lifemark Hospitals to motion to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents [62-1] filed by Liljeberg Ref 93-1794 & 93-4249 (kh) [Entry date 10/13/94] [2:93cv1794]

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10/14/94	67	MINUTE ENTRY(10/14/94): that the motion of Liljeberg to compel pla, Lifemark Hosptials of Louisiana & American Medical International for production of documents [62-1] set for hrg on 10/19/94 will be decided on the brief & is submitted by Magistrate Ivan L. Lemelle Ref 93-1794 (kh) [2:93cv1794]
10/21/94	68	MINUTE ENTRY(10/20/94): ORDER granting in part & denying in part dft Liljeberg Ent Inc's motion to compel pla, Lifemark Hosptials of Louisiana & American Medical International for prod of documents [62-1]. by Magistrate Ivan L. Lemelle (REF 93-1794) (dno) [2:93cv1794]
10/25/94	69	MINUTE ENTRY(10/25/94): Case reassigned to Judge Stanwood R. Duval Jr. by Judge Ginger Berrigan (REF: All Cases) (jd) [2:93cv1794]
11/1/94	70	MINUTE ENTRY(10/31/94): Case reassigned to Judge Okla Jones II by Judge Stanwood R. Duval Jr. (REF: Both Cases) (jd) [Entry date 11/02/94] [2:93cv1794]
11/14/94	71	Joint Mtn by pla Lifemark Hospitals & dft Liljeberg Ent Inc and ORDER for protective order limiting disclosure of confidential information as stip. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) [Entry date 11/15/94] [2:93cv1794]
12/6/94	72	MINUTE ENTRY(12/2/94): Dft Liljeberg Ent's mtns to dismiss the antitrust and unfair trade practices counterclaims of Lifemark Hospitals of LA, Inc. [24-1] & to remand case to Civil District Court, Parish of Orleans [27-1] & pla Lifemark Hospital's mtn for partial sum jgm [32-1] are re-noticed for 8:30 2/15/95 by ORAL ARGUMENT. by Judge Okla Jones II (RF BOTH CASES) (dno) [Entry date 12/07/94] [2:93cv1794]
12/13/94	73	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl & amended answer to debtor's mtn to assume executory contract. by Judge Okla Jones II Date Signed: 12/15/94 (REF BOTH CASES) (dno) [Entry date 12/15/94] [2:93cv1794]
12/15/94	74	AMENDED ANSWER by pla Lifemark Hospitals to debtor's mtn to assume executory contract. (REF BOTH CASES) (dno) [2:93cv1794]
12/30/94	75	Mtn by atty Jack Stolier and ORDER withdrawing atty same from record as counsel for Liljeberg Enterprises. by Judge Okla Jones II Date Signed: 1/4/95 (REF BOTH CASES) (dno) [Entry date 01/05/95] [2:93cv1794]
1/10/95	76	Notice of Deposition by pla Lifemark Hospitals of John Liljeberg on 1/18/95. (REF BOTH CASES) (dno)

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[Entry date 01/11/95] [2:93cv1794]

1/10/95 77 Notice of Deposition by pla Lifemark Hospitals of Robert Liljeberg on 1/19/95. (REF BOTH CASES) (dno) [Entry date 01/11/95] [2:93cv1794]

1/31/95 78 MTN by pla Lifemark Hospitals for partial sum jgm to be heard before Judge at 8:30 3/15/95 (REF BOTH CASES) (dno) [2:93cv1794]

2/2/95 79 Motion by plaintiff Lifemark Hospitals and ORDER that the original affidavit of Walter Earl Bissex be filed into the record by Judge Okla Jones II Date Signed: 2/6/95 (REF: 93-1794 & 93-4249) (gw) [Entry date 02/06/95] [2:93cv1794]

2/6/95 80 Introductory & explanatory guide to phases of suppl memo by pla Lifemark Hospitals in support of its mtn for partial sum jgm [78-1] (REF BOTH CASES) (dno) [Entry date 02/09/95] [2:93cv1794]

2/7/95 90 Mtn by dft Liljeberg Ent Inc and ORDER for leave to file suppl memo & Exhibit numbers 47 through 53 thereof, under seal as stip. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/7/95 91 Sealed Document (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/9/95 92 Mtn by pla Lifemark Hospitals and ORDER that same is allowed to substitute suppl memo in lieu of suppl memo filed previously filed. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/13/95 81 Mtn by pla Lifemark Hospitals and ORDER expediting its mtn for protective order to 2/13/95 at 9:30am. FURTHER ORDERED after teleconference that depo is hereby cont to be reset after ptys' counsel meet & attempt amicable resolution of issues herein. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) [Entry date 02/15/95] [2:93cv1794]

2/14/95 93 Mtn by dft Liljeberg Ent Inc & ORDER for leave to file 1) 2nd suppl memo in opp to Lifemark's mtn for sum jgm: response to Lifemark's Appendix E; 2) Exhibit 57; & 3) Exhibit 58. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

2/15/95 82 MTN by pla Lifemark Hospitals for protective order referred to Magistrate Ivan L. Lemelle at 9:30 2/13/95 (REF BOTH CASES) (dno) [2:93cv1794]

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2/15/95	83	Mtn by dft & debtor Liljeberg Ent Inc and ORDER that its mtn to remand case to Civil District Court, Parish of Orleans [27-1] s WITHDRAWN. by Judge Okla Jones II Date Signed: 2/16/95 (REF BOTH CASES) (dno) [Entry date 02/16/95] [2:93cv1794]
2/21/95	84	MINUTE ENTRY(2/15/95): ORDER granting dft Liljeberg's mtn to dismiss the unfair trade practices & denied as to antitrust claims [24-1] withdrawing dft Liljeberg's mtn to remand case to Civil District Court, Parish of Orleans [27-1] & denying pla Lifemark's mtn for partial sum jgm [32-1]. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 02/22/95] [Edit date 02/22/95] [2:93cv1794]
2/21/95	87	Mtn by debtor Liljeberg Ent Inc and ORDER extending time an addl 15 days for ptys to file expert reports. by Magistrate Ivan L. Lemelle Signed: 2/24/95 (REF BOTH CASES) (dno) [Entry date 02/27/95] [Edit date 02/27/95] [2:93cv1794]
2/22/95	85	Memo in opposition by pla Lifemark Hospitals to ex parte mtn for extension of time to file expert reports filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) [Entry date 02/23/95] [2:93cv1794]
2/23/95	86	Memorandum by dft Liljeberg Ent Inc in support of its mtn for extension of time to file expert reports. (REF BOTH CASES) (dno) [Entry date 02/24/95] [2:93cv1794]
2/24/95	88	Notice of Deposition by pla Lifemark Hospitals of Wendy Neeb on 3/9/95. (REF BOTH CASES) (dno) [Entry date 02/27/95] [2:93cv1794]
2/24/95	89	Notice of Deposition by pla Lifemark Hospitals of Warren Arms on 3/14/95. (REF BOTH CASES) (dno) [Entry date 02/27/95] [2:93cv1794]
2/24/95	95	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn for extension of time to file expert reports. by Judge Okla Jones II Date Signed: 3/3/95 (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]
3/3/95	94	2nd suppl memo in opposition by dft Liljeberg Ent Inc to mtn for sum jgm: response to Lifemark's appendix E [78-1] filed by pla Lifemark Hospitals (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]
3/3/95	96	Suppl Memo by pla Lifemark Hospitals in opposition to dft Liljeberg's mtn for extension of time to file expert reports. (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]

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3/3/95	97	Introductory & explanatory guide to phases of suppl memo by pla Lifemark Hospitals in support of its mtn for partial sum jgm [78-1] (REF BOTH CASES) (dno) [Entry date 03/06/95] [Edit date 03/17/95] [2:93cv1794]
3/7/95	98	Mtn by dft Liljeberg Ent Inc & ORDER extending time until 3/10/95 at 5:00pm to file its opp to pla Lifemark's mtn for sum jgm set for 3/15/95. by Judge Okla Jones II Date Signed: 3/8/95 (REF BOTH CASES) (dno) [Entry date 03/09/95] [Edit date 03/17/95] [2:93cv1794]
3/10/95	101	Memo in opposition by dft Liljeberg Ent Inc to mtn for partial sum jgm [78-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 03/17/95] [2:93cv1794]
3/13/95	99	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file a suppl memo in support of its mtn for partial sum jgm by Judge Okla Jones II Date Signed: 3/15/95 (REF: 93-1794 & 93-4249) (gw) [Entry date 03/16/95] [Edit date 03/17/95] [2:93cv1794]
3/15/95	100	Suppl Memorandum by plaintiff Lifemark Hospitals in in support of its motion for partial sum jgm [78-1] (REF: 93-1794 & 93-4249) (gw) [Entry date 03/16/95] [Edit date 03/17/95] [2:93cv1794]
3/16/95	102	MINUTE ENTRY(3/15/95): ORDERED that pla Lifemark Hospitals' mtn for partial sum jgm [78-1] set for this date cont to 8:30 3/29/95. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 03/17/95] [2:93cv1794]
3/24/95	105	Mtn by dft Liljeberg Ent Inc and ORDER that original ex parte mtn for leave to file 2nd suppl memo in opp to mtn for sum jgm. Exhibit 57 & 58 be substituted w/corrected Exhibit 58 & 59 as stip. by Judge Edith B. Clement Date Signed: 3/29/95 (REF BOTH CASES) (dno) [Entry date 03/29/95] [Edit date 03/29/95] [2:93cv1794]
3/24/95	114	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file its suppl memo in oppostion to Lifemark's mtn for partial sum jgm. by Judge Ginger Berrigan Date Signed: 4/6/95 (REF BOTH CASES) (dno) [Entry date 04/10/95] [2:93cv1794]
3/27/95	103	MINUTE ENTRY(3/27/95): Pla Lifemark Hospitals' mtn for partial sum jgm [78-1] set for 3/29/95 reset for 8:30 4/12/95. by Judge Ginger Berrigan (REF BOTH CASES) (dno) [Entry date 03/28/95] [2:93cv1794]
3/27/95	104	MTN by dft Liljeberg Ent Inc to compel prod of further documentation from plas to complete discovery referred to Magistrate Ivan L. Lemelle at 9:00 4/12/95 (REF BOTH CASES) (dno) [Entry date 03/28/95] [2:93cv1794]

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4/3/95	107	Exhibit list by pla Lifemark Hospitals (REF BOTH CASES) (dno) [Entry date 04/04/95] [2:93cv1794]
4/4/95	108	Memo in opposition by pla Lifemark Hospitals to mtn to compel prod of further documentation from plas to complete discovery [104-1] filed by dft Liljeberg Ent Inc. (REF BOTH CASES) (dno) [2:93cv1794]
4/4/95	109	MINUTE ENTRY (4/4/95): ORDERED that the mtn set for hrg on 4/12/95 will be on the briefs by Magistrate Ivan L. Lemelle (REF: both cases) (gw) [Entry date 04/05/95] [Edit date 04/05/95] [2:93cv1794]
4/4/95	110	Exhibit list by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) [Entry date 04/05/95] [2:93cv1794]
4/4/95	111	Witness list submitted by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) [Entry date 04/05/95] [2:93cv1794]
4/5/95	112	NOTICE case reallotted to Magistrate Judge 2 by Clerk (Ref: all cases) (ps) [2:93cv1794]
4/6/95	113	ANSWER by dft Liljeberg Ent Inc to amended counterclaim & counterclaims in response thereto of Lifemark Hospitals. (REF BOTH CASES) (dno) [2:93cv1794]
4/7/95	115	Suppl Memo in opposition by dft Liljeberg Ent Inc to mtn for partial sum jgm [78-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 04/10/95] [2:93cv1794]
4/10/95	116	MINUTE ENTRY(4/7/95): Pla Lifemark Hosp's mtn for partial sum jgm [78-1] set for 4/12/95 is reset for 8:30 5/10/95. by Judge Ginger Berrigan (REF BOTH CASES) (dno) [2:93cv1794]
4/11/95	118	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file reply to pla's memo in opp to dft's mtn to compel. by Judge Ginger Berrigan Date Signed: 4/12/95 (REF BOTH CASES) (dno) [Entry date 04/13/95] [2:93cv1794]
4/12/95	117	MINUTE ENTRY(4/12/95): ORDER granting pla Liljeberg's mtn to compel prod of further documentation from plas to complete discovery [104-1] AS STIP. by Magistrate Ivan L. Lemelle (REF BOTH CASES) (dno) [2:93cv1794]
4/13/95	119	Reply by dft Liljeberg Ent Inc to pla Lifemark's response to same's mtn to compel. (REF BOTH CASES) (dno) [2:93cv1794]

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4/18/95	123	Mtn by pla Lifemark Hospitals and ORDER expediting its mtn to dismiss counterclaims & to strike related affirmative defenses or for separate trial of counterclaims to 5/10/95 at 8:30am. by Judge Ginger Berrigan (REF BOTH CASES) (dno) [Entry date 04/21/95] [2:93cv1794]
4/19/95	120	Notice of Deposition by pla Lifemark Hospitals of Peggy Mire on 4/26/95. (REF BOTH CASES) (dno) [2:93cv1794]
4/19/95	121	Notice of Deposition by pla Lifemark Hospitals of Tom Rasor on 4/28/95. (REF BOTH CASES) (dno) [2:93cv1794]
4/19/95	122	Notice of Deposition by pla Lifemark Hospitals of Shirley Ellisor on 4/27/95. (REF BOTH CASES) (dno) [2:93cv1794]
4/20/95	124	MTN by pla Lifemark Hospitals to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & related affirmative defenses to be heard before Judge at 8:30 5/10/95 (REF BOTH CASES) (dno) [Entry date 04/21/95] [2:93cv1794]
4/21/95	128	Motion by plaintiff Lifemark Hospitals for exp hrg on mtn for review of Mag's order and ORDER that the mtn to review will be submitted on briefs by Judge Okla Jones II Date Signed: 5/2/95 (REF: ALL CASES) (pck) [Entry date 05/03/95] [Edit date 05/03/95] [2:93cv1794]
4/24/95	131	Motion by plaintiff Lifemark Hospitals for exp hrg and ORDER that pla's mtn for partial sum jgm will be submitted on briefs only by Judge Okla Jones II Date Signed: 5/2/95 (REF: BOTH CASES) (pck) [Entry date 05/03/95] [2:93cv1794]
5/2/95	125	Memorandum by defendant Liljeberg Ent Inc in opposition to Lifemark's mtn for exped hrg on its 2nd mtn for partial sum jgm (REF: BOTH CASES) (bb) [Entry date 05/03/95] [2:93cv1794]
5/2/95	126	Memo in opposition by defendant Liljeberg Ent Inc to motion of Lifemark to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & related affirmative defenses [124-1] filed by plaintiff Lifemark Hospitals (REF: BOTH CASES) (bb) [Entry date 05/03/95] [2:93cv1794]
5/2/95	127	Reply memorandum by defendant Liljeberg Ent Inc to pla's memo in support of mtn for review of Mag's order (REF: BOTH CASES) (bb) [Entry date 05/03/95] [2:93cv1794]
5/3/95	129	MOTION by plaintiff Lifemark Hospitals for review of Mag's order issd on 4/12/95 to be heard before Judge Jones on briefs (REF: ALL CASES) (pck) [2:93cv1794]

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5/3/95	130	MOTION by plaintiff Lifemark Hospitals for partial summary judgment to be heard before Judge Jones on briefs (REF: ALL CASES) (pck) [2:93cv1794]
5/4/95	133	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn to dismiss counterclaims & to strike. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 05/11/95] [2:93cv1794]
5/5/95	132	MINUTE ENTRY(5/4/95): ORDERED that pla Lifemark's mtn for partial sum jgm & to dismiss counterclaims set for 5/10/95 are taken under submission to be decided w/o oral argument. by Judge Okla Jones II (REF BOTH CASES) (dno) [2:93cv1794]
5/11/95	134	Suppl Memo by pla Lifemark Hospitals in support of its mtn to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for trial of counterclaims & related affirmative defenses [124-1] (REF BOTH CASES) (dno) [2:93cv1794]
5/15/95	135	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file the attached suppl memo in support of the 2nd mtn for partial sum jgm is granted. by Judge Okla Jones II Date Signed: 5/19/95 (Ref: Both Cases) (cp) [Entry date 05/19/95] [2:93cv1794]
5/16/95	137	Mtn by pla Lifemark Hospitals and ORDER expediting its mtn to strike jury demand. Matter will be submitted on briefs only. Opp to mtn due by noon on 6/2/95. by Judge Okla Jones II Date Signed: 5/19/95 (REF BOTH CASES) (dno) [Entry date 05/23/95] [2:93cv1794]
5/16/95	139	Mtn by pla Lifemark Hospitals and ORDER that all briefs in support & in opp to the mtn for partial sum jgm filed by same on 4/24/95 be filed w/Court by 5/31/95 at noon. by Judge Okla Jones II Date Signed: 5/19/95 (REF BOTH CASES) (dno) [Entry date 05/23/95] [2:93cv1794]
5/19/95	136	Memorandum by plaintiff Lifemark Hospitals in 2:93-cv-01794 in support of motion for partial summary judgment (Ref: Both Cases) [130-1] (cp) [2:93cv1794]
5/19/95	138	MTN by pla Lifemark Hospitals to strike jury demand to be heard before Judge on briefs only (REF BOTH CASES) (dno) [Entry date 05/23/95] [2:93cv1794]
5/23/95	140	Memo in opposition by dft Liljeberg Ent Inc to mtn to strike jury demand [138-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 05/24/95] [2:93cv1794]

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5/25/95	141	MINUTE ENTRY(5/25/95): ORDERED that Non-jury Trial set for 6/19/95 is CONT to 8:30 12/4/95. A conf to discuss preliminary trial matters is set for 8:00am on same day. Final pre-trial conf set for 8:30 11/21/95 as stip. by Judge Okla Jones II (REF 93-1794) (dno) [Entry date 05/26/95] [Edit date 05/26/95] [2:93cv1794]
6/2/95	142	Memo in opposition by dft Liljeberg Ent Inc to renewed mtn for sum jgm [130-1] filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 06/06/95] [2:93cv1794]
6/13/95	143	Mtn by pla Lifemark Hospitals and ORDER for leave to file response to brief of Liljeberg Ent Inc. by Judge Okla Jones II Date Signed: 6/16/95 (REF BOTH CASES) (dno) [Entry date 06/19/95] [2:93cv1794]
6/16/95	144	Memo by pla Lifemark Hospitals in response to Liljeberg's memo in opp to pla's mtn for partial sum jgm [130-1] (REF BOTH CASES) (dno) [Entry date 06/19/95] [2:93cv1794]
6/27/95	145	Mtn by pla Lifemark Hospitals and ORDER for leave to file addl docs to supp its mtn for sum jgm. by Judge Okla Jones II Date Signed: 6/29/95 (REF BOTH CASES) (dno) [Entry date 06/30/95] [2:93cv1794]
7/6/95	146	MTN by debtor Liljeberg Ent Inc for partial sum jgm to be heard before Judge at 8:30 8/2/95 (REF BOTH CASES) (dno) [Entry date 07/10/95] [2:93cv1794]
7/11/95	147	MTN by dft Liljeberg Ent Inc for partial sum jgm to be heard before Judge at 8:30 8/16/95 (REF BOTH CASES) (dno) [Entry date 07/12/95] [2:93cv1794]
7/25/95	148	Memo in opposition by pla Lifemark Hospitals to both mtns for partial sum jgm [147-1] [146-1] filed by dft Liljeberg Inc. (REF BOTH CASES) (dno) [2:93cv1794]
7/27/95	149	MINUTE ENTRY(7/25/95): ORDER & REASONS denying Lifemark Hospitals' mtn for review of Mag's order issd on 4/12/95 [129-1]. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 07/28/95] [2:93cv1794]
8/2/95	150	MINUTE ENTRY (7/31/95): Ordered that the mtn of Liljeberg Enterprises' mtn for partial sum jgm set for 8/2/95 will be submitted on briefs only without oral argument. by Judge Eldon E. Fallon Date Signed: 7/31/95 (Ref: 93-1794) (cp) [2:93cv1794]
8/7/95	153	Mtn by dft Liljeberg Ent Inc and ORDER for leave to file suppl memo in support of its mtn for partial sum jgm. by Judge Okla Jones II Date Signed: 8/15/95 (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]

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8/11/95	151	MINUTE ENTRY(8/10/95): Ordered that mtn of Liljeberg Ent will be submitted on briefs w/o oral argument on 8/16/95 by Judge Okla Jones II Date Signed: 8/10/95 (bb) [2:93cv1794]
8/11/95	155	Mtn by pla Lifemark Hospitals and ORDER for entry of a protective order as listed. by Judge Okla Jones II Date Signed: 8/15/95 (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]
8/14/95	152	MTN by pla Lifemark Hospitals for leave to file 2nd suppl answer to debtor's mtn to assume executory contract referred to Magistrate Joseph C. Wilkinson Jr. at 11:00 8/30/95 (REF BOTH CASES) (dno) [2:93cv1794]
8/15/95	154	Suppl Memorandum by dft Liljeberg Ent Inc in support of its mtn for partial sum jgm [147-1]. (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]
8/15/95	156	Re-notice of Hearing by pla Lifemark Hospitals setting its mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1] at 11:00 8/30/95 bfr Mag Wilkinson. (REF BOTH CASES) (dno) [Entry date 08/16/95] [2:93cv1794]
8/21/95	157	Letter to MAg Lemelle from atty Don Richard dtd 8/4/95 re 7/25/95 order issued by Judge Jones. (REF 93-1794) (dno) [2:93cv1794]
8/22/95	158	Memo in opposition by defendant Liljeberg Ent Inc to motion for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1] filed by plaintiff Lifemark Hospitals (REF: BOTH CASES) (pck) [2:93cv1794]
8/25/95	159	MINUTE ENTRY(8/24/95): ORDERED that pla Lifemark's mtn for leave to file 2nd suppl answer set for 8/30/95 is submitted on briefs as stip. by Magistrate Joseph C. Wilkinson Jr. (REF BOTH CASES) (dno) [2:93cv1794]
8/25/95	161	Mtn by pla Lifemark Hospitals and ORDER for leave to file suppl memo in support of its mtn for leave to file 2nd suppl and amended answer. by Magistrate Ivan L. Lemelle Date Signed: 8/28/95 (REF BOTH CASES) (dno) [Entry date 08/30/95] [2:93cv1794]
8/29/95	160	MINUTE ENTRY(8/28/95): ORDER & REASONS denying pla Lifemark Hospital's mtn for partial sum jgm [78-1]. by Judge Okla Jones II Date Signed: 8/28/95 (REF 93-1794) (dno) [2:93cv1794]
8/29/95	162	Suppl Memo by pla Lifemark Hospitals in support of its mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1]. (REF BOTH CASES) (dno) [Entry date 08/30/95] [2:93cv1794]

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8/30/95	163	MINUTE ENTRY(8/28/95): ORDER granting pla Lifemark Hospital's mtn for leave to file 2nd suppl answer to debtor's mtn to assume executory contract [152-1]. by Magistrate Ronald Fonseca (REF BOTH CASES) (dno) [2:93cv1794]
9/6/95	164	MINUTE ENTRY(9/5/95): ORDER & REASONS denying pla Lifemark Hospitals' 2nd mtn for partial sum jgm [130-1] by Judge Okla Jones II Date Signed: 9/5/95 (REF BOTH CASES) (dno) [2:93cv1794]
9/8/95	165	MINUTE ENTRY(9/7/95): ORDER & REASONS denying pla Lifemark Hospital's mtn to dismiss counterclaims & to strike related affirmative defenses or, alternatively, for separate trial of counterclaims & affirmative defenses [124-1]. FURTHER ORDERED that the alternative mtn to sever issues is DENIED. by Judge Okla Jones II Date Signed: 9/7/95 (REF 93-1794) (dno) [2:93cv1794]
9/15/95	166	MINUTE ENTRY(9/15/95): ORDERED that audit of 1,000 of Lifemark's patient charts by Liljeberg will be conducted in a room at hospital location to be selected & prepared by Lifemark on dates to be arranged by counsel primarily between hours of 3:00pm & 4:30pm only on Mondays though Fridays as stip. FURTHER ORDERED as stip. by Magistrate Joseph C. Wilkinson Jr. (REF BOTH CASES) (dno) [Entry date 09/18/95] [2:93cv1794]
9/25/95	167	MINUTE ENTRY(9/22/95): Pre-Trial Conf set for 11/21/95 at 8:30am is rescheduled for 11/21/95 at 9:15am bfr Judge Sear as stip. by Judge Morey L. Sear (REF BOTH CASES) (dno) [Entry date 09/26/95] [2:93cv1794]
10/2/95	168	1st amended Exhibit list by dft & debtor Liljeberg Ent Inc. (REF BOTH CASES) (dno) [2:93cv1794]
10/2/95	169	Suppl Witness list submitted by dft & debtor Liljeberg Ent Inc. (REF BOTH CASES) (dno) [2:93cv1794]
10/12/95	170	MINUTE ENTRY(10/11/95): ORDERED that all proceedings in this matter, including pre-trial conf set for 11/21/95 set before Judge, shall be conducted by Section "S" of this Court as stip. by Judge Morey L. Sear (REF BOTH CASES) (dno) [2:93cv1794]
10/13/95	171	MINUTE ENTRY(10/11/95): Pretrial conf set for 11/8/95 at 9:15am will be conducted by Judge Duplantier in his chambers. All other proceedings to be conducted by Section "S" by Judge Adrian G. Duplantier (originally dktd 10/16/95) (dno) [Entry date 10/18/95] [2:93cv1794]

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10/20/95	172	Reply by dfts in counterclaim Lifemark Hospitals of LA, Lifemark Hospitals & Amer Med Intl to counterclaims of Liljeberg. (REF BOTH CASES) (dno) [Entry date 10/23/95] [2:93cv1794]
10/23/95	175	Sealed Document (dno) [Entry date 11/07/95] [2:93cv1794]
10/25/95	173	MINUTE ENTRY(10/25/95): ORDERED that a Status Conf is set for 2:00 10/27/95 in chambers. by Judge Okla Jones II (REF BOTH CASES) (dno) [Entry date 10/26/95] [2:93cv1794]
10/30/95	174	Sealed Document (dno) [2:93cv1794]
10/31/95	177	MINUTE ENTRY(10/27/95): A Conf was held this date in chambers. ORDERED that C.A. 94-3993 is consolidated w/C.A. 93-1794. Non-jury Trial set for 12/4/95 is cont to 8:30 6/3/96 as stip. FURTHER ORDERED that Pre-Trial Conf set for 11/8/95 bfr Judge Duplantier is cont to 8:30 5/16/96 bfr Judge Jones as stip. AMENDMENTS pleadings due w/in 30 days as stip. by Judge Okla Jones II (REF ALL CASES) (dno) [2:93cv1794]
10/31/95	176	Sealed Document (dno) [Entry date 11/07/95] [2:93cv1794]
11/3/95	178	Sealed Document (dno) [Entry date 11/07/95] [2:93cv1794]
11/7/95	179	Sealed Document (dno) [2:93cv1794]
11/7/95	180	Sealed Document (dno) [2:93cv1794]
11/7/95	181	MINUTE ENTRY(11/7/95): ORDERED that dft Liljeberg Ent Inc's mtns for partial sum jgm [146-1] & for partial sum jgm [147-1] are RESET for 8:30 2/7/96 as stip. by Judge Okla Jones II (REF 93-1794) (dno) [Entry date 11/08/95] [2:93cv1794]
11/14/95	182	MINUTE ENTRY(11/14/95): Dft Liljeberg Ent Inc's mtn for suppl relief & sanctions in connection w/ongoing audit by same of 1,000 patient charts in possession of Lifemark Hospitals, Inc. is DENIED in part & GRANTED in part as stip. by Magistrate Joseph C. Wilkinson, Jr. (REF 93-1794 & 93-4249) (dno) [Entry date 11/15/95] [2:93cv1794]
11/22/95	183	Sealed Document (dno) [2:93cv1794]
12/4/95	184	MINUTE ENTRY(11/30/95): A status conf was held this date bfr Mag. by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794) (dno) [2:93cv1794]
12/13/95	185	MINUTE ENTRY(12/13/95): consolidating cases 2:93-cv-1794 with member cases 2:95-cv-2922. All docketing to be docketed in Master Case only as stip in order. by Judge Okla Jones II Date Signed: 12/13/95 (Ref: 93-1794 & 95-2922) (cp) [Entry date 12/14/95] [2:93cv1794]

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12/15/95	186	Mtn by pla Lifemark Hospitals for exp hrg on its mtn for contempt of, alternatively, for modification of protective order and ORDER DENIED. Dfts are ordered to file an opp by 12/26/95 at 5:00pm. by Judge Okla Jones II Date Signed: 12/19/95 (REF ALL CASES) (dno) [Entry date 12/20/95] [Edit date 12/20/95] [2:93cv1794]
12/26/95	187	Reply by dft Liljeberg Ent Inc to mtn for contempt or, alternatively, for modification of protective order filed by pla Lifemark Hospitals. (REF BOTH CASES) (dno) [Entry date 12/27/95] [2:93cv1794]
1/2/96	188	Memo in opposition by pla Lifemark Hospitals to mtn for review of Mag Wilkinson's 11/15/95 order filed by dft Liljeberg Ent Inc. (REF ALL CASES) (dno) [Entry date 01/03/96] [2:93cv1794]
1/12/96	189	RETURN OF SERVICE of subps to Maxicare, Bergen Brunswig Drug Company & Louisiana Health Service & Indemnity Company svd 12/27/95. (REF 93-1794 & 93-4249) (dno) [Entry date 01/17/96] [2:93cv1794]
1/16/96	190	NOTICE case reallotted to Judge G. T. Porteous Jr. by Clerk (tbl) [Entry date 01/17/96] [2:93cv1794]
1/19/96	191	MINUTE ENTRY(1/17/96): Court's m.e. of 10/27/96 is amended to have C.A. 94-3993 re-allotted to Mag-2. All other aspects reamins in effect. by Judge G. T. Porteous Jr. (REF BOTH CASES) (dno) [Entry date 01/22/96] [2:93cv1794]
1/23/96	192	MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for protective order pursuant to Rule 26(c)(1) & 30(a)(2)(B) for an order quashing notices served upon dft, Liljeberg Enterprises, Inc., scheduling repeat depositions of Charlotte Arras, Bonnie Bicocchi & Kenny Buttone referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 2/7/96 (REF ALL CASES) (dp) [Entry date 01/24/96] [Edit date 01/24/96] [2:93cv1794]
1/31/96	193	ORDER that a Status Conf is set for 10:00 a.m. on 3/1/96 bfr Judge in chambers to reschedule mtns set in these cases by Judge G. T. Porteous Jr. (REF 93-1794) (dp) [Entry date 02/01/96] [2:93cv1794]
2/8/96	194	MINUTE ENTRY (2/6/96): ORDER granting motion by dft, Lijebeg Enterprises for protective order pursuant to Rule 26(c)(1) & 30(a)(2)(B) for an order quashing notices served upon dft, Liljeberg Enterprises, Inc., scheduling repeat depositions of Charlotte Arras, Bonnie Bicocchi & Kenny Buttone [192-1] by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794 & 93-4249) (dp) [Edit date 02/08/96] [2:93cv1794]

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2/9/96	195	RETURN OF SERVICE of subp to Mediquip; svd 2/9/96. (dp) [Entry date 02/12/96] [2:93cv1794]
2/9/96	196	RETURN OF SERVICE of subp to Lifemark Hospitals of LA. Inc; svd 2/9/96. (dp) [Entry date 02/12/96] [2:93cv1794]
2/12/96	199	RETURN OF SERVICE of subp to Venacare USA, Inc; svd 2/13/96. (RE 93-1794 & 93-4249) (dp) [Entry date 02/13/96] [2:93cv1794]
2/13/96	197	RETURN OF SERVICE of subp to Physician Sales & Service, Inc.; svd 2/12/96. (REF 93-1794 & 93-4249) (dp) [2:93cv1794]
2/13/96	198	RETURN OF SERVICE of subp to Patio Drugs, Inc; svd 2/13/96. (dp) [2:93cv1794]
2/21/96	200	Objections by plaintiff Lifemark Hospitals in 2:93-cv-01794 to deposition subp. (dp) [2:93cv1794]
2/21/96	201	RETURN OF SERVICE of subp to Brian Hannah; svd 2/16/96. (dp) [Entry date 02/22/96] [2:93cv1794]
2/21/96	202	RETURN OF SERVICE of subp to Joann Slocolm; svd 2/19/96. (dp) [Entry date 02/22/96] [2:93cv1794]
2/22/96	203	RETURN OF SERVICE of subp to Bristol-Myers Squibb Co., Inc on 2/16/96. (dp) [2:93cv1794]
3/1/96	205	Motion by dfts Lifemark Hosp of LA Inc, Lifemark Hosp Inc, Amer Med Intl Inc & Stephen Faucheaux and ORDER for leave to file amd answer to cmp for TRO & prelim inj by Liljeberg Ent Inc by Judge G. T. Porteous Jr. Date Signed: 3/4/96 (REF: 95-2922) (gw) [Entry date 03/06/96] [2:93cv1794]
3/4/96	204	ORDER Pre-Trial Conference cont to 9:00 10/18/96; Non-jury Trial cont to 10:00 11/4/96; all deadlines are to be rescheduled with reference to this new trial date by Judge G. T. Porteous Jr. Date Signed: 3/4/96 (REF: 93-1794) (gw) [Entry date 03/06/96] [Edit date 03/06/96] [2:93cv1794]
3/4/96	206	AMENDED ANSWER by dfts Lifemark Hosp of LA Inc, Lifemark Hosp Inc, Amer Med Intl Inc & Stephen Faucheaux. (REF: 95-2922) (gw) [Entry date 03/06/96] [2:93cv1794]
3/6/96	207	Amd Witness list submitted by defendant Liljeberg Ent Inc (REF: 93-1794 & 93-4249) (gw) [2:93cv1794]
3/18/96	208	Motion by Lifemark Hospitals & Lifemark Hospitals of Louisiana, Inc and ORDER withdrawing attorney (attorney Moise S. Steeg Jr., attorney Charles L. Stern & & Steeg & O'Connor) by Judge G. T. Porteous Jr. Date Signed: 3/18/96 (REF: ALL CASES) (pck) [Entry date 03/21/96] [Edit date 03/21/96] [2:93cv1794]

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3/18/96	209	Motion by plaintiff Lifemark Hospitals and ORDER to withdraw attorneys, Moise S. Steeg, Jr. & Charles L. Stern, Jr. of the firm of Steeg & O'Connor for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 3/19/96 (REF 94-3993) (dp) [Entry date 03/21/96] [Edit date 05/10/96] [2:93cv1794]
4/4/96	210	Motion by plaintiff Lifemark Hospitals and ORDER that attorneys Miles Paul Clements, Joseph Nicholas Mole, Michael Raudon Phillips be enrolled as counsel for same by Judge G. T. Porteous Jr. Date Signed: 4/9/96 (REF: 93-1794, 93-4249, 95-2922) (jd) [Entry date 04/10/96] [2:93cv1794]
4/12/96	211	Motion by plaintiff Lifemark Hospitals and ORDER to enroll Miles P Clements, Joseph N Mole & Michael R Phillips as counsels of record by Judge G. T. Porteous Jr. Date Signed: 4/15/96 (REF: 94-3993) (gw) [Entry date 04/16/96] [2:93cv1794]
4/19/96	212	Motion by defendant Liljeberg Ent Inc and ORDER for appearance of Hans Joseph Liljeberg as additional co-counsel for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 4/22/96 (dp) [Entry date 04/23/96] [2:93cv1794]
4/22/96	215	Motion by plaintiff Lifemark Hospitals and ORDER for expediting hrg on same's mtn for reconsideration & for partial summary judgment is GRANTED & set for 6/12/96 at 9:30 a.m. by Judge G. T. Porteous Jr. Date Signed: 5/9/96 (dp) [Entry date 05/10/96] [Edit date 07/11/96] [2:93cv1794]
4/29/96	213	Motion by plaintiff Lifemark Hospitals and ORDER for appearance of Kenneth Anthony Mayeaux as additional counsel for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 4/30/96 (REF 94-3993) (dp) [Entry date 05/02/96] [2:93cv1794]
5/10/96	214	ORDER rescheduling motion by dft, Liljeberg Enterprises for partial sum jgm [146-1] & the motion by dft, Liljeberg Enterprises by for partial sum jgm [147-1] previously set for 5/16/96 to 6/12/96 at 9:30 a.m. by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) [Edit date 07/11/96] [2:93cv1794]
5/10/96	216	MOTION by plaintiff Lifemark Hospitals for reconsideration and for mtn for partial summary judgment to be heard before Judge Porteous at 9:30 a.m. on 6/12/96. (REF 93-1794) (dp) [2:93cv1794]

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5/15/96	217	Motion by defendant Liljeberg Ent Inc and ORDER for appearance of Stephen T. Wimberly & William Peter Connick as additional counsel of record for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 5/16/96 (REF 93-1794, 93-4249, 95-2922) (dp) [Entry date 05/17/96] [Edit date 05/17/96] [2:93cv1794]
5/29/96	219	Motion by plaintiff Lifemark Hospitals and ORDER withdrawing attorney John Flowers r for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 6/3/96 (dp) [Entry date 06/05/96] [2:93cv1794]
5/30/96	218	Memo in opposition by defendant Liljeberg Ent Inc to motion for partial sum jgm [146-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [2:93cv1794]
6/7/96	221	Motion by plaintiff Lifemark Hospitals in 2:93-cv-01794 and ORDER for leave to file reply brief to dft's memo in opp to same's mtn for partial summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 6/10/96 (dp) [Entry date 06/11/96] [Edit date 07/23/96] [2:93cv1794]
6/10/96	220	ORDER re- setting motion by pla, Life Mark for reconsideration and for mtn for partial summary judgment [216-1] motion by dft, Liljeberg for partial sum jgm [146-1] ; motion by pla Life Mark to strike jury demand [138-1] to 9:30 a.m. on 6/25/96, w/oral argument by Judge G. T. Porteous Jr. (REF 93-1794) (dp) [Entry date 06/11/96] [Edit date 07/11/96] [2:93cv1794]
6/10/96	222	Reply by plaintiff Lifemark Hospitals to opp by dft, Liljeberg Enterprisest to same's motion for reconsideration and for mtn for partial summary judgment [216-1] (dp) [Entry date 06/11/96] [2:93cv1794]
6/19/96	223	RETURN OF SERVICE of supbs to Lifemark Hosptials of LA; svd 6/18/96. (dp) [2:93cv1794]
6/25/96	224	ORDER setting motion by pla, Life Mark for reconsideration and for mtn for partial summary judgment [216-1] previously set for 6/25/96 to 9:30 a.m. on 6/28/96 by Judge G. T. Porteous Jr. Date Signed: 6/24/96 (dp) [Entry date 06/26/96] [2:93cv1794]
7/1/96	225	SMOOTH MINUTES: Hrg held 6/28/96 bfr Judge denying motion by pla, Lifemark Hosptials for reconsideration and for mtn for partial summary judgment [216-1] & the motion by dft, Liljeberg for partial sum jgm [146-1] is taken under submission by Judge G. T. Porteous Jr. (dp) [Entry date 07/02/96] [2:93cv1794]

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7/2/96	226	MOTION by plaintiff Lifemark Hospitals to compel discovery referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag at 11:00 7/17/96 (REF: all cases) (gw) [2:93cv1794]
7/2/96	227	MOTION by plaintiff Lifemark Hospitals for leave to take the deposition of ptys who have already been deposed in case referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. (REF ALL CASES) (dp) [Entry date 07/03/96] [Edit date 07/03/96] [2:93cv1794]
7/9/96	229	Motion by defendants, Liljeberg Ent Inc and ORDER for exped hrg on same's mtn to continue the mtn filed by pla to compel discovery agst dfts Lijeberg Enterprises & St. Jude is unncessary; dfts, Liljeberg Enterprises & St. Jude may file their oppositions to pla, Lifemark's mtn compel on or bfr 7/17/96; mtn will be decided w/out oral argument by Magistrate Joseph C. Wilkinson Jr. Date Signed: 7/10/96 (REF ALL CASES) (dp) [Entry date 07/12/96] [2:93cv1794]
7/9/96	231	Motion by defendants, Liljeberg Ent Inc & St. Jude and ORDER for exped hrg is unnecessary; dfts, Liljeberg & St. Jude may file their written report to pla's mtn for leave to take the deposition of ptys who have already been deposed by 7/17/96; said mtn will be be decided w/out on the briefs w/out oral argument by Magistrate Joseph C. Wilkinson Jr. Date Signed: 7/19/96. (REF ALL CASES) (dp) [Entry date 07/12/96] [2:93cv1794]
7/10/96	228	Memo in opposition by plaintiff Lifemark Hospitals to mtn to continue same's mtn to compel discovery filed by defendant Liljeberg Ent Inc (dp) [2:93cv1794]
7/10/96	230	MOTION by defendants, Liljeberg Ent Inc & St. Jude to continue mtn by pla, Lifemark to compel discovery agst Liljeberg & St. Jude referred to Magistrate Joseph C. Wilkinson Jr.; no hrg date set - matter will be heard on the briefs, w/out oral argument. (dp) [Entry date 07/12/96] [2:93cv1794]
7/10/96	232	MOTION by defendants, Liljeberg Ent Inc & St. Jude to continue mtn for leave to take the deposition of ptys who have already been deposed by pla, Lifemark referred to Magistrate Joseph C. Wilkinson Jr. No hrg date is set (Matter will be heard on the briefs w/out oral argument. (REF ALL CASES) (dp) [Entry date 07/12/96] [Edit date 07/23/96] [2:93cv1794]
7/12/96	237	Motion by defendant Liljeberg Ent Inc and ORDER for leave to file supplemental brief is GRANTED by Judge G. T. Porteous Jr. Date Signed: 7/22/96 (RF 93-1794) (dp) [Entry date 07/23/96] [Edit date 07/23/96] [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
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7/17/96 233 Memo in opposition by defendant Liljeberg Ent Inc to motion to compel discovery [226-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]

7/17/96 234 MOTION by plaintiff Lifemark Hospitals for leave to file 3rd supplemental & amended answer to debtor's mtn to assume executory contract to be heard before Judge Porteous at 9:30 a.m. on 8/21/96. (REF 93-1794) (dp) [Entry date 07/18/96] [Edit date 07/18/96] [2:93cv1794]

7/18/96 235 MINUTE ENTRY (7/17/96): Hrg held this date dismissing the motion by pla, Lifemark for leave to take the deposition of ptys who have already been deposed in case [227-1] by Magistrate Joseph C. Wilkinson Jr. (REF 93-1794 (dp) [Entry date 07/19/96] [Edit date 07/19/96] [2:93cv1794]

7/19/96 236 Memo in opposition by plaintiff Lifemark Hospitals to motion for partial sum jgm [146-1] filed by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) [Entry date 07/22/96] [2:93cv1794]

7/22/96 238 Memorandum by defendant Liljeberg Ent Inc in support of same's motion to continue mtn for leave to take the deposition of ptys who have already been deposed by pla, Lifemark [232-1]. (RF 93-1794) (dp) [Entry date 07/23/96] [2:93cv1794]

7/22/96 239 Motion by defendant Liljeberg Ent Inc in 2:93-cv-01794 and ORDER extending time to provide dft Lifemark Hospital with its final expert reports is GRANTED by Judge G. T. Porteous Jr. (REF 93-1794) (dp) [Entry date 07/24/96] [Edit date 07/24/96] [2:93cv1794]

7/22/96 240 Supplemental Memorandum by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) [Entry date 07/24/96] [2:93cv1794]

8/6/96 241 MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 8/21/96 (REF 94-3993) (dp) [Entry date 08/07/96] [2:93cv1794]

8/13/96 242 Notice of Deposition by plaintiff Lifemark Hospitals of John McDaniel on 9/12/96. (REF 93-1794, 93-4249, 95-2922, 95-3993) (dp) [Entry date 08/14/96] [2:93cv1794]

8/13/96 243 Motion by dft, St. Jude Hospital of Kenner and ORDER to continue motion by pla, Lifemark for partial summary judgment pursuant to Rule 56 [241-1] previously set for 8/21/96 to 9:30 a.m. on 9/4/96 is GRANTED by Judge G. T. Porteous Jr. Date Signed: 8/15/96 (REF 94-3993) (dp) [Entry date 08/16/96] [Edit date 08/16/96] [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
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8/14/96	249	Motion by defendant Liljeberg Ent Inc and ORDER to extend time to respond to pla, Lifemark's mtn for leave of court to file an amended answer is GRANTED until 8/21/96 by Judge G. T. Porteous Jr. Date Signed: 8/15/96 (REF 94-3993) (dp) [Entry date 08/23/96] [Edit date 08/23/96] [2:93cv1794]
8/19/96	244	Witness list submitted by plaintiffs, Lifemark Hospitals. & AMI (REF 93-1794) (dp) [Entry date 08/20/96] [Edit date 08/20/96] [2:93cv1794]
8/19/96	245	Exhibit list by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [Entry date 08/20/96] [2:93cv1794]
8/19/96	246	Amended Witness list submitted by defendant Liljeberg Ent Inc. (REF 93-1794) (dp) [Entry date 08/20/96] [2:93cv1794]
8/20/96	247	RETURN OF SERVICE of subp to John McDaniel; svd 8/16/96. (REF 93-1794) (dp) [Entry date 08/21/96] [Edit date 08/21/96] [2:93cv1794]
8/21/96	248	Memo in opposition by defendant Liljeberg Ent Inc to motion for leave to file 3rd supplemental & amended answer to debtor's mtn to assume executory contract [234-1] filed by plaintiff Lifemark Hospitals. (REF 94-3993) (dp) [Entry date 08/22/96] [2:93cv1794]
8/22/96	250	RETURN OF SERVICE of subp to Kathleen V. Gaudet, LA. Board of Pharmacy; svd 8/21/96. (REF ALL CASES) (dp) [Entry date 08/23/96] [Edit date 08/23/96] [2:93cv1794]
8/23/96	251	MINUTE ENTRY (8/23/96): ORDERED that no later than 8/238/96 counsel must confer & submit to the Court separate letters as sitp by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) [Entry date 08/26/96] [2:93cv1794]
8/27/96	252	Motion by dft, St. Jude Hospital and ORDER to extend time to file their opposition to mtn by pla, Lifemark's mtn for partial summary judgment is GRANTED until 8/28/96 by Judge G. T. Porteous Jr. Date Signed: 8/28/96 (REF 94-3993) (dp) [Entry date 08/29/96] [Edit date 08/29/96] [2:93cv1794]
8/28/96	253	Amended Witness list submitted by plaintiffs, Lifemark Hospitals & AMI. (REF 93-1794) (dp) [Entry date 08/29/96] [2:93cv1794]
8/28/96	254	Memo by dft, St. Jude Hospital in opposition to motion for partial sum jgm [146-1] filed by plaintiff Lifemark Hospitals. (REF 94-3993) (dp) [Entry date 08/29/96] [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
BKCY

9/6/96	255	MINUTE ENTRY (9/3/96): A Status Conf is set for 3:00 p.m. on 9/19/96 bfr Judge in chambers by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) [Entry date 09/09/96] [Edit date 09/09/96] [2:93cv1794]
9/6/96	262	Motion by dft, St. Jude Hospital and ORDER for leave to file response to pla, Lifemark's reply memo concerning pla, Lifemark's mtn for summary judgment is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/18/96 (REF 94-3993) (dp) [Entry date 09/23/96] [Edit date 09/23/96] [2:93cv1794]
9/12/96	256	Stipulation by defendants, Liljeberg Ent Inc et al. (REF 93-1794) (dp) [Entry date 09/13/96] [2:93cv1794]
9/12/96	261	Motion by dft St. Jude Hospital of Kenner, LA and ORDER for appearance of Leonard L. Le venson to enroll as additional counsel for record of same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/18/96 (REF 94-3993) (dp) [Entry date 09/19/96] [Edit date 09/23/96] [2:93cv1794]
9/17/96	258	MOTION by plaintiff Lifemark Hospitals forr summary judgment pursuant to Rule 56 on the circumvention claims to be heard before Judge Porteous at 9:30 a.m. on 10/2/96. (REF ALL CASES) (dp) [Entry date 09/18/96] [2:93cv1794]
9/17/96	259	MOTION by plaintiff Lifemark Hospitals for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 10/2/96 (dp) [Entry date 09/18/96] [2:93cv1794]
9/17/96	260	MOTION by plaintiff Lifemark Hospitals for partial summary judgment pursuant to Rule 56 to be heard before Judge Porteous at 9:30 a.m. on 10/2/96 (dp) [Entry date 09/18/96] [2:93cv1794]
9/18/96	257	MOTION by plaintiff Lifemark Hospitals to withdraw the reference and to consolidate with respect to its mtn to dismiss the Chapter 11 proceedings of dft Liljeberg Enterprises, Inc. to be heard before Judge Porteous at 9:30 a.m. on 10/2/96. (REF ALL CASES) (dp) [2:93cv1794]
9/19/96	268	Motion by Liljeberg Ent Inc and ORDER withdrawing attorneys, William Peter Connick & Stephen T. Wimberly & substituting attorneys, Jacob J. Amato Jr & Leonard Louis Levenson for same is GRANTED by Judge G. T. Porteous Jr. Date Signed: 9/23/96 (REF 93-1794) (dp) [Entry date 09/25/96] [Edit date 09/25/96] [2:93cv1794]
9/20/96	263	Supplemental memo by dft, St. Jude Hospital in response to pla, Lifemark's reply memo concering pla, Lifemark's mtn for partial summary judgment. (dp) [Entry date 09/23/96] [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
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9/23/96	266	Witness list submitted by defendants, Liljeberg Ent Inci & St. Jude Hospital. (dp) [Entry date 09/24/96] [2:93cv1794]
9/24/96	264	MINUTE ENTRY (9/23/96): A Status Conf was held on 9/19/96 ; dft, Liljeberg was given until 9/27/96 to respond to pla, Lifemark's 3 mtns for summary judgment, mtn to withdraw the reference & to consoldiate with respect to its mtn to dismiss the Chapter 11 proceedings; pla's expert reports are due 10/1/96; dft's expert reports are due 10/15/96; dft is given until 9/27/96 to submit its witness list by Judge G. T. Porteous Jr. (REF ALL CASES) (dp) [2:93cv1794]
9/24/96	265	RETURN OF SERVICE of subps to St. Charles General Hospital, Meadowcrest Professional Bldg, Doctor's Hospital of Jefferson, Lifemark Hospitals of LA., Lakewview Regional Medical Center Auxiliary, Highland Park Hospital, Inc., Northshore Medical Associates, Northshore Hospital Management Corp; svd 9/23/96. (REF ALL CASES) (dp) [Edit date 09/24/96] [2:93cv1794]
9/24/96	267	Memo in opposition by defendant Liljeberg Ent Inc to motion to withdraw the reference and to consolidate with respect to its mtn to dismiss the Chapter 11 proceedings of dft Liljeberg Enterprises, Inc. [257-1] filed by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]
9/25/96	269	RETURN OF SERVICE of subp to Tenet Health System Hospital, Inc; svd 9/24/96. (REF 93-1794) (dp) [Edit date 09/25/96] [2:93cv1794]
9/27/96	270	Motion by defendant Liljeberg Ent Inc and ORDER for expediting hrg on same's mtn for extension of time to file oppositions to pla, Lifemark's mtns for partial summary judgment is GRANTED & set for 9/27/96 at 1:00 p.m. by Judge Ginger Berrigan. (REF ALL CASES) (dp) [Entry date 09/30/96] [Edit date 09/30/96] [2:93cv1794]
9/27/96	272	Opposition by plaintiff Lifemark Hospitals to mtn by dft, Liljeberg Enterprises. (REF 93-1794) (dp) [Entry date 09/30/96] [2:93cv1794]
9/27/96	273	Witness list submitted by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [Entry date 09/30/96] [2:93cv1794]
9/30/96	271	Motion by defendant Liljeberg Ent Inc and ORDER for an extension of time to respond to 3 mtns by pla, Lifemark Hospitals for summary judgment is GRANTED until 10/2/96 by Judge Ginger Berrigan. Date Signed: 9/27/96 (dp) [Edit date 09/30/96] [2:93cv1794]
10/1/96	274	Stipulation by defendants, Liljeberg Ent Inc plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]

Proceedings include all events. MASTER PROTO MAG-2 BKCY
2:93cv1794 In re: Liljeberg Ent Inc

10/1/96 275 Amended Witness list submitted by plaintiff Lifemark Hospitals. (REF 93-1794) (dp) [2:93cv1794]

10/1/96 276 Motion by plaintiff Lifemark Hospitals and ORDER for expediting hrg on same's mtn to recuse is GRANTED & is set for 10/16/96 at 10:30 a.m. by Judge G. T. Porteous Jr. Date Signed: 10/2/96 (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/1/96 282 MOTION by plaintiff Lifemark Hospitals in 2:93-cv-01794 to compel payment of audit costs referred to Magistrate Joseph C. Wilkinson Jr. to be heard before Mag/Judge Wilkinson at 11:00 a.m. on 10/16/96 (dp) [Entry date 10/03/96] [2:93cv1794]

10/1/96 284 Motion by Lifemark Hosp of LA Inc and ORDER that expm hrg on its mtn to quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystem by dft Hosp Liljeberg is set for determination on the briefs w/o oral argument; Counsel for Liljeberg Ent Inc has filed its resp om 10/4/96 by Magistrate Joseph C. Wilkinson Jr. Date Signed: 10/7/96 (REF: all cases) (gw) [Entry date 10/10/96] [Edit date 10/10/96] [2:93cv1794]

10/2/96 277 MOTION by plaintiff Lifemark Hospitals to recuse to be heard before Judge Porteous at 10:30 a.m. on 10/16/96. (REF ALL CASES) (dp) [Entry date 10/03/96] [Edit date 10/03/96] [2:93cv1794]

10/2/96 279 Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [260-1], motion for partial summary judgment pursuant to Rule 56 [259-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/2/96 280 Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [259-1] filed by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/2/96 281 Memo in opposition by defendant Liljeberg Ent Inc to motion for partial summary judgment pursuant to Rule 56 [241-1] filed by plaintiff Lifemark Hospitals (REF ALL CASES) (dp) [Entry date 10/03/96] [2:93cv1794]

10/3/96 278 MINUTE ENTRY (10/2/96): Having received the plas' mtn to recuse, the Court finds that in the best interest of justice all mtns are deferred pending resolution of the mtn to recuse by Judge G. T. Porteous Jr. (dp) [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
BKCY

10/4/96	286	Memo in opposition by defendant Liljeberg Ent Inc to motion to quash 30(b)(6) ntc of depo & subp d/t of Tenet HealthSystem Hosp Inc [285-1] filed by plaintiff Lifemark Hospitals (REF: all cases) (gw) [Entry date 10/10/96] [2:93cv1794]
10/7/96	283	RETURN OF SERVICE of subp to Liljeberg Enterprises, Inc; svd 10/3/96. (dp) [Entry date 10/08/96] [2:93cv1794]
10/8/96	289	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file a supplemental memo in support of mtn to quash 30(b)(6) deposition & subpoena duces tecum is GRANTED by Magistrate Joseph C. Wilkinson Jr. (REF ALL CASES) (dp) [Entry date 10/11/96] [Edit date 10/11/96] [2:93cv1794]
10/9/96	285	MOTION by Lifemark Hosp of LA Incto quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystems Hosp Inc by dft Liljeberg referred to Magistrate Joseph C. Wilkinson Jr. for determination on the briefs w/o oral argument. (REF: all cases) (gw) [Entry date 10/10/96] [Edit date 10/10/96] [2:93cv1794]
10/9/96	287	MINUTE ENTRY (10/8/96): granting Lifemark Hosp of LA Inc's motion to quash 30(b)(6) ntc of depo & subp d/t served on Tenet HealthSystems Hosp Inc by dft Liljeberg [285-1] by Magistrate Joseph C. Wilkinson Jr. (REF: all cases) (gw) [Entry date 10/10/96] [2:93cv1794]
10/9/96	288	Memo in opposition by defendants Liljeberg Ent Inc & St Jude Hosp of Kenner to motion to recuse [277-1] filed by plaintiff Lifemark Hospitals (REF: all cases) (gw) [Entry date 10/10/96] [2:93cv1794]
10/10/96	290	Memorandum by plaintiff Lifemark Hospitals in support of same's motion to quash 30(b)(6) ntc of depo & subp d/t served on Tenet Health Systems Hosp Inc by dft Liljeberg [285-1] (REF ALL CASES) (dp) [Entry date 10/11/96] [Edit date 10/11/96] [2:93cv1794]
10/10/96	293	Motion by plaintiff Lifemark Hospitals and ORDER for leave to file supplemental memo in support of same's mtn to compel payment of audit costs is GRANTED by Magistrate Joseph C. Wilkinson Jr. Date Signed: 10/15/96 (dp) [Entry date 10/16/96] [2:93cv1794]
10/11/96	291	Memo in opposition by plaintiff Lifemark Hospitals to mtn by dft, Liljeberg Enterprises for review of Mag/Judge's order by defendant Liljeberg Ent Inc. (REF ALL CASES) (dp) [2:93cv1794]
10/11/96	292	Trial deposition designations by plaintiff Lifemark Hospitals. (REF ALL CASES) (dp) [2:93cv1794]

Proceedings include all events. MASTER PROTO
2:93cv1794 In re: Liljeberg Ent Inc MAG-2
BKCY

10/11/96 296 Motion by plaintiff Lifemark Hospitals and ORDER for leave to file reply memo to Liljeberg Ent Inc's opp to its mtn to recuse by Judge G. T. Porteous Jr. Date Signed: 10/15/96 (REF: ALL CASES) (gw) [Entry date 10/17/96] [2:93cv1794]

10/15/96 295 RETURN OF SERVICE of subp to Lifemark Hospitals of LA, Inc. svd 10/15/96. (REF ALL CASES) (dp) [Entry date 10/16/96] [Edit date 10/16/96] [2:93cv1794]

10/16/96 294 Memorandum by plaintiff Lifemark Hospitals in support of same's motion to compel payment of audit costs [282-1] (REF ALL CASES) (dp) [2:93cv1794]

10/16/96 297 Reply memo by plaintiff Lifemark Hospitals to Liljeberg's opp to its motion to recuse [277-1] (REF: ALL CASES) (gw) [Entry date 10/17/96] [2:93cv1794]

10/17/96 298 SMOOTH MINUTES: Hrg held 10/16/96 bfr Judge denying motion by pla, Lifemark Hospitals to recuse [277-1] by Judge G. T. Porteous Jr. (dp) [Entry date 10/18/96] [2:93cv1794]

[END OF DOCKET: 2:93cv1794]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

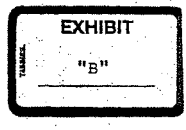
LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 95-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

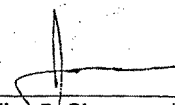
MOTION TO RECUSE

NOW INTO COURT, through undersigned counsel, comes Lifemark Hospitals of Louisiana, Inc. ("Lifemark"), who respectfully submits that Liljeberg Enterprises, Inc.'s ("LEI") last minute enrollment of Jacob Amato and Leonard Levenson as trial counsel in this matter creates an appearance of impropriety prohibited under 28 U.S.C. §455(a).

Lifemark is in no way suggesting that this Court could not be impartial in determining this matter. But, as set forth fully in the Memorandum in Support attached hereto, the mere appearance of impropriety requires recusal. Thus, for the foregoing reasons and the reasons set forth in the memorandum, Lifemark respectfully requests that this Court recuse itself from this matter prusuant to 28 U.S.C. §455(a).



Respectfully submitted,



Miles P. Clements (La. #4184)
Joseph N. Mole, T.A. (La. #09538)
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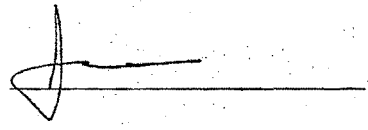
ATTORNEYS FOR PLAINTIFF,
LIFEMARK HOSPITALS OF
LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 1st day of October, 1996 by hand delivery on all counsel of record.



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS, INC.	**CIVIL ACTION**
	NO. 93-1794 c/w 94-3993, 93-4249, 95-2922
VERSUS	
LILJEBERG ENTERPRISES, INC.	**SECTION "T"**

JUDGMENT

On Wednesday, October 16, 1996, the court heard oral argument on Lifemark Hospitals, Inc.'s Motion to Recuse. The Court, having reviewed the motion to recuse, the opposition, the reply, and the response to the reply and having heard oral argument, for reasons stated in open court denies the Motion to Recuse. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that there be judgment entered denying Lifemark Hospitals, Inc.'s Motion to Recuse.

New Orleans, Louisiana, this 17th day of October, 1996.

G. Thomas Porteous, Jr.
United States District Judge

cc: Magistrate Judge Wilkinson
Clerk to Notify all Counsel

EXHIBIT
"C"

U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
SEP 12 3 14 PM '96
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. ~~94-3993 c/w~~ 93-1794
ST. JUDE HOSPITAL OF KENNER, LA, INC.	*	93-4249 94-2922
	*	SECTION "T" (3)

* * * * * * * *

EX PARTE MOTION OF ST. JUDE HOSPITAL OF KENNER LA., INC. TO ENROLL ADDITIONAL COUNSEL OF RECORD

NOW INTO COURT, through undersigned counsel, comes St. Jude Hospital of Kenner La., Inc., which moves to enroll Jacob J. Amato, Jr., the law firm of Amato and Creely, APLC, Leonard L. Levenson and Leonard L. Levenson, APLC as additional counsel of record in the above referenced consolidated civil actions on behalf of St. Jude Hospital of Kenner La., Inc.

In accordance with ULLR 1.04, Kenneth C. Fonte remains designated as trial attorney on behalf of St. Jude Hospital of Kenner La., Inc..

Respectfully submitted,

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Suite 200
Metairie, Louisiana 70002
(504) 455-0039
Trial Attorney

SEP 2 3 1996

FEE
PROCESS
EXHIBIT
"D"

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by placing a copy of same in the United States mail, postage prepaid and properly addressed this 11th day of September, 1996.

Kenneth C Ponte

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS, INC.	*	CIVIL ACTION
VERSUS	*	NO. 94-3993 c/w 93-1794
ST. JUDE HOSPITAL OF KENNER, LA, INC.	*	93-4249 94-2922
	*	SECTION "T" (3)

* * * * * * * *

ORDER

Considering St. Jude Hospital of Kenner La., Inc.'s foregoing Ex Parte Motion to Enroll as Counsel:

IT IS HEREBY ORDERED that Jacob J. Amato, Jr., the firm of Amato and Creely, APLC, Leonard L. Levenson and the firm of Leonard L. Levenson, APLC be and are hereby permitted to enroll as additional counsel of record on behalf of St. Jude Hospital of Kenner La., Inc..

New Orleans, Louisiana this 18 day of September, 1996.

UNITED STATES DISTRICT JUDGE

EXHIBIT
"E"

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

FILED

SEP 3 4 11 '93

IN RE:	*	NO. 93-10295
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

APPLICATION BY DEBTOR TO EMPLOY ATTORNEY FOR SPECIAL ASSIGNMENT ON A CONTINGENT FEE BASIS

The application of Liljeberg Enterprises, Inc., through undersigned counsel, respectfully represents:

I.

On the 27th day of January, 1993, Debtor filed a petition under Chapter 11 of the Bankruptcy Code.

II.

Applicant has continued in possession of its property, and as debtor-in-possession, is now operating its business and managing its property.

III.

Debtor, as debtor-in-possession, wishes to employ Jacob J. Amato, Jr. and the law firm of Amato & Creely, and Leonard L. Levenson, APLC and Leonard L. Levenson ("Special Counsel") duly admitted to practice in the State of Louisiana.

EXHIBIT "F"

IV.

Debtor wishes to employ Special Counsel to handle specific issues in the following matter:

1. Proceeding against AMI/Lifemark in the case styled "Lifemark Hospitals of Louisiana, Inc., et al v. Liljeberg Enterprises, Inc.", Civil Action No. 93-1794 c/w 93-4249, in the United States District Court for the Eastern District of Louisiana.

V.

The professional services Special Counsel are to render are:

a) to act as trial and, if necessary, appellate counsel for Debtor in connection with the lawsuits and all issues raised in the prosecution and defense thereof;

b) to prepare on behalf of the Debtor the necessary pleadings, discovery requests, and other legal papers; and

c) to perform all work necessary and incidental to the prosecution of the aforementioned case, including without limitation, conducting discovery, and any and all settlement discussions, all trial representation, and, to the extent necessary, the appeal of the matter and the seeking or opposing of supervisory writs and/or writs of certiorari.

VI.

Applicant desires to employ Special Counsel on a contingent fee basis. The contingent fee arrangement is the following:

1. LEI shall pay Special Counsel a contingency fee in the amount of Eleven (11%) percent of the net amount of all sums paid to, and received by, LEI from Lifemark or any of its corporate affiliates or corporate parent by settlement or by final and definitive judgment. The term "net amount" equals the sum of all damages recovered and paid to LEI or any of its agents, affiliates or stockholders after deducing therefrom any and all amounts withheld or offset, or otherwise not paid, by Lifemark or any of its corporate affiliates or corporate parent, on any counterclaims brought against LEI or its corporate affiliates arising out of, or related to, the aforesaid litigation.

2. Notwithstanding any provision of this agreement to the contrary, Special Counsel shall not be entitled to any fee whatsoever, contingency or otherwise, arising out of, or relating to, the recovery of unpaid reimbursable costs of pharmaceuticals owed to LEI by Lifemark or any of its corporate affiliates or corporate parent, and the interest thereon, which accrued prior to July 1, 1993. This claim for the recovery of unpaid reimbursable costs of pharmaceuticals prior to July 1, 1993, and the claim for interest thereon, is further described as the claim

presently pending before the court on a Motion for Partial Summary Judgment.

VII.

Special Counsel represents no interest adverse to Debtor as debtor-in-possession or the estate in the matters upon which they are to be engaged for Debtor as debtor-in-possession, and their employment would be to the best interests of this estate.

WHEREFORE, Applicant prays that it be authorized to employ and appoint Jacob J. Amato, Jr. and the law firm of Amato & Creely, and Leonard L. Levenson, APLC and Leonard L. Levenson to represent it as counsel in the above mentioned proceeding, and that it have such other and further relief as is just.

DRAPER & CULPEPPER, APLC

BY: _____

DOUGLAS S. DRAPER #5073
Suite 2630, LL&E Tower
909 Poydras Street
New Orleans, LA 70112
(504) 581-9595

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	NO. 93-10295
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

AFFIDAVIT OF PROPOSED ATTORNEYS

STATE OF LOUISIANA

PARISH OF ORLEANS

The proposed attorney, Jacob J. Amato, Jr., hereby makes solemn oath:

I.

He is an attorney and counsellor at law, duly admitted to practice in the State of Louisiana.

II.

Jacob J. Amato, Jr. maintains an office for the practice of law at 901 Derbigny Street, Gretna, Louisiana.

III.

Jacob J. Amato, Jr. and the law firm of Amato & Creely have been requested to serve as attorneys in connection with the pending litigation set forth in the motion and are willing to serve in that capacity.

IV.

Jacob J. Amato, Jr. and the law firm of Amato & Creely do not represent any interest adverse to that of the debtor or the creditors herein in the matters upon which they are to be retained.

JACOB J. AMATO, JR.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 28th DAY OF AUGUST, 1996.

NOTARY PUBLIC

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	NO. 93-10295
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

AFFIDAVIT OF PROPOSED ATTORNEYS

STATE OF LOUISIANA

PARISH OF ORLEANS

The proposed attorney, Leonard L. Levenson, hereby makes solemn oath:

I.

He is an attorney and counsellor at law, duly admitted to practice in the State of Louisiana.

II.

Leonard L. Levenson maintains an office for the practice of law at 427 Gravier Street, New Orleans, Louisiana.

III.

Leonard L. Levenson and Leonard L. Levenson, APLC have been requested to serve as attorneys in connection with the pending litigation set forth in the motion and are willing to serve in that capacity.

IV.

Leonard L. Levenson and Leonard L. Levenson, APLC do not represent any interest adverse to that of the debtor or the creditors herein in the matters upon which they are to be retained.

Leonard L. Levenson

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 28th DAY OF AUGUST, 1996.

NOTARY PUBLIC

DOCKETED
SEP 5 1996
FRANK J. MATHIUS CLERK
UNITED STATES BANKRUPTCY COURT
NEW ORLEANS, LA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:	*	NO. 93-10295
LILJEBERG ENTERPRISES, INC.	*	CHAPTER 11
DEBTOR	*	REORGANIZATION

ORDER AUTHORIZING APPOINTMENT OF ATTORNEYS

Upon the application of Liljeberg Enterprises, Inc., the above named debtor, praying for authority to employ and appoint Jacob J. Amato, Jr. and the law firm of Amato & Creely, and Leonard L. Levenson, APLC and Leonard L. Levenson ("Special Counsel"), to handle specific issues in the following matter:

1. Proceeding against AMI/Lifemark in the case styled "Lifemark Hospitals of Louisiana, Inc., et al v. Liljeberg Enterprises, Inc.", Civil Action No. 93-1794 c/w 93-4249, in the United States District Court for the Eastern District of Louisiana.

And it appearing that Special Counsel are attorneys duly admitted to practice in the State of Louisiana, and the Court being satisfied that they represent no interest adverse to Liljeberg Enterprises, Inc. as debtor-in-possession herein, or to its estate in the matters upon which they are to be engaged, that their employment is necessary and would be to the best interest of the estate;

RELIEF ORDERED
FEE PD.
COMP
D.C.
C.R.D.
ADM.
FIN.
PCS.
EA.
SECT.
PLEADING
1103

IT IS HEREBY ORDERED that Liljeberg Enterprises, Inc. as debtor-in-possession herein, be and is hereby authorized to employ Special Counsel to represent it in the above mentioned proceedings.

New Orleans, Louisiana, this 4th day of ~~August~~ Sept., 1996.

J. M. Brahney, III
JUDGE
UNITED STATES BANKRUPTCY COURT

DOUGLAS S. DRAPER #5073
DRAPER & CULPEPPER, APLC
Suite 2630, LL&E Tower
909 Poydras Street
New Orleans, LA 70112
(504) 581-9595

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

TO: COUNSEL FOR MOVANT

RE: DIRECTIVE ON SERVICE OF ATTACHED DOCUMENT

YOU ARE REQUIRED to serve the attached document on the parties mandated by the Federal Bankruptcy Rules and/or the Bankruptcy Code.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA
HALE BOGGS FEDERAL BUILDING
501 MAGAZINE STREET, ROOM 601
NEW ORLEANS, LOUISIANA 70130
(504) 589-6506

Date: 9/5/96

By:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS, LOUISIANA

LIFEMARK HOSPITALS, INC.

Plaintiff,

v.

LILJEBERG ENTERPRISES, INC.

Defendant.

Docket No. 93-179-4-"T"

New Orleans, Louisiana
Wednesday, October 16, 1996
10:17 a.m.

PLAINTIFF'S MOTION TO RECUSE
BEFORE THE HONORABLE G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

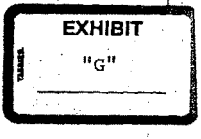
APPEARANCES:

For the Plaintiff:
Frilot, Partridge, Kohnke & Clements
BY: JOSEPH MOLE, ESQ.
STEPHANIE MAY
GARY RUFF, ESQ.
1100 Poydras Street
Suite 3600
New Orleans, Louisiana 70163

For the Defendant:
Weigand, Levenson & Costa
BY: LEONARD LEVENSON, ESQ.
427 Gravier Street
First Floor
New Orleans, Louisiana 70130

Amato & Creely
BY: JAKE AMATO, ESQ.
901 Derbigny Street
Gretna, Louisiana 70054

BY: HANS LILJEBERG, ESQ.
1221 Elmwood Park Boulevard
Suite 701
Harahan, Louisiana 70123



APPEARANCES (CON'T):

Court Reporter: DAVID A. ZAREK, CCR, RPR, CP
501 Magazine Street, Room 406
New Orleans, LA 70130
(504) 523-6062

Proceedings recorded by mechanical stenography; transcript produced by dictation.

P R O C E E D I N G S

MORNING SESSION

(Wednesday, October 16, 1996)

THE COURT: Let's take up this next matter, which is 93-1794 and all consolidated cases also. This is the motion filed with respect to all of the particular cases to recuse. Let me dictate one thing into the record before everybody commences so that everybody is not necessarily on edge as they might think. Bernard v. Coyne, which is 31 F.3d 842 involved the request to disqualify a circuit court judge of the 9th circuit. In that decision that Judge wrote, and I cite and "this" (reading) with full acquiescence counsel for a party who believes Judge's impartiality is reasonably subject to question has not only a professional duty to his client to raise the matter but an independent responsibility as an officer of the court. Judges are not omniscient, and despite safeguards overlook a conflict of interest. A lawyer who reasonably believes that the Judge before whom he is appearing should not sit must raise the issue so that it may be confronted and put to rest. Any other course would risk undermining public confidence in our judicial system." I cite that so that everyone understands that I recognize my duty and obligations, and I am fully prepared to listen. All right, go ahead.

MR. MOLE: I appreciate your remarks. It is not a very

easy thing to confront the federal judge with the suspicion that he probably doesn't want to hear. I am sure that in the course of trying -- I don't know you very well, Judge, and I have gotten to learn about you only through this case --

THE COURT: You told me the last time we graduated from Cor Jesu.

MR. MOLE: That's about all we have in common. What I learned about you from trying to investigate what I should do about what I have raised that you probably did read briefs and gave it some intelligent thought. So I don't want to go back through everything I have said.

What I would like to emphasize is mainly by what has been established in response to my motion to recuse. I have gotten to know Mr. Levenson and Mr. Amato.

THE COURT: Let me make also one other statement for the record if anyone wants to decide whether I am a friend with Mr. Amato and Mr. Levenson, I will put that to rest for the answer is affirmative, yes. Mr. Amato and I practiced the law together probably 20-plus years ago. Is that sufficient?

MR. MOLE: Yes.

THE COURT: 20-plus is sufficient. So if that is an issue at all, it is a non-issue.

MR. MOLE: What prompted us to file the motion is the

timing of what happened. This case is 10 years old, the oldest part is 10 years old. The lawyers who are in the case now are these previous to September 12th when you granted leave to add Mr. Amato and Mr. Levenson, who has been in for years. The case was set for trial, and you had an emphasis about keeping the trial date. They were added within two months of the trial date. And the case with that length I don't know Mr. Levenson or Mr. Amato very well. I know they are fun to practice against; they have a sense of humor, and they have given me by doing this quite literally none to my knowledge other than they are your friends. They have been given 11 percent contingency fee in a case that the Liljebergs, everybody -- I disagreed -- value at $140 million, at least part of this we have a percentage of. And I think that bears even more weight when you consider Mr. Liljeberg has taken the position that he doesn't give contingency fees. Jim Cobb has sued him in Bankruptcy Court for a fee claiming he had continued standing of plaintiff Liljeberg as a matter of the plaintiff doesn't give those away. This is like how we do it at the last minute. Mr. Levenson in his response to my reply brief says he has been in the case for a lot longer than the time when he showed up. It raises additional questions. Mr. Levenson is also, indeed, your friend: Has he discussed the case with us before at that time he appeared when he was investigating

it? Did he wait to see when you would hold on to the case rather than pass it on to Judge Lemmon? Those are the sort of questions that are going to be in the case no matter what happens forever if you be the Judge.

Mr. Levenson has accused me and my client of engaging innuendo. I looked up the word. Innuendo is a generally derogatory and witty way of making accusations indirectly. I don't think I have done that. I have been very direct. Mr. Levenson, and I think it is a good tactic, has tried to dare me to say what I think is the nature of the relationship between you and him and you and Mr. Amato, that are the two gentlemen behind me. And if they have something to contradict the statement that I made, which is that you all are indeed very, very close friends, I would have assumed that he would have made it. I am happy to tell the Judge what the public perception is of the relationship.

THE COURT: Well, the case you cite by the way involved the judge's wife. So I assume they were fairly close friends, too.

MR. MOLE: Probably. You don't have to stipulate.

THE COURT: Well, it could be a question sometimes.

MR. MOLE: I understand, Your Honor. I don't know what the Court wants to do with that issue, whether or not the Court wants to make a statement or accept the statement.

THE COURT: No, I have made the statement. Yes, Mr.

Amato and Mr. Levenson are friends of mine. Have I ever been to either one of them's house? The answer is a definitive no. Have I gone along to lunch with them? The answer is a definitive answer yes. Have I been going to lunch with all of the members of the bar? The answer is yes.

MR. MOLE: I understand.

THE COURT: Has, in fact, at the last status conference I had I saw Mr. Lane here I think in reality aligned with your side who spoke with me, and Mr. Lane and I have been to lunch together. I mean there is not a hell of a lot of lawyers in this city I haven't maintained a very open, friendly relationship with. So if you want to explore in detail, feel free to explore it. I don't have a problem with exploring it. But I don't know what you want to make with it.

MR. MOLE: Well, Your Honor --

THE COURT: And I also must say something for the record I think other than connecting the dots that the last status conference I had I virtually told everyone I was continuing this case. So this rush to trial that you suggest I am maintaining, I did all but connect the dots the last time.

MR. MOLE: Well, I understand.

THE COURT: The lawyers have come to this case like a

storm cloud through Louisiana. Look at the list. I ran a chaser sheet. Up until I think maybe Mr. Steeg and Mr. O'Connor. Mr. O'Connor were attorneys and they are out for whatever reason. They had a conflict situation. I have no idea what it was. Then you all got in it. Welcome, jump in. I mean I tried to make it clear at the last conference I don't care how many people are on the side or "X" amount of people are talking. Did I not say that?

MR. MOLE: It was pretty clear, Your Honor. Well, I would emphasize, Your Honor, that the standard is what a reasonable person would perceive if they knew all the facts. I think the timing of the appearance of Mr. Amato and Mr. Levenson creates the biggest concern along with the fact that they did not practice law together. All they have in common is that they are your close friends. The public perception is that they do dine with you, travel with you, that they have contributed to your campaigns.

THE COURT: Well, luckily I didn't have any campaigns. So I'm interested to find out how you know that. I never had any campaigns, counsel. I have never had an opponent. One time I had an opponent --

MR. MOLE: I had a campaign return from the --

THE COURT: The first time I ran, 1984, I think is the only time when they gave me money.

MR. MOLE: 1990 is what I have.

THE COURT: 1990 that was the Justice for All Program where they gave to every judge probably, but I could be wrong there.

MR. MOLE: I'm sorry if I'm wrong.

THE COURT: I don't know. You got the record. What did it say? Let me see them. Don't hide them if there is something in there that's deeply devious, tell me about it.

MR. MOLE: May I approach the bench?

THE COURT: Sure.

(Counsel Mole hands document to the Court.)

THE COURT: Yeah, I think if you look at this, you will find that whatever those numbers total, and I'm not a mathematician, but I think those numbers on these pages total more than $6,794. I am fairly certain adding that up. Did you?

MR. MOLE: I did not, Your Honor.

THE COURT: Well, let's go to the, pick a page at random starting with the firm of Anderson Tranthene and Mateern. There is over $200 on that page, one page out of I don't know how many it is. I think you will find that that was a function that was thrown by the entire judiciary of Jefferson Parish for which I received I forget whatever my portion was, but I reported it, which was $6,794 is what it looks like what it says here. And that's what it was. So, yes, I don't doubt that they contributed. I mean I don't

know. Maybe it is pertinent. Maybe microscopes and maybe that's why we shouldn't have it. But, yeah, okay, it's there.

MR. MOLE: Your Honor, I appreciate the Court's remarks at the beginning. What I have done again is in an effort to represent my client at the risk of offending the Court --

THE COURT: You haven't offended me. But don't misstate, don't come up with a document that clearly shows well in excess of $6700 with some innuendo that that means that they gave that money to me. If you would have checked your homework, you would have found that that was a Justice for all Program for all judges in Jefferson Parish. But go ahead. I don't dispute that I received funding from lawyers.

MR. MOLE: Right, Your Honor.

THE COURT: No question.

MR. MOLE: If the perception is that my client, and I have it that Mr. Levenson and Mr. Amato are not any more sinister than any other member of the bar, then we would be happy to have them or you dispel that. I think you have been honest with us. There is not much more I can say.

THE COURT: I understand. Let me tell you, no, it is a uncomfortable position you find yourself in, counselor. You know, I have been doing this for awhile. With all candor I must admit this is the first time a motion for my recusal

has ever been filed. Did it get my attention? Yeah, I guess it got my attention. But does that mean that any time a person I perceive to be friends who I have dinner with or whatever that I must disqualify myself? I don't think that's what the rule suggests. I, likewise, don't think that's what the Court had in mind. And even in your own pleadings and even in the case, it is the Travelers case from the Fifth Circuit published opinion which you gave, me that courts even recognized in citing from Murphy in its cite, and I think it is important to state (reading) "In today's legal culture friendship among judges and lawyers are common. They are more than common, they are desirable. A judge need not cut himself off from the rest of the legal community. Social as well as official communications among judges and lawyers may improve the quality of the legal decisions. Social interaction also makes some on the bench quite isolated and as a rule more tolerable to judges. Well qualified people would hesitate to become judges if they knew that wearing the robe meant either discharging one's friends or risking disqualification in a substantial number of cases. Courts have held that a judge need not disqualify himself just because a friend, even a close friend, appears as a lawyer." And that is a Seventh Circuit case but was cited in the Fifth Circuit decision.

Now that's a predicament all of us find ourselves in.

Mr. Amato and Mr. Levenson have both appeared before me and they have both won and both lost.

MR. MOLE: Your Honor, it is again it is not the fact of the friendship, it is the timing. Anyone who you would describe the situation to I think would generally be concerned that the timing is odd that a case of this length amply lawyered when other lawyers appear within the contingency fee in the way they have and that's why we made the motion.

THE COURT: I understand it, and it is a perception, clearly it is perception. I agree with you, but again even before this motion was even urged because I believe the status I had before you filed the motion, in fact, I know it was I made it plain that this November 4th date was probably fixed in everybody's mind. I mean I don't know what else to tell you. That was a near fix. We will see what we have got, but I understand, counselor and appreciate your position. And you have to urge these things, and I understand that. I take no animus toward you on that. If you did that, I don't need to repeat that.

MR. MOLE: Judge, what you said -- it is the first time I have had to do this myself. I would think one of the lawyers opposing me asked me how many times did you sit around discussing this with your client or your partners, and his answer was to a political extent easy to do. But we

convinced ourselves we had to do it.

THE COURT: All right.

MR. MOLE: Only after great deliberation.

THE COURT: All right.

MR. LEVENSON: Judge, I feel a little peculiar in this situation as well. I don't recall in the twenty years I have practiced law being in this situation. I think that you must take into consideration the admission by Lifemark in their pleading that they do not question your impartiality. And if they had done any investigation in connection with this matter, they could come up with no other result but that. And that is the test in this type of situation. It is the appearance to a well-informed, thoughtful, objective observer as stated in Jordan. And I think the key point there is well informed. Both well informed about our friendship, well informed about our reputation, well informed about the reputation and experience of Mr. Amato as well as that of myself.

Mr. Mole stated that the timing is odd. Well, I think it is correct that from the time that I was originally contacted by the Liljeberg attorneys in connection with this matter the Frilot firm has been involved in this case a very short period of time longer than I.

Mr. Mole brought up that when he first learned of that

yesterday he questioned why I waited so long to get into the case. Well, when I saw file cabinet upon file cabinet upon file cabinet of the paper, it wasn't candidly a very easy thing to assess for myself nor for Mr. Amato to take and became quite a bit of work to determine whether or not I wanted to dedicate a substantial portion of my future effort to this case which would deprive me of other income and other work as well. Mr. Mole didn't know that because he didn't ask me.

The next point Mr. Mole made was that there is nothing in common between Mr. Amato and myself except your friendship. That is incorrect. Another question Mr. Mole should have perhaps inquired into.

In Mr. Mole's brief he somewhat criticized my experience or perhaps the lack thereof in his mind in matters of this sort. Mr. Amato and myself have acted as primarily personal injury lawyers. That, of course, is not true. Mr. Amato and myself have tried hundreds if not thousands of cases and rules before juries, judges, state and federal, bankruptcy and federal court and just about every other court I can think of. In fact, at the risk of blowing my own horn, I think that I am probably the only lawyer in this room and maybe the only lawyer with all of the firms combined who has been written up in the WALL STREET JOURNAL in connection with litigation I had handled,

and it was not personal injury cases. My experience involves personal injury admittedly in recent years due to the change in the economy this year but also involved commercial litigation, bankruptcy, real estate and title law expertise which I think will become very important in this litigation.

Mr. Mole has alluded that in his pleadings that Mr. Amato and myself are your two closest friends. I find it interesting that Mr. Amato and myself are your closest friends that we were not contacted in connection with the background check which must be performed in connection with your appointment. Maybe other people don't think our friendship is viewed the same as Mr. Mole.

Finally, Mr. Mole says that we have contributed money to your campaign. Your Honor, as you know I didn't even know you when you ran for office. I only met you in the course of litigating cases in your court. To the best of my knowledge I have never given a campaign contribution to you. To the best of my knowledge you have never had a campaign to which to contribute to. The Justice for All Ball was something that was put together so that all of the judges of the 24th Judicial District Court could have a single fund-raiser, and I think the intent of that was to make it easier on lawyers who contributed to judge's campaigns, and there was some particular form as to how those proceeds were

divided up. I don't think they were divided up equally, although how they were distributed I wasn't part of.

THE COURT: I don't remember the breakdown, but I do know I was the smallest for what that's worth.

MR. LEVENSON: Judge, I think that the rule under Section 455 in the cases make it clear that whether or not we are your friend or even your close friend that is not ground for recusation, and I think that the motion should properly be denied.

THE COURT: Mr. Mole anything else you would like to add again?

MR. MOLE: Yes, Your Honor. One of the difficult decisions to make is how much of a record should I try to make on this without a balance of the fact that I have to practice law with these gentlemen and before you the rest of my life but that I have a duty to my client. But I think that the record that is made here today is enough, because I don't think Mr. Levenson and Mr. Amato, they have said that they dared me to say what I think are rumors. I don't want to do that. They have not denied what I have said about the relationship between you and them.

THE COURT: I have not denied it, and I don't think they deny it.

MR. MOLE: Then the fact of the matter is Mr. Levenson could very well deny it if he wanted to, and he has chosen

not to do that. That speaks more loudly than anything I could say.

THE COURT: Well, you know the issue becomes one of, I guess the confidence of the parties, not the attorneys. Because when it is all said and done you all have been but the spokesperson for the true people in interest and that's the litigants. My concern is not with whether or not lawyers are friends and for whatever value that contribution is to a group as a whole. My concern is that the parties are given a day in court which they can through you present their case, and they can be adjudicated thoroughly without bias, favor, prejudice, public opinion, sympathy, anything else, just on law and facts. That's basically the charge we give juries. We are no longer the juries, but if it was a non-jury trial, we are the trier of fact. And there is a ton of case law that says that I should charge myself according to the same way I would charge a jury.

I have always taken the position that if there was ever any question in my mind that this Court should recuse itself that I would notify counsel and give them the opportunity if they wanted to ask me to get off. That includes a case wherein my cousin, Billy, Billy Porteous tries a case in front of me in Gretna, and the plaintiff's lawyer is absolutely delited. And I have got to go fully explain to the jury that I never practiced with him and that they are

not to read anything into it. I don't fault you for your filing. I think it is a situation where because of this upward ongoing quick activity of this case because of dates approaching that on its face it appears to be evil or bad or improper. The reality is that none of the above are true. The reality is that if anyone thinks they gain favor from me because someone is in a case need only basically look at what I have done in the past to know that that is a fiction.

The question is again in that Bernard case the court said Section 450 requires not only that a Judge be subjectively confident of his ability to be even handed but there is a informed, rational objective observer would not doubt his impartiality. Well, everything we do in the judiciary is under a microscope anyhow. But if the rules were such that every time a contributor and you take a case with current contributions have been made, not 1990 contributions, have allowed the Judge to sit where friendship, even "Close friendships are not to be considered," I don't have any difficulty trying this case.

Now, after I rule can a party feel that they were wronged? I can't stop that feeling. There is no tie: somebody wins, somebody loses. Are they then upset? Possibly. But that's not for me to concern myself with because again whichever side wins by the evidence and the law will win by the evidence and the law. And as I have

told plaintiff lawyers in the past, if 40 percent of zero is zero, I assure you eleven percent of zero is still zero. Now, does that ease your client's mind? I don't know. I can't help you there. Does that make the informed observer satisfied? I don't know. But in my mind I am satisfied because if I had any question as to my ability, I would have called and said, "Look, you're right." Do not think for one moment that this Court went out and solicited this case. This case this Court drew because some other members of the bench couldn't hear it. The pool of judges was very small, and I drew it.

Now, I ran the chaser sheet on this, and the reason I talk about a flurry of activity up until the time I drew this case, which was on January 16, 1996, document No. 190 or entry 190 in the case re-alloted Judge G.T. Porteous, Jr., since that day when only 190 over a 3-year period entries had been made we have to date, now we have had 102 entries made. It always happens that when we get close to trial people get real, real interested. I can't explain it. It just happens. I don't read anything devious or bad about it. In fact, since the time you have come into the case or your firm which was entry No. 210, we have had 82 of them. So there has been a lot of activity, and I will attend to it.

I received a multitude of pleadings to find out in

taking up other issues today, and I had issued an order and I am hoping everyone got a copy of it. And if they didn't, I don't know what happened. But entry no. 278 says, "Having received the plaintiff's Motion to Recuse, the Court finds it is in the best interest of justice that all motions are deferred pending resolution of the motion to recuse.

MR. MOLE: I got that.

THE COURT: So I don't know what to tell you all other than I do not believe this is a case where 28 USC 455 is applicable. I don't think a well-informed individual can question my impartiality in this case. Part of me has to sit here and make sure that I don't over help or hurt either one of you. That's always going to be a problem if you know somebody on one side. I'm human, but I assure you I have done this long enough that it won't bother me at all. Saying no is the easiest thing. Saying zero is just a number. Whether it is worth $140 million as you suggest, I don't know. I don't know enough about this case. I don't even know if you all know enough about this case given the rash of pleadings that go back and forth. I'm not even sure it is that complex, but it is sure being made fairly complex.

Now, having said all of the above, I tell you now that there is no way on this earth that I can get through any of the motions pending and have a trial date by November 4th.

You all can forget it. It is actually impossible, which is exactly what I virtually said when we had the status. I won't be pushing anybody to trial on November 4th. I do want, however, that these things remain in effect. The requirements, those witness lists are cast in stone. I think you all both submitted them. That much is a finished deal. We are not going to be adding witnesses absent a hearing for good cause shown why they should be added. Now, I am not going to say that, I guess something could come up. But that's cast in stone. Both Magistrate Wilkinson and I have told you all that we are available for whatever assistance you need because this is a non-jury trial. I don't intend to enter into any discussions with you all on that. I told you that I believe that Magistrate Wilkinson did. My input is over at that point then. He acts as an arbitrator or mediator if that ever gets to that. If it doesn't, we try your case.

Because I know this is an important issue for you and an important issue for your client, I am, in fact, going to issue a judgment denying your motion to recuse myself. It is significant, it is important. If you think it deserves attention by the Fifth Circuit, that's why I am giving you the judgment. If you go there, you do it with no offense to me. And if they disagree with me, then they disagree with me. I don't have a problem with that, counselor. I don't

want the issue to be left that you didn't have a mechanism, and I don't think any of you want to do this thing twice.

So if you choose to go there, go there. Would I conceive of any grant of a stay? Yes. Would I ask that they expedite it? Probably, yes. And I would hope that you would ask that they expedite it because that does not innure to either side's benefit in this case.

MR. MOLE: One of the things that occurred to us and that is that we have a remedy for a writ of mandamus, and we haven't decided to do that.

THE COURT: That's why I thought a judgment was necessary, and I don't know if an order would have given you that ability. I am issuing it as a judgment denying your motion to recuse for the reasons I stated on the record, which you can get a transcript of it, of course. But, yes, I told you now that's what I am going to do is give you the guidance to do that.

MR. MOLE: One of my concerns is that we have a November 4th trial date. I would have to try to get discovery before then.

THE COURT: Does anyone here really believe I can dispose of all of your motions before November 4th? I'm not super human. I have continued all your motions because of this motion to recuse myself.

MR. MOLE: We didn't file them to delay things. But I

understand Your Honor.

THE COURT: I didn't take it for that, but I'm saying I did that on my own motion. Nobody asked me to stay it. I could have done it, but I think whenever somebody asks for a judge to recuse themselves, although technically I can continue a proceeding and particularly in the ruling I had made I think they are entitled for me not to do anything more until we take up the issue. We took the issue up. If you want to go across and do that, I am giving you the procedural tool to do it.

MR. MOLE: I appreciate that.

THE COURT: Okay, anything else I can dispose of?

MR. LEVINSON: On October the 23rd it is scheduled to appear for a pretrial conference.

THE COURT: Ignore it. Ignore it. There is no way on earth I am going to do your pretrial. You have got too many motions especially that you would have in the pretrial that the motions are open.

MR. LEVENSON: I understand that, Judge. But would you consider making it as a status conference so we can proceed?

THE COURT: I will do that as a status conference with you all.

MR. MOLE: And no pretrial order?

THE COURT: No, obviously not. They will issue an order that the pretrial order is hereby converted to a

status conference for whatever time I had it set. Just whatever if that time is blocked out, we keep it at that time.

MR. LEVENSON: That's fine, Judge.

THE COURT: Discovery I suggest that I believe should be closed at this point in time.

MR. MOLE: I think we have everything scheduled that needs to be scheduled, but we still have depositions going on through the last one is October 28th.

THE COURT: That's fine. But that's by agreement?

MR. MOLE: That's by agreement.

THE COURT: That's by agreement. And then as I understand it discovery will be closed?

MR. MOLE: Yes, Your Honor. We are cooperating pretty much.

THE COURT: Depending on what you do, whether you will be going to go forward and whether there is a stay over there or request for expedited hearing, will depend on when I give you a trial date. Maybe by the 23rd I would ask you and if you are not in position to do it, counselor, I understand. But on the 23rd it is a status conference. If it is your client's desire to proceed with a mandamus or appeal or whatever procedural remedy that is at his disposal with the Fifth Circuit, if you will simply notify me to that effect whether I would or would not set a date. I'm going

to set a date with that pending, I am not going to pass on this case while the ruling of mine which may have some impact on whether to recuse myself on this case. So if you could let me know by that date.

MR. MOLE: We will do that, Judge.

THE COURT: Okay, all right. Thank you all.

MR. MOLE: Thank you, Judge.

(Hearing concludes.)

REPORTER'S CERTIFICATE

The undersigned certifies, in his capacity of Official Court Reporter, United States District Court, Eastern District of Louisiana, the foregoing to be a true and accurate transcription of his Stenograph notes taken Wednesday, October 16, 1996.

New Orleans, Louisiana, this 21st day of October, 1996.

David A. Zarek
Official Reporter, Section "A"

MINUTE ENTRY
G. THOMAS PORTEOUS, JR.
JULY 26, 1996

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
JUL 26 2 15 PM '96
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IT IS ORDERED that the below listed Section "T" civil cases are permanently reallotted to judge Mary Ann Lemmon, Section "S" of this court, effective July 26, 1996. Counsel are instructed that any motions pending in these cases should be re-noticed for hearing before Section "S".

CIVIL ACTION CASES:

87-5547	TOTH ALUMINUM CORP. V. TOTH
92-2076	HIBERNIA NATIONAL BANK V. R.T.C.
93-1859	PROGRESSIVE CASUALTY V. R.T.A.
93-3212	U.S.A. V. SEWERAGE AND WATER BOARD
94-1397	CEDOTAL V. WHITNEY NATIONAL BANK
94-2035	THREADGILL V. PRUDENTIAL
94-3180	GILCHRIST V. PRUDENTIAL
94-3380	LOVETT V. SANDERSON
94-3861	ST. PAUL MERCURY INS. V. FAIR GROUNDS CORP.
94-4066	STEWART V. PRUDENTIAL
95-0346	UNITED NATIONAL INSURANCE V. FAIR GROUNDS CORP.
95-0601	GUSTE V. SHELL OIL COMPANY
95-0676	FOLSOM SOUTH VENTURES V. HOECHST CELANESE
95-1844	DANNA V. BARQ'S INC.
95-2487	PRITCHARD V. SIEGEL
95-3738	ORECK CORPORATION V. NATIONAL SUPER SERVICE CO.
95-3739	ORECK CORPORATION V. LINDHAUS USA, INC.
95-3741	ORECK CORPORATION V. MINUTEMAN INTERNATIONAL INC.
95-3742	ORECK CORPORATION V. WINDSOR INDUSTRIES, INC.
96-0819	PROGRESSIVE CASUALTY V. R.T.A.
96-1785	CHEMFIX TECHNOLOGIES V. ADVANCE REMEDIATION

CRIMINAL ACTION CASE:

96-0199	U.S.A. V. CALVIN SMITH AND DARRYL SULLIVAN

G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

DATE OF ENTRY JUL 26 1996

FEE
PROCESS
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INDEX

EXHIBIT
"H"

2. Permanent Hospital Loan

At the present time, AMI is financing the permanent loan for LEI at $44,000,000; however, AMI has only been able to document to LEI's satisfaction $35,000,000 of construction cost thereby leaving $9,000,000 which has not been documented to LEI's satisfaction. While this issue has been researched for over two years by AMI Construction accounting, the documentation which has been requested by LEI and audited by Coopers and Lybrand, independent accounting consultants for LEI, this is an issue which needs immediate attention. Mr. Liljeberg indicated that he would desire to leave the $44,000,000 on the books and receive a check for the discounted net present value of the $9,000,000 based upon a twenty-five year calculation. Furthermore, Mr. Liljeberg requested an inventory asset listing for all fixed equipment at St. Jude. Under separate cover, I had forwarded to you our analysis of both the pharmacy contract and permanent loan issues and have attached a copy to this memorandum for your reference.

3. Medical Office Building Buildouts

LEI, through the Medical Office Building Master Lease, still owes AMI approximately $600,000, for its share of buildout expenses associated with the original buildouts of Medical Office building space. Mr. Liljeberg indicated that he would propose that this amount would be offset as a part of the overall settlement on a commensurate basis on a percentage of this amount through the total percentage which the settlement would provide. Additionally, it is stated in the master lease that LEI would have the opportunity to bid on all buildouts and this has not occurred in the past nor has LEI had the right of approval for all contractors, as stated in the contract, and this issue would need to be resolved as well.

4. Medical Office Building Security Deposit

Mr. Liljeberg indicated that he would be willing to refund the $260,000 security deposit which AMI placed upon signing the MOB master lease if AMI would extend the MOB master lease for an additional ten years at the current lease rates and if AMI would further lease the unimproved fifth floor space of approximately 19,000 square feet. The current MOB master lease expires February 1990.

AUG 12 96 00 2689

AMI Memorandum

Senders' Location: AMI St. Jude Medical Center
Kenner, LA

CONFIDENTIAL COMMUNICATION
SUBJECT TO ATTORNEY/CLIENT PRIVILEGE

TO: Donna Erb DATE: May 24, 1988

FROM: John W. McDaniel cc:

SUBJECT: Liljeberg Enterprises, Inc.

Donna, this memorandum is for the purpose of advising you regarding the various issues surrounding the relationship between AMI St. Jude Medical Center and Liljeberg Enterprises, Inc.

After my meeting with John Liljeberg on Wednesday, May 18, 1988, Mr. Liljeberg clearly indicated that he had no interest whatsoever in negotiating the outstanding issues between AMI and LEI but rather preferred that either AMI and LEI arrange for the ownership to revert back to LEI or pursue these various issues through appropriate legal channels. After much discussion, he indicated that he would be willing to have one meeting wherein these various issues would be considered for possible settlement under various terms and conditions as follows:

1. Pharmacy contract

Mr. Liljeberg clearly explained that the situation surrounding the pharmacy contract was a matter of AMI's position of interpretation of the contract specific to the interpretation of the fee schedule at 1.35 times cost versus LEI's position of 2.35 times cost. Mr. Liljeberg's position is one of intent through his negotiations with Lifemark and Bill Mackie wherein it was the intention of that arrangement to additionally compensate Mr. Liljeberg through the pharmacy contract as a part of the "acquisition" of the Hospital. In order to resolve this most outstanding issue, Mr. Liljeberg indicated that he not only would like for the intent of the contract to be fulfilled, that is reimbursement at 2.35 times cost, but that he would also receive a retroactive adjustment based upon the 2.35 for all albumin products which we have recently begun paying him per advice of legal counsel. In addition, he requests that all products which have the label, "Federal Law Prohibits Dispensing . . . " would become a part of pharmacy although I feel that this item may be negotiable if he were to receive the previously stated it

EXHIBIT
"I"

5. Mammography equipment

Prior to the opening of the hospital, LEI acquired mammography equipment in the amount of $116,000 and has yet to reimburse AMI for this equipment. Mr. Liljeberg indicated that he would be willing to settle this at the current depreciated value of this equipment. It should be noted that this equipment is joint ventured with thirteen physicians in the St. Jude Breast Diagnostic Center and these thirteen physicians are among our top twenty admitters. Any adverse impact surrounding this settlement issue may have adverse impact upon these physicians.

6. Contract Language

Mr. Liljeberg indicated that he would like some language in the various agreements changed, specifically to change the corporation of "St. Jude Hospital of Kenner, LA, Inc." to "St. Jude Hospital of Kenner, LA, Limited Partnership. Mr. Liljeberg's desire to change the corporation to a limited partnership is for the purpose of avoiding La. State franchise taxes. He has indicated that AMI's corporate legal department has been reluctant to consider this in the past.

7. Hold Harmless Clause

Mr. Liljeberg indicated that he would like to change the present language of "hold harmless" to "hold harmless, indemnify and defend". At the present time, St. Jude Hospital of Kenner, LA., Inc. gets served every time St. Jude is served for litigation and Mr. Liljeberg simply seeks reimbursement of legal fees and costs which are incurred as to his requirement to answer and get dismissed from each lawsuit.

8. Property Taxes

Mr. Liljeberg would like consideration for his assistance for lobbying to keep the property taxes of St. Jude at their present rate. St. Jude's property taxes are approximately one half of the appraised value because of Mr. Liljeberg's influence with the property tax assessor and he would propose that consideration for his influence be used as an offset item against the medical office building buildout monies currently owed to AMI.

9. Use of Hospital Name

Mr. Liljeberg claims that AMI should compensate LEI for the use of the name "St. Jude Medical Center" in as much as Mr. Liljeberg has the corporate use for this name and requested that AMI pay for the use of the name a specified amount per year or a specified amount for use over a period of years.

10. HCA Litigation

LEI, through its contractural agreement with AMI, is to be reimbursed one half of all legal expenses associated with the defense of LEI's lawsuit against HCA. Since LEI has twice been heard at the U. S. Supreme Court regarding this litigation, AMI has been reluctant to pay its 50% share per corporate legal's interpretation that the appeal to the U. S. Supreme Court was outside of the agreement. Mr. Liljeberg contends that it is AMI's responsibility to pay 50% of all litigation associated with the HCA lawsuit and states that if the case is moved back to the lower courts, the risk of retrial of the entire suit would be at considerable expense to AMI and simply requests 50% of his legal expenses associated with the expense at the U. S. Supreme Court.

11. Pathology/Radiology Contracts

LEI has the ability, through the master contract, to name both the hospital pathology and radiology groups at the Hospital. Mr. Liljeberg reminded me that he did not have an opportunity to have input when MedLab took over the laboratory contract two years ago and he would like for MedLab to be removed and for the pathology group of his choice to retain the hospital laboratory contract.

While the aforementioned issues are those which are most outstanding, Mr. Liljeberg also mentioned the following as concerns or issues which he would like addressed during the negotiations:

1. Assurances that Hospital operations would meet or exceed community standards such as staffing, technology (i.e. MRI, etc.), marketing, etc. Mr. Liljeberg indicated that he felt that the "starting and stopping" of numerous projects by AMI within New Orleans such as AMICARE, various Network activities, etc. had negatively impacted St. Jude within both the medical community and the community at large.

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They alleged, *inter alia*, that Judge Mentz's law clerk and Travelers' counsel made "false statement[s] of material fact to the court", intentionally misled the court in violation of the Rules of Professional Conduct, and otherwise committed "ill practices". In light of the unrestrained accusations and innuendos we have seen in these actions, these charges simply reinforce the perception of the reckless attacks in which the Liljebergs and their counsel have engaged.

With those post-judgment motions, the Liljebergs dragged out the third case until the end of September. While the motions were pending, the Liljebergs failed to raise disqualification. Only after the district court denied the motions at the end of September did the Liljebergs commence their next salvo -- the 60(b)(6) motions. They waited until October 1, 1993 (nearly a year after entry of the judgments in the first two cases), before filing their motions in the first two cases;[10] in the third, they waited yet another month.[11]

Obviously, the delay in the third case cannot be countenanced. As of the alleged first date of knowledge of club membership, the judgment in that case had not been entered. (As noted, it was entered one week later.) As discussed, a party feeling there is a basis for disqualification must make that known to the court at the

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[10] The original judgment in the Partnership Litigation was entered on August 18, 1992, and amended on December 3, 1992; in the LEI Litigation, judgment was entered on August 18, 1992.

[11] The judgment in the SJH Litigation was entered on July 30, 1993. The 60(b)(6) motion was filed on November 2, 1993.

earliest possible moment. Moreover, as noted, a § 455(a) recusal is self-executing, *see* note 8, *supra;* no affidavit (or in this case, "opinion poll") is necessary to present the claimed basis for disqualification to the court.

Had the Liljebergs acted promptly, the district judge could have considered disqualification before entering judgment on the pending summary judgment motion in the third case. As our court has observed, "[i]f disqualification may be raised at any time, a lawyer is then encouraged to delay making a § 455(a) motion as long as possible if he believes that there is any chance that he will win at trial. If he loses, he can always claim the judge was disqualified and get a new trial." *Delesdernier*, 666 F.2d at 121.

As for the first two cases, it is certainly reasonable to suspect that the delay in filing the motions in those cases was also for the purpose of hoping not to impede a favorable decision in the third. Therefore, the delay in seeking recusal in the third action colors that for the first two. Had the recusal motions in all three actions been filed promptly after the alleged first date of knowledge of club membership, this might have assisted the district judge in determining recusal in the third case, for which judgment had not been entered. Accordingly, we will not separate the timeliness issue for the first two cases from the third. To do so would simply reward the Liljebergs for waiting on the result in the third case before seeking recusal in the first two.[12]

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[12] While these appeals were pending, the Liljebergs moved, in the alternative, to remand to the district court so that additional material could be added to the record (affidavit of recently

B.

The 60(b)(6) motions were denied properly for being untimely. In the alternative, even assuming *arguendo* a § 455 violation, the denial of the motions was not an abuse of discretion.[13]

> Rule 60(b)(6) relief is ... neither categorically available nor categorically unavailable for all § 455(a) violations. We conclude that in determining whether a judgment should be vacated for a violation of § 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and

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divorced former son-in-law of Judge Mentz; the contemporaneous motion to supplement the record on appeal was denied when filed.) Obviously, in light of our holding that the 60(b)(6) motions were untimely, the motion to remand is DENIED.

[13] We emphasize that, for purposes of this section, in order to determine whether there was an abuse of discretion in denying the 60(b)(6) motions, a § 455 violation is only assumed. It should be noted, however, that the Liljebergs do not cite, nor can we find, any case addressing disqualification because of membership in a private, social club (as discussed, this is the classification given the club by the Liljebergs), to include when members of a law firm representing one of the parties also hold such membership. In addition, we are reminded that

> [i]n today's legal culture friendships among judges and lawyers are common. They are more than common; they are desirable. A judge need not cut himself off from the rest of the legal community. Social as well as official communications among judges and lawyers may improve the quality of legal decisions. Social interactions also make service on the bench, quite isolated as a rule, more tolerable to judges. Many well-qualified people would hesitate to become judges if they knew that wearing the robe meant either discharging one's friends or risking disqualification in substantial numbers of cases. Many courts therefore have held that a judge need not disqualify himself just because a friend -- even a close friend -- appears as a lawyer.

United States v. *Murphy*, 768 F.2d 1518, 1537 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986).

> the risk of undermining the public's confidence in the judicial process.

Liljeberg, 486 U.S. at 864; *accord In re Continental Airlines Corp.*, 901 F.2d 1259, 1263 (5th Cir. 1990) ("the 'harmless error' rule applies to a breach of a judge's duty to stand recused under § 455(a)"), *cert. denied*, ___ U.S. ___, 113 S. Ct. 87 (1992).

First, in all three cases, the denial of the 60(b)(6) motions threaten the Liljebergs with a minimal risk of prejudice. In the Partnership Litigation, a jury, not the district judge, considered the facts and evaluated the credibility of the witnesses. It determined the Liljebergs' liability, which we affirmed, *Travelers*, 21 F.3d 1107 (unpublished). The Liljebergs fail to demonstrate, nor do we find, any injustice which would warrant vacating the jury's verdict. In the LEI and SJH Litigations, the sole issue was one of law.[14] The Liljebergs sought review of those judgments; in both instances, we affirmed through *de novo* review. *Travelers*, 7 F.3d 1203 (affirming the summary judgment in the LEI Litigation); *Travelers*, No. 93-3731, slip op. 581 (affirming the summary judgment in the SJH Litigation). Again, the Liljebergs suffered no injustice. *Continental Airlines*, 901 F.2d at 1263 ("The risk of injustice to the parties in allowing a summary judgment ruling to stand is usually slight").

On the other hand, Travelers faces a great risk of injustice should the judgments be vacated. During its dealings with the

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[14] At issue in the LEI Litigation was whether LEI and Krown were obligated to enter into leases with Travelers; in the SJH Litigation, whether *res judicata* prevented Travelers from seeking payment from SJH on the judgment against its partnership.

Liljebergs, Travelers has encountered what another panel of this court described as the most "egregious and unconscionable course of bad faith contractual dealings as the members of this panel can recall having encountered." *Travelers*, 21 F.3d 1107 (unpublished), No. 92-9579, slip op. at 2. Having obtained judgments against the Liljebergs, it would be a travesty of justice -- to say the least -- to require Travelers to start over. Besides, as noted, absent a showing of a material effect on the jury verdict in the Partnership Litigation, the results would be the same, especially in light of our *de novo* affirmance of the LEI and SJH Litigations.

Second, the denial of relief does not produce injustice in other cases. In fact, the Liljebergs fail to identify any.

And third, we find no risk that the public's confidence in the judicial process will be undermined. Partiality for or against an attorney, who is not a party, is not enough to require disqualification unless it can be shown that such a controversy would demonstrate bias for or against the party itself. *See Henderson v. Department of Public Safety and Corrections*, 901 F.2d 1288 (5th Cir. 1990);[15] *Davis v. Board of School Comm'rs of Mobile*

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[15] *Henderson* provides a close analogy to the Liljebergs' § 455(a) contention. A party alleged that the trial judge was required to recuse himself because, *inter alia*, "the judge presiding over this case ... has known the opposing counsel since he was a kid and that the judge presiding over this case was friends of opposing counsel and opposing counsel's father ...." *Henderson*, 901 F.2d at 1295. We recognized that these circumstances did not require disqualification under § 455 and that "even the most superficial research would have put [counsel] on notice that the factual circumstances he alleged were not grounds for recusal .... The trial judge was well within his discretion in finding that the motion for recusal was not well founded, either in fact or in law." *Id.* at 1296.

County, 517 F.2d 1044, 1051-52 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976).[16] *See also Delesdernier*, 666 F.2d at 121 ("... it might legitimately be asked whether the spectacle of an attorney dragging his opponent through a long and costly proceeding, only to conclude by moving for disqualification of the judge, is not equally detrimental to public impressions of the judicial system").[17]

C.

Contending that these appeals are frivolous, Travelers seeks sanctions against the Liljebergs.[18] A frivolous appeal is one

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[16] *See also, e.g., Chitimacha Tribe of La.*, 690 F.2d 1157 (judge not required to recuse himself where some defendants were related to members of the judge's former law firm); *Parrish v. Board of Comm'rs of Ala. State Bar*, 524 F.2d 98 (5th Cir. 1975) (en banc) (fact that judge had acquaintanceship or friendship with some defendants, witnesses, and defense counsel did not require recusal), *cert. denied*, 425 U.S. 944 (1976); *Warner v. Global Natural Resources PLC*, 545 F. Supp. 1298 (S.D. Ohio 1982) (judge not required to recuse himself due to acquaintanceship between plaintiff and judge, and fact that plaintiff had supported judge's nomination to the bench).

[17] The denials of the Liljeberg's other motions, which are raised as issues here, *see* note 4, *supra*, do not constitute an abuse of discretion.

[18] The Liljebergs challenge the district court's award of costs, expenses and attorneys' fees. The district court imposed these sanctions under 28 U.S.C. § 1927, which, pursuant to its plain terms, applies only to attorneys, not the parties in the litigation. *Browning v. Kramer*, 931 F.2d 340, 344 (5th Cir. 1991). Thus, the sanctions were not imposed against the Liljebergs. Additionally, the district court's order only imposed sanctions; it did not quantify the amount. Therefore, even if the Liljebergs were liable, this court would lack jurisdiction because the award of attorneys' fees, without an amount certain, is not a final order. *Southern Travel Club, Inc. v. Carnival Air Lines, Inc.*, 986 F.2d 125, 131 (5th Cir. 1993) ("an order awarding attorney's fees or costs is not reviewable on appeal until the award is reduced to a sum certain"). While these appeals were pending, the district court, in the Partnership Litigation, quantified § 1927 sanctions

which "involves legal points not arguable on their merits." *Olympia Co. v. Celotex Corp.*, 771 F.2d 888, 893 (5th Cir. 1985) (quoting *Hagerty v. Succession of Clement*, 749 F.2d 217, 221-22 (5th Cir. 1984), *cert. denied*, 474 U.S. 968 (1985)), *cert. denied*, 493 U.S. 818 (1989). The instant appeals were simply another dilatory and harassing tactic, with little concern for the resolution of the conflict. Sanctions are most appropriate; in fact, compelled. *Ratcliff v. Texas*, 714 F.2d 24, 25 (5th Cir. 1983) (sanctions warranted when prosecution of appeal was for the purpose of harassment or out of sheer obstinacy). Accordingly, we impose sanctions pursuant to Fed. R. App. P. 38 against John A. Liljeberg, Jr., and Robert Liljeberg in the amount of double costs and damages of $1,000; and, pursuant to 28 U.S.C. § 1927, against their counsel, Kenneth C. Fonte, in the amount of $2,000.[19]

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against the Liljebergs' attorney. This quantification is the subject of *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, No. 94-30272 (5th Cir. Nov. 21, 1994), which we also decide today.

[19] According to its plain terms, sanctions imposed under 28 U.S.C. § 1927 can only be for "excess costs, expenses, and attorneys' fees reasonably incurred because of ... [unreasonable and vexatious] conduct." Pursuant to § 1927, because these appeals "multip[ly] the proceedings in [these] case[s] unreasonably and vexatiously", all of the expenses incurred by Travelers for these appeals, to include attorneys' fees, are "excess". Based upon our familiarity with these appeals, the § 1927 papers filed in district court, the brief filed for Travelers, and the fact that it participated in oral argument, we are quite confident that its reasonable attorneys' fees exceeded $3,000, the total of the Rule 38 damages and § 1927 sanctions. For a more complete discussion of § 1927 sanctions, see the above referenced, related opinion rendered today, in which we affirmed the district court's imposition of such sanctions against Kenneth C. Fonte in one of the three cases from which these appeals were taken.

III.

Accordingly, for the foregoing reasons, we AFFIRM the denial of the Rule 60(b)(6) motions, and impose sanctions.

AFFIRMED; SANCTIONS IMPOSED

U.S. COURT OF APPEALS
FILED
DEC - 1 1994
CHARLES R. FULBRUGE III
CLERK

U.S. COURT OF APPEALS
RECEIVED
DEC 0 1 1994
NEW ORLEANS, LA.

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BILL OF COSTS

NOTE: The Bill of Costs is due for filing in this office *within 14 days from the date of the opinion,* in accordance with Rule 39 F.R.A.P. If a bill of costs is not timely filed in this office, processing can be accomplished only by the filing of a formal motion for leave to file same out of time.

The Travelers Insurance Company v. St. Jude Hospital of Kenner, La., et al. No. 93-3832, c/w 93-3833 c/w 93-3891

The Clerk is requested to tax the following costs against: Defendant/Appellants, St. Jude Hospital of Kenner, La., et al.

COSTS TAXABLE UNDER FRAP & LOCAL RULES 39	REQUESTED				ALLOWED (If different from amount requested)			
	No. of Copies	Pages Per Copy	Cost per Page*	Total Cost	No. of Documents	Pages per Document	Cost per Page*	Total Cost
Docket fee ($100.00)								
Appendix or Record Excerpts	9	73	$.25	$164.25	9	73	.25	164.25
Appellant's Brief								
Appellee's Brief	12	55	$.25	$165.00	12	55	.25	165.00
Appellant's Reply Brief								
Other:			Subtotal	$329.25				
** Costs are doubled pursuant to the Court's Order of 11/21/94				Total $ 658.50**				Costs are taxed in the amount of $ 329.25

Double Costs
Costs are hereby taxed in the amount of $ 658.50 this 13th day of December, 1994

CHARLES R. FULBRUGE III, CLERK

By Debbie Nadeau
Deputy Clerk

State of
County of Orleans

I Brent B. Barriere, do hereby swear under penalty of perjury that the services for which fees have been charged were incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this Bill of Costs was this day mailed to opposing counsel, with postage fully prepaid thereon. This 1st day of December, 1994.

B B Barriere
(Signature)

Attorney for The Travelers Insurance Company

*SEE REVERSE SIDE FOR LOCAL & FRAP RULES GOVERNING TAXATION OF COSTS

OP-JCT-7

7

2. Mr. Liljeberg indicated that he would like the existing Board of Directors restructured.

3. Mr. Liljeberg indicated that he would like for AMI to consider leasing his 1122 for his outpatient imaging center and breast diagnostic center.

4. Mr. Liljeberg requested an expansion of the Hospital pharmacy space of 1,500 square feet.

5. Mr. Liljeberg requested a financial statement regarding the amounts applied thus far toward principle and interest for the hospital loan payments.

6. Copies of all medicare cost reports.

7. Mr. Liljeberg indicated that since AMI is required to insure the hospital building, he was not satisfied that the property/casualty insurance was written through an indemnity company licensed in Louisiana. We are presently researching this issue.

Mr. Liljeberg further indicated that he would negotiate with only with Wally Weisman or Gene Burleson and would not negotiate in the presence of attorneys associated with the Jones, Walker Law Firm, specifically Harry Hardin and Dirk Wegmann, but would negotiate only in the presence of AMI Corporate Counsel. He further indicated that his negotiating team would consist of John Liljeberg, Robert Liljeberg and his attorneys, Jim Cobb and Jack Stolier. In addition, he requested that these negotiations be tape recorded and that a court reporter be present and that these expenses be shared equally. Furthermore, he indicated that he would like those present to have the ability to bind the company "at the table" assuming satisfactory settlement was reached.

Donna, Mr. Liljeberg was adamant about negatively impacting AMI if these issues could not be resolved through settlement efforts and indicated his intentions to cause a "public movement" against AMI involving both mayorial and city council resolutions, key community leader and physician support against AMI. He indicated that he would enlist civic organizations, federal, state and parish politicians, and even the Catholic Church in his effort to discredit AMI.

The one issue that causes us the greatest potential adverse public impact involves the inability to document the $9,000,000 dollar difference regarding the construction cost of the hospital. Mr. Liljeberg indicated that he would expose the "Medicare cost pass through" issue to the national media

AUG 12 96 00 26 92

because of our inability to document this $9,000,000 difference yet these dollars are being passed through via the Medicare cost reports. While I am sure that these documents exist somewhere, the implication that we are being reimbursed for expenditures which we cannot document clearly would impune our image and create an issue which would be difficult to immediately defend.

Donna, please advise if I may be of any further assistance regarding these issues. Thank you.

jf

AUG 12 96 002693

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-3891

D.C. Docket No. CA 93 173 I

U.S. DISTRICT
EASTERN DISTRICT OF L...
FILED DEC 14 1994
LORETTA G. ...

NOV 21 1994
CHARLES R. FULBRUGE III
CLERK

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

versus

ST. JUDE HOSPITAL OF KENNER
LOUISIANA, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Louisiana

Before HIGGINBOTHAM, JONES and BARKSDALE, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the district court in this cause is affirmed. IT IS FURTHER ORDERED that sanctions are imposed pursuant to Fed. R. App. P. 38 against John A. Liljeberg, Jr. and Robert Liljeberg in the amount of double costs and damages of $1,000.00; and pursuant to 28 U.S.C.§1927, against their counsel, Kenneth C. Fonte, in the amount of $2,000.00

November 21, 1994

ISSUED AS MANDATE: DEC 13 1994

EXHIBIT
"J"

A true copy
Fifth
Circuit
Carol G. Le Sage

U.S. COURT OF APPEALS
FILED
NOV 2 1 1994
CHARLES R. FULBRUGE III
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3832

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

VERSUS

LILJEBERG ENTERPRISES, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana

****

No. 93-3833

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

VERSUS

ST. JUDE HOSPITAL, OF KENNER, LOUISIANA, INC., ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana

****

No. 93-3891

TRAVELERS INSURANCE COMPANY,

Plaintiff-Appellee,

VERSUS

ST. JUDE HOSPITAL OF KENNER, LOUISIANA, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana

Before HIGGINBOTHAM, JONES, and BARKSDALE, Circuit Judges.

RHESA HAWKINS BARKSDALE, Circuit Judge:

At issue in these three related actions are the use of belated and extremely intemperate post-judgment motions, filed pursuant to Fed. R. Civ. P. 60(b)(6), seeking, primarily because of the trial judge's club memberships and other social contacts, to disqualify him under 28 U.S.C. § 455(a) (judge's "impartiality might reasonably be questioned"), and, therefore, to set aside the adverse judgments. The district court denied the motions as being untimely, and, alternatively, without merit. We AFFIRM and impose sanctions.

I.

Once again, this court has before it another of the continuing disputes between the Liljebergs and Travelers Insurance Company. The background to the three actions before us was developed in our earlier decisions in *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 7 F.3d 1203 (5th Cir. 1993), *aff'g in part* 799 F. Supp. 641 (E.D. La. 1992); *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, 21 F.3d 1107 (5th Cir. 1994) (No. 92-9579; unpublished); and *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, No. 93-3731, slip op. 581 (5th Cir. Oct. 25, 1994). We develop the time line only as necessary to clarify and focus the common issue in these three related appeals.

A.

In June 1990, Travelers filed suit against the St. Jude Medical Office Building Limited Partnership (Partnership) and other defendants seeking, *inter alia*, the seizure and judicial sale of the St. Jude Medical Office Building (Partnership Litigation).[1]

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[1] In addition to the Partnership, other defendants were St. Jude Hospital of Kenner, Louisiana, Inc. (SJH); Liljeberg Enterprises, Inc. (LEI); Krown Drugs, Inc. (Krown); John A. Liljeberg, Jr.; and Robert Liljeberg. SJH, Krown, and LEI are related entities, each formed, owned and controlled by the Liljebergs. Accordingly, references in this opinion to the Liljebergs include not only John and Robert Liljeberg, but also their entities.

Together with the seizure and sale of the building, Travelers also sought: unpaid rents from tenants Krown and LEI under their respective leases; joint liability of the Partnership for the unpaid rents of affiliates Krown and LEI due to the Partnership's consistent misrepresentations of timely collection of their rents; compensation for the destruction of improvements; the seizure and sale of movables surreptitiously removed from the building; and reimbursement for the cost of installing another storm and sewerage system in response to the Liljebergs' threats to block the existing

Following a jury trial, an amended judgment for Travelers was entered in December 1992; the Liljebergs appealed. On October 1, 1993, while the appeal was pending, the Liljebergs moved under Rule 60(b)(6) to have the judgment vacated,[2] claiming that, primarily because of his social contacts, United States District Judge Henry A. Mentz, Jr., violated 28 U.S.C. § 455(a) by failing to disqualify himself from the action although he knew, or should have known, that his impartiality might reasonably be questioned. The denial of the motion was appealed (No. 93-3833). As for the earlier appeal of the underlying judgment, our court affirmed the Liljebergs' liability on April 20, 1994; the determination of prejudgment interest was reversed and remanded. *Travelers*, 21 F.3d 1107 (unpublished).

B.

On August 13, 1992, in a related action, summary judgment was awarded Travelers to enforce two leases against Liljeberg Enterprises, Inc. (LEI Litigation). *Travelers*, 799 F. Supp. 641. LEI appealed; and, as in the Partnership Litigation, it filed the same 60(b)(6) motion on October 1, 1993, which the district court denied. Following that denial, but before LEI filed this appeal

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one.

[2] Fed. R. Civ. P. 60(b) provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason justifying relief from the operation of the judgment.

(No. 93-3832), our court affirmed the underlying summary judgment. *Travelers*, 7 F.3d 1203.

C.

When Travelers was unsuccessful in its efforts to collect the Partnership Litigation judgment, it sued the general partner, St. Jude Hospital of Kenner, Louisiana, Inc. (SJH Litigation). On July 30, 1993, summary judgment was awarded Travelers; and, SJH appealed the denial of its *res judicata* claim. Unlike the first two actions, SJH waited until November 2, 1993, to file essentially the same 60(b)(6) motion. *See* notes 4-5, *infra*. It appealed the denial (No. 93-3891). We recently affirmed the underlying summary judgment. *Travelers*, No. 93-3731, slip op. 581.

II.

At issue for all three appeals from the denials of the Rule 60(b)(6) motions is whether the district judge abused his discretion in refusing, post-judgment, to recuse himself pursuant to § 455(a).[3] That section provides in relevant part: "Any ...

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[3] Although all three 60(b)(6) motions were filed while appeals from the underlying judgments were pending, the district court had jurisdiction to consider the motions. Generally, when an appeal is taken, the district court is divested of jurisdiction except to take action in aid of the appeal until the case is remanded to it by the appellate court, or to correct clerical errors under Rule 60(a). 7 James W. Moore et al., Moore's Federal Practice, ¶ 60.30[2]. Our court recognizes, however,

> the power of the district court to consider on the merits and deny a 60(b) motion filed after a notice of appeal, because the district court's action is in furtherance of the appeal. When the district court is inclined to grant the 60(b) motion, however, then it is necessary to obtain the leave of the court of appeals. Without obtaining leave, the district court is without jurisdiction, and

judge ... of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). A party seeking such disqualification "must show that, if a reasonable man knew of all the circumstances, he would harbor doubts about the judge's impartiality." *Matter of Billedeaux*, 972 F.2d 104, 105 (5th Cir. 1992) (quoting *Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157, 1165 (5th Cir. 1982) (citations omitted), *cert. denied*, 464 U.S. 814 (1983)).

Although § 455 does not speak to vacating a judgment, Rule 60(b)(6), in conjunction with § 455, does provide "a procedure whereby, in appropriate cases, a party may be relieved of a final judgment." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 (1988). But, it goes without saying that a Rule 60 motion is not a substitute for an appeal from the underlying judgment. Accordingly, denial of a 60(b)(6) motion is reviewed only for abuse of discretion.[4] *E.g.*, *Williams v. Brown & Root, Inc.*, 828 F.2d

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cannot grant the motion.

Willie v. Continental Oil Co., 746 F.2d 1041, 1046 (5th Cir. 1984) (citations omitted), *vacated*, 760 F.2d 87 (5th Cir. 1985), *rev'd on other grounds*, 784 F.2d 706 (5th Cir. 1986) (en banc); *accord Lairsey v. Advance Abrasives Co.*, 542 F.2d 928, 932 (5th Cir. 1976).

[4] In addition to the 60(b)(6) motions, the Liljebergs filed motions seeking to amend (expand) the statement of facts in the first two cases; the disqualification of Judge Mentz from considering the 60(b)(6) motions; and an evidentiary hearing. As with a 60(b)(6) motion, the district court is given broad discretion in ruling on these motions, and will be affirmed absent an abuse of that discretion. *E.g.*, *Matter of Hipp, Inc.*, 5 F.3d 109, 116 (5th Cir. 1993). *See* note 17, *infra*.

325, 328 (5th Cir. 1987). Therefore, "[i]t is not enough that the granting of relief might have been permissible, or even warranted -- denial must have been so *unwarranted* as to constitute an abuse of discretion." *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981).

The lengthy, unsworn, and extremely intemperate (if not contemptuous) recitation of "facts" in support of the 60(b)(6) motions boils down primarily to assailing the judge's social contacts; essentially, that several attorneys from two law firms representing Travelers (to include the one representing it in these actions), as well as a director of its parent company, are members, with Judge Mentz, of The Boston Club of New Orleans.[5] These

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[5] The club is described by the Liljebergs as "an exclusive private club", which "has a reputation in the New Orleans area community as an elitist social clique". Whether the Boston Club is a "private club" under Chapter 40C of the City Code of New Orleans is at issue before our court in *Louisiana Debating and Literary Assoc. v. City of New Orleans*, No. 94-30180 (5th Cir. argued Nov. 1, 1994).

Other social ties of Judge Mentz which the Liljebergs assail include: membership in a "most secretive and exclusive carnival organization"; membership in Le Debut, a "private social club which selects and presents debutantes for introduction into New Orleans elite society"; membership in the Royal Society of St. George, which the Liljebergs contend "practices discrimination in the selection of ordinary members on the basis of national origin-an ordinary member must be of English birth or descent"; inclusion in The Social Directory of New Orleans, which lists an "aristocracy of merit" and includes "active and distinguished members of the social scene and/or members of old line families"; familial relationship to the director of Travelers' parent company (the brother of the judge's son-in-law (now, former, *see* note 12, *infra*) is married to the director's daughter); and his wife's and daughter's membership, together with wives of members of the two law firms, in an "exclusive private club for women", The Orleans Club, whose purpose is "'to associate into closer bonds of unity' women whose interests comprise the social, professional and financial affairs of New Orleans".

contacts supposedly create a situation in which a reasonable person would question the judge's impartiality, mandating disqualification and vacation of the judgments.[6]

Each of the two 60(b)(6) motions filed on October 1 included an unsworn 104 paragraph statement of material facts in support. One month later, when the Liljebergs sought to disqualify Judge Mentz from considering those motions and also filed the 60(b)(6) motion for the third action, their allegations ballooned into over 160 paragraphs. As noted, most of these "facts" fall in the category of intemperate accusations, inapposite references, and innuendos. For example, the Liljebergs describe at length the legal fees that Travelers paid to the two law firms during the years 1990-1993, and how these fees ranked when compared to the total legal fees paid by Travelers for each year. As another example, when the "facts" expanded to 166 paragraphs, the Liljebergs listed various people, including Judge Mentz, who were listed in The Social Directory of New Orleans.

The Liljebergs further attack Judge Mentz in the motions, claiming that while the cases were before his court, Judge Mentz "sought appointment to" this court, and that two of the partners of the law firm representing Travelers "had a reputation in the New Orleans area community as being ... influential Republican Party patron[s] who had significant contact with party officials responsible for making recommendations for federal appointments." The Liljebergs then intimate improper actions on the part of Judge Mentz and one of those two partners by claiming that, during a recess in the Partnership Litigation, the lawyer (then the United States Attorney) "visited privately with [Judge Mentz] in the court's chambers."

[6] Because we are reviewing the denials of Rule 60(b)(6) motions for abuse of discretion, we do not reach the § 455(a) merits as we would on a direct appeal from a judgment. This notwithstanding, it appears that the reasons given for disqualification are totally without merit; indeed, they are almost laughable. What is not humorous is the attack on the district court and the great waste of judicial time and resources, not to mention the cost to Travelers, caused by the 60(b)(6) motions and these appeals. The allegations speak volumes about the apparent vendetta engaged in by the Liljebergs, and their attorney, Kenneth C. Fonte, against Judge Mentz. This is best exemplified by the recent release of a song, on compact disc, written and performed by Mr. Fonte, entitled "King Henry"; it is nothing more than a personal and extremely unprofessional attack on Judge Mentz. (Shortly before oral argument in late August 1994, Travelers moved that we take judicial notice of this song; in opposition, Mr. Fonte admitted that it was written and recorded in May 1994. The motion was carried with the

The Liljebergs contend that they did not have any knowledge of the club membership until July 23, 1993, almost a year after the

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case; obviously, it is GRANTED.)

For example, the song states that Judge Mentz "grants favors to his friends in the social scene"; is "a slave to aristocracy"; will "lift the blindfold of justice [f]or fraternal fantasy"; and "believes that the Constitution [m]ust yield to noblesse oblige". No doubt, some of the lyrics are fairly clever. At best, they are biting satire. But, they were not written by a folksinger or balladeer. They were penned by a lawyer, an officer of the very court being ridiculed, who had been unsuccessful repeatedly in these actions in that court.

Contending that the song "expressly concerns criticism of official conduct of an officer of the federal government", Mr. Fonte claims protection under the First Amendment. Without addressing his contention, we remind him that "once a lawyer is admitted to the bar, although he does not surrender his freedom of expression, he must temper his criticisms in accordance with professional standards of conduct." *United States Dist. Court v. Sandlin*, 12 F.3d 861, 866 (9th Cir. 1993). He should also note that

> [t]he Louisiana Supreme Court recently approved the Code of Professionalism. Article 7 of that Code continues to emphasize that an attorney "should not engage in personal attacks on other counsel *or the court*." A lawyer's conduct should be characterized *at all times* by personal courtesy and professional integrity embodied in this Code.

Fox v. LAM, 632 So. 2d 877, 879 (La. App. 2d 1994) (emphasis added).

That a lawyer, an officer of the court, would stoop to this sort of conduct reflects a gross lack of understanding of professional conduct and the role that lawyers should play in assisting to uphold the dignity of the courts. To engage in heaping such ridicule on a federal judge undermines the position that the federal courts must hold in our system of government; the object harmed is not the judge, but the very system of justice on which the attorney and his clients depend. It is a sad day indeed when a lawyer's concept of his role and duty as a lawyer and officer of the court is so misguided. Mr. Fonte has stepped far, far beyond the pale.

first two judgments and one week before the third (SJH Litigation).[7] This contention, however, was unsupported by an affidavit or other evidentiary basis.[8] Upon discovery of these circumstances, the Liljebergs never mentioned their concern to Judge Mentz or to Travelers. Instead, they sat passively while Judge Mentz entered judgment in the third case.[9] Only after being

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[7] In denying the motions, Judge Mentz stated that he had disclosed his membership in the Boston Club during his confirmation process (he was appointed in 1982), and had listed it since 1984 in the Almanac of the Federal Judiciary. Although the Liljebergs characterize this publication as "esoteric" and as one "more likely than not most lawyers have never heard of ... and fewer still have bothered to peruse", another court has described it as "a publication widely circulated to the bench and bar". *Standing Comm. on Discipline of the United States Dist. Court for the Cent. Dist. of Cal. v. Yagman*, 856 F. Supp. 1395, 1397 (C.D. Cal. 1994).

[8] Unlike 28 U.S.C. § 144 (requiring an affidavit when seeking recusal based on bias or prejudice), an affidavit is not required to seek disqualification under § 455. Nevertheless, we are still troubled that certain parties may abuse § 455 for a dilatory and litigious purpose based on little or no substantiated basis. *See Delesdernier v. Porterie*, 666 F.2d 116, 121 (5th Cir.) ("Congress did not enact § 455(a) to allow counsel to make a game of the federal judiciary's ethical obligations; we should seek to preserve the integrity of the statute by discouraging bad faith manipulation of its rules for litigious advantage."), *cert. denied*, 459 U.S. 839 (1982).

On the other hand, in making the 60(b)(6) motions, and concerning the key issue of timeliness, the Liljebergs were obviously required, but failed, to support their motions with affidavits or other sworn proof that they did not know of Judge Mentz's club membership prior to July 23, 1993. *E.g., Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 683 (7th Cir.) (a party is required, with affidavits, to support a 60(b) motion to vacate an arbitration award when it claims a lack of prior knowledge of a former relationship between an adversary and an arbitrator; the party must negate any inference that it had implicitly consented to go before the arbitrator knowing all it now knows but saying nothing), *cert. denied*, 464 U.S. 1009 (1983).

[9] The Liljebergs maintain that upon learning of the club memberships, their counsel "commenced an investigation of the social ties among those persons to determine whether Judge Mentz

unsuccessful in that case did they seek recusal in all three. The district court denied the motions on two alternate grounds: untimely, and without merit. We address each basis.

A.

The first issue is whether the motions were untimely. Rule 60(b)(6) empowers federal courts with broad authority to relieve a party from a final judgment. *Liljeberg*, 486 U.S. at 863; *Klapprott v. United States*, 335 U.S. 601, 613 (1949). Moreover, a 60(b)(6) motion is not subject to the one year limitation imposed upon subparts (1) through (3). Instead, a party seeking 60(b)(6) relief must file the motion within a "reasonable time", *Liljeberg*, 486 U.S. at 863, which depends upon the particular facts and circumstances of the case. *First RepublicBank Fort Worth v. Norglass, Inc.*, 958 F.2d 117, 119 (5th Cir. 1992); *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981) ("What constitutes 'reasonable time' depends on the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties").

Because the Liljebergs rely upon § 455(a) for invoking Rule 60(b)(6), we consider also § 455(a)'s requirements in determining whether the motions were timely. *See Goldfine v. United States*,

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had violated 28 U.S.C. § 455(a)." In addition, they "commissioned and secured the performance of a sociological study to objectively evaluate public perception of the appearance of impropriety associated with the exclusive private club membership" of Judge Mentz and other New Orleans attorneys. Needless to say, without commenting on the propriety *vel non* of such a poll, this is not the legal standard by which a § 455(a) disqualification is judged.

326 F.2d 456, 457-58 (1st Cir. 1964) (a litigant who seeks a 60(b) vacation based on lack of notice must act within the period he would have had to have originally acted upon receiving actual notice). Our court has recognized that a timeliness requirement applies to raising § 455(a) disqualification. *Delesdernier*, 666 F.2d at 121-23. Furthermore, it is well-settled that -- for obvious reasons -- one seeking disqualification must do so at the earliest moment after knowledge of the facts demonstrating the basis for such disqualification. *Id.* at 121 n.3; *United States v. Patrick*, 542 F.2d 381, 390 (7th Cir. 1976), *cert. denied*, 430 U.S. 931 (1977); *Marcus v. Director, Office of Workers' Compensation Programs, U.S. Dep't of Labor*, 548 F.2d 1044, 1051 n.21 (D.C. Cir. 1976) (citing cases stating the general rule that one must raise the issue of disqualification of the trier, whether judge, administrator, or arbitrator, at the earliest practicable moment after relevant facts become known).

The district court did not abuse its discretion in rejecting all three motions as untimely. As noted, upon allegedly discovering on July 23, 1993, the primary basis for their motions, the Liljebergs failed to mention their concern to the judge or to Travelers. In fact, they not only waited until Judge Mentz entered judgment in the third case (SJH Litigation), but delayed even longer. In the SJH Litigation, after the district court entered judgment on July 30, the Liljebergs (specifically, SJH) on August 9, 1993, moved for a new trial or to alter the judgment, which they subsequently supplemented with another motion to vacate judgment.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

408

No. 96-31098

U.S. COURT OF APPEALS
FILED
OCT 28 1996
CHARLES R. FULBRUGE III
CLERK

In Re: LIFEMARK HOSPITALS OF LOUISIANA INC

Petitioner

Petition for Writ of Mandamus to the United States District Court for the Eastern District of Louisiana, New Orleans

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Before GARWOOD, JOLLY and DENNIS, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the petition for writ of mandamus is

DENIED

ited States Court of Appe

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

October 28, 1996

Ms Loretta Whyte, Clerk
Eastern District of Louisiana, New Orleans
United States District Court
500 Camp Street
Room C-151
New Orleans, LA 70130

No. 96-31098 In Re: Lifemark Hosp
USDC No. 93-CV-1794-T
93-CV-4249-T
95-CV-2922-T
95-CV-3993-T

Enclosed is a certified copy of the judgment issued as the mandate.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: Connie Boersma
Connie Boersma, Deputy Clerk

cc: w/encl:
Mr Miles Paul Clements
Mr Joseph N Mole
Mr Kenneth A Mayeaux
Mr Michael Raudon Phillips
Ms Stephanie A May
Hon Thomas G Porteous Jr

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
MAR 11 4 21 PM '97
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	~~C/W 93-4249~~
VERSUS	*	C/W 95-2922
	*	C/W 94-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

EX PARTE MOTION OF LIFEMARK HOSPITALS OF LOUISIANA, INC. TO ENROLL ADDITIONAL COUNSEL OF RECORD

Now into Court, through undersigned counsel, comes Lifemark Hospitals of Louisiana, Inc. and moves to enroll Don C. Gardner as additional counsel of record on its behalf in the above-captioned consolidated civil actions.

Joseph N. Mole, T.A. (La. #09538)
Kenneth A. Mayeaux (La. #17674)
Michael R. Phillips (La. #21020)
FRILOT, PARTRIDGE, KOHNKE
& CLEMENTS, L.C.
3600 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-3600
Telephone: (504) 599-8000

DATE OF ENTRY MAR 13 1997

008585

FEE
PROCESS
DKT
CTRMDEP
DOC. NO. 389

HP Exhibit 60(a)

Don C. Gardner (La. #5923)
6380 Jefferson Highway
Harahan, LA 70023
Telephone: (504) 737-6651

ATTORNEYS FOR LIFEMARK
HOSPITALS OF LOUISIANA, INC.

CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing pleading on this 11th day of March, 1997 by United States mail, properly addressed, and first class postage prepaid on all counsel of record.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	*	CIVIL ACTION
	*	NO. 93-1794
	*	C/W 93-4249
VERSUS	*	C/W 95-2922
	*	C/W 94-3993
LILJEBERG ENTERPRISES, INC.	*	SECTION "T"

* *

ORDER

Considering Lifemark Hospitals of Louisiana, Inc.'s foregoing Ex Parte Motion to Enroll Additional Counsel of Record, it is hereby

ORDERED that Don C. Gardner be and hereby is permitted to enroll as additional counsel of record on behalf of Lifemark Hospitals of Louisiana, Inc.

New Orleans, Louisiana, this 12th day of March, 1997.

UNITED STATES DISTRICT JUDGE

008587

HP Exhibit 60(b)

CASE: 2:93-cv-01794
DOCUMENT: 387
DATE: 03/13/97

CLERK: dp

Notices sent to:

Don Richard by fax to 504-568-0783
Douglas Draper by fax to 504-525-3761
Kenneth Fonte by fax to 504-849-2615
Jacob Amato by fax to 504-362-5168
Leonard Levenson by fax to 504-586-0079
Hans Liljeberg by fax to 504-885-3600
John Flowers by mail.
Gary Ruff by mail.
Joseph Mole by fax to 504-599-8100
Don Gardner by mail.
Brent Barriere by fax to 504-568-9130
Michael Fawer by fax to 504-525-2205
Mack Barham by fax to 504-525-6378
William Wessel by mail.
William Christovich by fax to 504-561-5743
Charles Stern by fax to 504-582-1240
Moise Steeg by fax to 504-582-1240

Number of pages to Scan/Fax: 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	Nos. 93-CV-1794 C/W 93-CV-4249 C/W 94-CV-3993 C/W 95-CV-2922
-versus	
LILJEBERG ENTERPRISES, INC.	New Orleans, Louisiana Thursday, July 17, 1997 10:00 a.m.

VOLUME XIII
BEFORE THE HONORABLE G. THOMAS PORTEOUS
UNITED STATES DISTRICT JUDGE PRESIDING

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer.

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* * *

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PROCEEDINGS

THE DEPUTY CLERK: All rise.

THE COURT: Call your next witness.

MR. MOLE: May I ask the Court for a schedule? We understand you intend to go to five and no later?

THE COURT: No later.

MR. MOLE: Then we would call Mr. Faucheaux, please.

THE COURT: If you believe he will take the remainder of the day, you can excuse any other witness she has.

MR. MOLE: It will be close and we might as well let her go.

(WHEREUPON, STEVE J. FAUCHEAUX was called as a witness by the Defense, and having been duly sworn testified as follows.)

THE COURT: State your name and spell it for my Court Reporter.

THE WITNESS: Steve J. Faucheaux, F-A-U-C-H-E-A-U-X.

DIRECT EXAMINATION

BY MR. MOLE:

Q What is your position with the hospital?

A I'm an administrative pharmacist at the hospital.

Q At the Kenner Regional Medical Center?

A Kenner Regional.

Q Where did you get your pharmacy degree?

A I obtained my pharmacy degree in 1974 from Xavier

University in New Orleans, and my master's in health administration from Tulane University.

Q And when were you hired at Kenner Regional Medical Center?

A January of 1994.

Q And, to your knowledge, was there anybody who held the job of administrative pharmacist before you?

A No.

Q Could you tell the Court, to the best of your recollection, what was your job? What were you hired to do?

A When I arrived at Kenner Regional, I was given a copy of the contract, the Clinical Pharmacy Management Agreement. I was given a contract book of the current prime vendor wholesale contract book and a personal computer and I was told to try and go through and organize some type of payment system where we could be assured we were paying the correct amounts of the drugs that were dispensed from pharmacy.

Q From the Liljeberg Enterprises pharmacy in the hospital?

A Correct.

Q Was it your understanding you were to be dealing on monthly, even more frequently on some bases, bills from the pharmacy?

A On a monthly basis, yes.

Q And can you describe for the Court, briefly, what was the billing system or process that was in place that you found when you arrived in January 1994?

A I was in close contact with Ms. Gunther from the accounting department and she showed me a normal monthly billing, which consisted of about six invoices with different titles and totals on it. And I was told that, that they had no one that could differentiate with what the invoices was so they paid off the invoice.

Q Was there any backup for the invoices?

A I think on the reconciliations, I think they had backups, but the main billing process had no backup other than figures.

Q Just a lump sum invoice?

A Correct.

Q Did you have any understanding when you started work that the Fourth Circuit Court of Appeals, Louisiana, had recently rendered a decision as to a new payment formula that was going to be enacted?

A Yes, I was.

Q Did you have any role with respect to that process?

A Well, when I arrived the process had already started, and I was told to call the accountants, who was Peat Marwick that we were dealing with, and they had already started the process of identifying the prices on the HPIs so they could adjust it for the additional cost we would be adding onto it.

Q Prior to becoming the administrative pharmacist at the Kenner Regional Medical Center, had you worked in hospital pharmacy before?

started with a base HPI, you know, that had all their figures in it that they had generated prior to my arrival. Since that time they've been changing back and forth and that's my only way of knowing what they're charging. And if they agree, I put it in; and if I don't, I put in my HPI. And that's the spreadsheet -- I had their HPI, as well as my HPI, because we disagree on most of them.

THE COURT: I got one. I got one.

THE WITNESS: One of the spreadsheets, I will show you. One of the old ones had it, but it's organized. "LHL's reimbursement and LEI's reimbursement."

THE COURT: March 1997. That converts to HPI rate?

THE WITNESS: That's the HPI rate. You see, some we agree on and some we don't.

THE COURT: I got you.

THE WITNESS: And I even say where it comes from; if it's from an invoice, I indicate it in column 3 and 4; or if it's on contract, "CONT," and I show the differences and that's what all those other columns are.

THE COURT: All right.

MR. MOLE: Judge, before Mr. Faucheaux steps down, I would like to ask him a follow-up question.

THE COURT: Oh, no. You can forever to forget to ask him a follow-up question.

THE COURT: Judge, with all due respect, I would like

to object. Your examination of the witness went beyond the scope of what is allowed under Rule 614.

THE COURT: Counselor, you can put this on the record outside of my presence.

From here forward, we'll have ever "i" dotted and every "t" crossed. Put it on the record. I'm in recess.

MR. MOLE: Thank you, Your Honor.

* * *

THE COURT: Let the record reflect I've only used the exhibits that were used by counsel during examination. Once an exhibit is introduced into this record and they don't question it, does not mean that the issue of what is contained on these documents, since they were never explained, is not for the Court to ask about.

(WHEREUPON, the Honorable G. Thomas Porteous exited the courtroom at this time.

FURTHER, this matter was recessed to Monday, July 21, 1997, at 10:00 a.m.)

* * *

REPORTER'S CERTIFICATE

I, Elizabeth C. Spong, CCR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

Elizabeth C. Spong, CCR
Official Court Reporter

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED OCT 10 1997
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC.	NOS. 93-CV-1794 C/W 93-CV-4249 C/W 93-CV-3993 C/W 95-CV-2922
VS.	NEW ORLEANS, LOUISIANA MONDAY, JULY 21, 1997 10:00 A.M.
LILJEBERG ENTERPRISES, INC.	SECTION "T"

VOLUME 14

TRANSCRIPT OF THE NON-JURY TRIAL
BEFORE THE HONORABLE G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT COURT JUDGE

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Proceedings recorded by mechanical stenography, transcript produced by Notereading.

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(MONDAY, JULY 21, 1997)

(MORNING SESSION - 10:00 A.M.)

(COURT CALLED TO ORDER)

THE COURT: Good morning.

(All counsel greet the Court).

THE COURT: Let me put something on the record, please.

At the close of the testimony last Thursday, an objection to my examination of a witness was raised by counsel for the Defense based on Code of Evidence Rule 614. This Court may not have allowed counsel to adequately explain his objection. Accordingly, since that time, this Court has reviewed and researched Rule 614 and feels that it is appropriate to state as follows:

1. During the course of the trial, the Court has, from time to time, asked questions of various witnesses, both for the Plaintiff LEI and the Defendant LHL. Typically, this Court has only asked those questions after questions on direct, cross and redirect examination.

2. This Court only asked a question in order to clarify an issue or help it to understand a conflicting issue or a confusing issue.

3. Since counsel objected under Rule 614, the Court must assume it is based on 614(c).

614(a), in this Court's opinion, is inapplicable since the Court did not call the witness.

614(b) simply codifies the authority of the Court to question a witness called, as in this case, by a party.

614(c) seems to indicate its applicability only with respect to jury trials, but the case law has helped this Court further evaluate its actions.

The Court has reviewed the following cases:

United States versus Paz, P-A-Z, *Uribe*, U-R-I-B-E. That case is cited at 891 Fed. 2d 396, wherein the First Circuit said, and I quote:

> "As courts repeatedly have noted, the trial judge is more than a mere moderator in a federal trial. The trial judge has the prerogative and at times the duty of eliciting facts he deems necessary to the clear presentation of issues. To this end, he may examine witnesses who testify so long as he preserves an attitude of impartiality and guards against giving the Jury an impression that the Court believes the Defendant is guilty."

Also, *Llach*, L-L-A-C-H, *versus United States*, 739 Fed. 2d 1322, wherein the Court said:

> "The Court has often stated that a judge

conducting a jury trial in a federal court is more than a mere moderator. He is the governor of the trial for the purpose of assuring its proper conduct."

Ross versus Black & Decker:

"A trial judge may not advocate on behalf of a plaintiff or a defendant, nor may he betray even a hint of favoritism towards either side. This scrupulous impartiality is not inconsistent with asking a question of a witness in an effort to make the testimony crystal clear for the jury. The trial judge need not sit on the bench like a mummy when his intervention would serve to clarify an issue for the juror."

And, finally, in *United States versus Paiva*, P-A-I-V-A, 892 Fed. 2d 148, the First Circuit said:

"In commenting on the testimony or questioning witnesses, however, the Judge may not assume the role of a witness. A judge may analyze and dissect the evidence, but he may not either distort it or add to it. If a judge exceeds the limitations on his powers to comment and to question, such action may constitute prejudicial error and require

reversal."

I have reviewed a transcript of my questions to Mr. Faucheaux. I did say at one point in time, quote, "So the doctor's instructions would be damned," closed quote. This could be interpreted by some as showing a favoritism and certainly may be inappropriate language concerning the language in *Llach* that this Court's function is to be the governor of the trial for the purpose of assuring its proper conduct.

I further quote from remarks given by Chief Justice Warren E. Berger at the American Law Institute May 18, '71, the topic being the necessity for civility. Chief Justice Berger said, and I quote:

> "Finally, civility is relevant to judges and especially trial judges because they are under greater stress than other judges and subject to the temptation to respond in kind to the insolence and bad manners of lawyers. Every judge must remember that no matter what the provocation, the judicial response must be a judicious response and that no one more surely sets the tone and the pattern for courtroom conduct than the presider."

I cite this not because there has been any showing of any insolence or bad manners in this case, but simply to reinforce my belief and the belief of Justice Berger that, again,

"no one more surely sets the tone and pattern for courtroom conduct than the presidor."

If anyone has come to the conclusion that I have any favoritism or partiality by my question, I hereby apologize to the witnesses and the parties. This record to date will show my actions, and I do not believe a reviewing court would find my actions, rulings, questions or manner during the trial actually showed any favoritism or partiality.

However, in order not to give the impression that I improperly cut off counsel for defense, I will allow him to recall Mr. Faucheaux in order to ask him any questions he believes required based on my interrogation.

In order to refocus his attention, I have prepared and hereby give to Mr. Mole a transcript of my questions and will allow him 15 minutes to review them and then he may ask any questions that he deems appropriate without further interruption by this Court.

Mr. Windhorst, give that to Mr. Mole. I will be in recess for 15 minutes.

THE CLERK: All rise.

(15-MINUTE RECESS)

PROCEEDINGS

(AFTER RECESS)

THE CLERK: Be seated.

THE COURT: Call your witness.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
2000 APR 26 A 11:40
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LIFEMARK HOSPITALS OF LOUISIANA, INC., ET AL.	**CIVIL ACTION**
	NO. 93-1794 c/w
VERSUS	**93-4249**
	95-2922
LILJEBERG ENTERPRISES	**94-3993**
	SECTION "T" (2)

Plaintiff, Lifemark Hospitals of Louisiana, Inc. ("LIFEMARK" or "LHL"), Lifemark Hospitals, Inc., ("LHI"), American Medical International ("AMI") and Tenet Healthcare Corporation[1] ("Tenet") and defendant, Liljeberg Enterprises, Inc. ("LEI") have been embroiled in disputes and litigation for more than a decade. This controversy began in State Court when LEI filed a petition in the Civil District Court for the Parish of Orleans, seeking a declaratory judgment that LIFEMARK was misinterpreting the Clinical Pharmacy Management Agreement ("CPMA") in a manner which resulted in LEI receiving substantially less compensation for pharmaceuticals than it was due. On January 28, 1993, the Louisiana Fourth Circuit Court of Appeal held that the CPMA provided that LEI was entitled to receive reimbursement of its actual acquisition cost in addition to the fee per

[1] The entities are generally referred to as either LHL or AMI. Tenet is the successor by merger to AMI and, as such, is liable for the acts or debts of AMI.

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procedure. The Louisiana Supreme Court denied writs of certiorari and\or review, and the judgment became final on June 4, 1993.[2]

While the above State Court action was pending appeal, LEI filed for bankruptcy on January 27, 1993. In the course of the Bankruptcy proceedings, LEI filed a Motion to Assume the CPMA, which it had entered with LIFEMARK on February 11, 1983 as an executory contract pursuant to 28 U.S.C. Sections 1334 and 1557(d). LIFEMARK opposed LEI's motion to assume the CPMA, asserting several defenses and claims for damages. On January 7, 1994 the Bankruptcy Court ordered the claim withdrawn to the district court and consolidated with the proceedings arising from the Motion to Assume.

On August 11, 1993, prior to consolidation in the District Court, LEI initiated a Summary proceeding entitled "Supplemental Petition and Rule to Show Cause why Further Relief Should not be Granted Under the Declaratory Judgment under the Code of Civil Procedure article 1878." In that action, LEI asserted a claim against LIFEMARK for reimbursement of its cost of pharmaceuticals for the period between July 31, 1989, the last day covered by the original state court damage award, and June 3, 1993, the date on which the state court judgment became final. LIFEMARK subsequently had the entire action removed from the Civil District Court to this Court on December 28, 1993.

The entirety of the controversy, once consolidated in this Court, consists of four actions. First, Civil Action 94-3993 is LIFEMARK's action against LEI for enforcement of the renewal promissory note representing the debt incurred in connection with the construction of St. Jude

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[2] LEI, after the judgment was rendered, requested that the State Court determine its reimbursement for actual acquisition costs from August 3, 1989 to the date LHL began cost reimbursement as part of the LEI compensation under the CPMA.

Medical Center ("KRMC") in 1983-85 (now known as Kenner Regional Medical Center). LIFEMARK maintains that the note is a negotiable instrument and as a "person in possession," LIFEMARK qualifies as a "holder" entitled to enforce the note against the maker, St. Jude Hospital of Kenner, La., Inc. ("St. Jude")/LEI. Under the acceleration clause of the note, LIFEMARK maintains the note is due immediately and payable upon St. Jude's default in payment of the note since October 1994, when the hospital was sold at judicial sale. LIFEMARK argues that St. Jude's collateral assignment of rents to LIFEMARK does not satisfy St. Jude's obligation to pay monthly installments under the renewal note because St. Jude's default under either the renewal note, collateral mortgage or lease terminates St. Jude's right to apply lease payments owed it by LIFEMARK against the debt payments it owed LIFEMARK. Finally, LIFEMARK contends that its failure to timely reinscribe the collateral mortgage before Travelers recorded its judicial mortgage against St. Jude is no defense to the debt owed on the renewal note.

St. Jude denies liability on the renewal promissory note and counterclaims that LIFEMARK shall restore to St. Jude's ownership of the hospital and lessor's rights arising under the lease. LEI contends, when the renewal promissory note was executed, it provided LIFEMARK with two forms of collateral: 1) pledge of the collateral mortgage note secured by the collateral mortgage on the hospital site; and 2) pledge of basic rent on the hospital lease by an act of collateral assignment of basic rent. As a result of the Act of Pledge of the collateral mortgage note and the basic rent of the hospital lease, LIFEMARK, as pledgee, undertook a fiduciary duty to St. Jude to protect that collateral. LEI argues that LIFEMARK, as pledgor, breached its fiduciary duties to St. Jude when it failed to use reasonable care in the custody and preservation of the collateral in its possession by: 1) failing to timely reinscribe the collateral mortgage; 2) failing to restore the superiority of the rank of the collateral mortgage lost by the Pledgee's failure to timely reinscribe; 3) failing to mitigate the

harm caused by the failure to timely reinscribe; and 4) failing, as pledge holder of the right to receive basic rent, to protect the lease against dissolution or termination by the lessee resulting from acts or omissions of the pledgee.

LEI further contends that the fiduciary duty of LIFEMARK, as pledgee of the collateral mortgage note and holder of the right to receive basic rent, prohibits LIFEMARK from: 1) deliberately exploiting and exacerbating the harm caused by its own failure to timely reinscribe the collateral mortgage and engaging in any act designed to depress or minimize the price bid at judicial sale of the property encumbered by the collateral mortgage securing that note; 2) deliberately exploiting and exacerbating the harm caused by its own failure to timely reinscribe the collateral mortgage for the purpose of terminating the lease; 3) collaborating with and assisting the lessee to extinguish both the obligation to pay rent and the lease to the obligor's detriment; and 4) refusing to enforce against the lessee the duty to pay rent for the purpose of creating a default in the principal debt secured by the pledge.

Second, Civil Action 93-1794 is LEI's Motion to Assume the CPMA as an executory contract pursuant to Bankruptcy Code section 365. LEI, as a debtor under Chapter 11 of the United States Bankruptcy Code, argues that it is entitled to assume the CPMA as an executory contract if: it cures or provides adequate assurance that the trustee will promptly cure such breach; compensates or provides adequate assurance that the trustee will promptly compensate a party other than the debtor to such contract, for any actual pecuniary loss to such party resulting from such default; and provides adequate assurance of future performance under such contract.

LIFEMARK opposes LEI's motion to assume the CPMA. LIFEMARK and its successors argue that LEI's assumption of the CPMA is barred by several incurable defaults.

Third, in Civil Action 93-4249, LEI claims LIFEMARK and its successor breached and wrongfully circumvented the CPMA in bad faith by:

1. acquiring and dispensing from other sources legend drugs required by the contract to be obtained from LEI;
2. refusing to pay LEI the fee per administered dose for each dose of drugs dispensed and administered at KRMC;
3. dispensing legend drugs through any department other than the LEI pharmacy;
4. administering multiple doses of drugs from bottles, vials, bags and other containers dispensed by the LEI pharmacy without compensating LEI for each administered dose;
5. dispensing legend drugs packaged as components of kits which also include non-pharmaceutical products from departments other than the LEI pharmacy, and refusing to pay LEI the fee per administered dose;
6. dispensing contrast media through the radiology department and refusing to pay LEI the fee per administered dose;
7. failing to increase the minimum fee in accordance with CPMA 4.1(c) since September, 1995;
8. deducting charges from LEI invoices without good cause;
9. deducting a bad debt allowance from the reimbursable actual acquisition costs of drugs;
10. refusing to pay the fees of LEI for performing skilled nursing unit reviews at the hospital;
11. failing to pay LEI chemotherapy fees and TPN fees;

12. failing to fully reimburse LEI for the actual acquisition costs of drugs; and

13. failing to pay the proper additive fees on I.V. piggybacks (IVP), and large volume parenterals (LVP).

LIFEMARK denies the allegations that it breached and wrongfully circumvented the CPMA in bad faith. LIFEMARK argues that the CPMA is not an exclusive agreement. Pursuant to section 2.4 of the CPMA, LIFEMARK contends that it is only required to obtain certain pharmaceuticals for inpatients and emergency room patients from LEI. And, pursuant to section 2.6, LIFEMARK is allowed to purchase various categories of medications and supplies from suppliers other than LEI.

In Civil Action 95-2922, LEI seeks an injunction to prohibit LHL, AMI and Tenet from unlawfully dispensing legend drugs at KRMC.

Finally, Lifemark has filed a proof of claim in the LEI Bankruptcy case asserting antitrust violations and damages.

This Court, having heard the testimony at trial and having considered the evidence, the applicable law and the memoranda submitted by the parties, now makes the following findings of fact and conclusions of law pursuant to Rule 52(a), Fed.R.Civ.P., as hereinafter set forth.

I. FINDINGS OF FACT (ALL CONSOLIDATED ACTIONS)

1.

On August 26, 1981, LEI was issued a Section 1122 Certificate, sometimes referred to as a certificate of need, from the Louisiana Department of Health and Human Services. The 1122 certificate was a government grant to build a hospital with a capital cost subsidy. The 1122 certificate granting this right was the only one available in the New Orleans area and the last one to

be granted in Louisiana.

2.

Although St. Jude owned a Section 1122 certificate of approval for the construction and operation of a hospital, it did not have the financial resources necessary to make use of the certificate. Moreover, St. Jude was confronted with an impending deadline for incurring a capital expenditure to continue the effect of the section 1122 certificate.

3.

LHI and John Liljeberg began negotiations for the construction and operation of St. Jude Hospital. At the time of negotiations with John Liljeberg, LHI was aware that the 1122 certificate was expressly declared to be "NON-TRANSFERABLE" and that St. Jude could not and would not transfer ownership of the section 1122 certificate of approval.

4.

Frustrated and disappointed that the 1122 certificate could not be transferred, Lifemark nevertheless drafted and structured the documents related to the development, construction, operation, financing and lease of the hospital in a manner provided for by law. However, since LIFEMARK would draft these documents, it took the opportunity to draft them in a manner which would provide future opportunities to remove St. Jude and LEI from the project.

5.

Because St. Jude was in a weak bargaining position with little leverage in negotiating the terms of the contracts with LHI AND LIFEMARK, LHI took advantage of the situation and used its financial strength and the section 1122 deadline to control the structure of the transactions related to the development.

6.

Immediately thereafter, while LHI negotiators undertook the task of gaining the trust and confidence of John Liljeberg, LHI'S counsel and pharmacy management personnel structured and drafted contract documents with little regard, if any, for the promises made to John Liljeberg by the LHI negotiators.

7.

LHI took advantage of a business opportunity and situation. LHI's actions, tactics and goals in negotiating with LEI were both devious and underhanded. Set forth below are the myriad of actions perpetrated by LHI and revealed during the course of the trial.

8.

In response to Liljeberg's demand for a 50\50 split of pharmacy revenues, LHI negotiators initially agreed; however, once Liljeberg became both practically and contractually committed to LHI to interrupt the section 1122 deadline, LHI negotiators told him that a change in federal law prohibited a direct percentage split of pharmacy revenues. Instead, LHI substituted a "fee per procedure" approach, which it represented to Liljeberg would come close to yielding LEI the same compensation as originally demanded. The representation that federal law prohibited compensation based on a percentage of pharmacy revenue turned out to be false.

9.

LHI's pharmacy contract draftsmen established a fee structure for LEI less lucrative than that used by LHL when it supplied hospitals with pharmacy management services.

10.

Internally, LHI's pharmacy department personnel approached the fee structure of the Clinical Pharmacy Management Agreement ("CPMA") as just another opportunity to implement their "RYLO" program in dealing with outsiders. "RYLO" is an acronym for "Rip Your Lips Off."

11.

LHI's counsel deliberately used ambiguous terminology in drafting both the compensation and scope of services provisions of the CPMA, so that, according to the testimony of LHI's former vice-president of development, "if the Liljeberg's got out of hand, they could whack them with it."

12.

LHI structured the CPMA to keep LEI "in tow." For instance, LHI drafted section 8.2 of the CPMA which governs the quality assurance program in a manner designed to make it more difficult for LEI to comply. The compliance standards were significantly more stringent than those applied to other LHI hospital pharmacies, and could be easily manipulated to assure failure and a CPMA default.

13.

LHI was not willing to loan St. Jude the funds necessary to develop the project unless St. Jude granted to LHL a lease of the hospital. LHI structured the lease so that St. Jude would not receive any net positive cash flow from basic rent until the loan was extinguished. Therefore, until extinguishment of the loan, the net cash flow to the developers principally consisted of fees payable pursuant to the CPMA.

14.

LHI was not willing to loan St. Jude the funds necessary to acquire the land, build the hospital and develop the facility unless it hired LHI to serve as project manager to administer the construction contract between St. Jude and Spaw Glass, Inc. LHI, and later American Medical International ("AMI"), used its authority as project manager for the construction of the hospital and the medical office building to inflate construction costs to overburden St. Jude and LEI with debt.

15.

When AMI took over LHI, the efforts to get rid of St. Jude and LEI continued and increased.

16.

Corporate policy of AMI included the goals of: a) causing financial harm to LEI; and b) gaining complete control of the development.

17.

AMI management circulated a report setting out options and objectives for terminating the CPMA when the hospital was first opened.

18.

AMI forced St. Jude to build a larger and more expensive Medical Office Building than necessary, and then refused to renew the master lease with the objective of causing a default in the Medical Office Building financing. When AMI entered into the master lease, it had no good faith intention of renewing at the end of the five-year term, notwithstanding the fact that St. Jude's obligation to provide the Medical Office Building continued for a period of fifty years, as a requirement of the hospital lease.

19.

LHI insisted that LEI lay a foundation for a second Medical Office Building, at a significant cost to LEI, notwithstanding the fact that the second Medical Office Building was not needed.

20.

When the hospital opened, AMI (which had acquired Lifemark) began a continuing bad faith pattern of deliberate CPMA circumvention, and unjustified refusal to pay LEI fees and reimbursable costs with the objectives of starving LEI and St. Jude of the capital necessary to complete, and support, the hospital's development and operation, forcing CPMA's termination and the taking control of the development.

21.

On December 10, 1987, John McDaniel, a former chief administrator of St. Jude Hospital, signed a written statement acknowledging that AMI had instructed him to find fault with LEI regardless of whether any basis existed for such criticism. The following two passages from his written statement aptly describe and corroborate the bad faith attitude of AMI management:

> Despite my satisfaction with Liljeberg Enterprise's CPMA and performance at AMI/St. Jude Medical Center, my superiors with AMI, particularly "Mr. Scott Athans", have instructed me to find fault with, and at every opportunity, create fault and project dissatisfaction with the pharmacy operation even when there was no basis for criticism.
>
> I have been informed by my superiors at AMI and others that it has been AMI's intention from the beginning to find fault with JAL, RLL, and LEI\CPMA sufficient enough to constitute a default of the CPMA even though there is no true or real evidence to support such a contention. In summary, I was instructed to manufacture evidence so as to default LEI.

22.

With respect to the contractual relationships involving St. Jude and LEI, including, but not limited to, the CPMA and the lease of the hospitals and the loan documents, LHL, LHI and AMI were operated as a single business enterprise and as a mere instrumentally and adjunct of AMI. LHI and LHL may sometimes be referred to collectively as "AMI/SBE" ("AMI/single business enterprise").

23.

The multitude of written communications between the parties included as exhibits clearly demonstrate that St. Jude and LEI always dealt directly with AMI on all matters affecting the various contractual relationships, once AMI had acquired LHI and LHL. There is no credible evidence that any entity other than AMI, or its successor, Tenet Healthcare Corporation ("Tenet"), interacted with LEI in any way concerning the performance of the respective duties of the parties under the CPMA. LEI communicated directly with AMI management and operating personnel on all matters related to the service provided pursuant to the CPMA. Furthermore, AMI management and operating personnel directly engaged in making policies and other decisions pertaining to the CPMA, without regard whatsoever to the existence of LHL as a separate entity.

24.

Subsidiaries of AMI, such as LHL and LHI, did not have a separate accounting system; instead, accounting functions were centralized through AMI and later Tenet.

25.

Until March, 1995, AMI directly supplied all of the funds used in the business operations of LHL and LHI. Specifically, all employees and expenses relating to the hospital were paid by AMI and not the leasee-operator LHL.

26.

LHL did not have a bank account separate from AMI.

27.

The source of capital for the business operations of LHL was a controlled disbursement account by which AMI funded its expenses.

28.

Disbursements on behalf of LHL from the controlled disbursement account funded by AMI were managed by the executive director of St. Jude Medical Center, who was directly employed by AMI and not the Board of Directors of LHL.

29.

When the executive director of KRMC sought a variance from the hospital's capital budget, he would not present his request to the board of directors of LHL. Instead, he would make the request for an exception to John Casey, an employee of AMI.

30.

Funds generated by LHL or LHI were transferred directly to AMI.

31.

AMI, not LHL, paid LEI for the services rendered under the CPMA. LHL never issued a check to LEI for payment of the pharmacy bill. Instead, LEI's invoices have always been paid with a check from AMI, and since March, 1995, from AMI's successor, Tenet.

32.

Patients are not billed by the LEI pharmacy at KRMC. Monthly bills were sent by LEI to AMI and Tenet as opposed to LHL, the party to the CPMA.

33.

From its opening in August, 1985, until its acquisition by Tenet in March, 1995, KRMC was operated by employees of AMI. None of the personnel operating KRMC were employed by LHL. The employees at KRMC were paid directly by AMI.

II. CIVIL ACTION NO. 94-3993

A. FINDINGS OF FACT

1.

For the purposes of civil action 94-3993, the following documents constitute the relevant contracts among the parties:

a) renewal promissory note;

b) collateral mortgage note;

c) pledge of collateral mortgage note;

d) collateral mortgage;

e) hospital lease; and

f) collateral assignment of basic rent.

2.

On March 11, 1983, LHI loaned funds to St. Jude to build KRMC. The loan was originally evidenced by a Loan Agreement and a promissory note dated March 15, 1983. The original hand

note was collateralized by the pledge of an $80,000,000 Collateral Mortgage Note secured by a Collateral Mortgage on the hospital site. Subsequently, the Loan Agreement was extinguished pursuant to a settlement agreement; and the original note was renewed through an instrument entitled "Renewal Promissory Note," dated April 22, 1991, for the principal sum of $44,873,550.40.

3.

When St. Jude executed the renewal promissory note on April 22, 1991, it provided LHI with two forms of collateral:

a) pledge of the collateral mortgage note secured by the collateral mortgage on the hospital site; and

b) pledge of basic rent on the hospital lease by an act of collateral assignment of basic rent.

4.

The collateral mortgage note had been held in pledge continuously by LHI since March 15, 1983. Until March 15, 1993, the collateral mortgage securing the collateral mortgage note was the highest ranking encumbrance on the property.

5.

The pledge of basic rent, evidenced by the collateral assignment of basic rent, came into existence on April 22, 1991. LHI had continuous custody of the pledge of rents from April 22, 1991 through at least October 28, 1994.

6.

The pledge of rent produced a revenue flow to LHI equal to the monthly installment amount of the renewal promissory note.

7.

The pledge of rents would have been effective against third parties from its date of public recordation, May 6, 1991 until August 1, 2010.

8.

LHI, as pledgee, had an obligation to collect rents from LHL through August 1, 2010.

9.

The act of pledge of the collateral mortgage note prohibited the pledgee from selling, assigning, delivering or otherwise surrendering possession of the note to the detriment of its obligation under the pledge.

10.

Timely reinscription of the collateral mortgage would have encumbered the hospital from 1983 until final payment of the renewal promissory note scheduled to mature in 2010.

11.

The utility and worth of the pledged collateral mortgage note were dependent upon the rank of the collateral mortgage.

12.

Timely reinscription of the collateral mortgage preserves the value of the collateral and, thus, benefits LHI, as pledgee.

13.

LHI allowed the effect of the collateral mortgage against third parties to lapse by failing to reinscribe it in the public records on or before March 15, 1993.

14.

During August 1993, Travelers recorded a judicial mortgage encumbering the hospital site.

15.

LHI did not reinscribe the collateral mortgage until June 29, 1994.

16.

As a result of LHI's failure to timely reinscribe the collateral mortgage, Traveler's judicial mortgage became the highest ranking mortgage encumbrance on the property. The judicial mortgage could never outrank the recorded lease.

17.

Travelers seized the hospital by a writ of execution to enforce its judgment and a judicial sale of the property was scheduled for October 28, 1994.

18.

LHI had both the opportunity and the right to stop the judicial sale by paying the Travelers' judgment and then adding the cost thereof to the amount due by St. Jude on the renewal loan, thus mitigating the loss attributable to its failure to timely reinscribe the collateral mortgage.

19.

Notwithstanding LHI's fault in failing to timely reinscribe the collateral mortgage, it chose not to pay the judgment held by Travelers prior to the judicial sale, and, thus, refused to mitigate the loss associated with the subordination of rank of the collateral mortgage.

20.

During the summer of 1994, officers, directors and other representatives of AMI, LHI and LHL, discussed and agreed upon a coordinated bidding strategy for the judicial sale among themselves as a single business enterprise for the benefit of AMI with the objectives of:

a) terminating St. Jude's ownership of the hospital;

b) dissolving the lease and the pledge of basic rent; and

c) canceling the CPMA of LEI.

They decided that LHI would not compete against LHL at the U.S. Marshal sale conducted to enforce Travelers' judicial mortgage.

21.

LHI admitted that the opportunity to terminate the hospital lease between LHL and St. Jude, and the opportunity to terminate the CPMA between LHL and LEI, carried weight in the decision to have LHL, and not LHI, bid at the judicial sale. When LHI was specifically asked whether this opportunity carried any weight in its decision to have LHL, as opposed to LHI, acquire the property, the answer was an unequivocal "yes."

22.

The former treasurer and vice-president of AMI, Michael Murdock, who directly participated in the decision to allow LHL, and not LHI, to bid at the judicial sale, acknowledged that the potential for terminating the pharmacy agreement was a consideration. When questioned:

> In making this decision to allow the hospital to proceed to judicial sale as opposed to just paying off the Traveler's lien, what consideration, if any did the officers and directors of AMI give internally to the potential effect of terminating the pharmacy agreement?"

He responded:

> I knew that as part of this transaction there was a potential that the pharmacy agreement could be terminated.

23.

The former treasurer controller and vice-president of AMI, Barry Bailey, who directly participated in the decision to allow LHL, and not LHI, to bid at the judicial sale, also acknowledged that the potential for terminating the pharmacy agreement was a consideration. When he was asked:

> Has any employee of AMI ever discussed with you the possibilities of terminating the pharmacy agreement at St. Jude Hospital that might be presented by the judicial sale of the hospital?

He responded:

> Yes. I think it was Donna.

24.

Donna Erb, the assistant secretary, and a vice-president, of both LHI and LHL, and an employee of AMI, who directly participated in the decision to allow LHL, and not LHI, to bid at the judicial sale, acknowledged that consideration was given to the potential for terminating the CPMA in making that decision. When questioned:

> At these meetings to determine how AMI would participate in the judicial sale of St. Jude hospital, was consideration given to the opportunity to terminate the CPMA?

Her reply was "yes."

25.

Donna Erb also acknowledged that the meetings attended by her concerning the judicial sale were primarily legal strategy meetings as the following exchange indicates:

Question: You have been identified as a participant in meetings concerning the decision of AMI on the handling of the judicial sale of St. Jude Hospital by some corporate officers of AMI. Do you recall participating in such meetings?

Answer: Yes.

Question: Were those meetings primarily business meetings or legal strategy meetings?

Answer: Primarily the latter.

Question: Primarily legal strategy meetings?

Answer: Yes.

26.

The former president and chief operating officer of AMI, John Casey, who directly participated in the decision to allow LHL, and not LHI, to bid at the judicial sale, acknowledged that consideration was given to the potential for terminating the CPMA in making that decision. When asked:

Question: Was the termination of the pharmacy contract a consideration?

Answer: It was a consideration, Yes.

Question: And one of those circumstances was presented by the judicial sale of the hospital, from your company's perspective at least, was to terminate the pharmacy contract, is that correct?

Answer: That was one of the circumstances, certainly.

Question: So would I be correct in understanding that your expectation is that your subordinates, if the opportunity presented itself, would structure the transaction in a way that it would terminate the pharmacy contract?

Answer: Correct.

27.

Since the appraised value of the hospital burdened with the fifty-year lease was less than the total balance due on the renewal promissory note, LHI enjoyed a significant bidding advantage over other potential participants in the judicial sale. Because it held the second ranking encumbrance, LHI would not be required to make an actual cash outlay in excess of the balance due on Travelers' judicial mortgage until the price was bid above $38,765,564.65. Therefore, unless another bidder was willing to pay in excess of the appraised value of the leased hospital, LHI's actual cash expenditure for the acquisition would be limited to $7,834,516.26.

28.

LHL and LHI colluded in its actions concerning the judicial sale of KRMC to chill the bidding and in fact insure that no other parties would bid.

29.

LHL did not hold either the renewal promissory note or the collateral mortgage, and, therefore, it was required to make the same cash outlay to purchase the hospital as any third party bidder. So, if it became known that LHI would refrain from bidding, this would increase the likelihood of third parties participating as bidders at the judicial sale, and, thus, increase the risk of raising the sale price above the minimum bid.

30.

Although LHI, LHL and AMI had already agreed that LHI would refrain from bidding, LHI, nevertheless, filed a motion in Federal Court to bid credits against the value of its mortgage instead of cash at the judicial sale, subject to paying only the amount of cash necessary to satisfy the superior mortgage of Travelers.

31.

However, LHI did not disclose to the court at any time prior to the granting of the order to bid mortgage credits of its prior agreement with AMI and LHL to refrain from bidding in competition against LHL at the judicial sale. Entered into the public record two days before the judicial sale, the order allowing LHI to bid mortgage credits instead of cash effectively discouraged participation by other potential bidders.

32.

Judicial sale of the hospital was conducted on October 28, 1994. The property was purchased for $26,000,000.00 by AMI/SBE in the name of LHL. No other bids were offered at the sale.

33.

LHI breached its duties as pledgee owed to St. Jude by failing to timely reinscribe the collateral mortgage, and failing to use reasonable care in the custody and preservation of both the pledged collateral mortgage note and rent. This breach proximately caused St. Jude's loss of ownership of the hospital, and lessor rights, including accrued and future rents arising under the hospital lease.

34.

LHI, as pledgee breached its fiduciary duties to St. Jude in bad faith. These violations were a result of LHI:

1) deliberately exploiting and exacerbating the harm caused by its failure to timely reinscribe the collateral mortgage;

2) collaborating with the efforts by LHL and AMI to terminate:

i) the pledgor's ownership of the hospital;

ii) the hospital lease, and

iii) the CPMA.

3) collaborating with LHL and AMI to minimize the price of the judicial sale;

4) failing to protect the right to collect rents from LHL; and

5) discharging LHL from the obligation to pay rent pursuant to the lease.

These breaches of duties caused St. Jude's loss of ownership of the hospital and lessor's rights.

35.

If LHI had not allowed the effect of the collateral mortgage against third parties to lapse, then the property could not have been sold to pay Travelers' judgment for a price less than $38,765,564.65, the amount then necessary to fully satisfy the renewal promissory note.

36.

LHL paid the Travelers judgment at the time of the judicial sale.

B. CONCLUSIONS OF LAW

1.

The crux of civil action 94-3993 involves the interpretation and application of a very simple and well-established rule of law: "that the relation between pledgor and pledgee is inherently one of a fiduciary character."

2.

By holding both the collateral mortgage note and the right to basic rent as pledgee, LHI undertook a fiduciary duty to St. Jude to protect that collateral.

3.

Chapter 9 of the Louisiana Commercial Laws applies to the pledge of the collateral mortgage note. The duty of a secured party to use reasonable care in the custody and preservation of collateral in his possession, as provided by La. R.S. 10:9-207(1), applies to the performance of LHI's duties as pledgee of the collateral mortgage note such that a violation of this duty which causes "any loss" renders the pledgee liable therefor pursuant to La. R.S. 10:9-207(3).

4.

Louisiana Civil Code Title XX Of Pledge and La. R.S. 9:4401 govern the pledge of lease income. C.C. art. 3167 Pledgee's liability for loss or decay of thing pledged; reimbursement of expenses of preservation provides that: "the creditor is answerable agreeably to the rules which have been established under the title: Of Conventional Obligations, for the loss or decay of the pledge which may happen through his fault. On his part the debtor is bound to pay to the creditor all the useful and necessary expenses which the latter has made for the preservation of the pledge."

5.

The obligations of LHI, as pledgee, are the same under both the Louisiana Civil Code and Chapter 9 of the Louisiana Commercial Laws. Therefore, the duties of a pledgee under C.C. art. 3167 and the jurisprudence interpreting that codal provision, describe principles underlying the obligations of LHI as a pledgee of both the collateral mortgage note and the right to basic rent.

6.

Louisiana courts, both state and federal, have consistently gone out of their way to explain the existence and reasoning involved in the fiduciary relationship between pledgor and pledgee. Not only are they consistent in this task, but they are also in remarkable accord in this area of the law.

7.

The United States Fifth Circuit has long recognized the existence of a fiduciary duty owed by a pledgee to the pledgor. In Commercial Nat'l Bank in Shreveport v. Parsons, 144 F.2d 231, 236 (1944), the Fifth Circuit explained:

> The relation between debtor and creditor or principal and guarantor is not necessarily one of trust and confidence, but that between pledgor and pledgee or liquidator and cestui que trust is inherently one of a fiduciary character.

8.

In footnote 3 of the Parsons opinion the Fifth Circuit makes it clear that a pledgee cannot make use of the pledge for his own benefit:

> Articles 3168 and 3176 [sic: actually 3167] of the Louisiana Civil Code. The pledgee has no right to use the thing pledged for his own pleasure or benefit without the consent of the pledgor. The pledgee cannot have the enjoyment of it or receive any profit from it without the consent, express or tacit, of the pledgor. The same views are entertained by the commentators of the French Code and expounders of the Roman Law, its source, and orgin. Denis on Contracts of Pledge, Sections 205, 206. These principles seem to be of universal application. Restatment of Agency, Section 388. 49 C.J. 920, from which we quote: 'The duties and relations of a pledgor and pledgee are governed more by the general maxims of equity than by the strict rules of common law. The very nature of the transaction gives rise to a trust relation between pledgor and pledgee, with its consequent duties to protect the debt or obligation and the collateral.

9.

In Trans-Global Alloy v. First Nat'l Bank, 583 So.2d 443 (La. 1991), the Louisiana Supreme Court applied Civil Code article 3167 to the pledge of an instrument evidencing intangible rights given as security for a debt. In holding the pledgee of a letter of credit liable to the debtor for damages caused by it in allowing the letter of credit to expire, the Supreme Court went out of its way

to describe the duties of a pledgee:

> It has been recognized that from the very nature of the transaction there arises a trust relationship between the pledgor and pledgee with attendant duties to protect the debt or the obligation and the collateral. The pledgee is presumed to act for the pledgor's interest as well as for his own, although their interests are not identical.

10.

For a more thorough and detailed understanding of pledge, the Louisiana Supreme Court in the same above opinion approvingly cites and refers the reader to a law review article which gives the following example: the pledgee is held responsible . . . if he neglects to have a mortgage which is pledged to him reinscribed or re-registered in proper time, and if it loses its rank or effect. Slovenko, "Of Pledge," 23 Tul. L. Rev. 59, 121 (1958); see also Henry Denis, A Treatise on the Law of the Contract of Pledge, c. 1898, FF hansell & Bro., Ltd., Chapt. XX sec. 270.

11.

While the above explication of the law of pledge may appear to be unnecessary and redundant to many, this Court has painstakingly reiterated what Louisiana Courts have consistently long recognized and held. It has done so because despite the well-established jurisprudence, Lifemark's counsel has failed to understand that a collateral mortgage is a different beast from a conventional mortgage. In its post trial brief, Lifemark sums up LEI's argument as follows:

> Lifemark's counsel failed to timely reinscribe LHI's collateral mortgage on the hospital, thus allowing Travelers' judgment lien to take first place and result in the foreclosure on the hospital at Travelers' hands. In effect, St. Jude claims that it was Lifemark's duty to protect St. Jude from Travelers' legitimate judgment rights by maintaining its position as first lien holder. Such a holding by this court would mean that every mortgagee has a duty to protect its mortgagor from its other creditors.

12.

A collateral mortgage is NOT a mortgage. It is a pledge. And, under Louisiana law, there are drastic differences between the two. A conventional mortgage does NOT place the mortgagee and mortgagor in a fiduciary relationship. A collateral mortgage DOES place the pledgee and pledgor in a fiduciary relationship. This is no small difference, as Louisiana courts do not pay lip service to the fiduciary duties they impose on those who undertake such a relationship. This is best evident in the Louisiana Supreme Court's articulation of what it means to be involved in such a relationship: "We hold, therefore, that an agent who acquires his principal's property, or one who otherwise acts in a fiduciary capacity, bears the burden of establishing that the transaction was an arm's length affair. This means that the agent or fiduciary must handle the matter as though it were his own affair. It also means that the agent or fiduciary may not take even the slightest advantage, but must zealously, diligently, and honestly guard and champion the rights of his principal against all other persons whomsoever, and is bound not to act in antagonism, opposition, or conflict with the interest of the principal to even the slightest extent." Noe v. Roussell, 310 So.2d 806, 816-819 (La. 1975).

13.

Applying Louisiana law and jurisprudence to the facts of this case, this court finds as follows. The relationship between Lifemark, as pledgee, and St. Jude, as pledgor, is inherently one of a fiduciary character. When Lifemark and St. Jude executed the renewal loan, in which Lifemark agreed to hold in pledge the collateral mortgage note and the right to receive basic rent, there arose from the very nature of that transaction a trust relationship between Lifemark and St. Jude with attendant duties of Lifemark to protect that collateral. The duty of care imposed on the pledgee, Lifemark, in this trust relationship is that of a prudent administrator, in which the pledgee is held

responsible if he neglects to have a mortgage which is pledged to him reinscribed or reregistered in proper time, and it loses its rank or effect. Lifemark breached its fiduciary duty as pledgee of the collateral mortgage note when it failed to timely reinscribe the collateral mortgage. This breach of fiduciary duty did not have to result in a loss or decay of the pledge of the collateral mortgage note and right to receive basic rent. Lifemark had the opportunity to cure this breach by paying the Travelers Judgment and adding the cost thereof to the amount due by St. Jude on the renewal loan, thus restoring the superiority of the rank of the collateral mortgage and thereby mitigating the harm caused to the collateral in its possession. This course of action would have been consistent with the law's mandate that a fiduciary must handle the matter as though it were his own affair and may not take even the slightest advantage.

14.

Lifemark, however, had its own agenda. With Travelers having seized the hospital by a writ of execution to enforce its judgment, and a judicial sale of the property scheduled for October 28, 1994, the situation had finally presented itself for Lifemark to attain its ultimate goals of becoming owner of St. Jude Hospital, terminating the lease and pledge of basic rent, and canceling the CPMA with LEI. Lifemark's actions in the attainment of these goals were inconsistent with the fiduciary duties it owed St. Jude as pledgee of both the collateral mortgage note and the right to receive basic rent.[3] As the testimony from Michael Murdock, Barry Bailey, John Casey, and Donna Erb indicates

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[3] The fiduciary duty of a pledgee to use reasonable care in the custody and preservation of collateral in his possession **requires** the pledgee holder of a collateral mortgage note:

i) to timely reinscribe the collateral mortgage which secures that note;

ii) to restore the superiority of the rank of the collateral mortgage lost by the pledgee's failure to timely reinscribe it; and,

iii) to mitigate the harm caused by his failure to timely

Lifemark devised a plan whereby LHI, who held the second ranking encumbrance on the property and enjoyed a significant bidding advantage over other potential participants, would file a motion in Federal Court to bid mortgage credits instead of cash at the judicial sale in the hopes of discouraging participation by other potential bidders who could possibly increase the sale price. On the day of the sale, LHI would refrain from bidding and LHL would have the property purchased in its name by AMI. On October 28, 1994 Lifemark followed through with its plan and acquired ownership of St. Jude hospital for $26 Million, paid the Travelers judgment and now asserts termination of the lease by confusion. On that date, LHL and Tenet also breached their fiduciary

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reinscribe the collateral mortgage securing that note.

Furthermore, the fiduciary duty of a pledgee to use reasonable care in the custody and preservation of collateral in his possession **prohibits** the pledgee holder of a collateral mortgage note from:

i) deliberately exploiting and exacerbating the harm caused by his own failure to timely reinscribe a collateral mortgage;
ii) engaging in any act designed to depress or minimize the price bid at the judicial sale of the property encumbered by the collateral mortgage securing that note.

With respect to the pledge of lease income, the fiduciary duty of a pledgee to use reasonable care in the custody and preservation of collateral in his possession **requires** the pledge holder of a right to receive basic rent to protect the lease against dissolution or termination by the leasee resulting from acts or omissions of the pledgee.

Such fiduciary duty also **prohibits** the pledgee holder of a right to receive basic rent from:

i) deliberately exploiting and exacerbating the harm caused by his own failure to timely reinscribe a collateral mortgage for the purpose of terminating the lease to benefit the lessee;
ii) collaborating with, and assisting, the lessee to extinguish both the obligation to pay rent and the lease to the pledgor's detriment; and
iii) refusing to enforce against the lessee the duty to pay rent for the purpose of creating a default in the principal debt secured by the pledge.

duty to LEI.

15.

Instead of consulting with St. Jude on how to best protect and preserve the collateral which it was holding in pledge, Lifemark deliberately exploited and exacerbated the harm caused by its own failure to timely reinscribe the collateral mortgage. Under Louisiana law, Lifemark could not take even the slightest advantage of its position as pledgee. It was under a fiduciary obligation to zealously, diligently and honestly champion the rights of St. Jude against all other persons whomsoever, and was bound not to act in antagonism, opposition, or conflict with the interest of St. Jude to even the slightest extent.

16.

This Court finds that Lifemark, as pledgee holder of the collateral mortgage note and right to receive basic rent, breached the fiduciary duties it owed to St. Jude. In a bad faith breach of trust, Lifemark wrongfully acquired St. Jude hospital. The remedy for such a breach requires that whatever a fiduciary wrongfully acquires during the fiduciary relationship must be disgorged completely, once and for all. McDonald v. O'Meara, 473 F.2d 799, 804 (5th Cir. 1973); C&B Sales and Service, Inc. v. McDonald, 95 F.3d 1308, 1313-1314 (5th Cir. 1996).

17.

As in the case at hand, the Fifth Circuit in McDonald v. O'Meara was faced with a complicated set of facts involving a breach of fiduciary duty. In its opinion the court cut through the complexity of the facts and explained: "The issue is simple. The servant having substantial, not ordinary, obligations breaches his duty and as part of his breach makes a trade which benefits himself no matter how things turn out. The Louisiana law with that wondrous certainty indigenous to the civil law, and sometimes, but not always, a part of the common law, requires that whatever the agent

servant/fiduciary wrongfully acquires during the fiduciary relationship must be disgorged completely."[4] In applying Civil Code article 3005[5] to the breach of fiduciary duty, the Fifth Circuit in McDonald articulated the test for its application. According to the Fifth Circuit: "The test under [Civil Code] Article 3005 does not hinge on a conventional principal-agent relationship, but rather upon the existence of a [fiduciary] duty." McDonald, 473 F.2d at 805, n. 10.

18.

Just as Louisiana Law does not pay lip service to the fiduciary duties it imposes on those who undertake a fiduciary relationship, Louisiana courts do not hesitate to impose the harsh remedy mandated by the law upon those who breach their fiduciary duties. The court in McDonald v. O'Meara, concluded its opinion by holding that O'Meara who had breached his fiduciary duty: "is bound to disgorge whatever he has received, is receiving, or will receive." The same law of disgorgement applies to Lifemark. Had anyone other than LHL acquired St. Jude Hospital at the foreclosure sale, LHL could have remained on the leased premises as tenant, as the Lease would not

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[4] The remedy is a total accounting of all profits: 'Every one, whether designated agent, trustee, servant, or what not, who is under contract or other legal obligation to represent or act for another in any particular business or line of business or for any valuable purpose, must be loyal and faithful to the interest of such other in respect to such business or purpose. He can not lawfully serve or acquire any private interest of his own in opposition to it. This is a rule of common sense and honesty as well as of law.' McDonald v. O'Meara, 473 F.2d 799, 804 (5th Cir. 1973), quoting Neal v. Daniels, 47 So.2d 44, 45 (La. 1950), Texana Oil & Refining Co. v. Belchic, 1922, 150 La. 88, 102, 90 So. 522, 527.

[5] Prior to the 1998 revision of the Louisiana Code of 1870, Of Mandate, Louisiana Civil Code Article 3005 provided that an agent is "bound to restore to his principal whatever he has received by virtue of his procuration, even should he have received it unduly."

Although the article 3005 has been revised, it does not change the law. C.C. Art. 3004 now reads "The mandatary is bound to deliver to the principal everything he has received by virtue of the mandate, including things he received unduly." The revision comments to article 3004 explain that "this provision is based on article 3005."

have terminated, but rather would have remained effective due to its recordation prior to both the Collateral Mortgage and the Travelers Judgment.

19.

The obligation of good faith set forth in Louisiana Civil Code Articles 1759 and 1983 applies to the performance of LEI and St. Jude as pledgor and LHI as pledgee of both the collateral mortgage note and the basic rent of the hospital.

20.

La.C.C.Art. 1759 states the general principal applicable to all obligations and requires that "Good faith shall govern the conduct of the obligor and the obligee to whatever pertains to the obligation." La.C.C.Art 1983 states the general effect of contracts: "Contracts have the effect of law between the parties and may be dissolved only through the consent of the parties or on grounds provided by law. Contracts must be performed in good faith.

21.

The requirement of good faith on the part of parties to an obligation is not new to Louisiana Law. The inclusion of this requirement in a code article has the merit of raising it to the status of a general principle which ought to guide the jurist in his analysis of the law of obligations. Engended by Roman law and developed by canon law, the theory of good faith underlies the entire law of obligations; for it is the essence of the law of obligations. (Alain A. Levasseur, Louisiana Law of Obligations in General).

22.

The collusion between LHL and LHI to chill the bidding is another basis upon which this Court has the authority to upset the judicial sale and return the parties to their positions prior to the sale. See Judge Schwartz's opinion in Dynamic Marine Consortium S.A. v. M/V Latini, 1999 WL

123808 (E.D.La. 1999) and the February 17, 1999 unpublished memorandum opinion.

23.

Based upon the foregoing, this Court will rescind the judicial sale of the hospital and return the parties to their positions as if the sale had not transpired. Subject to the condition set forth herein, title shall be revested in St. Jude and the collateral mortgage, collateral mortgage note, and note in favor of LHI shall be reinstated.

24.

The Court will condition return of the Hospital on Tenet receiving the amount it paid to Travelers within twenty (20) days of judgments entered in these consolidated cases becoming final judgments and the judgments having been paid.

25.

All rents which would have been paid absent the judicial sale will be deemed paid on the mortgage in favor of LHI and the mortgage note shall be deemed current at the time of the transfer.

26.

Inasmuch as this Court has restored the status quo prior to sale and reinstated the collateral mortgage, collateral mortgage note, and note, the claim of LHI on the note is disallowed.

III. CIVIL ACTION NO. 93-1794

A. FINDINGS OF FACT

1.

LHI and LEI entered into the Clinical Pharmacy Management Agreement ("CPMA") on February 10, 1983.

2.

The CPMA was drafted by Lifemark.

3.

Lifemark's counsel intentionally drafted the CPMA in an ambiguous manner. According to the testimony at trial, the CPMA was: "structured in a very loose manner in case it became advantageous down the road to get into a shoving match with a client."

4.

The CPMA was structured by Lifemark's counsel such that "it said whatever we want it to say."

5.

A final judgment was rendered in the matter styled Liljeberg Enterprises Inc v. Lifemark Hospitals of Louisiana, Inc., 620 So.2d 1331 (4th Cir. 1993), writs denied, 621 So.2d 818 (La. 1993). In that opinion, the Court determined that LHL was required to reimburse LEI for all of the actual acquisition costs incurred in providing goods and services pursuant to the CPMA. In addition, the contract requires that LEI be compensated on a per administered dose basis.

6.

The CPMA was intentionally written with ambiguities so that LHL, later AMI and now Tenet could apply economic pressure on LEI in the hope of causing the termination of the CPMA at its whim.

7.

LHL, AMI and Tenet have intentionally construed the CPMA in a manner that would result in an underpayment to LEI.

8.

LEI provides to KRMC a daily report on a computer disk that contains all of the medications dispensed over a 24 hour period. The disk contains the medication dispensed, patient account number, NDC drug code data such as manufacturer, quantity, strength and quantity dispensed. The daily disk does not however contain the actual acquisition cost of the drugs.

9.

On a monthly basis, LHL, AMI and now Tenet is provided a report on computer disk identifying the actual cost of the pharmaceuticals supplied that are reimbursable under the CPMA. In addition, pricing information is provided to LHL, AMI and Tenet through the use of an add/change/delete form.

10.

Under the CPMA, Section 2.4, LEI agreed to obtain all hospital inpatient requirements from Lifemark Pharmacy and Lifemark Pharmacy ("LPI") was obligated to supply the items at its cost. Only if LPI could not supply an item or if the item was cheaper elsewhere or if the quality was equal to or superior to that supplied by Lifemark Pharmacy could LEI purchase the item from a vendor other than LPI. LPI did not exist at any time after the opening of KRMC, and LEI never purchased

any drugs from LPI. The failure to operate LPI was another instance of LHL creating an ambiguity in the CPMA with the express purpose of putting financial pressure on LEI with the avowed intention of terminating the CPMA. The desire to terminate the CPMA was based upon Lifemark, AMI and now Tenet's belief they could increase KRMC's profitability by owning and operating the pharmacy themselves.

11.

LEI purchased drugs under a buying contract from both Bergan Brunswig and Spark Drug. The uncontradicted testimony is that LEI is paying six percent less for its drugs than if it had been purchasing the drugs under purchasing contracts between drug manufacturers, wholesalers and AMI and later Tenet.

12.

Different drug manufactures charge different prices for items that on their face may appear to be similar drugs. The difference in price may be due to: 1) the difference between generic or brand name; 2) the difference in quantity or strength; or 3) the difference in bioavailability or bioequivalency.

13.

A coding system, implemented by NDC whereby each drug is given a code number, allows the identification of the drug manufacturer, its strengths and its quantity and, thus, is a means of identifying the cost of the drug pursuant to purchasing contracts.

14.

A "handling fee" is a charge imposed on a large volume parenteral ("LVP") that is handled by a pharmacist.

15.

An "additive" is a medication or drug that is added to an intravenous fluid ("IV") either in an IV piggyback or an LVP. The method to add an additive to an IV piggyback or an LVP is through an aseptic technique which preserves the sterility of the drug.

16.

An "admixture" is the result of additives being placed in an intravenous solution. Each additive to a solution is performed as a separate procedure.

17.

An "IV piggyback" is a small volume of fluid that is used to administer mostly antibiotic and medications to patients through an intravenous solution. An additive is added to IV piggybacks in 90% of the IV piggybacks dispensed by LEI.

18.

Total Parenterals Nutrition ("TPN") is a combination of a highly caloric dextrose or sugar solution with protein additives prepared using the aseptic technique. A TPN contains between seven to nine additives.

19.

A "heparin flush kit" consists of three separate items that are administered at one time and are in essence a single procedure or dose.

20.

LHL, AMI and Tenet bills its patients a set markup from the price charged by LEI to it for the drug in question. The markup is generally three times the charge from LEI to it. In the case of Heparin Flush Kits the markup was the three times the billing by LEI to AMI.

21.

Nitroglycerin and Insulin are items that are sold by LEI to LHL and AMI and provided to patients. LEI supplies to the hospital on a daily or twice a day basis the Insulin or Nitroglycerin to be taken by the patient in the course of the day. Out of the vial supplied, the drugs are administered to patients at various times in the course of the day. As opposed to the Heparin Flush Kits that has three items and a single administration, these drugs come in a single vial for multiple administration and dosage.

22.

The pharmacy at KRMC under the Tenet Policy and Procedure Manual is responsible for the storage control and distribution of all medications in the entire hospital, including ancillary departments. This responsibility extends to legend, non legend and narcotic drugs.

23.

Allowing someone other than a licensed pharmacist to store, maintain and dispense legend drugs presents a danger to the health, safety and welfare of the public. The pharmacy director of LEI serves as the "hospital pharmacist" for purposes of compliance with Louisiana licensing and regulatory requirements. Each hospital can only have one licensed pharmacy. At KRMC, LEI serves as the exclusive "hospital pharmacy" of KRMC.

24.

Both AMI and Tenet without the permission of LEI used the LEI pharmacy permit to order drugs.

25.

Both AMI and Tenet have ordered kits directly from various drug companies that contain both legend drugs and supplies. The drug companies charge for the kits and the price is not broken down as to which component is for the legend drugs and the price paid for the other parts of the kit. Nothing in the law requires that these items be purchased from LEI. The CPMA, however, requires that all drugs to be administered to patients at KRMC be purchased from LEI other than those drugs for which a specific exclusion exists under the CPMA. The law only requires that LEI oversee the storage and dispensing of the items. LEI and its pharmacy director have recently been given the ability to supervise and oversee the storage of the kits containing legend drugs.

26.

Contrast media is a legend drug that may come in a kit or may be purchased separately. Contrast media is used in a number of procedures performed at KRMC. Isovue, Omnipaque, Hypaque and Renographin are considered contrast media.

27.

When the hospital first began operation, LEI supplied the hospital the contrast media which was a separate item on the bill to a patient. In an attempt to circumvent the terms of the CPMA and its spirit, AMI decided to include the contrast media cost in what it claims is an unidentifiable cost in a single procedure. This was done with the intent and purpose of avoiding having to purchase this item from LEI since the CPMA allowed AMI and Tenet to purchase items and legend drugs where the cost for the drug is not identifiable from the cost of the procedure. The AMI master price list is

called the "charge master" and contains a cost for a procedure with and without contrast media. The difference between the costs represents the contrast media and, for purposes of the CPMA, it is an identifiable cost. If the contrast media was purchased from LEI as required under the contract, LEI would have generated a profit of $140,000.00 per year. LEI has not supplied contrast media since 1992. LEI is entitled to compensation of $700,000.00 for the failure of Hospital to purchase contrast media from LEI.

28.

Sodium Chloride used for inhalation therapy is not supplied by LEI . Neither the contract nor any statute requires that LEI be the sole supplier for the item to KRMC.

29.

Triple Dye and sodium chloride used as an irrigating solution are legend drugs. The CPMA contains an express exclusion for irrigating solutions and no testimony has been introduced to show that the cost of "triple dye" can be or is isolated from the cost of the procedure being performed. AMI and Tenet are not required to purchase triple dye or sodium chloride from LEI and, thus, non-payment of these items on the bill submitted by LEI is warranted.

30.

LEI supplies to LHL both IV bags and a kit for nurses who administer chemotherapy (chemo kits) for which it has not been compensated. The contract does not require LEI to provide the items and, thus, the responsibility to supply the items to the staff and LEI is the responsibility of the hospital. LHL and AMI have not supplied LEI or its staff IV bags or chemo kits. Those items have in fact been supplied by LEI. The LEI bill to the hospital includes a reimbursement for IV bags and chemo kits supplied to the hospital on a pure cost basis without any markup.

31.

Albert Richard, the expert for Tenet, contends that during the period from 1986 through the date of trial, LEI has wrongfully billed in excess of $600,000.00 based upon the difference between LEI's actual acquisition costs and the amounts shown on the prime vendor contracts. In addition, Steve Faucheaux, the contract administrator for LHL, has been deducting payments from LEI on the same basis. The analysis performed by both Richard and Faucheaux is flawed in that they failed to compare the NDC number in the AMI or Tenet prime vendor contract to the NDC number of the drug supplied by LEI. The effect of the failure to compare NDC numbers results in comparing the lowest possible price for a type of drug against the actual drug supplied without regard to differences between brand name and generic drugs, strength, quantity, bioequivalency and bioavailability. The calculation by Richard of overcharges equals $605,000.00, and the deductions from the bills based on drug pricing by Faucheaux totals $2,023,571.00. The assertion of the overcharge is incorrect and the deductions from the bill based on the type of drug are incorrect.

32.

LHL contends that LEI has over billed it through the date of trial in the amount of $1,497,078.00 for handling and additive fees. The calculation is based on the argument that LEI may not receive a handling fee and additive fee for LVP's and a handling fee and an additive fee for IV Piggybacks. The bills submitted to and paid by AMI contain a charge for a handling fee for both LVP's and IV piggybacks.

33.

LEI is entitled to receive both a handling fee and an additive fee for LVP's since the handling of an LVP and the addition of an additive are separate procedures. In fact, each additive placed in an LVP or an IV piggyback is a separate procedure and, thus, LEI is entitled to compensation for each additive that is added to an IV piggyback on an IVP. Ninety (90%) percent of the IV piggybacks supplied by LEI contain one or more additives.

34.

The CPMA distinguishes between handling fees for LVP's and IV piggybacks. The CPMA gives to LEI a handling fee for LVP's, but none for IV Piggybacks. LEI has overcharged LHL $616,400 for handling fees for IV piggybacks.

35.

LHL claims it is entitled to a credit of $252,171.00 which it contends is the bad debt allowance authorized under the contract for the amount of the State Court judgment paid by LHL to LEI. The amount paid to LEI under the State Court decision was merely a reimbursement of costs.

36.

The CPMA (4.1(a)) only authorizes a 5% deduction as a bad debt allowance only against the "fee pertaining thereto." For the period June 1993 to the date of trial from the LEI bill, AMI and now Tenet have improperly been deducting from the payment due LEI an amount equal to 5% of the cost reimbursement which equals $103,617 through the date of the trial. The deduction of five (5%) percent of the fee received is authorized under the CPMA.

37.

The CPMA requires LEI to reimburse LHL for Medicare disallowance.

38.

Medicare is a federally managed health care program primarily designed to provide care to senior citizens. Medicaid is primarily a state program that is designed to provide medical care to indigents regardless of age. Each program has separate enabling legislation, separate regulatory schemes and separate criteria for eligibility and reimbursement. Each program was in existence at the time of the execution of the CPMA. The CPMA (4.1(e)) only authorizes reimbursement for medicare and no evidence by anyone who took part in the drafting of the CPMA has been introduced to prove that the reference to medicare was intended to include medicaid.

39.

The actual amount disallowed by Medicare amounts to $125,499.00 through the date of trial. No other amounts of medicare have been denied by medicare.

40.

LEI receives 33% of its revenue from minimum fee items under the CPMA. For the period September 1,1995 through May 31,1997, LEI received $2,447,485.35 from minimum fee revenue. For this period, LEI was paid by LHL for minimum fee items based upon the mistaken belief that no increase in the minimum fee was due under the terms of the CPMA.

41.

The correct reading of the CPMA would result in a 6.14% increase in the minimum fee that should have been paid to LEI. Applying a 6.14% increase to the minimum fee for the September 1,1995 through May 31,1997 period, LEI should have received an additional $150,275.60.

42.

Additive fees on TPN billings have been deducted from the LEI bill. In addition, LHL claims LEI has over billed it by including an additive fee for seven (7) additives per TPN solution. In order to add an additive to a TPN, the pharmacist uses the same aseptic technique as when he is adding something to either an IV piggyback or an LVP.

43.

LHL, for the period January 1,1993 to March 31, 1997, has wrongfully withheld $54,055.00 in payment due to LEI on the mistaken belief that reimbursement for chemo kits and payment for each additive to a TPN were not compensable.

44.

LHL has failed to reimburse LEI its actual acquisition cost for drugs for the period August, 1989 through June,1993. The parties have stipulated that the actual acquisition cost billed by LEI for the period is $4,062,396.00.

45.

Notwithstanding the receipt of an add/change/delete form from LEI setting forth changes in pricing LHL has not properly entered the cost data into its system thus resulting in reduced compensation to LEI. In addition, the LHL computers for some unknown reason deleted administered doses dispensed by LEI without any known reason from the daily and monthly disks received by LHL from LEI.

46.

Prior to late 1994, LEI was paid based upon a report known as the HPI report. The reimbursement to LEI was based upon the pricing and quantities set forth in the HPI report. The data contained on the report was entered solely by AMI. The reports contained a number of inaccuracies

which reduced the compensation paid to LEI from the compensation which should have been paid to LEI if the reports were accurate. For example, in a number of instances the HPI report listed the actual cost of acquisition to be zero notwithstanding the fact that the disk supplied by LEI and the add/change/delete form contained the proper pricing. Another example of the problem with the HPI report is that it failed to take into account floor stock supplied by LEI and administered and charged to patients by AMI.

47.

The inaccuracies in the HPI report and the payment to LEI could have been rectified had AMI merely compared the HPI report to the LEI disk and their own internally generated audit report. The audit report prepared for billing to patients purposes by AMI contained an analysis of the hospital records showing drugs dispensed to patients versus that which appeared on the patients bill or the LEI daily and monthly disks. It would have been an easy exercise to merely reconcile the information.

48.

For the period from January 1989 through December 31, 1992, the amount which LEI was not properly compensated by AMI, due to incorrect pricing and quantity differences, is $67,641.32. For the period January 1,1993 to May 31, 1997, the amount is $214,265.00. No evidence exists that the drugs at issue were not provided by LEI, and evidence does reveal that floor stock items were not accounted for by AMI and items were systematically deleted by the AMI computers.

49.

It was the intention of the parties under the CPMA that LEI, pursuant to the CPMA, would have the exclusive right to furnish all drugs to all departments at KRMC, except for the specific exclusions set forth in Section 2.6 of the CPMA.

50.

LHL does in fact purchase and dispense legend drugs from its materials management department in contravention of the CPMA.

51.

Materials Management is merely a department of the Hospital, is not a pharmacy and is not under the control or direction of a licensed pharmacist.

52.

LEI has conducted inspections of the hospital looking for medication vials that have been opened, not labeled with the date it was opened or medication that may be past its expiration date and medication that is partially filled and should be returned to pharmacy.

53.

LEI has also found a number of legend drugs that are not carried by it and were obtained from sources other that LEI.

54.

LEI and LHL have conducted audits of a sample of patients' charts to ascertain additional payments that may be due LEI under the CPMA. The audits conducted by both parties reveal that the patient charts (which are to be the primary record of drug administration to patients) maintained by the hospital vary from the records used to pay LEI under the CPMA. This indicates that patients have received multiple doses of drugs delivered to a patient or floor from LEI and that some drugs

have come into the hospital from outside sources. Under the CPMA, LEI is to be compensated for each administered dose.

55.

The Court finds that the LEI methodology to price the calculation of damages pursuant to its chart audit to be inflated. Specifically, charging the full price of the drug plus the fee for each administration of a drug when, in fact, a multiple administration of a drug would have carried no separate acquisition cost. The Court also finds that the LHL concept that 40% of all of the patients receive no drugs is also to be without foundation. The Court believes that the correct figure is somewhere between Dr. Haworth's $3,000,000 and a significant discount off the LEI expert's figure. The Court believes that $5,000,000 is the proper figure.

CONCLUSION

A. IN GENERAL

1.

The general principles of contractual interpretation are set forth in the Louisiana Civil Code. Interpretation of a contract is the determination of the common intent of the parties. Louisiana Civil Code article ("La.C.C. art.") 1945 (1870); La.C.C. art. 2045 (as adopted 1984).[6] Contracts are to be performed in good faith. La.C.C. art. 1901 (1870); La.C.C. art. 1983 (1984). Each provision in a

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[6] This contract was executed prior to the comprehensive revisions to the obligations articles of the Louisiana Civil Code pursuant to Act 331 of 1984. The CPMA was entered into on February 10, 1983. Effective January 1, 1985, the Louisiana law of Conventional Obligations was substantially revised by Act 331 if 1984. The Louisiana Supreme Court has held that to the extent that Act 331 of 1984 changed any substantive provisions of the pre-existing law, this Court must follow the law in effect at the time of the execution of the contract. *Morris v. Friedman*, 663 So.2d 19, 23-24 (La. 1995). However, the cited provisions of the Civil Code that are involved have not changed the law, and references to both pre- and post-revision articles are included.

contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. La.C.C. art. 1955 (1970); La.C.C. art. 2050 (1984). Although a contract is worded in general terms, it must be interpreted to cover only those things it appears the parties intended to include. La.C.C. art. 1959 (1870); La.C.C. art. 2051 (1984). A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the contract, and contracts of like nature between the parties. La.C.C. art. 1962 (1870); La.C.C. art. 2053 (1984). If the parties made no provision for a particular situation, it must be assumed that they intended to bind themselves not only to the express provision, but also to whatever the law, equity or usage regards as implied in a contract of that kind. La.C.C. art. 1903 (1870); La.C.C. article 2054 (1984).[7] Equity is based on the principles that no one is allowed to take unfair advantage of the other. La.C.C. arts. 1964, 1965 and 1966 (1870); La.C.C. art. 2055 (1984). Usage is a practice regularly observed in affairs of a nature identical or similar to the object of a contract subject to interpretation. Id. In the case of ambiguity, a contract is to be interpreted against a party who provided the ambiguous language. La.C.C. arts. 1957-1958 (1870); La.C.C. art. 2056 (1984), Official Revision comment (b).

2.

After listening to the testimony of the witnesses on both sides of the controversy, the Court agrees with the State Court that the CPMA is clear in some respects and ambiguous in many others.[8] The Court has found that the CPMA was drafted by counsel for LHI, and that it was intentionally

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[7] Official Revision Comment (a) provides that the article is new, and changes the law by making the rule of La.C.C. art. 1903 a rule of interpretation rather than one of substantive law. For the purposes of this case, this distinction does not make a difference.

[8] See Liljeberg Enterprises, Inc. v. Lifemark Hospitals of Louisiana, Inc., 620 So.2d 1331, 1336 (4th Cir. 1993), writs denied, 621 So.2d 818 (La. 1993).

drafted in an ambiguous manner in order to better LHL and LHI's position after its execution. Both sides have logical arguments concerning the interpretation of almost every sentence. About the only provisions that the court does not consider to be in dispute are those interpreted by the Louisiana state courts, whose judgments are *res judicata* and binding upon this Court. *See discussion, post.* It is relevant to look to parol evidence to determine the intention of the parties to an ambiguous contract. Liljeberg Enterprises, Inc. v. Lifemark Hospitals of Louisiana, Inc., 620 So.2d 1331, 1336 (4th Cir. 1993), writs denied, 621 So.2d 818 (La. 1993). In cases involving ambiguity, where the intention of the parties cannot be ascertained through parol evidence, the Court is obliged to follow the dictates of the Louisiana Civil Code and construe those ambiguous provisions against LHL, (AMI and Tenet) as the party which furnished the language.

3.

One additional principle must be considered as it has an important bearing on the issue of interpretation. LEI elicited testimony from a number of witnesses involved in the negotiation process on behalf of Lifemark, who testified that Lifemark intended from the inception to rid itself of the Liljebergs as soon as possible, and that the CPMA was intentionally drafted in a manner calculated to provide maximum bargaining leverage. While these witnesses were former employees, and in part may have been motivated by ill will toward their former employer, Lifemark made no attempt to refute their testimony, and the Court believes that they are sufficiently credible to determine that the CPMA was entered into with an ultimate motive of terminating rather than abiding by the contract. The fact that all these witnesses' testimony is consistent adds further support to their credibility. The Court finds that LHI and LHL entered the CPMA in bad faith. With the intent to abrogate the contract, when coupled with the ambiguity designed to promote that goal, further militates in favor of interpreting the contract against LHL, LHI, AMI and Tenet in situations

where the contract is susceptible of more than one interpretation.

B. ISSUE PRECLUSION

4.

Some of the issues previously litigated by the same parties have a bearing on the results of this case. Liljeberg Enterprises, Inc. v. Lifemark Hospitals of Louisiana, Inc., 620 So.2d 1331, 1336 (4th Cir. 1993), writs denied, 621 So.2d 818 (La. 1993), was a declaratory judgment action (the "Declaratory Judgment Action") involving the interpretation of various provisions of the CPMA, and this Court will grant preclusive effect as required by law.

5.

Pursuant to 28 U.S.C. § 1738, the federal courts are required to give full faith and credit to final judgments of state courts. 28 U.S.C. § 1738; In re Greenway, 71 F.3d 1177 (5th Cir. 1996), cert. denied, 116 S. Ct. 2499, 1325 L. Ed. 2d 191. A component of this is the granting of preclusive effect to the state court judgment. State court judgments are to be granted the same preclusive effect as they have by law or usage in the state court. Id.; Jones v. Sheehan, 82 F.3d 1334 (5th Cir. 1996); Daniels v. Equitable Life Assurance Society of the U.S., 35 F.3d. 210 (5th Cir. 1994). Under Louisiana law, the preclusive effect of a judgment is governed by La.R.S. 13:4231, formerly known as La.C.C. art. 2286.[9] La.R.S. 13:4231 was substantially revised by Act 521 of 1990, but Section 5 of Act 521 makes those revisions effective only with respect to judgments rendered in suits originally filed on or after January 1, 1991. Accordingly, the Court must review the law as it existed

[9] La.C.C. art 2289 was redesignated La.R.S. 13:4231 by the Louisiana State Law Institute pursuant to Acts 1984, No. 331, Section 7. The redesignation is said to be neither an amendment to nor re-enactment of the article. See note entitled "Redesignation" following La.R.S. 13:4231 (West).

during the period from the inception of the CPMA through the effective date of Act 521 of 1990. The legal principle was stated as follows:

> The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality.

6.

In the instant case, the state court action was a declaratory judgment action involving the exact same parties. The thing demanded was the interpretation of certain provisions of the CPMA, by way of a declaratory judgment and later as an additional demand for money based upon the interpretation of the contract. The instant litigation involves the interpretation of some of the same portions of the same contract. In R.G. Claitor's Realty v. Juban, 391 So.2d 394 (La. 1980), a declaratory judgment action in which the final judgment decreed that the plaintiff was entitled to erect a fence on his property was given *res judicata* effect against a subsequent suit by the original defendant seeking an injunction to require the demolition of the fence erected after the first judgment.

7.

To the extent that the prior litigation made a final determination of an issue involving the same parties to this litigation, the Court will grant the judgment preclusive effect with respect thereto.

C. INTERPRETATION OF SPECIFIC PROVISIONS

1. Calculation of Fees Per Procedure

8.

The CPMA establishes a pricing scheme under which LEI is to be paid under it for the pharmaceuticals and services supplied by LEI. Section 4.1(a) of the CPMA provides that LHL is to pay LEI "the fee per procedure" as shown on Exhibit "B" to the CPMA. Exhibit "B" provides generally that LHL shall reimburse LEI "the greater of (i) the minimum fee set forth below or (ii) a fee equal to 1.35 times cost as identified by invoice." The Exhibit then goes on to specify minimum fees for certain categories of drugs. The Louisiana courts already have held that the minimum fee per procedure was to be in addition to the cost of the item in question and that the price of the item is to be determined by actual invoice and not a theoretical price. Liljeberg Enterprises, Inc. v. Lifemark Hospitals of Louisiana, Inc., 620 So.2d 1331, 1335-1338 (4th Cir. 1993), writs denied, 621 So.2d 818 (La. 1993). The nuance currently before the court is the definition of a "procedure" for purposes of calculating the "fee per procedure." LHL argues that there is only one charge for the totality of the actions that must be taken to constitute one administration of a medication. LEI argues that each separate step in the administration of medication is a separate procedure for the purpose of charging under the CPMA. Thus, if LEI provides the Hospital with a multiple dose vial of medication, such as a large vial of insulin, from which multiple, but separate, administrations are made at different, distinct times (such as once every four hours), LEI argues that it is entitled to four separate fees in addition to a single recovery of the cost of the medication, while LHL maintains that there should only be one charge for a single procedure, in addition to the cost of the vial. The same analysis also applies to certain pharmaceutical kits that are packaged in a single package, but contain multiple items of individually wrapped drugs, such as a "heparin flush kit," which contains a single

unit of heparin and two single units of saline. Still further, in the case of drugs that are mixed, LEI argues that each separate addition to a solution is a separate procedure on which a fee may be charged, while LHL argues that only one fee may be charged based upon the combined price of the mixed items plus one fee.[10]

9.

The CPMA does not define the meaning of the term "per procedure." Webster's New World Dictionary (2nd College Edition) defines "per" as "for each; for every," and defines "procedure" as "the act, method, or manner or proceeding in some process or course of action" or "a particular course of action or way of doing something." Using a combination of these definitions, without reference to anything else, "per procedure" could refer to each separate act in a process, or to each single process as a unit. There is nothing in the CPMA that implicitly defines the term. The Court concludes the term to be ambiguous in the CPMA, and resort must be made to outside sources to ascertain the true intentions of the parties.

10.

In an attempt to address the meaning of the term per procedure, LEI introduced the testimony of Wendell Alford, a former Lifemark employee who was involved with the Liljebergs in the formation of the CPMA. Mr. Alford explained that LEI was to run the pharmacy department of the Hospital consistent with the general philosophy of the company, and that, at the time of the CPMA, the philosophy was to be compensated for each dose of a medication administered. Ronald Colichia, a former Lifemark vice president for operations generally assumed that the "fee per procedure" concept embodied in Section 4.1(a) of the CPMA was interchangeable with Lifemark's "per

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[10] The CPMA contains specific provisions pertaining to certain intravenous drugs, as well as "admixture fees," that will be discussed separately herein.

administered dose concept" that it was to be compensated for each dose of medication delivered. John Liljeberg testified consistent with these statements, and further added that LEI believed that it was entitled to payment for each unit of a particular type of medication that was administered to a patient. LEI's Pharmacy Director at the Hospital, Charles Witchen, described how certain mixtures of medications require multiple procedures, each requiring adherence to protocols designed to minimize contamination. LHI put on no credible testimony or other evidence in refutation of these statements. Thus, with respect to the administration of multiple units of medication, or multiple administrations of medication from single vials of medicine, the Court holds that LEI is entitled to be compensated for each unit administered.

11.

The testimony by the witness did not address a number of the specific issues between the parties. For example, the former employees could not address the issue as to whether LEI would be entitled to receive a fee for such procedure in a singular process for each separate legended drug contained in a single kit. Allowing LEI compensation for each step in the process and each legend item contained in a kit would in essence be a multiple reimbursement for a single one-time process. The Court will thus disallow multiple fees for a single on time administration from a kit where nothing is added to the solutions in the kit by LEI.

12.

Based upon this distinction LEI is only entitled to a single fee plus cost reimbursement for Heprin Flush kits. They are entitled to multiple fees for items such as insulin and nitroglycerin that are placed in a single vial but administered to patients in single doses over time. The LHL claim of overcharging for nitroglycerin and insulin is denied and LEI is entitled to $57,085 through the date of trial for improper deductions from the LEI monthly bill for these items.

13.

LHL, as part of its claim, asserts that it is entitled to damages for LEI's overcharging for Heprin Flush Kits. Based upon this Courts interpretation of the CPMA, LEI has in fact overcharged LHL for these items. The overcharging does not, however, mean that LEI is liable for damages as a result of the overcharging. For damages on this item to be awarded the Court must find that LHL has suffered some loss as a result of the overcharging and this Court finds that no loss has occurred. See La Civil Code Article 1995; and Weeks v. T.L. James & Co., 626 So.2d 420 (La.App. 3d Cir. 1993).

14.

The testimony of Steven Faucheaux the LHL administrative pharmacist testified that the LHL charge to hospital residents was merely a function of the price it paid LEI. LHL merely used the LEI overcharge price and multiplied that cost times three when billing its patients. The evidence is also clear that when LHL started reducing the LEI charge for Heprin Flush Kits they did not pass the price reduction on to the Kenner Regional Medical Center patients, but continued to us the higher LEI billing notwithstanding the fact that they did not pay the higher price to LEI. LHL actually profited from the overcharge since they passed it on to patients.

15.

The Court will disallow the LHL offset for overcharges for Heprin Flush Kits and also disallow the LEI claim for increased payment for the kits.

16.

LEI argues that the CPMA[11] permits LEI to charge a handling fee for each large volume parenteral (intravenous solution bag) plus an additive fee for each item added to the parenteral, in addition to recovery of the cost of the parenteral and each item added. LEI also argues that the handling fee is assessable with respect to Partial Fill I.V.'s, also known as "piggybacks." LHL argues that LEI is only permitted to receive one handling fee plus only one additive fee regardless of the amount of items added or the number of procedures employed.

17.

The above quoted provision refers to a flat fee for handling" and "handling fee" with respect to non-additive large volume parenterals, and does not refer to the cost of the item in question. Because payments under the formulas described on Exhibit "B" to the CPMA are payable pursuant to Section 4.1(a) of the CPMA, the decision of the Louisiana courts in Liljeberg Enterprises, Inc. v. Lifemark Hospitals of Louisiana, Inc., *supra*, is controlling on this issue.

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[11] Calculation of Certain Handling Fees
Exhibit B to the CPMA contains a provision as follows:
[LHI] shall reimburse [LEI] a flat fee for handling the following items:

I.V. Handling fee for Non-Additive large volume parenterals $1.00. Testimony in the record indicates that the dollar amounts set forth in this portion of Exhibit B have been revised by the parties. Although the Court has quoted the amounts set forth in Exhibit B as signed, it does not mean to imply that the current fees are other than the current agreement of the parties, except to the extent that different escalations are required as determined elsewhere in this opinion.

I.V. Additive Fee $1.70

18.

The reference to the I.V. Additive Fee is also tied to the fee per procedure analysis discussed earlier. Initially, it should be noted that the additive fee is not expressly limited to a specific type of parenteral, while the handling fee for non-additive large volume parenterals is limited expressly to large volume parenterals. Each additive to a large volume parenteral requires a separate procedure to incorporate the additive into the parenteral, involving the use of a laminar flow hood and sterile techniques. There is nothing contained in the contract or elicited in the testimony which indicates that this court should not construe the language concerning additives literally. Each additive may be billed as a separate procedure, in addition to the cost of the additive, determined as set forth earlier in Exhibit "B" to the CPMA.

19.

The Court disagrees with LEI's assertion that it is entitled to the I.V. handling fee established in Exhibit "B" with respect to partial fill I.V.'s known as piggybacks. I.V. Piggybacks are expressly dealt with earlier in Exhibit "B," and a special charge allocated thereto.[12] The testimony in the record is clear that an I.V. piggyback is not a large volume parenteral. When coupled with the express reference to "large volume" parenterals in connection with the flat handling fee, it appears that the I.V. piggyback fee and the large volume parenteral fee are mutually exclusive. Thus, while an I.V. additive fee may be assessed with respect to large volume parenterals and piggybacks, the large volume parenteral handling fee may not be assessed with respect to piggybacks. Based upon this

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[12] The general pricing rule of Exhibit B, discussed earlier, states that LHI shall reimburse LEI "the greater of (i) the minimum fee set forth below or (ii) a fee equal to 1.35 times cost as identified by invoice." There is a drug category set forth below titled Parenterals, which lists in part "Partial Fill I.V.'s (Piggybacks)" and shows a minimum fee pertaining thereto of "$5.25 (includes cost of solution)."

interpretation, LEI has overcharged for IV piggybacks $616,400.00.

2. TPN Fees

20.

In its billings, LEI requested reimbursement for an item called a TPN fee. LHL, AMI and Tenet on the bills submitted to it, denied compensation for the TPN fee. Basically, the TPN fee equals seven additive charges for preparing an intravenous feeding solutions to patients, based upon the testimony that these feeding solutions contain seven additives per administration. The additive charges are based upon the additive charges for large volume parenterals as discussed earlier, because the solutions are added to IVP's. The compensation paid to LEI has been based upon one additive fee, on the theory that the CPMA only allows one fee per solution regardless of the number of additives. Because these solutions are prepared for administration using large volume parenterals, LEI is correct that it is entitled to receive a separate fee for each additive in accordance with the earlier analysis concerning additive fees. Since no credible evidence has been introduced by LHL to rebut the testimony that there is an average of seven additives per TPN solution, LEI is entitled to recover amounts billed for TPN fees.

3. Circumvention Claims

21.

LEI contends that LHL is liable to LEI for lost profit by virtue of LHI's circumvention of its obligations under the CPMA. This contention arises in a number of ways. LEI argues that LHL brought certain pharmaceuticals into the Hospital in derogation of the appointment of LEI as the exclusive pharmacy for the Hospital. In addition, although the CPMA contains certain express

exceptions to the pharmaceuticals that are to be supplied by LEI, LEI maintains that the laws applicable to the dispensing of drugs in a hospital setting mandate that LEI, as the exclusive hospital pharmacy, be involved in the dispensing of various "excepted" drugs, thereby entitling it to its fees and costs in accordance with Exhibit "B."

Section 1 of the CPMA provides in part:

> It is the desire of LIFEMARK to engage the services of OPERATOR [LEI] to manage and operate Hospital's Pharmacy Department (the "Department");

Section 1.2 provides:

> Therefore, LIFEMARK hereby appoints OPERATOR to operate and manage the Department in the name, for the account, and on behalf of LIFEMARK, pursuant to the terms of this Agreement.

22.

Section 2.1 of the CPMA required LEI to "at all times furnish a licensed pharmacist to serve as Director of Pharmaceutical Services . . . , who will supervise the Department's operations and all personnel working within the Department." Section 2.5 of the CPMA provides that LEI is to "provide to Hospital's medical staff and nursing service a modern, patient-care oriented system" to include a number of responsibilities, including: a) introduction, implementation and maintenance of a unit dose system of medication; b) implementation of an IV admixture program; c) screening of patient profiles for possible adverse drug/drug interactions; d) screening of patient profiles for possibility drug incompatibilities; e) provide drug information services; f) conducting in-service training pertaining to pharmaceutical services to committees and staff members; g) development and printing of department policies and procedures; h) participation in the hospital's Pharmacy and Therapeutics Committee; i) participation in the hospital's Infection Control and Audit Committees, if requested; j) participation in the hospital's drug surveillance and utilization review program; k)

provide service of bedside rounds if requested by the hospital; l) participate in CPR attempts if requested by the hospital; and m) sell pharmaceutical items to Lifemark employees at a discount.

23.

Section 2.7 of the CPMA provides in part that "The services performed by the Department shall conform to the standard of the Joint Commission on Accreditation of Hospitals, the [Louisiana] Department of Health and Human Services, state and federal agencies exercising authority over the Department and LIFEMARK'S standards. . . ."

24.

Lifemark's appointment of LEI was comprehensive, and it mirrors many of the functions of a "hospital pharmacy," "hospital pharmacy director," and "hospital pharmacist" under the regulations governing the practice of pharmacy in hospitals in Louisiana. These regulations are contained under Title 46 of the Louisiana Administrative Code ("LAC"), Professional and Occupational Standards, in that part designated as Part LIII. These regulations impose special requirements upon pharmacies located within and operated in conjunction with hospitals. Under LAC 46.LIII.2501, a "hospital pharmacy" is a pharmacy department located in a hospital facility licensed by the Louisiana Department of Health and Hospitals, and represents an inpatient primary care treatment modality pharmacy. A hospital pharmacy permit is required to operate a pharmacy for possessing, dispensing, and delivering legend prescription orders to patients in a hospital. LAC 46.LIII.2503. The permit application must be signed by the hospital pharmacy director. A hospital pharmacy director is a pharmacist meeting specific educational and training requirements concerning hospital pharmacy practice. LAC 46.LIII.2523. A "hospital pharmacist" is a licensed pharmacist practicing in an in-patient primary health care treatment modality. Under LAC 46.LIII2507, the hospital pharmacist is responsible for, among other things: a) reconstitution of admixtures for oral or parenteral use; b)

initiating the selecting and retrieving bulk drugs for unit does prepacking; c) supervising the proper labeling of prepackaged medication and maintaining a proper log of prepackaging activity; d) supervising the dispensing of properly labeled, prepackaged drugs in final unit dosage form; e) supervising the maintenance of patient profiles; f) controlling all pharmacy functions of staff personnel under his or her immediate and direct supervised control; g) performing all compounding; h) dispensing all Schedule I and II Controlled Substances; and i) performing reasonable pharmacy functions required by the director of pharmacy.

25.

A direct comparison of the CPMA against the legal responsibilities of a hospital pharmacy and hospital pharmacist shows that Lifemark appointed LEI as the hospital's "Hospital Pharmacy" within the purview of the Louisiana regulations, and that LEI was responsible for engaging a "pharmacy director" and "hospital pharmacists." Once this determination is made, a number of important consequences follow from the federal and state laws that govern the dispensing of drugs.

26.

On the other hand, the CPMA contains an express exclusion from its scope for certain types of services and supplies. Section 2.6 of the CPMA provides:

> 2.6 OPERATOR [LEI] shall not provide, nor be entitled to any compensation, for the following:
>
> (a) all drugs and supplies utilized by the ancillary departments of the Hospital in preparation for, during, or immediately following departmental patient related procedures, except those patient identifiable charges in which the cost of the drug is not included in a fee or charge for that procedure. Ancillary departments shall include, but not be limited to, radiology, anesthesiology, and clinical labs;
>
> (b) all blood, except blood derivative products such as volume expanders, plasma, albumin, etc.;

(c) irrigating solutions not requiring the addition of drugs;

(d) supplies or devices used for the administration of infusion or parenteral or irrigating solutions; and

(e) those non-medical, sundry items used for patient care or comfort including, but not limited to, mouthwash, talcum and shampoo.

27.

Initially, it is obvious that the CPMA does not govern the foregoing items unless the parties agree otherwise or there is another basis for requiring LEI to handle these items. LEI is not to provide these items, and it will not receive compensation for them. The contrary is implicit, that if LEI provides these items, it is to be compensated for them. LEI has supplied and has not received compensation for items such as IV bags and chemotherapy kits.

28.

There are a number of issues presented as circumvention claims. The first is that the exclusion of Section 2.6(a) only applies to drugs the cost of which is not identifiable, and LEI contends that all drug charges are identifiable. The second is that LHL may not legally dispense medication without the intervention of LEI, because LHL has no authority to dispense drugs without the proper licenses, and LEI is the exclusive, licensed hospital pharmacy. The third issue involves LEI's overseeing of the dispensing of medications out of LHL's materials management department without compensation.

29.

Prescription, or "legend" drugs, are those that bear a legend on the label warning that the drug may not be dispensed without a prescription from a duly authorized practitioner. See 21 U.S.C. §353(b)(4). Generally, prescription drugs may only be dispensed by a licensed pharmacist. 21

U.S.C. § 353(b). Pharmacists are licensed under state law, but they are governed by many provisions of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301, *et seq.* In addition, certain types of prescription drugs are governed by the Controlled Substances Act, 21 U.S.C. § 801, *et seq.*, which imposes additional requirements upon licensed pharmacists. 21 U.S.C. § 822 requires any person who dispenses or proposes to dispense controlled substances (those "scheduled" and regulated by the act) to register with the U.S. Attorney General in accordance with the rules and regulations promulgated by him or her. The Drug Enforcement Administration of the Department of Justice issues a registration number to each registered pharmacy which is then used in connection with the ordering of drugs by a pharmacy. See 21 CFR §§ 1301.21, 1301.23, 1301.32, 1301.34.

30.

There was testimony concerning the issue of whether the storage and dispensing of certain pharmaceuticals out of ancillary departments, such as the Hospital's Materials Management Department was a violation of law. LEI reported LHL to the Louisiana Board of Pharmacy, which ultimately took no action. To some extent this appears to be the result of the board's decision to stay out of a contractual dispute between two private entities, and some testimony is to the effect that "everybody does it that way" regardless of the letter of the law. The Court discounts this testimony, because the exercise of discretion by the Board of Pharmacy cannot abrogate black letter law.

31.

To the extent that services excluded pursuant to Section 2.6 of the CPMA require the intervention of a pharmacist under applicable law, the appointment of LEI as the exclusive hospital pharmacy for the Hospital necessarily requires LEI to be involved in the process with respect to the ordering, storage and dispensing of such products, with the effect that the services provided will be governed by the CPMA and the pricing scheme establishing thereby. To the extent that applicable

law does not so require the intervention of a pharmacist, the CPMA does not require the involvement of LEI nor concomitant compensation, unless the parties to the contract agree otherwise. In rendering this ruling, the Court finds that the contract between the parties and the law place the responsibility for the storage of prescription medication (including kits containing prescription medication), and the dispensing of prescription medication based on the prescriptions of physicians, require the intervention of licensed pharmacists, and that LEI is the duly appointed hospital pharmacy charged with providing those services.

4. Deductions for Bad Debt

32.

Section 4.1(a) of the CPMA requires LHI to pay to LEI the fee per procedure "less 5% of such total of the fees per procedure as allowance, for bad debt." LHI contends that the bad debt deduction must be calculated not only on the fee set forth in Exhibit "B" of the Pharmacy, but also upon the cost of the item supplied. LEI contends that the bad debt deduction applies solely to the fee, but not to the actual cost of the items, and that LEI is entitled to be compensated for the actual cost of any items regardless of the bad debt deduction. The Louisiana courts expressly did not rule on this issue, but its interpretation of the contract and the definition of "fee per procedure" leads to the inevitable conclusion that the bad debt deduction does not apply to the cost of the drugs being supplied, but only to the fee.

33.

This court need only review the relevant agreement sections and the decision of the Louisiana Fourth Circuit Court of Appeal in Liljeberg Enterprises, Inc. v. Lifemark Hospitals of Louisiana, Inc., No. 92-CA-0869, 620 So. 2d 1331 (La. App. 4 Cir. 1993), writ denied, No. 93-C-1085, 621

So.2d 818 (La. 1993). The critical part of the CPMA at issue is the same section under scrutiny in the Declaratory Judgment Action, which provides as follows:

> 4.1(a) As compensation for those pharmaceutical services provided by OPERATOR as specified above, and for pharmaceuticals and intravenous solutions furnished hereunder to inpatients or emergency room patients, LIFEMARK **shall pay to OPERATOR the fee per procedure** as shown on Exhibit B, which is attached hereto and incorporated herein for all purposes **less 5% of such total of the fees per procedure** as allowance, (SIC) for bad debt. The allowance for bad debt shall be reviewed after each fiscal year of the Hospital and changed to reflect the actual percentage of uncollectible accounts for the proceeding fiscal year of the Hospital.

(Emphasis Added)

34.

In the Declaratory Judgment Action, the issue was whether the quoted language meant that the prices charged in accordance with the schedule was to include LEI's cost of the products supplied, or whether the fees were to be in addition to the cost. The court held that

> [LEI] shall be entitled to receive reimbursement of its actual acquisition cost in addition to the fee per procedure.

620 So. 2d at 1331.

35.

Although the CPMA judicially has been declared to establish compensation based upon cost plus a fee per procedure, Lifemark continues to assert that the allowance for bad debt referred to in the same sentence applies to both the cost of the goods to LEI *plus* the fee per procedure. This is entirely inconsistent with the plain meaning of the section, as interpreted by the Fourth Circuit Court of Appeal. In other words, although Lifemark is bound to the interpretation that "fee per procedure" refers solely to a fee, on top of acquisition cost, it takes the position that the words "such totals of the fees per procedure" appearing later in the same sentence applies to both the fee and the acquisition cost. This Court is constrained under *res judicata* principles to apply the Louisiana

court's interpretation of "fee per procedure" in the first portion of the sentence. It is not logical to believe that the same words have different meanings in two places in the same sentence, and this Court has seen nothing to indicate that a contrary interpretation is warranted. The section deals solely with "fees," and the reference to "such total" is a reference to the total of the "fees" described earlier, which does not include costs.

36.

The Court of Appeal in its opinion did indicate that Lifemark retained its claim for reimbursement for bad debts. This does not mean that there is any room for challenging the price component against which the bad debt percentage must be calculated. Rather, it recognized that the parties had not calculated the changes to the bad debt allowance percentage applicable to each year of the hospital's operation, as required by the above quoted language. This court decides that the bad debt calculation must be made solely upon the amount of fees charged by LEI, and not the cost component of the pharmaceutical products supplied. LHL is not permitted to deduct a bad debt allowance from the cost reimbursement element of the bill.

5. Reimbursement of Medicare and/or Medicaid Disallowances

37.

Section 4.1(e) of the CPMA provides that LEI is to reimburse "Client"[13] in the event that it is determined by the Hospital's "Medicare intermediary" to deny reimbursement for any portion of the compensation paid by LHL to LEI. LHL has taken the position that this language requires reimbursement for both Medicare and Medicaid charges denied, while LEI argues that the section

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[13] The term "Client" is not defined, but the parties appear to assume that it refers to LHL.

is limited to actual denials of Medicare reimbursement.

38.

Medicare reimbursement involves the use of "intermediaries" who determine those charges made by a hospital that qualify for reimbursement under the program. Section 4.1(e) is designed to allow LHL to recoup from LEI amounts paid to LEI (presumably with respect to Medicare patients) that were not reimbursable under the Medicare program. LHL presented testimony that its Medicare intermediary also provided data that was relevant to Medicaid reimbursement for certain post CPMA periods, and LHL extrapolates from this that Section 4.1(e) was intended to deal with Medicaid and Medicare reimbursement as gleaned from LHL's Medicare intermediary. There was no testimony concerning the intention of the parties with respect to whether Medicaid was to be the object of reimbursement under Section 4.1(e) of the CPMA, and the Court cannot disregard the reference solely to Medicare. If LHL had intended to include a reference to Medicaid, it could have easily added it to the section. Further, LHL's purely literal analysis would apply equally in the fortuitous event that LHL's Medicare intermediary also decided reimbursement claims for private insurance carriers. LHL is only entitled to the actual amounts disallowed by Medicare through the date of the trial which is $125,479.00.

6. Minimum Fees

39.

LEI contends that it is entitled to an increase in the minimum fee it can charge for the period after September 1, 1995. Section 4.1(c) of the CPMA governs how the minimum fee for any year is to be calculated. The dispute between LEI and LHL is whether the calculation is based upon the immediate preceding year or whether, as LHL contends, the calculation is based upon the highest

percentage for any prior year. The language of Section 4.1(c) uses the term "immediately preceding year" and the proper test is that advanced by LEI.

40.

Using the correct methodology, the minimum fee increase for the period September 1, 1995, to August 30, 1997, is 6.14%. The uncontradicted testimony of Jim Witchen is that thirty-three (33%) percent of the LEI revenue ($2,447,485.35) comes from minimum fee items. Applying the correct minimum fee to the minimum fee revenue, reveals that AMI wrongfully withheld $80,114.77 for the period September 1, 1995, to August 30, 1996, and $70,160.83 for the period September 1, 1996, through May 1997.

7. Other Items

41.

There are a number of disputes concerning whether or not LEI is entitled to charge for certain items not expressly provided for in the CPMA. Section 4.1(a) of the CPMA provides that as compensation for the services provided, LHL is to pay LEI the fee per procedure specified on Exhibit "B." Exhibit "B" lists the minimum fees by categories of drugs or services, but it also has a "catch all" provision as follows:

> Fees for items or categories not identified above shall be established in a manner consistent with the development schedule.

The contract contemplates that there may be services rendered pursuant to the contract that may not be precisely listed in the four corners of the exhibit, and it equally contemplates that LEI is to be compensated for those services.

42.

One item of contention is whether LEI is required to provide computerized Medical Administration Records, or "MARs," to LHL. An MAR is a record that shows every item of medication that was ordered to be administered to a patient. The testimony at trial appears to be that an MAR is becoming a standard type of document used in the administration of medications to hospitals. It appears to be a recent innovation in hospital practice, as LHL has only recently requested LEI to provide MARs.

43.

LEI has the capability to compile an MAR for each patient in the hospital, but LEI has refused to produce them to LHL without the payment of compensation. LEI has requested a fee of $10 per patient per day to perform this service. LHL has taken the position that LEI is obligated to provide MARs under the general provisions of the CPMA, and that LEI is not entitled to compensation for providing them to LHL, except perhaps for reimbursing supplies or the cost thereof in connection with the printing of MARs.

44.

Section 1.1 of the CPMA provides that LHL desires, and the LEI agrees to provide, a level of quality of pharmaceutical and hospital care consistent with that of the patient community in which the Hospital is located. Section 2.5 of the CPMA general outlines the services to be provided. That section provides that the services include, but are not limited to, certain enumerated items. The list of items does not include the providing to LHL or its doctors any records concerning medications ordered or the administration of medications. The section generally provides for the implementation of a unit dose system of medication. The pharmacy is to screen patient profiles for possible drug or allergic reactions. It does not contemplate that LEI is to provide information to the hospital that is

patient specific. The only subsection pertaining to drug information is the provision of "drug information services," which would appear to be a reference to the providing of information about drugs, not information about patients. Further, the fact that MARs are apparently a recent addition to hospital practice demonstrates that they were not contemplated by the provisions of Section 2.5. Because Section 2.5 primarily deals with the delivery of pharmaceuticals, plus in-service training, participation in committees and the development of policies, it does not appear broad enough to contemplate MARs.

45.

This does not mean that LHL cannot compel LEI to provide MARs. Section 1.1 and Section 2.5, when read together, clearly contemplate that LEI can be forced to provide MARS. However, when read in conjunction with Section 4.1(a), pertaining to compensation "for those pharmaceutical services provided by [LEI] as specified above," they fall within the scope of the provisions of Exhibit B that requires the payment for services in accordance with the "development schedule." Thus, if LHL intends to require LEI to provide MARs, it must be prepared to compensate LEI pursuant to the development schedule. Because this Court has not heard any testimony concerning the meaning of the reference to the development schedule, it is not in a position to determine what fee ultimately may be due for the providing of MARs.

III. CIVIL ACTION NO. 93-1794

A. FINDINGS OF FACT

1.

LEI filed for relief under Chapter 11 of the United States Bankruptcy Code on the 27th day of January, 1993.

2.

LEI served as a Debtor in Possession with the rights and powers of a Debtor in Possession.

3.

LEI timely filed a Motion to Assume the CPMA.

4.

LEI and LHL entered into the CPMA in February of 1983. The CPMA requires performance on the part of LEI to provide drugs at Kenner Regional Medical Center and the other party to the contract has obligations to make payment for the drugs supplied.

5.

The CPMA is an executory contract.

6.

The CPMA does not require or compel that LEI provide the services of a single named individual.

7.

The CPMA is a valuable asset of the LEI estate which generates positive net income. The termination of the CPMA would have a detrimental effect on the ability of LEI to pay its creditors.

8.

The assumption of the CPMA is a reasonable exercise of the business judgment of LEI.

9.

LEI has performed its obligations under the CPMA in good faith.

10.

St. Jude Hospital of Kenner, La. Inc. and LHL entered into a lease of the hospital in 1983. The lease between the parties was recorded in Jefferson Parish. The lease is a triple net lease with a monthly payment equal to the outstanding indebtedness due by St. Jude to LHI pursuant to the financing given to St. Jude to construct the Hospital.

11.

St. Jude granted to LHI a mortgage on the Hospital. The original mortgage was recorded in March of 1983 in Jefferson Parish. The mortgage was recorded after the LHL lease was filed in Jefferson Parish. The mortgage when viewed in tandem with the lease was incapable of default since the obligations owed by LHL to St. Jude under the lease would satisfy all of the obligations due by St. Jude to LHI under the terms of the financing.

12.

In April of 1991, St. Jude executed, at the request of LHI, a renewal promissory note and granted to LHI additional collateral. The additional collateral granted to LHI a pledge of the LHL rental and functionally allowed LHI and LHL to merely account for the payment as opposed to having LHL pay St. Jude and then have St. Jude pay LHI. At no point were checks ever written by LHL to St. Jude for lease payments. The entire flow of money was handled as mere bookkeeping entries. The record is in fact devoid of any evidence that LHL ever had a bank account. All payments to LEI under the CPMA and all payments to employees at the Hospital have come from

either AMI or Tenet.

13.

To maintain the priority of the mortgage, LHI would have had to reinscribe the mortgage prior to March of 1993. The mortgage was never timely reinscribed.

14.

In April of 1993, a judgment was rendered in favor of Travelers Insurance Co against St. Jude and LEI. The judgment was recorded in April of 1993. The judgment is inferior in rank to LHL's right of peaceable possession.

15.

Travelers seized the Hospital by writ of execution and it was ultimately sold via a judicial sale to LHL the Leasee of the Hospital.

16.

LHL has never been and never can be a third party dispossessed from its right of occupancy under the lease with St. Jude.

17.

The purpose for LHL buying the Hospital at the judicial sale was with the intent and purpose of attempting to cause a termination or breach of the CPMA. Having LHL, as opposed to LHI purchasing the Hospital at the judicial sale, resulted in significantly increased costs to the LHL/LHI group and was designed to remove bidders from the process.

18.

Under the CPMA, LHL has the right to have LEI pass a quality assurance audit. The items reviewed under the Quality Assurance audit are attached to the CPMA as an exhibit.

19.

For the first 11 years of the CPMA, LHL never held a quality assurance audit.

20.

In 1993, a Quality Assurance Audit was conducted on behalf of LHL by Dr. Mervin Kahlman. The audit was conducted based upon the exhibit attached to the CPMA.

21.

LEI did not pass the initial 1993 audit, however, when LEI exercised its rights under the CPMA and requested that LHL resurvey the pharmacy, LEI passed the Kahlman audit.

22.

The scoring for the audit and reaudit was based upon points earned to total points. In addition, in the resurvey only those areas which failed the initial survey were reviewed and the points earned during the resurvey were added to the points earned in the passing areas of the original survey to obtain a total passing score.

23.

In 1997 in an attempt to cause a breach of the CPMA, Tenet, successor to LHL, called for a survey. Rather than use the audit attached to the CPMA, Kahlman and a Tenet employee Bonnie Kirschenbaum, reconfigured the audit.

24.

The 1997 audit was designed and scored with the sole purpose of having LEI fail the audit and to constitute a default under the CPMA. Kahlman, in his scoring of the audit and resurvey of LEI, deducted points for acts or omissions of persons outside the control of LEI and for not having a policy for issues not concerning the pharmacy. In addition, in order to insure failure, Kahlman, at the direction of Kirschenbaum, scored the survey based upon using a mean score as opposed to the

scoring procedure used in prior years. Had the prior method of scoring been used LEI would have passed the audit. The bad faith of Kirschenbaum in designing the process is best evidenced by this Court's question to Kahlman and his response to this Court on the issue of whether LEI passed the 1997 audit. When asked if LEI passed the 1997 audit Kahlman responded "now that's a good question . . . I don't know."

25.

In 1997, the Joint Commission for Accreditation of Heath Care Organizations ("JCAH") surveyed the Hospital and the LEI pharmacy operation. LHL was advised that it passed the 1997 accreditation test and JCAH did not note any deficiencies pertaining to the LEI operation. LEI's services thus conformed to the standards of JCAH and all other agencies who exercise authority over the hospital pharmacy at the Hospital.

26.

In its years of operation of the Hospital pharmacy, LEI has never been cited by the Board of Pharmacy for ineffective service, never been sued for malpractice and only once been criticized by the Hospital internal operating or Medical committees. No one has ever died or been injured at the Hospital as a result of a drug error caused by LEI.

27.

LEI provides a 24-hour per day, seven days a week pharmacy for the hospital. It fills in excess of 20,000 prescriptions per month. The LHL corporate policy of Tenet is to have no more than twenty incident reports per month. LEI has never had 20 incident reports in any month.

28.

A medication error is one which reaches the patient and a dose of medication that deviates from the physician's order as written in the patient chart. The nursing staff has the responsibility to

inspect each drug before administering it to a patient, and, thus, is equally responsible with the pharmacy for any error that occurs based upon the Tenet policy and procedure manual.

29.

One time delays in dispensing drugs due to the illness of a pharmacist on duty do not constitute a default of the CPMA.

30.

LEI, through its personnel, took part in meetings of Hospital committees and subcommittees.

31.

Tenet has no stated or written policy as to how many meetings an employee or staff member can miss before they are in violation of Hospital policy.

32.

The meetings LEI failed to attend were those where it did not receive notice of the meetings or where it made a decision not to attend to demonstrate or protest as to the items being addressed at the meeting. Its attendance at meetings fulfills its requirements under the CPMA.

33.

The mere failure to attend a few meetings of Hospital Committees does not constitute a material breach of the CPMA warranting cancellation or a finding of breach of the CPMA.

34.

Travelers was paid the sum of $7,834,516.26 in satisfaction of its judgment.

35.

LEI has attended meetings of the Hospital sufficient to meet its obligations under the CPMA. An occasional absence is not the type of default envisioned by 11 U.S.C. § 365 or the La. Civil Code sufficient to cause cancellation of the CPMA for default.

36.

No evidence was introduced to support the LHL position that the reference to the Lifemark corporate affiliates in CPMA (5.1 b) is a typographical error. At no point prior to this trial did AMI or LHL or Tenet ever advise LEI of the alleged typographical error or attempt to seek an amendment or correction to the CPMA.

37.

The obligations contained in the CPMA are severable from St. Jude's obligations to LHI under the mortgage and LHL under the lease.

38.

LHL has approved the organizational chart of the relationship between the LHL and the LEI director of pharmacy.

39.

LEI, to the extent a monetary default exists under the CPMA, can cure the default with payment of sums due and can give adequate assurance of future performance.

40.

LEI has agreed to be included in the LHL and Tenet computer system at the Hospital.

B. CONCLUSIONS OF LAW

1.

A debtor under Chapter 11 of the United States Bankruptcy Code may assume an executory contract if it cures or provides adequate assurance that the trustee will promptly cure such breach; compensates or provides adequate assurance that one trustee will promptly compensate a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from

such default; and provides adequate assurance of future performance under such contract. See 11 U.S.C. § 365(b)(1).

2.

The initial inquiry is whether the CPMA is an executory contract. The generally accepted definition of executory contract is one on which performance remains due on both sides. National Labor Relations Bd. v. Bildisco and Bildisco, 465 U.S. 513, 104 S. Ct. 1188, 1194, 79 L. Ed. 2d 482 (1984). The CPMA clearly contemplates an ongoing relationship with continuing obligations on the part of both parties, and it clearly is an "executory contract" that is assumable within the meaning of 11 U.S.C. § 365. A contract is executory if at the time of the bankruptcy filing, the failure of either party to complete performance would constitute a material breach of the contract, thereby excusing the performance of the other party. In re Murexco Petroleum, Inc., 15 F.3d 60, 62-63 (5th Cir. 1994); In re Crippin, 877 F.2d 594, 596 (7th Cir. 1989).

3.

In determining whether to approve a debtor's assumption of an executory contract, the courts generally apply a "business judgment" test. Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303 (5th Cir. 1985). The court should determine if it would beneficial or burdensome for the estate to assume the contract before it. In re Orion Pictures Corp., 4 F.3d 1095, 1098 (2d Cir. 1993). The CPMA is a very lucrative contract to LEI. The scope of services provided, the general exclusivity provisions, and the pricing formula ensure a healthy profit margin to LEI. It would be incomprehensible for this Court to imagine a scenario where anything other than assumption would be in the best interest of LEI.

4.

LHL has argued that LEI breached the CPMA in a number of ways, and that the contract is not assumable under the provisions of Section 365 that govern defaults in executory contracts. Section 365(b) provides in pertinent part as follows:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> 1. cures, or provides adequate assurance that the trustee will promptly cure, such default;
>
> 2. compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> 3. provides adequate assurance of future performance under such contract or lease.

5.

LHL asserts a number of pre- and post-bankruptcy defaults, including: (1) the foreclosure terminated the Lease, which in turn is a default under the CPMA; (2) the filing of the Travelers Judgment was a breach of the Lease from St. Jude to LHL, causing a termination of the CPMA; (3) LEI failed to allow LHL to retain full control and responsibility for the operation of the pharmacy department; (4) LEI fails to attend meetings calling for the participation of its employees; (5) LEI failed LHL's Quality Assurance Audit; (6) LEI failed to provide computerized services requested by LHL; and (7) LEI provides substandard service; and (8) LEI overcharges LHL. In the case of the foreclosure and the alleged termination of the lease, LHL asserts that these conditions terminated the CPMA prior to the filing of LEI's bankruptcy, and there was nothing for LEI to assume.

6.

It does not matter for purposes of assuming a contract under 11 U.S.C. § 365 whether a default occurs before or after the filing of a petition under the United States Bankruptcy Code. Collier on Bankruptcy, ¶ 365.05[02] (15th ed. Revised, 1997), pp. 365-47,48; In re Berskshire Chemical Haulers, Inc., 20 B.R. 454, 457 (Bkrtcy.D.Mass. 1982); In re The Gold Standard at Penn, Inc., 75 B.R. 669, 674 (Bkrtcy.E.D.Pa. 1987); In re Bon Ton Restaurant & Pastry Shop, Inc., 53 B.R. 789, 793 (Bkrtcy.N.D.Ill 1985); See also Allied Technology, Inc. v. R. B. Brunneman & Sons, 25 B.R. 484, 500 (Bkrtcy.S.D.Oh. 1982); In re Rachels Industries, Inc., 109 B.R. 797, 811-812 (Bkrtcy.W.D.Tenn. 1990) ("This conclusion is clear after a reading of § 365(b)(1), which measures defaults as of the 'time of assumption,' which cannot come before the Court approves assumption." P. 812); In re Hub of Military Circle, Inc., 13 B.R. 288 (Bkrtcy.E.D.Va. 1981); See also Allied Technology, Inc. v. R. B. Brunneman & Sons, 25 B.R. 484, 500 (Bkrtcy.S.D.Oh. 1982). However, it does appear that Section 365 (b) contemplates that the contract be in existence, albeit in default, in order for there to be an assumption. See In re R.R.S., Inc., 7 B.R. 870 (Bkrtcy.M.D.Dla. 1980); In re The Final Touch Boutique, Inc., 6 B.R. 803 (Bkrtcy.S.D.Fla. 1980); See also In re Fontainbleau Hotel Corp., 515 F.2d 913 (5th Cir. 1975).

7.

In looking at the issue of breach of the CPMA the Court must turn to state law. See In re The Final Touch Boutique, Inc., 6 B.R. 803, 807 (Bkrtcy.S.D.Fla. 1980).

8.

LHL generally asserts that two of the defaults occurred prior to bankruptcy, and that there is no contract to assume. However, at the time of the bankruptcy, LEI was in possession of the pharmacy, and it continues to remain in possession at this time. Under Louisiana law, the general

rule is that a party who claims a breach of contract, and who wants to dissolve the contract, has a right of judicial dissolution. La.C.C. art. 2013; La.C.C. art. 2046-2047 (1870).[14] Under the article, dissolution takes place upon judicial declaration. La.C.C. art. 2013, Revision Comment (c).

9.

Not just any "technical" breach permits an obligee to dissolve a contract. La.C.C. art. 2014 provides:

> A contract may not be dissolved when the obligor has rendered a substantial part of the performance and the part not rendered does not substantially impair the interest of the obligee.

10.

Revision Comment (a) to this article also indicates that it is new, but does not change the law expressed in the predecessor articles and is consistent with case law. Comment (c) indicates that for a court to refuse dissolution, the obligor must have rendered substantial performance and the unperformed part must not impair the interest of the obligee. Furthermore, even in the event that a breach is found, the ability of an obligee to obtain dissolution is tempered by the second paragraph of La.C.C. art. 2013, which provides as follows:

> In an action involving judicial dissolution, the obligor who failed to perform may be granted, according to the circumstances, an additional time to perform.

11.

Comment (c) to the article indicates that the decision to grant additional time is a matter for the court to determine in light of circumstances of the individual case, including the good faith of

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[14]La.C.C. art 2013 was adopted by Act 331 of 1984. However, Official Revision Comment (a) provides that the article does not change the rule of former La.C.C. arts. 2046-2047 (1870).

the obligor, and whether he has a valid excuse for nonperformance. In the instant case, there are substantial allegations back and forth concerning the meaning of the CPMA and the obligations of both parties to the agreement. Accordingly, this dispute falls within the range of disputes with respect to which a judicial declaration of dissolution is a prerequisite to the dissolution.

12.

The Court is aware that there are certain types of defaults that do not require a judicial declaration of dissolution. An example given in Revision Comment (c) to La.C.C. art. 2013 is when neither party has performed and it is clear that one will not, in which case the other may declare the contract dissolved. Other examples include a situation where a person in possession of property apparently abandoned the premises or allowed another to take them over, Texala Oil & Gas Co., Inc. v. Caddo Mineral Lands Co., 93 So. 788 (La. 1922), or where a contractor essentially abandoned work after being requested to comply, Hay v. Bush, 34 So. 692 (La. 1903).

13.

There had been no judicial declaration terminating the CPMA as of the time of LEI's bankruptcy filing. The court also finds that the two contentions concerning the prior termination of the contract do not fall within the narrow exceptions to the judicial declaration rule. Therefore, the Court must determine whether the defaults claimed by LHL are sufficient to preclude assumption of the CPMA.

14.

The court went on to note that

> an order was signed for the seizure and sale of the property, however, no actual seizure ever took place. [The lessee] was never denied access to the building and was never told to vacate the premises. A sheriff's deputy visited the leased premises for approximately fifteen minutes . . . and bank representatives took an inventory of the building for approximately thirty minutes . . . . A necessary temporary or

insignificant disturbance is not grounds for the abrogation of a lease.

Union Bank v. Cottonport Ins. Exch., 630 So.2d 975, 977 (La.App. 3d Cir.), writ denied, 637 So. 2d 1049 (La. 1994).

15.

LHL contends that the CPMA may be dissolved pursuant to Section 5.1 on account of breaches of the Lease of the Hospital from St. Jude to LHL, or the mortgage given by St. Jude to LHI. Breaches asserted by LHL include the filing of the Travelers Judgment and the foreclosure of the hospital by Travelers.

16.

The initial paragraph of Section 5.1 provides that the CPMA "shall continue in full force and effect, unless sooner terminated with the first to occur of the following." The section goes on to provide specific events that may result in termination, including Section 5.1(b) as follows:

> (b) Either party shall remain in breach of this Agreement for a continuous, unabated 30-day period after receipt of written notice of such breach from the other party. Should OPERATOR, or any of LIFEMARK's corporate affiliates, be in default of any other contractual agreement with LIFEMARK or any of LIFEMARK's corporate affiliates, including, but not limited to, the lease relating to the Hospital, then OPERATOR shall be in breach of this agreement.

17.

LHL's argument hinges on the assumption that there is a typographical error in the Section, and that a default by LEI's affiliate (in this case, St. Jude), not LHL's affiliate, to LHL or an LHL affiliate, is a breach of the CPMA. Read literally, this section does not provide that a breach by an LEI affiliate to LHL or an LHL affiliate is a breach of the CPMA. LHL asserts it would not make sense for a default by an LHL affiliate to result in a breach of the CPMA by LEI, as the section literally provides. Instead, LHL contends that the section means that a default by LEI or LEI's

affiliate to LHL or LHL's affiliate is a breach of the CPMA. The court cannot determine this from the record before the court. LHL has presented no evidence concerning the intention of the section, but instead chooses to argue based solely upon apparent error.

18.

However, LHL's argument is not the only available argument. The language theoretically could have been prepared for LEI's benefit, so that a default by LHL or LHL's affiliate to LEI or LEI's affiliate would be a breach by LHL that would allow LEI to get out of the contract or seek damages. For example, this would allow LEI to terminate the CPMA if the Lease were terminated and LEI was required to solicit another operator of the Hospital with whom it would attempt to enter into a new CPMA. Under this interpretation, the reference to LHL would have been correct, but the other four references would have been erroneous. The Court has nothing to go on to say whether there were one or four errors. While this Court could speculate that LHL's interpretation is correct, LHL has not provided any proof to rebut the literal wording of the contract. Notwithstanding the foregoing, the court concludes in any event that St. Jude did not breach the lease or the mortgage.

19.

The lease contains a total pass through of all obligations of St. Jude under the loan and security agreement. In Section 3.1, the basic rent was the amount required to be paid by St. Jude pursuant to the loan documentation. Any and all expenses attendant to the use and operation of the property were directly passed through to LHI, including taxes (Section 5.1), utilities (Section 5.2), maintenance of the property (Section 6.2), and insurance (Section 9.1). In return for paying St. Jude's note obligations, LHL obtained the right to pay all rent payments directly to St. Jude's lender, and LHL's parent, LHI. LHL also obtained almost carte blanche permission to alter the hospital constructed on the land or to erect different buildings. LHL had total possession and control of the

leased premises during the term of the Lease, and it had the obligation to pay any and all charges pertaining to the real estate.

20.

The lease is so extensive an abdication of St. Jude's rights over the property that article XV, dealing with defaults, contains only a list of defaults by the tenant, and none by St. Jude.

21.

LHL refers to Section 11.1 of the Lease for the proposition that any liens allowed to exist on the property would result in a breach of the Lease. Section 11.1, in relevant part states:

> During the Lease Term, Lessor represents and covenants that it will not create nor allow to exist any liens, encumbrances, or charges **relating to obligations of the Lessor affecting the Leased Premises**, except liens such as paving, water and sewerage liens, resulting from special assessment by a governmental authority and the Act of Collateral Mortgage referred to in Section 1.1 hereof and any other mortgage instruments now or hereinafter executed to secure the loan mentioned in Section 1.1 or otherwise agreed to in writing by the lender.

While the recordation of the Travelers' judgment did create what a title examiner would call an encumbrance or lien against the land, it did not relate to the obligations of the Lessor affecting the Leased Premises. Those words limit the reference to liens to only those which affect the ability of the Lessor to maintain LHL in peaceable possession. Under La. R.S. 9:2721, *et seq.*, the recordation of the Lease which took place on March 14, 1983, served to create an indefeasible charge on the real estate. The only exceptions to LHL's rights would be real charges that prime prior recorded documents, particularly real estate taxes and other types of charges which would result in a sale of the land to the prejudice of the Lease. An inferior lien or encumbrance could not affect the obligations of the Lessor because they could not result in the dispossession of LHL. Section 20.10 of the Lease confirms what the law provides, that the Lease and LHL's leasehold estate was and would remain superior to the Loan Agreement and the security instruments later executed in

connection with the Loan Agreement.

22.

Louisiana Civil Code Article 2692 defines the obligations of a lessor. That article requires the landlord to:

1. Deliver the thing leased to the lessee;
2. Maintain the thing in the condition such as to serve for the use for which it was hired; and
3. To cause the lessee to be in peaceable possession.

23.

Louisiana law only requires a landlord to have the right to lease the property at the inception of the lease. The obligation is that the landlord somehow maintain the lessee in peaceable possession. If the landlord maintains the lessee in peaceable possession, it is irrelevant what happens to the underlying land. That is why the Louisiana Courts have consistently regarded a lease as a personal obligation or contract between the landlord and tenant, and not the creation of an interest in real estate. Prados v. South Central Bell Telephone Co., 329 So.2d 744 (La. 1976). This concept was reiterated in Union Bank v. Cottonport Ins. Exch., 630 So.2d 975 (La.App. 3d Cir. 1994), writ denied, 637 So.2d 1049 (La. 1994). In that case, a lessee sought to escape from a lease after a creditor seized the property on which the leased premises were situated. The court held that a seizure and subsequent dation of property did not terminate the lease or the lessee's obligations as long as the lessee was maintained in peaceable possession. The court determined that

> [a] lessor has breached its obligation to maintain the lessee in peaceable possession if a disturbance is such that the lessee can no longer use the premises for the purposes intended.

The court went on to note that

> an order was signed for the seizure and sale of the property, however, no actual seizure ever took place. [The lessee] was never denied access to the building and was never told to vacate the premises. A sheriff's deputy visited the leased premises for approximately fifteen minutes . . . and bank representatives took an inventory of the building for approximately thirty minutes . . . . A necessary temporary or insignificant disturbance is not grounds for abrogation of a lease.

Union Bank, 630 So.2d at 977.

24.

In the case at bar, LHL could have maintained, and has in fact maintained, peaceable possession of its leasehold interest and concomitant possession of the leased premises. No obligation of St. Jude affecting the leased premises was impacted by the mere recordation of the Travelers judgment. LHL could have sat on its hands during the entirety of the Travelers foreclosure and could not have been dispossessed. LHL instead attempted to violate its obligation to comply with the terms of the lease by attempting to acquire the property and, as a result, took action that only confirmed its peaceable possession.

25.

There also was no default by St. Jude under its mortgage. The mortgage permitted the attachment of inferior liens, as it contains a standard pact de non alienando as follows:

> . . . should there be created or suffered to be created any liens or charges superior in rank to the lien and mortgage herein granted ..., then in any such events, the Note . . . shall, at the option of the Mortgagee, immediately become due and payable . . . .

This language does not preclude inferior liens. It only precludes the creation or suffering of superior liens. St. Jude did not create a superior lien, nor did it suffer to be created a superior lien. LHL suffered to be created a superior lien. But for LHL's election or failure to reinscribe the collateral

mortgage, the judgment in favor of Travelers was entirely permitted under the mortgage. LHL should not be permitted to profit or benefit from a wrong it committed.

26.

LHL alternatively contends that Section 5.1(e) of the CPMA provides for its termination if "Lifemark [LHL] ceases to lease or operate the Hospital." LHL argues that the CPMA could not exist without the Lease remaining in place, while LEI argues that the CPMA would remain in force for as long as LHL operated the Hospital. In making its argument, LHL maintains that the Lease is but a part of a package including the CPMA, and that the failure of the lease resulted in a termination of the CPMA. The only document which mentions the loan, the Lease and the CPMA in the same document is the initial letter of intent dated December 20, 1982, which was between John Liljeberg, individually, and LHL (the "Letter of Intent"). John Liljeberg was not a party to the ultimate documentation. The Letter of Intent which by its own terms was non-binding, was totally superseded by the CPMA and by the Loan Agreement and documents related thereto. Section 16 of the CPMA provides:

> This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supercedes all previous negotiations, commitments, and writings. It may not be changed or modified except by a written instrument signed by both parties.

Similarly, the Loan Agreement, provides in Section 4.5 as follows:

> No verbal or parol agreements pertaining to this agreement shall be binding on Owner [St. Jude] or Lifemark [LHL], the entire agreement to be such as is written into this agreement, and Owner and Lifemark hereby agree that each has carefully read this instrument and that the same terms herein set out are satisfactory. This agreement shall not be altered, changed or amended except by instrument in writing, signed by all of the parties hereto.

27.

What is telling about the Loan Agreement is that the recitals setting forth the overall transaction and the agreement itself do not mention the CPMA, but only refer to the relationship between the Lease and the construction loan. Much like the Lease, the Loan Agreement does not mention the CPMA, and the sections pertaining to cutoffs of advances, Section 2.6, only refers to defaults by St. Jude, not LEI. Thus, although it is evident that the CPMA was a part of the overall transaction, it is not evident from the documents executed one month after the CPMA that the CPMA was not severable from the remainder of the transaction. That is, a default under the CPMA would not collapse the loan or the Lease.

28.

At the time the CPMA was executed, the Loan Agreement, the Lease and the Collateral Mortgage had not been fully negotiated or executed. Section 5.1 of the CPMA must be viewed in that context. The parties did not know, nor could they know, what those documents would provide. At the time the Loan Agreement, the Lease and the Collateral Mortgage were executed, the CPMA was known, and if the documents were intended to be totally dependent upon each other, they clearly would have provided so. At the time of the execution of the Letter of Intent, the final transaction obviously had not been pinned down. The Letter of Intent is addressed to Mr. John Liljeberg, although the certificate of need that authorizes the construction of the Hospital was issued to St. Jude. The parties obviously contemplated that an entity or entities, rather than John Liljeberg individually, ultimately would sign the documentation. Although the parties contemplated a lease of the Hospital, they also contemplated that LHL ultimately may become the owner. Section 6 of the Letter of Intent speaks in terms of a right of first refusal.

29.

Further evidence of the fluid state of the transaction can be found in the non-competition clause, Section 9 of the Letter of Intent, which provides that "as long as Lifemark [LHL] shall lease or own the Hospital," neither party to the Letter of Intent would engage in certain forms of competition. This latter clause could be a reference to the fact that LHL possibly would be the owner/operator of the Hospital, rather than the tenant. This similar concept is embodied in Section 5.1(e) of the CPMA. There was a real possibility that LHL could be an operator rather than a tenant. Thus, that section had to address both potential situations in a manner that protected LHL if neither situation was in effect, and which protected LEI if either situation was in effect. Thus, that section had to address either situation in an exclusive fashion. That is, if LHL was neither a tenant or operator of the Hospital, the CPMA would terminate. If, on the other hand, LHL was either a tenant or operator of the Hospital, the CPMA would remain in existence. The Lease itself represented a total divestiture of possession and authority over the Hospital property except for the right of reversion at the end of the potential fifty year lease term. The fifty year lease term was the functional equivalent of LHL owning and operating the Hospital, but which was structured as a lease arrangement to facilitate other business concerns. Furthermore it is clear from the testimony of all witnesses who spoke on the subject that the operation of the pharmacy was a critical component of John Liljeberg's negotiations, and he intended to operate the pharmacy via LEI for as long as the Hospital was operating at the location.

30.

LHL's alleges that LEI has breached the CPMA because it steadfastly refuses to allow LHL to retain full control and responsibility for the operation of the Hospital's pharmacy department. The CPMA has a number of sections relevant to this issue.

31.

Section I of the CPMA sets forth general parameters of the contract. The introductory paragraph of the section entitled "General" provides that "It is the desire of [LHL] to engage the services of [LEI] to manage and operate Hospital's Pharmacy Department." Section 1.1 provides in part that ". . . [LEI] shall operate the Department under the general philosophy of LIFEMARK Pharmacy Management, Inc. . . . ." In section 1.2, LHL appoints LEI ". . . to operate and mange the Department in the name, for the account, and on behalf of [LHL], pursuant to the terms of this Agreement."

Section 3.2 of the CPMA provides as follows:

> 3.2 The intent and understanding of the parties is that [LHL] retains full control and responsibility for the comprehensive operations of Hospital, including the [pharmacy] Department; provided, however, that [LEI] is delegated the authority to make management decisions during the normal course of daily operations of the Department without the prior consultation or approval of [LHL] pursuant to the Hospital's policies and procedures and the direction of LIFEMARK Pharmacy.

32.

Section 2 of the CPMA, discussed in greater detail earlier, describes the numerous responsibilities of LEI, which essentially result in LEI providing almost exclusive pharmacy services to LHL. Of special significance to the instant inquiry is the requirement that LEI provide its own equipment and employees.

33.

The CPMA also provides in Section 14 that LEI **is an independent contractor** and is not a general partner, limited partner, or employee of [LHL] or any subsidiary of LIFEMARK Corporation. The section goes on to provide that the agreement does not constitute a joint venture between the parties hereto. (Emphasis supplied). Section 18 requires LEI to make available copies

of books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by LEI under the agreement, when requested to do so by the United States Department of Health and Human Services or Comptroller General of the General Accounting Office, indicating at a minimum that LEI is responsible for its own record keeping in connection with the administration of the CPMA.

34.

Similarly, Section 6 contains reciprocal indemnifications, whereby each party agrees to indemnify and hold the other harmless from ". . . any and all manner of claims, demands and causes of action (including reasonable costs and attorney's fees) arising from or incident to the negligent or willful act or omission of such respective party." The section goes on to require LEI to obtain and maintain liability insurance.

35.

An independent contractor is one who renders service in the course of an occupation representing the will of his employer only as to the results of his work, and not as to the means by which it is accomplished. Amyx v. Henry & Hall, 79 So.2d 483 (La. 1955); Maxwell v. Bernard, 343 So.2d 431 (La.App. 3d Cir. 1977); Simon v. Orange Leader Newspaper, Inc., 647 So.2d 624 (La.App. 3d Cir. 1984), writ denied, 650 So.2d 1181 (La. 1995).

36.

In interpreting the foregoing potentially contradictory provisions of the CPMA, the Court must resort to the general principle espoused in Louisiana Civil Code article 2050, which provides that "[e]ach provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole." See also La.C.C. art. 1955 (1870). The aim of contract interpretation is to discern a compatible meaning to all provisions of the agreement.

Security Ctr. Protection Servs., Inc. v. Lafayette Sec. and Elec. Sys., Inc., 668 So.2d 1156 (La.App. 5th Cir. 1996), writ denied, 670 So.2d 217 (La. 1996). LHL cannot make LEI an independent contractor, responsible for hiring its own employees and purchasing its own equipment, and subject to liability for its own actions, while requiring LEI to follow any minute dictate that LHL may choose to impose upon LEI. Section 1.1 deals with the general philosophy of an LHL affiliate. Section 3.2 confirms that LHL is responsible for the control and operation of the Hospital, which includes the pharmacy as but one element of its overall operations, while recognizing that LEI is delegated, pursuant to Sections 1.2, 2 and 14, the authority to run its business consistent with the overall policies of LHL and the specific requirements of the CPMA.

37.

As an independent contractor, LEI is responsible for ensuring that it provides the necessary pharmaceuticals as required by the Pharmacy Agreement, but it is responsible for its own methods. After considering the record in its entirety, the Court finds that LEI has discharged its duties consistent with the intention of the CPMA, and that LEI is not in breach of the contract on the basis of LHL's assertion that LEI failed to submit to LHL's control and authority.

38.

LHL maintains that LEI has failed to participate in various committee meetings as required by the CPMA. LEI generally denies the allegation, or else defends on the basis that the matter was in litigation and that LHL was using meetings to "set up" LEI for the purpose of advancing LHL's litigation goals. Section 2.5 requires LEI to participate in certain committees of the Hospital, including participation in the Pharmacy and Therapeutics Committee or equivalent comment (Section 2.5(h)), participation in the Infection Control and Audit Committees, if requested by LHL (Section 2.5(i)), and participation in Hospital's drug surveillance and utilization review process

(Section 2.5(j)). Section 2.5(f) also requires LEI to conduct in-service educational programs pertaining to pharmaceutical services of pharmaceutical subjects for appropriate committees and staff of the Hospital.

39.

There is testimony to the effect that LEI did fail to participate in some meetings because of the litigation, or where it did not agree with proposed action. Because LEI desires to assume the CPMA rather than terminate it and seek damages, the fact that this matter is in litigation does not absolve LEI from honoring its contractual obligation to attend meetings any more than discontinuing the providing of pharmaceutical products. However, the Hospital apparently has no set policy on meeting attendance, and witnesses for LHL indicated that they do not attend all meetings.

40.

Even assuming that LEI failed to participate in meetings as required by the CPMA, such failure may easily be cured. LEI could take steps to ensure that it receives timely notice of meetings, and thereafter could attend them. Given the relationship between the parties, and the possibility of future litigation, LEI would be well advised to do so.

41.

LHL maintains that LEI breached the CPMA by failing a quality assurance audit that is required by the contract. Section 8.2 of the CPMA permits LHL to terminate the contract on 90 days' notice if LEI fails to obtain a score of 90% in the Quality Assurance Program survey. A copy of the survey was said to be attached to the CPMA as Exhibit "C." Section 8.2 goes on to provide that the survey will be updated and amended by "LIFEMARK Pharmacy" (defined in Section 1.1 to mean Lifemark Pharmacy Management, Inc. or its successor), which shall become a part of the CPMA. The survey "shall be conducted" twice per year by a representative of "LIFEMARK

Pharmacy." The section goes on to provide that LEI has an opportunity to cure if it achieves a score of 90% in a resurvey. LEI would have a period of 15 days from notice of termination to request a resurvey, and a resurvey shall be conducted within 45 days of the notice of termination.

42.

Also relevant to the issue of quality assurance is Section 2.7 of the CPMA, which requires the services to be performed by LEI to conform to the standards of the Joint Commission on Accreditation of Hospitals ("JCAH"), and state and federal agencies exercising authority over the pharmacy department. This section also makes reference to Section 8.2 and to Exhibit "C" to the CPMA. JCAH performs periodic audits of hospitals, and accreditation by JCAH is a prerequisite to various benefits, such as reimbursement of Medicare costs, that are important to the continued operations of hospitals.

43.

John Liljeberg testified that there had only been approximately two quality assurance surveys. Mervyn Kalman performed two surveys for LHL, one in 1993 and one in 1997. The survey form used in 1997 was prepared by Bonnie Kirschbaum, Director of Pharmacy Affairs for Tenet, in 1996 after this litigation was pending. Kirschbaum decided to perform a survey after requesting to inspect LEI's facilities and being advised by LEI's counsel that the inspection could take place on the condition that the results could not be used in connection with the litigation. Kirschbaum indicated that LEI's contractual arrangement was a unique situation, so she used Exhibit "C" to the CPMA and changed it allegedly based upon changes in JCAH philosophy.

44.

The fact that the parties were in litigation does not relieve LEI of the obligation to perform pursuant to the contract. LEI contractually agreed to a high standard, based upon criteria established

in Exhibit "C," apparently believing that it would meet the standard. At the same time, LHL has an obligation to perform its side of the contract in good faith. The record is abundantly clear that LHL and its various parent companies over the years relished the thought of actually terminating the CPMA, starting even before it was signed. Initially, the Court cannot believe that Tenet could have revised the 1993 survey with blinders on concerning the litigation, and without regard to the legal position it hoped to take after the completion of the survey.

45.

LEI argues that LHL changed the rules in midstream with the intention of failing LEI on the survey so that it could terminate the CPMA. In particular, LEI argues that scoring on some categories of the 1997 survey was arbitrarily tightened against LEI, that the scoring methodology on the initial survey was changed to make it more difficult for LEI to pass, that LEI was docked points for matters not within its control, and that the scoring methodology on the resurvey was changed to insure failure.

46.

By the time of the 1997 survey, the survey form and methodology changed. Ms. Kirschbaum prepared the 1997 survey with Mr. Kalman's input. Kalman and Ms. Kirschbaum testified that a change was necessary due to changes in JCAH philosophy and methodology. Rather than viewing the pharmacy department as a stand alone operation, the JCAH concept of medications took a broader view and encompassed interdepartmental and interdisciplinary review. The extent to which these changes required the new survey to take its final form is not clear.

47.

The Court finds that some of the changes were obviously designed to ensure that LEI would fail the survey. On one item, a requirement that drugs opened on a floor have an expiration date

marked thereon went up from 90 percent in 1993 to 100 percent in 1997. Mr. Kalman indicated that this change was purely a Tenet change, and that JCAH had no such requirement. He also testified elsewhere that, although hospital pharmacies strive for perfection, it is not going to happen, and errors will occur.

48.

Mr. Kalman testified that some items requiring grading on the survey may in fact not be the responsibility of LEI, but some other group at the hospital. In the case of floor stock discussed in the preceding paragraph, the expiration dates are placed on the drugs by nurses, not pharmacists, so there could be no way to ensure compliance with the 100 percent standard unless a pharmacist was present at all times to monitor the nursing practice. In the case of incident reports, points were deducted from LEI for not having copies of reports in its files that were maintained by another department of the hospital under hospital policy in place at the time.

49.

The scoring methodology was changed in a manner not contemplated by the CPMA and motivated by the desire to fail LEI on the survey and terminate the CPMA. During the 1993 survey, Mr. Kalman assigned points in the various categories. He then added all points assigned to LEI throughout the entire survey and divided that by the total number of points obtainable on the entire survey and came up with a single percentage. On the 1993 initial survey, LEI achieved a score 88.4 percent, so Kalman did a resurvey as contemplated by Section 8.2. On the resurvey, Kalman only looked at the areas where LEI was out of compliance in the initial survey and assigned points to those areas. He then added the points from the areas resurveyed to the points earned in the areas that he did not resurvey, and divided by the total number of points obtainable. On resurvey, Kalman gave LEI a total of 96 percent, a passing score.

50.

In the 1997 survey, there were a number of different areas on the survey. Rather than adding up all points earned against all potential points, each separate section had all points earned divided by all potential points, and each section had a percentage figure. At the end of the survey, all of the percentages were totaled for a single percentage total. At the end of the initial survey, Kalman calculated LEI's performance at 86.7, a failing score. On resurvey, Kalman only looked at the areas for which LEI scored less than 90 percent. On resurvey, Kalman concluded that LEI rated only 83 percent in those areas. He made no attempt to add the resurvey area percentages to the previously passing percentages and come up with a new total. Instead, he concluded on resurvey that LEI had achieved a failing score of 83 percent on the resurvey areas. If he had added the prior passing percentages to the resurvey percentages and averaged those, he would have given LEI a 92.5 percent passing score on the resurvey.

51.

This Court need not determine whether the survey was facially acceptable or not, as the application of it was intentionally manipulated to allege that LEI failed the quality assurance audit. Section 8.7 requires a resurvey, not merely a second examination to determine if areas below 90 percent on the first audit had gone above 90 percent in the aggregate. At a minimum this implies a new totaling of scores and a new aggregate percentage score. If LHL wanted to accept prior perfect scores in lieu of a total resurvey, that was its prerogative, but it cannot view the few areas resurveyed in a vacuum. The contract in no way states or implies this, and there was no testimony to so indicate, in fact, the history of these parties' relationship indicates the contrary.

52.

There also is testimony in the record that the Hospital scored a preliminary rating of 94 percent on its JCAH assessment conducted shortly after the 1997 survey, and that recommendations that the Hospital preliminarily received concerning remedial actions required had nothing to do with the pharmacy.

53.

When asked by this Court if LEI failed the 1997, Kahlman advised the Court he did not know. The Court can only conclude from this answer that the 1997 scoring method was designed by Tenet in bad faith for the sole purpose of LEI failing the test.

54.

LHL asserts that LEI has breached the CPMA through faulty service. This argument covers a number of allegations made by LHL, including the ordering of improper strengths of medication, the providing of unit dose strengths designed to maximize profit rather than minimize inconvenience to patients, the failure to cover a two-hour time period when a pharmacist was ill, and the providing of an improperly prepared intravenous solution. Dealing first with the two categories involving strengths of medications, the record is clear that the authority for ordering various strengths of medications rests with the Hospital pharmacy director, in this case LEI employee Jim Witchen. While LHL showed some instances in which LEI should have provided different strengths of medication, the Court does not believe that they establish sufficient frequency to show abuse of Mr. Witchen's discretion and violation of LEI's contractual duty. The remaining categories require more discussion.

55.

In the incident involving a sick pharmacist, the sole pharmacist on duty became ill during his hours of assignment. Disregarding LEI's policy requiring notification of a superior, the pharmacist attempted to work through his condition. There was no indication that emergency orders were not filled during this incident. LEI counseled the pharmacist.

The CPMA provides in Section 2.2 as follows:

> In the event that at any time in the sole opinion of LIFEMARK, an employee of [LEI] is not complying with the Hospital's rules and regulations or is not operating the Department in the best interest of the Hospital, [LEI] agrees to replace such employee upon LIFEMARK'S request.

In short, the Pharmacy Agreement contemplated that issues concerning employees of LEI could arise during the term of the contract, and it set out a mechanism for curing any problems in a manner less drastic than contract termination.

56.

The Court, however, notes LHL and now Tenet should be careful to use these contract provisions in good faith and not as a means to cause termination of the CPMA or place LEI in the position of continually having to find employees.

IV. CIVIL ACTION NO. 95-2922

A. FINDINGS OF FACT

1.

LEI and Lifemark have been in litigation for over eleven (11) years concerning the interpretation of the CPMA.

2.

Courts (including this Court in these consolidated cases) have awarded LEI damages for the breach of the CPMA by Lifemark and now Tenet.

3.

LEI has an adequate remedy at law and will not suffer irreparable injury as the result of this Court denying the LEI request for the issuance of an injunction.

B. CONCLUSIONS OF LAW

1.

The basis for the granting of injunctive relief in the federal courts requires a finding of (1) irreparable injury; and (2) inadequate legal remedies. See DSC Communications Corporation v. Next Level Communications, 107 F.3d 322 (5th Cir. 1997).

2.

As evidenced by this case and the litigation between the parties in State Court, LEI can file suit for any breach of the CPMA that may occur.

3.

This Court in these Findings of Fact and Conclusions of Law has attempted to interpret the CPMA in hope that future litigation may be avoided between the parties. Each party to this proceeding should read Judge Livaudais' opinion in Louisiana Power and Light v. United Gas Pipe Line Co., 642 F. Supp. 781 (E.D. La. 1986) before devising a new method to circumvent the terms of the CPMA, with resulting new litigation between the parties. Neither this Court or any other tribunal which may hear the next dispute between the parties will look kindly upon some newly created unidentifiable drug cost or specially manufactured kit by Tenet or billing by LEI which will

either decrease the drugs purchased under the CPMA or create new billing opportunities under the CPMA.

Proof of Claim

The proof of claim submitted by LHL in the LEI Chapter 11 proceeding involves claims of overcharges that are addressed in these Findings of Fact and Conclusions of Law as well as antitrust claims. The Court denies the entirety of the anti-trust claims based upon the following findings:

1. For purposes of analyzing Lifemark's illegal tying and exclusion dealing anti-trust claims, the East Bank area of the Parish of Jefferson constitutes the relevant geographical market;
2. St. Jude lacked sufficient power in the markets for general acute case hospital services and for commercial real estate within the East Bank area of the Parish of Jefferson to support Lifemark's anti-trust claims of illegal tying and exclusive dealing;
3. The contracts among Lifemark, St. Jude and LEI, including the CPMA, did not restrain trade or injure competition in the market for hospital pharmacy products and services within the East Bank area of the Parish of Jefferson;
4. The contracts among Lifemark, St. Jude and LEI, including the CPMA, did not restrain trade or injure competition in the market for general acute care hospital services within the East Bank area of the Parish of Jefferson;
5. St. Jude did not own the only property or facility suitable, available or utilized to provide general acute care hospital services, or hospital pharmacy supplies and services, within the East Bank area of the Parish of Jefferson;

6. St. Jude and LEI lacked sufficient economic leverage in negotiating the contracts with Lifemark to control the terms of : LEI's compensation under the CPMA; St. Jude's rent under the hospital lease; and St. Jude's cost of financing the acquisition and construction of the hospital;

7. Lifemark had, and exercised, sufficient economic leverage in negotiating the contracts with St. Jude and LEI to control the terms of: LEI's compensation under the CPMA; St. Jude's rent under the hospital lease; and St. Jude's cost of financing the acquisition and construction of the hospital; and

8. Lifemark's anti-trust claims for illegal tying and exclusive dealing are barred by expiration prior to suit of the four year limitations period of 15 U.S.C. § 15b, and the one year prescription provided under Louisiana law for state anti-trust claims.

Prejudgment Interest

1.

The consolidated cases are before this Court based upon 28 U.S.C. § 1334, which is the Bankruptcy grant of jurisdiction. The Court will employ the rule applicable to diversity cases since each of the cases are in essence state contract actions. Under federal diversity jurisdiction, the applicable law to be applied is the state law on the issue.

2.

Louisiana law grants pre-judgment interest were the amounts that are owed, are both due and easily ascertainable. Trans-Global Alloy Ltd. v. First Nat'l Bank of Jefferson Parish, 583 So. 2d 443, 457-59 (La. 1991). The only claim that falls into the category of due and easily ascertainable are the

claims of LEI for cost reimbursement under the removed Declaratory Judgment Action for the period August 1989 through the date Lifemark began reimbursing LEI its cost. Interest on this claim will run from the date the reimbursement payment should have been made to LEI.

3.

The Court is disallowing all other claims for pre-judgment interest.

Other Claims

1.

Inasmuch as the Court has ordered the dissolution of the judicial sale, the reinstatement of ownership in KRMC in the name of St. Jude, the reinstatement of the collateral mortgage, collateral mortgage note, and note, and the current pay status of the note, the Court denies the LHI claim for payment on the note.

2.

The Court denies all other claims asserted by both the plaintiffs and defendants that are not addressed in these Findings of Fact and Conclusions of Law.

Recapitulation

Reinstatement of the Hospital Lease
Return of the Hospital to LEI
Reinstatement of the Mortgage
and Note to Current Status

Reinstatement of the Renewal Promissory Note, Collateral Mortgage Note, Pledge of Collateral Mortgage Note, Collateral Assignment of Basic Rent and Hospital Lease	
Overcharge	$616,400.00
Medicare	$125,479.00
Travelers Judgment	$7,834,516.26
Contrast Media	$700,000.00
Drugs Disallowed	$2,023,571.00
Bad Debt	$103,617.00
Minimum Fee	$150,275.60
TPN/Chemo Fees	$54,055.00
Declaratory Judgment	$4,062,396.00
Pricing & Quantity	$67,641.32
Chart Audit	$5,000,000.00
Nitroglycerin/Insulin	$57,085.00

New Orleans, Louisiana, this 25th day of April, 2000.

G. THOMAS PORTEOUS, JR.
U.S. DISTRICT JUDGE

ing of a statutory term unless Congress explicitly rejects that meaning. *See Taylor v. United States*, 495 U.S. 575, 592, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990).

Second, the plain language of the phrase "crimes against the person" connotes conduct that is *intentionally* directed against another person—which would exclude reckless conduct with the likely effect of harming others. Here again, the definition of "crime of violence" in § 16(b), as construed in *Chapa-Garza*, provides a more suitable reference point than the Guidelines definition because § 16(b) includes only those offenses that are likely to involve the intentional use of force.

In sum, we conclude that the term "crimes against the person" should be construed in accordance with its accepted common law meaning to include only those offenses that, by their nature, are likely to involve the intentional use or threat of physical force against another person. Under this definition, Trejo's misdemeanor convictions for driving under the influence are not "crimes against the person." *See Chapa-Garza*, 243 F.3d at 927–28; *cf. Solem v. Helm*, 463 U.S. 277, 280, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) (noting that, for purposes of Eighth Amendment proportionality review, a "third-offense driving while intoxicated" is not "a crime against a person"). Consequently, Trejo is not eligible for an enhanced sentence of supervised release under § 1326(b)(1).

III

Because Trejo's three misdemeanor convictions for driving under the influence were not "crimes against the person" under § 1326(b)(1), the district court erred in sentencing Trejo to a term of supervised release in excess of the maximum term authorized for a conviction under § 1326(a). Accordingly, we VACATE Trejo's three-year term of supervised release and remand the case to the district court for resentencing in a manner not inconsistent with this opinion.

VACATED and REMANDED.

In the Matter of: LILJEBERG ENTERPRISES, INC., Debtor.

Lifemark Hospitals, Inc., Appellant–Cross–Appellee,

v.

Liljeberg Enterprises, Inc., Appellee–Cross–Appellant,

Liljeberg Enterprises, Inc., Appellee–Cross–Appellant,

v.

Lifemark Hospitals, Inc., Appellant–Cross–Appellee,

Lifemark Hospitals, Inc., Appellant–Cross–Appellee,

v.

St. Jude Hospital of Kenner, Louisiana, L.L.C., Appellee–Cross–Appellant,

Liljeberg Enterprises, Inc., Appellee–Cross–Appellant,

v.

Lifemark Hospitals of Louisiana, Inc.; Lifemark Hospitals, Inc.; American Medical International; Tenent Healthcare Corporation, Appellants–Cross–Appellees.

No. 00–30645.

United States Court of Appeals, Fifth Circuit.

Aug. 28, 2002.

In consolidated proceedings involving Chapter 11 debtor-company which had ex-

clusive right to provide pharmaceutical services at hospital, orders were entered by the United States District Court for the Eastern District of Louisiana, G. Thomas Porteous, Jr., J., overturning judicial sale of hospital, reinstating various agreements which defined financing and lease of hospital, and denying holder of hospital mortgage a claim for deficiency judgment. Damages award was entered in debtor's favor on its circumvention claim, and order was entered conditionally granting debtor's motion to assume pharmacy agreement. Appeal was taken. The Court of Appeals, Patrick E. Higginbotham, Circuit Judge, held that: (1) mortgage lender that provided financing for construction of hospital did not, by virtue of mortgagor's pledge of its own collateral mortgage note, undertake fiduciary duties as pledgee; (2) mortgage lender's exercise of its contractual rights did not support claim of bad faith or self-dealing, such as might allow district court to upset judicially confirmed sale; (3) pharmacy agreement was "executory" contract; (4) cross-default provision was enforceable, such that an incurable breach of lease agreement by affiliate precluded debtor from assuming pharmacy agreement; and (5) damages award was supported by evidence in part.

Affirmed in part, reversed in part, and remanded in part.

1. Federal Courts ⇐776, 850.1

Court of Appeals reviews *de novo* district court's legal conclusions but reviews its findings of fact for clear error.

2. Federal Courts ⇐776, 850.1

As to mixed questions of law and fact, Court of Appeals reviews district court's fact findings for clear error and its legal conclusions and application of law to fact *de novo*.

3. Mortgages ⇐211, 529(3)

Under Louisiana law, mortgage lender that provided $40 million in financing for construction of hospital did not, by virtue of mortgagor's pledge to lender of its own collateral mortgage note, undertake any fiduciary duties as pledgee to timely reinscribe collateral mortgage or buy out intervening creditor's lien, and its failure to do so did not provide basis for setting aside confirmed judicial sale to lender after intervening creditor foreclosed.

4. Federal Courts ⇐382.1, 383

In diversity case, federal court has to apply substantive law of state in which it sits as it believes that highest court of that state would do, looking to decisions of intermediate state courts for guidance where state's highest court has not spoken clearly to issue.

5. Pledges ⇐28

Under Louisiana law, trust relationship exists between pledgor and pledgee, which carries with it attendant duties to protect obligation and collateral.

6. Pledges ⇐1

Under Louisiana law, "pledge" is accessory contract by which debtor gives something to creditor as security for his debt.

See publication Words and Phrases for other judicial constructions and definitions.

7. Mortgages ⇐199(2)

Under Louisiana law, where collateral assignment of rents specifically provided that mortgage lender would not be obligated to perform or to discharge any obligation, duty or liability under lease, its holding of right to basic rent under collateral assignment of rents did not subject it to any duty to preserve lease covering these assigned rents.

8. Mortgages ⇐529(3)

Under Louisiana law, mortgage lender's exercise of its contractual rights, in not reinscribing its collateral mortgage and thereby allowing another mortgagee to gain priority, and in acquiring property on credit bid submitted in connection with intervening mortgagee's foreclosure sale, did not support claim of bad faith or self-dealing, such as might permit district court to upset judicially confirmed sale of property.

9. Judicial Sales ⇐34.1

Under Louisiana jurisprudence, judicial sale, once completed, cannot generally be undone.

10. Bankruptcy ⇐3106

Pharmacy agreement pursuant to which performance was still owing on both sides at time of debtor's Chapter 11 filing was "executory" contract, which debtor could assume, even after debtor's postpetition default; contract did not provide for automatic termination on default, but required notice from nonbreaching party, and notice was never given. Bankr.Code, 11 U.S.C.A. § 365.

See publication Words and Phrases for other judicial constructions and definitions.

11. Bankruptcy ⇐3106

To determine whether debtor's contract is "executory," for purpose of assumption or rejection, court must inquire whether performance remains due to some extent on both sides, such that failure of either party to complete performance would constitute a material breach and excuse other party from performing. Bankr.Code, 11 U.S.C.A. § 365.

12. Contracts ⇐217

Under Louisiana law, contract will not terminate, even though it explicitly provides for automatic termination, unless non-breaching party seeks judicial dissolution of contract or at least provides notice of intent to terminate contract for default.

13. Bankruptcy ⇐3110.1

Act of assuming contract must be grounded, at least in part, on conclusion that maintenance of contract is more beneficial to estate than doing without other party's services. Bankr.Code, 11 U.S.C.A. § 365.

14. Bankruptcy ⇐3114

Bankruptcy statute which conditions debtor's right to assume executory contract on his either curing, or providing adequate assurance of cure, of any defaults and providing assurance of future performance essentially allows debtor to continue in beneficial contract, provided that the other party is made whole at time of debtor's assumption of contract. Bankr.Code, 11 U.S.C.A. § 365(b)(1).

15. Bankruptcy ⇐3114

Bankruptcy statute which conditions debtor's right to assume executory contract on his either curing, or providing adequate assurance of cure, of any defaults and providing assurance of future performance is meant to provide means whereby debtor can force other party to contract to continue to perform under contract if (1) debtor can provide adequate assurance that he, too, will continue to perform, and if (2) the debtor can cure any defaults in his past performance. Bankr.Code, 11 U.S.C.A. § 365(b)(1).

16. Bankruptcy ⇐3110.1

Debtor must take full account of cost to cure all existing defaults owed to non-debtor party when assessing, for assumption or rejection purposes, whether executory contract is beneficial to estate. Bankr.Code, 11 U.S.C.A. § 365.

17. Bankruptcy ⇐3114

To determine if debtor-in-possession has provided "adequate assurance" of future performance, as prerequisite to assuming executory contract, court must look to factual conditions, including whether debtor's financial data indicates its ability to generate an income stream sufficient to meet its obligations, general economic outlook in debtor's industry, and presence of guarantee. Bankr.Code, 11 U.S.C.A. § 365(b)(1).

18. Bankruptcy ⇐3787

To the extent that determination of whether debtor provided "adequate assurance" of future performance of contract to be assumed turned upon contested factual disputes, appellate court's review was for clear error only. Bankr.Code, 11 U.S.C.A. § 365(b)(1).

19. Federal Courts ⇐776

District court's interpretation of contract is reviewed *de novo*, and contract and record are reviewed independently and under same standards guiding district court.

20. Federal Courts ⇐776, 874

If interpretation of contract turns on consideration of extrinsic evidence, such as evidence of intent of parties, standard of review is "clear error," but if intent is determined solely from language of contract, then contractual interpretation is pure question of law, and threshold question as to whether extrinsic evidence should be considered in determining intent of parties is itself a question of law and thus reviewable *de novo*.

21. Federal Courts ⇐412.1

In diversity case, Court of Appeals would look to state law for applicable standard of contract interpretation.

22. Contracts ⇐1, 152

Under Louisiana law, contract is the law between parties, and is read for its plain meaning.

23. Contracts ⇐152
Evidence ⇐397(1), 448

Under Louisiana law, where words of contract are clear and explicit and lead to no absurd consequences, contract's meaning and intent of its parties must be sought within four corners of document and cannot be explained or contradicted by extrinsic evidence

24. Contracts ⇐147(2), 176(2)

Under Louisiana law, if court finds contract to be unambiguous, it may construe parties' intent from face of document, without considering extrinsic evidence, and enter judgment as matter of law.

25. Contracts ⇐143(2)

Under Louisiana law, contract is ambiguous when uncertain as to parties' intentions and susceptible to more than one reasonable meaning under the circumstances and after applying established rules of construction.

26. Contracts ⇐143(1, 2, 3)

Under Louisiana law, when words of contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of parties' intent; party may not create an ambiguity where none exists, nor may courts create new contractual obligations where language of written document clearly expresses their intent.

27. Contracts ⇐155

Under Louisiana law, rule of contract construction, that doubts or ambiguities as to meaning of contract must, if not otherwise resolvable, be eliminated by interpreting contract against the party who

prepared it, applies only when there are two equally reasonable interpretations of contractual provision in question.

28. Contracts ⇐155

Under Louisiana law, rule of contract construction, that doubts or ambiguities as to meaning of contract must, if not otherwise resolvable, be eliminated by interpreting contract against the party who prepared it, is primarily applied to standard-form or adhesionary contracts.

29. Contracts ⇐155

While jurisprudence of Louisiana has established a rule of contractual interpretation which construes ambiguity against party who drafted document in question, neither party is deemed to be the scrivener where initial draft is modified and remodified in series of exchanges between parties to produce an execution draft reflecting give and take between obligor and obligee.

30. Bankruptcy ⇐3101, 3114

Cross-default provision in debtor's executory contract to operate pharmacy at hospital, providing that if debtor or any of the other party's corporate affiliates were in default of their obligations under lease or other contract between parties, then this would be regarded as a breach of pharmacy agreement by debtor, could not be interpreted as written, so as to subject debtor to liability for defaults by other party's corporate affiliates; rather, to avoid absurd result, provision had to be interpreted as referring to defaults by debtor's corporate affiliates, so that breach of lease by debtor's affiliate, when it allowed judicial mortgage to be entered against hospital property and mortgagee to foreclose thereon, was incurable default under pharmacy agreement, that precluded debtor's assumption thereof. Bankr.Code, 11 U.S.C.A. § 365(b)(1).

31. Reformation of Instruments ⇐1

Under Louisiana law, reformation is equitable remedy which may be used when contract fails to express parties' true intent, either because of mutual mistake or fraud.

32. Reformation of Instruments ⇐19(1), 45(1)

To establish the appropriateness of reformation, party that seeks to reform contract must show, by clear and convincing evidence, that agreement, as written, contains mutual mistake and does not comport with parties' original intent.

33. Contracts ⇐143.5

Under Louisiana law, every provision of contract must be interpreted in light of contract's other provisions in order to give each provision the meaning suggested by contract as a whole

34. Contracts ⇐143.5, 153

Under Louisiana law, contract provisions susceptible to different meanings should be interpreted so as not to neutralize or ignore any provision or treat any provision as mere surplusage and so as to preserve validity of contract.

35. Contracts ⇐143(1), 170(1)

Under Louisiana law, doubtful provision in contract must be interpreted in light of the nature of contract, equity, usages, conduct of parties before and after formation of contract, and of other contracts of like nature between same parties.

36. Bankruptcy ⇐3101, 3114

Where lease and collateral mortgage to party that provided $40 million of financing for construction of hospital were interrelated with pharmacy agreement pursuant to which debtor ran pharmacy service out of hospital, such that there would have been no pharmacy agreement without lease or loan secured by collateral

mortgage, cross-default provision was enforceable in bankruptcy, such that an incurable breach of lease agreement by debtor's affiliate precluded debtor from assuming pharmacy agreement. Bankr. Code, 11 U.S.C.A. § 365(b)(1).

37. Bankruptcy ⇐3101

Although cross-default provisions are inherently suspect, they are not per se invalid in bankruptcy context, and court should carefully scrutinize facts and circumstances surrounding particular transaction to determine whether enforcement of provision would contravene an overriding federal bankruptcy policy and thus impermissibly hamper debtor's reorganization.

38. Bankruptcy ⇐3101, 3114

Federal bankruptcy policy is offended when non-debtor seeks enforcement of cross-default provision in effort to extract priority payments under unrelated agreement, and creditor cannot use protections afforded by bankruptcy statute which requires curing of defaults and adequate assurances of future payment under contract to be assumed in order to maximize its returns by treating unrelated unsecured debt as de facto priority obligation. Bankr.Code, 11 U.S.C.A. § 365(b)(1).

39. Bankruptcy ⇐3114

Where non-debtor party would have been willing, absent existence of the cross-defaulted agreement, to enter into contract that debtor wishes to assume, then cross-default provision should not be enforced, so as to require debtor, as prerequisite to assuming the one contract, to first cure its default under cross-defaulted agreement; however, enforcement of cross-default provision should not be refused where to do so would thwart non-debtor party's bargain. Bankr.Code, 11 U.S.C.A. § 365(b)(1).

40. Bankruptcy ⇐3101

Mere fact that legally separate entities are parties to various agreements does not of itself preclude enforcement of cross-default provision in bankruptcy, and where documents are contemporaneously executed as necessary elements of same transaction, such that there would have been no transaction without each of the other agreements, fact that nominally distinct parties executed these agreements will not preclude enforcement of cross-default provision in favor of party whose economic interests are identical to those of entity that is party to document containing cross-default provision. Bankr.Code, 11 U.S.C.A. § 365.

41. Federal Courts ⇐871

In absence of error of law, Court of Appeals reviews district court's award of damages for clear error only.

42. Federal Courts ⇐871

If award of damages is plausible in light of record, reviewing court should not reverse the award, even if it might have come to different conclusion.

43. Damages ⇐184

While district court may not determine damages by speculation or guess, it will be enough if evidence shows extent of damages as matter of just and reasonable inference, though result may be only approximate.

44. Damages ⇐184

Under Louisiana law, actual damages must be proven; they cannot be speculative or conjectural.

45. Damages ⇐184

Under Louisiana law, while breaching party should not escape liability because of difficulty in finding perfect measure of damages, evidence must furnish data for a reasonably accurate estimate, such that it

appears reasonably evident that amount allowed as contract damages rests upon some certain basis.

46. Damages ⇐190

Under Louisiana law of damages, lost profits must be proven with reasonable certainty and cannot be based on conjecture and speculation.

47. Damages ⇐118

District court's interpretation of the phrase "fee per procedure," as used in section of pharmacy agreement entitling company that provided pharmacy service at hospital to certain prescribed fees on "per procedure" basis, as entitling company to new fee each time a dose of same drug or drug combination was administered from single vial of medicine, was not clearly erroneous but was sufficiently supported by evidence presented in support of company's damages claim.

48. Health ⇐178

Actions on part of hospital's materials management department, in ordering and distributing to doctors and nurses in ancillary departments certain legend drugs for administration to patients on doctors' orders, was a "distribution" and not "dispensing" of such drugs, and did not have to be accomplished under supervision of pharmacist under Louisiana law that was in effect at time; accordingly, hospital's contested practice of ordering and distributing certain legend drugs and kits containing legend drugs did not violate Louisiana pharmacy laws, and would not support cause of action by pharmacy against hospital for circumventing pharmacy's right to fee.

49. Damages ⇐190

Damages award upon pharmacy's circumvention claim against hospital where it had exclusive right to provide pharmaceutical services was not erroneous, as product of mere speculation and conjecture, but was sufficiently supported by evidence presented, including results of audit of patient charts and competing estimates of hospital's and of pharmacy's experts.

50. Health ⇐942

Clause in pharmacy agreement, which provided that company that had exclusive right to provide pharmacy services at hospital would not be entitled to compensation for any drugs and supplies utilized by ancillary departments of hospital in connection with patient-related procedures in which cost of drug was included in charge for the procedure, relieved hospital of any obligation to pay for company's lost profits in connection with contrast media that hospital obtained from another source and used in radiology procedures at hospital, where cost of this contrast media was not separately billed; operation of this provision did not turn on whether charge for drug could be identified, but on whether such an "identifiable" charge was included in charge for patient-related procedure in which drug was used.

51. Health ⇐942

Clause in pharmacy agreement, which generally limited amount of reimbursement which company providing pharmaceutical services at hospital could seek based on drug prices set forth in other party's prime vendor contracts, did not give other party right to pay company for name-brand drugs that it dispensed at hospital, and that it had earlier acquired at or below prices for these same name-brand drugs in prime vendor contracts, based on lower prices at which generic drugs might have been acquired; nothing in pharmacy agreement authorized other party to pay company for generic drugs when company was dispensing physician-requested name-brand drugs and when other party had

never told company to dispense only generics.

52. Health ⇐942

Minimum fee increase provision in pharmacy agreement, which provided for adjustment in minimum fee that was paid to company providing pharmacy services at hospital based on increase/decrease in certain indicators "in the immediately preceding years," did not permit increase in minimum fee based on isolated increase in indicators in a single year, where that increase was not enough to offset decreases from prior years; natural sense of "immediately preceding years" conveys last two or three years, and district court erred in interpreting the plural word "years" as if it were singular.

53. Health ⇐942

Company that provided pharmacy services at hospital was liable to hospital for any overcharges, notwithstanding alleged lack of damages to hospital, which purportedly charged its patients three times the overcharge price and thus actually profited from overcharges by passing them on to patients.

54. Removal of Cases ⇐119

Corporate entity that was never joined as defendant nor served with process could not be subject of adverse judgment, in action that was removed from state court and consolidated with three other proceedings.

55. Judgment ⇐668(3), 707

One is not bound by judgment in personam resulting from litigation in which he is not designated as party or to which he has not been made a party by service of process.

56. Costs ⇐194.34

Chapter 11 debtor and affiliated entity were not entitled to award of attorney fees, pursuant to terms either of lease or Louisiana statute that provides for fee award when transaction is rescinded based upon fraud, once Court of Appeals reversed district court's judgment overturning judicial sale and reinstating lease.

Joseph N. Mole, Frilot, Partridge, Kohnke & Clements, New Orleans, LA, Nina Cortell (argued), Sharon N. Freytag, Haynes & Boone, Dallas, TX, for Appellants–Cross–Appellees.

Sidney Katherine Powell (argued), Powell & Reggio, Dallas, TX, Deborah Pearce Reggio, Powell & Reggio, New Orleans, LA, for Appellees–Cross–Appellants.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before PATRICK E. HIGGINBOTHAM, DeMOSS and BENAVIDES, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal brings to us three of four consolidated actions arising from a failed relationship formed to build and manage a hospital and medical office building in Kenner, Louisiana, the latest round in the parties' protracted litigation.

Following a bench trial of the consolidated cases, the district court overturned a judicial sale of the hospital, reinstated various contracts which defined the financing and lease of the hospital, and denied the holder of the hospital mortgage a claim for a deficiency judgment. The court also ruled that, under a Clinical Pharmacy Management Agreement governing the operation of the hospital pharmacy and the flow of drugs to the hospital, Liljeberg

Enterprises, Inc., the hospital pharmacy operator and principal supplier of drugs to the hospital, was due almost $12.5 million and the hospital operators and principal purchasers of the drugs for the hospital were owed $741,879.

In Chapter 11 proceedings, the district court conditionally granted the debtor Liljeberg Enterprises, Inc.'s request to assume the Clinical Pharmacy Management Agreement as an executory contract pursuant to 11 U.S.C. § 365.[1]

We reverse the district court's judgment setting aside the judicial foreclosure of the hospital and declining to award the deficiency due on the mortgage debt, we reverse the district court's order allowing the debtor in the Chapter 11 proceedings to assume the pharmacy agreement, and finally we affirm in part and reverse in part the various awards made under the pharmacy agreement.

I.

First, the dramatis personae. The four consolidated actions involve Lifemark Hospitals of Louisiana, Inc., Lifemark Hospitals, Inc., American Medical International, and Tenet Healthcare Corporation on one side,[2] and Liljeberg Enterprises, Inc. ("Liljeberg Enterprises") and St. Jude Hospital of Kenner, La., L.L.C. ("St.Jude") (collectively the "Liljebergs") on the other.

Liljeberg Enterprises is a corporation whose sole shareholders are John Liljeberg and his brother Robert Liljeberg, both licensed pharmacists. The Liljebergs, through Liljeberg Enterprises, formed a series of corporations and a partnership to own or operate a medical complex consisting of a hospital, a hospital pharmacy, and a medical office building. St. Jude, a wholly-owned subsidiary of Liljeberg Enterprises, owned the St. Jude Hospital ("hospital"), which is now known as Kenner Regional Medical Center. St. Jude Medical Office Building, Ltd. Partnership ("St. Jude Limited Partnership"), of which St. Jude was the general partner, owned the adjacent medical office building. Funding for that building came from Travelers Insurance Company, a loan of $25 million on October 10, 1985, secured by a mortgage on the medical office building and an assignment to Travelers of rents to be paid on leased spaces in the building.

Lifemark Hospitals, Inc. was a national hospital management company that provided financing to St. Jude to build the hospital. Lifemark Hospitals of Louisiana, Inc., a wholly owned subsidiary of Lifemark Hospitals, Inc., entered into an agreement with St. Jude to lease and operate the hospital. American Medical acquired Lifemark Hospitals, Inc. in 1984, and Tenet became the successor to American Medical in 1995.

II.

On August 26, 1981, the Liljebergs obtained a "certificate of need" under Section 1122 of the Social Security Act to build and operate a 300-bed acute care facility in the New Orleans area.[3] This Section

1. Neither party appeals from the district court's judgment in Cause No. 95-2922, denying Liljeberg Enterprises, Inc.'s request for injunctive relief. The district court consolidated Cause No. 93-1794 early on with Cause Nos. 93-4249, 94-3993, and 95-2922 for all purposes, but, for ease of reference, we follow the district court and the parties in referring to the various parts of the district court's judgment in the case by the original causes of action numbers.

2. We refer to these parties collectively or individually as "Lifemark" except where further distinction is relevant.

3. The 1122 certificate allowed certain capital costs to be passed through to the government.

1122 certificate was the only one available in the New Orleans area and the last one to be granted in Louisiana. Lacking the money to build a hospital, the Liljebergs immediately solicited participation by many companies, including Health Services Acquisition Corporation. The Liljebergs' negotiations with Health Services extended over several months before disintegrating into heated litigation.[4] The Liljebergs began their discussions with Lifemark in the latter part of 1981, under the shadow of the approaching deadline under the Section 1122 certificate of need.

In their negotiations with Lifemark, John Liljeberg was assisted by a team of two attorneys, one of whom was a CPA, an economist, and two pharmacy consultants. John Liljeberg insisted from the outset that, as part of any deal, the Liljebergs had to be given a contract to provide pharmaceutical services to the hospital. On December 21, 1982, the parties signed a letter of intent setting forth the principal terms of their agreement.

The final documents were executed in early 1983, including: (1) a loan agreement, wherein Lifemark Hospitals, Inc. agreed to provide financing of over $44 million to St. Jude for construction of the hospital; (2) a promissory note signed by St. Jude and made payable to Lifemark Hospitals, Inc.; (3) a collateral mortgage, a collateral mortgage note, and a pledge of the collateral mortgage note, all signed by St. Jude to secure the note to Lifemark Hospitals, Inc.; (4) a lease agreement wherein Lifemark Hospitals of Louisiana, Inc. agreed to lease and operate the hospital from St. Jude; and (5) the Clinical Pharmacy Management Agreement ("pharmacy agreement"), signed by Liljeberg Enterprises and Lifemark Hospitals of Louisiana, Inc., wherein Liljeberg Enterprises agreed to provide pharmaceutical services to the hospital. Additionally, the Liljebergs received a cash payment of $2.5 million as called for by the letter of intent.

These agreements were intertwined in at least two ways: (1) St. Jude's note payments and Lifemark's lease payments were offsetting transactions so that their monthly payment was only a bookkeeping entry;[5] and (2) the pharmacy agreement contained a cross-default provision.

A dispute arose between Lifemark and St. Jude over the financing and project management involved in the construction of the hospital. That dispute was settled by written agreement in 1991 after arbitration. As part of the settlement, St. Jude executed a renewal note, renewing and extending the original note. Like the original note, the renewal note was secured by the original collateral mortgage, collateral mortgage note, and pledge of collateral mortgage note. To further secure the renewal note, St. Jude executed a "Collateral Assignment of Basic Rent" ("collateral assignment of rents"), which was recorded, providing Lifemark Hospitals, Inc. a secured interest in rents in the event of a future default by St. Jude.

The hospital, hospital pharmacy, and medical office building became operational in 1985. By March of 1990, St. Jude Limited Partnership had defaulted on its Travelers loan and, in June 1990, Travelers sued St. Jude Limited Partnership and other defendants. The suit, seeking sei-

4. *See, e.g., Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988).

5. Under both its original note and a later renewal note, St. Jude had the right to offset its right to receive basic rent against St. Jude's note obligations. St. Jude exercised this option at all relevant times through October 1, 1994.

zure and sale by judicial process of the medical office building, was successful, and the building was sold at public auction on October 18, 1991 to Travelers, the sole bidder.

More protracted litigation ensued, in the course of which a panel of this court commented that the conduct of the Liljebergs constituted "as egregious and unconscionable of bad faith contractual dealings as the members of this panel can recall having encountered."[6] Travelers obtained an amended judgment in December 1992 awarding Travelers both unpaid rents and damages from St. Jude Limited Partnership based on, *inter alia*, a jury verdict finding waste committed by the Liljebergs with respect to the collateral in the medical office building securing the repayment of Travelers's loan to St. Jude Limited Partnership for the construction of the building. When efforts to collect the amended judgment against the partnership failed, Travelers filed a separate action against St. Jude, the general partner of St. Jude Limited Partnership, in which Travelers obtained a summary judgment on July 30, 1993, which this Court affirmed.[7]

On August 12, 1993, Travelers secured a lien on the hospital by filing its $7.8 million judgment against St. Jude. The Travelers lien primed Lifemark's collateral mortgage because Lifemark had not at that time reinscribed its lien.[8] Lifemark reinscribed its collateral mortgage on June 29, 1994.

Within the same time frame, on January 27, 1993, within one month after Travelers obtained its $7.8 million judgment, Liljeberg Enterprises filed for bankruptcy protection. In the course of these bankruptcy proceedings, Liljeberg Enterprises as the debtor in possession, sought the federal district court's permission to assume, that is, continue to operate under, the pharmacy agreement, pursuant to 11 U.S.C. §§ 365 and 1107. Shortly thereafter, on August 11, 1993, within one month after Travelers sought to collect its judgment against St. Jude, St. Jude filed for Chapter 11 bankruptcy protection. The bankruptcy court dismissed that action one year later, finding that St. Jude had filed in bad faith.

On August 30, 1994, Travelers began the process of foreclosing on the hospital. Once again, St. Jude asked the district court to vacate Travelers's writ of execution and to find Travelers's lien inferior to Lifemark's lien. At St. Jude's request, Lifemark filed a memorandum setting forth the facts concerning the ranking of the liens. The court denied St. Jude's motions and allowed the foreclosure sale to proceed.

Prior to the sale, Lifemark Hospitals, Inc. filed a motion in the federal district court before Judge Henry A. Mentz, Jr. seeking permission to bid credits against the value of its collateral mortgage instead of cash at the judicial sale, subject to any obligation to pay the amount of cash neces-

6. *Travelers Ins. Co. v. St. Jude Hosp.*, No. 92-9579, 21 F.3d 1107, at 2 (5th Cir. Apr. 20, 1994) (unpublished per curiam).

7. *Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, 37 F.3d 193 (5th Cir.1994).

8. Lifemark's collateral mortgage is dated March 15, 1983. In order to preserve the rank of the collateral mortgage, it had to be reinscribed by March 15, 1993. *See* LA. CIVIL CODE art. 3328; *accord id.* art. 3369 (repealed by 1992 La. Acts 1132). Nearly five months later Travelers filed its judgment lien. One effect of Lifemark's failure to reinscribe was that it was not able to foreclose on the hospital following the filing of the Travelers lien without paying the Travelers debt. Lifemark, in fact, ultimately sued its former attorneys for legal malpractice on the basis of this failure to reinscribe.

sary to satisfy the superior judicial mortgage of Travelers. The court granted Lifemark Hospitals, Inc.'s motion.

The United States Marshal's seizure and judicial sale of the hospital occurred on October 28, 1994. Lifemark Hospitals of Louisiana, Inc. was the sole bidder and purchased the hospital for $26 million, or two-thirds of the $37.5 million appraised value as the minimum price prescribed by Louisiana statute. The purchase price was distributed as follows: (1) $7,786,083.33 went to Travelers to satisfy its lien; (2) $18,165,483.74 went to Lifemark Hospitals, Inc. to reduce the deficiency owed on St. Jude's note to Lifemark Hospitals, Inc.; and (3) the balance was applied to costs of the sale. The district court subsequently confirmed the sale. St. Jude appealed the orders of the district court, and this court affirmed, dismissing as moot St. Jude's challenge to the confirmed judicial sale.[9]

As a result, Lifemark became the owner of the hospital, and Lifemark's lease with St. Jude was extinguished as a matter of law under the doctrine of confusion. At the same time, Lifemark accelerated the debt owed by St. Jude under the renewal note, and Lifemark sought to terminate the pharmacy agreement based upon the cross-default provision in that agreement.

III.

Ultimately four lawsuits were consolidated and tried to the bench in the United States District Court for the Eastern District of Louisiana in June and July 1997. The district court entered findings of fact and conclusions of law and a partial judgment on April 26, 2000, later amending the judgment by adding a certification under Federal Rule of Civil Procedure 54(b) on August 1, 2000, three years after the case was tried. The amended judgment included a Rule 54(b) certification for immediate appeal of "all claims other than Liljeberg Enterprises, Inc.'s claim in Cause No. 93–4249 for damages accruing from the commencement date of the trial and continuing through the date of" the amended judgment.

In the first lawsuit, Cause No. 94–3993, Lifemark sued St. Jude to collect the unpaid balance of a promissory note evidencing the debt incurred in building the hospital. St. Jude counterclaimed for damages asserting a variety of lender liability claims. The district court awarded no damages to Lifemark or St. Jude. Rather it set out to undo the transaction and overturned the 1994 confirmed judicial sale of the hospital. This upset was made contingent upon either St. Jude or its parent company Liljeberg Enterprises reimbursing Lifemark the amount that Lifemark had paid to Travelers, the holder of the superior lien and judicial mortgage. The district court also reinstated all of the related commercial instruments as if the judicial sale had never taken place and denied Lifemark's deficiency claim.

In the second suit, Cause No. 93–1794, Liljeberg Enterprises, as the Chapter 11 debtor in possession, sought permission from the bankruptcy court to assume the pharmacy agreement between Lifemark and Liljeberg Enterprises as an executory contract pursuant to Bankruptcy Code section 365. On October 19, 1993, the district court withdrew the reference to bankruptcy court of LEI's motion to assume. The district court, over Lifemark's objection, granted the motion to assume the pharmacy contract.

9. *See Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc.*, Nos. 94–30636, 94–30639 & 94–30665, 56 F.3d 1386 (5th Cir. May 24, 1995) (unpublished per curiam).

The third suit, Cause No. 93–4249, was filed in Louisiana state court but removed to the federal district court. Here Liljeberg Enterprises claims that Lifemark, acting in bad faith, breached and wrongfully "circumvented" the pharmacy agreement. Lifemark denied the allegations and counterclaimed for overcharges and breaches of the pharmacy agreement.[10] The district court found that Lifemark owed Liljeberg Enterprises $12,432,905.92 for breach of payment due under the pharmacy agreement and that Liljeberg Enterprises owed Lifemark $741,879 in overcharges.

Finally, in the fourth suit, Cause No. 95–2922, Liljeberg Enterprises sought an injunction to prohibit Lifemark from unlawfully dispensing legend drugs at the hospital.[11] The district court denied Liljeberg Enterprises's request.

IV.

Lifemark here attacks judgments in Cause Nos. 94–3993, 93–1794, and 93–4249 on many grounds. In Cause No. 94–3993, Lifemark argues that the district court erred by rescinding the judicial sale of the hospital when this court of appeals decided in prior litigation that St. Jude's challenge to the judicially confirmed sale was moot; that the judgments are flawed by the following erroneous rulings: that Lifemark Hospitals, Inc. had a duty to St. Jude to reinscribe the collateral mortgage, and that Lifemark Hospitals, Inc. had a duty to terminate the Travelers foreclosure; that Lifemark Hospitals, Inc. had a duty to prevent Lifemark Hospitals of Louisiana, Inc. from purchasing the hospital at the foreclosure sale; that Lifemark acted in bad faith or colluded to chill the bidding at the foreclosure sale which proximately caused St. Jude's loss; and that Lifemark Hospitals of Louisiana, Inc. did not properly purchase the hospital at two-thirds of its appraised value. Lifemark also argues that the district court erred in concluding that Lifemark is not entitled to recover on its deficiency claim under the renewal promissory note.

In Cause No. 93–1794, Lifemark argues that the district court erred in allowing Liljeberg Enterprises to assume the pharmacy agreement on several grounds. First, it erred in its ruling that the pharmacy agreement did not terminate by its own terms prior to the district court's order allowing assumption. Second, by failing to properly interpret sections 5.1(e)

10. Lifemark filed many of its breach of contract claims as part of its counterclaim in the bankruptcy cause of action, Cause No. 93–1794. The district court consolidated Cause No. 93–1794 with Cause No. 93–4249 early in the course of this litigation, and, as a result, like the district court's opinion and judgment, this court's opinion treats Lifemark's claims related to LEI's breach of the pharmacy agreement as though they were filed in Cause No. 93–4249.

11. Legend drugs are prescription drugs that bear a legend on the label warning that the drug may not be dispensed without a prescription from a duly-authorized practitioner. *See* LA.REV.STAT. § 37:1164(45) (" 'Prescription drug' or 'legend drug' means a drug that is required by any applicable federal or state law or regulation to be dispensed or delivered pursuant only to a prescription drug order, or is restricted to use by practitioners only."); *id.* § 40:1237(3) (" 'Legend drug' means any drug or drug product bearing on the label of the manufacturer or distributor, as required by the Federal Food and Drug Administration, the statement 'Caution: Federal law prohibits dispensing without prescription.' "); LA. ADMIN. CODE tit. 46, pt. LIII, § 3501(A) ("Legend Drugs. A legend drug is a medication which must only be dispensed by a pharmacist on the order of a licensed practitioner and shall bear the following notation on the label of a commercial container: 'caution: federal law prohibits dispensing without a prescription' (Ref. R.S. 40:1237, et seq. [1982] and U.S.C. 21:353(b) [1987]).")

and 5.1(b) of the pharmacy agreement and section 11.1 of the lease and the fourth and fifth covenants of the mortgage.

In Cause No. 93–4249, Lifemark argues that the district court erred in its interpretation of sections 2.4, 2.6, 4.1, and Exhibit B of the pharmacy agreement and in denying Lifemark's motion to reopen the evidence. Further, Lifemark argues that the district court erred: in awarding damages based upon a procedurally flawed audit; in awarding duplicative damages; in allowing Liljeberg Enterprises to recover costs greater than those allowed by the hospital's prime vendor contract under section 2.4 of the pharmacy agreement; in allowing Liljeberg Enterprises to recover based on unexplained bills; in failing to award damages to Lifemark for Liljeberg Enterprises's overbilling; and in its interpretation of the parties' stipulation as to actual acquisition costs payable under an earlier state court judgment.

Finally, Lifemark argues that the district court erred in awarding any relief against Tenet, a non-party.

On its cross-appeal, in Cause No. 94–3993, Liljeberg Enterprises argues that the district court erred in requiring St. Jude and Liljeberg Enterprises to reimburse Lifemark the $7,834,516.26 it paid to Travelers for the allegedly collusive purchase of the hospital. The Liljebergs also contend on their cross-appeal in Cause Nos. 94–3993, 93–1794, and 93–4249 that Liljeberg Enterprises and St. Jude are entitled to attorneys' fees by the parties' lease agreement and under Louisiana Civil Code articles 1997 and 1958.

V. Cause No. 94–3993

The district court in Cause No. 94–3993 overturned the confirmed 1994 judicial sale of the hospital contingent upon either St. Jude or Liljeberg Enterprises reimbursing Lifemark the approximately $7.8 million that Lifemark paid to Travelers to purchase the hospital at foreclosure. The district court also reinstated the renewal promissory note, collateral mortgage note, pledge of collateral mortgage note, collateral mortgage, hospital lease, and collateral assignment of rents which existed before the judicial sale and held that all rental payments that were due by Lifemark to St. Jude under the lease shall be deemed paid by St. Jude to Lifemark and the renewal promissory note, collateral mortgage note, pledge of collateral mortgage note, and collateral mortgage are deemed current and not in default as of the date of judgment. Finally, the district court denied Lifemark's claim for a deficiency pursuant to the renewal promissory note.

[1, 2] We review *de novo* the district court's legal conclusions, but review its findings of fact for clear error.[12] We have explained that " 'a finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed,' " and that, "despite an appellate court's conviction that it would have weighed the evidence differently had it been sitting as the trier of fact, it may not reverse a district court's findings when they are based on a plausible account of the evidence considered against the entirety of the record."[13] Accordingly, "when 'two permissible views of the evidence exist, the fact finder's choice between them

12. *Kona Tech. Corp. v. S. Pac. Transp. Co.*, 225 F.3d 595, 601 (5th Cir.2000).

13. *NAACP v. Fordice*, 252 F.3d 361, 365 (5th Cir.2001) (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 573, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985)).

cannot be clearly erroneous.' " [14] Further, "as to mixed questions of law and fact, we review the district court's fact findings for clear error, and its legal conclusions and application of law to fact *de novo*." [15]

A.

[3] The district court premised its decision setting aside the judicial sale of the hospital on a finding that Lifemark breached fiduciary duties and an obligation of good faith owed to St. Jude. It found these obligations in the Louisiana law of pledge. The district court found that Lifemark Hospitals, Inc. became the pledgee of St. Jude by holding the collateral mortgage note and the right to basic rent under the collateral assignment of rents. As pledgee, Lifemark owed fiduciary duties to St. Jude, its pledgor, to protect that collateral, the collateral mortgage note and the right to basic rent under the collateral assignment of rents.

The found breach came when Lifemark failed to timely reinscribe the collateral mortgage and "allowed" Travelers' judgment mortgage to prime the collateral mortgage. The district court also found a breach of a duty to preserve the lease covering the assigned rents as pledgee of the right to basic rent under the collateral assignment of rents. This breach came, it found, when Lifemark Hospitals, Inc. allowed Lifemark Hospitals of Louisiana, Inc. to acquire the hospital. That acquisition extinguished the lease under the doctrine of confusion pursuant to Louisiana Civil Code article 1903 as well as the rental stream assigned to Lifemark Hospitals, Inc.

As the district court explained it, when St. Jude became liable to Travelers for over $7.8 million, specifically $7,834,516.26, and the hospital became subject to Travelers's approximately $7.8 million lien, Lifemark Hospitals, Inc. was obligated to buy out the Travelers lien, to add the Travelers debt to the debt owed by St. Jude to Lifemark Hospitals, Inc. Relatedly, it found an obligation to refrain from having Lifemark Hospitals of Louisiana, Inc. purchase the hospital at the foreclosure sale. All these were found to be duties, all of which Lifemark breached.

[4] In this diversity case, we are controlled by the substantive law of Louisiana. We are to determine and apply its law as we believe the Supreme Court of Louisiana would, looking to the decisions of intermediate Louisiana appellate courts for guidance where the Supreme Court of Louisiana has not spoken clearly to the issue.[16]

We conclude that the foundational principles of the entire set of the district court's rulings are deeply flawed. Such duties are not to be found in Louisiana law.

[5] There is no question but that, under Louisiana law, " 'a trust relationship between the pledgor and pledgee' " carries with it " 'attendant duties to protect the debt or the obligation and the collateral.' " [17] But holding the collateral mortgage note and the right to basic rent under

14. *Id.* (quoting *Anderson*, 470 U.S. at 573, 105 S.Ct. 1504).

15. *Payne v. United States*, 289 F.3d 377, 381 (5th Cir.2002).

16. *See Verdine v. Ensco Offshore Co.*, 255 F.3d 246, 252 (5th Cir.2001); *Hulin v. Fibreboard Corp.*, 178 F.3d 316, 328 (5th Cir.1999).

17. *Trans-Global Alloy Ltd. v. First Nat'l Bank of Jefferson Parish*, 583 So.2d 443, 453 (La. 1991) (quoting *In re Pan American Life Ins. Co.*, 88 So.2d 410, 415 (La.App. 2 Cir.1956)).

the collateral assignment of rents did not create a pledgor-pledgee relationship giving rise to the duties discovered by the district court.

[6] To understand why this is so it is helpful to review the Louisiana law of pledge and collateral mortgages. "The pledge is a contract by which one debtor gives something to his creditor as a security for his debt."[18] The Supreme Court of Louisiana has very recently repeated the Louisiana law of pledge:

> Pledge is an accessory contract by which one debtor gives something to a creditor as security for the debt. Invariably, the thing given as security for the debt is a movable, in which case the contract is more accurately called pawn. A person may give a pledge not only for his own debt, but also for that of another. The pledge secures only that debt or debts contemplated in the contract between the pledgor and pledgee.[19]

A "collateral mortgage" is statutorily defined as "a mortgage that is given to secure a written obligation, such as a collateral mortgage note, negotiable or non-negotiable instrument, or other written evidence of debt, that is issued, pledged, or otherwise used as security for another obligation."[20] We recently summarized the basic operation of a typical collateral mortgage transaction under Louisiana law:

> In a typical Louisiana collateral mortgage transaction, the borrower contemporaneously executes a promissory note (known as a collateral mortgage note) and an act of mortgage (known as a collateral mortgage). In this latter instrument, the mortgagor acknowledges his indebtedness and states his intent to pledge the collateral mortgage note, which is secured by the collateral mortgage, as security for the advancement of funds. The collateral mortgage note is customly made payable on demand, to "Bearer" or "Myself" or "Any Future Holder," and is "paraphed" for identification with the mortgage. This collateral mortgage package is then delivered by the borrower in pledge to the lender to secure an indebtedness which is usually represented by a separate "hand note."
>
> The pledge of a collateral mortgage note and collateral mortgage to secure a debt is a contract. The pledge secures only the debt or debts contemplated in the act of pledge between the pledgor and the pledgee. A collateral mortgage package may be pledged to secure particular debts, either previously existing or contracted contemporaneously with the pledge, or future loans by the pledgee to the pledgor—or both—up to the limits of the pledge.[21]

18. LA. CIV. CODE art. 3133.

19. *Diamond Servs. Corp. v. Benoit*, 780 So.2d 367, 371 (La.2001) (citations and footnote omitted).

20. LA. REV. STAT. § 9:5550(1).

21. *Charrier v. Sec. Nat'l of Or. (In re Charrier)*, 167 F.3d 229, 232–33 (5th Cir.1999) (footnotes omitted). We have also discussed the usual purpose to which collateral mortgages are put: "The collateral mortgage is commonly used with financing in which the maker draws the loan proceeds in stages. The collateral note and mortgage are made for the full amount of the line of credit extended by the lender. This is then pledged as security for a debt, usually represented by a separate hand note. This seemingly fictitious transaction is a Louisiana credit device that lenders use to obtain a lien on property effective on the date the mortgage is executed for advances not yet made, but which the lender may make in the future." *Fed. Sav. & Loan Ins. Corp. v. Murray*, 853 F.2d 1251, 1255 n. 1 (5th Cir.1988).

The Supreme Court of Louisiana has made clear that "[t]he collateral mortgage, though now recognized by statute, is a form of conventional mortgage that was developed by Louisiana's practicing lawyers and has long been recognized by Louisiana courts." [22] It "arose out of the need for a special form of mortgage to secure revolving lines of credit and multiple present and future cross-collateralized debts for which there was no provision in the Civil Code." [23]

More specifically, the Supreme Court of Louisiana explained:

> "A mortgage is an accessory right which is granted to the creditor over the property of another as security for the debt. La. Civ.Code arts. 3278, 3284. Mortgages are of three types: conventional, legal and judicial. La. Civ.Code art. 3286. Within the area of conventional mortgages, three different forms of mortgages are recognized by the Louisiana statutes and jurisprudence: an 'ordinary mortgage' (La. Civ.Code arts. 3278, 3290); a mortgage to secure future advances (La. Civ.Code arts. 3292, 3293); and a collateral mortgage. *See Thrift Funds Canal, Inc. v. Foy*, 261 La. 573, 260 So.2d 628 (1972). Unlike the other two forms of conventional mortgages, a collateral mortgage is not a 'pure' mortgage; rather, it is the result of judicial recognition that one can pledge a note secured by a mortgage and use this pledge to secure yet another debt."
>
> "A collateral mortgage indirectly secures a debt via a pledge. A collateral mortgage consists of at least three documents, and takes several steps to complete. First, there is a promissory note, usually called a collateral mortgage note or a 'ne varietur' note. The collateral mortgage note is secured by a mortgage, the so-called collateral mortgage. The mortgage provides the creditor with security in the enforcement of the collateral mortgage note."
>
> "Up to this point, a collateral mortgage appears to be identical to both a mortgage to secure future advances and an ordinary mortgage. But a distinction arises in the collateral mortgage situation because money is not directly advanced on the note that is paraphed for identification with the act of mortgage. Rather, the collateral mortgage note and the mortgage which secures it are *pledged* to secure a debt." [24]

As such, "[b]ecause the mortgagor, after executing the collateral mortgage and the collateral mortgage note, then pledges the collateral mortgage note as security for a debt, usually represented by a separate hand note, the collateral mortgage package combines the security devices of pledge and mortgage." [25]

Synthesizing the law of pledge and on collateral mortgages, the Supreme Court of Louisiana has observed that a "[p]ledge is an accessory contract which secures the performance of an *existing* principal obligation," and "[t]he principal obligation in the collateral mortgage scheme is the actual indebtedness, usually represented by a hand note, and the collateral mortgage note is pledged to secure payment of the principal obligation." [26] The district court and Liljeberg Enterprises make much of

22. *Diamond Servs.*, 780 So.2d at 370 (footnote omitted).

23. *Id.* at 371.

24. *Id.* at 371 (quoting *First Guar. Bank v. Alford*, 366 So.2d 1299, 1302 (La.1978)).

25. *Id.* at 372 (footnote omitted).

26. *Tex. Bank of Beaumont v. Bozorg*, 457 So.2d 667, 671 n. 4 (La.1984).

the fact that the collateral mortgage "package" involves a "pledge," but, under the facts of this case, this is word play.

A collateral mortgage often involves a hand note that is a third party's note made payable to the mortgagor, which note is pledged by the mortgagor to the mortgagee.[27] In such an instance, a pledgor-pledgee relationship with attendant duties—including a statutory duty of reasonable care and fiduciary duties—to protect the rights of the mortgagor in the third party's note against other creditors of the third party may well arise under statute by the virtue of the nature of the pledgor-pledgee relationship.[28]

Here, however, St. Jude executed a collateral mortgage on the hospital site and pledged a collateral mortgage note to Lifemark Hospitals, Inc. to secure the collateral mortgage, which was itself created to secure the promissory note evidencing Lifemark Hospitals, Inc.'s loan to St. Jude for construction of the hospital. There was no third-party obligation involved.[29] In such a case, where the mortgagor has "pledged" to the mortgagee the mortga-

27. *See, e.g., Diamond Servs.*, 780 So.2d at 372 ("The dispute in this case centers around the obligation that arises from the making of the collateral mortgage note when that note is pledged to secure the debt of a third party represented by a hand note executed by that third party.").

28. *See, e.g.*, LA.REV.STAT. § 10:9–207(a) ("Duty of care when secured party in possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed."); LA. CIV.CODE art. 3167 ("The creditor is answerable agreeably to the rules which have been established under the title: Of Conventional Obligations, for the loss or decay of the pledge which may happen through his fault."); *accord* LA.REV.STAT. § 10:9–207(1) ("A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.") (superseded by 2001 La. Acts 128); *cf. Trans–Global*, 583 So.2d at 453 (holding that, in a case not involving a collateral mortgage, the duty of care imposed on a creditor, as the pledgee of a debtor's letter of credit from a third party, was that of prudent administrator such that the creditor could be held liable for the loss or decay of the pledge occurring through its fault).

29. Liljeberg Enterprises argues for first time in its reply brief that Lifemark did not raise in the district court its argument distinguishing between collateral mortgages involving third party notes and those involving hand notes on which the collateral mortgagor is the obligor. Ordinarily, we do not consider arguments raised for the first time in a reply brief. *See Price v. Roark*, 256 F.3d 364, 368 n. 2 (5th Cir.2001). However, St. Jude's argument here seeks simply to invoke a rule which we at times invoke *sua sponte:* that arguments not raised in the district court cannot be asserted for the first time on appeal. *See Stokes v. Emerson Elec. Co.*, 217 F.3d 353, 358 n. 19 (5th Cir.2000); *Brown v. Ames*, 201 F.3d 654, 663 (5th Cir.), *cert. denied*, 531 U.S. 925, 121 S.Ct. 299, 148 L.Ed.2d 240 (2000). However, an argument is not waived on appeal if the argument on the issue before the district court was sufficient to permit the district court to rule on it. *Brown*, 201 F.3d at 663; *Rogers v. Hartford Life & Accident Ins. Co.*, 167 F.3d 933, 943 n. 8 (5th Cir.1999); *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 n. 4 (5th Cir.1996). That is the case here, based on our review of the record. On appeal, Lifemark has certainly refined its argument to distinguish the duties owed by a collateral mortgagee/pledgee in third-party note situations as developed in the case law cited by St. Jude from Lifemark's situation, but Lifemark did sufficiently put before the district court its argument that no duty to reinscribe the collateral mortgage or to prevent the loss of the hospital flowed from its pledgor-pledgee relationship with St. Jude. *See* R. 9076, 9151–57. This was sufficient to permit the district court to rule on the essential argument Lifemark advances on appeal.

gor's own hand note on which the mortgagor is directly obligated to the mortgagee, the mortgagee has a duty to keep the note so that it may be returned to the mortgagor upon payment of the underlying debt to the mortgagee.[30] It is true that the Supreme Court of Louisiana has cited Professor Slovenko's observation that:

> ... [I]n the case of promissory notes, bills of exchange, and other evidences of indebtedness pledged as security, a duty exists on the part of the pledgee to preserve the rights of the pledgor against the obligors in the deposited documents. The pledgee is held responsible if he neglects to have a promissory note, the subject of the pledge, protested for non-payment, and the endorser is discharged in consequence; or, if he neglects to have a mortgage which is pledged to him reinscribed or reregistered in proper time, and it loses its rank and effect.[31]

It is also the case that Professor Slovenko's discussion assumes that a third-party obligation is involved with the pledge, where here it is not. To the contrary, the obligor of the underlying document and the pledgor (and the collateral mortgagor) were one and the same—St. Jude.

Lifemark Hospitals, Inc. loaned money to St. Jude to build a hospital, a loan evidenced by a loan agreement and a promissory note, or hand note, in turn collateralized by the pledge of a collateral mortgage note, itself secured by a collateral mortgage on the hospital site.[32] The extraordinary duty the district court imposed upon Lifemark, who loaned the money to build the hospital and held the mortgage on it to secure its payment, is inexplicable. Whatever duty Lifemark may have owed as the pledgee of the collateral mortgage note, they do not include a requirement that Lifemark reinscribe the mortgage executed in Lifemark's favor to secure a debt owed by St. Jude to Lifemark, in order that the mortgage may retain priority for Lifemark's benefit as pledgee and mortgagee. As Lifemark aptly points out, ordinarily a debtor such as St. Jude is happy to have its creditor fail to record its lien. We reject the assertion

30. *Cf.* Max Nathan, Jr. & Anthony P. Dunbar, *The Collateral Mortgage: Logic and Experience*, 49 LA. L.REV. 39, 49 (1988) ("Since a collateral mortgage may be used to secure a specific debt, a debtor who wishes to limit the mortgage to that debt can lawfully do so and the pledge agreement is clearly the proper document in which to manifest such an intent. The risk, of course, is that the ne varietur note, which is negotiable, *may fall into the hands of bona fide third parties* who are unaware of the pledge agreement and are not bound by it. That risk is probably the major drawback to use of the collateral mortgage. *The problem is mitigated by the fact that a pledgee, who accepts a fiduciary duty as such, surely would be liable to a borrower injured in such a situation.* The risk can be further minimized by use of a third-party custodian to hold the ne varietur note, or by use of a safety deposit box with appropriate restrictions." (emphasis added; footnotes omitted)); *cf. also People's Bank v. Cookston*, 142 So. 285, 286 (La.App. 2 Cir.1932) (holding that the plaintiff, as pledgee of the chattel mortgage note, was "under obligation to keep the pledged property intact, in order that it might be returned when the principal obligation is paid, when it does not proceed on the pledged property").

31. Ralph Slovenko, *Of Pledge*, 33 TUL. L.REV. 59, 121 (1958) (cited in *Trans-Global*, 583 So.2d at 453).

32. Under a later settlement in 1991, St. Jude executed a renewal note, renewing and extending the original note, and, like the original note, the renewal note was secured by the original collateral mortgage, collateral mortgage note, and pledge of the collateral mortgage note. Along with the execution of the renewal note, St. Jude provided Lifemark Hospitals, Inc. with additional security in the form of a collateral assignment of rents, which assignment was recorded.

that Lifemark as the mortgagee here owed a duty to its mortgagor to reinscribe the mortgage, as illustrated in part, indeed, by the very difficulty of describing exactly how not protecting a mortgage's first position, in and of itself, could possibly harm the *mortgagor*.

Nor can this theory explain how it can lie beside the undisputed right of Lifemark Hospitals, Inc. to, "at any time, without notice to anyone, release any part of the Property from the effect of the Mortgage." This right of release is explicitly recited in the collateral mortgage itself. In addition, the renewal note provides that St. Jude "agree[s] to any ... release of any [of the security herefor]." The right of Lifemark to unilaterally release any part of the property from the mortgage is wholly at odds with the district court's discovery of a "duty" to reinscribe the collateral mortgage. It was Lifemark's contracted-for right to retain the collateral mortgage's priority against other creditors, under both the renewal note and the collateral mortgage itself.[33] The grant of a security interest to secure St. Jude's debt was to protect the lender, Lifemark Hospitals, Inc., not the borrower.

Nor did Lifemark as mortgagee have a duty to protect the hospital owner from other creditors asserting their rights against the hospital, as the district court held Lifemark did. It is self-evident that there is a vast difference between a statutory duty to prevent loss or decay of a third party's note evidencing a debt owed to the collateral mortgagor/pledgor in order to preserve against other third parties the collateral mortgagor's rights in the third party's note pledged by it to the collateral mortgagee, and a supposed fiduciary duty on the part of the collateral mortgagee to protect the collateral mortgagor against a third party's exercise of its rights in an entirely different instrument or judgment. This is a mere chimera, existing nowhere in Louisiana law. It was apparently constructed out of whole cloth.

In sum, Lifemark had no duty to timely reinscribe the collateral mortgage, and the district court erred as a matter of law in concluding that Lifemark had a consequential duty to "mitigate" any harm allegedly caused by Lifemark's failure to reinscribe by buying out the Travelers lien and adding the Travelers debt to the debt owed by St. Jude to Lifemark.

[7] As for any duties arising out of Lifemark's holding the right to basic rent under the collateral assignment of rents, Lifemark argues in part that the statutory duty of reasonable care under Louisiana Civil Code article 3167 does not apply to an assignment of rents because such an assignment is not a pledge where Lifemark did not take possession of a corporeal movable or evidence of a credit, such as a note, as required by Louisiana Civil Code article 3152.[34] Lifemark argues that article 3167 imposes only custodial duties on pledgees and that no such duties attend its collateral assignment of rents from St. Jude.

33. *Cf. Commercial Nat'l Bank in Shreveport v. Audubon Meadow P'ship*, 566 So.2d 1136, 1140–41 (La.App. 2 Cir.1990) (holding that, in light of the guaranty agreement's permitting the lending bank to surrender any securities without notice or consent from the guarantor, the bank's alleged negligence in allowing a letter of credit to lapse provided the guarantor with no basis for recovery against the bank).

34. *See* LA. CIV.CODE art. 3152 ("It is essential to the contract of pledge that the creditor be put in possession of the thing given to him in pledge, and consequently that actual delivery of it be made to him, unless he has possession of it already by some other right.").

This argument, however, does not account for Louisiana Civil Code article 3153, which provides: "But this delivery is only necessary with respect to corporeal things; as to incorporeal rights, such as credits, which are given in pledge, the delivery is merely fictitious and symbolical." [35] An assignment of rents may be a pledge, because "[o]ne may, in fine, pawn incorporeal movables, such as credits and other claims of that nature." [36] Indeed, Louisiana statutes provide that "[c]laims, credits, obligations, and incorporeal rights in general not evidenced by written instrument or muniment of title, shall be subject to pledge, and may be pledged in the same manner as other property" and that "[t]he pledge shall be valid as to all persons without delivery of the claim, credit, obligation, or incorporeal right to the pledgee." [37]

But again, that is beside the point, the duty attributed by the district court to Lifemark as pledgee of the right to basic rent under the collateral assignment of rents did not exist. The recorded collateral assignment of rents simply gave Lifemark a secured right to rents upon default by St. Jude under the renewal note. The collateral assignment of rents specifically provides that Lifemark Hospitals, Inc. "shall not be obligated to perform or discharge nor does [Lifemark Hospitals, Inc.] hereby undertake to perform or discharge any obligation, duty or liability under said Lease." As we observed, the renewal note itself gave Lifemark the right to release any security, including the collateral assignment of rents, under the renewal note. In the face of these contractual provisions, holding the right to basic rent under the collateral assignment of rents imposed no duty upon Lifemark to preserve the lease covering the assigned rents.

We are persuaded that the district court erred as a matter of law in concluding that Lifemark breached any duties by failing to timely reinscribe the collateral mortgage, buy out the Travelers lien, add the Travelers debt to the debt owed by St. Jude to Lifemark Hospitals, Inc., and refrain from having Lifemark Hospitals of Louisiana, Inc. purchase the hospital at the foreclosure sale. In sum, Lifemark did not owe the duties to St. Jude upon which the district court premised its order reversing the judicial sale of the hospital. The district court erred in upsetting the confirmed judicial sale on these grounds.

B.

[8] The district court pointed to its findings of Lifemark's bad faith, collusion, and self-dealing in forcing the judicial sale of the hospital, chilling the bidding at the sale, and purchasing the hospital as an alternative ground for its upset of the judicial sale. The district court relied upon

35. *Id.* art. 3153.

36. *Id.* art. 3155; *see also* LA.REV.STAT. § 9:4401(A) ("Any obligation may be secured by an assignment by a lessor or sublessor of leases or rents, or both leases and rents, pertaining to immovable property. Such assignment may be expressed as a conditional or collateral assignment, and may be effected in an act of mortgage, by a separate written instrument of assignment, or by a separate written instrument of pledge, and may be referred to, denominated, or described as a pledge or an assignment, or both.").

37. LA.REV.STAT. §§ 9:4321, 9:4322 (repealed by 2001 La. Acts. 128). Although these provisions were repealed in 2001, *see* 2001 La. Acts 128, this repeal cannot be applied retroactively to the facts of this case because these provisions were substantive laws and the legislature did not express its intent to give the repeal of the substantive law retroactive effect, *see Billingsley v. Mitchell*, 676 So.2d 208, 212–13 (La.App. 1 Cir.), *writ denied*, 681 So.2d 1265 (La.1996).

two unpublished district court decisions setting aside a judicial sale. Both were in admiralty and prior to sale confirmation.

That slender reed aside, the district court's findings of a "conspiracy" to wrest control of the hospital and medical office building from St. Jude and Liljeberg Enterprises border on the absurd. We are left with the definite and firm conviction that a mistake has been committed, that the findings are not supported by the evidence and are clearly erroneous.

The district court's "conspiracy theory" conclusion is based, in part, on the view that Liljeberg Enterprises's or St. Jude's losses were caused by Lifemark. Specifically, not reinscribing the collateral mortgage and not buying out the Travelers lien and adding the Travelers debt to the debt owed by St. Jude to Lifemark. These findings turn on the remarkable but largely implicit conclusion, asserted directly by the Liljebergs' counsel at oral argument, that, under Louisiana law, a second mortgagee, which Travelers would have been had the collateral mortgage been timely reinscribed, cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.[38]

The theory that Lifemark proximately caused any loss to Liljeberg Enterprises or St. Jude from the Travelers foreclosure on its judicial mortgage cannot accommodate the undisputed fact that, under Louisiana law, St. Jude could have reinscribed the collateral mortgage itself.[39] A subordinate position for the Travelers judgment is now said to have been critical for St. Jude and its loss the centerpiece of a conspiracy to take the hospital. Yet, St. Jude could have checked the records and protected its own interest. That it could have and did not do so is telling. It rends a large hole in the conspiracy claim and leaves St. Jude's inaction unexplained. This, with the reality we have explained that Lifemark Hospitals, Inc. had no duty to buy out the Travelers lien, no duty to add the Travelers debt to the debt owed by St. Jude to Lifemark Hospitals, Inc., and no duty to prevent the purchase of the hospital at the foreclosure sale by Lifemark Hospitals of Louisiana, Inc.

Even if we were to somehow "explain" all of this by the theory that this foreclosure was part of Lifemark's plan from the beginning, the theory cannot be squared with one large undisputed fact: Liljeberg Enterprises and St. Jude faced the Travelers lien because of Liljeberg Enterprises's and St. Jude's own failed litigation against Travelers, arising out of an independent dispute with Travelers. Any suggestion that Lifemark somehow worked that result is defied by the record. Indeed, a panel of this court described the Liljebergs' con-

38. *See, e.g., First Nat'l Bank of Gonzales v. Morton*, 544 So.2d 5 (La.App. 1 Cir.) (involving a prior successful foreclosure suit brought by a second mortgagee), *writ denied*, 550 So.2d 654 (La.1989); *Keys v. Box*, 476 So.2d 1141 (La.App. 3 Cir.1985) (involving a foreclosure suit brought by a bank to protect its interest as a second mortgagee); *Guinn v. Houston Fire & Cas. Ins. Co.*, 32 So.2d 613 (La.App. 1 Cir.1947) (involving a foreclosure suit instituted by a second mortgagee).

39. *See* LA. CIV.CODE art. 3333 ("A person may reinscribe a recorded document creating a mortgage or evidencing a privilege by filing with a recorder a signed, written notice of reinscription."); *accord id.* art. 3369(E) ("The effect of the registry ceases in all cases, even against the contracting parties, unless the inscriptions have been renewed within the periods of time above provided in the manner in which they were first made, or by filing a notice of reinscription of mortgage or a written request for reinscription by the mortgagee *or any interested person*, together with a copy of the original act of mortgage." (emphasis added)) (repealed by 1992 La. Acts 1132).

duct involved that litigation as "as egregious and unconscionable of bad faith contractual dealings as the members of this panel can recall having encountered." [40] The cases before us only reinforce that panel's observation. The record is clear that any losses by St. Jude and Liljeberg Enterprises were proximately caused by the Liljebergs, who defaulted to Travelers and whose post-default conduct, in part, led to the Travelers judgment and its resulting judicial mortgage and lien on the hospital. The foreclosure of this lien led to the foreclosure of the hospital that the district court order would set aside.

Indeed, despite Liljeberg Enterprises's contention on appeal that Lifemark's efforts to "circumvent" the pharmacy agreement and refusal to renew the medical office building lease caused St. Jude and Liljeberg Enterprises to experience significant shortfalls which foreclosed any possibility of paying the note on the medical office building to Travelers, the district court made no findings of fact that Lifemark's conduct was the cause of the debt to Travelers or St. Jude's inability to pay that debt, which resulted in the judicial mortgage Travelers filed encumbering the hospital property.[41]

With or without such findings, however, the idea that Lifemark deliberately subordinated its mortgage interest to Travelers, knowing it would result in a required payment, *to wit*, approximately $7.8 million, to Travelers at any judicial sale, comes close to being nonsensical. It rests upon the assertion that Louisiana law somehow obligated Lifemark to lend the money to bail the Liljebergs out of their litigation fiasco with Travelers. That is so because, as we will explain, Travelers would most certainly have foreclosed its second mortgage. Although the district court made no such explicit finding, Liljeberg Enterprises argues on appeal that Lifemark deliberately failed to reinscribe its collateral mortgage in order to facilitate the Travelers foreclosure and the judicial sale of the medical office building and the hospital to Lifemark Hospitals of Louisiana, Inc., whereafter Lifemark conspired to manipulate the judicial sale, colluded to minimize the price offered at the judicial sale, and schemed to terminate the lease and St. Jude's right to collect rents from Lifemark.

In answer to the palpable flaws in their theories, the Liljebergs would simply expand the conspiracy. They argue that this court should consider documents from Lifemark's legal malpractice suit against their former attorneys for their attorneys' failure to reinscribe the collateral mortgage and, more specifically, in a footnote in their original brief, the Liljebergs state for the first time that they "challenge the court's denial of their motion to supplement the record with documents from the trial between Lifemark and [its former attorneys]," which "documents clearly show that Defendants and their attorneys conspired to defraud St. Jude/Liljeberg Enterprises out the hospital, the lease, and

40. *Travelers Ins. Co. v. St. Jude Hosp.*, No. 92–9579, 21 F.3d 1107, at 2 (5th Cir. Apr. 20, 1994) (unpublished per curiam). The panel further noted that "[t]he Liljeberg conduct to which we refer is the antithesis of that mandated in La. Civil Code Ann. art. 1983 ('Contracts must be performed in good faith.'), and has contributed to the legal effects described in La. Civil Code Ann. art. 1997 ('An obligor in bad faith is liable for all damages, foreseeable or nor, that are a direct consequence of his failure to perform.')." *Id.* at 2 n. 3.

41. Nor, for that matter, did the district court make findings supporting two other premises of the Liljebergs' arguments on appeal: that Lifemark intentionally or deliberately failed to reinscribe the collateral mortgage or that Lifemark engaged in any fraud on the court or fraud with regard to the judicial sale.

the pharmacy." It tells that this argument was not raised or briefed as a separate issue until the Liljebergs' final reply brief. It is therefore waived.[42] Moreover, the district court ruled in an order dated April 25, 2000 that the Liljebergs' motion to supplement was rendered moot by the court's order and final judgment issuing its findings of fact and conclusions of law, which therefore quite obviously did not rely on the supplemental materials proffered with the motion. Under these circumstances, even if we were to consider this issue, the Liljebergs could not show an abuse of discretion on appeal.[43]

In sum, we conclude that the district court's findings that Lifemark engaged in bad faith, collusion, and self-dealing to force the judicial sale of the hospital, chill the bidding at the sale, and purchase the hospital are clearly erroneous. In the absence of any breach of duty to St. Jude or Liljeberg Enterprises on the part of Lifemark or a Lifemark breach having proximately caused any loss to the Liljebergs resulting from the Travelers lien, there is no bad faith or collusion in Lifemark's decision to bid at the judicial sale or Lifemark's purchase of the hospital at the legally-permitted two-thirds of its appraised value.

The other side of the no-duty coin is that Lifemark was free to act in its own self-interest, including allowing Lifemark, which had the license, to own and operate the hospital, and to escape the burden of the pharmacy agreement, which functioned much like an overriding royalty payment. As Lifemark persuasively argues on appeal, and the record is clear: the various lending and lease transactions and instruments, as agreed to by the Liljebergs and Lifemark, permitted the outcomes which Lifemark sought in Lifemark Hospitals of Louisiana, Inc.'s bidding at the judicial sale as well as Lifemark's decision not to renew the lease on the medical office building.[44] Lifemark Hospitals, Inc. was legally entitled to obtain permission to bid credits, and received a court order granting such permission, to give it the option to bid at the sale should the circumstances warrant. The district court's findings and the Liljebergs' arguments on appeal offer no logical connection between a decision to seek authority to bid credits and the absence, let alone the chilling, of other bids on the hospital property at the judicial sale—the credits represent a debt Lifemark Hospitals, Inc. was owed, so a payment in cash and credits or simply in cash would make no difference for the bottom line in Lifemark's accounting. Moreover, although

42. *See Price,* 256 F.3d at 368 n. 2 (court of appeals does not consider issues raised for the first time in a reply brief); *Peavy v. WFAA-TV, Inc.,* 221 F.3d 158, 179 (5th Cir.2000) (refusing to consider issue that were not raised or adequately briefed in the parties' opening briefs), *cert. denied,* 532 U.S. 1051, 121 S.Ct. 2191, 149 L.Ed.2d 1023 (2001); *Atwood v. Union Carbide Corp.,* 847 F.2d 278, 280 (5th Cir.) ("As we have already noted, issues not briefed, or set forth in the list of issues presented, are waived."), *amended on reh'g on other grounds,* 850 F.2d 1093 (5th Cir.1988).

43. *See Fields v. Pool Offshore, Inc.,* 182 F.3d 353, 360 n. 7 (5th Cir.1999) (standard of review for denial of motion to supplement the record is for abuse of discretion only); *Morales v. Turman,* 562 F.2d 993, 996 (5th Cir. 1977) (same).

Even assuming arguendo that the Liljebergs did not waive this issue on appeal and that we were to conclude that the district court abused its discretion in denying their motion to supplement, the supplemental material would not alter our conclusions on appeal.

44. *Cf. Clark v. America's Favorite Chicken Co.,* 110 F.3d 295, 297–98 (5th Cir.1997) (under Louisiana law, it is not a breach of the implied covenant of good faith and fair dealing to engage in conduct which is expressly allowed under a contract).

the Liljebergs argue that Lifemark's knowledge that the priority of the lease on the hospital and collateral assignment of rents would deter other bidders at the judicial sale somehow supports their conspiracy theory, it demonstrates quite the opposite. As counsel for Lifemark aptly noted at oral argument, the judicial sale could almost be considered "chill-proof," in that it is hard to imagine anyone bidding $26 million on a property that would, by virtue of the lease and collateral assignment of rents, provide no cash-flow until at least sixteen years later, in 2010.

[9] On the basis of its clearly erroneous "conspiracy theory" findings, the district court erred as a matter of law in disregarding long-standing Louisiana jurisprudence that a judicial sale, once completed, cannot generally be undone.[45] Freed from the district court's clearly erroneous "conspiracy theory" findings, the evidence concerning Lifemark's actions following Travelers's filing its judicial mortgage does not support findings of bad faith, collusion, and self-dealing on the part of Lifemark that would permit the district court to overturn the confirmed judicial sale.[46] Rather, the evidence considered against the entirety of the record shows that Lifemark's actions consisted of commercially reasonable, albeit aggressive, steps in reaction to the Travelers judgment, all of which were within their contractual rights and applicable law.

We have detected several warring premises internal to the Liljebergs' theories. In concluding this section, we mention one more: the Liljebergs attempt to maintain both that Lifemark never intended to perform under the various commercial instruments between the parties and that Lifemark drafted these instruments to *allow* Lifemark to engage in conduct it challenges—declining to renew the lease on the medical office building, purchasing the hospital at a judicial sale, and terminating the pharmacy agreement based on a cross-default provision.

C.

Lifemark argues that the district court erred in denying its claim for a deficiency judgment, a sum of $20,600,060.91 that St. Jude owed Lifemark Hospitals, Inc. under the renewal promissory note after Life-

45. *See generally Boyd v. Farmers–Merchants Bank & Trust Co.*, 433 So.2d 339, 342 (La. App. 3 Cir.) ("As a general rule, a judicial sale cannot be attacked once the sale is consummated in the absence of fraud or ill practices."), *writ denied*, 440 So.2d 732 (La.1983).

46. *Compare Acadian Prod. Corp. of La. v. Savanna Corp.*, 222 La. 617, 63 So.2d 141, 142 (1953) ("Among the requirements for the legal seizure and sale of property in satisfaction of a judgment are to be found ... those prohibiting any combination or conspiracy to stifle competition and chill the bidding at a judicial sale."); *Pease v. Gatti*, 202 La. 698, 12 So.2d 684, 690 (1942) ("This court has repeatedly held that, where there is an agreement to stifle competition at judicial sales and where one of the parties to the agreement is a party to the proceeding, the sale may be annulled by the injured party."); *Konen v. Konen*, 165 La. 288, 115 So. 490, 491 (1928) ("Hence the concealment or misrepresentation of facts, amounting to fraud, is not the only cause for annulling a judicial sale, but anything said or done by one who becomes an adjudicatee, for the purpose of preventing competition at the sale, or, in other words, for the purpose of chilling it, which is reasonably capable of doing so, and has that effect, will be sufficient to annul the sale."); *First Nat'l Bank of Abbeville v. Hebert*, 162 La. 703, 111 So. 66, 69 (1926) ("An agreement whereby parties engage not to bid against each other at a public auction, especially where the auction is required or directed by law, as in sales of property under execution, and where one of the parties to the agreement is a party to the proceeding, is a sufficient cause for annulling the sale.").

mark Hospitals of Louisiana, Inc.'s purchase of the hospital at the judicial sale.

The Liljebergs respond that the same bad faith and collusive conduct that tainted the judicial sale also bars any claim for deficiency and that the alleged defaults and acceleration were caused by the bad faith and collusive wrongdoing of Lifemark, which alone is legally responsible. The district court denied Lifemark's deficiency judgment claim based on its decision to overturn the judicial sale, such that "[a]ll rents which would have been paid absent the judicial sale will be deemed paid on the mortgage in favor of [Lifemark Hospitals, Inc.] and the mortgage note shall be deemed current at the time of transfer," and, "[i]nasmuch as this Court has restored the status quo prior to sale and reinstated the collateral mortgage, collateral mortgage note, and note, the claim of [Lifemark Hospitals, Inc.] on the note is disallowed." Having found the district court's findings and conclusions in favor of this order to be in error, and rejected the Liljebergs' arguments on appeal, we must in turn reverse the district court's order denying this claim. As discussed *infra* in connection with the motion to assume the pharmacy agreement, the judicial mortgage and lien on the hospital won in court by Travelers and the judicial sale that followed were defaults under the fourth covenant of the collateral mortgage. These events of default gave Lifemark the contractually-secured right to accelerate the renewal promissory note and immediately recover all amounts and interest due thereunder.[47] We remand to the district court for calculation of the amount of deficiency owed to Lifemark Hospitals, Inc. and for entry of judgment in that amount.

D.

On its cross-appeal, Liljeberg Enterprises argues that the district court erred in requiring St. Jude and Liljeberg Enterprises to reimburse Lifemark the approximately $7.8 million it paid to Travelers. Having reversed the district court's order overturning the judicial sale, we must reverse the order of reimbursement, part of the district court's set-aside of the judicial sale. Because Lifemark will maintain ownership of the hospital pursuant to the confirmed judicial sale, the Liljebergs need not reimburse Lifemark's payment of the Travelers debt made at foreclosure. Liljeberg Enterprises's cross-appeal on this issue is now moot.[48]

47. The fourth covenant of the collateral mortgage provides:

> The Property is to remain mortgaged and hypothecated until the full and final payment of the aforesaid indebtedness in principal and interest, attorney's fees, insurance premiums, costs and expenses, the Mortgagor hereby binding itself, its heirs, successors and assigns not to make a conveyance, mortgage, transfer or sale of the Property until full and final payment of the aforesaid indebtedness including principal and interest, attorney's fees, insurance premiums, costs and expenses, unless the Mortgagee expressly consents to such conveyance or mortgage in writing. The Mortgagor hereby agrees that should the Property be mortgaged, sold or transferred, either with or without the assumption of the aforesaid indebtedness, such sale, transfer or mortgage shall constitute a breach of this contract and the obligations herein set forth, and the Note shall, at the option of the Mortgagee, immediately mature and become due and payable, anything contained herein to the contrary notwithstanding, and it shall be lawful for the Mortgagee to proceed with enforcement of its mortgage as hereinabove set forth.

48. We therefore assume, without deciding, that the Liljebergs did not waive this point of error by failing to raise it before the district court, notwithstanding that the relief they sought in seeking to alter or amend the district court's findings and judgment specifically requested only that the district court "defer the due date for reimbursing Lifemark with

VI. Cause No. 93–1794

The district court concluded in Cause No. 93–1794 that Liljeberg Enterprises, as the debtor in possession in its Chapter 11 bankruptcy proceeding, should be allowed to assume the pharmacy agreement pursuant to 11 U.S.C. § 365. The district court rejected Lifemark's arguments that the pharmacy agreement terminated under its own terms and was therefore not available to be assumed and that Liljeberg Enterprises committed incurable defaults under the pharmacy agreement which, pursuant to 11 U.S.C. § 365(b)(1), precluded an order granting Liljeberg Enterprises's motion to assume.

11 U.S.C. § 365(a) provides that "the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor," but 11 U.S.C. § 1107(a) provides that, "[s]ubject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, ... of a trustee serving in a case under this chapter." Thus, as a debtor in possession, Liljeberg Enterprises was required to satisfy all the requirements of 11 U.S.C. § 365(b)(1) in order to assume the pharmacy agreement as an executory contract under section 365:

> If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.[49]

A.

[10, 11] As an initial matter, Lifemark argues that the pharmacy agreement was no longer an executory contract subject to assumption. To determine if a contract is executory for purposes of this provision, "the relevant inquiry is whether performance remains due to some extent on both sides," such "that an agreement is executory *if at the time of the bankruptcy filing,* the failure of either party to complete performance would constitute a material breach of the contract, thereby excusing the performance of the other party." [50]

Lifemark argues that the district court erred in treating the pharmacy agreement as an executory contract subject to assumption by Liljeberg Enterprises. They

the amount of the Travelers judicial mortgage until after the single business enterprise has paid all the money judgments awarded in favor of Liljeberg Enterprises and St. Jude."

49. 11 U.S.C. § 365(b)(1).

50. *Phoenix Exploration, Inc. v. Yaquinto (In re Murexco Petroleum, Inc.),* 15 F.3d 60, 62–63 (5th Cir.1994) (emphasis added); *accord Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.,* 83 F.3d 735, 741 (5th Cir.1996); *cf. Phillips v. First City, Texas–Tyler, N.A. (In re Phillips),* 966 F.2d 926, 935 (5th Cir.1992) (holding that a partnership agreement does not "remain[ ] an executory contract after the Final Judgment decreed that [one partner] breached the partnership agreement, awarded [another partner] damages, and ordered [the partnership] dissolved, and after passage of the Final Judgment's 90–day prescription for winding up [the partnership]").

contend that, when Lifemark ceased to lease the hospital on October 28, 1994, the pharmacy agreement terminated by its own terms pursuant to section 5.1(e). It provides: "This Agreement shall be effective as set forth above and shall continue in full force and effect, unless sooner terminated with the first to occur of the following: ... (e) LIFEMARK ceases to lease or operate Hospital."

Liljeberg Enterprises filed for Chapter 11 relief on January 27, 1993. Lifemark's lease of the hospital did not end until almost twenty months later-when Travelers foreclosed and Lifemark bought the hospital at the judicial sale. There is no dispute but that throughout this period the pharmacy agreement was in full force and effect and a failure of either party to complete performance would have been a material breach.

Lifemark argues, however, that a line of authority out of the Tenth Circuit provides that "[a] contract that provides for termination on the default of one party may terminate under ordinary principles of contract law even if the defaulting party has filed a petition under the Bankruptcy Act." [51] Although this holding arose under the old Bankruptcy Act,[52] Lifemark argues that it remains valid under the Bankruptcy Code, pointing to a bankruptcy court's conclusion to that effect.[53] That Michigan bankruptcy court reviewed several decisions involving the issue of whether a contract terminated by its own terms or time limits post-petition and concluded that "the issue must be whether termination requires the non-debtor party to undertake some post-petition affirmative act," such that, "[w]hen termination of the contract requires an affirmative act of the non-debtor party, the contract remains executory because such an act is stayed under 11 U.S.C. § 362(a)," but, "[w]hen termination occurs *without any action by the non-debtor party,* the contract is no longer executory and no longer subject to assumption or rejection." [54]

The parties have pointed to no Fifth Circuit decisions treating this issue, and we have located none. The Liljebergs argue that even under this authority the pharmacy agreement did not terminate post-petition where Lifemark not only participated in the alleged defaults, they intentionally precipitated them; that, under the pharmacy agreement and Louisiana law, the pharmacy agreement could not terminate automatically but required Lifemark to place Liljeberg Enterprises in default and obtain judicial dissolution.

[12] We agree and conclude that the district court did not err in concluding that the pharmacy agreement was an executory agreement subject to assumption by Liljeberg Enterprises. Lifemark's affirmative acts—its purchase of the hospital—caused the lease to be extinguished under the doctrine of confusion, which in turn caused any alleged default under section 5.1(e) of the pharmacy agreement. Moreover, Louisiana law provides that, except in limited

51. *Trigg v. U.S. Dep't of Interior (In re Trigg),* 630 F.2d 1370, 1374 (10th Cir.1980); *accord Gloria Mfg. Corp. v. Int'l Ladies' Garment Workers' Union,* 734 F.2d 1020, 1022 (4th Cir.1984).

52. "The Bankruptcy Reform Act of 1978, Pub.L. 95-598, November 6, 1978, 92 Stat. 2549, repealed the former Bankruptcy Act of 1898 and replaced that Act with the Bankruptcy Code, Title 11 of the United States Code, effective October 1, 1979." *Mitsubishi Int'l Corp. v. Clark Pipe & Supply Co., Inc.,* 735 F.2d 160, 162 n. 2 (5th Cir.1984).

53. *Hertzberg v. Loyal Am. Life Ins. Co. (In re B&K Hydraulic Co.),* 106 B.R. 131, 134 (Bankr.E.D.Mich.1989).

54. *Id.* at 135-36 (emphasis added).

circumstances which the district court correctly concluded do not apply here, a contract will not terminate unless the nonbreaching party seeks judicial dissolution of the contract or at least provides notice of the intent to exercise the right to terminate the contract for default, even if the contract explicitly provides for automatic termination.[55] And section 5.1(e) does not do so. Lifemark was required to give Liljeberg Enterprises written notice of termination under section 15 of the pharmacy agreement. In short, terminating the pharmacy agreement for default under section 5.1(e) required an affirmative act of Lifemark. Lifemark gave no notice and did not seek judicial dissolution. The pharmacy agreement remained executory.

B.

[13] Turning then to whether the district court erred in allowing Liljeberg Enterprises to assume the executory pharmacy agreement, under section 365, "[a]n assumed lease or contract will remain in effect through and then after the completion of the reorganization," and "[t]he nondebtor party to the agreement is not released from its duties and must continue to perform; likewise, the debtor must continue to perform or pay for the services or other costs that are not discharged."[56] We have further explained that " '[t]he act of assumption must be grounded, at least in part, in the conclusion that maintenance of the contract is more beneficial to the estate than doing without the other party's services,' "[57] a determination that assumption of the pharmacy agreement by Liljeberg Enterprises "represented a proper exercise of business judgment."[58]

[14–17] Section 365(b)(1) essentially " 'allows a debtor to "continue in a beneficial contract provided, however, that the other party is made whole at the time of the debtor's assumption of said contract." ' "[59] That is, "[s]ection 365 is intended to provide a means whereby a debtor can force another party to an executory contract to continue to perform under the contract if (1) the debtor can provide adequate assurance that it, too, will continue to perform, and if (2) the debtor can cure any defaults in its past performance."[60] As such, "the debtor party must take full account of the cost to cure all existing defaults owed to the nondebtor party when assessing whether the contract is beneficial to the estate."[61] Further, to determine if the debtor in possession has provided "adequate assurance" of future performance, we have held that courts must look to " 'factual conditions,' " including "consider[ation of] whether the debtor's financial data indicated its ability to generate an income stream sufficient to meet its obligations,

55. *See* LA. CIV.CODE art. 2013 & cmts. (b)-(c); *id.* 2015, cmt. (c); *id.* 2017 & cmt. (b); *id.* 2024; *Mennella v. Kurt E. Schon E.A.I., Ltd.*, 979 F.2d 357, 361 & n. 16 (5th Cir.1992); *Pembroke v. Gulf Oil Corp.*, 454 F.2d 606, 611 (5th Cir.1971).

56. *Century Indem. Co. v. Nat'l Gypsum Co. Settlement Trust (In re Nat'l Gypsum Co.)*, 208 F.3d 498, 505 (5th Cir.), *cert. denied*, 531 U.S. 871, 121 S.Ct. 172, 148 L.Ed.2d 117 (2000).

57. *Id.* (quoting *MMR Holding Corp. v. C & C Consultants, Inc. (In re MMR Holding Corp.)*, 203 B.R. 605, 612 (Bankr.M.D.La.1996)).

58. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir.1985).

59. *Nat'l Gypsum*, 208 F.3d at 505 (quoting *In re Eagle Bus Mfg., Inc.*, 148 B.R. 481, 483 (Bankr.S.D.Tex.1992) (quoting *255 Turnpike Assocs. v. J.W. Mays, Inc. (In re J.W. Mays, Inc.)*, 30 B.R. 769, 772 (Bankr.S.D.N.Y. 1983))).

60. *Richmond*, 762 F.2d at 1310.

61. *Nat'l Gypsum*, 208 F.3d at 505.

the general economic outlook in the debtor's industry, and the presence of a guarantee." [62]

[18] To the extent that such determinations turn on contested factual disputes, and not errors of law, we review only for clear error and not under *de novo* review.[63] Lifemark argues that, pursuant to 11 U.S.C. § 365(b)(1), the district court should have denied Liljeberg Enterprises's motion to assume because Liljeberg Enterprises's transactional and operational defaults under the pharmacy agreement are incurable and because Liljeberg Enterprises cannot provide adequate assurance of future performance.

[19, 20] Lifemark's arguments regarding transactional defaults require interpretation of several contractual documents. "The district court's interpretation of a contract is reviewed de novo," and "[t]he contract and record are reviewed independently and under the same standards that guided the district court." [64] At the same time, "if the interpretation of the contract turns on the consideration of extrinsic evidence, such as evidence of the intent of the parties, the standard of review is clearly erroneous," but, if "intent is determined solely from the language of the contract, then contractual interpretation is purely a question of law," and "[t]he threshold question whether extrinsic evidence should be considered in determining the intent of the parties is itself a question of law and thus reviewable de novo." [65]

[21–26] In this diversity case, we look to Louisiana law for the applicable standard of contract interpretation.[66] "Under Louisiana law, a contract is the law between the parties, and is read for its plain meaning." [67] Thus, "[u]nder Louisiana law, where the words of a contract are clear and explicit and lead to no absurd consequences, the contract's meaning and the intent of its parties must be sought within the four corners of the document and cannot be explained or contradicted by extrinsic evidence," such that, "[i]f a court finds the contract to be unambiguous, it may construe the intent from the face of the document—without considering extrinsic evidence—and enter judgment as a matter of law." [68] Further, " '[u]nder Louisiana law, a contract is ambiguous when it

62. *Richmond*, 762 F.2d at 1310 (quoting *In re Sapolin Paints, Inc.*, 5 B.R. 412, 421 (Bankr. E.D.N.Y.1980)).

63. *See id.* at 1307–09 & n. 4.

64. *St. Martin v. Mobil Exploration & Producing U.S. Inc.*, 224 F.3d 402, 409 (5th Cir. 2000).

65. *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Circle, Inc.*, 915 F.2d 986, 989 (5th Cir. 1990) (per curiam); *see also Gebreyesus v. F.C. Schaffer & Assocs., Inc.*, 204 F.3d 639, 642 (5th Cir.2000) ("Under Louisiana law, the interpretation of a contract and the determination of ambiguities are questions of law. Where a court determines that ambiguity exists and makes factual determinations of intent, we review those factual findings for clear error." (citations omitted)). As the district court correctly noted, the Louisiana Civil Code's contract interpretation provisions were substantially amended by Act 331 of 1984, which was enacted after the pharmacy agreement was entered into on February 10, 1983. However, the cited provisions of the Civil Code and other principles of contract interpretation under Louisiana law cited and applied herein did not substantively change the law and so there are no retroactivity concerns presented by citing these post-Act 331 cases and Code provisions. *Cf. Morris v. Friedman*, 663 So.2d 19, 23–24 (La.1995).

66. *See Exxon Corp. v. Crosby–Mississippi Res., Ltd.*, 154 F.3d 202, 205 (5th Cir.1998).

67. *Nat'l Union*, 915 F.2d at 989 (citation omitted).

68. *Am. Totalisator Co., Inc. v. Fair Grounds Corp.*, 3 F.3d 810, 813 (5th Cir.1993).

is uncertain as to the parties' intentions and susceptible to more than one reasonable meaning under the circumstances and after applying established rules of construction.'" [69] Put another way, "under Louisiana law, 'when the words of the contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent,'" and "[t]his established rule of strict construction does not allow the parties to create an ambiguity where none exists and does not authorize courts to create new contractual obligations where the language of the written document clearly expresses the intent of the parties." [70]

[27] The Liljebergs and the district court also rely on the rule that "under Louisiana law doubts or ambiguities as to the meaning of a contract must, if not otherwise resolvable, be eliminated by interpreting the contract against the party who prepared it." [71] The Supreme Court of Louisiana has applied this rule in the context of "an adhesionary contract," noting that "any contradiction or ambiguity should be construed against Titan, the party who drafted the policy," but that "[t]his general rule of construction ... only applies when there are two equally reasonable interpretations of the contractual provision in question." [72]

[28] The statutory provision, Louisiana Civil Code article 2056, captioned "Standard-form contracts," provides both that, "[i]n case of doubt that cannot be otherwise resolved, a provision in a contract must be interpreted against the party who furnished its text" and that "[a] contract executed in a standard form of one party must be interpreted, in case of doubt, in favor of the other party." This language suggests it will primarily be applied to standard-form or adhesionary contracts or, as the Supreme Court of Louisiana has most often recently applied article 2056, to insurance contracts.[73] Neither this court nor the Supreme Court of Louisiana has, however, confined the provision to these types of contracts.[74]

69. *Davis Oil Co. v. TS, Inc.*, 145 F.3d 305, 308 (5th Cir.1998) (quoting *Lloyds of London v. Transcon. Gas Pipe Line Corp.*, 101 F.3d 425, 429 (5th Cir.1996)).

70. *Omnitech Int'l, Inc. v. Clorox Co.*, 11 F.3d 1316, 1326 (5th Cir.1994) (quoting LA. CIV. CODE art. 2046).

71. *Amoco Prod. Co. v. Forest Oil Corp.*, 844 F.2d 251, 255 n. 7 (5th Cir.1988); *accord Liljeberg Enters. Inc. v. Lifemark Hosps. of La., Inc.*, 620 So.2d 1331, 1334–35 (La.App. 4 Cir.) ("Interpretation of a contract is the determination of the common intent of the parties. LSA–C.C.2045. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. LSA–C.C.2046. The words of a contract must be given their generally prevailing meaning. LSA–C.C.2047. Each provision in a contract must be interpreted in light of the other provisions so that each is given the meaning suggested by the contract as a whole. LSA–C.C.2050. In case of doubt that cannot be otherwise resolved, a provision in a contract must be interpreted against the party who furnished its text. LSA–C.C.2056."), *writs denied*, 621 So.2d 818 (La.1993). On appeal, Lifemark does not deny that it drafted the pharmacy agreement. *See id.* at 1338 (identifying "the attorney who drafted the agreement for Lifemark").

72. *Lewis v. Hamilton*, 652 So.2d 1327, 1330 (La.1995).

73. *E.g., Succession of Fannaly v. Lafayette Ins. Co.*, 805 So.2d 1134, 1138 (La.2002); *La. Ins. Guar. Ass'n v. Interstate Fire & Cas. Co.*, 630 So.2d 759, 764 (La.1994).

74. *See, e.g., United States Abatement Corp. v. Mobil Exploration & Producing U.S., Inc. (In re United States Abatement Corp.)*, 79 F.3d 393, 400 (5th Cir.1996) (case involving oil platform maintenance contract); *Huggs, Inc. v. LPC Energy, Inc.*, 889 F.2d 649, 653 (5th Cir.1989) (case involving mineral lease); *Brown v. Drillers, Inc.*, 630 So.2d 741, 754 n.

[29] At the same time, we have held that, "while the jurisprudence of Louisiana has established a rule of contractual interpretation which construes ambiguity against the party drafting the document in question, neither party is deemed to be the scrivener when, as here, the initial draft is modified and remodified in a series of exchanges between the parties to produce an execution draft reflecting give and take between obligor and obligee." [75]

[30] We first must answer whether the judicial lien and foreclosure of the hospital were defaults under the collateral mortgage and lease and, if so, whether they were transactional defaults under the pharmacy agreement's cross-default provision. Section 5.1(b) of the pharmacy agreement provides:

> This Agreement shall be effective as set forth above and shall continue in full force and effect, unless sooner terminated with the first to occur of the following: ... (b) Either party shall remain in breach of this Agreement for a continuous, unabated 30-day period after receipt of written notice of such breach from the other party. Should OPERATOR [Liljeberg Enterprises, Inc.]; or any of LIFEMARK's corporate affiliates, be in default of any other contractual agreement with LIFEMARK or any of LIFEMARK's corporate affiliates, including, but not limited to, the lease relating to the Hospital, then OPERATOR [Liljeberg Enterprises, Inc.] shall be in breach of this Agreement.

Section 5.1(b) placed the Liljebergs in breach of the pharmacy agreement by virtue of the default under the fourth covenant of the collateral mortgage through the sale of the hospital. That covenant provides that "[t]he Mortgagor [St. Jude] hereby agrees that should the [hospital] be mortgaged, sold or transferred, either with or without the assumption of the aforesaid indebtedness, such sale, transfer or mortgage shall constitute a breach of this contract and the obligations herein set forth."

Lifemark argues that the judicial mortgage and lien placed on the hospital was also a transactional default under the fourth and fifth covenants of the collateral mortgage. The fourth covenant provides in relevant part, in addition to the previously-quoted language, that "[t]he [hospital] is to remain mortgaged and hypothecated until the full and final payment of the aforesaid indebtedness ... the Mortgagor [St. Jude] hereby binding itself ... not to make a conveyance, mortgage, transfer or sale of the [hospital] until full and final payment of the aforesaid indebtedness ..., unless the Mortgagee [Lifemark Hospitals, Inc.] expressly consents to such conveyance or mortgage in writing." The fifth covenant provides, in pertinent part, that "should there be created or suffered to be created any other lien or charges superior in rank to the lien and mortgage herein granted, ... then and in any of such events, the Note in principal and interest and all other indebtedness secured hereby shall, at the option of the Mortgagee [Lifemark Hospitals, Inc.] shall, at the option of the Mortgagee [Life-

20 (La.1994) ("Applying this rule [Louisiana Civil Code article 2056] in contexts like this one is appropriate in that it recognizes the reality that the releasee is responsible for the broad release language and that any ambiguity should thus be construed against the releasee."); *cf. Mott v. ODECO*, 577 F.2d 273, 278 (5th Cir.1978) (case involving master service contract relating to offshore oil-drilling platform) (applying pre-article 2056 rule in Louisiana Civil Code articles 1957 and 1958, which embodied the same general rule of Louisiana jurisprudence).

75. *Shell Offshore, Inc. v. Marr*, 916 F.2d 1040, 1046 (5th Cir.1990).

mark Hospitals, Inc.], immediately become due and payable...." Finally, Lifemark argues that the Travelers lien created a default of the lease between St. Jude and Lifemark, which provides in Article 11.1, entitled "Warranty of Peaceable Possession and Title," that "[d]uring the Lease Term, LESSOR [St. Jude] represents and covenants that it will not create nor allow to exist any liens, encumbrances or charges relating to obligations of the LESSOR [St. Jude] affecting the Leased Premises except liens, such as paving, water and sewerage liens, resulting from a special assessment by a Governmental Authority and the Act of Collateral Mortgage ... and any other mortgage instruments now or hereafter executed to secure the [Lifemark Hospitals, Inc.] loan ... or otherwise agreed to in writing by [Lifemark Hospitals, Inc.]."

It is important to note that the collateral mortgage was signed by St. Jude and Lifemark Hospitals, Inc., not Liljeberg Enterprises and Lifemark Hospitals of Louisiana, Inc., while the lease of the hospital was signed by St. Jude and Lifemark Hospitals of Louisiana, Inc., not Liljeberg Enterprises and Lifemark Hospitals of Louisiana, Inc. As a result, Lifemark argues on appeal that the first reference to Lifemark in section 5.1(b) of the CPA is a typographical error, and that the provision should read "or any of OPERATOR's corporate affiliates," such that any default of St. Jude, which is an affiliate of the "Operator," Liljeberg Enterprises, is a default under the pharmacy agreement.

[31, 32] The difficulty for Lifemark is that it is required to seek reformation or, to avoid absurdity, reading of the word "OPERATOR'S" into section 5.1(b) for "LIFEMARK'S." Lifemark has never whole-heartedly sought reformation and with good reason. Under Louisiana law, "[r]eformation is an equitable remedy that may be used when a contract between the parties fails to express their true intent, either because of mutual mistake or fraud." [76] Indeed, "[t]o establish the appropriateness of reformation, [Lifemark] had to prove by clear and convincing evidence that the [pharmacy agreement], as written, contained a mutual mistake and did not comport with the parties original intent." [77]

On this appeal, Lifemark stresses that the district court erred in rejecting its interpretation of section 5.1(b). The district court concluded that the language in section 5.1(b) could have been prepared for Liljeberg Enterprises's benefit so that a default by Lifemark or a Lifemark affiliate would have allowed Liljeberg Enterprises to terminate the pharmacy agreement or seek damages. Lifemark replies that this suggested rational basis for the provision's otherwise embarrassing phrasing is not so simple. Rather, this rescue requires a finding that the scriveners made four errors in the provision, instead of the one error that would exist under Lifemark's interpretation. Lifemark's argument, while strong, is not clear and convincing evidence of mutual mistake or fraud in the formation of the pharmacy agreement.

Lifemark also says that John Liljeberg testified that the Travelers lien could cause a default under the pharmacy agreement's cross-default provision. As we read the testimony, Liljeberg did not admit any mutual mistake in the drafting of section 5.1(b) of the pharmacy agreement. Rather he indicated only that his attorney was concerned that the Travelers lien and

76. *Edwards v. Your Credit Inc.*, 148 F.3d 427, 436 (5th Cir.1998).

77. *Duhon v. Mobil Oil Corp.*, 12 F.3d 55, 58 (5th Cir.1994).

foreclosure might sever the pharmacy agreement.

At the same time, "Louisiana courts will not interpret a contract in a way that leads to unreasonable consequences or inequitable or absurd results even when the words used in the contract are fairly explicit." [78] Lifemark argues that the assertion that there was no typographical error in section 5.1(b) of the pharmacy agreement is untenable because it leads to the nonsensical result that, when read literally, section 5.1(b) provides that Liljeberg Enterprises would be in breach if a Lifemark affiliate defaulted under an agreement with another Lifemark affiliate. Lifemark points out that this reading of section 5.1(b) is contrary to its plain language. That provision sets forth a default on "the lease relating to the Hospital" as an example of the type of breach that will trigger the cross-default provision. They note that, under Liljeberg Enterprises's reading, such a breach of the lease could not trigger the cross-default provision because it is not an agreement between Liljeberg Enterprises and a Lifemark affiliate or an agreement between two Lifemark entities.

[33–35] This is a stronger argument for Lifemark's interpretation of section 5.1(b). Particularly so in light of several controlling standards for contract interpretation under Louisiana law: (1) Every provision of the contract must be interpreted in light of the contract's other provisions in order to give each provision the meaning suggested by the contract as a whole; (2) Contract provisions susceptible to different meanings should be interpreted so as not to neutralize or ignore any provision or treat any provision as mere surplusage and so as to preserve the validity of the contract; and (3) "'A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and of other contracts of a like nature between the same parties.'" [79] Only if these rules do not resolve the issue of how to interpret the contractual provision at issue should the provision be interpreted against the party that drafted it, which default rule applies, in any event, "only ... when there are two equally reasonable interpretations of the contractual provision in question." [80]

We conclude that Lifemark's interpretation of section 5.1(b), providing that "LIFEMARK'S" should be read as "OPERATOR'S" in the first reference in the provision, is the only construction of the provision which gives it the meaning suggested by the pharmacy agreement as a whole and which does not neutralize or ignore any provision or treat any provision as mere surplusage. In particular, this reading of section 5.1(b) makes sense of the example of the lease of the hospital between St. Jude and Lifemark Hospitals, Inc., which was signed only a month after Liljeberg Enterprises and Lifemark Hospitals of Louisiana, Inc. entered into the pharmacy agreement. In short, reading section 5.1(b) literally leads to absurd results, *inter alia*, that Liljeberg Enterprises would be required to answer for a default by one of Lifemark's corporate affiliates, whereas the interpretation advanced by Lifemark represents the most reasonable interpretation of the provision in question following the established rules of contract interpretation under Louisiana law.

We conclude that the district court erred in finding section 5.1(b) to be unenforcea-

78. *Tex. E. Transmission Corp. v. Amerada Hess Corp.*, 145 F.3d 737, 742 (5th Cir.1998).

79. *Id.* (quoting LA. CIV.CODE art. 2053).

80. *Lewis*, 652 So.2d at 1330.

ble and therefore severable from the pharmacy agreement pursuant to section 10 and in finding that "[t]he obligations contained in the [pharmacy agreement] are severable from St. Jude's obligations to [Lifemark Hospitals, Inc.] under the mortgage and [Lifemark Hospitals of Louisiana, Inc.] under the lease."

We further hold that the district court clearly erred in finding, largely implicitly, that the Travelers judicial mortgage and the judicial sale of the hospital were not defaults under the fourth covenant of the collateral mortgage. The district court also clearly erred in finding that "[t]he mortgage when viewed in tandem with the lease was incapable of default since the obligations owed by [Lifemark] under the lease would satisfy all of the obligations due by St. Jude to [Lifemark Hospitals, Inc.] under the terms of the financing." Under the express terms of the collateral mortgage, the hospital was not be mortgaged or sold. These events were breaches of the non-financial covenants of the collateral mortgage and the undisputed fact is that the hospital was both mortgaged and sold. It is no answer that the mortgage and sale resulted from Lifemark's actions and not Liljeberg Enterprises's or St. Jude's. The express language of the fourth covenant does not confine its prohibition of sales or mortgages of the hospital to events caused by St. Jude. We have already concluded that the district court clearly erred in finding the superior rank of the Travelers judicial mortgage and the resulting judicial sale of the hospital to have been the result of a breach of fiduciary duties, bad faith, or collusion on the part of Lifemark. Moreover, the district court made no findings that Liljeberg Enterprises had cured or provided adequate assurance that it will promptly cure such a default, nor could the district court have done so on this record.

[36] The Liljebergs, however, attempt to escape the effect of the default under the collateral mortgage by attacking the validity of the cross-default provision of the pharmacy agreement. These efforts are unavailing. The Travelers judgment which gave rise to the judicial mortgage and lien and subsequent judicial sale of the hospital did not occur solely because of Liljeberg Enterprises's financial condition upon the filing of its Chapter 11 bankruptcy petition. To assert that it did ignores the Liljebergs' bad faith conduct, as found by this court, in their dealings with Travelers. Contrary to the Liljebergs' assertion, relegated to a footnote, that the pharmacy agreement's cross-default provision is legally invalid because it impermissibly hinges on Liljeberg Enterprises's financial condition and ability to pay under the other contracts, the cross-default provision does not run afoul of the exceptions to 11 U.S.C. § 365(b)(1)'s requirements provided under sections 365(b)(2)(A) or 365(e)(1)(A).[81]

[37–40] There is non-binding authority from bankruptcy and district courts outside of this circuit, cited by the Liljebergs, for the propositions that cross-default provisions do not integrate otherwise separate transactions or leases and

81. See 11 U.S.C. § 365(b)(2)(A) ("Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—(A) the ... financial condition of the debtor at any time before the closing of the case ...."); *id.* § 365(e)(1)(A) ("Notwithstanding a provision in an executory contract ..., an executory contract ... of the debtor may not be terminated ..., at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—(A) the ... financial condition of the debtor at any time before the closing of the case...."). *Compare In re Plitt Amusement Co. of Wash., Inc.*, 233 B.R. 837, 847 (Bankr.C.D.Cal.1999); *In re Sambo's Rests., Inc.*, 24 B.R. 755, 757 (Bankr.C.D.Cal. 1982).

that section 365 prohibits the enforcement of cross-default provisions where enforcement would restrict the debtor's ability to assume an executory contract.[82] We agree with another bankruptcy court which recently synthesized these authorities and concluded that, while "cross-default provisions are inherently suspect," they are not *per se* invalid in the bankruptcy context, and "a court should carefully scrutinize the facts and circumstances surrounding the particular transaction to determine whether enforcement of the provision would contravene an overriding federal bankruptcy policy and thus impermissibly hamper the debtor's reorganization."[83] Before finding that a cross-default provision involving a lease and non-lease agreements, including a note, similar to that here, was enforceable, the bankruptcy court concluded that "[f]ederal bankruptcy policy is offended where the non-debtor party seeks enforcement of a cross-default provision in an effort to extract priority payments under an unrelated agreement," such that "[a] creditor cannot use the protections afforded it by section 365(b) (which requires curing of defaults and adequate assurances of future payments as a precondition to assumption of an executory contract or unexpired lease) in order to maximize its returns by treating unrelated unsecured debt as a *de facto* priority obligation."[84] As such, "where the non-debtor party would have been willing, absent the existence of the cross-defaulted agreement, to enter into a contract that the debtor wishes to assume, the cross-default provision should not be enforced," but "enforcement of a cross-default provision should not be refused where to do so would thwart the non-debtor party's bargain."[85] The court also noted that "[t]he fact that legally separate entities are parties to the various contracts does not of itself preclude enforcement of the cross-default provision" and that, "[w]here documents are contemporaneously executed as necessary elements of the same transaction, such that there would have been no transaction without each of the other agreements, the fact that nominally distinct parties executed the agreements will not preclude enforcement of a cross-default provision in favor of a party whose economic interests are identical to those of the entity that is party to the document containing the cross-default provision."[86]

Here, there is ample support for the conclusion that the lease and collateral mortgage of the hospital are interrelated with the pharmacy agreement and that there would have been no pharmacy agreement without the lease of the hospital or the loan secured by the collateral mortgage. Indeed, the parties agreed in the pre-trial order that St. Jude would not have entered into the lease of the hospital to Lifemark if Lifemark had refused to enter into the pharmacy agreement with Liljeberg Enterprises.[87] It is true that the lease was signed a month after the pharmacy agreement was executed, but section 5.1(b) expressly contemplates "the lease relating to the Hospital" as an instrument

82. *See EBC Midtown S. Corp. v. McLaren/Hart Envtl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 597 (S.D.N.Y.1992); *Braniff, Inc. v. GPA Group PLC (In re Braniff, Inc.)*, 118 B.R. 819, 845 (Bankr.M.D.Fla. 1990); *see also Plitt*, 233 B.R. at 847.

83. *Kopel v. Campanile (In re Kopel)*, 232 B.R. 57, 64 (Bankr.E.D.N.Y.1999).

84. *Id.* at 65–66.

85. *Id.* at 66.

86. *Id.* at 67.

87. Pre–Trial Order at 34 ¶ 23 (R. 9212).

covered by the cross-default provision. The parties also agreed that John Liljeberg signed a letter of intent dated December 20, 1982, with Lifemark concerning a proposal to develop St. Jude Hospital.[88] The district court, in considering the effectiveness of an alleged default under pharmacy agreement section 5.1(e), found that "although it is evident that the [pharmacy agreement] was a part of the overall transaction, it is not evident from the documents executed one month after the [pharmacy agreement] that the [pharmacy agreement] was not severable from the remainder of the transaction," such that "a default under the [pharmacy agreement] would not collapse the loan or the Lease." That observation adds nothing. Non-enforcement of the cross-default provision, providing that a default under the collateral mortgage or lease would collapse the pharmacy agreement, would thwart Lifemark's bargain in agreeing to enter into the pharmacy agreement, all a part of the overall transaction to finance the building of the hospital through a loan secured by a collateral mortgage. Any finding, express or implied, to the contrary by the district court is clearly erroneous on the record before us.[89]

C.

In sum, the district court erred in allowing Liljeberg Enterprises to assume the pharmacy agreement pursuant to 11 U.S.C. § 365. Liljeberg Enterprises's assumption of the pharmacy agreement is barred pursuant to 11 U.S.C. § 365(b)(1)(A) by defaults under the fourth covenant of the collateral mortgage in the form of the judicial mortgage placed on and judicial sale of the hospital, which in turn resulted in an incurable default under section 5.1(b) of the pharmacy agreement.[90] We therefore reverse the district court's judgment in Cause No. 93–1794 granting Liljeberg Enterprises's motion to assume the pharmacy agreement.

VII. Cause No. 93–4249

The district court in Cause No. 93–4249 ruled that Lifemark Hospitals of Louisiana, Inc., American Medical, and Tenet are liable to Liljeberg Enterprises for damages in the total amount of $12,432,905.92 for breach of payment due under the pharmacy agreement, specifically for the following: (1) $4,062,396 for Lifemark's failure to reimburse Liljeberg Enterprises its actual acquisition costs for the period August 31, 1989 through June 1, 1993; (2) $700,000 as lost profits for Lifemark's failure to purchase contrast media through the date of trial from Liljeberg Enterprises as required under the pharmacy agreement;[91] (3) $2,023,571 for

88. *Id.* at 32 ¶ 4 (R. 9210).

89. Likewise, the Liljebergs' unsupported contention in a footnote that principles of estoppel and waiver bar Lifemark's challenge to Liljeberg Enterprises's assumption because Liljeberg Enterprises would not be in bankruptcy were it not for Lifemark's actions is undermined by our conclusion that the district court clearly erred in its findings of bad faith and collusion and by the absence of any findings by the district court (or record evidence) that Lifemark's conduct was the cause of the debt to Travelers or St. Jude's inability to pay that debt, let alone Liljeberg Enterprises's Chapter 11 bankruptcy.

90. In light of this conclusion, we need not address Lifemark's additional arguments regarding Liljeberg Enterprises's transaction defaults under the collateral mortgage and lease, operational defaults under the pharmacy agreement, or failure to provide adequate assurance of future performance under the pharmacy agreement.

91. Contrast media is a diagnostic drug for use in, *inter alia*, radiology procedures, which is generally swallowed or injected and which

Lifemark's wrongful disallowance of requested payment to Liljeberg Enterprises due to pricing differences and other items not specifically addressed in the district court's judgment through the date of trial; (4) $103,617 for Lifemark's wrongfully deducting bad debt allowances from its payments on the cost reimbursement portion of Liljeberg Enterprises's billing through the date of trial; (5) $150,275.60 for Lifemark's failure to implement minimum fee increases due to Liljeberg Enterprises under the pharmacy agreement through the date of trial; (6) $54,055 for Lifemark's failure to properly pay Liljeberg Enterprises under the pharmacy agreement for TPN fees and to reimburse Liljeberg Enterprises for chemotherapy kits provided to the nursing staff at the hospital; [92] (7) $281,906.32 for pricing and quantity differences; (8) $57,085 for Lifemark's failure to properly pay Liljeberg Enterprises for nitroglycerin and insulin supplied under the pharmacy agreement; and (9) an additional $5 million as damages through the date of trial. The district court also ruled that Liljeberg Enterprises is liable to Lifemark Hospitals of Louisiana, Inc., American Medical, and Tenet for $741,879, specifically $616,400 for Liljeberg Enterprises's overcharges on piggyback fees under the pharmacy agreement [93] and $125,479 for Liljeberg Enterprises's failure to pay Medicare reimbursement due to Lifemark Hospitals of Louisiana, Inc., American Medical, and Tenet under the pharmacy agreement through the date of trial. The district court denied all other claims by the parties for damages under the pharmacy agreement.

[41, 42] In the absence of an error of law, this court reviews the district court's award of damages for clear error only.[94] "If the award of damages is plausible in light of the record, a reviewing court should not reverse the award even if it might have come to a different conclusion." [95]

[43–46] We have generally held that, "[w]hile the district court may not determine damages by speculation or guess, it will be enough if the evidence show[s] the extent of the damages as a matter of just and reasonable inference, although the result be only approximate." [96] Moreover, under Louisiana law, it is well-settled that "[a]ctual damages must be proven; they cannot be speculative or conjectural." [97] Thus, "[w]hile the breaching party should not escape liability because of difficulty in finding a perfect measure of damages, the evidence must furnish data for a reason-

the district court found may come in a kit or may be purchased separately.

92. The district court found that "Total Patenterals Nutrition ('TPN') is a combination of a highly caloric dextrose or sugar solution with protein additives prepared using the aseptic technique."

93. The district court found that "[a]n 'IV piggyback' is a small volume of fluid that is used to administer mostly antibiotic ... medications to patients through an intravenous solution," and "[a]n additive is added to IV piggybacks in 90% of the IV piggybacks dispensed by [Liljeberg Enterprises]."

94. *E. & J. Gallo Winery v. Spider Webs Ltd.*, 286 F.3d 270, 277 (5th Cir.2002); *Harken Exploration Co. v. Sphere Drake Ins. PLC*, 261 F.3d 466, 477 (5th Cir.2001).

95. *St. Martin*, 224 F.3d at 410.

96. *Sulzer Carbomedics, Inc. v. Or. Cardio-Devices, Inc.*, 257 F.3d 449, 459–60 (5th Cir. 2001) (internal quotation marks omitted) (quoting *DSC Communications Corp. v. Next Level Communications*, 107 F.3d 322, 330 (5th Cir.1997) (quoting *Terrell v. Household Goods Carriers' Bureau*, 494 F.2d 16, 24 (5th Cir.1974))).

97. *Nat Harrison Assocs., Inc. v. Gulf States Utils. Co.*, 491 F.2d 578, 587 (5th Cir.1974).

ably accurate estimate of the amount of damages" such that it "appear[s] reasonably evident that the amount allowed rests upon a certain basis." [98] More specifically, "Louisiana law is well-settled that lost profits 'must be proven with reasonable certainty and cannot be based on conjecture and speculation.'" [99]

The district court's findings of breaches of the pharmacy agreement meriting damage awards against Lifemark and many of Lifemark's arguments on appeal turn largely on interpretations of various provisions of the pharmacy agreement, which are generally governed by the standards we have described. On appeal, the Liljebergs seek to go beyond the plain language of the pharmacy agreement on the basis of Lifemark's alleged drafting of the pharmacy agreement in bad faith. The argument is that the contract was made deliberately ambiguous in order to injure Liljeberg Enterprises. Likewise, the district court found ambiguity in almost every relevant provision of the pharmacy agreement which was not preclusively interpreted by the Louisiana state court in a prior case involving these parties.[100] The district court further concluded that, based on testimony that Lifemark entered into the pharmacy agreement with the ultimate motive of terminating rather than abiding by the contract, the pharmacy agreement should be interpreted against Lifemark where the pharmacy agreement is susceptible to more than one interpretation. However, as Lifemark aptly points out on appeal, Liljeberg Enterprises never argued that the contract was fraudulently induced and the record shows that John Liljeberg was fully apprised of the pharmacy agreement's terms and was represented by counsel and pharmacy consultants when he negotiated the agreement and understood the agreement that he signed on behalf of Liljeberg Enterprises. Under these circumstances, in the absence of ambiguity, we look to the clear and explicit language within the four corners of the pharmacy agreement to determine the pharmacy agreement's meaning and the intent of its parties.

On appeal, Lifemark challenges several of the district court's damage awards to Liljeberg Enterprises.[101] We will address each challenge in turn.

A.

Lifemark argues that the district court erred in awarding $5 million for Liljeberg Enterprises's "circumvention claim" based upon Liljeberg Enterprises's theory that Lifemark "circumvented" the pharmacy agreement, and thereby avoided paying Liljeberg Enterprises, by not paying Liljeberg Enterprises for each administered dose of drugs provided by Liljeberg Enterprises and obtaining drugs from other sources. Lifemark contends that these

98. *Id.*; *accord Mobil Exploration & Producing U.S., Inc. v. Cajun Constr. Servs., Inc.*, 45 F.3d 96, 101–02 & nn.18–19 (5th Cir.1995).

99. *Mac Sales, Inc. v. E.I. du Pont de Nemours & Co.*, 24 F.3d 747, 753 (5th Cir.1994) (quoting *Guy T. Williams Realty, Inc. v. Shamrock Constr. Co.*, 564 So.2d 689, 695 (La.App. 5 Cir.), *writ denied*, 569 So.2d 982 (La.1990)).

100. *See Liljeberg Enters. Inc. v. Lifemark Hosps. of La., Inc.*, 620 So.2d 1331 (La.App. 4 Cir.), *writs denied*, 621 So.2d 818 (La.1993). Neither party challenges on appeal the district court's determination of issue preclusion.

101. Lifemark does not appeal the district court's awards of $103,617 for bad debt deductions and $54,055 for chemotherapy kits and TPN fees, nor the district court's failure to award $753,952 for Liljeberg Enterprises's denial of Medicaid reimbursements. Likewise, the Liljebergs do not appeal the order to repay $616,400 for I.V. piggyback fee overcharges and $125,479 for Medicare reimbursement denials.

claims fail because they are based upon erroneous interpretations of sections 2.6 and 4.1 of the pharmacy agreement and because, in any event, by relying solely on a procedurally flawed audit of patient charts, Liljeberg Enterprises failed to adequately prove damages. Lifemark also contends that the $5 million award for "circumvention" overlaps impermissibly with the $700,000 award for lost profits on contrast media (based upon Liljeberg Enterprises's argument under section 2.6(a)) and the $57,085 award for insulin and nitroglycerin underpayments (based upon Liljeberg Enterprises's argument under section 4.1).[102]

The provisions of the pharmacy agreement at issue here are sections 2.6 and 4.1 and Exhibit B. Section 2.6(a) provides:

> OPERATOR [Liljeberg Enterprises, Inc.] shall not provide, nor be entitled to any compensation, for the following:
>
> (a) all drugs and supplies utilized by the ancillary departments of the Hospital in preparation for, during, or immediately following departmental patient related procedures, except those patient identifiable charges in which the cost of the drug is not included in a fee or charge for that procedure. Ancillary departments shall include, but not be limited to, radiology, anesthesiology, and clinical labs....

Section 4.1 provides in pertinent part:

> (a) As compensation for those pharmaceutical services provided by OPERATOR [Liljeberg Enterprises, Inc.] as specified above, and for pharmaceuticals and intravenous solutions furnished hereunder to inpatients or emergency room patients, LIFEMARK shall pay to OPERATOR [Liljeberg Enterprises, Inc.] the fee per procedure as shown on Exhibit B, which is attached hereto and incorporated herein for all purposes less 5% of such total of the fees per procedure as allowance, for bad debt. The allowance for bad debt shall be reviewed after each fiscal year of the Hospital and changed to reflect the actual percentage of uncollectable accounts for the preceding fiscal year of the Hospital.

Exhibit B, in turn, provides:

> LIFEMARK shall reimburse the OPERATOR [Liljeberg Enterprises, Inc.] the greater of (i) the minimum fee set forth below or (ii) a fee equal to 1.35 times cost as identified by invoice.

Drug Category	Minimum Fee	
Orals		
Solid	$ .53	
Liquid	.63	
CII Controlled Drug	.56	
Suppositories	.53	
Parenterals		
Per Dose	2.80	
CII Controlled Drug	3.00	
Partial Fill I.V.'s (Piggybacks)	5.25	(includes cost of solution)
Miscellaneous		
Opthalmics, Externals, Otics, etc.	1.40	

> Fees for items or categories not identified above shall be established in a manner consistent with the development schedule.
>
> LIFEMARK shall reimburse the OPERATOR [Liljeberg Enterprises, Inc.] a flat fee for handling the following items:

I.V. Handling fee for Non-Additive, large volume parenterals	$ 1.00
I.V. Additive Fee	1.70

i.

[47] Lifemark argues that the district court erroneously interpreted section

102. *See Nat'l Tea Co. v. Plymouth Rubber Co., Inc.*, 663 So.2d 801, 811 (La.App. 5 Cir.1995) (holding that "the allowance of a double recovery in a contractual situation, in which the damages are fixed, is inappropriate").

4.1(a)'s provision for "the fee per procedure as shown on Exhibit B" to mean that Liljeberg Enterprises was entitled to a new fee each time a dose of the same drug or drug combination was administered by a nurse or physician, even if Liljeberg Enterprises performed no new pharmaceutical service. Lifemark contends that section 4.1(a)'s "fee per procedure" provision is unambiguous and simply means that Liljeberg Enterprises is entitled to a single fee for each drug dispensed by Liljeberg Enterprises's pharmacy, irrespective of whether a nurse or doctor later administers a dose or doses of the drug in a multistep process.

The state court's preclusive holding establishes that, under section 4.1(a), Liljeberg Enterprises is entitled to receive reimbursement for actual acquisition costs in addition to the "fee per procedure" set forth in Exhibit B.[103] The question left unanswered by the state court decision, however, and squarely presented in this case is whether "fee per procedure" should be understood to authorize Liljeberg Enterprises to receive a fee per drug dispensed or pharmaceutical service provided by Liljeberg Enterprises's pharmacy or a fee per administered dose, as the district court found. The district court concluded that the phrase "per procedure" is ambiguous and therefore turned to extrinsic evidence.

This conclusion is correct if the parties' intent as to the meaning of this provision of section 4.1(a) is uncertain and this provision is susceptible to more than one reasonable meaning under the circumstances and after applying established rules of construction.[104] The term "procedure" is nowhere defined in the pharmacy agreement and is, in fact, used in several different contexts within this contract, including "departmental patient related procedures" and "the Hospital's policies and procedures." Lifemark argues that the per-administered-dose meaning is not reasonable because it would compensate Liljeberg Enterprises for services performed by other hospital employees or departments, such as nurses administering medication, and not simply for services Liljeberg Enterprises actually performed. As support for this argument, Lifemark notes that section 4.1(a) provides that the "fee for procedure" shall be paid "[a]s compensation for those pharmaceutical services provided by [Liljeberg Enterprises] as specified above, and for pharmaceuticals and intravenous solutions furnished hereunder to inpatients or emergency room patients." Section 2.4 provides that "pharmaceutical services" includes "without limitation, drugs, medicines, and intravenous solutions." Even the most expansive, reasonable meaning attributable to "pharmaceutical services" under the pharmacy agreement would not include services performed by other hospital employees or departments within the scope of "pharmaceutical services provided by [Liljeberg Enterprises]."

However, section 4.1(a) also provides that the "fee per procedure" shall be paid "for pharmaceuticals and intravenous solutions furnished hereunder to inpatients or emergency room patients." In light of this language, the ordinary meaning of "procedure" could reasonably encompass either meaning attributed by the parties to "fee per procedure." Moreover, the district court's interpretation of "fee per procedure" does not neutralize or ignore or treat as mere surplusage any other provision of the pharmacy agreement. Under these circumstances, we conclude that the

103. *Liljeberg Enters.*, 620 So.2d at 1335–36.

104. *See Davis Oil*, 145 F.3d at 308.

district court did not err in concluding that the phrase "fee per procedure" in section 4.1(a) is ambiguous and looking to extrinsic evidence.

Having found ambiguity exists in section 4.1(a), we review the district court's factual determinations of intent for clear error only.[105] Lifemark argues that compensation per dose administered results in grossly excessive charges. Additionally, Lifemark notes that the district court interpreted the "fee per procedure" phrase to apply differently to heparin flush kits and contends that there is no reasoned basis for interpreting "per procedure" differently according to the type of drug dispensed when the pharmacy's involvement is the same.[106] However, Lifemark offers no persuasive argument on appeal that there is clear error in the district court's finding, based on witness testimony, that the parties intended for Liljeberg Enterprises to be compensated for each unit administered with respect to the administration of multiple units of medication or multiple administrations of medication from single vials of medicine. We therefore conclude that the district court's interpretation of section 4.1(a)is correct.[107] The district court's additional finding that heparin flush kits are distinguishable because allowing Liljeberg Enterprises compensation for each step in the process and each legend drug item contained in a kit would involve multiple reimbursement for a single, one-time process of administering the kit is consistent with the district court's general finding and is also not clearly erroneous.

ii.

[48] Turning to section 2.6(a) of the pharmacy agreement, Lifemark argues that the district court erred in ruling that Lifemark was required to compensate Liljeberg Enterprises for certain bulk drugs, such as contrast media and surgery kits, which Lifemark purchased directly from drug wholesalers and which were sent to ancillary departments of the hospital for administration by doctors or nurses.[108] According to Lifemark, the district court held that compensation was due Liljeberg Enterprises because section 2.6(a)'s excluding compensation to Liljeberg Enterprises for these drugs was illegal and was superceded by the Tenet policy manual. The argument is that the district court included this unspecified compensation in its $5 million award to Liljeberg Enterprises.

The district court's actual findings and conclusions on this matter are somewhat different, however, and hinge on the following propositions. Liljeberg Enterprises was the exclusive, licensed hospital pharmacy for the hospital, and the parties intended that Liljeberg Enterprises would

105. *See Gebreyesus*, 204 F.3d at 642.

106. The district court's unchallenged factual finding was that "[a] 'heparin flush kit' consists of three separate items that are administered at one time and are in essence a single procedure or dose."

107. Lifemark also argues that the district court erred in failing to award Lifemark $51,771 as reimbursement for overpayments for multiple doses of nitroglycerin and insulin, where Liljeberg Enterprises charged multiple fees for the pharmacy's single act of dispensing these medications, and, based on the same reasoning, Lifemark contends that the district court erred in awarding $57,085 for Lifemark's alleged underpayments to Liljeberg Enterprises for nitroglycerin and insulin supplied under the pharmacy agreement. On the basis of our conclusion that the district court's interpretation of "fee for procedure" in section 4.1(a) is not in error, we reject these points of error as well.

108. Surgery kits contain a combination of legend drugs such as Lidocaine and non-legend supplies used during surgical procedures.

have the exclusive right to furnish all drugs to all departments at the hospital except for specific exclusions set forth in section 2.6. Louisiana and federal law do not require that kits which include legend drugs be purchased from Liljeberg Enterprises, but the law does require that Liljeberg Enterprises oversee the storage and dispensing of these items. However, Tenet policy requires that the hospital pharmacy procure, store, distribute, and control all pharmaceuticals used within the hospital,[109] and the pharmacy agreement requires that all drugs to be administered to patients at the hospital be purchased from Liljeberg Enterprises, other than those drugs for which a specific exclusion exists under the pharmacy agreement, *e.g.*, pursuant to section 2.6. Thus, Lifemark should have involved Liljeberg Enterprises in procuring, storing, and dispensing any drugs or kits which required the intervention of a licensed pharmacist under applicable law. Lifemark failed to do so in ordering legend drugs or kits containing legend drugs from sources other than Liljeberg Enterprises, including by use of Liljeberg Enterprises's pharmacy permit without Liljeberg Enterprises's permission,[110] and by storing and dispensing legend drugs through the hospital's Materials Management Department, bypassing the hospital pharmacy, in contravention of the pharmacy agreement.

Thus, the district court did not conclude that section 2.6(a) is illegal *per se*. Nor did it conclude that Liljeberg Enterprises was required by state or federal law to purchase all drugs or kits containing legend drugs for use in the ancillary departments of the hospital in preparation for, during, or immediately following departmental patient related procedures. Rather, it decided that, where state and federal law requires Liljeberg Enterprises's involvement with legend drugs used by the ancillary departments of the hospital, section 2.6(a) must not be read to bar Liljeberg Enterprises from entitlement to compensation under the pharmacy agreement.

Lifemark argues, however, that where section 2.6(a) states that Liljeberg Enterprises will neither "provide" nor be compensated for drugs used in ancillary departments, including legend drugs, but does not prohibit Liljeberg Enterprises from providing oversight or other services which the court has found to be necessary, section 2.6(a) is entirely consistent with the district court's finding that Lifemark could lawfully purchase legend drugs. Lifemark also argues that there is no evidence of illegality; that a Louisiana Board of Pharmacy inspector found no violations where the drugs were distributed on doctors' orders and the administration of the drugs was ultimately reviewed by the hospital pharmacy.[111] Lifemark contends that

109. The district court found that Tenet's Pharmacy Policy & Procedure Manual gave Liljeberg Enterprises, as the hospital's pharmacy department, the responsibility to store, control, and distribute all drugs, including non-legend drugs, for use in ancillary departments, resting on the manual's general statement that the general purpose of the pharmacy department is the procurement, distribution, and control of all pharmaceuticals used within the hospital.

110. There is no dispute that only Liljeberg Enterprises possessed the relevant hospital pharmacy permit for the hospital required under Louisiana law.

111. Lifemark concedes that an inspector for the Louisiana Department of Health and Hospitals testified that he concluded that legend drugs were being stored and dispensed from the Materials Management Department without the supervision of a pharmacist, but notes that he also admitted that his normal job responsibility was to inspect hospitals for federal reimbursements and that he would defer to Louisiana Board of Pharmacy on the interpretation and enforcement of Louisiana pharmacy laws.

the district court erred in discounting this evidence (along with testimony that, even if it is against the letter of the law, many hospitals store and dispense pharmaceuticals out of ancillary departments), because, in the view of the district court, the Board's non-action against Lifemark appeared to be the result of the Board's desire to stay out of a contract dispute between two private entities and "because the exercise of discretion by the Board of Pharmacy cannot abrogate black letter law."

Finally, Lifemark argues that the district court erred in refusing to reopen the record to allow evidence from a trial in another lawsuit filed by Liljeberg Enterprises's former pharmacy director James Witchen against Lifemark Hospitals of Louisiana, Inc., a Lifemark employee, Tenet, and Liljeberg Enterprises.[112] This evidence showed that the Louisiana Board of Pharmacy found that Lifemark's handling of legend drugs was not a violation of pharmacy laws. Lifemark argues that this refusal works an injustice to it and constitutes an abuse of discretion.[113]

We conclude that the district court erred in concluding that section 2.6(a) denies Liljeberg Enterprises compensation for its required involvement in the procuring or purchasing and distribution, as opposed to the dispensing, of the legend drugs or kits. However, the district court did not err insofar as it concluded that Liljeberg Enterprises should have been involved with the storage of the legend drugs or kits at issue and compensated accordingly under the pharmacy agreement.

The district court's conclusion turns on whether applicable state or federal law required Liljeberg Enterprises to purchase, procure, store, distribute, or dispense legend drugs or kits containing legend drugs, which would prohibit a reading of section 2.6(a) to exclude compensation to Liljeberg Enterprises for rendering these services to "provide" such drugs for use by the ancillary departments of the hospital.[114]

Turning first to federal law, neither the district court nor the Liljebergs point to any relevant statutes, and we have found none, which prohibit the hospital's practice of the Materials Management Department's ordering, storing, and distributing legend drugs, which are not "controlled substances," to doctors or nurses in the ancillary departments of the hospital to administer to patients on doctors' or-

112. Witchen's suit stemmed from Lifemark's request, pursuant to its rights under the pharmacy agreement, that Liljeberg Enterprises remove Witchen as pharmacy director.

113. The standard for deciding whether the district court erred in denying a motion to reopen is well-settled:

> We review for abuse of discretion a district court's ruling on a party's motion to reopen its case for the presentation of additional evidence. The court's decision "will not be disturbed in the absence of a showing that it has worked an injustice in the cause." Among the factors the trial court should examine in deciding whether to allow a reopening are the importance and probative value of the evidence, the reason for the moving party's failure to introduce the evidence earlier, and the possibility of prejudice to the non-moving party.

Garcia v. Woman's Hosp. of Tex., 97 F.3d 810, 814 (5th Cir.1996) (citations omitted; quoting *Gas Ridge, Inc. v. Suburban Agric. Props., Inc.*, 150 F.2d 363, 366 (5th Cir.1945)).

114. Section 2.6(a) provides that Liljeberg Enterprises "shall not *provide, nor be entitled to any compensation,* for ... (a) all drugs and supplies utilized by the ancillary departments of the Hospital in preparation for, during, or immediately following departmental patient related procedures, except those patient identifiable charges in which the cost of the drug is not included in a fee or charge for that procedure." (emphasis added).

ders.[115] Furthermore, although the district court found that American Medical and Tenet used Liljeberg Enterprises's pharmacy permit without Liljeberg Enterprises's permission to order drugs, the court made no further findings that these drugs were controlled substances for which 21 U.S.C. § 822 requires registration with the United States Attorney General, and the record does not support a finding that Liljeberg Enterprises's "circumvention claim" involves any legend drugs which are controlled substances.

This issue presents a classic *Erie* question as to what state law requires, which we review *de novo*.[116] The competing views of officials from the Louisiana Board of Pharmacy and the Louisiana Department of Health and Hospitals on the question of what Louisiana law required as to the procurement or purchasing, storage, and dispensing or distributing of legend drugs at the hospital are of no moment in this analysis and entitled to no deference. Although the regulations upon which the district court relied were promulgated by the Board of Pharmacy of the Louisiana Department of Health and Hospitals, the views upon which the parties rely are not the sort of final decision of a state agency embodying the agency's interpretation of its own regulations to which Louisiana courts will give deference.[117] For this reason, the district court was entirely within its discretion in denying Lifemark's motion to supplement the record with evidence that the Louisiana Board of Pharmacy rejected Liljeberg Enterprises's complaints to the Board that Lifemark's hospital departments were dispensing drugs in violation of state pharmacy laws and that the Board rejected the complaints because it failed to find any violation of the pharmacy laws.

In concluding that "[t]he law only requires that [Liljeberg Enterprises] oversee the storage and dispensing of [items containing legend drugs]," the district court discussed only regulations promulgated by the Board of Pharmacy of the Louisiana Department of Health and Hospitals which govern "hospital pharmacies."[118] These regulations, however, do not specifically require the hospital pharmacy or pharmacist-in-charge to be involved in the purchasing, procurement, or distribution of legend drugs to doctors or nurses in the ancillary departments of the hospital to administer to patients on doctors' orders.[119] Our review of Louisiana law con-

115. *See* 21 U.S.C. § 353(b)(1)(ii) (requiring that certain drugs be dispensed only "upon a written prescription of a practitioner licensed by law to administer such drug"); *id.* § 822 (governing persons required to register with the United States Attorney General in order to dispense any "controlled substance").

116. *See Salve Regina Coll. v. Russell*, 499 U.S. 225, 231, 111 S.Ct. 1217, 113 L.Ed.2d 190 (1991).

117. *Cf. Matter of Recovery I, Inc.*, 635 So.2d 690, 697 (La.App. 1 Cir.), *writ denied*, 639 So.2d 1169 (La.1994); *cf. also Laidlaw Envtl. Servs., Inc. v. La. Pub. Serv. Comm'n*, 752 So.2d 748, 751 (La.1999) (noting that the Louisiana Public Service Commission is entitled to deference in its interpretations of its own rules and regulations but not in its interpretation of statutes and judicial decisions).

118. *See* LA. ADMIN. CODE tit. 46, pt. LIII, § 2501; *id.* § 2503; *id.* § 2507(B); *id.* § 2513; *id.* § 2519(A); *id.* § 2523(A).

119. *See id.* § 2501 ("A hospital pharmacy is a pharmacy department located in a hospital facility licensed under R.S. 40:2000 et seq., [1986] by the Louisiana Department of Health and Hospitals. Hospital pharmacy represents an inpatient primary care treatment modality pharmacy."); *id.* § 2503(A) ("A hospital pharmacy permit shall be required to operate a pharmacy for possession, dispensing, and delivering legend prescription orders to patients in a hospital."); *id.* § 2511(A) ("Hospital dispensing is the

vinces us that the Materials Management Department's "distributing" legend drugs to doctors or nurses in the ancillary departments of the hospital to "administer" to patients on doctors' orders constituted "distribution" and was not "dispensing," as the district court described it. Louisiana law in effect at the relevant time did not require that this work be supervised or done by a pharmacist.[120] Neither the district court nor Liljeberg Enterprises point us to any other controlling Louisiana law then in force that would prohibit the role of the Materials Management Department in ordering and distributing the drugs and kits at issue, and we have located no Louisiana case law or statute in effect at the relevant time which would do so.

The Louisiana legislature later changed the law to require just what the district court found to be the law at the time of Lifemark's alleged "circumvention" pursuant to the various hospital pharmacy regulations. The Louisiana legislature in 1999, after the events which allegedly gave rise to Liljeberg Enterprises's "circumvention claim," enacted Louisiana Revised Statutes § 37:1224(F). This section provided that "[a]ll procurement, delivery, dispensing, and distribution of federal legend and con-

issuance of one or more unit doses of medication in a suitable container, by a pharmacist, properly labeled for subsequent administration ...."); *id.* § 2513 ("Prescription legend drugs may be dispensed from the hospital pharmacy only upon orders of a licensed medical practitioner."); *id.* § 2517(A) ("All drugs dispensed by a hospital pharmacy, intended for use within the facility, shall be dispensed in appropriate containers and adequately labeled as to identify patient name, room number, trade mark, chemical or generic name, and strength of the medication."); *id.* § 2519(A) ("Drugs may be dispensed and administered only upon the prescription orders of licensed authorized prescribers."); *id.* § 2523(A) ("The hospital pharmacy shall be under the direct control and supervision of a pharmacy director who is a Louisiana licensed pharmacist, serves as pharmacist-in-charge and is competent in the specialized functions of a hospital pharmacy located in a primary care treatment modality."); *id.* § 2529(A)(1) ("The annual hospital pharmacy inspection review shall verify the following. 1. Dispensed Drugs. Prescription orders are dispensed exclusively by licensed pharmacists to inpatients."); *accord id.* § 3501(A) ("Legend Drugs. A legend drug is a medication which must only be dispensed by a pharmacist on the order of a licensed practitioner and shall bear the following notation on the label of a commercial container: 'caution: federal law prohibits dispensing without a prescription' (Ref. R.S. 40:1237, et seq. [1982] and R.S. 21:353(b) [1987])."); *id.* § 3501(A)(1) ("Dispensing. Legend drugs shall be dispensed only by a licensed Louisiana pharmacist."); *id.* § 3501(A)(3) ("Possession. Legend drugs shall be procured and possessed by a pharmacy permittee for legitimate dispensing by a pharmacist in the course of the practice of pharmacy, unless otherwise provided by law.").

120. It is important to distinguish between "dispensing," "administering," "delivering," and "distributing" drugs. Under Louisiana law, "'[a]dminister' or 'administration' means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other means." LA.REV.STAT. § 37:1164(1); *accord id.* § 40:961(2). "'Deliver' or 'delivery' means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration." *Id.* § 37:1164(8); *accord id.* § 40:961(10). On the other hand, "'[d]ispense' or 'dispensing' means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient," such that "'[d]ispense' necessarily includes a transfer of possession of a drug or device to the patient or the patient's agent." *Id.* § 37:1164(10); *accord id.* § 40:961(13). Finally, "'[d]istribute' or 'distribution' means the delivery of a drug or device other than by administering or dispensing." *Id.* § 37:1164(11); *accord id.* § 40:961(14).

trolled drugs that are purchased for and administered to patients inside a hospital licensed under R.S. 40:2100, et seq. shall be procured, delivered, dispensed, and distributed under the direction of the pharmacist-in-charge of that hospital." [121] The legislature explicitly noted in Act 767, in which it enacted section 37:1224(F), that section "37:1224(F) is all new law." [122] Yet, because the Legislature did not expressly provide for this new substantive law to apply retroactively, section 37:1224(F) is not applicable to this case.[123]

Regulations from the Board of Pharmacy Louisiana Department of Health in force at the relevant time, however, provided that "[l]egend drugs shall be stored in a licensed pharmacy under the immediate control and responsibility of a pharmacist." [124] On appeal, Lifemark does not challenge the district court's finding that "Materials Management is merely a department of the hospital, is not a pharmacy and is not under the control or direction of a licensed pharmacist." [125] Lifemark instead points us to the testimony of the Louisiana Board of Pharmacy inspector that a sanitary permit issued by the Louisiana Department of Health and Hospitals to Lifemark gave the hospital the authority to hold and store prescription drugs outside of the hospital pharmacy. But Lifemark points us to no controlling Louisiana law which codifies or confirms this authority, and our own research has located none.

On the basis of our review of Louisiana law in force at the time of the events giving rise to the Liljebergs' "circumvention claim," we believe the Supreme Court of Louisiana would conclude that Lifemark's contested practice of ordering and distributing certain legend drugs and kits containing legend drugs did not violate the Louisiana pharmacy laws. This conclusion is bolstered by the legislature's later enactment of section 37:1224(F) as "new law." At the same tine, we are persuaded that the Supreme Court of Louisiana would conclude that governing state regulations required the involvement of the hospital pharmacy in the storage of legend drugs and kits containing legend drugs.

Accordingly, without any basis in state or federal requirements, the district court erred as a matter of law in expanding the scope of the pharmacy agreement through Tenet's policy manual to provide for a requirement that Liljeberg Enterprises be involved in the purchasing, procurement, or distribution of the legend drugs or kits containing legend drugs at issue.[126] Indeed, the law between the parties-section 2.6(a) of the pharmacy agreement-provides to the contrary.

The district court thus erred in awarding $5 million in damages on the basis, in part, that Lifemark "circumvented" Liljeberg Enterprises's hospital pharmacy and thereby denied compensation to Liljeberg Enterprises. Lifemark did not violate fed-

121. LA.REV.STAT. § 37:1224(F) (repealed by 2000 La. Acts 83). Section 37:1224(F) was repealed the year after its enactment. *See* 2000 La. Acts 83.

122. *See* 1999 La. Acts 767.

123. *See id.; see generally Jacobs v. City of Bunkie*, 737 So.2d 14, 20 (La.1999).

124. LA. ADMIN. CODE tit. 46, pt. LIII, § 3501(A)(4).

125. The district court also found that Liljeberg Enterprises "and its pharmacy director have recently been given the ability to supervise and oversee the storage of the kits containing legend drugs."

126. *See Nat'l Union*, 915 F.2d at 989 ("Under Louisiana law, a contract is the law between the parties, and is read for its plain meaning." (citation omitted)).

eral or Louisiana law by purchasing certain bulk drugs, such as contrast media and surgery kits, directly from drug wholesalers and distributing them to ancillary departments of the hospital for administration by doctors and nurses, but the hospital's storage of these drugs and kits outside of the hospital pharmacy contravened governing state regulations.

iii.

Lifemark argues that, notwithstanding its challenges to the district court's interpretations of sections 4.1(a) and 2.6(a) of the pharmacy agreement in favor of Liljeberg Enterprises's "circumvention claim," the $5 million award cannot stand because Liljeberg Enterprises failed to adequately prove damages awarded in reliance on a procedurally flawed audit of patient charts. Moreover, Lifemark argues that the $5 million award for Liljeberg Enterprises's "circumvention claim" is duplicative, in part, of the $700,000 award for lost profits on contrast media, which we address below, and the $57,085 award for insulin and nitroglycerin underpayments, which we affirm.

a.

[49] Lifemark argues that, rather than even attempting to prove actual, itemized damages, Liljeberg Enterprises performed an audit of a small percentage of patient charts from which it asked a mathematics professor to extrapolate a damage figure. The district court rejected the professor's figure, finding "that the [Liljeberg Enterprises] methodology to price the calculation of damages pursuant to its chart audit to be inflated." However, despite Lifemark's assertion that the district court found the chart audit to be unreliable, the only flaw the district court found in the audit was its "charging the full price of the drug plus the fee for each administration of a drug when, in fact, a multiple administration of a drug would have carried no separate acquisition cost," while the district court also found that Lifemark's claim "that 40% of all of the patients receive no drugs is also ... without foundation." On the basis of these findings, the district court found that "the correct figure is somewhere between [Lifemark expert] Dr. Haworth's $3,000,000 and a significant discount off the [Liljeberg Enterprises] expert's figure," which was at least $12.8 million, and accordingly found "that $5,000,000 is the proper figure."

The district court was presented with conflicting testimony and evidence as to the validity of the chart audit and the accuracy of its methodology. On appeal, Lifemark argues that the district court should have credited the testimony of its experts over the testimony and evidence offered by Liljeberg Enterprises in support of the audit. On the record before us, the district court was entitled to weigh the conflicting testimony and credit Liljeberg Enterprises's chart audit as the basis for a reasonably accurate estimate of the amount of damages, with modifications, and, in so doing, the district court did not base its award on mere speculation or conjecture.[127] It is well-settled that the district court is only required to determine the extent of the damages as a matter of just and reasonable inference and that the result need only be approximate. The basis for the district court's award, while it is decidedly not "a perfect measure of dam-

127. *See Theriot v. United States*, 245 F.3d 388, 395 (5th Cir.1998) (noting that, when the district court's finding is based on its decision to credit the testimony of one witness over that of another, that finding, if not internally inconsistent, can virtually never be clear error); *accord Justiss Oil Co., Inc. v. Kerr-McGee Ref. Corp.*, 75 F.3d 1057, 1067 (5th Cir.1996).

ages," nevertheless meets these criteria on the record before us.

b.

Additionally, according to Lifemark, the $5 million award overlaps with two more specific damage awards for non-payments for contrast media and underpayments for insulin and nitroglycerin. This is because Liljeberg Enterprises's pharmacy director admitted that both these claims were a part of Liljeberg Enterprises's "circumvention claim." Additionally, the district court's $5 million award was based on the chart audit; that Liljeberg Enterprises's expert accepted the chart in calculating damages for claimed underpayments or non-payments for contrast media, insulin, and nitroglycerin. That is, Liljeberg Enterprises did not back the overlapping charges out of the audit.

It is unclear whether the district court's $5 million figure took account of non-payments for contrast media or underpayments for insulin and nitroglycerin. However, because the district court made specific awards with separate stated reasons as to each of these claimed underpayments, we must conclude that they were not included in the $5 million award, in the absence of more compelling evidence from Lifemark of duplicative awards.

iv.

We conclude that the district court erred, in part, in awarding $5 million on Liljeberg Enterprises's "circumvention claim" on the basis of its interpretation of section 2.6(a) of the pharmacy agreement. We cannot on the record before us quantify how much of the $5 million award was for Liljeberg Enterprises's "circumvention claim" under section 2.6(a), which we reverse in part, as distinguished from its claim under section 4.1(a), which we affirm. We therefore vacate the district court's $5 million award to Liljeberg Enterprises and remand to the district court for a redetermination of damages for Liljeberg Enterprises's "circumvention claim."

B.

[50] Lifemark also argues that, because contrast media was not separately identifiable on patients' bills, Liljeberg Enterprises is not entitled to the $700,000 award for lost profits on contrast media under section 2.6(a) of the pharmacy agreement. Lifemark argues that the district court erred in relying upon an exception in section 2.6(a), which excludes "patient identifiable charges in which the cost of the drug is ... included in a fee or a charge for that procedure," to justify a $700,000 award.

The district court found that Liljeberg Enterprises originally supplied contrast media to the hospital, which was included as a separate item on the bill of a patient, but that American Medical later decided to include contrast media in what it urges are unidentifiable costs in a single procedure. The district court found that American Medical began including the contrast media cost within a single procedure in order to avoid having to purchase this item from Liljeberg Enterprises. The contention is that the pharmacy agreement allowed American Medical to purchase items and legend drugs from other sources "where the cost for the drug is not identifiable from the cost of the procedure." However, the district court concluded that, from American Medical's master price list or "charge master," it can identify the cost of contrast media by comparing the listed costs for procedures with and without contrast media and so, "for purposes of the [pharmacy agreement], it is an identifiable cost."

Lifemark argues that American Medical stopped billing contrast media as a separate item to each patient and began including them in bills for radiology procedures. Lifemark argues that it negotiated a favorable contract with a new vendor, which allowed it to bill for contrast media in this fashion, a practice that saved patients up to $400 per procedure. The argument continues that, pursuant to section 2.6(a) of the pharmacy agreement, American Medical stopped paying Liljeberg Enterprises for contrast media because, under its new practice, these drugs were "patient identifiable charges in which the cost of the drug is ... included in a fee or charge for that procedure."

Section 2.6(a) provides that Liljeberg Enterprises "shall not provide, nor be entitled to any compensation, for ... (a) all drugs and supplies utilized by the ancillary departments of the Hospital [including, but not limited to, radiology] in preparation for, during, or immediately following departmental patient related procedures," including "those patient identifiable charges in which the cost of the drug is ... included in a fee or charge for that procedure."

The operation of this provision does not turn, as the district court concluded, on whether the charge for the drug can be identified, *i.e.*, is "identifiable," for each patient, but rather on whether such an "identifiable" charge is included in the fee or charge for the departmental patient related procedure in which the drug is used. The district court made no finding that the charges for the cost of contract media were not included in the charges for radiation procedures, but simply concluded that American Medical contravened the terms and spirit of the pharmacy agreement.

Section 2.6(a) is clear, and American Medical operated well within its terms. The district court erred in its implicit conclusion that American Medical breached the pharmacy agreement in bad faith. We reverse the district court's award of $700,000 to Liljeberg Enterprises as lost profits for Lifemark's failure to purchase contrast media through the date of trial from Liljeberg Enterprises as required under the pharmacy agreement.

C.

[51] Lifemark argues that the district court erred in awarding Liljeberg Enterprises $2,023,571, which represents costs incurred in excess of limits set by their contract. The argument is that the award is based on an erroneous conclusion that Lifemark improperly limited reimbursement for acquired drugs to prices set forth in Lifemark's prime vendor contracts; that this finding is erroneous because the limit is found in section 2.4 of the pharmacy agreement. Section 2.4 provides:

> OPERATOR [Liljeberg Enterprises, Inc.] agrees to obtain from LIFEMARK Pharmacy all of Hospital's inpatient (including emergency room patients) requirements for pharmaceutical services, including, without limitation, drugs, medicines, and intravenous solutions, to the extent LIFEMARK Pharmacy can provide same. LIFEMARK Pharmacy shall supply these items at cost. Nothing in this Agreement shall prevent OPERATOR [Liljeberg Enterprises, Inc.] from acquiring those items from another supplier if i) the cost for those items is less than what LIFEMARK Pharmacy would charge and ii) the quality of those items is equal to or superior to those supplied by LIFEMARK Pharmacy.

The district court concluded that, under section 2.4, Liljeberg Enterprises agreed to obtain all hospital inpatient requirements from Lifemark Pharmacy, which was obligated to supply the items at cost; that, Liljeberg Enterprises could purchase

such required items from a vendor other than Lifemark Pharmacy only if Lifemark Pharmacy could not supply an item or if the item was less expensive elsewhere and the quality was equal or superior to that supplied by Lifemark Pharmacy. The district court also found, however, that "Lifemark Pharmacy" did not exist at any time after the hospital opened and that Liljeberg Enterprises never purchased any drugs from "Lifemark Pharmacy" but instead purchased drugs under buying contracts from Bergan Brunswig and from Spark Drug. Finally, the district court found that Liljeberg Enterprises was paying six percent less for drugs than if it would have under purchasing contracts between drug manufacturers and wholesalers and American Medical and later Tenet.

The district court found that, where Liljeberg Enterprises's actual acquisition costs for drugs which it did not obtain through Lifemark's prime vendor contracts was greater than the amount shown for those drugs on the prime vendor contracts, Lifemark had deducted the difference between the amounts from its payments to Liljeberg Enterprises under the pharmacy agreement. At trial, Lifemark's expert witness Dr. Albert Richard applied the same approach to argue that Liljeberg Enterprises had wrongfully billed in excess of $600,000 based on the difference between Liljeberg Enterprises's actual acquisition costs and the amounts shown on Lifemark's prime vendor contracts. The district court rejected Dr. Richards's argument and found that Lifemark's contract administrator had wrongfully deducted amounts from Liljeberg Enterprises's bills on the basis of this approach. The district court found that Lifemark's approach failed to compare the National Drug Code ("NDC") number [128] in Lifemark's prime vendor contract to the NDC number of the drugs actually supplied by Liljeberg Enterprises. Instead, payments were based on the lowest price possible for the type of drug supplied without regard to differences in generic versus name-brand drugs and in strength, quantity, bioequivalency, and bioavailability.

Lifemark first argues that American Medical and later Tenet are the successors to "Lifemark Pharmacy" for purposes of the pharmacy agreement. According to Lifemark, because American Medical purchased Lifemark in 1984, before the pharmacy opened, pricing was established by a prime vendor contract negotiated by American Medical on behalf of all American Medical-owned hospitals. This provided sources in bulk with favorable pricing, and Tenet later followed the same protocol.

Lifemark also argues that it was entitled under section 2.4 to pay Liljeberg Enterprises only the price for generic drugs, otherwise equivalent with regard to strength, bioequivalency, and bioavailability. It points out that Liljeberg Enterprises could have purchased its drugs at the lower prices under the prime vendor contracts by becoming a member of Tenet's group purchasing organization or by purchasing generic or other drugs from outside vendors at the lower prices; that Liljeberg Enterprises instead chose to purchase and bill Lifemark for the more expensive name-brand drugs, thereby expanding its profits under the cost-plus contract. Liljeberg Enterprises responds that nothing in the pharmacy agreement authorized American Medical or Tenet to

128. The district court found that "[a] coding system, implemented by NDC whereby each drug is given a code number, allows the identification of the drug manufacturer, its strengths and its quantity and, thus, is a means of identifying the cost of the drug pursuant to purchasing contracts."

pay Liljeberg Enterprises for generic drugs when Liljeberg Enterprises was dispensing physician-requested name-brand drugs and that Lifemark never told Liljeberg Enterprises to dispense only generics.

We conclude that the district court did not err in its interpretation of section 2.4. Like the parties, whose past practice under the pharmacy agreement includes Liljeberg Enterprises's purchasing drugs under Lifemark's prime vendor contracts negotiated by American Medical, we substitute American Medical/Tenet for "LIFEMARK Pharmacy," so that the comparison for purposes of the phrase "less than what LIFEMARK Pharmacy would charge" looks to Lifemark's prime vendor contracts. However, the provision that Liljeberg Enterprises could obtain drugs from other suppliers so long as "the cost for those items is less than what LIFEMARK Pharmacy would charge" does not in itself contemplate that, while American Medical/Tenet would charge one price for requested name-brand drugs under the prime vendor contracts, Lifemark can pay Liljeberg Enterprises only the cost of generic equivalents under the prime vendor contracts.

On appeal, Lifemark does not challenge the finding that Liljeberg Enterprises paid the same or less for name-brand drugs than if it would have paid for the same *name-brand* drugs under Lifemark's prime vendor contracts, which Lifemark simply describes as providing "favorable bulk prices." [129] Instead, Lifemark complains that Liljeberg Enterprises should have been purchasing only generic drugs or purchasing in bulk under its prime vendor contracts. Nothing in section 2.4 entitles Lifemark to insist on such purchases by Liljeberg Enterprises in the absence of the availability from the prime vendor contracts of lower prices for the same drugs. It is no answer that the pharmacy agreement requires the purchase of the lowest priced drugs and makes no exceptions for name-brand drugs where the term "items" in section 2.4 reasonably encompasses, in the context of the pharmacy agreement, both name-brand and generic drugs, depending on the order which Liljeberg Enterprises was called upon to fill.

We find no error in the district court's interpretation of section 2.4 or its findings supporting its award of $2,023,571 for Lifemark's wrongful disallowance of requested payment due to pricing differences.

D.

[52] Lifemark argues that the district court misread the minimum fee increase provision of the pharmacy agreement, section 4.1(c). This led to its finding that Lifemark should have increased the minimum fee in 1995 and its award of $150,275.60. Section 4.1(c) of the pharmacy agreement provides:

> LIFEMARK agrees that OPERATOR's [Liljeberg Enterprises, Inc.'s] minimum fee expressed in Exhibit B shall be increased annually by the lesser of (i) the percentage increase in the Department's revenue per patient day and (ii) the percentage increase in the Hospital Market Basket Index, as published by the American Hospital Association, or ap-

129. Lifemark does challenge the specific finding that Liljeberg Enterprises is paying six percent less than Tenet's bulk prices on the basis that the supporting testimony for this finding referred only to the price Liljeberg Enterprises was paying at the time of trial. However, Lifemark points to no evidence that would show clear error in the district court's broader finding that the prices for name-brand drugs under Lifemark's prime vendor contracts are not lower than the prices Liljeberg Enterprises was paying for the same name-brand drugs.

propriate successor index (the "Index"); provided however, that in any year in which there is either no change or a percentage decrease pursuant to subsection (i) or (ii) above, the minimum fee shall not be changed and provided, further, that the calculations in any year pursuant to subsection (i) and (ii) above shall be adjusted for any decrease, if any, in the immediately preceding years. The percentage calculated pursuant to subsection (i) above shall be a fraction, the numerator of which is the revenue per patient day for the year just ended and the denominator of which is the revenue per patient day for the prior year. The percentage calculated pursuant to subsection (ii) above shall be a fraction, the numerator of which is the most recently published Index and the denominator of which is the last published Index immediately prior to the beginning of the most recently concluded 12–month period of this subsection Agreement. The first adjustment shall be made as of the first day of the thirteenth (13th) month of the term of this Agreement and shall be based solely upon subsection (ii) above, and subsequent adjustments shall be made on each annual anniversary date thereafter.

The district court found that Liljeberg Enterprises receives 33% of its revenue from minimum fee items under the pharmacy agreement and that, for the period September 1, 1995 through May 31, 1997, Liljeberg Enterprises received $2,447,485.35 from minimum fee revenue; that this amount was paid by Lifemark based upon Lifemark's mistaken belief that no increase in the minimum fee was due under the terms of the pharmacy agreement. The district court concluded that under the pharmacy agreement a 6.14% increase in the minimum fee should have been paid to Liljeberg Enterprises, an additional $150,275.60 for the period September 1, 1995 through May 31, 1997. These findings are based on the district court's conclusion that, under section 4.1(c), the term "immediately preceding years" requires, as Liljeberg Enterprises claims, that the minimum fee for any year is to be calculated based upon the immediate preceding year and not, as Lifemark claims, upon the highest percentage for any prior year.

Lifemark's only argument here is that reading the word "years" as singular and not plural led the district court to erroneously conclude that a minimum fee increase should be allowed when there is a net increase based upon a single year's growth on the heels of several years of losses. Lifemark contends that this interpretation flies in the face of common sense as well as the language of the pharmacy agreement, which calls for the netting of decreases in previous years against any increases in the current year's revenue. Lifemark asserts that it is undisputed that pharmacy revenue per patient day declined during the years 1992–1994 and that, although Liljeberg Enterprises increased its per-patient revenue in 1995, a cumulative decrease remained, such that the minimum fee increase provision was not triggered.

We conclude that the district court erred in its interpretation of section 4.1(c).[130] The pharmacy agreement nowhere explic-

130. We are not persuaded by the Liljebergs' argument that this issue is controlled by the Louisiana state court decision's preclusive holdings. *See Liljeberg Enters.*, 620 So.2d at 1340 (holding only that the trial court erred in determining that the starting date for the escalation of the minimum fees was March 1, 1984, whereas "any adjustments in the minimum fees should have begun thirteen months from August 25, 1985, the date St. Jude's Hospital began operations").

itly mentions "netting" or aggregating prior years' percentage decreases or changes. Yet every provision of the pharmacy agreement must be interpreted in light of the contract's other provisions, to give each provision the meaning suggested by the contract as a whole and to avoid neutralizing, ignoring, or treating as mere surplusage any provision.

Section 4.1(c) calls for an increase in the minimum fee based on the lesser of the percentage increase in the pharmacy's revenue per patient day and the percentage increase in the Hospital Market Basket Index so long as (1) there was a percentage increase in both the pharmacy's revenue per patient day and the Hospital Market Basket Index, *i.e.*, neither of these indices experienced either "no change or a percentage decrease," (2) "provided, further, that the calculations in any year pursuant to subsection (i) and (ii) above shall be adjusted for any decrease, if any, in the immediately preceding years." The district court apparently read this provision to provide for an increase in minimum fees by the lesser of the percentage increase in the pharmacy's revenue per patient day and the percentage increase in the Hospital Market Basket Index that year, so long as there was no percentage decrease in the "immediately preceding year." Lifemark would read the provision to prohibit a minimum fee increase until there is no net percentage decrease when the current year's percentage increase is added to the percentage decreases in some unspecified number of preceding years.

The district court's interpretation gives no effect to the phrase "the calculations in any year pursuant to subsection (i) and (ii) above *shall be adjusted for*" and, without any explanation or apparent finding of ambiguity, reads "immediately preceding years" as singular and not plural. Looking to the meaning of this phrase in section 4.1(c) suggested by the contract as a whole, we note that the "calculations" at issue are important for determining whether there is an increase, a decrease, or no change as a matter of percentages. The most reasonable understanding of "adjusting" the calculations "for any decrease, if any, in the immediately preceding years" is to offset any percentage increase in the current year by the net "decrease, if any, in the immediately preceding years." The natural sense of "immediately preceding years" conveys the last two or three years, in order to give effect to both the phrases "immediately preceding" and "years."

Accordingly, we conclude that the district court erred in its interpretation of section 4.1(c). As such, we reverse the district court's award of $150,275.60 to Liljeberg Enterprises for Lifemark's failure to implement minimum fee increases due to Liljeberg Enterprises under the pharmacy agreement through the date of trial.

E.

Lifemark argues that the district court erred in awarding Liljeberg Enterprises $281,906.32 based upon its finding that the HPI reports [131] failed to reflect drug prices and frequencies submitted in reports generated by Liljeberg Enterprises. Lifemark asserts that this finding is clearly erroneous because it is predicated on a fundamental misunderstanding of the parties' record-keeping and billing procedures and because it overlooks Liljeberg Enterprises's failure to provide documentation to support the accuracy of the prices and quantities it submitted.

131. HPI rates represented the prices at which Liljeberg Enterprises billed Lifemark for pharmaceuticals, and HPI rates were located on the monthly "hospital pharmacy billing" report, or "HPI report."

The district court found that Lifemark improperly entered cost data into its computer, "deleted administered doses dispensed by Liljeberg Enterprises without any known reason from [Liljeberg Enterprises's] daily and monthly disks," and generated inaccurate HPI reports which incorrectly reflected the drug prices and frequencies dispensed by Liljeberg Enterprises, and that the HPI reports also failed to take into account floor stock. The district court further found that there was no evidence that the drugs at issue in Liljeberg Enterprises's claim for underpayments due to Lifemark's incorrect pricing and quantity differences between January 1989 and May 31, 1997 were not provided by Liljeberg Enterprises and that the evidence in the record revealed that floor stock items were not accounted for by Lifemark.

Reviewing these factual findings for clear error only, we find that this damage award is based on a plausible account of the evidence considered against the entirety of the record. Lifemark points out that Liljeberg Enterprises's own pharmacy director clearly testified that the daily disks provided by the Liljeberg Enterprises pharmacy to Lifemark contained only the quantity that the pharmacy dispensed, not the doses administered by the hospital's doctors and nurses, such that it was not possible that Lifemark's computers deleted *administered* doses dispensed by Liljeberg Enterprises from Liljeberg Enterprises's daily disks. At the same time, Lifemark does not deny that the HPI reports often indicated that the actual cost of acquisition of a drug to be zero and did not always account for so-called floor stock. The district court heard conflicting testimony as to whether Lifemark adequately paid Liljeberg Enterprises for this floor stock and the zero entries on the HPI reports, and it was entitled to credit Liljeberg Enterprises's account of the evidence. Lifemark's citation to isolated testimony favorable to its position on each of these fact findings does not show clear error.

We affirm the district court's award of $281,906.32 to Liljeberg Enterprises for pricing and quantity differences.

F.

Lifemark argues that district court miscalculated the actual acquisition costs payable under the judgment of the Louisiana state court of appeal in a prior case between Liljeberg Enterprises and Lifemark involving the pharmacy agreement. According to Lifemark, Liljeberg Enterprises and Lifemark stipulated that they would "split the difference" between their experts' numbers, which was $3,575,748 by Lifemark's expert and $4,062,396 by Liljeberg Enterprises's expert. Accordingly, Lifemark contends that the district court should have awarded $3,819,072, not $4,062,396, which was the number given by Liljeberg Enterprises's expert.

Lifemark acknowledges that it owes Liljeberg Enterprises for actual acquisition cost for drugs for the period August 1989 through June 1993 pursuant to the preclusive state court judgment,[132] but argues that the district court erred in finding that "[t]he parties have stipulated that the actual acquisition cost billed by [Liljeberg Enterprises] for the period is $4,062,396.00." Liljeberg Enterprises suggests that the record indicates that Lifemark's and Liljeberg Enterprises's experts originally did split at $4,062,396, but that

132. *See Liljeberg Enters. Inc. v. Lifemark Hosps. of La., Inc.*, 620 So.2d 1331 (La.App. 4 Cir.), *writs denied*, 621 So.2d 818 (La.1993).

Lifemark's expert later tried to lower that figure.

The record reflects that the parties stipulated at trial that the amount of this award should be fixed at the mid-point between the sum determined by Liljeberg Enterprises's expert and the sum determined by Lifemark's expert. Liljeberg Enterprises's expert's number was undisputedly $4,062,396. The number provided by Dr. Richard, Lifemark's damages expert, began at $3,990,953, and at trial he testified that the average of these figures would be $4,026,675. However, he then discussed several adjustments off this number and presented a figure of $3,575,748, which Lifemark now urges on appeal to provide an average of $3,819,072.

Based on the parties' stipulation, we conclude that the district court clearly erred in not splitting the difference between Dr. Richard's original figure of $3,990,953 and Liljeberg Enterprises's figure of $4,062,396. We must reduce this award to $4,026,675.

G.

Lifemark argues that the district court erred by not awarding Lifemark $2,585,138 in reimbursement of Liljeberg Enterprises's overcharges based on Liljeberg Enterprises's submission each month of a lump sum bill that was inexplicably higher than and inconsistent with the daily record of patient billing that Liljeberg Enterprises provided to Lifemark. According to Lifemark, the evidence at trial showed that this claim included (1) $184,000 overbilled to Lifemark based upon claimed frequencies of drugs dispensed; (2) $1,497,078 for thousands of unexplained $3.05 "admixture fees," overcharges relating to I.V.s, for which Lifemark should have been awarded $880,678, after a credit of $616,400 for the amount awarded to Lifemark for overcharges relating to I.V. handling fees for piggybacks;[133] (3) $885,644 which Liljeberg Enterprises overcharged Lifemark for heparin flush kits, which the district court found but refused to award on the basis that Lifemark passed the overcharges onto patients and suffered no loss; and (4) $634,816 in overcharges resulting from Liljeberg Enterprises's submission of incorrect pricing information from September 1, 1989 through April 30, 1993 on Liljeberg Enterprises's bills based upon HPI reports using pricing information from Liljeberg Enterprises's add/change/delete forms.

i.

First, Lifemark argues that it presented uncontroverted evidence that Liljeberg Enterprises, in adjusting the bills to Lifemark to reflect the frequencies of drugs dispensed, only adjusted the bills when the numbers favored Liljeberg Enterprises and failed to adjust the bills when the numbers favored Lifemark, which resulted in an overbilling which Dr. Richard estimated as at least $184,000. Liljeberg Enterprises points to no evidence to the contrary, but argues that the $184,000 Lifemark claims is based on frequencies of drugs which the hospital alone handled and was responsible for and which, assuming Lifemark dispensed these drugs in violation of the pharmacy agreement, more likely than not would increase, not decrease, Liljeberg Enterprises's damages if an accounting were made of the compensation owed for these drugs under the pharmacy agreement.

133. The district court found that "[a] 'handling fee' is a charge imposed on a large volume patental ('LVP') that is handled by a pharmacist" and that "[a]n 'admixture' is the result of additives being placed in an intravenous solution," where "[e]ach additive to a solution is performed as a separate procedure."

The district court made no relevant findings as to this claim and did not explicitly deny it, and, as Lifemark aptly observes, Liljeberg Enterprises's response is a non-answer. We conclude that the failure to award this sum is clearly erroneous. The record evidence submitted by Lifemark leaves us with the firm and definite conviction that the only plausible account of the evidence considered against the entirety of the record is that Liljeberg Enterprises systematically overcharged Lifemark by failing to correct drug frequency reports when the preliminary frequency shown on Lifemark's HPI report exceeded the frequency shown on Liljeberg Enterprises's pharmacy charge report.[134]

The evidence is that Dr. Richard testified that $184,000 is a reasonable estimate of the amount of the aggregate overcharges. We are given no conflicting evidence and modify the judgment to award Lifemark $184,000 in damages on this claim.

ii.

Second, Lifemark contends that, when Liljeberg Enterprises's bills were scrutinized at trial, Liljeberg Enterprises was unable to explain thousands of $3.05 "admixture fees" relating to I.V.s and argues that the district court clearly erred in failing to award damages based on Dr. Richard's calculation of reimbursement of the total overcharge for these unexplained fees, $1,497,078. Lifemark contends that, notwithstanding the unexplained "admixture" charges and the discrepancies in the pharmacy's reporting of the charges, Lifemark was billed these charges thousands of times each month for several years and paid them. The district court made no relevant findings as to this claim and did not explicitly deny it.

On the record before us, we cannot conclude that the district court clearly erred in failing to award damages to Lifemark for these overcharges. The district court awarded Lifemark $616,400 for Liljeberg Enterprises's overcharges on I.V. piggyback fees under the pharmacy agreement, which Liljeberg Enterprises has not appealed, and the number offered by Dr. Richard was $1,497,078 in gross overcharges for I.V. handling and admixture fees. Lifemark seeks an award of $880,678 after applying a credit of $616,400 for the amount awarded for overcharges relating to I.V. handling fees for piggybacks.

The record before us, however, does not allow us to arrive at a reasonably accurate estimate of the amount of damages for any overcharges for the I.V. "admixture" fees disaggregated from Dr. Richard's estimate of the gross overcharges for I.V. handling and admixture fees. Accordingly, we affirm the district court's decision to deny Lifemark an award on this claim.

iii.

[53] Third, Lifemark argues that the district court erred by finding that "[Liljeberg Enterprises] has in fact overcharged [Lifemark] for [Heparin flush kits]" but then refusing to reimburse Lifemark for the $885,644 overcharge due to its conclusion that Lifemark passed the overcharge onto patients and suffered no loss. Lifemark contends that this latter finding was based upon a misreading of the testimony of Steven Faucheaux, Lifemark's administrative pharmacist. According to Lifemark, the district court found that Faucheaux testified that Lifemark billed its

134. Liljeberg Enterprises also implies that the denial of these damages was appropriate because Lifemark readily billed its patients on the basis of the numbers in the HPI reports. This pass-through argument, addressed more fully below, is wholly unpersuasive.

patients based upon Liljeberg Enterprises's "overcharge price and multiplied that cost times three," when, in fact, Faucheaux explicitly denied basing patient charges on Liljeberg Enterprises's "overcharge prices" and instead explained that "patient rates are from a totally separate mechanism" and that Lifemark "uses the actual wholesale price of the drug" to bill patients. Moreover, Lifemark argues that, even if the overcharges were passed on, Lifemark was entitled to realize the benefit of its bargain by paying the lower costs to Liljeberg Enterprises, citing Louisiana Civil Code article 1995.[135]

The district court found that Lifemark, American Medical, and Tenet bill the hospital's patients a set markup from the price charged by Liljeberg Enterprises for each drug, including a triple markup for heparin flush kits. The court then concluded that, although Liljeberg Enterprises in fact overcharged Lifemark for heparin flush kits, Liljeberg Enterprises is not liable for damages because Lifemark suffered no loss when it charged its patients three times the overcharge price for the loss and so actually profited from the overcharge by passing it on to patients.

Regardless of whether Lifemark tripled the charges from Liljeberg Enterprises in billing its patients, we concluded that the district court's "pass-through" reasoning is without merit. Even if Lifemark recouped the overcharge payments many times over, Liljeberg Enterprises remains liable for the amount it overcharged Lifemark in the first instance in breach of the pharmacy agreement.[136] Neither the district court nor Liljeberg Enterprises has presented any authority to the contrary. Under Louisiana law, Lifemark suffered a loss as a matter of law by overpaying Liljeberg Enterprises based on Liljeberg Enterprises's systematic overcharges for heparin flush kits.

Based on the evidence presented by Lifemark, including the expert report of Dr. Richard, the district court clearly erred as a matter of law in failing to award Lifemark $885,644 for the heparin flush kit overcharges. We modify the judgment to provide the award to Lifemark of $885,644 in damages on this claim.

iv.

Fourth and finally, Lifemark argues that the district court erred by failing to award Lifemark $634,816 based on overcharges resulting from Liljeberg Enterprises's submission of incorrect pricing information from September 1, 1989 through April 30, 1993. Lifemark contends that, although during that time period, Liljeberg Enterprises's bills were based solely upon HPI reports, which were generated by the hospital's computers, the pricing information, the "HPI rate," came directly from Liljeberg Enterprises's add/change/delete forms, on which, in several instances, Liljeberg Enterprises submitted the wrong HPI rate.

We cannot find clear error in the rejection of this claim. The evidence presented by Lifemark does not leave us with a definite and firm conviction that the district court was mistaken in denying the claim. The claim was based on Dr. Richard's extrapolation of a 60-item sample that Lifemark wrongfully paid $634,816 as a result of Liljeberg Enterprises's errors

135. LA. CIV.CODE art. 1995 ("Damages are measured by the loss sustained by the obligee and the profit of which he has been deprived.").

136. *Cf. S. Pac. Co. v. Darnell-Taenzer Lumber Co.*, 245 U.S. 531, 534–35, 38 S.Ct. 186, 62 L.Ed. 451 (1918); *Hughes Communications Galaxy, Inc. v. United States*, 38 Fed. Cl. 578, 580–82 (1997).

in using the HPI rate. Unlike the evidence regarding the systematic frequency billing discrepancies which overwhelmingly ran in Liljeberg Enterprises's favor, the evidence here simply shows that some HPI rates drawn from Liljeberg Enterprises's add/change/delete forms were incorrect and Lifemark failed to notice and correct the error based on the information provided by Liljeberg Enterprises in the first instance.

We therefore affirm the district court's denial of an award to Lifemark on this claim.

VIII. Judgment against Tenet

[54] Lifemark argues that, because Tenet was not sued by Liljeberg Enterprises or St. Jude, it was error for the district court to enter judgment against it. The district court made no finding of jurisdiction over Tenet nor any ruling formally adding Tenet as a party to this consolidated case, and a review of the district court's docket sheet confirms that, to this day, Tenet is not a party in this case and has never been joined as a defendant or served with process.

[55] "It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process." [137] The Liljebergs' reliance on case law regarding successor liability and collateral estoppel is misplaced. The issue is jurisdiction over a non-party to the actions, not liability for a party already properly joined and served. We conclude that the district court erred in entering judgment against Tenet, a non-party in this case, and we must vacate the judgment in its entirety as against Tenet.

IX. Attorneys' Fees

[56] On their cross-appeal, the Liljebergs argue that Liljeberg Enterprises and St. Jude are entitled to attorneys' fees under the parties' lease agreement and under Civil Code articles 1997 and 1958. On the record before us and based on our rulings on this appeal, Liljeberg Enterprises and St. Jude have no basis for a claim for attorneys' fees.

First, we have reversed the district court's judgment overturning the judicial sale and reinstating, *inter alia*, the lease between St. Jude and Lifemark. Accordingly, even assuming the claim has not been waived, as Lifemark claims, there is no basis to award St. Jude fees under section 17.1 of the lease.

Second, Louisiana Civil Code article 1958 provides that "[t]he party against whom rescission is granted because of fraud is liable for damages and attorney fees." Again, however, even assuming this provision would apply to this case based on the district court's findings of fact and conclusions of law and that this claim has not been waived, we have reversed the district court's judgment which overturned the judicial sale and ordered rescission of the hospital.

Finally, Louisiana Civil Code article 1997 provides that "[a]n obligor in bad faith is liable for all the damages, foreseeable or not, that are a direct consequence of his failure to perform." There is conflicting authority as to whether this provision authorizes the award of attorneys' fees for a bad faith breach of contract.[138]

137. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969); *accord Waffenschmidt v. MacKay*, 763 F.2d 711, 718 (5th Cir.1985); *E.B. Elliott Adver. Co. v. Metro. Dade County*, 425 F.2d 1141, 1148 (5th Cir.1970).

138. *See Newport Ltd. v. Sears, Roebuck & Co.*, No. Civ. A. 86-2319, 1995 WL 688799, at *4-

However, we need not decide this unsettled issue because the Liljebergs failed to raise article 1997 as a basis for attorneys' fees in the district court and have therefore waived any claim to attorneys' fees.[139] We are not persuaded that our refusal to consider this claim for the first time on appeal would work a miscarriage of justice.

X.

To summarize our holdings,(i) we reverse the district court's judgment in Cause No. 94-3993 overturning the judicial sale of the hospital and reinstating various commercial instruments relating to the financing and lease of the hospital and remand for calculation of the amount of, and entry of judgment on, the past due deficiency owed to Lifemark Hospitals, Inc. on the renewal promissory note and interest due thereunder; (ii) we reverse the judgment in Cause No. 93-1794 granting Liljeberg Enterprises's motion to assume the pharmacy contract; (iii) in Cause No. 93-4249, we affirm the district court's damage awards to Liljeberg Enterprises of $2,023,571 for Lifemark's wrongful disallowance of requested payment due to pricing differences and $281,906.32 for pricing and quantity differences; (iv) we reverse the district court's award to Liljeberg Enterprises of $700,000 as lost profits for Lifemark's failure to purchase contrast media from Liljeberg Enterprises and $150,275.60 for Lifemark's failure to implement minimum fee increases due to Liljeberg Enterprises under the pharmacy agreement through the date of trial; (v) we modify the district court's award of $4,062,396 for Lifemark's failure to reimburse Liljeberg Enterprises its actual acquisition costs for the period August 31, 1989 through June 1, 1993 to $4,026,675; (vi) we vacate the district court's $5 million award to Liljeberg Enterprises and remand to the district court for a redetermination of damages for Liljeberg Enterprises's "circumvention claim"; (vii) we conclude that the district court clearly erred in failing to award Lifemark $184,000 in overbillings by Liljeberg Enterprises based upon claimed frequencies of drugs dispensed and $885,644 for the heparin flush kit overcharges, and we award Lifemark damages in these amounts; (viii) we reverse the district court's judgment against Tenet, a non-party to this case; and (ix) we conclude that Lifemark's other points of error on appeal and the Liljebergs' points of error on their cross-appeal are without merit.[140]

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED IN PART.

PRIMERICA LIFE INSURANCE CO.; et al., Plaintiffs,

*8 (E.D.La. Nov.21, 1995).

139. *See N. Alamo Water Supply Corp. v. City of San Juan*, 90 F.3d 910, 916 (5th Cir.1996) (holding that the Court of Appeals will not consider an issue that a party fails to raise in the district court absent extraordinary circumstances, which exist only when the issue is a pure question of law and a miscarriage of justice would result from the failure to consider it).

140. As a final housekeeping matter, the Liljebergs' motion to strike Lifemark's reply brief's cross-index, which has been carried with the case, is meritless and is denied. The inclusion of the index is not prohibited by any rule, and it did not cause the reply brief to exceed the word count mandated by Federal Rule of Appellate Procedure 32.

02:47 JUDGE LAKE: Please be seated.

Mr. Woods, you may proceed.

MR. WOODS: Thank you, your Honor.

JOSEPH MOLE, DULY SWORN, TESTIFIED:

02:47 **DIRECT EXAMINATION**

BY MR. WOODS:

Q. Mr. Mole, will you state your name to the Special Committee, please?

A. My name is Joseph Nicholas Mole, and I am a --

02:48 Q. Okay. And how are you employed, sir?

A. I'm an attorney here in New Orleans.

Q. How long have you been an attorney in New Orleans?

A. Thirty years.

Q. Are you with a firm?

02:48 A. Yes, I am.

Q. And which firm?

A. The firm is Frilot, LLC -- actually, it's Frilot Partridge.

Q. What type of practice do you engage in?

A. I've always done principally commercial litigation.

02:48 Q. All right. Calling your attention to the years '96 and '97, were you involved in a case -- one of the parties being named Liljeberg?

A. Yes, I was. I was retained by Tenet to represent them.

Q. What was the case -- what was the style of the case?

02:48 A. Liljeberg Enterprises, Inc. and the St. Jude Hospital of

Louisiana, Inc. were the plaintiffs. The defendant was Lifemark Hospitals of Louisiana, which was a Tenet subsidiary.

Q. Okay. And you represented Lifemark, then?

A. That's correct.

02:49 Q. Okay. Do you recall what month of '96 you became involved in the case?

A. I believe it was April of '96.

Q. All right.

A. The case was set for trial.

02:49 Q. Have you had a chance to look over the pleadings, the motion to recuse in that case?

A. I have.

Q. Okay. And have you looked at the docket sheet?

A. Yes, I have. I looked at my own pleadings index.

02:49 Q. Okay. You got on the case in April, '96.

The case had been active since how long, as you recall?

A. Well, it's an interesting question. It began, to my knowledge, as litigation in civil district court, in

02:49 New Orleans state court in, I believe, '87. It migrated to federal bankruptcy court when the Liljebergs filed a Chapter 11. And, so, it had gone back to '87. The federal court litigation kicked off in 1993, I believe.

Q. Okay. And you then got involved in 1996. Is that correct?

02:49 A. That's correct. Yeah, I enrolled.

02:49 Q. Now, before we go further, your attorney had requested an immunity order for you; and I want to present that to you.

MR. WOODS: It's Exhibit Number 45, your Honors.

BY MR. WOODS:

02:50 Q. And you have seen a copy of that before, have you not?

A. Yes, I have.

Q. Okay. And you realize that you're testifying under immunity and that anything you say cannot be used against you, except for any false statements or perjury?

02:50 A. I understand.

Q. When you were in -- involved in --

JUDGE BENAVIDES: I would like to get something straight.

MR. WOODS: Yes, sir.

02:50 JUDGE BENAVIDES: I'm trying to think. There's nothing in any of the reports that we have that suggested that Mr. Mole has done anything wrong.

MR. WOODS: No, there's not.

JUDGE BENAVIDES: But he -- but nonetheless, is it 02:50 your position, Mr. Mole, that you will not testify unless you have an immunity order?

THE WITNESS: No, it's not, your Honor. My attorney felt that it was best. I testified to the grand jury, and I was interviewed by the FBI in connection with this matter; and 02:51 you will have to ask him. I don't do criminal work, but he

thought it was best that I get --

JUDGE BENAVIDES: So, your position is you would testify without the immunity order; you're just doing it at the request of your attorney?

THE WITNESS: At his advice.

JUDGE BENAVIDES: All right.

MR. WOODS: Thank you, your Honor.

BY MR. WOODS:

Q. Mr. Mole, when you got on the case in April, '96, was Jake Amato or Lenny Levenson involved in the case on the other side?

A. No, they were not, to my knowledge.

Q. And was Don Gardner involved on your side?

A. No, he was not.

Q. Do you recall approximately when Amato and Levenson became attorneys of record for the other side?

A. I can place it by saying that I think the trial date, when I got in, was sometime in late October, early November of '96. Jake and Lenny signed up or enrolled as counsel about five or six weeks prior to that date.

Q. In September, '96, or so?

A. That sounds right.

And Don enrolled, I believe, for us in late February, early March of '97. The trial date was continued.

Q. Okay. We'll get to Gardner's involvement; but when the two of those became involved in 9 -- September of '96, before an

02:52 October or November trial date of '96, did that cause any concern on your part?

A. Yes, it did.

Q. And would you explain to the Committee what concern you had with those two individuals entering this complex case at such a late date?

A. Well, I felt that it was odd, in a case that was a bench trial, that two lawyers who had no previous involvement would sign up that close to trial. I had gotten involved in April of '96 and had some idea of how much history there was and how much in the way of complex legal issues were involved in the case. I also had some knowledge that the Liljebergs were very prone to trying to influence the judicial process through whatever means they could. So, it was a concern to me, yes.

02:53 Q. All right. What did you do based on that concern?

A. I began asking people -- i had some familiarity with -- well, with the legal community and the Jefferson Parish politics. So, I began to call people who knew that world and asked them what they thought. And a lot of people wouldn't talk to me, but my concerns were substantiated that Jake and Lenny were close to Judge Porteous and that there was a risk that their presence in the case would be a problem for my client.

Q. Okay. Had they basically taken over as counsel for that client?

02:53 A. The client already had numerous lawyers, bankruptcy specialists, Don Richard who was the trial lawyer. Hans Liljeberg was on the case. Doug Draper was a bankruptcy lawyer. And I believe there were other lawyers. So, they
02:54 had -- they already had a stable of lawyers involved.

In the pretrial proceedings that we had yet to go, they -- they took some interest; but they were never, in my perception, the laboring oar.

Q. Okay. When did you file the motion to recuse?
02:54 A. I believe in September. I believe it was heard October 16, if I recall, 1996. So, it would have been a few weeks before that.

Q. Okay. I'm going to show you what has been marked and admitted into evidence as Exhibit Number 19, which is the
02:54 motion to recuse. If you would, take a look at that.

Does that refresh -- that's a certified clerk's copy of the motion -- the pleadings in the motion to recuse.

A. Yeah, that's my signature and my motion.

Q. At the time you filed the motion, were you aware of any
02:54 financial relationship between Amato and Levenson and Judge Porteous?

A. No.

Q. And by "financial arrangement," I include the giving of money or cash to Judge Porteous by Levenson or Amato.
02:55 A. No, I was not aware of that. If I -- if that were the

truth and I had known it, I certainly would have raised it in this motion. I had no such information.

Q. And during the pendency of that motion, before it's ruled on, did Judge Porteous mention to you or any of the parties that he had received cash from Amato or Levenson?

A. No, he did not.

Q. Who responded to the motion in limine for the other side?

A. Looking at the part of the package you handed me as Exhibit 19, I believe there's an opposition signed by Lenny Levenson. No. That's Jake Amato.

I don't know whose signature it is. But the signature block is for Lenny Levenson, and there's a signature that may well be his. And then Ken Fonte, who was another one of the Liljeberg lawyers, is below that.

Q. In that pleading, did they acknowledge that Amato or Levenson had provided cash to Judge Porteous?

A. No. I don't recall exactly what they said, but they certainly never reported --

JUDGE BENAVIDES: I missed that last answer, the one before that. You went through a list of names, and then you said that seems to be blocked out.

Did Amato, in fact, sign that response?

THE WITNESS: I cannot read the signature.

JUDGE BENAVIDES: But there's a signature line for Amato with a signature on it?

02:56 THE WITNESS: I'm looking at the reply memo, and it's -- there's a signature line for Lenny Levenson and a block with no signature line for Ken Fonte --

JUDGE BENAVIDES: All right.

02:56 MR. WOODS: Judge, I can put it on the Elmo. And it's Exhibit 19 in your books.

BY MR. WOODS:

Q. Where did you see "Amato"?

A. No. If I said "Amato," I misspoke.

02:57 Q. Okay. So --

JUDGE BENAVIDES: So, Amato didn't sign it?

THE WITNESS: That's my -- my supposition is that's Lenny's signature, because there's three letters of the same sort. And it's Leonard L. Levenson; so, I assume it's his.

02:57 BY MR. WOODS:

Q. Okay. And there's no acknowledgement in those pleadings of any prior cash being given by Amato or Levenson?

A. No. I've never received that information anywhere.

Q. And was there a denial in the response that there was any

02:57 special relationship between them and Judge Porteous, based on what you raised in your motion to recuse?

A. Well, you know, in my motion to recuse, I danced around that issue pretty carefully because I didn't want to accuse the judge that was going to try my case of doing something of which

02:57 I had no evidence. So, it was an act of trying to suggest that

02:58 that was, you know, something that I was concerned about, without actually saying it. So, I don't know that I raised the issue that squarely.

Certainly, there was a denial, to my 02:58 recollection, from the other side that there was anything like that.

Q. Okay.

A. But that's a very general answer based on my recollection.

JUDGE BENAVIDES: Counsel, if you pardon my 02:58 interruption.

MR. WOODS: Yes.

JUDGE BENAVIDES: At the time that you filed your motion that included the recusal request, did you copy just Levenson and -- or did you copy all the lawyers, including 02:58 Amato and Creely, or did you --

THE WITNESS: It's my practice to copy all lawyers who are listed.

JUDGE BENAVIDES: Okay. So, you -- you noticed everyone?

02:58 THE WITNESS: To my recollection, your Honor.

JUDGE BENAVIDES: And prior to that time, were there any pleadings in the case from opposing counsel where Amato signed a pleading as opposed -- in other words, was the way this response was signed, was that consistent with the way 02:59 pleadings from the other side would have been signed after

02:59 Amato and Creely came into the case?

I'm trying to get as to whether there -- whether there was pleadings before signed by Amato. There's a motion to recuse that's filed that alleges an improper relationship; and for some reason, the response does not have Amato's signature on it.

THE WITNESS: You know, I don't recall, your Honor.

JUDGE BENAVIDES: Okay.

THE WITNESS: There were so many lawyers, I never focused on who signed, to be honest with you.

JUDGE BENAVIDES: Thank you.

BY MR. WOODS:

Q. And was there a ruling on the motion in limine?

A. The motion to recuse?

Q. The motion to recuse. I'm sorry.

A. I believe it was heard on October 16. It was denied from the bench and there was a ruling the next day and it was entered into the record.

Q. All right. When was that?

A. I believe it was October 17, it seems like, the order.

Q. And what did you do in response to that ruling?

A. We sought a writ of mandamus from the Fifth Circuit. It was denied.

Q. And then what did you do?

03:00 A. We went on with preparing for trial. My client was

concerned because they obviously knew what I was concerned with myself and asked if there was someone or some way we could protect them from what I was led to believe could be an unbalanced playing field. And we -- I looked into that. We ultimately hired Don Gardner for that reason.

Q. All right. You mentioned that you were trying to level the playing field. Was that at your insistence or your client's insistence?

A. It was my client's insistence.

Q. And how did you go about trying to level the playing field? How would you determine who to hire to level the playing field?

A. Well, I made a lot of phone calls. And I used to be partners with Magistrate J. Wilkinson and, through him, members of my firm and -- Tom Wilkinson, who was the parish attorney for Jefferson Parish, I talked to him. And ultimately, he led me to Don.

Q. All right. And what was the recommendation for Don Gardner? Why did you go to Don Gardner? What -- what led you to him?

A. Tom told me that he was a close personal friend of the judge and that for purposes of leveling the playing field that I couldn't do better, that Don was as close as people got to Judge Porteous and if that's what I wanted that Don would be the person.

Q. What did you feel about doing this as an attorney?

03:01 A. I didn't like it, would not have done it; but my clients insisted. You know, I've been in situations where I felt -- there was many times where I felt that the other side had an advantage because of a relationship with the Court; and I've
03:02 always felt that the best way to deal with that is to stand up against it, not to play that game.

Q. Okay.

CHIEF JUDGE JONES: You mean this court or just courts in general?

03:02 THE WITNESS: Jefferson Parish. Never in federal court.

JUDGE LAKE: Can you pull the microphone to you, please?

Thank you.

03:02 BY MR. WOODS:

Q. And, Mr. Mole, did you then meet with Mr. Gardner?

A. I did.

Q. And did you discuss a fee arrangement?

A. In a general sense.

03:02 Q. Okay. And did you discuss his role in the case?

A. I did.

Q. Did you understand what kind of practice he had?

A. I learned that he was primarily a domestic dispute lawyer, divorce work.

03:03 Q. And did this case involve divorce work or domestic

relations?
A. It did not.
Q. Okay. Did you ultimately end up with a written fee agreement with Don Gardner?
A. I did.
Q. I'm going to show you what's marked and admitted into evidence as Exhibit 10. And if you would, take a look at that and see if that is a copy of the fee agreement you entered into.
A. It is.
Q. I'm going to show this on the Elmo, Mr. Gardner. If you would explain --
A. "Mole."
Q. Yes, sir.
If you would, explain -- see if I can get it here to --
This is dated February 18th, '97.
A. Yes, sir. I see that.
Q. And this is after the motion to recuse has been overruled and your mandamus to the Fifth Circuit had been denied?
A. That is correct.
Q. And you're set for trial when?
A. I don't recall what the setting was then, but ultimately it was set for June of '97.
CHIEF JUDGE JONES: I'm sorry. Is there a Bates

03:04 number on that exhibit?

MR. WOODS: No, your Honor, not on the one I have. But let me see if there is --

CHIEF JUDGE JONES: You called it Exhibit 10, and it's 03:04 not 10 in my book.

Oh, well, maybe -- maybe I --

MR. WOODS: It's the last two pages of Exhibit 10, your Honor.

CHIEF JUDGE JONES: Oh, okay. Sorry.

03:04 Thank you. Yes.

BY MR. WOODS:

Q. Mr. Mole, would you read for the Committee the fee agreement that you had with Mr. Gardner?

A. I can just read from the letter. "Lifemark is willing to 03:05 offer you a fee for assisting with the Liljeberg case as follows. Retainer of $100,000 payable upon enrollment as counsel of record"; and, then, 2, "a fee of two hundred if after trial there is a judgment allowing Lifemark to terminate the pharmacy agreement with no liability for future damages."

03:05 And then it goes on. Do you want me to keep reading?

Q. Yes, please.

A. "The following sums will be added to the above retainer and fee based upon the level of damages contained in the judgment 03:05 provided the judgment allows Lifemark to terminate the pharmacy

03:05 agreement with no liability for future damages."

Number 3 is -- and then it goes on with numbered paragraphs.

"3, A fee" should be "of 100,000 if the damages 03:05 for past actions are less than 15 million in principal, for a total fee of 400,000; 4, a fee of two hundred if the damages are less than 5 million in principal, for a total fee of 500,000; and a fee of 300,000 if the damages are zero, for a total fee of 600,000.

03:06 "Further, Lifemark will pay you $100,000 as a severance fee in the event that Judge Porteous withdraws or if the case settles prior to trial. This results in a total of 200,000, one hundred retainer plus one hundred if the case settles or Judge Porteous ceases to be our judge. This is to 03:06 satisfy your concern" -- I didn't catch the last few words -- "concern" --

Q. -- "that involvement in --"

A. -- "this time consuming case will harm your present practice, as you explained, if the trial is continued beyond 03:06 June because Judge Porteous withdraws and gives the case to a new judge, you will not be able to remain involved. Also, Lifemark wants to give you some incentive to be involved even if the case settles."

And, then, do you want me to keep reading?

03:07 Q. Yes, sir.

03:07 A. "To reiterate, Lifemark is willing to offer you an outcome determinative fee. You would receive the following fees based upon the results described. 200,000 if Judge Porteous withdraws or if the case settles prior to trial; one hundred retainer plus one hundred severance.

"Two, 300,000, this would be the minimum payable for any result that allows Lifemark to terminate the pharmacy agreement with no liability for future damages.

"Three, four hundred, for a judgment or other result allowing Lifemark to terminate the contract with no liability for future damages and with damages for prior -- past actions in an amount less than 15 million in principal.

"Four, 500,000, this sum would be payable if the damages are less than 5 million in principal and Lifemark is able to terminate the contract as described above.

"Five, 600,000, this fee would be payable if the trial resulted in a judgment allowing Lifemark to terminate the contract and damages are zero.

"I look forward to meeting you -- with you later this week. Very truly yours." And then it's my name.

Q. Now, Mr. Mole, there's some unusual contingencies listed there. Would you explain to the Committee why you had those different fee levels for Mr. Gardner's involvement?

A. Well, this was not a negotiated -- this proposal was accepted by Don as written. So, that was entirely the product

of my way of thinking.

We wanted to get him involved and keep him interested. The pharmacy agreement that's alluded to in the letter is -- was a very onerous contract between the Liljebergs, who ran the pharmacy, and the Kenner Regional Medical Center, which Tenet then owned and which was owned by the subsidiary Lifemark.

That pharmacy agreement resulted in having a pharmacy that served the patients of the Kenner Regional Medical Center, but it had been in litigation with that hospital since 1987. It was a very acrimonious relationship. It hindered the health care in the hospital. The nurses and doctors and staff felt that they were held hostage by the pharmacy. They did not always get the medications from the pharmacy that they needed, quickly. Or if there was a cost concern, the pharmacy would sometimes hold up the medication.

It was a very bad contract. In addition, it cost the hospital, we estimated, between one and a half and two million dollars a year in extra payments above and beyond what a normal contract would have cost. So, that was the driving motivation for the -- for the fee arrangement, to get rid of that contract. So, that was very important to us.

I also had some concern hiring Don, who was a nice guy but I didn't know him. I didn't want me and my client to be made a fool of, and I wanted his loyalty to be a hundred

03:10 percent to us and not -- not distracted. I wanted him to be interested in the outcome.

Q. So, several of those provisions were to ensure his loyalty to your side. Is that correct?

03:10 A. That's correct. And to a good result.

Q. And did you do that because you understood that he was a friend of the judge and he was a friend of the other two lawyers on the other side?

A. Yes.

03:10 CHIEF JUDGE JONES: This looks as if it's payable whether or not he put in -- in any work.

THE WITNESS: Yes. Yes, your Honor, it was.

BY MR. WOODS:

Q. And did Mr. Gardner take part in the preparation of the

03:10 trial or did he merely just sit through the trial as a lawyer at the table and not question witnesses?

A. He sat through the trial. He did not -- he did not take any witnesses. I don't believe -- I don't know that he attended any depositions, but he certainly didn't take any or

03:11 prepare any pleadings.

Q. So, did you ultimately end up paying him a hundred thousand for his role in the case?

A. We did. The client did.

Q. And that was for the purpose of leveling the playing field?

03:11 A. That's an accurate way to sum up the motivation.

03:11 Q. Did Gardner -- during the course of your relationship on this representation, did he ever mention anything concerning Judge Porteous?

A. Yeah, we talked about Judge Porteous.

03:11 Q. What did he say?

A. You know, he gave me some insight into the judge's personality. Don -- I have to say Don was always steadfast in saying that he was not going to be able to influence the judge's determination of the case.

03:11 He told me about his social relationship with the judge, that he would drink wine with him, go to his house, entertain him, attend social functions with him, things like that. He offered me the insight that the judge's mother had been a nurse, I think a head nurse at Baptist Hospital, and

03:12 that may have created some normal human prejudices or beliefs concerning the issues in how -- a case that involved nurses and hospitals.

Q. Do you remember being interviewed by the FBI prior to your grand jury testimony?

03:12 A. I do.

Q. And you've reviewed that memorandum of interview, have you not?

A. I believe in your presence, Mr. Woods, yes.

Q. Okay. Do you recall Don Gardner saying anything about

03:12 Judge Porteous' behavior on the federal bench as opposed to the

state bench?
A. I don't remember at what point in the proceeding, but I remember him telling me that he felt the judge needed to stop this kind of behavior, that it was okay on the state bench but now that he was a federal judge he shouldn't be doing it. And I don't remember the precise context.
JUDGE BENAVIDES: What kind of behavior are you referring to?
THE WITNESS: His relationship with Jake and Lenny.
BY MR. WOODS:
Q. All right. And there was one other comment you made -- or that you related to the FBI concerning Gardner telling you something about the Jeep leases or the Jeep purchases?
A. Apparently -- I have no direct knowledge of this -- the judge's son or sons had a Jeep or Jeeps; and there was some statement to me from which I inferred that Don had some concern that those had been provided by Jake and/or Lenny in some way.
Q. Okay. And you've reviewed your grand jury testimony, and it's true and accurate?
A. As I recall, yes.
Q. And the memorandum of interview was true and correct?
A. As I recall, yes.
Q. Okay.
MR. WOODS: Thank you. I pass the witness, your Honor.

03:13 1 CHIEF JUDGE JONES: I have a question. What -- how
2 did you develop this one hundred, two hundred -- this sliding
3 scale of payments? Was that totally of your own devising or
4 the client's devising or did somebody suggest those -- that?
03:14 5 THE WITNESS: Those were numbers that were arrived at
6 between my client and myself.
7 CHIEF JUDGE JONES: Numbers, yes; but what about the
8 idea of the scale, the contingencies and all that?
9 THE WITNESS: It was -- it was largely my creation,
03:14 10 and it was reflecting my client's concerns that the -- the
11 priorities of what we would reward with fees were their
12 concerns.
13 JUDGE BENAVIDES: What was the -- what was the --
14 apart from the sliding scale, apparently if Judge Porteous
03:14 15 withdrew then Gardner would get another hundred thousand
16 dollars.
17 THE WITNESS: Don had expressed some concern that he
18 was investing time and that he had a very active practice.
19 And, you know, I have witnessed that. I have been in Jefferson
03:15 20 Parish. And he -- you know, just randomly, where -- he would
21 have to give up a lot of work on small -- relatively smaller
22 cases that he made money on in volume and that was -- it would
23 interrupt the flow of his work.
24 JUDGE BENAVIDES: Well, how would -- how would it take
03:15 25 more of his time? If he was invested for a hundred thousand

dollars, what --

THE WITNESS: He would lose the opportunity --

JUDGE BENAVIDES: -- why -- why would he get another hundred thousand dollars if Porteous withdrew?

It seems like if Porteous stayed on the case, he would be staying on the case longer for this hundred thousand dollars than getting the hundred thousand dollars if Porteous withdrew. So, I mean, it seems -- it seems just the opposite of his -- of the value of his time.

If this judge -- if this judge never withdraws for the next five or six or seven years, I only get a hundred thousand dollars. If he withdraws, I can go back to my busy -- busy practice and take another hundred thousand dollars with me.

I mean, I'm trying to see the justification for the extra payment if -- if Judge Porteous were to withdraw.

THE WITNESS: Well, if the judge withdrew, we would have remaining an agreement with Don. I didn't want him to continue in the case --

JUDGE BENAVIDES: So, that would keep --

THE WITNESS: Yeah.

JUDGE BENAVIDES: -- keep him -- kind of buy him out of that lawsuit, because it was going to take an extended period of time regardless of whether it was Judge Porteous or not. Was that your thinking?

03:16 THE WITNESS: Yes.

CHIEF JUDGE JONES: Judge Porteous, do you have any questions?

JUDGE PORTEOUS: Just a few, your Honor.

03:16 **CROSS-EXAMINATION**

BY JUDGE PORTEOUS:

Q. Just very briefly. The -- again, you brought in Gardner, you said, to even the playing field?

A. Yes, sir.

03:16 Q. Why would that then suggest that I would withdraw?

A. I'm not sure there's a direct link between those. I think it was Don's concern -- my concern that if you withdrew I would no longer need Don and -- but he would still be on a contract with us, and I wanted some closure to that.

03:17 Q. Well, the question is why did you think Don getting in the case would cause me to withdraw?

A. I'm not sure that I was --

Q. You're bringing him in on your side to even the playing field.

03:17 A. Yes, sir.

Q. What made you believe that I would withdraw now that Don was in the case? Did you want him to talk to me?

A. I thought there might be some concern on your part that it would be difficult for you to decide a case with friends on

03:17 both sides.

Q. But judges try, traditionally, cases all the time with friends on both sides.

A. Yes.

Q. During your trial, I think you indicated that I was a gentlemen, professional, and polite and let you argue as a lawyer evidentiary rules. Is that right?

A. That's correct.

Q. And I believe you also indicated that -- now, of course trial lawyers always think they have lost when somebody rules against them.

A. Whenever I lose, I think the judge has got it wrong.

Q. Of course. Did you also testify that I'm a relatively easy person to appear in front of?

A. I don't think I testified, because I wasn't under oath; but I think I probably said that.

Q. Well, under the grand jury, you were under oath, weren't you?

A. Oh, okay. Then -- I thought you were reading from the trial transcript.

Q. No, no.

A. I would agree with that.

Q. Okay. And we didn't waste time or do foolish things that an inexperienced judge would do?

A. I thought you were a very good trial judge.

Q. And you said you "didn't feel he was terribly unfair about

03:18 1 evidentiary rulings"?
2 A. No.
3 Q. You said that, though?
4 A. I would agree with it now. I don't recall my exact words.
03:18 5 Q. Well, do you want me to show it to you?
6 A. No.
7 Q. Okay. Mr. Mole, there was also a point in the trial -- and
8 I think it had been going on awhile, on a Friday, and I lost my
9 temper.
03:18 10 A. It was a Thursday.
11 Q. Whatever it was.
12 And threw some binders. I think we had been in
13 this trial awhile.
14 A. I remember it well.
03:19 15 Q. And is it fair to say that this was a pretty tedious type
16 of trial, where you had a lot of exhibits, a lot of technical
17 stuff going on at all times?
18 A. Yes.
19 Q. You had hundreds, if not thousands, of exhibits, did you
03:19 20 not?
21 A. We had a lot of exhibits, yes, sir.
22 Q. Well, certainly more than a hundred?
23 A. A lot more.
24 Q. Okay. Now, it was after, I believe, you had called a
03:19 25 witness direct, crossed by the other side, direct again by

03:19 yourself, and then I asked some questions?
A. I recall that.
Q. And then you wanted to ask some additional questions?
A. I asked if I could follow up.
03:19 Q. And I said no?
A. You did.
Q. And I think words to the effect was I was exceeding my authority?
A. Yeah. I think I referenced one of the Federal Rules of
03:19 Evidence.
Q. And I got --
A. You were pissed.
Q. And "pissed" is a fair statement.
And we shut it down?
03:19 A. Yes.
Q. Now, if it was a Thursday, we must have been off for -- did we take a day off? Because I don't recall Friday.
A. We came back Monday.
Q. Monday?
03:20 A. I believe, yeah.
Q. When we came back, did I, in fact, dictate an order into the record?
A. Yeah. You had what appeared to be a fairly well prepared thought out ruling.
03:20 Q. Allowing -- saying that I didn't think I had exceeded my

authority and allowing myself to follow up. Is that right? Or words to that effect?

A. You overruled my objection but allowed me to go ahead and follow up, as I recall.

03:20 Q. Right.

And not only did I allow you to follow up, I gave you a copy of the questions I had asked that witness, did I not?

A. Yes.

03:20 Q. And so I did let you, uninterrupted, have additional questions?

A. That's correct.

Q. Did you think I was fair doing that?

A. Yes.

03:20 Q. So, I changed my mind because I was wrong?

A. I don't know what your thought process was but --

Q. But I let you ask them?

A. But you did, yes, sir.

Q. And after that, I didn't have -- nothing different changed

03:20 about my demeanor on the bench, did it?

A. Nope.

Q. Still finished the trial?

A. Yes.

Q. Now, isn't it also an accurate statement that this was and

03:20 had been contentious for years and years and years?

03:21 A. Extremely.
Q. And that -- I think this case may have gone to this court on a couple of occasions and maybe even to the Supreme Court on one occasion.
03:21 A. Well, between this and related litigation with Travelers, the case had been to the Fifth Circuit, I think I once counted, four or five times and the Supreme Court at least once or twice.
Q. And the Travelers case also had some part and parcel to do
03:21 with this case at some point?
A. Pretty much, yeah.
Q. And you had never really gotten any trial dates that stuck before it came to me?
A. Well, there was one trial date when I stepped in; and I
03:21 think, at the parties' request and your advice, we moved it to the summer of '07. And that was it.
Q. And we kept to a schedule so you folks could get this case tried?
A. We got it tried.
03:21 Q. That they hadn't been able to do up until that point in time?
A. Yes.
Q. And it had gone from judge to judge to judge?
A. Yeah. It had been with a number of federal judges, but you
03:22 were the only one I saw.

03:22 Q. And I believe I said, "I'm the last federal judge you-all are going to see. We're going to get your case tried."
A. I believe you said words to that effect, yes.
Q. Okay.
03:22 JUDGE PORTEOUS: I don't have any additional questions, Judges.
CHIEF JUDGE JONES: All right.
MR. WOODS: I have a couple of follow-up.

REDIRECT EXAMINATION

BY MR. WOODS:
Q. Mr. Mole, Judge Porteous had excellent recall as to dates and questions and losing temper. During the course of that, did he ever tell you that he had a financial relationship with Jake Amato?
03:22 A. No.
Q. Did you become aware or were you ever advised that during 1999, while this case was pending -- as I understand, the case was tried in the summer of '97 and a ruling wasn't relayed or wasn't given until April 26, 2000. Is that correct?
03:22 A. That is correct.
Q. Were you aware that Judge Porteous had received cash from Amato in May or June of '99 of approximately $2,000?
JUDGE PORTEOUS: With all due respect, your Honor, I must object. That's well outside the scope of any
03:23 cross-examination. Nothing in my cross-examination suggested

it. That's an area that counsel certainly could have explored in direct. He chose not to.

CHIEF JUDGE JONES: That's a very pertinent objection for a man of your limited abilities, sir, that you claim. And it is overruled because we are not bound by the conventional rules of evidence here and there's clearly been evidence. And if you want to examine him again later, you can do that.

JUDGE PORTEOUS: Your Honor, you now have referenced twice to my mental stability. Is your Honor still okay trying this case?

CHIEF JUDGE JONES: Absolutely. Every --

JUDGE PORTEOUS: You referenced it twice.

CHIEF JUDGE JONES: Every time you open your mouth, Judge Porteous, I'm more and more convinced of your mental acuity.

JUDGE PORTEOUS: I didn't even know that was part of the hearing today. It's not included in the charge.

CHIEF JUDGE JONES: Sir, you may sit down.

JUDGE PORTEOUS: All right.

BY MR. WOODS:

Q. Were you aware of any cash changing hands in '99 during the pendency of this suit?

A. No. I would have been very alarmed to find out that Jake was giving money to the judge during the case as being under submission for decision by Judge Porteous.

MR. WOODS: Okay. Thank you.

JUDGE PORTEOUS: May I have one potential follow-up?

CHIEF JUDGE JONES: Yes, sir.

JUDGE PORTEOUS: Or just a couple?

CHIEF JUDGE JONES: Yes, sir.

JUDGE PORTEOUS: Not even on that.

RECROSS-EXAMINATION

BY JUDGE PORTEOUS:

Q. Are you aware that, again, while this case was under advisement, that your counsel Mr. Gardner accompanied me and my family to Las Vegas for a bachelor party?

A. No, I did not know that.

Q. So, he went -- if I represent to you that he went, do you find anything wrong with that?

A. You know, I find something wrong with the whole system that allows that to happen, Judge Porteous. So, yeah, I do.

Q. Okay. But if he -- should I have recused because I went with Gardner?

A. Well, I'm not the judge here but --

Q. I'll withdraw that question.

A. Yeah, you should. I think you should.

JUDGE PORTEOUS: I'll withdraw the question. I don't have any further questions now.

MR. WOODS: May he be excused, your Honors?

CHIEF JUDGE JONES: Yes.

03:25 Mr. Mole, thank you for testifying.

MR. WOODS: We would call Robert Creely next.

Mr. Creely is down the hall in 204. Can you bring him in, please?

03:25 *(Witness being summoned to the stand)*

CHIEF JUDGE JONES: What I alluded to earlier, Judge Porteous, is the fact that up until about six weeks ago, you were vigorously asserting through counsel that you were unable to assist in your own defense mentally, that you had 03:26 limited memory and limited ability. And I just want you to know that, as far as I am concerned, you're doing a splendid job of representing yourself.

JUDGE PORTEOUS: Well, your Honor, when I'm placed in a position where I have to defend myself, no matter what 03:26 abilities I actually have, I have to try and assert the minimum, because I've not been allowed to get additional counsel.

And I understand your position. But I am dealing with my life in this situation, your Honor. And to suggest 03:26 that that in some way reflects other periods of time that I've been seeing this mental healthcare professional, is a mighty microscopic view of my position. So -- but I understand yours.

CHIEF JUDGE JONES: Yes, sir.

MR. WOODS: Your Honor, this is Mr. Creely and his 03:26 attorney, Ralph Capitelli.

Dubester, Mark

From: Roberts, Blake C. [Blake_C._Roberts@who.eop.gov]
Sent: Monday, October 19, 2009 1:48 PM
To: Dubester, Mark
Cc: Weideman, Christian; GaryM Stern; John Laster
Subject: Clinton Presidential Records re: Judge Porteous
Attachments: Porteous Clinton Records.pdf

Mark,

Attached to this email are 15 pages of Clinton presidential records related to Judge Porteous. Per our discussion, this production satisfies the House Judiciary Committee's May 29, 2009 special access request for material relating to Judge Porteous. As we discussed, the Committee is not receiving a 2 page decision memorandum from Lloyd Cutler and other White House staff to the President relating to the nomination of Porteous and other candidates for judicial positions.

Thank you,

Blake

Blake Roberts
Deputy Associate White House Counsel
202-456-2948 (w)
202-503-5521 (m)
broberts@who.eop.gov

HP Exhibit 67

Dubester, Mark

From: John Laster [John.Laster@nara.gov]
Sent: Tuesday, October 20, 2009 4:36 PM
To: Dubester, Mark
Cc: GaryM Stern; Nancy Smith; Blake C. Roberts
Subject: FW: Clinton Presidential Records re: Judge Porteous

Mark:

Sorry I didn't get a chance to respond yesterday, but I wanted to double check the situation with the Clinton Library to make sure that I remembered the details of the search correctly.

When we conducted our initial search for records related to Judge Porteous, we also noticed that there were numerous referenced documents in the cover letter and so we specifically searched to try to locate those items. However, we were not successful. While we can never definitively say that records don't exist somewhere in our holdings, the Clinton Library archivists have exhausted their search for those forms and questionnaires.

Sorry not to have better news. Please let us know if you have any additional questions, however.

John

John Laster
Archivist
Presidential Materials Staff
National Archives and Records Administration
700 Pennsylvania Avenue, NW
Washington, DC 20408-0001
(202) 357-5144
john.laster@nara.gov

CHAMBERS OF
C. Thomas Fortenberry, Jr.
JUDGE, DIVISION "K"

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

April 27, 1994

Mr. Jason Rapp
Office of the Counsel
Room 128
Old Executive Office Bldg.
Washington, D.C. 20500

Dear Mr. Rapp:

Enclosed please find the completed forms pertaining to my recommended nomination. The packet itself was received on April 11, 1994, and because of my trial schedule and seminar commitment I was unable to complete them within seven days.

This return contains:

A) Completed Personal Data Questionnaire with attachments for questions 13 and 26.

B) Completed questionnaire United States Senate, Committee on the Judiciary with attachments for question 15 and a completed financial statement. I have included my contributions to the State Retirement System in an abundance of caution. If it is deemed to not be an asset, it would simply reduce my net worth.

C) Completed questionnaire Office of the Attorney General with a financial statement together with my tax returns for 1991, 1992 and 1993. Again, the financial statement shows my contributions to the State Retirement System in an abundance of caution.

D) Original and three copies with original signatures of the SF-86.

E) Original and two copies with original signatures of the tax check waiver.

F) Original and two copies with original signatures of the consent for FBI investigation.

G) Two signed fingerprints charts.

H) Completed Physical Qualification Judiciary form.

If any further information or documentation is required, please do not hesitate to call.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

THE WHITE HOUSE

WASHINGTON

April 6, 1994

Dear Chief Judge Porteous:

As you know, you have been recommended to the President for nomination to the U.S. District Court for the Eastern District of Louisiana.

Enclosed you will find several forms that we will need you to complete, to facilitate the President's consideration of your potential nomination. While the forms are somewhat duplicative, each is required for a separate purpose; your patience in completing them all is appreciated.

Please return the completed forms, within seven days if possible, to me at the following address: Office of the Counsel, Room 128, Old Executive Office Building, Washington, D.C. 20500. If you have any questions, please feel free to call me at (202) 456-7901.

Congratulations on the recommendation of your nomination. I look forward to receiving your completed forms as soon as possible.

Sincerely,

Victoria L. Radd

Victoria L. Radd
Associate Counsel to the President

The Honorable G. Thomas Porteous
4801 Neyrey Drive
Metairie, Louisiana 70002

Enclosures

JOHN BREAUX
LOUISIANA

MAJORITY
CHIEF DEPUTY WHIP
COMMITTEES:
COMMERCE, SCIENCE, AND TRANSPORTATION
FINANCE
SPECIAL COMMITTEE ON AGING
WASHINGTON OFFICE:
(202) 224-4623

United States Senate
WASHINGTON, DC 20510

STATE OFFICES:

ONE AMERICAN PLACE, SUITE 2030
BATON ROUGE, LA 70825
(504) 382-2050

THE FEDERAL BUILDING
705 JEFFERSON STREET, ROOM 103
LAFAYETTE, LA 70501
(318) 262-6671

WASHINGTON SQUARE ANNEX BUILDING
211 NORTH 3RD STREET, ROOM 102A
MONROE, LA 71201
(318) 325-3320

HALE BOGGS FEDERAL BUILDING
501 MAGAZINE STREET, SUITE 1005
NEW ORLEANS, LA 70130
(504) 589-2531

CENTRAL LOUISIANA:
(318) 487-8445

March 23, 1994

Honorable Bill Clinton
The White House
Washington, D.C. 20500

Dear Mr. President:

We would like to recommend G. Thomas Porteous as a candidate for Federal Judge for the Eastern District of Louisiana.

Judge Porteous is currently a Judge of the 24th Judicial District Court, Division A, in the Parish of Jefferson. Enclosed you will find his resume, and we hope that you will contact us if we can provide any further information. Thank you for your consideration.

Sincerely,

J. BENNETT JOHNSTON
United States Senator

JOHN BREAUX
United States Senator

HONORABLE G. THOMAS PORTEOUS
4801 NEYREY DRIVE
METAIRIE, LA 70002
(504) 455-5879
(504) 364-3850

JUDICIAL AND LEGAL EXPERIENCE:

January 1992 - Present	Chief Judge of the 24th Judicial District Court
August 1984 - Present	Judge of the 24th Judicial District Court, Division "A" Parish of Jefferson
January 1973 - 1984	Assistant District Attorney Parish of Jefferson 1976 to 1984, Felony Supervisor - in charge of major felony prosecutions: more notably, State v. Poretto, State v. Fagot 1973-1974 Chief Felony Complaint Division
January 1971 - 1973	Louisiana Department of Justice Special Counsel, assigned to Criminal Division; tried felony cases in Jefferson Parish, Caddo Parish and Lafourche Parish. Assigned to Louisiana Supreme Court, responsible for all appeals and Writs of Habeas Corpus
1973 - Present	Guest lecturer and speaker. Judge, Loyola Moot Court Competition. Instructor of Criminal Law, Criminal Procedure and Constitutional Law at: St. Mary's Dominican College, Loyola School of Law, and Jefferson Parish Sheriff Office Training Academy
January 1982 - 1984	City Attorney, City of Harahan
1973 - 1984	Private General Civil Law Practice Porteous and Mustakas

EDUCATION:

1971	Juris Doctorate Louisiana State University School of Law, Baton Rouge Finalist, Robert Lee Tullis Moot Court Competition
1968	Bachelor of Arts, Major in Economics Louisiana State University, New Orleans

PROFESSIONAL AND PRIVATE ORGANIZATIONS:

1991 - 1992 President of the Fourth and Fifth Circuit Judges Association
Current Board Member - Executive Board of the Fourth and Fifth Circuit Judges Association
Past President - Louisiana District Attorney's Association (Assistant's Section)
Federal Bar Association
American Bar Association
Louisiana State Bar Association
Jefferson Bar Association
Former President St. Clement of Rome Men's Club

AWARDS:

Morality in Media of Louisiana - January 21, 1983
Brother Martin High School, Outstanding Service - 1987
University of Southwestern Louisiana, Criminal Justice Program - 1980

PROFESSIONAL CONTINUING LEGAL EDUCATION:

Annual Spring Judges Conference - Lafayette
Annual Fall Judges Conference
Annual District Attorney's Conference, Louisiana District Attorney Association
Career Prosecutor Course, National College of District Attorneys
Louisiana Evidence Seminars, Louisiana State University
Criminal Law Seminars, Louisiana State University

ADMITTED TO PRACTICE BEFORE:

United States Supreme Court
Louisiana Supreme Court
Federal District Court, Eastern District of Louisiana
United States Court of Appeal, 5th Circuit

ACTIVITIES AND HOBBIES:

Coach - football, baseball; Referee - basketball, Johnny Bright Playground
Hunting, fishing, golf

PERSONAL:

Born: New Orleans, Louisiana; December 15, 1946
Married to the former Carmella Ann Giardina, father of four children: Michael, Timothy, Thomas and Catherine

CDSS Search (in Full Text)
Scan ID 085188SS
"Porteous"

Porteous Special Access

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FGDS

THE WHITE HOUSE

WASHINGTON

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MEMORANDUM

OK JVB

To: John Podesta
Via: The Executive Clerk
From: J. Veronica Biggins, Assistant to the President and Director of Presidential Personnel

Subject: Nomination
Date: August 25, 1994

The following individual has been approved by the President, cleared by White House Counsel, and is ready to be nominated to the Senate:

G. Thomas Porteous, Jr.
Louisiana
U. S. Department of Justice
U. S. District Judge for the Eastern District of Louisiana
Vice: Robert F. Collins

Please submit this nomination to the Senate for confirmation.

JVB:dss

AUG 25 1994

71C

Office of the Attorney General
Washington, D. C. 20530

August 24, 1994

Dear Mr. President:

I have the honor to enclose the nomination of G. Thomas Porteous, Jr., of Louisiana, to be United States District Judge for the Eastern District of Louisiana vice Robert F. Collins, resigned.

Judge Porteous was born December 15, 1946 in New Orleans, Louisiana. He received a B.A. degree in 1968 from Louisiana State University and a J.D. degree in 1971 from Louisiana State University Law School. He was admitted to the Louisiana State Bar in 1971.

Since 1984, Judge Porteous has served as a District Judge for the 24th Judicial District Court of Louisiana. Prior to his appointment to the court, he was City Attorney for the City of Harahan, 1982-1984; a partner in the law firm of Porteous & Mustakas, 1980-1984; a partner in the law firm of Porteous, Lee & Mustakas, 1976-1980; a partner in the law firm of Edwards, Porteous & Lee, 1974-1976; Chief of the Felony Complaint Division of the District Attorney's Office for the Parish of Jefferson, 1973-1975; a partner in the law firm of Edwards, Porteous & Amato, 1973-1974; and Special Counsel for the Louisiana Attorney General's Office, 1971-1973.

The appropriate Circuit Representative of the Standing Committee on Federal Judiciary of the American Bar Association has preliminarily found Judge Porteous qualified for appointment to this position, and that finding is before this Committee for a final vote. We have no reason to believe that the Committee's vote and a formal report will differ from the preliminary rating. He bears an excellent reputation as to character and integrity, has judicial temperament and is, I believe, worthy of appointment as a United States District Judge.

I recommend the nomination.

Respectfully,

Janet Reno

The President
The White House

Copy to
V. Rudd 8/25

ET

The White House,

19

To the

Senate of the United States.

I nominate G. Thomas Porteous, Jr., of Louisiana,

to be United States District Judge for the Eastern District of

Louisiana vice Robert F. Collins, resigned.

G. THOMAS PORTEOUS, JR.

Birth:	December 15, 1946	New Orleans, Louisiana
Legal Residence:	Louisiana	
Marital Status:	Married	Carmella Giardina Porteous 4 children
Education:	1964 - 1968	Louisiana State University B.A. degree
	1968 - 1971	Louisiana State University Law School J.D. degree
Bar:	1971	Louisiana
Experience:	1971 - 1973	State of Louisiana Attorney General's Office Special Counsel
	1973 - 1974	Edwards, Porteous & Amato Partner
	1973 - 1975	District Attorney's Office Parish of Jefferson Chief Felony Complaint Div
	1974 - 1976	Edwards, Porteous & Lee Partner
	1976 - 1980	Porteous, Lee & Mustakas Partner
	1980 - 1984	Porteous & Mustakas Partner
	1982 - 1984	City Attorney's office City of Harahan City Attorney
	1984 - present	24th Judicial District Court State of Louisiana District Judge
Office:	Gretna Courthouse Annex Building Second Floor, Room 200 Gretna, Louisiana 70053 504 364-3850	
Home:	4801 Neyrey Drive Metairie, Louisiana 70002 504 455-5879	
Ethnic Group:	Caucasian	
Salary:	$133,600	

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release August 25, 1994

PRESIDENT NAMES SEVEN FEDERAL JUDGES

President Clinton today nominated Fred I. Parker to the U.S. Court of Appeals for the Second Circuit. The President also nominated six individuals to serve on the U.S. District Court: Helen Gillmor for the District of Hawaii; John R. Tait for the District of Idaho; Okla Jones, II, and G. Thomas Porteous, Jr. for the Eastern District of Louisiana; James A. Beaty for the Middle District of North Carolina; and David Briones for the Western District of Texas.

"These nominees will bring legal talent and dedication to the federal bench," the President said. "I know they will serve our country with distinction."

Fred I. Parker, 56, has been Chief Judge of the U.S. District Court for the District of Vermont since 1991. He was appointed to the federal bench by President George Bush in 1990.

Prior to his judicial appointment, Judge Parker practiced law in Burlington, Vermont with the firm of Langrock Perry Parker & Wool (and its predecessor firms) from 1972 to 1990, and with Yandell & Page from 1966-1969. He served as Deputy Attorney General in the Vermont Attorney General's Office from 1969-1972. Judge Parker graduated from the University of Massachusetts and from Georgetown Law School, where he was managing editor of the Georgetown Law Journal. He served as a corporal in the United States Marine Corps Reserve from 1955 to 1962.

While in private practice, Judge Parker served on the Professional Conduct Board and the Judicial Conduct Board of the Vermont Supreme Court. From 1973 to 1979, he chaired the Vermont Law Enforcement Training Council, which provided training for state police, sheriffs, and local law enforcement agencies. Judge Parker also served as Chair of the Vermont Bar Association Special Committee on the Reform of the Judiciary from 1979 to 1980.

-more-

Judge Parker now serves on the Advisory Committee on the Civil Justice Reform Act of 1990, the Judicial Branch Committee of the National Judicial Conference, and the Second Circuit Judicial Council. He also has sat by designation on the United States Court of Appeals for the Second Circuit, the court to which he is now nominated. Judge Parker and his wife, Barbara, have two sons and live in Burlington, Vermont.

Upon confirmation, Judge Parker would become one of 13 judges for the U.S. Court of Appeals for the Second Circuit, which hears cases from Connecticut, New York and Vermont.

Helen Gillmor, 51, is a partner with the Honolulu law firm of Gillmor & Gillmor, where she has practiced since 1985. From 1977 to 1985, she sat as a per diem district court judge for the State of Hawaii. Previously, she served as a Deputy Public Defender and as a law clerk for Chief Justice William S. Richardson of the Hawaii Supreme Court. Gillmor earned a B.A. degree from Queens College and an LL.B. degree from Boston University School of Law. Gillmor and her husband, John P. Gillmor, have two children and live in Honolulu.

John R. Tait, 48, is a partner with the Lewiston, Idaho law firm of Keeton and Tait, where he has practiced since 1974. From 1968 to 1971, Tait served in the U.S. Army. He earned a B.A. degree from Columbia College and a J.D. degree from Vanderbilt University School of Law. Tait and his wife, Christina R. Bjornstand, have two children and live in Lewiston.

Okla Jones, II, 48, has served as a judge on the Civil District Court for the Parish of Orleans since 1990. From 1986 to 1990, he served as the City Attorney for the City of New Orleans; and from 1983 to 1986, he was Special Counsel to the New Orleans City Council. From 1976 to 1986, Jones practiced law in New Orleans. From 1973 to 1976, Jones served as the Project Director for the New Orleans Office of the Lawyer's Committee for Civil Rights Under Law. Jones earned a B.A. degree from Southern University and a J.D. degree from Boston College School of Law. Jones and his wife, Carolyn A. Carmon, have one child and live in New Orleans.

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Federal Judges continued, page 3

G. Thomas Porteous, 47, has served as a district judge for the 24th Judicial District Court of Louisiana since 1984. From 1982 to 1984, Porteous served as City Attorney for the City of Harahan. From 1976 to 1984, he practiced law in Louisiana. From 1973 to 1975, he served as Chief of the Felony Complaint Division of the District Attorney's Office for the Parish of Jefferson; and from 1971 to 1973, he was Special Counsel for the Louisiana Attorney General's Office. Porteous earned a B.A. degree from Louisiana State University and a J.D. degree from Louisiana State University Law School. He and his wife, Carmella Giardina Porteous, have four children and live in Metairie.

James A. Beaty, 45, has served as a Superior Court Judge in North Carolina since 1981. From 1974 to 1981, he practiced law in Winston-Salem and Lexington. Beaty earned a B.A. degree from Western Carolina University and a J.D. degree from the University of North Carolina School of Law. Beaty and his wife, Toyoko Christine Beaty, have one child and live in Winston-Salem.

David Briones, 51, has served as a judge on the El Paso County Court since 1991. From 1971 to 1991, he practiced law as a partner with the El Paso firm of Moreno and Briones. From 1964 to 1966, Briones served in the United States Army. Briones is a past-President of the Mexican-American Bar Association of El Paso and was Chairman of the Rules Committee of the El Paso Bar Association. Briones earned a B.A. degree from the University of Texas and a J.D. degree from the University of Texas School of Law. Briones and his wife, Delia Garcia Briones, have two children and live in El Paso.

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President Clinton's Appointments
STATUS = C

Name	Title	Nominated	Confirmed	Appointed
ALM, Steven Scott	United States Attorney for the District of Hawaii	09/26/94	10/07/94	
BACA, Joseph Francis	Member of the Board of Directors of the State Justice Institute (Judge) for a term expiring 09/17/95	08/16/94	10/07/94	
BALDWIN, Robert Nelson	Member of the Board of Directors of the State Justice Institute (State Court Administrator) for a term expiring 09/17/95	08/16/94	10/07/94	
BEATY, James A., Jr.	United States District Judge for the Middle District of North Carolina	08/25/94	10/07/94	
BILCHIK, Sheldon C.	Administrator of the Office of Juvenile Justice and Delinquency Prevention	08/08/94	10/07/94	
BRIONES, David	United States District Judge for the Western District of Texas	08/25/94	10/07/94	
BUCKLO, Elaine P.	United States District Judge for the Northern District of Illinois	08/16/94	10/07/94	
CARRINGTON, Michael D.	United States Marshal for the Northern District of Indiana	09/26/94	10/07/94	
DURR, Eisenhower	United States Marshal for the Southern District of Mississippi	05/16/94	10/07/94	
ENGLISH, Robert Bradford	United States Marshal for the Western District of Missouri	09/26/94	10/07/94	
GETTLEMAN, Robert W.	United States District Judge for the Northern District of Illinois	08/16/94	10/07/94	
GILLMOR, Helen W.	United States District Judge for the District of Hawaii	08/25/94	10/07/94	
HAMILTON, David F.	United States District Judge for the Southern District of Indiana	06/08/94	10/07/94	
✓JONES, Okla, II	United States District Judge for the Eastern District of Louisiana	08/25/94	10/07/94	
KATZ, David A.	United States District Judge for the Northern District of Ohio	08/12/94	10/07/94	
LAU, Valerie	Inspector General, Department of the Treasury	04/12/94	10/07/94	
MCLAUGHLIN, Sean J.	United States District Judge for the Western District of Pennsylvania	08/12/94	10/07/94	
MCNAMARA, Thomas S.	Assistant Secretary of State	09/13/94	10/07/94	
MOORE, Robert	United States Marshal for the Central District of Illinois	07/22/94	10/07/94	
MOORE, William T., Jr.	United States District Judge for the Southern District of Georgia	07/13/94	10/07/94	
MOORE-SILVER, Roslyn	United States District Judge for the District of Arizona	09/14/94	10/07/94	

President Clinton's Appointments
STATUS - C

Name	Title	Nominated	Confirmed	Appointed
MORENO, G. Mario	Assistant Secretary for Intergovernmental and Interagency Affairs, Department of Education (Four Additional Officers)	06/20/94	10/07/94	
MURPHY, Diana E.	United States Circuit Judge for the Eighth Circuit	07/28/94	10/07/94	
MURPHY, John R.	United States Marshal for the District of Alaska	09/26/94	10/07/94	
MURRAY, Florence K.	Member of the Board of Directors of the State Justice Institute (Judge) for a term expiring 09/17/95	08/16/94	10/07/94	
PEREZ, Jorge M.	Member of the National Council on the Arts for a term expiring 09/03/98	08/16/94	10/07/94	
PORTEOUS, C. Thomas, Jr.	United States District Judge for the Eastern District of Louisiana	08/25/94	10/07/94	
RAMON, Michael R.	United States Marshal for the Central District of California	09/14/94	10/07/94	
ROBERTSON, James	United States District Judge for the District of Columbia	09/14/94	10/07/94	
RUIZ, Vanessa	Associate Judge of the District of Columbia Court of Appeals	07/12/94	10/07/94	
RUSSELL, Thomas B.	United States District Judge for the Western District of Kentucky	09/14/94	10/07/94	
RUTHERFORD III, Herbert M.	United States Marshal for the District of Columbia	09/26/94	10/07/94	
THOMPSON, Alvin W.	United States District Judge for the District of Connecticut	09/14/94	10/07/94	
VALDEZ, Joel David	Member of the National Commission on Libraries and Information Science for a term expiring 07/19/98	07/12/94	10/07/94	
WALLS, William H.	United States District Judge for the District of New Jersey	09/14/94	10/07/94	
WILSON, Charles R.	United States Attorney for the Middle District of Florida	09/19/94	10/07/94	

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 18, 2009

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to the Committee's letter, dated March 31, 2009, which requested documents and other information relating to the Department's referral to the United States Court of Appeals for the Fifth Circuit pertaining to Judge G. Thomas Porteous, Jr.

Enclosed are 223 pages of records pertaining to the Senate confirmation of Judge Porteous, including his questionnaires and other material he supplied to the FBI. Social Security numbers have been redacted from these documents in order to protect individual privacy interests. Nonetheless, these records implicate substantial individual privacy interests and, accordingly, we request that you consult with the Department prior to disclosing their contents outside of the Committee.

The FBI is working to process additional documents responsive to your request and we will supplement this response as soon as they become available. Please do not hesitate to contact us if you would like additional assistance with this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosures

cc: The Honorable Lamar S. Smith
Ranking Minority Member

Standard Form 86
Revised December 1990
U.S.Office of Personnel Management
FPM Chapter 732

QUESTIONNAIRE FOR SENSITIVE POSITIONS (For National Security)

Form approved:
O.M.B. No. 3206-0007
NSN 7540-00-634-4036
86-110

OPM USE ONLY — Codes — Case Number

Part 1

Agency Use Only (Complete items A through P using instructions in FPM Supplement 296-33)

A Type of Investigation	B Extra Coverage	C Sensitivity Level	D Access	E Nature of Action Code	F Date of Action (Month Day Year)

G Geographic Location	H Position Code	I Position Title

J SON — K Location of Official Personnel Folder: ☐ None ☐ NPRC ☐ At SON — Other Address — ZIP Code

L SOI — M Location of Security Folder: ☐ None ☐ At SOI ☐ NPI — Other Address — ZIP Code

N OPAC-ALC Number	O Accounting Data and/or Agency Case Number

P Requesting Official: Name and Title	Signature	Telephone Number FTS ( )	Date
		( )	

Persons completing this form should begin with the questions below. Please type or print your answers.

1 FULL NAME • If you have only initials in your name, use them and State (IO). • If you have no middle name, enter "NMN." • If you are a "Jr.," "Sr.," "II," etc., enter this in the box after your middle name.

2 DATE OF BIRTH

Last Name	First Name	Middle Name	Jr., II, etc.	Month	Day	Year
Portebus	Gabriel	Thomas		07	15	46

3 PLACE OF BIRTH • Use the two letter code for the State.

City	County	State	Country (if not in the United States)
New Orleans	Orleans	LA	

4 SOCIAL SECURITY NUMBER [redacted]

5 OTHER NAMES USED
Give other names you used and the period of time you used them *(for example: your maiden name, name[s] by a former marriage, former name[s], alias[es], or nickname[s])*. If the other name is your maiden name, put "nee" in front of it.

Name	Month/Year Month/Year	Name	Month/Year Month/Year
None	to		
Name	Month/Year Month/Year	Name	Month/Year Month/Year
	to		

6 OTHER IDENTIFYING INFORMATION

Height (feet and inches)	Weight (pounds)	Hair Color	Eye Color	Sex (mark one box)
5' 10"	200	Brown	Hazel	☐ Female ☒ Male

7 TELEPHONE NUMBERS

Work (Include Area Code and extension)	Home (Include Area Code)
(☒) Day	( ) Day
( ) Night (504) 364-3850	(☒) Night (504) 455-5879

8 CITIZENSHIP

a Mark the box at the right that applies to you and follow the instructions next to the box you marked.

I am a U.S. citizen by birth in the U.S.	X	Answer items b and d
I am a U.S. citizen, but I was NOT born in the U.S.		Answer items b, c, and d
I am not a U.S. citizen.		Answer items b and e

b Your Mother's Maiden Name: Wyand Farmer

c **UNITED STATES CITIZENSHIP** If you are a U.S. Citizen, but were not born in the U.S., provide information about one or more of the following proofs of your citizenship.

Naturalization Certificate *(Where were you naturalized?)*

Court	City	State	Certificate Number	Month/Day/Year Issued

Citizenship Certificate *(Where was the certificate issued?)*

City	State	Certificate Number	Month/Day/Year Issued

State Department Form 240 - Report of Birth Abroad of a Citizen of the United States

Give the date the form was prepared and give an explanation if needed.	Month/Day/Year	Explanation

U.S. Passport
This may be either a current or previous U.S. Passport.

Passport Number	Month/Day/Year Issued

d **DUAL CITIZENSHIP** If you are *(or were)* a dual citizen of the United States and another country, provide the name of that country in the space to the right. — Country: Not a dual citizen

e **ALIEN** If you are an alien, provide the following information:

Place You Entered the United States:	City	State	Date You Entered U.S. Month	Day	Year	Alien Registration Number	Country of Citizenship

PORT000000001

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9 WHERE YOU HAVE LIVED

Fill in your full address for every place you have lived beginning with the present (#1) and working backward 15 years.

- If you attended school away from your permanent residence, list the address you lived at while attending school.
- For any address in the past 3 years:
  - List a person who knew you at that address, preferably someone who still lives in that area.
  - If address listed is "General Delivery," a Rural Route, or Star Route, provide directions for locating the residence on an attached continuation sheet, and show the block #.

	Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
#1	Present 7/77 To Present	4801 Neyrey Dr.		Metairie	LA	70010012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
Dr. John Finnan		4701 Woodland		Metairie	LA	70010012 / 504) 456-6265
#2	6/75 To 7/77	4705 Morales St.		Metairie	LA	70010012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#3	3/72 To 6/75	4083 Division St.		Metairie	LA	70010012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#4	6/71 To 2/72	2136 N. Lobdell	605	Baton Rouge	LA	70818016
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#5	8/69 To 6/71	3550 Nicholson Dr.	2094	Baton Rouge	LA	70818012
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )
#6	9/68 To 5/69	LSU Baton Rouge, Hatcher Dorm.		Baton Rouge	LA	70818013
Name of Person Who Knows You		Street Address	Apt. #	City (Country)	State	ZIP Code / Telephone Number
						( )

10 WHERE YOU WENT TO SCHOOL

Fill in information about schools you have attended, beyond Junior High School, beginning with the most recent (#1) and working backward 15 years. Also list College or University degrees received beyond 15 years.

- For schools you attended in the past 3 years, list a person who knew you at school (such as an instructor or a student).
- For correspondence schools and extension classes, list records location address.
- In the "Code" block, use one of these codes: 1 - High School 2 - College/University 3 - Vocational/Trade School

	Month/Year Month/Year	Code	Name of School	Degree/Diploma/Other (show each degree and date received if Code 2)	Month/Year
#1	9/68 To 5/71	2	LSU School of Law	Juris Doctor	5/71
Street Address and City (Country) of School				State	ZIP Code
Hebert Law Center, Room 210, Baton Rouge				LA	70803
Name of Person Who Knew You		Street Address and City (Country)		State / ZIP Code	Telephone Number
					( )
#2	9/64 To 5/68	2	LSU in New Orleans	Bachelor of Arts	5/68
Street Address and City (Country) of School				State	ZIP Code
Lakefront, New Orleans				LA	70148
Name of Person Who Knew You		Street Address and City (Country)		State / ZIP Code	Telephone Number
					( )
#3	9/60 To 5/64	1	Cor Jesu High School		5/64
Street Address and City (Country) of School				State	ZIP Code
Name of Person Who Knew You		Street Address and City (Country)		State / ZIP Code	Telephone Number
					( )

ur Social Security Number before going to the next page → [redacted]

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11 YOUR EMPLOYMENT ACTIVITIES

Fill in your employment activities, beginning with the present (#1) and working backward 15 years. INCLUDE:

- all full-time work
- all part-time work
- all paid work
- active military duty
- self-employment
- all periods of unemployment

IN THE NUMBERED ACTIVITY SECTION USE ONE OF THESE CODES IN THE CODE BLOCK:

1 - Active military duty stations
2 - National Guard/Reserve
3 - U.S.P.H.S. Commissioned Corps
4 - Other Federal employment
5 - State Government (Non-Federal) employment
6 - Self-employment (Enter business name and/or name of person who can verify)
7 - Unemployment (Enter name of person who can verify)
8 - Federal Contractor (list Contractor, not Federal agency)
9 - Other

FOR EACH ACTIVITY SECTION, provide information requested. For example, if you had worked at XY Plumbing in Denver, CO, for 3 separate periods of time, you would enter dates and information concerning the most recent period of employment first, and provide dates, position titles, and supervisors for the two previous periods of employment in the appropriate blocks below that information. (For locations outside the U.S., show city and country.)

#1

Month/Year To Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
Present 6/84 To Date	5	Judicial Dept. of La.	Judge

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
301 Loyola Ave.	New Orleans	LA	70112	(504) 568-574
Street Address of Job Location (if different than Employer's Address)	**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
Gretna Courthouse-Annex Bldg.	Gretna	LA	70053	(504) 364-385(
Supervisor's Name & Street Address (if different than Job Location)	**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
ugh Collins 301 Loyola Ave.	New Orleans	LA	70112	(504) 568-574

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year To Month/Year	Your Position Title & Supervisor's Name	Month/Year To Month/Year	Your Position Title & Supervisor's Name
To		To	5747 3850 5747
To		To	

#2

Month/Year To Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
10/73 To 8/84	5	Jefferson Parish District Attorney	Assistant District Attorney

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
retna Courthouse-Annex Bldg., 5th Flr.	Gretna	LA	70053	(504) 368-102
Street Address of Job Location (if different than Employer's Address)	**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
				( )
Supervisor's Name & Street Address (if different than Job Location)	**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
John Mamoulides, District Attorney	Gretna	LA	70053	(504) 368-102

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year To Month/Year	Your Position Title & Supervisor's Name	Month/Year To Month/Year	Your Position Title & Supervisor's Name
To		To	1020 1020
To		To	

#3

Month/Year To Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
7/82 To 8/84	9	City of Harahan	City Attorney

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
437 Jefferson Highway	Harahan	LA	70123	(504) 737-638
Street Address of Job Location (if different than Employer's Address)	**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
				( )
Supervisor's Name & Street Address (if different than Job Location)	**City (Country)**	**State**	**ZIP Code**	**Telephone Number**
layor Carlo Ferrara				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year To Month/Year	Your Position Title & Supervisor's Name	Month/Year To Month/Year	Your Position Title & Supervisor's Name
To		To	6382
To		To	

ter your Social Security Number before going to the next page → [redacted]

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YOUR EMPLOYMENT ACTIVITIES (Continued)

#4 | Month/Year Month/Year: 4/80 to 8/84 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Porteous & Mustakas | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
1317 Nursery	Metairie	LA	70100 1515	(504) 833-52
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
3445 N. Causeway Blvd.	Metairie	LA	70100 1012	( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Carlotta Cuccia (Secretary) 1317 Nursery	Metairie	LA	70100 1515	(504) 833-52

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year To	Your Position Title & Supervisor's Name	Month/Year Month/Year To	Your Position Title & Supervisor's Name
To		To	

#5 | Month/Year Month/Year: 2/76 to 4/80 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Porteous, Lee & Mustakas | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
139 Huey P. Long Ave.	Gretna	LA	70100 1515	( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Harry Lee 100 Huey P. Long Ave.	Gretna	LA	70100 1515	(504) 363-55

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year To	Your Position Title & Supervisor's Name	Month/Year Month/Year To	Your Position Title & Supervisor's Name
To		To	

#6 | Month/Year Month/Year: 8/76 to 2/76 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Edwards, Porteous & Lee | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
139 Huey P. Long Ave.	Gretna	LA	70100 1515	( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Marion Edwards Gretna Courthouse-Annex, 5th Flr., Gretna		LA	70100 1515	(504) 368-10

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year To	Your Position Title & Supervisor's Name	Month/Year Month/Year To	Your Position Title & Supervisor's Name
To		To	

#7 | Month/Year Month/Year: 76 to 76 | Code: 6 | Employer's Name/Military Service/Unemployment or Self-Employment Verifier: Edwards, Porteous & Amato | Your Position Title: Attorney (Partner)

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
139 Huey P. Long Ave.	Gretna	LA	70100 1515	( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Marion Edwards Gretna Courthouse-Annex, 5th Flr., Gretna		LA	70100 1515	(504) 368-10

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year To	Your Position Title & Supervisor's Name	Month/Year Month/Year To	Your Position Title & Supervisor's Name
To		To	

er your Social Security Number before going to the next page → [redacted]

06/23/94 18:02 ☎ 008

Standard Form 86A
Revised December 1990
U.S.Office of Personnel Management
FPM Chapter 736

CONTINUATION SHEET FOR QUESTIONNAIRES SF 86, SF 85P, AND SF 85

For use with the SF 86, Questionnaire for Sensitive Positions (for National Security); SF 85P, Questionnaire for Public Trust Positions; and SF 85, Questionnaire for Non-Sensitive Positions

Form approved: O.M.B. No. 3206-00 NSN 7540-01-268-4 86-202

INSTRUCTIONS: Use this form to continue your answers to "Where You Have Lived" and/or "Your Employment Activities." Follow the instructions on the form for the particular questions you are answering and give information in the same sequence. Use as many continuation sheets as you need to furnish all the requested information.

Your Name: Porteous, Gabriel Thomas Jr.

Your Social Security Number: [redacted]

WHERE YOU HAVE LIVED (Continued)

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
3/56 To 6/69	2218 Madrid St.		New Orleans	LA	70117

Name of Person Who Knows You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

Month/Year Month/Year	Street Address	Apt. #	City (Country)	State	ZIP Code
To					

Name of Person Who Knew You	Street Address	Apt.#	City (Country)	State	ZIP Code	Telephone Number
						( )

YOUR EMPLOYMENT ACTIVITIES (Continued)

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
9/71 To 10/73	5	State of La., Office of the Atty. General	Special Counsel-Criminal Div.

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
P.O. Box 94005	Baton Rouge	LA	70804	(504) 342-701

Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )

Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Jack Yelverton				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

Month/Year Month/Year	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
8/70 To 5/71	6	B & L Associates	Investigator

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
512 Acadia	Baton Rouge	LA	70806	(504) 751-479

Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )

Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Dick Barrios				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year	Your Position Title & Supervisor's Name	Month/Year Month/Year	Your Position Title & Supervisor's Name
To		To	
To		To	

4791

06/23/94 18:03 ☎ 009

YOUR EMPLOYMENT ACTIVITIES (Continued)

Month/Year Month/Year To	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title
6/ 64 To 5/ 73	6	Baker's Shoe Stores	Sales Clerk

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
Westside Shopping Center	Gretna	LA	70053	( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
Anthony Indovina 4013 Cedar	Marrero	LA	70072	(504) 341-484

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year To	Your Position Title & Supervisor's Name	Month/Year Month/Year To	Your Position Title & Supervisor's Name
To		To	

Month/Year Month/Year To	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
				( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year To	Your Position Title & Supervisor's Name	Month/Year Month/Year To	Your Position Title & Supervisor's Name
To		To	

Month/Year Month/Year To	Code	Employer's Name/Military Service/Unemployment or Self-Employment Verifier	Your Position Title

Employer's/Verifier's Street Address	City (Country)	State	ZIP Code	Telephone Number
				( )
Street Address of Job Location (if different than Employer's Address)	City (Country)	State	ZIP Code	Telephone Number
				( )
Supervisor's Name & Street Address (if different than Job Location)	City (Country)	State	ZIP Code	Telephone Number
				( )

PREVIOUS PERIODS OF THE SAME ACTIVITY AND LOCATION - IF CONTINUATION SHEET IS USED, SHOW BLOCK #

Month/Year Month/Year To	Your Position Title & Supervisor's Name	Month/Year Month/Year To	Your Position Title & Supervisor's Name
To		To	

Enter your Social Security Number → [redacted]

06/21/94 18:04 ☎ 010

12 PEOPLE WHO KNOW YOU WELL

List two people who know you well and live in the United States.
- Don't list spouse, other relatives, or former spouses.
- Try not to list anyone mentioned in item 9, 10, or 11.

	Name	Number Years Known	Telephone Number
#1	Don C. Gardner	23	(504) 737-6651 Day (X) or Night ( )
Home Address	(504) 737-2273 Office 40 Imperial Woods Dr. 6380 Jefferson Hwy.	City (County) Harahan	State / ZIP Code LA 70123
#2	Daniel Martiny	18	(504) 834-7676 Day (X) or Night ( )
Home Address	(504)464-9045 Office 131 Airline Hwy., Ste. 201 622 Carmenere Dr. Metairie, La. 70001	City (County) Kenner	State / ZIP Code LA 70065

13 YOUR OUTSIDE ACTIVITIES

List any activities which you may wish to have considered as reflecting favorably on your reputation for leadership, responsibility, honesty, and integrity in the last 15 years. (Response Optional)

	Month/Year Month/Year	Activity	Location of Activity: City (Country)	State
#1	4/94 to 4/96	President, Fourth & Fifth Circuit Judges Assoc.	Gretna	LA
#2	1/92 to 12/93	Chief Judge, Twenty-Fourth Judicial District Court	Gretna	LA
#3	to			

14 YOUR FOREIGN ACTIVITIES

		Yes	No
a.	Do you have any foreign property, business connections, or financial interests?		X
b.	Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?		X
c.	In the last 15 years, have you had continuing contact with a national of any foreign country designated by the agency instructing you to fill out this form? (NOTE: If the agency wants you to answer this question, it will provide you with a list of countries.)		X

If you answered "Yes" to a, b, or c, explain in the space below:

15 FOREIGN COUNTRIES YOU HAVE VISITED

List foreign countries you have visited, beginning with the most current (#1) and working backward 15 years.
- Do not include countries covered in items 9, 10, and 11.
- In the "Code" block, use one of these codes: 1 - Business 2 - Pleasure 3 - Education 4 - Other

	Month/Year Month/Year	Code	Country		Month/Year Month/Year	Code	Country
#1	7/93 to 7/93	2	Bahamas	#3	7/91 to 7/91	2	Bahamas
#2	9/92 to 9/92	2	Italy, France, Spain, Greece, Sicily	#4	to		

16 YOUR MILITARY HISTORY

		Yes	No
a.	Have you served in the United States military?		X
	Have you served in the United States Merchant Marine?		X

- If your answer to both questions is "No," GO TO QUESTION 17.
- If your answer to either question is "Yes," GO TO b.

b. Starting with the most current (#1) and working backward, enter information for all periods of active service into the table below.
- Mark "O" block for Officer or "E" block for Enlisted.
- In the "Code" block, use one of these codes:
1 - Air Force 2 - Army 3 - Navy 4 - Marine Corps 5 - Coast Guard 6 - Merchant Marine 7 - National Guard

	Month/Year Month/Year	Code	Service/Certificate #	O	E	Status (Mark "X" in appropriate blocks - use State Code for National Guard): None	Active Duty	Active Reserve	National Guard (show State)	Inactive Reserve	Retired
#1	to										
#2	to										
#3	to										
#4	to										

Enter your Social Security Number before going to the next page → [redacted]

06/23/94 18:05 ☎ 011

17 YOUR RELATIVES

Give full names and enter the correct code for all relatives, living or dead; specified below:

1 - Mother *(first)* 4 - Stepfather 7 - Stepchild 10 - Stepbrother 13 - Half-sister 16 - Guardian
2 - Father *(second)* 5 - Foster parent 8 - Brother 11 - Stepsister 14 - Father-in-law
3 - Stepmother 6 - Child *(adopted also)* 9 - Sister 12 - Half-brother 15 - Mother-in-law

Full Name *(if deceased, check box on the left before entering name)*	Code	Date of Birth Month/Day/Year	Country of Birth	Country of Citizenship	Current Street Address and City *(country)* of Living Relatives	State
Wyand F. Porteous	1	1/02/15	USA	USA	deceased	
Gabriel T. Porteous, Sr.	2	1/13/09	USA	USA	deceased	
Michael P. Porteous	6	4/27/71	USA	USA	4801 Neyrey Dr. Metairie	LA
Timothy A. Porteous	6	1/12/73	USA	USA	4801 Neyrey Dr. Metairie	LA
Thomas A. Porteous	6	3/03/75	USA	USA	4801 Neyrey Dr. Metairie	LA
Catherine A. Porteous	6	2/18/81	USA	USA	4801 Neyrey Dr. Metairie	LA
Anthony J. Giardina	14	2/19/19	USA	USA	6301 Amhurst Metairie	LA
Jovanina G. Giardina	14	7/23/19	USA	USA	6301 Amhurst Metairie	LA

18 YOUR MARITAL STATUS

Mark one of the following boxes to show your current marital status:

1 - Never married *(go to question 19)* 3 - Separated 5 - Divorced
2 - Married 4 - Legally Separated 6 - Widowed

Current Spouse Complete the following about your current spouse.

Full Name	Date of Birth	Place of Birth *(Include country if outside the U.S.)*	Social Security Number
Carmella Ann Porteous	12/23/48	New Orleans, La.	[redacted]

Other Names Used *(Specify maiden name, names by other marriages, etc., and show dates used for each name)*
Carmella Ann Giardina (12/23/48 - 6/28/69)

Country of Citizenship	Date Married	Place Married *(Include country if outside the U.S.)*	State
USA	6/28/69	New Orleans	LA

If Separated, Date of Separation *(Md./Day/Yr.)*	If Legally Separated, Where is the Record Located? City *(Country)*	State

Address of Current Spouse *(Street, city, and country if outside the U.S.)*	State	ZIP Code
4801 Neyrey Dr., Metairie	LA	70002

Former Spouse(s) Complete the following about your former spouse(s), use blank sheets if needed.

Full Name	Date of Birth	Place of Birth *(Include country if outside the U.S.)*	State

Country of Citizenship	Date Married	Place Married *(Include country if outside the U.S.)*	State

Check One, Then Give Date	Month/Day/Year	If Divorced, Where is the Record Located? City *(Country)*	State
Divorced / Widowed			

Address of Former Spouse *(Street, city, and country if outside the U.S.)*	State	ZIP Code

19 PERSONS LIVING WITH YOU

Does the citizen of another country, or a United States citizen by other than birth, live at your residence? If "Yes," provide the information required below. If a United States citizen by other than birth lives with you, show both "United States" and prior country of citizenship below. Don't list your spouse or other relatives you provided in question 17.

Yes No X

Name of Person	Country of Citizenship	Relationship

This concludes Part 1 of this form. If you have used Page 9, continuation sheets, or blank sheets to complete any of the questions in Part 1, give the number for those questions in the space to the right: →

Enter your Social Security Number before going to the next page → [redacted]

06/23/94 18:06 ☎ 012

Standard Form 86
Revised December 1990
U.S.Office of Personnel Management
FPM Chapter 732

QUESTIONNAIRE FOR SENSITIVE POSITIONS (For National Security)

Form approved:
O.M.B. No. 3206-0007
NSN 7540-00-634-4036
86-110

Part 2

20 YOUR SELECTIVE SERVICE RECORD — Yes / No

a. Are you a male born after December 31, 1959? If "No," go to 21. If "Yes," go to b.

b. Have you registered with the Selective Service System? If "Yes," provide your registration number. If "No," show the reason for your legal exemption below.

Registration Number | Legal Exemption Explanation

21 YOUR MILITARY RECORD — Yes / No

a. Have you ever received other than an honorable discharge from the military? If "Yes," provide:
Date of Discharge *(Month and Year)*: Type of Discharge:

b. Have you ever been subject to court-martial or other disciplinary proceedings under the Uniform Code of Military Justice? If "Yes," list any disciplinary proceedings in the last 15 years and all courts-martial. (Include non-judicial and Captain's mast, etc.)

Month/Year	Charge or Specification / Action Taken	Place *(City and county/country if outside the United States)*	State

22 YOUR EMPLOYMENT RECORD — Yes / No

Has any of the following happened to you in the last 15 years? If "Yes," begin with the most recent occurrence and go backward, providing date fired, quit, or left, and other information requested.

Use the following codes and explain the reason your employment was ended:
1 - Fired from a job
2 - Quit a job after being told you'd be fired
3 - Left a job by mutual agreement following allegations of misconduct
4 - Left a job by mutual agreement following allegations of unsatisfactory performance
5 - Left a job for other reasons under unfavorable circumstance

Month/Year	Code	Specify Reason	Employer's Name and Address	State	ZIP Code

23 YOUR POLICE RECORD *(Do not include anything that happened before your 16th birthday.)* — Yes / No

a. Have you ever been charged with or convicted of any felony offense?
b. Have you ever been charged with or convicted of a firearms or explosives offense?
c. Are there currently any charges pending against you for any criminal offense?
d. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?
e. In the last 5 years, have you been arrested for, charged with, or convicted for any offense(s) not listed in response to a, b, c, or d above? *(Leave out traffic fines of less than $100.)*

If you answered "Yes" to a, b, c, d, or e above, explain your answer(s) in the space provided.

Month/Year	Offense	Action Taken	Law Enforcement Authority or Court *(City and county/country if outside the U.S.)*	State	ZIP Code

24 YOUR MEDICAL RECORD — Yes / No

a. Have you experienced problems on or off the job because of any emotional or mental condition?
b. Have you ever seen a health care professional for any of the types of problems mentioned above?

If you answered "Yes" to questions a or b, explain below.

Month/Year, Month/Year	Explanation

Enter your Social Security Number before going to the next page →

06/23/94 18:07 ☎ 013

25 ILLEGAL DRUGS AND ALCOHOL

	Yes	No
a. In the last 5 years, have you used, possessed, supplied, or manufactured any illegal drugs? When used without a prescription, illegal drugs include marijuana, cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), stimulants (cocaine, amphetamines, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.). *(NOTE: The information you provide in response to this question will not be provided for use in any criminal proceedings against you.)*		X
b. Have you experienced problems (disciplinary actions, evictions, formal complaints, etc.) on or off a job from your use of illegal drugs or alcohol?		X

If you answered "Yes" to question a or b above, provide information relating to the types of substance(s), the nature of the activity, and any other details relating to your involvement with illegal drugs or alcohol. Include any treatment or counseling received.

Month/Year	Month/Year	Type of Substance	Explanation
	To		
	To		
	To		

26 YOUR INVESTIGATIONS RECORD

	Yes	No
a. Has the United States Government ever investigated your background? If "Yes," use the codes that follow to provide the requested information below. If "Yes," but you can't recall the investigating agency and/or the security clearance received, enter "Other" agency code or clearance code, as appropriate, and "Don't know" or "Don't recall" under the "Other Agency" heading, below. If your response is "No," or you don't know or can't recall if you were investigated and cleared, check the "No" box.		X

Codes for Investigating Agency
1 - Defense Department 4 - FBI
2 - State Department 5 - Treasury Department
3 - Office of Personnel Management 6 - Other *(Specify)*

Codes for Security Clearance Received
0 - Not Required 3 - Top Secret 5 - Q-Nonsensitive
1 - Confidential 4 - Sensitive Compartmented Information 7 - L
2 - Secret 5 - Q-Sensitive 8 - Other

Month/Year	Agency Code	Other Agency	Clearance Code	Month/Year	Agency Code	Other Agency	Clearance Code

	Yes	No
b. To your knowledge, have you ever had a clearance or access authorization denied, suspended, or revoked, or have you ever been debarred from government employment? If "Yes," give date of action and agency.		

Month/Year	Department or Agency Taking Action	Month/Year	Department or Agency Taking Action

27 YOUR FINANCIAL RECORD

	Yes	No
a. In the last 5 years, have you, or a company over which you exercised some control, filed for bankruptcy, been declared bankrupt, been subject to a tax lien, or had legal judgment rendered against you for a debt? If you answered "Yes," provide date of initial action and other information requested below.		X

Month/Year	Type of Action	Name Action Occurred Under	Name/Address of Court or Agency Handling Case	State	ZIP Code

	Yes	No
b. Are you now over 180 days delinquent on any loan or financial obligation? Include loans or obligations funded or guaranteed by the Federal Government. *(If an SF 171, Application for Federal Employment, will be attached, you do not need to repeat Federal Government delinquencies. See the instructions headed, "How is the SF 171 used with this form?")*		

If you answered "Yes," provide the information requested below:

Month/Year	Type of Loan or Obligation and Account #	Name/Address of Creditor or Obligee	State	ZIP Code

Enter your Social Security Number before going to the next page → [redacted]

PORT000000010

26 YOUR ASSOCIATION RECORD	Yes	No
a. In the last 15 years, have you been an officer or a member or made a contribution to an organization dedicated to the violent overthrow of the United States Government and which engages in illegal activities to that end, knowing that the organization engages in such activities with the specific intent to further such activities?		X
b. In the last 15 years, have you knowingly engaged in any acts or activities designed to overthrow the United States Government by force? If you answered "Yes" to a or b, explain in the space below:		X

Continuation Space

Use the continuation sheet(s) *(SF 86A)* for additional answers to questions 9, 10, and 11. Use the space below to continue answers to all other questions and any information you would like to add. If more space is needed than what is provided below, use a blank sheet(s) of paper. Start each sheet with your name and Social Security Number. Before each answer, identify the number of the question.

After completing Parts 1 and 2 of this form and any attachments, you should review your answers to all questions to make sure the form is complete and accurate, and then sign and date the following certification and sign and date the release on page 10. If you attach an SF 171, Application for Federal Employment, make sure that it is updated and that any information added to the SF 171 is initialed and dated.

Certification That My Answers Are True

I read each question asked of me and understood each question. My statements on this form, and any attachments to this form, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both.

Signature (Sign in ink) [redacted] Date [redacted]

Enter your Social Security Number before going to the next page [redacted]

08/23/94 18:09 ☎ 009

Standard Form 86
Revised December 1990
U.S.Office of Personnel Management
5 CFR Chapter 732

Form approved:
O.M.B. No. 3206-0007
NSN 7540-00-634-4036
86-110

UNITED STATES OF AMERICA

AUTHORIZATION FOR RELEASE OF INFORMATION

Carefully read this authorization to release information about you, then sign and date it in ink.

I Authorize any investigator, special agent, or other duly accredited representative of the U.S. Office of Personnel Management, the Federal Bureau of Investigation, the Department of Defense, and any authorized Federal agency, to obtain any information relating to my activities from schools, residential management agents, employers, criminal justice agencies, retail business establishments, or other sources of information. This information may include, but is not limited to, my academic, residential, achievement, performance, attendance, disciplinary, employment history, and criminal history record information.

I Understand that, for financial or lending institutions, medical institutions, hospitals, health care professionals, and other sources of information, a separate specific release will or may be needed, and I may be contacted for such a release at a later date.

I Further Authorize the U.S. Office of Personnel Management, the Federal Bureau of Investigation, the Department of Defense, and any other authorized agency, to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for, assignment to, or retention in, a sensitive position, in accordance with 5 U.S.C. 9101.

I Authorize custodians of records and sources of information pertaining to me to release such information upon request of the investigator, special agent, or other duly accredited representative of any Federal agency authorized above regardless of any previous agreement to the contrary.

I Understand that the information released by records custodians and sources of information is for official use by the Federal Government only for the purposes provided in this Standard Form 86, and may be redisclosed by the Government only as authorized by law.

Copies of this authorization that show my signature are as valid as the original release signed by me. This authorization is valid for two (2) years from the date signed.

Signature (Sign in Ink)	Full Name (Type or Print Legibly)		Date Signed
[signature]	Gabriel Thomas Porteous, Jr.		April 7, 1994
Other Names Used			Social Security Number [redacted]
Current Address (Street, City)	State	ZIP Code	Area Telephone Number (Include Area Code)
4801 Neyrey Dr., Metairie	LA	70010012	(504) 455-5879

G. THOMAS PORTEOUS, JR.

Birth:	December 15, 1946	New Orleans, Louisiana
Legal Residence:	Louisiana	
Marital Status:	Married	Carmella Giardina Porteous 4 children
Education:	1964 - 1968	Louisiana State University B.A. degree
	1968 - 1971	Louisiana State University Law School J.D. degree
Bar:	1971	Louisiana
Experience:	1971 - 1973	State of Louisiana Attorney General's Office Special Counsel
	1973 - 1974	Edwards, Porteous & Amato Partner
	1973 - 1975	District Attorney's Office Parish of Jefferson Chief Felony Complaint Div
	1974 - 1976	Edwards, Porteous & Lee Partner
	1976 - 1980	Porteous, Lee & Mustakas Partner
	1980 - 1984	Porteous & Mustakas Partner
	1982 - 1984	City Attorney's office City of Harahan City Attorney
	1984 - present	24th Judicial District Court State of Louisiana District Judge
Office:	Gretna Courthouse Annex Building Second Floor, Room 200 Gretna, Louisiana 70053 504 364-3850	
Home:	4801 Neyrey Drive Metairie, Louisiana 70002 504 455-5879	
Ethnic Group:	Caucasian	
Salary:	$133,600	

The White House,

19

To the

Senate of the United States.

I nominate G. Thomas Porteous, Jr., of Louisiana,

to be United States District Judge for the Eastern District of

Louisiana vice Robert F. Collins, resigned.

G. THOMAS PORTEOUS, JR.

Birth:	December 15, 1946	New Orleans, Louisiana
Legal Residence:	Louisiana	
Marital Status:	Married	Carmella Giardina Porteous 4 children
Education:	1964 - 1968	Louisiana State University B.A. degree
	1968 - 1971	Louisiana State University Law School J.D. degree
Bar:	1971	Louisiana
Experience:	1971 - 1973	State of Louisiana Attorney General's Office Special Counsel
	1973 - 1974	Edwards, Porteous & Amato Partner
	1973 - 1975	District Attorney's Office Parish of Jefferson Chief Felony Complaint Div
	1974 - 1976	Edwards, Porteous & Lee Partner
	1976 - 1980	Porteous, Lee & Mustakas Partner
	1980 - 1984	Porteous & Mustakas Partner
	1982 - 1984	City Attorney's office City of Harahan City Attorney
	1984 - present	24th Judicial District Court State of Louisiana District Judge

Office: Gretna Courthouse Annex Building
Second Floor, Room 200
Gretna, Louisiana 70053
504 364-3850

To be United States District Judge for the Eastern District of Louisiana

final

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

G. THOMAS PORTEOUS, JR.
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es).

Residence: 4801 Neyrey Drive
Metairie, LA 70002

Office: 24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
2nd Floor, Room 200
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946 New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

Carmella Ann Giardina Porteous
Vascular Technician
Vascular Laboratory, Inc.
3939 Houma Blvd., Suite 20
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Louisiana State University (New Orleans) 1964-1968
Bachelor of Arts - Economics
Degree Awarded: May, 1968

Louisiana State University Law School 1968-1971
Baton Rouge, LA
Juris Doctor
Degree Awarded: May, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

District Court Judge January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law Spring 1990
Civil Procedure Spring 1991

District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

District Attorney's Office Assistant District Attorney
Parish of Jefferson Supervisor:February 1,1975-August 6,1984
District Atty. John Mamoulides Chief Felony Complaint Div.:
Gretna Courthouse Annex Bldg. October 8,1973-January 31,1975
5th Floor
Gretna, LA 70053

St. Mary Dominican College
Instructor: Criminal law and procedure 1982

Porteous & Mustakas 3445 North Causeway Blvd. Metairie, LA 70002	Partner April 1980 - August 1984
City Attorney's Office City of Harahan 6437 Jefferson Hwy. Harahan, LA 70123	City Attorney July 1,1982 - August 23,1984
Porteous, Lee & Mustakas 139 Huey P. Long Ave. Gretna, LA 70053	Partner February 1976 - April 1980
Edwards, Porteous & Lee 139 Huey P. Long Ave. Gretna, LA 70053	Partner August 1974 - January 1976
Edwards, Porteous & Amato 139 Huey P. Long Ave. Gretna, LA 70053	Partner October 1973 - July 1974
Attorney General State of Louisiana P.O.Box 94005 Baton Rouge, LA 70804	Special Counsel September 10, 1971 - October 7, 1973
B & L Associates Dick Barrios 512 Acadia Baton Rouge, LA 70806 (800) 673-0545 (504) 751-4791 Position: Clerk/Assistant	1970 - 1971

Baker Shoe Stores 1968 - 1971
Westside Shopping Center
Gretna, LA 70053
(no longer at that location)
main branch - 837 Canal St.
New Orleans, LA 70112
(504) 524-7904
Position: Shoe Salesman

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

La. State Bar Association
4th & 5th Circuit Judges Association President - 1991
Chief Judge - 24th Judicial district Court - 1992
American Bar Association
Jefferson Bar Association
American Judges Association
American Judicature Society
La. District Attorney's Association President Assistant - 1974
District Attorney Section

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. please explain the reason for any lapse of member ship. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Louisiana	September 7, 1971
United States District Court, Eastern District of Louisiana	September 19, 1972
United States Supreme Court	April 18, 1977
United States Court of Appeals, 5th Circuit	October 1, 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you please supply them.

See Attachment "A".

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - May, 1990.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

PORT000000020

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction. Other specific courts dispose of these two areas.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

(1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La. App 5 Cir., June 1988)
(2) In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

See Attachment "B-1"

(3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (LA 1988)
(4) Paul Fuller v. William Barattini, 574 So.2d 412, (La. App. 5 Cir., Jan.,1991)
(5) Paul Hidding v. Dr. Randall Williams, 578 So.2d 1192, (La. App. 5 Cir., April,1991)
(6) Karen Jewell v. The Bershire Development, 612 So.2d 749, (La. App. 5 Cir. Dec.,1992)
(7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La. App. 5 Cir., May,1993)
(8) Betty Ann Dunn v. Kreutziger, D.D.S., et al., 625 So.2d 672, (La. App. 5 Cir., Oct., 1993)
(9) Judy Watts on behalf of minor, Polly Watts v. J.C. Penny et al., App.Ct. # _____, (La. App 5 Cir.,1994)(Not designated for publication)

See Attachment "B-2"

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 632 So.2d 1170, (La. App. 5 Cir.,Feb.,1994)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Abadie, 612 So.2d 1 (LA 1993). Defendant made a statement implicating himself in the murder of a seven year old girl, Raquel Fabre. The issue of right to counsel was involved on appeal from ruling that the statement was admissible. The Supreme Court found that defendant sufficiently invoked right to counsel by unsuccessfully attempting to obtain legal advice on telephone, and defendant did not "initiate " or "reopen" interrogation by expressing his possible willingness to talk to particular officer in response to police's chief's request that he submit to lie detector test.

State v. Lindsey, 491 So.2d 371 (LA 1986). LSA-R.S. 14:71 (A)(2) Issuing worthless checks - presumption. The statute provides that a presumption exists, as follows: if an offender fails to pay a check within ten days after notice of its nonpayment, it shall be presumptive evidence of his intent to defraud. Prior rulings by the Supreme Court led me to believe that this presumption would be a mandatory presumption, as opposed to a permissive presumption, hence, unconstitutional. The Supreme Court ruled that the statute was ambiguous as to whether it created a mandatory or permissive presumption; therefore, it is interpreted as constitutional and with lenity toward the defendant. The Court recognized that its holding in this case was in conflict with its prior holdings in State v. Williams, 400 So.2d 575, (LA 1981) and State v. McCoy, 395 So.2d 319 (La. 1980). It explained how those cases could be reconciled and interpreted. My lower court ruling was vacated and the matter remanded.

Yount v. Maisano, 616 So.2d 1382, (La. App. 5 Cir. 1993); 620 So.2d 823 (LA 1993). Jury award against homeowner's policy reversed. Exclusion in policy for bodily injury "expected or intended by the insured." Supreme Court reversed, finding the actions of defendant to be an intentional act and excluded from coverage.

Marshall v. Citicorp Mortgage, Inc., 601 So.2d 669, (La. App. 5 Cir. 1992). Summary judgment reversed finding issue of material facts existed. Issue of decreasing credit life for less than loan balance when combined with rule of '78's in rebating finance charge.

Succession of Ziifle, 595 So.2d 776, (La. App. 5 Cir. 1992). Protracted litigation since 1978. A default judgment, taken before Judge Price, the previous judge of Division A, was found to be a nullity; hence, subsequent judgments were set aside.

Tracy v. Travelers Ins. Companies, 594 So.2d 541, (La. App. 5 Cir 1992) reversed trial court on exclusion of coverage on comprehensive general liability policy.

Wills v. State Farm Auto, 578 So.2d 1006, (La. App. 5 Cir. 1991). Reversed granting of summary judgment on whether insured had offered choice of limits for uninsured motorist coverage and affirmatively selected lower limits.

Kuebler v. Martin, 578 So.2d 113, (LA 1991). This is one of two cases argued before me on the same day. In the first, Autin v. Martin, I granted the defendant's relief on all claims and dismissed plaintiff's claims against the banks. The 5th Circuit Court of Appeals affirmed my decision at 576 So.2d 72, writs were denied by the Louisiana Supreme Court on April 11, 1991.

The second case is the one cited. In that case I granted the bank's motions. Likewise, this was affirmed by the appellate court but reversed by the Supreme Court only as to one of the banks finding the general language in plaintiff's petition did state a cause of action as to that one bank.

American Motorist Ins. Co., 579 So.2d 429, (LA 1991); 566 So.2d 121, (La. App. 5 Cir. 1990). Court of Appeals changed the amount of quantum on portions of the award. Supreme Court reversed the Court of Appeals, in part, and the trial court, in part, on different elements of damage award.

Lutz v. Jefferson Parish School, 565 So.2d 1071, (La. App. 5. Cir 1990); 503 So.2d 106, (La. App. 5 Cir. 1987). Judgment granting reduction in workman compensation payments based upon claimant receiving disability

retirement benefits. Reversed, finding statute was prospective only.

Cabral v. National Fire Ins.Co., 563 So S.2d 533, (La. App. 5 Cir 1990); writ denied, 567 So.2d 1129. Reversed default judgment because insufficient trial record made by plaintiff.

Succession of Austin, 527 So.2d 483, (La. App. 5 Cir. 1988). Foreign will modified by the trial court to reduce the portion that impinged on the legitime. Court of Appeals reversed finding that subsequent birth and legitimation of children revoked the will.

Augustine v. Griffen, 525 So.2d 540, (La. App. 5 Cir. 1988); writ denied, 532 So.2d 118. Twelve-year old on bike hit by auto. I reduced award by 20% for comparative negligence of child. Court of Appeals changed percentage of negligence on child to 80%.

First National Bank v. Verheugen, et al., 527 So.2d 453, (La. App. 5 Cir. 1988); writ denied 530 So.2d 576. Reversed in part on issue of attorney's fees.

Thibodeaux v. Burton, 525 So.2d 1103, (La. App. 5 Cir.1988); 531 So.2d 767, (LA 1989). Plaintiff left a quadriplegic after an auto accident. Pacific Employer Insurance Company failed to answer. Plaintiff obtained default judgment. Court of Appeals upheld default judgment and refusal of new trial. Supreme Court reversed with 3 dissents, finding an incomplete record was made by plaintiff when he confirmed the default.

Southern States Masonry, Inc. v. L.A. Jones Construction Co., et al., 507 So.2d 198, (LA 1987). Granted exception of prematurity. "Pay when paid" clause of contract between contractor and subcontractor.

Cooper v. Brownlow, 491 So.2d 693, (La. App. 5 Cir. 1986). Ruled Levee District was immune from liability under provision of LSA-R.S. 9:2791 and 2795, on a summary judgment. Court of Appeals ruled question of material facts in dispute which precluded summary judgment.

Administration of Tulane Education, 497 So.2d 27, (La. App. 5, 1986). Suit on tuition. Directed verdict for defendant was reversed finding university's

records admissible. Remanded.

Markey v. Howard, 484 So.2d 165, (La. App. 5 Cir. 1986). Jury's assessment of 30% negligence to plaintiff driver was manifestly erroneous. Appellate Court removed this allocation, in all other particulars affirmed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State v. Manuel Caballero, 472 So.2d 85, (La. App 5 Cir., June,1985); 492 So.2d 1215
State v. Edward Parr, 498 So.2d 103, (La. App 5 Cir., Nov.,1986); writ denied 532 So.2d 113
State v. Antoinne Williams, 483 So.2d 626, (La. App 5 Cir., Feb.,1986)
State v. Nolan Grant, 517 So.2d 1151, (La. App 5 Cir., Dec.,1987)
State v. Karen Copeland, 631 So.2d 1223, (La. App. 5 Cir., Jan.,1994)
State v. Darrell Williams, 545 So.2d 651, (La. App. 5 Cir.) writ denied 556 So.2d 53 and 584 So.2d 1157
State v. Jessie Head, 598 So.2d 1202, (La. App. 5 Cir., April,1992)
State v. Lane Nelson, 105 S.Ct 2050; 459 So.2d 510; *post conviction relief*
See Attachment "B-3"

16. Public office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Attorney General — 9/10/71 - 10/7/73
State of Louisiana

Assistant District Attorney — 2/1/73 - 8/6/84
Parish of Jefferson

Both were appointed positions

No unsuccessful candidacies for elective public office

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

District Court Judge — January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law — Spring 1990
Civil Procedure — Spring 1991

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

Instructor: Criminal law and procedure
St. Mary Dominican College — 1982

District Attorney's Office
Parish of Jefferson
District Atty. John Mamoulides
Gretna Courthouse Annex Bldg., 5th Floor
Gretna, LA 70053

Assistant District Attorney
Supervisor: 2/1/75 - 8/6/84
Chief Felony Complaint Div.:
10/8/73 - 1/31/75

City Attorney's Office
City of Harahan
6437 Jefferson Hwy.
Harahan, LA 70123

City Attorney
7/1/82 - 8/23/84

Porteous & Mustakas
3445 North Causeway Blvd.
Metairie, LA 70002

Partner
April 1980 - August 1984

Porteous, Lee & Mustakas
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
February 1976 - April 1980

Edwards, Porteous & Lee
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
August 1974 - January 1976

Edwards, Porteous & Amato
139 Huey P. Long Ave.
Gretna, LA 70053

Partner
October 1973 - July 1974

Attorney General
State of Louisiana
P.O. Box 94005
Baton Rouge, LA 70804

Special Counsel
9/10/71 -10/7/73

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General Civil Practice - in private practice & City Attorney
Criminal Prosecution - Attorney General & District Attorney

2. Describe the typical former clients, and mention the areas, if any, in which you have specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan & also prosecuted municipal violations, in the Mayor's Court

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
   (a) federal courts - 20%
   (b) state courts of record - 80%
   (c) other courts - 0%

3. What percentage of your litigation was;
   (a) civil - 50%
   (b) criminal - 50%

4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus cases - Sole Counsel, 80%; Chief Counsel, 15%; Associate Counsel, 5%.

5. What percentage of these trials were:
   (a) jury 40%
   (b) non-jury 60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the names of the court and name of the judge or judges before whom the case was litigated; and
(c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. I handled this case through all pre-trial discovery and pleadings and participated in all conferences with Judge Alvin Rubin with respect to the case. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.

Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terriberry, Carroll, Yancey & Farrell
Walter Carroll, Jr.(retired)
3100 Energy Centre

1100 Poydras St.
New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. I was associated to try this matter because of my extensive litigation experience. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140
(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a ten-year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. When I initially met the victim and her mother, she would not comment. Then, she later made only isolated statements. The child had to be shown the courtroom, where she would be seated and where all the lawyers, defendant and judge would be seated. In advanced preparation for trial, D.A. personnel were placed in the courtroom to simulate the public. Great efforts were made to make the child understand what was about to happen and to make her comfortable and responsive. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
Sam Dalton
2001 Jefferson Hwy.
Jefferson, LA 70121
(504) 835-4289

Co-Defense Counsel:
George Troxell
4330 Canal Street
New Orleans,LA 70119
(504) 488-8800

4. State of Louisiana v. Leonard J. Fagot
Criminal # 76-2116, 24th Judicial District Court
Division "J", Judge Patrick E. Carr
Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy. My participation was from the inception of this case. This matter required appearances in Federal Court, prior to trial in State District Court, because of defendant's claim of denial of due process based on his state of health. The Federal District Court denied defendant's claim and favorably commended our procedures and precautionary measures.
Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
Assistant District Attorney William Hall
3500 N. Hullen Street

Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May,1985); 475 So.2d 314,(La. Sept.,1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder and Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the victim/wife by the police. I handled this matter from the initial motion to reduce the bond. This was critical because at this stage we were able to positively connect the defendant with the weapon. Trial preparation was very time consuming because out of state trips were required to secure the presence of a witness. An appearance before a District Court Judge in Annapolis was required to secure the immediate apprehension and transportation of the witness to Louisiana, along with returning this witness to Annapolis.
Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:
Ralph Whalen
3170 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 582-2333

6. State of Louisiana v. James Nolen
Criminal # 81-4045, 24th Judicial District Court
Division "J", Judge Jacob Karno
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victim's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restrains were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:
Phil Johnson
(inactive) The Louisiana Bar Association reports no current address for this attorney and could only provide the following telephone number:
(714) 275-6066

7. State of Louisiana v. Joseph Batiste
Criminal #71-1081, 24th Judicial District Court
Division "A", Judge Louis DeSonier
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact. Multiple motions to suppress were argued. A photographic line up was suppressed, but the victim's in-court identification was allowed because a sufficient predicate was established to show an independent basis for the identification. Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, life imprisonment.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to police. There were two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights.
Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
Division "A ", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Eppling v. Jon-T Chemical, Inc.
Civil Action # , 24th Judicial District Court, State of Louisiana
Division "B", Judge Zaccaria
Citations: 363 So.2d 1263

Trial on the summary judgment

Sole Counsel: G. Thomas Porteous, Jr. for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.
Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:
Thomas Loop
(deceased)

Additionally, the following ten individuals have recently dealt with me on legal matters within the last five years:

Scott W. McQuaig
1500 One Galleria Blvd.
Metairie, LA 70001
(504) 836-5070

Edward J. Rice, Jr.
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234

Lawrence J. Centola, Jr.
650 Poydras St., Ste. 2100
New Orleans, LA 70130
(504) 523-1385

Raymond A. Pelleteri
1539 Jackson Ave., 6th Floor
New Orleans, LA 70130
(504) 561-5000

Jay Zainey
2543 Metairie Road
Metairie, LA 70001
(504) 831-6766

Robert Glass
530 Natchez Street
New Orleans, LA 70130
(504) 581-9083

Patricia LeBlanc
1615 Metairie Road
Metairie, LA 70005
(504) 834-2612

Kathryn T. Wiedorn
3421 N. Causeway Blvd., 9th Floor
Metairie, LA 70002
(504) 831-4091

Allan Berger
4173 Canal Street
New Orleans, LA 70119
(504) 486-9481

Joseph R. McMahon, Jr.
111 Veterans Blvd.
Heritage Plaza, Ste. 740
Metairie, LA 70005
(504) 837-1844

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently pled guilty to first degree and he was resentence to life in prison, without

capital punishment. (Attachment "B-3")

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C., State of Louisiana, Division "A", Judge Louis G. DeSonier,Jr.

The brief represents my sole personal work. Trial on the summary judgment, December 18, 1980. Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Instructor: Criminal Law/Criminal Procedure
For three years, I taught at St. Mary Dominican College. The class was a required course in the Criminal Justice program.

Co-instructor: Civil Procedure.
In conjunction with another attorney, I volunteered my time to teach third-year law students at Loyola School of Law. The emphasis was not only on the written and codified law, but also on the practical application of the law during trial proceedings. I taught the course during the Spring term in 1990 and 1991.

Speaker - Continuing Legal Education. I appeared as a speaker for numerous CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

District Court Judge
State of Louisiana
Division A, 24th Judicial District Court

District Court Judge, Ad Hoc
State of Louisiana
Division A, 24th Judicial District Court

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Louisiana State Employee Retirement System. If I am appointed prior to the end of my term, i.e., December 31, 1996, the benefits can only be drawn when I attain age 60.

2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the mandates of the Federal Rules of Civil & Criminal Procedure. I will also follow the guidelines of the Code of Judicial Conduct. I will also consider the model codes and recommendation of the ABA which are pertinent.

The only possible areas of conflict of interest would be reviewing cases from Louisiana State Court, 24th Judicial District Court, Division A, during the time I sat or a challenge to the Louisiana State Employee Retirement System. As to the retirement, a conflict could arise only if I remained on the Jefferson bench twelve (12) years, until 1996. If I took the Federal bench prior to this point, I would not be eligible for retirement proceeds until age sixty (60).

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment "C"

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment "D"

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only the campaign wherein I was elected District Court Judge.

III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Speaker - Continuing Legal Education. I appear as a speaker for numerous

CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

Since I took the bench, I invited field trips to Division "A", 24th J.D.C. for school children about once a month. The students would observe the docket and I then speak with them on the working of the court system. Afterwards, I entertain questions to explain either the particular case or the function of the courts.

I have also visited many schools in Orleans and Jefferson Parish to speak on the court systems, the functions and the duties of a judge.

Judging Moot Court Competitions on numerous occasions at Tulane School of Law and Loyola Law School.

I recently participated in the National Institute of Trial Advocacy program at Louisiana State University School of Law

At Loyola School of Law, I volunteered as co-instructor for Civil Procedure for two terms.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your

nomination?

No.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initially, I met with Senator John Breaux to discuss the possibility of being recommended for the federal bench. Both Senators Breaux and Johnston sent my name to the White House and I was recommended.

After completing multiple questionnaires, I was interviewed in Washington by members of the Justice Department, Office of Policy Development.

The FBI and the ABA have also conducted extensive reviews of my credentials and qualifications, along with conducting interviews.

On August 25, 1994, I was officially nominated by the President for the United States District Court, Eastern District of Louisiana.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our country, with its three separate and distinct branches of government, has withstood the test of time and the criticism of some. Even though the branches are separate, there will always be occasions when there is interaction among them while still preserving the separation of powers.

We, in the judiciary, have a duty to listen to the facts of a case and render a decision according to law pertinent to those issues. The presentation of the facts are for the litigants and we should always guard against participating in that presentation. A trier of fact should in no way devise, invent or concoct facts; it should rule on the case before it. Unless a question is certified before the court by the Louisiana Supreme Court or any other tribunal properly, it may not render an advisory opinion. Novel questions of law occasionally arise, and they must be dealt with according to the facts before the court. The judiciary must decide cases according to the facts and law as an impartial arbitrator.

In performing our duties there are occasions when our judgments may

be interpreted as judicial activism. When we declare a law unconstitutional and unenforceable that may be interpreted by some as interfering with the legislative function. However, such action is part of our duty and responsibility and is far different from actually legislating.

When we deal with individual grievances, we must be ever mindful to follow judicial precedent and constitutional interpretation. The personal feelings of a judge should never replace sound, established judicial precedent and constitutional interpretation. In instructing juries, I always remind them that "your decision must not be based on bias, prejudice, sympathy or public opinion." We in the judiciary must be ever mindful of this guideline when we are the trier of the facts.

Once a matter is before a court on a trial on the merits, the judiciary's duty is to render our decision solely based on the law and evidence. Prior to trial, a judge may be called upon to counsel or intervene as an unbiased peacemaker, encouraging the parties to be open minded and understanding.

If we attempt to go beyond our role, we may in fact infringe on areas reserved to the other branches of government. If we attempt to do less, we will not be adhering to our oaths and weakening the judicial branch of government. It is always a careful balance.

IV CONFIDENTIAL

1. Full name (include names used).

   Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Residence:	4801 Neyrey Drive Metairie, LA 70002	(504) 455-5879
Office:	Division "A" Gretna Courthouse Annex Bldg. 2nd floor, Room 200 Gretna, LA 70053	(504) 364-3850

3. Have you ever been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?

   No.

4. Were all your taxes (federal, state, and local) current (filed and paid) as of the date of your nomination?

   Yes.

5. Has a tax lien or other collection procedure (to include receipt of computer balance due notices) ever been instituted against you by federal, state, or local authorities? If so, give full details.

   No.

6. Have you or your spouse ever been the subject of any audit, investigation or inquiry for either federal, state, or local taxes? If so, give full details.

   No.

7. Have you or your spouse ever declared bankruptcy? If so, give particulars.

No.

8. Have you to your knowledge ever been under federal, state, or local investigation for a possible violation of either a civil or criminal statute or administrative agency regulation? If so, give full details. Has any organization of which you were an officer, director, or active participant ever been the subject of such an investigation with respect to activities within your responsibility? If so, give full details.

No.

9. Have you ever been the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group for a breach of ethics, unprofessional conduct or a violation of any rule of practice? If so, give particulars.

No.

10. Have you ever been sued by a client or other party? Have you ever been a party to any litigation? If so, give full particulars.

Clark, et al v. Edwards, et al.
86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity. Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.
413-728, 24th Judicial District Court
Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature. The Indigent Defender Board has stated that they will voluntarily dismiss this suit within the next 30 days.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al, except it was filed in Federal court.

Injunction granted, statute declared unconstitutional.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court
All judges were sued as nominal parties in their official capacity. Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). Post Augustus ruling, parties petitioned in state court for refunds of the fees collected to date. Refunds denied by the trial and appellate courts. The Louisiana Supreme Court denied plaintiffs' writs on June 24, 1994.

DeGrange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine DeGrange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

11. Please advise the Committee of any unfavorable information that may affect your nomination.

To the best of my knowledge, I do not know of any unfavorable information that may affect my nomination.

AFFIDAVIT

I, Gabriel Thomas Porteous, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Gretna, Louisiana this 6 day of September, 1994.

Gabriel Thomas Porteous, Jr.

Notary

AO-10
Rev. 1/93

FINANCIAL DISCLOSURE REPORT

Report Required [redacted]
Reform Act of 19[redacted]
101-194, Novemb[redacted]
(5 U.S.C.A. App.[redacted]

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Porteous (Jr.), Gabriel T.	United States District Court Eastern District of Louisiana	8-29-94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) United States District Court Judge	5. Report Type (check appropriate type) X Nomination, Date 8-25-94 ___ Initial ___ Annual ___ Final	6. Reporting Period 1-1-93 - 8-25-94
7. Chambers or Office Address Division A, 24th Judicial District Ct. Gretna Courthouse - Annex Bldg. Gretna, Louisiana 70053	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reviewing Officer Signature _____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed.* Complete all parts, checking the NONE box for each section where you have no reportable information. *Sign on last page.*

POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
X	NONE (No reportable positions)	

. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

	DATE	PARTIES AND TERMS
X	NONE (No reportable agreements)	

I. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE (Honoraria only)	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income)		
	1994 Year to Date Judicial State of Louisiana	$ 49,206.00
	Vascular Laboratory, Inc. (S)	$
	1993 Judicial State of Louisiana	$ 72,830.58
	Southern Baptist Hospital (Final balance of annuity, retirement, of my deceased mother)	$ 381.39
	Vascular Laboratory, Inc. (S) (See Attachment I)	$

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ATTACHMENT I

FINANCIAL DISCLOSURE REPORT (cont'd) PORTEOUS (JR.), Gabriel T. 8-29-94

III. NON-INVESTMENT INCOME

1992 Judicial State of Louisiana	$74,384.26
Southern Baptist Hospital (Retirement annuity deceased mother)	1,652.64
Executive Life Insurance of California (Retirement annuity deceased mother)	3,287.40

Vascular Laboratory, Inc. (S)

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Porteous (Jr.), Gabriel T.	8-29-94

IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements or gifts)	
1	Exempt	
2		
3		
4		
5		
6		
7		
8		

V. OTHER GIFTS.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts)		
1	Exempt		$
2			$
3			$
4			$

VI. LIABILITIES.

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Porteous (Jr.), Gabriel T.	8-29-94

I. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of assets (including trust assets) Identify each asset to be reported. For each asset reported, fill in columns (B) and (C). For each "Trust or other financial institution" asset reported, fill in columns (D) and (E) as appropriate. Complete columns (A)-(C) for spouse/dependent child assets only if they are solely owned or jointly owned with you. Please do not write "See schedule"	B. Gross income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period (if any)				
	(1) Amount Code (A-H)	(2) Type (e.g., div., rent, int.) Code (1-8)	(3) Value Code (J-P)	(4) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption) Code (1-7)	(2) Date (Month Day)	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
X NONE (No reportable income, assets, or transactions)									
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

Income Code:	A=$1,000 or less		B=$1,001-$2,500		C=$2,501-$5,000		D=$5,001-$15,000		
(Sec. cover Pg. 1)	E=$15,001-$50,000		F=$50,001-$100,000		G=$100,001-$1,000,000		H=More than $1,000,000		
Value Codes:	J=$15,000 or less		K=$15,001-$50,000		L=$50,001-$100,000		M=$100,001-$250,000		
(Sec. cover Pg. 1)	N=$250,001-$500,000		O=$500,001-$1,000,000		P=More than $1,000,000				
Value Method Codes:	Q=Appraisal		R=Assess. (Please attach copy)		S=Assessment (previous)		T=Cost (Real Estate Only)		
(Sec. cover Pg. 1)	U=Book Value		V=Other		W=Estimate				

FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Porteous (Jr.), Gabriel T.	8-29-94

VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

IX. CERTIFICATION.

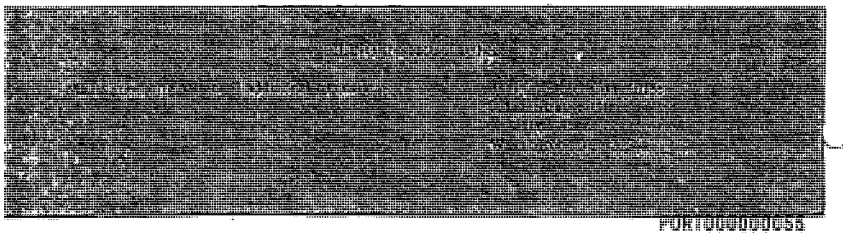
In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature _____ Date September 6, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)



IT NATIONAL BANK OF COMMERCE
(...EINAFTER REFERRED TO AS "BANK")
P. O. BOX 60279
210 BARONNE STREET
NEW ORLEANS, LOUISIANA 70160

PERSONAL FINANCIAL STATEMENT

NOTICE - This statement is designed for use by residents of Louisiana or another community property state. Reflect in this statement only your own financial condition. List all of your separate assets and any community property or income in which you have an interest, as well as all debts which may be satisfied out of either your separate or community property. If you are seeking credit jointly with your spouse and your spouse has separate community property and/or income, your spouse should submit a separate Personal Financial Statement and attach it to yours.

FOR BANK USE ONLY: OFFICER _____ CL# _____ CL# _____ IL# _____

Please do not leave any questions unanswered. Mark N/A ("Not Applicable") in any space which would otherwise be left blank.

INDIVIDUAL INFORMATION

Name Gabriel Thomas Porteous, Jr.	Employer Name Judicial Branch, State of Louisiana
Address 4801 Neyrey Drive	Employer Address 301 Loyola Avenue
City, State & Zip Metairie, Louisiana 70002	City, State & Zip New Orleans, Louisiana 70112
Date of Birth 12-15-46	Years with Present Employer 10
Social Security # [redacted]	Position or Occupation Judge
Residential Phone (504) 455-5879	Business Phone (504) 364-3850

STATEMENT OF FINANCIAL CONDITION AS OF April 26 ,1994

ASSETS (Do not include assets of questionable value)	In Dollars (omit cents)	LIABILITIES	In Dollars (omit cents)
Cash - (See Schedule 1)		Notes Payable - (See Schedule 8)	
Cash In This Institution	1,500	Notes Payable to This Institution - Secured	
Cash In Other Institutions	1,700	Notes Payable to This Institution - Unsecured	3,614
U.S. Gov't & Marketable Securities - (See Schedule 2)		Other Notes Payable - Secured	
U.S. Gov't Securities		Other Notes Payable - Unsecured	
Money Market Funds and Mutual Funds		Automobile Loans	
Listed Securities (NYSE, ASE, OTC)		Loans Against Margin Accounts - (See Schedule 2)	
Closely Held or Not Actively Traded Securities - (See Schedule 2)		Life Insurance Policy Loans - (See Schedule 3)	2,000
		Real Estate Mortgages Payable - (See Schedule 5)	
...n Surrender Value - Life Insurance Policies - (See Schedule 3)	5,000	Personal Residence	94,000
		Other Wholly Owned Real Estate	
IRA's, Keoghs, Profit Sharing & Other Vested Retirement Accounts - (See Schedule 4)	92,408	Partially Owned Real Estate	
		Oil and Gas Liabilities - (See Schedule 7)	
Real Estate - (See Schedule 5)		Credit Card Accounts and Bills Due	37,853
Personal Residence	225,000	Loans Due to Partnerships	
Other Wholly Owned Real Estate		Unpaid Income Tax	
Partially Owned Real Estate		Other Unpaid Taxes and Interest	
Real Estate Mortgages Owned - (See Schedule 6)		Estimated Tax Liability on Assets if Liquidated	
Accounts Receivable & Notes Receivable - (See Schedule 6)		Other Debts - Itemize below	
Oil and Gas Interests - (See Schedule 7)			
Deferred Income			
Automobiles	15,000		
Other Assets:			
Personal Property	25,000		
Partnership Interests			
		Total Liabilities	137,467
		Net Worth	228,141
Total Assets	365,608	Total Liabilities and Net Worth	365,608

GENERAL INFORMATION

Number of Dependents (not including Spouse): 4 Ages: 23, 21, 19, 13 Marital Status: ☒ Married ☐ Unmarried ☐ Separated

Spouse Information:

...ame Carmella Giardina Porteous

...Address (if different from applicant) _____

Employer Name Vascular Laboratory, Inc. Position or Occupation Technician

Employer Address 4320 Houma Blvd., Metairie, Louisiana 70006

Social Security [redacted] Date of Birth 12-23-48 Business Phone (504) 456-5536

If married and domiciled in Louisiana, have you and your spouse executed a contract which varies the legal (Community Property) regime?
☐ Yes ☒ No If "Yes", attach a copy of such contract.

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CHEDULE 4 - IRAs, Keoghs, Profit Sharing & Other Vested Retirement Accounts - If not enough space, please attach separate schedule.

TRUSTEE OR PLAN ADMINISTRATOR	IN THE NAME OF	TYPE OF ACCOUNT	BENEFICIARY	MARKET VALUE	AMOUNT OF PLAN LOANS	MARKET VALUE LESS PLAN LOANS	ACCESS DATE
tate of La.	G. Thomas	Ret.	Carmella Porteous	92,408	0	0	12/15/06
mployees	Porteous, Jr.						or
etirement							Separation
ystem							from servic
						Total	

CHEDULE 5 - Real Estate Owned - If not enough space, please attach separate schedule.

ADDRESS & TYPE OF PROPERTY	% OWNED	TITLE IN NAME OF	YR. ACQ'D	COST & IMPRVMTS	PRESENT MARKET VALUE	MORTGAGE BALANCE	LENDER	LOAN MATURITY	ANNUAL LOAN PMT. AMT.	GROSS ANNUAL INCOME	ANNUAL OPER. EXP. (not incl. loan)
ERSONAL RESIDENCE											
801 Neyrey Dr.		Mr. & Mrs.	77								
etairie, La.	100	G.T. Porteous,	Jr.	105,000	225,000	94,000	Fidelity	9/2008	9981.84		
HER WHOLLY OWNED REAL ESTATE (Residential or Commercial)											
RTIALLY OWNED REAL ESTATE											
				Totals					Totals		
				Your Portion of Market Value and Debt					Your Portion of Income & Expenses		

HEDULE 6 - Accounts Receivable, Mortgage Receivable & Notes Receivable - If not enough space, please attach separate schedule.

DUE FROM	ORIGINAL AMOUNT	PRESENT BALANCE	INT. RATE	MATURITY	PAYMENT TERMS	ARE PMTS. CURRENT?	COLLATERAL
	Total						

HEDULE 7 - Oil and Gas Interests (Including General Partnership Interests) - If not enough space, please attach separate schedule.

FIELD NAME, ARISH / COUNTY & STATE	TYPE OF INTEREST	SOURCE OF VALUATION	VALUATION AMT / DATE	PRESENT LOAN BAL.	LENDER	ANNUAL PMT. AMOUNT	GROSS ANNUAL INCOME	ANNUAL CASH OPER. EXP.
			Totals			Totals		

HEDULE 8 - Notes Payable (Including all loans, active lines of credit and inactive lines of credit.) - If not enough space, please attach separate schedule.

ME OF CREDITOR	TYPE OF FACILITY (Loan or Line)	ORIGINAL LOAN OR LINE AMOUNT	UNPAID BALANCE	INTEREST RATE	MATURITY DATE	UNSECURED OR SECURED (List Collateral)	ACCOUNT NUMBER
rst NBC	Loan	3,614	3,614	6	*	unsecured	[redacted]
		Total	3,614				PORT000000057

U.S. Department of Justice

Office of Policy Development

Assistant Attorney General

Washington, D.C. 20530

August 25, 1994

PERSONAL AND CONFIDENTIAL

Honorable G. Thomas Porteous
Gretna Courthouse Annex Building
2nd Floor, Room 200
Gretna, Louisiana 70053

Dear Judge Porteous:

In connection with your candidacy for appointment to the United States District Court for the District of Idaho, you will be required to file a "Financial Disclosure Report" as required by the Ethics Reform Act of 1989 within five days of your name being submitted to the United States Senate for confirmation consideration.

Please review and comply with the enclosed material. Because of the short filing requirement, you may wish to complete the form in draft at this time (do not send to us). Also you should note that the information on the form may not be older than thirty days from the date of nomination. You will be notified by telephone when the five days begins to run.

If you have any questions concerning this procedure, please call Sheila Joy at 202 514-1607.

Sincerely yours,

Eleanor Dean Acheson
Assistant to the Attorney General

CHAIR
Robert P. Watkins
725 Twelfth Street, N.W.
Washington, DC 20005
FIRST CIRCUIT
Michael S. Greco
19th Floor
One International Place
100 Oliver Street
Boston, MA 02110
SECOND CIRCUIT
Arnold I. Burns
23rd Floor
1585 Broadway
New York, NY 10036
THIRD CIRCUIT
Victor F. Battaglia, Sr.
1800 Mellon Bank Center
Tenth and Market Streets
Wilmington, DE 19801
FOURTH CIRCUIT
J. Hardin Marion
26th Floor
100 East Pratt Street
Baltimore, MD 21202
FIFTH CIRCUIT
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2400 One American Center
600 Congress Avenue
Austin, TX 78701
SIXTH CIRCUIT
Charles E. English
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Bowling Green, KY 42102-0770
SEVENTH CIRCUIT
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Suite1333
111 West Washington Street
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EIGHTH CIRCUIT
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25 West Flagler Street
Miami, FL 33130-1780
DISTRICT OF COLUMBIA CIRCUIT
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1747 Pennsylvania Avenue, N.W.
Washington, DC 20006-4604
FEDERAL CIRCUIT
Mortimer M. Caplin
Suite 1100
One Thomas Circle, N.W.
Washington, DC 20005
BOARD OF GOVERNORS LIAISON
J. Michael McWilliams
26th Floor
100 East Pratt Street
Baltimore, MD 21202
STAFF LIAISON
Irene R. Emsellem
American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

June 29, 1994

CONFIDENTIAL

Eleanor Dean Acheson, Esquire
Assistant Attorney General
Office of Policy Development
United States Department of Justice
Room 4234
Washington, D.C. 20530

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Eleanor:

Thank you for your letter of June 28, 1994 regarding the Honorable G. Thomas Porteous, Jr.

I have also received a copy of your letter to Judge Porteous requesting him to forward a copy of his Personal Data Questionnaire responses to me and Sylvia H. Walbolt, Esq.

I have written to Judge Porteous and Mrs. Walbolt. Copies of those letters are enclosed.

Sincerely yours,

Robert P. Watkins

Robert P. Watkins
Chair

Enclosures

cc: Sylvia H. Walbolt, Esq.

PORT000000059

CHAIR
Robert P. Watkins
725 Twelfth Street, N.W.
Washington, DC 20005
FIRST CIRCUIT
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Washington, DC 20036
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AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

June 29, 1994

CONFIDENTIAL

Honorable G. Thomas Porteous, Jr.
Judicial Department of Louisiana
Gretna Courthouse-Annex Building
Gretna, LA 70053

Dear Judge Porteous:

Eleanor Dean Acheson, Assistant Attorney General, sent me a copy of her June 28, 1994 letter to you requesting that you transmit copies of your responses to the Personal Data Questionnaire to me and to Sylvia H. Walbolt, Esquire, who will be conducting the investigation. Receipt of this document is the starting point for the investigation.

Enclosed is a copy of the Committee's brochure, "Standing Committee on Federal Judiciary--What It Is and How It Works," as amended, for your information.

If you have any questions about this process, please feel free to call me at (202) 434-5151.

We look forward to receipt of your responses.

Sincerely yours,

Robert P. Watkins
Chair

Enclosure

cc: Eleanor Dean Acheson, Esq.
Sylvia H. Walbolt, Esq.

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Washington, DC 20036
(202) 331-2210

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

June 29, 1994

CONFIDENTIAL

Sylvia H. Walbolt, Esq.
Carlton, Fields, Ward, Emmanuel,
Smith & Cutler, P.A.
Barnett Tower, Suite 2300
One Progress Plaza
St. Petersburg, FL 33701

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Sylvia:

You will have received copies of Eleanor Dean Acheson's letters of June 28, 1994 to me and Judge Porteous in connection with his candidacy for appointment to the United States District Court for the Eastern District of Louisiana.

I have written to Judge Porteous as per the enclosed letter, pointing out that our investigation will not begin until we receive his responses to the Personal Data Questionnaire.

After receipt of Judge Porteous' responses, please make your usual inquiries and proceed in the usual manner.

Sincerely yours,

Robert P. Watkins

Robert P. Watkins
Chair

Enclosure
cc: Eleanor Dean Acheson, Esq.

PORT000000061

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIR
William E. Willis
125 Broad Street
28th Floor
New York, NY 10004-2498
FIRST CIRCUIT
Michael S. Greco
19th Floor
One International Place
100 Oliver Street
Boston, MA 02110
SECOND CIRCUIT
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624 South Grand Avenue
Los Angeles, CA 90017
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Mona S. Lambird
500 West Main
Oklahoma City, OK 73102-2275
ELEVENTH CIRCUIT
Sylvia H. Walbolt
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Washington, DC 20005
BOARD OF GOVERNORS LIAISON
R. William Ide III
One Peachtree Center
303 Peachtree Street
Atlanta, GA 30308
STAFF LIAISON
Irene K. Emsellem
American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CONFIDENTIAL August 30, 1994

Hon. Eleanor Dean Acheson
Assistant Attorney General
United States Department of Justice
Office of the Attorney General
Room 5131
Washington, D.C. 20530

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Eldie:

As a result of our investigation our Committee is unanimously of the opinion that Honorable G. Thomas Porteous, Jr. is Qualified for appointment as Judge of the United States District Court, Eastern Districtof Louisiana.

Sincerely,

Bill

William E. Willis
Chair

cc: All Committee Members

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CHAIR
William E. Willis
125 Broad Street
28th Floor
New York, NY 10004-2498
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STAFF LIAISON
Irene R. Emsellem
merican Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CONFIDENTIAL August 30, 1994

Committee on the Judiciary
ATT: Hon. Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

RE: HONORABLE G. THOMAS PORTEOUS, JR.
United States District Court
Eastern District of Louisiana

Dear Senator Biden:

Thank you for affording this Committee an opportunity to express an opinion pertaining to the nomination of Honorable G. Thomas Porteous, Jr. for appointment as Judge of the United States District Court, Eastern District of Louisiana.

Our Committee is unanimously of the opinion that Judge Porteous is Qualified for this appointment.

A copy of this letter has been sent to Judge Porteous for his information.

Sincerely,

Bill Willis

William E. Willis
Chair

cc: Honorable G. Thomas Porteous, Jr.
All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson

PORT000000063

CHAIR
William E. Willis
125 Broad Street
28th Floor
New York, NY 10004-2498
FIRST CIRCUIT
Michael S. Greco
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American Bar Association
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary
1800 M Street, NW
Washington, DC 20036
(202) 331-2210

CONFIDENTIAL August 30, 1994

Honorable G. Thomas Porteous, Jr.
24th Judicial District Court
Division "A"
Gretna Courthouse Annex Bldg.
Second Floor, Room 200
Gretna, LA 70053

Dear Judge Porteous:

Congratulations on your nomination for appointment as Judge of the United States District Court, Eastern District of Louisiana.

At the invitation of the United States Senate Committee on the Judiciary, we have today sent a letter to them reporting on our evaluation of your qualifications. A copy of this letter is enclosed for your information.

Sincerely,

Bill Willis
William E. Willis
Chair

(Enclosure)

cc: All ABA Judiciary Committee Members
Hon. Eleanor Dean Acheson

U. S. Department of Justice

Executive Secretariat

Washington, D.C. 20530

6/28/94

TO: Sylvia Walbolt, Esq.
Carlton, Fields, Ward, Emmanuel,
Smith & Cutler, P.A.

FM: Sheila Joy
Staff Assistant, Judicial Appointments

RE: G. Thomas Porteous, Jr.

Judge Porteous is away on a cruise. Mr. Watkins' office has indicated you would like to have some information regarding Judge Porteous so you could begin work on his evaluation immediately.

The following is a DRAFT of Judge Porteous' Personal Data Questionnaire (without attachments). He will be back in his office next week and will send you a final copy with attachments.

I will be in my office tomorrow, if you need anything further. My telephone number is 202 514-1607.

U. S. Department of Justice
Office of Policy Development

Washington, D.C. 20530

June 28, 1994

Robert P. Watkins, Esq.
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005

Dear Mr. Watkins:

We would appreciate having the formal report of the ABA Standing Committee on Federal Judiciary on G. Thomas Porteous, Jr., who is under consideration for appointment as United States District Judge for the Eastern District of Louisiana.

To facilitate the Committee's evaluation, we have asked Judge Porteous to forward his response to the Personal Data Questionnaire to you and to the Circuit representative of the Committee.

Sincerely yours,

Eleanor D. Acheson
Assistant Attorney General

cc: Sylvia H. Walbolt, Esq.

U. S. Department of Justice

Office of Policy Development

Washington, D.C. 20530

June 28, 1994

PERSONAL AND CONFIDENTIAL

The Honorable G. Thomas Porteous, Jr.
Judicial Department of Louisiana
Gretna Courthouse-Annex Building
Gretna, Louisiana 70053

Dear Mr. Porteous:

In connection with your candidacy for appointment to the United States District Court for the Eastern District of Louisiana, we have requested a formal report from the ABA Standing Committee on Federal Judiciary.

In order to facilitate the ABA Committee's evaluation, please send the information provided in your response to the Personal Data Questionnaire to both the Chairman and the Circuit representative of the Committee, whose names and addresses, respectively, are as follows:

Robert P. Watkins, Esq.
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 20005

Sylvia H. Walbolt, Esq.
Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A.
Barnett Tower, Suite 2300
One Pregress Plaza
St. Petersburg, Florida 33701

If you have any questions concerning this procedure, please call Sheila Joy at 202 514-1607.

Sincerely yours,

Eleanor D. Acheson
Assistant Attorney General

cc: Robert P. Watkins, Esq.
Sylvia H. Walbolt, Esq.

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(202) 331-2210

AMERICAN BAR ASSOCIATION Standing Committee on Federal Judiciary

Reply to: Williams & Connolly
725 12th St., N.W.
Washington, D.C. 20005
(202) 434-5151

July 7, 1994

CONFIDENTIAL

Honorable G. Thomas Porteous, Jr.
24th Judicial District Court
Division "A"
Gretna Courthouse Annex Building
Second Floor, Room 200
Gretna, LA 70053

Dear Judge Porteous:

Thank you for your letter of July 5, 1994 and the copy of your responses to the Personal Data Questionnaire.

I understand that you have also sent a copy of your responses to Sylvia H. Walbolt, Esquire, who will be conducting the investigation.

Mr. Walbolt will contact you in due course.

Sincerely yours,

Robert P. Watkins

Robert P. Watkins
Chair

cc: Eleanor Dean Acheson, Esq.
Sylvia H. Walbolt, Esq.

SENT BY:Xerox Telecopier 7020 ; 03-22-94 ; 14:29 ; 2024588423→ 95142424;# 3
03-22-94 10:54AM TU 94501047 T003/004

HONORABLE G. THOMAS PORTEOUS
4801 NEYREY DRIVE
METAIRIE, LA 70002
(504) 455-5878
(504) 364-3850

JUDICIAL AND LEGAL EXPERIENCE:

January 1992 - Present	Chief Judge of the 24th Judicial District Court
August 1984 - Present	Judge of the 24th Judicial District Court, Division "A" Parish of Jefferson
January 1973 - 1984	Assistant District Attorney Parish of Jefferson 1976 to 1984, Felony Supervisor - in charge of major felony prosecutions; more notably, State v. Poretto, State v. Fagot 1973-1974 Chief Felony Complaint Division
January 1971 - 1973	Louisiana Department of Justice Special Counsel, assigned to Criminal Division; tried felony cases in Jefferson Parish, Caddo Parish and Lafourche Parish. Assigned to Louisiana Supreme Court, responsible for all appeals and Writs of Habeas Corpus
1973 - Present	Guest lecturer and speaker. Judge, Loyola Moot Court Competition. Instructor of Criminal Law, Criminal Procedure and Constitutional Law at: St. Mary's Dominican College, Loyola School of Law, and Jefferson Parish Sheriff Office Training Academy
January 1982 - 1984	City Attorney, City of Harahan
1973 - 1984	Private General Civil Law Practice Porteous and Mustakas

EDUCATION:

1971	Juris Doctorate Louisiana State University School of Law, Baton Rouge Finalist, Robert Lee Tullis Moot Court Competition
1968	Bachelor of Arts, Major in Economics Louisiana State University, New Orleans

PROFESSIONAL AND PRIVATE ORGANIZATIONS:

1991 - 1992 President of the Fourth and Fifth Circuit Judges Association
Current Board Member - Executive Board of the Fourth and Fifth Circuit Judges Association
Past President - Louisiana District Attorney's Association (Assistant's Section)
Federal Bar Association
American Bar Association
Louisiana State Bar Association
Jefferson Bar Association
Former President St. Clement of Rome Men's Club

AWARDS:

Morality in Media of Louisiana - January 21, 1983
Brother Martin High School, Outstanding Service - 1987
University of Southwestern Louisiana, Criminal Justice Program - 1980

PROFESSIONAL CONTINUING LEGAL EDUCATION:

Annual Spring Judges Conference - Lafayette
Annual Fall Judges Conference
Annual District Attorney's Conference, Louisiana District Attorney Association
Career Prosecutor Course, National College of District Attorneys
Louisiana Evidence Seminars, Louisiana State University
Criminal Law Seminars, Louisiana State University

ADMITTED TO PRACTICE BEFORE:

United States Supreme Court
Louisiana Supreme Court
Federal District Court, Eastern District of Louisiana
United States Court of Appeal, 5th Circuit

ACTIVITIES AND HOBBIES:

Coach - football, baseball; Referee - basketball, Johnny Bright Playground
Hunting, fishing, golf

PERSONAL:

Born: New Orleans, Louisiana; December 15, 1946
Married to the former Carmella Ann Giardina, father of four children: Michael, Timothy, Thomas and Catherine

CHAMBERS OF
G. Thomas Porteous, Jr.
JUDGE, DIVISION "X"

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

September 15, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to the request from the Judiciary Committee, enclosed is the original and two copies of the Motion to Dismiss in the Twenty-Fourth Judicial District Indigent Defender Board, et als vs. The State of Louisiana, et al, No. 413-728, 24th Judicial District Court. Also enclosed is the Writ Denial in Steven Augustus, et al vs. State of Louisiana, through its Governor, Edwin Edwards, et al, Parish of Jefferson, Twenty-Fourth Judicial District Court, Div. "D", No. 427-921.

The Augustus and Sierra cases cited in the confidential section of the Senate Questionnaire may be confusing. Originally, Augustus, et al vs. State of Louisiana, Governor Roemer, et al, 90-4667, U.S. District Court, Eastern District of Louisiana, was decided in federal court and declared LSA-R.S. 13:994(B)(1),(2),(3) to be unconstitutional.

Simultaneously, Augustus and Sierra were filed seeking a return of the funds collected pursuant to LSA-R.S. 13:994(B)(1),(2),(3). Only Augustus proceeded to trial because all parties agreed that the issues were identical in Sierra and the decision in Augustus would be dispositive in the Sierra case.

Accordingly, the denial of writs in Augustus makes the state court proceedings final.

If any further information is required, please advise.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

bcc: Nancy Scott-Finan

CHAMBERS OF
C. Thomas Perkins, Jr.
JUDGE, DIVISION "X"

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

September 29, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to a request from your committee, please allow me to supplement my answer to Question 10.

Inadvertently, I omitted my membership in Chateau Golf and Country Club. I have held this membership for approximately nine years as an honorary member.

Since the date of my membership, Chateau Golf and Country Club has been completely nondiscriminatory and my membership has been fully disclosed to the Federal Bureau of Investigation and other organizations involved in the background check pertaining to my nomination.

Chateau Golf and Country Club was acquired by its present owners on September 29, 1992, pursuant to bankruptcy proceedings involving the previous owners.

Enclosed please find the original and two copies of the bylaws of Chateau Golf and Country Club from approximately 1989. The new ownership has not revised or modified these bylaws, but has allowed membership and participation open to all.

If any further information is required, please contact Michael Coons, General Manager, Chateau Golf and Country Club, at 1-504-467-1351. Mr. Coons has previously been contacted by the

Federal Bureau of Investigation as part of my background investigation.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

bcc: Nancy Scott-Finan

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

CHAMBERS OF
C. Thomas Portens, Jr.
JUDGE, DIVISION "A"

September 29, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to a request from your committee, please allow me to supplement my answer to Question 10.

Inadvertently, I omitted my membership in Chateau Golf and Country Club. I have held this membership for approximately nine years as an honorary member.

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Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

CHATEAU GOLF

AND COUNTRY CLUB

As stated in its Charter, the OBJECTS AND PURPOSES OF CHATEAU GOLF AND COUNTRY CLUB are:

> It shall be the object and purpose of this Club to acquire, by purchase, lease or otherwise, an eighteen (18) hole golf course, together with a Clubhouse and all other improvements thereon located in the Parish of Jefferson, State of Louisiana, in that part thereof known as Chateau Estates, and to operate the same as a private golf and country club for the use of its members and guests; to acquire, by purchase, lease or otherwise and operate thereon tennis courts and one or more swimming pools for the private use and benefit of its members and guests; to promote, organize and conduct such recreational, cultural and sporting activities as to enhance the physical, moral and intellectual development of its members and guests; to do any and all other things necessary or germane to the accomplishment of the above objects and purposes.

The management of the Club and all corporate powers are vested in the BOARD OF DIRECTORS composed of no more than three (3) persons. The members of the BOARD OF DIRECTORS serve for one (1) year from the date of their election, or until their successors have been duly elected by the stockholders. At present there is only one stockholder and he holds all authorized and issued shares of stock in the corporation.

The BOARD OF DIRECTORS has authority to make and alter by-laws, determine the amount of the initiation fee and other fees, determine the amount of the annual

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dues to be paid, establish such class or classes of membership as it may deem advisable, and to prescribe the qualifications and privileges, and all fees and dues to be paid by and the regulations to govern all such classes. It has the further authority to prepare, adopt, promulgate and enforce the rules and regulations of the Club. The BOARD OF DIRECTORS serves simultaneously as the Admissions Committee and it is vested with the power of general supervision over all of the affairs of the Club and it is the tribunal of last resort before which the appeal of disputed questions shall be ultimately decided.

The BOARD hereby promulgates the:

BY-LAWS
OF
CHATEAU GOLF AND COUNTRY CLUB

SECTION 1.

CLASSES OF MEMBERSHIP. The membership shall be divided into the following classes:

1) REGULAR - A Regular member shall be a person of good character or reputation who shall have been elected to membership in the manner hereinafter provided.

2) CORPORATE or FIRM - Members of this class shall enjoy all of the rights and privileges of Regular members, as defined in these By-Laws and the Club Rules and Regulations, except that the membership certificate shall be issued in the name of the corporation or firm and then assigned to an officer, executive or director for use. No more than five such assignees may be permitted for each corporate or firm membership, and each assignee shall be charged annual dues on the same basis as a Regular membership.

The assignee may be changed from time to time by the corporate or firm member, subject to the approval of the new assignee by the Admissions Committee. The annual dues charged of a corporate or firm member shall be the same as that charged Regular members, except that the corporate or firm member shall also be charged a fee of $100.00 each time a new assignee is approved and admitted.

3) NON-RESIDENT - A Non-Resident member shall be a person who would otherwise qualify as a Regular member except that his domicile and place of usual residence is located more than 100 statute miles from the Clubhouse.

4) LADIES - An unmarried lady, over the age of 18 years, of good character or reputation, who shall have been elected to membership in the manner hereinafter provided. Includable in this class of membership shall be the widow of a deceased member.

5) HONORARY - An Honorary member shall be an adult who has so distinguished himself in cultural, political, scientific, intellectual or athletic endeavor as to warrant the special honor of election to membership in the Club without the necessity of payment of initiation fees or payment of the annual dues required of other members.

6) TENNIS - A Tennis member shall be a person of good character or reputation whose principal athletic and recreational interest is tennis and who shall be elected to membership in the same manner as a Regular member.

7) SOCIAL - A Social member shall be a person of good character or reputation who shall be elected to membership in the same manner as a Regular member.

SECTION II.

NON-PROPRIETARY. Membership in Chateau Golf and Country Club does not include a proprietary interest in the Club and/or any of its facilities or movable or immovable property. Members are not issued stock in the Club but only Certificates of Membership therein.

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SECTION III.

ANNUAL DUES AND FEES. The annual dues, initiation fee and other fees shall be fixed by the BOARD OF DIRECTORS.

SECTION IV.

CLUB COUNCIL. There shall be a Club Council which shall consist of seven (7) members in good standing. Each member shall be appointed by the BOARD OF DIRECTORS and shall serve as such until he resigns or is removed by the BOARD OF DIRECTORS.

The Chairman of the Club Council shall be elected at the annual meeting of the Club Council, which shall be held during the month of October.

The Chairman of the Club Council shall preside over all meetings of the Club Council and he shall serve as such until his successor is elected and installed.

SECTION V.

ELECTION TO MEMBERSHIP. All nominations for membership must be made by a Regular member. Nominations must be in writing, addressed to the Club General Manager and they must be seconded by three other Regular members, two of whom must be a member of the Club Council. The nominator and at least one of the seconding parties must affirm that they know him to be of good moral character or reputation and that they are not related to such nominee by blood or by marriage.

Upon receipt of a letter of nomination and the required seconding letters, the Club General Manager shall mail to the nominee an application for membership, and shall post the nominee's name and his proposers on the Club bulletin board.

After receipt of the completed, signed application for membership, the Club General Manager shall deliver the same to the Chairman of the Club Council, who shall deliver the same to the Admissions Committee. The Admissions Committee, by majority vote, shall accept or reject the nominee's application for membership. All proceedings before the Club Council and the Admissions Committee regarding consideration of an application for membership shall be kept in strictest confidence and it shall be the obligation of each member of the Club Council and each member of the Admissions Committee to preserve the secrecy of the deliberations, except that each nominee shall be informed of the disposition of his application by correspondence addressed to him.

SECTION VI.

PRIVILEGES. All classes of membership shall have such privileges and use of the Clubhouse, golf course and other facilities as may be given them by the Rules and Regulations adopted and promulgated by the BOARD OF DIRECTORS.

SECTION VII.

SUSPENSIONS AND EXPULSIONS. The BOARD OF DIRECTORS shall be vested with the powers to censure, suspend and expel members for conduct which in the opinion of the BOARD is detrimental to the good order, welfare or reputation of the Club; provided that no sentence of suspension or expulsion shall be pronounced by the BOARD OF DIRECTORS except upon a vote of two-thirds (2/3rds) of the members of the BOARD. The action of the BOARD OF DIRECTORS shall be final and conclusive.

SECTION VIII.

RESIGNATIONS. No resignation shall be accepted unless the resigning member shall have first paid all indebtedness due to the Club. The resignation shall become effective on the first day of the next succeeding quarter during which the resignation shall have been handed to the Secretary and all indebtedness to the Club shall have been paid.

SECTION IX.

DELINQUENTS. All indebtednesses due to the Club by a

member or a guest shall be due and payable on the first day of the month following the month within which the indebtedness was incurred. Accounts shall be considered delinquent thirty (30) days after the last day of the month in which the charge was made. The member shall be notified of such delinquency and a delinquency penalty of ten (10%) percent shall be added to that portion of his account which is delinquent. In the event that the entire account has not been paid in full within fifteen (15) days from the date of mailing of the notice of delinquency, the delinquent member shall be suspended from the privileges of the Club. Notice of suspension shall be posted on the Club bulletin board. Should the suspended member remain suspended for thirty (30) days, he shall be automatically expelled from the Club membership and forever denied the use of the Club facilities and its grounds.

SECTION X.

COMMITTEES. The following are the standing committees of Chateau Golf and Country Club. The chairman of each committee shall be a member of the Club Council and remaining members of each committee shall be selected by the chairman of the committee, with the advice and consent of the Club Council.

A. GOLF COMMITTEE
B. FOOD & BEVERAGE COMMITTEE
C. SOCIAL COMMITTEE
D. CLUBHOUSE COMMITTEE
E. TENNIS COMMITTEE
F. SWIMMING POOL COMMITTEE
G. MEMBERSHIP COMMITTEE

SECTION XI.

These amended By-Laws shall supersede all prior By-Laws and they shall become effective as of this date.

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the By-Laws of Chateau Golf and Country Club, Ltd., which were unanimously adopted by the BOARD OF DIRECTORS at its meeting on May 1, 1989, with all members present and voting.

J. MICHAEL COONS, Secretary

PORTION OF 00000088

Twenty-Fourth Judicial District Court
PARISH OF JEFFERSON
STATE OF LOUISIANA
Gretna

CHAMBERS OF
G. Thomas Porteous, Jr.
JUDGE, DIVISION "K"

September 27, 1994

Committee on the Judiciary
Attn: Honorable Joseph R. Biden, Jr., Chairman
224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Biden:

Pursuant to the request from the Judiciary Committee, enclosed please find the original and two copies of the decisions referred to by me in response to Question 15 (1). Copies of the unpublished opinions of the Court of Appeals in the following cases are also attached:

In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986)

Judy Watts on behalf of minor, Polly Watts v. J. C. Penny, et al, App. Cc. # 93-CA-811 , (La. App. 5 Cir., 1994)

All of the decisions referred to in my response to Question 15 (3) were rendered from the bench, and accordingly, there are no written decisions. The only exception is State vs. Lane Nelson and a copy of this decision is attached.

If any further information is required, please advise.

Sincerely,

G. THOMAS PORTEOUS, JR.

GTPjr/rd

Enclosures

bcc: Nancy Scott-Finan

NOT DESIGNATED
FOR PUBLICATION

IN THE MATTER OF THE WRONGFUL DEATH OF STANTON J. STARK	*	NO. 86-CA-34
	*	COURT OF APPEAL
	*	FIFTH CIRCUIT
	*	STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NUMBER 263-171, DIVISION "A"
HONORABLE G. THOMAS PORTEOUS, JR., JUDGE

CHARLES GRISBAUM, JR.

JUDGE

JUN 02 1986

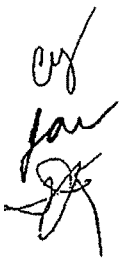
(Court composed of Judges Lawrence A. Chehardy, Thomas J. Kliebert, and Charles Grisbaum, Jr.)

W. PAUL ANDERSSON, for appellant
HAMMETT, LEAKE & HAMMETT
2500 Canal Place One
New Orleans, Louisiana 70130-1193

EDWARD M. GORDON III, for appellees
4141 Veterans Boulevard, Suite 214
Metairie, Louisiana 70002

JOHN R. STARK, for appellees
IN PROPER PERSON
5909 Lafreniere Street
Metairie, Louisiana 70003

AMENDED IN PART, AND AS AMENDED, AFFIRMED



On appeal is a judgment notwithstanding the verdict (J.N.O.V.) disposition of a wrongful death matter in which the jury had allocated fault 44 percent to Stephen Douglas and 56 percent to the decedent, Stanton Stark. We amend and, as amended, we affirm.

We are called upon to determine:

(1) Whether the trial court erred in failing to credit GEICO for the $10,000 paid by the auto liability insurer, State Farm; and

(2) Whether the trial court erred in granting the J.N.O.V. in that (a) it erroneously reassessed percentages

of negligence and (b) it erroneously increased the quantum award.

The record shows that on November 25, 1981, as Stephen Douglas was about to depart an evening party attended by various neighborhood teen-aged males, Stanton Stark walked up to the passenger door of Douglas' vehicle. Besides Douglas, three other males were inside the car. Shortly after Stark approached, Douglas pulled away, made a U-turn--in part, across a neighbor's lawn--and headed south down Sandra Avenue towards Lafreniere Street. For whatever reason, Stark, who had been positioned in the open doorway of the car, remained so positioned, riding on the door sill as the car followed this path. After the car straightened out on Sandra, Stark either fell or jumped off, struck his head, and later died.

In addressing the initial issue, we note the plaintiffs in this suit oppose GEICO, their uninsured/under-insured motorist carrier. State Farm paid its $10,000 liability limit for coverage on the Douglas auto and was dismissed at the close of the plaintiffs' case. Plaintiffs concede that GEICO is entitled to a $10,000 credit for the sum paid by State Farm. Calculated in the initial judgment, the credit must have been omitted inadvertently from the J.N.O.V. Accordingly, we amend the judgment of the trial court to incorporate the $10,000 credit.

We now turn to the remaining issue and initially address whether the trial court erred in reassessing the negligence of the parties. The jury found that Stark assumed the risk of injury. It also specifically allocated fault at 44 percent to Douglas and 56 percent to Stark. In casting

its first and J.N.O.V. judgments, the court disregarded this assumption of risk finding, concluding that La. C.C. art. 2323 more properly applied to assign degrees of fault. In essence, then, the court determined that the finding as to assumption of risk was legally irrelevant.

The trial court based its conclusion on what we consider dicta in Bell v. Jet Wheel Blast, 462 So.2d 166 (La. 1985) that indicates:

> In those types of cases in which comparative fault principles may be applied, the principles of article 2323 and its predecessors should be applied by analogy so that the claim for damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss. . . . Furthermore, the adoption of a system of comparative fault should, where it applies, entail the merger of the defenses of misuse and assumption of risk into the general scheme of assessment of liability in proportion to fault.

Id. at 172.

Our jurisprudence states that "The elements of the defense of assumption of the risk are: (1) that the plaintiff had knowledge of the danger; (2) that he understood and appreciated the risk therefrom; and (3) that he voluntarily exposed himself to such risk." Fritscher v. Chateau Golf & Country Club, 453 So.2d 964, 967 (La. App. 5th Cir. 1984), writ denied, 460 So.2d 604 (La. 1984). See also Beck v. Boh Bros. Constr. Co., 467 So.2d 1318, 1321 (La. App. 5th Cir. 1985). Here, it appears that Stark had been drinking, which might well have affected his knowledge of danger or his appreciation of that danger. Moreover, the testimony without exception indicates that Stark's approaching the car and his behavior thereafter were unplanned and unanticipated.

He had not planned to ride with Douglas, nor does it appear that he was attempting to enter the car. The spontaneity of Stark's behavior militates against his fully comprehending the risks attendant. Finally, nowhere does it appear that Stark knew that Douglas would start his car and drive away with Stark clinging to its side. Once Douglas left, Stark had no idea how far he would drive. Even if Stark hopped aboard once the car began to move, it cannot be said that Stark voluntarily assumed the risks of bouncing across a neighbor's yard or of proceeding on down the street. Stark was given no opportunity to get off during the course of these maneuvers. Given the leanings of Bell and the facts herein, we find the court correctly concluded that assumption of the risk was inapplicable as a matter of law.

We now turn to the questions of whether the trial court erred in its reassessment of the percentages of fault. By the 1979 amendment of La. C.C.P. art. 1811 quantum may, indeed, be altered by J.N.O.V. provided that "based on the evidence there is no genuine issue of fact." That is, "where the trial court is convinced that, under the evidence, reasonable minds could not differ as to the amount of damages, it should have the authority to grant the appropriate judgment notwithstanding the verdict." La. C.C.P. art. 1811 comments. We also note that this enunciated standard applies to changes affecting the merits, more specifically, the reassessment of fault. Blum v. New Orleans Pub. Serv., Inc., 469 So.2d 1117, 1119 (La. App. 4th Cir. 1985), writ denied, 472 So.2d 921 (La. 1985).

The trial court, in its reasons for judgment, states, in part:

Viewing the evidence most favorable to the party against whom the motion is made, the court finds that defendant failed to prove that plaintiff was in any way at fault in becoming an "outrider" on the vehicle, voluntarily. All evidence preponderates to the finding that plaintiff found himself in a position of imminent peril without sufficient time to consider and weigh all circumstances or the best means that may be adopted to avoid the impending danger.

There was no evidence presented which could substantiate a finding that the emergency was brought about by any alleged fault on the part of Stanton J. Stark.

Tim Talbot testified that when Stanton got to the car the lights and engine were off. Norman McKay testified that the car was stopped when Stanton was on the threshold.

It is clear from the testimony of those present who could recall the particulars of how Stanton came to be on the auto that Stanton was positioned between or/on the threshold and the open car door when the vehicle began to move. The driver did not use reasonable care in taking on its passenger; Stanton had every right to assume that the vehicle would not move until he was safely away or inside the vehicle. It is also clear that once the vehicle did pull forward Stanton was on the horns of a dilemma . . . [from which] only hindsight and cool reflection could have possibly provided a safe escape. The law clearly does not hold plaintiff to this standard of conduct. See Carter v. City Parish Government[,] 423 So.2d 1080 (La. 1982).

* * *

It is clear from the evidence that at the beginning of the scenario Stanton Stark was nothing more than a pedestrian, resting on the Douglas vehicle while observing the activity of the occupants. Stanton then involuntarily became an "outrider" on the vehicle because of the sudden and unexpected movement of the car.

The court is of the opinion that Stanton had every legal right to assume

> that there would be no movement of the vehicle until he was safely away from, or inside of, the vehicle.
>
> Under these circumstances, the court concludes that Steven [sic] Douglas breached the duty he owed to plaintiff to exercise reasonable care in the operation and control of his vehicle and the risk of plaintiff's injury was within the scope of that duty. Inasmuch as Steven [sic] Douglas' negligent conduct was a cause[-]in[-]fact of the accident and resulting injuries, he is liable to plaintiff.

We agree.

Regarding the final issue, quantum, we note the trial court, in its reasons for judgment, states, "The court is convinced that, under the evidence of this case, reasonable minds could not differ as to the fact that a much higher award of damages was justified." Again, we agree. Recognizing the well-settled legal axiom that a trial court has wide discretion in its award of damages, we will not disturb such an award absent manifest error, and we find none. Accordingly, we find no error in the trial court's entry of the judgment N.O.V. in favor of the plaintiff.

Other issues have been raised, which, we find, have no merit.

For the reasons assigned, the judgment of the trial court is affirmed, with the exception that this court reduces the damage award by $10,000, which is the amount State Farm Mutual Automobile Insurance Company, as the insurer of Stephen Douglas, has already paid the plaintiffs.

AMENDED IN PART, AND AS AMENDED, AFFIRMED

NOT DESIGNATED
FOR PUBLICATION

JUDY WATTS, ON BEHALF OF HER MINOR DAUGHTER, POLLY WATTS

VERSUS

J. C. PENNEY AND LIBERTY MUTUAL INSURANCE COMPANY

NO. 93-CA-811

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

ON APPEAL FROM THE 24TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA, PARISH OF JEFFERSON
NO. 306-035, DIVISION "A"
THE HONORABLE G. THOMAS PORTEOUS, JUDGE

FEB 23 1994

SOL GOTHARD
JUDGE

(Court composed of Judges Charles Grisbaum, Jr., Edward A. Dufresne, Jr. and Sol Gothard.)

PATRICK J. SANDERS
3200 Ridgelake Drive, Suite 100
Metairie, Louisiana 70002
Attorney for Intervenor/Appellant (Thomas Cerullo)

DANIEL J. MARKEY, JR.
5559 Canal Boulevard
New Orleans, Louisiana 70124
Attorney for Defendant In Intervention (Lawrence J. Hand)

AMENDED AND AS AMENDED, AFFIRMED

Appellant, Thomas Cerullo, intervened in this action for damages to protect his rights under a contingency fee contract with the plaintiff. The trial court awarded him $5,000.00 on a quantum meruit basis for professional services rendered. Mr. Cerullo brings this appeal seeking review of the adequacy of the amount awarded and requesting additional funds for reimbursement of outstanding advances for medical expenses and costs related to the case.

In January, 1984, Polly Watts, the minor daughter of Judith Watts, was injured when she fell in a dressing room of the J.C. Penney store on Lapalco Boulevard in Jefferson Parish. Judith Watts employed Thomas Cerullo to assert the claim. Ms. Watts signed a contingency fee contract with Mr. Cerullo and suit was filed against J.C. Penney and its insurer, Liberty Mutual Insurance Company on January 25, 1985.

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In July, 1987, Ms. Watts discharged Mr. Cerullo and hired Lawrence Hand to represent her in the action for damages. Mr. Cerullo filed a petition of intervention in November, 1988 seeking attorney's fees and reimbursement of certain costs. The lawsuit was settled out of court on December 10, 1990 for a total of $270,000.00; of which, $90,000.00 was withheld for payment of attorney's fees. Mr. Hand received one-half of that amount, or $45,000.00, immediately and the remaining $45,000.00 was held in escrow pending consideration of and ruling on Mr. Cerullo's claim.

After a trial on the merits, Mr. Cerullo was awarded $5,000.00 and the remaining $40,000.00 was awarded to Mr. Hand. The trial court gave extensive written reasons for judgment which indicate that the award represents payment for thirty hours of work at $125.00 per hour. The trial court stated that, "the Court finds that Mr. Cerullo's contribution to the ultimate resolution of the case was minimal. His sole accomplishment was to interrupt prescription." Mr. Cerullo argues that the award is too low to fairly compensate him for his work.

The litigation record of the principal matter shows that Mr. Cerullo filed only one pleading, the initial petition. Service on that petition was held and, in fact, never accomplished. No depositions were taken in the three years Mr. Cerullo had the case. At trial, Mr. Cerullo testified that he did not keep a record of the time he spent working on the case. He submitted a reconstructed summary of hours worked, asserting that he spent a total of 263.25 hours.

At trial Mr. Cerullo stipulated that service on the petition for damages was held, that there was no litigation using the courts and, that there were no depositions or discovery of any kind. He testified that he spent time researching the case, discussing the matter with the insurance adjustar and various medical and legal experts. Mr. Cerullo stated that he did not move forward with the case because the injured girl was only

fourteen at the time and he wanted to know the full extent of her injuries before he settled the matter.

Mr. Cerullo introduced testimony from Dr. Rick Saluga, a chiropractor who treated Polly Watts for about three weeks. Dr. Saluga verified that, considering travel time, eight to ten hours would be a fair estimate of time spent by Mr. Cerullo in consultation. Donald Klein, an attorney, testified that Mr. Cerullo spent about ten hours discussing the matter with him.

The record further shows that Mr. Cerullo wrote eight letters to Liberty Mutual during the three years he represented Ms. Watts. The last letter, written in March, 1986 contained a demand for $175,000.00 to settle the claim. That demand was rejected by the insurance company and a counter offer of $15,000.00 was made in August, 1986. The matter apparently did not proceed beyond that, and in January of 1987 Mr. Cerullo was discharged.

Ms. Watts testified that she had few meetings with Mr. Cerullo, and that these meetings usually took place outside of his office. She complained that Mr. Cerullo was uncommunicative and that the limited communications were fraught with misrepresentations.

When a party to a contingency fee contract discharges his attorney before the fee is earned, the attorney's mandate is revoked and the contract is dissolved. Quantum meruit then becomes the proper basis for recovery. Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1978); Keys v. Mercy Hosp. of New Orleans, 537 So.2d 1223 (La.App. 4th Cir.1989). In Toups v. Brainis, 608 So.2d 246, 247 (La.App. 5th Cir.1992), this court stated:

> Under Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1979), the attorney fee of a discharged attorney is to be apportioned according to the respective services and contributions of the attorney's work performed and other relevant factors as set forth in Rule 1.5 of the Rules of Professional Conduct; which provides in pertinent part:
>
> > (a) A lawyer's fee shall be reasonable. The factors to be

considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

Quantum meruit means as much as is deserved. Smith v. Westside Transit Lines, Inc., 313 So.2d 371 (La.App. 4th Cir.1975), writ denied, 318 So.2d 43 (La.1975). A quantum meruit analysis properly evaluates not merely the laws expended, but the results and benefits obtained. Smith v. Westside Transit Lines, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra, at 1225. Therefore, recovery is limited to the actual value of the service rendered. Saucier v. Hayes Dairy Products, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra.

The trial court gave credence to Ms. Watts testimony and found that she had ample cause to discharge Mr. Cerullo for his lack of candor and failure to communicate. The court further found that Mr. Cerullo took a "wait and see" approach to the case and should not be compensated for that time. The court further found that the estimate of the hours spent, reconstructed after the fact and offered at trial by Mr. Cerullo, was exaggerated.

Given the facts of this case we cannot hold that the trial court abused its discretion in awarding Mr. Cerullo a total of $5,000.00 in attorney's fees.

Mr. Cerullo also complains that the court erred in failing to award him $2,423.00 as reimbursement for outstanding advances for medical expenses and costs related to the case. Mr. Cerullo introduced copies of cancelled checks made out to Ms. Watts totaling $425.00, two checks to the clerk of court totaling $130.00 and several other checks for various medical expenses totaling $689.00. Those costs total $1,244.00. Mr. Cerullo also asks for reimbursement for an additional $1,179.00 for litigation costs guaranteed. The trial court judgment awarded Mr. Cerullo reimbursement for the initial filing fee but was silent as to the other costs.

Recently, in Dupuis v. Faulk, 609 So.2d 1190, at 1192, (La.App. 3rd Cir. 1992), the court stated:

> The Privilege for attorney's fees is granted by La. R.S. 9:5001 and R.S. 37:218. Both statutes were amended by Acts 1989, No. 78 § 1, effective June 16, 1989, to include the following definitions:
>
> 9:5001
> B. The term "professional fees", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> 37:218
> B. The term "fee", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> The Rules of Professional Conduct of the Louisiana Bar Association with regard to the advances made to a client are found in Rule 1.8(e):
>
> (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

> (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
>
> (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Rule 1.8(e) embodies the former Disciplinary Rule 5-103(B):

> Disciplinary Rule 5-103(B) provides: "While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

In Louisiana State Bar Association v. Edwins, 329 So.2d 437 (La.1976), at page 446, the Supreme Court addressed the propriety of advancing financial assistance during representation of a client:

> If an impoverished person is unable to secure subsistence from some source during disability, he may be deprived of the only effective means by which he can wait out the necessary delays that result from litigation to enforce his cause of action. He may, for reasons of economic necessity and physical need, be forced to settle his claim for an inadequate amount.

The Dupuis court held that certain medical and living expenses are now included a part of the "fee" for privilege purposes. The court at 1193, further observed that:

> ...In extending the privilege to cover such advances, the legislature intended to overrule, at least in part, Calk v. Highland Construction & Manufacturing, 376 So.2d 495 (La.1979).
>
> In Calk, supra, the Louisiana Supreme Court found that the word "fee" did not include advances which are in the nature of a loan, nor does it include the payment or reimbursement of expenses which, like medical bills, constitute the client's special damages...

We find that interpretation of the legislative intent to be consistent with the changes made in the 1989 amendments to LSA-R.S. 37:218 and LSA-R.S. 9:5001. Thus, we find the trial court's judgment should be amended to award Mr. Cerullo reimbursement of advances made by him in furtherance of Ms. Watts litigation. We do not find, nor has Mr. Cerullo suggested, jurisprudential support for an award of funds secured but not paid to medical providers.

For the foregoing reasons the judgment of the trial court is amended to award Mr. Cerullo the sum of $1244.00 for reimbursement of funds advanced. Mr. Hand's award is decreased by $1,244.00. In all other respects the judgment is affirmed.

AMENDED AND AS AMENDED, AFFIRMED

G. THOMAS PORTEOUS, JR.
PERSONAL DATA QUESTIONNAIRE

1. Full name and social security number.

Gabriel Thomas Porteous, Jr.
[redacted]

2. Office and home addresses, zip codes, telephone numbers and area codes.

Office: 24th Judicial District Court, Division "A"
Gretna Courthouse Annex Bldg.
Second Floor, Room 200
Gretna, LA 70053
(504) 364-3850

Home: 4801 Neyrey Dr.
Metairie, LA 70002
(504) 455-5879

3. Date and place of birth.

December 15, 1946
New Orleans, LA

4. Are you a naturalized citizen? If so, give date and place of naturalization.

No.

5. Family status.

a. Have you ever been married? If so, state the date of marriage and your spouse's full name including maiden name, if applicable.

Yes. June 28, 1969 - Carmella Ann Giardina Porteous

b. Have you been divorced? If so, give particulars, including the date,

the name of the moving party, the number of the case, the court, and the grounds. Give the name and current address of any former spouse(s).

No.

c. Names of your children, with age, address and present occupation of each.

Name	Age	Occupation
Michael Patrick Porteous 4801 Neyrey Dr. Metairie, LA 70002	23	Student
Timothy Alexander Porteous (school address) P.O. Box 25132 Phi Gamma Delta Fraternity Baton Rouge, LA 70894	21	Student
Thomas Anthony Porteous (school address) 1727 S. Brightside View, Apt. A Baton Rouge, LA 70870	19	Student
Catherine Anne Porteous 4801 Neyrey Dr. Metairie, LA 70002	13	Student

6. Have you had any military service? If so, give dates, branch of service, rank or rate, serial number, present status, and type of discharge, if applicable.

No.

7. List each college and law school you attended, including dates of attendance, the degrees awarded and, if you left any institution without receiving a degree, the reason for leaving.

Louisiana State University (New Orleans) 1964-1968

Bachelor of Arts - Economics

Louisiana State University Law School — 1968-1971
Baton Rouge, LA
Juris Doctor

8. List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

All Courts of Louisiana	September 7, 1971
United States District Court, Eastern District of Louisiana	September 19,1972
United States Supreme Court	April 18, 1977
United States Court of Appeals, 5th Circuit	October 1, 1981

9. Describe chronologically your law practice and experience after your graduation from law school and until you became a judge, including:

a. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.

No.

b. whether you practiced alone, and if so, the addresses and the dates.

No.

c. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, the nature of your connection with each, and the names, addresses and current telephone numbers for individuals who have direct personal knowledge about your work at such law firm, company or government agency.

Attorney General
State of Louisiana
P.O.Box 94005
Baton Rouge, LA 70804
Special Counsel
9/10/71 -10/7/73

You may contact:
Jack Yelverton
Assistant Atty. General
(504) 342-7013
same address

District Attorney's Office
Parish of Jefferson
District Atty. John Mamoulides
Gretna Courthouse Annex Bldg, 5th Floor
Gretna, LA 70053
Chief Felony Complaint Div.:
10/8/73 - 1/31/75
Supervisor: 2/1/75 - 8/6/84

You may contact:
John Mamoulides
same address
(504) 368-1020

Edwards, Porteous & Amato
139 Huey P. Long Ave.
Gretna, LA 70053
Partner
October 1973 - July 1974

You may contact:
Marion Edwards
District Attorney's Office
Gretna Courthouse Annex Bldg., 5th Floor
Gretna, LA 70053
(504) 368-1020 and/or
Jacob Amato
901 Derbigny St.
Gretna, LA 70053
(504) 367-8181

Edwards, Porteous & Lee
139 Huey P. Long Ave.
Gretna, LA 70053
Partner
August 1974 - January 1976

You may contact:

Sheriff Harry Lee
Parish of Jefferson
100 Huey P. Long Ave.
P.O.Box 485
Gretna, LA 70054
(504) 363-5500
Marion Edwards
(see above)

Porteous, Lee & Mustakas — Partner
139 Huey P. Long Ave. — February 1976 - April 1980
Gretna, LA 70053
You may contact:
Carlotta Cuccia
1317 Nursery
Metairie, LA
(504)833-5210

Porteous & Mustakas — Partner
3445 North Causeway Blvd. — April 1980 - August 1984
Metairie, LA 70002
Contact: same as above

City Attorney's Office — City Attorney
City of Harahan — 7/1/82 - 8/23/84
6437 Jefferson Hwy.
Harahan, LA 70123
You may contact:
Mayor Carlo Ferrara
(504) 737-6383
same address

d. any other relevant particulars.

None.

10. a. What was the general character of your practice before you became a judge, dividing it into periods with dates if its character changed

over the years.

General Civil Practice - in private practice & City Attorney
Criminal Prosecution - Attorney General & District Attorney

b. Describe your typical former clients, and mention the areas, if any, in which you specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleeting operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan and also prosecuted municipal violations in the Mayor's Court

11. a. Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Regularly.

b. What percentage of these appearances was in:
   1) Federal courts. 20%
   2) State courts of record. 80%
   3) Other courts. none

c. What percentage of your litigation was:
   1) Civil. 50%
   2) Criminal. 50%

d. State the number of cases you tried to verdict or judgment (rather than settled) in courts of record, indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus - Sole Counsel, 80%; Chief Counsel, 15%; and Associate Counsel, 5%.

e. What percentage of these trials was:
   1) Jury. 40%
   2) Non-jury. 60%

f. Describe ten of the most significant litigated matters which you personally handled and give the citations, if the cases were reported. Give a capsule summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case a) the dates of the trial period or periods, b) the name of the court and the name of the judge before whom the case was tried, and c) the individual name, address and telephone numbers of co-counsel and of counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.
Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.
Counsel for Tellepsen Construction Co. & Lagradeur International
(Sole Counsel)

Opposing Counsel:
Terriberry, Carroll, Yancey & Farrell
Walter Carroll, Jr.(retired)
3100 Energy Centre
1100 Poydras St.

New Orleans, LA 70163
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. Final Disposition: Judgment for plaintiff.

Co-Counsel:
Don Gardner
6380 Jefferson Hwy.
Harahan, LA 70123
(504) 737-6651

Opposing Counsel:
Rene A. Pastorek
Ste. 1060
3900 N.Causeway Blvd.
Metairie, LA 70002
(504) 831-3747

Wayne T. McGaw
365 Canal Street
Room 1870
New Orleans, LA 70140

(504) 528-2058

3. State of Louisiana v. John J. Storms, III
Criminal # 79-1114, 24th Judicial District Court
Division "M", Judge Robert J. Burns
Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a 10 year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:
Assistant District Attorney Arthur Lentini
2551 Metairie Road
Metairie, LA 70001
(504) 838-8777

Defense Counsel:
Sam Dalton
2001 Jefferson Hwy.
Jefferson, LA 70121
(504) 835-4289

Co-Defense Counsel:
George Troxell
4330 Canal Street
New Orleans,LA 70119
(504) 488-8800

4. State of Louisiana v. Leonard J. Fagot

Criminal # 76-2116, 24th Judicial District Court
Division "J", Judge Patrick E. Carr
Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy.
Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

Co-Counsel for State:
Assistant District Attorney William Hall
3500 N. Hullen Street
Metairie, LA 70002
(504) 456-8692

Defense Counsels:
Robert Broussard (deceased)
Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto
Criminal # 80-1980, 81-1003, 24th Judicial District Court
Division "G", Judge Herbert Gautreaux
Citation: 468 So.2d 1142, (La. May,1985); 475 So.2d 314,(La. Sept.,1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder,

Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the wife by the police.
Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:
Assistant District Attorney Gordon Konrad
P.O. Box 10890
Jefferson, LA 70181 /or
3900 River Rd., Suite 6
Jefferson, LA 70121
(504) 831-9985

Defense Counsel:
Ralph Whalen
3170 Energy Centre
1100 Poydras Street
New Orleans, LA 70163
(504) 582-2333

6. State of Louisiana v. James Nolen
Criminal # 81-4045, 24th Judicial District Court
Division "J", Judge Jacob Karno
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victims's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restraints were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:
Phil Johnson
(inactive)
(714) 275-6066

7. State of Louisiana v. Joseph Batiste
Criminal #71-1081, 24th Judicial District Court
Division "A", Judge Louis DeSonier
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact.
Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, sentenced to life in prison.

Defense Counsel:
Philip Schoen Brooks
723 Hillary St.
New Orleans, LA 70118
(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court
Division "A", Judge Roy A. Price
Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to

police and to his father. There was two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights.
Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:
Jacob Amato, Jr.
901 Derbigny Street
Gretna, LA 70053
(504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.
Civil Action # 247-364, 24th Judicial District Court, State of Louisiana
Division "A", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal.
Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:
Alvin J. Dupre, Jr.
Suite A, 2701 Houma Blvd.
Metairie, LA
(504) 454-1061

10. Eppling v. Jon-T Chemical, Inc.
Civil Action #205-643, 24th Judicial District Court, State of Louisiana

Division "B", Judge Zaccaria
Citations: 363 So.2d 1263

Trial on the summary judgment.

Sole Counsel: G. Thomas Porteous, Jr.
for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.
Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:
Thomas Loop
(deceased)

g. If you believe the responses 11(a) through 11(f) do not reflect your experience, please describe any experience which you consider the equivalent of trial experience.

Not applicable.

12. State the judicial office you now hold, and the judicial offices you have previously held, giving dates and the details, including the courts involved, whether elected or appointed, periods of service and a description of the jurisdiction of each of such courts with any limitations upon the jurisdiction of each court.

District Court Judge — January 1, 1985 - Present
State of Louisiana
~~Division A, 24th Judicial District Court~~

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction, other specific courts dispose of these two areas.

13. Attach ten of the most significant opinions you have written and give the citations if the opinions were reported, as well as citations to any appellate review of such opinions. As to each case for which an opinion is submitted, state the name, address and telephone number of counsel of each of the parties.

See attachment (my written trial court judgments and reasons)

Appellate cites and attorneys' names, addresses and telephone numbers are as follows:

(1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La App 5 Cir., June 1988)

Leonard Levenson
427 Gravier St.
New Orleans, LA
(504)586-0066

John E. Seago
8126 One Calais Ave., Suite 2C
Baton Rouge, LA 70809
(504) 766-5805

Joseph F. D'Aquin, III
Christopher E. Lawler

PORT000000111

4640 Rye St.
Metairie, LA 70006
(504)454-6808

(2) In the Matter of the Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

W. Paul Andersson
1100 Poydras St.
New Orleans, LA
(504)585-7500

Edward M. Gordon, III
2901 N. Causeway Blvd.
Metairie, LA
(504)832-4006

John R. Stark
(deceased)

(3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (La. 1988)

A. Remy Fransen, Jr.
814 Howard Ave.
New Orleans, LA
(504)522-1188

Stephen N. Elliott
1615 Metairie Road
Metairie, LA 70005
(504)834-2612

Robert M. Johnston
Pan American Life Ctr.
601 Poydras St.
Suite 2490
New Orleans, LA 70130

(504)581-2606

(4) Paul Fuller v. William Barattini, 574 So.2d 412, (La.App. 5 Cir., Jan.,1991)

Harry A. Burglass
1824 Williams Blvd.
Kenner, LA
(504) 469-2168

Gerald Wasserman
3850 N. Causeway Blvd.
Suite 630, II Lakeway Center
Metairie, LA 70002
(504)836-7300

J.B. Kiefer
1 Galleria Blvd.
Metairie, LA
(504) 835-6441

(5) Paul Hidding, et al. v. Dr. Randall Williams, et al., 578 So.2d 1192, (La.App. 5 Cir., April,1991)

Gregory F. Gambel
Byron J. Casey, III
Energy Centre - Suite 1810
1100 Poydras Street
New Orleans, LA 70163
(504)582-2112 & 582-2114

Robert Garrity
1905 Hickory Ave.
Harahan, LA 70123
(504)738-1111

Lloyd W. Hayes
Katherine B. Muslow

Suite 1000, 639 Loyola Ave.
New Orleans, LA 70113
(504)523-5100

(6) Karen Jewell, et al. v. The Berkshire Development et al., 612 So.2d 749, (La.App. 5 Cir. Dec.,1992)

James O. Manning
3108 David Drive
Metairie, LA 70003
(504)885-0400

Robert B. Acomb, Jr.
Richard D. Bertram
201 St. Charles Ave., 50th Floor
New Orleans, LA 70170
(504)582-8112 and 582-8334

Thomas G. Wilkinson
300 Huey P. Long Ave.
Gretna, LA 70054
(504)364-1892

L. Eades Hogue
Joseph C. Wilkinson, Jr.
Lawrence W. Dagate
21st Floor, Pan-American Life Center
601 Poydras Street
New Orleans, LA 70130-6097
(504) 584-9431, 584-9175, and 584-9135

(7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La.App. 5 Cir., May,1993)

Robert Winn
Betty F. England
201 St. Charles Ave.
35th Floor

New Orleans, LA 70170
(504)582-1503

Philip C. Ciaccio
10555 Lake Forest Blvd.
New Orleans, LA
(504) 241-9150

(8) Betty Ann Dunn v. Keith L. Kreutziger, D.D.S., et al., 625 So.2d 672, (La.App. 5 Cir., Oct., 1993)

Charles F. Gay, Jr.
Cristina R.Wheat
4500 One Shell Square
New Orleans, LA 70139
(504)581-3234

Margaret Hammond
639 Loyola Ave.
New Orleans, LA
(504)581-6503

(9) Judy Watts on behalf of her minor daughter, Polly Watts v. J.C. Penny et al., App. # 93-CA-811, (La. App 5 Cir.,Feb.,1994) (Not designated for publication)

Patrick J. Sanders
3200 Ridgelake Drive, Suite 100
Metairie, LA 70002
(504) 834-0646

Daniel J. Markey, Jr.
5559 Canal Blvd.
New Orleans, LA 70124
(504)482-4566

(10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 1994 WL 34062, ___ So.2d ___, (La. App. 5 Cir.,Feb.,1994)

Robert C. Lehman
1895 West Causeway Blvd.
Mandeville, LA 70448
(504)626-4509

Wade A. Langlois
Daniel A. Ranson
2304 Manhattan Blvd.
Harvey, LA 70058
P.O. Box 1910
Gretna, LA 70054
(504)362-2466

14. Have you ever held public office other than a judicial office? If so, give the details, including the offices involved, whether elected or appointed and the length of your service, giving dates.

Yes.

Special Counsel, Attorney General State of Louisiana	9/10/71 - 10/7/73
Assistant District Attorney Parish of Jefferson	2/1/73 - 8/6/84

Both were appointed positions.

15. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? If so, give details, including dates.

No.

16. Have you ever been engaged in any occupation, business, or profession other than the practice of law or holding judicial or other public office? If so, give details, including dates.

No.

17. Are you now an officer or director or otherwise engaged in the management of any business enterprise?

No.

a. If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Not applicable.

b. Is it your intention to resign such positions and withdraw from any participation in the management of any of such enterprises if you are nominated and confirmed. If not, give reasons.

Not applicable.

18. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law or regulation, county or municipal law, regulation or ordinance? If so, give details. Do not include traffic violations for which a fine of $100.00 or less was imposed.

No.

19. Have you, to your knowledge, ever been under federal, state or local investigation for possible violation of a criminal statute? If so, give particulars.

No.

20. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? If so, give particulars.

No.

21. a. Have you ever been sued by a client or a party? If so, give particulars.

No.

b. Describe any claim or lawsuit which alleged an act or omission by you as a lawyer.

Not applicable.

c. Have you ever been sanctioned pursuant to Rule 11 or pursuant to any other federal, state or local rule?

No.

22. Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stakeholder. Include all legal proceedings in which you were a party in interest, testified as a witness, were named as a co-conspirator or a co-respondent, and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.

Clark, et al v. Edwards, et al.
86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity. Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.
413-728, 24th Judicial District Court
Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court
Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity.

Pending.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al except it was filed in Federal court.

Injunction granted.

De Grange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine De Grange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

Grand Jury: I only appeared on one occasion. In approximately 1979, I appeared before a Federal Grand Jury as a witness. No indictment was returned. I believe the party being investigated was my client, Richard White. Those are the only particulars I can recall and I cannot locate any documentation on this matter.

23. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or, to your knowledge, been subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, give the particulars.

No.

24. With respect to your judicial service,

a. Have you participated in any proceeding in which you had a stock or other financial interest in one of the parties or in the matter in controversy? If so, give particulars.

No.

b. Is there a rule or custom in your court as to judges sitting on such cases? If so, state the rule or custom and whether or not you have complied with it.

The custom in our court would be for a judge to voluntarily recuse themselves. This is subject to all appropriate Louisiana civil and criminal laws. I have always complied with this custom.

c. Have you to the best of your knowledge and belief complied with applicable statutes and Cannons of the American Bar Association relative to such matters as were in force and applicable at the time? If not, give particulars.

Yes.

d. Have you ever received compensation from outside sources for services rendered (other than fees or expenses for lectures or teaching)? If so, give particulars.

No.

25. a. What is the present state of your health?

Excellent.

b. Have you in the last 10 years (i) been hospitalized due to injury or illness or (ii) been prevented from working due to injury or illness or otherwise incapacitated for a period in excess of ten days? If so, give particulars, including the causes, the dates, the places of confinement, and the present status of the conditions which caused the confinement or incapacitation.

Dr. A. Gustavo Colon was the treating physician. Skin cancer was resolved.
May 4, 1990 - Reconstruction of postauricular concha; procedure took place in doctor's surgical office.
October 7, 1989 - Excision of the preauricular area; elevation of pre-auricular flap and immediate expansion and rotation of flap.
Plastic surgery complete.

Dr. Robert E. Songy was treating physician. Diagnosis was hiatal hernia attack. Admitted to East Jefferson Hospital in January, 1988. There have been no recurrences.

c. Do you have a hearing or vision impairment or any other disability which might affect your ability to perform the duties of a trial or appellate judge? If so, please describe the disability and how your disability could be accommodated to allow you to perform the duties of a trial or appellate judge.

No.

d. When did you have your most recent general physical examination?

May, 1990

e. Are you currently under treatment for an illness or physical condition? If so, give details.

No.

f. Have you ever been treated for or had any problem with alcoholism

or any related condition associated with consumption of alcoholic beverages or any other form of drug addition or dependency? If so, give details.

No.

g. Have you ever been treated for or suffered from any form of mental illness? If so, give details.

No.

26. Furnish at least five examples of legal articles, books, briefs, or other legal writings which reflect your personal work. If briefs are submitted, indicate the degree to which they represent your personal work. If there are reported opinions relevant to a submitted brief, give the citation to or a copy of any relevant appellate opinion.

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently plead guilty to first degree and he was resentence to life imprison, without capital punishment. (See attached judgement)

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364, 24th J.D.C. The brief represents my sole personal work. (See attached brief)

Jefferson Bar Association CLE Courses
Seminar on Criminal Law & Procedure.(See attached seminar material)

Jefferson Bar Association CLE Courses
1994 seminar on Medical Malpractice.(See attached seminar material)

Eppling v. Jon-T Chemicals, Civil Action# 205-643, 24th J.D.C., cited at 363 So.2d 1263. The brief represents my sole personal work.(See attached)

27. a. List all bar associations and professional societies of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

La. State Bar Association
4th & 5th Circuit Judges Association — President - 1991
Chief Judge - 24th Judicial district Court - 1992
American Bar Association
Jefferson Bar Association
American Judges Association
American Judicature Society
La. District Attorney's Association — President Assistant - 1974-75
District Attorney Section

b. List also chairmanships of any committees in bar associations and professional societies, and memberships on any committees which you believe to be of particular significance (e.g., judicial selection committee, committee of censors, grievance committee).

None.

c. Describe also your participation, if any, on judicial committees, in judicial conferences, and in sitting, by designation, as a temporary member of the court which reviews decisions of your court.

La. Summer School for Judges - Panelist
24th J.D.C. Indigent Defender Board Committee - Chairperson: 1993
24th J.D.C. Security Committee - Chairperson: 1991 through 1994

28. List all organizations and clubs other than bar associations or professional associations or professional societies of which you are or have been a member, including civic, charitable, educational, social and fraternal organizations, and give dates of membership, offices held and honors bestowed.

Chateau Estate Country Club — Honorary Member 1985-present

St. Clement of Rome School Men's Club (Parents' Club)	Member 1978-present President 1982-83
Phi Kappa Theta Fraternity	
Phi Alpha Delta Law Fraternity	
American Red Cross	
Brother Martin High School Parents' Club	Vice-President - 1989-90

29. List any honors, prizes, awards or other forms of recognition which you have received (including any indication of academic distinction in college or law school) other than those mentioned in answers to the foregoing questions.

Morality in Media Louisiana		1983
Finalist -	Robert Lee Tullis Moot Court Competition LSU Law School	1971
USL - Criminal Justice Program	Certificate of Appreciation Criminal Law and Procedure Update	January, 1980

30. Describe any pro bono or community service activities in which you have engaged.

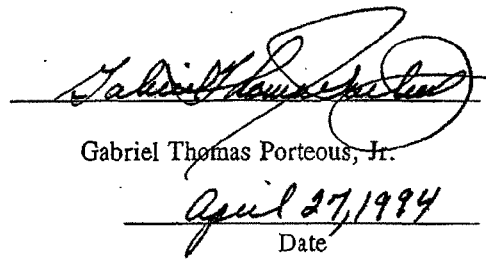
As an Assistant District Attorney and as an Assistant Attorney General, I was precluded from indigent defender representation in criminal cases. Louisiana has NOLAC to assist indigent in civil matter.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

31. State any other information which may reflect positively or adversely on

you, or which you believe should be disclosed in connection with consideration of you for nomination for the Federal Judiciary.

None.



Gabriel Thomas Porteous, Jr.

April 27, 1994
Date

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 286-153 DIVISION "A"

DAVID EGUDIN

VS.

CARRIAGE COURT CONDOMINIUMS, ET AL

FILED
JUN 18 1987
DEPUTY CLERK

FILED: _____, 1987 DEPUTY CLERK: _____

JUDGMENT

This matter came to the court for hearing on the 18th day of February, 1987.

PRESENT: -LEONARD LEVENSON, Attorney for Plaintiff

JOSEPH D'AQUIN
EDWARD T. SUFFERN, JR.
JOHN SEAGO
CHRISTOPHER LAWLER
CONRAD MEYER, IV, Attorneys for Defendants

The Court, after hearing the pleadings, the evidence and the arguments and memoranda of law furnished by counsel, considering the law to be in favor of the plaintiff, David Egudin, and against the defendants, for the written reasons that will be subsequently rendered.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of plaintiff, David Egudin, and against defendants, Carriage Court Condominiums, Behrvil Group, Inc., and Pierre Villere, finding fraud and unfair trade practices.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of David Egudin and against Vilmark Brokers, Inc., Ann Zehentner and Bobbie Henderson finding that the said defendants breached their fiduciary duties as real estate agents as a result of their acts and omissions during the course of events that led to plaintiff's lose and that said defendants committed various acts violative of LSA-R.S. 37:1455.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants, Carriage Court Condominiums and Pierre Villere convey to petitioner, David Egudin, on or before July 18, 1987, the property described as condominium unit 202 of the Carriage Court Condominiums together with the undivided ownership interest in the common elements of paid condominium located at 2500 Houma Boulevard in the Parish of Jafferson, State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in default of the passage of said act of sale by defendant there be judgment in favor of David Egudin and

[redacted]

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against defendants, Carriage Court Condominiums, Pierre Villere, and Behrvil Group, Inc., jointly, severally and in solido in the amount of THIRTY-THREE THOUSAND AND NO/100 ($33,000.00) DOLLARS as the amount required by FSLIC to release the unit from existing mortgages.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment for mental anquish, anxiety, humiliation and embarrassment in favor of David Egudin against the defendants, Carriage Court Condominiums, Pierre Villere, Vilmark Brokers, Inc., Behrvil Group, Inc., Ann Zehentner and Bobbie Henderson in the amount of TWO HUNDRED THOUSAND AND NO/100 ($200,000.00) DOLLARS jointly, severally and in solido.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment awarding attorney fees in favor of David Egudin and against defendants, Carriage Court Condominiums, Pierre Villere, Behrvil Group, Inc., Vilmark Brokers, Inc., Ann Zehentner and Bobbie Henderson, jointly, severally and in solido in the amount of TWENTY-SEVEN THOUSAND NINETY AND NO/100 ($27,090.00) DOLLARS together with legal interest from date of judicial demand and all cost of these proceedings.

JUDGMENT READ, RENDERED AND SIGNED this 18th day of June, 1987, at Gretna, Louisiana.

ON MINUTES
JUN 23 1987

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 286-153 DIVISION "A"

DAVID EGUDIN

VS.

CARRIAGE COURT CONDOMINIUMS, ET AL

FILED: _____, 1987 DEPUTY CLERK: _____

FILED JUL 17, 1987 DEPUTY CLERK

REASONS FOR JUDGMENT

This matter comes before the court on a petition for specific performance and damages. The evidence at trial revealed that petitioner paid the purchase price for condominium unit 202 of the Carriage Court Condominiums, on March 5, 1982, prior to the closing of the sale of the condominium unit.

Carriage Court Condominiums is a partnership in commendam. Behrvil Group is the general partner. Villere, the developer of Carriage Court Condominiums, is the sole shareholder and president of Behrvil Group. The majority of petitioner's personal dealings were through Ann Zehentner and to a lesser extent, Bobbie Henderson. These defendants worked as real estate agents for Vilmark Brokers, coordinating sales, on site for Carriage Court Condominiums. Henderson and Zehentner were under the direct supervision of Villere. The initial entering of the agreement to purchase and the payment of the purchase price of FORTY-SIX THOUSAND TWO HUNDRED NINETY-SEVEN AND 44/100 ($46,297.44) DOLLARS in full prior to closing was negotiated with Zehentner and her sponsoring broker, Henderson.

Plaintiff has never received title to the said unit from Carriage Court Condominiums. Title could not be conveyed because of mortgages with Audubon Federal. Audubon Federal subsequently foreclosed on Carriage Court Condominiums. Audubon Federal thereafter was placed in receivership by the Federal Home Loan Bank Board. The FSLIC is named as receiver.

It was stipulated at trial that plaintiff is entitled to specific performance There is also a stipulation by Mike Hill of FSLIC that plaintiff could obtain release of this unit by payment of THIRTY-THREE THOUSAND AND NO/100 ($33,000.00) DOLLARS.

It was revealed at trial that plaintiff's present predicament was brought about by an intertwining web of fraud, mishandling, ineptitude and inexperience.

The court found plaintiff, David Egudin, who was of foreign origin, was unfamiliar with real estate transactions and totally reliant on the representations of Zehentner and Henderson.

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Plaintiff testified that in December of 1981 he looked at unit 202 and placed ONE HUNDRED AND NO/100 ($100.00) DOLLARS down to hold the unit. Then on December 21 he executed P-7 and P-8. He testified that Zehentner told him he had to pay TWO THOUSAND AND NO/100 ($2,000.00) DOLLARS in January and TWO THOUSAND AND NO/100 ($2,000.00) more when he moved in. Plaintiff affirmed that in March of 1982 Zehentner, then, approached him regarding payment in full of the purchase price. On March 23, 1982, plaintiff gave Henderson a check for the purchase price and executed P-10. He testified that he, at no time, read the document and that neither Henderson nor Zehentner asked if he understood what they meant. He further testified that she never said the check was going to the developer/owner.

Both Henderson and Zehentner testified that they have never been involved in this type of transaction before. Although Henderson testified that she told plaintiff that she was giving the money to the developer/owner, the court chooses to believe plaintiff's testimony that she did not, and finds Egudin to be the more credible witness.

Henderson also testified that she did not think it her concern whether the property was mortgaged or not.

Pierre Villere testified that Zehentner knew there was a mortgage on the property when she sold unit 202.

The offending clauses are contained in Section 1. A. of the contracts.

In Exhibit 8A, the contract reads in pertinent part:

> A. "Upon Seller's acceptance of Purchaser's offer, Purchaser will deposit with Seller an amount of $2,280.47 - TWO THOUSAND TWO HUNDRED EIGHTY DOLLARS AND 47 CENTS. This deposit shall be placed in escrow by Seller in any Bank in the New Orleans area...."

Paragraph 1. A. reads in pertinent part in Exhibit 10:

> "Upon Seller's acceptance of Purchaser's offer, Purchaser will deposit with Seller cash in the amount of $45,609.50 FORTY-FIVE THOUSAND SIX HUNDRED NINE DOLLARS AND FIFTY CENTS."

The sentence stating: "This deposit shall be placed in escrow by Seller in any Bank..." is specifically deleted in Exhibit 10. The court finds that neither Zehentner nor Henderson pointed out this deletion in the contract.

The court feels that Henderson just blindly turned over plaintiff's check, never inquiring as to why ONE HUNDRED (100%) PERCENT of the purchase price was being required from plaintif, the only person required to pay in advance the full amount. She was completely unconcerned about how the caretaker of the money would keep safe these funds. Her behavior was at best unprofessional and clearly a violation of LSA-R.S. 37:1455.

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Defendants argue that 37:1455(4) provides that the party can agree not to escrow the funds. The court gives no weight to this argument for two reasons. First, the contract is silent as to escrow and the statute states the party has to agree in writing. And second, the court finds the agent confessed ignorance as to what to do when a person pays in full prior to act of sale, and their claim that plaintiff agreed such an escrow was not required, are incongruous.

The court finds that both Zehentner and Henderson owed a fiduciary duty to plaintiff that was breached and was a proximate cause of plaintiff's damages.

As to the defendant, Pierre Villere, it is clear to the court that misrepresentations were made with the intent to obtain an unjust advantage over plaintiff which caused his loss and that Mr. Villere was guilty of unfair trade practices which were immoral, oppressive, unscrupulous and harmful to plaintiff.

The court is of the opinion that Mr. Villere's actions were deceptive from the beginning. The check was immediately deposited in his operating account and used for the routine operations of Carriage Court Condominiums. The money was never escrowed; he knew a partial release was not available from Audubon Federal and that he could not go to a closing until he had sold a sufficient number of units.

After plaintiff insisted on some documentation, he reluctantly presenced him with a worthless document acknowledging his title. This document was only recorded due to plaintiff's enterprise. Villere further compounded his fraud by using the unit for cross collateralization on other units (Exhibit P-18). When informed by Peter S. Michell as to the cloud on his title, he assured him he could get it removed. He compounded his fraud again with his attempt to send his heretofore gullible confederate to sign additional papers to remove the acknowledgment from the public records (Exhibit 13, 14 and 15). It was at this point, Ann Zehentner abandoned her role as double agent and enlightened plaintiff of his predicament.

The court is convinced that the negligence of the real estate agents and the fraud of Mr. Villere caused emotional injury to plaintiff. Louisiana Courts have recognized that emotional injury is a separate element of damages for which recovery is available when the evidence establishes both the existence of such injury and its causal connection to defendant's negligence. Dousson v. South Central Bell, 429 So. 2d 466.

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Further, damages for mental anquish and attorney fees are awarded under Louisiana Unfair Trade Practice Act.

Both defendants, Zehentner and Henderson, were experienced real estate agents being involved in hundred of acts of sale, admitted that they found this situation unusual, had never been involved in such a transaction, yet did nothing as agents for plaintiff to protect his interest or advise him of this peculiarity.

The court finds the defendants solidarily liable for their actions. Even though obligations arise from separate acts or for different reasons, defendants are solidarily liable where they are obligated to do the same thing. Perez v. State Farm, 459 So. 2d 218. Joiner v. Diamond M. Drilling, 688 F. 2d 256.

As to damages, it has been stipulated that plaintiff is entitled to specific performance. It is also stipulated that the sum of money necessary to release the property from its present encumbrances by the FSLIC is THIRTY-THREE THOUSAND AND NO/100 ($33,000.00) DOLLARS.

As to the award for mental anquish, it is clear to the court that plaintiff is entitled to an award for his mental suffering because of the intentional fraud by Villere and the negligence of the real estate agents who were employed by him.

Mr. Egudin presently works at the Time Saver, working the 11 to 7 shift. He testified that he only clears TWO HUNDRED AND NO/100 ($200.00) DOLLARS a week. He has paid TEN THOUSAND ONE HUNDRED SIXTY-SIX AND 74/100 ($10,166.74) DOLLARS in litigation cost and TWENTY-SEVEN THOUSAND NINETY AND NO/100 ($27,090.00) DOLLARS in attorney fees are presently outstanding. Mr. Egudin testified that he used his lifesavings to purchase the home. Because of his problems in loosing his home and lifesavings, he took a bottle of valiums in an attempt to commit suicide. There is no question in the court's mind that plaintiff's mental anquish was extremely severe. The court accordingly awards TWO HUNDRED THOUSAND AND NO/100 ($200,000.00) DOLLARS for mental pain and anquish.

As to attorney's fees, Mr. Levenson has testified as to the number of hours he has in this case and the court finds an award of TWENTY-SEVEN THOUSAND NINETY AND NO/100 ($27,090.00) DOLLARS to be reasonable under the circumstances.

Gretna, Louisiana, this 17th day of July, 1987.

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 263-171 DIVISION "A"

IN THE MATTER OF THE
WRONGFUL DEATH OF STANTON J. STARK

FILED
APR 23 1985
DEPUTY CLERK

FILED:_____, 1985 DEPUTY CLERK:_____

JUDGMENT

This case having been duly tried before and submitted to the jury on the 22nd of March, 1985, and the jury having this day returned a verdict in the form of interrogatories as follows:

Pursuant to Code of Civil Procedure Art. 1916(2), when a jury returns a special verdict, the judge must sign a judgment in accordance therewith, therefore, in conformance with the verdict of the jury herein,

IT IS ORDERED, ADJUDGED AND DECREED that the verdict of the jury be and it is hereby made the judgment of this court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the expert fees in this matter are hereby set at TWO HUNDRED FIFTY AND NO/100 ($250.00) DOLLARS per expert witness.

IT IS FURTHER ORDERD, ADJUDGED AND DECREED that the expert fees and cost of these proceedings are to be divided between plaintiffs and defendant in proportion with the degree of fault attributed to the respective parties.

Pursuant to Code of Civil Procedure Art. 1812(D) when a jury returns a judgment pursuant to a special verdict, the court shall then enter judgment in conformity with the jury's answers to these special questions and according to applicable law.

The court finds the applicable law in the instant matter concerning the dollar figure due in a comparative fault situation is Bell v. Jet Wheel Blast, (La. 1985) 462 So. 2d 166. There the court stated that the adoption of a system of comparative fault should entail the merger of assumption of risk into the general scheme of assessment of liability in proportion to fault. A plaintiff's claim for damages is no longer barred because of assumption of the risk. The net effect of article 2323, as amended, is to prevent the courts from applying any defense more injurious to a damage claim than comparative negligence. Presumably, the doctrine of last clear chance, like that of assumption of the risk, is also merged into the general scheme of comparative negligence under the rational of Bell, supra.

Accordingly, plaintiffs' recovery is reduced in proportion to the fault attributed to the decedent, Stanton J. Stark.

In determining what dollar figure to place on the jury's special verdict, the court must reduce the damage award by TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS which is the amount State Farm Mutual Automobile Insurance Company, as the insurer of Stephen Douglas, has already paid to plaintiffs. The fact of payment has been stipulated by all parties, and GEICO, as UM carrier, is entitled to a credit for monies paid by the primary liability coverage.

Pursuant to the verdict of the jury finding,

Stanton Stark	56% fault
Stephen Douglas	44% fault

and awarding,

Mrs. Lynn Stark	$26,333.00
John R. Stark	$21,750.00,

the court makes the following calculations:

Mrs. Lynn Stark	$26,333.00 X 44% = $11,586.52	
John R. Stark	$21,750.00 X 44% = $ 9,570.00	
Mrs. Lynn Stark	$11,586.52	
	- 5,000.00	(½ of $10,000.00 credit, previously paid by State Farm)
	$ 6,586.52	
John R. Stark	$ 9,570.00	
	- 5,000.00	(½ of $10,000.00 credit, previously paid by State Farm)
	$ 4,570.00	

IT IS ORDERED, ADJUDGED AND DECREED that said verdict be and it is hereby made the judgment of this court and accordingly the defendant, Government Employees Insurance Company, is hereby condemned to pay to plaintiff, Mrs. Lynn Stark, the sum of SIX THOUSAND FIVE HUNDRED EIGHTY-SIX AND 52/100 ($6,586.52) DOLLARS and to plaintiff, John R. Stark, the sum of FOUR THOUSAND FIVE HUNDRED SEVENTY AND NO/100 ($4,570.00) DOLLARS with legal interest from date of judicial demand.

JUDGMENT READ, RENDERED AND SIGNED this 23rd day of April, 1985, at Gretna, Louisiana.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 263-171 DIVISION "A"

IN THE MATTER OF THE

WRONGFUL DEATH OF STANTON STARK

FILED: _____, 1985 DEPUTY CLERK: _____

FILED
JUL 15 1985
DEPUTY CLERK

JUDGMENT

This cause having been submitted to the court on motion of plaintiffs for a judgment notwithstanding the verdict to amend the jury's attribution of liability, and damages, and/or additur, and a motion for a new trial.

Considering the law and evidence, the court finds that there is no basis in law or fact to support the conclusion of the jury as to liability and damages.

IT IS ORDERED, ADJUDGED AND DECREED that the verdict of the jury in the above entitled and numbered cause be, and it is hereby set aside, and a judgment notwithstanding the verdict is granted as to liability and damages as follows:

Steven Douglas is found to be ONE HUNDRED (100%) PERCENT at fault; that there be judgment in favor of plaintiff, John Stark, in the amount of FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS, and plaintiff, Mrs. Lynn Stark, in the amount of FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS, and against the defendants, Steven Douglas and Government Employees Insurance Company, with legal interest from date of judicial demand, and all cost of these proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for a new trial be conditionally granted if the court's ruling on the judgment notwithstanding the verdict is reversed or vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for additur be denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be expert fees assessed against the defendants, Steven Douglas and Government Employees Insurance Company, in the amount of TWO HUNDRED FIFTY AND NO/100 ($250.00) DOLLARS per expert.

JUDGMENT READ, RENDERED AND SIGNED this 15th day of July, 1985, at Gretna, Louisiana.

ON MINUTES
JUL 16 1985

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 263-171 DIVISION "A"

IN THE MATTER OF THE

WRONGFUL DEATH OF STANTON J. STARK

FILED

JUL 15 1985

DEPUTY CLERK

FILED: _____, 1985 DEPUTY CLERK: _____

REASONS FOR JUDGMENT

In respect to the judgment notwithstanding the verdict, the court finds the facts of the case warrant the following:

Viewing the evidence most favorable to the party against whom the motion is made, the court finds that defendant failed to prove that plaintiff was in any way at fault in becoming an "outrider" on the vehicle, voluntarily. All evidence preponderates to the finding that plaintiff found himself in a position of imminent peril without sufficient time to consider and weigh all circumstances or the best means that may be adopted to avoid the impending danger.

There was no evidence presented which could substantiate a finding that the emergency was brought about by any alleged fault on the part of Stanton J. Stark.

Tim Talbot testified that when Stanton got to the car the lights and engine were off. Norman McKay testified that the car was stopped when Stanton was on the threshold.

It is clear from the testimony of those present who could recall the particulars of how Stanton came to be on the auto that Stanton was positioned between or/on the threshold and the open car door when the vehicle began to move. The driver did not use reasonable care in taking on its passenger; Stanton had every right to assume that the vehicle would not move until he was safely away or inside the vehicle. It is also clear that once the vehicle did pull forward Stanton was on the horns of a dilemma that only hindsight and cool reflection could have possibly provided a safe escape. The law clearly does not hold plaintiff to this standard of conduct. See Carter v. City Parish Government 423 So. 2d 1080 (La. 1982).

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Viewing the evidence most favorably to the party against whom the motion is made, the verdict is so unreasonable that it would be unconscionable to permit it to stand. The jury clearly held Stanton to a higher standard of conduct than the law demanded.

It is clear from the evidence that at the beginning of the scenario Stanton Stark was nothing more than a pedestrian, resting on the Douglas vehicle while observing the activity of the occupants. Stanton then involuntarily became an "outrider" on the vehicle because of the sudden and unexpected movement of the car.

The court is of the opinion that Stanton had every legal right to assume that there would be no movement of the vehicle until he was safely away from, or inside of, the vehicle.

Under these circumstances, the court concludes that Steven Douglas breached the duty he owed to plaintiff to exercise reasonable care in the operation and control of his vehicle and the risk of plaintiff's injury was within the scope of that duty. Inasmuch as Steven Douglas' negligent conduct was a cause in fact of the accident and resulting injuries, he is liable to plaintiff.

The evidence further showed Steven Douglas drove his car in an erratic fashion and that once he set his car in motion, Stanton Stark was left with no other recourse but to just hang on for dear life.

The Louisiana Supreme Court recently ruled on the duty a guest passenger owes himself in Smith v. Travelers Ins. Co., 430 So. 2d 55 (La. 1983).

In the Smith case the defendant turned into a designated parking area and came to a complete stop. With the radio playing very loud, he looked only to his left, put the car in reverse and failed to notice that the interior dome light came on when plaintiff attempted to exit the car. As she alighted, defendant suddenly and without warning put the car in reverse and started backing up, causing her to be thrown to the ground and struck by the auto door. As a result of the injury, plaintiff was paralyzed. Defendants asserted the defense of contributory negligence. The court in the Smith case ruled:

> "Contributory negligence is a defense to a tort suit and it is incumbent upon the defendant to prove that the plaintiff was contributorily negligent. Tucker v. Lirette, 400 So. 2d 647 (La. 1981). A guest passenger owes a duty to herself to ascertain that she can safely disembark from an automobile. Contrary to the contention of the defendants and the instruction given by the trial judge to the jury in the instant case, this duty does not encompass a responsibility to notify the driver of a stopped vehicle of her intention to alight from the vehicle. Our review of the record reveals nothing which would indicate that plaintiff could not have made a safe exit absent Krushin's negligent conduct."

The court finds in the instant case that Stanton Stark did not breach any duty owed to himself and finds the jury was clearly wrong in finding Stanton Stark FIFTY-SIX (56%) PERCENT at fault and assesses ONE HUNDRED (100%) PERCENT of the fault to Steven Douglas.

As to the jury's finding that Stanton Stark assumed the risk of injury, the court likewise is of the opinion that the jury's verdict is without any reasonable basis and clearly wrong. Defendants have previously filed a motion to enter judgment in accordance with the jury interrogatories. In determining the dollar figure to be placed on the jury verdict, this court held that the adoption of a system of comparative fault entailed the merger of assumption of risk into the general scheme of assessment of liability in proportion to fault. Therefore, the net effect of Article 2323, as amended, is to prevent the courts from applying any defense more injurious to a damage claim than comparative negligence. See Bell v. Jet Wheel Blast, (La. 1985) 462 So. 2d 166.

Aside from the court's opinion that defendants aren't legally entitled to the defense of assumption of the risk and viewing the evidence most favorable to defendant, the court finds that the facts of the instant case do not warrant a finding of assumption of the risk and the jury's finding on this point is without a reasonable basis in fact.

In accordance with Article 1811 of the Code of Civil Procedure, a judgment notwithstanding the verdict may be granted on the issue of liability or on both issues.

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The court is of the opinion that the instant case warrants a judgment notwithstanding the verdict on both the issue of liability and damages.

The court is convinced that, under the evidence of this case, reasonable minds could not differ as to the fact that a much higher award of damages was justified.

The present award is clearly out of line with the evidence presented in the case and other awards. Other awards, while not used for achieving uniformity, serves as an aid in determining whether a particular award is so out of line that reasonable minds could not differ as to the amount of damages.

The court therefore grants plaintiffs' motion for judgment notwithstanding the verdict, and the verdict of the jury awarding John Stark, TWENTY-ONE THOUSAND SEVEN HUNDRED FIFTY AND NO/100 ($21,750.00) DOLLARS and Lynn Stark TWENTY-SIX THOUSAND THREE HUNDRED THIRTY-THREE AND NO/100 ($26,333.00) DOLLARS is set aside, and the court reforms the jury verdict increasing it to John Stark, FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS and Lynn Stark, FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS.

As to the motion for new trial, under the provisions of Code of Civil Procedure Article 1811 (C.)(1), the court should rule on the motion for a new trial even though the motion for a judgment notwithstanding the verdict is granted. The court, therefore, determines that should the judgment notwithstanding the verdict be thereafter vacated or reversed, the motion for a new trial is conditionally granted for the reasons heretofore mentioned in the granting of the judgment notwithstanding the verdict and because the verdict is too unreasonable to permit it to stand.

As to the motion for additur the court finds it necessary to rule on said motion in light of the fact that the court has granted a judgment notwithstanding the verdict as to damages.

Gretna, Louisiana, this 15th day of July, 1985.

JUDGE

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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 285-171 DIVISION "A"

EDGAR CARLSEN

VS.

MEHAFFEY & DAIGLE, INC., ET AL

FILED:_____, 1987 DEPUTY CLERK:_____

JUDGMENT

This cause came for hearing on a motion for a new trial on the 19th day of December, 1986.

PRESENT: REMY FRANSEN, Attorney for Plaintiff
ROBERT M. JOHNSTON, Attorney for Defendants
ALISON E. ROBERTS, Attorney for Defendants

Considering the law and evidence, the court finds that there is no basis in law or fact to support the conclusion of the jury as to the award of general damages,

IT IS ORDERED, ADJUDGED AND DECREED that the verdict of the jury in the above entitled and numbered cause be and it is hereby set aside and a judgment notwithstanding the verdict is granted as to the award of general damages in jury interrogatory number 7 as follows:

That there be judgment in favor of Edgar Carlsen in the amount of ONE HUNDRED FIFTY THOUSAND AND NO/100 ($150,000.00) DOLLARS.

IT IS ORDERED, ADJUDGED AND DECREED that the original judgment of the court and all other jury interrogatories still stand in effect.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for a new trial as to damages be conditionally granted if the court's ruling on the judgment notwithstanding the verdict is reversed or vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the motion for additur be denied.

JUDGMENT READ, RENDERED AND SIGNED this 22nd day of January, 1987, at Gretna, Louisiana.

JUDGE

ON MINUTES
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24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 285-171 DIVISION "A"

EDGAR CARLSEN

VS.

MEHAFFEY & DAIGLE, INC., ET AL

FILED: _____, 1987 DEPUTY CLERK: _____

REASONS FOR JUDGMENT

This cause has been submitted to the court on motion of plaintiff for a judgment notwithstanding the verdict to amend the jury's award as to general damages, and/or additur and a motion for a new trial.

The court is of the opinion that the instant case warrants a judgment notwithstanding the verdict on the issue of general damages.

The court is convinced that under the evidence of this case reasonable minds could not differ as to the fact that a much higher award for general damages was justified.

The present award is clearly out of line with the evidence presented in the case and other awards. Other awards, while not used for achieving uniformity serves as an aid in determining whether a particular award is so out of line that reasonable minds could not differ as to the amount of damages.

In a recent case, Fifth Circuit Court of Appeals, Riley v. Winn Dixie of Louisiana, Inc., 489 So. 2d 931, the court found a jury award of THIRTY THOUSAND AND NO/100 ($30,000.00) DOLLARS for general damages for a lumbar laminectomy to be inadequate and found the low range for such an injury to be ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS. The court there considered the following cases: Johnson v. Wicks, 356 So. 2d 469 (1st Cir. 1977) - ONE HUNDRED THIRTEEN THOUSAND TWENTY-FOUR AND NO/100 ($113,024.00) DOLLARS; Williams v. City of New Orleans, 433 So. 2d 1129 (4th Cir. 1983) - ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 ($125,000.00) DOLLARS; Abshire v. Dubois, 422 So. 2d 611 (3rd Cir. 1982) ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

The plaintiff in the instant case has undergone two surgical interventions as a direct result of the accident.

Plaintiff suffered a ruptured disk as a result of the accident for which he had to undergo a fusion. As a complication of that surgery, plaintiff also had to undergo a mastectomy as a result of a breast growth which resulted from the use of a drug prescribed after his surgery.

The court therefore grants plaintiff's motion for judgment notwithstanding the verdict, and the verdict of the jury awarding Edgar Carlsen FIFTY THOUSAND AND NO/100 ($50,000.00) DOLLARS is set aside, and the court reforms the verdict as to general damages to ONE HUNDRED FIFTY THOUSAND AND NO/100 ($150,000.00) DOLLARS.

The court further finds that a new trial should be conditionally granted as to the issue of damages if the court's ruling on the judgment notwithstanding the verdict is reversed or vacated because the jury's award is clearly contrary to the law and evidence and presents good grounds to the court for a new trial in the interest of justice.

Gretna, Louisiana, this 22nd day of January, 1987.

J U D G E

Rhonda

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 321-881 DIVISION "A"

A. PAUL FULLER and/or UNITED TALENT ASSOCIATES, INC.

VS.

WILLIAM BARATTINI

FILED:_____, 1989 DEPUTY CLERK:_____

JUDGMENT

This matter came on for hearing on December 16, 1987, January 7, 1988, and March 18, 1988, and was taken under advisement for plaintiff to submit memos.

PRESENT: HARRY BURGLASS, Attorney for Plaintiff

J. B. KIEFER, Attorney for Defendant

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of plaintiff, for the written reasons attached hereto,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of plaintiff, A. Paul Fuller, and against the defendant, William Barattini, in the sum of FIFTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-SIX AND 50/100 ($58,856.50) DOLLARS with legal interest from date of filing until paid and for all cost of these proceedings.

JUDGMENT READ, RENDERED AND SIGNED this 29th day of January, 1990, at Gretna, Louisiana.

J U D G E

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 321-881 DIVISION "A"

A. PAUL FULLER and/or UNITED TALENT ASSOCIATES, INC.

VS.

WILLIAM BARATTINI

FILED:_____, 1989 DEPUTY CLERK:_____

REASONS FOR JUDGMENT

The pertinent facts are these: William Barattini is the owner of property located at 3116 North Arnoult Road, Metairie, Louisiana.

On October 21, 1982, a written lease was executed by Barattini, as Lessor, and A. Paul Fuller, as Lessee. The lease provided for a five year primary term beginning December 1, 1982. The lessee paid TWELVE THOUSAND AND NO/100 ($12,000.00) DOLLARS pursuant to the terms of this lease, constituting the first month's rental and the deposit.

Mr. Fuller's purpose was to open a Ladies Club where an all male cast could perform exclusively for women. He was apparently impressed by the Fat City location and expended a lot of time and effort to establish the club as a going concern.

At the outset, the court wishes to make note that the business the plaintiff wanted to establish might appear at first blush to be morally reprehensible to some. In fact, in defendant's post trial memorandum, Barattini, after the fact, referred to himself as an "honest, hard-working person" and plaintiff's business as "the operation of such an offensive and obnoxious business as a Ladies Night Club/ male strip joint". The court is unimpressed by such platitudes and condemnations. In the instant case, it is not the court's duty to sanction or censure the parties' morality. The Court has before it a lease dispute.

It is the decision of this Court that the defendant, William Barattini, breached the contract of lease with the plaintiff, A. Paul Fuller, and that plaintiff is entitled to a recession of the lease agreement and damages.

The lessee made it clear to the lessor that in order to open the establishment he envisioned, he would need adequate parking. It is the opinion of this court that plaintiff made known to defendant the purpose of the establishment and what, to him, appeared to be a problem with parking.

It was clear to the court that Lessor's over-zealousness to lease his location led him to compromise negotiations in the instant matter. The Court believes that defendant represented to plaintiff that parking was not going to be a problem, nor was it going to be a problem to obtain a building permit. The Court concludes that plaintiff placed heavy reliance on these statements and would not have entered into a lease at this location but for these assertions. The Court finds that lease was void from its inception because of error occasioned by the failure of the Lessor to disclose the true status of the property and because of plaintiff's induced and mistaken belief that there were no obstacles or serious problems to remedy before a permit could be obtained.

The Court is convinced that William Barattini was fully aware of the restrictions and impediments to obtaining a building permit and made representations to the plaintiff that did not come to fruition.

The Court finds that the defendant did orally make a commitment to plaintiff to obtain the necessary building permits. The Court bases its belief on a number of factors: First, the Court finds Mr. Fuller to be a credible witness and is convinced that Barattini made the representation to him that he would obtain the permits. Mr. Barattini built the improvements at Kelly Lynn's, another business, at the same location and was aware of the parking variances needed in that case to get the permits.

The area leased to plaintiff was a shell. Both parties wanted the interior finished. Defendant's constant involvement in the proposed club was evident from the testimony. The plans even called for a 7' x 9' office for his use. He knew of the improvements that were being installed; the lighting, the stage, the bar, and the plumbing. The defendant testified that he told plaintiff that he was going to cut a hole in the sidewalk so they could get to the lot next to his.

The Court believes that defendant succeeded in inducing plaintiff to continue to make improvements to the property until that point in time when the electrical and plumbing work could not be closed in for lack of inspection, which of course could not occur since they needed a building permit. Accordingly, the Court finds the defendant liable for the expenses the plaintiff incurred up until that point in time.

In Guaranty Savings Assurance Co. v. Uddo, 386 So. 2d 670, the Court stated that where substantial evidence indicated that the principal cause or motive for the Lessee's contracting of the Lessor's premises was established

to be a lounge, and that the Lessor was well aware of the Lessee's intentions and of the fact that zoning was inconsistent with the Lessee's plans, the Lessee was entitled to rescind the contract of lease because of his inability to obtain a permit.

Based on the jurisprudence in Guaranty, supra, the Court finds that lease in question should be rescinded.

In light of the Court's decision to rescind the lease, the defendant's claim for past due rent is found to be of no merit.

The claim for past due rent is specious for a number of reasons. The Court is of the opoinion that, in the interim, while this chaos was transpiring, there was a verbal understanding that no rent would be due. The Court also believes that, had it not rescinded the lease, there was a provision in the lease that contemplated "delayed possession", wherein rent would not be due.

As to damages, the plaintiff is evidently entitled to the return of the deposit and the first month's rent, which represents TWELVE THOUSAND AND NO/100 ($12,000.00) DOLLARS. Additionally, plaintiff is also entitled to the money he expended in promoting his enterprise together with the expenses he incurred in building the lounge.

The records kept of this aborted enterprise are, at best, incomplete. As is evident by the newspaper ads introduced at trial by defendant, there were some advertising costs expended to promote the club. However, there are no invoices or checks to show what sums were expended; therefore, the Court cannot award this as an item of damage. Ploding through plaintiff's exhibits, the Court finds the following damages were incurred due to defendant's breach of the lease:

Creative Lighting	Dec. 29, 1982	$14,000.00
Dixie Sign Deposit	Nov. 3, 1982	689.00
Nolen Enterprises	Nov. 18, 1982	27,255.00
Wayne Wiggins (Electronics)	Dec. 5, 1982	175.00
	Dec. 7, 1982	50.00
	Dec. 10, 1982	169.00
Stauffer's Custom Wood Works	Nov. 3, 1982	611.00
	Nov. 12, 1982	522.50
	Nov. 23, 1982	1,265.00
	Dec. 2, 1982	855.00
	Dec. 10, 1982	1,017.50
	Dec. 16, 1982	247.50

The total of this list and the return of the first month's rent and deposit equals $58,856.50.

Plaintiff testified, as did another witness, that he removed approximately ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS in sound and lighting

equipment, therefore, the only loss in this regard was the cost of labor to creative lighting which is listed above. The plaintiff also testified that at the time the project was shut down it was 75-80% complete.

Plaintiff claims that his loss of profits were enormous in this case. George Laibe testified for plaintiff and stated he was a consultant and producer of TV programing. He stated that he had various correspondence with plaintiff and wanted to acquire the TV and video rights. He testified that the project's concept began to break down and, then, plaintiff kept changing the opening date for the club. The idea, initially, was to do a pilot program and footage for one hour and one half hour programs.

All of these plans have been seemingly abandoned. Plaintiff testified that his credibility with his investors was damaged and he did not have the money to seek a new location.

As to this claim for loss of profits, the Court finds that any award of this nature would be too speculative. The enterprise did not get off the ground. It is impossible for the Court to guess at what profits there was to be made.

The plaintiff also claimed expenses of insurance, but failed to produce any evidence of that loss. Therefore no award is made for that item.

As a general rule, attorney's fees are not due and owing a successful litigant unless specifically provided by contract or by statute. The law does not provide for an award of attorney fees in a suit for breach of contract against a person in good faith.

The Court is of the opinion that when defendant represented that he would obtain the permits he had no ill intentions, he merely over estimated his abilities and under estimated the problems that resulted.

Therefore, plaintiff cannot recover the attorney's fees incurred in this suit or his prior suit to obtain permits.

Accordingly, the Court awards the sum of FIFTY-EIGHT THOUSAND EIGHT HUNDRED FIFTY-SIX AND 50/100 ($58,856,50) DOLLARS to plaintiff, A. Paul Fuller.

Gretna, Louisiana, this 19th day of January, 1990.

J U D G E

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 355-201 DIVISION "A"

PAUL HIDDING, ET AL

VERSUS

DR. RANDALL A. WILLIAMS

FILED: _____, 1990 DEPUTY CLERK: _____

JUDGMENT

This matter came to trial on May 1, 1990.

PRESENT: GREGORY F. GAMBEL, BYRON J. CASEY, III, and ROBERT T. GARRITY, JR., Attorneys for Plaintiffs, RUBINELL HIDDING, individually and as provisional administratrix of the estate of PAUL HIDDING, RUSSELL HIDDING and GENE HIDDING

LLOYD W. HAYES, Attorney for DR. RANDALL A. WILLIAMS and THE HARTFORD FIRE INSURANCE COMPANY

After hearing the pleadings, evidence and arguments of counsel, the Court considering the law and evidence to be in favor of the plaintiffs, Rubinell Hidding, individually and as provisional administratrix of the estate of Paul Hidding, Russell Hidding and Gene Hidding for written reasons assigned.

IT IS ORDERED, ADJUDGED AND DECREED that the Peremptory Exception of Prescription filed by the defendants, Dr. Randall A. Williams and The Hartford Fire Insurance Company, is denied.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of plaintiff, Rubinell Hidding, individually, for the loss of her consortium claim in the sum of THIRTY-FIVE THOUSAND AND NO/100 ($35,000.00) DOLLARS, and in favor of plaintiff, Rubinell Hidding as provisional administratrix of the estate of Paul Hidding in the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 ($250,000.00) DOLLARS, and medical expenses in the sum of TWENTY-TWO THOUSAND SIX AND 50/100 ($22,006.50) DOLLARS, with legal interest from the date of filing until paid, along with all costs of these proceedings.

JUDGMENT READ, RENDERED AND SIGNED this 16th day of July, 1990, at Gretna, Louisiana.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 355-201 DIVISION "A"

PAUL HIDDING, ET AL

VERSUS

DR. RANDALL A. WILLIAMS

FILED: _____, 1990 DEPUTY CLERK: _____

REASONS FOR JUDGMENT

This matter come to trial on a claim for medical malpractice against Dr. Williams alleging lack of informed consent and negligence in the performance of surgery.

Paul Hidding, was examined by Dr. Williams on December 10, 1984. A CT scan was later performed and a diagnosis of spinal stenosis was confirmed . Surgery was performed on December 17, 1984.

The day before surgery, December 16, 1984, Dr. Williams visited plaintiff to inform him as to the nature of the surgery. The disclosures made at that meeting form the basis of the Court's finding of lack of informed consent.

On the issue of informed consent, plaintiff has alleged two separate theories. The first of which is that Dr. Williams failed to inform plaintiff of the possible loss of bladder and/or bowel control.

The second thrust of plaintiff's argument is that Dr. Randall Williams was suffering from alcohol abuse in December, 1984, and had an affirmative obligation to inform the patient of his alcohol problem, thereby giving him the option of either obtaining a different orthopedic surgeon to perform the lumbar laminectomy or making the decision to continue on with Dr. Williams. It is this second argument that the Court finds of consequence.

Research of Louisiana jurisprudence has revealed no case directly on point of this issue, however, the Court does have the benefit of a medical review panel and the testimony of Dr. Russell Levy.

The panel decided that "there is a material issue of fact not requiring expert opinion, bearing on liability for consideration by the Court".

Dr. Russell Levy, one of the physicians who sat on the panel, appeared at trial of this matter. Dr. Levy testified that this was a

peculiar kind of case for the panel because of the facts related to the allegations of Dr. Williams' alcohol abuse and because there was evidence presented from a divorce suit.

When the doctor was asked "Do you have an opinion as to whether or not a physician who is suffering from alcohol and drug dependency has an affirmative obligation to explain to his patient that he is suffering from that dependency so that the patient can know that and make the decision for the selection of physicians?". Dr. Levy responded "I certainly think that if a physician or anybody in a position of life and death over someone knows that they're suffering from this condition, they should at least let this person know that they have these problems".

Although the facts of the case are novel, the law on informed consent is clear. In Hondroulis v. Schumacher, 531 So. 2d 450, the Court stated: Because of the presumption created by the uniform consent law, plaintiff's burden of proof has been described as follows, he must show:

"(1) The existence of a material risk unknown to the patient;

(2) A failure to disclose that risk on the part of the physician;

(3) Disclosure of the risk would have led a reasonable patient in plaintiff's position to reject the medical procedure or choose a different course of treatment;

(4) Injury."

The Court, in discussing what disclosures must be made, stated: "Disclosure must be made only when a risk is medically known and of a magnitude that would be material in a reasonable patient's decision to undergo treatment." Hondroulis, supra.

"When a material risk which would have influenced a reasonable person is proven, it must then be shown that the treating physician breached a duty to disclose that risk."

"A fair reading of the statute indicates that its enumeration of risks is merely a listing of the possible results about which disclosure must be made." Hondroulis, supra.

Taking into consideration the jurisprudence, the expert testimony and the decision of the Medical Review Panel, the Court finds that failing to disclose an alcohol abuse problem is a violation of the informed consent statute.

As to the specific evidence that Dr. Williams was in fact suffering from alcohol abuse, the Court finds the testimony of Adele C. Williams, the former wife of Dr. Williams, to be persuasive on this point. Adele Williams

testified that she was married to defendant from December, 1956, until 1984, 28 years. She testified that Dr. Williams was drunk a large portion of the time when he was home. His former wife testified that her husband's performance, along with his ability to function, was affected by his alcohol abuse. She testified that his condition was deteriorating and getting progressively worse.

The Court believes that Adele Williams was very credible and truthful. She was reluctant to be a witness against her former husband and was clearly unhappy to have to testify against her husband or to be a witness in this litigation. The Court felt her testimony was truthful and without malice or bias.

Accordingly, this Court finds as a matter of fact that Dr. Williams abused alcohol at the time of the surgery in question and violated his duty to disclose this fact to his prospective surgical patients. By failing to inform plaintiff of this problem, Dr. Williams failed to meet the guidelines of Hondroulis, supra.

As to damages, the parties stipulated to medical expenses incurred by Paul Hidding in conjunction with the medical condition which he suffered after his surgery of December 17, 1984. The Court therefore finds the sum of TWENTY-TWO THOUSAND SIX AND 50/100 ($22,006.50) DOLLARS in medical expenses was incurred as a result of the actions of Dr. Williams.

The surgery occurred on December 17, 1984. Following the surgery, plaintiff suffered loss of bladder and bowel function. Mr. and Mrs. Hidding had to be trained in catherization techniques. As a result of his catherization, plaintiff suffered various urinary tract infections on a regular basis. Mr. Hidding lived with a colostomy following his surgery to his death. Rubinell Hidding and Russell Hidding testified that her husband no longer went out in public due to the rancid smell emitted by the colostomy bag and that he had no control over flatus. They testified that he no longer enjoyed the events of his daily life, such as working in his garage, going fishing, or dining out.

Mrs. Hidding testified that her husband had no penal sensation and that their sexual activity ceased. Mrs. Hidding testified that she was married to Paul Hidding for 44 years. She testified that he was always a very active person prior to his surgery and that they participated in numerous activities together. Paul Hidding died on January 9, 1990.

In light of this testimony, the Court awards Rubinell Hidding the sum of THIRTY-FIVE THOUSAND AND NO/100 ($35,000.00) DOLLARS for loss of consortium claim.

The Court further awards Rubinell Hidding, as provisional administratrix of the estate of Paul Hidding the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 ($250,000.00) DOLLARS as general damages for the physical and mental pain Mr. Hidding suffered for five years prior to his death.

Since a claim of prescription has been raised by defendant, the Court must also rule on that exception. The Court finds the exception of prescription to be without merit. The Court believes that it was not until April 15, 1986, that the Hiddings were made aware that there was permanent nerve damage and that plaintiff would never regain bladder or bowel control. The complaint was filed with the Comissioner of Insurance against Dr. Williams in December, 1986. This was well within one year from the date they discovered that Mr. Hidding's bladder and bowel conditions were permanent.

Accordingly, the Court denies the defendant's exception of prescription.

Gretna, Louisiana, this 16th day of July, 1990.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 354-591 DIVISION "A"

KAREN JEWELL, wife of/and DONALD GLASS, ET AL

VERSUS

THE BERKSHIRE DEVELOPMENT CORPORATION, ET AL

FILED: _____, 1992 DEPUTY CLERK: _____

JUDGMENT

This matter came for hearing on the 5th day of November, 1991, on motions and exceptions.

PRESENT: JAMES O. MANNING, Attorney for Plaintiffs

ERIC O. GISLESON, Attorney for Defendants, HARRIS MORTGAGE and BERKSHIRE DEVELOPMENT CORPORATION

THOMAS C. WILKINSON, Attorney for Defendant, HIBERNIA NATIONAL BANK

JOSEPH C. WILKINSON, JR., Attorney for Defendant, HIBERNIA NATIONAL BANK

ROBERT B. ACOMB, JR., Attorney for Defendant, FEDERAL NATIONAL MORTGAGE ASSOCIATION

The Court, after hearing the pleadings, the evidence and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of movers, Hibernia National Bank and Federal National Mortgage Association (Fannie Mae), for the written reasons attached hereto:

IT IS ORDERED, ADJUDGED AND DECREED that the motion for summary judgment on behalf of Hibernia National Bank be and the same is hereby granted dismissing plaintiffs' claim against this defendant at plaintiffs' cost.

IT IS ORDERED, ADJUDGED AND DECREED that the motion for summary judgment filed on behalf of Federal National Mortgage Association (Fannie Mae) be and is hereby granted dismissing plaintiffs' claim against this defendant at plaintiffs' cost.

IT IS ORDERED, ADJUDGED AND DECREED that the motions and exceptions filed on behaf of Berkshire, J. H. Harris, Streuby Drumm, and Harris Mortgage Company be and the same is hereby denied.

JUDGMENT READ, RENDERED AND SIGNED this 15th day of January, 1992, at Gretna, Louisiana.

JUDGE

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 354-591 DIVISION "A"

KAREN JEWELL, wife of/and DONALD GLASS, ET AL

VERSUS

THE BERKSHIRE DEVELOPMENT CORPORATION, ET AL

FILED: _____, 1992 DEPUTY CLERK: _____

REASONS FOR JUDGMENT

On November 5, 1991, a hearing was conducted on various motions and exceptions filed by the defendants in the captioned matter. Having considered the oral argument of counsel, the memoranda, affidavits, and exhibits submitted by all parties in support of and in opposition to these motions and exceptions, and the law applicable to the case, the Court issues the following order:

The Motion for Summary Judgment of Hibernia National Bank is granted. The Court finds that there is no genuine issue as to any material fact relating to the claims against Hibernia, and that Hibernia is entitled to judgment as a matter of law. Specifically, Hibernia cannot on this record be deemed to have been a party to a joint venture or partnership concerning the development or conversion of the former Berkshire Apartments to condominiums as alleged in the Petition. No intent or agreement to form such a joint venture, nor to share in profits and losses other than as an ordinary lender would, nor to exercise a proprietary interest in management of the enterprise on behalf of Hibernia or any other party has been shown, and no triable issue on any of those points has been established by Plaintiffs. See Carlson v. Ewing, 54 So. 2d 414, 417 (La. 1951); Glover v. Sowada, 457 So. 2d 101, 104-05 (La. App. 5th Cir. 1984); Terry v. Slidell Refrigerating & Heating, Inc., 271 So. 2d 536, 540 (La. App. 1st Cir. 1972). The affidavit of Mr. Buller and the other submissions of Plaintiffs in Opposition to the Motion for Summary Judgment are insufficient under Article 967 of the Louisiana Code of Civil Procedure and fail to raise a genuine issue of material fact precluding entry of judgment as a matter of law in favor of Hibernia.

In addition, Louisiana law is clear that under the undisputed facts in this case, Hibernia owed no fiduciary duty or other legal duty directly to these Plaintiffs as alleged in the Petition. See Guidry v. Bank of LaPlace, 740 F. Supp. 1208, 1218 (E.D. La. 1990) and cases cited therein; La. Act No. 581 (1991 Regular Sess.), L.R.S. 6:1124.

This Court finds the reasoning and authorities more fully set forth in Hibernia's original and supplemental memoranda and exhibits in support of its motion presuasive, and Hibernia's Motion for Summary Judgment is therefore granted.

As to Hibernia's Peremptory Exception of Prescription, the Court finds that there is no reason to comment on the exception since the Court has granted the Summary on the aforementioned basis.

As to FNMA's Motion for Summary Judgment, Plaintiffs' claims depend upon their allegation that other defendants were the agents of FNMA. Having reconsidered this Motion, this Court finds that there is no genuine issue of material fact as to this claim and that no other Defendant was the agent of FNMA as a matter of law for purposes of Plaintiffs' claims. See Robarson Advertising Service v. Winnfield Life Insurance, 453 So. 2d 662 (La. App. 5th Cir. 1984). The affidavit of Mr. Marsiglia and the Servicing Contract submitted by Plaintiffs in Opposition to FNMA's Motion are insufficient to raise a genuine issue of material fact. Accordingly, FNMA's Motion for Summary Judgment is also granted.

As to the Motions and Exceptions filed by Berkshire, Drumm Harris and Harris Mortgage Corporation, the Court finds that these exceptions are best deferred to a trial on the merits and are accordingly denied.

Gretna, Louisiana, this 15th day of January, 1992.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 382-915 DIVISION "A"

THUAN NGOC DO

VERSUS

PHUONG HOANG NGO AND ABC INSURANCE COMPANY

FILED:_____

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DEPUTY CLERK

JUDGMENT

This matter came for hearing on the 11th day of October, 1991 and the 9th and 10th of March, 1992, and taken under advisement.

PRESENT:

Betty F. England
Robert E. Winn
Attorney for plaintiff, Thuan Ngnoc Do

Philip C. Ciaccio, Jr.
Attorney for defendants, Phoung Hoang Ngo and Hien Thi Dinh

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of the defendant for the written reasons attached hereto:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Phuong Hoang Ngo and Hein Thi Dinh, and against the plaintiff, Thuan Ngoc Do, dismissing plaintiff's suit. All parties to bear their respective costs.

JUDGMENT READ, RENDERED, and SIGNED this 9th day of September, 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 382-915 DIVISION "A"

THUAN NGOC DO

VERSUS

PHUONG HOANG NGO AND ABC INSURANCE COMPANY

FILED:_____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT

The plaintiff, Thuan Ngoc Do, was assaulted and shot by another patron, named Cao, in a place of business called the Queen Bee Club or Queen Bee Hall located at 6541-6545 LaPalco Boulevard in Marrero, Louisiana. Plaintiff was rendered permanently paraplegic as a result of the injury he sustained in the shooting.

Defendants claim they should not be liable because they were not the owners or operators and that the actions of the gunman were totally unforeseeable and unexpected.

Hein Dinh testified that she and Phuong Ngo live together and have three children and that they were members of a group called the Vietnamese Airborne Group. Defendants claim that the Vietnamese Airborne Group were responsible for promoting that night's activity. On the date of the shooting, arrangements had been made for a band to perform in a portion of the premises. Hein Dinh had arranged for uniform armed security guards. The premises sold alcoholic beverages. Both Phuong Ngo and Hien Dinh testified that they were present at the time the shooting occurred. Hein Dinh testified that she and Phuong Ngo remained after the shooting and that she locked the Queen Bee on her way out and never allowed the Queen Bee to reopen. Hien Dinh testified that she owned the building at the time of the shooting and that Ngo owned the equipment described in the lease. Toan Dinh, defendant Hein Dinh's brother, testified that he was the owner of the Queen Bee Lounge because he had entered into a lease agreement with the defendant, Phuong Ngo.

The Court finds that the defendants, Phuong Ngo and Hien Dinh, were the operators of the Queen Bee on the night of the shooting and that the hall was in their control and custody. However, the Court is not of the opinion that they are liable to plaintiff for the injuries he suffered.

On the night of the shooting, there were five security guards hired and several hundred people present. After the band stopped playing, the defendants permitted the security guards to leave. The plaintiff and many other customers were still on the premises. Testimony as to the exact number of people on the premises at the time of the shooting varied.

Plaintiff testified at trial that he though it could have been as many as 30. Hien Dinh testified to a lesser number at trial, however, in deposition testimony she was quoted as saying 50 people were present at the time of the shooting. At trial, Cuong Nguyen, a member of the Vietnamese Airborne Group, testified that only friends remained at the time of the shooting and not members of the general public but also testified that Cao was only known slightly. He testified that 15 to 20 people were left.

As to the time the security guards left, one estimation was that the security guards were on the premises from 9:00 PM until around 1:30 AM and that the shooting occurred approximately 30 minutes later at 2:00 AM. Cuong Nguyen testified that he though 40 to 45 minutes had elapsed between the time the band stopped playing and when the shooting occurred.

The court is of the opinion that the frame of time between the shooting and the discharge of the security guards was relatively long and that there was not a sufficient number of persons remaining to warrant security. The persons who remained on the premises were known, for the most part, by the owners of the lounge. Thuyen Cao gave no indication of violence earlier that night; nor was there testimony that it was reasonable to anticipate that this man was violent. There was, in fact, no reason to anticipate violence of any sort to occur after the security guards had been discharged.

Dr. Wade Schindler, an expert in security call by plaintiff, was of the opinion

that the nature of the event required security until all guest left the premises. The Court is not willing to find as a matter of law that, at concerts and live music performances, security must remain on the premises until all persons have left.

The Court finds that the defendants acted reasonably in preventing foreseeable criminal conduct. The conduct which cause the plaintiff's injury was not foreseeable.

An owner or occupier of land who uses the property as a location for a business establishment which the public is invited to patronize owes his customers a duty to exercising ordinary care to maintain the premises in reasonably safe condition. Willie v. American Casualty Co., 547 So.2d 1075 (La.App. 1st Cir. 1989). This responsibility includes an obligation to protect patrons from reasonably foreseeable criminal activity by third persons.

The Court in Willie, supra at p.1085, held that the questions of causation and foreseeability are inextricably entwined and that where the criminal act is foreseeable, the failure to take reasonable steps to prevent such act is a proximate cause of its result. The Court in Willie when on to state that if a jury concludes "that precautions were available which might which might have increased the chances of dissuading the attacker... The plaintiff is not obligated to prove the utilization of security measures would surely have prevented the assault. Since additional criminal attacks should have been anticipated, it is not unreasonable to infer that reasonable security measure would have served as a deterrent and the defendant's failure to take such measures constituted a substantial factor in the assault. Causation, like any other element of plaintiff's case, need not be demonstrated by conclusive proof."

The Court in Willie, supra at p.1081, stated that in determining whether or not criminal activities were foreseeable, you are entitled to take into account whether or not there was a history of prior criminal activity in the same location. Citing section 344 of the Restatement (Second) of Torts(1965) at comment (f), the Court stated that "the possessor may know or have a reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which are likely to endanger the safety of the visitor even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past

experience, is such that he should reasonably anticipate careless or criminal conduct on the part of the third persons, either generally or at some particular time, he may be under a duty to take precautions against it..."

Hence, it is not required that the defendants be aware of the specific impending criminal conduct or be aware that a particular individual would endanger a patron. It is sufficient that the defendants were, or should have been, aware of a pattern of conduct which made the particular injury-causing criminal conduct foreseeable.

In the instant case, Phoung Ngo and Hien Dinh took all reasonable steps to guard against foreseeable assault on their patrons.

The Court is of the opinion that the defendants did not breach their duty of care to plaintiff when they permitted the security guards to leave. The owners had no reason to anticipate that any harm would come to the persons remaining on the premises. Under the facts of the case, there was nothing that occurred prior to or immediately proceeding this incident which made this particular injury-causing criminal conduct foreseeable.

Accordingly, the Court will dismiss the suit of plaintiff, Thuan Ngoc Do. All parties to bear their respective cost.

SIGNED this 9th day of September 1992. Gretna, Louisiana.

JUDGE

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24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 411-405 DIVISION "A"

BETTY ANN DUNN

VERSUS

KEITH L. KREUTZIGER, D.D.S.,M.D. AND OCHSNER FOUNDATION HOSPITAL

FILED: _____ _____
DEPUTY CLERK

JUDGMENT

This matter came for hearing on the 5th day of March, 1993, on an exception of prescription and taken under advisement.

PRESENT:

CHARLES F. GAY, JR.
Attorney for DEFENDANTS

MARGARET HAMMOND
Attorney for PLAINTIFF

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of the exceptor for the following reasons, to wit:

This is an exception of prescription for alleged acts of medical malpractice which took place on July 15, 1987, when Dr. Kreutziger preformed nasal surgery on Betty Dunn. Dr. Kreutziger thought the surgery was unsuccessful and that a revision was clearly necessary. This was verified when plaintiff received a second opinion by Dr. Jack Anderson on October 12, 1987; by a third opinion by Dr. Calvin Johnson on November 2, 1987; and by a fourth opinion of Dr. Joseph Gautreaux on January 26th, 1988.

The Court finds that the alleged injury was discovered possibly as early as October, 1987, and most certainly by January 26, 1988, when four physicians had advised Ms.Dunn that she would need revision surgery. It was clear at that time that surgery would have to be repeated and that the damages she had suffered, nasal deformity and difficulty breathing, were a result of the

surgery. Plaintiff filed a medical malpractice claim with the Commissioner of Insurance on October 5th, 1989, more than a year later.

The Court finds that the action against defendants's have prescribed under LSA-R.S. 9:5628, therefore the suit will be dismissed with prejudice.

IT IS ORDERED, ADJUDGED AND DECREED that the exception of prescription filed on behalf of defendants, Dr. Keith L. Kreutziger and Ochsner Foundation Hospital, be and is hereby granted and plaintiff's suit is dismissed with prejudice at her cost.

JUDGMENT READ, RENDERED, and SIGNED this 5th day of March, 1993. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 306-035 DIVISION "A"

JUDY WATTS ON BEHALF OF THE MINOR, POLLY WATTS

VERSUS

J.C. PENNEY CO. AND LIBERTY MUTUAL INSURANCE CO.

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This matter came for hearing on a trial on the merits on the 9th day of April and the 14th day of May, 1992, on an Intervention of Thomas Cerullo, Attorney at Law.

PRESENT:

PATRICK SANDERS
Attorney for Thomas Cerullo, Intervenor

DANIEL J. MARKEY, JR.
Attorney for Lawrence J. Hand, Defendant in Intervention

Intervention into the case was filed by Thomas Cerullo, attorney at law, seeking apportionment of FORTY-FIVE THOUSAND ($45,000.00) DOLLARS of attorneys' fees which was escrowed from the settlement of the principle claim in this lawsuit.

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be, for the written reasons attached hereto, as follows:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein apportioning the escrowed portion of the attorneys' fees as follows:

THOMAS CERULLO, Intervenor, is awarded the sum of FIVE THOUSAND ($5,000.00) DOLLARS.

LAWRENCE J. HAND, Defendant in Intervention, is awarded the balance

of the escrowed fee, FORTY THOUSAND ($40,000.00) DOLLARS.

THOMAS CERULLO, is also awards the initial cost of filing the suit.

IT IS FURTHER ORDER, ADJUDGED, AND DECREED that each party shall bear his own cost in this matter, and that interest is adjudged in proportion to the respective award.

JUDGMENT READ, RENDERED, and SIGNED this 13th day of October, 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 306-035 DIVISION "A"

JUDY WATTS ON BEHALF OF HER MINOR CHILD, PENNY WATTS

VERSUS

J. C. PENNEY CO. AND LIBERTY MUTUAL INSURANCE COMPANY

FILED:_____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT

The original claim in this matter was a claim for injuries sustained by Polly Watts in an accident at a J.C. Penney store. The Watts' claim was settled without trial on December 10, 1990, for the amount of $270,000.00. At the settlement, $90,000.00 was withheld from the proceeds to pay the attorney's fee of which it was agreed that Mr. Hand should immediately receive half and the other half of the fee amounting to $45,000.00 was escrowed. The issues before the Court are: what is the proper basis for apportioning that fee, and, if Cerullo was fired for cause, what is the value of his contribution.

The Court finds that Thomas Cerullo was fired for cause and that his recovery is limited to quantum meruit.

At the trial of the intervention, Judith Watts testified that she discharged Mr. Cerullo because she came to realize that he was not representing her properly. Mrs. Watts related a story that was both credible and disappointing for anyone who expects conscientious performance from an attorney.

She explained that she was referred to Mr. Cerullo by a mutual acquaintance. Judith Watts fist met Mr. Cerullo at his office where she executed a contract employing him to represent her and her daughter in the principal claim. At the initial interview, she and Mr. Cerullo met briefly in a vestibule of his office building. Mrs. Watts related how he would not allow her

into the main portion of the office because he did not want his landlord, also an attorney, to know of the case. This was the only meeting Mrs. Watts had at his office.

Mrs. Watts testified to three years of frustration while under the guidance of Mr. Cerullo. The attorney/client relationship between Mr. Cerullo and Mrs. Watts was characterized by the lawyer's failure to communicate with the client, meetings outside of his office at places such as the client's apartment complex, a candy store where Mrs. Watts worked in the evenings after her regular teaching job, and on one occasion, an evening encounter in the parking lot of the apartment complex where that attorney met the claimant, Polly Watts, for the first and only time.

Judith Watts detailed how Mr. Cerullo continually explained that her suit would be settled, even giving spurious future dates when the settlement would be completed. He never explained to her that the suit had not been answered and could not be placed on the trial docket. She was not advised that it had not even been served upon defendants.

As a result of one misrepresentation, Mrs. Watts moved from her apartment into a more expensive one. She expected that the settlement, promised to be immediately forthcoming by Mr. Cerullo, would help pay the added rent expense. The settlement never materialized and the Watts were unable to pay the increased rent without borrowing funds.

Ordinarily, the Court would be inclined to regard this incident as an error in judgment by Mrs. Watts. However, it is obvious that the plaintiff was not given complete information by her attorney upon which to base a sound decision. For example, she was never told that her petition had not been served, that the information requested by the defendant had not been sent by Mr. Cerullo, and that her attorney's "theory" required delaying settlement to observe the minor's development. In the opinion of the Court, Mr. Cerullo's

lack of candor and his failure to properly communicate with his client contributed to the mistake in judgment made by Mrs. Watts.

Mrs. Watts related how, on more than one occasion, Mr. Cerullo advised her of arrangements and appointments with medical professionals, appointments which caused her to miss work and Polly to miss school. However, when she arrived for the medical appointments, she discovered that Mr. Cerullo had failed to follow through on the arrangements and Polly was not seen by the doctor.

Judith Watts testified that she began keeping a written log of representations made to her by her attorney, because, as she put it, he changed stories so frequently that she thought she was losing her mind.

Mrs. Watts testimony described numerous other dubious actions by Mr. Cerullo which brought her to the point of consulting the Bar Association to determine what could be done about the situation.

The Court is of the opinion that Mrs. Watts was a very credible witness and finds that she had ample cause to discharge Mr. Cerullo as her attorney.

Having found that Mr. Cerullo was discharged for cause, the claim for attorney fees is relegated to quantum meruit.

Mr. Cerullo filed a seven paragraph petition on the day the case would have prescribed. The petition was never served on defendants. This is his only document in the record.

In total, Mr. Cerullo mailed eight letters to the insurer, Liberty Mutual, during the three years he represented the Watts. The last letter dated March 27, 1986, contained a demand for $175,000.00 to settle the claim. The demand was rejected and a counter offer of $15,500.00 was made by the insurer in August, 1986. At this point the lawsuit went unserved. When Mr. Cerullo was discharge in January of 1987, some nine months after his demand and five months after the counter offer of $15,500.00, service had not been

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requested and no answer had been filed by the defendant.

During the course of his representation, Mr. Cerullo engaged in no formal discovery. No depositions were taken, no written statements of witnesses other than some medical reports were obtained. Mr. Cerullo was not diligent in forwarding the scant evidence he had gathered to the insurer despite requests from the insurance representative.

At trial, Mr. Cerullo produced estimates of time spent on the case showing such items as five hours for travel to the client's apartment and ten hours to prepare a seven paragraph petition, most of which is boiler plate language. Consequently, the Court was left with the impression that Mr. Cerullo's estimate of time spent on the Watts' case was exaggerated. Accordingly, the Court is of the opinion that the testimony of Mr. Cerullo regarding time spent developing his theory of the case to be self-serving and of little significance.

Mr. Cerullo's testimony at trial showed that his only strategy was to "wait and see". In a quantum meruit situation, this "waiting", while performing no other service, should not be compensated.

Interestingly, Mr. Cerullo claims to have spent many hours reviewing medical texts and discussing the case with another lawyer and a chiropractor. However, he communicated none of the medical knowledge, he supposedly acquired, to the insurance representative in an effort to settle the case. Whether he learned anything that could have been significant is irrelevant since he did not contribute it to the cause of his client despite opportunities to do so. Accordingly, the Court gives little weight to this testimony.

As an indication of how little effort was put into the representation by Mr. Cerullo, the Court examined the eight letters he wrote during his three years of employment. All were addressed to the insurer. Half of the letters were hand written, two letters contained only one sentence, five contained two

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sentences, and the longest, his last, contained six sentences.

The Court, upon examining the entire record and in light of its years of experience, finds that Mr. Cerullo probably spent no more than 30 hours working on this case over the three years that he was employed as the Watts' attorney. Out of an abundance of fairness the Court will add to that thirty hours, another ten hours, reaching a total of forty hours. At ONE HUNDRED TWENTY-FIVE ($125.00) DOLLARS per hour, the maximum fee to which Mr. Cerullo is entitled is FIVE THOUSAND ($5,000.00) DOLLARS. Additionally, the Court will return the cost of the initial filing fee.

In conclusion, the Court finds that Mr. Cerullo's contribution to the ultimate resolution of the case was minimal. His sole accomplishment was to interrupt prescription. He is amply compensated for his effort by the award of FIVE THOUSAND ($5,000.00) DOLLARS plus filing fee.

SIGNED this 13th day of October, 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 394-298 DIVISION "A"

KENNETH POCHE AND SCOTT KEY

VERSUS

BAYLINER MARINE CORPORATION AND WAGNER MARINE, INC.

FILED:_____ _____
DEPUTY CLERK

JUDGMENT

This matter came for hearing on the 28th day of May, and the 2nd and 3rd day of April, 1992 on a trial of the merits.

PRESENT:

ROBERT C. LEHMAN
Attorney for KENNETH POCHE and SCOTT KEY

FREDRICK H. DWYER
Attorney for BAYLINER MARINE CORPORATION

ROY V. LADNER
Attorney for WAGNER MARINE,INC.

JAMES M. GARNER
Attorney for GLENS FALLS INSURANCE COMPANY

The Court, after hearing the pleadings, the evidence, and the arguments and memoranda of law furnished by counsel, considering the law and evidence to be in favor of the plaintiffs and against Bayliner Marine Corporation for the written reasons attached hereto:

IT IS ORDERED, ADJUDGED AND DECREED that the sale of the Bayliner Trophy Convertible 2560 boat is immediately rescinded, and that Bayliner Marine refund to petitioners, Kenneth Poche and Scott Key, the full purchase price of FORTY-SIX THOUSAND, SEVEN HUNDRED NINETY-NINE and 91/100 ($46,799.91) DOLLARS, plus judicial interest from date of purchase.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment against defendant, Bayliner Marine Corporation, in favor of petitioners, Kenneth Poche and Scott Key, reimbursing petitioners for various expenses incurred by them resulting from their ownership of the vessel in the sum of FOURTEEN THOUSAND FOUR HUNDRED THIRTY THREE and 04/100 ($14,433.04) DOLLARS plus judicial interest from date of judicial demand.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of petitioners, Kenneth Poche and Scott Key, and against defendant, Bayliner Marine, in the amount of TWENTY THOUSAND ($20,000.00) DOLLARS plus judicial interest from date of demand as consequential damages incurred for inconvenience, aggravation, and loss of use resulting from repeated attempts to have the defects in the boat corrected and petitioners' inability to use the boat for the purpose intended for the four year period.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment against defendant, Bayliner Marine Corporation, in favor of petitioners, Kenneth Poche and Scott Key, in the sum of TWENTY THOUSAND ($20,000.00) DOLLARS for reasonable attorneys fees, plus expert fees in this matter which are set at ONE THOUSAND ($1,000.00) DOLLARS per expert and judicial interest from date of demand for all professional costs and fees incurred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant, Bayliner Marine Corporation, be taxed with all cost of these proceedings.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant, Wagner Marine, Inc., and against the

petitioners, Kenneth Poche and Scott Key, dismissing this claim with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there be judgment in favor of third party defendant, Glens Falls Insurance Co. and against third party petitioner, Wagner Marine Inc., dismissing this claim with prejudice.

JUDGMENT READ, RENDERED, and SIGNED this 14th day of October 1992. Gretna, Louisiana.

JUDGE

24th JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 394-298 DIVISION "A"

KENNETH POCHE AND SCOTT KEY

VERSUS

BAYLINER MARINE CORPORATION AND WAGNER MARINE, INC.

FILED:_____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT

This matter concerns an action for rescission of sale and damages involving the purchase of a Bayliner Trophy Convertible 2560 boat by the plaintiffs. The defendants are Bayliner Marine Corporation, the manufacturer of the vessel, and Wagner Marine, Inc., the local dealer of the vessel. At the conclusion of trial, the Court granted a motion to dismiss the action of petitioners against Wagner Marine, Inc. and Wagner's third party demand against its insurer, reserving all actions and relief against the manufacturer, Bayliner Marine Corporation.

The issue before the Court is whether plaintiffs are entitled to an award of the sale price on account of a vice or defect in the vessel sold that would render the vessel either absolutely useless or its use so inconvenient and imperfect that it must be supposed that the buyer would not have purchased it had he know of the vice.

The Court finds that plaintiffs have carried their burden of proof in this matter. The vessel exhibited unsatisfactory performance immediately after purchase and the performance characteristics of the vessel proved unacceptable for either pleasure or fishing use.

Plaintiffs purchased the boat from Wagner Marine in April of 1988 for the

sum of $46,799.91. Plaintiffs were interested in purchasing a boat that would best suit their needs as an offshore fishing and sport diving vessel. Prior to purchase, the boat was not available for a test run. The plaintiffs did travel to Houston, Texas for the purpose of looking at an identical boat the Houston dealership had in its yard. At that time, a number of sales representatives of Bayliner vessels had represented that the vessel was ideally suited for offshore fishing and sport diving. Additionally, a sales person from Wagner Marine had contacted Bayliner Marine to verify sales literature relating to performance of this model boat.

Bayliner's advertising literature showed the vessel to be a suitable blue water fishing vessel which could be expected to attain speeds of 33.1 m.p.h. to 37 m.p.h. and cruise with a normal load at 26.8 m.p.h. @ 3500 r.p.m. Based on these verbal and written representations, the plaintiffs purchased the Bayliner Trophy Convertible 2560.

After taking possession of the boat, the plaintiffs found performance to be severely lacking and the vessel to be useless for offshore fishing. The boat would not come up to plane except at full throttle, and even then it proved impossible to attain a speed even close to the manufacturer's suggested performance as represented by sales literature and personnel.

On the first attempt made by plaintiffs to bring the boat fishing, the trip was abandoned when they couldn't get enough power and ran out of gas trying. Numerous communications were undertaken between plaintiffs and the local dealer as well as the manufacturer in an attempt to rectify the problems. Various propeller modification were made at plaintiffs' expense, to no avail. After six months a marine surveyor was engaged by Bayliner to survey and ascertain the cause, nature and extent of the problem and to recommend repairs.

Bayliner surveyor, Mr. Gilligan, determined that the vessel was severely

underpowered and due to its lack of performance was not suited for its intended purpose.

As a consequence, a decision was reached by Bayliner that the boat needed a new engine. The original power was a 260 horsepower O.M.C. engine and Bayliner suggested that it be repowered with a 270 horsepower Volvo-Penta engine unit. Plaintiffs' expressed concern that this would not be a significant enough change but was reassured that this was correct. Nevertheless, Bayliner installed the 270 Volvo-Penta unit, at some expense to plaintiffs. After the change, the boat still exhibited the same characteristics of being extremely underpowered. Plaintiffs were still unable to use the vessel in the gulf or any other recreational activity.

Discovery by plaintiffs, showed that Bayliner had identical problems with other vessels and that the engine replacement in those vessels produced equally unsatisfactory results.

Petitioners was also advised to try different propellers which they did at their expense. Scott Key testified that he spent a minimum of $1,000.00 purchasing different propellers recommended by Bayliner, all to no avail.

Plaintiffs than engaged Mr. Gilligan, the original marine surveyor hired by Bayliner, who conducted a survey on July 6, 1989. He conducted this survey after the boat was repowered. Gilligan concluded that the vessel would not come to plane and that the hull was drastically underpowered.

Telephone communications between the parties continued through this time, through November, December, and January. Suit was than filed in February of 1990.

At trial of this matter, Mr. Warren Wagner, owner of Wagner Marine, stated that the boat did not perform in an acceptable manner and that Bayliner offered little cooperation in addressing the problem. Mr. Wagner testified that had he been aware of the actual performance of the vessel, he would never

have sold it to plaintiffs.

Mr. Gilligan calculated the fuel consumption at the rate of one-half mile per gallon. Taking into consideration a twenty percent fuel safety reserve factor which the expert stated was standard, the vessel would have a range of forty miles (if the vessel would have been capable of cruising). Such range is not safe for use as a blue water fishing vessel. He testified that the lack of adequate power and excessive fuel consumption actually made the boat dangerous for use as a blue water fishing vessel. Lack of power even made the vessel unsafe for use on Lake Pontchartrain.

Ken Helmrich, an expert marine surveyor retained by plaintiffs, testified that the boat did not perform satisfactory and failed to attain suitable speeds as advertised and failed to plane properly or cruise at any reasonable engine speed. He further stated that the boat would only come out of the water when the engine was at full throttle, a condition which would hurt the life of the engine and cause excessive fuel consumption.

Defense called an expert, Mr. Clark Scarboro, who inspected the vessel. Mr. Scarboro was a recently retired employee of Bayliner Marine who was one of the engineering staff members that developed the design of the 2650 Trophy vessel. He claimed that the vessel reached maximum r.p.m. of 4200 and a maximum speed of 28.3 m.p.h. Even though the bottom of the boat had been pressured washed and scraped, he claimed the bottom was still rough and with a clean bottom and a working trim it could reach speeds of 29 or even up to 32 m.p.h. He testified that if speed was not the most important factor, this vessel was suitable for the purposes of offshore fishing.

The Court finds defense's expert testimony to be of little merit because it showed that the boat was not able to attain speeds even approaching that which was represented in the Bayliner literature and advertisements.

The Court is further convinced that the vessel would not maintain a plane

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at less than full throttle and had essentially no cruising capabilities. Therefore, the vessel is not useable, not only because it couldn't attain the speed the literature claimed, but also because of these other unacceptable characteristics.

Our Louisiana Civil Code provides for rescission of a sale through redhibition. This is defined in LSA C.C. Article 2520, which states:

> "the avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice."

The boat in the instant matter has proven virtually useless for the plaintiffs' purpose. Not only does the boat fail to attain the speed it originally claimed, it also performs poorly and uses an extraordinary amount of fuel.

When the seller does not know of the vices in the thing he sold, he is only bound to repair, remedy, or correct the vices. If he is unable to or fails to repair, remedy or correct the vices, then he must restore the purchase price, and reimburse the reasonable expenses occasioned by the sale, as well as those expenses incurred for the preservation of the thing. LSA C.C. Article 2531.

When a seller knows of the defect in the thing sold and omits to reveal this information to the purchaser, the seller becomes liable to the purchaser not only for the restitution of the price and repayment of the expenses, but also for attorney's fees and is answerable to the buyer in damages. LSA C.C. Article 2545.

Plaintiffs made numerous request to Wagner Marine and, although not required to do so, gave the manufacturer an opportunity to correct the defects. In the case of a manufacturer, it is presumed to know the defect in the thing which it manufactures and consequently, is considered a bad faith seller, liable for damages and attorney's fees in addition to the price and expenses in connection with the sale. Dickerson v. Begnaud Motors Inc., 446 So2d 536, (3rd Cir. App. 1984); Reid v. Leson Chevrolet Co. Inc., 542 So2d 673, (5th Cir.

App. 1989); Alexander v. Burrough Corporation, 350 So2d 988; (2d Cir. App. 1977); LSA C.C. Article 2531.

The Court felt plaintiffs were unrelenting in their attempts to get Bayliner Marine to make the boat perform properly. The Court, on the other hand, felt Bayliner Marine had much less than a fervent interest in correcting the problem. Bayliner Marine was also less than diligent when it came to discovery and other aspects of the litigation which resulted in this action being very time consuming. As to the quantum of recoverable items and damages, the Court finds plaintiffs are entitled to the following: their original purchase price of $46,799.91; $1,333.04 in repair work (Plaintiff Exhibit #23); $1,100.00 cost of propellers; insurance premiums of $8,000.00; slip rental of $3,000.00; and miscellaneous expenses of $1,000.00 for battery, fuel, oil, and general maintenance.

The plaintiffs are also entitled to recover attorney's fees under LSA C.C. Article 2545. Taking into consideration the hours involved in bringing this suit to trial and the nature of the lawsuit, the Court finds TWENTY THOUSAND AND NO/100 ($20,000.00) DOLLARS to be reasonable attorney's fees. Because of the complexity and time consuming nature involved in the opinions of the experts, the Court sets expert fees in this matter at ONE THOUSAND AND NO/100 ($1,000.00) DOLLARS per expert.

The Court further awards consequential damages for inconvenience and lack of use of the vessel for the past four years in the amount of TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS per litigant which totals TWENTY THOUSAND AND NO/100 ($20,000.00) DOLLARS.

SIGNED this 14th day of October 1992. Gretna, Louisiana.

JUDGE

NOT DESIGNATED
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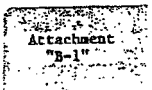

IN THE MATTER OF THE WRONGFUL DEATH OF STANTON J. STARK * NO. 86-CA-34

* COURT OF APPEAL

* FIFTH CIRCUIT

* STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NUMBER 263-171, DIVISION "A"
HONORABLE G. THOMAS PORTEOUS, JR., JUDGE

CHARLES GRISBAUM, JR.

JUDGE

JUN 02 1986

(Court composed of Judges Lawrence A. Chehardy, Thomas J. Kliebert, and Charles Grisbaum, Jr.)

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AMENDED IN PART, AND AS AMENDED, AFFIRMED

On appeal is a judgment notwithstanding the verdict (J.N.O.V.) disposition of a wrongful death matter in which the jury had allocated fault 44 percent to Stephen Douglas and 56 percent to the decedent, Stanton Stark. We amend and, as amended, we affirm.

We are called upon to determine:

(1) Whether the trial court erred in failing to credit GEICO for the $10,000 paid by the auto liability insurer, State Farm; and

(2) Whether the trial court erred in granting the J.N.O.V. in that (a) it erroneously reassessed percentages

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of negligence and (b) it erroneously increased the quantum award.

The record shows that on November 25, 1981, as Stephen Douglas was about to depart an evening party attended by various neighborhood teen-aged males, Stanton Stark walked up to the passenger door of Douglas' vehicle. Besides Douglas, three other males were inside the car. Shortly after Stark approached, Douglas pulled away, made a U-turn--in part, across a neighbor's lawn--and headed south down Sandra Avenue towards Lafreniere Street. For whatever reason, Stark, who had been positioned in the open doorway of the car, remained so positioned, riding on the door sill as the car followed this path. After the car straightened out on Sandra, Stark either fell or jumped off, struck his head, and later died.

In addressing the initial issue, we note the plaintiffs in this suit oppose GEICO, their uninsured/under-insured motorist carrier. State Farm paid its $10,000 liability limit for coverage on the Douglas auto and was dismissed at the close of the plaintiffs' case. Plaintiffs concede that GEICO is entitled to a $10,000 credit for the sum paid by State Farm. Calculated in the initial judgment, the credit must have been omitted inadvertently from the J.N.O.V. Accordingly, we amend the judgment of the trial court to incorporate the $10,000 credit.

We now turn to the remaining issue and initially address whether the trial court erred in reassessing the negligence of the parties. The jury found that Stark assumed the risk of injury. It also specifically allocated fault at 44 percent to Douglas and 56 percent to Stark. In casting

its first and J.N.O.V. judgments, the court disregarded this assumption of risk finding, concluding that La. C.C. art. 2323 more properly applied to assign degrees of fault. In essence, then, the court determined that the finding as to assumption of risk was legally irrelevant.

The trial court based its conclusion on what we consider dicta in Bell v. Jet Wheel Blast, 462 So.2d 166 (La. 1985) that indicates:

> In those types of cases in which comparative fault principles may be applied, the principles of article 2323 and its predecessors should be applied by analogy so that the claim for damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss. . . . Furthermore, the adoption of a system of comparative fault should, where it applies, entail the merger of the defenses of misuse and assumption of risk into the general scheme of assessment of liability in proportion to fault.

Id. at 172.

Our jurisprudence states that "The elements of the defense of assumption of the risk are: (1) that the plaintiff had knowledge of the danger; (2) that he understood and appreciated the risk therefrom; and (3) that he voluntarily exposed himself to such risk." Fritscher v. Chateau Golf & Country Club, 453 So.2d 964, 967 (La. App. 5th Cir. 1984), writ denied, 460 So.2d 604 (La. 1984). See also Beck v. Boh Bros. Constr. Co., 467 So.2d 1318, 1321 (La. App. 5th Cir. 1985). Here, it appears that Stark had been drinking, which might well have affected his knowledge of danger or his appreciation of that danger. Moreover, the testimony without exception indicates that Stark's approaching the car and his behavior thereafter were unplanned and unanticipated.

He had not planned to ride with Douglas, nor does it appear that he was attempting to enter the car. The spontaneity of Stark's behavior militates against his fully comprehending the risks attendant. Finally, nowhere does it appear that Stark knew that Douglas would start his car and drive away with Stark clinging to its side. Once Douglas left, Stark had no idea how far he would drive. Even if Stark hopped aboard once the car began to move, it cannot be said that Stark voluntarily assumed the risks of bouncing across a neighbor's yard or of proceeding on down the street. Stark was given no opportunity to get off during the course of these maneuvers. Given the leanings of Bell and the facts herein, we find the court correctly concluded that assumption of the risk was inapplicable as a matter of law.

We now turn to the questions of whether the trial court erred in its reassessment of the percentages of fault. By the 1979 amendment of La. C.C.P. art. 1811 quantum may, indeed, be altered by J.N.O.V. provided that "based on the evidence there is no genuine issue of fact." That is, "where the trial court is convinced that, under the evidence, reasonable minds could not differ as to the amount of damages, it should have the authority to grant the appropriate judgment notwithstanding the verdict." La. C.C.P. art. 1811 comments. We also note that this enunciated standard applies to changes affecting the merits, more specifically, the reassessment of fault. Blum v. New Orleans Pub. Serv., Inc., 469 So.2d 1117, 1119 (La. App. 4th Cir. 1985), writ denied, 472 So.2d 921 (La. 1985).

The trial court, in its reasons for judgment, states, in part:

Viewing the evidence most favorable to the party against whom the motion is made, the court finds that defendant failed to prove that plaintiff was in any way at fault in becoming an "outrider" on the vehicle, voluntarily. All evidence preponderates to the finding that plaintiff found himself in a position of imminent peril without sufficient time to consider and weigh all circumstances or the best means that may be adopted to avoid the impending danger.

There was no evidence presented which could substantiate a finding that the emergency was brought about by any alleged fault on the part of Stanton J. Stark.

Tim Talbot testified that when Stanton got to the car the lights and engine were off. Norman McKay testified that the car was stopped when Stanton was on the threshold.

It is clear from the testimony of those present who could recall the particulars of how Stanton came to be on the auto that Stanton was positioned between or/on the threshold and the open car door when the vehicle began to move. The driver did not use reasonable care in taking on its passenger; Stanton had every right to assume that the vehicle would not move until he was safely away or inside the vehicle. It is also clear that once the vehicle did pull forward Stanton was on the horns of a dilemma . . . [from which] only hindsight and cool reflection could have possibly provided a safe escape. The law clearly does not hold plaintiff to this standard of conduct. See Carter v. City Parish Government[,] 423 So.2d 1080 (La. 1982).

* * *

It is clear from the evidence that at the beginning of the scenario Stanton Stark was nothing more than a pedestrian, resting on the Douglas vehicle while observing the activity of the occupants. Stanton then involuntarily became an "outrider" on the vehicle because of the sudden and unexpected movement of the car.

The court is of the opinion that Stanton had every legal right to assume

> that there would be no movement of the vehicle until he was safely away from, or inside of, the vehicle.
>
> Under these circumstances, the court concludes that Steven [sic] Douglas breached the duty he owed to plaintiff to exercise reasonable care in the operation and control of his vehicle and the risk of plaintiff's injury was within the scope of that duty. Inasmuch as Steven [sic] Douglas' negligent conduct was a cause[-]in[-]fact of the accident and resulting injuries, he is liable to plaintiff.

We agree.

Regarding the final issue, quantum, we note the trial court, in its reasons for judgment, states, "The court is convinced that, under the evidence of this case, reasonable minds could not differ as to the fact that a much higher award of damages was justified." Again, we agree. Recognizing the well-settled legal axiom that a trial court has wide discretion in its award of damages, we will not disturb such an award absent manifest error, and we find none. Accordingly, we find no error in the trial court's entry of the judgment N.O.V. in favor of the plaintiff.

Other issues have been raised, which, we find, have no merit.

For the reasons assigned, the judgment of the trial court is affirmed, with the exception that this court reduces the damage award by $10,000, which is the amount State Farm Mutual Automobile Insurance Company, as the insurer of Stephen Douglas, has already paid the plaintiffs.

AMENDED IN PART, AND AS AMENDED, AFFIRMED

NOT DESIGNATED
FOR PUBLICATION

JUDY WATTS, ON BEHALF OF HER MINOR DAUGHTER, POLLY WATTS

VERSUS

J. C. PENNEY AND LIBERTY MUTUAL INSURANCE COMPANY

NO. 93-CA-811

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

ON APPEAL FROM THE 24TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA, PARISH OF JEFFERSON
NO. 306-035, DIVISION "A"
THE HONORABLE G. THOMAS PORTEOUS, JUDGE

FEB 23 1994

SOL GOTHARD
JUDGE

(Court composed of Judges Charles Grisbaum, Jr., Edward A. Dufresne, Jr. and Sol Gothard.)

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AMENDED AND AS AMENDED, AFFIRMED

Appellant, Thomas Cerullo, intervened in this action for damages to protect his rights under a contingency fee contract with the plaintiff. The trial court awarded him $5,000.00 on a quantum meruit basis for professional services rendered. Mr. Cerullo brings this appeal seeking review of the adequacy of the amount awarded and requesting additional funds for reimbursement of outstanding advances for medical expenses and costs related to the case.

In January, 1984, Polly Watts, the minor daughter of Judith Watts, was injured when she fell in a dressing room of the J.C. Penney store on Lapalco Boulevard in Jefferson Parish. Judith Watts employed Thomas Cerullo to assert the claim. Ms. Watts signed a contingency fee contract with Mr. Cerullo and suit was filed against J.C. Penney and its insurer, Liberty Mutual Insurance Company on January 25, 1985.

In July, 1987, Ms. Watts discharged Mr. Cerullo and hired Lawrence Hand to represent her in the action for damages. Mr. Cerullo filed a petition of intervention in November, 1988 seeking attorney's fees and reimbursement of certain costs. The lawsuit was settled out of court on December 10, 1990 for a total of $270,000.00; of which, $90,000.00 was withheld for payment of attorney's fees. Mr. Hand received one-half of that amount, or $45,000.00, immediately and the remaining $45,000.00 was held in escrow pending consideration of and ruling on Mr. Cerullo's claim.

After a trial on the merits, Mr. Cerullo was awarded $5,000.00 and the remaining $40,000.00 was awarded to Mr. Hand. The trial court gave extensive written reasons for judgment which indicate that the award represents payment for thirty hours of work at $125.00 per hour. The trial court stated that, "the Court finds that Mr. Cerullo's contribution to the ultimate resolution of the case was minimal. His sole accomplishment was to interrupt prescription." Mr. Cerullo argues that the award is too low to fairly compensate him for his work.

The litigation record of the principal matter shows that Mr. Cerullo filed only one pleading, the initial petition. Service on that petition was held and, in fact, never accomplished. No depositions were taken in the three years Mr. Cerullo had the case. At trial, Mr. Cerullo testified that he did not keep a record of the time he spent working on the case. He submitted a reconstructed summary of hours worked, asserting that he spent a total of 263.25 hours.

At trial Mr. Cerullo stipulated that service on the petition for damages was held, that there was no litigation using the courts and, that there were no depositions or discovery of any kind. He testified that he spent time researching the case, discussing the matter with the insurance adjuster and various medical and legal experts. Mr. Cerullo stated that he did not move forward with the case because the injured girl was only

fourteen at the time and he wanted to know the full extent of her injuries before he settled the matter.

Mr. Cerullo introduced testimony from Dr. Rick Saluga, a chiropractor who treated Polly Watts for about three weeks. Dr. Saluga verified that, considering travel time, eight to ten hours would be a fair estimate of time spent by Mr. Cerullo in consultation. Donald Klein, an attorney, testified that Mr. Cerullo spent about ten hours discussing the matter with him.

The record further shows that Mr. Cerullo wrote eight letters to Liberty Mutual during the three years he represented Ms. Watts. The last letter, written in March, 1986 contained a demand for $175,000.00 to settle the claim. That demand was rejected by the insurance company and a counter offer of $15,000.00 was made in August, 1986. The matter apparently did not proceed beyond that, and in January of 1987 Mr. Cerullo was discharged.

Ms. Watts testified that she had few meetings with Mr. Cerullo, and that these meetings usually took place outside of his office. She complained that Mr. Cerullo was uncommunicative and that the limited communications were fraught with misrepresentations.

When a party to a contingency fee contract discharges his attorney before the fee is earned, the attorney's mandate is revoked and the contract is dissolved. Quantum meruit then becomes the proper basis for recovery. Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1978); Keys v. Mercy Hosp. of New Orleans, 537 So.2d 1223 (La.App. 4th Cir.1989). In Toups v. Brainis, 608 So.2d 246, 247 (La.App. 5th Cir.1992), this court stated:

> Under Saucier v. Hayes Dairy Products, Inc., 373 So.2d 102 (La.1979), the attorney fee of a discharged attorney is to be apportioned according to the respective services and contributions of the attorney's work performed and other relevant factors as set forth in Rule 1.5 of the Rules of Professional Conduct; which provides in pertinent part:
>
> > (a) A lawyer's fee shall be reasonable. The factors to be

considered in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer:

(3) The fee customarily charged in the locality for similar legal services;

(4) The amount involved and the results obtained;

(5) The time limitations imposed by the client or by the circumstances;

(6) The nature and length of the professional relationship with the client;

7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

Quantum meruit means as much as is deserved. Smith v. Westside Transit Lines, Inc., 313 So.2d 371 (La.App. 4th Cir.1975), writ denied, 318 So.2d 43 (La.1975). A quantum meruit analysis properly evaluates not merely the laws expended, but the results and benefits obtained. Smith v. Westside Transit Lines, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra, at 1225. Therefore, recovery is limited to the actual value of the service rendered. Saucier v. Hayes Dairy Products, Inc., supra; Keys v. Mercy Hosp. of New Orleans, supra.

The trial court gave credence to Ms. Watts testimony and found that she had ample cause to discharge Mr. Cerullo for his lack of candor and failure to communicate. The court further found that Mr. Cerullo took a "wait and see" approach to the case and should not be compensated for that time. The court further found that the estimate of the hours spent, reconstructed after the fact and offered at trial by Mr. Cerullo, was exaggerated.

Given the facts of this case we cannot hold that the trial court abused its discretion in awarding Mr. Cerullo a total of $5,000.00 in attorney's fees.

Mr. Cerullo also complains that the court erred in failing to award him $2,423.00 as reimbursement for outstanding advances for medical expenses and costs related to the case. Mr. Cerullo introduced copies of cancelled checks made out to Ms. Watts totaling $425.00, two checks to the clerk of court totaling $130.00 and several other checks for various medical expenses totaling $689.00. Those costs total $1,244.00. Mr. Cerullo also asks for reimbursement for an additional $1,179.00 for litigation costs guaranteed. The trial court judgment awarded Mr. Cerullo reimbursement for the initial filing fee but was silent as to the other costs.

Recently, in Dupuis v. Faulk, 609 So.2d 1190, at 1192, (La.App. 3rd Cir. 1992), the court stated:

> The Privilege for attorney's fees is granted by La. R.S. 9:5001 and R.S. 37:218. Both statutes were amended by Acts 1989, No. 78 § 1, effective June 16, 1989, to include the following definitions:
>
> 9:5001
> B. The term "professional fees", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> 37:218
> B. The term "fee", as used in this Section, means the agreed upon fee, whether fixed or contingent, and any and all other amounts advanced by the attorney to or on behalf of the client, as permitted by the Rules of Professional Conduct of the Louisiana State Bar Association.
>
> The Rules of Professional Conduct of the Louisiana Bar Association with regard to the advances made to a client are found in Rule 1.8(e):
>
> (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

> (1) A lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
>
> (2) A lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Rule 1.8(e) embodies the former Disciplinary Rule 5-103(B):

> Disciplinary Rule 5-103(B) provides: "While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to his client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

In Louisiana State Bar Association v. Edwins, 329 So.2d 437 (La.1976), at page 446, the Supreme Court addressed the propriety of advancing financial assistance during representation of a client:

> If an impoverished person is unable to secure subsistence from some source during disability, he may be deprived of the only effective means by which he can wait out the necessary delays that result from litigation to enforce his cause of action. He may, for reasons of economic necessity and physical need, be forced to settle his claim for an inadequate amount.

The Dupuis court held that certain medical and living expenses are now included a part of the "fee" for privilege purposes. The court at 1193, further observed that:

> ...In extending the privilege to cover such advances, the legislature intended to overrule, at least in part, Calk v. Highland Construction & Manufacturing, 376 So.2d 495 (La.1979).
>
> In Calk, supra, the Louisiana Supreme Court found that the word "fee" did not include advances which are in the nature of a loan, nor does it include the payment or reimbursement of expenses which, like medical bills, constitute the client's special damages...

We find that interpretation of the legislative intent to be consistent with the changes made in the 1989 amendments to LSA-R.S. 37:218 and LSA-R.S. 9:5001. Thus, we find the trial court's judgment should be amended to award Mr. Cerullo reimbursement of advances made by him in furtherance of Ms. Watts litigation. We do not find, nor has Mr. Cerullo suggested, jurisprudential support for an award of funds secured but not paid to medical providers.

For the foregoing reasons the judgment of the trial court is amended to award Mr. Cerullo the sum of $1244.00 for reimbursement of funds advanced. Mr. Hand's award is decreased by $1,244.00. In all other respects the judgment is affirmed.

AMENDED AND AS AMENDED, AFFIRMED

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 81-3248 DIVISION "A"

STATE OF LOUISIANA

VERSUS

LANE NELSON

FILED:_____ _____DY.CLERK

O R D E R

This matter comes before this Court on defendant, Lane C. Nelson's, Application for Post-Conviction Relief in which he asserts the following claims for relief:

1) Jurors were improperly disqualified for cause.

2) The State improperly was allowed to exercise a peremptory challenge against a juror who already had been sworn in.

3) The trial court improperly interfered with the voir dire interrogation of the jury.

4) Petitioner was denied a fair and impartial jury because the potential jurors were not individually sequestered during voir dire examination.

5) Confessions made by the defendant improperly were admitted into evidence.

6) The trial court prevented petitioner from defending against the charges made against him and established an irrebutable presumption on specific intent in the State's favor by limiting improperly his ability to present psychiatric testimony.

6A) Petitioner was deprived of due process by his exclusion from a critical portion of the trial.

7) The trial court improperly admitted into evidence various inflammatory and prejudicial photographs.

8) Prosecutorial misconduct rendered petitioner's trial fundamentally unfair.

9) The trial court improperly called the jury's attention to petitioner's failure to testify during the guilt phase of his trial.

10) Petitioner was deprived of effective assistance of counsel.

11) Petitioner was improperly sentenced to death on the basis of a single aggravating circumstance that merely echoed an element of the underlying crime for which he was convicted.

12) Remarks made during the trial concerning judicial review of the jury's recommendation of a death sentence improperly reduced the jury's sense of responsibility for the penalty imposed.

13) The trial court failed to instruct the jury that it could recommend a sentence of life imprisonment even if it found the existence of one or more aggravating circumstances and no mitigating circumstances.

14) During its instructions to the jury following the sentencing phase of the trial, the trial court failed to define for the jury the term "mitigating circumstance".

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15) The trial court failed to guide the jury regarding the function to be played by mitigating circumstances in determining what sentence to recommend.

16) Petitioner's sentence is excessive and disproportionate and cruel and unusual.

17) Petitioner's sentence is arbitrary and capricious.

18) Petitioner's sentence is invidiously discriminatory.

19) Capital punishment is an excessive penalty.

20) The cumulative effect of violations of petitioner's rights is in itself a violation of petitioner's constitutional rights.

STATEMENT OF THE FACTS

On July 23, 1981, at about 7:00 P.M., a traffic accident occurred on Interstate 10 in Madison County, Florida. Trooper Homer Melgaard investigated the accident, which involved a disabled truck hit in the rear by an automobile, despite the truck driver's efforts to flag traffic. Witnesses at the scene advised Trooper Melgard that two men walking down the road had been in the automobile. One of them, Lane C. Nelson, was arrested for operating a motor vehicle under the influence of alcoholic beverages and both he and his companion, Robert Wihelm, were taken to the Madison County jail. Because Trooper Melgaard had to wait for a wrecker, the three of them reached the jail between 8:30 and 8:45 P.M. Melgaard requested a breathalyzer test on Nelson which showed a .24 reading. In the course of doing his paperwork on the accident report, trooper Melgaard engaged Nelson in a general conversation and inquired about the ownership of the vehicle. Nelson said he had borrowed the rented automobile from a friend in

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Louisiana to go to the store. During the conversation, Nelson volunteered: "Looking at me, you do not think I would kill anybody." At this point, Trooper Melgaard ended the conversation and summoned Officer William Pheil, who gave Nelson his Miranda rights at approximately 10:00 P.M. After those rights were fully explained and Nelson signed a waiver, the officers began to question him.

Nelson had been hitchhiking to New Orleans when he was picked up by Beauvais Randall in Bunkie, Louisiana. Randall, apparently a transvestite, was dressed like a woman. On their way to New Orleans, Randall, sensing the defendant had little money, offered to pay Nelson $50.00 to take pictures of him in women's clothing. Following their arrival at Randall's apartment in Jefferson Parish, the two men went to sleep. Randall slept in his bedroom and Nelson slept on the living room couch.

Nelson was still sleeping the next morning when he was awakened by Randall, who was dressed in a black negligee. Randall demanded that the defendant begin the proposed photography session immediately. He asked Nelson to bind him with ropes in various positions that were modeled after certain magazine photographs and then to take the photographs of him in those positions. During much of this period Randall used a falsetto voice and, as part of his sexually deviate nature, accused the defendant several times of planning to beat or even kill him. Lane Nelson was repulsed by Randall's behavior, but nonetheless agreed to do as he was asked in return for the $50.00 he had been promised.

After one or two hours of the photography session, defendant asked Randall to advance him $20.00 from the proposed $50.00 payment so that he could buy something to drink. Randall agreed, and Lane Nelson went to a nearby convenience store, where he purchased two six-packs of 16-ounce cans of beer, and a pint of vodka. During the remainder of the afternoon, Nelson consumed all of these alcoholic beverages.

One or two hours after Nelson went to the store, Randall stated that he wished to perform oral sex on him. When the defendant hesitated, Randall offered to pay him. Nelson, who had not had any previous homosexual encounters, was extremely distressed by this occurrence, but he was so intoxicated and depressed by this time, that he let Randall do as he pleased.

Shortly after this incident, Lane Nelson and Randall left the apartment to go to a nearby Pizza Inn, where Nelson consumed more alcohol, specifically, an entire pitcher of beer. During their time at the restaurant Randall told Lane Nelson a series of stories, trying to impress upon Nelson that Randall was almost uncontrollably violent. They then returned to the apartment, at which point Nelson decided he wanted to wash his clothes in the complex's laundromat. However, before he left to do the laundry, Randall asked that the defendant tie him to the bed and leave him there.

While doing his laundry, Lane Nelson finished the last of the beer and the vodka and began to think of possible methods of escaping from Randall, and his sexual practices, as well as his apparently violent nature. He recalled that Randall previously had explained that the car in which they had been riding was a rental vehicle being paid for by Randall's employer and that the car had not been returned in a timely fashion to the rental company. Lane Nelson decided to use the car to get away from the situation.

At about 6:30 P.M. that same evening, Lane Nelson returned to the apartment from the laundromat in a drunken, agitated state and informed Randall, who still was tied to the bed, that he planned to take the car and leave the New Orleans area with it. Randall protested in a falsetto voice and accused the defendant of wanting to kill him. At this point Lane Nelson "flipped out...and just stabbed him" with a knife. Randall asked for medical help, but Nelson stabbed him several more times because he did not want to "see him

in pain or nothing." Randall died as a result of the stab wounds.

Following the stabbing, Lane Nelson took Randall's car keys and about $65.00 from the apartment and began to drive toward what he believed was Florida. After about two hours of driving drunkenly, Nelson fell asleep at a roadside rest area. Nelson learned the next morning that he had been driving west, rather than east, so he changed his direction and headed towards the Florida Gulf Coast. At about 7:00 P.M. that evening the car, holding Lane Nelson and a hitchhiker, collided with the rear of a disabled truck on Interstate 10 in Madison County, Florida. This is when Lane Nelson was arrested for operating a motor vehicle under the influence of alcoholic beverages.

Subsequently, the defendant was charged by indictment in Jefferson Parish, Louisiana with the crime of first degree murder. After a trial by jury he was found "guilty" as charged and received the death penalty.

CLAIM I

Defendant's first claim is that the jurors in his case were improperly disqualified for cause.

Defendant asserts that juror LaCrouts was improperly disqualified for cause. Juror LaCrouts stated that she would be able to convict the defendant if the State had proven his guilt beyond a reasonable doubt, but she might not be able to consider imposing the death penalty. Defendant claims that the exclusion of juror LaCrouts solely because of her conscientious or religious scruples against the death penalty caused his trial jury to be unrepresentative and biased in favor of the prosecution. The issue of whether the exclusion of jurors from the guilt/innocence phase of a trial in a bifurcated trial system, who are not death qualified, results in juries which are more likely to convict, and whether the exclusion of such jurors denies the defendant his right to a trial by jury from a representative cross-section of the community was discussed by the United

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States Supreme Court in Lockhart v. McCree, 106 S.Ct. 1758(1986). The United States Supreme Court held that States are not prohibited from death qualifying juries in capital cases. The Court stated that in order to find that a jury does not represent a fair cross section of the community, a distinctive group in the community must have been systematically excluded. In the case at bar there was no distinctive group which was excluded from defendant's jury; therefore, defendant was tried by a jury which was representative of the community at large.

Defendant claims that juror Kippers should not have been excused for cause because the juror informed the Court that he would give the defendant a bouquet of flowers "if he murdered a queer." Trial transcript, January 5, 1982, p.174, lines 20-22; p.175, lines 1-2. It is defendant's contention that the Court should have allowed juror Kippers to be questioned further and informed that he had a duty to view the case impartially and put aside his personal views, before he was excused for cause. A review of the record shows that no objection was made by defense counsel when juror Kippers was excused. Under LSA-C.Cr.P. Article 841, an error cannot be availed of after verdict unless it was objected to at the time of its occurrence. Therefore, the defendant is barred from asserting this claim.

Defendant contends that the failure of the Court to sequester jurors individually during voir dire questioning prejudiced the defendant. Defendant states that the jurors were dissuaded by peer pressure and fear of embarrassment from responding truthfully to the questions asked of them. A review of the record reveals that the jurors were allowed to individually approach the bench, if they so desired, and speak privately with the Court. Therefore, this claim is unsubstantiated.

Accordingly, the Court finds that defendant's first claim is without merit.

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CLAIM II

In defendant's second claim he contends that the State was improperly allowed to exercise a peremptory challenge against a juror who had already been sworn in. This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at p.515(La.1984). Accordingly, this Court finds the defendant's second claim without merit.

CLAIM III

Defendant's third claim is that the trial court interfered with the voir dire interrogation of the jury.

As an example, defendant cites the incident concerning juror LaCrouts. Juror LaCrouts informed the Court that if the defendant were convicted she would not be able to consider imposing the death penalty upon him. It is defendant's contention that following this remark by the juror, the Court restricted defense counsel's examination of the juror and immediately excused the juror. A review of the record reveals that the Court allowed defense counsel to pursue questioning juror LaCrouts in order to determine the reasons why she was unable to consider imposing the death penalty. Trial transcript, January 5, 1982, pgs.243-247. At one point the Court asked, "Does anybody wish to ask any questions?" Trial transcript, January 5, 1982, p.246, lines 9-10.

Defendant also asserts that there were several other occasions, similar to the incident with juror LaCrouts in which the trial court restricted the scope of examination of the jurors. A thorough review of the record shows that this claim is unsubstantiated.

Accordingly, the Court finds defendant's third claim without merit.

CLAIM IV

In defendant's fourth claim he asserts that he was denied a fair and impartial jury because the potential jurors were not individually sequestered during voir dire examination. It is defendant's contention that since the

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jurors were questioned in front of the entire jury pool they were not able to answer the questions truthfully because of peer pressure and the fear of embarrassment.

In accordance with Louisiana jurisprudence, the burden is on the defendant to show special circumstances indicating why individual voir dire is warranted. State v. Monroe, 397 So.2d 1258(La.1981), cert. denied, 103 S.Ct. 3571(1983), rehearing denied, 104 S.Ct. 36(1983); State v. Dominick, 354 So.2d 1316(La.1978). Defendant alleges that his case necessitated inquiry into sensitive topics such as homosexuality, sexual deviation and perversion. Therefore, individual voir dire was necessary.

The record shows that jurors were individually allowed to approach the bench and ask or answer questions. There was no embarrassment because the jurors had an opportunity to confer with the Court in private.

Accordingly, the Court finds the defendant's fourth claim without merit.

CLAIM V

Defendant's fifth claim is that confessions made by the defendant were improperly admitted into evidence. This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at pgs.514-515 (La.1984). Accordingly, this Court finds the defendant's fifth claim without merit.

CLAIM VI

In defendant's sixth claim he contends that the trial court prevented him from defending against the charges made against him and established an irrebutable presumption on specific intent in the State's favor by improperly limiting his ability to present psychiatric testimony.

This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at pgs. 516-517(La.1984). The Supreme Court of Louisiana held:

> ...Evidence of a mental defect which does not meet the M'Naughten definition of insanity cannot negate a specific intent

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> to commit a crime. State v. Rideau, 193 So.2d 264(1966).
>
> Defense counsel focused his inquiry on whether defendant on the day of the murder had the mental capacity to form the requisite specific intent to murder. The trial court disallowed questions designed to elicit expert opinion about defendant's ability to have a specific intent to murder on the day of the crime. The court agreed that the experts could be asked hypothetical questions based on the facts in evidence about Nelson and specific questions about his mental capacity at the time of the offense. Defense counsel refused to accept the court's parameters for his questioning.

This Court declines to review the constitutionality of the above ruling rendered by the Supreme Court of Louisiana in this matter.

Accordingly, the Court finds defendant's sixth claim without merit.

CLAIM VIA

In defendant's claim six A, defendant asserts that he was deprived of due process by his exclusion from a critical portion of the trial.

The portion of the trial defendant refers to is discussions between defense counsel, the State and the Court. A review of the record and trial transcript shows that these discussions, which were either in chambers or at the bench, consisted solely of legal argument between the attorneys and the Judge. Therefore, the Court finds that it was not necessary that defendant be present at this non-critical portion of the trial.

Accordingly, the Court finds that defendant's claim six A is without merit.

CLAIM VII

Defendant's seventh claim is that the trial court improperly admitted into evidence various inflammatory and prejudicial photographs.

This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510, at p. 516 (La.1984). The Supreme Court of Louisiana stated that "The

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probative value of the photographs is not outweighed by their prejudicial effect."

Accordingly, the Court finds defendant's seventh claim without merit.

CLAIM VIII

In defendant's eighth claim he asserts that prosecutorial misconduct rendered his trial fundamentally unfair.

Defendant argues that during voir dire examination the prosecutor referred to photographs, which the jurors would view during the course of the trial, as distasteful and gory. It is defendant's contention that the prosecutor began the trial with an emotional appeal to the jurors.

Defendant states that during voir dire examination, the prosecutor told the jurors that during the trial they would have to make a decision concerning the defendant's life. Defendant argues that this comment made it appear to any of the jurors chosen that they would have to find defendant guilty of first degree murder.

Defendant contends that during opening statement the prosecutor referred to prejudicial material that she knew would not and could not be admitted into evidence and by doing this, she inflamed the jury's passion against the defendant. Defendant argues that during the State's rebuttal argument, the prosecutor tried to impugn defendant's character by referring to the victim as a degenerate and implying that the defendant was also a degenerate.

In Louisiana jurisprudence before an allegedly prejudicial argument requires reversal, the reviewing court must be thoroughly convinced that the jury was influenced by the remarks and that such remarks contributed to the verdict. State v. Byrne, 483 So.2d 564 (La.1986), rehearing denied, 107 S.Ct. 243 (1986); State v. Jarman, 445 So.2d 1184 (La.1984).

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The Supreme Court of Louisiana and the United States Fifth Circuit Court of Appeals have previously held that erroneous statements by the prosecution during closing argument would constitute harmless error in light of the trial court's curative admonition to the jury and the strength of evidence against the defendant. U.S. v. Nation, 701 F.2d 31 (5th Cir.1983), cert.denied 104 S.Ct. 175(1983); U.S. v. Grapp, 653 F.2d 189(5th Cir.1981); State v. Pierce, 422 So.2d 1157(La.1982); State v. Felde, 422 So.2d 370(La.1982), 103 S.Ct. 1903(1983).

At one point in the trial, the prosecutor during his rebuttal argument in response to defense's closing argument stated that defense counsel's "function in life, or with this defendant, is to make inside look out, black look white, up seem down - confuse and befuddle the issue, whatever you want to do." Trial transcript, January 7, 1982, p.101, lines 20-22. The court instructed the jury to disregard the remark and the prosecutor apologized. The Supreme Court of Louisiana stated, "Any influence from the improper remarks was cured by the precautionary instruction." State v. Nelson, 459 So.2d 510 at p.517(La.1984).

Defendant asserts that remarks made by the prosecutor during voir dire examination, opening statement and rebuttal argument were prejudicial and unduly influenced the jury. This argument has no merit in light of the fact that the court gave the following instructions to the jury:

> Statements and arguments made by the attorneys are not evidence. In the opening statements, the attorneys are permitted to familiarize you with the facts they expect to prove. In closing arguments the attorneys are permitted to present for your consideration their contentions regarding what the evidence has shown or not shown and what conclusions they think may be drawn from the evidence. The opening statements and the closing arguments are not to be considered as evidence.
>
> You are not to be influenced by sympathy, passion, prejudice, or public opinion. You are expected to reach a just verdict.

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Trial transcript, January 7, 1982, page 105, lines 2-10.

The Court has thoroughly reviewed the entire trial transcript and is of the opinion that the improper remarks complained of by the defendant did not result in any prejudice to the defendant, in light of the Court's admonition and instructions to the jury and the strength of evidence against the defendant.

Accordingly, the Court finds defendant's eighth claim without merit.

CLAIM IX

In defendant's ninth claim he contends that the trial court improperly called the jury's attention to his failure to testify during the guilt phase of the trial.

A review of the trial transcript reflects that after the Bill of Indictment was read the Court read La.R.S.14:30 and its responsive verdicts to the jury. The Court then informed the jury of the manner in which the trial would proceed. The Court stated, "Second, the State will then introduce evidence intended to support the charges contained in the Bill of Indictment which you heard read a moment ago. Third, after the State has presented its evidence, the defendant may also present evidence, but the defendant is not required to do so." Trial transcript, January 6, 1982, page 31, lines 18-26. It is a correct statement of law that the defendant is not required to present evidence. Defendant in no way could be prejudiced by this statement made by the Court.

Defendant contends that a part of the Court's instructions given the jury before their deliberation referred to the petitioner's right to remain silent and his failure to testify. The Court's instruction was as follows: "The defendant is not required by law to call any witnesses or produce any evidence. The defendant is not required to testify. No presumption of guilt may be raised and no inference of any kind may be drawn from the fact that the

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defendant did not testify." Trial transcript, January 7, 1982, p.105, lines 11-13. The preceeding charge which was given to the jury in the instant case is proper. Nowhere did the Court comment on defendant's failure to testify. Defendant was not prejudiced by this statement made by the Court.

Accordingly, the Court finds defendant's ninth claim without merit.

CLAIM X

In defendant's tenth claim he contends that he was deprived of effective assistance of counsel.

The Court has chosen to address this claim in relation to the two phases of trial: the guilt/innocence phase and the sentencing phase.

A. The guilt/innocence phase

This Court has thoroughly reviewed the court record, the trial transcript, and the transcript of the evidentiary hearing to determine if the defendant was deprived of effective assistance of counsel according to the standard set forth by the United States Supreme Court in Strickland v. Washington, 104 S.Ct. 2052(1984). A defendant has the burden of proving that the ineffective assistance of counsel which he alleges not only provided the possibility of prejudice, but that it worked to his actual and substantial disadvantage in the outcome of the case. Defendant has not met this burden of proof in the instant case.

Assuming arguendo, that minor errors were made by the defense counsel during the guilt/innocence phase, these errors could have had only an insubstantial and insignificant impact on the jury. Furthermore, defendant's guilt was so irrefutably evident that an acquittal would have been an unreasonable event based upon the entire record.

Accordingly, the Court finds defendant's tenth claim as regarding the guilt/innocence phase in this case to be without merit.

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B. The sentencing phase

It is the opinion of this Court that a capital sentencing hearing in Louisiana, such as the one in this case, is very similar to a trial. In Strickland v. Washington, 104 S.Ct. 2052 (1984) the United States Supreme Court reviewed a petition for habeas corpus filed by a defendant who had received the death penalty for a murder conviction and asserted that he had been denied effective assistance of counsel. The Supreme Court held:

> A capital sentencing proceeding like the one involved in this case, however, is sufficiently like a trial in its adversarial format and in the existence of standards for decision..., that counsel's role in the proceeding is comparable to counsel's role at trial - to ensure that the adversarial testing process works to produce a just result under the standards governing decision. For purposes of describing counsel's duties, therefore, Florida's capital sentencing proceeding need not be distinguished from an ordinary trial. Strickland, 104 S.Ct. at 2064.

Therefore, this Court will review defense counsels' actions at the sentencing phase of defendant's trial, according to the duties expected of counsel at trial.

Defense counsel presented only three witnesses at the sentencing phase of the trial. The witnesses were: Dr. Shraberg, Linda Nelson, who is the defendant's sister, and the defendant. One of the defense counsel, Mr. Samuel Stephens read to the jurors the testimony of Dr. Richoux, which had been transcribed at the defendant's sanity hearing. At the evidentiary hearing in this court, Mr. Samuel Stephens was questioned as to why Dr. Richoux was not present at the sentencing phase of the trial. His reply was "Because I believe he was unavailable and I (did) not have him under a continuing subpoena." Evidentiary hearing transcript, November 11, 1986, p.126, lines 23-25.

At the evidentiary hearing, Mr. Samuel Stephens testified that in his opinion the defendant had committed the crime of manslaughter. Therefore, his preparation for trial consisted of a manslaughter defense. Evidentiary

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hearing transcript, November 11, 1986, p.110, lines 15-22; p.111, lines 14-18. It is clear from a reading of the trial transcript and the information obtained at the evidentiary hearing that defense counsel had not prepared for the penalty phase of the trial because they thought there would be none.

In Strickland v. Washington, 104 S.Ct. 2052(1984) the United States Supreme Court developed a two pronged test to determine if counsel's assistance was so defective as to require reversal of a conviction or death sentence.

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Strickland, 104 S.Ct. at 2064.

In assessing counsel's performance hindsight is not an accurate tool.

> A court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. Strickland, 104 S.Ct. at 2065.

The facts of this particular case are that Lane Nelson had been indicted for the first degree murder of Beauvais Randall. At trial, defense counsel presented the defense of intoxication under La.R.S. 14:15. However, the jury found that the defendant's intoxicated condition did not preclude the presence of the specific criminal intent necessary for the commission of first degree murder. The jury found the defendant guilty of first degree murder.

Once the defendant was found guilty of first degree murder it was the role of defense counsel to present as much mitigating evidence as they could so that their client would have a chance to escape the death penalty. It seems logical that they should have realized that there was a possibility the defendant may be convicted of first degree murder and

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that they would have investigated and thoroughly prepared to present the mitigating circumstances in favor of the defendant, one of those circumstances being the defendant's intoxication. However, this was not the case as demonstrated by the testimony of defense attorney, Mr. Samuel Stephens, at the evidentiary hearing held in this matter.

When asked, "Would you describe the pre-trial investigations you did in the case?" Mr. Samuel Stephens replied, "It was not very much. I did not think it was too complex. The whole case against Lane revolved mostly around the statements that he had given the police authority from Jefferson Parish and in the state of Florida. The whole defense was to try to attack that statement and failing that try to give some justification for his actions." Evidentiary hearing transcript, November 11, 1986, p.104, lines 20-28; p.105, line 3.

Mr. Samuel Stephens was asked the following question, "During the sentencing phase of the trial what did you do to prepare for the sentencing phase of the trial?" His reply, "Interviewed Mr. Nelson's sister who was in California and talk with Lane here and generally going over the family background and trying to show the jury that he did not have any criminal past." Evidentiary hearing transcript, November 11, 1986, p.122, lines 23-29; p.123, line 3.

Defense counsel only presented one witness to show defendant's lack of criminal past - his sister. Defense counsel's examination of defendant's sister was superficial and ineffective. He asked the witness if she and the defendant grew up together in their parent's home to which she replied yes. Defense counsel asked her about the deaths of their parents and defendant's reaction to those deaths. Defense counsel asked defendant's sister, Linda Nelson, if she had ever known her brother to be a violent person to which she replied no. Defense counsel never even questioned the witness concerning defendant's lack of a criminal past.

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In the evidentiary hearing which was held in this matter, the Court for the first time learns of defendant's background. The Court is made aware that the defendant grew up in an environment where his parents were alcoholics and they physically abused each other and his mother abused him. Evidentiary hearing transcript, November 13, 1986, p.60, lines 5-24; p. 77, lines 17-29; p.78, lines 1-15. This information comes from the testimony of Barbara Langedyk, the defendant's aunt. She was not contacted by either of the defense counsel to testify at the sentencing phase of the defendant's trial. Had she been contacted she would have been willing to come to Louisiana to testify. Evidentiary hearing transcript, November 13, 1986, p.88, lines 27-29; p.89, lines 1-4.

Linda Benisek (formerly Linda Nelson), the defendant's sister, testified in her deposition which was held on June 14, 1986 in Torrance, California that the defendant became involved with drugs as an adolescent. Deposition of Linda Benisek, June 14, 1986, p.12, lines 20-28; p.13, lines 1-12.

At this same deposition, Linda Benisek testified that when the defense counsel phoned her and asked her to come to New Orleans and testify at her brother's trial he didn't explain what she might be testifying about. She also testified that at the time she was contacted by phone the defense counsel never inquired if there were any other witnesses who might be able to testify for the defendant. Deposition of Linda Benisek, June 14, 1986, p.22, lines 19-28; p.23, lines 1-3.

Nancy Sullivan, a friend of the defendant's testified at the evidentiary hearing that the defendant had a drinking problem. Evidentiary hearing transcript, November 13, 1986, p.138, lines 18-20.

The fact that the defendant had grown up in an abusive home, that his parents were alcoholics, and that he had problems with drugs and alcohol was never revealed to the jurors at the sentencing phase of defendant's trial. The

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information was not available because the defense counsel did not investigate defendant's background and had made no attempts to contact friends of the defendant from Florida and the Army and family members, other than defendant's sister.

During the evidentiary hearing the following colloquy took place between Mr. Samuel Stephens and Mr. Robert McGlasson, one of the attorneys representing the defendant in his application for post-conviction relief:

> Q. Were you aware that prior to the trial of other members of Mr. Nelson's family and other friends.
>
> A. He mentionad he had relatives out west.
>
> Q. Are you aware that he had a grandmother in California?
>
> A. I believe he told me he did.
>
> Q. Did you interview or attempt to speak to her?
>
> A. No.
>
> Q. Are you aware that he had an aunt in California?
>
> A. He told me.
>
> Q. Did you interview or attempt to speak with her?
>
> A. No.
>
> Q. Were you aware of any other family members or friends?
>
> A. I knew he had a girlfriend in Florida.
>
> Q. Did you speak with her or interview her?
>
> A. No.

Evidentiary hearing transcript, November 11, 1986, p. 123, lines 4-22.

"It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to guilt and to a degree of guilt or penalty." American Bar Association Project on Standards for Criminal Justice, Standards

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Relating to the Prosecution Function and the Defense Function, Sec.4.1(tentative draft 1970). The United States Court of Appeals, Eleventh Circuit in Goodwin v. Balkcom, 684 F.2d 794 (1982) held that "At the heart of effective representation is the independent duty to investigate and prepare. Counsel have a duty to interview potential witnesses and make an independent examination of the facts, circumstances, pleadings and laws involved." Id. at p.805. The United States Supreme Court stated in Strickland, 104 S.Ct. at 2066, "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." A review of the record and all transcripts demonstrates that defense counsel for Lane Nelson made practically no efforts to develop information which would have been helpful to the defendant at the sentencing phase of his trial.

Mr. Samuel Stephens testified at the evidentiary hearing that the only experts he intended to use at the sentencing phase of the trial were the two court-appointed psychiatrists. Evidentiary hearing transcript, November 11, 1986, p.124, lines 27-28; p.125, lines 3-5. Yet, defense counsel did not have Dr. Richoux under a continuing subpoena. Evidentiary hearing transcript, November 11, 1986, p.126, lines 22-26.

Prior to the trial of the defendant there were two sanity hearings held in this matter in accordance with C.Cr.P. Art. 650 since the defendant had entered a combined plea of "not guilty and not guilty by reason of insanity". On November 5, 1981 a sanity hearing was held to determine defendant's mental capacity at that time to assist his counsel in the trial of this matter. On November 12, 1981 a sanity hearing was held to determine the defendant's mental condition as of the time of the offense.

When Dr. Richoux was unavailable for the sentencing phase of defendant's trial, Mr. Samuel Stephens read the

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psychiatrist's testimony from the sanity hearing which was held on November 12, 1981.

Defense counsel's examination of Dr. Shraberg at the sentencing phase of the trial was cursory and superficial. The Court finds that this may be related to their lack of preparation with the psychiatrist. At the evidentiary hearing, Dr. Shraberg was asked if he had participated in any discussions with counsel before he testified at the sentencing phase of defendant's trial. He said he spoke with defense counsel in the courtroom while the jury was out of the courtroom. Dr. Shraberg also stated that his complete testimony at the sentencing phase of the trial took only five or ten minutes. Evidentiary hearing transcript, November 11, 1986, p.83, lines 9-25.

Defense counsel did not question Dr. Shraberg concerning the mitigating circumstances in this matter. Mr. James Weidner questioned the psychiatrist by reading to him the testimony he had previously given in the sanity hearing held on November 12, 1981 and inquiring if this was still his opinion. Trial transcript, January 8, 1982, p.29, lines 16-29; p.30, lines 1-14. Dr. Shraberg's comments concerning what he was asked at the sentencing phase of the trial are as follows: "Defense counsel asked me a few simple questions concerning whether Mr. Nelson was depressed, intoxicated and grieving at the time of the crime, to which I answered affirmatively. They did not ask me to explain or elaborate upon any of these conclusions, nor did they ask me any questions concerning how these factors related to Mr. Nelson's actions and intentions at the time of the crime..." Attachments to Application for Post-Conviction Relief, Affidavit of Dr. Shraberg, Exhibit H, p.4.

It appears that defense counsel did not fully understand the meaning of the sentencing phase of the trial. Defendant had already been found sane. Defendant had already been found guilty of first degree murder. In the sentencing phase, it was defense counsel's responsibility to

present evidence favorable to the defendant so the jury would not sentence him to death.

Defense counsel failed to present mitigating evidence in accordance with La.C.Cr.P. Art. 905.5, Mitigating Circumstances. Sections a, b, and e apply to the case at bar.

> (a) The offender has no significant prior history of criminal activity;
>
> (b) The offense was committed while the offender was under the influence of extreme mental or emotional disturbance;
>
> (e) At the time of the offense the capacity of the offender to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication;

Defendant, Lane Nelson has met the first stage of the Strickland test - that counsel's performance was deficient and his errors were so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. The second stage of the Strickland test is that the defendant must show that the deficient performance prejudiced the defense. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 104 S.Ct. at 2068. When a defendant challenges the death sentence, such as Lane Nelson is in this case, "the question is whether there is a reasonable probability that, absent the errors, the sentencer - including an appellate court, to the extent it independently reweighs the evidence - would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." Strickland, 104 S.Ct. at 2069.

At the evidentiary hearing Dr. Shraberg explained in detail how alcohol intoxication affects the mental functioning of individuals. He discussed that intoxication

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causes impairment in one's judgment and that one's impulse control may be reduced as a result of this impairment. Evidentiary hearing transcript, November 11, 1986, p.70, lines 3-15. It was his belief that Lane Nelson's impulse control was reduced due to alcohol intoxication and the amount of anger and grief which the defendant was experiencing at the time. Dr. Shraberg stated, "And, my opinion, unfortunately, the type of interactions that went on was rather bazaar (sic) and the interactions between the victim and Mr. Nelson more or less lit a fuse and having the alcohol was like gasoline had a fuse which caused the explosion." Evidentiary hearing transcript, November 11, 1986, p.71, lines 14-19.

At the evidentiary hearing in this matter, Dr. Richoux testified that he believed the defendant was grossly intoxicated by alcohol at the time of the offense. Evidentiary hearing transcript, November 11, 1986, p.154, lines 14-15. Dr. Richoux explained that alcohol may affect mental functioning in a variety of ways. Alcohol is a central nervous system depressant and diminishes many brain functions. In his testimony, Dr. Richoux stated:

> Basically, what we are talking about is this process by which urges, impulses, or feelings, which have originated in other sentries in the brain are monitored, examined by the higher cordical function and subject to censorship one might say. Higher cordical function enables the brain to sort out which feeling and impulses will be acted upon and which one won't. What impulses turn to behavior and what impulses simply remain impulses.
>
> Higher cordical function is suppressed or depressed by alcohol therefore alcohol removes inhibition. The most common example is the one that people joke about, someone's dancing with a lamp shade on his head. Presumably this occurred because this individual has the impulse to do or engage in this type of behavior when he's in a non-intoxicated state his higher cordical functions tell him not to because they take into account social morays and they take into account convention, embarrassment, and other complex psychological functions.
>
> When he's under the influence of alcohol that portion of the brain simply shuts down temporarily. Therefore, the impulses

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> are free to turn into behavior in an uncensored, unmonitored way.
>
> Evidentiary hearing transcript, November 11, 1986, p. 156, lines 9-28; p.157, lines 3-15.

Dr. Richoux explained:

> It's my opinion that Mr. Nelson's intoxication at the time of the offense affected his conduct in a disinhibitory fashion consistent with what I described before concerning the affects of alcohol on brain functioning, and that is to remove the sensory or monitoring portion of the brain that prevents under normal circumstances when an individual is not intoxicated that person from acting on unacceptable impulses including violent impulses.
>
> I think there were obviously very rageful feelings present in Mr. Nelson and the effects of the alcohol was to disinhibit him to the point that those impulses turned into actions.
>
> Evidentiary hearing transcript, November 11, 1986, p.159, lines 24-28; p.160, lines 3-16.

At the evidentiary hearing, Dr. Richoux informed the court that the defendant had a "fairly traumatic upbringing". He gained most of this information from affidavits given by individuals who would have testified at the sentencing phase of the trial had they been asked to testify. Dr. Richoux testified that this type of information concerning the defendant's background is important because the defendant, "presents, as an adult, primarily his past character or personality type". Evidentiary hearing transcript, November 11, 1986, p.180, lines 27-28.

In the evidentiary hearing, Dr. Richoux was asked to explain how this type of crime could have occurred, since it was not typical of the defendant's passive dependent personality type. His reply:

> What he did, primarily by a very catastrophic coming together of two factors. The first one being his intoxication of alcohol. This is disinhibitor or releasing factor, you might say. The other thing are the emotions that I also described previously in relation to his life circumstances at that time. The way that they aggravated feelings of depression and rage they were part of his character all along but became much more intense in relation to breaking up with his common law wife and in

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> relation to his mother's terminal illness and in relation to the particular behavior and appearance, dress, and so forth of the person who ultimately became the victim.
>
> Mr. Nelson felt depression, rage and all of these in extreme form and giving the releasing or disinhibiting effect of the alcohol those impulses and feelings got translated into his behavior in a violent fashion.
>
> Evidentiary hearing transcript, November 11, 1986, p.186, lines 14-28; p.187, lines 3-9.

It is apparent from the evidentiary hearing, that had defense counsel properly prepared to examine Dr. Shraberg at the sentencing phase of trial, he could have elicited the doctor's professional opinion concerning the defendant and his state of mind. It is Dr. Shraberg's opinion that the defendant was intoxicated, that he acted spontaneously, and was in a state of severe emotional distress at the time of the commission of the offense.

It is also apparent that had Dr. Richoux been called upon to testify that he would have given his opinion concerning the defendant and his state of mind at the time of the offense. It was Dr. Richoux's professional opinion that the defendant was grossly intoxicated from alcohol at the time of the offense and that the defendant was experiencing an extreme emotional disturbance at the time of the offense. The jury did not get to hear any of this information.

No attempt was made by defense counsel to obtain possible mitigation testimony from family members, other than the defendant's sister, or individuals who knew Lane Nelson from work, the Army or Florida. These individuals would have been willing to testify concerning the defendant's background had they been asked to by counsel: Members of the defendant's family, Barbara Langedyk, his aunt and Josephine Langedyk, his grandmother; Rick Diaz, who worked with the defendant in California; friends of the defendant's from Florida who were Jean Marie Joyner, Nancy Sullivan and Kim Kern; and Wendy Ann Brown, who was a friend of the defendant's from the Army. These individuals would

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have demonstrated to the jury that the defendant had no significant prior history of criminal activity in accordance with C.Cr.P. Art. 905.5(a).

In Tyler v. Kemp, 755 F.2d 741(1985), at p. 745, the United States Court of Appeals, Eleventh Circuit held, "The evolution of the nature of the penalty phase of a capital trial indicates the importance of the jury receiving adequate and accurate information regarding the defendant. Without that information, a jury cannot make the life/death decision in a rational and individualized manner." The United States Court of Appeals, Eleventh Circuit in Thomas v. Kemp, 796 F.2d 1322 (1986), at p. 1325, held "The key aspect of the penalty trial is that the sentence be individualized, focusing on the particularized characteristics of the individual."

The jury in the instant case was not able to make the life/death decision in a rational manner. The jury was given scant information in the penalty phase concerning Lane Nelson. Here, as in Tyler v. Kemp, 755 F.2d 741(1985), at p. 745, the death penalty which resulted in the instant case was robbed of the reliability essential to assure confidence in that decision.

This Court concludes that defendant has satisfied the prejudice prong of the Strickland standard. Defense counsels' failure to investigate and present sufficient mitigating evidence fell below an objective standard of reasonableness under prevailing professional norms. Strickland v. Washington, 104 S.Ct. at 2064.

Lane Nelson has established that the errors of his defense counsel were prejudicial to his defense. "There is a sufficient probability that effective counsel could have convinced a sentencer that the death sentence should not be given to undermine confidence in the outcome." King v. Strickland, 748 F.2d 1462 (1984), at p.1464-1465.

Here, as in Jones v. Thigpen, 788 F.2d 1101 (1986), at p. 1103, defense counsel either neglected or ignored

critical matters of mitigation at the point when the jury was to decide whether to sentence Lane Nelson to death. This failure was unreasonable, and it was prejudicial to the defendant in that there is a reasonable probability that had this evidence been presented, the jury would have concluded that death was not warranted. Strickland, 104 S.Ct. at pgs.2064-2069.

Accordingly, the Court finds defendant's tenth claim, regarding the sentencing phase of the trial, to have merit.

Having found that defendant's tenth claim has merit,

IT IS ORDERED BY THE COURT that the Application for Post-Conviction Relief as regards claim ten, be and the same is hereby granted vacating and setting aside defendant's original sentence.

IT IS FURTHER ORDERED BY THE COURT that this matter be set on the Court's docket within ninety days, by the State of Louisiana to retry the sentencing phase of the defendant's trial. If the State of Louisiana fails to schedule this trial within the allotted time period, the Court will resentance the defendant.

CLAIM XI

Defendant's eleventh claim is that he was improperly sentenced to death on the basis of a single aggravating circumstance that merely echoed an element of the underlying crime for which he was convicted.

The Supreme Court of the United States addressed this issue in Lowenfield v. Phelps, Secretary, Louisiana Department of Corrections, et al. Slip Opinion No. 86-6867, decided January 13, 1988, at p.II. The United States Supreme Court held "The death sentence does not violate the Eighth Amendment simply because the single statutory 'aggravating circumstance' found by the jury duplicates an element of the underlying offense of first-degree murder."

Accordingly, this Court finds the defendant's eleventh claim without merit.

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CLAIM XII

In defendant's twelfth claim he asserts that remarks made during his trial concerning judicial review of the jury's recommendation of a death sentence improperly reduced the jury's sense of responsibility for the penalty imposed. This issue was fully litigated on appeal and found to be without merit. State v. Nelson, 459 So.2d 510 (La.1984), Assignment of Error Number Eleven, at p.518.

CLAIM XIII

Defendant's thirteenth claim is that the trial court failed to instruct the jury that it could recommend a sentence of life imprisonment even if it found the existence of one or more aggravating circumstances and no mitigating circumstances.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XIV

In defendant's fourteenth claim he contends that during the instructions to the jury following the sentencing phase of the trial, the trial court failed to define for the jury the term "mitigating circumstances".

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XV

Defendant's fifteenth claim is that the trial court failed to guide the jury regarding the function to be played by mitigating circumstances in determining what sentence to recommend.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XVI

In defendant's sixteenth claim he asserts that his sentence is excessive and disproportionate and cruel and unusual.

PORT000000222

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XVII

Defendant's seventeenth claim is that his sentence is arbitrary and capricious.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XVIII

In defendant's eighteenth claim he contends that his sentence is invidiously discriminatory.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XIX

Defendant's nineteenth claim is that capital punishment is an excessive penalty.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

CLAIM XX

In defendant's twentieth claim he contends that the cumulative effect of violations of his rights is in itself a violation of his constitutional rights.

The Court chooses not to address this issue, as the Court has ordered that a new hearing be held in the sentencing phase of this trial.

Gretna, Louisiana, this 23rd day of March, 1988.

JUDGE

PLEASE SERVE:
Assistant District Attorney, Dorothy Pendergast

Assistant District Attorney, Joellen Grant

Mr. Charles L. Stern, Jr., Attorney for Defendant,
Stone, Pigman, Walther, Wittmann & Hutchinson
546 Carondelet Street, New Orleans, Louisiana 70130

Warden, Hilton Butler, Louisiana State Penitentiary
Angola, Louisiana 70712

PORT000000223

Due to privacy concerns, Exhibit # 69 (b) in unredacted form is only available for Senators to review.

SUPPLEMENT TO STANDARD FORM 86 (SF-86)

(Attach additional pages if necessary)

1S. Please list names of all corporations, firms, partnerships or other business enterprises, and all nonprofit organizations and other institutions with which you are now, or during the past five years have been, affiliated, as an officer, owner, director, trustee, partner, advisor, attorney or consultant. In addition, please provide the names of any other organizations with which you were affiliated prior to the past five years that might present a potential conflict or appearance of conflict of interest with your prospective appointment. (Please note that in the case of an attorney's client listing, it is only necessary to provide the names of major clients and those that might present a potential conflict or appearance of conflict of interest with the prospective appointment).

NONE

2S. Please list all your interests in real property, other than a personal residence, setting forth the nature of your interest, the type of property and the address.

NONE

3S. Have you or any firm, company or other entity with which you have been associated ever been convicted of a violation of any Federal, state, county or municipal law, regulation or ordinance? If so, please provide full details.

NO

4S. Have you or any firm, company or other entity with which you have been associated ever been the subject of Federal, state or local investigation for possible violation of a criminal statute? If so, please give full details.

NO

5S. Have you ever been involved in civil or criminal litigation, or in administrative or legislative proceedings of any kind, either as a plaintiff, defendant, respondent, witness or party in interest? If so, please give full details identifying dates, issues litigated and the location where the civil action is recorded.

SEE ATTACHMENT #1

65. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please give full details.

NO

73. Have you ever run for political office, served on a political committee or been identified in a public way with a particular organization, candidate or issue? Have any complaints been lodged against you or your political committee with the Federal Election Commission or state or local election authorities? If so, please describe.

SEE ATTACHMENT #2

85. Are you currently, or have you ever been, a member or office holder in any club or organization that restricts or restricted membership on the basis of sex, race, color, religion, national origin, age or handicap? If so, provide the name, address and dates of membership for each.

NO

89. Please identify any adults (18 years or older) currently living with you who are not members of your immediate family. Provide the names of those individuals, dates and places of birth, and whether or not they are United States citizens.

NONE

105. Is there anything in your personal life that could be used by someone to coerce or blackmail you? Is there anything in your life that could cause an embarrassment to you or to the President if publicly known? If so, please provide full details.

NO

I understand that the information being provided on this supplement to the SF-86 is to be considered part of the original SF-86 dated April 27, 1994 and a false statement on this form is punishable by law.

Signature

9B

ATTACHMENT 1

Clark, et al v. Edwards, et al.
86-435, U.S. District Court, Eastern District of Louisiana

Suit challenging the method of election of judges in Louisiana. All judges were sued as nominal parties; we were sued in our official capacity. Resolution: Jefferson Parish, the 24th Judicial District Court, established sub-districts wherein an individual candidate runs, as opposed to running throughout the entire parish as was previously the procedure.

24th Judicial District Court, Indigent Defender Board & Sam Dalton v. State of Louisiana, Governor Roemer, et al.
413-728, 24th Judicial District Court
Declaratory judgment on constitutionality of LSA-R.S. 15:144(B)(D). All judges were sued, we were sued in our official capacity.

Resolution: Supreme Court issued a TRO and remanded to lower court. At the request of the Chief Justice and all interested parties, we have deferred further proceedings pending resolution by the legislature.

Sierra, et al v. State of Louisiana, Governor Roemer, et al
#405-429, 24th Judicial District Court
Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity.

Pending.

Augustus, et al. v. State of Louisiana, Governor Roemer, et al
#90-4667 U. S. District Court, Eastern District of Louisiana

Constitutionality of LSA-R.S. 13:994(B)(1),(2),(3). This concerned a Louisiana statute which assessed a 2% fee on bail bonds. All judges were sued as nominal parties in their official capacity. This is virtually the same claim as Sierra, et al v. State of Louisiana, Governor Roemer, et al except it was filed in Federal court.

Injunction granted.

9c

(Attachment 1 continued)

De Grange, et al v. 24th Judicial District Court
89-3535, U.S. District Court, Eastern District of Louisiana

All judges were sued in their official and individual capacity. Petitioners, Shurmaine De Grange and Ida Williams alleged discrimination. Both petitioners were former employees of the late Judge Lionel Collins. After his death, De Grange, his former law clerk, alleged she was not hired as a hearing officer in Domestic Court because of discrimination. Ida Williams, his former secretary, alleged discrimination because her services were not retained by the newly elected judge of the division.

Resolution: The matter was settled without any admission of liability or responsibility.

9D

ATTACHMENT 2

District Court Judge — January 1, 1985 - Present
State of Louisiana
Division A, 24th Judicial District Court

District Court Judge, Ad Hoc — August 24, 1984 - January 1, 1985
State of Louisiana
Division A, 24th Judicial District Court

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

4E

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, State Court Judge for the 24th District of Louisiana, located in Gretna, Louisiana (LA), telephonically contacted this interviewing Agent in the New Orleans Office of the Federal Bureau of Investigation (FBI). PORTEOUS advised that he had telephoned his office in Gretna, LA, from Baton Rouge, LA, where he was teaching a class. PORTEOUS had called in to request any messages, and was advised that [redacted] had been interviewed earlier that day by FBI Agents of New Orleans office. As a result, she was noticeably unnerved. PORTEOUS had been advised by [redacted] of the nature of the interview, and stated that he seemed to recall being involved in bond reduction matters involving former criminal defendants, [redacted] and [redacted]. He further stated that he seemed to recall that [redacted] bond was originally set at a very high sum of money, but upon request by the arresting officer, name unrecalled, he (PORTEOUS) agreed to reduce the bond considerably. PORTEOUS also absolutely denied that any money was received by him as a fee for agreeing to reduce the bond in the [redacted] matter.

With regards to the [redacted] matter, PORTEOUS stated he recalled agreeing to reduce her bond after obtaining information about the complainant, which convinced him that the charges against her did not merit such a high bond being set.

Investigation on 8/17/94 at New Orleans, Louisiana (Telephonically) File # 77A-HQ- F

by SA S /glm Date dictated 8/18/94

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, Louisiana State Court Judge for the 24th Judicial District, was interviewed in his office located in Gretna, Louisiana (LA), regarding information received from confidential source, NO T-6, on August 8, 1994.

PORTEOUS stated that he was somewhat aware of the nature of the inquiry due to [redacted], having been interviewed by this interviewing Agent on the previous day. [redacted] had related to Judge PORTEOUS a summation of that interview. PORTEOUS was initially asked if he recalled having been involved in a bond reduction matter for a criminal defendant named [redacted], who was arrested by the Jefferson Parish Sheriff's Office on a cocaine charge in March, 1987. Judge PORTEOUS could not specifically recall a bond reduction matter involving this named individual, but after being provided with some of the information obtained from NO T-6, PORTEOUS seemed to recall that this individual, who already had an extensive criminal history involving narcotics violations, had a very high bond initially set. Upon request from the arresting officer or possibly Deputy Chief RICHARD RODRIGUE, who is in charge of Criminal Detectives for the Jefferson Parish Sheriff's Department (JPSD), he reluctantly agreed to reduce the bond. PORTEOUS stated that if the incident that he is recalling is in fact an incident that involved the named subject, [redacted], the agreement to reduce the bond was based on reporting from a JPSD officer that [redacted]

PORTEOUS further stated that if this was the incident he is attempting to recall, then Assistant District Attorney PAT MC GINNITY, (who is currently in private practice as a criminal defense attorney, with office located on Girod Street, New Orleans, LA, telephone [redacted] would have been involved in the bond reduction discussion. PORTEOUS stated that it is routine for the prosecuting attorney along with the arresting officer to be involved in a discussion regarding any bond reductions. PORTEOUS could not recall any involvement of a [redacted] in monetary transactions regarding the bond reduction. Furthermore, PORTEOUS categorically denied that

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Investigation on 8/18/94 at Gretna, Louisiana File # 77A-HQ- F

by SA S /glm Date dictated 8/18/94

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FD-302a (Rev. 11-15-83)

77A-HQ- F

Continuation of FD-302 of JUDGE THOMAS PORTEOUS , On 8/18/94 , Page 2

he was paid a sum of $10,000, or for that matter, any sum in exchange for an agreement to reduce the bond for [redacted]

With regards to an allegation that PORTEOUS had received $1,500 to reduce a bond in a matter involving a [redacted], who had been arrested for theft, PORTEOUS, already having been aware of this allegation from previous discussion with [redacted] (as referenced above), had the criminal file available for review. PORTEOUS pointed out tha[redacted] bond had originally been set at $300,000, based on a mere two counts of theft. The bond was initially set by Judge JOHN MOLAISON. Upon review of the matter, PORTEOUS agreed to reduce the bond to a $50,000 property bond. He recalls ADAM BARNETT being the bondsman in this matter, a trusted bondsman who he had known for a long time. PORTEOUS stated that he felt, based upon the Jefferson Parish jails being extremely overcrowded at that time (last year), the fact that the details of the arrest did not appear to warrant such a high bond, along with limited criminal history of the defendant, this situation warranted a reduction in bond. PORTEOUS pointed out that the bond was reduced to a $50,000 property bond. Although it was later shown that the surety was insufficient for the amount of the bond, the defendant appeared in court for every hearing, and was ultimately given credit for time served in jail, and placed on probation. He recalled the New Orleans Times Picayune newspaper as making an issue of this technical error in allowing a property bond to be set when there was insufficient surety. PORTEOUS stated that although there was a technical error here, it proved to be a harmless error, in light of the fact that the defendant never failed to appear for any of her court hearings. However, PORTEOUS again categorically denied that he had been given $1,500 or any amount of money to reduce the bond for [redacted]

Judge PORTEOUS also denied that he had ever owned a yacht either individually or jointly with others, and furthermore, denied that he had ever owned any type of boat. He also denied that he had ever been present when cocaine, marijuana, or any other illegal narcotic was being utilized. He also denied that he had ever used any illegal narcotic personally.

Lastly, Judge PORTEOUS denied that he had ever signed any bail bonds "in blank;" and stated that he was unaware of anything in his background that might be the basis of attempted

FD-302a (Rev. 11-15-83)

77A-HQ- F

Continuation of FD-302 of JUDGE THOMAS PORTEOUS , On 8/18/94 , Page 3

influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgement or discretion.

INTELLIGENCE REPORT

CONFIDENTIAL

November 9, 1994

SUBJECT: (1) AUBRY WALLACE N/M [redacted]
(2) LOUIS MARCOTTE
(3) JUDGE THOMAS G. PORTEOUS, JR.
(4) BAIL BONDS UNLIMITED

REPORTED BY: [redacted]

On November 8, 1994, at 3:25 p. m. Rafael C. Goyeneche, III and Anthony Radosti met with Federal Judge Thomas G. Porteous in his chambers which are located at 500 Camp Street, New Orleans, Louisiana.

Upon arrival we advised Judge Porteous that the purpose of our meeting was to question him regarding his amendment of the Aubry N. Wallace sentence (State of Louisiana vs. Aubry Wallace, 89-2360-A, 24th Judicial District Court, Jefferson Parish, Louisiana). In particular we advised Judge Porteous that we wanted to ask him about his relationship with Louis Marcotte. Mr. Marcotte is the owner of Bail Bonds Unlimited and Mr. Wallace's

employer. The Judge stated "lets not sugar coat anything, in other words you guys think I'm dirty". We replied that we had some questions about his handling of the Aubry Wallace case and welcomed an explanation of his reasoning in this matter.

We informed the Judge that our sources had confirmed that Mr. Wallace was desirous of having his burglary conviction set aside and dismissed so that he could apply to the Louisiana Pardon Board as a first offender to receive a pardon for a narcotics conviction. We advised the Judge that Wallace could only apply for a pardon as a first offender on the narcotics case if his burglary conviction was set aside. We told the Judge that Wallace needed his two felony convictions (Burglary and Possession of in excess of 28 oz. of cocaine) removed from his record so that he could apply for a license to be a bail bondsman. The Judge admitted that he was informed of Mr. Wallace's plan by Robert Rees the attorney for Wallace. The Judge readily acknowledged that he was aware that Wallace had been working for Bail Bonds Unlimited and Louis Marcotte at the time he amended Wallace's sentence. Furthermore, the Judge stated that he suspected that Wallace's employment with Bail Bonds Unlimited was a violation of some type of state law, but he felt it was the responsibility of the parole officer to deal with that issue. The Judge stated that he was aware that Wallace was recently arrested by the Parole Office for a parole violation relative to his employment with Bail Bonds Unlimited.

The Judge freely admitted that he has known Mr. Marcotte for a number of years and considers him to be a friend. We asked the

CONFIDENTIAL PORT000000595

Judge if he frequently ate lunch with Mr. Marcotte and provided him with the name of the two restaurants they frequent. He admitted that he has had several lunches with Mr. Marcotte, but he didn't know if he would term his lunches with Marcotte as "frequent". Additionally, we asked if he had traveled to Las Vegas with Mr. Marcotte and he confirmed that he had. The Judge stated that six or seven people went as a group to Vegas and Marcotte was a member of the group. The Judge when asked did Marcotte pay his way, quickly changed the subject. Porteous when asked a second time advised that Marcotte did not pay his way to Vegas.

We then questioned the Judge about the factors he considered in deciding to amend Aubry Wallace's sentence on September 22, 1994. The Judge stated that he had known Wallace before he appeared before him on the burglary charge. He was a sheriff's deputy until he got into some type of trouble. He considered Wallace to be a [redacted] but liked him and thought he was deserving of a "break". Porteous also stated that he would see Wallace around the court house and knew he was working for Marcotte. The Judge stated that he felt Wallace was entitled to be benefit of La. C. Cr. Pro. Art.: 893 (E) (which permits a judge to set aside the conviction and dismiss the prosecution) because he was told by the defense attorney that he (Porteous) did not advise Wallace at the time he tendered his plea that Article 893 was available to him. Porteous advised he did not recall the guilty plea at all nor did he check the record. The Judge stated that he recently had granted another 893 plea to another felon that had completed his sentence 20 years ago.

CONFIDENTIAL PORT0000000596

We informed the Judge that in our opinion his actions were improper under La. C. - Cr. Pro. Art.: 881 RE: Amendment of Sentence. We pointed out that the article limits the courts discretion to amend sentences to instances prior to the beginning of the execution of the sentence. Wallace's sentence was amended after completion of his jail term for a narcotics conviction and while he was on supervised parole. The Judge admitted that his actions were contrary to Article 881 but defended his actions by stating that the Assistant District Attorney who was present in court should have objected to the amendment of Wallace's sentence.

The Judge vehemently denied that he amended the sentence out of friendship for or at the request of Louis Marcotte.

The Judge stated he felt he had done nothing criminal, but stated that the Assistant District Attorney had the authority to appeal his ruling if it was improper. The Judge ended the meeting by telling us to "do what you think you have to do." We thanked him for his time and we left his chamber at approximately 4 p. m.

CONFIDENTIAL
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TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

THE STATE OF LOUISIANA NO. 89-2360

VS.

AUBRY N. WALLACE DIV. A

Proceedings taken in the above numbered and entitled cause in open court on June 26, 1990 before the Honorable G. Thomas Porteous, Judge presiding.

* * * * * * *

APPEARANCES:

For the State:

ANN LAMBERT, Assistant District Attorney

For the Defendant:

JOSEPH J. TOSH, Attorney at Law

Reported by: Sandra B. Bancock, CCR

PROCEEDINGS

MR. TOSH:

I'm Joseph Tosh and I represent Aubry Wallace. Mr. Wallace would withdraw his former plea of not guilty and enter a plea of guilty to the amended charge of simple burglary.

AUBRY N. WALLACE, 240 Garden Road, Marrero, Louisiana, after having been first duly sworn, was examined and testified as follows:

THE COURT:

Mr. Wallace, your attorney has indicated to me that he's advised of your rights:

One, to a trial by jury,

Two, to confront your accusers, and

Three, against self-incrimination

and that by entering a plea of guilty you are waiving or giving up these rights.

He's also indicated to me that you have advised him that you understand these things; is that correct?

THE DEFENDANT:

Yes.

THE COURT:

I want you to convince me also that you understand what you are doing by entering this plea of guilty. Consequently, I am going to explain the nature of the crime to which you are pleading guilty and I will also explain the consequences of your plea of guilty.

If you have any questions or if you do not understand anything I say stop me and I will answer your questions and give you any additional instructions which you may desire.

Ms. Lambert, this case is being

reduced to simple burglary; is that correct?

MR. LAMBERT:

Yes.

THE COURT:

You're 29 and you have a high school diploma. Is that correct, Mr. Wallace?

THE DEFENDANT:

Yes.

THE COURT:

Mr. Wallace, you're pleading guilty to one count of simple burglary which occurred on the eighth day of May 1989. The maximum penalty I could impose on you would be up to 12 years at hard labor. Do you understand that?

THE DEFENDANT:

Yes.

THE COURT:

Do you understand that the plea of guilty is your decision and no one can force you to so plead?

THE DEFENDANT:

Yes.

THE COURT:

To plead guilty is your voluntary act and must be free from any vice or defect which would render your ability to plead guilty inadequate. Has anyone used any force, intimidation, coercion or promise or reward against either you or any member of your family for the purpose

THE COURT:

No anything.

THE DEFENDANT:

No.

THE COURT:

Have you been advised by your attorney that if I accept your plea I intend to give you three years at hard labor suspended, two years of active probation and a $10 a month supervision fee? Do you understand that?

THE DEFENDANT:

Yes.

THE COURT:

You have the right to a trial by jury which jury may either find you guilty as charged, guilty of a lesser crime or not guilty. You have the right to hire an attorney to defend you at that trial. If you could not afford an attorney one would be appointed for you which would cost you nothing. Do you understand that by pleading guilty you are waiving or giving these rights?

THE DEFENDANT:

Yes.

THE COURT:

THE DEFENDANT:

Yes.

THE COURT:

Are you satisfied with his representation?

THE DEFENDANT:

Yes.

THE COURT:

Do you have any complaint to make?

THE DEFENDANT:

No.

THE COURT:

At any jury trial you have the right to confront your accusers to compel testimony on your behalf from your witnesses. By entering this plea of guilty you are waiving or giving up these rights. Do you understand that?

THE DEFENDANT:

Yes.

THE COURT:

If you were to go on trial in the event of a conviction, that is, if the jury would find you guilty you would have the right to appeal. Again, in the event of an appeal if you could not afford an attorney one would be appointed for you which would cost you nothing. By entering this plea of guilty you are waiving and giving up these rights. Do you understand that?

[redacted]

Yes.

THE COURT:

If you plead guilty and this Court

accepts your plea you do not have the right to assert any allegations of defect, such as:

One, an illegal arrest

Two, an illegal search an seizure

Three, an illegal confession

Four, an illegal lineup, and

Five, the fact that the State might not be able to prove such charge or that a jury would find you guilty. Do you understand that by pleading guilty you are waiving or giving up these rights?

THE DEFENDANT:

Yes.

THE COURT:

Do you understand that by pleading guilty you are telling this Court that you have in fact committed the crime to which you are pleading guilty?

THE DEFENDANT:

Yes.

THE COURT:

Mr. Tosh, there's a portion on here for you to read and sign. You did both.

MR. TOSH:

Yes, Your Honor.

[redacted]

Yes.

THE COURT:

Mr. Tosh went over the document with you.

THE DEFENDANT:

Yes.

THE COURT:

Are there any questions you have of me or is there anything that you do not understand?

THE DEFENDANT:

No.

THE COURT:

I, as trial judge, have entered into the foregoing colloquy with the defendant. I'm entirely satisfied that the defendant was aware of the nature of the crime to which he has pled guilty. That the defendant did in fact commit said crime and that there is a basis in fact to accept said plea of guilty. That the defendant understands the consequences of said plea of guilty and has made a knowing, intelligent, free and voluntary act of pleading guilty to the above mentioned crime. I therefore will accept his plea of guilty.

Again, you have a right to a delay. If you wish to waive that delay I can impose sentence today.

MR. TOSH:

We will waive any delay.

THE COURT:

Under 894.1 Mr. Wallace has absolutely

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no history of any criminal activity. Two, he should respond affirmatively to probationary treatment. Three, his crime was the result of circumstances unlikely to occur. Accordingly, the Court will sentence the defendant to three years at hard labor which I will suspend and place him on two years of active probation. He will pay a monthly supervision fee in the amount of $10 per month.

MR. TOSH:

Thank you, Your Honor.

PORT000000618

C E R T I F I C A T E

I, Sandra B. Hancock, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings heard in open court at Gretna, Louisiana, June 26, 1990 before the Honorable G. Thomas Porteous, Judge presiding in the matter entitled, THE STATE OF LOUISIANA VERSUS AUBRY N. WALLACE, NO. 89-2360.

Sandra B. Hancock
Official Court Reporter
24th Judicial District Court
In and For the Parish of Jefferson
State of Louisiana

PORT000000619

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

****

STATE OF LOUISIANA NO. 89-2360

VS. DIVISION "A"

AUBREY WALLACE
****

PROCEEDINGS taken in the above numbered and entitled cause before the Honorable G. Thomas Porteous, Judge presiding, on September 21, 1994.

APPEARANCES

For the Plaintiff:

Michael Reynolds

For the Defendant:

Bruce Netterville

Reported by: Lisa Broussard, Official Court Reporter

WITNESS INDEX

WITNESSES: PAGE NO.:

EXHIBIT INDEX

EXHIBITS:	DESCRIPTION	PAGE RECEIVED:
	PLAINTIFF'S EXHIBITS	
	DEFENDANT'S EXHIBITS	

P R O C E E D I N G S

THE COURT:

All right. This is State of Louisiana versus Aubrey Wallace. It was 89-2360. It's a motion for amended sentence. Mr. Netterville is standing in on behalf of Mr. Reese. I've already spoken with the DA on this. Apparently, previously in my Court on 11 December 91, I terminated this defendant's probation unsatisfactorily because as stated in the petition, "Subject was sentenced on 2/26/91, on 89-0001, to five years at hard labor for possession of PCP and Cocaine." That conviction or that crime technically predates the crime for which he pled in my particular Court. Accordingly, it was an incorrect basis to terminate unsatisfactorily. Accordingly, the sentence will be amended to include removal of the unsatisfactory removal of probation and the entering of the plea under Code of Criminal Procedure 893.

All right. I've signed the order.

MR. NETTERVILLE:

Thank you, Judge.

THE COURT:

If you want further relief, then file a petition to enforce 893 and then I'll execute that also.

MR. NETTERVILLE:

Thank you.

PORT000000623

C E R T I F I C A T E

I, Lisa Broussard, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings heard in Open Court at Gretna, Louisiana, on September 21, 1994, before the Honorable G. Thomas Porteous, Judge presiding, in the matter entitled State of Louisiana versus Aubry N. Wallace, numbered Criminal Docket Number 89-2360.

Lisa Broussard

LISA BROUSSARD
OFFICIAL COURT REPORTER
24TH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF
JEFFERSON, STATE OF LOUISIANA

This 28 day of Nov., 1994.

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

****

STATE OF LOUISIANA NO. 89-2360

VS. DIVISION "A"

AUBRY WALLACE

****

PROCEEDINGS taken in the above numbered and entitled cause before the Honorable G. Thomas Porteous, Judge presiding, on October 14, 1994.

APPEARANCES

For the Plaintiff:

Michael Reynolds

For the Defendant:

Robert Reese

Reported by: Lisa Broussard, Official Court Reporter

WITNESS INDEX

WITNESSES: PAGE NO.:

EXHIBIT INDEX

EXHIBITS:	DESCRIPTION	PAGE RECEIVED:
	PLAINTIFF'S EXHIBITS	
	DEFENDANT'S EXHIBITS	

PROCEEDINGS

MR. REESE:

Your Honor, Robert Reese on behalf of - -

THE COURT:

I'm going to grant that. I've already amended the sentence to provide for a 893.

MR. REESE:

Yes, sir. I might want to put something on the record.

THE COURT:

All right.

MR. REESE:

I wasn't here last time, Judge. In that matter, Mr. Wallace was placed on probation by your Court. He later received a conviction, but the charge he received the conviction on happened prior to the probation. His probation was terminated unsatisfactorily based on that - -

THE COURT:

I've changed that already.

MR. REESE:

We already terminated the probation satisfactorily. We amended the sentence for 893, and at this time I'm asking that the 893 be invoked.

THE COURT:

I'm going to invoke it. Under 893 the dismissal will be entered.

MR. REESE:

Thank you, Your Honor.

C E R T I F I C A T E

I, Lisa Broussard, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the proceedings heard in Open Court at Gretna, Louisiana, on October 14, 1994, before the Honorable G. Thomas Porteous, Judge presiding, in the matter entitled State of Louisiana versus Aubry N. Wallace, numbered Criminal Docket Number 89-2360.

Lisa Broussard

LISA BROUSSARD
OFFICIAL COURT REPORTER
24TH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF
JEFFERSON, STATE OF LOUISIANA

This 28 day of Nov, 1994.

Historical and Statutory Notes

Source:

18 U.S.C.A. § 3568; Acts 1966, No. 310, § 1.

→ **Art. 881. Amendment of sentence**

A. Although the sentence imposed is legal in every respect, the court may amend or change the sentence, within the legal limits of its discretion, prior to the beginning of execution of the sentence.

B. After commencement of execution of sentence, in felony cases in which the defendant has been sentenced to imprisonment without hard labor and in misdemeanor cases, the sentencing judge may reduce the sentence or may amend the sentence to place the defendant on supervised probation. If a sentence is reduced or amended, a copy of the minute entry reflecting the judgment reducing or amending the sentence shall be furnished to the district attorney and the arresting law enforcement agency. *Amended by Acts 1987, No. 59, § 1.*

Official Revision Comment

(a) This article continues the rule of Art. 526 of the 1928 Code of Criminal Procedure, that a legal sentence may only be changed, either to increase or decrease it, prior to the beginning of execution of the sentence.

Fed.Rule 35 authorizes a reduction of sentence within sixty days after sentence is imposed without any reference to the beginning of execution. A questionnaire was addressed to all Louisiana District Judges as to whether they favored a rule authorizing reduction of a sentence within a sixty-day period. The Louisiana District Judge's Association, at its April 23, 1964 meeting, considered the matter and voted unanimously in favor of retaining the rule that does not permit any change in a legal sentence after the defendant has begun to serve the sentence. The reasons underlying the district judges' vote were clearly indicated in answers to the questionnaire, which also advocated "no change", and are summarized as follows:

First, Louisiana district judges make use of pre-sentence investigations when they serve a useful purpose, and the judges impose sentence after full and deliberate consideration of all relevant circumstances. Many judges reported that they never had occasion to increase or decrease the sentence imposed.

Second, the judges are strongly against any provision, such as Fed. Rule 35, which authorizes reduction of a sentence after the beginning of its execution. Such a procedure can subject the sentencing judge to continuous harassment by the defendant's relatives, friends, and attorneys, and would virtually constitute the judge a "one man pardon board" as several of the judges aptly point out.

Third, the judges apparently feel that the authority to amend the sentence prior to the beginning of its execution is a proper compromise of a difficult situation. It permits some reconsideration in exceptional cases, without subjecting the sentencing judge to a substantial period of harassment and pressures.

The above article conforms with the district judges' recommendation.

(b) The trial court's authority to amend the sentence prior to "the beginning of execution of the sentence," is limited by Art. 916, which divests the trial court of jurisdiction upon the entering of the order of appeal. Certain exceptions are recognized in Art. 916, and one of these is that the trial court retains jurisdiction to "Correct an illegal sentence, or reduce a legal sentence in accordance with Article 913B." Under Article 913B, the trial court has authority to amend the sentence to grant credit for all or a part of the time served pending the appeal, when the defendant was held without bail.

(c) Since the authority to increase a sentence prior to the beginning of execution of the sentence is a continuation of the rule of Art. 526 of the 1928 Code, it will not preclude continued recognition of the binding effect of a "plea bargain". In State v. Mockosher, 205 La. 434, 17 So.2d 575 (1944), the Louisiana Supreme Court held that where a defendant had pleaded guilty and had been sentenced in conformity with an agreement entered into with the court and district attorney, the court was powerless to reconsider the penalty and increase the sentence originally imposed. The court reasoned that the defendant had surrendered "valuable rights" in return for the security of the light sentence, and that those rights could not be taken away by a subsequent exercise of the court's general authority to increase the sentence prior to the beginning of its execution.

Historical and Statutory Notes

Source:

Former R.S. 15:526; Acts 1966, No. 310, § 1.

→ **Art. 881.1. Motion to reconsider sentence**

A. (1) Within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence.

(2) The motion shall be oral at the time of sentencing or in writing thereafter and shall set forth the specific grounds on which the motion is based.

B. If a motion is made or filed under Paragraph A of this Article, the trial court may resentence the defendant despite the pendency of an appeal or the commencement of execution of the sentence.

C. The trial court may deny a motion to reconsider sentence without a contradictory hearing.

D. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

Section 3 of Acts 1991, No. 38 (§ 1 of which enacted C.Cr.P. arts. 881.1 to 881.6 and § 2 of which amends C.Cr.P. art. 916) provides: Section 3. The provisions of this Act shall become effective on January 1, 1992, or thirty days after the effective date of the sentencing guidelines promulgated by the Louisiana Sentencing Commission, whichever is later."

The sentencing guidelines became effective Jan. 1, 1992.

→ **Art. 881.2. Review of sentence**

A. (1) The defendant may appeal or seek review of a sentence based on any ground asserted in a motion to reconsider sentence. The defendant also may seek review of a sentence which exceeds the maximum sentence authorized by the statute under which the defendant was convicted and any applicable statutory enhancement provisions.

(2) The defendant cannot appeal or seek review of a sentence imposed in conformity with a plea agreement which was set forth in the record at the time of the plea.

B. The state may appeal or seek review of a sentence:

(1) If the sentence imposed was not in conformity with:

(a) Mandatory requirements of the statute under which the defendant was convicted, or any other applicable mandatory sentence provision; or

(b) The applicable enhancement provisions under the Habitual Offender Law, R.S. 15:529.1; and

(2) If the state objected at the time the sentence was imposed or made or filed a motion to reconsider sentence under this Article. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.3. Record on review of sentence

In reviewing a sentence the appellate court may consider the record of the case which shall include any evidence or relevant information introduced at preliminary hearings, hearings on motions, arraignments, or sentencing proceedings, and any relevant information included in a presentence investigation report filed into the record at sentencing. In order to preserve confidentiality, in appropriate cases, the court may order that the presentence report, or any portion thereof, be held under seal. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.4. Action by appellate court

A. If the appellate court finds that a sentence must be set aside on any ground, the court shall remand for resentence by the trial court. The appellate court may give direction to the trial court concerning the proper sentence to impose.

B. In the interest of justice, the appellate court may remand the case for resentencing before a judge other than the judge who imposed the initial sentence.

C. If necessary to an appropriate disposition of a motion to reconsider sentence, the appellate court may remand the case to the trial court with instructions to supplement the record or to hold an evidentiary hearing.

D. The appellate court shall not set aside a sentence for failure to impose a sentence in conformity with the sentencing guidelines or for excessiveness if the record supports the sentence imposed. *Added by Acts 1991, No. 38, § 31, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.5. Correction of illegal sentence by trial court

On motion of the state or the defendant, or on its own motion, at any time, the court may correct a sentence imposed by that court which exceeds the maximum sentence authorized by law. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

Art. 881.6. Effect upon sentence

No sentence shall be declared unlawful, inadequate, or excessive solely due to the failure of the court to impose a sentence in conformity with the sentencing guidelines of the commission. *Added by Acts 1991, No. 38, § 1, eff. Jan. 31, 1992.*

Historical and Statutory Notes

For provision relating to the effective date of this section, see note under C.Cr.P. art. 881.1.

→ **Art. 882. Correction of illegal sentence; review of illegal sentence**

A. An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.

B. A sentence may be reviewed as to its legality on the application of the defendant or of the state:

(1) In an appealable case by appeal; or

(2) In an unappealable case by writs of certiorari and prohibition.

C. Nothing in this Article shall be construed to deprive any defendant of his right, in a proper case, to the writ of habeas corpus. *Amended by Acts 1984, No. 587, § 1.*

Official Revision Comment

(a) The first sentence, taken from Fed. Rule 35, states the almost self-evident authority of the court to correct an illegal sentence at any time, for an illegal sentence is, in the contemplation of the law, no sentence at all. State v. Johnson, 220 La. 64, 55 So.2d 782 (1951). The phrase "at any time" makes clear the court's authority to make a correction after the defendant has begun to serve the sentence. Such authority was squarely affirmed in United States v. Johnson, 142 F.Supp. 532 (E.D.Tex.1956), aff'd, 241 F.2d 60 (5th Cir. 1957), citing Bozza v. United States, 330 U.S. 160, 67 S.Ct. 645, 91 L.Ed. 818 (1947).

(b) The court's authority to correct an illegal sentence at any time, which includes the power to pronounce a legal sentence, applies when an order of appeal or writs have been granted. This authority of the trial court is specifically set forth in Art. 916. Retention of the trial judge's power to correct an illegal sentence after an appeal has been taken achieves a very practical result. Under the well-settled Louisiana jurisprudence, State v. Johnson, 220 La. 64, 55 So.2d 782 (1951) (citing eleven Louisiana decisions in point), the supreme court will not directly correct an illegal sentence. Instead the case is remanded to the trial judge to impose a legal sentence as a substitute for the previously imposed illegal one. Under the above article the trial judge is empowered whenever and at whatever stage of the proceedings he discovers his error, to directly correct the illegal sentence.

(c) The methods of review stated in this article are retained from Art. 527 of the 1928 Code.

Historical and Statutory Notes

Source:
Fed.Rule 35; former R.S. 15:527; Acts 1966, No. 310, § 1.

Art. 883. Concurrent and consecutive sentences

If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. Other sentences of imprisonment shall be served consecutively unless the court expressly directs that some or all of them be served concurrently. In the case of the concurrent sentence, the judge shall specify, and the court minutes shall reflect, the date from which the sentences are to run concurrently. *Amended by Acts 1977, No. 397, § 1.*

Official Revision Comment

The sentencing judge's general authority to impose either concurrent or consecutive sentences is well recognized. Often, however, the judge's intent in this regard is either not expressed or is expressed in a very confused way. Orfield, in Criminal Procedure From Arrest to Appeal 575 (1947), states that "One of the knottiest problems of criminal procedure is how to tell when sentences are concurrent and when consecutive." This important matter was not provided for in the 1928 Louisiana Code of Criminal Procedure. Under this article the judge has express authority to specify whether multiple sentences are to be served concurrently or consecutively. The authority exists when sentences for several offenses are imposed at the same time, and also when sentence for a new conviction is imposed on a defendant who has already been sentenced for a prior conviction.

When the court does not expressly direct whether the sentences are to be served concurrently or consecutively, this article provides the rule of construction. If the sentences are for offenses arising out of the same act or transaction or out of interrelated criminal conduct, it is likely that the judge intended concurrent sentences. There is substantial precedent for treating such offenses as running concurrently. (See Sec. 402 of the A.L.I. Code of Criminal Procedure.) A general presumption of concurrent sentences is found in some states. People v. Ezell, 155 Ill.App. 298 (1910); Breton, Petitioner, 93 Me. 39, 44 Atl. 125 (1899); In re Black, 162 N.C. 457, 78 S.E. 273 (1913); State v. McKellar, 85 S.C. 236, 67 S.E. 314 (1910).

If the convictions are for offenses which do not arise out of the same interrelation of criminal conduct, a sentencing judge would be much less likely to intend that the sentences be served concurrently. Therefore, this article provides that in the absence of an express stipulation to the contrary, such sentences are to be served consecutively.

Historical and Statutory Notes

Source:
Acts 1966, No. 310, § 1.

Art. 883.1. Sentences concurrent with sentences of other jurisdictions

A. The sentencing court may specify that the sentence imposed be served concurrently with a sentence imposed by a federal court or a court of any other state and that service of the concurrent terms of imprisonment in a federal correctional institution or a correctional institution of another state shall be in satisfaction of the sentence imposed in this state in the manner and to the same extent as if the defendant had been committed to the Louisiana Department of Public Safety and Corrections for the term of years served in a federal correctional institution or a correctional institution of another state. When serving a concurrent sentence in a federal correctional institution or a correctional institution of another state, the defendant shall receive credit for time served as allowed under the laws of this state.

B. Whenever sentence is imposed under the provisions of this Article, the court shall order that the defendant be remanded to the custody of the sheriff of the parish in which the conviction was had in the event that the terms of imprisonment to which the defendant is sentenced in the foreign jurisdiction terminates prior to the date on which the sentence imposed in this state is to terminate.

D. The authority vested in courts by this Article is in addition to any authority granted by other laws with respect to persons convicted of traffic violations and children decreed to be traffic violators.

E. All court-approved driver improvement courses under this Article shall include instruction on railroad and highway grade crossing safety.

F. to I. Repealed by Acts 1991, No. 485, § 2; Acts 1993, No. 225, § 2, eff. July 1, 1993. *Added by Acts 1972, No. 224, § 1. Amended by Acts 1985, No. 150, § 1; Acts 1990, No. 834, § 1; Acts 1991, No. 485, §§ 1, 2; Acts 1993, No. 225, § 2, eff. July 1, 1993.*

1 R.S. 32:1 et seq.

Art. 892.2. Notice of controlled dangerous substance conviction; licensing authority

When a person is convicted of violating any felony provision of the Uniform Controlled Dangerous Substances Law, the court imposing sentence shall determine if the defendant possesses a license to practice a trade, occupation, or profession in this state and, if so, the court shall cause notice of the conviction to be forwarded to the appropriate licensing authority. *Added by Acts 1989, No. 81, § 1.*

Art. 892.3. Transfer of foreign nationals or citizens; treaty

When a treaty is in effect between the United States and a foreign country providing for the transfer of a convicted offender who is a citizen or national of the foreign country to the foreign country or the transfer of a citizen of the United States convicted as an offender in the foreign country to the United States, the governor is authorized, subject to the terms of such treaty, to act on behalf of the state and to consent to the transfer of such convicted offenders under the provisions of Article IV, Section 5(A) of the Constitution of Louisiana. *Added by Acts 1990, No. 514, § 1, eff. July 18, 1990.*

CHAPTER 2. SUSPENDED SENTENCE AND PROBATION

Art.
893. Suspension of sentence and probation in felony cases.
893.1. Motion to invoke firearm sentencing provision.
893.2. Use of firearm in commission of a felony; hearing.
893.3. Sentence imposed on felony in which firearm was used.
893.4. Inapplicability to unintentional felonies.
893.5. Community service in lieu of imprisonment.
894. Suspension of sentence; probation in misdemeanor cases.
894.1. Sentencing guidelines.
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894.3. Notice to victim for sentencing.
895. Conditions of probation.
895.1. Probation; restitution; fees.
895.2. Probation; restitution for values of wildlife.
895.3. Probationer transferred between states; fees.
895.4. Probation; fees; crime stoppers organizations.
896. Modifying or changing conditions of probation.
897. Termination of probation or suspended sentence; discharge of defendant.
898. Satisfaction of suspended sentence and probation.
899. Arrest or summons for violation of probation.
900. Violation hearing; sanctions.
901. Revocation for commission of another offense.
901.1. Additional sanctions for probation revocation.
902. Drug addict; pre-sentence investigation; voluntary treatment; conditions of probation.

Preliminary Statement

Although suspension of sentence has been possible in Louisiana since 1914 and was incorporated into the 1928 Code of Criminal Procedure, the first comprehensive system of suspended sentence and probation was enacted by Acts 48 and 49 of the 1942. Those laws were revised in 1960, by the Parolee Rehabilitation Committee, in the light of recent developments in this important phase of penology. Act 360 of 1960, drafted and sponsored by that committee, was prepared after a full consideration of the probation section, Sec. 301, of the American Law Institute's tentative draft of a Model Penal Code, the Standard Probation and Parole Act prepared by the National Probation and Parole Association, the 1942 Louisiana statutes (former R.S. 15:530 to 538), and carefully drafted statutes of California, Florida, Illinois, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. The 1960 Louisiana statute, which had been carefully considered by a strong panel of judges and prison administrators, served as the basis of this Chapter. Since the basic policy considerations were so recently and carefully reviewed, this Chapter generally adheres to the 1960 law. However, each provision has been carefully analyzed in an effort to improve its phraseology and organization, if possible.

Art. 893. Suspension of sentence and probation in felony cases

A. When it appears that the best interest of the public and of the defendant will be served, the court after a first or second conviction of a noncapital felony, may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation under the supervision of the division of probation and parole. The court shall not suspend the sentence of a second conviction unless the court finds that such offense did not involve the use of a dangerous weapon by the defendant, the offense occurred at least five years after satisfaction of the sentence imposed for the first conviction, and the defendant was not charged with any other felony since the date of first conviction. The period of probation shall be specified and shall not be less than one year nor more than five years. The suspended sentence shall be regarded as a sentence for the purpose of granting or denying a new trial or appeal.

B. The court under the same conditions and by the same procedure as provided for above may suspend the

execution or imposition of the sentence of a multiple offender who has been convicted, in the instant offense, of a violation of the Controlled Dangerous Substances Law of Louisiana,[1] other than the production, manufacture, distribution, or dispensing, or possession with intent to produce, manufacture, distribute, or dispense, or the attempt to possess with intent to produce, manufacture, distribute, or dispense, a controlled dangerous substance, and place the defendant on probation if he intends to participate, and is accepted, in a licensed state or federal drug treatment program, or if not immediately accepted, he receives a binding commitment from the appropriate official of a licensed state or federal drug treatment program that the next available space in such program will be given to the defendant; however, if for any reason the defendant is rejected by the program, or if he leaves the program before completion or against medical advice, he shall be returned to the custody of the court which imposed the sentence and the sentencing judge shall order the sentence executed.

C. If the sentence consists of both a fine and imprisonment, the court may impose the fine and suspend the sentence or place the defendant on probation as to the imprisonment.

D. Except as otherwise provided by law, the court shall not suspend a felony sentence after the defendant has begun to serve the sentence.

E. When the imposition of sentence has been suspended by the court for the first conviction only, as authorized by this Article, and the court finds at the conclusion of the probationary period that the probation of the defendant has been satisfactory, the court may set the conviction aside and dismiss the prosecution and the dismissal of the prosecution shall have the same effect as acquittal, except that said conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a multiple offender, and further shall be considered as a first offense for purposes of any other law or laws relating to cumulation of offenses. Dismissal under this Paragraph shall occur only once with respect to any person.

F. Nothing contained herein shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a felony. *Amended by Acts 1970, No. 467, § 1; Acts 1972, No. 514, § 1; Acts 1978, No. 570, § 2; Acts 1980, No. 311, § 1; Acts 1986, No. 770, § 1; Acts 1987, No. 59, § 1; Acts 1987, No. 721, § 1; Acts 1991, No. 89, § 1; Acts 1991, No. 91, § 1; Acts 1992, No. 303, § 1.*

[1] R.S. 40:961 et seq.

Official Revision Comment

(a) Under this article and its source provision the sentencing judge is authorized to suspend either the imposition or execution of sentence when placing the defendant on probation. The 1960 authorization for suspension of the imposition of sentence followed A.L.I. Model Penal Code, § 7.01 (Tent. Draft No. 4, 1955), which permitted the sentencing judge to place a defendant on probation without immediately fixing the term to be served if the probation was violated. Accord: 18 U.S.C. § 3651. Thus, the court is enabled to consider the probation record in determining a subsequent imposition of the sentence. An alternative is afforded by the court's authority to impose a sentence and suspend its execution. Often a definite statement of the term facing the defendant on probation, if he fails to satisfy his probation, will be desirable as an added incentive for compliance.

(b) Act 360 of 1960 might have been construed as authorizing the court to suspend a felony sentence without probation. A primary function of suspended sentence is lost if it is not safeguarded by the conditions and supervision which probation entails. This article is more specific and clearly makes probation mandatory. Of course, the extent of the conditions and supervision imposed will vary with the needs of the particular case.

(c) The concluding provision is retained from the 1942 and 1960 probation laws, which also prohibited the court from suspending the sentence after the defendant has begun to serve it. In retaining this prohibition against belated probation, the 1960 drafting committee stated, "Although there is nothing 'conceptually' wrong with allowing the judge to grant a suspended sentence or probation after a person has begun to serve his sentence, the facts that, parole is available after one-third . . . of the sentence is served, and that the trial judge should not be harassed by continuous probation petitions has prompted the prohibition." Report of the Parolee Rehabilitation Committee, January 4, 1960, p. 51.

(d) The concluding sentence of the first paragraph, treating the suspended sentence as a sentence for the purpose of granting or denying a new trial or appeal, is taken from former R.S. 15:534 (last paragraph), as enacted by Act No. 360 of 1960. The provision is necessary to remove doubt as to whether a sentence imposed but suspended constitutes a sentence within the general definition of Art. 871, which defines a sentence as "the *penalty imposed* by the court . . ." (Emphasis added.) For purposes of determining the time for the filing and disposition of a motion for a new trial, the suspended sentence should be treated in the same way as any other sentence.

Historical and Statutory Notes

Source:

Former R.S. 15:530(A), as amended by Act 360 of 1960; Acts 1966, No. 310, § 1.

Art. 893.1. Motion to invoke firearm sentencing provision

A. If the district attorney intends to move for imposition of sentence under the provisions of Article 893.3, he shall file a motion within a reasonable period of time prior to commencement of trial of the felony in which the firearm was used.

B. The motion shall contain a plain, concise, and definite written statement of the essential facts consti-

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B. When the imposition of sentence has been suspended by the court, as authorized by this Article, and the court finds at the conclusion of the period of suspension that the defendant has not been convicted of any other offense during the period of the suspended sentence, and that no criminal charge is pending against him, the court may set the conviction aside and dismiss the prosecution. The dismissal of the prosecution shall have the same effect as an acquittal, except that the conviction may be considered as a first offense and provide the basis for subsequent prosecution of the party as a multiple offender. Discharge and dismissal under this provision may occur only once with respect to any person during a five-year period.

C. Nothing contained herein shall be construed as being a basis for destruction of records of the arrest and prosecution of any person convicted of a misdemeanor. *Amended by Acts 1972, No. 514, § 1; Acts 1972, No. 651, § 1; Acts 1975, No. 608, § 1: Acts 1978, No. 570, § 3; Acts 1982, No. 270, § 1; Acts 1986, No. 789, § 1; Acts 1987, No. 29, § 1; Acts 1989, No. 35, § 1; Acts 1990, No. 89, § 1.*

Official Revision Comment

(a) This article provides for unsupervised suspension of sentence in most misdemeanor cases, and the only condition imposed is good behavior, which is defined to mean that the defendant must not be convicted of any other offense during the period of the suspended sentence. Accord: former R.S. 15:536, as amended by Act 360 of 1960. In State v. Gordon, 214 La. 822, 38 So.2d 794 (1949), the court interpreted the phrase "any other crime" to include conviction of a federal offense. Stressing the policy of the suspended sentence law, that is, to aid the rehabilitation of the penitent offender who abstains from further crime, the court held that the condition of the suspended sentence would be broken by any conviction whether local, federal, or foreign.

Regardless of the term of the sentence imposed, which may be for a short period of twenty or thirty days, the suspension of sentence on good behavior is for one year unless the court specifies a shorter period.

(b) The second paragraph of the above article, following the 1960 revised probation law (former R.S. 15:536), authorizes the court to place the defendant on probation when a sentence in excess of ninety days is imposed. If, however, a shorter sentence is imposed, the costs and difficulties of supervision render probation impractical. It is generally conceded that, but for the cost of supervision, probation on stated conditions is superior to simple suspension of sentence. Both A.L.I. Model Penal Code, § 7.01, Proposed Official Draft (1962) and 18 U.S.C. § 3651 make no distinction between felonies and misdemeanors, and make probation and supervision available in both instances.

(c) The period of the suspended sentence probation may be longer than the sentence imposed, but it may not exceed two years. It may be desirable to hold the defendant subject to a suspended sentence and probation for a longer period than the prison term; but it is not desirable, in misdemeanor cases, to hold the defendant subject to the probation authorities for a long period, such as may be necessary in felony cases.

(d) This article expressly authorizes the court to suspend the execution of the whole *or any part* of the sentence imposed. Although the power to suspend part of a misdemeanor sentence may appear to be implicit in the general power to suspend the execution of sentence, the Louisiana Supreme Court held that a partial suspension was not authorized by a general power to suspend. Cox v. Brown, 211 La. 235, 29 So.2d 776 (1947); State v. Johnson, 220 La. 64, 55 So.2d 782 (1951).

Flexibility is desirable, since a basic purpose of the suspended sentence is to enable a trial judge to adjust the sentence to the exigencies of the case at hand. For example, it frequently may be advisable to release a defendant for a short time because of some illness or other emergency situation. Also, it may be good policy to impose a sentence of a fine and imprisonment, but to suspend the imprisonment part of the sentence.

(e) Criminal neglect of family is a misdemeanor for which it is generally advisable to place the offender on probation with careful supervision by the Welfare Department staff to make sure that the defendant lives up to his family obligations. The substantive elements of the crime, and some incidental procedural aspects, are comprehensively treated in the much amended Arts. 74 and 75 of the Criminal Code (R.S. 14:74 and 14:75). Special probation provisions in the Criminal Procedure title of the Revised Statutes (former R.S. 15:536.1), are retained in Title 15 of the Revised Statutes. Combination and further revision did not prove feasible.

Historical and Statutory Notes

Source:

Former R.S. 15:536; Acts 1966, No. 310, § 1.

Art. 894.1. Sentencing guidelines

A. When the defendant has been convicted of a felony, the court shall consider the sentencing guidelines promulgated by the Louisiana Sentencing Commission in determining the appropriate sentence to be imposed. However, no sentence shall be declared unlawful, inadequate, or excessive solely due to the failure of the court to impose a sentence in conformity with the sentencing guidelines of the commission.

B. A court may impose a sentence, which includes incarceration or other significant sanctions, which is appropriate under the sentencing guidelines notwithstanding any limitation on probation or suspension of sentence under the provisions of Article 893.

C. The court shall state for the record the considerations taken into account, including any aggravating and mitigating circumstances which may be present, and the factual basis therefor in imposing sentence. *Added by Acts 1977, No. 635, § 1. Amended by Acts 1986, No. 704, § 1; Acts 1987, No. 500, § 1; Acts 1991, No. 22, § 1, eff. Jan. 31, 1992.*

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 7/8/94

GABRIEL THOMAS PORTEOUS, JR., Judge, Division A, 24th Judicial District Court, Parish of Jefferson, was interviewed at his place of business, JEFFERSON PARISH COURTHOUSE, Gretna, Louisiana 70053, 504/364-3850. PORTEOUS was advised that he was being interviewed as a result of a request for the FBI to conduct a background investigation concerning his candidacy for U.S. District Judge, Eastern District of Louisiana. PORTEOUS was advised that the scope of the questions asked during the interview was not necessarily limited to the timeframe on the SF-86 and that his response to each question should cover his entire adult life, since age 18. It was also pointed out the PORTEOUS that Question 23 on the SF-86, pertaining to "Police Record," covers activities since his 16th birthday.

PORTEOUS currently resides at 4801 Neyrey Drive, Metairie, Louisiana, which is the only property he owns at this time. PORTEOUS attended LOUISIANA STATE UNIVERSITY AT NEW ORLEANS (LSU-NO), from September, 1964, to May, 1968, while he resided with his family at 2218 Madrid Street, New Orleans, Louisiana. LSU-NO is known as the UNIVERSITY OF NEW ORLEANS (UNO) today. PORTEOUS was employed by BAKER'S SHOE STORES as listed in his application the summer after his graduation from high school and during his attendance at LSU-NO.

After graduation from LSU-NO in May, 1968, PORTEOUS continued to work for BAKER'S SHOE STORES during the summer. During PORTEOUS' attendance at LSU LAW SCHOOL in Baton Rouge, Louisiana, he continued to work part-time for BAKER'S and affiliated shoe stores in Baton Rouge. He believes BAKER'S is owned by EDISON SHOES. After PORTEOUS' first year of law school, from May, 1969, to approximately August, 1969, he resided with his parents on Madrid Street for a few months while he prepared for his wedding. PORTEOUS said that after graduation from law school in May, 1971, he was preparing for the Bar examination which he took in late June or early July, 1971. He believes he began working at the Office of the Attorney General, State of Louisiana, throughout the Summer of 1971, before becoming Special Counsel there in September, 1971.

Investigation on 7/6 & 7/8/94 at Gretna, Louisiana File # 77A-HQ- F

by SA BOBBY P. HAMIL, JR., and SA CHEYENNE D. TACKETT:rsg Date dictated 7/8/94

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

HP Exhibit 69(i)

FD-302a (Rev. 11-15-83)

77A-HQ-[redacted] P[redacted]

Continuation of FD-302 of GABRIEL THOMAS PORTEOUS, JR. , On 7/6 & 7/8/94 Page 2

PORTEOUS advised that from July, 1982, until August, 1984, he was employed part-time as a city attorney for the City of Harahan, simultaneously working as a Jefferson Parish District Attorney. He advised that the law firm of EDWARDS, PORTEOUS, & AMATO that he had been with beginning January, 1973, is the firm that evolved into PORTEOUS & MUSTAKAS, of which he was a partner until August, 1984. PORTEOUS said that he was employed part-time with B&L ASSOCIATES from August, 1970, to May, 1971, while at the same time working part-time for BAKER'S. He said that he was basically "on call" for B&L ASSOCIATES to conduct interviews and take statements.

PORTEOUS said that he does not really have a supervisor currently but listed HUGH COLLINS on his application as COLLINS is the judicial administrator for the State of Louisiana.

PORTEOUS said that he has no personal or business credit issues, including but not limited to repossessions, delinquent student loans, debts placed for collection, or bankruptcy. He advised that he is current on all Federal, State, and local tax obligations, including but not limited to income taxes, Medicare taxes, Social Security taxes, and unemployment taxes. PORTEOUS said that the only back payment of taxes he has had to make was either in 1974, 1975, or 1976 when he was with the firm EDWARDS, PORTEOUS & LEE. He advised that upon an Internal Revenue Service (IRS) audit, the firm was advised that advances the firm paid for filing fees could not be considered expenses, as the firm had indicated on their tax returns. The firm paid the taxes on the difference of taxable income excluding the filing fees as expenses.

PORTEOUS stated that other than the civil suits listed on the supplement to his SF-86, he has not been involved in any civil suits as a plaintiff or defendant, to include divorces. PORTEOUS said that he has had no involvement in criminal matters as a suspect or subject or any criminal charge, arrest, or conviction.

PORTEOUS said that he had not been denied employment or been dismissed from employment, to include the Federal sector. PORTEOUS advised that he has had no contact with official representatives of foreign countries.

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Continuation of FD-302 of GABRIEL THOMAS PORTEOUS, JR. , On 7/6 & 7/8/94 Page 3

PORTEOUS said he is not concealing any activity or conduct that could be used to influence, pressure, coerce, or compromise him in any way or that would impact negatively on the candidate's character, reputation, judgement, or discretion.

PORTEOUS stated that he has had no professional complaints or any non-judicial disciplinary action against him, to include Bar Association grievances, Better Business Bureau complaints, student or military disciplinary proceedings, Equal Employment Opportunity complaints, and Office of Professional Responsibility inquiries. PORTEOUS said that in his official capacity, he, along with all judges in the 24th Judicial District Court, was sued by SHURMAINE DE GRANGE and IDA WILLIAMS for alleged discrimination. He said that both petitioners were former employees of the late Judge LIONEL COLLINS. The suit is referred to in PORTEOUS' supplemental SF-86.

PORTEOUS advised that he is not involved in any business or investment circumstances that could or have involved conflicts of interest allegations.

PORTEOUS said that he has had no psychological counseling with psychiatrists, psychologists, or other qualified counselors, including marital counselors.

PORTEOUS said that he has not abused alcohol or prescription drugs or used illegal drugs, to include marijuana, during his entire adult life. He has had no participation in drug or alcohol counseling/rehabilitation programs since age 18.

PORTEOUS advised that he has had no involvement in any organization which advocates the use of force to overthrow the U.S. Government or any involvement in the commission of sabotage, espionage, or assistance of others in any of these acts. PORTEOUS knows of no current or past circumstances that could have a bearing on his suitability for Federal employment or access to classified information.

PORTEOUS advised that he has no current membership in any organization or social/private club which restrict membership on the basis of sex, race, color, religion, or national origin. PORTEOUS currently is a member of the following: American Bar Association, Jefferson Bar Association, American Judges

Associations, American Judicature Society, Louisiana District Attorney's Association, 4th and 5th Circuit Judges Association, Chateau Golf and Country Club, and St. Clement of Rome Men's Club. PORTEOUS has held the office of President of the 4th and 5th Circuit Judges Association within the last five years but does not currently hold that position. PORTEOUS advised that St. Clement is the church which he attends. He said that within the church there is a women's and men's club which have different functions in the church.

PORTEOUS advised that sometime between 1979 and 1982, he was a member of the Mardi Gras krewe of CAESAR for two years. The Mardi Gras krewe is an organization which sponsors a parade and other festivities during Mardi Gras. He advised that this was an all-male krewe at the time, but he is not sure what its membership consists of currently. PORTEOUS did not hold an office in this organization.

PORTEOUS advised that he has not written any articles for publication or made any major speeches. He said that he gives a presentation annually to the Jefferson Bar Association on topics such as conflicts of interest and medical malpractice. He has given presentations to the Louisiana Bar Association and the Louisiana Judicial College as well. These presentations consist of an outline, a short synopsis, and case examples for the continuing legal education of these organizations' members.

PORTEOUS said that he has been taking out student loans for his son through a "Parent-Plus" Program at FIRST NATIONAL BANK OF COMMERCE (FNBC), New Orleans, each semester. Repayment of these loans had been deferred until his son's graduation until recently. PORTEOUS advised that on March 7, 1994, he received his first notice that payment on the loan was due. By this time, it was overdue. In April, 1994, he received forms to fill out for deferment of payment until his son's graduation. He filled the forms out, and the school signed them on April 14, 1994. On May 3, 1994, PORTEOUS received a letter of ineligibility for deferment since the parent is paying back the loan. On May 25, 1994, he sent the lending institution a request for forbearance on the debt because of the confusion over eligibility for deferment. PORTEOUS then paid $96.83 to FNBC which covered accrued interest and, on June 28, 1994, commenced making payments as scheduled. PORTEOUS said this loan is now current.

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Continuation of FD-302 of GABRIEL THOMAS PORTEOUS, JR. , On 7/6 & 7/8/94 Page 5

PORTEOUS advised that he has seen a plastic surgeon for surgery on his ear whose name is Dr. GUSTAVE COLON. He said his internist is Dr. ROBERT SONGY.

PORTEOUS provided the supplement to his SF-86 with Attachments 1 & 2 to the interviewing Agents. PORTEOUS signed an FD-465, Medical Release Form, at this time. Also provided to the Agents was a copy of certification from Chief Disciplinary Counsel, Louisiana State Bar Association, stating that there is no pending or past record of any complaint, grievance, disciplinary action, or disciplinary proceeding against PORTEOUS.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, State Court Judge for the 24th District of Louisiana, located in Gretna, Louisiana (LA), telephonically contacted this interviewing Agent in the New Orleans Office of the Federal Bureau of Investigation (FBI). PORTEOUS advised that he had telephoned his office in Gretna, LA, from Baton Rouge, LA, where he was teaching a class. PORTEOUS had called in to request any messages, and was advised that his Civil Court Clerk, JOLENE ACY had been interviewed earlier that day by FBI Agents of New Orleans office. As a result, she was noticeably unnerved. PORTEOUS had been advised by ACY of the nature of the interview, and stated that he seemed to recall being involved in bond reduction matters involving former criminal defendants, TRACY IRELAND and KEITH KLINE. He further stated that he seemed to recall that KLINE's bond was originally set at a very high sum of money, but upon request by the arresting officer, name unrecalled, he (PORTEOUS) agreed to reduce the bond considerably. PORTEOUS also absolutely denied that any money was received by him as a fee for agreeing to reduce the bond in the KLINE matter.

With regards to the TRACY IRELAND matter, PORTEOUS stated he recalled agreeing to reduce her bond after obtaining information about the complainant, which convinced him that the charges against her did not merit such a high bond being set.

Investigation on 8/17/94 at New Orleans, Louisiana (Telephonically) File # 77A-HQ- F

by SA BOBBY P. HAMIL, JR./glm Date dictated 8/18/94

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

HP Exhibit 69(j)

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 8/18/94

Judge THOMAS PORTEOUS, Louisiana State Court Judge for the 24th Judicial District, was interviewed in his office located in Gretna, Louisiana (LA), regarding information received from confidential source, NO T-6, on August 8, 1994.

PORTEOUS stated that he was somewhat aware of the nature of the inquiry due to his Criminal Court Clerk, JOLENE ACY, having been interviewed by this interviewing Agent on the previous day. ACY had related to Judge PORTEOUS a summation of that interview. PORTEOUS was initially asked if he recalled having been involved in a bond reduction matter for a criminal defendant named KEITH KLINE, who was arrested by the Jefferson Parish Sheriff's Office on a cocaine charge in March, 1987. Judge PORTEOUS could not specifically recall a bond reduction matter involving this named individual, but after being provided with some of the information obtained from NO T-6, PORTEOUS seemed to recall that this individual, who already had an extensive criminal history involving narcotics violations, had a very high bond initially set. Upon request from the arresting officer or possibly Deputy Chief RICHARD RODRIGUE, who is in charge of Criminal Detectives for the Jefferson Parish Sheriff's Department (JPSD), he reluctantly agreed to reduce the bond. PORTEOUS stated that if the incident that he is recalling is in fact an incident that involved the named subject, KEITH KLINE, the agreement to reduce the bond was based on reporting from a JPSD officer that E E PORTEOUS further stated that if this was the incident he is attempting to recall, then Assistant District Attorney PAT MC GINNITY, (who is currently in private practice as a criminal defense attorney, with office located on Girod Street, New Orleans, LA, telephone P-1 would have been involved in the bond reduction discussion. PORTEOUS stated that it is routine for the prosecuting attorney along with the arresting officer to be involved in a discussion regarding any bond reductions. PORTEOUS could not recall any involvement of a girlfriend of KEITH KLINE in monetary transactions regarding the bond reduction. Furthermore, PORTEOUS categorically denied that

Investigation on 8/18/94 at Gretna, Louisiana 5 File # 77A-HQ- F

by SA BOBBY P. HAMIL, JR./glm Date dictated 8/18/94

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Continuation of FD-302 of JUDGE THOMAS PORTEOUS , On 8/18/94 , Page 2

he was paid a sum of $10,000, or for that matter, any sum in exchange for an agreement to reduce the bond for KEITH KLINE.

With regards to an allegation that PORTEOUS had received $1,500 to reduce a bond in a matter involving a TRACY IRELAND, who had been arrested for theft, PORTEOUS, already having been aware of this allegation from previous discussion with JOLENE ACY (as referenced above), had the criminal file available for review. PORTEOUS pointed out that IRELAND's bond had originally been set at $300,000, based on a mere two counts of theft. The bond was initially set by Judge JOHN MOLAISON. Upon review of the matter, PORTEOUS agreed to reduce the bond to a $50,000 property bond. He recalls ADAM BARNETT being the bondsman in this matter, a trusted bondsman who he had known for a long time. PORTEOUS stated that he felt, based upon the Jefferson Parish jails being extremely overcrowded at that time (last year), the fact that the details of the arrest did not appear to warrant such a high bond, along with limited criminal history of the defendant, this situation warranted a reduction in bond. PORTEOUS pointed out that the bond was reduced to a $50,000 property bond. Although it was later shown that the surety was insufficient for the amount of the bond, the defendant appeared in court for every hearing, and was ultimately given credit for time served in jail, and placed on probation. He recalled the New Orleans Times Picayune newspaper as making an issue of this technical error in allowing a property bond to be set when there was insufficient surety. PORTEOUS stated that although there was a technical error here, it proved to be a harmless error, in light of the fact that the defendant never failed to appear for any of her court hearings. However, PORTEOUS again categorically denied that he had been given $1,500 or any amount of money to reduce the bond for TRACY IRELAND.

Judge PORTEOUS also denied that he had ever owned a yacht either individually or jointly with others, and furthermore, denied that he had ever owned any type of boat. He also denied that he had ever been present when cocaine, marijuana, or any other illegal narcotic was being utilized. He also denied that he had ever used any illegal narcotic personally.

Lastly, Judge PORTEOUS denied that he had ever signed any bail bonds "in blank;" and stated that he was unaware of anything in his background that might be the basis of attempted

FD-302a (Rev. 11-15-83)

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Continuation of FD-302 of JUDGE THOMAS PORTEOUS, On 8/18/94, Page 3

influence, pressure, coercion or compromise and/or would impact negatively on his character, reputation, judgement or discretion.

CLOSED, MULTI

U. S. District Court
Eastern District of Louisiana (New Orleans)
CRIMINAL DOCKET FOR CASE #: 2:04-cr-00061-GPK All Defendants

Case title: USA v. Marcotte, et al

Date Filed: 03/03/2004
Date Terminated: 08/28/2006

Assigned to: Judge George P Kazen

Defendant (1)

Louis M Marcotte, III
TERMINATED: 08/28/2006

represented by **Richard W. Westling**
Ober, Kaler, Grimes & Shriver
1401 H Street, N.W.
5th Floor
Washington, DC 20005-3324
202-326-5012
Email: rwwestling@ober.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Martin E. Regan, Jr.
Martin E. Regan & Associates, PLC
2125 St. Charles Ave.
New Orleans, LA 70130
504-522-7260
Email: mregan@reganlaw.net
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts	**Disposition**
18:1962(d) CONSPIRACY TO OPERATE AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY INCLUDING BRIBERY (1)	sentenced 8/28/06

Highest Offense Level (Opening)

Felony

HP Exhibit 70

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Assigned to: Judge George P Kazen

Defendant (2)

Lori M Marcotte represented by **John Wilson Reed**
TERMINATED: 08/28/2006
Glass & Reed
530 Natchez St.
New Orleans, LA 70130
504-581-9083
Email: jwreed@bellsouth.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts **Disposition**

18:371 CONSPIRACY TO COMMIT MAIL FRAUD
(2) sentenced 8/28/06

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Plaintiff

United States of America represented by **Michael William Magner**

U. S. Attorney's Office
Hale Boggs Federal Bldg.
500 Poydras St.
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/03/2004	1	INFORMATION by USA against Louis M Marcotte (1) count(s) 1, Lori M Marcotte (2) count(s) 2 (jd) (Entered: 03/17/2004)
03/03/2004	2	MOTION filed by plaintiff USA and ORDER to SEAL the bill of information, factual bases, and plea agreements as to defendants Louis M Marcotte III, Lori M Marcotte by Judge Helen G. Berrigan (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/04/2004	3	LETTER from Chief Judge Berrigan USDC to Chief Judge Carolyn King of the USCA dated 3/3/04 advising Judge King that all judges of the EDLA who have a criminal docket have recused themselves from this matter (jd) (Entered: 03/17/2004)
03/04/2004	5	ORDER that Magistrate Judge C. Michael Hill of the Western District of La. is assigned to conduct proceedings and perform all duties permitted pursuant to USC 636 as may be required. This assignment shall be for the duration of the case. by Judge Helen G. Berrigan (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/05/2004	4	ORDER designating and assigning this matter to Judge George P. Kazen, District Judge for the Southern District of Texas, and to Magistrate Judge C. Michael Hill of the Western District of Louisiana, to conduct all proceedings in this matter by Chief Judge Carolyn King, USCA Date Signed: 3/4/04 (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/11/2004	6	ORDER that Magistrate Judge C. Michael Hill recuses himself in this matter. by Magistrate Judge C. Michael Hill Date Signed: 3/10/04 (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/15/2004	7	ORDER that Magistrate Judge Nancy K. Johnson of the Southern District of Texas is assigned to conduct proceedings and perform all duties permitted

		pursuant to USC 636 as may be required in this case. This assignment shall be for the duration of the case. by Judge Helen G. Berrigan (originally docketed 3/16/04) (jd) (Entered: 03/17/2004)
03/17/2004	8	ORDER that this case be UNSEALED by Judge George P. Kazen Date Signed: 3/16/04 (jd) (Entered: 03/17/2004)
03/17/2004	9	NOTICE OF LIS PENDENS filed by plaintiff USA with intent to seek criminal forfeiture of listed property recorded in the name of Sisters Marcotte, L.L.C. as to defendant Louis M Marcotte III (jd) (Entered: 03/17/2004)
03/17/2004	10	MINUTE ENTRY (3/17/03) initial appearance of Louis M Marcotte III held; Attorneys Richard W. Westling & Martin E. Regan Jr. present; dft informed court that counsel would be retained; personal surety Bond set $50,000 ; dft released on bond; arraignment held. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	11	MINUTE ENTRY (3/17/04) dft Louis M Marcotte III arraigned; not guilty plea entered; Attorneys Richard Westling & Martin Regan Jr present; dft released on bond; waiver of indictment executed; re-arraignment set for 10:00 3/18/04 before Judge George Kazen. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	12	MINUTE ENTRY (3/17/04) initial appearance of Lori M Marcotte held; Attorney John Wilson Reed present; personal surety Bond set for $10,000 ; dft released on bond; arraignment held. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	13	MINUTE ENTRY (3/17/04) dft Lori M Marcotte arraigned; not guilty plea entered; Attorney John Reed present; dft released on bond ; waiver of indictment executed; re-arraignment set for 10:00 3/18/04 before Judge George Kazen. by Magistrate Judge Johnson (jd) (Entered: 03/17/2004)
03/17/2004	15	(filed 3/18/04) WAIVER of Indictment by defendant Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/17/2004	19	(filed 3/18/04) WAIVER of Indictment by defendant Lori M Marcotte (lg) (Entered: 03/18/2004)
03/18/2004	14	MINUTE ENTRY (3/17/04) Ordered that the Section for this case is hereby designated GPK by Judge George P. Kazen (lg) (Entered: 03/18/2004)
03/18/2004	16	FACTUAL BASIS as to defendant Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/18/2004	17	PLEA Agreement as to Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/18/2004	18	Addendum to PLEA Agreement as to Louis M Marcotte III (lg) (Entered: 03/18/2004)
03/18/2004	20	FACTUAL BASIS as to defendant Lori M Marcotte (lg) (Entered: 03/18/2004)
03/18/2004	21	PLEA Agreement as to Lori M Marcotte (lg) (Entered: 03/18/2004)
03/18/2004	22	Addendum to PLEA Agreement as to Lori M Marcotte (lg) (Entered:

		03/18/2004)
03/18/2004	23	SMOOTH Minutes as to defendant Louis M Marcotte III; Reported/Recorded by Karen Ibos; re-arraignment held; dft enters plea of guilty to count 1 of the bill of information; plea bargain letter filed; factual basis filed; plea accepted; PSI ordered; sentencing to be set a later date; dft released. by Judge George P. Kazen (jd) (Entered: 03/19/2004)
03/18/2004	24	SMOOTH Minutes as to defendant Lori M Marcotte; Reported/Recorded by Karen Ibos; re-arraignment held; dft enters plea of guilty as to count 2 of the bill of information; plea bargain letter filed; factual basis filed; plea accepted; PSI ordered; sentencing to be set at a later date; dft released. by Judge George P. Kazen (jd) (Entered: 03/19/2004)
09/08/2004	25	Consent to Modify Conditions of Release as to defendant Louis M Marcotte III & ORDER adding the condition that the defendant refrain from all use of alcohol and participate in substance abuse counseling as directed by Pretrial Services. by Judge George P. Kazen Date Signed: 9/2/04 (jd) (Entered: 09/09/2004)
11/28/2005	26	MOTION to Permission to Leave the Jurisdiction by Lori M Marcotte and ORDER granting same. Signed by Judge George Kazen on 11/29/05 (jtd,) (Entered: 11/29/2005)
11/28/2005	27	TEXT ORDER granting 26 Motion to Travel as to Lori M Marcotte (2). Defendant is permitted to travel to Italy from 12/12/05 through 12/22/05 provided that in advance of travel there is a new personal surety bond in the amount of $50,000 signed by Lisa Marcotte. Further ORDER that Pre-trial Services release defendant's passport to her for the purposes of this trip and for defendant to return passport immediately upon her return. Defendant to provide Pre-trial Services with an itinerary suffciently detailed for their purposes. Signed by Judge George P Kazen on 11/29/05. (jtd,) (Entered: 11/29/2005)
12/06/2005	28	Minute Entry for proceedings held before Judge Alma L. Chasez :Hearing to perfect bond as to Lori M Marcotte held on 12/6/2005 ; bond papers were executed and defendant was released (Court Reporter: Magistrate Clerical Unit) (jtd,) (Entered: 12/14/2005)
12/06/2005	29	Personal Surety Bond Set & Executed as to Lori M Marcotte in amount of $ $50,000.00. Defendant released. (jtd,) (Entered: 12/14/2005)
08/02/2006	32	NOTICE OF HEARING as to Louis M Marcotte, III, Lori M Marcotte. Sentencing set for 8/28/2006 02:00 PM before Judge George P Kazen. (dno,) (Entered: 08/02/2006)
08/24/2006	33	MEMORANDUM IN AID OF SENTENCING by Louis M Marcotte, III (Attachments: # 1 Exhibit A - Information Regarding Post-Plea Activities # 2 Exhibit B - Reference Letters)(jtd,) (Entered: 08/24/2006)
08/28/2006	39	Minute Entry for proceedings held before Judge George P Kazen :Sentencing held on 8/28/2006 for Louis M Marcotte, III (1), Count(s) 1 and Lori M Marcotte (2), Count(s) 2. Written judgments shall be entered. Both defendants released under their present bonds. (Court Reporter Vic Digiorgio.) (jtd,)

		(Entered: 09/01/2006)
08/28/2006	45	JUDGMENT as to Louis M Marcotte, III (1), Count(s) 1, sentenced 8/28/06 ; defendant to be imprisoned for 38 months; upon release, defendant placed on supervised release for 3 years; defendant fined $15,000; special assessment of $100; defendant to surrender by 12:00 noon on 10/27/06. Signed by Judge George P Kazen on 9/6/06. (jtd,) (Entered: 09/08/2006)
08/28/2006	46	JUDGMENT as to Lori M Marcotte (2), Count(s) 2, sentenced 8/28/06; defendant placed on probation for 3 years; defendant fined $15,000; special assessment of $100 . Signed by Judge George P Kazen on 9/1/06. (jtd,) (Entered: 09/08/2006)
08/28/2006	47	MOTION for Issuance of a Preliminary Order of Forfeiture of Property by United States of America as to Louis M Marcotte, III. (jtd,) (Entered: 09/08/2006)
08/29/2006	44	ORDER TO SURRENDER as to Louis M Marcotte, III on 10/27/06 by 12:00 noon. Signed by Judge George P Kazen on 8/28/06. (jtd,) (Entered: 09/01/2006)
09/08/2006	48	ORDER granting 47 Motion for Forfeiture of Property as to Louis M Marcotte III (1). Signed by Judge George P Kazen on 9/6/06. (USM-3cc) (jtd,) (Entered: 09/08/2006)
11/22/2006	49	EXPARTE/CONSENT MOTION to Alter Judgment re 45 Judgment, by Louis M Marcotte, III. (Attachments: # 1 Proposed Order)(Westling, Richard) (Entered: 11/22/2006)
11/28/2006	50	ORDER granting 49 Motion to Alter Judgment as to Louis M Marcotte III (1). The portion of the Judgment and Conviction entered on 8/28/06 which recommended that 'defendant be designated to a facility where he may participate in a substance abuse program' is clarified and modified to reflect the recommendation that defendant be designated to a facility where he can be enrolled in the Bureau of Prisons 500 hour Residential Drug Abuse Program (RDAP). Signed by Judge George P Kazen on 11/28/06. (jtd) Copies sent to PTS, USP, USM & BOP. Modified on 11/28/2006 (jrc). (Entered: 11/28/2006)
07/23/2007	51	EXPARTE/CONSENT MOTION for Forfeiture of Property by United States of America as to Louis M Marcotte, III. (Attachments: # 1 Affidavit # 2 Proposed Order)(Nguyen, Loan Mimi) (Entered: 07/23/2007)
07/24/2007	52	Correction of Docket Entry by Clerk re 51 MOTION for Forfeiture of Property filed by United States of America. Filing attorney did not include a certificate of service with the motion. All filings must contain this certificate. No further action is necessary. (jtd) (Entered: 07/24/2007)
07/26/2007	53	FINAL ORDER OF FORFEITURE as to Louis M Marcotte, III. Currency as described in document is to be forfeited to the USA and shall be disposed of in accordance with law. Signed by Judge George P Kazen on 7/25/07. (1cc: USM) (jtd) (Entered: 07/27/2007)

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10/15/2008 09:35:10			
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FELONY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BILL OF INFORMATION FOR CONSPIRACY TO OPERATE AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY AND CONSPIRACY TO COMMIT MAIL FRAUD

UNITED STATES OF AMERICA	*	CRIMINAL DOCKET NO. 04-061
v.	*	SECTION: SECT V MAG. 2
LOUIS M. MARCOTTE, III LORI M. MARCOTTE	*	VIOLATIONS: 18 U.S.C. § 1962 18 U.S.C. § 1963 18 U.S.C. § 1341 18 U.S.C. § 371

* * *

LORETTA G. WHYTE CLERK

2004 MAR -3 AM 11:18

FILED U.S. DISTRICT COURT EASTERN DISTRICT OF LA

The United States Attorney charges that:

COUNT 1 – CONSPIRACY TO OPERATE AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY

A. At All Times Material Herein:

1. Bail Bonds Unlimited, Inc. (hereinafter "BBU") was a bail bonds company licensed and regulated by the Louisiana Department of Insurance (hereinafter "DOI") and engaged in the business of insurance, whose activities affected interstate commerce. Beginning in or about 1991 and continuing until the date of this bill of information, BBU provided commercial surety bail bonds for individuals who had been arrested for crimes in Jefferson Parish, Louisiana and elsewhere. BBU

Fee
Process
X Dktd
CtRmDep
Doc. No. 1

HP Exhibit 71(a)

was the largest bail bonding company in Jefferson Parish, Louisiana, with over ninety percent of the bail bond market.

2. The defendant, LOUIS M. MARCOTTE, III, was a bail bondsman licensed under the laws of the State of Louisiana and was the president of BBU.

3. Pursuant to Louisiana law, a bail bond agent is licensed and regulated by the DOI to market and sell bail bonds.

4. Under Louisiana law, bail bonds are a device to insure the appearance of criminal defendants in court.

5. Louisiana law, specifically Louisiana Revised Statutes, Title 14, Article 118, defines the felony offense of public bribery as the acceptance or offering to accept, directly or indirectly, anything of apparent present or prospective value by any person elected to public office or any public officer with the intent to influence the conduct of that person in relation to his or her position, employment, or duty. Louisiana law also defines the felony offense of public bribery as the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any person elected to public office or any public officer with the intent to influence the conduct of that person in relation to his or her position, employment, or duty.

6. Amwest Surety Insurance Company (hereinafter "Amwest") was an insurance company licensed and domiciled in the State of Nebraska which underwrote bail bonds insurance policies, among other things, and engaged in the business of insurance and whose activities affected interstate commerce. Amwest entered into a general agency contract with BBU and the defendant, LOUIS M. MARCOTTE, III, on or about November 24, 1992. Pursuant to that agency contract, BBU and LOUIS M. MARCOTTE, III agreed, among other things, to indemnify and hold Amwest harmless from any loss it might incur as a result of any bail bonds written by BBU, its agents and/or LOUIS M. MARCOTTE, III. To collateralize this portion of the agency contract, BBU and LOUIS M. MARCOTTE, III agreed to create a Build-up Fund (hereinafter "BUF") by depositing approximately one-half percent (.5%) of the face value of each bond written by BBU, its agents

and/or LOUIS M. MARCOTTE, III. Amwest was placed in liquidation by the State of Nebraska on or about June 7, 2001. Amwest's successor in interest, Far West Insurance Company, was placed in liquidation by the State of Nebraska on or about November 9, 2001.

B. The Conspirators

1. Judge Ronald D. Bodenheimer (hereinafter "Bodenheimer") was a public officer, namely an elected district judge of the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana (hereinafter "24th JDC").

2. Lieutenant Guy Maynard Crosby (hereinafter "Crosby") was a public officer, namely a Lieutenant with the Jefferson Parish Sheriff's Office (hereinafter "JPSO") and was in charge of the Warrants and Attachments Section of the JPSO with the responsibility of locating and apprehending fugitives.

3. Bail Bondsman #1 was a Gretna, Louisiana bail bondsman and the Chief Financial Officer of BBU.

4. Bail Bondsman #2 was a Gretna, Louisiana bail bondsman and an employee of BBU.

5. Judge A was a public officer, namely an elected district judge of the 24th JDC.

6. Deputy #1 was a public officer, namely a JPSO Deputy and jailer.

7. Deputy #2 was a public officer, namely a JPSO Deputy and jailer.

8. Deputy #3 was a public officer, namely a JPSO Deputy and jailer.

C. The Racketeering Enterprise

LOUIS M. MARCOTTE, III, BBU, and others known to the United States Attorney comprised an enterprise as defined by Title 18, United States Code, Section 1961(4), that is, a group of individuals and entities associated in fact, which was engaged in, and the activities of which affected, interstate commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

D. The Racketeering Conspiracy

1. Beginning at a date unknown but prior to 1991, and continuing through the date of this bill of information, in the Eastern District of Louisiana and elsewhere, LOUIS M. MARCOTTE, III, defendant herein, being a person employed by and associated with the enterprise, which enterprise engaged in, and the activities of which affected, interstate commerce, did conspire together and with other persons known and unknown to the United States Attorney to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of multiple acts involving bribery in violation of Louisiana Revised Statutes, Title 14, Article 118 (Public Bribery) and indictable under Title 18, United States Code, Sections 1341, 1346 (Mail Fraud).

2. It was part of the conspiracy that the defendant and his co-conspirators agreed that a conspirator would commit at least two Acts of Racketeering in the conduct of the affairs of the enterprise.

E. Purpose, Method, and Means of the Conspiracy

The form and substance of the conspiracy was as follows:

1. It was a part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, engaged in a scheme to maximize BBU's and MARCOTTE's own profits from writing bail bonds in Jefferson Parish and elsewhere through the corruption of and attempts to corruptly influence certain sheriff's deputies and judges and the defrauding Amwest, among other things.

2. It was a further part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, used the United States mails and other private interstate carriers to process BBU bonds which had been corruptly obtained, to disguise cash payments as campaign contributions, and to defraud Amwest.

3. It was a further part of the conspiracy that, in return for things of value, certain judges would make themselves available to BBU; quickly respond to the requests of BBU; and set, reduce, increase, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

4. It was a further part of the conspiracy that, to allow BBU to maximize its profits, the conspirator judges would engage in the practice of "bond splitting." Bond splitting would commonly occur when a defendant could not afford to pay the bond that had originally been set. When this happened, BBU would ask one of the conspirator judges to "split" the total bond into a commercial portion and a non-commercial portion. At BBU's request, the conspirator judge would set the commercial portion of the bond at an amount the defendant could afford and would set the balance in some other manner. BBU would then post the commercial portion of the bond and collect a percentage of that bond as commission. This practice allowed BBU to maximize its profit and minimize its liability.

5. It was a further part of the conspiracy that, in return for things of value, certain JPSO Deputies gave BBU preferential treatment at the Jefferson Parish jail to maximize BBU's profits and hinder its competition.

6. It was a further part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, defrauded Amwest by using the mails and private interstate carriers to fraudulently obtain funds from the BUF account, which was to be used to reimburse Amwest for any bond forfeitures it paid on behalf of BBU relative to criminal defendants who failed to appear in court.

7. It was a further part of the conspiracy that the defendant, LOUIS M. MARCOTTE, III, and others known and unknown to the United States Attorney, directly and indirectly, concealed and hid the purposes of and acts done in furtherance of the racketeering conspiracy.

F. Overt Acts

1. In furtherance of the said RICO conspiracy, and to accomplish the objects thereof, the defendant, LOUIS M. MARCOTTE, III, and others known and unknown to the United States Attorney, committed and caused others to commit the following Overt Acts, among others, in the Eastern District of Louisiana, and elsewhere:

2. Corruption of Judge Ronald D. Bodenheimer

a. Beginning at a date unknown and continuing until in or about June 2002, LOUIS M. MARCOTTE, III provided Bodenheimer with gifts, meals, and other things of value. In return, Bodenheimer was available to BBU; quickly responded to the requests of BBU; and set, reduced, increased, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

b. In or about July 1999, BBU paid for a hotel room and show tickets for Bodenheimer and his wife at a casino in Biloxi, Mississippi.

c. In or about March 2000, LOUIS M. MARCOTTE, III hired Bodenheimer's daughter to work at BBU. In the Fall of 2001, at Bodenheimer's request, BBU began to pay for Bodenheimer's daughter's health insurance.

d. In or about April 2000, LOUIS M. MARCOTTE, III hired Bodenheimer's stepson to work at BBU.

e. In or about June 2000, at a conference in Destin, Florida, a BBU employee chartered a boat trip for Bodenheimer, several other judges, and their families. During the same conference, LOUIS M. MARCOTTE, III hosted a party for Bodenheimer and several other judges.

f. In or about 2000 and 2001, a relative of Bail Bondsman #1 provided free labor for repairs and renovations of Bodenheimer's home.

g. In October 2000, at BBU's request, Bodenheimer set a $25,000.00 bond for a defendant who had been arrested as a fugitive.

h. In October 2000, at BBU's request, Bodenheimer split two bonds on a defendant, reducing one from a $100,000.00 commercial bond into a $10,000.00 commercial bond and a $90,000.00 personal surety bond. Bodenheimer reduced the other from a $200,000.00 commercial bond into a $20,000.00 commercial bond and a $180,000.00 personal surety bond.

i. On or about November 6, 2000, BBU began to pay for health insurance for Bodenheimer's son.

j. On or about April 6, 2001, LOUIS M. MARCOTTE, III bought drinks and dinner for Bodenheimer, Judge A, several other judges, and several of the judges' family members at a casino in Biloxi, Mississippi.

k. In June 2001, at BBU's request, Bodenheimer set a $50,100.00 commercial bond and a $175,000.00 personal surety bond on a defendant for the offense of attempted first degree murder.

l. On or about October 21, 2001, at BBU's request, Bodenheimer set a $15,000.00 commercial bond on a defendant who was a fugitive from Texas. Notwithstanding the bond amount set by Bodenheimer, BBU charged the defendant for a $20,000.00 bond.

m. On or about October 29, 2001, at BBU's request, Bodenheimer split a $100,000.00 bond on a defendant who had been arrested for attempted second degree murder into a $25,000.00 commercial bond and a $75,000.00 personal surety bond.

n. On January 24, 2002, the defendant, LOUIS M. MARCOTTE, III, along with Bail Bondsman #1 and another BBU employee, bought lunch for Bodenheimer, Judge A, and another judge at a restaurant in Gretna, Louisiana, at a cost in excess of $300.00.

o. On March 11, 2002, LOUIS M. MARCOTTE, III bought lunch and drinks for Bodenheimer and another judge at a restaurant in New Orleans at a cost in excess of $400.00.

p. Beginning in or about 2000 and continuing until in or about 2002, LOUIS M. MARCOTTE, III discussed with Bodenheimer investment and/or partnership opportunities in

several businesses. Some of these offers included financial arrangements in which MARCOTTE would disguise Bodenheimer's interest in the business venture.

q. Between September 2000 and June 2002, at BBU's request, Bodenheimer split approximately 350 bonds and set approximately 450 bonds.

3. Corruption of Judge A

a. Beginning on a date unknown and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III provided Judge A with cash payments, gifts, meals, and other things of value. In return, Judge A was available to BBU; quickly responded to the requests of BBU; and set, reduced, increased, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

b. From a date unknown through 2001, BBU furnished parking spaces free of charge for Judge A's secretary and staff. In fact, on or about September 4, 2001, when an employee of another judge attempted to take two of Judge A's spaces, an employee of BBU reassured Judge A's secretary that LOUIS M. MARCOTTE, III had given 4 parking spaces to Judge A's staff. Later that day, the BBU employee stated that MARCOTTE gave Judge A's staff the parking spaces because Judge A "is very good to us."

c. In April 2001, at BBU's request, Judge A set a $100,000.00 commercial bond and $250,500.00 personal surety bond for a defendant.

d. On or about September 14, 2001, a BBU employee called Judge A concerning a bond for a defendant. The BBU employee told Judge A that the defendant's family was able to post a $10,000.00 commercial bond. The defendant had been arrested on September 5, 2001 for drug and firearms charges. On September 17, 2001, Judge A split the defendant's bond into a $10,000.00 commercial bond and a $15,000.00 personal surety bond. After being released on the bond set by Judge A, the defendant was arrested on September 29, 2001 for bond violations and again on December 8, 2001 for possession and distribution of crack cocaine. On or about December 12, 2001,

at the request of BBU, Judge A signed another bail order releasing the same defendant on an $8,000.00 commercial bond and a $22,000.00 personal surety bond.

e. In September 2001, a BBU employee called Judge A concerning a bond for a defendant. The BBU employee told Judge A that the defendant could afford a $5,000.00 commercial bond. Judge A set the bond that BBU requested, and the defendant was released later that evening.

f. On or about October 19, 2001, Bail Bondsman #1 and Judge A played golf together. During the golf game, a BBU employee called Bail Bondsman #1 to ask if Judge A would sign several bonds. Later that day, Judge A set a $125,000.00 commercial bond and a $396,500.00 personal surety bond for one defendant and a $10,000.00 commercial bond and a $10,000.00 personal surety bond for another defendant.

g. On October 21, 2001, LOUIS M. MARCOTTE, III told Bail Bondsman #1, "I know we wrote a lot of freaking bail." Bail Bondsman #1 told LOUIS M. MARCOTTE, III, "Friday out on the golf course with the judge [Judge A], I did about $250,000.00 for the uh, uh, Gretna house." Later in the conversation, Bail Bondsman #1 and LOUIS M. MARCOTTE, III discussed giving Judge A cash but writing on the envelope "[Judge A] Campaign Fund." Although LOUIS M. MARCOTTE, III stated that a cash gift was "completely legal," he further stated, "We need to watch . . . what we say on the phone 'cause we're saying, saying, ah, . . . I'm more worried about the office phone but maybe mine too . . . ." Bail Bondsman #1 then stated, ". . . what we saying, there ain't nothing wrong. I just want to make sure I can give cash. If a man asks for cash for his fundraiser, I want to give cash . . . ." LOUIS M. MARCOTTE, III and Bail Bondsman #1 further discussed giving "five."

h. On October 22, 2001, at the direction of LOUIS M. MARCOTTE, III, Bail Bondsman #1 gave Judge A $5,000.00 in cash. On October 23, 2001, Judge A deposited $1,500.00 in cash into his personal bank account. On October 31, 2001, Judge A deposited $720.00 in cash into his personal bank account.

i. On November 30, 2001, Judge A and Bail Bondsman #1 played golf together. The same day, Judge A set a $2,000.00 commercial bond for one defendant and a $20,000.00 commercial bond and a $60,000.00 personal surety bond for another defendant, all at the request of BBU.

j. On December 4, 2001, Bail Bondsman #1 bought lunch for Judge A at a restaurant in Gretna, Louisiana. The same day, at the request of BBU, Judge A set a $10,000.00 commercial bond and a $31,500.00 personal surety bond on a defendant.

k. On December 6, 2001, Bail Bondsman #1 bought lunch for Judge A at a restaurant in Gretna, Louisiana. The same day, at BBU's request, Judge A set a $30,000.00 commercial bond and a $110,000.00 personal surety bond on a defendant.

l. On December 18, 2001 BBU paid for a Christmas luncheon for Judge A's staff at a restaurant in New Orleans, Louisiana in an amount in excess of $700.00. BBU also furnished the liquor for another Christmas party hosted by Judge A.

m. On January 8, 2002, Bail Bondsman #1 and Judge A played golf together. The same day, at BBU's request, Judge A set a $25,000.00 commercial bond and a $33,000.00 personal surety bond for a defendant.

n. On February 12, 2002, Bail Bondsman #1 cashed out $200.00 from BBU for "entertainment" for Judge A. The next day, Bail Bondsman #1 and Judge A played golf in Pass Christian, Mississippi. On February 15, 2002, Judge A deposited $200.00 cash into his personal checking account.

o. On February 13, 2002, at the request of BBU, Judge A set a $4,000.00 commercial bond and a $6,000.00 personal surety bond for a defendant.

p. On April 3, 2002, in Judge A's chambers, Bail Bondsman #1 pulled an envelope containing $5,000.00 in cash out of his pants pocket and handed it to Judge A saying, "Coming to deliver on my promise." Judge A responded, "Appreciate it." Bail Bondsman #1 further stated, "Put that away somewhere." On August 20, 2002, Judge A wrote a check from his personal

checking account to BBU in the amount of $5,000.00 and a second check from his personal checking account to Bail Bonds, Inc. for $5,000.00. Both checks were mailed to Bail Bondsman #1.

q. Between September 2000 and December 2002, at BBU's request, Judge A split approximately 140 bonds and set approximately 268 bonds.

4. Attempts to Corruptly Influence Certain Other 24th JDC Judges

Beginning at a date unknown and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III provided certain other 24th JDC Judges with things of value. In return, these judges were available to BBU; quickly responded to the requests of BBU; and set, reduced, increased, and split bonds to maximize BBU's profits, minimize BBU's liability, and hinder BBU's competition.

5. Corruption of Certain Sheriff's Deputies

a. Beginning at a date unknown but prior to 1991 and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III and other employees of BBU made cash payments to Deputy #1 and Deputy #2 in amounts ranging from $20.00 to $200.00 per occurrence.

b. Beginning on a date unknown and continuing until the date of this bill of information, LOUIS M. MARCOTTE, III and other employees of BBU frequently purchased meals for JPSO Deputies while they were on duty at the Intake and Booking Section of the Jefferson Parish jail.

c. Between 1995 and 1997, LOUIS M. MARCOTTE, III paid for two JPSO Deputies to take a trip to Las Vegas, Nevada.

d. In or about 1997, a BBU employee gave Deputy #2 and several other deputies watches that LOUIS M. MARCOTTE, III had purchased on a trip to New York, New York.

e. In or about 1997, LOUIS M. MARCOTTE, III provided a JPSO Deputy assigned to the Intake and Booking Section of the Jefferson Parish jail with the use of a vehicle at no charge. Later that year, LOUIS M. MARCOTTE, III purchased a grey Nissan Maxima for that deputy at a cost of approximately $1,800.00.

f. In or about 1998, at the direction of LOUIS M. MARCOTTE, III, a BBU employee gave Deputy #2 $1,600.00 in cash so that Deputy #2 could purchase handguns for himself and several other JPSO deputies.

g. Between 1998 and 2000, MARCOTTE purchased automobile tires for Deputy #2.

h. Beginning on or about January 18, 1999 and continuing until the present, LOUIS M. MARCOTTE, III and BBU employed the son of Deputy #3 in order to curry favor with Deputy #3.

i. In 1999, at the direction of LOUIS M. MARCOTTE, III, a BBU employee bought meals for Deputy #2 and several other deputies on numerous occasions at a restaurant on Lapalco Boulevard.

j. In or about December 2001, a BBU employee gave Deputy #2 $130.00 in cash to take several JPSO Deputies out for drinks at a restaurant in New Orleans.

k. On February 12, 2002, LOUIS M. MARCOTTE, III called Deputy #2 to discuss MARCOTTE's concern about competition from a former BBU employee. Deputy #2 told LOUIS M. MARCOTTE, III that he would tell the JPSO deputies not to accept anything from the former BBU employee.

l. Beginning on February 20, 2002, and continuing until August 21, 2002, BBU paid for a cellular telephone for Deputy #3 at a total cost exceeding $700.00.

m. On March 9, 2002, LOUIS M. MARCOTTE, III and Bail Bondsman #2 had a conversation in which Bail Bondsman #2 explained that he had been paying Deputy #2 $100.00 a week. Bail Bondsman #2 stated, "I have to go outside and tell you this. I had to get, um, [Deputy #2] a hundred dollars. That alright, huh?" LOUIS M. MARCOTTE, III asked, "For what?" Bail Bondsman #2 responded, "Because Lori told me to do it every week."

n. Beginning in or about May 2000 and continuing through 2002, LOUIS M. MARCOTTE, III paid JPSO Lieutenant Guy Maynard Crosby approximately $1,000.00 per month

and provided the unlimited use of a cellular telephone in order to influence Crosby to illegally use the National Crime Information Center's computer data base to locate and identify fugitives released on bail bonds written by BBU to facilitate their apprehension and thereby obviate costly bond forfeitures which inured to the financial benefit of BBU and/or MARCOTTE.

6. The Fraud Against Amwest

a. In or about December 1999, LOUIS M. MARCOTTE, III and others known to the United States Attorney, sought to withdraw approximately $650,000.00 from the BUF account held in trust with Amwest in order to expand his bail bond business to other states. To do so, Amwest required MARCOTTE to substitute real property having equity of approximately $650,000.00 to collateralize the BUF.

b. On or about December 20, 1999, LOUIS M. MARCOTTE, III and others known to the United States Attorney, mailed a letter to Amwest enclosing a fraudulent real estate appraisal dated December 16, 1999 on his personal residence indicating it was worth approximately $800,000.00 when in fact MARCOTTE and others known to the United States Attorney, well knew that it was worth significantly less than $800,000.00. Additionally, MARCOTTE and others known to the United States Attorney, in the same mailing, sent Amwest an Act of Mortgage for $700,000.00 on his personal residence knowing that the actual unencumbered value of his residence was significantly less, all designed to induce Amwest to release approximately $500,000.00 from the BUF to BBU.

c. On or about December 28, 1999, Amwest mailed a letter enclosing a check made payable to BBU in the sum of $400,000.00. This letter further referenced an earlier disbursement by Amwest in the form of a $100,000.00 check dated December 6, 1999 made payable to BBU. LOUIS M. MARCOTTE, III and others known to the United States Attorney deposited those checks into the accounts of BBU.

d. On or about December 29, 1999, LOUIS M. MARCOTTE, III and others known to the United States Attorney mailed a letter through a private interstate carrier to Amwest

enclosing a fraudulent real estate appraisal dated December 29, 1999 on real property located at 1708 Williams Boulevard, Kenner, Louisiana indicating it was worth approximately $146,000.00 when in fact, LOUIS M. MARCOTTE, III and others known to the United States Attorney, well knew it was worth significantly less than the appraised value. Additionally, MARCOTTE and others known to the United States Attorney, in the same mailing, sent Amwest an Act of Mortgage for $150,000.00 on 1708 Williams Boulevard, Kenner, Louisiana, knowing that the actual value of this property was significantly less, all designed to further induce Amwest to release approximately $150,000.00 from the BUF to BBU.

e. On or about January 4, 2000, Amwest mailed a check payable to BBU in the sum of $150,000.00 to LOUIS M. MARCOTTE, III which was thereafter deposited into the account of BBU.

f. In or about May of 2001, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, knowing that Amwest was experiencing significant financial difficulties and fearing that his personal residence would be entangled in a protracted insurance liquidation proceeding in another state, devised a scheme to release his personal residence as collateral to the BUF. This scheme included the substitution of other real estate of inferior value to his personal residence as collateral.

g. On or about May 31, 2001, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, mailed a letter to Amwest enclosing a fraudulent real estate appraisal dated May 24, 2001 on real property located at 415-417 Derbigny Street, Gretna, Louisiana indicating it was worth approximately $180,000.00 when in fact MARCOTTE and others known to the United States Attorney, well knew it was worth significantly less than the stated appraised value. Additionally, MARCOTTE and others known to the United States Attorney, in the same mailing, enclosed another fraudulent real estate appraisal dated March 25, 2001 on real property located at 418-420 South Broad Street, New Orleans, Louisiana indicating that it was worth approximately $275,000.00 when in fact MARCOTTE and others known to the United States

Attorney well knew it was worth significantly less than the stated appraised value as it had suffered serious and devaluing fire damage on or about June 28, 2000. Moreover, in this mailing, MARCOTTE and others known to the United States Attorney, enclosed fraudulent mortgage and real estate security instruments securing these properties in favor of Amwest, all designed to deceive Amwest into believing that it had received substituted collateral for MARCOTTE's personal residence of equal or greater value. Federal Express records confirm that BBU sent a mailing to Amwest on or about June 7, 2001; and Amwest's records confirm receipt of such a mailing.

h. On or about June 7, 2001, LOUIS M. MARCOTTE, III, and others known to the United States Attorney, mailed a letter through a private interstate carrier enclosing fraudulent mortgage and security instruments on 415-417 Derbigny Street, Gretna, Louisiana and 418-420 South Broad Street, New Orleans, Louisiana in favor of Amwest indicating that these security instruments had been recorded in the official mortgage records for Jefferson and Orleans Parishes respectively, all the while knowing that MARCOTTE and others known to the United States Attorney, had cancelled or never filed these security instruments.

All in violation of Title 18, United States Code, Section 1962(d).

COUNT 2 - CONSPIRACY TO COMMIT MAIL FRAUD

A. At All Times Material Herein:

1. The allegations contained in Section A of Count 1 are reincorporated as if fully realleged.

2. The defendant, LORI M. MARCOTTE, was a Gretna, Louisiana bail bond agent and the Vice President of BBU.

B. The Scheme:

1. Beginning on an exact date unknown, but in or before 1998, and continuing until the date of this bill of information, in the Eastern District of Louisiana and elsewhere, the defendant, LORI M. MARCOTTE, and others, known and unknown to the United States Attorney, knowingly and willfully devised and intended to devise a scheme and artifice to defraud and to deprive the

citizens of the State of Louisiana of the honest and faithful services, performed free from deceit, bias, self-dealing, and concealment, of certain Jefferson Parish Sheriff's Deputies in the performance of their official duties in the Intake and Booking Section of the Jefferson Parish jail.

2. It was part of the scheme and artifice to defraud that, in connection with the processing of inmates and bonds, LORI M. MARCOTTE corruptly provided JPSO Deputies with cash payments, gifts, and other things of value, in order to influence the deputies in the performance of their officials duties, more particularly to give BBU preferential treatment at the Jefferson Parish jail so as to maximize BBU's profits and hinder its competition.

C. The Conspiracy

From in or about 1998, and continuing through the date of this bill of information, in the Eastern District of Louisiana and elsewhere, the defendant, LORI M. MARCOTTE, and others known and unknown to the United States Attorney, did knowingly and willfully conspire, combine, confederate and agree together to knowingly and willfully cause mail to be delivered by the United States Postal Service for the purpose of executing the scheme set forth in Section B, in violation of Title 18, United States Code, Sections 1341 and 1346.

D. Overt Acts

In furtherance of the conspiracy and to accomplish its purposes, the defendant, LORI M. MARCOTTE, and others known and unknown to the United States Attorney, committed the following overt acts, among others, in the Eastern District of Louisiana and elsewhere:

1. Between 1998 and 2000, LORI M. MARCOTTE purchased automobile tires for Deputy #2.

2. In or about December 2001, LORI M. MARCOTTE gave Deputy #2 $130.00 in cash to take several JPSO Deputies out for drinks at a restaurant in New Orleans.

3. In 2001, LORI M. MARCOTTE gave Deputy #2 $150.00 in cash.

4. Beginning on February 20, 2002 and continuing until August 21, 2002, LORI M. MARCOTTE paid for a cellular telephone for Deputy #3 at a total cost exceeding $700.00.

5. On March 9, 2002, LOUIS M. MARCOTTE, III and Bail Bondsman #2 had a conversation in which Bail Bondsman #2 explained that he had been paying Deputy #2 $100.00 a week. Bail Bondsman #2 stated, "I have to go outside and tell you this. I had to get, um, [Deputy #2] a hundred dollars. That alright, huh?" LOUIS M. MARCOTTE, III asked, "For what?" Bail Bondsman #2 responded, "Because Lori told me to do it every week."

6. On or about June 11, 2002, LORI M. MARCOTTE caused to be mailed BBU Check No. 6212 as payment for BBU's cellular telephone bill, including the cellular telephone given to Deputy #3.

All in violation of Title 18, United States Code, Section 371.

NOTICE OF RACKETEERING FORFEITURE

1. The allegations of Count 1 of this bill of information are realleged and incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code, Section 1963.

2. LOUIS M. MARCOTTE, III

a. has interests which he acquired and maintained in violation of Title 18, United States Code, Section 1962, making all such interests subject to forfeiture to the United States of America, pursuant to Title 18, United States Code, Section 1963(a)(1);

b. has interests in, security of, claims against, and/or property and contractual rights affording him a source of influence over the enterprise which he established, operated, controlled, conducted and participated in the conduct of, in violation of Title 18, United States Code, Section 1962, thereby making all such interests, security, claims against, property and contractual rights wherever located, and in whatever names held, subject to forfeiture to the United States of America, pursuant to Title 18, United States Code, Section 1963(a)(2); and

c. has property constituting, or derived from, any proceeds which he obtained directly and indirectly from racketeering activity in violation of Title 18, United States Code, Section

1962, thereby making such property subject to forfeiture to the United States of America pursuant to Title 18, United States Code, Section 1963(a)(3).

3. The property described above includes, but are not limited to, the following:

a. The equity in real property located at 217 Derbigny Street, Gretna, Louisiana and described as follows:

> Property currently recorded in the name of Sisters Marcotte, L.L.C., and described as follows: One certain lot of ground, together with all the buildings and improvements thereon, and all the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated in the Village of New Mechanickham (now part of the City of Gretna), in the Parish of Jefferson, State of Louisiana, on the right bank of the Mississippi River and opposite the Fourth District of the City of New Orleans, designated by the Lot 7 of Square No. 6, which square is bounded by Derbigny, Second and Third Streets and the upper line of the Village of Mechanickham, on a plan by J. A. D'Hemecourt, Surveyor, dated November 13, 1872, in correction of a plan drawn by J. G. Dreaux, C.E. on March 13, 1872, and deposited in the office of W. J. McCune, late Notary for this Parish (Jefferson), and which said lot measures 31 feet 5 inches and 4 lines (31' 5" 4''') front on Derbigny Street, by a depth of 180 feet (180') between parallel lines. The improvements thereon bear Municipal No. 217 Derbigny Street, Gretna, Louisiana;

b. And a sum of money in U.S. Currency which, in aggregate with the equity in 217 Derbigny Street, Gretna, Louisiana, is equal to $250,000 in U.S. Currency;

4. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 1963(m), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Section 1963.

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New Orleans, Louisiana
March 3, 2004