

RICO COMPLAINT

BOOK III
Pages 662 to 993

AFFIDAVIT OF WARREN D. JOHNSON, SR.
AFFIDAVIT OF JEFFREY A. JOHNSON
AFFIDAVIT OF JERRY P. LINKOUS
NEWS ARTICLES AND RULES OF EVIDENCE
EXCERPTS OF TESTIMONY
PROSECUTORIAL MISCONDUCT AND VINDICTIVENESS

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INDEX - BOOK III

TABLE OF EXHIBITS

Table of Exhibits filed United States v. Warren D. Johnson, Jr. Case No. 98-8037-CR-RYSKAMP Southern District of Florida in support of a Rule 201(d); Petition for a Writ of Habeas Corpus; Filing a Rule 3 Criminal Complaint; and Verified Declaration in support of this Complaint and Motion.

	Letters	Pages
Affidavit of Warren D. Johnson, Sr.	A	665 - 712
Affidavit of Jeffrey A. Johnson	B	713 - 778
News Articles	C	779 - 786
Rules of Evidence - FCR Rule 201(d); Title 18 U.S.C. § 3060; Preliminary Examination; Docket Proceedings; F.R.Cr.P. Index; Ineffective Assistance of Counsel Rule 6(f); Title 18 U.S.C. § 31 - Chapter 2; and Pro-se / In Propria Persona definitions	D	787 - 793
Excerpts of Motions Filed by Patrick Scott, Attorney for U.S. Trustee Soneet Kapila	E	794 - 808
Excerpts of P.S.I. Report by Patricia A. Borah, U.S. Probation Officer	F	809 - 811
Excerpts of Testimony of James Lindsey	G	812 - 831
Three Agreements Filed in the Martin County Florida Public Records, dated January 11, 1994, Showing Dr. Walter Harber Owned 100% of Bay Pointe Estates (Not Bay Pointe Estates Land Trust) and a Deed to the Lindsey Family Trust dated April 1, 1994	H	832 - 859
Excerpts of Testimony of Stephen Rofsky	I	860 - 873
Excerpts of Testimony of James Harper	J	874 - 915
Excerpts of Testimony of Ray Marshall; Gerald Bourne; and Rashid "Reg" Bodhanya	K	916 - 952
Excerpts of Testimony of Dennis Ciaglo; and Richard Grund	L	953 - 985
Copy of <u>U.S. v. Guthrie</u> on Prosecutorial Misconduct and Vindictiveness	M	986 - 993

INDEX - BOOK IV

Excerpts of Hearings pre-Trial where Johnson was Denied being Pro se and Denied his Demand for a Bill of Particulars	N	994 - 1030
News Articles	O	1031 - 1033
Letters showing Johnson was finally allowed to be Pro-se on June 24, 1999	P	1034 - 1039
Dianne Johnson's Riverside Bank Account - #1002141708, from 3/21/94 to 11/03/94, When the Entire \$225,000 was Expended	Q	1040 - 1043
Warren Johnson's Letter of Engagement for Bay Pointe Estates for Employment, Time Sheets, Offers to U.S. Trustee Kapila, Sanchez Contract, Appraisal, Harber's Expenses and Adam Brown Awards from 1991 to 1993	R	1044 - 1078
Southeast Bank Documents	S	1079 - 1113
Fercal (Harbour Pointe Subdivision) Documents - Phase V (AKA Otters Run); Phase VI (AKA Bay Pointe Estates), Project received Benefit of Linkous 10" Water Main prior to March 13, 1989	T	1114 - 1149
Violations of Defendant Warren D. Johnson, Jr.'s Pro-se Status and Governmental Extortion Issue	U	1150 - 1165
Pro-se Motion to Notify Attorney Generals of U.S.A. and Florida of Vendetta, Cover-up and Fraud in this case	V	1166 - 1229
Johnson Family History - Mayflower Compact (First Constitution in America - 1620)	W	1230 - 1245
Sale of Lawsuits and Raymond Loesch Documents	X	1246 - 1255
Extortion Threat by Patrick Scott Wed. 14 Feb. 2001 e-mailed to Carolyn Bell @ usdoj.gov and Johnson family Attorneys	Y	1256 - 1262
Documentation in Support of the Reorganized Principality of Orange. The Royal Johnson Family - PORTOSEL	Z	1263 - 1335
14 Page Complaint filed under the European Court of Human Rights - Strasbourg, France		1336 - 1348
Exhibits TCI - 1 to 13		1349 - 1487
Exhibits CRC - 1 to 12		1488 - 1610

NOTE - All of the above Affidavits and documents were known to
the government and hidden or misstated and excluded
from the evidence and the transcripts of witnesses were
colored by the prosecutor.

EXHIBITS A - W

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA

V

Case No. 98-CR-8039-ALL

WARREN D. JOHNSON, JR.

_____/

AFFIDAVIT OF WARREN D JOHNSON, SR.

UPON BEING DULY SWORN, I, the undersigned, Warren D Johnson, Sr say the following, which is true and correct, under penalty of perjury, and based upon my knowledge and belief

My name is Warren D Johnson, Sr father of Warren D. Johnson, Jr. I am over (21) twenty-one years of age

I have attached the following documents and tax returns regarding the profits and taxes I paid on property I owned, developed, and sold from December 31, 1977 to present and state the following history.

1. The property was the result of two separate purchases through his real estate broker, Joan B Thompson. (See Exhibit A). I have known Joan B. Thomson since she was the young wife of my minister. Paul Thomson, in the early 1950's
2. In the late 1970's. Jerry P Linkous, who was an unlimited general contractor in the State of Florida, built an oceanfront home for me on Jupiter Island. My sons Paul Johnson, Warren D Johnson, Jr , and my grandson Mark Johnson, all worked on the construction of the beach house and guesthouse

3 Please find attached Exhibit "B" which is a letter dated July 10, 1979 to Warren D Johnson, Sr on commission as well as closing statements and deeds for five (5) parcels which were split into nineteen (19) lots. Also enclosed is a purchase money note from Warren D. Johnson, Sr. to J. Lavino Company for \$120,000.00 (In exhibit A). All closings were done by my attorney Frank Ryan.

4. On August 15, 1979 I gave a gift of property valued at \$250,000.00 to the Full Gospel Christian Association (see Exhibit C) for copies of appraisal, warranty deed, recording fees, topo, and U.S. Treasury Department certification of 501 © (3) I. D Number 71-6057425 church status.

5 I, Warren D Johnson, Sr. also gave \$24,245.00 to help build a new church in Batavia, New York, (see Exhibit D), as shown on my 1978 IRS Tax Return. My total gain for the sale of real estate was \$41,219.00 in 1978; \$187,604.00 in 1979; and \$388,948.00 on the sale of my house in 1980 (see Exhibit E). Pages 1-6 are from my tax return for 1979 and pages 1, 2, and 7 are from my tax return for 1980 (see Exhibit F).

6. On the 17th of September 1983, I, Warren D. Johnson, Sr. signed a satisfaction of mortgage (see Exhibit G) and paid off the balance on a \$750,352.60 purchase money mortgage I held on the sale of my home on Jupiter Island. I then loaned Linkous Corporation \$261,250 00 to fund a cash bond for the construction of the water main and infrastructure for Bay Pointe subdivision and received a note and option to purchase a riverfront lot in Bay Pointe.

7 In 1979 (see page 3 of 1979 tax return - Exhibit "E") Mark and Kelly Johnson were paid \$9,000 00 each for their respective trusts. This is the only payment they received. The prosecution lied to the court and jury claiming that I had hidden 20 million

dollars in trusts for Mark and Kelly Johnson from the Jupiter Island development. The prosecution and the FBI knew they were lying in court because they had all the closing statements, deeds and doc stamps from the Jupiter Island development.

8. In closing I would like to state the following. Before and during my son Warren D Johnson, Jr.'s trial, I was battling bladder cancer and because of my weakened state I was unable to travel to Florida to testify. If I had testified, I would have been able to expose the FBI and prosecutions fraud on the court against my son. Let the documents speak for themselves. Justice must prevail.

FURTHER, AFFIANT SAYETH NAUGHT,

Warren D. Johnson Sr.

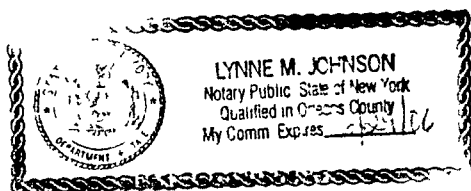
Warren D. Johnson, Sr.
11951 East Yates Center Road
Lyndonville, New York 14098

STATE OF NEW YORK
COUNTY OF ORLEANS

The foregoing instrument was acknowledged before me this 19th day of March 2002, Warren D. Johnson, Sr. who is personally known to me or who produced identification and took an oath/affirmed.

[Signature]
Notary Public

My commission expires:



DEPOSIT RECEIPT AND CONTRACT FOR SALE AND PURCHASE

I, J. J. LAVINO and CONJ of Philadelphia, Penn (Ph) hereinafter called the seller
 of [REDACTED] (Ph) hereinafter called the buyer hereby agree
 that the seller shall sell and the buyer shall buy the following described property UPON THE TERMS AND CONDITIONS HEREINAFTER
SET FORTH which shall include the STANDARD FOR REAL ESTATE TRANSACTIONS set forth on reverse side of this contract

1. LEGAL DESCRIPTION of real estate located in Philadelphia County, Florida

Lot 1, 2, 3 and 4 in Block 1, Subdivision 1 of
Tract 1 in Section 10, Township 1, Range 1, East of
the 1000

Personal property included None

Street address 5110 Road 100, Philadelphia, Pennsylvania

Seller represents that the property can be used for the following purposes Residential

2. Purchase price and Method of Payment Purchase price is 100,000.00 Dollars

Deposit to be held in trust by John J. Lavino \$ 10,000.00

Approximate principal balance of first mortgage to which conveyance shall be subject if any Mortgage holder \$ 0.00

Interest None per annum Method of payment Cash
 Other None \$ 0.00

CASH
 Cash certified or local cashiers check on closing and delivery of deed for such greater or lesser amount as may be necessary to complete payment of purchase price after credits, adjustments and prorations

\$ 100,000.00

3. TIME FOR ACCEPTANCE If this contract is not executed by the seller and buyer on or before 10/1/77, the aforesaid deposit shall be, at the option of the buyer returned to him and this agreement shall be null and void. The date of contract, for purposes of performance, shall be regarded as the date when the last one of the seller and buyer has signed this contract.

4. CLOSING DATE This contract shall be closed and the deed and possession shall be delivered on or before the 1st day of April, 19 78, unless extended by other provisions of this contract.

5. PRORATIONS Taxes, insurance, interest, rents and other expenses, and revenue of said property shall be prorated as of the date of closing.

6. EVIDENCE OF TITLE (Check 1) or 1) (2) Within 10 days from the date of this contract the seller shall at his expense deliver to the buyer or his attorney in accordance with Standard A on reverse side either (1) abstract (2) title guarantee.

7. CONVEYANCE Seller shall convey title to the aforesaid property to the buyer by statutory warranty deed subject to matters contained in this contract and taxes for the year of closing.

8. RESTRICTIONS AND EASEMENTS The buyer shall take title subject to (a) Zoning and/or restrictions and prohibitions imposed by governmental authority (b) Restrictions and matters appearing on the plat and/or common to the subdivision (c) Public utility easements of record, provided said easements are located on the side or rear lines of the property and are not more than six feet in width (d) Other None

Further provided that none of the foregoing interferes with the use of the property for the purposes as stated in this contract.

9. DEFAULT BY BUYER If buyer fails to perform any of the covenants of this contract, all money paid pursuant to this contract by buyer is aforesaid shall be returned by or for the account of the seller as consideration for the execution of this contract and is agreed liquidated damages and in full settlement of any claims for damages.

10. DEFAULT BY SELLER If the seller fails to perform any of the covenants of this contract, the aforesaid money paid by the buyer at the option of the buyer, shall be returned to the buyer on demand or the buyer shall have only the right of specific performance.

11. TYPEWRITTEN OR HANDWRITTEN PROVISIONS Typewritten or handwritten provisions inserted in this form shall control all printed provisions in conflict therewith.

12. OTHER AGREEMENTS No agreements or representations, unless incorporated in this contract shall be binding upon any of the parties.

13. SPECIAL CLAUSES

(1) See addendum attached hereto for more information.

(2) See proposed mortgage and deed attached hereto and made a part hereof.

WITNESSES (Two are required)

[Signature]
[Signature]

Executed by Buyer on

EXHIBIT A

A-4

668

SCHEDULE "A"

Re: Contract between L. J. Davino & Company and
Watson D. Johnson, et al. et al.

Lot 3
Parcel 1

The South 95.23 feet of Lot 26, Lot 27 and the
North 7.08 feet of Lot 28, Blowing Rocks
Subdivision, as recorded in Plat Book 1, page
1, Martin County, Florida, records.

Lot 6
Parcel 2

The South 88.20 feet of Lot 32, Lot 33 and the
North 14.16 feet of Lot 31, Blowing Rocks
Subdivision, as recorded in Plat Book 1, page
1, Martin County, Florida, records.

Lot 7
Parcel 3

The South 85.81 feet of Lot 34, Lot 35 and the
North 16.52 feet of Lot 36, Blowing Rocks
Subdivision, as recorded in Plat Book 1, page
1, Martin County, Florida, records.

Lot 8
Parcel 4

The South 83.48 feet of Lot 36, Lot 37 and the
North 18.88 feet of Lot 38, Blowing Rocks
Subdivision, as recorded in Plat Book 1, page
1, Martin County, Florida, records.

Lot sizes and dimensions were determined from Stafford & Brock
survey for Severson & Linton, Inc., Real Estate Brokers, in
Hobe Sound, Florida.

Acres of ocean front parcels was determined from vegetation
line.

ADDENDUM

Re: Contract between E. J. Lavino & Company,
and Warren D. Johnson, Sr., Trustee

1. This contract is contingent upon the following conditions:

(a) Seller hereby agrees to join with the Buyer, at Buyer's expense, to replat Lots 3, 6, 7 and 8 into 15 sublots, all as shown on Schedule of Lot Divisions for Preferred Properties, Inc., by Lindahl & Browning, Inc., dated June 3, 1976.

(b) Fresh water shall be commercially available to Lots 3, 6, 7 and 8 at the time of Closing.

2. At closing, Lot 3 and Lot 6, consisting of sublots a, b, c, d, e, f and g, as more particularly described in Schedule "A" attached hereto, will not be encumbered by the Purchase Money Mortgage. Lots 7 and 8, consisting of sublots "H" through "o", as more particularly described in Schedule A, will be encumbered by Purchase Money Mortgages with the following provisions.

(a) Note #1 will be for \$120,000.00 payable over two years from the date of closing, with interest at 9% per annum, with payment of interest only in the first year of \$2,700.00 per quarter and quarterly payments of principal and interest in the second year of \$31,687.50. At the time of the final payment of Note #1, the four sublots will be released to the Buyer, being Lot 7, as shown on map attached: Sublots h, i, j and k.

(b) Note #2 will be for \$100,000 payable over three years from the date of closing, with interest at 9% per annum, with payment of interest only in the first two years of \$2,250.00 per

quarter and quarterly payments of principal and interest in the third year of \$26,406.25. At the time of the final payment of Note #2, the four sublots will be released to Buyer, being Lot 8, as shown on map attached: Sublots l, m, n and o.

(c) The mortgage notes may be paid off at any time in part or in full, without prepayment penalty. A default under either note will automatically constitute a default of the other note.

(d) There shall be added to each quarterly payment an amount equal to one quarter of the annual real estate taxes relating to the unreleased properties. Seller agrees to pay the taxes when due and shall have the right to surcharge the Buyer for any deficiency in quarterly payments.

3. Preferred Properties, Inc., and Robert J. Odoardi are entitled to share 50/50 in a 10% real estate commission payable by the Seller only if this transaction is closed.

(a) At closing, the commission will be paid on \$380,000.00.

(b) At the end of the second year, at the final payment of the \$120,000.00 Note, the commission will be paid on \$120,000.00.

(c) At the end of the third year, upon the final payment of the \$100,000.00 Note, the commission will be paid on the \$100,000.00

If this contract is voided because of any of the contingencies set forth in Paragraph 1 (a & b) above, the down payment shall be returned to the Buyer and neither the Seller nor the brokers will be entitled to any part thereof.

120,000.00

STUART, Florida,

19 78

FOR VALUE RECEIVED, the undersigned, jointly and severally, PROMISE TO PAY to the order of

E. J. Laying Company

One Hundred Twenty Thousand

DOLLARS,

at _____ or such other place as the holder hereof may designate in writing, together with interest from date at the rate of 9 per centum per annum on the unpaid balance until maturity. The said principal and interest shall be due and payable

Only interest is payable for the first year payable quarterly. The first payment being due June ____, 1978.

The principal and interest payments shall be due and payable during the second year, the first payment of principal and interest being due June ____, 1979. This note may be prepaid any time without penalty.

If default be made for 30 days in the payment of any installment of principal or interest or any part thereof the whole sum then remaining unpaid with interest shall at holder's option become due and payable without notice. Failure to exercise such option shall not constitute a waiver of the right to exercise the same in the event of subsequent default. After maturity both principal and accrued interest shall bear interest at 9 per centum per annum until paid. The makers and endorsers of this note further waive demand, notice of nonpayment and protest. If this note is not paid at maturity and the same is placed with an attorney for collection, the makers and endorsers hereby agree to pay all costs of collection including all court costs and reasonable attorney fees. If any payment is paid more than 10 days after due then in addition to said payment the maker shall pay a LATE CHARGE of 5% of the payment due or \$5.00, whichever is less. This provision shall not be construed to modify the default provisions herein or the interest due after default.

Wm. D. Johnson, Jr., Trustee
Wm. D. Johnson, Jr., Trustee

Closing Statement April 17 1973

Seller: E. J. Lavino & Company

Buyer: Warren D. Johnson, Sr., P. U. R.

Property Address:

County: Martin City: -----

Legal Description:

Parcels in BLOWING ROCKS SUBDIVISION
Jupiter Island

SEE DESCRIPTION ATTACHED

Closing Statement April 17 1973

Seller: E. J. Lavino & Company

Buyer: Warren D. Johnson, Sr., P. U. R.

Property Address:

County: Martin City: -----

Legal Description:

Parcels in BLOWING ROCKS SUBDIVISION
Jupiter Island

SEE DESCRIPTION ATTACHED

SELLER'S COPY	A DUE SELLER	B CREDIT BUYER
1 SELLING PRICE	500000.00	500000.00
*2 DOWN PAYMENT	50000.00	50000.00
3 MORTGAGES		
a Assumed by Buyer	XXXXXX	XXXXXX
b Executed by Buyer	XXXXXX	XXXXXX
4 RENTS pro rated		
5 INTEREST pro rated		
6 INSURANCE Fire		
Unearned Premium		XXXXXX
Other		XXXXXX
7 TAXES 104 days		
a based on days credit to Seller or		
b based on days credit to Buyer		
8 19 City Taxes	a	b
9 19 County Taxes	a	b
10 19 Personal Taxes	a	b
11		
12		
13		
TOTALS	500000.00	500000.00
14 Column 'A' less Column 'B'	500000.00	500000.00
*1 BALANCE DUE SELLER	500000.00	500000.00
SELLER'S EXPENSES OF SALE		CHARGE - ELLEN
15 Abstracting Charges		
16 Attorney Fee		
17 Broker's Commission		50000.00
18 Escrow Fees		
19 Florida Documentary Stamp on Deed		660.00
20 Florida Revenue Stamps on Deed		1300.00
21 Intangible Tax on Mortgage		00.00
22 Recording Mortgage		00.00
23 Survey Charges		
24 Mortgage Transfer Fee		
25		
*26 TOTAL EXPENSES TO SELLER		\$52670.00

SUMMARY

DOWN PAYMENT *(2) 50000.00
(plus) BALANCE DUE SELLER *(1) 500000.00
SUB TOTAL 550000.00
(less) SELLER'S EXPENSES *(26) 52670.00
NET CASH TO SELLER 517330.00

Taxes were prorated as of 4/17/73 based on year 1972 in the amount of \$10,712.15
Abstract delivered to Buyer
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of above check or Net Cash of Seller and hereby approve above and certify it correct

BUYER'S COPY	DUE	CREDIT
a PURCHASE PRICE	500000.00	500000.00
*b DOWN PAYMENT	50000.00	50000.00
c MORTGAGES		
a Assumed by Buyer	XXXXXX	XXXXXX
b Executed by Buyer	XXXXXX	XXXXXX
d RENTS pro rated		
e INTEREST pro rated		
f INSURANCE Fire		
Unearned Premium		XXXXXX
Other		XXXXXX
g TAXES 104 days		
a based on days credit to Seller or		
b based on days credit to Buyer		
h 19 City Taxes	a	b
i 19 County Taxes	a	b
j 19 Personal Taxes	a	b
k		
l		
m		
TOTALS	500000.00	500000.00
n Column 'A' less Column 'B'	500000.00	500000.00
*1 BALANCE DUE SELLER	500000.00	500000.00
BUYER'S EXPENSES OF SALE		CHARGE - ELLEN
o Abstracting Charges		
p Attorney Fees		
q Escrow Fees		
r Florida Revenue Stamp on Note		5.00
s Intangible Tax on Mortgage		
t Recording Deed		
u Recording Mortgage		
v Survey Charges		
w Mortgage Transfer Fee		
x		
y		
*2 TOTAL EXPENSES TO BUYER		\$31.00

SUMMARY

BALANCE DUE SELLER *(1) 500000.00
(plus) BUYER'S EXPENSES *(2) 31.00
NET CASH DUE FROM BUYER 500031.00

Taxes were prorated as of 4/17/73 based on year 1972 in the amount of \$10,712.15
Abstract delivered to Buyer
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of above check or Net Cash of Seller and hereby approve above and certify it correct

612 North Federal Highway
North Palm Beach, Florida 33408

Closing Statement July 7 1972

Seller: JAMES P. JR.
Buyer: JAMES P. JR.
Property Address: 612 North Federal Highway
County: Palm Beach City: North Palm Beach
Legal Description: The South 92.02 feet of Lot 29, Lot 30 and the North 9.41 feet of Lot 30, PLANNING MAPS

The South 92.02 feet of Lot 29, Lot 30 and the North 9.41 feet of Lot 30, PLANNING MAPS

Closing Statement July 7 1972

Seller: JAMES P. JR.
Buyer: JAMES P. JR.
Property Address: 612 North Federal Highway
County: Palm Beach City: North Palm Beach
Legal Description: The South 92.02 feet of Lot 29, Lot 30 and the North 9.41 feet of Lot 30, PLANNING MAPS

The South 92.02 feet of Lot 29, Lot 30 and the North 9.41 feet of Lot 30, PLANNING MAPS

SELLER'S COPY		A	B
		DEBIT SELLER	CREDIT BUYER
1	SELLING PRICE	700.00	700.00
2	DOWN PAYMENT	500.00	500.00
3	MORTGAGES		
a	Assumed by Buyer	500.00	500.00
b	Assumed by Seller		
4	RENTS pro rated		
5	INTEREST pro rated		
6	INSURANCE Fire		
	Unearned Premium		
	Other		
7	TAXES		
a	Based on days credit to seller or		
b	Based on days credit to buyer		
8	19 City Taxes		
9	19 County Taxes		
10	19 Personal Taxes		
11	Discount for early		
12	Other		
13	TOTALS	200.00	200.00
14	Column 'A' less Column 'B'	0.00	0.00
15	BALANCE DUE SELLER	500.00	500.00
SELLER'S EXPENSES OF SALE			
16	Abstracting Charges		
17	Attorney Fee		
18	Broker's Commission - Preferred Plan		
19	Escrow Fees		
20	Florida Documentary Surcharge Stamps on Deed		
21	Florida Revenue Stamps on Deed		
22	Intangible Tax on Mortgage		
23	Recording Mortgage		
24	Survey Charges		
25	Mortgage Transfer Fee		
26	TOTAL EXPENSES TO SELLER	511.75	511.75
SUMMARY			
	DOWN PAYMENT (2)	500.00	
(plus)	BALANCE DUE SELLER (15)	500.00	
SUB TOTAL		1000.00	
(less)	SELLER'S EXPENSES (26)	511.75	
NET CASH TO SELLER		488.25	

Taxes and Insurance pro rated as of 7/7/72 based on year 1972, in the amount of \$ 100.00
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of above check or Net Cash to Seller and hereby approve above and certify it is correct

BUYER'S COPY		C	D
		DEBIT BUYER	CREDIT SELLER
1	PURCHASE PRICE	700.00	700.00
2	DOWN PAYMENT	500.00	500.00
3	MORTGAGES		
a	Assumed by Buyer	500.00	500.00
b	Assumed by Seller		
4	RENTS pro rated		
5	INTEREST pro rated		
6	INSURANCE Fire		
	Unearned Premium		
	Other		
7	TAXES		
a	Based on days credit to seller or		
b	Based on days credit to buyer		
8	19 City Taxes		
9	19 County Taxes		
10	19 Personal Taxes		
11	Discount for early		
12	Other		
13	TOTALS	200.00	200.00
14	Column 'A' less Column 'B'	0.00	0.00
15	BALANCE DUE BUYER	500.00	500.00
BUYER'S EXPENSES OF SALE			
16	Abstracting Charges		
17	Attorney Fees		
18	Escrow Fees		
19	Florida Revenue Stamps on Note		
20	Intangible Tax on Mortgage		
21	Recording Deed		
22	Recording Mortgage		
23	Survey Charges		
24	Mortgage Transfer Fee		
25	TOTAL EXPENSES TO BUYER	5	5
SUMMARY			
	BALANCE DUE BUYER (15)	500.00	
(plus)	BUYER'S EXPENSES (25)	5	
NET CASH DUE FROM BUYER		505.00	

Taxes and Insurance pro rated as of 7/7/72 based on year 1972, in the amount of \$ 100.00
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of above and hereby approve same and certify it is correct



July 10, 1979

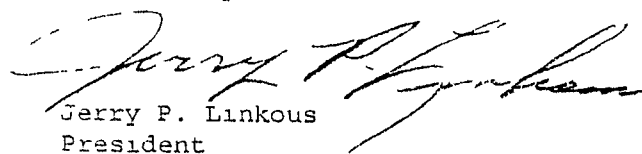
Mr. Warren D. Johnson, Sr., Trustee
179 Beacon Lane
Jupiter, Florida 33458

Dear Warren:

Regarding your sale trade involving the Frank Smith deal, we will reduce our 10% commission to a flat fee of \$12,500 total paid by you.

I understand your sale of Parcel #17 will involve a trade for Parcel #2 and a sale to Mr. Lesnick of Parcel #2 to get cashed out of #17.

Yours truly,


Jerry P. Linkous
President

JPL:cpr

Paid in full
(97)



PREFERRED PROPERTIES OF PALM BEACH CO., INC.

Plaza 222 U.S. Hwy #1
Tequesta Florida 33458

305-744-2228

A-11

EXHIBIT B

Closing Statement September 11, 19 79

Seller: Warren D. Johnson, Sr., Trustee

Buyer: Robert T. Lemnick

Property Address

County: Martin

Legal Description

PARCEL 2, Blowing Rocks Subdivision

Closing Statement September 11, 19 79

Seller: Warren D. Johnson, Sr., Trustee

Buyer: Robert T. Lemnick

Property Address

County: Martin

Legal Description

Blowing Rocks Subdivision, PARCEL 2

SELLER'S COPY		DUE SELLER	CREDIT BUYER
1 SELLING PRICE		150,000 00	
2 DOWN PAYMENT			10,000 00
3 MORTGAGES	a assumed by Buyer b executed by Buyer		
4 RENTS pro rated			
5 INTEREST pro rated			
6 INSURANCE Fire	Unearned Premium		
	Other Unearned Premium		
7 TAXES	a Based on 1978 credit to seller or b Based on 1979 credit to Buyer		
8 1978 City Taxes	a		b 632 50
9 1979 County Taxes	a		b 632 50
10 1979 Personal Taxes	a		b
11			
12			
13			
TOTALS		150,000 00	10,632 50
14 Column A' less Column 'B'		10,632 50	
* BALANCE DUE SELLER		139,367 50	
SELLER'S EXPENSES OF SALE		CHARGE SELLER	
15 Abstracting Charges		1,240 00	
16 Attorney Fee		1,250 00	
17 Broker's Commission			
18 Chain of title		75 00	
19 Florida Documentary Surtax Stamps on Deed		165 00	
20 Florida Revenue Stamps on Deed		450 00	
21 Intangible Tax on Mortgage			
22 Recording Mortgage			
23 Survey Charges			
24 Mortgage Transfer Fee			
25			
26 TOTAL EXPENSES TO SELLER		3,180 00	

SUMMARY

DOWN PAYMENT *(2) \$
 (plus) BALANCE DUE SELLER *(1) \$
 US TOTAL \$ 139,367.50
 (less) SELLER'S EXPENSES *(20) \$ 3,180.00
 NET CASH TO SELLER \$ 136,187.50

Taxes and ~~insurance~~ pro rated as of September 11 19 79 taxes
 based on year 78 in the amount of \$ 912.50
 Abstract delivered to _____
 Insurance Policies delivered to _____
 Title with cancelled stamps to _____
 Received a true copy of above check and net cash to seller and
 hereby approve above and certify it correct

BUYER'S COPY		DUE BUYER	CREDIT SELLER
1 PURCHASE PRICE		150,000 00	
2 DOWN PAYMENT			10,000 00
3 MORTGAGES	a assumed by Buyer b executed by Buyer		
4 RENTS pro rated			
5 INTEREST pro rated			
6 INSURANCE Fire	Unearned Premium		
	Other Unearned Premium		
7 TAXES	a Based on 1978 credit to seller or b Based on 1979 credit to Buyer		
8 1978 City Taxes	a		b 632 50
9 1979 County Taxes	a		b 632 50
10 1979 Personal Taxes	a		b
11			
12			
13			
TOTALS		150,000 00	10,632 50
14 Column A' less Column 'B'		10,632 50	
* BALANCE DUE SELLER		139,367 50	
BUYER'S EXPENSES OF SALE		CHARGE BUYER	
a Abstracting Charges			
b Attorney Fees			
c Escrow Fees			
d Florida Revenue Stamps on Note			
e Intangible Tax on Mortgage			
f Recording Deed			4 00
g Recording Mortgage			
h Survey Charges			
i Mortgage Transfer Fee			
x Water tap			132.50
y			
*2 TOTAL EXPENSES TO BUYER			132.50

SUMMARY

BALANCE DUE SELLER *(1) \$ 139,367.50
 (plus) BUYER'S EXPENSES *(2) \$ 132.50
 NET CASH DUE FROM BUYER \$ 139,500.00

Taxes and ~~insurance~~ pro rated as of September 11 19 79
 based on year 78 in the amount of \$ 912.50
 Abstract delivered to _____
 Insurance Policies delivered to _____
 Title with cancelled stamps to _____
 Received a true copy of above and hereby approve above and
 certify it correct

EVEN

TRADE

Closing Statement August 23, 1979

Sellers: SMITH, Francis G. and Alice

Buyer: JOHNSON, Warren D., Sr., Trustee

Property Address: _____
County: Martin City: _____

Legal Description: Parcel 2, Blowing Rocks Subdivision

SELLER'S COPY		DUE SELLER		CREDIT BUYER		BUYER'S COPY	
1	SELLING PRICE					a	PURCHASE PRICE
2	DOWN PAYMENT					b	DOWN PAYMENT
3	MORTGAGES						MORTGAGES
	a Assumed by Buyer						
	b Executed by Buyer						
4	RENTS pro rated						RENTS pro rated
5	INTEREST pro rated						INTEREST pro rated
6	INSURANCE Fire						INSURANCE Fire
	Other						Other
7	TAXES					9	TAXES
	a Based on						a Based on
	b Based on						b Based on
8	19 City Taxes					11	19 City Taxes
9	19 County Taxes					12	19 County Taxes
10	19 Personal Taxes					13	19 Personal Taxes
11							
12							
13							
TOTALS						TOTALS	
14	Column A less Column B					14	Column A less Column B
*BALANCE DUE SELLER						*BALANCE DUE SELLER	
SELLER'S EXPENSES OF SALE				BUYER'S EXPENSES OF SALE			
15	Abstracting Charges					15	Abstracting Charges
16	Attorney Fee					16	Attorney Fees
17	Broker's Commission					17	Escrow Fees
18	Broker's chain of title					18	Florida Revenue Stamps on Note
19	Florida Documentary Surtax Stamps on Deed					19	Intangible Tax on Mortgage
20	Florida Revenue Stamps on Deed					20	Recording Deed
21	Intangible Tax on Mortgage					21	Recording Mortgage
22	Recording Broker's Warranty Deed					22	Survey Charges
23	Survey Charges					23	Mortgage Transfer Fee
24	Mortgage Transfer Fee					24	
25						25	
26	TOTAL EXPENSES TO SELLER					26	TOTAL EXPENSES TO BUYER

SUMMARY

DOWN PAYMENT *(2) \$ _____
 (plus) BALANCE DUE SELLER *(1) \$ _____
 SUB TOTAL \$ _____
 (less) SELLER'S EXPENSES *(26) \$ _____
 NET CASH DUE FROM SELLER \$ 707.85

SUMMARY

BALANCE DUE SELLER *(1) \$ _____
 (plus) BUYER'S EXPENSES *(2) \$ _____
 NET CASH DUE FROM BUYER \$ _____

Taxes and Insurance pro rated as of _____ axes
 based on year 19 _____ in the amount of \$ _____
 Abstract delivered to _____
 Insurance Policies delivered to _____
 Note with cancelled stamps to _____
 Received a true copy of above re: for Net Cash to Seller and
 hereby approve above and certify it correct

Taxes and Insurance pro rated as of _____ 9
 based on year 19 _____ in the amount of _____
 Abstract delivered to _____
 Insurance Policies delivered to _____
 Note with cancelled stamps to _____
 Received a true copy of above and certify it correct

This instrument is prepared by _____
 Name _____
 Address _____
 _____ North Palm Beach _____

Warranty Deed

(STATUTORY FORM—SECTION 689.02 FS)

This Indenture, Made this 24th day of July August 1979 Between

FRANCIS G SMITH and ALICE SMITH, his wife
 of the County of Palm Beach State of Florida grantor and

WARREN D JOHNSON SR TRUSTEE

whose post office address is East Yates Road, Lyndonville New York

of the County of Warren State of New York grantee

Witnesseth, That said grantor for and in consideration of the sum of _____

TEN and xx/100----- Dollars
 and other good and valuable considerations to said grantor in hand paid by said grantee the receipt whereof is hereby
 acknowledged has granted be turned and sold to the said grantee and grantee's heirs and assigns forever the following
 described land situate lying and being in Martin County Florida to wit

PARCEL 2

A parcel of land being a portion of Blowing Rocks Subdivision as recorded in
 Plat Book I Page I Martin County Florida and being more particularly, described
 as follows

The South 94 10 feet of Lot 27, together with North 7 08 feet of Lot 28 Blowing Rocks
 Subdivision, as recorded in Plat Book I Page I, Martin County, Florida Public
 Records, lying easterly of the East right of way line of State Road 707 as now
 existing

Containing 1 25 acres more or less

THIS IS NON HOMESTEAD PROPERTY

and said grantor does hereby fully warrant the title to said land and will defend the same against the lawful claim of all
 persons whomsoever

* Grantor and grantee are used for singular or plural as context requires

In Witness Whereof, Grantor has hereunto set grantor's hand and seal the day and year first above written
 Signed, sealed and delivered in our presence

Victoria Squarise
Francis G. Smith

Francis G. Smith Seal)
Alice Smith Seal)
 _____ Seal)
 _____ Seal)

STATE OF FLORIDA
 COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day before me an officer duly qualified to take acknowledgments personally appeared

FRANCIS G SMITH and ALICE SMITH his wife

to me known to be the persons described in and who executed the foregoing instrument and acknowledged to me that
 they executed the same

WITNESS my hand and official seal in the County and State last aforesaid this 24th day of July August
 1979

My commission expires

33K 479 PAGE 1747

Victoria Squarise
 Notary Public

(NOTARY SEAL)

NOTARY PUBLIC STATE OF FLORIDA
 MY COMMISSION EXPIRES AUGUST 1 1983

OFFICE OF THE
 Ryan Ryan & Associates
 1000 1st St
 North Palm Beach, Fla 33463

Closing Statement April 19 19

Seller: William D. Johnson, Sr., Trustee

Buyer: Francis & Alice Smith

Property Address: _____

County: Martin City: _____

Legal Description: _____

Closing Statement April 19 1978

Seller: William D. Johnson, Sr., Trustee

Buyer: Francis & Alice Smith

Property Address: _____

County: Martin City: _____

Legal Description: _____

SELLER'S COPY	A DUE SELLER	B CREDIT BUYER
1 SELLING PRICE	110000 00	XXXXXX XXX
*2 DOWN PAYMENT	XXXXXX XXX	
3 MORTGAGES a Assumed by Buyer	XXXXXX XXX	
b Executed by Buyer	XXXXXX XXX	
4 RENTS pro rated		
5 INTEREST pro rated		
6 INSURANCE Fire		XXXXXX XXX
Unearned Premium		
Other		XXXXXX XXX
Unearned Premium		
7 TAXES to be pro-rated		
a Based on days credit to Seller or		
b Based on days credit to Buyer		
8 19 City Taxes	a	b
9 19 County Taxes	a	b
10 19 Personal Taxes	a	b
11		
12		
13		
TOTALS	110000 00	-- --
14 Column "A" less Column "B"	-- --	XXXXXX XXX
*1 BALANCE DUE SELLER	110000 00	XXXXXX XXX
SELLER'S EXPENSES OF SALE		CHARGE SELLER
15 Abstracting Charges		690 00
16 Attorney Fee		
17 Broker's Commission		
18 Escrow Fees		
19 Florida Documentary Surtax Stamps on Deed		121 00
20 Florida Revenue Stamps on Deed		330 00
21 Intangible Tax on Mortgage		
22 Recording Mortgage		
23 Survey Charges		
24 Mortgage Transfer Fee		
25		
*26 TOTAL EXPENSES TO SELLER		\$1,141 00

SUMMARY

DOWN PAYMENT *(2) ^{30% of} 33000.00

(plus) BALANCE DUE SELLER *(1) \$ 110,000.00

SUB TOTAL \$ 110,000.00

(less) SELLER'S EXPENSES *(26) \$ 1,141.00

NET CASH TO SELLER \$ 108,859.00

Taxes to be pro-rated as of 19 78

Abstract delivered to _____ received.

Insurance Policies delivered to _____

Note, with cancelled stamps to _____

Received a true copy of above check or Net Cash to Seller and hereby approve above and certify it to be correct.

BUYER'S COPY	C DUE BUYER	E CREDIT SELLER
a PURCHASE PRICE	100000 00	XXXXXX XXX
*a DOWN PAYMENT	XXXXXX XXX	
c MORTGAGES a Assumed by Buyer	XXXXXX XXX	
b Executed by Buyer	XXXXXX XXX	
d RENTS pro rated		
e INTEREST pro rated		
f INSURANCE Fire		XXXXXX XXX
Unearned Premium		
Other		XXXXXX XXX
Unearned Premium		
j TAXES to be pro-rated		
a Based on days credit to Seller or		
b Based on days credit to Buyer		
n 19 City Taxes	a	b
o 19 County Taxes	a	b
p 19 Personal Taxes	a	b
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
TOTALS	100000 00	-- --
n Column "C" less Column "E"	-- --	XXXXXX XXX
*1 BALANCE DUE BUYER	100000 00	XXXXXX XXX
BUYER'S EXPENSES OF SALE		CHARGE BUYER
a Abstracting Charges		
p Attorney Fees		
q Escrow Fees		
r Florida Revenue Stamps on Note		
s Intangible Tax on Mortgage		
t Recording Deed		7 00
u Recording Mortgage		
v Survey Charges		
w Mortgage Transfer Fee		
x		
y		
*2 TOTAL EXPENSES TO BUYER		\$ -

SUMMARY

BALANCE DUE SELLER *(1) \$ 110,000.00

(plus) BUYER'S EXPENSES *(2) \$ -

NET CASH DUE FROM BUYER \$ 110,000.00

Taxes to be pro-rated as of 19 78

Abstract delivered to _____ received.

Insurance Policies delivered to _____

Note with cancelled stamps to _____

Received a true copy of above and hereby approve same and certify it to be correct.

	PROPERTY	NFT SALE	REAL ESTATE COMMISSION	OTHER EXPENSES	COST	GAIN OR LOSS
Frank Smith	SE1/4 Parcel 3	\$108,859.00	\$11,000.00	\$ 333.33	\$ 80,846.41	+16,679.26
Mrt Reynolds & Mary Greene	S1/2 Parcel 4 +	\$175,433.21	---	---	\$ 98,639.00	+76,794.21
I Sanchez & Nick Raich	Parcel 6	\$272,437.50	\$27,500.00	\$1,000.00	\$242,539.75	+1,398.25
William Warren	Parcel 7	\$295,430.00	\$31,200.00	\$1,000.00	\$242,539.25	+20,690.75
Dan Thomson	NF1/4 Parcel 8	\$ 73,836.72	---	\$ 333.33	\$ 20,846.41	-(57,343.02)
				Net Gain Total		<u>\$58,219.45</u>

JOHN, REAR & MITCHELL
618 North Federal Highway
North Palm Beach, Florida 33408

Closing Statement July 17 1971

Seller: JOHNSON, Warron D., Sr., Trustee

Buyer: PLYMOUTH, Trust

Property Address

County: Martin City: Palm Beach

Legal Description:

Parcel in BLOWING ROCKS SUBDIVISION

JOHN, REAR & MITCHELL
618 North Federal Highway
North Palm Beach, Florida 33408

Closing Statement July 17 1971

Seller: JOHNSON, Warron D., Sr., Trustee

Buyer: PLYMOUTH, Trust

Property Address

County: Martin City: Palm Beach

Legal Description:

Parcel in BLOWING ROCKS SUBDIVISION

SELLER'S COPY		A DUE SELLER		B CREDIT BUYER	
1 SELLING PRICE		150,000.00		AAAAAA	AA
*2 DOWN PAYMENT		AAAAAA	AAA		
3 MORTGAGES:	a Assumed by Buyer	AAAAAA	AAA		
	b Executed by Buyer	AAAAAA	AAA		
4 RENTS pro rated					
5 INTEREST pro rated					
6 INSURANCE Fire	Unearned Premium		AAAAAA	AAA	
	Other		AAAAAA	AAA	
7 TAXES	a Based on 1970 days credit to seller or b Based on 1971 days credit to buyer				
8 19 City Taxes	a		b		
9 19 County Taxes	a		b	132.78	
10 19 Personal Taxes	a		b		
11					
12					
13					
TOTALS		150,000.00		AAAAAA	AAA
14 Column "A" less Column "B"		150,000.00		AAAAAA	AAA
*1 BALANCE DUE SELLER		150,000.00		AAAAAA	AAA
SELLER'S EXPENSES OF SALE				CHARGE SELLER	
15 Abstracting Charges				210.00	
16 Attorney Fee				1,000.00	
17 Broker's Commission					
18 Escrow Fees					
19 Florida Documentary Surtax Stamps on Deed				1,000.00	
20 Florida Revenue Stamps on Deed				2,100.00	
21 Intangible Tax on Mortgage					
22 Recording Mortgage					
23 Survey Charges					
24 Mortgage Transfer Fee					
25					
*26, TOTAL EXPENSES TO SELLER				\$ 2,055.00	

SUMMARY

DOWN PAYMENT *(2) \$
(plus) BALANCE DUE SELLER *(1) \$
SUB TOTAL \$ 150,000.00
(less) SELLER'S EXPENSES *(26) \$ 2,055.00
NET CASH TO SELLER \$ 147,945.00

Taxes and interest pro rated as of 7-17-71 based on year 1971 in the amount of \$ 107.11
Abstract delivered to
Insurance Policies delivered to
Note, with cancelled stamps to
Received a true copy of above check for Net Cash to Seller and hereby approve above and certify it correct

BUYER'S COPY		C DUE SE		E CREDIT BUYER	
a PURCHASE PRICE		150,000.00		AAAAAA	AA
*b DOWN PAYMENT		AAAAAA	AAA		
c MORTGAGES	a Assumed by Buyer	AAAAAA	AAA		
	b Executed by Buyer	AAAAAA	AAA		
d RENTS pro rated					
e INTEREST pro rated					
f INSURANCE Fire	Unearned Premium		AAAAAA	AAA	
	Other		AAAAAA	AAA	
g TAXES	a Based on 1970 days credit to seller or b Based on 1971 days credit to buyer				
h 19 City Taxes	a		b		
i 19 County Taxes	a		b	432.78	
j 19 Personal Taxes	a		b		
k					
l					
m					
TOTALS		150,000.00		AAAAAA	AAA
n Column "C" less Column "D"		150,000.00		AAAAAA	AAA
*1 BALANCE DUE SELLER		150,000.00		AAAAAA	AAA
BUYER'S EXPENSES OF SALE				CHARGE BUYER	
a Abstracting Charges				210.00	
b Attorney Fees				1,000.00	
c Escrow Fees					
d Florida Revenue Stamps on Note				1,000.00	
e Intangible Tax on Mortgage					
f Recording Deed					
g Recording Mortgage					
h Survey Charges					
i Mortgage Transfer Fee					
j					
k					
*2 TOTAL EXPENSES TO BUYER				\$ 2,210.00	

SUMMARY

BALANCE DUE SELLER *(1) \$ 150,000.00
(plus) BUYER'S EXPENSES *(2) \$ 2,210.00
NET CASH DUE FROM BUYER \$ 147,790.00

Taxes and interest pro rated as of 7-17-71 based on year 1971 in the amount of \$ 107.11
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of above and hereby approve above and certify it correct

Closing Statement

August 30, 1978

Sellers: Warren D. Johnson, Sr., Trustee

Buyer: Mary S. Greene

Property Address: Martin

County: Martin

Legal Description:

A parcel of land being a portion of Blowing
Rocks Subdivision, as recorded in Plat
Book 1, Page 1, Martin County, Florida

SELLER'S COPY		BUYER'S COPY	
1 SELLING PRICE	30,000 00	1 PURCHASE PRICE	
2 DOWN PAYMENT		2 DOWN PAYMENT	
3 MORTGAGES		3 MORTGAGES	
4 RENTS pro rated		4 RENTS pro rated	
5 INTEREST pro rated		5 INTEREST pro rated	
6 INSURANCE Fire		6 INSURANCE Fire	
7 TAXES		7 TAXES	
8 City Taxes		8 City Taxes	
9 County Taxes		9 County Taxes	
10 Personal Taxes		10 Personal Taxes	
11		11	
12		12	
13		13	
TOTALS	30,000 00	TOTALS	
14 Column 'A' less Column 'B'	317 51	14 Column 'A' less Column 'B'	
15 BALANCE DUE SELLER	22,582 49	15 BALANCE DUE SELLER	
16 SELLER'S EXPENSES OF SALE		16 SELLER'S EXPENSES OF SALE	
17 Abstracting Charges		17 Abstracting Charges	
18 Attorney Fee		18 Attorney Fee	
19 Broker's Commission		19 Broker's Commission	
20 Escrow Fees		20 Escrow Fees	
21 Florida Documentary Stamp		21 Florida Documentary Stamp	
22 Florida Revenue Stamps on Deed		22 Florida Revenue Stamps on Deed	
23 Intangible Tax on Mortgage		23 Intangible Tax on Mortgage	
24 Recording Mortgage		24 Recording Mortgage	
25 Survey Charges		25 Survey Charges	
26 Mortgage Transfer Fee		26 Mortgage Transfer Fee	
27 TOTAL EXPENSES TO SELLER	361 50	27 TOTAL EXPENSES TO SELLER	

SUMMARY

DOWN PAYMENT (2) \$
(plus) BALANCE DUE SELLER (14) \$
SUB TOTAL \$ 22,582.49
(less) SELLER'S EXPENSES (26) \$ 361.50
NET CASH TO SELLER \$ 22,220.99

Taxes and insurance pro rated as of August 30, 1978
based on year 1977 in the amount of 472.32
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of above and Net Cash to Seller
I hereby approve above and certify

Buyer: Mary S. Greene
Property Address: Martin
County: Martin
Legal Description:

BUYER'S COPY		SELLER'S COPY	
1 PURCHASE PRICE		1 SELLING PRICE	30,000 00
2 DOWN PAYMENT		2 DOWN PAYMENT	
3 MORTGAGES		3 MORTGAGES	
4 RENTS pro rated		4 RENTS pro rated	
5 INTEREST pro rated		5 INTEREST pro rated	
6 INSURANCE Fire		6 INSURANCE Fire	
7 TAXES		7 TAXES	
8 City Taxes		8 City Taxes	
9 County Taxes		9 County Taxes	
10 Personal Taxes		10 Personal Taxes	
11		11	
12		12	
13		13	
TOTALS		TOTALS	30,000 00
14 Column 'A' less Column 'B'		14 Column 'A' less Column 'B'	317 51
15 BALANCE DUE SELLER		15 BALANCE DUE SELLER	22,582 49
16 BUYER'S EXPENSES OF SALE		16 BUYER'S EXPENSES OF SALE	
17 Abstracting Charges		17 Abstracting Charges	
18 Attorney Fee		18 Attorney Fee	
19 Escrow Fees		19 Escrow Fees	
20 Florida Revenue Stamps on Note		20 Florida Revenue Stamps on Note	
21 Intangible Tax on Mortgage		21 Intangible Tax on Mortgage	
22 Recording Deed		22 Recording Deed	
23 Recording Mortgage		23 Recording Mortgage	
24 Survey Charges		24 Survey Charges	
25 Mortgage Transfer Fee		25 Mortgage Transfer Fee	
26 TOTAL EXPENSES TO BUYER		26 TOTAL EXPENSES TO BUYER	

SUMMARY

BALANCE DUE SELLER (14) \$
(plus) BUYER'S EXPENSES (26) \$
NET CASH DUE FROM BUYER

Taxes and insurance pro rated as of August 30, 1978
based on year 1977 in the amount of 472.32
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of above and Net Cash to Seller
I hereby approve above and certify

Closing Statement April 1978

Closing Statement April 1978

Seller: William D. Johnson, Sr. Trustee
 Nicholas S. Raich and Alfredo Sanchez
 Buyer: William K. Warren, Jr.
 Property Address: _____
 County: Martin City: _____
 Legal Description: _____

Seller: William D. Johnson, Sr. Trustee
 Nicholas S. Raich and Alfredo Sanchez
 Buyer: William K. Warren, Jr.
 Property Address: _____
 County: Martin City: _____
 Legal Description: _____

Parcel 3, Parcel 4, Parcel 13 and
 Parcel 14, BLOWING ROCKS SUBDIVISION

Parcel 3, Parcel 4, Parcel 14 and
 Parcel 14, BLOWING ROCKS SUBDIVISION

SELLER'S COPY	A DUE SELLER	B CREDIT BUYER
1. SELLING PRICE	275,000.00	XXXXXX XXX
*2. DOWN PAYMENT	XXXXXX XXX	25,000.00
3. MORTGAGES: a. Assumed by Buyer	XXXXXX XXX	
b. Executed by Buyer	XXXXXX XXX	
4. RENTS, pro-rated		
5. INTEREST, pro-rated		
6. INSURANCE: Fire		XXXXXX XXX
Unearned Premium		
Other		XXXXXX XXX
Unearned Premium		
7. TAXES: a. be pro-rated as follows: a. Based on _____ days credit to Seller, or b. Based on _____ days credit to Buyer		
8. 19 _____ City Taxes	=	0
9. 19 _____ County Taxes	=	0
10. 19 _____ Personal Taxes	=	0
11. Promissory Note		50,000.00
12.		
13.		
TOTALS	275,000.00	75,000.00
14. Column "A" less Column "B"	250,000.00	XXXXXX XXX
*T BALANCE DUE SELLER	250,000.00	XXXXXX XXX
SELLER'S EXPENSES OF SALE		CHARGE SELLER
15. Abstracting Charges		1,135.00
16. Attorney Fee		
17. Broker's Commission		
18. Escrow Fees		
19. Florida Documentary Surtax Stamps on Deed		300.00
20. Florida Revenue Stamps, on Deed		125.00
21. Intangible Tax on Mortgage		
22. Recording Mortgage		
23. Survey Charges		
24. Mortgage Transfer Fee		
25.		
*26. TOTAL EXPENSES TO SELLER		\$ 2,560.00

SUMMARY:

DOWN PAYMENT *(2) Only if Paid Seller \$ 25,000.00
 (plus) BALANCE DUE SELLER *(T) \$ 250,000.00
 SUB TOTAL \$ 275,000.00
 (less) SELLER'S EXPENSES *(26) \$ 2,560.00
 NET CASH TO SELLER \$ 272,440.00

to be

Taxes and insurance pro-rated as follows: 19 74. taxes
 Abstract delivered to _____

Insurance Policies delivered to _____
 Note, with cancelled stamps, to _____

"Received a true copy of above, check for Net Cash to Seller, and
 hereby approve above and certify it correct."

BUYER'S COPY	A DUE SELLER	B CREDIT BUYER
a. PURCHASE PRICE	275,000.00	XXXXXX XXX
*b. DOWN PAYMENT	XXXXXX XXX	25,000.00
c. MORTGAGES: a. Assumed by Buyer	XXXXXX XXX	
b. Executed by Buyer	XXXXXX XXX	
d. RENTS, pro-rated		
e. INTEREST, pro-rated		
f. INSURANCE: Fire		XXXXXX XXX
Unearned Premium		
Other		XXXXXX XXX
Unearned Premium		
g. TAXES: a. be pro-rated as follows: a. Based on _____ days credit to Seller, or b. Based on _____ days credit to Buyer		
h. 19 _____ City Taxes	=	0
i. 19 _____ County Taxes	=	0
j. 19 _____ Personal Taxes	=	0
k. Promissory Note		50,000.00
l.		
m.		
TOTALS	275,000.00	75,000.00
n. Column "A" less Column "B"	250,000.00	XXXXXX XXX
*T BALANCE DUE SELLER	250,000.00	XXXXXX XXX
BUYER'S EXPENSES OF SALE		CHARGE BUYER
o. Abstracting Charges		
p. Attorney Fees		
q. Escrow Fees		
r. Florida Revenue Stamps, on Note		
s. Intangible Tax on Mortgage		
t. Recording Deed		
u. Recording Mortgage		
v. Survey Charges		
w. Mortgage Transfer Fee		
x.		
y.		
*2. TOTAL EXPENSES TO BUYER		\$ -

SUMMARY:

BALANCE DUE SELLER *(T) \$ 250,000.00
 (plus) BUYER'S EXPENSES *(2) \$ -
 NET CASH DUE FROM BUYER \$ 250,000.00

to be

Taxes and insurance pro-rated as follows: 19 74. taxes
 Abstract delivered to _____

Insurance Policies delivered to _____
 Note, with cancelled stamps, to _____

"Received a true copy of above and hereby approve same and certify it correct."

Closing Statement April 1971

Seller: Warren D. Johnson, Sr. Trustee
 Buyer: William K. Warren, Jr.
 Property Address: _____
 County: Marion City: _____
 Legal Description: _____

Parcel 5 and Parcel 12
 BLOWING ROCKS SUBDIVISION

Closing Statement April 1971

Seller: Warren D. Johnson, Sr. Trustee
 Buyer: William K. Warren, Jr.
 Property Address: _____
 County: Marion City: _____
 Legal Description: _____

Parcel 5 and Parcel 12
 BLOWING ROCKS SUBDIVISION

SELLER'S COPY		A DUE SELLER		B CREDIT BUYER	
1	SELLING PRICE				
2	DOWN PAYMENT				
3	MORTGAGES				
	a Assumed by buyer				
	b Cancelled by Buyer				
4	RENTS pro rated				
5	INTEREST pro rated				
6	INSURANCE fire				
	Unearned Premium				
	Other				
7	TAXES to be pro-rated				
	a Based on days credit to seller or				
	b Based on days credit to Buyer				
8	19 City Taxes				
9	19 County Taxes				
10	19 Personal Taxes				
11					
12					
13					
TOTALS					
14	Column A less Column B				
15	BALANCE DUE SELLER				
SELLER'S EXPENSES OF SALE					
16	Abstracting Charges				
17	Attorney Fee				
18	Broker's Commission				
19	Escrow Fees				
20	Florida Documentary Stamp Taxes on Deed				
21	Intangible Tax on Mortgage				
22	Recording Mortgage				
23	Survey Charges				
24	Mortgage Transfer Fee				
25					
26	TOTAL EXPENSES TO SELLER				

SUMMARY
 DOWN PAYMENT #2) \$
 (plus) BALANCE DUE SELLER #1) \$
 SUB TOTAL \$
 (less) SELLER'S EXPENSES #26) \$
 NET CASH TO SELLER \$

Taxes and Insurance pro rated as of April 1971
 based on year 1971 in the amount of \$
 Abstract delivered to Buyer
 Insurance Policies delivered to Buyer
 Note with cancelled stamps to Buyer
 Received a true copy of above and hereby approve above and certify it correct

BUYER'S COPY		A DUE SELLER		B CREDIT BUYER	
1	PURCHASE PRICE				
2	DOWN PAYMENT				
3	MORTGAGES				
	a Assumed by buyer				
	b Cancelled by Buyer				
4	RENTS pro rated				
5	INTEREST pro rated				
6	INSURANCE fire				
	Unearned Premium				
	Other				
7	TAXES to be pro-rated				
	a Based on days credit to seller or				
	b Based on days credit to Buyer				
8	19 City Taxes				
9	19 County Taxes				
10	19 Personal Taxes				
11					
TOTALS					
12	Column A less Column B				
13	BALANCE DUE SELLER				
BUYER'S EXPENSES OF SALE					
14	Abstracting Charges				
15	Attorney Fees				
16	Escrow Fees				
17	Florida Revenue Stamps on Note				
18	Intangible Tax on Mortgage				
19	Recording Deed				
20	Recording Mortgage				
21	Survey Charges				
22	Mortgage Transfer Fee				
23					
24					
25					
26	TOTAL EXPENSES TO BUYER				

SUMMARY
 BALANCE DUE SELLER #1) \$
 (plus) BUYER'S EXPENSES #26) \$
 NET CASH DUE FROM BUYER \$

Taxes and Insurance pro rated as of April 1971
 based on year 1971 in the amount of \$
 Abstract delivered to Buyer
 Insurance Policies delivered to Buyer
 Note with cancelled stamps to Buyer
 Received a true copy of above and hereby approve above and certify it correct

RAY, RALPH ELLIOTT AND
618 North Federal Hwy
North Palm Beach, Fla

Closing Statement 12/1/19 19

Seller: JOHNSON, Warren D, Sr, Trustee

Buyer: MARTEL, William K Jr

Property Address:
County: Martin City
Legal Description:

Parcel 6 and 11

BLOWING ROCKS SUBDIVISION

RAY, RALPH ELLIOTT AND
618 North Federal Hwy
North Palm Beach, Fla

Closing Statement 12/1/19 19

Seller: JOHNSON, Warren D, Sr, Trustee

Buyer: MARTEL, William K Jr

Property Address:
County: Martin City
Legal Description:

Parcel 6 and 11

BLOWING ROCKS SUBDIVISION

SELLER'S COPY		DUE SELLER		CREDIT BUYER		BUYER'S COPY		DUE BUYER		CREDIT SELLER	
1	SELLING PRICE	150,000.00				a	PURCHASE PRICE	150,000.00			
2	DOWN PAYMENT					b	DOWN PAYMENT				
3	MORTGAGES						MORTGAGES				
4	RENTS pro rated						RENTS pro rated				
5	INTEREST pro rated						INTEREST pro rated				
6	INSURANCE Fire						INSURANCE Fire				
	Other						Other				
7	TAXES See Below						TAXES See Below				
8	19 City Taxes	a		b		8	19 City Taxes	a		b	
9	19 County Taxes	a		b		9	19 County Taxes	a		b	
10	19 Personal Taxes	a		b		10	19 Personal Taxes	a		b	
11						11					
12						12					
13						13					
TOTALS		150,000.00				TOTALS		150,000.00			
14 Column A less Column B		150,000.00				14 Column A less Column B		150,000.00			
*BALANCE DUE SELLER		150,000.00				*BALANCE DUE SELLER		150,000.00			
SELLER'S EXPENSES OF SALE						BUYER'S EXPENSES OF SALE					
15	Abstracting Charges & Title Insurance					15	Abstracting Charges				
16	Attorney Fee					16	Attorney Fees				
17	Broker's Commission					17	Escrow Fees				
18	Escrow Fees					18	Florida Revenue Stamps on Note				
19	Florida Documentary Surtax Stamps on Deed					19	Intangible Tax on Mortgage				
20	Florida Revenue Stamps on Deed					20	Recording Deed				
21	Intangible Tax on Mortgage					21	Recording Mortgage				
22	Recording Mortgage					22	Survey Charges				
23	Survey Charges					23	Mortgage Transfer Fee				
24	Mortgage Transfer Fee					24					
25						25					
*20 TOTAL EXPENSES TO SELLER		53,000.00				*20 TOTAL EXPENSES TO BUYER		53,000.00			
SUMMARY						SUMMARY					
DOWN PAYMENT *(2)		0.00				BALANCE DUE SELLER *(7)		150,000.00			
(plus) BALANCE DUE SELLER *(1)		150,000.00				(plus) BUYER'S EXPENSES *(2)		53,000.00			
SUB TOTAL		150,000.00				NET CASH DUE FROM BUYER		150,000.00			
(less) SELLER'S EXPENSES *(20)		53,000.00									
NET CASH TO SELLER		97,000.00									

To be provided by the Seller to the Buyer:
Taxes and Insurance: The Seller has provided the Buyer with a true and correct copy of the taxes and insurance paid for the property based on year 19 in the amount of \$
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
"Received a true copy of above check or Net Cash to Seller and hereby approve above and certify it correct"

To be provided by the Buyer to the Seller:
Taxes and Insurance: The Buyer has provided the Seller with a true and correct copy of the taxes and insurance paid for the property based on year 19 in the amount of \$
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
"Received a true copy of above and certify it correct"

Seller WARREN D. JOHNSON, SR., TRUSTEE

Seller

Buyer JOAN B. THOMSON

Buyer

Property Address Martin

Property Address

County C

County

Legal Description Parcel 7, BLOWING ROCKS SUBDIVISION

Legal Description

SELLER'S COPY			BUYER'S COPY		
1 SELLING PRICE	25,000	00	1 PURCHASE PRICE		
2 DOWN PAYMENT			2 DOWN PAYMENT		
3 MORTGAGES			3 MORTGAGES		
4 RENTS pro rated			4 RENTS pro rated		
5 INTEREST pro rated			5 INTEREST pro rated		
6 INSURANCE Fire			6 INSURANCE Fire		
Other			Other		
7 TAXES			7 TAXES		
8 1978 City Taxes	573	78	8 1978 City Taxes		
9 1978 County Taxes			9 1978 County Taxes		
10 1978 Personal Taxes			10 1978 Personal Taxes		
11			11		
12			12		
13			13		
TOTALS	25,000	00	TOTALS		
14 Column A less Column B	573	78	14 Column A less Column B		
15 BALANCE DUE SELLER	24,426	122	15 BALANCE DUE SELLER		
16 SELLER'S EXPENSES			16 BUYER'S EXPENSES OF SALE		
17 Abstracting Charges	230	00	17 Abstracting Charges		
18 Attorney Fee	250	00	18 Attorney Fees		
19 Broker's Commission			19 Escrow Fees		
20 Escrow Fees			20 Florida Revenue Stamps		
21 Florida Documentary Tax	27	50	21 Intangible Tax on Mortgage		
22 Florida Revenue Stamps on Deed	5	00	22 Recording Mortgage		
23 Intangible Tax on Mortgage			23 Survey Charges		
24 Recording Mortgage	7	00	24 Mortgage Transfer Fee		
25 Survey Charges			25		
26 Mortgage Transfer Fee			26 TOTAL EXPENSES TO BUYER		
27 TOTAL EXPENSES TO SELLER		\$ 589.50			
SUMMARY			SUMMARY		
DOWN PAYMENT (12)			BALANCE DUE SELLER (15)		
(plus) BALANCE DUE SELLER (11)			(plus) BUYER'S EXPENSES (16-25)		
SUB TOTAL		\$ 24,426.122	NET CASH DUE FROM BUYER		
(less) SELLER'S EXPENSES (16-25)		\$ 589.50			
NET CASH TO SELLER		\$ 23,836.622			

Taxes and Insurance pro rated by 19 days based on year 1973 in the amount of \$
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of book of Net Cash to Seller and
hereby approve above and certify

Taxes and Insurance pro rated by 19 days based on year 1973 in the amount of \$
Abstract delivered to
Insurance Policies delivered to
Note with cancelled stamps to
Received a true copy of book of Net Cash to Seller and
hereby approve above and certify

Closing Statement July 24, 19 79Seller: Warren D. Johnson, Sr., TrusteeBuyer: Caribbean Construction Company of PalmProperty Address: Peach CountyCounty: Martin City: _____

Legal Description: _____

Parcel 16, Blowing Rocks Subdivision

Closing Statement July 24, 19 79Seller: Warren D. Johnson, Sr., TrusteeBuyer: Caribbean Construction Company of PalmProperty Address: Beach CountyCounty: Martin City: _____

Legal Description: _____

Parcel 16, Blowing Rocks Subdivision

SELLER'S COPY		A DUE SELLER		B CREDIT BUYER	
1 SELLING PRICE		80,530	00	XXXXXX	XXX
2 DOWN PAYMENT		XXXXXX	XXX	10	00
3 MORTGAGES	a Assumed by Buyer	XXXXXX	XXX		
	b Executed by Buyer	XXXXXX	XXX		
4 RENTS pro rated					
5 INTEREST pro rated					
6 INSURANCE Fire	Unearned Premium			XXXXXX	XXX
	Other			XXXXXX	XXX
7 TAXES	a Based on 205 days credit to Seller or				
	b Based on 205 days credit to Buyer				
8 19 City Taxes	a			b	
9 19 79 County Taxes	a			b	219 35
10 19 Personal Taxes	a			b	
11					
12					
13					
TOTALS		80,530	00	229	35
14 Column 'A' less Column 'B'		229	35	XXXXXX	XXX
*T BALANCE DUE SELLER		80,400	65	XXXXXX	XXX
SELLER'S EXPENSES OF SALE		CHARGE SELLER			
15 Abstracting Charges			545	00	
16 Attorney Fee			004	00	
17 Broker's Commission					
18 Document chain of title			75	00	
19 Florida Documentary Surtax Stamps on Deed			89	10	
20 Florida Revenue Stamps on Deed			242	00	
21 Intangible Tax on Mortgage					
22 Recording Mortgage					
23 Survey Charges					
24 Mortgage Transfer Fee					
25					
*26 TOTAL EXPENSES TO SELLER			\$ 1,355	20	

SUMMARY

DOWN PAYMENT *(2) Only if paid by Seller \$ 10.00
 (plus) BALANCE DUE SELLER *(†) \$ 80,400.65
 SUB TOTAL \$ 80,410.65
 (less) SELLER'S EXPENSES *(26) \$ 1,355.20
 NET CASH TO SELLER \$ 79,055.45

Taxes and insurance pro rated as of July 24, 19 79 taxes based on year 19 78 in the amount of \$ 391.14

Abstract delivered to _____

Insurance Policies delivered to _____

Note with cancelled stamps to _____

Received a true copy of above check for Net Cash to Seller and hereby approve above and certify it correct

BUYER'S COPY		A DUE SELLER		B CREDIT BU	
1 PURCHASE PRICE		80,530	00	XXXXXX	XXX
2 DOWN PAYMENT		XXXXXX	XXX	10	00
3 MORTGAGES	a Assumed by Buyer	XXXXXX	XXX		
	b Executed by Buyer	XXXXXX	XXX		
4 RENTS pro rated					
5 INTEREST pro rated					
6 INSURANCE Fire	Unearned Premium			XXXXXX	XXX
	Other			XXXXXX	XXX
7 TAXES	a Based on 205 days credit to Seller or				
	b Based on 205 days credit to Buyer				
8 19 City Taxes	a			b	
9 19 79 County Taxes	a			b	219 35
10 19 Personal Taxes	a			b	
11					
12					
13					
TOTALS		80,530	00	229	35
n Column 'A' less Column 'B'		229	35	XXXXXX	XXX
*T BALANCE DUE SELLER		80,400	65	XXXXXX	XXX
BUYER'S EXPENSES OF SALE		CHARGE BU			
o Abstracting Charges	mortgagee		50		
p Attorney Fees - Bank			300		
q Escrow Fees					
r Florida Revenue Stamps on Note			120		
s Intangible Tax on Mortgage			160		
t Recording Deed			7		
u Recording Mortgage			13		
v Document - notice of commencement			5		
w Mortgage Transfer Fee					
x Bank service charge			1,600		
y water tap assignment			13,250		
*2 TOTAL EXPENSES TO BUYER			\$ 15,505.10		

SUMMARY

BALANCE DUE SELLER *(†) \$ 80,400.65
 (plus) BUYER'S EXPENSES *(2) \$ 15,505.10
 NET CASH DUE FROM BUYER \$ 95,905.65

Taxes and insurance pro rated as of July 24, 19 79 based on year 19 78 in the amount of \$ 391.14

Abstract delivered to _____

Insurance Policies delivered to _____

Note with cancelled stamps to _____

Received a true copy of above and hereby approve same and it correct

A-23

Closing Statement June 26, 1979

Seller Warren D. Johnson, Sr., Trustee

Buyer William K. Warren, Jr.

Property Address

County Martin City

Legal Description

Parcel 10, BLOWING ROCK'S SUBDIVISION

Closing Statement June 26, 1979

Seller Warren D. Johnson, Sr., Trustee

Buyer William K. Warren Jr.

Property Address

County Martin City

Legal Description

Parcel 10, BLOWING ROCK'S SUBDIVISION

SELLER'S COPY		BUYER'S COPY	
1 SELLING PRICE	70,000.00	1 PURCHASE PRICE	70,000.00
*2 DOWN PAYMENT		2 CASH PAYMENT	
3 MORTGAGES		MORTGAGES	
4 RENTS pro rated		4 RENTS pro rated	
5 INTEREST pro rated		5 INTEREST pro rated	
6 INSURANCE Fire		6 INSURANCE Fire	
7 TAXES		7 TAXES	
8 City Taxes		8 City Taxes	
9 County Taxes		9 County Taxes	
10 Personal Taxes		10 Personal Taxes	
TOTALS	70,000.00	TOTALS	70,000.00
14 Column A less Column B	69,271.65	14 Column A less Column B	69,271.65
*1 BALANCE DUE SELLER	69,271.65	*1 BALANCE DUE BUYER	69,271.65
SELLER'S EXPENSES OF SALE		BUYER'S EXPENSES OF SALE	
15 Abstracting Charges	110.00	15 Abstracting Charges	110.00
16 Attorney Fee	350.00	16 Attorney Fee	350.00
17 Broker's Commission		17 Broker's Commission	
18 Escrow Fees		18 Escrow Fees	
19 Florida Documentary Surplus Stamps on Deed	77.00	19 Florida Documentary Surplus Stamps on Deed	77.00
20 Florida Revenue Stamps on Deed	210.00	20 Florida Revenue Stamps on Deed	210.00
21 Intangible Tax on Mortgage		21 Intangible Tax on Mortgage	
22 Recording Mortgage		22 Recording Mortgage	
23 Survey Charges		23 Survey Charges	
24 Mortgage Transfer Fee		24 Mortgage Transfer Fee	
25 Roger Johnson Architect	1,057.03	25 Roger Johnson Architect	1,057.03
*26 TOTAL EXPENSES TO SELLER	2,104.03	*26 TOTAL EXPENSES TO BUYER	2,104.03
SUMMARY		SUMMARY	
DOWN PAYMENT *(2)	\$	BALANCE DUE SELLER *(1)	\$69,271.65
(plus) BALANCE DUE SELLER *(1)	\$	(plus) BUYER'S EXPENSES *(2)	\$2,104.03
SUB TOTAL	\$69,271.65	NET CASH DUE FROM BUYER	\$69,271.65
(less) SELLER'S EXPENSES *(26)	\$2,104.03		
NET CASH TO SELLER	\$67,167.62		

Taxes and ~~XXXXXX~~ prorated as of June 26, 1979 taxes based on year 1978 in the amount of \$2,298.40

Abstract delivered to

Insurance Policies delivered to

Note with cancelled stamps

Received a true copy of above check or Net Cash to Seller and hereby approve above and certify to be

Warren D. Johnson, Sr.
William K. Warren, Jr.

Taxes and ~~XXXXXX~~ prorated as of June 26, 1979 taxes based on year 1978 in the amount of \$2,298.40

Abstract delivered to

Insurance Policies delivered to

Note with cancelled stamps

Received a true copy of above and hereby approve above and certify to be

689

Closing Statement May 30, 1979

Warren D. Johnson Sr., Trustee

Lennis L. Pinder & Janet L. Pinder, his wife.

Property Address: State Road 707
County: Martin City: Hobe Sound

Legal Description:

Lot 37 & the North 18.88 feet of Lot 38,
Blowing Rocks Subdivision, as recorded in
Plat Book 1, Page 1, Martin County, Florida,
Public Records.

SELLER'S COPY	A DUE SELLER	B CREDIT BUYER
SELLING PRICE	141,900 00	XXXXXX XXX
DOWN PAYMENT	XXXXXX XXX	14,000 00
MORTGAGES	Assumed by Buyer Secured by Buyer	XXXXXX XXX XXXXXX XXX
RENTS pro rated		
INTEREST pro rated		
INSURANCE Fire	Unearned Premium	XXXXXX XXX
Other	Unearned Premium	XXXXXX XXX
TAXES		628 58
19 City Taxes	a	b
19 County Taxes	c	d
19 Personal Taxes	e	f
TOTALS	141,900 00	14,628 58
Column A' less Column 'B'	14,628 58	XXXXXX XXX
BALANCE DUE SELLER	127,271 42	XXXXXX XXX
SELLER'S EXPENSES OF SALE		CHARGE SELLER
Abstracting Charges		
Attorney Fee / Crowell & Hansen (Owner's)		332 60
Broker's Commission / Preferred Property		14,190 00
Escrow Fees		
Florida Documentary Surtax Stamps on Deed		425 70
Florida Revenue Stamps on Deed		136 20
Intangible Tax on Mortgage		
Recording Mortgage Satisfaction		4 00
Recording Recording Affidavits (2)		3 00
Mortgage Transfer Fee		
E.J. Lavino & Co. (Mtg. Payoff)		101,087 97
TOTAL EXPENSES TO SELLER		116,704 47

SUMMARY

DOWN PAYMENT * (2)	Only 1 Paid Seller	\$ 14,000 00
(plus) BALANCE DUE SELLER * (1)		\$ 127,271 42
TOTAL		\$ 141,271 42
(less) SELLER'S EXPENSES * (26)		\$ 116,704 47
CASH TO SELLER		\$ 24,566 95

as and Insurance pro rated as of May 30, 1979 taxes
on year 1978 in the amount of \$ 1,529.55
tract delivered to
Insurance Policies delivered to
with cancelled stamps of
eived a true copy of above check for Net Cash to Seller and
oy approve above and certify

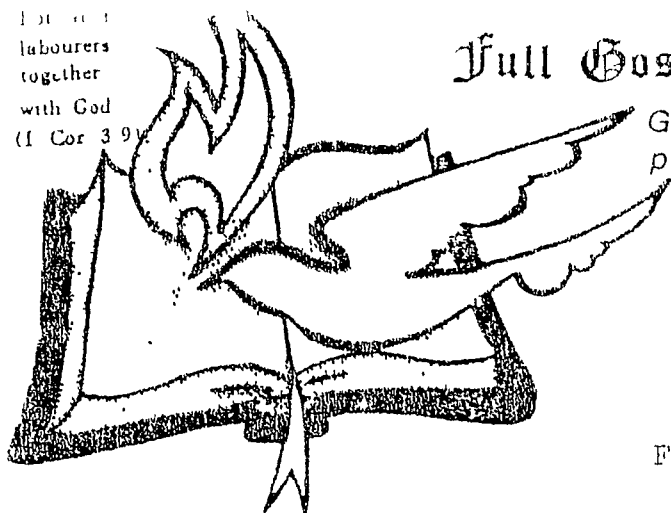
For Your Files

Warren D. Johnson, Sr., Trustee

NOV 1978
DEC 1978
JAN 1979
FEB 1979
MAY 1979
JULY 1979
SEP 1979
OCT 1979
NOV 1979
DEC 1979
JAN 1980
FEB 1980
MAY 1980
JULY 1980
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For all
labourers
together
with God
(1 Cor 3:9)

Full Gospel Christian Association



GENERAL HEADQUARTERS
P o box 1213, Little Rock, Ark

REV NOAH C EDWARDS
general bishop
REV JOHN A BRADY
general secretary

February 12 1979

To Whom it may Concern:

:OFFICERS:

Constitution, of The Full Gospel Christian Association, Incorporated
in the State of Arkansas, in the Year of 1961.

According to Article Three, Section A, of the Full Gospel Christian
Association. I Noah C. Edwards, General Bishop Do Hereby Appoint,
Austin R. Adler, of Orlando Florida, as Resident Agent, for the State
of Florida. To Conduct all Buisness matters Concerning the Full Gospel
Christian Association, in the State of Florida.

Be it Known, that on this 12th. day of February 1979, He has been
Ratified By the General Board, of the Full Gospel Christian Association.

Noah C. Edwards

Noah C. Edwards
General Bishop

W. Jay Lawrence
Notary Public
Commission Expires
Sept 16, 1979

EXHIBIT C

A-27



U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
WASHINGTON 25 D C

7-111 2
AC

MAR 25 1964

The Full Gospel Christian Association
P. O. Box 1221
Little Rock, Arkansas

Gentlemen:

PURPOSE	
Religious	
ADDRESS INQUIRIES FILE RETURNS WITH DISTRICT DIRECTOR OF INTERNAL REVENUE	
Little Rock, Arkansas	
FORM 990-A REQUIRED	ACCOUNTING PERIOD ENDING
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

Based upon the evidence submitted, it is held that you are exempt from Federal income tax as an organization described in section 501(c)(1) of the Internal Revenue Code, as it is shown that you are organized and operated exclusively for the purpose shown above. Any questions concerning excise, employment or other Federal taxes should be submitted to your District Director.

You are not required to file Federal income tax returns so long as you retain an exempt status and you are not subject to the tax on unrelated business income imposed by section 511 of the Code and are required to file Form 990-E for the purpose of reporting unrelated business taxable income. Any change in the organization's character, purposes or method of operation should be reported immediately to your District Director for consideration of their effect upon your exempt status. You should also report any change in your name or address. Your liability for filing the annual information return, Form 990-A, is set forth above. If required, must be filed after the close of your annual accounting period indicated above.

Contributions made to you are deductible by donors as provided in section 170 of the Code. Bequests, legacies, devises, transfers or gifts to or for your use are deductible for Federal estate and gift tax purposes under the provisions of sections 2055, 2106 and 2522 of the Code.

You are not liable for the taxes imposed under the Federal Insurance Contribution Act (social security taxes) unless you file a waiver of exemption certificate as provided in such Act. You are not liable for the tax imposed under the Federal Unemployment Tax Act. Inquiries about the waiver of exemption certificate for social security taxes should be addressed to your District Director.

Your District Director is being advised of this action.

IDENTIFICATION Number
71 6057425

Very truly yours,

R. J. Stabone
Acting Chief, Exempt Organizations Branch

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written
 Name JOHN L. JOHNSON
 Address PLATE 115, LOT 37, BLOWING ROCKS SUBDIVISION, MARTIN COUNTY, FLORIDA

Warranty Deed

(STATUTORY FORM—SECTION 689.02 F.S.)

This Indenture, Made this 15th day of August 1979 Between

WARREN D. JOHNSON, SR, TRUSTEE

of the County of State of New York grantor and

FULL GOSPEL CHRISTIAN ASSOCIATION, an ecclesiastical corporation

whose post office address is P.O. Box 1213, Little Rock, Arkansas 72203

of County of State of Arkansas grantee

Witnesseth, That said grantor or and in consideration of the sum of Ten and xx/100 Dollars and other good and aluable considerations to said grantor in and paid by said grantee the receipt whereof is hereby acknowledged has granted bargained and sold to he said grantee and grantee's heirs and assigns forever the following described land situate lying and being in Martin County Florida to wit:

PARCEL 8

A parcel of land being a portion of Blowing Rocks Subdivision as recorded in Plat Book 1, Page 1 Martin County Florida and being more particular / described as to wits

The South 82 30 feet of Lot 37 together with the North 18 08 feet of Lot 2, Blowing Rocks Subdivision as recorded in Plat Book 1 Page 1 Martin County, Florida public records lying easterly of the East right of way line or State Road 70" as now laid out and in use

Containing 1 29 acres more or less

and said grantor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever

* Grantor and 'grantee' are used for singular or plural as context requires

In Witness Whereof, Grantor has hereunto set grantor's hand and seal the day and year first above written Signed sealed and delivered in our presence

Edward F. Baker
Donald H. Baker

Warren D. Johnson Sr. Trustee (Seal)
 _____ (Seal)
 _____ (Seal)
 _____ (Seal)

STATE OF New York
 COUNTY OF Orleans

I HEREBY CERTIFY that on this day before me an officer duly qualified to take acknowledgments personally appeared

Warren D. Johnson, Sr

to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same

WITNESS my hand and official seal in the County and State last aforesaid this 15th day of July 1979

My commission expires March 30, 1980 477 PAGE 686

Notary Public

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 DEPT OF REVENUE
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 00 30

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 SUR TAX
 00 55
 DEPT OF REVENUE
 AUG 10
 00 55

07/11/13 All: 33
 11-33

09
 BOOK 477 PAGE 667

THORNE & ASSOCIATES

Post Office Box 3501 • West Palm Beach, Florida • 33402
Phone (305) 684 1927

STATEMENT

WARREN JOHNSON, SR. (TRUSTEE)
River Bend - Lakewood "C"
Tequesta, Florida 33458

DATE	ORDER NO.	DESCRIPTION	AMOUNT
	183-78		
04-13-79	S-244-A	Topography Elevations of South line of Lot 3	
		Note reduction and plotting	
		4 Hours Field Time @ \$ 52.50 per hour	\$ 210.00
		3 Hours Office Time @ \$ 35.00 per hour	\$ 105.00
		Total Amount	\$ 315.00
		Thank You - Thorne & Associates	

APPRAISERS — CONSULTANTS

Robert J. Callaway, MAI SREA
Joe R. Price SRA MAI

1639 Forum Place
West Palm Beach, Florida 33401
Telephone 686-0333

67 C South Federal Highway
Stuart, Florida 33494
Telephone 280-1191

ADDRESS So. Beach Road
CITY/COUNTY Jupiter Island FLA LOT
SUBDIVISION Blowing Rocks

South 82.30' of Lot 37 & North 13.93
of Lot 38 lying East of Road R/W

NEIGHBORHOOD DATA										
PROXIMITY OF PROPERTY TO					TRENDS		INC. DEC. STAB.		GENERAL ECONOMICS	
	Less 4 mi.	1/2 to 1 mi.	1 mi. +	Transp. o	Income Level					TYPICAL RESIDENT'S GROSS INC. 15,000
Downtown Area			X		Population	X				TYPICAL OCCUPATION BUS, PROFE
Local Shopping			X		Housing Units	X				TYP. PROPERTY VALUES
Grammar School			X		Density Pop./Unit					Single Family Residential 250,000
High School			X		Avg. Prop. Values					1-2 Family & Condo
Expressway Access			X		Market Activity	X				Condo & Multi Family
Other					Remaining Economic Life					Non Residential Uses
TYPE OF DEVELOPMENT One <u>Few</u> <u>Many</u> Builders UNITS PER YR					TYPICAL FINANCING CONV. <u>INS</u>					

SITE DATA									
LOT SIZE	101		x 420/425		Ocean Frontage		Corner	Inside	
ZONING	Residential		HIGHEST AND BEST USE OF SITE Present		or S.F.R. Site				
IMPROVMTS	Asphalt St	Conc St	Curbs	Sidewalks	Alley	Driveway			
UTILITIES	Gas	Elect	Water	San Sewer	Storm Sewer	Well	Septic		
EASEMENTS (DETRIMENTAL TO VALUE)			Party Wall	Driveway	Sidewalk	Other			
Describe Easements									

BUILDING DATA									
Vacant Lot									
EXTERIOR					INTERIOR				
FOUNDATION	Conc	Block	Brick	Good Avg Poor	WALLS & CEIL	Drywall	Plaster	Wood	
	Brick	Crawl	Slab		FLOOR	Conc	Tile	Wood	Carpet
WALL CONST	Frame	Veneer	Block		HTG / AC	Cent	Wall	Wind	SPACI
WINDOWS	Metal	Wood	Type		FUEL	Gas	Oil	Elect	
ROOFING	Asphalt	Bit Up	Com T e l		ENERGY EFF				
SIDING	Wood	Alum	Stucco		ELECT	Ampt	Fuse	Cir dr	
GAR CAR PT	Frame	Veneer	Block		BATH (s) #	Age	FLR/Walls	Ceramic	Other
#CARS	Det'd	Att'd	Ylt in	OH Djour	BATH FIX (s)	Levs	WC (s)	Tub (s)	Shower
OTHER	Gutters	Porch	Patio		KITCHEN	Age	CAB	Adq	Inwdq
REMARKS					OTHER	O/R	Dishw	Disp	Ex Pan
						Firepl			Ex Pan
ROOMS	LIVING	DINING	KITCHEN	BEDRM	CLOSETS	BATHS	FAM RM	FLA RM	
FLOOR									DEPRECIATION
BASEMENT									IF NOT TYPICAL DESCRIBE
1st FLOOR									PHYSICAL DETERIORATION
2nd FLOOR									FUNCTIONAL OBSOLESCENCE
3RD FLOOR									ECONOMIC OBSOLESCENCE
ATTIC									
TOTAL									No Units

STAPLE PICTURE HERE

Warren Johnson

INTEREST APPRAISED IS FEE SIMPLE UNLESS OTHERWISE INDICATED

COST APPROACH TO VALUE:

NOT USED

LAND VALUATION—(ZONED _____) _____ F.F. or S.F. \times _____ S/F F or S/F \times _____

+ SITE IMPROVEMENTS AS IS driveway landscaping, etc.

other _____

+ TOTAL \$ _____

BUILDING VALUATION—REPLACEMENT COST

BLDG	AREA	UNIT COST	COST NEW	ACT	AGE	EFF	PHY	DEPRECIATION	FUNG.	ECOM	TOTAL	DEP VALUE
MAIN												

INDICATED VALUE from COST APPROACH ROUNDED \$ _____

MARKET DATA APPROACH TO VALUE

VACANT OCEAN FRONT SALES

DATE OF SALE							
ADDRESS OF COMPARABLE SALES	A		B		C		
SALE PRICE OF COMPARABLE				\$		\$	
ADJUSTMENT FOR DATE OF SALE	\$ (-)	(+)	\$ (-)	(+)	\$ (-)	(+)	
AGE & OVERALL CONDITION	1	Blowing Rocks	100x455	Current	\$237000	\$ 270	
SIZE & UTILITY	2	Blowing Rocks	100x445	Current	\$250000	\$ -500	
MODERN KITCHEN BATH HEATING, AC	3	LOT 4 DISC	85x210	Current	\$165000	\$ 1900	
GARAGE & PORCHES							
SITE & LOCATION		Sale 3 Adjusted Up for Depth.					
CONST QUALITY							
OTHER							
SUB TOTALS	\$ (-)	(+)	\$ (-)	(+)	\$ (-)	(+)	
TOTALS							

Conclusion: Subject 101 F.F \times \$2475 = 249975

INDICATED VALUE from MARKET APPROACH \$ 250,000

INCOME APPROACH TO VALUE (if applicable)

ESTIMATED RENTAL \$ _____ \times GROSS RENT MULTIPLIER (_____) =

INDICATED VALUE from INCOME APPROACH \$ _____

MARKETABILITY AS IS Good _____ Average _____ Fair _____ Poor _____

CORRELATED FINAL ESTIMATE OF MARKET VALUE

AS OF July 10 1979

\$ 250,000

I (We) certify that to the best of my (our) knowledge and belief the facts and data used herein are true and correct and that I (we) personally inspected the property from the inside and the outside, and that I (we) have no undisclosed interest, present or prospective therein

Review Appraiser

Appraiser

REMARKS

CALLAWAY AND PRICE INC

Sale 1. - Parcel 7
Sale 2. - Parcel 8
Sale 3. - Jupiter Inlet Beach Colony

APR 9 1979

For Privacy Act Notice, see page 3 of Instructions For the year January 1-December 31 1979 or other tax year beginning

Use IRS label. Other- wise, please print or type.	Your first name and initial (if joint return, also give spouse's name and initial)	Last name		Your social security number
	Warren D. & Joyce L.		Johnson	0133 16 0430
	Present home address (Number and street, including apartment number or rural route)			
	R.F.D. 2 - Yates Center Rd.			
City, town or post office State and ZIP code				Spouse's social security no.
Lyndonville, New York 14098				125 28 4395
				Your occupation
				Farm
Do you want \$1 to go to the Presidential Election Campaign Fund? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				Spouse's occupation on
If joint return, does your spouse want \$1 to go to this fund? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				Housewife

Filing Status

Check only
one box

- 1 ☐ Single
- 2 ☒ Married filing joint return (even if only one had income)
- 3 ☐ Married filing separate return If spouse is also filing, give spouse's social security number in the space above and enter full name here ▶
- 4 ☐ Unmarried head of household Enter qualifying name ▶
- 5 ☐ Qualifying widow(er) with dependent child (Year spouse died ▶ 19) See page 6 of Instructions

Exemptions

Always check
the box labeled
Yourself
Check other
boxes if they
apply

- 6a ☒ Yourself ☐ 65 or over ☐ Blind Enter number of boxes checked on 6a and b ▶ 2
- b ☒ Spouse ☐ 65 or over ☐ Blind
- c First names of your dependent children who lived with you ▶ Enter number of children listed ▶
- | d Other dependents | (2) Relationship | (3) Number of months lived in your home | (4) Did dependent have income of \$750 or more? | (5) Did you provide more than one half of dependent's support? | Enter number of other dependents ▶ |
|--------------------|------------------|---|---|--|------------------------------------|
| | | | | | |
| | | | | | |
- 7 Total number of exemptions claimed Add numbers entered in boxes above ▶ 2

Income

Please attach
Copy B of your
Forms W-2 here.If you do not have
a W-2, see
page 5 of
Instructions.

- | | | |
|--|-----|----------|
| 8 Wages, salaries, tips, and other employee compensation | 8 | |
| 9 Interest income (If over \$400, attach Schedule B) | 9 | 1,340 |
| 10a Dividends (If over \$400 attach Schedule B) | 10a | |
| 10b Exclusion | 10b | |
| 10c Subtract line 10b from line 10a | 10c | |
| 11 State and local income tax refunds (does not apply unless refund is for year you itemized deductions) | 11 | |
| 12 Alimony received | 12 | |
| 13 Business income or (loss) (attach Schedule C) | 13 | |
| 14 Capital gain or (loss) (attach Schedule D) | 14 | 42,072 |
| 15 Taxable part of capital gain distributions not reported on Schedule D (see page 9 of Instructions) | 15 | |
| 16 Net gain or (loss) from Supplemental Schedule of Gains and Losses (attach Form 4797) | 16 | |
| 17 Fully taxable pensions and annuities not reported on Schedule E | 17 | |
| 18 Pensions, annuities, rents, royalties, partnerships, estates or trusts, etc. (attach Schedule E) | 18 | (22,936) |
| 19 Farm income or (loss) (attach Schedule F) | 19 | 22,043 |
| 20 Other income (state nature and source—see page 10 of Instructions) | 20 | |
| 21 Total income Add lines 8, 9, and 10c through 20 | 21 | 42,519 |

Adjustments
to Income

- | | | |
|--|----|--|
| 22 Moving expense (attach Form 3903) | 22 | |
| 23 Employee business expenses (attach Form 2106) | 23 | |
| 24 Payments to an IRA (see page 10 of Instructions) | 24 | |
| 25 Payments to a Keogh (H.R. 10) retirement plan | 25 | |
| 26 Interest penalty due to early withdrawal or savings | 26 | |
| 27 Alimony paid (see page 10 of Instructions) | 27 | |
| 28 Total adjustments. Add lines 22 through 27 | 28 | |

Adjusted
Gross Income

- | | | |
|--|----|--------|
| 29 Subtract line 28 from line 21 | 29 | |
| 30 Disability income exclusion (attach Form 2440) | 30 | |
| 31 Adjusted gross income. Subtract line 30 from line 29. If this line is less than \$8,000, see page 2 of Instructions. If you want IRS to figure your tax, see page 4 of Instructions | 31 | 42,519 |

EXHIBIT D

A-35

Form 1040 (1978)

Tax Computation	32 Amount from line 31	32	42,519
	33 If you do not itemize deductions enter zero. If you itemize complete Schedule A (Form 1040) and enter the amount from Schedule A line 41. Caution: If you have unearned income and can be claimed as a dependent on your parent's return, check here <input type="checkbox"/> and see page 11 of the instructions. Also see page 11 of the instructions if • You are married filing a separate return and your spouse itemizes deductions, OR • You file Form 4563, OR • You are a dual status alien	33	19,169
	34 Subtract line 33 from line 32. Use the amount on line 34 to find your tax from the Tax Tables, or to figure your tax on Schedule TC, Part I. Use Schedule TC, Part I, and the Tax Rate Schedules ONLY if • The amount on line 34 is more than \$20,000 (\$40,000 if you checked Filing Status Box 2 or 5), OR • You have more exemptions than those covered in the Tax Table for your filing status, OR • You use any of these forms to figure your tax: Schedule D, Schedule G, or Form 4726	34	23,350
	35 Tax. Enter tax here and check from <input type="checkbox"/> Tax Tables or <input checked="" type="checkbox"/> Schedule TC	35	3,543
Credits	36 Additional taxes (See page 11 of instructions) Enter total and check from <input type="checkbox"/> Form 4970, <input type="checkbox"/> Form 4972, <input type="checkbox"/> Form 5544, <input type="checkbox"/> Form 5405, or <input type="checkbox"/> Section 72(m)(5) penalty tax	36	
	37 Total. Add lines 35 and 36	37	3,543
	38 Credit for contributions to candidates for public office	38	
	39 Credit for the elderly (attach Schedules R&RP)	39	
Other Taxes	40 Credit for child and dependent care expenses (attach Form 2441)	40	
	41 Investment credit (attach Form 3468)	41	3,424
	42 Foreign tax credit (attach Form 1116)	42	
	43 Work Incentive (WIN) Credit (attach Form 4874)	43	
	44 New jobs credit (attach Form 5384)	44	
	45 Residential energy credits (see page 12 of instructions) (attach Form 5695)	45	119
	46 Total credits. Add lines 38 through 45	46	3,543
	47 Balance. Subtract line 46 from line 37 and enter difference (but not less than zero)	47	0
	48 Self-employment tax (attach Schedule SE)	48	1,434
	49 Minimum tax. Check here <input type="checkbox"/> and attach Form 4625	49	
Payments	50 Tax from recomputing prior year investment credit (attach Form 4255)	50	
	51 Social security (FICA) tax on tip income not reported to employer (attach Form 4137)	51	
	52 Uncollected employee FICA and RRTA tax on tips (from Form W-2)	52	
	53 Tax on an IRA (attach Form 5329)	53	
	54 Total tax. Add lines 47 through 53	54	1,434
	55 Total Federal income tax withheld	55	
	56 1978 estimated tax payments and credit from 1977 return	56	
	57 Earned income credit. If line 31 is under \$8,000, see page 2 of instructions. If eligible, enter child's name	57	
Refund or Due	58 Amount paid with Form 4868	58	
	59 Excess FICA and RRTA tax withheld (two or more employers)	59	
	60 Credit for Federal tax on special fuels and oils (attach Form 4136)	60	217
	61 Regulated Investment Company credit (attach Form 2439)	61	
	62 Total. Add lines 55 through 61	62	217
	63 If line 62 is larger than line 54 enter amount OVERPAID	63	
Please Sign Here	64 Amount of line 63 to be REFUNDED TO YOU	64	
	65 Amount of line 63 to be credited on 1979 estimated tax	65	
	66 If line 54 is larger than line 62 enter BALANCE DUE. Attach check or money order for full amount payable to Internal Revenue Service. Write your social security number on check or money order. (Check <input type="checkbox"/> if Form 2210 (2210F) is attached. See page 14 of instructions)	66	1,217

Under penalties of perjury I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Preparer's signature _____ Date _____ Spouse's signature (if filing jointly BOTH must sign even if only one had tax) _____

Paid Preparer's Information: Preparer's signature _____ Preparer's social security no. _____ Check if self-employed ☐ Firm's name (or yours if self-employed), address and ZIP code _____ CI No ☐ Date _____

Schedule A—Itemized Deductions

(Form 1040)

Department of the Treasury
Internal Revenue Service

► Attach to Form 1040. ► See Instructions for Schedules A and B (Form 1040).

1978

Name(s) as shown on Form 1040

Warren D. & Joyce L. Johnson

Put social security number
23 16 0430

Schedule A—Itemized Deductions

Medical and Dental Expenses (not paid by insurance or otherwise) (See page 15 of Instructions.)

1 One-half (but not more than \$150) of insurance premiums you paid for medical care. (Be sure to include in line 10 below) . ►	150
2 Medicine and drugs	
3 Enter 1% of Form 1040, line 31	
4 Subtract line 3 from line 2. If line 3 is more than line 2, enter zero	
5 Balance of insurance premiums for medical care not entered on line 1	
6 Other medical and dental expenses	
a Doctors, dentists, nurses, etc	
b Hospitals	
c Other (itemize—include hearing aids, dentures, eyeglasses, transportation, etc) ►	
7 Total (add lines 4 through 6c)	
8 Enter 3% of Form 1040, line 31	
9 Subtract line 8 from line 7. If line 8 is more than line 7, enter zero	
10 Total medical and dental expenses (add lines 1 and 9). Enter here and on line 33 ►	150

Taxes (See page 15 of Instructions.)

11 State and local income	
12 Real estate	200
13 State and local gasoline (see gas tax tables)	69
14 General sales (see sales tax tables)	535
15 Personal property	
16 Other (itemize) ►	
S. T. on Car	156
17 Total taxes (add lines 11 through 16). Enter here and on line 34 ►	960

Interest Expense (See page 16 of Instructions.)

18 a Home mortgage	
b Credit and charge cards	
19 Other (itemize) ►	
20 Total interest expense (add lines 18a through 19). Enter here and on line 35 ►	

Contributions (See page 17 of Instructions.)

21 a Cash contributions for which you have receipts, cancelled checks or other written evidence	
b Other cash contributions (show who you gave to and how much you gave) ►	
Batavia Evangelical	22,095
Charismatic Teaching Center	2,150
Total	24,245
Limit 50% of Line 31	21,259
22 Other than cash (see page 17 of instructions for required statement)	
23 Carryover from prior years	
24 Total contributions (add lines 21a through 23). Enter here and on line 36 ►	21,259

Casualty or Theft Loss(es) (See page 17 of Instructions.)

25 Loss before insurance reimbursement	
26 Insurance reimbursement	
27 Subtract line 26 from line 25. If line 26 is more than line 25, enter zero	
28 Enter \$100 or amount on line 27, whichever is smaller	
29 Total casualty or theft loss(es) (subtract line 28 from line 27). Enter here and on line 37 ►	

Miscellaneous Deductions (See page 17 of Instructions.)

30 Union dues	
31 Other (itemize) ►	
32 Total miscellaneous deductions (add lines 30 and 31). Enter here and on line 38 ►	

Summary of Itemized Deductions (See page 18 of Instructions.)

33 Total medical and dental—from line 10	150
34 Total taxes—from line 17	960
35 Total interest—from line 20	
36 Total contributions—from line 24	21,259
37 Total casualty or theft loss(es)—from line 29	
38 Total miscellaneous—from line 32	
39 Total deductions (add lines 33 through 38) ►	22,369
40 If you checked Form 1040 Filing Status box 2 or 5, enter \$3,200 1 or 4, enter \$2,200 3, enter \$1,600	3,200
41 Subtract line 40 from line 39. Enter here and on Form 1040 line 33. (If line 40 is more than line 39, enter zero and see "You Must Itemize Deductions" on page 11 of the Instructions) ►	19,169

1978

Name(s) as shown on Form 1040

Warren D. Johnson

Your social security number

16 0430

Part I Short-term Capital Gains and Losses—Assets Held One Year or Less

a. Kind of property and description (Example, 100 shares of Z Co.)	b. Date acquired (Mo., day, yr.)	c. Date sold (Mo., day, yr.)	d. Gross sales price less expense of sale	e. Cost or other basis as adjusted (see Instructions page 19)	f. Gain or (loss) from all sales during entire tax year (d less e)	g. Enter gain or (loss) from sales after 10/31/78
1 Fla. Lots	4-17-78	4-17-78	700,563	719,138	(18,575)	
" "	7-17-78	7-17-78	175,433	98,639	76,794	
Non-Business Bad Debt - Bankrupt			0	17,000	(17,000)	
2 Enter your share of net short term gain or (loss) from partnerships and fiduciaries	2					
3 Enter net gain or (loss), combine lines 1 and 2	3			41,219		
4 Short term capital loss carryover attributable to years beginning after 1969 (see Instructions page 19)	4			()		
5 Net short term gain or (loss), combine lines 3 and 4, column (f)	5			41,219		

Part II Long-term Capital Gains and Losses—Assets Held More Than One Year

6						
7 Capital gain distributions	7					
8 Enter gain, if applicable, from Form 4797, line 6(a)(1) (see Instructions page 19)	8			1,706		
9 Enter your share of net long term gain or (loss) from partnerships and fiduciaries	9					
10 Enter your share of net long term gain from small business corporations (Subchapter S)	10					
11 Net gain or (loss), combine lines 6 through 10	11			1,706		
12 Long term capital loss carryover attributable to years beginning after 1969 (see Instructions page 19)	12			()		
13 Net long term gain or (loss), combine lines 11 and 12, column (f)	13			1,706		

NOTE: If you have capital loss carryovers from years beginning before 1970, do not complete Parts III, IV or VI. See Form 4798 instead.

Part III Computation of Capital Gain Deduction
(Complete this part only if line 14 shows a gain)

14 Combine lines 5 and 13, column (f), and enter here. If result is zero or a loss, do not complete the rest of this part. Instead skip to Part IV, line 24 on page 2	14	42,925
15 Enter line 13, column (f) or line 14, whichever is smaller. If zero or a loss, enter zero and skip to line 23	15	1,706
16 If line 11, column (g) is a gain, combine lines 3 and 11, column (g), and enter here. If this line or line 11, column (g) shows a loss or zero, enter a zero and skip to line 20	16	0
17 Enter line 11, column (g) or line 16, whichever is smaller	17	
18 Enter line 15 or line 17, whichever is smaller	18	
19 Enter 60% of amount on line 18	19	
20 Subtract line 18 from line 15	20	1,706
21 Enter 50% of amount on line 20	21	853
22 Add line 19 and line 21. This is your capital gain deduction	22	853
23 Subtract line 22 from line 14. Enter this amount on Form 1040 line 14	23	2,072

Form 1040		Department of the Treasury - Internal Revenue Service		1979		COPY	
For Privacy Act Notice, see page 3 of Instructions		For the year January 1-December 31, 1979, or other tax year beginning		1979		19	
Use IRS label. Otherwise, please print or type.	OY 103-16-0430 125-28-4395 D16 4			Last name		Your social security number	
	- WARREN D & JOYCE L JOHNSON					7	
- R D 2 YATES CENTER RD			14098		IRS		Spouse's social security no
- LYNDONVILLE NY					Your occupation		FARM
					Spouse's occupation		HW
Presidential Election Campaign Fund		Do you want \$1 to go to this fund?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Note: Checking "Yes" will not increase your tax or reduce your refund	
		If joint return, does your spouse want \$1 to go to this fund?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Filing Status							
Check only one box							
1		Single					
2		<input checked="" type="checkbox"/> Married filing joint return (even if only one had income)					
3		Married filing separate return. Enter spouse's social security number above and full name here					
4		Head of household. (See page 7 of Instructions) If qualifying person is your unmarried child, enter child's name					
5		Qualifying widow(er) with dependent child (Year spouse died 19) (See page 7 of Instructions)					
Exemptions							
Always check the box labeled Yourself. Check other boxes if they apply.							
6a		<input checked="" type="checkbox"/> Yourself		<input type="checkbox"/> 65 or over		<input type="checkbox"/> Blind	
b		<input checked="" type="checkbox"/> Spouse		<input type="checkbox"/> 65 or over		<input type="checkbox"/> Blind	
c		First names of your dependent children who lived with you					
d		Other dependents:		(2) Relationship		(3) Number of months lived in your home	
		(1) Name				(4) Did dependent have income of \$1,000 or more?	
						(5) Did you provide more than one half of dependent's support?	
7		Total number of exemptions claimed					
Income							
Please attach Copy B of your Forms W-2 here. If you do not have a W-2, see page 5 of Instructions.							
8		Wages, salaries, tips, etc.				18	
9		Interest income (attach Schedule B if over \$400)				4,619	
10a		Dividends (attach Schedule B if over \$400) 357				10b Exclusion 200	
c		Subtract line 10b from line 10a				157	
11		State and local income tax refunds (does not apply unless refund is for year you itemized deductions—see page 10 of Instructions)				11	
12		Alimony received				12	
13		Business income or (loss) (attach Schedule C)				13	
14		Capital gain or (loss) (attach Schedule D)				14 75042	
15		Taxable part of capital gain distributions not reported on Schedule D (see page 10 of Instructions)				15	
16		Supplemental gains or (losses) (attach Form 4797)				16	
17		Fully taxable pensions and annuities not reported on Schedule E				17	
18		Pensions, annuities, rents, royalties, partnerships, estates or trusts, etc. (attach Schedule E)				18 699	
19		Farm income or (loss) (attach Schedule F)				19 30,227	
20a		Unemployment compensation. Total amount received				20b	
b		Taxable part, if any, from worksheet on page 10 of Instructions				21	
21		Other income (state nature and source—see page 10 of Instructions)				21	
22		Total income. Add amounts in column for lines 8 through 21				22 110,762	
Adjustments to Income							
23		Moving expense (attach Form 3903 or 3903F)				23	
24		Employee business expenses (attach Form 2106)				24	
25		Payments to an IRA (see page 11 of Instructions)				25	
26		Payments to a Keogh (H R 10) retirement plan				26	
27		Interest penalty on early withdrawal of savings				27	
28		Alimony paid (see page 11 of Instructions)				28	
29		Disability income exclusion (attach Form 2440)				29	
30		Total adjustments. Add lines 23 through 29				30	
Adjusted Gross Income							
31		Adjusted gross income. Subtract line 30 from line 22. If this line is less than \$10,000, see page 2 of Instructions. If you want IRS to figure your tax, see page 4 of Instructions				31 110,762	

EXHIBIT E

A-39

Form 1040 (1979)

703

Tax Computation (See Instructions on page 12)	32	Amount from line 31 (adjusted gross income)	32	110,262
	33	If you do not itemize deductions, enter zero If you itemize, complete Schedule A (Form 1040) and enter the amount from Schedule A, line 41 Caution: If you have unearned income and can be claimed as a dependent on your parent's return, check here <input type="checkbox"/> and see page 12 of the instructions. Also see page 12 of the instructions if: • You are married filing a separate return and your spouse itemizes deductions, OR • You file Form 4563, OR • You are a dual-status alien.	33	78,596
	34	Subtract line 33 from line 32. Use the amount on line 34 to find your tax from the Tax Tables, or to figure your tax on Schedule TC, Part I Use Schedule TC, Part I, and the Tax Rate Schedules ONLY if: • Line 34 is more than \$20,000 (\$40,000 if you checked Filing Status Box 2 or 5), OR • You have more exemptions than are shown in the Tax Table for your filing status OR • You use Schedule G or Form 4726 to figure your tax Otherwise, you MUST use the Tax Tables to find your tax	34	31,566
	35	Tax Enter tax here and check if from <input type="checkbox"/> Tax Tables or <input checked="" type="checkbox"/> Schedule TC	35	5,592
	36	Additional taxes (See page 12 of Instructions) Enter here and check if from <input type="checkbox"/> Form 4970, <input type="checkbox"/> Form 4972, <input type="checkbox"/> Form 5544 <input type="checkbox"/> Form 5405, or <input type="checkbox"/> Section 72(m)(5) penalty tax	36	
	37	Total. Add lines 35 and 36	37	5,592
Credits	38	Credit for contributions to candidates for public office	38	
	39	Credit for the elderly (attach Schedules R&RP)	39	
	40	Credit for child and dependent care expenses (attach Form 2441)	40	
	41	Investment credit (attach Form 3468)	41	3,320
	42	Foreign tax credit (attach Form 1116)	42	
	43	Work incentive (WIN) credit (attach Form 4874)	43	
	44	Jobs credit (attach Form 5384)	44	
	45	Residential energy credits (attach Form 5695)	45	24
	46	Total credits. Add lines 38 through 45	46	3,374
	47	Balance. Subtract line 46 from line 37 and enter difference (but not less than zero)	47	2,278
Other Taxes (Including Advance EIC Payments)	48	Self-employment tax (attach Schedule SE)	48	1,553
	49a	Minimum tax (Attach Form 4625 and check here <input type="checkbox"/>)	49a	
	49b	Alternative minimum tax (Attach Form 6251 and check here <input checked="" type="checkbox"/>)	49b	22,777
	50	Tax from recomputing prior year investment credit (attach Form 4255)	50	
	51a	Social security (FICA) tax on tip income not reported to employer (attach Form 4137)	51a	
	51b	Uncollected employee FICA and RRTA tax on tips (from Form W-2)	51b	
	52	Tax on an IRA (attach Form 5329)	52	
	53	Advance earned income credit payments received (from Form W-2)	53	
54	Total. Add lines 47 through 53	54	26,545	
Payments Attach Forms W-2, W-2G, and W-2P to front.	55	Total Federal income tax withheld	55	
	56	1979 estimated tax payments and credit from 1978 return	56	
	57	Earned income credit. If line 32 is under \$10,000, see page 2 of Instructions	57	
	58	Amount paid with Form 4868	58	
	59	Excess FICA and RRTA tax withheld (two or more employers)	59	
	60	Credit for Federal tax on special fuels and oils (attach Form 4136 or 4136-T)	60	169
	61	Regulated Investment Company credit (attach Form 2439)	61	
62	Total. Add lines 55 through 61	62	169	
Refund or Balance Due	63	If line 62 is larger than line 54, enter amount OVERPAID	63	
	64	Amount of line 63 to be REFUNDED TO YOU	64	
	65	Amount of line 63 to be credited on 1980 estimated tax	65	
	66	If line 54 is larger than line 62, enter BALANCE DUE. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number on check or money order (Check <input type="checkbox"/> if Form 2210 (2210F) is attached. See page 15 of Instructions) <input checked="" type="checkbox"/> \$	66	26,376

Please Sign Here

Under penalties of perjury I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

☒ Your signature _____ Date _____ ☒ Preparer's signature (if filing jointly BOTH must sign even if only one has income)

Preparer's signature and date: James W. Moriarty APR 12 '80

Firm's name (or yours if self-employed) and address: James W. Moriarty

Check if self-employed ☒ Preparer's social security no: 096 16 276

EI No: 16-075033 ZIP code: 1-40

Schedules A & B—Itemized Deductions AND Interest and Dividend Income

(Form 1040)

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 1040 ▶ See Instructions for Schedules A and B (Form 1040)

1979

708

Name(s) as shown on Form 1040

WARREN D & JOYCE L JOHNSON

Your social security number
03 16 0430

Schedule A—Itemized Deductions (Schedule B is on back)

Medical and Dental Expenses (not paid or reimbursed by insurance or otherwise) (See page 16 of Instructions)

- 1 One-half (but not more than \$150) of insurance premiums you paid for medical care. (Be sure to include in line 10 below.) ▶
- 2 Medicine and drugs
- 3 Enter 1% of Form 1040, line 31
- 4 Subtract line 3 from line 2. If line 3 is more than line 2, enter zero
- 5 Balance of insurance premiums for medical care not entered on line 1
- 6 Other medical and dental expenses
 - a Doctors, dentists, nurses, etc
 - b Hospitals
 - c Other (itemize—include hearing aids, dentures, eyeglasses, transportation, etc) ▶
- 7 Total (add lines 4 through 6c)
- 8 Enter 3% of Form 1040, line 31
- 9 Subtract line 8 from line 7. If line 8 is more than line 7, enter zero
- 10 Total medical and dental expenses (add lines 1 and 9). Enter here and on line 33 ▶

Taxes (See page 16 of Instructions)

Note: Gasoline taxes are no longer deductible

- 11 State and local income
- 12 Real estate
- 13 General sales (see sales tax tables)
- 14 Personal property
- 15 Other (itemize) ▶
- 16 Total taxes (add lines 11 through 15). Enter here and on line 34 ▶

Interest Expense (See page 17 of Instructions)

- 17 Home mortgage
- 18 Credit and charge cards
- 19 Other (itemize) ▶

LAVINIA NOTE
M. JOHNSON
K.
- 20 Total interest expense (add lines 17 through 19). Enter here and on line 35 ▶

Contributions (See page 17 of Instructions)

- 21 a Cash contributions for which you have receipts, cancelled checks or other written evidence
- b Other cash contributions (show to whom you gave and how much you gave) ▶
- 22 Other than cash (see page 17 of instructions for required statement)
- 23 Carryover from prior years
- 24 Total contributions (add lines 21a through 23). Enter here and on line 36 ▶

Casualty or Theft Loss(es) (See page 18 of Instructions)

- 25 Loss before insurance reimbursement
- 26 Insurance reimbursement
- 27 Subtract line 26 from line 25. If line 26 is more than line 25, enter zero
- 28 Enter \$100 or amount from line 27 whichever is smaller
- 29 Total casualty or theft loss(es) (subtract line 28 from line 27). Enter here and on line 37 ▶

Miscellaneous Deductions (See page 18 of Instructions)

- 30 Union dues
- 31 Other (itemize) ▶

TAX SERVICE
EXPENSES CANCELLED W/BC
PROPERTY
- 32 Total miscellaneous deductions (add lines 30 and 31). Enter here and on line 38 ▶

Summary of Itemized Deductions (See page 18 of Instructions)

- 33 Total medical and dental—from line 10
- 34 Total taxes—from line 16
- 35 Total interest—from line 20
- 36 Total contributions—from line 24
- 37 Total casualty or theft loss(es)—from line 29
- 38 Total miscellaneous—from line 32
- 39 Add lines 33 through 38
- 40 If you checked Form 1040, Filing Status box 2 or 5 enter \$3,400
1 or 4 enter \$2,300
3 enter \$1,700
- 41 Subtract line 40 from line 39. Enter here and on Form 1040, line 33 (If line 40 is more than line 39 see the instructions to line 41 on page 13)

CRICKET T = 2740

Social Security or Identification No. 103 16-0430
Year Ended 1973 1975

CHARITABLE CONTRIBUTION			
CONTRIBUTION TO THE FULL GOSPEL CHRISTIAN ASSOC			
* GIFT OF THE SE 1/4 OF PARCEL H&F M.A.I APPRAISAL AT TIME OF GIFT IS			
* 250,000. COST BASIS IS \$2,928			
		APPRAISED BASIS	250,000
		COST	\$2,928
		APPRaisal DIFFERENTIAL	167,072
		COST BASIS	\$2,928
		50% OF APPR VALU	\$83,536
		VALUE OF CONTRIB	166,464
* TOTAL CONTRIB		176,450	
** ALLOWABLE SET ADJUST		53,381	
CARRYOVER - JUST TO 50% LIM - 12,064			

Capital Gains and Losses

Schedule are gains and losses on stocks, bonds, and similar investments, and gains (but not losses) on personal assets such as a home or jewelry)

► Attach to Form 1040.

▶ See Instructions for Schedule D (Form 1040)

1979

— 12

Name(s) as shown on Form 1040

WARREN D. & VOYCE L. JOHNSON

Your social security number

Caution: Columns f and g are not the same as ...; year. Most other lines have also been changed.

Part I Short-term Capital Gains and Losses—Assets Held One Year or Less

[illegible]

Part II Long-term Capital Gains and Losses—Assets Held More Than One Year

[illegible]

Note: If you have capital loss carryovers from years beginning before 1970, do not complete Part III only. See Form 4798 instead.

For Privacy Act Notice, see Instructions For the year January 1 - December 31 1980 or other tax year beginning 1980 ending 19

Use IRS label Otherwise Please print or type
JAMES E. JURY, JR. JOHN S. JURY
100 PALES CREEK RD
YONKONIS, NY 10918
Your social security number
Spouse's social security no
Your occupation
Spouse's occupation

Presidential Election Campaign Fund Do you want \$1 to go to this fund?
If joint return does your spouse want \$1 to go to this fund?
Yes No Yes No Note Checking Yes I not increase your tax or reduce your refund

Requested by Census Bureau for Revenue Sharing A Where do you live (actual location of residence)? (See page 2 of instructions) B Do you live within the city limits of a city, village, etc. C In what county do you live? D In what township do you live?
State City, village, borough, etc. Yes No PLAYS
NY

Filing Status 1 Single 2 Married filing joint return (even if only one had income) 3 Married filing separate return Enter spouse's soc sec no above & full name here 4 Head of household (See page 6 of instructions) If qualifying person is your unmarried child enter child's name 5 Qualifying widow(er) with dependent child (Year spouse died 19) (See page 5 of instructions)

Exemptions Always check the box labeled Yourself. Check other boxes if they apply
6a Yourself 65 or over Blind Enter number of boxes checked on 6a and b
b Spouse 65 or over Blind Enter number of children listed on 6c
c First names of your dependent children who lived with you
d Other dependents (1) Name (2) Relationship (3) Number of months lived in your home (4) Did dependent have income of \$1,000 or more? (5) Did you provide more than one-half of dependent's support? Enter number of other dependents Add numbers entered in boxes above
7 Total number of exemptions claimed

Income Please attach Copy 3 of your Forms W-2 here If you do not have a W-2, see page 5 of instructions. Please attach check or money order here
8 Wages, salaries, tips, etc 8
9 Interest income (attach Schedule B if over \$400) 9
10a Dividends (attach Schedule E if over \$400) 10a
10b Exclusion 10b
10c 10c
11 Refunds of state and local income taxes (do not enter an amount unless you deducted those taxes in an earlier year - see page 9 of instructions) 11
12 Alimony received 12
13 Business income or (loss) (attach Schedule C) 13
14 Capital gain or (loss) (attach Schedule D) 14
15 40% of capital gain distributions not reported on line 14 (see page 9 of instructions) 15
16 Supplemental gains or (losses) (attach Form 4797) 16
17 Fully taxable pensions and annuities not reported on line 18 17
18 Pensions, annuities, rents, royalties, partnerships, etc (attach Schedule E) 18
19 Farm income or (loss) (attach Schedule F) 19
20a Unemployment compensation (insurance) Total received 20a
b Taxable amount, if any from worksheet on page 10 of instructions 20b
21 Other income (state nature and source - see page 10 of instructions) 21
22 Total income. Add amounts in column for lines 8 through 21 22

Adjustments to Income (See instructions on page 10)
23 Moving expense (attach Form 3903 or 3903F) 23
24 Employee business expenses (attach Form 2106) 24
25 Payments to an IRA (enter code from page 10) 25
26 Payments to a Keogh (H.R. 10) retirement plan 26
27 Interest penalty on early withdrawal of savings 27
28 Alimony paid 28
29 Disability income exclusion (attach Form 2440) 29
30 Total adjustments. Add lines 23 through 29 30

Adjusted Gross Income 31 Adjusted gross income. Subtract line 30 from line 22. If this line is less than \$10,000, see "Earned Income Credit" (line 57) on pages 13 and 14 of instructions. If you want IRS to figure your tax, see page 2 of instructions 31

Tax Computation (See Instructions on page 11)	32	Amount from line 31 (adjusted gross income)		32	
	33	If you do not itemize deductions enter zero If you itemize complete Schedule A (Form 1040) and enter the amount from Schedule A line 41 Caution If you have unearned income and can be claimed as a dependent on your parent's return check here <input type="checkbox"/> and see page 1 of the Instructions. Also see page 11 of the Instructions if: • You are married filing a separate return and your spouse itemizes deductions OR • You file Form 4563, OR • You are a dual status alien		33	
	34	Subtract line 33 from line 32. Use the amount on line 34 to find your tax from the Tax Tables or to figure your tax on Schedule TC, Part I. Use Schedule TC, Part I, and the Tax Rate Schedules ONLY if: • Line 34 is more than \$20,000 (\$40,000 if you checked Filing Status Box 2 or 5) OR • You have more exemptions than are shown in the Tax Table for your filing status OR • You use Schedule G or Form 4726 to figure your tax Otherwise you MUST use the Tax Tables to find your tax		34	
	35	Tax. Enter tax here and check if from <input type="checkbox"/> Tax Tables or <input type="checkbox"/> Schedule TC		35	
Credits (See Instructions on page 12)	36	Additional taxes (See page 12 or Instructions). Enter here and check if from <input type="checkbox"/> Form 4970, <input type="checkbox"/> Form 4972, <input type="checkbox"/> Form 5544, <input type="checkbox"/> Form 5405 or <input type="checkbox"/> Section 72(m)(5) penalty tax		36	
	37	Total. Add lines 35 and 36		37	
	38	Credit for contributions to candidates for public office	38		
	39	Credit for the elderly (attach Schedule R&RP)	39		
Other Taxes (Including Advance EIC Payments)	40	Credit for child and dependent care expenses (attach Form 2441)	40		
	41	Investment credit (attach Form 468)	41	77	
	42	Foreign tax credit (attach Form 1116)	42		
	43	Work incentive (WIN) credit (attach Form 4874)	43		
	44	Jobs credit (attach Form 5884)	44		
	45	Residential energy credits (attach Form 5695)	45		
	46	Total credits. Add lines 38 through 45	46		
	47	Balance. Subtract line 46 from line 37 and enter difference (but not less than zero)	47		
	48	Self employment tax (attach Schedule SE)	48	1.7	
	49a	Minimum tax. Attach Form 4625 and check here <input type="checkbox"/>	49a		
Payments Attach Forms W-2, W-2G and W-2P to front	49b	Alternative minimum tax. Attach Form 6251 and check here <input checked="" type="checkbox"/>	49b	1.1	
	50	Tax from recomputing prior year investment credit (attach Form 4255)	50		
	51a	Social security (FICA) tax on tip income not reported to employer (attach Form 4137)	51a		
	51b	Uncollected employee FICA and RRTA tax on tips (from Form W-2)	51b		
	52	Tax on an IRA (attach Form 5329)	52		
	53	Advance earned income credit (EIC) payments received (from Form W-2)	53		
	54	Balance. Add lines 47 through 53	54		
	55	Total Federal income tax withheld	55		
	56	1980 estimated tax payments and amount applied from 1979 return	56		
	Refund or Balance Due	57	Earned income credit. If line 32 is under \$10,000 see pages 13 and 14 of Instructions	57	
58		Amount paid with Form 4868	58		
59		Excess FICA and RRTA tax withheld (two or more employers)	59		
60		Credit for Federal tax on special fuels and oils (attach Form 4136 or 4136-T)	60	275	
61		Regulated Investment Company credit (attach Form 2439)	61		
62		Total. Add lines 55 through 61	62		
63		If line 62 is larger than line 54 enter amount OVERPAID	63		
64		Amount of line 63 to be REFUNDED TO YOU	64		
65		Amount of line 63 to be applied to your 1981 estimated tax	65		
66		If line 54 is larger than line 62 enter BALANCE DUE. Attach check or money order for full amount payable to Internal Revenue Service. Write your social security number on check or money order. (Check <input checked="" type="checkbox"/> if Form 2210 (2210F) is attached. See page 15 or Instructions.)	66		
Please Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.				
	Your signature		Date		
Paid Preparer's Use Only	Preparer's signature and date		Check if self-employed <input type="checkbox"/>		
	Firm's name (or yours if self-employed) and address		Preparer's social security number		
	EIN No.		ZIP code		
	3/18/81		45391.4		

NAME(S) AS SHOWN ON RETURN

IDENTIFYING NUMBER

DESCRIPTION OF PROPERTY

134 15 2-4-113

TYPE OF ASSET

1 2 3

1 2 3

1735.

void).

4 5181.

ORDINARY GAIN

1903.

1. 3000.

1. 3000.

72.7545

[illegible]

PROPERTY WAS HELD BY
RELATED PARTY AND R. 144 L. 1960

14-500 Satisfaction of Mortgage

Know All Men By These Presents: That
WARREN D. JOHNSON, SR., TRUSTEE

15 The owner and holder of a certain mortgage deed executed by ALEX KLEMEX

to WARREN D. JOHNSON, SR., TRUSTEE

bearing date the 3rd day of July A.D. 1980 recorded in Official Records
Book 198 page 244 in the office of the Clerk of the Circuit Court of Martin County
State of Florida securing a certain note in the principal sum of (\$750,352.60)
SEVEN HUNDRED FIFTY THOUSAND THREE HUNDRED FIFTY TWO and 60/100 -----
Dollars and certain promises and obligations set forth in said mortgage deed upon the property situated in said
State and County described as follows to wit:

A parcel of land being a portion of BLOWING ROCKS SUBDIVISION,
as recorded in Plat Book 1, Page 1, Martin County, Florida and
being more particularly described as follows:

The South 95.28 feet of Lot 26, together with the North 5 90 feet
of Lot 27, BLOWING ROCKS SUBDIVISION, as recorded in Plat Book 1,
Page 1, Martin County, Florida, public records, lying Easterly of
the East right-of-way line of State Road 707, as it now exists
Containing 1.00 acres more or less,

As the said mortgage deed may have been extended and modified
thereafter.

I hereby acknowledge full payment and satisfaction of said note and mortgage deed and surrender the
same as cancelled and hereby direct the Clerk of the said Circuit Court to cancel the same of record

Witness my hand and seal this 1st day of September A.D. 1983

Signed, sealed and delivered in Presence of

Warren D. Johnson, Sr.
Gordon E. Baker

Warren D. Johnson, Sr. Trustee
Warren D. Johnson, Sr., Trustee

NEW YORK
STATE OF ~~FLORIDA~~
COUNTY OF ORLEANS

1494

I HEREBY CERTIFY that on this day before me an
officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared

WARREN D. JOHNSON, SR., as Trustee

to me known to be the person described in and who executed the foregoing instrument and he acknowledged
before me that he executed the same

WITNESS my hand and official seal in the County and State last aforesaid this 1st day of
September A.D. 1983.

Butler T. Baker
NOTARY PUBLIC My Commission Expires 12/30/84

Return to
Fred Weinstein, Esq
Address 1300 North Federal Highway, P.O. Box 426, Boca Raton, FL 33432

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
W. PALM BEACH DIVISION

UNITED STATES OF AMERICA

V.

Case No. 98-CR-8039-ALL

WARREN D. JOHNSON, JR.

AFFIDAVIT OF JEFFREY A. JOHNSON

UPON BEING DULY SWORN, I, the undersigned, Jeffrey A. Johnson say the following, which is true and correct, under penalty of perjury, and based upon my knowledge and belief:

My name is Jeffrey A. Johnson, the youngest son of Warren D. Johnson, Sr. I am over (21) twenty-one years of age, founder of Ice Ban, Inc., a New York Corporation, and the original inventor (along with Larry Pratt) of Brewers Condensed Solids (BCS) and Steep Water as non-corrosive de-icing and anti-icing agents. I also commissioned the trademark application of ICE BAN.

1. The government case against Warren D. Johnson, Jr. (above case 98-CR-8039) is a fraud on the court and the prosecution withheld information that was supplied to F.B.I. Agent Thomas J. Pierce of Buffalo, New York in several interviews for F.B.I. (302) field reports.

2. In one interview Pierce took extensive notes of the facts on this vendetta that started when Warren D. Johnson, Jr. sued Torrone B. Calasira, an F.B.I. Agent's sister by

threatened to get Warren D. Johnson, Jr. through her brother.

3. At the end of 2001, my attorney, David Finegold, told me that prosecutor Carolyn Bell told him her case was "very weak" and attorney Patrick Scott told Finegold that he needed to get the Restitution collected "so he could pay a large bank note" with his legal fee. As the attorney for U.S. Trustee Kapila, Patrick Scott has admitted that he made the statement, but lied to the court as to the timing and threats against Adam Brown.

4. Prior to the Restitution in the forced Settlement Agreement, which our family members were refusing to sign, Patrick Scott threatened to have Adam Brown indicted if the family members don't give up their lawful property.

5. Due to the extreme nature of the threats that were relayed through our attorneys, our entire family gave up the control stock of two public companies. We had lawfully purchased the stock in these companies with our own funds. Both offerings were under a 504(d) stock offering and prospectus, which was filed with the Attorney General of the State of New York.

6. The following is a history of documents and information which the government agents well knew:

- A. Warren Johnson, Sr. purchases a piece of property from J. Lavino and Company on Jupiter Island on December 31, 1977. A "Satisfaction of Mortgage" is recorded in Martin County of Florida records. (See Exhibit A).
- B. On October 13, 1983 Warren Johnson, Sr. loans Linkous Corporation \$261,250.00 for the development of a piece of property that came to be known as Bay Pointe. (See Exhibit B).
- C. In 1984, Dr. Walter Harper along with his wife Bec-

purchased lots 11 and 12 in Bay Pointe from Linkous Corporation under a Resolution of Agreement for Deed. (See Exhibit C). Per the Martin County doc stamps on Exhibit C, each lot was valued at \$250,000.00 for a total of \$500,000.00 owed to Linkous Corporation.

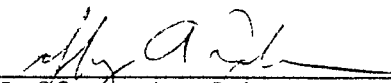
- D. Warren Johnson, Jr. owned an option on an adjacent piece of property to Bay Pointe. Warren Johnson, Jr. was needing money and sold his option on that piece of property to Dr. Walter Harber. Dr. Harber invested over 3 million dollars developing the piece of property that came to be known as Bay Pointe Estates.
- E. In early 1994, Dr. Harber sold a lot in Bay Pointe Estates to Dexter Yeager.
- F. Up to that time in early 1994, Dr. Harber had paid Linkous Corporation money each year on the accrued interest on lots 11 and 12 in Bay Pointe and the interest payments were reflected on Dr. Harber's tax returns. The balance of \$250,000.00 was still owed to Linkous Corporation on the principle for lots 11 and 12.
- G. In March of 1994, Dr. Harber paid off the balance owed to Linkous Corporation for lots 11 and 12 from the proceeds on the lot sold to Dexter Yeager in Bay Pointe Estates. The amount was \$250,000.00.
- H. On March 25, 1994 Linkous Corporation wire transferred to Warren Johnson, Sr.'s bank account \$250,000.00 (see Exhibit D) to pay off the note Warren Johnson, Sr. had been holding since October 18, 1983. (See Exhibit B). Warren Johnson, Sr. forgave Linkous Corp. any accrued interest and accepted the \$250,000.00 as payment in full.
- I. Soon after receiving the \$250,000.00, Warren Johnson, Sr. proceeded to send down a series of checks to Dianne Johnson, Warren Johnson, Jr.'s wife, totaling \$225,000.00. The purpose for Dianne Johnson needing the money was to secure a patent and for test marketing a new road de-icer invented in Hungary by a man named Jeno Toth.
- J. On a Sunday in June of 1994, Jeffrey Johnson (Warren Johnson, Jr.'s younger brother) was telephoned on a conference call with Warren Johnson, Jr. and a Mr. George Janke. The purpose for the call was to solicit Jeffrey Johnson to start a company to be filed in the York State and to test market the Hungarian de-icing product. Jeff Johnson agreed and formed the

company Ice Ban Incorporated. A product license agreement was signed between Inc Ban Inc. and Ecological Snow Control (Eco Sno) on October 13, 1994. In that license agreement the \$225,000.00 that Warren D. Johnson, Sr. had sent to Dianne, was earmarked as Ice Ban Inc.'s licensing fee. (See Exhibit E, page 3).

- K. On Warren Johnson, Jr. and Dianne Johnson's joint 1994 income tax return the \$225,000.00 that was paid to Dianne for Ice Ban Inc.'s licensing fee was reflected as income on Schedule D of her tax return. (See Exhibit F).
- L. On July 31, 1997 a company formed by George Janke and Warren Johnson, Jr., called Ice Ban America, bought out Ice Ban Inc. for 1.3 million shares of Ice Ban America. One-hundred thousand shares of the 1.3 million shares were allocated to be placed in the name of Warren D. Johnson, Sr. as repayment for the \$225,000.00 license fee and \$72,470.05 cash debt that was owed by Ice Ban Inc. (See Exhibit G, page 2). (See Exhibit H) along with Ice Ban Inc.'s balance sheet (Exhibit I).
- M. Everything is further memorialized by Natural Solutions (formally known as Ice Ban America) on a 10-KSB. (See Exhibit J).
- N. The Affidavit of Jerry P. Linkous, President of Linkous Corporation and his supporting documents clearly states that Dr. Walter Harber owed Linkous Corporation the \$250,000.00 and that the Linkous Corporation owed Warren D. Johnson, Sr. well over \$250,000.00. (See Exhibit K).
- O. On a taped interview that I have Dr. Harber states that Warren Johnson, Jr. never owned an interest in Bay Pointe Estates and that every transaction of the money from Dr. Harber was a legitimate repayment of debt.
- P. The \$19,500 paid to Dianne Johnson by Warren Johnson, Sr. was for the purchase of a 1995 GMC hi-top van, which was resold by Jeffrey Johnson to Jim Whipple in Londonville, New York.
- Q. According to Dianne Johnson's bank records, all of the \$225,000.00 was spent by November 1994 by Dianne Johnson and none of the proceeds went into Ice Ban Inc. The government's forensic expert ran a fraud on the court in an exhibit to the JAC, that falsely showed that these funds were invested in Ice Ban in 1995 and 1996.

7. The government had to lie in court to show a money trial to Ice Ban so that they could illegally seize the stock. Warren D. Johnson, Jr. informed the Palm Beach Sheriff's Deputies of the extortion and they read, copied and took to the U.S. mail a letter sent to Judge Kenneth Ryskamp on January 20, 2001, telling him of the duress and extortion. A copy of the letter is attached as Exhibit K. It is apparent that the letter was stolen from the file and clerk's office because it is not part of the court record and not shown on the docket sheet of the criminal case.

FURTHER, AFFIANT SAYETH NAUGHT.

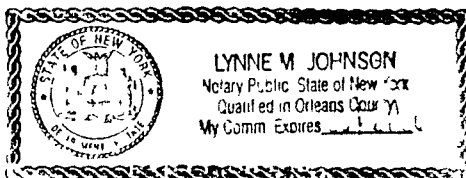

Jeffrey A. Johnson
12118 East Yates Rd.
Lyndonville, New York
14098

STATE OF NEW YORK
COUNTY OF ORLEANS

10th The foregoing instrument was acknowledged before me this 10th day of March, 2002, by Jeffrey A. Johnson, who is personally known to me or who has produced identification and who took an oath/affirmed.


Notary Public

My Commission Expires:



105000

Satisfaction of Mortgage

Know All Men By These Presents: That

WARREN D. JOHNSON, SR., TRUSTEE

1. The owner and holder of a certain mortgage deed executed by ALFRED KIEMER

to WARREN D. JOHNSON, SR., TRUSTEE

bearing date the 31st day of July 1980 recorded in Official Record Book 198 page 2411 in the office of the Clerk of the Circuit Court of Martin County

State of Florida, securing two certain notes in the principal sum of (\$150,000.00) and (\$100,000.00) and SEVEN HUNDRED FIFTY THOUSAND THREE HUNDRED FIFTY TWO and 60/100

Dollars and certain promises and obligations set forth in said mortgage deed upon the property situate in said

State and County described as follows to wit:

A parcel of land being a portion of BLOWING ROCKS SUBDIVISION, as recorded in Plat Book 1, Page 1, Martin County, Florida and being more particularly described as follows:

The South 95.33 feet of Lot 26, together with the North 5.90 feet of Lot 27, BLOWING ROCKS SUBDIVISION, as recorded in Plat Book 1, Page 1, Martin County, Florida, public records, being Eastern 1/4 of the East right-of-way, line of State Road 707, as it now exists containing 1.00 acres more or less,

As the said mortgage deed may have been extended and modified thereafter.

I hereby acknowledge full payment and satisfaction of said note and mortgage deed and surrender the same as cancelled and hereby direct the Clerk of the said Circuit Court to cancel the same of record

Witness my hand and seal this

day of September A.D. 1983

Signed, sealed and delivered in presence of

Robert T. Fournier
Gordon F. BakerWarren D. Johnson, Sr., Trustee
Warren D. Johnson, Sr., TrusteeNEW YORK
STATE OF FLORIDA
COUNTY OF ORLEANS

I HEREBY CERTIFY that on this day before me an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments personally appeared

WARREN D. JOHNSON, SR., as Trustee

to me known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same

WITNESS my hand and official seal in the County and State last aforesaid this 11th day of September A.D. 1983

Notary Public
My Commission Expires 07/30/84

Return to

Fred Weinstein, Esq.

North Federal Highway, P.O. Box 426, Boca Raton, FL 33432

\$ 261,250.00

Jupiter, Florida
October 18, 1983

FOR VALUE RECEIVED, the undersigned, (jointly and severally, if more than one) promises to pay to
 WALTER D. JOHNSON, Sr. of First Yates Road, Lynbrookville, New York 14098
 or order, in the manner hereinafter specified,

the principal sum of TWO HUNDRED SIXTY ONE THOUSAND TWO HUNDRED FIFTY & 00/100 DOLLARS
 (\$261,250.00) with interest from date at the rate of SIX per cent per annum on the balance from time to time remaining unpaid

The said principal and interest shall be payable in lawful money of the United States of America at East Yates Road, Lynbrookville, New York 14098 or at such place as may hereafter be designated by written notice from the holder to the maker hereof, on the date and in the manner following:

NOTE SHALL BE GUARANTEED BY ~~THE~~ as to principal only, and Linkous Corporation shall guarantee this note with a Riverfront lot in the Bay Pointe Subdivision. Walter D. Johnson, Sr. shall have the option to convert this note into the Riverfront lot No. 5 after the Plat is recorded in the public records of Martin County, for a period of three years. Another Riverfront lot may be substituted for Riverfront lot No. 5 by mutual consent.

This note with interest is secured by a mortgage on real estate, of even date herewith made by the maker hereof in favor of the said payee, and shall be continued and enforced according to the laws of the State of Florida

If default be made in the payment of any of the sums or interest mentioned herein or in said mortgage, or in the performance of any of the agreements contained herein or in said mortgage, then the entire principal sum and accrued interest shall at the option of the holder hereof become at once due and collectible without notice, time being of the essence; and said principal sum and accrued interest shall both bear interest from such time until paid at the highest rate allowable under the laws of the State of Florida. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

Each person liable hereon whether maker or endorser, hereby waives presentment, protest, notice of protest and notice of dishonor and agrees to pay all costs, including a reasonable attorney's fee, whether suit be brought or not, if, after maturity of this note or default hereunder, or under said mortgage, counsel shall be employed to collect this note or to protect the security of said mortgage.

Whenever used herein the terms "holder", "maker" and "payee" shall be construed in the singular or plural as the context may require or admit

Maker's Address

LINKOUS CORPORATION

(SEAL)

(SFAT)

Jerry Linkous, President

(SEAL)

All certificates delivered in San Jose

535663

Warranty Deed

(STATUTORY FORM—SECTION 689.02 FS)

This Indenture, Made this 5th day of September, 1984
LINKOUS CORPORATION, a Florida corporation,

of the County of Martin State of Florida

WALTER L. BARBER and BECKY BARBER, his wife

whose post office address is 111 West Fairview Avenue, Johnson City

of the County of Fnox State of Tennessee

Witnesseth That said grantor for and in consideration of the sum of
-----TEN (\$10.00)-----

and other good and valuable considerations said grantor in hand paid by said grantee the receipt
acknowledged has granted bargained and sold to the said grantee and grantee's heirs and assigns
described land situate ying and being in Martin County Florida to w

Lot 11, BAZ POINTE, according to the Plat thereof
on file in the office of the Clerk of the Circuit Court, in
and for Martin County, Florida, recorded in Plat Book 3,
Page 50.

SUBJECT TO restrictions, reservations and easements of
record and taxes for the year 1984 and thereafter..

MARTIN
COUNTY
FLORIDA

STATE OF FLORIDA
DOCUMENTARY STAMP TAX
DEPT. OF REVENUE
P3 506724 84
1103 225 00

OF FLORIDA
STAMP TAX
900 00

MPV 23 06

and said grantor does hereby fully warrant the title to said land and will defend the same against the
persons whomsoever

Grantor and grantee are used for signing or plural as context requires
In witness whereof, Grantor has hereunto set grantor's hand and seal the day and year first
signed and delivered in our presence

Walter L. Barber
Becky Barber

LINKOUS CORPORATION
[Signature]

STATE OF FLORIDA
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day before me an officer duly qualified to take acknowledgments personally
JERRY LINKOUS, as President of LINKOUS CORPORATION,
Florida corporation,
is the known to be the person described in and who executed the foregoing instrument and acknowledges
he executed the same

WITNESS my hand and official seal in the County and State aforesaid this 5th day of September,
1984

My Comm. No. 2201 111

Notary Public, State of Florida at Large
My Commission Expires June 30, 1988
Notary: [Signature] Commission & Clerk, Inc.

State of Florida at Large
My Commission No. 2201 111

EXHIBIT C

536661

Warranty Deed

(STATUTORY FORM—SECTION 689.02 F.S.)

This instrument was prepared by:

Name Linkous Corporation
P.O. Box 742
Jupiter, Florida 33463

This instrument, Made this 30 th day of May 19 84 Between

LINKOUS CORPORATION a Florida Corporation P O Box 742 Jupiter
 Florida 33463
 of the County of Palm Beach State of Florida grantor and

Walter L. Harber and Becky Harber his wife
 whose post office address is 111 West Fairview Avenue, Johnson City, Tennessee 37601

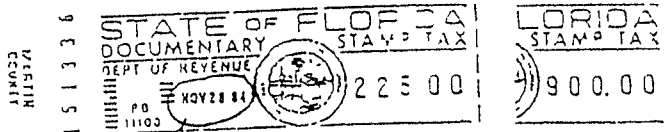
of the County of KNOX State of Tennessee grantee

Witnesseth That said grantor for and in consideration of the sum of _____

_____ TEN (\$10 00) _____ Dollars
 and other good and valuable considerations to said grantor in hand paid by said grantee the receipt whereof is hereby
 acknowledged has granted bargained and sold to the said grantee and grantee's heirs and assigns forever the following
 described land situate lying and being _____
 Martin County Florida to wit:

Lot 12, BAY POINT according to the Plat thereof on file in the office
 of the Clerk of the Circuit Court, recorded in Plat Book 9 Pages 50
 of the Public Records of Martin County, Florida.

Subject to restrictions reservations easements of record and taxes
 for the year 198-



and said grantor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all
 persons whomsoever

* Grantor and grantee are used for singular or plural as context requires

In Witness Whereof _____
 Signed sealed and delivered in our presence _____

LINKOUS CORPORATION

By: Jerry Linkous, President

(Seal)

(Seal)

(Seal)

(Seal)

STATE OF Florida
 COUNTY OF Palm Beach

I HEREBY CERTIFY that on this day before me an officer duly qualified to take acknowledgments personally appeared

Jerry Linkous as President of Linkous Corporation, a Florida Corporation

to me known to be the person seen and who executed the foregoing instrument and acknowledged before me that
 he executed the same

WITNESS my hand and official seal in the County and State aforesaid this 30 th day of May
 19 84

My Commission expires _____

Notary Public

NOT PUBLIC UTATION OF 010
 2003 MAY 28 10:00 AM

33 620 112002



Manufacturers and Traders Trust Company
654 Madison Avenue New York, N.Y. 10021
1 M&T Plaza Buffalo, N.Y. 14243
(716) 842 5107

CREDIT ADVICE

WARREN D JOHNSON
11951 E YATES CENTER RD

LYNDONVILLE, NY
USA 14098

We have credited your account number: 7942247340

DATE: 03/25/94

OUR REFERENCE: 940325001085000

RELATED REF: 0052

AMOUNT: 250,000.00

RECEIVED VIA: Fedwire

FROM:

BY ORDER OF:

INDEPENDENT BKRS BANK OF FLA
INDEPENDENT BKRS BANK OF FLA
ORLANDO
FL

ADMIRALTY

OMAD: 3PB2Q8921CF000228

DETAILS OF PAYMENTS:

ADDITIONAL INFORMATION:

B/O JERRY LINKOUS LINKOUS CORP

EXHIBIT

722

LAW OFFICES OF
LYMAN AND LYMAN
ATTORNEYS AND COUNSELLORS
51 NORTH MAIN STREET
ALBION NEW YORK 14411-1296

NATHAN M. LYMAN
LOUIS G. MASCO

TEL (716) 589-5623
FAX (716) 589-1292

CURTIS LYMAN SR 3925 9921

October 13, 1994

Jeff Johnson
12118 E. Yates Road
Lyndonville, New York 14093

re: Ice Ban

Dear Mr. Johnson:

Kindly find enclosed five sets of the Product License Agreement relative to the above captioned matter, which need to be signed by you before a Notary Public.

Thank you for allowing us to be of assistance in this matter.

Very truly yours,

LYMAN AND LYMAN, ESQS.


Nathan M. Lyman

NML/sd
enc

00000000

ENCLOSURE

723

Product License Agreement

This agreement is by and between DIANNE JOHNSON, licensee of a FLORIDA Corp., hereinafter identified as "Eco Sno", and Ice Ban, Inc., a New York Corporation herein identified as "Licensee".

Whereas, Eco Sno is the sole owner of the invention and Patents for the use of the condensed residue of the distillation of industrial alcohols, and also vinaculture fermentation residue, alone or mixed, or with or without additives, as an anti-freeze agent for roadway snow and ice control, and for other anti-freeze snow and ice control uses; and,

Whereas, Eco Sno wishes and intends to develop the use of its Patent protected products, hereinafter identified as "Product", to develop the full potential for its use as an anti-freeze agent, and to fully exploit the economic value and use of the Product; and,

Whereas, in order for the Product's use to be fully exploited at the earliest time, Eco Sno intends to license the use of the Product in some selected areas, to certain selected licensees; and,

Whereas, Licensee has carefully reviewed the Patent and examined the Product use and available technical data; and,

Whereas, Licensee desires to and herein makes application to acquire a license for the exclusive use of the Product to be used as a roadway anti-freeze snow and ice control agent in and throughout the licensed area, which area is identified in paragraph 1 below and in Exhibit "A" attached, and,

Whereas, Licensee intends to, warrants and commits itself to the full development and use of the Product in the license area, and intends to establish all required marketing, sales, public information programs, and to provide for all storage, handling, transportation, and distribution facilities and required equipment and agrees to purchase or otherwise arrange for the total estimated yearly Product supply requirement in the license area at its own expense, and,

Whereas, because of licensee's commitments, promises and warranties to develop, provide, sell and use the Product in the license area to its fullest potential, Eco Sno intends to enter into a limited license agreement with Licensee for the described license area.

Now, therefore, for good and valuable considerations, it is agreed between the parties as follows:

1. The area and extent of the exclusive license area which Eco Sno provides to Licensee shall be the area described in Exhibit "A" and as indicated on the map attached to Exhibit "A".
2. The area above described and outlined in exhibit "A" is the SOLE total and only area in which Licensee shall have the right to market, use, and sell the Product. Licensee hereby specifically agrees that they shall not extend the use or sale of the product beyond the license area granted by this agreement, unless specifically authorized in writing by Eco Sno. Any such additional area authorization, shall be subject to the exclusive written approval of Eco Sno, and subject to any additional terms and fees required by Eco Sno for such area extension.
3. Licensee hereby agrees to pay an initial, non-refundable licensing fee to Eco Sno for the authorization to use the Eco Sno for the exclusive authorization to use the Product within the license area. The original licensing fee of Two Hundred Twenty-five Thousand (225,000 U.S. dollars) has been paid by Licensee to DIANNE JOHNSON by Warren D. Johnson Sr. on behalf of Ice Ban, Inc.
4. Licensee hereby agrees to pay an on-going licensing fee to Eco Sno for the use of the Product. The on-going fee of (\$5.00) U.S. dollars per U.S. ton of Product shall be paid monthly for each ton of Product sold or utilized in the license area. This licensing agreement shall commence upon the payment of the initial licensing fee, and the execution of this agreement, and shall continue until terminated according to the terms hereunder.
5. Eco Sno agrees to protect the license area from infringement by any unauthorized party or unauthorized user of the Product within the License area.
6. Prior to the execution of this agreement, and each July 15th thereafter, Licensee shall prepare a prospectus of anticipated Product required for the snow season in the license area. This prospectus shall contain details of marketing, sales, supply, storage, distribution arrangements, and anticipated product tonnage to be utilized in the license area. This prospectus is to be submitted to Eco Sno for its review no later than July 25th. Eco Sno shall have the exclusive right to ascertain that sufficient product is available and sufficient storage and distribution facilities, and required equipment are in place to deliver the Product in the license area as weather conditions require. If Eco Sno concludes that there is an insufficiency of any category of the business prospectus, Eco Sno shall have the exclusive right to modify the prospectus on or before August 30th for the coming snow season and Licensee shall thereafter adjust the prospectus and preparations accordingly.

7. The parties to this agreement acknowledge that Product utilization will ultimately be determined by the actual weather conditions, and the snow and ice each season, which will vary from year to year. However, it is agreed that the optimum Product exploitation and utilization by Licensee is the basis and reason for Eco Sno to enter into this license agreement with Licensee.

A. In the event Licensee fails to develop and exploit the full utilization of the product in the license area, Eco Sno shall at its sole determination of such failure notify Licensee of such failure in writing.

B. Licensee shall have 30 days to cure such failure.

C. If Licensee does not cure the said failure or otherwise correct the failure to the full satisfaction of Eco Sno, Eco Sno shall have the exclusive right to terminate this licensee agreement by giving written notice after said 30 day period.

D. Licensee hereby agrees that it acknowledges the right of Eco Sno to terminate this agreement for any failure or breach by Licensee at the sole discretion of Eco Sno.

E. Licensee further agrees that in the event of such termination by Eco Sno, Licensee shall not be entitled to a refund of the original licensing fee or any other payments made up to that time, or for any expenses or operating costs incurred by Licensee.

F. Licensee agrees to pay Eco Sno any outstanding Product use tonnage fee due, or other amounts due and payable to Eco Sno at the time of any termination.

G. Upon any termination Eco Sno shall have the right, and intends to, and shall immediately enter into a license agreement with others for the license area authorized in this agreement, in order to provide the necessary Product service in the license area.

8. Licensee agrees that it will not assign, sell, or otherwise transfer to any other entity, the rights granted herein to Licensee by Eco Sno without the prior written approval of Eco Sno of such transfer. Any transfer whatsoever of Licensee rights under this agreement without the written approval of such transfer by Eco Sno will immediately terminate this agreement, and terminate all of Licensee's rights in the license area, which terminated rights shall immediately revert To Eco Sno.

9. Eco Sno shall receive a monthly report of all sales and product use. Further, Eco Sno shall have the right to independently audit the books and records of Licensee to confirm the usage of the Eco Sno Product. Such audit, if any, may only be during normal business hours, and after five days written notice to Licensee.

10. This license agreement is an exclusive license to use, distribute, and sell the Product. It does not provide an exclusive right to Licensee to purchase or acquire the Product produced or available in the license area beyond its own Product needs. Eco Sno shall have the right in the subject license area to purchase Product and, or assign such purchase rights to others. The purpose of this provision is not to limit Licensee's Product supply but only to provide an adequate, reasonably priced Product availability to all licensees, and to prevent licensees in any Product production areas from monopolizing the production or supply in their license area beyond their actual seasonal need.

11. Licensee is an independent contractor. Licensee is not employed by, nor is an agent of Eco Sno. Licensee hereby holds Eco Sno harmless for any of its actions and agrees to protect Eco Sno against any claims or legal action, whatsoever brought against Licensee or Eco Sno in the license area, or any other court of competent jurisdiction.

Licensee shall provide complete business and vehicle liability insurance, at its own expense, from insurance carriers approved by Eco Sno, in form, limits and coverages required by Eco Sno. Further, Eco Sno shall be named in such insurance policy(s) as a named party, as its interests may appear, and is to receive copies of all notices pertaining to said insurance.

An original copy of the policy(s) shall be provided to Eco Sno at the execution of this agreement. Any extensions, modifications, new policies or cancellation notices must be provided to Eco Sno at least 30 days prior to any change, modification or termination date of the then current insurance coverages.

Failure of Licensee to provide or maintain the insurance required by Eco Sno shall result in the immediate termination of this license agreement.

12. Confidentiality. Licensee acknowledges the confidential nature of information and procedures which may be made available to Licensee by Eco Sno and shall not disclose to anyone other than an authorized employee any information or procedures. Any confidential literature or documents given to the Licensee will be returned at the expiration or termination of this license.

13. Reporting Requirements. The Licensee shall submit to Eco Sno, on forms approved or provided by Eco Sno, such financial and operating information as required by Eco Sno to establish the

gross revenue of the Licensee. The Licensee, by these presents, consents to the use of such information by Eco Sno as it shall, in its sole discretion, determine. Eco Sno shall not identify such information, when and if released, with the name of the Licensee without the prior written consent of the Licensee.

14. Personnel. All personnel employed by the Licensee in connection with the handling, use and sale of Product shall maintain such standards and demeanor as shall be established by Eco Sno. Should any employee or prospective employee perform work which in the opinion of the Eco Sno requires special skill or knowledge, such employee shall be specially trained and shall take part in such instruction as may be determined by Eco Sno. All personnel performing managerial or supervisory functions, and all personnel receiving special training and instruction shall execute noncompetitive agreements in the form executed by similar employees of other licensees, as may be required by Eco Sno.

15. During the initial year of Product utilization, Licensee agrees to use the Product mixed with, or applied to the roadway surface simultaneously with any dry additive normally used in the license area for snow and ice control, such as sand, cinders, river gravel, etc., with a minimum of 50% admixture of the dry ingredient to enhance and insure roadway traction. Eco Sno and Licensee shall continue Product utilization testing to determine the optimum and most effective mixture percentage for the subject license area conditions, and to assure the lowest cost to each governmental entity utilizing the Product.

16. Restrictions on Licensee.

A. The Licensee shall not, during the term of this agreement and for a period of five (5) years thereafter, communicate or divulge to, or use for the benefit of, any other person, partnership, association, or corporation, any information or knowledge concerning the methods of manufacture, promotion, sale or distribution or use employed by Eco Sno in and about its business which may be communicated to the Licensee, or which the Licensee may acquire by virtue of its operation under the terms of this agreement; nor will the Licensee do any act prejudicial or injurious to the business or goodwill of Eco Sno. In addition, during such period of time. The Licensee shall not employ, or seek to engage any person who is employed by any other business operated under the Eco Sno name or of its other Licensees, and will not, directly or indirectly, induce any such person to leave his or her employment unless the Licensee has obtained the prior written approval of Eco Sno.

B. During the term of this agreement, and upon its termination for any cause, and for a period of Five (5) years

thereafter, the Licensee will not, directly or indirectly, enter the employment of, or render services to, any other person, partnership, association, or corporation engaged in the same or substantially similar business covered by this agreement in any area which can be reasonably termed competitive to Eco Sno or any of its licensees; and during such term of Five (5) years, the Licensee will not, within such territory engage, in such business on his own account, or become interested therein, directly or indirectly, as an individual, partner, shareholder, director, consultant, independent contractor, officer, clerk, principal, agent, employee, trustee, or in any relation or capacity whatsoever.

C. Upon termination of this agreement for any cause, the Licensee will immediately discontinue the use of all trade names, trademarks, signs, structures, and forms of advertising indicative of Eco Sno the Product, or the business; will make or cause to be made such changes in signs, buildings, and structures as Eco Sno shall reasonably direct so as to distinguish effectively the same from its former appearance and from any other of Eco Sno's places of business. If the Licensee shall upon request fail or omit to make such changes or cause them to be made, then Eco Sno shall have the right to enter upon the premises upon which such business is being conducted without being deemed guilty of trespasser or any other tort, and shall have the right to make such changes or cause them to be made at the expense of the Licensee, which the expense of the Licensee shall pay on demand. The Licensee shall also on request of the Eco Sno, and upon payment of the reasonable market value therefore, turn over and deliver to the Eco Sno, its representatives, agents or assigns, all matters and things bearing the trademark or trade names of Eco Sno or other Product trade names or market identifications in the license area.

D. Any Licensee trade name(s), trade mark(s) or trade slogan(s) describing the Product, the Product use, or Product benefits must be approved in writing by Eco Sno prior to the use of such identifications. Upon termination, for whatever reason, the Licensee hereby agrees to the immediate transfer of all right and title to such trade name(s), trademark(s) and/or slogan(s) whether registered with any government agency or not to Eco Sno; and Licensee further agrees that at termination it shall immediately cease the use of any such Product trade or use names or slogans.

17. Independence of restrictive covenants. The covenants contained in this agreement shall be construed as independent of any other provision of this agreement, and independent of each other unless otherwise stated, and the existence of any claim or cause of action of the Licensee against Eco Sno, whether predicted on

this agreement or otherwise, shall not constitute a defense to the enforcement by Eco Sno of any of the covenants in this agreement.

18. Termination.

A. If the Licensee shall neglect or fail to perform or observe any of the Licensee's covenants for a period of Thirty (30) days, or if any assignment shall be made of the business for the benefit of the creditors, or if a receiver, guardian, conservator, trustee in bankruptcy, or similar officer shall be appointed to take charge of all or part of the Licensee's property, or if the Licensee is adjudicated a bankrupt, then unless such condition or conditions are remedied to the satisfaction of Eco Sno within thirty (30) days after written notice thereof has been given to the Licensee, the license hereunder shall cease.

B. In the event of any failure by the Licensee to pay any amounts owed to Eco Sno, Eco Sno shall be entitled to collect same, together with a delinquency charge of one and one half percent, (1.5) percent per month from the date first due, and have paid to Eco Sno reasonable attorney's fees necessary to collect amounts owed by Licensee to Eco Sno.

19. Governing Law. This agreement and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of Florida. The Licensee herein waives trial by jury, and agrees to submit to the personal jurisdiction and venue of a court of jurisdiction in Palm Beach County, State of Florida, United States of America. In the event that litigation results from or arises out of this Agreement, or the performance thereof, the Licensee shall reimburse Eco Sno with reasonable attorney's fees, court costs, and all other expenses, whether or not assessable by the court as costs, in addition to any other relief to which Eco Sno may be entitled. No action by Licensee shall be entertained by said court, or any other court of competent jurisdiction, if filed more than one year subsequent to the date of the purported cause(s) of action, regardless of whether any damages were otherwise as of said time calculable.

20. Disclosure of Counsel. Eco Sno acknowledges that NATHAN LYMAN, ESQ, whose address is 51 N. MAIN ST, Albion, NY, has represented only the Licensee during the negotiation of this Agreement, and that it has not relied upon the advice of said Counsel in the negotiation of this Agreement or in the execution hereof, and that, should a dispute of any kind arise at any time between the parties hereto, a conflict of interest could result, and Eco Sno would engage other Counsel to represent it in such matters.

21. Contractual Procedures. Unless specifically disallowed by law, should litigation arise hereunder, service of process therefore may be obtained through certified mail, return receipt requested; the parties hereto waiving any and all rights they may have to object to the method by which service was perfected.

As to Eco Sno:

DIANNE JOHNSON
x George Janke, Pres.
Ecological Snow Control, Inc.
5600 N. Poinsettia Drive, Suite 1507
W. Palm Beach, Fl. 33407

As to Licensee:

JEFF JOHNSON, PRESIDENT
ICE BAN, INC.
121.3 EAST YATES ROAD
LYNDONVILLE, NEW YORK 14098

22. Extraordinary remedies. In the event of any breach by or termination of Licensee, to the extent cognizable at law, the parties hereto agree that in addition to any and all other remedies available to Eco Sno, Eco Sno may and is entitled to obtain injunctive relief, regardless of whether or not it can be demonstrated that other adequate remedy at law exists.

23. Licensee and all other licensees, hereby agree that they will contribute a sum equal to twenty five (25) cents per ton for each ton of Product sold, to match a similar contribution by Eco Sno. This contribution of funds will be placed in a trust fund to support environmental agencies, environmental scientific investigation and scholarship to seek other new environmental applications and use of Product and other new product developments.

If any significant discovery or invention or new use developed, licensee will have the first right and opportunity, at its option, to license the use of such application or product discovery in its license area. Any publicity or public benefits from trust fund contributions shall acknowledge Licensees participation in same.

24. This is the total agreement between the parties. There shall be no modification, change, addition, or deletion of this agreement unless in writing, executed by the parties hereto, and specifically made a part of this agreement.

Agreed and accepted by the parties hereto this day 3 day of
October 1994.

Signed, sealed and delivered
in the presence of:

Witness John A. Hargis

Witness Robert T. Jackson "LICENSOR" DIANNE JOHNSON

By [Signature]

(SEAL)

AS A RESALE OF HER LICENSEE TERRITORY
FROM ECOLOGICAL SNOW CONTROL, INC **

BY: [Signature]

Witness Louise A. Deering

Witness Ron M. Hargis

"LICENSEE" ICE BAN, INC., A NEW YORK
CORPORATION JEFF JOHNSON, PRESIDENT

STATE OF New York
COUNTY OF Cattaraugus

The foregoing instrument was executed and acknowledged
before me this 3rd day of October, 1994, by Diane Johnson
, as Licensor in the foregoing instrument.

Notary Public Glennda Sue Dickinson

(SEAL)

My commission expires:

GLENDA SUE DICKINSON
Notary Public, State of New York
Qualified in Orleans County
My Commission Expires June '5 1996

-9-

732

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STATE OF *New York*
COUNTY OF *Orleans*

The foregoing instrument was executed and acknowledged
before me this *5* day of *October*, 19*41*, by *Joseph J. Jones*
, on behalf of *See Far Exp.*
as Licensee in the foregoing instrument.

Notary Public *Gene L. L. L.*

(SZAL)

My Commission expires:

ULE L. L. L.
Notary Public in the State of New York
Orleans County
Commission Expires September 5, 19*41*



Capital Gains and Losses

▶ Attach to Form 1040. ▶ See Instructions for Schedule D (Form 1040)
▶ Use lines 20 and 22 for more space to list transactions for lines 1 and 9.

1994

Attachment
Sequence No **12**

Name(s) shown on Form 1040

WARREN D & DIANNE J JOHNSON

Your social security number
054-34-8545

Part I Short-Term Capital Gains and Losses-Assets Held One Year or Less

(a) Description of property (Example: 100 sh. XYZ Co)	(b) Date acquired (Mo., day, yr)	(c) Date sold (Mo., day, yr)	(d) Sales price (see page D-3)	(e) Cost or other basis (see page D-3)	(f) LOSS If (e) is more than (d) subtract (d) from (e)	(g) GAIN If (d) is more than (e), subtract (e) from (d)
Franchise Rights	6/01/94	10/01/94	225,000	10,000		215,000
2 Enter your short-term totals, if any, from line 21	2					
3 Total short-term sales price amounts. Add column (d) of lines 1 & 2	3		225,000			
4 Short-term gain from Forms 2119 and 8252, and short-term gain or (loss) from Forms 4684, 8781, and 8824	4					
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5					
6 Short-term capital loss carryover. Enter the amount, if any, from line 9 of your 1993 Capital Loss Carryover Worksheet	6				598,849	
7 Add lines 1, 2, and 4 through 6, in columns (f) and (g)	7				598,849	215,000
8 Net short-term capital gain or (loss). Combine columns (f) and (g) of line 7	8					-383,849

Part II Long-Term Capital Gains and Losses-Assets Held More Than One Year

9						
10 Enter your long-term totals, if any, from line 23	10					
11 Total long-term sales price amounts. Add column (d) of ln. 9 & 10	11					
12 Gain from Form 4797; long-term gain from Forms 2119, 2439, and 8252; and long-term gain or (loss) from Forms 4684, 8781, and 8824	12					
13 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	13					
14 Capital gain distributions	14					
15 Long-term capital loss carryover. Enter the amount, if any, from line 14 of your 1993 Capital Loss Carryover Worksheet	15				5,041,320	
16 Add lines 9, 10, and 12 through 15, in columns (f) and (g)	16				5,041,320	
17 Net long-term capital gain or (loss). Combine columns (f) and (g) of line 16	17					-5,041,320

Part III Summary of Parts I and II

18 Combine lines 8 and 17. If a loss, go to line 19. If a gain, enter the gain on Form 1040, line 13. Note: If both lines 17 and 18 are gains, see the Capital Gain Tax Worksheet on page 25	18	-5,425,169
19 If line 18 is a (loss), enter here and as a (loss) on Form 1040, line 13, the smaller of these losses: a The (loss) on line 18; or b (\$3,000) or, if married filing separately, (\$1,500) Note: See the Capital Loss Carryover Worksheet on page D-3 if the loss on line 18 exceeds the loss on line 19 or if Form 1040, line 35, is a loss.	19	3,000
		735

ICE BAN AMERICA, INC.
AGREEMENT TO ACQUIRE ICE BAN (NY), INC.

This Agreement is entered into this ____ day of _____ by and between **Ice Ban America, Inc.**, a Nevada Corporation, hereinafter referred to as "**IBA**" and **Ice Ban, Inc.**, a New York Corporation, along with stockholders Jeff Johnson, Dianne Johnson, Lawrence Pratt, Sharon Pratt, Paul Johnson, Patricia Wellspeak, Nathan Lyman, Roger Wolte, and Sandra Wolte, hereinafter collectively referred to as "**IBNY**" for **IBA** to acquire all rights titles and interest of **IBNY** in an exchange of **IBA** restricted common stock for one hundred (100%) percent of **IBNY** common stock issued and/or outstanding.

WHEREAS, **IBA** wishes and intends to acquire all rights, titles and interest to **IBNY**, and,

WHEREAS **IBA** is a publicly owned company which has authorized un-issued shares of stock available for acquisition, distribution or sale, and,

WHEREAS, **IBNY** is a privately owned corporation with a total of one hundred and five (105) shares issued to its stockholders, which represents one hundred (100%) percent of the issued and outstanding shares of **IBNY** and,

WHEREAS, **IBNY** wishes and intends to be acquired by **IBA** in an exchange of stock and to become a part of **IBA** and its operations.

NOW THEREFORE, for good and valuable considerations it is agreed between the parties that

1. **RECITALS:** The foregoing recitals are true and correct and are hereby made a part hereof.
2. **EXCHANGE OF STOCK:** **IBA** shall issue one million three hundred thousand (1,300,000) shares of its restricted common stock to **IBNY** in exchange for one hundred (100%) percent of the issued and outstanding stock in **IBNY** and all of the assets of whatever nature owned by **IBNY**.
3. **STATEMENT OF ASSETS:** The statement of assets and sales projections which are provided by **IBNY** are a condition of this Agreement. **IBNY** warrants said statements are true, accurate, and provide a complete list of **IBNY**'S assets and obligations (attached marked Exhibit "A").
4. **CLOSING TERMS:** Upon the execution of this Agreement, **IBA** shall deliver one million three hundred thousand (1,300,000) shares of its restricted common stock to **IBNY** in exchange for one hundred (100%) percent of the issued and outstanding shares of **IBNY** and all of **IBNY**'S assets and rights. The **IBA** shares of stock shall be issued to **IBNY** in the following names and quantities of stock:

Page 1 of 1

EXHIBIT G

B-24

736

NO. OF SHARES IBNY	NAME	NO. OF SHARES IBA
0	Warren Johnson, Sr *	
25	Jeff Johnson	100,000
25	Dianne Johnson	284,524
12.5	Lawrence Pratt	284,524
12.5	Sharon Pratt	142,262
13	Paul Johnson	142,262
7	Patricia Wellspeak	148,452
0	Nathan Lyman	74,106
2	Roger Wolle	74,280
2	Sandra Wolle	24,702
105 equal to 100% of IBNY stock and ownership		24,702 1,300,000

* Stock issued for seventy two thousand four hundred and seventy dollars and five (\$72,470.05) cents debt plus, two hundred twenty five thousand (\$225,000.00) dollars paid for Franchise

At the closing IBNY shall deliver all shares of IBNY stock to IBA. As a condition subsequent to the closing, IBNY shall deliver to IBA signed authorization by each IBNY stock holder which are included in this Agreement

5. **BCS PATENT PENDING AND TEMBIND™ PRODUCT:** As a condition of this Agreement, it is agreed between IBA and IBNY that the rights to the Brewers Condensed Solubles (BCS) patent application pending, and the Tembec, Inc., distribution rights for the Tembind™ Product in the United States shall be transferred and granted by IBNY to Ice Ban USA, Inc., a Florida Corporation hereinafter referred to as "IBUSA" which had previously been granted contractual rights to the BCS patent rights and the US Tembind™ distribution rights

For its transfer and in consideration for IBUSA to authorize this Agreement and the transferring of IBUSA'S granted rights to IBNY, IBUSA shall receive one hundred thousand (100,000) shares of IBA restricted stock at the time of closing of this Agreement. In consideration of this payment IBUSA shall grant to IBA the United States BCS patent application rights, and the Tembind™ United States distribution rights, on the same terms and conditions as the other patent rights granted by IBUSA to IBA.

6. **CLOSING:** Closing shall be on or before July 31, 1997, unless extended in writing by the parties hereto and it is understood that at the time of closing IBA will deliver the one million three hundred thousand (1,300,000) shares of IBA restricted common stock issued in the quantities and to the persons listed in Paragraph 5 above

7. **EMPLOYMENT AGREEMENT** As a condition of this Agreement Jeff Johnson has agreed to be employed, at the discretion of the Board of Directors of IBA as Vice President

Page 2 of

and Chief Operating Officer of IBA a minimum term of three (3) years. Jeff Johnson has previously been elected to the Board of Directors of IBA.

8. **COOPERATION:** Each party agrees to cooperate and to take such further action and to execute and deliver and complete any additional instruments and documents as the other party may from time to time reasonably request in order to effectuate and accomplish the purpose of this Agreement.
9. **INVESTMENT INTENT:** IBNY and its stockholders hereby acknowledge that the acquisition of the restricted common stock shares of IBA are for their own account for investment purposes only, and not with a view to the sale or other distribution in whole or in part.
10. **NON REGISTRATION OF SECURITIES:** IBNY acknowledges and understands that the shares of stock subject to the Agreement are being transferred pursuant to an exemption from registration under the Federal and State securities laws, and accordingly cannot be sold or transferred without the availability of an exemption from registration.
11. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement and understanding between the parties hereto with respect to the subject-matter hereof and supersedes all previous or contemporaneous written or verbal Agreements.
12. **GOVERNING LAW VENUE:** This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida. Venue of any litigation between the parties hereto with respect to the subject matter hereof shall be proper only in Palm Beach County, Florida.
13. **ATTORNEY'S FEES:** In the event that it becomes necessary for either party to utilize the services of an attorney to enforce any provision of this Agreement, IBNY shall pay the reasonable court costs and attorneys' fees incurred by IBA, including all costs at trial or appellate levels and including all costs associated with the execution of any judgments.
14. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which taken together, shall constitute one and the same Agreement.
15. **HEADINGS:** The headings contained in this Agreement are inserted only as a matter of convenience and in no way defines, limits, extends or prescribes the scope of this Agreement or the intent of any provision hereof.
16. **SEVERABILITY:** All Provisions of the Agreement are severable from the others and this Agreement shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein; all partially valid and enforceable provisions shall be enforced to the extent they are intelligible, valid and enforceable.

Notary
Felix Brown

Lawrence Pratt
Lawrence Pratt, Shareholder

STATE OF New York
COUNTY OF Orleans
Before me this 29 day of July, 1997 appeared Lawrence Pratt, Shareholder in Ice
Ban, Inc., who is personally known to me or produced the following identification
and whose name is subscribed to the foregoing document and
acknowledged to me that he executed the same

NATHAN M. LEMAN
Notary Public for the State of New York
My Comm. Expires September 15, 1997

[Signature] My Commission expires
Notary

Notary
Felix Brown

By Sharon Pratt
Sharon Pratt, Shareholder

STATE OF New York
COUNTY OF Orleans
Before me this 29 day of July, 1997 appeared Sharon Pratt, Shareholder in Ice
Ban, Inc., who is personally known to me or produced the following identification
and whose name is subscribed to the foregoing document and
acknowledged to me that she executed the same

NATHAN M. LEMAN
Notary Public for the State of New York
My Comm. Expires September 15, 1997

[Signature] My Commission expires
Notary

Notary
Felix Brown

By Paul Johnson
Paul Johnson, Shareholder

STATE OF New York
COUNTY OF Orleans
Before me this 29 day of July, 1997 appeared Paul Johnson, Shareholder in Ice
Ban, Inc., who is personally known to me or produced the following identification
and whose name is subscribed to the foregoing document and
acknowledged to me that he executed the same

NATHAN M. LEMAN
Notary Public for the State of New York
My Comm. Expires September 15, 1997

[Signature] My Commission expires
Notary

Notary

STATE OF New York
COUNTY OF Orleans

Before me this 29 day of July, 1997 appeared Patricia Wellspeak Shareholder in Ice Ban, Inc. who is personally known to me or produced the following identification and whose name is subscribed to the foregoing document and acknowledged to me that she executed the same

[Signature] My Commission expires
Notary

By Patricia Wellspeak
Patricia Wellspeak, Shareholder

NATHAN M LYMAN
Notary Public, State of New York
Qualified in Orleans County
Commission Expires December 26, 1997

[Signature]
[Signature]

By [Signature]
Nathan Lyman Shareholder

STATE OF New York
COUNTY OF Orleans

Before me this 29 day of July, 1997 appeared Nathan Lyman, Shareholder in Ice Ban, Inc. who is personally known to me or produced the following identification and whose name is subscribed to the foregoing document and acknowledged to me that he executed the same

[Signature] My Commission expires
Notary

GAIL T LYMAN
Notary Public, State of New York
Qualified in Orleans County
Commission Expires December 26, 1997

[Signature]
[Signature]

By Roger Wolte
Roger Wolte, Shareholder

STATE OF New York
COUNTY OF Orleans

Before me this 29 day of July, 1997 appeared Roger Wolte Shareholder in Ice Ban, Inc. who is personally known to me or produced the following identification and whose name is subscribed to the foregoing document and acknowledged to me that he executed the same

[Signature] My Commission expires
Notary

NATHAN M LYMAN
Notary Public, State of New York
Qualified in Orleans County
Commission Expires December 26, 1997

Witness
Felix Brown

By Sandra Wolfe
Sandra Wolfe, Shareholder

STATE OF New York

COUNTY OF Orleans

Before me this 29 day of July, 1997 appeared Sandra Wolfe, Shareholder in Ice Ban, Inc. who is personally known to me or produced the following identification and whose name is subscribed to the foregoing document and acknowledged to me that she executed the same

Notary

My Commission expires

NATHAN M. LYMAN
Notary Public, State of New York
Qualified in Orleans County

Commission Expires September 30, 1997

Witness
Felix Brown

By Dianne Johnson
Dianne Johnson, Shareholder

STATE OF New York

COUNTY OF Orleans

Before me this 29 day of July, 1997 appeared Dianne Johnson, Shareholder in Ice Ban, Inc. who is personally known to me or produced the following identification and whose name is subscribed to the foregoing document and acknowledged to me that she executed the same

Notary

My Commission expires

NATHAN M. LYMAN
Notary Public, State of New York
Qualified in Orleans County

Commission Expires September 30, 1997

ICE BAN, INC.

12118 E. YATES CENTER RD.
LYNDONVILLE, NY 14098

PHONE: 1-800-7-ICEBAN
FAX: 716-765-2452

July 27, 1997

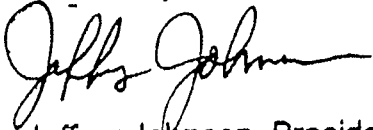
George Janke, President
Ice Ban America, Inc.
1201 US One - Suite 36
North Palm Beach, FL 33408

Dear George:

Dianne Johnson, owner of 25% of Ice Ban, Inc. was duly authorized to open an office in Florida and agreed to fund all expenses of the office at 511 SW Bay Pointe Circle, Palm City for our benefit. She will capitalize that investment as her basis cost in the 284,524 shares of Ice Ban America, Inc. stock that she will receive on the buy out.

Warren Johnson, Sr. will be issued 100,000 shares of Ice Ban America, Inc. for funds he loaned Ice Ban, Inc. and payments made in the amount of \$225,000 for the New York State franchise.

Yours truly,



Jeffrey Johnson, President

Ice Ban, Inc.
Balance Sheet
 As of July 28, 1997

	Jul 28, '97
360 - Accounts Payable	136,920.28
Total Accounts Payable	136,920.28
Credit Cards	
370 - Visa Card	
371 - Visa - Jeff 7276	-158.60
372 - Visa - Larry 7284	132.42
Total 370 - Visa Card	26.18
Total Credit Cards	-26.18
Other Current Liabilities	484.61
425 - Payroll Liabilities	484.61
Total Other Current Liabilities	136,378.71
Total Current Liabilities	
Long Term Liabilities	
470 Note - Charlotte Pratt	20,000.00
474 - Loan - Warren Johnson, Sr	72,470.05 *
Total Long Term Liabilities	92,470.05
Total Liabilities	228,848.76
Equity	
502 Common Stock	13,000.00
510 - Opening Bal Equity	-29,243.23
596 Retained Earnings	-10,732.98
Net Income	50,461.09
Total Equity	23,474.88
TOTAL LIABILITIES & EQUITY	262,323.64

* Paid in Full by issuing 100,000 shares Ice Ban America, Inc. (ICEB) on the buyout. This 100,000 shares of ICEB stock includes the above \$72,470.05 loan plus \$225,000 paid for the franchise fee for New York State.

The above license agreement as amended requires a quarterly royalty payment of 2% of sales, but not to exceed \$3.00 per ton nor to be less than \$2.00 per ton. [See Part III, Item 12, Certain Relationships and Related Transactions.]

On February 21, 1997, the Company entered into an agreement to sell common stock to Minnesota Corn Processors Company ("Minnesota Processors") in exchange for supplies of the raw material by product which Minnesota Processors produces and which the Company uses to produce ICE BAN®. This arrangement provided the Company with nearly fifty percent (50%) of the Company's product supply. In accordance with this agreement on February 21, 1997, the Company committed one million one hundred seventy thousand (1,170,000) shares of common stock to Minnesota Processors for the purchase of raw materials provided by Minnesota Processors for the ICE BAN® product. Over the life of the contract, the shares that were issued had a fair market value of \$296,527 and as of July 31, 2000 represent 65,966 shares or 0.21% of the issued and outstanding capital stock of the Company on a fully diluted basis. The amount of raw material supplied by Minnesota Processors was derived from a formula based on the market value of the product and the price of the Company's stock at the time of shipment, based upon a formula agreed to between the Company and Minnesota Processors. The contract provided: (1) Minnesota Processors agreed to conduct laboratory and field testing of ICE BAN®; (2) Minnesota Processors agreed to use its resources to promote further development of ICE BAN®; (3) Minnesota Processors agreed to provide rancage and distribution as well as sales and service in its market; (4) Minnesota Processors agreed to confidentiality and non compete provisions; (5) the Company granted Minnesota Processors an option to purchase an additional one million one hundred seventy thousand (1,170,000) shares on the same terms as previously agreed to, and (6) ASC granted Minnesota Processors pre-emptive rights to maintain a 15% stake in the Company. The Company relied upon the exemption from registration provided by §4(2) of the Act and Rule 506 of Regulation D ("Rule 506"), promulgated thereunder, and §30A.15 (Subd. 2)(b) of the Minnesota Code. This agreement was superseded by a supply agreement on October 19, 1999.

On July 29, 1997, in an exchange of stock, the Company acquired Ice Ban, Inc. ("IBNY"), the only licensee with territorial rights to ICE BAN® in the U.S. (i.e., upstate New York and Erie, Pennsylvania) which were not included in the original license to the Company. The Company issued one million three hundred thousand (1,300,000) shares of its restricted common stock to acquire 100% of the common stock of IBNY. At the time that the shares were issued, the shares had a fair market value of \$6,916,000 and as of July 31, 2000 represent 4.2% of the issued and outstanding capital stock of the Company on a fully diluted basis. As a result of this acquisition of IBNY, the Company's license now extends to the entire United States. In acquiring IBNY, the Company also acquired the national distribution rights from IBUSA to the TEMBIND® product. As part of the transaction, IBNY was obligated to assign the above rights to IBUSA with the further agreement that IBUSA would assign the rights to the Company or its designee, which it did, in consideration for one hundred thousand (100,000) shares of the Company's common stock. The shares had a fair market value of \$531,900 on the date of the transfer and represent 0.32% of the issued and outstanding capital stock of the Company. As part of this transaction, the above mentioned 100,000 shares of the Company's common stock were issued to IBUSA in consideration for IBUSA's expansion of the license of ICE BAN® products to upstate New York and Erie County, Pennsylvania. The Company relied upon the exemption from registration provided by §-2) of the Act and Rule 506.

On October 17, 1997, the Company formed Tembind America, Inc. as a wholly owned subsidiary to market the TEMBIND® product in the United States. On November 2, 1998, the Company changed the name of this subsidiary to Roadbind America, Inc. ("Roadbind"). At that time, the Company also discontinued use of the TEMBIND® brand name and began marketing its dust control and road stabilization product under brand names more related to its product distinctions. The Company now uses the trademarked name RB ULTRA™.

On July 7, 1998, the Company formed a separate corporation named Natural Solutions Corporation with the purpose of changing the name of the Company from Ice Ban America, Inc. to Natural Solutions Corporation. The newly formed corporation's name was changed to Ice Ban America, Inc. on December 7, 1998 and on that date the Company changed its name to Natural Solutions Corporation. The new name was adopted to better describe the Company's commitment to developing and marketing environmentally friendly products. The Company believes the new name is more suggestive of the year round nature of the Company's operations. As a result of these events, NSC has a wholly owned subsidiary named Ice Ban America, Inc. ("IBA").

Affidavit of Jerry P. Linkous

Date February 2, 2001

I, the undersigned, Jerry P Linkous say the following, which is, true and correct and based, upon my knowledge

My name is Jerry P Linkous

I am over (21) twenty one years of age, have always owned 100% of Linkous Corporation, and all matters set forth in this affidavit are true and correct and based on my personal knowledge

The government case against Warren D Johnson Jr (Case no 98-8039CR) is a fraud on the court and the prosecution has withheld information

On September 16, 1998 I took a new job with Broward County to coordinate the inspection of new schools under construction

On Monday morning previous to my job, I met with Carolyn Bell and Michael McBride to tell them that "The \$250,000 00 that Dr Walter Harber paid Linkous Corporation on March 23, 1994 was the principal payment for a river front lot in Bay Pointe that Dr Harber had not previously paid for."

Dr. Harber could have paid Linkous Corporation for the hook-up to a (10) ten-inch water main as per the Water Service Agreement in O R. Book 574 page 532 The pay off would have been \$251,200 77 with interest compounded at 10% (as per the attached letter) pro-rated to March 23, 1994 This hook-up charge is still unpaid, but never the less owed since Martin County breached our agreement

Dr Harber purchased Lots 11 and 12 in the Bay Pointe Subdivision from Linkous Corporation under a Resolution for an Agreement for Deed, and paid interest from approximately 1982 to 1986 (see-attached deeds). These deeds were recorded in 1984, but Dr Harber continued to pay interest on the unpaid principal for up to two additional years The project ran into a development delay, so interest was suspended after 1987 In 1982 Dr Harber sold Lot 11 for \$550,000 00 and there after paid the \$250,000 00 principal on March 23, 1994 If Dr Harber had not paid the principal, it would have been tax fraud on his part

I have always told the government that Linkous Corporation owed \$261,250 00 on a Cash Bond Agreement and Note to Warren D Johnson Sr I built a house for Warren D Johnson Sr on Jupiter Island, which he sold. Warren D Johnson Sr received over \$700,000 00 from the pay off on that mortgage just weeks before the October 18, 1983 loan of \$261,250 00 to Linkous Corporation for the Cash Bond Agreement with Martin

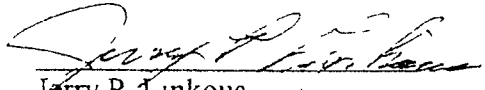
County (See Satisfaction of Mortgage-September 17, 1983 recorded in O R Book 581
page 1494 Martin County records)

These facts are clearly documented in the FBI (302) field report by FBI agent Thomas J
Pierce of Buffalo, New York on January 12, 1998, as well as the Government Document
Receipt of January 22, 1998 (see attached)

As per agent Pierce's FBI (302) field report, Warren D Johnson, Sr had numerous
medical conditions relative to cancer and heart I personally have an in-operable brain
tumor and Haiber has severe memory loss problems, however these records speak for
themselves, along with Harbers tax returns and cancelled checks The government has
always had these records

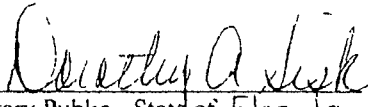
The simple facts are that Harber owed Linkous Corporation and Linkous owed Warren D
Johnson, Sr more than the \$250,000 00 paid March 23, 1994 The government's case
against Warren D Johnson, Jr was a fraud and they know it

Further affiant saith not


Jerry P Linkous

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 5 day of February 2001.
By Jerry P Linkous who produced identification and who did swear that the matters set forth
in this affidavit are true and correct


Notary Public - State of Florida



DOROTHY A. SISK
COMMISSION # CC755641
EXPIRES AUG 18, 2002
BONDED THROUGH
ADVANTAGE NOTARY OF FLORIDA



BAY POINTE
LUXURY WATERFRONT RESIDENCES

Dr. Walter Harber
111 Ridgemont Road
Johnson City, Tenn. 37601

RE: Hookup To 10 Inch Water Main Fronting Harbour Point
Phase on North and 6 Inch Water Main on East.

Dear Walt:

The Water Service Agreement in O.R. Book 574 Page 532
calls for new subdivisions to reimburse the developer
for costs. Your project was added to this system in
1987 by application for a P.U.D. Agreement filed on
behalf of the property by DeMartini and his engineers.

Please find the costs plus 10% compounded per year.
You may pay me when Lot 33 closes.

Cost of Water Main	\$ 90,000
Interest 6/19/84- 10%	99,000
6/19/85	108,900
6/19/86	119,790
6/19/87	131,769
6/19/88	144,946
6/19/89	159,440
6/19/90	175,385
6/19/91	192,923
6/19/92	212,215
6/19/93	233,437
6/19/94	256,780

You may make the check to Linkous Corporation on the above
at the closing and pro-rate.

Yours truly,

Jerry Linkous, President

August 24, 2000

Mr Robert Critton
Burman, Critton & Luttier
712 U S One
Suite 300
North Palm Beach, FL 33408-1588

Dear Bob.

Enclosed you will find a copy of the transfer of deeds from Linkous to Harber. Please note the amount of the Doc stamps. At the time of this transfer the stamp rate was 45 which according to Martin County records equates to \$250,000 00 each. This shows that Harber did owe Linkous the \$250,000 and Linkous did owe Warren, Sr. aprox. \$261,000 for the development of Bay Pointe. The fact that Harber did not pay Warren Sr until the Yager lot sale is really not relevant because the money was owed. It will probably be necessary to subpoena Harbers tax returns showing that only interest had been paid and that principal was never paid to Linkous until the Yager closing.

I hope this will help to clarify the issue for you. It certainly helped me to see the money was indeed owed to Linkous as Warren had stated all along

Sincerely,

Dianne Johnson

535663

Warranty Deed

(STATUTORY FORM—SECTION 689.02 FS)

This instrument was
made on
Date
P O
Address
North Palm Beach

This Indenture, Made this 5th day of September 19 '
LINKOUS CORPORATION, a Florida corporation,

of the County of Martin State of Florida

ALTER L. HARBER and BECKY HARBER, his wife

whose last office address is 111 West Fairview Avenue, Johnson City,

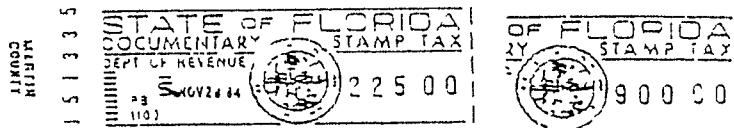
of the County of Knox State of Tennessee

Witnesseth, That said grantor for and in consideration of the sum of
-----TEN (\$10 00)-----

and other good and valuable considerations to said grantor in hand paid by said grantee he received and acknowledged has granted bargained and sold to the said grantee and grantee's heirs and assigns forever described and situate lying and being in Martin County Florida a w

Lot 11, BAY POINTE, according to the Plat thereof on file in the office of the Clerk of the Circuit Court, in and for Martin County, Florida, recorded in Plat Book 9, Page 50.

SUBJECT TO restrictions, reservations and easements of record and taxes for the year 1984 and thereafter.



and said grantor does hereby fully warrant the title to said land and will defend the same against the persons whomsoever

* Grantor and grantee are used for singular or plural as context requires

In witness whereof, Grantor has hereunto set grantor's hand and seal the day and year first signed, sealed and delivered in our presence:

ALTER L. HARBER
BECKY HARBER

LINKOUS CORPORATION
JERRY LINKOUS

STATE OF FLORIDA
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day before me an officer duly qualified to take acknowledgments personally JERRY LINKOUS, as President of LINKOUS CORPORATION, Florida corporation,

to me known to be the person described in and who executed the foregoing instrument and acknowledges he executed the same

WITNESS my hand and official seal in the County and State aforesaid this 5th day of September 19 84

My commission expires:

Notary Public, State of Florida at Large
My Commission Expires June 30, 1985
James W. Thompson, Notary Public, Johnson & Clark, Inc.

State of Florida at North Palm Beach
My commission expires:

536661

This instrument was prepared by:

Linkous Corporation

Name P O Box 742

Address Jupiter, Florida 33468

Warranty Deed (STATUTORY FORM-SECTION 689.02 F.S.)

This Indenture, Made this 30 th day of May 19 84 Between

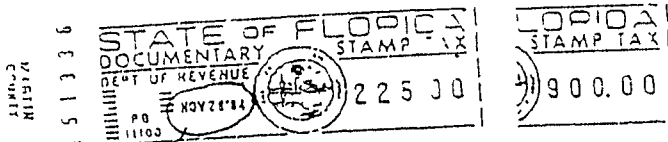
LINKOUS CORPORATION a Florida Corporation P O. Box 742 Jupiter
Florida 33468
of the County of Palm Beach State of Florida grantor and

Walter L. Harber and Becky Harber his wife
whose post office address is 111 West Fairview Avenue, Johnson City, Tennessee 37601
of the County of Knox State of Tennessee grantee

Witnesseth, That said grantor for and a consideration of the sum of _____ Dollars
and other good and valuable considerations to said grantor in hand paid by said grantee he receipt whereof is hereby
acknowledged, has granted bargained and sold to the said grantee and grantee's heirs and assigns forever the following
described land situate lying and being in Martin County Florida to wit

Lot 12, BAY POINTE according to the Plat thereof on file in the office
of the Clerk of the Circuit Court, recorded in Plat Book 9, Pages 50
of the Public Records of Martin County, Florida.

Subject to restrictions, reservations, easements of record and taxes
for the year 1984



and said grantor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all
persons whomsoever

* Grantor and grantee are used for singular or plural as context requires

In Witness Whereof

Signed sealed and delivered in our presence

Grantor has hereunto set grantor's hand and seal the day and year first above written

Walter L. Harber
Becky Harber

LINKOUS CORPORATION (Seal)
By: Jerry Linkous, President (Seal)
Jerry Linkous (Seal)
Jerry Linkous (Seal)

STATE OF Florida
COUNTY OF Palm Beach

I HEREBY CERTIFY that on this day before me an officer duly qualified to take acknowledgments personally appeared

Jerry Linkous as President of Linkous Corporation, a Florida Corporation

to me known to be the person described in and who executed the foregoing instrument and acknowledged before me that
he executed the same

WITNESS my hand and official seal in the County and State aforesaid this 30 th day of May
19 84

Walter L. Harber
Notary Public

My commission expires

NOTARY PUBLIC STATE OF FLORIDA
Commission Expires 11/30/84
SIGNED AND DELIVERED IN OUR PRESENCE

620 PAGE 2002

DOC STAMPS
PER \$ 100.00

BEFORE	1957			\$.10
JULY	1st	1957 through DEC.	1962	\$.20
JAN.	1st	1963 through SEPT.	1979	.30
OCT.	1st	1979 through JUNE	1981	.40
JULY	1st	1981 through JUNE	1985	.45
JULY	1st	1985 through JUNE	1987	.50
JULY	1st	1987 through MAY	1991	.55
JUNE	1st	1991 through JULY	1992	.60
AUG.	1st	1992 through		.70

MORTGAGE

THROUGH JUNE	1990			.15
JULY	1st	1990 through JULY	1992	.32
AUG.	1st	1992 through		.35

DOC STAMPS
PER \$ 100.00

BEFORE	1957			\$.10
JULY	1st	1957 through DEC.	1962	\$.20
JAN.	1st	1963 through SEPT.	1979	.30
OCT.	1st	1979 through JUNE	1981	.40
JULY	1st	1981 through JUNE	1985	.45
JULY	1st	1985 through JUNE	1987	.50
JULY	1st	1987 through MAY	1991	.55
JUNE	1st	1991 through JULY	1992	.60
AUG.	1st	1992 through		.70

MORTGAGE

THROUGH JUNE	1990			.15
JULY	1st	1990 through JULY	1992	.32
AUG.	1st	1992 through		.35

1983

Satisfaction of Mortgage

Know All Men By These Presents: That I
WARREN D. JOHNSON, SR., TRUSTEE

is the owner and holder of a certain mortgage deed executed by ALEX KLEMEK
to WARREN D. JOHNSON, SR., TRUSTEE

bearing date the 31st day of July A.D. 1980 recorded in Official Records
Book 198 page 2414 in the office of the Clerk of the Circuit Court of Martin County
State of Florida reciting two certain notes in the principal sum of (\$250,000.00) -----
SEVEN HUNDRED FIFTY THOUSAND THREE HUNDRED FIFTY TWO (752,352.60) -----
Dollars and certain premises and obligations set forth in said mortgage deed upon the property situate in said
State and County described as follows to wit:

A parcel of land being a portion of BLOWING ROCKS SUBDIVISION,
as recorded in Plat Book 1, Page 1, Martin County, Florida and
being more particularly described as follows:

The South 95.28 feet of Lot 26, together with the North 5.90 feet
of Lot 27, BLOWING ROCKS SUBDIVISION, as recorded in Plat Book 1,
Page 1, Martin County, Florida, public records, lying Easterly of
the East right-of-way line of State Road 707, as it now exists
Containing 1.00 acres more or less,

As the said mortgage deed may have been extended and modified
thereafter.

I hereby acknowledge full payment and satisfaction of said note and mortgage deed and surrender the
same as cancelled and hereby direct the Clerk of the said Circuit Court to cancel the same at record

Witness my hand and seal this 1st day of September A.D. 1983

Signed, sealed and delivered in Presence of
Robert T. Lane
Robert T. Baker

Warren D. Johnson, Sr. Trustee
Warren D. Johnson, Sr., Trustee
LS
LS

NEW YORK
STATE OF ~~FLORIDA~~
COUNTY OF ORLEANS

Notary No. 1494

I HEREBY CERTIFY that on this day before me an
officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments personally appeared
WARREN D. JOHNSON, SR., as Trustee

to me known to be the person described in and who executed the foregoing instrument and he acknowledged
before me that he executed the same

WITNESS my hand and official seal in the County and State last aforesaid this
September 1st A.D. 1983.

Butler T. Baker
NOTARY PUBLIC My Commission Expires
9/30/84

Return to
Fred Weinstein, Esq
1000 North Federal Highway, P.O. Box 426, Boca Raton, FL 33402

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 1/16/98

WARREN D. JOHNSON, Sr., who resides at 11951 East Yates Center Road, Lyndonville, New York, telephone number (716) 765-2786, date of birth February 9, 1921, was advised of the identity of the interviewing Agent

WARREN D. JOHNSON, Sr. was presented a United States District Court, Southern District of Florida, subpoena to testify before a grand jury by Special Agent THOMAS J. PIERCE at 11951 East Yates Center Road, Lyndonville, New York. Attached to the subpoena was an attachment which requested that any and all documents and records of any kind relating in any way to financial transactions between WARREN D. JOHNSON, Sr. and the following and/or entities in any way related to any of the following from January 1, 1978 up to and including the present. SA PIERCE pointed out this attachment to WARREN D. JOHNSON, Sr.

SA PIERCE then questioned WARREN D. JOHNSON, Sr. concerning his being listed as a creditor in the amount of \$17,000 involving a note dated August 10, 1978, from his son WARREN D. JOHNSON, Jr. WARREN D. JOHNSON, Sr. advised that he does not have any recollection concerning his being a creditor for the amount of \$17,000.00. Concerning the property named The Rolling Hills of Jupiter, WARREN D. JOHNSON, Sr. advised that he bought the property in approximately 1973 for the purchase price of \$5,000.00. He was made aware of this property by the former wife of his minister, JOAN THOMPSON. He had purchased the property, but WARREN D. JOHNSON, Jr. took care of all the business.

WARREN D. JOHNSON, Sr. was questioned concerning Subaru stock. He does not recall specifically the Subaru stock, but he does recall a lawsuit and the loss of monies. He does not recall how much money he had lost.

WARREN D. JOHNSON, Sr. was questioned concerning his interest in oil and gas wells. He advised that he did, in fact, own some oil and gas wells, but he does not recall where these wells are or when he owned them. He advised that he may have earned some interest on these wells.

Investigation on 1/7/98 at Lyndonville, New York

File # 49A-MM-62616

Date dictated 1/12/98

by SA THOMAS J. PIERCE: tac

49A-MM-62616

Continuation of FD-302 of WARREN D. JOHNSON, Sr., On 1/7/98 Page 2

WARREN D. JOHNSON, Sr. advised that he has no recollection concerning interest income, net farm losses, and adjusted income.

X WARREN D. JOHNSON, Sr. advised that he recalls that \$261,250 was gained from the capital from the sale of Jupiter Island. He stated that he loaned the money to Linkous Corporation and it was guaranteed by Bay Pointe.

X WARREN D. JOHNSON, Sr. advised that he does not recall a \$50,000 check from WALT HARBOR, but recalls that a \$250,000 deposit was made into his account which was the principal from the Linkous-Corporation loan. He advised that he waived the interest on the loan.

WARREN D. JOHNSON, Sr. advised that he recalled writing a \$125,000 check made payable to DIANE JOHNSON and subsequently transferred another \$100,000 into DIANE JOHNSON's account. These deposits were to be used for the start up costs for a company named Iceban. He does not recall transferring \$19,500 to DIANE JOHNSON's account in April 1996.

WARREN D. JOHNSON, Sr. advised that he had purchased a 1993 Cadillac from Marko Design. He recalls that he paid \$6,000 for the vehicle and that he is still in possession of the vehicle.

X WARREN D. JOHNSON, Sr. advised that he and his wife had recently returned from a two week trip to Florida. He also advised that he has numerous medical conditions which may preclude him from traveling to Florida to appear before the grand jury. He advised that he is undergoing treatment for cancer.

WARREN D. JOHNSON, Sr. advised that he has an attorney and that his attorney will handle the request of the subpoena.

WARREN D. JOHNSON, Sr. advised that he is aware of the Federal Bureau of Investigation (FBI) investigation concerning his son WARREN D. JOHNSON, Jr. He advised that a CARREN KALVISINO (ph), Certified Public Accountant, and his son WARREN D. JOHNSON, Jr. were involved in a dispute concerning property titled Bay Pointe Extension. It was his understanding that WARREN D. JOHNSON, Jr. had the right to purchase a parcel of land

49A-MM-62616

Continuation of FD 302 of WARREN D JOHNSON, Sr. On 1/7/98 Page 3

named Bay Pointe Extension. KALVISINO countered by stating that she had executive rights to the Bay Pointe Extension. This resulted in a lawsuit between WARREN D. JOHNSON, Jr. and KALVISINO, in which she had lost the lawsuit. KALVISINO has a brother or brother-in-law in the FBI and that is the reason why the FBI is investigating WARREN D. JOHNSON, Jr.

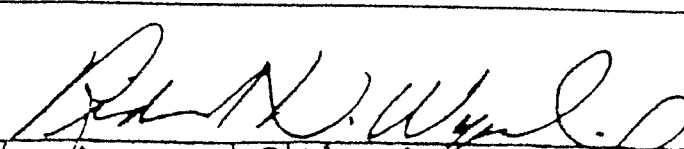
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

DOCUMENT RECEIPT

1. I, WARREN D. JOHNSON of
11951 E. Yates Center Rd., Lyndonville, NY 14098 have custody
and control of the documents listed below, which I have voluntarily
submitted to U.S. District Court, Grand Jury for Southern District of Florida

2. The documents submitted are as follows:

- (a) Mortgage Note in the amount of \$261,250.00 dated 10/18/83 signed by Jerry Linkous as President of Linkous Corporation
- (b) M&T credit verification of \$250,000.00-dated 3/25/94
- (c) Note in Farm Book of wire transfer of \$250,000 with note of "Return of Capital"
- (d) Note of wire transfer of \$100,000 - to Dianne Johnson on or about 3/28/94
- (e) Check of Dianne Johnson dated 3/28/94 for \$125,000.00
- (f) M&T Bank Statement for Warren D. Johnson for 3/24-4/22/94 indicating wire transfer of \$250,000 - and check 4152 of \$125,000
- (g) M&T Bank Statement of Warren D. Johnson for 4/23-5/23/94 indicating wire transfer of \$100,000
- (h) Check #3865 for \$2,000.00 to Adam Brown dated 10/11/92
- (i) Check #3886 for \$3,000.00 to Adam Brown dated 11/8/92
- (j) Florida vehicle registration of lease with Marko Design & Leasing, Inc.


Signature and Title of Persons Submitting Documents
Richard H. Wyssling, Attorney for Warren D. Johnson

1/22/98
Date

Signature of Agents Receiving Documents

Date

261,250.00

Jupiter, Florida
October 18, 1983

FOR VALUE RECEIVED, the undersigned, (jointly and severally, if more than one) promises to pay to
Warren D. Johnson, Sr., East Yates Road, Lyndonville, New York 14098

, or order, in the manner hereinafter specified,
: principal sum of TWO HUNDRED SIXTY ONE THOUSAND TWO HUNDRED FIFTY & 00-----/100 DOLLARS
261,250.00) with interest from date at the rate of SIX per cent. per annum on the balance from time to time remaining unpaid.
ie said principal and interest shall be payable in lawful money of the United States of America at East Yates Road, Lyndon-
ville, New York 14098, or at such place as may hereafter be designated by written notice from the holder to the maker hereof, on
: date and in the manner following.

NOTE SHALL BE GUARANTEED BY ~~XXXXXXXXXXXXXXXXXXXX~~ ^{WDJ} as to principal only, and Linkous Corporation shall guarantee this note with a Riverfront Lot in the Bay Pointe Subdiv-
ision. Warren D. Johnson, Sr. shall have the option to convert this note in to the
Riverfront Lot No. 5 after the Plat is recorded in the public records of Martin County,
for a period of three years. Another Riverfront Lot may be substituted for Riverfront
Lot No. 5 by mutual consent.

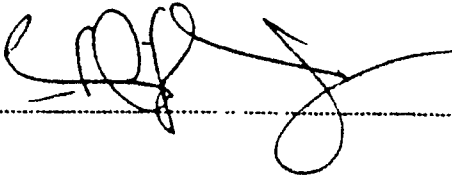
This note with interest is secured by a mortgage on real estate, of even date herewith, made by the maker hereof in favor of the said
payee, and shall be construed and enforced according to the laws of the State of Florida.

If default be made in the payment of any of the sums or interest mentioned herein or in said mortgage, or in the performance of
y of the agreements contained herein or in said mortgage, then the entire principal sum and accrued interest shall at the option of the
holder hereof become at once due and collectible without notice, time being of the essence; and said principal sum and accrued interest
all both bear interest from such time until paid at the highest rate allowable under the laws of the State of Florida. Failure to exercise
a option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

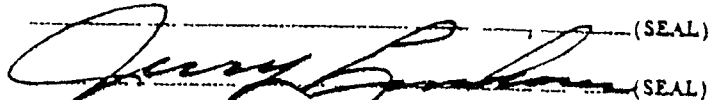
Each person liable hereon whether maker or endorser, hereby waives presentment, protest, notice, notice of protest and notice of dis-
onor and agrees to pay all costs, including a reasonable attorney's fee, whether suit be brought or not, if, after maturity of this note or default
reunder, or under said mortgage, counsel shall be employed to collect this note or to protect the security of said mortgage.

Whenever used herein the terms "holder", "maker" and "payee" shall be construed in the singular or plural as the context may
require or admit.

Maker's Address



LINKOUS CORPORATION (SEAL)



Jerry Linkous, President (SEAL)

EXHIBIT "A"

Seed Bank

122.67	248.17	
72.08	320.25	
316.16	636.41	
58.85		
81.33	717.74	
75.84	793.58	
295.50		
103.05	1043.31	Total Yr.
	1397.65	

March 1994

return of capital

on Note of \$261,250.00

date Oct 18, 1985

interest waived

250,000.00 wire transfer

EXHIBIT "C"



M&T Bank

Manufacturers and Traders Trust Company
654 Madison Avenue New York, N.Y. 10021
1 M&T Plaza Buffalo, N.Y. 14243
(716) 842 5107

CREDIT ADVICE

WARREN D JOHNSON
11951 E YATES CENTER RD

LYNDONVILLE, NY
USA 14098

We have credited your account number: 7942247340

DATE: 03/25/94

OUR REFERENCE: 940325001085000

RELATED REF: 0052

AMOUNT: 250,000.00

RECEIVED VIA: Fedwire

FROM:

BY ORDER OF:

INDEPENDENT BKRS BANK OF FLA
INDEPENDENT BKRS BANK OF FLA
ORLANDO
FL

ADMIRALTY

OMAD: 3PB2Q8921CF000228

DETAILS OF PAYMENTS:

ADDITIONAL INFORMATION:

B/O JERRY LINKOUS LINKOUS CORP

EXHIBIT "B"

2-43

760

Log No. _____

P & Z File No. _____

ESTIMATE FOR
ROADS, PARKING LOT, STORM DRAINAGE,
WATER AND SEWER CONSTRUCTION
ENGINEERING FEE ONLY

Owner/Developer Linkous Corporation Date August 27, 1983Address Plaza 222 US Highway #1 Telephone _____Tequesta, Florida 33458Name of Development Bay Point Lot(s) 31k(s)Section 5 Township 38S Range 41W Parcels/or Phase 1

DESCRIPTION OF COST

Clearing and Grading	\$ 5,000.00
Culvert Pipe and Inlet/Drain	30,203.00
Concrete Curbs	35,480.50
Paving Base	67,749.14
Paving Surface	50,071.00
Endwalls and Inlets	20,100.00
Swales	0.00
Material Tests	0.00
Sod, Seeding, and Mulching	1,003.96
Drainage Easements, Guardrails, Barricades, Rip-rap	0.00
Signs and Traffic Control Devices	250.00
Water and Sewer Lines	
Including Distribution Lines	
Miscellaneous	37,660.50
TOTAL	\$ 248,608.00

Prepared By Anand ThangForwarded for Posting oj

Approved: _____

H. Burton Smith, P.E.
Public Works Director and
County Engineer

Engineering Fee Due 82.5% \$ 6,215.20Engineering Fee Paid \$ 6,215.20**PAID**Signature of
Community Development Department

P. Connette
Date 10-20-83

ESTIMATE FOR
ROADS, PARKING LOT, STORM DRAINAGE,
WATER AND SEWER CONSTRUCTION
ENGINEERING FEE ONLY

Owner/Developer Linkers, Inc. Corp. Date August 22, 1983
Address Plaza 222 US Highway #1 Telephone _____
Tequesta, Florida 33458
Name of Development Bay Point Lot(s) _____ Blk(s) _____
Section 5 Township 38S Range 41E Parcels/or Phase 1

DESCRIPTION OF COST

Clearing and Grading	\$ 5,000.00
Culvert Pipe and Underdrain	30,203.00
Concrete Curbs	36,480.50
Paving Base	67,749.14
Paving Surface	50,071.00
Endwalls and Inlets	20,100.00
Swales	0.00
Material Tests	0.00
Sod, Seeding, and Mulching	1,003.86
Drainage Easements, Guardrails, Barricades, rip-rap	0.00
Signs and Traffic Control Devices	250.00
Water and Sewer Plants including Distribution Lines	37,660.50
Miscellaneous	0.00

TOTAL

\$ 248,603.00

Prepared By Anand. Thangj.
Forwarded for Posting lcj

Approved: _____

H. Burton Smith, P.E.
Public Works Director and
County Engineer

PAID

Engineering Fee Due @ 2.5% \$ 6,215.20

Signature of _____
Community Development Depart

Engineering Fee Paid \$ 6,215.20

RECEIVED

AUG 29 1983

EDUCATIONAL IMPACT AGREEMENT AND LIEN

COMMUNITY
DEV. SEPT.

This is an Agreement between THE SCHOOL BOARD OF MARTIN COUNTY, FLORIDA, hereinafter referred to as "THE SCHOOL BOARD", and LINGUOS CORPORATION, a Florida corporation its successors and assigns, hereinafter referred to as the "DEVELOPER."

WHEREAS Florida Statute §235.193, the Local Comprehensive Planning Act of 1975, Ch 61-2466 §31 Florida Statutes, and Article XI of the Martin County Comprehensive Plan establish State and local policy as requiring consideration of the effect of new residential development upon local public school facilities; and

WHEREAS the Developer seeks to satisfy this consideration with respect to the BAY POINTE PUD(-) Plat/PUD/DRI which has been submitted for approval of the Martin County Commission, by entering into this Educational Impact Agreement for the payment of an amount of money or donation and conveyance of land to The School Board to be utilized to offset the cost of providing additional educational facilities which the parties agree will be required and made necessary by the new residential development proposed by the Developer; and

WHEREAS the Developer is the owner in Fee Simple of the lands as described in Exhibit "A" attached hereto, which are the same lands as proposed for development; and

WHEREAS the schedule and method of payment of such money or donation of land and its utilization as provided herein are agreed as appropriate for the circumstances of the specific development proposed,

NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises and payments hereinafter set forth, The School Board and Developer agree as follows:

1. The Developer shall pay to The School Board an amount of money or donate land in accordance with the terms contained in Exhibit "B" attached hereto and made a part hereof.
2. The School Board agrees that payment in accordance with this Agreement satisfies Section 235.193, Florida Statutes, the Comprehensive Planning Act of 1975, Ch 61-2466 §3 Florida Statutes and Article XI of the Martin County Comprehensive Plan as to consideration of the educational impact of the proposed development on the public schools of Martin County.
3. The Developer shall make payment of educational impact fees directly to The School Board prior to the issuance of each building permit by Martin County.
4. The School Board shall acknowledge receipt of such money as is paid by the Developer when paid, and execute an appropriate Release, suitable for recording in the Public Records of Martin County, for the particular lots or units for which the fees are paid.
5. This Agreement is made expressly contingent upon approval by the Board of County Commissioners of Martin County of the proposed development of 26 single family homes type residential units. Upon such approval this Agreement will become fully effective and binding, and absent such approval this Agreement shall be null and void and have no force and effect.
6. The Developer shall advise The School Board of any changes as to number or type of residential dwelling units, and their projected completion schedule.

EXHIBIT "B"

A. Fees Agreed to be Paid.

1. Prior to the date of issuance of a building permit for the construction of a residential dwelling unit in the development area, the appropriate fee for the type of dwelling unit to be constructed as established by the School Board fee schedule then in effect shall become due and payable and shall be paid by the Developer to The School Board. The applicable fee in effect as of the date of this Agreement is \$402.06 per single-family dwelling unit.
2. The Developer may have the obligation imposed hereby entirely discharged at any time prior to a revision of the fee schedule by The School Board by paying the following total amount now owed, less any fees paid:

\$10,453.56

B. Land Agreed to be Donated.

1. None.

MARTIN COUNTY, FLORIDA
INTER-OFFICE MEMORANDUM

RECEIVED

AUG 23 1983

Planning Division
2.2.3.

TO: Harry King
Planning Director

DATE: August 23, 1983 FILE PW-83-1024

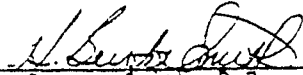
FROM: H. Burton Smith, P.E.
Public Works Director
and County Engineer

SUBJECT: BAY POINT PUD(x) - Requesting
Final Plat and Final Develop-
REFERENCES: ment Plan Approval

The approval for this development is recommended.

However, the developer shall be advised of the following comments:

- 1) Traffic control signs shall also be provided within the development. Show these signs on the plan.
- 2) Engineering fee amounting to \$6,215.20 shall be paid in accordance with resolution #194 (See attached form).
- 3) A letter of credit or bond shall be posted for \$249,608.00 for the improvements to be completed.


H. Burton Smith, P.E.
Public Works Director
and County Engineer

HBS/AJ/sc
Attachment

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 WASHINGTON, D. C. 20250
 OFFICE OF THE ASSISTANT SECRETARY FOR LAND MANAGEMENT
 1015 G STREET, N.W.
 WASHINGTON, D. C. 20540
 TELEPHONE (202) 755-1200
 FAX (202) 755-1201
 E-MAIL: BLM@BLM.GOV
 WWW: WWW.BLM.GOV

JANUARY 20, 2001

EXHIBIT L

JUDGE KENNETH RYSKAMP
UNITED STATES DISTRICT COURT
WEST PALM BEACH, FLORIDA 33401

RE: WARREN D. JOHNSON, JR. CASE NO. 98-8039 CR RYSKAMP

DEAR JUDGE RYSKAMP:

I AM WRITING THIS LETTER BY HAND, BECAUSE THE JAIC WILL NOT ALLOW ME ACCESS TO A LAW LIBRARY AND HAVE TAKEN AWAY MY U.S. POSTAL STAMPS AS WELL AS OPENING MY LEGAL MAIL, BREACHING MY ATTORNEY/CLIENT PRIVILEGE.

I STARTED A MOTION, PRO SE TO BE FILED WITH JUDGE FRIEDMAN'S COURT, BUT CANNOT FINISH WITHOUT A TYPEWRITER. I HAVE ENCLOSED A COPY OF THE MOTION SO FAR, AND IT SPEAKS FOR ITSELF. THE GOVERNMENT IS NOW THREATENING MY FAMILY TO GIVE UP THEIR LEGALLY PURCHASED ASSETS (OR) FACE INDICTMENT. (EXTORTION AND DURESS)

SEE PAGES OF THE TRIAL TRANSCRIPT # 1179 & # 531.

LET'S DEAL WITH IT NOW !!!

DR. WALTER HARBUR PURCHASED TWO LOTS FROM LINKOUS CORPORATION. HIS TAX RETURNS WILL SHOW HE PAID INTEREST IN 1982 & 1983. HE RECEIVED BOTH DEEDS IN 1984 AND THEY WERE RECORDED NOV 28, 1984. HIS TAX RETURNS WILL SHOW HE CONTINUED TO PAY INTEREST ON A RESOLUTION FOR AN AGREEMENT FOR DEED FOR UP TO TWO MORE YEARS, UNTIL THE PROJECT RAN INTO TROUBLE. (100 YEAR FLOOD, FILL WASHING INTO RIVER, SEAWALL & ENTRANCE PROBLEMS). HE SOLD LOT 11 TO JOHN PIERRE IN 1992/93 AND FILED A TAX RETURN. HIS BASIS COST WAS \$250,000 WHICH HE PAID 3/23/94 FROM A CLOSING WITH DOCKER YOUNGER. HE OWNED 100% OF ALL OF BOCA POINTE ESTATE LOTS AS OF 11/1/94 AS PER TWO DOCUMENTS FILED IN THE PUBLIC RECORDS OF MARTIN COUNTY.

WE ALSO KNOW FROM THESE PUBLIC RECORDS THE Bay Pointe Estates LAND TRUST ONLY EXISTED FOR A SHORT TIME. WE ALSO KNOW THAT THERE WAS NO PROFIT FROM THAT DEAL. THERE IS ONLY ONE CHECK WHEREBY HARBER PAID CINKOUS THE PRINCIPAL ON HIS LOT FOR \$250,000 AND IT WAS MARCH 23, 1994 FROM HARBERS 100% OWNERSHIP SALE TO YEAGER.

THE GOVERNMENTS CASE IS A FRAUD. PLEASE FIND ENCLOSED MY COMPLAINT TO THE O.P.R. IN WASHINGTON, DC. THE DOCUMENT SPEAKS FOR ITSELF.

ORDER THE PRISON SYSTEM TO ALLOW ME ACCESS TO A LAW LIBRARY AND TYPEWRITER SO I CAN FILE PROPER MOTIONS WITH YOUR COURT AND JUDGE FRIEDMAN'S COURT FOR EMERGENCY HEARINGS. THIS HAS ALWAYS BEEN A CIVIC CASE BETWEEN ME AND THE BOND HOLDERS.

JIM EISENBERG WAS HIRED BY MY FAMILY TO DO AN APPEAL. IF YOU DECIDE TO STRIP MY FAMILY OF THEIR LAWFUL PERSONAL PROPERTY AND GIVE 90% OF THE FUNDS TO THE BONDHOLDERS ON A GUARANTEE I NEVER SIGNED. SO BE IT. THE BONDHOLDERS PURCHASED MY PROJECT AT A FORECLOSURE SALE FOR \$1000 UNDER NATIONS BANK, AS TRUSTEE. THEY MADE A MAJOR MISTAKE UNDER LAW BY MERGING THE TITLE AND INTEREST TO THE 28 MILLION DOLLAR MORTGAGE. UNDER FLORIDA LAW THE MORTGAGE NO LONGER EXISTED THAT WAS THE SOLE COLLATERAL FOR 28 MILLION IN TAX FREE BONDS. THEY THEN WHITED OUT THE PURCHASER'S NAME & CHANGED THE DEED FROM THE CLERK OF THE COURT BY TYPING IN SUN BANK AS SUCCESSOR TRUSTEE. SINCE THE NAME DIDN'T FIT, I BELIEVE THEY ENCLOSED A COPY & RETURNED A FORGED COPY.

JERRY SPENCE WROTE IN HIS BOOK AND JUSTICE FOR NONE
THAT THE BIG BANKS CONTROL OUR GOVERNMENT.

THOMAS JEFFERSON WROTE "EXPERIENCE HAS SHOWN, THAT
EVEN UNDER THE BEST FORMS OF GOVERNMENT THOSE ENTRUSTED
WITH POWER HAVE, IN TIME, AND BY SLOW OPERATION,
PERVERTED IT INTO TYRANNY."

"1. RESISTANCE TO TYRANTS IS OBEDIENCE TO GOD."

"2. A SOCIETY THAT WILL TRADE A LITTLE LIBERTY FOR A
LITTLE ORDER WILL DESERVE NEITHER AND LOOSE BOTH."

PLEASE A SUBPOENA duces tecum to the I.R.S. AND
F.B.I. to produce HARBOR'S TAX RETURNS from 1982 to 1994,
ALONG WITH ANY OTHER CHECK FOR \$250,000 TO
PAY THE PRINCIPAL AS per the PUBLIC RECORD AND HIS TAX
RETURNS. IT DOES NOT EXIST, ~~THE PROOF IS~~

~~THE FACT THAT THEY DESTROYED THE FBI (302),
FIVE COPIES FROM THE FBI FILES WITH CINCOUS
MONDAY MORNING 8:00 OR ABOUT SEPTEMBER 19, 1998,
WHEN CINCOUS TOLD THAT (BEC & MCDONN) THE
\$250,000 US\$ PAYMENT FOR A CO. THE ALSO DID
A TELEPHONE MEETING WITH HARBOR ON THE SAME
DAY AND SCREENED A HUP FOR SAYING IT WAS FOR
A LOT~~

IN US V. TWOMEY JUDGE WYZANSKI, JR SAID "A CRIMINAL
TRIAL IS NOT SUPPOSED TO BE A SACRIFICE OF UNARMED
PRISONERS TO GLADIATORS."

TO INDICT OTHER FAMILY MEMBERS WOULD NOW BE ILLEGAL
UNDER THE CITIZEN'S PROTECTION ACT PASSED BY CONGRESSMAN
JOHN P. MURTHA.

B-57

= -

YOURS RESPECTFULLY, 769
WARREN D. JOHNSON, JR.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,
Plaintiff,

CASF NO. : 98-8039-CR-RYSKAMP

v.

WARREN D. JOHNSON, JR.
Defendant-Petitioner.

_____/

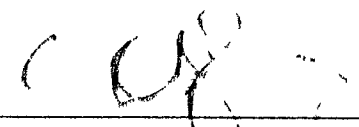
NOTICE OF FILING ADDITIONAL DOCUMENTATION AS EXHIBIT B
PAGES B-58 to B-64 IN SUPPORT OF DEFENDANT'S PREVIOUS FILING OF A
COMBINED MOTION AND JUDICIAL NOTICE UNDER 201 (d) F.R.E.

COMES NOW, Petitioner Warren D. Johnson, Jr., In Propria
Persona and Sui Juris, and hereby files into this Court the
following:

1. EXHIBIT B, pages B-58 to B-65, attached herein as an
addition to the existing EXHIBIT B, pages B-1 to B-57 on file
in this case.

RESPECTFULLY submitted this 6th day of March, 2003.

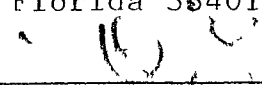
Respectfully submitted,



Warren D. Johnson, Jr.
53225-004 A-3 Low
Federal Correction Complex
P.O. Box 1031
Coleman, Florida 33521-1031

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing is true and correct and
a copy of this document was mailed by First Class Mail on the
6th day of March, 2003 to: Carolyn Bell, AUSA, 500 South
Australian Blvd., West Palm Beach, Florida 33401-6235.

BY:  770

Warren D. Johnson, Jr.

Dkt. 207 (03/10/03)

AFFIDAVIT OF JEFFREY A. JOHNSON

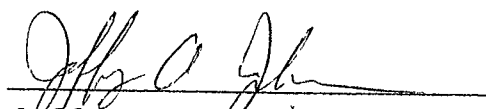
UPON BEING DULY SWORN, I the undersigned, Jeffrey A. Johnson say the following, which is true and correct, under penalty of perjury and based on my knowledge and belief:

1. I filed an Affidavit for this case, 98-8039-CR-RYSKAMP, which was notarized March 19, 2002; and, entered into the record of the case as EXHIBIT B, pages B-1 to B-57. The facts contained in that Affidavit are undisputed.

2. I have further supplied a document, GOVERNMENT IMPROPRIETIES REGARDING THE TRIAL OF WARREN D. JOHNSON, JR.- Chronological Business History of Warren D. Johnson, Jr. along with the government's misrepresentation and lies regarding the facts, which document has been supplied to the Congressional Investigation of government misconduct, and the Inspector General Glen A. Fine's investigation, which opened October 2002.

3. I now affirm the aforesaid document under oath, and add same as pages B-58 to B-64 to my previous Affidavit.

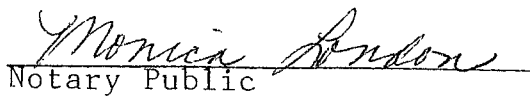
FURTHER, AFFIANT SAYETH NAUGHT.


Jeffrey A. Johnson
12118 East Yates Road
Lyndonville, New York 14098

STATE OF NEW YORK
COUNTY OF ORLEANS

771

The foregoing instrument was acknowledged before me this 25th day of February, 2003, by Jeffrey A. Johnson, who is personally known to me or who has produced identification and who took an oath/affirmed.


Notary Public

MONICA LONDON
Notary Public in the State of New York
ORLEANS COUNTY
Commission Expires June 30, 2006
My Commission Expires:

Government Improprieties Regarding the Trial of Warren D. Johnson, Jr.

Case # 98-8037-CR-RYSKAMP

Chronological Business History of Warren D. Johnson, Jr. along with the government's misrepresentation and lies regarding the facts.

A) Warren D. Johnson, Sr. Trustee (Father of the defendant) purchases a piece of property on Jupiter Island, Florida from E. J. Lavino and Company from Philadelphia, Pennsylvania. The property was subdivided into lots and sold by Warren, Sr. The net gain on the sale of the Jupiter Island lots as reported on Warren, Sr.'s income taxes are as follows.

1978 Schedule D \$58,219 net gain

1979 Schedule D \$187,581 net gain

1980 Schedule D \$388,948 net gain from Warren, Sr.'s sale of oceanfront home on Jupiter Island.

Government lies at trial:

- 1) Warren Sr. (Father) was Warren Johnson Jr.'s nominee.
- 2) Jupiter Island lots were sold for 20 million dollars.
- 3) The 20 million dollars was placed in trust for Mark and Kelly Johnson, the son and daughter of Warren D. Johnson Jr.

Documents exposing the lies

- 1) Warren D. Johnson, Sr.'s Income Tax Returns from 1978-80
- 2) Contract between Warren, Sr. and E. J. Lavino and Company
- 3) Signed and executed contracts between Warren, Sr. and all the buyers of the lots on Jupiter Island that came to be called "Blowing Rocks Subdivision" that show that the gross receipts on the sale of all the lots was a small fraction of the 20 million dollars the government claimed.
- 4) That Mark and Kelly Johnson were paid \$9,000.00 respectively for each of their individual trusts as reflected on Warren, Sr.'s 1979 Income Tax Return Schedule "E"

It is important to note at this time that Warren D. Johnson, Jr. had gone through bankruptcy and was discharged in 1979. Because of the 1979 bankruptcy the government prosecutor and FBI agent lied also to Warren, Jr.'s probation officer, Patricia Borah. By feeding Ms. Borah false information about the Jupiter Island deal, Ms. Borah represented to the court for sentencing purposes that Warren, Jr. had a history of hiding assets from the bankruptcy court. (Totally False) Because of Ms. Borah's report Warren, Jr. received a lateral movement from a civil conviction to a criminal conviction with an upward movement of 2 points. This virtually doubled Warren, Jr.'s sentence. All based on the biased information supplied by the prosecutor and the FBI per Patricia Borah's own words.

B) On October 18, 1983 Warren Johnson, Sr. loans 261,250.00 to Linkous Corporation a Florida Contractor for the purpose of installing the roads, sewer, and water lines in a land development project called Bay Pointe. (Warren, Sr. took a note from Linkous Corporation signed by the President, Jerry Linkous)

Document on record: Note between Warren, Sr. and Linkous Corporation

C) In 1984, Dr. Walter Harber along with his wife Becky purchased lots 11 and 12 in Bay Pointe from Linkous Corporation under a "Resolution of Agreement for Deed" This means that Dr. Harber need only pay the interest on the value of the two lots and not have to pay any principle until he sells the lots. A "Resolution of Agreement for Deed" is used as a selling tool for real estate speculators. Lots were valued at \$250,000.00 (The selling price to Harber) each per Martin County, Florida records. Dr. Harber paid Linkous Corporation \$50,000.00 each year for 5 years (10% interest on \$500,000.00)

Documents on record:

- 1) Signed Resolution for Agreement for Deed between Linkous Corp. and Walter Harber.
- 2) Bate Stamps from Martin County Records showing purchase value of lots 11 and 12 at \$250,000.00 each

FBI Violations: Dr Harber's income tax returns showing the payments of \$50k each year for 5 years as interest payments. The FBI had Harber's Income tax returns but did not supply them to Warren, Jr. or his defense counsel. FBI Special Agent Michael McBride interviewed Dr. Walter Harber and Jerry Linkous. When a FBI Agent interviews someone the agent has to fill out a 302-field report. No 302-field reports were supplied to Warren Johnson, Jr.'s defense counsel. It was post trial that I Jeffrey A. Johnson conducted a taped (With the interviewee's permission)

conversation with Dr. Harber and Jerry Linkous. They stated to me that they had told the FBI that Warren, Jr. was innocent of the issues he was charged with and they supplied the FBI with documentation to prove Warren's innocence. If the 302-field reports had have been given to Warren's defense counsel, Warren would never have been convicted. This is a clear legal violation whereby evidence was withheld or destroyed by the government and would have proven Warren, Jr.'s innocence.

D) Around the year 1990 Warren Johnson, Jr. owned an option to purchase an adjacent piece of property to Bay Pointe. Warren Johnson, Jr. did not have sufficient funds to close on the property, so Warren sold his option to Dr. Walter Harber, James Lindsey, and Adam Brown for 80 some thousand dollars. (Adam Brown is Warren, Jr.'s son-in-law and was recognized as the top real estate salesman in South Florida)

Note: Warren D. Johnson, Jr. declares bankruptcy and is discharged in 1991

Harber, Lindsey, and Brown developed the property and in early 1994 sold a lot to a man named Dexter Yeager for \$550,000.00. Harber paid Linkous Corporation \$250,000.00 as a principle payment on his lots in Bay Pointe (See category C). Linkous Corporation then paid Warren D. Johnson, Sr. the \$250,000.00 to satisfy the note (See category B). Warren D. Johnson, Sr. accepted the 250k as payment in full and forgave the balance and interest not yet received.

Warren, Sr. a few weeks later sent down a series of 3 checks totaling \$225,000.00 made payable to Dianne Johnson, Warren, Jr.'s wife. One check for \$28,000.00 was to pay for a new 1994 GMC conversion van that I, Jeff Johnson, had purchased from Warren, Jr. and Dianne. I then paid the money back to my father, Warren, Sr. a few weeks later.

Warren, Jr. and Dianne used the \$225,000.00 to pay off accumulated bills, assist a business partner financially (George Janke), and start a new business in the road de-icing field.

Synopsis: Warren Johnson, Jr. was charged and found guilty of hiding an asset from his 1991 Bankruptcy. The asset in question was the \$225 k from the sale of the lot to Dexter Yeager (See category D). Warren, Jr. then laundered the money through Linkous Corp., through his father Warren Johnson, Sr., then back to Dianne, Warren, Jr.'s wife.

Issues of substance that caused an unwarranted guilty verdict:

1. Upon indictment all of Warren, Jr.'s assets were frozen. Warren could not afford an attorney of his choice so he was forced to take a public defender (Robert Adler).
2. Mr. Adler because of his caseload, only met with Warren once a week for a couple hours.
3. Because the trial took place just before Thanksgiving, Judge Ryscamp only gave the prosecution and defense a total of 8 days for the trial. Judge Ryscamp did not want to sequester the jury over Thanksgiving. The prosecution took the first 5 days leaving only 3 days for the defense and for the closing arguments.
4. Because of the time constraints and per Mr. Adler, "The lack of money", no witnesses were called to testify for the defense. Only Warren, Jr testified.
5. All evidence was read into the records for the defense. (This is very important and you'll see why)
6. Dr. Walter Harber was kept in a windowless room in the courthouse for 3 days by the prosecution waiting to testify. After the 3 days Dr. Harber was told to "Go get lost" by FBI agent McBride. (Harber was kept under wraps by the prosecution and they knew they weren't going to let him testify because Harber knew the truth and held the key to Warren's innocence.)
7. In closing arguments the prosecution laid out a mild closing statement. The defense laid out in their closing statements that the prosecution had not proved one thing against his client (Warren, Jr.). That all testimony was hearsay and most irrelevant to the issues being tried. In our judicial system the prosecution gets one more crack at the jury in closing and this is where Prosecutor Carolyn Bell did her damage. Ms. Bell proceeded to tell the jury that Warren Johnson, Jr. is a liar. Not just once but more than 10 times. Ms. Bell then told the jury "If all these people wanted to testified to Warren's innocence, why weren't they called to the stand". Then Ms. Bell questioned the jury by saying "Why did Warren, Jr. read the evidence into the record? How do we know he wasn't reading from a blank sheet of paper? I didn't see it did you?"
8. All the evidence in Harber's tax returns that would have shown the 250k was truly owed to Linkous. The 302-field reports on Harber and Jerry Linkous and God knows how much other evidence was destroyed or hidden from the defense by the government prosecutor and FBI.

ADDENDUM TO REPORT BY JEFFREY A. JOHNSON

In case no. 98-8039-CR-RYSCAMP there was no money laundering as the government claimed, but only legitimate payments from Dr. Walter Harber to Linkous Corporation for the principle payment on a riverfront lot in Bay Pointe. This is a legitimate cash-flow and not money laundering.

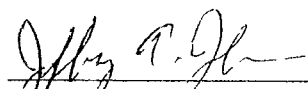
Dr. Harber could not remember if his payments were interest or principle, and was in error as to the interest rate being ten (10%) percent. Upon investigation we have now determined that Dr. Harber in fact payed Linkous Corporation eighteen (18%) percent interest from 1982 to 1986 on a Resolution for an Agreement for Deed. The principle amount was \$275,000.00 originally. Dr. Harber brought Dr. Jack Williams into the same deal, who also paid eighteen (18%) percent interest on the purchase of Lots 8 & 9 under a similar Resolution for an Agreement for Deed at a slightly higher principle amount. Dr. Harber's principle amount was re-negotiated and reduced to \$250,000.00. Dr. Williams sold his Lots back to Linkous Corporation and received a capital gain on his tax returns plus interest deductions for payments in the previous years.

These facts are well known to the United States and can be verified by the tax returns of both Dr. Williams & Dr. Harber, along with their testimony. The testimony of Helen, who was both their loan officer and banker, and could possibly confirm this with greater detail.

Dr. Harber told the F.B.I. and Assistant United States Attorney Bell, "that the \$250,000.00 was a principle payment for a lot." Dr. Harber called Adam Brown after his call from the F.B.I. and prosecutor Bell, and told Adam Brown that "they were screaming at him (Harber) for telling them the \$250,000.00 was principle for a riverfront lot." Harber could have stiffed Linkous on that payment, and been a tax cheat, but made the payment for HIS benefit. Linkous then did the honorable thing by paying off his loan to Warren D. Johnson, Sr.

In closing I say this, an innocent man has been incarcerated in Florida for the past 46 months. Almost 4 years of his life wasted at the taxpayer expense for something he was innocent of. Free Warren Johnson, Jr. or give him a new trial. I've got enough evidence and history in this case to now, without a doubt, prove Warren, Jr.'s innocence.

Sincerely



Jeffrey A. Johnson

Prosecutors See Limits to Doubt In Capital Cases

By ADAM LIPTAK

Judge Laura Denvir Stith seemed not to believe what she was hearing.

A prosecutor was trying to block a death row inmate from having his conviction reopened on the basis of new evidence, and Judge Stith, of the Missouri Supreme Court, was getting exasperated. "Are you suggesting," she asked the prosecutor, that "even if we find Mr. Amrine is actually innocent, he should be executed?"

Frank A. Jung, an assistant state attorney general, replied, "That's correct, your honor."

That exchange was, legal experts say, unusual only for its frankness.

Andersen's role Enron collapse

Thompson said. "Arthur Andersen is charged with a crime that attacks the justice system itself by impeding investigators and regulators from getting at the truth."

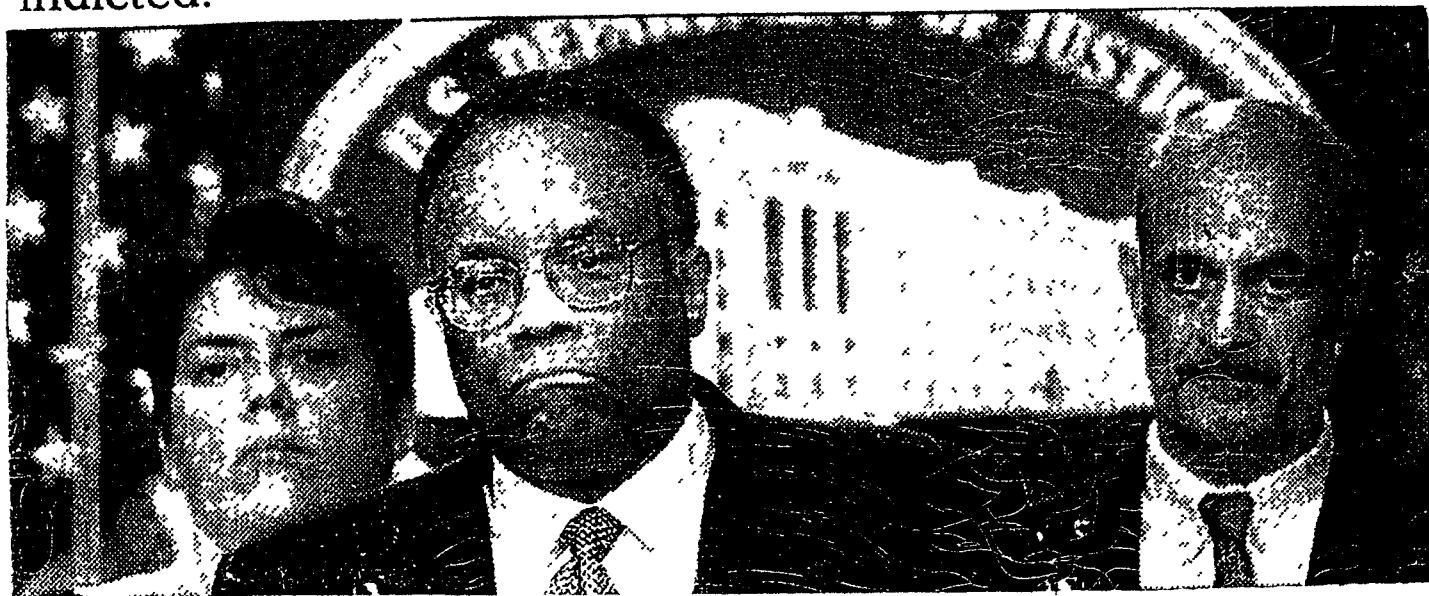
these documents were relevant to the inquiries into Enron's collapse."

Thompson said. "It would be unfortunate for our criminal-justice system if any individual or any entity could say that he or she or it was too big or too important, so as it couldn't be indicted."

Firm	Revenue
PricewaterhouseCoopers	\$8.1 bil.
Deloitte & Touche	\$6.1 bil.
Ernst & Young	\$4.5 bil.
Arthur Andersen	\$4.3 bil.
KPMG	\$3.2 bil.

Source: Public Accounting Report

Members of Andersen's criminal legal team, from the firm Mayer Brown Rowe & Maw, plan to move as quickly to dismiss the indictment or get a speedy trial.



In Washington. Deputy Attorney General Larry Thompson (center), Leslie Cauldwell of the Justice Department and Bruce Gephardt of the FBI announce the indictment of Arthur Andersen on Thursday.

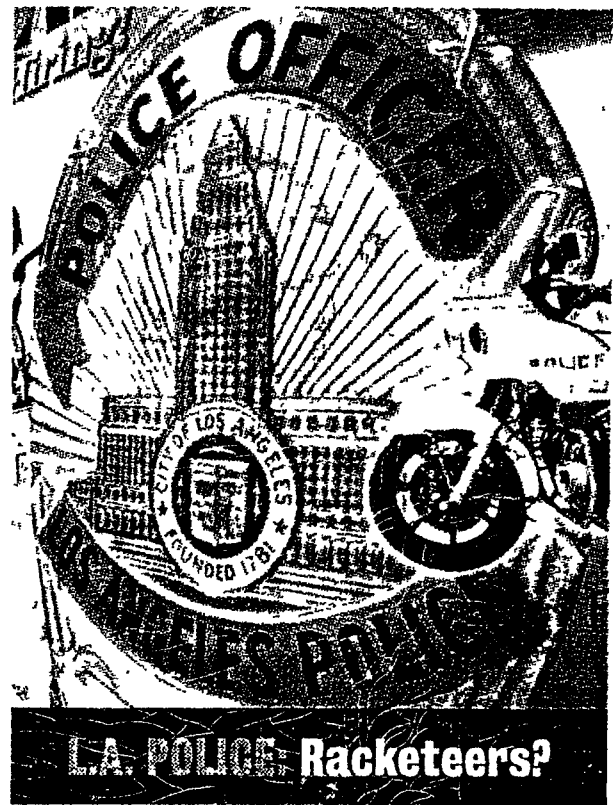
The mob in blue?

Los Angeles may become the first police department to be sued as a racketeering enterprise. The case involves Louie Guerrero, who claims officers choked, kicked, and punched him and then arrested him on trumped-up charges in 1997.

A judge's ruling allows Mr. Guerrero to refile under the controversial Racketeer Influenced and Corrupt Organizations Act, the 1970 law aimed at the Mafia. RICO allows plaintiffs to

receive triple damages and extends the statute of limitations to 10 years after a crime is committed. (Abortion clinic owners successfully sued pro-life activists under RICO.)

More than 100 convictions have been overturned since the LAPD corruption scandal was uncovered last year after allegations that officers in an anti-gang unit at the Rampart station beat, shot, and framed innocent people.



Key figure in LAPD corruption faces prison

Sentencing is today in Los Angeles for a former police officer who symbolized corruption in the Los Angeles Police Department. Nino Durden pleaded guilty to conspiracy, perjury, theft and related charges in March and cooperated with investigators. He is expected to receive a sentence of seven years and eight months. The Rampart scandal led to charges being dismissed or overturned in about 100 cases. Durden was accused of shooting a gang member, who was left a paraplegic, then testifying against him in order to send him to prison on false charges.

Report due on FBI record-handling

By Kevin Johnson
USA TODAY

WASHINGTON — The FBI was bracing for a scathing evaluation of its records management system today, nearly a year after lawyers for Oklahoma City bomber Timothy McVeigh were denied thousands of government documents prior to his trial.

The report of the Justice Department's Office of the Inspector General is expected to find fault with the FBI and recommend disciplinary action for some bureau employees, sources with knowledge of the Justice review said Monday.

Attorney General John Ashcroft ordered the review in May when it

was disclosed that the FBI failed to turn over about 3,000 case documents to McVeigh's defense lawyers. The discovery prompted Ashcroft to delay McVeigh's execution for a month.

Upon review, federal courts ruled the documents had no bearing on McVeigh's guilt in the 1995 bombing of the Alfred P. Murrah Federal Building. McVeigh was executed in June — the first federal execution in nearly 40 years.

Until the Sept. 11 attacks, McVeigh's crime was the worst act of terrorism on U.S. soil. The bombing killed 168 people. The Sept. 11 attacks killed more than 3,000.

In the report, the inspector general finds that some agents were

generally unaware of the expanded rules of what to turn over as evidence in the McVeigh case. The rules were issued by the judge in the case and called for the government to turn over virtually every document generated in the extensive investigation of the bombing.

The report cites a culture in which some FBI agents decided for themselves what documents were relevant. It says the agents shared with prosecutors and defense lawyers only those documents that met their criteria.

However, the report cites no instance in which FBI agents intentionally withheld material that might have been helpful to McVeigh's defense.

THURSDAY | FEBRUARY 28, 2002

Global Crossing delays results

Global Crossing Ltd., the fiber-optic network operator that filed for bankruptcy last month, delayed the release of fourth-quarter and full-year results as it evaluates more than \$8 billion in write-offs.

The losses will be "significant," the company said in a statement late Wednesday. The figures will reflect \$8 billion in expenses for intangibles such as goodwill, and a "multibillion-dollar writedown" of tangible assets. Goodwill is the difference between the price paid for an asset and its book value.

Orlando Sentinel

OrlandoSentinel.com

FLORIDA EDITION SATURDAY MARCH 9, 2002

50 CENTS

Pact would put more ethanol in tank

By H. JOSEF HEBERT
ASSOCIATED PRESS

WASHINGTON — Bridging long-time differences between farm and oil interests, senators agreed Friday to triple the ethanol used in gasoline and to ban a fuel additive that has fouled drinking water.

The compromise assures that a package of new gasoline requirements — aimed at giving refiners more flexibility, helping farmers sell corn for ethanol and ensuring no backsliding in air quality — will be part of energy legislation now before the Senate.

But some California officials worried the ethanol requirement could cause fuel shortages and high prices because the state's refineries already operate at high capacity and there is little ethanol produced in the state. Ethanol takes up less volume than the fuel additive MTBE, meaning more gasoline will have to be refined, possibly causing shortages, they said.

"There's a big question about whether California can absorb this mandate without gasoline prices rising significantly," said Sen. Dianne Feinstein, D-Calif.

The gasoline agreement would re-

quire refiners by 2012 to use at least 5 billion gallons of corn-based ethanol or other bio-fuel nationwide, about three times the amount produced today and a boon to farmers.

The first stage of the new ethanol mandate would go into effect in two years when the volume must increase from the current 1.7 billion gallons to 2.3 billion gallons nationwide.

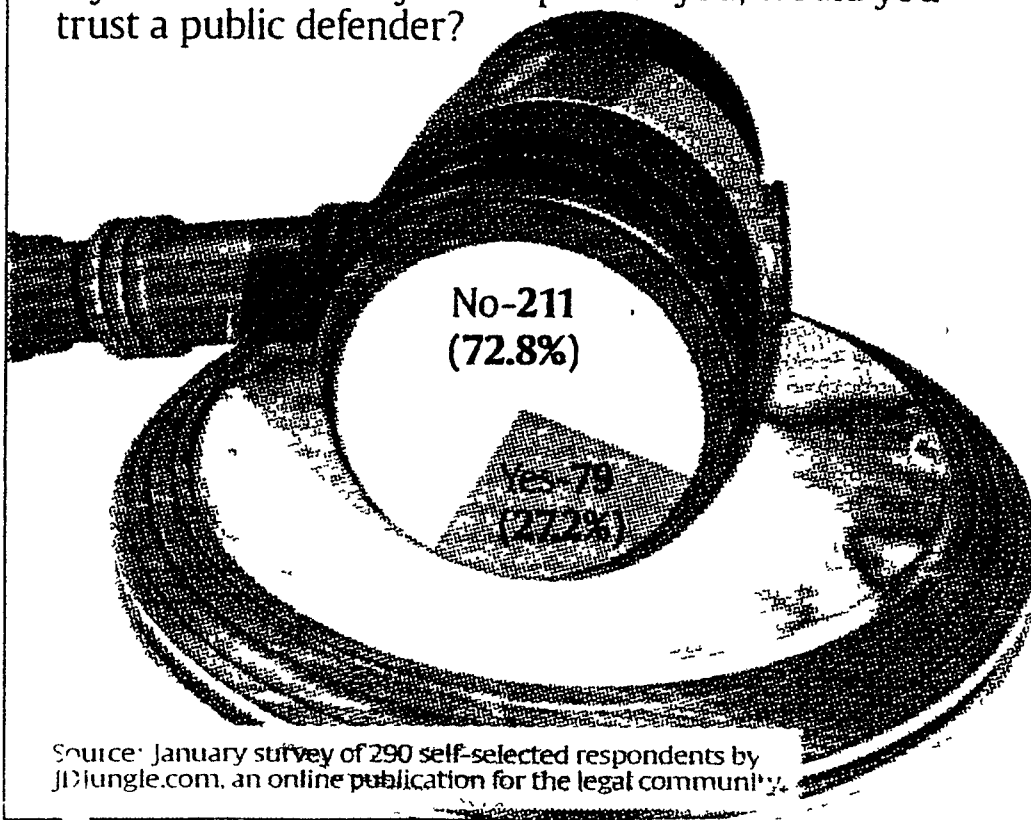
The deal also would allow states to ban MTBE, leading to a nationwide ban of the additive in four years. MTBE, which has been used to reduce tailpipe pollution, has been found to pollute waterways.

ENVIRONMENTAL CANADA HAS DECLARE ROCK SALT A POISON AND HIGHWAY DEPARTMENTS MUST NOW HAVE A PERMIT TO USE IT FOR ROAD DE-ICING. THE SALT CAN NOW BE REPLACED BY THE ICE BAN PRODUCED FROM THE CORN-BASED ETHANOL BY PRODUCT, WHICH WILL INCREASE TO THREE TIMES ITS CURRENT AVAILABILITY.

USA TODAY Snapshots®

Most would not trust a public defender

If you needed a lawyer to represent you, would you trust a public defender?



Thursday, March 7, 2002

TUESDAY, MARCH 26, 2002 **A9**

Officer indicted for perjury

NEW YORK — A former police officer awaiting retrial in the torture of Abner Louima was indicted Monday on perjury charges. According to federal prosecutors, Charles Schwarz lied at a trial in 2000 when he denied escorting Louima inside a Brooklyn stationhouse and when he denied being present when the Haitian immigrant was assaulted. Schwarz has denied he was in the 70th Precinct bathroom when Officer Justin Volpe sodomized Louima with a broken broomstick. After Volpe pleaded guilty in the 1997 attack, a jury convicted Schwarz of violating Louima's civil rights by holding him down during the assault.

RULES OF EVIDENCE

ARTICLE II. JUDICIAL NOTICE

Rule 201

Rule 201. Judicial Notice of Adjudicative Facts

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When discretionary.** A court may take judicial notice, whether requested or not.

(d) **When mandatory** A court shall take judicial notice if requested by a party and supplied with the necessary information.

§ 3060. Preliminary examination

(a) Except as otherwise provided by this section, a preliminary examination shall be held within the time set by the judge or magistrate pursuant to subsection (b) of this section, to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it.

561-804-6894
[COR LD NTC]
United States Probation Office
501 S Flagler Drive
Suite 400
West Palm Beach, FL 33401-3912
561-804-6894

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
3/24/98	1	INDICTMENT as to Warren D. Johnson (1) count s) 1, 2, 3-7 9 (Criminal Category 2) (br) [Entry date 03/24/98]
3/24/98	--	Magistrate Identification: Magistrate Judge Ann E. Vitunac (br) [Entry date 03/24/98]
3/24/98	2	SUMMONS, ES issued for Warren D. Johnson Jr. before Magistrate Ann E. Vitunac (br) [Entry date 03/24/98]
3/25/98	3	NOTICE of Temporary Appearance for Warren D. Johnson Jr. by Attorney David Roth (kw) [Entry date 03/25/98]
3/25/98	4	Minute of bond, nebbia and initial hearing held on 3/25/98 before Magistrate Ann E. Vitunac as to Warren D. Johnson Jr.; Court Reporter Name or Tape #: AEV 98-38-493 (kw) [Entry date 03/26/98]
3/25/98	6	ORDER on Initial Appearance as to Warren D. Johnson Jr. Bond set to \$100,000.00 CSB. Arraignment set for 9:30 4/9/98 ; Report re counsel set for 9:30 4/9/98; before Magistrate Ann E. Vitunac, , (Signed by Magistrate Ann E. Vitunac on 3/25/98) CCAP (kw) [Entry date 03/30/98]
3/26/98	5	REPORT Commencing Criminal Action as to Warren D. Johnson Jr. DOB: 10/6/42 Prisoner # 53225-004 (pa) [Entry date 03/26/98]
3/26/98	7	CSB BOND entered by Warren D. Johnson Jr. in Amount \$ 100,000.00 (Surety Information: Allegheny Mutual Casualty Comp , Michael Sandy , 328 Banyan Blvd. West Palm Beach, Fl.) Approved by Magistrate Ann E. Vitunac (kw) [Entry date 03/30/98]
4/1/98	8	NOTICE of surrendered passport as to Warren D. Johnson Jr. by Pretrial Services (kw) [Entry date 04/01/98]
4/9/98	9	Minute of status re counsel and arraignment held on 4/8/98 before Magistrate Ann E. Vitunac as to Warren D. Johnson Jr.; Tape #: AEV 98-49-996 (kw) [Entry date 04/09/98]
4/22/98	10	Minute of status re counsel not held on 4/22/98 before Magistrate Ann E. Vitunac as to Warren D. Johnson Jr ; Tape #: AEV 98-52-2560 (kw) [Entry date 04/22/98]
4/24/98	11	ORDER as to Warren D. Johnson Jr. for Appointment of Public Defender (Signed by Magistrate Ann E. Vitunac on 4/25/98) CCAP (kw) [Entry date 04/27/98]
4/24/98	12	ORDER setting aside order appointing Federal Public

<http://pacer.flsd.uscourts.gov/dc/cgi-bin/pacer/40.pl>

789

02/21/2002

FEDERAL RULES OF CRIMINAL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

Amendments received to January 5, 1998

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule

1. Scope.
2. Purpose and Construction.

II. PRELIMINARY PROCEEDINGS

3. The Complaint.
4. Arrest Warrant or Summons Upon Complaint.
 - (a) Issuance.
 - (b) Probable Cause.
 - (c) Form.
 - (1) Warrant.
 - (2) Summons.
 - (d) Execution or Service; and Return.
 - (1) By Whom.
 - (2) Territorial Limits.
 - (3) Manner.
 - (4) Return.
5. Initial Appearance Before the Magistrate Judge.
 - (a) In General.
 - (b) Misdemeanors and Other Petty Offenses.
 - (c) Offenses Not Triable by the United States Magistrate Judge.
- 5.1. Preliminary Examination.
 - (a) Probable Cause Finding.
 - (b) Discharge of Defendant.
 - (c) Records

III. INDICTMENT AND INFORMATION

6. The Grand Jury.
 - (a) Summoning Grand Jurors.
 - (1) Generally.
 - (2) Alternate Jurors.
 - (b) Objections to Grand Jury and to Grand Jurors.
 - (1) Challenges
 - (2) Motion To Dismiss.
 - (c) Foreperson and Deputy Foreperson.
 - (d) Who May Be Present.
 - (e) Recording and Disclosure of Proceedings.
 - (1) Recording of Proceedings.
 - (2) General Rule of Secrecy.
 - (3) Exceptions.
 - (4) Sealed Indictments.
 - (5) Closed Hearing
 - (6) Sealed Records
 - (f) Finding and Return of Indictment.

Rule

6. The Grand Jury.
 - (g) Discharge and Excuse.
7. The Indictment and the Information.
 - (a) Use of Indictment or Information.
 - (b) Waiver of Indictment.
 - (c) Nature and Contents.
 - (1) In General.
 - (2) Criminal Forfeiture.
 - (3) Harmless Error.
 - (d) Surplusage.
 - (e) Amendment of Information.
 - (f) Bill of Particulars.
8. Joinder of Offenses and of Defendants.
 - (a) Joinder of Offenses.
 - (b) Joinder of Defendants.
9. Warrant or Summons Upon Indictment or Information.
 - (a) Issuance.
 - (b) Form.
 - (1) Warrant.
 - (2) Summons.
 - (c) Execution or Service; and Return.
 - (1) Execution or Service.
 - (2) Return.
 - (d) Remand to United States Magistrate for Trial of Minor Offenses (Abrogated).

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

10. Arraignment.
11. Pleas.
 - (a) Alternatives.
 - (1) In General.
 - (2) Conditional Pleas.
 - (b) Nolo Contendere.
 - (c) Advice to Defendant.
 - (d) Insuring That the Plea Is Voluntary.
 - (e) Plea Agreement Procedure.
 - (1) In General.
 - (2) Notice of Such Agreement.
 - (3) Acceptance of a Plea Agreement.
 - (4) Rejection of a Plea Agreement.
 - (5) Time of Plea Agreement Procedure.
 - (6) Inadmissibility of Pleas, Plea Discussions, and Related Statements.
 - (f) Determining Accuracy of Plea.

Complete Annotation Materials, see Title 18 U.S.C.A.

C. INEFFECTIVE ASSISTANCE OF COUNSEL FOR NOT OBJECTING TO GRAND JURY'S FAILURE TO RETURN THE INDICTMENT IN OPEN COURT.

Rule 6(f) F.R. Crim. P. states:

Finding and Return of Indictment. An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury to a federal magistrate judge in open court.

Rule 6(f) is the codification of **Renigar vs. United States**, 172 F2d 646, 650 (4th Cir. 1909), which held, "It is essential to the validity of an indictment that it be presented in open court and in the presence of the grand jury." **Renigar** held the failure to return an indictment in open court was a jurisdictional defect. **Renigar** defined return in open court as follows: "When the grand jury has found its indictments, it returns them into open court, going personally in a body." *Id.* at 648.

The failure to return an indictment in open court in the presence of the grand jury is a jurisdictional defect, the failure to make an appropriate and timely objection to the defective return of the indictment is a fairly obvious case of ineffective assistance.

In **Williams**, the Supreme Court stated that a claim of ineffectiveness requires a showing of (a) deficient performance and (b) the loss of a substantive or procedural right attributable to the ineffective assistance. There is no indication that counsel's failure to object was a strategic decision made after a thorough investigation of the facts and the law. There is no indication that the failure to object was a reasonable choice.

If counsel had made an appropriate and timely objection, the indictment would have been dismissed, which establishes the loss of the substantive or procedural rights required by **Williams**.

CHAPTER 2—AIRCRAFT AND MOTOR VEHICLES

Sec.

- 31. Definitions.
- 32. Destruction of aircraft or aircraft facilities.
- 33. Destruction of motor vehicles or motor vehicle facilities.
- 34. Penalty when death results.
- 35. Imparting or conveying false information.
- 36. Drive-by shooting.
- 37. Violence at international airports.

§ 31. Definitions

When used in this chapter the term—

“Aircraft engine”, “air navigation facility”, “appliance”, “civil aircraft”, “foreign air commerce”, “interstate air commerce”, “landing area”, “overseas air commerce”, “propeller”, “spare part” and “special aircraft jurisdiction of the United States” shall have the meaning ascribed to those terms in sections 40102(a) and 46501 of title 49.

“Motor vehicle” means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo;

“Destructive substance” means any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature;

“Used for commercial purposes” means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit;

“In flight” means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property on board; and

“In service” means any time from the beginning of preflight preparation of the aircraft by ground person-

nel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight.

(Added July 14, 1956, c. 595, § 1, 70 Stat. 538, and amended Oct. 12, 1984, Pub.L. 98-473, Title II, §§ 1010, 2013(a), 98 Stat. 2141, 2187; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7015, 102 Stat. 4395; July 5, 1994, Pub.L. 103-272, § 5(e)(1), 108 Stat. 1373.)

HISTORICAL AND STATUTORY NOTES

Effective Date of 1984 Amendment

Section 2015 of Pub.L. 98-473 provided that: “This part [amending this section and section 32 of this title and sections 1301, 1471, and 1472 of Title 49, Transportation] shall become effective on the date of the enactment of this joint resolution [Oct. 12, 1984].”

Short Title of 1984 Amendment

Section 2011 of Pub.L. 98-473 provided that: “This part [amending this section and section 32 of this title and sections 1301, 1471, and 1472 of Title 49, Transportation] may be cited as the ‘Aircraft Sabotage Act.’”

Congressional Statement and Declaration of Purpose

Section 2012 of Pub.L. 98-473 provided that: “The Congress hereby finds that—

“(1) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (ratified by the United States on November 1, 1972) requires each contracting State to establish its jurisdiction over certain offenses affecting the safety of civil aviation;

“(2) such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations; and

“(3) the purpose of this subtitle is to implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and to expand the protection accorded to aircraft and related facilities.”

Legislative History

For legislative history and purpose of Act July 14, 1956, see 1956 U.S. Code Cong. and Adm. News, p. 3145.

For legislative history and purpose of Pub.L. 98-473, see 1984 U.S. Code Cong. and Adm. News, p. 3182. See, also, Pub.L. 100-690, 1988 U.S. Code Cong. and Adm. News, p.

Complete Annotation Materials, see Title 18 U.S.C.A.

In propria persona /in prówpriyə pərsównə/. In one's own proper person. It was formerly a rule in pleading that pleas to the jurisdiction of the court must be plead *in propria persona*, because if pleaded by attorney they admit the jurisdiction, as an attorney is an officer of the court, and he is presumed to plead after having obtained leave, which admits the jurisdiction. See Pro se.

Pro se /pròw síy/. For one's own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court.

Sui juris /s(y)úway júres/. Lat. Of his own right; possessing full social and civil rights; not under any legal disability, or the power of another, or guardianship.

Having capacity to manage one's own affairs; not under legal disability to act for one's self.

See Emancipation; Majority. Compare Non sui juris.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

Case No. 92-33339-BKC-SHF

WARREN DOUGLAS JOHNSON, JR.,

Chapter 7

Debtor.
_____ /FIRST INTERIM FEE APPLICATION OF TRUSTEE'S COUNSEL

1. Name of applicant: **Law Office of Patrick Scott**
2. Role of applicant: **Counsel for Trustee**
3. Name of certifying professional: **Patrick S. Scott**
4. Date case filed: **10/2/92**
5. Date of application for employment: **2/12/99**
6. Date of order approving employment: **2/22/99**
7. If debtor's counsel, date of Disclosure of Compensation form: **n/a**
8. Date of this application: **9/26/01**
9. Dates of services covered: **12/17/98 – 9/25/01**

Fees...

- | | | |
|-----|--|---------------------|
| 10. | Total fee requested for this period (from Exhibit 1) | \$248,532.50 |
| 11. | Balance remaining in fee retainer account, not yet awarded | (\$ 0) |
| 12. | Fees paid or advanced for this period, by other sources | (\$ 0) |
| 13. | Net amount of fee requested for this period | \$248,532.50 |

Expenses...

- | | | |
|-----|--|---------------------|
| 14. | Total expense reimbursement requested for this period (from Exhibit 2) | \$ 8,321.03 |
| 15. | Balance remaining in expense retainer account, not yet received | (\$ 0) |
| 16. | Expenses paid or advanced for this period, by other sources | (\$ 0) |
| 17. | -Net amount of expense reimbursements requested for this period | \$ 8,321.03 |
| 18. | Gross award requested for this period (#10 + #14) | \$256,853.53 |
| 19. | Net award requested for this period (#13 + #17) | \$256,853.53 |

If final fee application...

- | | | |
|-----|---|-----------------|
| 20. | Amounts of net awards requested in interim applications but <u>not previously awarded</u> (total from "History of Fees and Expenses," following pages): | \$ _____ |
| 21. | Final fee and expense award requested (#19 + #20) | \$ _____ |

1994 to administer an asset worth \$20,000. The trustee retained a different attorney during the 1992-1994 phase of the case.

In April 1998, the debtor was indicted on several counts of bankruptcy fraud, money laundering, and bank fraud; the bankruptcy fraud and money laundering stemmed from the alleged concealment of an asset—a real estate purchase option—in his bankruptcy case. He was convicted after a jury trial, in which the trustee testified, in November 1998. After the conviction the trustee reopened the chapter 7 case.

Two days after the debtor's criminal sentencing in June 1999, the trustee commenced this adversary proceeding, and this court entered a preliminary injunction which enjoined the transfer or encumbrance of the debtor's home, furniture, and a list of assets which the sentencing judge (U.S. District Judge Kenneth Ryskamp) had indicated were allegedly properties held by others as secret nominees for the debtor. The injunction was later extended to include the net proceeds of a lawsuit ("RFP v. SunTrust") then pending in state court in Broward County, as to which the debtor claimed an interest.

The trustee undertook substantial discovery, document production, and 15 depositions (including several days of deposition testimony of the debtor at the Federal Correctional Institution in Coleman, Florida), and has obtained more than a hundred thousand pages of other records and documents necessary to his investigation. The trustee interviewed scores of witnesses, and attempted to put together a detailed history of the events leading up to the filing of the adversary proceeding. It should be noted that the various defendants generally disputed the trustee's assertions and allegations.

We have completed a settlement of all disputes among the trustee, Mr. Johnson, his family, and others, including a number of other lawsuits and claims which reached out to include more than 30 parties. The settlement leaves the trustee in control of money and real estate, and he anticipates selling the real estate within six months, at which time all the monies will be distributed. The total proceeds will fall between \$1 million and \$1.2 million, and the total administrative costs and fees will likely be less than \$300,000. The case was extremely difficult, with many risks, including the possibility that Mr. Johnson's conviction could be overturned in his present appeal and we would recover nothing. He has agreed, as part of this settlement, that this settlement will stand even if he is successful in overturning his conviction.

Other major risks included: (1) the possibility that the court would find that our recovery would be capped at \$250,000 (the amount that the debtor recovered from the concealed asset), (2) the possibility that the court would not allow us to recover assets which the debtor did not own at the time of his bankruptcy, including the stock in Natural Solutions Corp. f/k/a Ice Ban America and in IBAC Corp., both of which were developed by Mr. Johnson and others in 1994-1997, (3) the possibility that we could not bring the Turks and Caicos entities which hold most of the stock under the jurisdiction of American courts, the possibility that Mrs. Johnson would have an "innocent spouse" defense to the government's effort to recover her homestead, which Mr. Johnson owned but which is normally exempt from a bankruptcy estate, and (4) the possibility that the obstacles placed in our way would make the case too difficult and expensive to continue litigating.

All of the following parties were plaintiffs or defendants in at least one of four actions: the "state court suit," the "federal court suit" (into which the trustee was added as a counterdefendant), the employment suit, the Pratt suit (in Orleans County, New York), and the trustee's adversary proceeding.

<u>The Family</u>	<u>Offshore Entities</u>	<u>Others</u>
Warren D. Johnson, Jr.	Medical College Fund	T. Leonard Fisher/Thomas M. Fisher
Diane Johnson	Windmills Plantation Fund, Ltd.	Natural Solutions Corp.
Jeff Johnson	Hawks Nest Plantation Fund	Ice Ban Canada ("IBAC")
Lynn Johnson	Reed International Fund, Inc.	Estate of George Janke
Mark Johnson	Ryder Securities, Ltd.	Carmen Silva
Kelly Brown	Martin Preservation Fund	Richard Grund
Adam Brown	Harvard Fund, Ltd.	Gerald Bourne
Patricia Wellspeak	Mercantile Trust Fund	Rashid Bodhanya (not a defendant)
Sharon Pratt	Grand Turk Harbour Development	Walter Harber (not a defendant)
Lawrence Pratt	Harbour Funding Group (Nevada)	Burton Wickham
Warren D. Johnson, Sr.		Steven Rubens
Joyce Johnson		Michael Ball
Paul Johnson		Linkous Corporation

There are several other individuals and corporations which might have been added into one or more of these five lawsuits had the cases not settled. The pleadings in the federal court suit file itself fill an entire file drawer.

Many of the defendants do not agree with the trustee's recitation of the facts, but the applicant believes that the following is a fair representation of the principal facts, and conveys the complexity of the litigation. These facts were never proven at any trial.

The debtor was raised in a farm family in rural New York, the son of Warren Sr. and Joyce Johnson. He married Dianne, and they had two children, Kelly (Brown) and Mark Johnson. In the 1960s, the debtor was a young stockbroker in Syracuse, New York, where he worked with Burton Wickham and later with Steven Rubens. He and his family moved to Florida in the 1970s. His brothers Jeffrey Johnson and Paul Johnson and his sisters Patricia (Wellspeak) and Sharon (Pratt) remained in New York, although Paul later moved to Florida.

Throughout the 1980s, the debtor operated as a real estate developer, and eventually purchased his present home in the Bay Pointe subdivision of Martin County. During the period 1988-1992 he lost, through foreclosures, his interests in a half-dozen apartment complexes and other properties, but remained liable on certain guarantees, most notably a performance guarantee to the bondholders of the Retirement Facility at Palm Aire, Ltd. (represented by SunTrust Bank). His partner in this "RFPA" venture was George Janke. During this time, the debtor was also litigating his right to a purchase option on certain planted acreage to the south and to the west of Bay Pointe subdivision, known as "Bay Pointe Estates" and "Otter's Run." He was successful in his suit, and negotiated with Walter Harber and James Lindsey to provide the funds to exercise the option and purchase both properties, with the debtor's son-in-law Adam Brown owning the Otter's Run subdivision and one-half of the beneficial interest in the land trust Dr. Harber and Mr. Lindsey would set up for Bay Pointe Estates.

The debtor received less than fair value from Adam Brown for these interests, completed the transfers 11 months prior to his chapter 7 filing, and failed to disclose them in his bankruptcy schedules. Furthermore, after receiving his bankruptcy discharge, his wife, Dianne, received \$250,000 in a convoluted series of events which took place during a few days in March 1994, by which Harber-Lindsey paid Linkous Corporation, which paid Warren Johnson Sr., who paid Dianne. Although Linkous Corporation and Warren Sr. and the debtor (speaking for Dianne, who asserted the Fifth Amendment in response to questions on this subject) have insisted that that each of them was owed money in turn, the trustee believes that the better evidence is that Harber and Lindsey had agreed to give the debtor an advance on profits in recognition of the debtor as the true (but secret) owner of Adam Brown's interest. Ironically, the development and sale of the lots at Bay Pointe Estates, which has been plagued by environmental and other problems, will not produce a profit. Harber, Lindsey, and the Bay Pointe Estates Land Trust have agreed to accept an assignment of Adam Brown's interest from this trustee in settlement of their separate claims.

The debtor and his wife supported themselves for a year and a half from the \$250,000. This income was essential to them, because—beginning in May 1994—they devoted substantially all of their income-producing efforts to developing a series of companies which would capitalize upon a Hungarian patent for the production of winter road-coating products. George Janke had first introduced the debtor to the product, the rights to which Janke had secured (perhaps with some slight assistance from T. Leonard Fisher). The rights to the patent, and other similar products involving the "environmentally-friendly" byproducts of grain distillates and fermentation, has generated a wide variety of patent disputes, and unfair competition lawsuits which have complicated this case but which disputes are not being resolved here. Janke would call the product "Eco-Snow," and with the debtor's assistance formed several companies during 1994-1995 to market it. Jeff Johnson, who lived in Orleans County, New York, and brother-in-law Lawrence Pratt, a retired food chemist, would oversee the product testing and seek endorsements from township road superintendents. The debtor and Jeffrey would rename the product "Ice Ban."

The debtor ended up taking the lead on Eco Snow/Ice Ban, and convinced Jeffrey to turn over the small family farm in New York to tenants and to begin testing and promoting the product among the family contacts and road commissioners throughout the snow-swept upper tier of New York. With the assistance of Jeffrey's wife Lynn Johnson and two friends (Roger and Sandra Wolfe) in the small farming community where Jeffrey lived, the Johnson family formed Ice Ban, Inc. (N.Y.). Many deals were made informally, sometimes by Jeffrey or the debtor, sometimes by George Janke, and eventually both Janke and Lenny Fisher came to feel that the Johnsons had squeezed them out of valuable rights which had vested in them. Among the many alleged deals were: (1) the granting of the original rights to the technology to Diane or to Warren Sr., who then granted their rights to Ice Ban, Inc. (N.Y.) in exchange for stock in that company, and (2) the granting of 25% of the company and exclusive airport and U.K. rights to Lenny Fisher, and (3) promises made to Camillus Dunne of England, and to numerous others.

During the winter of 1995-96, as the original \$250,000 was running out, the Johnson family completed sufficient product testing to obtain endorsements and to tout specific claims regarding the product's cost, effectiveness, and other benefits. By the summer of 1996, having made virtually no product sales, but having expanded their line to include a road dust-control product which they called "Tembind" (ultimately leading to another series of disputes with Tembec Corp and others).

and with the control of the Ice Ban technology still in controversy, the debtor and Janke formed a new company, Ice Ban America, Inc. n/k/a Natural Solutions Corp. ("Natural Solutions"). They issued 12 million shares of restricted founder's stock to themselves, and made a Section 504 offering of one million 10c shares followed by 900,000 \$1 shares. Most of these free-trading shares went to the debtor's designees, and many of them ended up with Lenny Fisher. The process repeated itself a year later when the Johnsons and Janke formed IBAC Corporation—for Canadian distribution rights—but without Fisher's involvement. The insider shares were generally distributed through a series of a couple dozen accounts set up by Elliott Kagna of Union Securities in Vancouver, British Columbia. Mr. Kagna has disregarded our subpoena served through the British Columbia authorities under the Hague Convention. Among the parties whom the debtor solicited to assist with the misdirection of securities to Thomas M. Fisher (a Northern Ireland resident, the father of Lenny Fisher) were Burton Wickham and Steven Rubens, who received free stock in return. Mr. Wickham and Mr. Rubens also claim that they were unaware of the scheme. One friend of the Johnsons, Michael Ball, resold large numbers of family-owned shares of IBAC Corporation, which IBAC Corporation has since claimed was in violation of law.

Most of the debtor's 6.4 million restricted shares in Natural Solutions ended up, indirectly through Harbour Funding Group (Nev.), in six offshore corporations (the first six listed on the chart above), beneficial ownership of which has been ascribed to a family trust set up for the debtor's children, siblings, and nephews and nieces. The next two companies listed were formed in 1997 to hold restricted founder's shares of IBAC Corporation. In the course of dealing with Rashid "Reg" Bodhanya—the local representative of the registered agent for the nine Turks and Caicos companies—, and while the value of both the Natural Solutions stock and IBAC Corporation stock was still rising, the debtor made a series of financial deals with Bodhanya to save Bodhanya's own failing hotel empire in the islands. Janke—as Natural Solutions' president—authorized the release of restrictions on a million shares to be sold by some of the offshore companies, which raised roughly \$3 million in cash offshore, which was put into the control of Bodhanya. One of the original six companies pledged its 500,000 shares to the Turks and Caicos government for a performance bond on a resort project to be built by Grand Turk Harbour Developments, Ltd., and the debtor solicited Gerald Bourne of Longwood, Florida to be the director of the resort project. The debtor and Jeffrey Johnson have claimed that Bodhanya misappropriated the moneys. Bodhanya resigned as a director of the companies in July 1998, and has since fled the Turks and Caicos Islands in the wake of a government investigation.

In early 1997, the debtor was able to confirm that he was under federal criminal investigation for bankruptcy fraud, and he resigned as an officer and director of Natural Solutions and IBAC Corp. In mid-1997, Natural Solutions acquired the Johnson family stock interests in Ice Ban, Inc. (N.Y.) in exchange for 1.3 million restricted shares of Natural Solutions stock, which the family will be retaining in this settlement. The debtor did not own any of these shares.

The stock values peaked in November 1997, and began dropping, through the debtor's indictment in April 1998, and bottoming out after the criminal trial in November 1998. It has since been virtually untradeable in any quantity, and Natural Solutions was delisted by NASDAQ. George Janke fired Jeffrey Johnson in early 1999. After this litigation began, Rev. M.G. "Pat" Robertson took an interest in the company, and has invested several million dollars. He displaced George Janke as chairman, and is now willing to fund a portion of this settlement.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of this application, with all exhibits, was mailed this 26th day of September, 2001, to Warren Douglas Johnson, Jr. #53225-004, Low FCC Coleman, P.O. Box 789, Coleman, FL 33521; Stuart A. Young, Abramson Young Brooks & Pefka, P.A., 1860 Forest Hill Blvd., #201, West Palm Beach, FL 33406-6071; Soneet R. Kapila, 1000 S. Federal Highway, Suite 200, Ft. Lauderdale, FL 33316; and the Office of U.S. Trustee, Federal Building, Room 1204, 51 S.W. 1st Avenue, Miami, FL 33130.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

LAW OFFICE OF PATRICK SCOTT
Counsel for Trustee
111 Southeast 12th Street, Suite B
Fort Lauderdale, FL 33316
(954) 523-1615

By: 

Patrick S. Scott
Fla. Bar No. 290025

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

WARREN DOUGLAS JOHNSON, JR.,

Debtor

Case No. 92-33339-BKC-SHF

Chapter 7

SONEET R. KAPILA, Trustee,

Plaintiff,

Adv. Proc. No. 99-3143-BKC-SHF-A

vs.

WARREN DOUGLAS JOHNSON, JR.,
ADAM BROWN, JOYCE JOHNSON,
WARREN JOHNSON, SR., LINKOUS
CORPORATION, DIANNE JOHNSON,
KELLY BROWN, JEFFREY JOHNSON,
LYNNE JOHNSON, PAUL JOHNSON,
MARK JOHNSON, PATRICIA WELLSPEAK,
SHARON PRATT, LAWRENCE PRATT,
HARBOUR FUNDING PARTNERS, MEDICAL
COLLEGE FUND, LTD., WINDMILLS
PLANTATION FUND, LTD., HAWK'S NEST
PLANTATION FUND, LTD., REED
INTERNATIONAL FUND, LTD., RYDER
SECURITIES, LTD., MARLIN PRESERVATION
FUND, LTD., HARVARD FUND LIMITED,
MERCHANT TRUST FUND LIMITED,
GRAND TURK HARBOUR DEVELOPMENTS, LTD.,
GERALD BOURNE, RICHARD GRUND, STEVEN RUBENS,
T. LEONARD FISCHER, AND BURTON WICKHAM,

Defendants.

**TRUSTEE'S MOTION TO APPROVE
SETTLEMENT ON SHORTENED NOTICE
AND TO RECONSIDER DETERMINATION OF CLAIMS**

Soneet R. Kapila, the chapter 7 trustee in this case, files this Motion to Approve
Settlement on Shortened Notice and to Reconsider Determination of Claims, and states:

17. This settlement should be approved because, as appears in the first portion of this motion, the case is extraordinarily complex, and the result is uncertain. The cost of continuing with the litigation is immense. The trustee is recovering the most valuable assets (including cash, the debtor's homestead, other real properties, and shares of stock which the trustee has arranged to sell for \$425,000) at a time when there is still a grave risk that the shares of stock could become worthless in the future. The trustee is convinced that this is the best settlement which can be made, and that it satisfactorily balances the likelihood of collection under bankruptcy remedies, non-bankruptcy causes of action, and the government's restitution and forfeiture powers, against the risk of making a smaller recovery than this settlement provides.

9

c) The restitution order in the district court must be entered before the debtor can continue with his appeal of his conviction.

10

7. CHANCE TO CONFER WITH ATTORNEY

7.01. The parties have been advised in writing of their right to consult with an attorney before signing this Agreement and acknowledge that they have done so.

17

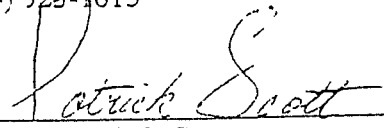
CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of this motion (with signed Settlement Agreement, and unsigned exhibits) has been mailed to all parties on the attached mailing list this 23rd day of February, 2001.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A)

LAW OFFICE OF PATRICK SCOTT
Counsel for Trustee
111 Southeast 12th Street, Suite B
Fort Lauderdale, FL 33316-1813
(954) 522-1615

By


Patrick S. Scott
Fla Bar No 290025

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

1.19. In the event the 500,000 shares held by Marlin Preservation Fund, Ltd. cannot be delivered due to their status in escrow with the Finbar Dempsey firm, this Agreement shall proceed with Marlin Preservation Fund, Ltd. conveying all rights to the escrow and to the shares to Trustee and cooperating fully with Trustee or his assignee to obtain the release of such shares from escrow and delivery of good title to the shares. The Johnson Parties, Corporate Parties, and Miscellaneous Parties agree that, upon transfer to the Trustee, they will have no interest in that escrow or those shares. In the event the shares cannot be delivered from escrow, Marlin Preservation Fund, Ltd. and the Johnson Parties will deliver a valid affidavit of lost certificate and will cooperate in transfer of all rights in such shares to Trustee and his assignee. The provisions of this paragraph shall not negate any representations or warranties made elsewhere in this agreement or in the Stock Purchase Agreement.

7

EXHIBIT H TO SETTLEMENT AGREEMENT

LIST OF BUYERS OF IBAC UNREGISTERED STOCK

Name/Address	# of Shares.
Dr Jay Rosen 2020 Seven Springs Blvd New Port Richie, FL 34655	10,000
Tom Birt 3345 San Bernadion Street Clearwater, FL 33759	10,000

Name/Address	# of Shares
Dennis Ciaglio 396 NE Surfside Avenue Port St Lucie, FL 34983	10,000
Oswald Skippings PO Box 156 Grand Turk TCI	2,000

EXHIBIT I TO SETTLEMENT AGREEMENT

Allowable Claims of Creditors

	<u>Allowed Claims</u>
Apex Municipal Fund, Inc., et al. (bondholders)	\$3,929,114.31
Washington Mutual (fmly. Great Western Bank)	\$ 307,178.49
Value Recovery Group (fmly. RTC-Royal Palm Orange County foreclosure)	\$ 97,494.65
FDIC-Coral Coast Savings	\$ 156,294.42
Ray Loesche	\$ 15,000.00
Chase Visa	\$ 3,019.93
Richard J. Agar (fmly. First Union National Bank)	\$ 180,000.00
First USA Bank	\$ 8,000.00
Republic National Bank	\$ 6,000.00
Texaco, Inc.	\$ 500.00
Masterlooms	\$ 1,875.00*
Executive Equipment Leasing, Inc.	\$ 3,000.00*
Orange County Tax Assessor	\$ 88.92
Gary Dytrych & Ryan, P.A.	\$ 3,731.94

Claims Not Allowable

American Medical Alert
Amy Pratt, Trustee for Patricia Wellspeak
Adam Brown
Chase Lincoln First Bank
Edward Ackerman, Donald and Nancy Jablonsky
Graham-Eckes Palm Beach Academy
J.J. Dorbel Corp. (assignee of William Hibbel)
Warren D. Johnson, Sr.
Jerry Linkous
Slawson Burman & Critton
Richard Smith
RTC-Royal Palm Savings (Seminole County foreclosure)
Sprint Telephone
Statewide Collection
Tilden Commercial Appliances
Unilease of Florida, Inc.
Walter L. Harber Trust

In all cases, the allowance amounts are to be the same for both restitution and bankruptcy dividend purposes, regardless of any previous distinction made by the bankruptcy court between the timeliness of claim filing for the two purposes. Those marked "*" had been disallowed by the bankruptcy court because no proofs of claim had been filed, but both of these claimants asserted their claims (Executive Leasing in an April 1999 letter to the trustee's counsel and Masterlooms during the criminal court trial), and there is independent evidence of the allowability of those claims

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

Case No. 92-33339-BKC-SHF

WARREN DOUGLAS JOHNSON, JR.,

Chapter 7

Debtor.

TRUSTEE'S COUNSEL'S RESPONSE TO DEBTOR'S MOTION
TO OBJECT TO THE PAYMENT OF \$256,853.53 TO TRUSTEE'S
COUNSEL DUE TO EXTORTION & DURESS IN OBTAINING
THE SETTLEMENT AGREEMENT AND FRAUD ON THE COURT

Patrick S. Scott, of the Law Office of Patrick Scott, files this response to the Debtor's Motion to Object to the Payment of \$265,853.53 to Trustee's Counsel, and states:

1 After two-and-one-half years working on this case, I filed a fee application. Ordinarily, I would not file a written response to a chapter 7 debtor's objection, because a chapter 7 debtor, in a case which will produce no surplus for the debtor, has no pecuniary interest in the case, and has no standing to object to a fee application. *In re George*, 23 B.R. 686 (Bankr. S.D. Fla. 1982). But the severity of the debtor's criticism is loosely based on allegation contained within the motion. Most of the allegations are directed at others, principally the United States Attorney's Office and the Federal Bureau of Investigation, so I will respond only to those allegations directed at me.

2. Pages 1 and 9: the suggestion that I threatened to have Adam Brown indicted if he and the Johnson family did not turn over their legally purchased asset in the settlement agreement. It's not true. It is well known among lawyers that one cannot make a threat of criminal prosecution in order to gain advantage in a civil action, and I have never made such a threat. I dealt only through attorneys, not the Johnson family or Brown family directly, and if

someone believes that I made any such threats they should produce the person to whom I made such a threat.

3. Page 3: the allegation that I fraudulently stated in my fee application that Mr Johnson sold the option contract for less than its true value. In my fee application, my recitation of the facts begins with a disclaimer:

Many of the defendants do not agree with the trustee's recitation of the facts, but the applicant believes that the following is a fair representation of the principal facts, and conveys the complexity of the litigation. These facts were never proven at any trial.

Notwithstanding this, I stand by the statement that Mr. Johnson sold (or gave away) the option contract for less than fair value.

4. Page 5: the suggestion that the settlement agreement was signed by the Johnson family under duress. The settlement was negotiated among counsel, and was the subject of many changes before everyone agreed to sign it. The debtor, and counsel for the debtor and counsel for his family, appeared before Judge Ryskamp in February, knowing all the same facts which the debtor now alleges.

5. Page 6: the allegation that I knew the debtor's conviction would be overturned. It has not been overturned and I have never believed it would be.

6. Page 6: that I have told Mr. Feingold that I have a large bank loan. True, but irrelevant. In April or May, after the settlement of this case, I told Mr. Feingold that my firm has a bank line of credit for operating capital as a result of carrying the time incurred in this case, and that I was anxious to put in for an interim fee because I am tired of paying interest to the bank. I took the loan late in the case, and do not believe that I told anyone about it until April or May.

7. Page 8: the suggestion that I am conspiring with U S. Attorney Thomas Scott, and may be related to him. I am not related to him, and have never met with or spoken to him. My

involvement with the U S Attorney's Office and the FBI in this case has been to obtain information from the criminal court trial, and to determine what criminal restitution would be necessary to effectuate a settlement which could serve also as restitution.

8. Page 8: the allegation that I threatened to investigate the Johnson family for being able to pay their lawyers. True, partly I told the Johnson family lawyers that I was planning to subpoena them to find out where the Johnson family was getting the money to pay them. One of the principal factual issues in this litigation was what became of the proceeds of millions of dollars in stock sold by or at the instance of the Johnson family

The trustee and his counsel wish to have this motion heard at the same time as the fee application, and will presume that it will be heard at that time.

I HEREBY CERTIFY that a true copy of this Response was mailed this 17th day of October, 2001, to Warren Douglas Johnson, Jr. #53225-004, Low FCC Coleman, P O. Box 789, Coleman, FL 33521; Stuart A. Young, Abramson Young Brooks & Pefka, P.A., 1860 Forest Hill Blvd., #201, West Palm Beach, FL 33406-6071, Soneet R. Kapila, 1000 S. Federal Highway, Suite 200, Ft. Lauderdale, FL 33316; and the Office of U.S. Trustee, Federal Building, Room 1204, 51 S.W. 1st Avenue, Miami, FL 33130.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

LAW OFFICE OF PATRICK SCOTT
Counsel for Trustee
111 Southeast 12th Street, Suite B
Fort Lauderdale, FL 33316
(954) 523-1615

By: 

Patrick S. Scott
Fla. Bar No. 290825

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

Case No. 92-33339-BKC-SHF

WARREN DOUGLAS JOHNSON, JR.,

Debtor.

Chapter 7

ORDER GRANTING TRUSTEE'S MOTION TO
APPROVE SETTLEMENT AGREEMENT

n) the Trustee has, and at the closing will have, good and valid title to the Shares he is selling pursuant to the Stock Purchase Agreements, and has the full legal right, power and authority to sell, assign, transfer and deliver such Shares to the Purchasers and to make the representations, warranties, covenants and agreements made by him in the Stock Purchase Agreements;

3

r) the Trustee has taken no action and during the time that the Trustee held the Shares no facts arose which would impair title to the Shares, or otherwise preventing the Trustee from having good and valid title to the Shares he is selling pursuant to the Stock Purchase Agreements, free and clear of any liens or restrictions, and having the full legal right, power and authority to sell, assign, transfer and deliver such Shares to the Purchasers and to make the representations, warranties, covenants and agreements made by the Trustee in the Stock Purchase Agreements;

s) the execution, delivery and performance by the Trustee of the Stock Purchase Agreements will not violate any other agreement to which the Trustee is a party, including, without limitation, any voting agreement, stockholders agreement or voting trust

4

2. The Trustee shall deliver all right, title and interest in and to 3,925,000 shares of common stock, par value \$0.001 per share, of Natural Solutions Corporation to M. G. Robertson for the purchase price of \$375,000; this sale shall be free and clear of all Liens, claims, Restrictions and interests of any person or entity, whether or not a party to this Proceeding. All such Liens, claims, Restrictions and interests, if any, shall attach to the proceeds of the sale.

5

807

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

Case No 92-33339-BKC-SHF

WARREN DOUGLAS JOHNSON, JR.,

Debtor.

Chapter 7

TRUSTEE'S MOTION TO SUPPLEMENT FEBRUARY 23,
2001 ORDER GRANTING TRUSTEE'S MOTION TO
APPROVE SETTLEMENT AGREEMENT

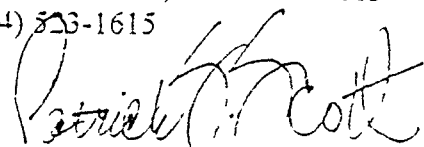
3 Now, notwithstanding the entry of these two orders, the *transfer agent* for the Natural Solutions Corporation stock—Atlas Stock Transfer Corporation ("Atlas")—is unwilling, to transfer to Dr. Robertson the 500,000 shares formerly held by Marlin Preservation Fund, Ltd., or to cancel the 520,000 shares formerly held by Harvard Fund, Ltd. and Merchants Trust Fund, Ltd. While the trustee has already received all the consideration for the settlement, a related settlement is jeopardized by Atlas' action, because Natural Solutions Corporation is declining to close the related settlement. The trustee does not agree that the settlement of this case depends upon the closing of the settlement in the other case, but to avoid any risk, has agreed to seek one more clarifying order.

4. No party to this case is affected by these clarifications, because all the parties in this case, including nine offshore companies, have already executed the settlement agreement containing a disclaimer of their interests in this stock.

WE HEREBY CERTIFY that a true copy of this motion was mailed or faxed as noted to all parties on the attached mailing list this 17th day of September, 2001.

LAW OFFICE OF PATRICK SCOTT
Counsel for Trustee
111 S.E. 12th Street, Suite B
Fort Lauderdale, FL 33316-1813
(954) 523-1615

By



Patrick S. Scott
Fla. Bar No 290025

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

PRESENTENCE INVESTIGATION REPORT

v.

Warren D. Johnson, Jr.

)
) Docket No. 98-8039-CR-RYSKAMP
) Defendant No. 01
) Guideline Manual: 1998
)

Prepared for: The Honorable Kenneth L. Ryskamp
U. S. District Judge

Prepared by: Patricia A. Borah/lah
U. S. Probation Officer
501 S. Flagler Drive, Suite 400
West Palm Beach, Florida 33401
(561) 804-6859

The Offense Conduct

3. According to information provided by Assistant U.S. Attorney Carolyn Bell and Federal Bureau of Investigation (FBI) Special Agent Michael McBride,
4. The defendant is a retired real estate developer who lives in Stuart, Florida with his wife, Dianne. During 1978, two pieces of prime real estate in Jupiter Island were purchased in the name of Warren Johnson, Sr., Trustee. The defendant later admitted that the property was held in trust for his two children. At the time, Warren Johnson, Sr. had several other grandchildren who were not included in this trust. During a civil proceeding in the 1980's the defendant provided testimony that he was employed "managing a family trust". He further referred to 19 lots that had an estimated worth of \$20,000,000.¹

After the bankruptcy was settled, the lots were
sold for \$20,000,000.

5. In the early 1980's, Johnson obtained an option to buy Bay Pointe (lots 1-6), vacant waterfront property in Martin County, which he sold to Linkous Corporation without ever taking title in his name. Development started in approximately 1983 at the direction of Johnson through Linkous Corporation, using some of the proceeds from the Jupiter Island sales for start up money.
7. During this time, the defendant entered into another venture involving the purchase of 29 acres along the St. Lucie River in Martin County, Florida known as "Bay Pointe Estates" and "Otter's Run". It was adjacent to Bay Pointe which Johnson had previously developed. He planned to develop an even more exclusive development at Bay Pointe Estates. In March 1988, he filed suit against his partners, the co-owners of the property, PMC/FERCAL for the option to purchase Otter's Run in Bay Pointe Estates. That matter was pending until 1991 at which time the defendant prevailed and won the option to purchase the 29 acres under dispute. The purchase had to be made within 30 days of the date of the verdict. His interest in this property was never disclosed on his bankruptcy petition filed in 1992.
8. By December 1989, the defendant needed money to develop the Palm Aire property and repay the Southeast note. A business partner, Ray Loesche, loaned the defendant \$280,000 for the project, which the defendant did not repay. (Loesche later sued Johnson in 1990 for repayment, 90-1041-CA, Martin County.) The defendant ultimately raised a \$28,000,000 bond to develop the Retirement Facility at Palm Aire. The bond holders were represented by institutional mutual funds, including Merrill Lynch, Steinroe, Dreyfus and Prudential. The funds were held by a trustee until it was needed for development. However, before committing the \$28,000,000 for the retirement facility, the investors required further assurances from the developers, Johnson and Janke. Both the defendant and Janke signed an amended Guaranty for approximately \$3,000,000
11. During this same time, the bond holders also expected payment on the amended Guaranty and negotiations to change the term continued. In April 1991, the defendant provided the Palm Aire bond holders with a similar statement to the one he provided to Southeast. He then amended the statement provided to the bond holders citing a "loss of borrowing power", which was never provided to Southeast. On March 31, 1991, the defendant signed another Amended Guaranty requiring more collateral to the bond holders, namely his interest in the Retirement Facility and Lot 1 of Bay Pointe. The collateral was never transferred to the bond holders.

51. Ice Ban USA, Incorporated is a private corporation that holds the patents (about 8 patents) for Ice Ban products. In August 1996, Janke formed another corporation, Ice Ban, America, Inc. in the state of Nevada. The company originally had plans to sell franchises but that idea never materialized. Janke is the president and Jeffrey Johnson, the defendant's brother, is the vice president. However, Johnson is in the process of being let go. According to Janke, the Board of Directors agreed to cooperate with the federal investigation against the defendant but Jeffrey Johnson wouldn't agree to that. He was then voted out as vice president and was given the option to resign or be fired.

54.

Ice Ban is

currently blocking the sale of the restricted stock in an effort to prevent an "unloading" in the market and to assist the government in an ongoing securities fraud investigation.

56. Prior to 1996, the defendant simply listed his occupation as "self employed". He reported that he worked a total of five deals for Walter Harber, one of the investors in Bay Pointe Estates. In addition to his work with Bay Pointe Estates, the defendant was involved with Quarum, Ostrich Syndication and Mens Medical.

61. Mrs. Johnson also reported that she has approximately 250,000 shares of Ice Ban that she acquired as part of a buyout agreement. It is currently selling for approximately \$2 per share. Additionally, the defendant may also have access to approximately 4,000,000 of Ice Ban stock. The government has requested to be notified if any of the stock is traded. Ice Ban officials indicated that they would block the sale of any of Johnson's stock while the defendant is under investigation. The government intends to use the stock for payment of restitution.

78. First, the defendant has established a pattern of discharging his poor business decisions through the bankruptcy court. Although the defendant did not file bankruptcy until 1992, the debt that was discharged commenced in 1986, seven years after the filing of his previous petition and consisted largely of "business deals" gone awry. The filing that took place in 1979 occurred just after the defendant placed \$20,000,000 in trust. Unlike the typical parties emerging from bankruptcy, the defendant resumed making "high end" real estate/development decisions which presumably became his employment after both filings. Such deals could only be consummated with significant collateral. It is obvious that the defendant has a history

Respectfully submitted,

F-3

by: Patricia A. Borah
Patricia A. Borah,
U S. Probation Officer

811

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
) Docket No.
) 98-8037-CR-RYSKAMP
Plaintiff,)
)
) West Palm Beach, Fl.
v.) November 9, 1998
) Volume 1
WARREN D. JOHNSON, JR.,)
)
)
Defendant.)
)
-----x

VOLUME 1
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE KENNETH L. RYSKAMP
and a jury

APPEARANCES:

For the Government: CAROLYN BELL, ESQ.

For the Defendant: ROBERT ADLER, ESQ.

Court Reporter: Richard Greenspan, CSR, RPR, RMR, SCM, CRR
United States Courthouse
West Palm Beach, FL 33401

Lindsey - direct

23 Q. Is this a large company or a small company?

24 A. Well, our sales are approximately 200 million a year and
25 our -- we have 14,000 apartments.

Lindsey - direct

13 Q. Mr. Lindsey, you can take a seat again on the witness
14 stand.

15 Approximately when was the first time that you heard
16 about Bay Pointe and Bay Pointe Estates?

17 A. Sometime in 1988 I had my family down at Disney World and
18 Walt had his family there and we drove over to Bay Pointe
19 Estates -- Bay Pointe at that time.

20 Q. How was it described to you?

21 A. Bay Pointe Estates didn't exist. It was just a wooded kind
22 of jungle-looking-like tract of land. There was wasn't any
23 major description of it. It was just a matter of we went by
24 and saw Mr. Johnson and went out in the boat and looked at
25 everything in general, but it was just mostly a social visit,

Lindsey - direct

1 Q. Did Warren Johnson tell you anything about his money being
2 tied up in some other deals?

3 A. He said that he was in an investment in an elderly care
4 center down south and right now that he would need to have some
5 other capital, although I got the feeling that he could have
6 borrowed the money or he could have gotten the money.

13 Q. You were going to be putting in how much money into this
14 deal?

15 A. 500,000 for the land and approximately 600,000 for the
16 development costs, and, then incidental expenses that were
17 involved, probably another hundred thousand dollars. 150
18 maybe.

19 Q. So you were going to be putting in approximately --

20 A. A million three.

21 Q. A million three into the project, and what was Mr. Johnson
22 going to be putting into the project?

23 A. Well, he was going to take care of all of the details with
24 the county and coordinate the engineers and surveyors and all
25 of those people to help get us going. He lived right there and

Lindsey - direct

1 he could keep his eye on the project while it was being
2 constructed, just to inform us of what was going on and all.
8 A. Well, he had the land to begin with under his option
9 control and if we were going to do it, that was the only choice
10 or the only question about it.

Lindsey - direct

17 Q. When we were talking before about what else Warren Johnson
18 was bringing to the table, did Warren Johnson say anything to
19 you about bringing in an easement or anything like that?
20 A. There was a deal that was mentioned about the rights to get
21 in the gate. I can't keep up with the exact details of that,
22 but I mean, it was talking about the rights to get in the gate.
23 Q. And did Warren Johnson say he was bringing those rights
24 with him to the table as well?
25 A. That was a control factor that he had in the project as he

7 A. I told Dr. Harber that if he wanted to do that and sell it
8 and do it on a note and mortgage and a deed for some future
9 time when -- I remember distinctly Warren was talking about
10 building a house over there, then I would, if I could hold all
11 the documents, if they were waiting into the future, if they
12 were going to prepare the documents, I would want to hold the
13 documents in Arkansas, and they sent me a deed and a note and a
14 mortgage.

19 Q. And in fact if you take a look at Government's Exhibit
20 2-35, does that contain the documents that we are talking about
21 that you tore up?

22 A. Yes, ma'am.

23 Q. Did you ever talk to Dianne Johnson about this proposal?

24 A. I didn't, no, ma'am.

25 Q. No?

7 Q. Did Adam Brown bring anything to the transaction?

8 A. He could help sell it.

16 Q. For his activities in helping to sell the project?

17 A. Right, but my experience in real estate indicated that
18 sales is very strategic and it's important to have a
19 salesperson in a relationship, someone who is competent and can
20 sell.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	Docket No.
)	98-8037-CR-RYSKAMP
Plaintiff,)	
)	West Palm Beach, Fl.
v.)	November 10, 1998
)	9:00 a.m.
WARREN D. JOHNSON, JR.,)	
)	
Defendant.)	

-----x

VOLUME 2
TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE KENNETH L. RYSKAMP
and a jury

APPEARANCES:

For the Government: CAROLYN BELL, ESQ.

For the Defendant: ROBERT ADLER, ESQ.

Court Reporter: Richard Greenspan, CSR, RPR, RMR, SCM, CFP
United States Courthouse
West Palm Beach, FL 33401

817

15 MS. BELL: Yes, your Honor, I have one very brief
16 matter.

17 Your Honor, it goes without saying that this is a
18 court of law. Mr. Johnson has brought in to sit with him it
19 appears to be his minister. He was here yesterday morning
20 without his collar or his clothing on and yet today he shows up
21 with his full Sunday best, so to speak.

22 THE COURT: He had his collar on yesterday.

138

Lindsey - cross

7 I had a subdivision before that, but then I started building
8 some apartments. We have developed 13 subdivisions and we have
9 built 14,000 apartments and we manage those now. We have two
10 offices and about 100 agents and we have a management company
11 that would be the largest in Arkansas.

143

Lindsey - cross

1 Q. Were you even aware that Linkous Corporation had brought
2 the water line from an existing source down a county easement
3 all the way to the Bay Pointe property?

4 A. No, I was not aware.

24 Q. Were you in any way involved with Walt Harber purchasing
25 any lots in Bay Pointe?

818

1 A. No.

22 Q. You said that the first time that you came to the Bay
23 Pointe development you believed was in 1988 or so?

24 A. Right in that area, I think. Summer of '88, I think.

25 Q. You had come to Disney World?

1 A. Yes.

2 Q. You went to the Bay Pointe development with Mr. Harber or
3 Dr. Harber?

4 A. Yes.

19 Q. Paragraph 14 deals with a resolution by then developer
20 Linkous Corporation, correct?

21 A. Right.

22 Q. So back in October of 1991 you had a document in your
23 possession that told you that Linkous Corporation was somehow
24 involved with Bay Pointe, right?

25 A. Yes. And need to be cured.

Lindsey - cross

- 18 Q. In any way. How many employees do you have?
- 19 A. We have 100 agents. I have already mentioned that.
- 20 Q. Okay.
- 21 A. We have three lawyers on staff.

Lindsey - cross

- 6 A. This is to advise that pursuant to our discussion, the sale
- 7 of the subject property with regard to the above transaction is
- 8 being made with no guarantee for ingress and egress to parcel
- 9 B. Further, the final title insurance policy with regard to
- 10 the above transaction will accept insuring -- further, the
- 11 final title insurance policy with regard to the above
- 12 transaction will accept insuring ingress and egress to parcel B
- 13 on the subject property in Schedule B of the policy.
- 14 Q. Now, that letter refers to ingress and egress into Bay
- 15 Pointe Estates, right?
- 16 A. Right.
- 17 Q. And you had already received a draft or perhaps even the
- 18 title commitment that showed various exceptions relating to
- 19 ingress and egress, right?
- 20 A. In advance to the closing.

185

Lindsey - cross

7 Q. You mentioned Linkous Corporation, right, in the
8 exceptions?

9 A. In the exceptions, yes.

188

Lindsey - cross

20 Q. Paragraph 14. Take a look at that.

21 That again talks about Linkous Corporation,
22 developer, and it talks about assignment of various rights
23 relating to water, name, et cetera, right?

24 A. Right. It needs to be cured.

191

Lindsey - cross

12 Q. This affirmation doesn't have anything included about
13 Linkous Corporation having actually received any funds pursuant
14 to the resolution, does it? Take a look at it.

15 A. No.

Lindsey - cross

14 Q. And you knew that what Adam Brown was bringing to the
15 table, which was the ability to market and sell property in an
16 area where he was one of the premier brokers, was an extremely
17 valuable asset, right?

18 A. Yes. He was valuable. I will point out in eight years, we
19 have had four sales, so, you know, as far as how it has been
20 accomplished, you know, we have stayed with Adam on the deal to
21 this day. He still has the right to sell the property and just
22 recently sold one.

Lindsey - cross

14 Q. You weren't there every time Walt Harber signed a document
15 relating to Bay Pointe, right?

16 A. No.

17 Q. You were in Arkansas?

18 A. Yes.

19 Q. How many times did you actually come and look at or visit
20 the Bay Pointe Estates property?

21 A. Maybe five times in my life.

Lindsey - cross

16 Q. You had to sue, the trust had to sue to get ingress and
17 egress?

18 A. Walt had to sue. I still did not know about that. I
19 thought we were being delayed by having to get amendments to
20 get through the city and all of that. I was never told that.

21 Q. So Walt Harber was doing something that you didn't know
22 about?

23 A. I did not know that.. I did not.

24 Q. Just like you weren't at that meeting where Jerry Linkous
25 signed that affirmation, right?

Lindsey - cross

1 A. No, I was not there.

2 Q. You were completely unaware that Walt Harber had filed a
3 suit on behalf of the trust to get ingress and egress?

4 A. I was.

5 Q. Completely unaware?

6 A. Unaware.

Lindsey - cross -

3 Q. Because in order to do the development, the plat had to be
4 approved and all these issues about ingress and egress or other
5 issues relating to the plat had to be resolved, correct? Is
6 that correct?

7 A. Yes, all -- you can't get a legal plat to get a building
8 permit if any kind of legal question would be out there so you
9 couldn't pass the lot.

10 Q. So until this dispute about ingress and egress was
11 resolved, no lots could be sold, right?

12 A. No.

Lindsey - cross

3 Q. Haven't you ever had a dispute with someone who says well,
4 I don't agree with that interpretation of those documents?

5 A. Yes, I think that that's true, but I think that Warren was
6 duty bound to tell us. He had been put on notice that he was
7 fixing to be sued if we proceeded with this sale. I think he
8 was duty bound to do that. When I saw that at the grand jury,
9 I mean, I was offended by that, just to be honest.

10 Q. You had your lawyers, right?

11 A. I didn't have a lawyer that knew that document, sir.

12 Q. You had received a letter from the -- excuse me, the
13 lawyers for the sellers of the parcel saying that they weren't
14 going to insure ingress and egress, right?

15 A. That letter was there. We were making the assumption that
16 all these were -- had the authority to do it and it proved out
17 in court that we were right, that Warren was right. It proved
18 that he was right, but it took two years to do it and he had
19 notice in advance.

Lindsey - redirect

15 THE COURT: What the relevancy of this whole day of
16 testimony is? It seems to me the key issue is was this man
17 hiding property on his bankruptcy and this sounds like a civil
18 case whether this man has been defrauded. Whether he has been
19 defrauded or not has nothing to do with whether the defendant
20 is hiding property from creditors.

21 MS. BELL: I agree, your Honor.

22 THE COURT: We are way far afield on all of this
23 stuff on whether he got a bad deal or a good deal or anything
24 else.

Lindsey - redirect

18 Q. Did Warren Johnson ever tell you that there were problems
19 with the access, with the ingress and the egress and the water
20 rights to this property?

21 A. That gets real vague to me. He mentioned something about
22 Linkous at some point and you know we saw all of these
23 documents in advance to the closing. My attorney reviewed it
24 and I at least cursorily reviewed it. Linkous apparently
25 wasn't a big word to me. I remember this, when I saw it on the

1 closing statement, after it was on there as per resolution, it
2 was on there Linkous, then at that point in time I
3 remembered -- I mean, that name was just was very, very vague
4 to me and I just had -- I didn't know what it was. I was
5 trying to figure out what the word was, was it a person or what
6 was it, you know.

7 Q. Now, you are talking about the closing statement on the
8 \$250,000?

9 A. Yes. I'm still talking about back in 1991.

10 Q. At any point in time back in 1991, did Warrer Johnson ever
11 say to you, you know, Jim, there is a problem with access to
12 this property and it makes the property worthless?

13 A. You know, I have tried to search my mind on that. I have a
14 vague recollection of one conversation where he talked about
15 that he was for sure going to get the option on it cured
16 because he had a -- that Linkous or he -- I don't remember
17 Linkous, that he had a million dollar right in it, that there
18 was a million dollar right in it somehow, a million dollar
19 deal.

20 I remember the million and I remember Linkous, and
21 really, when it gets to that, I mean, that is so vague. I
22 mean, it was obviously in the documents. It was obviously at
23 that point in time we read it and it's obvious my attorney
24 wanted to make sure that it was cured.

25 Q. When we are talking about this million dollars and the

11 Q. With respect to the access to the property and with respect
12 to all of those other rights, including the water rights to the
13 property, all of those documents that we looked at yesterday
14 and all of the documents that you looked at again today with
15 Mr. Adler, what do those documents say about the access and the
16 water rights to this property?

22 A. I understand all the documents say the title is good and it
23 was cured. The lawsuit came after that. I could say Mr.
24 Johnson had notice of that in advance.

25 In my opinion, all these documents in its total say

4 Q. We have done business together for a number of years and
5 there exists between us a position of trust upon which you may
6 rely in this transaction, notwithstanding any other
7 documentation. Signed by Warren D. Johnson, Jr., correct?

8 A. Yes.

9 Q. So he was going to have to pay you money if there was any
10 problems with this, that's what this letter says?

11 A. Yes, it would take a good sum today.

12 Q. Under the trust agreement, he wasn't going to get any
13 money, right?

14 A. No, he got nothing out of it.

15 Q. And you would agree that you and Mr. Harber agreed to pay
16 approximately \$1 million at that time for both the purchase and
17 for development costs relating to Bay Pointe Estates and Otters
18 Run?

19 A. Approximately. I felt like it would be one million three.

9 Q. But it was not your original suggestion to do this in the
10 form of a trust?

11 A. I think it may have been. I am not sure. I really think
12 it may have been in my suggestion.

24 Q. Once the project got going, once the project was being
25 developed, did Warren Johnson have any continuing interest in

Lindsey - redirect

1 you rely on Adar Brown or Warren Johnson?

2 A. We relied on Warren.

Lindsey - redirect

17 Brown.

18 Q. Can you tell us, Mr. Lindsey, just in the ballpark, about
19 how much is your friend Dr. Harber worth, net worth?

20 A. \$15 to 20 million.

21 Q. And sir, approximately what would you say your net worth
22 is?

23 A. More than I deserve.. Is that a good answer?

24 Q. Just ballpark.

25 A. I don't know. It's an uncomfortable question for me. I

Lindsey - recross

1 would say more than \$50 million.

1 the development of the property, any continuing role in the
2 development of Bay Pointe Estates?

3 MR. ADLER: Objection. Beyond the scope of
4 cross-examination.

5 THE COURT: Overruled.

6 A. Warren was helping everywhere he could. I mean, our
7 relationship was that they, Adam Brown and Warren and their
8 family and me and Walt were involved in this together. It was
9 friendly. It was positive. You know, I didn't know that he
10 received that letter. I didn't know about the lawsuit being
11 going on like that. I mean, it's just unthinkable, but Walt
12 didn't tell me, because he was probably scared a little bit.
13 He just didn't feel like he wanted to upset me and he knew that
14 that would have, so he just left me out of that loop.

15 Q. But with respect to the ongoing development of Bay Pointe
16 Estates, did Warren Johnson continue to have an active role?

17 A. We were counting on Warren to help us, yes, with the
18 county. I mean, we had no experience with this county, with
19 engineers, with all these people down here. We had hired them.
20 We had what we thought their fees would be. I came down here
21 and negotiated a contract to do the construction work that
22 later was set aside and went another direction, but other than
23 that, we were dependent on him. We knew none of his problems.
24 We had no knowledge of his problems.

25 Q. With respect to the development of Bay Pointe Estates, did

PREPARED BY AND
TO BE RETURNED TO:
LEONARD RUTLAND, JR., ESQ.
LAW OFFICES OF LEONARD RUTLAND, JR., P.A.
10 CENTRAL PARKWAY, SUITE 350
STUART, FLORIDA 34994

AGREEMENT

THIS AGREEMENT made and entered into this 11th day of JANUARY, 1994, by and between BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC. ("Bay Pointe"), WALTER HARBER, AS TRUSTEE, HIS SUCCESSORS AND ASSIGNS, ("Harber"), BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION, INC. ("Bay Pointe Estates"), AND WARREN D. JOHNSON, JR. ("Johnson").

WITNESSETH:

WHEREAS, certain disagreements and conflicts exist between Bay Pointe and Harber which have resulted in the filing of that certain civil action known as WALTER L. HARBER, TRUSTEE, Plaintiff, v. BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida corporation not for profit, Circuit Court Nineteenth Judicial District in and for Martin County, Florida, file No. 92-1044-CA, wherein Harber has filed a Complaint For Declaratory Relief;

WHEREAS, the parties desire to amicably resolve the said conflicts and have entered into settlement negotiations with the purpose of so doing;

WHEREAS, the parties have entered into this Agreement to resolve the said disagreements and conflicts, **SUBJECT TO THE APPROVAL OF 100% OF THE PROPERTY OWNERS IN BAY POINTE SUBDIVISION**, the terms and conditions of which are hereinafter set forth;

WHEREAS, it is the desire of Harber, Bay Pointe, and Bay Pointe Estates to merge the two homeowners' associations into one association as soon as it is practical;

WHEREAS, Bay Pointe is the owner of the property more particularly described in EXHIBIT "A" attached hereto and incorporated herein by reference ("Bay Pointe Common Property"); and

WHEREAS, Harber desires to obtain from Bay Pointe a perpetual nonexclusive easement for the exercise of certain rights and privileges upon, over and under Bay Pointe Common Property for the purpose of ingress and egress, construction and maintenance of utilities, including but not limited to underground sewer and water, (sometimes referred to herein as "infrastructure"), for the

OR BK 1064 PG 2582

f that certain property more particularly described in
" attached hereto and incorporated herein by reference as
Estates (formerly "Harbour Pointe Phase 6", now known as
Bay Pointe Estates").

THEREFORE, in consideration of \$10.00 and the other good
able consideration, the receipt of which is hereby
ged, the parties hereto agree as follows:

AGREEMENT IS APPROVED BY 100% OF THE PROPERTY OWNERS IN
E THE FOLLOWING TERMS AND CONDITIONS HEREINAFTER SET FORTH
COME EFFECTIVE. IN THE EVENT THIS AGREEMENT IS NOT
BY 100% OF THE SAID PROPERTY OWNERS WITHIN THIRTY (30)
R THIS AGREEMENT IS EXECUTED BY THE PARTIES HERETO, IT
DEEMED NULL, VOID AND OF NO CAUSE OR EFFECT WHATSOEVER:

The parties shall execute a Mutual Extinguishment of
Agreement and shall cause same to be recorded in the said
records together with such additional documents as are
to perform the terms and conditions set forth herein.
reby represents and warrants that he is the sole owner of
ct property referred to herein as "Bay Pointe Estates" and
ights claimed by Harber in the above-referenced lawsuit,
but not being limited to the right of ingress and egress
across Bay Pointe.

Harber shall reimburse Bay Pointe for all attorney fees
in conjunction with this dispute and its resolution,
otherwise provided herein. Harber shall also retain
and pay all attorney fees, filing costs, permit fees,
as and any other fees or expenses required to execute,
document and record the terms and conditions of this
and as set forth in this agreement.

Upon the filing of the Plat of Bay Pointe Estates, Bay
as owner of the Common Property of Bay Pointe, shall give
ent to Harber, his successors and/or assigns, as to the
use Bay Pointe Common Property for ingress and egress to
erty described in Exhibit "B" and for construction and
nce of utilities in, under and on Bay Pointe Common
for the benefit of the Property described in Exhibit "B".
tten request of Harber, Bay Pointe shall also formalize in
the foregoing easement with such purveyors of utilities as
shall request. Within ten (10) days after the approval of
sement by 100% of the property owners of Bay Pointe and the
of the Plat of Bay Pointe Estates, Harber shall record a
y warranty deed from the Bay Pointe Estates Property Owners
ion, Inc., conveying common area tracts CA 1, CA 2 and CA
own on the Plat of Bay Pointe Estates, to Bay Pointe.
shall indemnify and hold harmless Bay Pointe for any and all
damage, including attorney fees, resulting from the
ment of Bay Pointe Estates, including, but not being limited
violations of code, permitting requirements, or agency
on requirements. Bay Pointe Estates infrastructure shall

be architecturally compatible with Bay Pointe, including the street lights. The construction of infrastructure and other improvements required by Martin County as a condition of the approval of the Bay Pointe Estates P.U.D., shall be bonded and the plat/P.U.D. shall be filed and recorded in the Public Records of Martin County, Florida at the earliest possible date.

4. The easement, rights and privileges herein granted shall be in perpetuity and shall be in substantially the same form as Exhibit "C" hereto. The grant of said easement shall run with the land and be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors, and assigns.

5. Bay Pointe covenants that Bay Pointe is the owner of the Bay Pointe Common Property, free and clear of all mortgages and liens, and has the right, title and capacity to grant the easement granted herein. Harber covenants that he, individually or as sole member of the Bay Point Estates Property Owners Association, Inc., is the sole owner of the Bay Pointe Estates property and of all rights, title and interest claimed by him in the subject Complaint for Declaratory Relief, free and clear of all mortgages and liens, and has the right, title and capacity to enter into this agreement and execute the terms and conditions of same.

6. Pursuant to the terms of a Mutual Easement, Bay Pointe, all property owners in Bay Pointe subdivision, their guests, invitees, agents or successors in interest, shall have the right to use all roads and common property in Bay Pointe Estates. Bay Pointe Estates, all property owners in Bay Pointe Estates subdivision, their guests, invitees, agents or successors in interest, shall have the right to use all roads and common property in Bay Pointe. Bay Pointe shall have the right to collect assessments or association dues for the maintenance of the common properties, lots and homes in Bay Pointe Subdivision and in Bay Pointe Estates Subdivision. The architecture of the future homes in Bay Pointe Estates Subdivision shall be controlled by the Community Design Committee of Bay Pointe. Bay Pointe and Harber both agree to merge the Bay Pointe Subdivision and the Bay Pointe Estates Subdivision under one association with a declaration of covenants and restrictions essentially identical to those of Bay Pointe filed in OR Book 615, Pages 1998 to 2022, Public Records of Martin County, Florida, except as otherwise stated herein. The Bay Pointe Estates shall include the following provision for amendment:

Section 2. Amendment. This Declaration may be amended upon the recordation of an appropriate instrument in the Public Records of Martin County, Florida; subject, however, to the following provisions:

(a) Except as provided hereinbelow, an amendment initiated by any party other than the Developer must obtain the approval of at least two-thirds (2/3rds) of the Owners; provided, however, that until such time as the Developer relinquishes control of the Association, as

described hereinabove, all amendments must include the joinder of Developer and Bay Pointe Property Owners Association of Palm City, Inc.

(b) This Declaration may be amended upon the initiation of Developer, at any time, upon approval of at least fifty-one percent (51%) of the Owners and the joinder of Bay Pointe Property Owners Association of Palm City, Inc.

(c) This Declaration may be amended by the Developer, at any time, without the joinder or consent of other Owners, Institutional Mortgagees or any other party, for the purpose of complying with governmental or lender requirements.

(d) Any duly adopted amendment to this Declaration shall run with and bind the property for the same period and to the same extent as do the covenants and restrictions set forth herein.

The declaration of covenants and restrictions of Bay Pointe Estates subdivision shall be subject to the approval of Bay Pointe, which approval shall not be unreasonably withheld. The parties shall obtain such approvals from Martin County, Florida, as may be deemed reasonably necessary to effectuate the proposed merger of associations, including, but not limited to, minor amendments to their respective P.U.D. agreements.

7. The Non-Riverfront Lots in the Bay Pointe Subdivision (Lots 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26) and the Non-Riverfront lots in the Bay Pointe Estates Subdivision (Lots 27, 28, 29, 30, 31, 36 and 37) (all of the said 17 lots may be sometimes hereinafter referred to as the "upland lots") shall have exclusive dock privileges to a "Non-Commercial Multiple Docking Facility" to be provided by Harber in a Bay Pointe Estates river front location. The dock shall have at least 20 slips for boats up to 26 feet in length and a beam of 10 feet. Following approval of the existing plat plan which has been submitted to Martin County for Bay Pointe Estates, Harber shall make application for the required permits for a multiple docking facility as specified by the appropriate dock codes and ordinances of Martin County and any other local, state or Federal governmental authority which needs to be involved in the permitting and approval process. A copy of the dock plans and permit request will be delivered to Bay Pointe prior to their submission for review and approval. The design of the dock will meet the appropriate codes and be of sufficient construction to meet its intended use. Harber will use due diligence in applying for and pursuing the approval and issuance of permits. Harber will cause his engineer, attorney or any other individual or entity who is assisting Harber in obtaining the permits, to give written status reports to Bay Pointe each month beginning the month following the application for permits and continuing until such time as the permits are approved and issued or disapproved. The parties recognize that Harber's application for and pursuance of

approval of the permits is a benefit to all parties. At the same time, the parties also recognize that the application for the permits does not guarantee that permits will be granted or approved. Harber shall place \$25,000.00 in escrow with Robert D. Critton, Jr., Esquire ("Critton"), as escrow agent. Critton shall place the said \$25,000.00 in an interest bearing account. Interest accruing to the said account shall be deemed a part of the said \$25,000.00 and shall be included in and be an additional part of any disbursement of the said \$25,000.00 made in accordance herewith. The said \$25,000.00 shall be used for the construction of the dock when permits for the construction of same have been obtained. In the event permits are not obtained and construction of the dock completed within two years after the recording of the plat of Bay Pointe Estates or by December 31, 1995, whichever shall first occur, the escrow agent shall pay the \$25,000.00 to Bay Pointe as part consideration for this agreement and the said \$25,000.00 shall be paid to the Bay Pointe upland lot owners, in equal shares. In the event permits are obtained and construction costs are less than \$25,000.00, any unused sums shall be paid to Harber upon completion of the dock. If the permits are not approved, Harber has no further obligations relating to the construction of the dock. If approval is granted for the construction of the dock, construction shall begin within thirty (30) days from the issuance of the permits, and Harber shall be responsible for all construction costs up to a maximum of \$50,000.00 to Harber, exclusive of permitting and/or application process costs. Upon completion of the dock, Harber shall make written request to Bay Pointe for the release to Harber of the \$25,000.00 held in escrow; thereafter, Bay Pointe shall inspect the said dock and shall direct escrow agent to disburse the said funds provided that the dock is constructed in a workmanlike manner and in accordance with the permit and plans for same. Should the cost of construction, exclusive of permitting and/or application process costs, exceed \$50,000.00, then the upland lot owners (the ultimate beneficiaries of the construction) shall share the additional cost on a pro-rata basis. Upland lot owners shall have the option of electing not to pay their pro-rata share of the said additional cost, however, any upland lot owner electing not to pay the said costs shall thereby waive any and all rights, title and interest in the dock being constructed. Harber's obligation for all permitting and/or application processing costs, including but not limited to architectural, attorney, engineering, and design fees and costs, is limited to \$12,000.00. Should the cost of permitting and/or application process costs exceed \$12,000.00, then the upland lot owners (the ultimate beneficiaries of the construction) shall share the additional cost on a pro-rata basis. Upland lot owners shall have the option of electing not to pay their pro-rata share of the said additional cost, however, any upland lot owner electing not to pay the said costs shall thereby waive any and all rights, title and interest in the dock being constructed. Harber shall provide city water and electric power to the foot of the dock. The upland lot owners shall be responsible for completing the installation of the water and electric service to the individual boat slips at their option and cost. Upland lot owners will determine among

themselves by lottery, the specific slip assignments. Dock assignments shall become appurtenances to the respective lots to which they are assigned and shall be deemed assigned to subsequent owners of the subject lots upon the conveyance of the said lots. In the event that Harber fails to obtain approval for a minimum of 20 slips, Bay Pointe subdivision lake front lot owners shall have first priority. Those dock slips for which approval is obtained, if any, shall be apportioned amongst the upland lot owners by lottery, with Bay Pointe subdivision lake front lot owners having first priority. Upon approval of the dock, the parties shall record in the Public Records a written dock use agreement regarding the said docks.

8. Harber shall provide and pay for the preparation and recording of all documents required for this agreement (unless otherwise provided) and subsequent agreements in order to plat Exhibit "B", as well as provide utilities such as water and sewer for the plat of Exhibit "B". This provision shall be deemed to include any and all cost or expense required to obtain approval from governmental agencies for the matters set forth herein.

9. Harber shall install and pay for a sewer system of sufficient size and capacity to service all of Bay Pointe subdivision as well as Bay Pointe Estates subdivision and provide "stubbing" to connect a future Bay Pointe sewer system to the Bay Pointe Estates pumping station which will also have sufficient capacity to carry the total load. Bay Pointe property owners will install and pay for the future Bay Pointe system which will be connected to the Bay Pointe Estates pumping station, including hook-up fees and reservation fees.

10. Harber shall repair any damage caused during the construction of Bay Pointe Estates infrastructure, including, but not being limited to, any landscaping, streets, walls or gates of Bay Pointe and shall indemnify Bay Pointe for any loss or damage resulting from the said construction. When the said construction of infrastructure is completed, it is intended that Bay Pointe will be at the same or in better condition than it was in prior to the commencement of construction.

11. Harber shall complete all site preparation and/or infrastructure in a timely manner and shall exercise due diligence in completing same. The foregoing notwithstanding, Harber shall have a reasonable time within which to complete site preparation and/or infrastructure in accordance with normal time estimates to be determined by professional engineers. Delays caused by acts of God shall not be included in these calculations but shall instead be deemed extensions in Harber's time of performance in a time period equal to the act in question. All work shall be done by licensed and bonded contractors. All Bay Pointe Estates lots will be seeded and irrigated upon completion of infrastructure, if seeding and irrigation is allowed by Martin County.

12. Harber agrees that pro-rata fees for the general

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maintenance of the Bay Pointe entrance, gates and associated common property shall be paid to the Bay Pointe Property Owners' Association of Palm City, Inc., on a quarterly basis, using a calendar quarter consistent with their then current billings, by the owners of each and every individual lot within Exhibit "B" commencing three months after this Agreement is approved by 100% of the Bay Pointe owners.

13. It is the intention of both parties that a single property owners association will administer both subdivisions under a single, amended, Declaration of Covenants and Restrictions. All assessments for the common property of both subdivisions will be paid equally by each lot owner with the exception of the noncommercial community dock which will be paid for equally by the upland lot owners who have a boat slip. Also, the cost of operating the sewer system prior to Bay Pointe's connection to same will be paid by Harbor. The assessments for the individual lots will be equitable to all owners. Until the merger of the associations, each association shall obtain liability insurance insuring their respective common properties and each such insurance policies shall name both associations as insureds/loss payees.

14. The Declaration of Covenants and Restrictions for Bay Pointe will be amended to include the appropriate terms and conditions of this agreement and to clarify the provisions in the Declaration regarding its amendment. Bay Pointe shall pay attorney fees and costs incurred in the said amendment process and not Harbor or any property owner of Bay Pointe Estates.

15. This Agreement is subject to all applicable governmental laws and regulations regarding the subject properties and shall be construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals effective as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Shirley D. Halberstam
Printed Name: SHIRLEY HALBERSTAM

Jo Ann Hicks
Printed Name: JOANN HICKS

Priscilla Moore
Printed Name: Priscilla Moore

BAY POINTE PROPERTY OWNERS
ASSOCIATION OF PALM CITY, INC.
a Florida not for profit
corporation

By: William F. Bustec
Printed Name: WILLIAM F. BUSTEC
As President

OR BK 1064 PG 2588

Judith Seitel
JUDITH SEITEL
Priscilla Moore
Printed Name: Priscilla Moore

Walter Harber
WALTER HARBER, AS TRUSTEE

Priscilla Moore
Printed Name: Priscilla Moore
Helen Whitson
Printed Name: HELEN WHITSON

BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION, INC., a Florida not for profit corporation

By: Walter Harber
Printed Name: WALTER HARBER
As President

Adonna M. Rutland
Printed Name: Adonna M. Rutland
Jo Ann Hicks
Printed Name: JO ANN HICKS

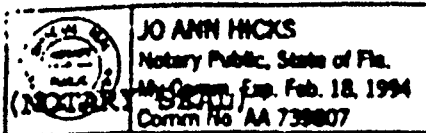
Warren D. Johnson, Jr.
WARREN D. JOHNSON, JR.

STATE OF Florida
COUNTY Martin

The foregoing instrument was acknowledged before me this 14th day of January, 1994 by William F. Buxter, as PRESIDENT of BAY POINTE PROPERTY OWNERS ASSOCIATION OF PALM CITY, INC., a Florida not for profit corporation. He/She is personally known to me or has produced _____ as identification.

Jo Ann Hicks
Print Name: JO ANN HICKS
Notary Public

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My Commission Expires:

STATE OF TENNESSEE

COUNTY WASHINGTON

The foregoing instrument was acknowledged before me this 7TH day of January, 1994 by WALTER HARBER, as TRUSTEE. He is

personally known to me or has produced Drivers License as identification.

Piscilla Moore

Print Name: Piscilla Moore
Notary Public

(NOTARY SEAL)

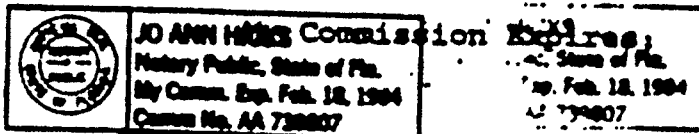
My Commission Expires: 8-3-97

STATE OF *Florida*
COUNTY *Martin*

The foregoing instrument was acknowledged before me this 11TH day of *January*, 1994 by WARREN D. JOHNSON, JR.. He is personally known to me or has produced _____ as identification.

Jo Ann Hicks
Print Name: JO ANN HICKS
Notary Public

(NOTARY SEAL)



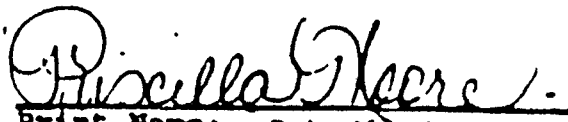
STATE OF TENNESSEE

COUNTY WASHINGTON

The foregoing instrument was acknowledged before me this 7th day of January, 1994 by Walter L. Harber, as President of BAY POINTE ESTATES PROPERTY OWNERS ASSOCIATION, INC., a Florida

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not for profit corporation. He/She is personally known to me or
has produced Drivers License as identification.


Print Name: Priscilla Moore
Notary Public

(NOTARY SEAL)

My Commission Expires: 8-3-97

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MUTUAL EASEMENT AND MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into on the _____ day of _____, 1993, by and between BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, hereinafter "BPPOA", and WALTER HARBER, as Trustee, hereinafter "HARBER" and BAY POINTE ESTATES PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, hereinafter "BPEPOA"

WITNESSETH:

WHEREAS, Bay Pointe is a residential planned unit development located in Martin County, Florida, and for purposes of this agreement any reference to "Bay Pointe" is intended to include Bay Pointe Subdivision as recorded in Plat Book 9, Page 50, and Bay Pointe Entrance as recorded in Plat Book 9, Page 78, both of the public records of Martin County, Florida; and

WHEREAS, HARBER is the owner in fee simple of that certain real property located in Martin County, Florida, more particularly described as:

See Exhibit "A" attached hereto and made a part hereof

which property is contiguous to Bay Pointe; and

WHEREAS, HARBER has caused said property described in Exhibit "A" to be subdivided into a single-family residential community known as "Bay Pointe Estates" according to the plat thereof recorded in Plat Book _____, Page _____, of the public records of Martin County, Florida, and

WHEREAS, BPEPOA is the owner in fee simple of the common properties located within Bay Pointe, according to the plat recorded in Plat Book _____, Page _____, including but not limited to the private roads and rights of way, and maintenance, drainage and

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utility easements, as evidenced by the dedications set forth on the plat of Bay Pointe Estates; and

WHEREAS, BPPOA is the owner in fee simple of the common properties located within Bay Pointe, according to the plats recorded in Plat Book 9, Page 50 and Plat Book 9, Page 78, including but not limited to the private roads and rights of way, as evidenced by that Warranty Deed recorded in Official Records Book 791, Page 2431, of the public records of Martin County, Florida; and

WHEREAS, BPPOA is the owner in fee simple of the Common Area Tracts shown on the Plat of Bay Pointe Estates, as evidenced by that Special Warranty Deed recorded in Official Records Book _____, Page _____, of the public records of Martin County, Florida; and

WHEREAS, as a part of the resolution of a dispute between the parties with regard to the rights of HARBER to use the private roads and rights of way located within Bay Pointe for ingress, egress, drainage and utilities for the benefit of the property described in Exhibit "A", all interested parties have executed a Mutual Extinguishment of Easement which is intended to extinguish all prior rights and responsibilities relating to the common areas within Bay Pointe, and in particular relating to the private roads which may have been created by implication, recorded instruments or by common law. Said Mutual Extinguishment of Easement being recorded immediately prior to this Agreement; and

WHEREAS, the parties desire to set forth the mutual rights and responsibilities with regard to the roads, rights of way, drainage, maintenance and utility easements, and common area tracts areas which have been or will be designated as "Common Properties" in the Declaration of Protective Covenants and Restrictions for Bay Pointe and the Declaration of Protective Covenants and Restrictions for Bay Pointe Estates;

NOW THEREFORE, upon the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A. That the above recitations are true and correct.

PRIVATE ROADS

B. That BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, hereby grants to WALTER HARBER, AS TRUSTEE, his successors and/or assigns, and BAY POINT ESTATES PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a non-exclusive perpetual easement for ingress and egress over, under, across and through the private roads as set forth on the plats of Bay Pointe and Bay Pointe Entrance as recorded in Plat Book 9, Page 50 and Plat Book 9, Page 78, respectively, for the benefit of and as an easement appurtenant to the property described in Exhibit "A".

C. That WALTER HARBER, AS TRUSTEE, his successors and/or assigns, hereby grants to BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, and to all of the individual owners of lots in Bay Pointe, a non-exclusive perpetual easement for ingress and egress over, under, across and through the private roads as set forth on the plat of Bay Pointe Estates as recorded in Plat Book _____, Page _____, public records of Martin County, Florida, for the benefit of and as an easement appurtenant to Bay Pointe subdivision.

D. That the mutual rights of ingress and egress as provided by this Agreement shall be for the benefit of the owners of lots in Bay Pointe and Bay Pointe Estates, their guests and invitees, and shall not be construed as giving the public any rights to use of the private roads located within either subdivision.

E. Each party, through the property owner's associations of the respective subdivisions, shall have the responsibility of maintaining the roads and rights-of-way which are within the boundaries of the subdivision to county standards, and may, through the declarations of covenants and restrictions or by-laws of the associations, establish higher standards of maintenance.

F. The costs associated with maintaining said easements shall be as set forth in Paragraph O below.

UTILITY EASEMENTS

G. That BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, hereby grants to WALTER HARBER, AS TRUSTEE, his successors and/or assigns, and BAY POINTE ESTATES PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a non-exclusive perpetual easement for the construction and maintenance of utilities over, under, across and through the "Utility Easements" as set forth on the plats of Bay Pointe and Bay Pointe Entrance as recorded in Plat Book 9, Page 50 and Plat Book 9, Page 78, respectively, for the benefit of and as an easement appurtenant to the property described in Exhibit "A".

H. That WALTER HARBER, AS TRUSTEE, his successors and/or assigns, hereby grants to BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, a non-exclusive perpetual easement for the construction and maintenance of utilities over, under, across and through that part of the property described on the plat of Bay Pointe Estates, as recorded in Plat Book _____, Page _____, as "Utility Easements", public records of Martin County, Florida, for the benefit of and as an easement appurtenant to Bay Pointe subdivision.

I. The costs associated with maintaining said easements shall be as set forth in Paragraph O below.

DRAINAGE, MAINTENANCE AND ACCESS EASEMENTS

J. That BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, hereby grants to WALTER HARBER, AS TRUSTEE, his successors and/or assigns, a non-exclusive perpetual easement for drainage, maintenance and access over, under, across and through the "Drainage Easements," "Access Easements," and "Maintenance Easements" as set forth on the plats of Bay Pointe and Bay Pointe Entrance as recorded in Plat Book 9, Page 50 and Plat Book 9, Page 78, respectively, for the benefit of and as an easement appurtenant to the property described in Exhibit "A".

K. That WALTER HARBER, AS TRUSTEE, his successors and/or assigns, hereby grants to BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, a non-exclusive perpetual easement for drainage, maintenance and access over, under, across and through that part of the property described on the plat of Bay Pointe Estates, as recorded in Plat Book _____, Page _____, as "Drainage Easements," "Access Easements," and "Maintenance Easements" public records of Martin County, Florida, for the benefit of and as an easement appurtenant to Bay Pointe subdivision.

L. The costs associated with maintaining said easements shall be as set forth in Paragraph O below.

COMMON AREA TRACTS

M. That BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, hereby grants to WALTER HARBER, AS TRUSTEE, his successors and/or assigns, a non-exclusive perpetual easement over, under, across, and through those parcels of property described as Common Area Tracts on the Plat of Bay Pointe Estates, as recorded in Plat Book _____, Page _____, for the use and benefit of the owners of lots in Bay Pointe Estates, and as an easement appurtenant to the property described in Exhibit "A".

N. The costs associated with maintaining said easements shall be as set forth in Paragraph O below.

MISCELLANEOUS PROVISIONS

O. The costs of maintaining the Common Properties of both Associations shall be assessed as follows:

1. Commencing three months after the approval of the settlement agreement in the action filed in the Circuit Court of the Nineteenth Judicial Circuit in and for Martin County, Florida, Case No. 92-1044 CA by 100% of the lot owners of Bay Pointe, HARBER, his successors and/or assigns, shall pay to BPPOA a pro-rata fee for the use of the Bay Pointe entrance, streets, gates and associated Common Property located within Bay Pointe. BPPOA shall present HARBER with a statement of amount owed together with an accounting of the basis

of the assessment on a quarterly basis.

2. Upon the issuance of the final approval of the roads, streets and other infrastructure within Bay Pointe Estates by the appropriate governmental officials, the maintenance costs for all Common Properties in both Bay Pointe and Bay Pointe Estates shall be assessed against all lot owners in both Bay Pointe and Bay Pointe Estates on a pro-rata basis, it being the intent of all parties that the two separate property owner's associations will ultimately merge and manage the common properties of both subdivisions as one subdivision.

3. The date and method of assessment shall be established by the declaration of covenants and restrictions, articles of incorporation and by-laws of the respective subdivisions until such time as the associations merge into one association.

P. These easements are non-exclusive and perpetual, and may not be terminated except upon the happening of one or more of the following events or actions:

1. Violation of either party's Planned Unit Development Agreement with Martin County, Florida, which violation results in a breach of the PUD agreement and reversion of the property back to its status prior to the PUD agreement being signed. Evidence necessary to terminate the easements pursuant to this subparagraph shall be a instrument, executed by Martin County, a political subdivision, recorded in the public records of Martin County, Florida, specifically stating that the PUD has been violated and resolving that the status of the property is returned to that which existed prior to the PUD agreement:

2. Formal amendment to, or abandonment of, the plat of either Bay Pointe or Bay Pointe Estates without written approval of the other party. Evidence necessary to terminate the easements pursuant to this subparagraph shall be the recordation of an amended plat for any of the subdivisions without an accompanying joinder and consent of the other party.

Q. This Agreement shall be recorded in the public records of Martin County, Florida, and the venue in any action initiated to enforce the terms and provisions of this Agreement shall be Martin County, Florida. The law of the State of Florida shall govern the interpretation and application of this Agreement.

R. The rights and responsibilities created by this Agreement shall be perpetual, shall run with the lands described herein, and shall bind the parties, their respective successors and/or assigns.

S. In the event any party brings an action to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to a judgment against the non-prevailing party for all costs and reasonable attorneys' fees, including paralegal fees, at all trial and appellate levels.

T. Bay Pointe Property Owner's Association of Palm City, Inc., a Florida

corporation, warrants and represents that it is authorized to enter into this Agreement on behalf of the association and the lot owners in Bay Pointe, and that all conditions precedent to the execution of this agreement which may be required by the articles of incorporation, bylaws, or other corporate documents as well as the terms and conditions of the declaration of protective covenants and restrictions for Bay Pointe have been satisfied.

U. HARBER, warrants and represents that he is authorized to enter into this Agreement individually and on behalf of the association and the lot owners in Bay Pointe Estates, and that all conditions precedent to the execution of this agreement which may be required by the articles of incorporation, bylaws, or other corporate documents of Bay Pointe Estates Property Owner's Association of Palm City, Inc., a Florida corporation, as well as the terms and conditions of the declaration of protective covenants and restrictions for Bay Pointe Estates have been satisfied.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

Signed, sealed and
delivered in the presence of:

Shirley D. Nalbandian
SHIRLEY D. NALBANDIAN

John Hicks

Priscilla Moore

Priscilla Moore

Helen Whitson
HELEN WHITSON

Priscilla Moore

Priscilla Moore

Helen Whitson
HELEN WHITSON

BAY POINTE PROPERTY OWNER'S
ASSOCIATION OF PALM CITY, INC., a
Florida not-for-profit corporation

By: William F. Auster
Printed name: WILLIAM F. AUSTER
It's President

Walter Harber
WALTER HARBER, AS TRUSTEE

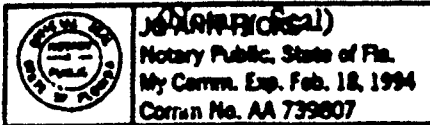
BAY POINTE ESTATES PROPERTY
OWNER'S ASSOCIATION OF PALM
CITY, INC., a Florida not-for-profit
corporation

By: Walter Harber
Printed name: Walter Harber
It's President

STATE OR FLORIDA
COUNTY OF Middle

The foregoing instrument was acknowledged before me this 11th day of January, 1994, by WILLIAM F. RYSTER, President of BAY POINT PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, who is personally known to me; or who has produced _____ as identification and who did not take an oath.

NOTARY PUBLIC:



J. Ann Hicks
State of Florida at Large
My Commission Expires:

J. Ann Hicks
Printed Name

STATE OR ~~FLORIDA~~ TENNESSEE
COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 7th day of January, 1994, by WALTER HARBUR, AS TRUSTEE, who is personally known to me or who has produced Drivers License as identification and who did not take an oath.

NOTARY PUBLIC:

(Notary Seal)

Priscilla Moore
State of Tennessee at Large
My Commission Expires: 8-3-97

Priscilla Moore
Printed Name

STATE OF ~~FLORIDA~~ TENNESSEE
COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 7th day of January, 1994, by Walter Harber, President of BAY POINTE ESTATES PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, who is personally known to me or who has produced Drivers License as identification and who did not take an oath.

(Notary Seal)

NOTARY PUBLIC:

Priscilla Moore

State of Tennessee Large

My Commission Expires: 8-3-97

Priscilla Moore
Printed Name

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MUTUAL EXTINGUISHMENT OF EASEMENT AND QUIT CLAIM

THIS AGREEMENT, entered into on the ____ day of _____, 1993, by and between WALTER L. HARBER, TRUSTEE ("HARBER"), BAY POINTE ESTATES PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation ("BPEPOA"), BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation ("BPPOA"), and WARREN JOHNSON, JR., a/k/a Warren D. Johnson, Jr., a/k/a Warren Johnson ("JOHNSON")

WITNESSETH:

WHEREAS, Bay Pointe is a residential planned unit development located in Martin County, Florida, and for purposes of this agreement any reference to "Bay Pointe" is intended to include Bay Pointe Subdivision as recorded in Plat Book 9, Page 50, and Bay Pointe Entrance as recorded in Plat Book 9, Page 78, both of the public records of Martin County, Florida; and

WHEREAS, HARBER is the owner in fee simple of that certain real property located in Martin County, Florida, more particularly described as:

See Exhibit "A" attached hereto and made a part hereof

which property is contiguous to Bay Pointe; and

WHEREAS, said property described in Exhibit "A" has been platted into a residential subdivision known as Bay Pointe Estates as shown on the plat of Bay Pointe Estates Subdivision recorded in Plat Book _____, Page _____ of the public records of Martin County, Florida, which property is contiguous to Bay Pointe; and

WHEREAS, BPPOA, a Florida not-for-profit corporation, is the owner in fee simple of all the common properties of Bay Pointe Subdivision and of Bay Pointe Entrance as shown on the plat of BAY POINTE SUBDIVISION, as recorded in Plat Book 9, Page 50, and the plat of BAY POINTE ENTRANCE recorded in Plat Book 9, Page 78, of the public records of Martin County, Florida, as evidenced by that Warranty Deed recorded in Official Records Book 791, Page 2431, which common properties include, but are not limited to, all areas marked and designated on said plats as "private road"; and

WHEREAS, a dispute has arisen as to the rights and responsibilities of the parties

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pursuant to those documents which purportedly create an easement in favor of the owner of the property set forth in Exhibit A over the roads and streets set forth in the plats of BAY POINTE SUBDIVISION and BAY POINTE ENTRANCE, and as a result of the dispute a civil action for declaratory relief was filed by HARBER against BPPOA in the Circuit Court of the Nineteenth Judicial Circuit in and for Martin County, Florida, Case No. 92-1044 CA, and

WHEREAS, upon the mutual agreement of the parties, it has been determined that in order to settle the controversy as to what rights, if any, HARBER, his successors and/or assigns has to use the roads and streets for ingress and egress to the property described in Exhibit A, all prior rights and responsibilities should be mutually released and extinguished pursuant to this Agreement, and new rights and responsibilities should be established pursuant to a new Mutual Easement and Road Maintenance Agreement between the parties, both of which shall be recorded in the public records of Martin County, Florida;

NOW THEREFORE, upon the mutual covenants between the parties, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A. That all of the above recitations are true and correct.

B. That all of the rights, interests, licenses, uses, easements, and responsibilities arising out of or created by the following documents recorded in the public records of Martin County, Florida, which purport to establish or create easement or license for ingress and egress in favor of HARBER or JOHNSON, their successors and/or assigns, over, across, under and through BAY POINTE SUBDIVISION and BAY POINTE ENTRANCE, are hereby released, extinguished and shall, from this day forward, be of no further force and effect:

1. Resolution executed by the Bay Pointe Property Owner's Association of Palm City, Inc. and reaffirmed in the document recorded in Official Records Book 930, Page 783.

2. Resolution of Linkous Corporation, the original developer of Bay Pointe, P.U.D., by its President, Jerry Linkous, dated April 3, 1987, reaffirmed by instrument executed by Jerry Linkous and recorded in Official Records Book 930, Page 791.

3. Letter Grant dated June 13, 1988, by Bay Pointe Property Owner's Association of Palm City, Inc., signed by its President, Donald Slater, and Minutes of Meeting of Bay Pointe Property Owner's Association of Palm City, Florida dated 4/22/88 as reaffirmed in that document recorded in Official Records Book 931, Page 2382.

4. Affidavit of Warren D. Johnson, Jr., secretary of the association, as recorded in Official Records Book 930, Page 780.

C. That HARBER and JOHNSON, their successors and/or assigns, remise, release

and quit claim all of their right, title and interest in and to the easement or license created pursuant to the aforementioned documents.

D. That simultaneously with the execution of this Mutual Release and Extinguishment, and in consideration therefor, HARBER as owner of the property described in Exhibit A, and BPPOA as the owner of the common properties, including but not limited to the roads, streets, easements and rights of way over, under, across and through Bay Pointe P.U.D. and Bay Pointe Entrance P.U.D. shall execute and record a Mutual Easement and Maintenance Agreement, with the rights created by said Mutual Easement and Maintenance Agreement replacing and superceding any and all rights released by this Agreement.

E. That BPPOA has the authority, pursuant to its articles of incorporation, bylaws and the declaration of covenants and restrictions, to enter into this agreement and to bind the members of the association, and hereby affirmatively represents and warrants that it has obtained the required vote of the membership to authorize the undersigned officer to act on behalf of, and to bind the association.

F. That in addition to, and not in contravention of, this Agreement, HARBER and JOHNSON shall execute and deliver Quit Claim Deeds which shall convey to BPPOA all of their right, title and interest created by the above referenced documents.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

Signed, sealed and delivered
in the presence of:

Priscilla Johnson

Heleen Whitcomb

Walter L. Harber

Walter L. Harber, Trustee

BAY POINTE ESTATES PROPERTY
OWNER'S ASSOCIATION OF PALM
CITY, INC., a Florida not-for-profit
corporation

Priscilla Johnson

Heleen Whitcomb

By: Walter L. Harber
Walter L. Harber, Pres.

BAY POINTE PROPERTY OWNER'S
ASSOCIATION OF PALM CITY, INC., a
Florida not-for-profit corporation

Shirley D. Nalbandian
SHIRLEY D. NALBANDIAN

Jo Ann Hicks
JOANN HICKS

By: William F. Buxter
WILLIAM F. BUXTER, Pres.

Adonna M. Rutland
Adonna M. Rutland
Jo Ann Hicks
JOANN HICKS

Warren Johnson, Jr., a/k/a Warren D. Johnson, Jr., a/k/a Warren Johnson

STATE OF ~~FLORIDA~~ TENNESSEE
COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 7th day of January, 1994, by WALTER L. HARRER, Trustee, who is personally known to me or who has produced Drivers License as identification and who did not take an oath.

(Notary Seal)

NOTARY PUBLIC:

Priscilla Moore

State of Tennessee-Large
My Commission Expires: 8-3-97

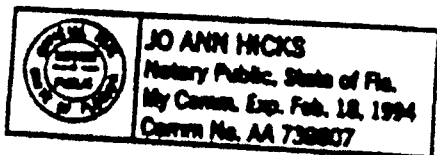
Priscilla Moore
Printed Name

STATE OF FLORIDA
COUNTY OF Martin

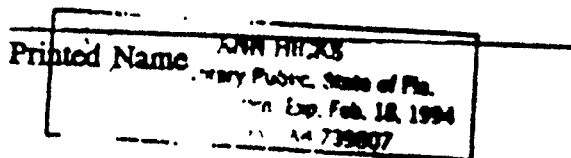
The foregoing instrument was acknowledged before me this 14th day of January, 1994, by WARREN JOHNSON, JR. a/k/a WARREN D. JOHNSON, JR., a/k/a WARREN JOHNSON, who is personally known to me or who has produced _____ as identification and who did not take an oath.

NOTARY PUBLIC:

(Notary Seal)



Jo Ann Hicks
State of Florida at Large
My Commission Expires:



STATE OF ~~FLORIDA~~ TENNESSEE
COUNTY OF WASHINGTON

The foregoing instrument was acknowledged before me this 7th day of January, 1994, by Walter L. Harber, President of BAY POINTE ESTATES PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, who is personally known to me or who has produced _____ as identification and who did not take an oath.

NOTARY PUBLIC:

(Notary Seal)

Priscilla Moore
State of Tennessee at Large
My Commission Expires: 8-3-97
Priscilla Moore
Printed Name

STATE OF FLORIDA
COUNTY OF Martin

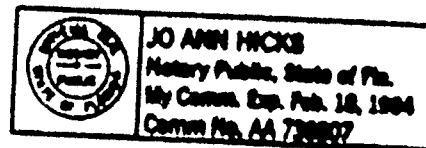
The foregoing instrument was acknowledged before me this 11th day of January, 1994, by WILLIAM F. BUSTEAD, President of BAY POINTE PROPERTY OWNER'S ASSOCIATION OF PALM CITY, INC., a Florida not-for-profit corporation, who is personally known to me or who has produced _____ as identification and who did not take an oath.

NOTARY PUBLIC:

(Notary Seal)

Jo Ann Hicks
State of Florida at Large
My Commission Expires:
JO ANN HICKS
Printed Name

2:12pm/1/26/94



01061512

94 MAY -9 PM 4:49

Parcel ID Number:

(Space Above This Line For Recording Data)

WARRANTY DEED

This Indenture, Made this 1ST day of APRIL, 1994 A.D.,
Between **WALTER L. HARBER, INDIVIDUALLY AND AS TRUSTEE**, grantor, and **JAMES E.
LINDSEY, AS TRUSTEE OF THE LINDSEY FAMILY TRUST**, whose address is: 3900 Front
Street, Fayetteville, Arkansas 72703, grantee.

WITNESSETH that the GRANTOR, for and in consideration of the sum of TEN AND
NO/100 (\$10.00) DOLLARS, and other good and valuable consideration to GRANTOR,
in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, has granted,
bargained and sold to the said GRANTEE and GRANTEE'S heirs and assigns forever,
the following described land, situate, lying and being in the county of Martin,
State of Florida, to wit:

SEE EXHIBIT "A" ATTACHED HERETO

and the grantor does hereby fully warrant the title to said land, and will defend
the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set his hand and seal the day
and year first above written.

signed, sealed and delivered in
my presence:

Della Whitson
Witness signature

HELEN WHITSON
Witness printed name

Rebecca Henley
Witness signature

Becky Henley
Witness printed name

STATE OF Tennessee
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 1ST day of
April, 1994, by **WALTER L. HARBER, INDIVIDUALLY AND AS TRUSTEE**. He
is personally known to me and did not take an oath.

Walter Harber
WALTER L. HARBER, INDIVIDUALLY AND
AS TRUSTEE

REC'D BY 76 MARSHA STILLER

CLERK OF CIRCUIT COURT

CLERK OF CIRCUIT COURT

INT. TAX # BY 627 D.C.

Lanny Henley
Notary Public

My commission expires:

My commission number:

Lanny Henley
Printed Name

This Document Prepared By:
Terence P. McCarthy, Esq.
McCarthy, Summers, Bobko, McKee & Bonan, P.A.
2081 S.E. Ocean Blvd., Suite 2A
Stuart, Florida 34996

F:\USERS\TPM\WARRANTY.BRO

01061516

94 MAY -9 PM 4:49

Parcel ID Number:

(Space Above This Line For Recording Data)

WARRANTY DEED

This Indenture, Made this 1ST day of April, 1994 A.D.,
Between WALTER L. HARBER, AS TRUSTEE, grantor, and WALTER L. HARBER,
INDIVIDUALLY, whose address is: 2111 W. Mount Castle Drive, Johnson City, TN
37601, grantee.

WITNESSETH that the GRANTOR, for and in consideration of the sum of TEN AND
NO/100 (\$10.00) DOLLARS, and other good and valuable consideration to GRANTOR,
in hand paid by GRANTEE, the receipt whereof is hereby acknowledged, has granted,
bargained and sold to the said GRANTEE and GRANTEE'S heirs and assigns forever,
the following described land, situate, lying and being in the county of Martin,
State of Florida, to wit:

SEE EXHIBIT "A" ATTACHED HERETO

and the grantor does hereby fully warrant the title to said land, and will defend
the same against lawful claims of all persons whomsoever.

In Witness Whereof, the grantor has hereunto set his hand and seal the day
and year first above written.

Signed, sealed and delivered in
our presence:

Becky Henley
Witness signature

Becky Henley
Witness printed name

Warren D. Johnson, Jr.
Witness signature

Warren D. Johnson, Jr.
Witness printed name

STATE OF Tennessee
COUNTY OF Washington

Walter L. Harber
WALTER L. HARBER, AS TRUSTEE

DOC DEED \$ 70 MARSHA STILLER

TMC MTG \$ _____ MARTIN COUNTY

DOC-ASM \$ _____ CLERK OF CIRCUIT COURT

INT TAX \$ _____ BY eh D.C.

The foregoing instrument was acknowledged before me this 1ST day of
April, 1994, by WALTER L. HARBER, AS TRUSTEE. He is personally known
to me and did not take an oath.

Lanny Henley
Notary Public
My commission expires: 11/1/94
My commission number: _____

Lanny Henley
Printed Name

This Document Prepared By:
Terence P. McCarthy, Esq.
McCarthy, Summers, Bobko, McKey & Bonan, P.A.
2081 S.E. Ocean Blvd., Suite 2A
Stuart, Florida 34996

F:\USERS\TPM\WARRANTY.BRO



P.O.C. - DENOTES POINT OF COMMENCEMENT
P.O.B. - DENOTES POINT OF BEGINNING

LEGAL DESCRIPTION

BEING ALL OF LOT 36, ACCORDING TO THE PLAT OF BAY POINTE ESTATES, AS RECORDED IN PLAT BOOK 13, PAGE 50, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA.

AND

A PORTION OF LOT 1, ACCORDING TO THE PLAT OF BAY POINTE AS RECORDED IN PLAT BOOK 9, PAGE 50, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWESTERLY CORNER OF SAID LOT 1, BAY POINTE LYING ON THE WEST LINE OF SAID LOT 1, BAY POINTE ALSO BEING THE EAST LINE OF SAID PLAT OF BAY POINTE ESTATES; THENCE SOUTH 00°40'12" WEST, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 170.85 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 36, BAY POINTE ESTATES AND THE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 00°40'02" WEST ALONG THE WEST LINE OF SAID LOT 1, BAY POINTE, A DISTANCE OF 142.94 FEET TO THE SOUTHERLY CORNER OF SAID LOT 36, BAY POINTE ESTATES; THENCE SOUTH 52°05'25" EAST ALONG THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF SAID LOT 36, BAY POINTE ESTATES, A DISTANCE OF 37.5 FEET, MORE OR LESS TO THE POINT OF INTERSECTION WITH THE MEAN HIGH WATERLINE OF THE ST. LUCIE RIVER; THENCE NORTHEASTERLY ALONG THE MEAN HIGH WATER LINE A DISTANCE OF 115.3 FEET, MORE OR LESS TO THE POINT OF INTERSECTION WITH THE SOUTHEASTERLY PROLONGATION OF THE NORTHEASTERLY LINE OF SAID LOT 36, BAY POINTE; THENCE NORTH 52°05'25" WEST ALONG SAID SOUTHEASTERLY PROLONGATION OF THE NORTHEASTERLY LINE OF SAID LOT 36, BAY POINTE, A DISTANCE OF 105.9 FEET MORE OR LESS TO THE POINT OF BEGINNING.

K & A
Precision Surveying, Inc.

Planners, Surveyors and Development Consultants
P.O. Box 12567 • Fort Pierce, Florida 34979 • (407) 468-3060

DATE: 11-15-88
BY: J. J. J. J.
DRAWING NO. 91-004-10

LAND DESCRIPTION & SKETCH

OF:
ALL OF LOT 36 & THE DESCRIBED
PORTION OF LOT 1.

PREPARED FOR:

WALTER HARBER

GRBK 070 PGI 027

SHEET

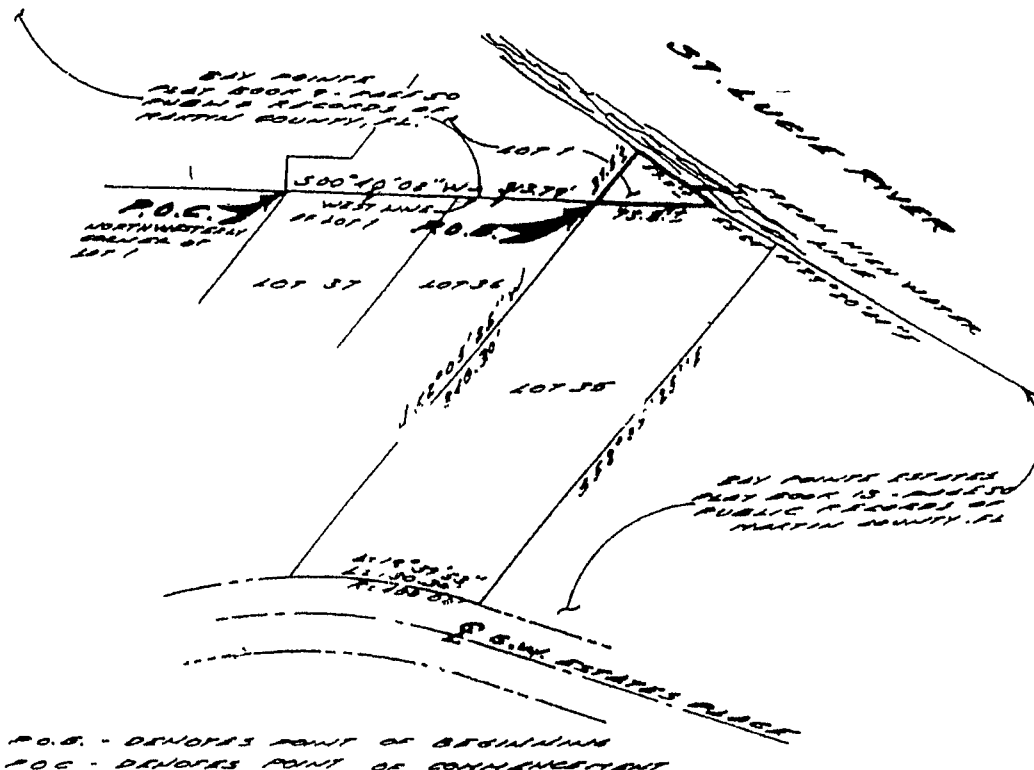
1

OF

1

858

H-27



P.O.B. - DENOTES POINT OF BEGINNING
P.O.C. - DENOTES POINT OF COMMENCEMENT

LEGAL DESCRIPTION

BEING ALL OF LOT 35, ACCORDING TO THE PLAT OF BAY POINTE ESTATES, AS RECORDED IN PLAT BOOK 9, PAGE 50, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA.

AND

A PORTION OF LOT 1, ACCORDING TO THE PLAT OF BAY POINTE AS RECORDED IN PLAT BOOK 9, PAGE 50, PUBLIC RECORDS OF MARTIN COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE, AT THE NORTHWESTERLY CORNER OF SAID LOT 1, BAY POINTE LYING ON THE WEST LINE OF SAID LOT 1, ALSO BEING THE EAST LINE OF SAID PLAT OF BAY POINTE ESTATES; THENCE SOUTH 00°40'02" WEST, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 313.79 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 35, BAY POINTE ESTATES AND THE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 00°40'02" WEST, ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 73.8 FEET, MORE OR LESS TO THE POINT OF INTERSECTION WITH THE MEAN HIGH WATER LINE OF THE ST. LUCIE RIVER; THENCE NORTHEASTERLY ALONG THE MEAN HIGH WATER LINE, A DISTANCE OF 59.2 FEET, MORE OR LESS TO THE POINT OF INTERSECTION WITH THE SOUTHEASTERLY PROLONGATION OF THE NORTHEASTERLY LINE OF SAID LOT 35; THENCE NORTH 52°05'25" WEST, ALONG SAID SOUTHEASTERLY PROLONGATION, A DISTANCE OF 37.5 FEET MORE OR LESS TO THE POINT OF BEGINNING.

R & A Precision Surveying, Inc. Planners, Surveyors and Development Consultants P.O. Box 12567 • Fort Pierce, Florida 34979 • (407) 468-3060		LAND DESCRIPTION & SKETCH OF: ALL OF LOT 35 & THE DESCRIBED PORTION OF LOT 1 PREPARED FOR: WOLF HARBOR OR BK 1070 PGI 028		SHEET 1 OF 1
DRAWN BY: DATE: 11/1/80 CHECKED BY: DATE: 5-21-81 DRAWING NO.: 91-351.01	LAST PAGE			859 H-28

EXHIBIT I

344

Rofsky - direct

5 Q. This \$200 million that's in this fund, this isn't just one
6 person's money, correct?

7 A. No, there are quite a few people. I don't know the exact
8 number of people, but to amass \$200 million, it's a very widely
9 distributed funds.

10 Q. Thousands if not millions of people?

11 A. I'd say probably thousands.

353

Rofsky - direct

14 Q. Can you read for us the entry at 1978 through 1982?

15 A. 1978 to 1982, developed ten ocean and nine Intracoastal
16 lots on Jupiter Island (Hobe Sound), Florida for a family
17 trust. Value of the property in the today's dollars would
18 exceed \$20 million, with homes selling in the two to three
19 million plus dollar range.

360

Rofsky - direct

8 A. Well, the operating deficit fund that I was describing just
9 earlier, \$2.8 million, was money that was the developer's in
10 this transaction, that was in the deal, it was their money to
11 pay the operating deficits.

12 Q. And they received that money from having sold the land that
13 was at issue in the Palm-Aire, the condholders, for a premium?

14 A. I believe that was the case.

860

16 MS. BELL: Mr. Elkins was Mr. Johnson's bankruptcy
 17 attorney. He and his firm assisted in the preparation of the
 18 petition and the schedules and the statement of financial
 19 affairs for Mr. Johnson and for Mrs. Johnson when she filed for
 20 bankruptcy.

21 Through Mr. Elkins, we will be introducing the rough
 22 drafts of these that were prepared by Mr. Johnson and we will
 23 also be asking him about how bankruptcy, the type of
 24 information that he gives to his clients when he files for
 25 bankruptcy and about the 341(a) meeting of creditors.

370

1 None of this information is privileged because,
 2 number one, it was never intended to be kept confidential.

3 Number two, it's not privileged because it is not
 4 legal work per se. Very often these types of documents and
 5 this type of information is given to people by nonlawyers.

395

Rofsky - direct

10 Q. You were also not aware, as we discussed yesterday, of the
 11 fact that Mr. Johnson and his wife Dianne had filed for
 12 bankruptcy back in 1978?

13 A. No. I didn't know he had filed for bankruptcy at all.

861

Rofsky - direct

8 Q. So in May of 1991 the facility opens?

9 A. Yes.

10 Q. Tell us about the facility.

11 A. The Retirement Facility at Palm-Aire is a beautiful
12 retirement facility. It's very well done, very pretty. It's a
13 place where I would want to live myself and I think anyone who
14 saw it would want to live there.

15 Q. About how many apartments are there?

16 A. It's a 300 unit complex that has a lot of different
17 amenities. It has a swimming pool and a Jacuzzi and a shuffle
18 board court and a big dining room and some lounges with a grand
19 piano. It's a very impressive facility.

419

Rofsky - direct

2 Now, moving toward July of 1991, in July of 1991,
3 what happened with respect to the guarantee?

4 A. In July of 1991, I believe that the guarantee was amended
5 after several months of negotiation.

420

Rofsky - direct

10 Q. So what did you take as security?

11 A. We took a second mortgage on a nursing home lot that was
12 adjacent to the Palm-Aire Retirement Facility.

20 Q. Did you also take a security interest in lot 1 of Ba
21 Pointe?

22 A. I don't recall at this point

862

Rofsky - direct

8 Q. I would like you to take a look, if you would, at
9 Government's Exhibit 4-39. Do you have that in front of you?

10 A. I have 4-39 in front of me.

11 Q. What is it?

12 A. It is a package of information on letterhead that says Bay
13 Pointe luxury waterfront residences. It's a letter to Frank
14 Ryan, Esquire, of Ryan & Ryan Legal Associates, and as I
15 recall, this is something that was given to us as information
16 regarding the Bay Pointe transaction to tell us that it was
17 just a matter of time before we would be seeing some money from
18 that transaction coming into the bond deal for the unfunded
19 guarantee.

424

Rofsky - direct

14 Q. The letter appears to be requesting money from the
15 bondholders for Bay Pointe Estates. Would you agree with that?

16 A. Yes.

17 Q. Was that even possible for you, the bondholders, to give
18 Mr. Johnson money for Bay Pointe Estates?

19 A. No. We, as the Apex Funding in particular, could not lend
20 money. It could purchase bonds in the securities market, but
21 it could not lend money. It was not a bank and it did not have
22 funds or the legal authority to make personal loans.

863

11 Q. So why is this significant?

12 A. This is significant, this letter is significant because it
13 was sent to us -- the letter asks to forward the request to
14 bondholders, but it also says that this project is the way to
15 put up the \$1.4 million unfunded guarantee in the Palm-Aire
16 project.

17 Q. In fact, that is an exact sentence in this letter, isn't
18 it?

19 A. Yes, it is.

20 Q. Can you read for us that exact sentence?

21 A. There is a paragraph that starts "Please forward this
22 request to the bondholders. This project represents four years
23 of work and a bitter lawsuit. It is also a way to put up the
24 \$1,400,000 unfunded guarantee in the Palm-Aire project.

Rofsky - direct

427

19 Q. And you were aware that in July of 1991 an amended
20 guarantee was signed by Johnson and that you and the other
21 bondholders representatives were agreeing to more favorable
22 terms from Mr. Johnson?

23 A. Yes. I don't know the exact date, whether it was 7/31/91,
24 but in July that amended guarantee was signed and it provided
25 for relief and actually officiated or documented what had been

Rofsky - direct

-29

1 nappening in the prior months allowing access to the cash.

Rofsky - direct

4 Q. What about Bay Pointe Estates and Otters Run, if you had
5 known about the transactions relating to Bay Pointe Estates and
6 Otters Run, what would you have done?

7 A. Well, if Bay Pointe Estates was transferred, we would have
8 tried to get our hands on it because that was the source of
9 payment to us and to the extent that there was any transaction
10 involving that, there was an obligation to be paying money into
11 this bond deal and should have been going towards that unfunded
12 guarantee.

445

Rofsky - cross

12 particular state or is it a national company?

13 A. Well, Merrill Lynch as a company is a global financial
14 services firm and generally when people refer to Merrill Lynch,

457

Rofsky - cross

20 "Q. Did you ever talk with Mr. Johnson prior to the closing?

21 "A. I don't recall speaking with Mr. Johnson prior to the
22 closing.

23 "Q. When is the first time you can remember speaking with Mr.
24 Johnson?

25 "A. The first time I recall speaking with Mr. Johnson was

458

Rofsky - cross

1 sometime in the fall of 1991."

11 Locking at several -- literally hundreds of bond
12 transactions a year and making decisions on which bonds to
13 purchase

Rofsky - cross

470

17 Q. One thing that you mentioned twice in your testimony is
18 that Warren Jonnson never told you about his bankruptcy in
19 1978; is that right?

20 A. Yes.

21 Q. You never asked him about whether he ever filed bankruptcy,
22 did you?

23 A. No.

478

Rofsky - cross

19 Q. You knew before you loaned any money that Mr. Johnson and
20 Mr. Janke, the guarantors, had said that they had not provided
21 any financial information that was in accordance with generally
22 accepted accounting principals and had not been prepared by any
23 independent Certified Public Accountants and that there was no
24 assurance that the guarantors would ever have the financial
25 resources available to meet their obligations under the

479

Rofsky - cross

1 guarantee if called upon to do so, you had that information
2 before you ever loaned -- actually spent a dime in March of
3 1990, didn't you?

4 A. I think what you are -- it sounds like some of the

866

5 information that you are saying there is not a dime of it

Rofsky - cross

1 Q. And the land acquisition was in the millions of dollars?

2 A. Yes, it was.

Rofsky - cross

15 Q. Just to recap, land acquisition costs, this doesn't go
16 directly to the borrower either, this goes to pay whoever the
17 seller is of the property?

18 A. No, the dollars that go for land acquisition actually go to
19 the purchaser of the land, who then takes that money and pays
20 the seller.

21 Q. This money goes to land acquisition to buy the land for the
22 project?

23 A. Yes.

24 Q. Eventually it ends up in the hands of whoever is selling
25 the property, the money goes to that individual?

Rofsky - cross

1 A. Yes. The money ultimately winds up going to the seller.

Rofsky - cross

25 [Q. Apex Fund of course had an appraisal for the property

Rofsky - cross

1 because you had to set some value for the land acquisition,
2 right?

3 A. We did have an appraisal that was reviewed.

4 Q. Of course, Apex wasn't going to simply hand out millions of
5 dollars to buy a piece of land without being absolutely certain
6 that the land was worth that amount of money; is that right?

7 A. That is correct.

Rofsky - cross

16 Q. You said that you have seen or you did see an appraisal for
17 the property before the closing?

18 A. Yes.

19 Q. And that appraisal was prepared by someone who is a
20 certified appraiser, capable of giving an appraisal on the
21 commercial piece of property worth millions of dollars?

22 A. Yes.

1 business deal.

2 Q. It's a business deal. This is America. People have a
3 right to make money and to borrow money and each side has their
4 own lawyers and take their own positions and that's the way it
5 works in this country, right?

6 A. Yes.

7 Q. I mean, you weren't in business with the limited -- with
8 the limited partnership, were you?

9 A. Certainly not. Certainly not.

10 Q. When the limited partnership bought that land, they did it
11 with money that the bondholders supplied after having received
12 the appraisal, right?

13 A. Yes.

14 Q. That money went to the seller, whoever it was, right? It
15 went from the limited partnership to the seller, right?

16 A. The money for land acquisition, I think the way it worked
17 was that a portion of the money that was being borrowed for
18 land acquisition went to the seller and the remaining portion
19 stayed with the bond trustee as the corpus of the operating
20 deficit fund.

21 Q. A portion of that money, the land acquisition money, went
22 to the limited partnership to buy the land from the seller,
23 right?

24 A. Yes.

25 Q. And that seller could take whatever equity he or she had in

1 that property and use it as he or she saw fit, right?

2 A. Yes. And in this particular case, one of the conditions of
3 the bond deal was that rather than taking that equity and
4 putting it in their pockets, that that equity be left in the
5 bond transaction.

6 Q. I haven't got there yet. That wasn't my question. In the
7 abstract that seller could take their money and walk away and
8 say I made a profit on my land, I'm going out to buy myself a
9 Mercedes, or they can take that money and use it and invest it,
10 right, and that's how it works in America, right? Do you
11 disagree with that?

12 A. No, I don't disagree with that.

13 Q. But in this case the seller of the land that was used to
14 build the ACLF site was Warren Johnson as trustee, right? If
15 you don't know, say you don't know.

16 A. I don't know.

17 Q. Any event, you are aware that the seller took the equity
18 that they received from selling this land at a profit and they
19 put it back in the deal, so to speak, to fund that \$2.8 million
20 reserve account that you have gone over, that's how it worked,
21 right?

22 A. Yes, it worked like that. That was one of the terms that
23 was negotiated I think prior to the Apex involvement. Dain
24 Bosworth, knowing what investors generally require, I think
25 demanded that any of that equity be left in the deal and that's

8 Q. In this case they said to the seller that we agree to this
9 purchase, but we want the equity taken out and put back in the
10 deal as a reserve fund, right?

11 A. That is correct.

12 Q. You don't quibble with the fact that this money, this
13 equity belonged to the seller, right? That was the seller's
14 money?

15 A. Yes.

2 Q. Mr. Johnson, if he had wanted to, he could have found
3 another buyer for this piece of property at \$8 million and sold
4 to that person and made a profit, right?

5 A. I guess so.

6 Q. But in this case you agreed, you agreed on behalf of your
7 bondholders to pay Mr. Johnson the amount of money that was set
8 in that contract between the retirement facility, Palm-Aire
9 limited and Mr. Johnson, you agreed to that, didn't you?

10 A. We purchased \$10 million of the \$28 million worth of bonds.
11 The bond transaction funded the purchase of the acquisition, so
12 we purchased the bonds with the knowledge of how the bond
13 proceeds were to be used.

14 Q. And pay to the way it was to be used was Mr. Johnson was
15 going to have a \$2,800,000 equity in this sale that was going
16 to be put in to the development; that was agreed to, right?

17 A. That would be part of the bond transaction, the \$2.3
18 million to be paid by the trustee, yes.

Rofsky - cross

18 Q. You had the wrong session. That section dealt with
19 borrowers. Mr. Johnson and Mr. Janke are not the borrowers
20 under this agreement, right?

21 A. The borrower under this agreement is Retirement Facility of
22 Palm-Aire Limited, a limited partnership.

526

Rofsky - cross

7 Q. This is a letter from Mr. Johnson to Frank Ryan asking him
8 to forward to the bondholders a request for financing for a Bay
9 Pointe development, correct?

10 A. Yes.

11 Q. I believe that you testified that the bondholders rejected
12 Mr. Johnson's request, correct?

13 A. Couldn't do anything with it.

14 Q. The bondholders did not at that time require Mr. Johnson to
15 assign any rights that he had in that property to the
16 bondholders, did they?

17 A. No.

5 THE COURT: I have often wondered what would happen
6 if we tried a civil case with criminal lawyers and I am finding
7 out right now, and it's a disaster. There is no focus to the
8 prosecution, there is no focus to the defense. Both sides seem
9 to be trying to waste as much time asking irrelevant questions.
10 In almost three days, I have heard less than half an hour of
11 relevant testimony in this case.

12 All of these issues are tangential. The government
13 put them in and the defense cross-examines on it. No wonder
14 you will say this case is going to take ten days. This is not
15 a ten-day case. It is a ten-day case because you all want to
16 make it one, I guess.

17 MR. ADLER: Judge, I don't want to make it one. I
18 have been objecting to relevancy from the beginning. Once they
19 bring the stuff in and try to accuse Mr. Johnson of fraud --

20 THE COURT: I understand. This jury is totally lost.
21 - You have reams and reams of pages dealing with concepts they
22 don't understand and we have lost sight of the fact that this
23 is supposedly a case about hiding assets from a bankruptcy. I
24 haven't heard any of that today yet. All I am hearing is about
25 a transaction that isn't even involved in the indictment. This

1 whole retirement center isn't mentioned in the indictment.

CROSS-EXAMINATION

BY MR. ADLER:

Q. Good morning.

A. Good morning.

Q. I believe you said you currently are not involved in the banking industry?

A. That's correct.

Q. But back in 1991, you were an employee of Southeast Bank?

A. Correct.

Q. How long had you worked for Southeast Bank prior to 1991?

A. I believe I came over, not much time had passed before my commencement of employment at Southeast Bank, so probably right in that near future, I would say early '91 or late '90.

Q. That's when you came to work for Southeast Bank?

A. Right around that timeframe.

Q. I believe you said, that about that time Southeast Bank was having some financial difficulties?

A. That's correct.

Q. I think you said things were somewhat confused at the bank at that time?

A. That would be a fair statement.

Q. And the bank was under a lot of pressure to make sure that all its loans were in order, correct?

A. The banks are always under a lot of pressure to make sure that their loans are in order.

1 1991?

2 A. I would say, and this is really a guess, I probably had
3 anywhere from a dozen to 20 loans that were under my
4 responsibility.

5 Q. How many of those loans were either in default or coming up
6 due as far a maturity date?

7 A. Not performing or coming up upon maturity or matured
8 already, I would say a third of those.

9 Q. A third --

10 A. A third to a half of those.

11 Q. So about a third of your workload was devoted to problem
12 loans, so to speak?

13 A. That would be a fair statement.

14 Q. Government's Exhibit 10-1, if you could open your book
15 there. I would like to go through some of these documents with
16 you.

17 A. Sure.

18 Q. 10-1 is the original application for loan commitment in
19 regard to how this loan began. Correct?

20 A. Correct.

21 Q. And the actual borrower in 1988 was a corporation, Young At
22 Heart, Inc., correct?

23 A. Correct.

24 Q. The guarantors of the loan were to be a George A. Janke and
25 a Warren D. Johnson, Jr., correct?

Harper - cross

1 the borrower has no opinion as to the information contained,
2 correct?

3 A. I would disagree with that. At that time Mr. Johnson was a
4 guarantor, I believe, and not the borrower.

5 Q. Excuse me, he was a guarantor?

6 A. Yes.

7 Q. He was not a borrower?

8 A. Correct. At that time.

9 Q. But the accountant's information, his letter --

10 A. Yes, sir.

11 Q. Again was not audited?

12 A. Correct.

13 Q. And he expressed no opinion as to the information
14 submitted, right?

15 A. That is correct.

16 Q. Now, that financial statement dated February 10, 1988 shows
17 that Mr. Johnson has an asset referred to as the Haverhill
18 Court Apartments, correct?

19 A. That's correct.

20 Q. And it shows a liability of a Great Western Financial first
21 mortgage on Haverhill Court Apartments, correct?

22 A. That's correct.

23 Q. The bank had this information in its possession on or about
24 February 10 of 1988, correct?

25 A. That's correct.

1 A. No, I don't believe I do.

2 Q. Take a look at Government's Exhibit 10-6. Do you
3 in front of you?

4 A. Yes.

5 Q. 10-6 is a letter from Southeast Bank dated March 13, 1989,
6 correct?

7 A. Correct.

8 Q. And this would have been either -- on or about the date
9 that that first maturity date was coming up, March 10 of 1989?

10 A. Correct.

11 Q. That letter is from Southeast Bank and it's addressed to
12 George Janke, correct?

13 A. Correct.

14 Q. And Mr. Janke is significant because he is one of the
15 guarantors on this loan, correct?

16 A. Correct.

17 Q. The bank is asking Mr. Janke for a copy of the financial
18 statement of Warren D. and Dianne Johnson, correct?

19 A. Correct. As Mr. Janke as an officer of the Young At Heart,
20 Inc. corporation, which is the borrower.

21 Q. But that letter clearly is addressed to Mr. Janke asking
22 for Warren Johnson's financial statement, correct?

23 A. Correct.

24 Q. No dispute about that, correct?

25 A. Correct.

1 Q. That mentions on it Haverhill Court Apartments and it
2 mentions the mortgage payable in Haverhill Court Apartments to
3 Great Western Bank, right?

4 A. Yes.

5 Q. Let's take a look at that credit report. Do you have that
6 in front of you?

7 A. That's 10-4? Yes.

8 Q. You have that in front of you?

9 A. Yes.

10 Q. Back in 1989, are you aware of what credit reporting
11 agencies were available for the bank to contact in order to
12 obtain credit information about a borrower?

13 A. Back in '89, that was prior to my coming to this
14 institution, but certainly there were -- generally speaking,
15 there has been about three agencies, TRW, D&B, I believe, and I
16 think there is another one.

17 Q. And those agencies prepare credit reports for individuals?

18 A. Correct.

19 Q. What is the cost of those reports to a bank?

20 A. Relatively nominal. Like \$25.

21 Q. This report that has been admitted in evidence, this
22 document, is this something called an in-house report to a bank
23 as opposed to a full factual credit report? In essence, this
24 is a short of a short version?

25 A. This appears to me to be some type of credit report that

1 A. Correct.

2 Q. So clearly the bank was aware from all of these documents
3 that Mr. Johnson had a million dollar or thereabouts obligation
4 to Great Western Bank, right?

5 MS. BELL: Objection. Assumed facts not in evidence.

6 THE COURT: Overruled.

7 Q. The bank clearly knew this?

8 A. Can you restate the question?

9 Q. That in 1989, the bank clearly knew that Mr. Johnson had an
10 obligation to Great Western Bank in regard to the Haverhill
11 Court Apartments in the approximate amount of a million dollars
12 or so, right?

13 A. Obviously because Mr. Johnson put that on his financial
14 statement at that time, that's correct.

15 Q. I think you said repeatedly that when you review a loan,
16 you review the whole documentation, right, you have to go back
17 and see what the history was, right?

18 A. Correct. That's the prudent thing to do, to get an
19 understanding and then it brings you up to the current point in
20 time where you relook at all of those aspects that I discussed
21 yesterday as to how they sit at that point in time. That is
22 most relevant.

23 Q. So you would go back obviously and look at prior financial
24 statements since they would be in the loan file along with
25 other documents; is that right?

1 A. You may spend some times with those, a lender may. A
2 lender may not choose not to. The most prudent thing would be
3 to spend some time reviewing those.

4 What is most relevant is the current information you
5 are dealing with at the time you are considering the renewal.

6 Q. You just said yesterday that the current information is
7 very fluid on a financial information, right? You used that
8 word, it's fluid, right? It can change from day-to-day?

9 A. Everything changes from day-to-day.

10 Q. Exactly. So it makes it even more important to show this
11 fluidity that you go back and look it at all the prior
12 financial statements just to see how this financial statement
13 has sort of flowed through the years, right?

14 A. Correct.

15 Q. I mean, you are a prudent guy, so you would have gone back
16 to do that?

17 A. That's correct.

18 Q. You did that in this case, right?

19 A. That's right.

20 Q. So you clearly knew in 1991 that Mr. Johnson at least at
21 some point had a million dollar obligation to Great Western
22 Bank specifically in regard to the Haverhill Court Apartments,
23 right?

24 A. That's correct.

25 Q. In March of 1990, the loan was extended once again,

1 A. Correct.

2 Q. That was the intent of the loan, right?

3 A. Correct.

4 Q. The bank says we have no more interest in the 12 acres that
5 belongs to the ACLF site, we will only have a \$600,000 mortgage
6 which will only be involved with the one acre nursing home
7 site, right?

8 A. That's right.

9 Q. Before the bank did that, I take it they received an
10 appraisal to make sure that its 600,000 mortgage on the nursing
11 home site was sufficient -- there was sufficient collateral
12 there, right?

13 A. Yes, the bank would want to see that the fair market value
14 of that little piece of property as established by the
15 appraisal would be higher than 600,000 loan would.

16 Q. That was done in this case, the bank had an appraisal and
17 they agreed to release the 12 acres and keep the one acre with
18 their 600,000 mortgage, right?

19 A. That's correct.

20 Q. And that is what this modification of note and mortgage was
21 supposed to do, right?

22 A. Correct.

23 Q. I take it the bank's lawyers prepare these types of
24 instruments?

25 A. Yes, that's correct.

1 A. Correct.

2 Q. And that refers to an Exhibit A, which was of the parcel
3 that was to be released, right, that's Exhibit A? Look at
4 paragraph 5, the first Exhibit A?

5 A. Oh, yes. That's correct.

6 Q. Let's take a look at Exhibit A. That's the legal
7 description of the portion of this 13.A acres that was
8 released, correct?

9 A. I believe so.

10 Q. And it was supposed to be a release of the 12 or so acres,
11 right? That was the deal?

12 A. Again, I am not intimately familiar with this legal
13 description or this document --

14 Q. That's your understanding of what the deal was to be?

15 A. Correct.

16 Q. So that release was supposed to be of 12 point something
17 acres, correct?

18 A. Correct.

19 Q. Take a look at the actual exhibit and at the very bottom,
20 what does it say about the actual size of the parcel that was
21 actually released?

22 A. 1.006 acres, more or less.

23 Q. With all its lawyers, with all its employees, what happened
24 here was that the bank messed up in this document, right? They
25 released the wrong parcel, right?

1 A. That's what it appears.

2 Q. And this is something that you reviewed when you analyzed
3 Mr. Johnson's loan, correct?

4 A. I reviewed, like I said previously, the bank's internal
5 credit files and up to that point I don't think I reviewed
6 every single page of every single legal document that had been
7 executed.

8 Q. Isn't collateral the key to any loan?

9 A. No, it is not.

10 Q. To a real estate loan, collateral is not the key?

11 A. No, it is not.

12 Q. Obviously it's at least a very important element of a real
13 estate loan, right?

14 A. Yes, it is.

15 Q. When I borrow money for my house, it's very important that
16 the bank get a lien on the right property, correct?

17 A. Correct.

18 Q. That's why a bank hires lawyers, right?

19 A. Right.

20 Q. That's why there are title companies involved?

21 A. Correct.

22 Q. Sometimes people make mistakes, right?

23 A. That's correct.

24 Q. In this case apparently the bank made a very big mistake
25 when they did this modification document?

1 Q. And a certain fee was paid to get the extension?

2 A. Yes.

3 Q. I believe it was \$6,000?

4 A. Yes.

5 Q. At that time that's when this error occurred and the wrong
6 parcel was released in March of 1990, right?

7 A. Right.

8 Q. In October of 1990, the bank sent Mr. Johnson a letter and
9 they told him that his financial statement of September 11,
10 1989 had expired as of September 11, 1990, right?

11 A. Correct.

12 Q. The bank apparently sent him a form of some kind that the
13 bank provides, right?

14 A. Correct.

15 Q. A bank can require a borrower to fill out whatever type of
16 forms that it wants as a condition of a loan, right?

17 A. Correct.

18 Q. There is something in the industry that's called a 1003
19 that's commonly used in residential real estate transactions,
20 right? Are you familiar with a 1003? Fannie Mae form?

21 A. Seeking a residential mortgage as a person?

22 Q. Yes. You have seen those kind of forms before?

23 A. I believe I have. I am not particularly familiar with that
24 form. I didn't do residential mortgage loans.

25 Q. Suffice it to say that the bank, if they want to get its

1 A. I have it here.

2 Q. You have that in front of you?

3 A. Yes.

4 Q. 10-12 is another letter from Southeast Bank to Mr. Johnson,
5 right?

6 A. Correct.

7 Q. It again asks for a copy of a current personal financial
8 statement, right?

9 A. Yes, apparently despite the previous request, the bank
10 still had not received that statement, so the bank sent out
11 another letter again asking for a current statement.

12 Q. It asks Mr. Johnson to provide a statement not only for
13 himself, but for Mr. Janke, right?

14 A. Yes.

15 Q. Because with all of these changes, Mr. Janke was still a
16 guarantor of that loan, right?

17 A. That's correct.

18 Q. Are you aware of any correspondence from Warren Johnson to
19 Southeast Bank prior to this January 14, 1991 letter in which
20 he requested any type of extension of that loan beyond its
21 March 1991 maturity?

22 A. No.

23 Q. There is no such letter, is there?

24 A. Not that I am aware of, no.

25 Q. There is no application for an extension filled out by Mr.

1 Johnson, is there?

2 A. No.

3 Q. Government's Exhibit 10-13 is another credit analysis
4 prepared by the bank, right?

5 A. Yes, it is.

6 Q. That's dated January 25, 1991, right?

7 A. That's correct.

8 Q. There is no letter, no application for Mr. Johnson between
9 January 14, 1991 and the date of this credit analysis, is
10 there?

11 A. No. No, there is not. This credit analysis you will see
12 there it says purpose is an annual review. The bank's internal
13 auditors require that all credits perform an annual review of
14 those credits regardless of what may or may not be happening.
15 That was the purpose of this, just to document on an annual
16 basis the current status and current information regarding the
17 loan. So it wasn't relative to the fact that the loan had
18 matured or it was about to mature or the fact that Mr. Johnson
19 had or had not asked for an extension.

20 This is purely, you know, not related to anything
21 that was actually going on with the loan.

22 Q. Included in the exhibits is Government's Exhibit 10-14.
23 Take a look at that.

24 A. Yes.

25 Q. Now, that is a modification of mortgage and note that was

Harper - cross

- 1 prepared by an attorney with Gunster Yoakley, correct? E
- 2 A. Yes.
- 3 Q. Gunster Yoakley was the bank's lawyer, right?
- 4 A. Correct.
- 5 Q. And that modification of mortgage and note is not signed by
- 6 Mr. Johnson, is it?
- 7 A. No, it's not.
- 8 Q. It's not signed by the bank, is it?
- 9 A. No.
- 10 Q. Take a look at Gover . . . 's Exhibit 10-15.
- 11 A. I have it here.
- 12 Q. That's another letter from Southeast Bank to Mr. Johnson,
- 13 correct?
- 14 A. Correct.
- 15 Q. And that's sent by someone by the name of Dianne L. Ross,
- 16 vice president?
- 17 A. Yes.
- 18 Q. She was an employee of Southeast Bank?
- 19 A. Correct.
- 20 Q. That letter states in the first paragraph that "Pursuant to
- 21 my correspondence of January 14, 1991 and several conversations
- 22 and meetings with George Janke and yourself, I have still not
- 23 been provided such information as to the disposition of the
- 24 above referenced loan," correct?
- 25 A. Correct.

1 Q. It continues: "In light of the pending joint venture
2 scenario, George Janke has discussed with me, I can assume your
3 request might be for an extension of time. However, failing
4 your written request identifying the requested timeframe and
5 providing details of the joint venture if solidified, I am
6 unable to analyze and proceed with a possible loan extension."

7 The last paragraph is "I would appreciate you
8 providing the necessary information in order to address the
9 subject matured loan facility."

10 That is the letter sent by the bank to Mr. Johnson as
11 of March 25, 1991, right?

12 A. Correct.

13 Q. Once again, Mr. George Janke is a guarantor on the -- on
14 this loan, right?

15 A. Correct.

16 Q. Ms. Ross said in this letter that she wanted a written
17 request, right?

18 A. She is asking for written request identifying specific
19 information.

20 Q. She used the term written, right?

21 A. Correct.

22 Q. This was a requirement that was in a letter from the bank
23 to Mr. Johnson, right?

24 A. I think she is asking for written request.

25 Q. She says, and I quote, "However, failing your written

Harper - cross

1 request" -- she used that language, right? E

2 A. Correct.

3 Q. And this individual was a vice president with Southeast
4 Bank, right?

5 A. Correct.

6 Q. This letter wasn't prepared by Mr. Johnson, was it?

7 A. No. What this letter says to me is that Dianne met with
8 Mr. Janke and Mr. Johnson and that they had discussions
9 regarding how they will address this loan and apparently there
10 was conversation regarding a new entity or venture that would
11 be involved and she is looking for information on paper and
12 black and white from Mr. Janke and Mr. Johnson regarding that
13 that she can put in her file.

14 Q. Mr. Harper, what it says to you is one thing, but it's very
15 important, is it not, that the bank clearly indicate to a
16 borrower what its requirements are, isn't that a fair thing?

17 A. That is a fair thing.

18 Q. It's the bank in this case, in this letter; it's the bank
19 that chose the exact words of this letter, right?

20 A. This is true. This letter is not a legal document that was
21 signed by all parties, this is simply a letter asking for more
22 information.

23 Q. But it's the bank that decides what form any information
24 has to take, right? The bank decides that, not the borrower?

25 A. The bank can ask.

1 Q. They can require. It's not ask, they can require. They
2 can say in order for us to do something, you must do something,
3 right?

4 A. They can ask. The borrower doesn't have to -- doesn't
5 obviously have to provide.

6 Q. Mr. Harper, the bank can say to a borrower we require you
7 to do A or we are not going to loan you money, right? A bank
8 can do that? Can't they do that?

9 A. Correct.

10 Q. Doesn't a bank do that all the time in requiring people to
11 come in with certain collateral or certain documents or to
12 provide certain things in writing, don't they do that all the
13 time?

14 A. Correct.

15 Q. And this letter says written request on it, clearly and
16 unequivocally; doesn't this letter say that?

17 A. Yes, she is asking for something in writing to support
18- their meeting, the information that was discussed in their
19 meeting and more detail regarding what was discussed in that
20 meeting.

21 Q. Can you show this jury any written request that Warren
22 Johnson ever submitted to the bank asking for an extension of
23 this loan from its March 1991 maturity date? Can you show this
24 jury any written request?

25 A. No, I cannot.

1 Q. There has never been any such request, has there? 7

2 A. Not to my knowledge. Not in writing.

3 Q. Never in writing? Never? Is that a yes?

4 A. Yes.

5 Q. Again, it's the warning letter to Mr. Johnson that says
6 failing your written request. That was the bank letter, right?

7 A. Correct. You have asked that question several times.

8 Q. Yes.

9 I'm sorry, maybe it is funny.

10 Do you think the bank has an obligation to its
11 borrower to be very clear in what it wants; do you think a bank
12 has that obligation?

13 A. Yes, I think the bank is clear that they want the loan
14 repaid at maturity or they are willing to work with the
15 borrower to renew the loan, but then we need information to
16 help the borrower in order to renew the loan.

17 Q. And in its communications with the borrower, isn't it only
18 fair that a bank be clear in what it wants? Isn't that a basic
19 premise of the bank's dealings with the borrower?

20 A. Yes.

21 Q. You say you got involved with this loan when?

22 A. After Dianne -- when I came to the bank, Dianne passed a
23 relationship responsibility of handling that loan over to me
24 and that's when I became involved.

25 Q. And when was that?

Harper - cross

- 1 A. That would be about that same time, March, April time~~frame~~.
- 2 Q. Well, it would have been after March 25 of 1991, right?
- 3 A. Yes. Shortly thereafter. I actually recall this --
- 4 Dianne's letter says that she, I -- I'm referring to the letter
- 5 that the attorneys are referring to here. It says I am unable
- 6 to analyze and proceed with the possible loan extension. It
- 7 doesn't preclude me, who took the relationship over, from doing
- 8 such.
- 9 Q. Take a look at Government's Exhibit 10-16. That is your
- 10 credit memorandum, right?
- 11 A. Correct.
- 12 Q. Now, from March 25 to April 17, 1991, there was never any
- 13 written requests from Warren Johnson requesting that this loan
- 14 be extended, is there?
- 15 A. No.
- 16 Q. You say you had conversations with Mr. Johnson?
- 17 A. Yes.
- 18 Q. Do you have any records of when those conversations took
- 19 place?
- 20 A. No, I don't.
- 21 Q. Do you have any notes of when these conversations took
- 22 place?
- 23 A. No, I don't.
- 24 Q. Do you have any notes of whether these conversations were
- 25 over the telephone or were in person?

1 A. I recall that I had at least one conversation or several
2 with Warren over the phone. I remember meeting Warren at the
3 opening of his property.

4 Q. My question was do you have any notes?

5 A. No, I don't have any notes.

6 Q. You have no notes?

7 A. No.

8 Q. These conversations took place back in April of 1991,
9 right?

10 A. Correct.

11 Q. That's some seven years ago, right?

12 A. Correct.

13 Q. This isn't something you have been thinking about from that
14 date since this date, right?

15 A. That's correct.

16 Q. And you were working a lot of loans at that time or a
17 number of loans at that time; is that correct?

18 A. That's very common and that is correct.

19 Q. And you have worked on a number of loans since?

20 A. Correct.

21 Q. Isn't it true, Mr. Harper, that you very well may be
22 confusing conversations that you had with George Janke with
23 conversations that you had with Mr. Johnson, isn't that very
24 possible?

25 A. I don't believe so.

1 how that document got into the bank file, can you? E

2 A. I can't testify how any of these documents got into these
3 files.

4 Q. When you reviewed that financial statement dated January 2,
5 1991, you had in your possession obviously the entire bank file
6 that we have been talking about, right?

7 A. Correct.

8 Q. You had in Mr. Johnson's financial statements that had been
9 previously provided, right?

10 A. Right.

11 Q. You had that credit report that we talked about before,
12 right?

13 A. Right.

14 Q. Take a look at the January 2, 1991 financial statement that
15 was in the bank file. First of all, can you tell whether
16 that's an original or whether that's a copy?

17 A. This particular copy is in fact a copy.

18 Q. It's a copy. So that is clearly a copy of a financial
19 statement?

20 A. Correct.

21 Q. Are you aware of any original signed financial statement
22 that was in the Southeast Bank files dated January 2, 1991?

23 A. None other this copy of original signed.

24 Q. So in reviewing the file in April of 1991, you were relying
25 upon a copy or a purported financial statement of Mr. Johnson,

1 right?

2 A. Yes, and I believe we rely on copies of financial
3 statements, that's very common.

4 Q. This January 2, 1991 financial statement, wherever it came
5 from, clearly had on it a reference to note and mortgage on
6 Haverhill Court Apartments due March 31, correct?

7 A. Correct.

8 Q. On the previous financial statements, Mr. Johnson had
9 listed the Haverhill Court Apartments as an asset, right?

10 A. Yes.

11 Q. He had listed actually two liabilities related to the
12 Haverhill Court Apartments, right?

13 A. That's correct.

14 Q. And in fact, again on the credit report the Great Western
15 loan showed up, right?

16 A. Three years prior, that's correct.

17 Q. So you had all that information in your possession whenever
18 it is that you reviewed the loan and saw this financial
19 statement, right?

20 A. Yes, that's correct. I saw that three years earlier there
21 was a credit report that did show that liability.

22 Q. Did you ever request from Mr. Johnson that he provide any
23 types of deeds or mortgages relating to the Haverhill Court
24 Apartments?

25 A. No, I did not. I had no reason to do so. Mr. Johnson

1 Q. You are not a lawyer, are you?

2 A. No, I am not.

3 Q. You don't actually prepare guarantees, right?

4 A. That's correct.

5 Q. And that's because you leave that to the hands of lawyers
6 who are experts in that area, correct?

7 A. That's correct.

8 Q. Because sometimes lay people may not either know how to
9 prepare a guarantee or may not understand what is required
10 under a guarantee, correct?

11 A. Correct.

12 Q. Take a look at Government's Exhibit 10-18.

13 A. I have it here.

14 Q. That's a letter from you to Warren Johnson, correct?

15 A. Correct.

16 Q. And it's in reference to the bank agreeing to certain terms
17 relating to an extension of the loan, correct?

18 A. Correct.

19 Q. Up until June 12, 1991, neither you nor anyone from
20 Southeast Bank had ever received any type of written request
21 for Mr. Johnson asking for an extension of that loan, correct?

22 A. That's correct. We also never received a written request
23 or verbal request for Mr. Johnson asking for us not to work to
24 renew the loan and in this environment, back in that timeframe,
25 as in any timeframe, a lender cannot appear to be overly

1 aggressive in pursuing a foreclosure or not to renew a loan.

2 Q. Obviously a borrower can elect to let a loan mature and not
3 pay it, right?

4 A. That's correct.

5 Q. A borrower has no obligation to seek a renewal or an
6 extension of a loan, right?

7 A. That does not remove them from the liability to actually
8 repay the loan.

9 Q. Of course. But there is no obligation for the borrower to
10 come to the bank and say I want an extension, right? There is
11 no obligation for them to do that?

12 A. There is no obligation for them to state whether or not
13 they want to or do not want to renew the loan, so we have to
14 protect ourselves, the bank has to protect the bank's money,
15 the depositor's money by taking steps to move forward so that
16 the bank will not be held liable for doing things that appear
17 to be inappropriate.

18 Q. Isn't that the exact reason why in this case it wasn't
19 Warren Johnson who was asking for an extension, it was the bank
20 trying to get an extension in order to make its loan current
21 because it was having financial difficulties, isn't that really
22 what was happening here?

23 A. That's not correct.

24 Q. Let's take a look at your June 12, 1991 letter.

25 Your letter has certain pre-closing requirements on

1 it, right?

2 A. Correct.

3 Q. One of the requirements in paragraph 5 is that Mr. Johnson
4 and his wife Dianne Johnson provide a joint personal financial
5 statement, correct?

6 A. Correct.

7 Q. And that was your requirement, right?

8 A. Correct.

9 Q. It had to be a joint statement, right?

10 A. In order to actually execute the documents, we would -- we
11 required Mr. Johnson provide a financial statement that showed
12 all the jointly held assets.

13 Q. So the bank wasn't going to proceed with any extension
14 unless it had a joint financial statement, right?

15 A. Correct.

16 Q. That was a requirement that you had set, right?

17 A. Correct.

18 Q. And as we talked before, the bank can establish whatever
19 requirements that it wants, correct? Correct, providing they
20 are legal?

21 A. We can attempt to make certain requirements, that's
22 correct.

23 Q. I am confused. When you say attempt, the bank has the
24 power to require a borrower to do something, plain and simple?

25 A. We can't force them to do anything they don't want to do or

1 provide things they don't want to provide. We can make an
2 offer, sometimes when we get to a closing table conditions
3 change at the closing table.

4 Q. And that's up to the bank to decide what the requirements
5 are, right?

6 A. Sometimes at the closing table documents are executed with
7 follow-up letters saying these items still need to be provided
8 subsequent to the execution of the documents.

9 Q. But the bottom line is the bank doesn't have to make an
10 extension or do anything unless its terms are met, right? The
11 bank can set terms and say these have to be met before we do
12 something, right? That's the bottom line. There can be
13 negotiation, but the bank could say we want something or we
14 won't do this, right?

15 A. That's a fair statement.

16 Q. That's a basic principle of the way our entire country does
17 business, right?

18 A. Correct.

19 Q. Parties get together and negotiate and it is up to them to
20 decide what's required before they are going to enter into an
21 agreement, right?

22 A. Right.

23 Q. I mean, you have a business degree, right? You understand
24 that, don't you?

25 A. I have said correct.

1 Q. Mr. Janke is on here because he was a guarantor of the
2 loan?

3 A. Right.

4 Q. Dianne Johnson was a guarantor of the loan? You don't
5 know?

6 A. The assets, if the financial statement shows that the
7 assets are held jointly, then she would be required to also
8 sign this commitment letter.

9 Q. Take a look at your July 1 letter, which is Government's
10 Exhibit 10-20. You have that letter in front of you?

11 A. Yes, I do.

12 Q. That letter is a letter from you to Mr. Johnson, right?
13 I'm sorry, it's a letter from Southeast Bank from a Richard
14 M. Forney to James B. Harper, right?

15 A. No, the letter is from Richard Forney and myself to Mr.
16 Johnson.

17 Q. This is a letter that you drafted again?

18 A. Yes.

19 Q. This letter indicates in the first paragraph that "Dear Mr.
20 Johnson: The borrower of the above referenced loan failed to
21 return to the bank the signed June 12 commitment letter and the
22 required fee by the June 24 deadline," correct?

23 A. Correct.

24 Q. So the bank never received any type of response from Mr.
25 Johnson in regard to the June 12, 1991 letter, right?

1 A. We did not receive any written response. We did not
2 receive any verbal communication. I do not recall having any
3 efforts made to have Mr. Johnson to contact me, so again, in
4 order to protect the bank's interests and not appearing to be
5 overly aggressive, perhaps Mr. Johnson was out of the country.
6 Perhaps Mr. Johnson was not available. Perhaps he didn't
7 receive the first letter. We sent another letter.

8 Q. Up to this point, now it's July 1, 1991, the bank has never
9 had anything in writing from Mr. Johnson requesting a loan
10 extension or agreeing to a loan extension, correct? :

11 A. That's correct, or requesting us not to renew the loan.

12 Q. But again, there is no obligation on a borrower's part to
13 make that request, is there?

14 A. When Mr. Johnson met with them, they could have very easily
15 communicated to Mr. Johnson -- I'm sorry, Dianne Ross. When
16 Dianne Ross met with them, with Mr. Johnson, Mr. Johnson could
17 have easily communicated to Mrs. Ross that they did not want
18 the loan renewed. I am sure she would have documented that in
19 the file.

20 Q. Her letter said that there was no extension request because
21 her letter said I assume you want an extension request, which
22 has to be in writing. That's what she said, right?

23 A. She is assuming that, based on their meeting and their
24 conversations.

25 Q. You weren't there at that meeting, were you?

1 A. No, I was not.

2 Q. That letter was her response to Mr. Johnson as a result
3 a meeting, right?

4 A. None of us were there at that meeting.

5 Q. Can you show this jury any requirement in any of these loan
6 documents that says that Mr. Johnson has to tell the bank that
7 he is not going to extend the loan, can you point that out in
8 any document that the bank has?

9 A. No, all I can point out is loan documents that state that
10 Mr. Johnson has to repay the loan at maturity.

11 Q. And again, he has the choice, as any borrower does, of
12 simply saying to the lender or not saying to the lender I am
13 not paying this guy, let him come after me, borrower can do
14 that, right?

15 A. That's correct.

16 Q. In fact, at no point has Mr. Johnson ever given Southeast
17 Bank a written request of any kind in order to extend that
18 lobby beyond the March 19, 1991 due date, right?

19 A. Mr. Johnson did provide a financial statement. Why would
20 he provide that financial statement if he wasn't interested in
21 the loan being renewed?

22 Q. Because he didn't provide it. You have no idea where that
23 came from, do you? You don't know where it came from?

24 A. Where would you suggest, how would that file get into the
25 file?

1 A. Right.

2 Q. That's all you know about that financial statement as far
3 as how it got in that file?

4 A. Somehow the bank received that statement.

5 Q. Somehow. That's all I needed to know.

6 The loan was never extended, was it?

7 A. My involvement with this loan ended about that point. I
8 sent two loan extension offerings to Mr. Johnson, which were
9 not acted upon, and at that point I moved into another area of
10 the bank and I believe the loan was moved over to the loan
11 workout area where they pursued foreclosure.

12 Q. So you have no information whatsoever that the bank ever
13 extended this loan, right?

14 A. That's correct.

15 Q. In fact, to the contrary, there is the foreclosure
16 complaint in the file?

17 A. Correct.

18 Q. Just to summarize, we had a loan --

19 MS. BELL: Objection, your Honor. Counsel is going
20 to be testifying.

21 THE COURT: It does sound like testimony. I will
22 sustain the objection.

23 Q. The original loan was Young At Heart, Inc. as the borrower,
24 right?

25 A. Correct.

1 A. Correct.

2 Q. So Warren Johnson personally owed \$600,000 to the bank, to
3 Southeast Bank on this loan that we are talking about in April
4 of 1991; is that right?

5 A. Correct.

6 Q. Did you have conversations with Warren Johnson personally
7 about the extension on this loan?

8 A. I had at least one conversation with Mr. Johnson.

9 Q. It's more probable than not that you had more conversation
10 with Mr. Johnson about that?

11 A. Yes.

12 Q. In fact, Mr. Johnson personally said in the course of the
13 conversation "I want to extend the repayment on this loan"?

14 MR. ADLER: Objection. Leading.

15 THE COURT: Sustained.

16 Q. What did Mr. Johnson say to you, what did Mr. Johnson
17 personally say to you about what he wanted to do with this
18 loan?

19 A. I can't recall explicitly those exact words coming from Mr.
20 Johnson. Obviously through correspondence and through at least
21 one conversation and meeting with Mr. Johnson, he knew what I
22 was there to talk about.

23 MR. ADLER: Objection. Calls for speculation.

24 THE COURT: Overruled.

25 A. Short of hearing those specific words, I don't recall that,

2 Q. Are the records, the type of records that reflect the
3 events that happened around the time that they happened?

5 MS. BELL: Your Honor, at this time I move for the
6 admission of Exhibits 1000-8 through 1000-15.

8 (Government's Exhibits 1000-8 through 1000-15 for
9 identification were received in evidence)

14 A. The initial contracts were in the name of a corporation
15 called Sun, Sea & Sand, Inc.

17 A. The president on the documents that were signed was Warren
18 D. Johnson, Jr.

20 A. Ultimately the closing, which took place later in 1979
21 closed in the name of Warren Johnson -- I think it was Warren
22 D. Johnson, Sr., trustee.

25 Q. What was Mr. Johnson, Jr.'s role at the closing?

Sundheim - direct

1 A. Mr. Johnson pretty much spearheaded the closing, seemed to
2 be in charge of what was going on at Mr. Ryan's office.

3 Q. And Mr. Johnson, Sr., what was his role at the closing?

4 A. My recollection is that he was there to sign documents,
5 notes, mortgages.

6 MS. BELL: Your Honor, nothing further from this
7 witness.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. ADLER:

11 Q. The individual who purchased this property was Warren
12 Johnson, Sr. as trustee, correct?

13 A. Yes.

14 Q. When you say he signed the documents, he, meaning Mr.
15 Johnson, Sr., was the person liable on the notes and mortgages,
16 correct?

17 A. Correct.

18 Q. Mr. Johnson, Jr. had no liability under those notes,
19 correct?

20 A. No, sir.

21 Q. Mr. Johnson, Jr. did not receive any of the proceeds, if
22 any, from the closing, did he?

23 A. Well, he would have been paying -- there weren't any
24 proceeds that would have been due the buyer of the property,
25 anyway.

CAROLYN BELL CLOSING ARGUMENTS.
CALLED JOHNSON A LIAR (17 times)

1652

1 Brown before I filed for bankruptcy so that my creditors
2 couldn't get them.

3 But the best evidence of all that this is what Mr.
4 Johnson did, you know what the best evidence of all is? The
5 best evidence of all is where the money ended up. Who got the
6 money? When there were profits to be received from Bay Pointe
7 Estates, did Adam Brown get them? No. Warren Johnson got
8 them.

9 When there were profits to be received from the sale
10 of the lot in Bay Pointe Estates, those profits ended up in the
11 pocket of Warren Johnson.

12 Now, you remember Mr. Kapila. Mr. Kapila was the
13 trustee in Warren Johnson's bankruptcy and I asked Mr. Kapila
14 if this was an asset, something that Mr. Johnson had before he
15 filed for bankruptcy, when the first lot was sold, what should
16 happen to the money from that lot?

17 He said well, the money should go through the
18 bankruptcy court to pay Mr. Johnson's creditors.

19 Then I showed Mr. Kapila where the money went, and I
20 asked him did you know that the money from the sale of the
21 first lot at Bay Pointe Estates went into an account in the
22 name of Linkous Corporation and then the next day into an
23 account in the name of Warren Johnson's father, and then the
24 next day, a couple of days later, into Dianne Johnson's
25 account, and over the course of the next few months into Dianne

1 looked at the resolutions. Ms. Daniels, Warren Johnson's
2 lawyer. Mr. Lindsey told us he had his lawyer look at them.
3 Mr. Develle, the title agent, he looked at those resolutions.

4 And what did the resolutions say? They said that
5 Linkous Corporation had been paid all of the money that it was
6 supposed to have been paid way back in 1987. Those documents
7 said Linkous Corporation was owed no money. Those documents
8 said Warren Johnson had paid Linkous Corporation, I believe it
9 said a million dollars cash back in 1987 or 1988. Linkous
10 Corporation was owed no money. And yet the money went into the
11 name of Linkous Corporation.

12 One day. Next day the money goes into the name of
13 Warren D Johnson, Sr. That's Warren D. Johnson, Jr.'s father.
14 Then the money goes into the account in the name of Dianne
15 Johnson. A check for \$125,000 is written to Dianne Johnson.

16 Now, why Dianne Johnson? Well, take a look at that
17 account in the name of Dianne Johnson. You will see, you
18 remember Mr. Develle told you, Warren Johnson wrote out a
19 majority, I believe, of the checks on that account. They were
20 all signed by Dianne Johnson, but if you look at the checks,
21 most of them were physically written by Warren Johnson. Warren
22 Johnson and Dianne Johnson had always had joint accounts in the
23 past. Take a look at some of the documents we introduced in
24 the B series through Mr. Elkins, you will see there are a
25 number of bank statements from prior to Warren and Johnson

1 read to you the instruction saying you should decide whether
2 you believe what each witness had to say and how important that
3 testimony was. In making that decision, you may believe or
4 disbelieve any witness in whole or in part. Also the number of
5 witnesses testifying concerning any particular dispute is not
6 controlling.

7 In deciding whether you believe or do not believe any
8 witness, I suggest you ask yourself a few questions: Did the
9 witness impress you as one who was telling the truth? Did the
10 witness have any particular reason not to tell the truth? Did
11 the witness have a personal interest in the outcome of the
12 case? Did the witness seem to have a good memory? Did the
13 witness have the opportunity and the ability to observe
14 accurately the things he or she testified about? Did the
15 witness appear to understand the questions clearly and answer
16 them directly? Did the witness' testimony differ from other
17 testimony or other evidence?

18 Ladies and gentlemen of the jury, there is only one
19 person that testified before you that had a reason to lie to
20 you and whose testimony differed from the testimony of every
21 other witness that got before you on the witness stand, and
22 that witness was Warren Johnson. Warren Johnson testified to
23 you about things that weren't true. Warren Johnson lied to
24 you.

909

25 Let's go over some of those lies that Warren Johnson

1 made. Warren Johnson lied to you -- let's start with Southeast
2 Bank. Warren Johnson lied to you he when he said he didn't
3 give -- he didn't want a renewal from Southeast Bank. How do
4 we know Warren Johnson lied to you when he said he didn't want
5 a renewal from Southeast Bank?

6 Well, let's put aside from Harper's testimony that
7 Mr. Johnson wanted a renewal. Let's put aside the fact that it
8 was Mr. Johnson's loan and Mr. Johnson was a guarantor on that
9 loan, so of course Mr. Johnson would want renewal. Let's even
10 put aside that if Mr. Johnson hadn't gotten a renewal the
11 bondholders at the Palm-Aire facility certainly wouldn't have
12 given him any kind of special treatment on the guarantee that
13 they were owed under.

14 Let's put all that aside and let's go to Mr.
15 Johnson's own words. Let's go to a document that Mr. Johnson's
16 lawyer gave not to Southeast Bank, but to the bondholders. It
17 will tell you, ladies and gentlemen, we don't know whether this
18 document was given to the bondholders. The only reason we know
19 that it was given to the bondholders by Mr. Johnson's lawyer,
20 Mr. Michael Ryan, is bought of the little marking here which
21 says MR, which as the document custodian told you, Michael
22 Ryan, who was Mr. Johnson's lawyer in this litigation.

23 This document, Government's Exhibit 4-22, is a copy
24 of the renewal notice that was sent to Mr. Johnson by Southeast
25 Bank and that he was supposed to sign and return to Southeast

1 Bank. He never signed and returned it to Southeast Bank, but
 2 he did sign it.

3 If Mr. Johnson didn't want a renewal on this loan,
 4 then why did Mr. Johnson sign a piece of paper saying that he
 5 wanted a renewal on the loan? More lies.

6 Mr. Johnson told you that this deal was the best deal
 7 he could get in a one day timeframe. Don't take my word for it
 8 that that was the story. Read his own words in Government's
 9 Exhibit 1000-2. Read his own words where he talks about how
 10 this was the best that he could do in 24 hours and how the 24
 11 hours came about because of this letter dated October 30, which
 12 is Government's Exhibit 1000-3.

13 We know that that is a lie. We know that that was
 14 not by any means the best deal that Mr. Johnson could get. We
 15 know that in fact this deal had been set up weeks if not months
 16 before. The deal was always in Adam Brown's name. We know
 17 that from the testimony and we know that from the documents.

18 Look at those documents. You will see faxes going
 19 back and forth in the 2 series of the documents. You will see
 20 that the trust agreement, the trust agreement that we have been
 21 talking about was signed before October 31. It was signed I
 22 think it was October 29, much more than a day before all of
 23 this. You will see in Alys Daniels' bill in Exhibit 3-46 that
 24 this whole thing was done before that.

25 You will see in that title insurance commitment I

1 keep talking about, 12-19, that Mr. Johnson had Adam Brown's
 2 name on this from the beginning. You will see in Government's
 3 Exhibit 2-1 that you have, a copy of the letter talking about
 4 Adam Brown, joint venture trustee dated September 30, 1991.

5 You will see checks that were already there.
 6 Government's Exhibit 2-10 and 2-11, prior to this one day
 7 timeframe that Mr. Johnson told you about. That is a lie.
 8 That is not true.

9 It's alot. Warren Johnson lied to you when he said
 10 he disclosed the fact that he made this transfer to his
 11 attorney, Mr. Elkins. That is a lie. How do we know that's a
 12 lie? The only reason you wouldn't disclose a transfer is if it
 13 isn't in the ordinary course of business. Take a look at that
 14 bankruptcy petition. There is no place on that bankruptcy
 15 petition, no place where Mr. Johnson says he is in the real
 16 estate business. There is no place on that bankruptcy petition
 17 where Mr. Johnson discloses the fact that he supposedly sold
 18 this option contract to Adam Brown.

19 Why did he do that? Why did he lie to you when he
 20 said that? Why did he want you to think that he had told his
 21 lawyer that and that his lawyer was the one who lied to you?
 22 He wanted you to think that he was disclosing everything he was
 23 supposed to and he wasn't. He lied.

24 Mr. Johnson lied to you when he said on that witness
 25 stand and he said to you that he disclosed that transfer to

1 Linkous, who in 1994, again you see from his tax return, Mr.
2 Linkous is so broke he is fighting with the IRS to get a \$2,000
3 refund. That's how broke he is.

4 Do you really think that Mr. Linkous was owed this
5 money? No. That was a lie. Mr. Linkous, Linkous Corporation
6 was Warren Johnson. That's the truth. This whole thing about
7 Linkous Corporation being owed money, that is a lie, Linkous
8 owed money.

9 Here is the note. Read it. 1983 I think it is.
10 1983. 6 percent interest. If it's not paid off in such and
11 such a time, Mr. Johnson, Sr. gets a river lot. No lots paid.
12 No interest. Nothing. Warren Johnson, Jr. is a guarantor on
13 this.

14 We know from his previous testimony, we went over
15 that the other day, that of course Mr. Johnson was supposed to
16 be a guarantor on this. Is this the real thing? Is this a
17 real note? No. Linkous didn't owe any money to Warren
18 Johnson, Sr.

19 And why not? Because Linkous Corporation was Warren
20 Johnson, Jr. and because this money that's at issue here, this
21 \$261,000, that money wasn't Warren Johnson, Sr.'s money, that
22 was Warren D. Johnson, Jr.'s money, and that, ladies and
23 gentlemen, this to me is the biggest lie of all.

24 The biggest lie of all is that the money that was at
25 issue on that \$261,000 note was Warren Johnson Sr.'s money

1 tell you that?

2 Do you really think that the only evidence you would
3 have heard from the defense would be Mr. Johnson's testimony if
4 there was anybody else out there who could come in here and
5 raise their right hand and testify to tell the truth and who
6 would back up anything that Mr. Johnson said? That burden
7 never shifts, but the evidence that Mr. Johnson presented, that
8 was his choice.

9 Now, this case has taken two weeks, but it is not a
10 complicated case. This is a simple case. This is a simple
11 case of someone who lied and someone who was greedy. This is a
12 simple case of someone who lied to Southeast Bank to influence
13 that bank so that he didn't have to repay a \$600,000 loan.
14 This is a simple case of someone who hid an asset that he
15 himself said was worth over \$1 million from the bankruptcy
16 court and his creditors, and it's a simple case of someone who
17 took the proceeds, the money from the sale of that property
18 that he hid and laundered it through a number of different
19 accounts and used it by putting it into his own pocket. It is
20 a simple case of fraud.

21 Mr. Adler said to you tell the government that the
22 government shouldn't be doing these kinds of cases. Well,
23 ladies and gentlemen, if the government shouldn't be doing
24 cases where people lie and cheat and steal, I ask you what kind
25 of cases should the government be doing?

Rofsky - cross

5 THE COURT: I have often wondered what would happen
6 if we tried a civil case with criminal lawyers and I am finding
7 out right now, and it's a disaster. There is no focus to the
8 prosecution, there is no focus to the defense. Both sides seem
9 to be trying to waste as much time asking irrelevant questions.
10 In almost three days, I have heard less than half an hour of
11 relevant testimony in this case.

20 THE COURT: I understand. This jury is totally lost.
21 You have reams and reams of pages dealing with concepts they
22 don't understand and we have lost sight of the fact that this
23 is supposedly a case about hiding assets from a bankruptcy. I
24 haven't heard any of that today yet. All I am hearing is about
25 a transaction that isn't even involved in the indictment. This

1173

Kapila - cross

3 MR. ADLER: Judge, the whole charge here is Mr.
4 Johnson concealed something in this bankruptcy. The government
5 is aware, and I believe they have made misrepresentations to
6 this jury,

1179

Kapila - cross

2 THE COURT: That allows your defense. If you can
3 establish later on that the government has withheld evidence or
4 misled the jury, that's a pretty serious accusation and I will
5 deal with that later on.

915

1 THE COURT: Well, are we even involved in
2 restitution at this time? Aren't we involved with the
3 question of how much the victims lost?

4 MS. BELL: Well, I would argue, your Honor --

5 THE COURT: Restitution may be a further point but
6 right now we say how much loss did the victims sustain.
15 the question of civil settlements and all this other question
16 of how much was actually lost, particularly when all of these
17 things take place after the bankruptcy discharge is in
18 effect, are simply questions of restitution. They are

THE COURT:

49

2 Now, with respect to this \$3.9 million guarantee, there is a
3 Final Summary Judgment.

25 So the 3.9 million is the amount for both

THE COURT:

50

1 restitution purposes and for loss purposes.

THE COURT:

Now, let me just say that in dealing with creditors, especially in the state of Florida where it is well known, and I have seen cases exactly like this, that somebody who has incurred large debt realizes he's going to go to bankruptcy, will come from another state, say New York, put half of his huge amount of resources in a big home and another half in an annuity, declare bankruptcy and say, You can't touch any of it now because my home is exempt and an annuity is exempt. And we have multimillionaires living in Palm Beach and Miami Beach and other places who have discharged all their creditors while living off their annuity and in their mansions.

And so I can see it's very easy for creditors to say they're going to get away with it. Well, you know, it's hopeless. The bankruptcy laws have become a sham and a fraud

THE COURT:

on the public. It's not really the bankruptcy laws, it's the laws of the State of Florida. And shame on our legislators for allowing this to continue. But they, in an effort presumably to preserve someone's's home, have not put any limit on that. And they have allowed bankrupt individuals to live in multimillion dollar homes -- and I'm not saying that's the case here -- and to have their annuities which

8 they take from ill-gotten loans, and thumb their nose at the
9 creditors while they live in luxury and the creditors get
10 nothing.

11 It is a known fact. It happens in Florida. It is
12 happening day after day I see cases like that. I had one
13 case recently where the guy stalled his creditors for six
14 months so he could liquidate all his assets and come down to
15 Florida and buy a home and annuity so that he could declare
16 bankruptcy here and not lose any of his money.

17 Unfortunately, he missed establishing residency
18 here by about 20 days and he didn't get a discharge.

19 But I think that creditors have become aware of
20 what can be done. And even though they're aware of the fraud
21 involved, they came in and they say, well, we've got to just
22 deal with a best situation.

23 So I don't see that this settlement had any effect
24 on the fact that there was a victim for \$3.9 million. And
25 I'll overrule that objection.

57

3 MS. BELL: Your Honor, I think I can shorten this.
4 The government would concede that Mr. Hibbel is not a victim
5 and not owed restitution. Mr. Hibbel owned a non-recourse
6 loan so he only had recourse, maybe it's called recourse, but
7 he only had recourse to the property and not Mr. Johnson.
8 The government will concede on Mr. Hibbel.

13 THE COURT: Let me say with regard to all these
 14 letters, I have read every letter that has been submitted. I
 15 feel that if people take the time to write a letter that the
 16 Court should read it. I think this is another letter, which
 17 I will read in a moment.

18 This is a situation where I see a real
 19 schizophrenic side to the defendant. I don't doubt for a
 20 moment the truthfulness of the letters that I read. I don't
 21 doubt for a moment the sincerity of those letters, the fact
 22 that the defendant was involved in many good causes, that he
 23 was involved in the church, in Bible studies, giving his
 24 money to various worthy causes.

25 And I think that all of the letter writers had seen

THE COURT:

1 a side of the defendant which I don't deny exists.
 2 Unfortunately, during the trial we saw another side of the
 3 defendant that did exist. And how you can put those together
 4 I don't know.

14 Now, God can give grace and forgiveness to people.
 15 The Court cannot. I can forgive Mr. Johnson but that doesn't
 16 absolve me of my responsibility to sentence him for what he
 17 did.

18 And when I say that there's kind of a schizophrenic
19 side to this, I'm accepting at face value that he has been
20 involved in all of these activities, worthy as they may be,
21 and I'm pleased to see that he has this side his life which
22 is very commendable. But we have seen another side his life
23 which is not very commendable.

24 And because of all the good things he's done, that
25 doesn't mean the Court just erases the crimes that he has
committed.

5 It just means that he has two sides to his
6 existence. And the people who, presumably, are here and who
7 have written these fine letters, I accept them as truthful
8 and as an honest and sincere evaluation of what they have
9 seen of Mr. Johnson.

THE COURT:

10 You know, we get a lot of bank robbery cases here.
11 And, frankly, I have more respect for a bank robber. A bank
12 robber says, Hey, I don't have anything available to me, it's
13 a matter of whether I eat, whether I exist. And he walks
14 into a bank with a gun and says, Give me your money. He
15 doesn't have the ability to go to the loan department and
16 present a lot of credentials and get them to give the money
17 to him voluntarily.

18 So in this case, this is bank robbery, this is, you
19 call it what you want. But it's taking money under false
20 pretenses.

the Court

11 But there are persons who come before the Court who
12 have had problems with the law before that can be in criminal
13 -history Category 1 but do not have a perfectly clean record
14 as Mr. Johnson does. I think that's the most important thing
15 for the Court to consider.

16 Plus the factors of all the nice things that people
17 have said -- the good character, the benefit he's given to
18 others, the fact that he goes to church and has been so
19 active is beyond the norm of persons who just go about their
20 daily lives and don't get in trouble.

RAY MARSHALL, GOVERNMENT WITNESS, SWORN

DIRECT EXAMINATION 11:15 AM

BY MS. BELL:

Q. Mr. Marshall, over the course of the last few years have you been associated with a company now known by the name Natural Solutions Corporation?

A. Yes, I have.

Q. How long have you been associated with that company?

A. Since about June of '94.

Q. And prior to being known as Natural Solutions Corporation, what was this company known as?

A. When it first started it was known as Ecological Snow Control, Inc. And then it became Iceban USA. And then ultimately a public offering was done under the name of Iceban America, Inc.

Q. You mentioned Ecological Snow Control. When was it known as Ecological Snow Control?

A. Back in '94.

Q. Were you associated with the company in 1994?

A. Yes, I was.

Q. And from 1994 up until fairly recently would you say that your interest mainly involved with the day-to-day operations of what's now known as Natural Solutions Corporation?

A. Very definitely.

- 1 Q. You were involved with principals of the company?
- 2 A. Yes.
- 3 Q. You were involved with the finances and operations and
- 4 all other such things?
- 5 A. Correct.

- 14 Q. Okay. Now I'd like to ask you about a company known as
- 15 IBAC, are you familiar with that company?
- 16 A. Yes, I am.
- 17 Q. What was IBAC?
- 18 A. IBAC Corporation was started in 1997 as a means to
- 19 extend Iceban product to the Canadian market. And it was
- 20 taken public in a manner similar to the way Iceban America
- 21 was taken public.
- 22 Q. When you say it was taken public in a manner similar,
- 23 what do you mean?
- 24 A. The stock was issued, founders stock was issued to
- 25 Mr. Janke and to the Johnson family. And stock was, of

- 1 course, purchased by the public.
- 2 Q. Whose idea was this IBAC?
- 3 A. Basically I believe Mr. Janke probably would be the
- 4 initial person who considered developing it.

14 Q. What was Diane Johnson's role with respect to setting up
15 IBAC?

16 A. She basically had no role.

17 Q. Now, at some point in time discussions were entered into
18 between Mr. Janke and Mr. Johnson with respect to issuing
19 founders stock with respect to IBAC corporation; is that
20 correct?

21 A. That's correct.

Marshall - Direct

92

11 Q. Now, with respect to contributions made to IBAC did
12 Diane Johnson make any capital contributions to IBAC?

13 A. Certainly none that I'm aware.

14 Q. Did she put any money into IBAC?

15 A. No.

16 Q. Any sweat equity, so to speak?

17 A. No.

Marshall - Cross

98

15 THE COURT: All right. Any cross examination?

16 MR. EISENBERG: Yes.

17 CROSS EXAMINATION 11:37 AM

18 BY MR. EISENBERG:

19 Q. Mr. Marshall, what do you do for a living, sir?

20 A. Right now I'm employed by an investment banking firm.

925

10 THE COURT: Sustained.

11 BY MR. EISENBERG:

12 Q. What's wrong with giving property to your family?

13 THE COURT: I sustained the objection, counsel.

14 There's nothing wrong with giving things away. Let's
15 proceed.

11 BY MR. CRITTON:

12 Q. Let me show what you I've referenced as Defendant's
13 Exhibit E composite. Do you recognize these are letters
14 wherein Mr. Bodhanya was resigning as an officer-director of
15 Merchants Trust and as well as the Harvard Fund, July 20 of
16 1998? Do you recognize these as being true and accurate
17 copies of documents that you had seen?

18 A. I recognize the signature.

24 THE COURT: will be admitted.

25 *(Defense's Exhibit E admitted)*

6 Q. Were you in the islands at the time that the resignation
7 occurred by Mr. Bodhanya on July 20 of 1998?

8 A. Yes.

9 Q. Was there continued concern at that point with regard to
10 whether Mr. Bodhanya had taken money improperly in his
11 fiduciary capacity or had unlawfully paid expenses from the
12 Grand Turk Harbor account or other accounts to pay personal
13 expenses of his own?

14 A. Yes. And there was also deep concerns about him being a
15 flight risk to Cuba.

16 Q. Did that meeting take place on Sunday, July 26?

17 A. That's correct. They both drafted up their positions
18 and --

19 Q. Where did the meeting take place?

20 A. Miami International Airport.

21 Q. And were you present?

22 A. Yes, I was there.

18 Q. Was an agreement signed by Mr. Bodhanya on that date?

19 A. Yes. And I eye witnessed his signature, attested to his
20 signature.

21 MR. CRITTON: If I may approach the witness.

22 THE COURT: Certainly

23 BY MR. CRITTON:

24 Q. Let me show you Exhibit B and ask you if this is the
25 agreement that Mr. -- in fact, that you witnessed and

5 Q. Okay. Now, this agreement, in essence, provides that
6 Mr. Bodhanya, and I'm paraphrasing, agrees to pay the Harvard
7 Fund and Merchants Trust almost three million five hundred
8 dollars in cash and stock Mr. Bodhanya had transferred to
9 creditors for his own benefit while he was a director and
10 fiduciary of those corporations --

11 A. Yes.

18 Q. In the discussions that took place between Mr. Johnson
19 and Mr. Bodhanya, did Mr. Johnson say to him, You stole this
20 money from Harvard, from Merchants and from Grand Turk
21 Harbor?

22 A. Yeah, the word theft, thief and so on was used.

23 Q. And this agreement confirms that fact?

24 A. Yes.

25 Q. And Mr. Bodhanya, did he ever say, well, gee, I didn't

1 steal that money?

2 A. No, he signed the agreement.

21 Q. Did he ever tell you that he did not owe \$3.5 million
22 for the moneys that he had wrongfully taken as a fiduciary
23 from Harvard Merchants and Grand Turk?

24 A. No. In fact, when, my following trip I went down myself
25 personally, I attempted to do some due diligence on some of
the, along with the attorneys.

1 Q. Were you surprised to learn that his interest in most of
2 his properties was almost nil?

3 A. I was disappointed. That was an understatement.

4 Q. Did you see Mr. Bodhanya at some point in November of
5 1998?

6 A. Yes.

7 Q. And where did you see him?

8 A. Well, I have to say it was bizarre.

9 Q. I just want to know where did you see him?

10 A. At the Sanford Airport.

11 Q. And how did it happen that you were called to the
12 Sanford Airport to meet with Reg Bodhanya?

13 A. I received a call the day before from a gentleman who
14 said he was in the construction business of some kind, he had
15 some housing product, mass housing product. And I had heard
16 about that from Canada and I said, Are you from Canada? And
17 he said yes. He said, I'm on my way back. And he says, Can
18 I meet with you to go over it with you? I said, well, I'm a
19 bit busy today but tomorrow. And he tried to meet me
20 someplace in Orlando. I said, why don't you come up to the
21 Sanford Airport where I had my office and meet me up there?
22 So we agreed to a time.

23 When I got out of my car to walk to the airport the
24 gentleman walking across the lot to meet me was this man
25 Richard.

1 Q. Richard from the July 26, 1998 meeting?

2 A. Right. I immediately was a bit shocked. And then he
3 said: "well, I'm here. I'm not here to talk about housing.
4 Actually Mr. Bodhanya wants to talk to you and he's sitting
5 in a car right across from you right now."

6 Q. And were you surprised to say the least?

7 A. I was totally shocked.

8 Q. So he had gotten you to the airport under false
9 pretenses?

10 A. Yes. Then he said: "why don't you get in the car and
11 we'll to go a restaurant and meet?"

12 Q. What did you say?

13 A. I immediately -- my, I was, you know, concerned, to say
14 the least, about this whole scenario. So I said, "No, I'm
15 not going anywhere. Why don't you come into the coffee shop
16 in the airport?" Because I know the airport. I have been
17 very involved in that airport for many years, in its
18 development. So I knew I was safe there.

19 Q. Were you concerned about your safety Mr. Bourne?

20 A. Well, it was, yeah, it was strange, to say the least.
21 So I decided to, we would to go the coffee shop where the
22 lady, I knew her. We sat down, and I just felt uncomfortable
23 that whole scene.

24 Q. Mr. Bodhanya obviously came in with Richard?

25 A. Yes.

1 Q. What was the pitch Mr. Bodhanya made to you in late
2 November of 1998?

3 A. They were almost working as a team and with leading
4 questions, and basically they were trying to say you seem --
5 Richard said: "You seem like a very nice man, very decent
6 guy. You wouldn't be involved in anything, we know that. We
7 just know that you signed the attestation to the signature in
8 July, it had to be under threat and you must have been really
9 scared, weren't you?" And all this kind of stuff.

10 You know, it was like I was very uncomfortable. I
11 was trying not to answer and yet trying not to shake
12 something loose. It was weird. And so we kind of played
13 around with the conversation for a while.

14 I said: "What's the point of all of this?" And
15 Reg said: "Well, I want you to sign a document that I will
16 prepare negating that." And saying that, you know, it was,
17 that that was forced, you know, that wasn't true, that wasn't
18 right.

19 Q. What did you say?

20 A. And I said: "Well, where's the document?" He said,
21 "Well, I have to prepare it." I said, "Well, prepare it and
22 let me, I don't know what you are talking about." And he
23 said he would meet me the next morning. Which happened to be
24 a Sunday morning and I was going out of town that same day at
25 11:00 with my wife.

1 So early in the morning the phone rings and
2 Mr. Bodhanya calls and says he's outside my door, right in my
3 neighborhood.

4 Q. You have a locked neighborhood?

5 A. Not gated, no. In fact, he said, "I'm outside your
6 son's house." He had stayed at my home once before and
7 learned where my son lived. He said, "I'm sitting outside of
8 his home now. Will you come down the street?" I was in my
9 pajamas, barefoot. It was early in the morning. We were
10 getting ready to prepare breakfast with my wife.

11 So I said: "No, but I'll meet you towards the
12 front of the development." So I drove out, just the way I
13 was, unshaven and so on. And he was sitting there in the car
14 with this guy Richard. And he had this document. He said:
15 "why don't you just get in the car; why don't you get in the
16 car?" I said: "No, I'm not going to get in the car. Let's
17 go down the road." I said: "I'm not dressed for going
18 anywhere. Let's have this discussion right here. Can I see
19 the document?"

20 He said, "I'll review it with you" and held it in
21 the car. I said, "Look, I'm not going to stand here," and he
22 told me then that if I didn't sign it that, you know, things
23 could be hard for me.

24 I said: "What do you mean by that?" He said, All
25 this thing going on with Johnson and so on. He says, "I

1 Could put in a good word for you." I said, "For what? I
2 don't need a good word."

3 Q. Were you worried about your good name in the Caribbean?

4 A. No. But at the same time Reg was trying to make it
5 sound so. But I wasn't worried but I just didn't like, the
6 whole thing I just didn't like.

7 Q. Mr. Johnson by this time had been convicted?

8 A. Yes, of course.

9 Q. Did Mr. Bodhanya indicate his feelings toward
10 Mr. Johnson at that time?

11 A. Very negative.

12 Q. What did he say?

13 A. He asked made a strange statement. One I remember he
14 said: "It's my mission in life to see him put away forever."
15 And the guy, Richard said, "You're saying too much, Reg." He
16 made those kind of statements.

17 And just at that point a gentleman, seeing me
18 standing there with a strange car, was driving down the road,
19 that knew my son, in a big massive tow truck. He pulled in
20 and he leaned out the window and he said: "Is everything
21 okay, Mr. Bourne?"

22 And I signaled him with my eyes that I was in a
23 very strange situation. And I used it as my opportunity to
24 say, "well, give me the document and let me go review it and
25 I'll call you back in a couple hours. Can I meet you

1 somewhere at that point?" They said: "No, we'll wait for
2 you." I said, "No, I'd rather you not just sit here and
3 wait."

4 I said: "Okay, Kevin, it's okay to go." And then
5 he eventually handed over the document for me to take. And I
6 took it home. Richard was not far away. And I quickly put
7 it through my fax machine and made a copy of it. And at that
8 point in time the phone rang again and they said: "Are you
9 ready to come and sign the document?" And I said no.

10 At that point I was very nervous. And my wife was
11 coming up getting dressed and getting ready to go. And I
12 knew they were sitting out front. And so it became almost a
13 strange movie like thing. Because I got in the car and then
14 I roared out of the development to try to zoom past them
15 before they could realize it, and they made chase.

16 Q. They did?

17 A. Yes. And I managed to out maneuver them and get out of
18 town. My wife said: "What are you doing, are you crazy?"
19 And then I explained to her what was happening and she got
20 real mad. And she said: "Why didn't you tell me before?" I
21 said: "If I had told you before you might have, you know,
22 made it difficult for us to escape."

23 The whole thing was bizarre. It was bizarre.

24 Then I never, Reg said to me: "If you don't sign
25 it today and I leave here and I go back, then, you know, it's

1 out of my hands." He kept on saying "it's out of my hands."
2 I don't know what he meant by that.

14 Q. -- do you know that Mr. Bodhanya was unlawfully and
15 illegally taking money from Grand Turk Harbor to pay
16 operational costs for his hotels that was never authorized?
17 A. Uh-huh, I have physically seen massive amounts of
18 checks, cancelled checks. It really shocked me the amount
19 and the extent and how long this went on for.

1 A. Yes.
2 Q. Were you ever aware that Mr. Bodhanya was up here and
3 met with Mr. Janke regarding Iceban matters in November of
4 1998?
5 A. I had no idea of any of this stuff.

6 Q. A couple last questions, sir. Did you discover, or have
7 you discovered since you've been reviewing and since Reverend
8 Grund, your Executive Director, has been reviewing the books
9 and records of Harvard Fund, Merchants Fund and Grand Turk
10 Harbor that Mr. Bodhanya unlawfully took both stock and money
11 from those companies to cover a personal obligation that he
12 had with an insurance company and with AmSouth Bank?

13 A. I saw a lot of these documents this last week. And
14 Mr. Grund, Reverend Grund would have to go into details, but
15 it is very major.

1 A. Yes.

2 Q. Those 500 shares were brought to you by Dennis Ciaglo
3 for Mr. Johnson?

4 A. Not me specifically. To Reg Bodhanya. And Reggie was
5 in charge of putting them into safekeeping as a requirement
6 of the government for a \$2 million security. Mr. Ciaglo was
7 involved in the building part of the thing, so that was his
8 whole area. So he brought this down to Mr. Bodhanya, lodged
9 it with a safekeeping scenario. That was reflected in the
10 development agreement. Because it had to be done for a
11 development agreement to be signed. And the government
12 accepted that at that point.

13 Q. My company is simply the 500,000 shares were shares of
14 Iceban and they came not from you, not from Mr. Bodhanya,
15 they came from Mr. Johnston?

16 A. If you have to put it in that way, they came from the
17 family trust or from that area, I don't know specifically
18 where they came from. But, yes, they came from that
19 direction.

MR. EISENBERG:

7 They say that there was a misrepresentation made to
8 Judge Vitunac which happened to be on June 23, 1998, after
9 all of this was transferred out, from whatever Mr. Johnson
10 may have had, all the transfers had been made. And
11 specifically the question from Judge Vitunac was: Did he
12 have any liquid assets outside the United States? Did
13 Mr. Johnson. And the answer here is no.

14 THE COURT: I understand your position, and you'll
15 get a chance to argue that. I want to follow along with the
16 government.

Bodhanya - Direct

159

1 Q. Mr. Bodhanya, you had made a statement that there are
2 secrecy laws within the Turks and Caicos Islands?

3 A. Yes.

4 Q. And what do they prohibit you from saying?

5 A. They basically prohibit a person from divulging
6 commercial dealings or transactions or information concerning
7 commercial dealings without authority.

19 MR. EISENBERG: If I might, Judge. I think,
20 though, that the person who should be doing this issue is the
21 Turks and Caicos judge and not a United States District Court
22 Judge, according to the testimony.

23 THE COURT: Well, he's here and he's not under the
24 jurisdiction of any Turks and Caicos judge. He's under my
25 jurisdiction. I'll allow him to proceed.

1 about a company called Iceban?

2 A. Yes.

3 Q. Tell us what he said about that.

4 A. He basically discussed the fact that he was involved in
5 a company called Iceban. It was the fastest growing stock on
6 the NASDAQ exchange. It had a tremendous future. And he
7 believed that it was going to, it was going to perform so
8 well that would it put Mr. Johnson in a Bill Gates category.
9 That was it.

17 Q. Moving forward then. In approximately April of 1997
18 what were you told -- did your contacts with Mr. Johnson
19 change; tell us about that.

20 A. Basically I had next to no contact with Mr. Johnson. He

21 stopped visiting. But Gerald Bourne was down very, very
22 frequently and I was told by Gerald Bourne not to call
23 Mr. Johnson because he was under investigation by the feds.
24 Those were the words that he used. The phones were being
25 tapped and, simply, he did not wish to receive any

1 communications or calls about this project. Or indeed
2 anything in the Turks and Caicos.

3 Q. And so most of your contacts after that were with
4 Mr. Bourne?

5 A. Totally Mr. Bourne.

8 Q. What happened in April 1998?

9 A. As part of the development agreement with the Turks and
10 Caicos Islands government, as part of -- one of the
11 conditions was that Grand Turk Harbor place security to the
12 value of \$2 million as good faith for the project. And
13 Mr. Dennis Ciaglo brought a share certificate to my office to
14 place as security with the government. And the share
15 certificate was in the name of, was the Marlin Preservation
16 Fund.

1 A. In July.

2 Q. July of 1998 you were asked to sign a number of
3 different documents giving up your position with respect to
4 Harvard Fund, Merchants Fund, Medical College Fund, windmills
5 Plantation, Hawk's Nest, Reid International, Rider and Marlin
6 Preservation Fund, is that right?

7 A. Yes.

8 Q. And you were asked to do that by Mr. Bourne and
9 Mr. Ciaglo, is that right?

10 A. Yes.

1 Q. What happened?

2 A. Mr. Johnson accused me of stealing the Harvard Fund, and
3 was demanding that I sign over the documents which basically
4 transferred the beneficial ownership of Harvard Fund.

5 Q. And, in fact, you did ultimately sign over beneficial
6 ownership of Harvard Fund and a number of different entities
7 as well, is that right?

8 A. No. The following day, following another meeting, or at
9 another meeting I did transfer, I did sign over the Harvard
10 Fund.

- 13 Q. That was what precipitated Mr. Johnson's anger with you?
14 A. Yes. That and the fact that he, and the fact that he
15 contended that there was no hotel deal.

- 12 Q. And then what happened?
13 A. Basically he asked me some questions about the shares
14 that were placed as security with AmSouth Bank.

- 7 Q. All right. And, Mr. Bodhanya, you have even been tried
8 in criminal court on an assault case, isn't that true?
9 A. Yes.
10 Q. Now; Mr. Johnson, to your knowledge, has never
11 physically, you're not aware of any incident where he
12 physically assaulted anyone, are you?
13 A. No.
14 Q. And you're not aware, similar to your circumstances,
15 where Mr. Johnson had ever been tried based upon having
16 assaulted someone with what, a baseball bat or some sort of
17 club?
18 A. That was the allegation, yes.
25 Q. In fact, when you were up here in November 1998 it was

1 right around the time of the annual meeting of the
2 shareholders of Iceban, true?

3 A. I wouldn't know.

4 Q. Well, didn't Mr. Janke tell you, sir, that he needed
5 someone to vote those shares of stock or sign the proxy
6 statement?

7 A. No.

8 Q. When you were up here in November of 1988 it was right
9 around the time the annual meeting of the shareholders of
10 Iceban, true?

11 A. I won't know.

12 Q. All right. Well, didn't Mr. Janke tell you, sir, that
13 he needed someone to vote those shares of stock or to sign a
14 proxy statement?

15 A. No.

16 Q. Mr. Bodhanya, did you sign the, in blank, that is not
17 both the shares, but did you sign in blank those shares of
18 stock of Iceban for Hawk's, Windmills, Medical College,
19 Marlin Preservation, Reid and Riders Securities?

20 A. No.

21 Q. Sometime prior to or during November of 1998?

22 A. I don't believe I've ever signed them.

23 Q. And so it's your testimony that you at no time ever
24 voted any shares, that is whether signing the proxy or voting
25 them, of any of those six entities, is that true?

1 know who prepared it.

2 Q. Well --

3 A. This was in the bundle of documents that I was forced to
4 sign.

5 Q. Mr. Bodhanya, isn't it true, this document says, "I'm no
6 longer a director of Harvard Fund, I'm in no way herein
7 connect to it either," you're advising him of your no longer
8 being associated whatsoever; true?

9 A. Yes, it's dated the 26th of July.

10 Q. Okay. And within this document -- it's your testimony
11 that all of the dates on this document are incorrect except
12 the dates that you crossed off and put in. Is that true?

13 A. These documents were signed by me on the 26th of July
14 and that's why those dates were amended to reflect that.

15 Q. With regard to the agreement you signed on July 26 of
16 1998, would you agree with me that there were four
17 individuals there -- you, Mr. Johnson, your stocky friend and
18 Mr. Bourne?

19 A. Yes.

20 Q. Okay. And when that document was signed you signed it
21 voluntarily; no one forced you to sign that document, did
22 they?

23 A. No one held my hand.

24 Q. And isn't it a fact that Mr. DuMeres --

25 A. Dubray.

- 11 Q. You said I don't believe so. Isn't it true that
12 Mr. Johnson, every time he talked about Grand Turk Harbor or
13 any other entity, these are companies set up for his company,
14 that is for his family?
15 A. He -- he -- he -- yes, he may well have asserted --
16 Q. He said that continually again and again, that this
17 entity, this business Grand Turk Harbor was set up for the
18 benefit of his family; isn't that true?
19 A. Yes, he may have said that, yes.

- 9 Q. February of 1997. How many deals have you done in the
10 Turks and Caicos for between \$8 and \$11 million to transfer,
11 that is that you would receive that kind of dough, moneys,
12 and transfer hotels or some other property with basically a
13 handshake agreement?
14 A. I haven't done any.
15 Q. Never --
16 A. Right.

5 Q. Excuse me, sir. You represented that you owned those
6 properties, isn't that true?

7 A. No, I didn't.

11 Q. And so what you're saying is that Mr. Johnson on behalf
12 of Grand Turk, this very sharp businessman that you've
13 described, he was going to do a handshake deal with you, pay
14 you \$10 million, \$10.5 million?

15 A. Actually 8, it was 8 million in February.

16 Q. Okay. Did it ever change?

17 A. Yes.

18 Q. Did it change sometime later on for what reason?

19 A. In October.

20 Q. Why did it change?

21 A. It changed because originally we had an agreement that
22 it was to complete in 90 days. And, and it hadn't.

23 Therefore, I was continuing to finance the operation of the
24 hotels. And continuing to meet the funding costs, et cetera.
25 When I shouldn't have been.

13 Q. And is it your testimony, if I understood you earlier,
14 it's your testimony that Harvard Fund was just gratuitously
15 given to you?

16 A. No, it was payment on account of the hotel deal.

7 Q. Didn't you tell Mr. Coupland, the attorney who had
8 worked with Grand Turk Harbor and with whom you had closely
9 worked, that you acknowledged your indebtedness to Grand Turk
10 Harbor in the amount of \$3.5 million in respect of cash and
11 stock?

12 A. Yes.

13 Q. And, in fact, you acknowledged you never told
14 Mr. Coupland that you had been under duress, that you were
15 pressured, that you were threatened, did you?

16 A. Not at that time, no.

17 Q. Well, at no time did you ever tell him that, did you?

16 BY MR. CRITTON:

17 Q. Mr. Bodhanya, let me show you Composite Exhibit K. Do
18 you recognize at the top of page it's a letter to Mark
19 Johnson and Dennis Ciaglo --

20 A. Yes.

21 Q. -- dated July 23, 1998?

22 A. Right.

23 Q. Which would have been subsequent, after you had resigned
24 all your positions that we talked about earlier?

25 A. All except Harvard, yes.

6 BY MR. CRITTON:

7 Q. Mr. Bodhanya, let me show you a document Defendant's
8 Composite Exhibit L. Grand Turk Harbor Developments, Ltd.,
9 dated May 25, 1998?

10 A. Yes.

11 Q. Do you recognize that as being your signature and that
12 being a true and accurate, the first two pages being a true
13 and accurate copy of Composite Exhibit L?

14 A. Yes.

15 Q. That document deals with a corporate resolution for
16 writing checks on the Grand Turk Harbor account?

17 A. Yes.

18 Q. And it provides that in order to write any check over
19 2,500 bucks U.S. it required the signature of either you or
20 Mr. Kwelch and Mr. Ciaglo, true?

21 A. Yes, it basically requires two signatures, yes.

22 Q. All right. If you look at the May 25th corporate
23 resolution that was put with Barclay, that as well provides
24 that, that is it adopts the board of directors resolution
25 that said either you or Mr. Kwelch plus Mr. Ciaglo must sign

1 any check over 2,500 bucks, correct?

2 A. Yes.

3 Q. Now, let me show you what will be marked as Exhibit M.

14 Q. The mandate document, you're referring to the bank
15 resolution?

16 A. Yes, this is the mandate document. Although it says
17 25th of May there, it was actually completed, I believe, on
18 the 2nd of June, indicated at the bottom.

19 Q. All right. But, in fact, if the corporate resolution is
20 passed on the 25th of May of a particular year and it
21 requires, basically saying you can't write any check over
22 2,500 bucks without two signatures, when it actually ends up
23 in the bank that way, you as a director would be bound by the
24 corporate resolution that was passed, true?

25 A. Ahm --

11 Q. If, in fact, those are the Grand Turk Harbor Barclay
12 account, you would agree with me that would you not have had
13 the authority to write a check to yourself under those
14 circumstances without a second signature; isn't that true?

15 A. Yes, that's correct.

16 Q. And the first one is for 75,000, the second is ten
17 grand?

18 A. Yes.

23 Q. And check number 5618 is made to another company that
24 you owned in the amount of ten grand?

25 A. Same company yes.

1 Q. And, again, there's not two signatures on those checks?

2 A. - That's correct.

3 Q. Therefore, at least under the corporate resolution,
4 under the bank resolution, you would not have had the
5 authority to have written those checks?

6 A. Yes, that's correct under that scenario.

7 Q. Okay. If I were to represent to you, sir, that you
8 ended up writing close to, oh, let's say \$250,000 off the
9 Grand Turk Harbor account after the resolution was passed
10 sometime in May -- in fact, let me -- 200,000 plus -- you
11 would agree with me, if those only had one signature that
12 would have been inappropriate, correct?

950

13 A. Ahm, year. I don't know why the bank would have paid
14 them.

1 Q. You told us the agreement was with Harvard --

2 A. No, no, no, I did not say Harvard.

3 Q. Let me finish the question.

4 A. Harvard was the payment.

5 Q. You told us earlier that the deal was with Harvard and
6 Harvard was going to make the payments --

7 A. I've never said --

8 Q. Excuse me, sir. I'll let you finish. Let me ask the
9 question.

10 In fact, what you were doing is you were dipping
11 into the Grand Turk Harbor funds that was supposed to be used
12 for the development of this project, and you were using them,
13 these funds as your own personal bank account, and when your
14 hand got stuck in the cookie jar Mr. Johnson exposed you, you
15 came -- you resigned from those companies, you came to Miami,
16 you signed that agreement, and it was only after Mr. Johnson
17 was convicted in November of 1998 that all of a sudden you
18 said, This is the best time in the world to distance myself
19 from Warren Johnson because now I can turn and blame
20 everything on the felon Mr. Johnson, and I, Reg Bodhanya,
21 will keep this great reputation -- that's why you tried to
22 squeeze Jerry Bourne at the airport; isn't that all true,
23 sir?

24 A. Have you finished?

25 Q. Yes, sir.

25

THE COURT: I know there will be a lot of argument

218

1 and we have the whole issue of restitution that I have to
2 resolve. And I don't think that, in fairness to both sides,
3 I'm in any position to do it today. We've got Probation,
4 we've got Marshals, we've got CSO's, I mean, they have lives
5 to live too.

6 we'll work this in next Friday.

7 MR. EISENBERG: Judge, I'll be in Chicago next
8 Friday. I'm sorry. If I could, if we can just have my
9 secretary call your judicial assistant and call Miss Bell's
10 secretary, Mr. Critton will arrange it when we're all
11 together, but I'm leaving Thursday.

12 THE COURT: All right. We'll set it up when it's
13 convenient for everyone.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA, . CASE NO. 98-8039-CR-KLR
PLAINTIFF, . WEST PALM BEACH, FLORIDA
V. .
WARREN JOHNSON, . WEDNESDAY, JUNE 23, 1999
DEFENDANT, . 1:30 P.M.
. SENTENCING - VOL 2 of 2

TRANSCRIPT OF PROCEEDINGS HAD
BEFORE THE HONORABLE KENNETH L. RYSKAMP
UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE UNITED STATES: CAROLYN BELL, AUSA

FOR THE DEFENDANT: JAMES EISENBERG, ESQ.
ROBERT CRITTON, ESQ.

COURT REPORTER: CRISS D. BERTLING, RPR-CM
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
701 CLEMATIS STREET, #416
WEST PALM BEACH, FLORIDA 33401
PHONE (561) 651-3865

(PROCEEDINGS RECORDED AND TRANSCRIBED VIA C.A.T.)

7 A. Adam Brown asked me if I was interested in doing a multi
8 billion dollar project out of the country. And he said he

1 A. Yes.

2 Q. In approximately May of 1998 were you asked to carry
3 certain shares of stock down to the Turks and Caicos Islands?

4 A. Yes, I was.

22 Q. Is it possible it was the Marlin Preservation fund?

23 A. No.

24 Q. You don't recall?

25 A. No, no.

3 Q. But it was the stock that was going to be used to, as a
4 bond for the Grand Turk Harbor project?

5 A. Correct, correct.

15 Q. Now, why was it that he wanted you to have a bank
16 account in your name?

17 A. Because at that point I think Reg Bodhanya was not going
18 to be in charge of signing checks or cashing checks, et
19 cetera.

Giaglo - Direct

1 Q. Did he tell you anything about an FBI problem that he
2 was having that prevented him from having a bank account in
3 his name?

4 A. He didn't tell me he couldn't have a bank account in his
5 name. He did tell me that he couldn't leave the country.

6 Q. Did he tell you anything about any FBI problem that he
7 was having?

8 A. He explained to me that there was a problem with the FBI
9 because he had a lawsuit that had happened with a sister of
10 one of the FBI agents, and that because he had won the case
11 that the FBI was persecuting him.

Giaglo - Direct

3 Q. What did Mr. Johnson say he needed this money for?

4 A. To cover his court cases.

13 Q. Let me back up for a minute. You walked into the bank
14 and you withdrew how much money?

15 A. I think it was like 9,500.

1 A. Correct.

2 Q. Okay. And then in the parking lot what was in the
3 parking lot?

4 A. There was a van with two other people in it and Warren
5 in it. And I was told to give the money to --

6 Q. Well, then you got into the van?

7 A. Right.

8 Q. Was Mr. Johnson sitting there?

9 A. Yes.

10 Q. Did you attempt to give the money to Mr. Johnson?

11 A. Yes.

12 Q. What did he say?

13 A. He said he couldn't take the money and I needed to hand
14 it to somebody else.

15 Q. To whom did you hand the money?

16 A. Handed it to the lady in the van and she turned it over
17 to Mr. Johnson.

18 Q. Was she laughing when she turned it over?

19 A. Yes.

20 Q. And the other two people that were in the van, were they
21 introduced to you?

22 A. I was told that they were ministers from his church. I
23 don't know the people. I wouldn't recognize the people again
24 if they were in front of me.

25 Q. So they were the minister and his wife from

Ciaglo - Cross

1 Mr. Johnson's church?

2 A. Correct.

Ciaglo - Cross

18 MR. EISENBERG: Judge, we don't have any 302's that
19 reflect that. And I'd just like to know if there are any
20 302's in existence, because the 302 we have is silent.

21 MS. BELL: Yes, your Honor. This was a meeting we
22 had with Mr. Ciaglo, Agent McBride and I, during which time
23 we were preparing him for his testimony before the Court
24 today. At that time he told us for the first time about this
25 information.

Ciaglo - Cross

1 when Mr. Eisenberg, Mr. Ciaglo says it was a week
2 ago -- as the Court will recall, we began this on Friday of
3 last week. This interview took place on Thursday. And it is
4 true, I did not have Agent McBride, ask him to write a 302 on
5 this matter. I don't generally have agents write 302's for
6 witness interviews prior to testimony.

Diaglo - Cross

4 Q. Okay. Now, sir, you were aware that Mr. Johnson was a
5 consultant to the Grand Turk Harbor development project,
6 true?

7 A. I was aware he was a consultant to the Grand Turk Harbor
8 project sometime in July.

9 Q. Of 1998?

10 A. '98.

18 Q. Okay. And if I told you that Mr. Bourne's interest in
19 the project was through family trusts, that would be news to
20 you?

21 A. *(No verbal response; witness shrugging his shoulders).*

22 Q. You don't know one way or the other, do you?

23 A. No.

Diaglo - Cross

3 Q. With regard to Mr. Johnson, whether he was acting on
4 behalf as a consultant both for the project and for family
5 trusts, you don't know because you never saw those documents
6 either?

7 A. I never saw any documents, that's correct.

- 16 Q. Mr. Ciaglo, you gave a statement to FBI Agent McBride?
- 17 A. I gave a number of statements to FBI Agent McBride.
- 18 Q. All right. We have one statement. Within the statement
- 19 it reflects that Ciaglo pointed out that he attempted to get
- 20 an employment contract from these individuals and also wanted
- 21 to be a 25 percent shareholder. However, he got, he neither
- 22 got a contract nor became a shareholder. That's true?
- 23 A. That's correct.
- 24 Q. And you were reasonably bitter about that, sir?
- 25 A. Ahm, no. Warren Johnson agreed to give me three percent

- 11 Q. What amount of moneys are you currently investigating to
- 12 determine whether or not they were proper or appropriate
- 13 expenditures by Mr. Bodhanya out of this account?
- 14 A. The Merchants Trust account.
- 15 Q. Yes, sir.
- 16 A. \$517,000.
- 17 Q. And are there any documents that's backup documents with
- 18 regard to the Merchants Fund which would have justified, from
- 19 what you have seen, those types of expenditures or those
- 20 types of checks being written by Mr. Bodhanya to his own
- 21 personal corporations?
- 22 A. Absolutely not.

Grund - Direct

1 A. Yes, sir, I do.

2 Q. And the various checks or the entities to whom the
3 checks were drawn, are those again Reg Bodhanya owned or
4 controlled or his brother's controlled entities?

5 A. On this particular list, they are Reg Bodhanya.

6 Q. And with regard to specifically, let me ask you this.

7 As to the entire list, is there any backup, are
8 there any invoices, are there any bills, are there any
9 documents which would serve as appropriate backup for checks
10 having justifiably been written out of this account to
11 further the Grand Turk Harbor Development project?

12 A. As a matter of fact, these are the checks, these are the
13 only checks that do not have any documents or invoices.

14 Q. None whatsoever?

15 A. None whatsoever.

16 Q. And you have searched all of the records?

17 A. Yes, sir, I have.

1 Q. And the checks after May 25 of 1998, all of the checks
2 from May 29, 1998 down through June 30 of 1998, are they one
3 signature checks?

4 A. Yes, sir.

5 Q. And so at least as to all of these checks neither
6 Mr. Kwelech nor Mr. Bodhanya nor Mr. Ciaglo followed their own
7 board resolutions?

8 A. No, sir, they did not.

9 Q. Reverend Grund, as part of your investigation, you also
10 have on Exhibit P, AmSouth Bank, Standard Star Insurance?

11 A. Yes, sir, I do.

12 Q. And have you, as part of your investigation, looked, as
13 part of marshaling the assets of these companies, have you
14 looked into that particular transaction?

15 A. Yes, sir, I did.

16 Q. And why were you looking into the AmSouth transaction,
17 that is, what was the significance of that transaction as it
18 affected the Grand Turk Harbor Development?

19 A. Well, two signature things. One, it was the very first
20 transaction Mr. Bodhanya did out of the accounts. And, two,
21 it correlated to his agreement to pay back the funds that he
22 had misappropriated.

23 Q. All right. And were you able to, from the documents
24 that you were able to review, were you able to determine
25 where -- let me strike that.

1 From the documents, were you able to determine
2 whether moneys and/or assets were taken from Harvard and/or
3 Merchants and either pledged or sent to another entity on
4 behalf of Mr. Bodhanya?

5 A. Yes, I did.

6 Q. And what were you able to determine?

7 A. I was able to determine that Mr. Bodhanya used cash and
8 stocks from Grand Turk Harbor, Harvard Fund and Merchants
9 Trust to collateralize a loan and to keep from going into
10 default with AmSouth Bank on a loan that he had with them.

11 Q. Let me mark as Exhibit Q --

12 MR. CRITTON: Your Honor, I have another copy for
13 the witness and I would ask only that the Court ignore my
14 highlighting.

15 THE COURT: All right.

16 BY MR. CRITTON:

17 Q. Reverend Grund, as part of the documents that you
18 reviewed in attempting to marshal the assets of Grand Turk
19 Harbor, Ltd., Harvard and as well Merchants, did you come
20 across records from Standard Star Insurance Company, Ltd., as
21 well as Barclay's Bank?

22 A. Yes, sir.

23 Q. And were these part of the records that were within the
24 files that were provided to you by Morris Cottingham?

25 A. Yes, sir.

1 Q. And within the documents what were you able to determine
2 in the way of what the transaction was wherein Mr. Bodhanya
3 took assets from these corporations for his own personal
4 benefit?

5 A. I was able to determine that, A, this had nothing to do
6 with Grand Turk Harbor Development, in no way did it further
7 the project or enhance it. And it was specifically to deal
8 with two specific companies that in my preliminary
9 investigation belonged to Reg Bodhanya.

10 Q. And in terms of the moneys, the six approximately
11 hundred thousand and \$605,000, as reflected on the request
12 for telegraphic transfer, were you able to determine from
13 your review of the records from where those funds came that
14 were transferred to AmSouth Bank for the benefit of
15 Mr. Bodhanya?

16 A. Correct. All of the dates, 12-31-97, correlate from the
17 transfer of the funds to the two first amounts that
18 Mr. Bodhanya took out of Harvard Fund and Merchants Trust.

19 Q. So if we looked at Exhibit P and looked at the first
20 amounts on 12-31-97, 12-31-97, for the 475 and the 225, are
21 those the funds that you believe that were used as part of
22 the \$705,000 that was paid on -- or used from the project
23 for Mr. Bodhanya's benefit rather than for Grand Turk's
24 benefit?

25 A. I have no idea where the other 5,000 came from, but I'm

1 confident, according to this and according to Mr. Bodhanya's
2 document that he signed, that's where these funds came from.

3 Q. Was there any justification, was there any backup
4 documents which would have authorized, from what you
5 reviewed, Mr. Bodhanya using corporate assets from either
6 Harvard or Merchants or from Grand Turk to benefit himself?

7 A. No, sir, there were no documents to justify that.

8 Q. In reviewing the books and records, including the
9 minutes of the corporate meetings, did you find any documents
10 that would have authorized through a corporate meeting
11 Mr. Bodhanya using corporate assets for his own personal
12 benefit?

13 A. No, sir, there are none.

14 Q. As a result of what you have found, could you advise us
15 what you have done with regard or what you have done in terms
16 of determining whether these funds were properly taken or
17 improperly taken?

18 A. As the person with the fiduciary responsibility of these
19 three companies, and taking that responsibility seriously, I
20 have hired a private investigator who is a 22-year veteran of
21 the Federal Bureau of Investigation, with a background in
22 white collar crime and fraud, to do his investigation. I've
23 also hired another retired FBI agent with 30 years of
24 experience, who is a forensic accountant, to take all the
25 books and find out where all the money went and trace the

1 trail.

2 Q. And if, in fact, it is ultimately determined based upon
3 the two retired FBI agents that moneys have been wrongfully
4 taken, do you plan to press charges against Mr. Bodhanya
5 either in the States or in the Turks and Caicos?

6 A. In both places, if I have the availability, to the
7 fullest extent of the law.

8 Q. Now, are you familiar with a gentleman named Dennis
9 Ciaglo?

10 A. Yes, sir, I am.

11 Q. And you were here when Mr. Ciaglo testified today?

12 A. That's correct.

13 Q. And in reviewing the books and records of Grand Turk
14 Harbor, have you been able to determine whether you are
15 concerned about any of the transactions which were done with
16 Mr. Ciaglo?

17 A. I'm as deeply concerned about his transactions as I was
18 about Mr. Bodhanya's.

19 Q. Could you give the Court an example of what concern you
20 have about Mr. Ciaglo, based upon your review of the books
21 and records as the executive director?

22 A. On a small level, the receipts and the numbers on a
23 cursory examination don't seem to match. But more
24 importantly is the value of certain vehicles he sold to Grand
25 Turk Harbor from which he took funds, either which we did not

965

19 Q. You have no ownership interest in either the Harvard
20 Fund or Merchants Fund?

21 A. I have no ownership, no.

22 Q. Who is the owner?

23 A. The owner of record is Mark E. Johnson, custodian for
24 the Johnson family, 21 Johnson family members.

313

7 January 5, 1998, 3.925 million shares of Iceban stock --
8 which I should tell the Court at the time was selling for
9 approximately \$6 a share -- had been transferred to an entity
10 called the Harbor Funding Partners, Ltd. We knew nothing
11 else about the Harbor Funding partners, Ltd. at that time.

12 THE COURT: Those shares were in the name of --

13 MS. BELL: Well --

14 THE COURT: -- Warren Johnson, Jr.?

15 MS. BELL: They were originally shares that had
16 been issued to Mr. Johnson as part of his founders stock in
17 Iceban America. Then those shares were reissued in December
18 of '96 -- they were simply, it was a bookkeeping type of
19 thing, Judge. The shares were --

20 THE COURT: Broken down?

966

21 MS. BELL: Exactly. And then we knew that in
22 January of 1998 3.925 million shares were transferred to this
23 entity called the Harbor Funding Partners. we didn't know
24 what that was

1 we found out in June of 1998 that, in fact, the
2 Harbor Funding Partners, Ltd. was a Nevada general
3 partnership. And the general partner of that partnership was
4 an entity called Charter Media Group, Ltd.. Charter Media
5 Group, Ltd., we discovered, was an entity of which Warren
6 Johnson was the president. So at that point in time --

9 point in time was that Mr. Johnson had been quoted in a
10 newspaper as saying he was planning on building "Israel for
11 the Gentiles" in Grand Turk, and that the first building that
12 was going to be built there was going to be a 7,000 square
13 foot mansion for he and his family on the harbor.

1 MS. BELL: Exactly. Warren Johnson was one of the
2 founders of Iceban America. You recall Ray Marshall
3 testified about that. He put not only dollars but a lot of
4 sweat equity --

5 THE COURT: Who did, Marshall?

6 MS. BELL: Ray Marshall testified Warren Johnson
7 put dollars and sweat equity.

8 THE COURT: How many dollars?

9 MS. BELL: Well, it depends upon how you calculate
10 it, Judge. There are a number of different entities and
11 companies that he was putting money into. We were mostly
12 focused on the money that directly came from the laundered
13 funds from the bankruptcy.

14 THE COURT: You mean through New York, through his
15 father?

16 MS. BELL: Yes, exactly. Some of the money, the
17 reason I was stopping, some of the money went through Iceban,
18 Inc. which was the New York arm of Iceban. I'll get to that
19 in a moment. But that was some of the later money. That
20 was, I think about \$90,000. But prior to that time, just
21 from the laundered funds, we were segregating out other
22 funds, I think it was about \$30,000. 968

23 But, in addition to that, Judge, Warren Johnson
24 lived off of the \$250,000 that he laundered. Had he not had
25 that \$250,000 he would have had to go out and get a job. And

1 because he didn't go out, literally they had in the hundreds
2 of dollars in their bank account when the first of this money
3 came in. They had no money.

4 And this money came in and allowed him to spend all
5 of this time, and to go out to get people to buy Iceban, to
6 get people to invest in Iceban. he was able to live on this
7 money so that he could spend his time on Iceban. So this
8 laundered money, it was almost as if he was getting a salary,
9 if you would. This laundered money allowed him to put his
10 efforts into Iceban. which is why ultimately he was issued
11 this 6.4 million shares of founders stock.

23 MS. BELL: To create cash to support this Grand
24 Turk Harbor project that was Warren Johnson's project. That
25 was another one of the issues before Judge Vitunac.

1 Mr. Johnson claimed he had no interest in this project. And.
2 of course, everything was put in the name of his family.

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2 of dollars in their bank account when the first of this money
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24 Turk Harbor project that was Warren Johnson's project. That
25 was another one of the issues before Judge Vitunac.

1 Mr. Johnson claimed he had no interest in this project. And,
2 of course, everything was put in the name of his family.

8 Then there's the Natural Solutions stock. We have
9 been through most of these shares of stocks. Medical
10 college, Windmills, Hawk's Nest, Reid, Rider, Marlin
11 Preservation fund, which, as the Court will recall, is
12 500,000 shares of stock in escrow backing this Grand Turk
13 Harbor project. Harvard Fund, Merchants Fund.

23 horizontal departure. As the Court will recall, back in that
24 1970's bankruptcy what Mr. Johnson did was he had access to a
25 piece of property that ultimately earned him \$20 million.

1 Instead of making that property available to his
2 creditors, he took that piece of property and he put it in a
3 trust in the name of Warren D. Johnson, Sr. for the benefit
4 of his two children Kelly and Mark Johnson. As the Court
5 will recall, we actually had testimony, we actually found
6 someone who was involved --

7 THE COURT: Is this the so-called Johnson family
8 trust or a different trust?

9 MS. BELL: This is a different trust, this is back
10 in the 1970's.

11 As the Court will recall, we actually found someone
12 who was around then, and who said that Warren Johnson was the
13 one who was directing everything, and the father came in and
14 signed the papers but it was Mr. Johnson's deal.

15 And we showed documents physically showing that
16 before this whole trust idea came up, and before, frankly,
17 about a year before the bankruptcy, so before the creditors
18 were really on Mr. Johnson's, really pursuing Mr. Johnson,
19 the plan had been to form a corporation with Mr. Johnson as
20 the president into which this property was going to be put.

21 THE COURT: In paragraph four of the PSI it says
22 that the 19 lots had an estimated worth of \$20 million.
23 Going over the next page, well, it says at the bottom, after
24 the bankruptcy was settled the lots were sold for
25 \$20 million.

1 MS. BELL: That was from Mr. Johnson's own
2 testimony, Judge. We introduced this at trial --

3 THE COURT: This came out at the trial?

4 MS. BELL: Right. In the early 1980's Mr. Johnson
5 testified in an entirely unrelated matter that those lots
6 sold for approximately \$20 million, the money was put in a
7 family trust.

8 So on that basis, and also, frankly, and in a
9 upward departure, that horizontal departure also talks about
10 not only prior misconduct but the possibility and the
11 probability of someone continuing to do this type of
12 activity, this type of criminal misconduct.

350

25 THE COURT: Well, it showed that he transferred

351

1 \$20 million before he went bankrupt and gave to it his father
2 for the benefit of his children.

12 THE COURT: Can you enlighten me on those expenses,
13 did that come out in the record? I just don't recall that
14 now whether that was 20 million free and clear or gross or
15 what the net was

7 I would find from the evidence presented -- first
8 of all, I departed upward by two points for obstruction of
9 justice in lying to the jury. It would appear, in
10 consolidating one and two, that he also misrepresented the
11 truth, lied to Judge Vitunac and the Probation Office. I
12 considered both of those to be agencies and arms of the Court

6 MS. BELL: And then when we get to the laundering
7 of the money, we have the money going from Bay Point Estates,
8 to as the Court will recall, Lycus (*phonetic*) Corporation, an
9 account named Lycus Corporation. Then going to the account
10 of Warren D. Johnson, Sr. in New York. Some of the money
11 came down into this account in the name of Diane Johnson,
12 which was used by Warren Johnson.

13 THE COURT: Yes, I remember all of that.

14 MS. BELL: And some of it also went into an account
15 in the name of Iceban, Inc.

4 MS. BELL: Your Honor, prior to pronouncing
5 sentence, your Honor recalls we still have to deal with
6 restitution. I believe we can deal with that fairly quickly.
7 But do I believe we still need to determine those amounts.

4 So I'm finding that he has the ability to make
5 restitution.

6 I think there might be some -- well, generally in a
7 bankruptcy case you don't get a discharge if there's fraud.
8 The jury has found fraud. I find fraud. So it seems to me
9 that all of the claimants, the claims are not discharged. I
10 think the wisest course would be to refer it back to the
11 bankruptcy court to then determine what are the legitimate
12 claims that are not discharged because of the fraud. And the
13 bankruptcy court may be in a much better position than I am
14 to deal with each one of these claims and determine what the
15 proper amount is.

16 MS. BELL: Your Honor, if I may. We have the
17 bankruptcy trustee's attorney here today, Mr. Patrick Scott.
18 I have a proposition to make to the Court. Apparently this
19 was done in a case Judge Zloch did. What I propose to the
20 Court is that the bankruptcy trustee under the auspices of
21 the bankruptcy court be given the authority to enforce your
22 Honor's restitution order.

1 restitution are in some ways different are from the ideas and
2 things that go into determining whether a claim is going to
3 be discharged or not.

4 And while I agree -- in fact, we have information
5 here that we can present to the Court, I agree that to the
6 extent, for example, that Mr. Johnson has, in fact, made
7 payments on particular claims, he should not be credited with
8 that. But what often happens in bankruptcy court is that
9 claims are settled for significantly less than what the
10 claims are. And I believe that that would be --

11 THE COURT: How do I deal with that if there has
12 been a settlement? People say I may never get it and make a
13 settlement.

14 MS. BELL: I'm talking about afterwards. Not the
15 previous settlements. I'm talking about settlements being
16 made now.

17 THE COURT: That's why I think the bankruptcy court
18 is in a much better position to evaluate this than I am. I
19 might have a couple days of hearings on restitution. Each
20 one of these claims to determine what the dollar amount is.
21 I don't plan to do that.

22 MS. BELL: I don't believe it would take the Court
23 that long.

24 THE COURT: I'm not going to do it. And I'll defer
25 that to the bankruptcy court. So it is very clear in the

1 record that I have found fraud. Fraud prevents a discharge
2 from occurring. And that they go back and open up these
3 claims and find out exactly what is there. There's more than
4 sufficient assets here to cover these claims. And then I can
5 let the bankruptcy court assess that.

6 Does the attorney want to saying anything at this
7 point?

8 MR. STOCK: Your Honor, I'm Patrick Stock, I'm the
9 attorney for the bankruptcy trustee who has had the case
10 reopened. It's been closed these many years. I was just
11 going to comment that there are two different interests in
12 recoveries here. One is the interest that the U.S. Attorney
13 or, perhaps, Probation Office has in giving effect to your
14 Honor's order to make restitution by causing recoveries from
15 the debtor of assets that he may not be willing to or may not
16 be able at this point to give voluntarily back to the benefit
17 of the victims who deserve restitution.

18 The other is the interest of the bankruptcy estate
19 which owns certain things and the proceeds of certain things
20 that existed on the date that Mr. Johnson filed his
21 bankruptcy in 1993.

22 Those are two different kinds of recoveries. I had
23 hoped there would be something formulated that would give one
24 person, perhaps the bankruptcy trustee, the power to make
25 both types of recovery.

1 MS. BELL: If I may put that in slightly different
2 language. I believe what Mr. Scott is talking about is
3 generally in bankruptcy, only items that are assets of the
4 bankruptcy estate are used to pay bankruptcy claimants.
5 Restitution is a different matter.

6 THE COURT: But I consider all of these things to
7 be Mr. Johnson's assets being held in a nominee, a fraudulent
8 nominee to protect himself from his creditors.

9 MS. BELL: Would the Court go a step further and
10 find that these are assets of Mr. Johnson's bankruptcy
11 estate?

12 THE COURT: That's what I said. I think that's
13 what I said. They're Mr. Johnson's assets.

14 MR. EISENBERG: Judge, of course -- and let me
15 throw this in. Of course we object to all the Court's
16 findings. I think the Court, that you understand --

17 THE COURT: Right.

18 MR. EISENBERG: -- we intend to take it on appeal.
19 I don't know what effect all this will have; it is going to
20 all be thrown in on appeal.

21 I think the Court was correct in its first
22 instance, I think the government is trying to go a little too
23 far in their instance.

24 If I can paraphrase what the Court said. The
25 amount that the Court is going to find as restitution will be

1 deferred to the bankruptcy judge. You can do that. I don't
2 think that anything else is going to be of any value.

3 THE COURT: What I'm also saying is that all of
4 this stuff came out of the assets of the defendant. And, of
5 course, it may be multiplied and got added to and changed in
6 names, but they are all his assets and they are all subject
7 to whatever restitution, whatever amounts are due and owing.

8 MR. EISENBERG: I understand that much. But when
9 we file a notice of appeal all that gets stayed until it goes
10 up to the Eleventh Circuit.

11 THE COURT: I can't control that.

12 MR. EISENBERG: The Court can defer, aside from
13 that --

14 THE COURT: If the Eleventh Circuit has a better
15 way of handling it, they will let us know.

16 MR. EISENBERG: No, no, no. I'm still saying the
17 Court can defer the amount of restitution each individual
18 claimant gets, because otherwise you have to spend a lot of
19 time doing that.

20 THE COURT: I'm asking the bankruptcy court to
21 determine what these amounts are. And if it requires a
22 further order from me, I will enter the order. Maybe it will
23 be on a Report and Recommendation and then I'll specify the
24 exact amount.

25 MS. BELL: Perhaps that's the best way to deal

1 this. I have Elizabeth Stein from our financial litigation
 2 unit. She tells me in fact in order for the United States
 3 Government to be involved in collecting restitution, we do
 4 need an order from this Court. So perhaps your Honor's idea
 5 is a perfect one. That the bankruptcy court can do a Report
 6 and Recommendation, akin to the type that magistrate judges
 7 do.

8 THE COURT: Right.

9 MS. BELL: To you and then you can issue the final
 10 order.

3 THE COURT: whatever vehicle we need we'll use and
 4 we'll put that in the J&C. But it's my intent that the
 5 bankruptcy court would be in a better position to evaluate
 6 these claims which were previously discharged and no longer
 7 are discharged.

8 MR. EISENBERG: We don't have a problem with the
 9 bankruptcy court. We have major objection to Mr. Capella
 10 (*phonetic*) if that was the proposal, the trustee, who is an
 11 advocate, making any Report and Recommendation.

12 THE COURT: Well, your objection is noticed.

13 MR. EISENBERG: But Judge Friedman would be okay.

14 THE COURT: Your objection is noted. I'm sure any
 15 report will be done by Judge Friedman

9 THE COURT: Getting down to sentencing. I now have
10 a range of 87 to 108. I think the tragedy in this case is
11 that the legal system is being used as a sword instead of a
12 shield. The bankruptcy laws are to protect people who are so
13 overwhelmed with debt that they can't go on. They file for
14 bankruptcy, they get a discharge and can start a new life.

15 It was never intended that people who have more
16 than sufficient assets to cover all of their creditors are
17 allowed to secret their assets and put them in family names
18 and then wipe out all of their debts and use it as a sword
19 instead of a shield.

20 And apparently this has been done for a number of
21 years and the government has just recently gotten involved in
22 criminalizing this type of conduct.

23 I guess the sad thing is that I hear all of this
24 testimony from pastors and people who attest to the
25 defendant's great spiritual depth and how concerned he is

1 about spiritual matters. You know, there are some things
2 that are illegal and there are some things that are immoral.
3 Of course, this starts out being totally immoral. It's also
4 illegal.

5 And it's time that these things are put to an end.

20 I just think it's so reprehensible that somebody
21 would attempt to scheme like this, to do it twice, go through
22 two bankruptcies, and then come in and say, Hey, I don't have
23 any money, I gave it all away, I gave it all to my children
24 and my family who didn't earn it. So I'll take bankruptcy
25 . but I'll continue to live well.

1 I think one of the greatest errors that was
2 committed during the trial of this case is, the parking lot
3 across the street, when all the jurors left, they would see
4 the defendant and his family get in their Cadillacs and
5 Jaguars and all their expensive cars and leave.

6 If you are going to play this game you ought to
7 play it to the hilt and at least cover up your mode of
8 transportation in coming here.

9 But I would watch as the jurors walked across the
10 street with the defendant and his family and they got into
11 their luxury cars and the jurors got into their cars. It was
12 not a very good pretense.

13 well, after consideration of the statements by all
14 parties, and a review of the presentence investigation
15 report, having presided over the trial in this matter, the
16 Court shall impose a sentence departing upward as indicated
17 from the guideline range.

18 It's the finding of the Court that there exists
19 aggravating circumstances not adequately taken into
20 consideration by the Sentencing Commission in formulating the
21 guidelines.

22 I've already indicated as a plus two for
23 obstruction of justice in addition to the other plus two and
24 a departure on the horizontal criminal history category.

25 Defendant has made virtually a career of

1 accumulating and concealing assets and ultimately using the
2 United States Bankruptcy Court, not once but twice, to
3 discharge his debt. His obvious disregard for the government
4 and the use of the bankruptcy laws is outlandish.

5 The Court finds that the defendant obstructed
6 justice on multiple occasions during the trial and during his
7 reports to the Magistrate Judge and Probation Office.

8 Further, it is the finding of the Court that
9 defendant is not able to pay a fine in addition to
10 restitution owed in this case. Accordingly a fine shall not
11 be imposed.

12 Pursuant to the Sentencing Reform Act of 1984, it
13 is the judgment of the Court that the defendant Warren D.
14 Johnson, Jr. is hereby committed to the custody of the Bureau
15 of Prisons to be imprisoned for a term of 97 months.

19 It is ordered the defendant shall make restitution
20 in the amount that will be determined through the bankruptcy
21 court, through the receiver and bankruptcy judge and reported
22 back to this Court.

23 Eventually restitution will be payable to the U.S.
24 Courts, addressed to U.S. Clerk's Office, attention financial
25 section, 301 North Miami Avenue, room 150, Miami, Florida,

L-32

1 who will then forward the restitution payments to the
2 victims. Restitution is payable immediately.

1 about Mr. Johnson's family, their automobiles and the like.
2 I mean, these people have lives outside of the court, and
3 they do work, and they have gone through efforts to gain
4 whatever they have.

5 THE COURT: My only comment was it was very poor
6 strategy to let the jury see all of this opulent display of
7 wealth while he's claiming to be, to have nothing.

8 MR. EISENBERG: It didn't come out that way. It
9 appeared to be more of a put-down on the family.

10 THE COURT: I'm just saying it was poor strategy.
11 The jurors saw it everyday they went to the same parking lot.

12 MR. EISENBERG: In any event, I raise my objection
13 as to the Court's sentence.

14 THE COURT: I think your objections are all on the
15 record.

applicable to the group boycott alleged by appellant.

SECTION 1983 CLAIM

[2] Appellant contends that the appellees' conduct in expelling him from the staffs of Memorial and Sharpstown, both private hospitals, denied him procedural due process actionable under 42 U.S.C. § 1983.⁴ The district court granted appellees' motion for summary judgment on this claim on the ground that any deprivation was not a result of state action. Appellant argues that the appellees acted under color of state law by acting under the authority of the Texas Medical Practice Act.⁵

The Texas Medical Practice Act authorizes a medical peer review committee to report its findings of a physician's incompetency to the Texas State Board of Medical Examiners. The peer review committee members receive immunity from civil liability that might result from the report or investigation.⁶ Whether the acts of the appellees who served on the peer review committee as authorized by the Texas Medical Practice Act should be considered "state action" requires a nexus between those acts and the state such that appellees' conduct is "fairly attributable to the State." *Rendell-Baker v. Kohn*, 457 U.S. 830, 838, 102 S.Ct. 2764, 2770, 73 L.Ed.2d 418 (1982). This nexus exists when the State "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." 457 U.S. at 840, 102 S.Ct. at 2771 (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1003, 102 S.Ct. 2777, 2785, 73 L.Ed.2d 534 (1982)). Appellant contends that this immunity granted appellees by the State of Texas provided such encouragement to appellees

that the peer review committee acted as an investigatory arm of the state.

A similar argument was rejected by this court in *White v. Scrivner Corp.*, 594 F.2d 140 (5th Cir.1979). In *White*, the plaintiff sued under section 1983 after being detained in the defendant's food store as a suspected shoplifter. The plaintiffs alleged that state action was present because a Louisiana statute permitted defendant to detain persons reasonably believed to be shoplifters without facing civil liability. The court concluded that "the mere existence of the statute" did not result in state action. Similarly, we agree with the district court that the Texas Medical Practice Act did not make the action of appellees state action. See also *Rendell-Baker v. Kohn*, *supra*; *Blum v. Yaretsky*, *supra*; *Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 85 (1978).

AFFIRMED.



UNITED STATES of America,
Plaintiff-Appellee,

v.

Raymond L. GUTHRIE, Jr., a/k/a Junior Guthrie, and Walter Graham Lewis, Defendants-Appellants.

No. 84-4830.

United States Court of Appeals,
Fifth Circuit.

May 14, 1986.

Rehearing and Rehearing En Banc
Denied June 23, 1986.

Defendants charged with importation and possession of marijuana filed motions

shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1983 (West 1981)

5. See Tex. Stat. Ann. art. 4495b (Vernon Supp. 1986)

4. Section 1983 provides in pertinent part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

to quash indictments. The United States District Court for the Western District of Louisiana, John M. Duhe, Jr., J., denied motions, and defendants appealed. The Court of Appeals, Gee, Circuit Judge, held that: (1) prosecution for conspiracy to commit crime did not bar later prosecution for crime itself; (2) one defendant's prior acquittal on charge of continuing criminal enterprise did not preclude later prosecution for drug smuggling offense which had formed one of predicate offenses for acquitted charge; and (3) defendant failed to show prosecutorial vindictiveness.

Affirmed.

Alvin B. Rubin, Circuit Judge, dissented and filed opinion.

1. Criminal Law §29

Offenses of conspiracy to commit crime and crime itself are separate, and prosecution for former does not bar later prosecution for latter. U.S.C.A. Const. Amend. 5.

2. Criminal Law §200(1)

Where same conduct violates two statutory provisions, first step in double jeopardy analysis is to determine whether Congress intended that each violation be separate offense. U.S.C.A. Const. Amend. 5.

3. Criminal Law §199

Predicate offenses of continuing criminal enterprise violation are not lesser included offenses of continuing criminal enterprise for purposes of double jeopardy analysis, and thus, defendant's acquittal on continuing criminal enterprise charge did not preclude his subsequent prosecution for involvement in drug smuggling episode which had formed one of predicate offenses on prior charge. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 408, 21 U.S.C.A. § 848; U.S.C.A. Const. Amend. 5.

4. Constitutional Law §257

For Government to punish person because he has done what law plainly allows him to do is due process violation of most basic sort. U.S.C.A. Const. Amends. 5-14

5. Criminal Law §37.15(2)

There was no prosecutorial misconduct in charging defendant with substantive offenses arising out of drug smuggling episode after his acquittal on continuing criminal enterprise charge, for which smuggling episode had formed one predicate offense, and defendant's appeal from prior conspiracy conviction arising out of episode; defendant's appeal of conspiracy conviction had been unsuccessful.

Ferdinand J. Kleppner, Metairie, La., Edwin T. Mulock, Bradenton, Fla., for Guthrie.

Thomas E. Guilbeau, Lafayette, La., for Lewis.

D.H. Perkins, Jr., Asst. U.S. Atty., Joseph S. Cage, Jr., U.S. Atty., Shreveport, La., Howard Cobb Parker, Asst. U.S. Atty., Lafayette, La., for plaintiff-appellee.

Appeals from the United States District Court for the Western District of Louisiana.

Before GEE, RUBIN, and DAVIS, Circuit Judges.

GEE, Circuit Judge:

In February 1984, a United States Grand Jury in the Western District of Louisiana returned a four-count indictment against Walter Lewis and Raymond Guthrie. That indictment charged Lewis and Guthrie with importation of marijuana in violation of 21 U.S.C. § 952, and possession of marijuana with an intent to distribute in violation of 21 U.S.C. § 841(a)(1). These charges stemmed from an alleged smuggling episode in Morgan City, Louisiana, aboard the vessel Miss Clarice between February 1 and April 15, 1979.

Lewis and Guthrie pled not guilty and later moved to quash the indictment on multiple grounds, but this motion was denied by the district court. Lewis and Guthrie now appeal that decision.

I. WALTER LEWIS

In 1983, Lewis was charged by a United States Grand Jury in the Northern District of Florida with conspiracy to possess marijuana with an intent to distribute, as well as conspiracy to import marijuana. In response to a motion for a bill of particulars, the government cited the following episode:

The importation, possession, and distribution of a multi-ton load of marijuana in the Morgan City area of Louisiana on or about April [sic] of 1979. This marijuana is believed to have been transported to the United States in the vessel "Miss Clarice."

There were no substantive charges for this episode, however. Following a trial, Lewis was found guilty of both conspiracy charges.

[1] Lewis argues that his present indictment for the substantive offenses in the Morgan City smuggling episode was barred by the Constitution's prohibition of double jeopardy¹ since he had already been prosecuted for conspiracy for the same offense in Florida. This contention is meritless. It is firmly established that the offenses of conspiracy to commit a crime and the crime itself are separate, and a prosecution for the former does not bar a later prosecution for the latter. *United States v. Kalish*, 734 F.2d 194, 199 (5th Cir.1984).²

II. RAYMOND GUTHRIE

The Florida grand jury which indicted Lewis also indicted Raymond Guthrie on two counts of conspiracy, and Guthrie, like Lewis, was found guilty of those charges. The Florida grand jury additionally indicted Guthrie for engaging in a continuing criminal enterprise in violation of 21 U.S.C. § 848, but he was acquitted of this charge. At trial, the government introduced evidence of several smuggling episodes—in-

cluding the one in Morgan City in 1979—to prove the continuing criminal enterprise charge. Guthrie argues that his present indictment in the Western District of Louisiana for the substantive offenses stemming from the Morgan City episode should be dismissed on grounds both of double jeopardy and prosecutorial misconduct. We consider each of these arguments in turn.

A. Double Jeopardy

[2] Where the same conduct violates two statutory provisions, the first step in a double jeopardy analysis is to determine whether Congress intended that each violation be a separate offense. *Garrett v. United States*, — U.S. —, —, 105 S.Ct. 2407, 2411, 85 L.Ed.2d 764, 771 (1985). "If Congress intended that there be only one offense—that is, defendant could be convicted under either statutory provision for a single act, but not under both—there would be no statutory authorization for a subsequent prosecution after conviction of one of the two provisions, and that would end the double jeopardy analysis." *Id.*

In *United States v. Chagra*, 669 F.2d 241, 261-262 (5th Cir.1982), we held that Congress intended to prevent cumulative penalties for a continuing criminal enterprise violation and its predicate offenses. Citing *Chagra*, we have since held that the predicate offenses underlying a § 848 continuing criminal enterprise violation are lesser included offenses of the continuing criminal enterprise that cannot support a separate conviction or sentence. *United States v. Oberski*, 734 F.2d 1030, 1032 (5th Cir.1984).

Very recently, however, the Supreme Court squarely rejected the rationale of *Chagra*. In *Garrett v. United States*, supra, the defendant challenged on double jeopardy grounds a continuing criminal en-

1. The Fifth Amendment to the U.S. Constitution declares, in pertinent part, that "nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb."

2. Of course if a controlling fact in both prosecutions had been found in the defendants' favor

in the first prosecution for conspiracy, collateral estoppel would bar the later prosecution on the substantive offense. *Kalish*, supra, 734 F.2d at 199 n. 7 [citing *Ala. v. Swenson*, 397 U.S. 436, 30 S.Ct. 1139, 25 L.Ed.2d 469 (1970)].

terprise prosecution which charged predicate offenses that occurred between 1976 and 1981. The defendant had been previously convicted of one of those predicate offenses, a Washington state episode which took place in 1979 and 1980. The Court³ declared that:

[T]he language, structure, and legislative history of the Comprehensive Drug Abuse, Prevention and Control Act of 1970, however, show in the plainest way that Congress intended the CCE provision to be a separate criminal offense which was punishable in addition to, and not as a substitute for, the predicate offenses. — U.S. at —, 105 S.Ct. at 2412, 81 L.Ed.2d at 772.

In view of this unequivocal statement by the Court, it is clear to us that our language to the contrary in *Chagra* has been disapproved. Hence, our holding in *Oberski*, supra—that the predicate offense of a continuing criminal enterprise violation is a lesser included offense—which relied upon the language in question in *Chagra* must be viewed as disapproved as well.

After concluding in *Garrett* that Congress intended to permit prosecution for both the predicate offenses and the continuing criminal enterprise offense, the Supreme Court undertook the second step of a double jeopardy analysis. That step is a determination whether a continuing criminal enterprise offense is considered the “same offense” as one or more of its predicate offenses within the meaning of the Double Jeopardy Clause. — U.S. at —, 105 S.Ct. at 2415, 85 L.Ed.2d at 776. The Court noted:

Quite obviously, the continuing criminal enterprise offense is not, in any common sense or literal meaning of the term, the “same” offense as one of the predicate offenses. The CCE offense requires the jury to find that the defendant committed a predicate offense, and in addition that the predicate offense was part of a

continuing series of predicate offenses undertaken by the defendant in concert with five or more other persons, that the defendant occupied the position of an organizer or manager, and that the defendant obtained substantial income or resources from the continuing series of violations. *Id.*

The Court then considered whether the predicate offenses of a continuing criminal enterprise violation are lesser included offenses of the latter. The Court distinguished *Brown v. Ohio*, 432 U.S. 161, 97 S.Ct. 2221, 53 L.Ed.2d 187 (1977), wherein it was held that where the misdemeanor of joyriding was a lesser included offense of felony auto theft, a prosecution for the misdemeanor barred a second prosecution for the felony. The Court explained:

The defendant in *Brown* had stolen an automobile and driven it for several days. He had engaged in a single course of conduct—driving a stolen car. The very same conduct would support a misdemeanor prosecution for joyriding or a felony prosecution for auto theft, depending only on the defendant's state of mind while he engaged in the conduct in question. Every moment of his conduct was as relevant to the joyriding charge as it was to the auto theft charge. — U.S. at —, 105 S.Ct. at 2416, 85 L.Ed.2d at 777.

But on the facts before it, the Court observed, “the situation is quite different.” *Id.* The Court noted that the continuing criminal enterprise indictment charged several predicate offenses which occurred between 1976 and 1981, while the predicate offense for which the defendant had been previously convicted took place in 1979 and 1980. And thus, the Court reasoned:

Obviously the conduct in which Garrett was charged with engaging in the Florida indictment, when compared with that with which he was charged in the Wash-

3. The dissent refers to the “Garrett plurality.” Justice Rehnquist's opinion was joined by four other members of the Court, however; and although Justice O'Connor, one of the four who joined in the Court's opinion, did write a sepa-

rate concurrence. Justice Rehnquist's opinion has full precedential authority. Justice O'Connor's concurrence closes with the words “I join the opinion of the Court.”

ington indictment, does not lend itself to the simple analogy of a single course of conduct—stealing a car—comprising a lesser included misdemeanor within a felony. Here the continuing criminal enterprise was alleged to have spanned more than five years; the acts charged in the Washington indictment were alleged to have occurred on single days in 1979 and 1980, respectively. Whenever it was during the five-and-one-half-year period alleged in the indictment that Garrett committed the first of the three predicate offenses required to form the basis for a continuing criminal enterprise prosecution, it could not then have been said with any certainty that he would necessarily go ahead and commit the other violations required to render him liable on a continuing criminal enterprise charge. Every minute that Nathaniel Brown drove or possessed the stolen automobile he was simultaneously committing both the lesser included misdemeanor and the greater felony, but the same is simply not true of Garrett. His various boat-load smuggling operations in Louisiana, for example, obviously involved incidents of conduct wholly separate from his “mother boat” operations in Washington. *These significant differences caution against ready transposition of the “lesser included offense” principles of double jeopardy from the classically simple situation presented in Brown to the multi-layered conduct, both as to time and to place, involved in this case.* — U.S. at —, 105 S.Ct. at 2416–2417, 85 L.Ed.2d at 777–778 (emphasis supplied).

[3] The Court, however, stopped just short of holding that a continuing criminal enterprise’s predicate offenses were not lesser included offenses, and satisfied itself with an expression of “serious doubts” as to whether the contrary was the case. — U.S. at —, 105 S.Ct. at 2418, 85 L.Ed.2d at

779. We, however, find the reasoning of the Court compelling and thus hold that predicate offenses of a continuing criminal enterprise violation are not lesser included offenses of the continuing criminal enterprise for purposes of the Fifth Amendment’s Double Jeopardy Clause.⁴

B. Prosecutorial Misconduct

Guthrie argues that the government’s prosecution for the substantive offenses stemming from the Morgan City smuggling episode represents prosecutorial misconduct, violative of the Due Process Clause of the Fifth Amendment, in light of the fact that this indictment came only after the government had been defeated on the continuing criminal enterprise charges and Guthrie had appealed the conspiracy conviction from the Florida trial.

[4] For the government to punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort. *United States v. Goodwin*, 457 U.S. 368, 372, 102 S.Ct. 2485, 2488, 73 L.Ed.2d 74 (1982). In *United States v. Krezdorn*, 718 F.2d 1360 (5th Cir.1983) (en banc), we established guidelines for resolving a claim of prosecutorial vindictiveness:

If the defendant challenges as vindictive a prosecutorial decision to increase the number or severity of charges following a successful appeal, the court must examine the prosecutor’s actions in the context of the entire proceedings. If any objective event or combination of events in those proceedings should indicate to a reasonable minded defendant that the prosecutor’s decision to increase the severity of charges was motivated by some purpose other than a vindictive desire to deter or punish appeals, no presumption of vindictiveness is created. In trying the issue of vindictiveness, the prosecutor may offer proof of the sort suggest-

4. We note the dissent does not take issue with the Supreme Court’s reasoning and at no point argues for the proposition that a continuing criminal enterprise’s predicate offense is a lesser included offense. Indeed the dissent’s prin-

cipal concern, aside from prosecutorial vindictiveness, seems to be collateral estoppel. While there may be some merit in this argument, Guthrie has never raised it, either here or in the district court.

ed in *Hardwick* [558 F.2d 292 (5th Cir. 1977)] that as a matter of fact his actions were not vindictive. The burden of proof (by a preponderance of the evidence) remains on the defendant who raised the affirmative defense. If, on the other hand, the course of events provides no objective indication that would allay a reasonable apprehension by the defendant that the more serious charge was vindictive, i.e., inspired by a determination to "punish a pesky defendant for exercising his legal rights," a presumption of vindictiveness applies.... *Id.* at 1365. (emphasis supplied).

[5] The proper venue for the Morgan City offense was the Western District of Louisiana. This fact, when combined with the knowledge that his appeal of the Florida conspiracy conviction was *unsuccessful*, should have indicated to a reasonable minded defendant in Guthrie's situation that the government's decision to seek the present indictment was motivated by some purpose other than a vindictive desire to exact retribution for his appeal. The Supreme Court has made clear that "the Due Process Clause is not offended by *all* possibilities of increased punishment . . . but only by those that pose a realistic likelihood of 'vindictiveness.'" *United States v. Goodwin*, *supra*, 457 U.S. at 384, 102 S.Ct. at 2494, citing *Blackledge v. Perry*, 417 U.S. 21, 27, 94 S.Ct. 2098, 2102, 40 L.Ed.2d 628 (1974). Therefore, we have little difficulty in rejecting this claim.

CONCLUSION

We hold that the present prosecution of Walter Lewis for the substantive offenses arising out of the Morgan City episode is not barred by his prior prosecution for conspiracy. We further hold that the Morgan City offense for which Raymond Guthrie is currently charged is not a lesser included offense of the continuing criminal enterprise for which he was prosecuted in Flor-

ida, and that Guthrie's claim of prosecutorial misconduct is without merit. Accordingly, the denial of relief by the court below is

AFFIRMED.

ALVIN B. RUBIN, Circuit Judge, dissenting:

I respectfully dissent because, unlike my brothers, I would not extend the opinion in *Garrett v. United States*,¹ and because I understand the double jeopardy clause to afford greater protection against successive prosecutions than they allow it. Successive prosecutions raise double jeopardy concerns that multiple punishments imposed at a single trial do not.² When conviction of a greater crime cannot be had without proving every element of a lesser crime, the double jeopardy clause bars a separate prosecution of the lesser crime after conviction of the greater one.³

In *Garrett*, the defendant had in March, 1981 pleaded guilty to, and been convicted of, importing marijuana. He was later indicted for participating in a continuing criminal enterprise (CCE) in violation of 21 U.S.C. § 848 which requires, *inter alia*, proof of a series of three or more drug-related offenses. The marijuana offense to which Garrett pleaded guilty was included in the CCE indictment as one of the necessary predicate offenses. The criminal enterprise, however, was alleged to have continued from January 16, 1976, to July 16, 1981, encompassing predicate offenses that occurred after the guilty plea.

After discussing the double jeopardy question at length, the *Garrett* plurality states, as my brothers note, that it has "serious doubts as to whether the offense to which Garrett pleaded guilty in Washington was a 'lesser included offense' within the CCE charge so that the prosecution of the former would bar a prosecution of

1. — U.S. — 105 S.Ct. 2437, 85 L.Ed.2d 764 (1985).

2. See *Jordan v. Virginia*, 653 F.2d 370, 373 (4th Cir. 1980).

3. See *Id.*, *Jordan v. Oklahoma*, 433 U.S. 682, 682-683, 41 S.Ct. 2912, 2913, 53 L.Ed.2d 1054 (1977).

the latter.”⁴ The Court did not, however, decide that question, for it continued:

But we may assume, for purposes of decision here, that the Washington offense was a lesser included offense, because in our view Garrett's claim of double jeopardy would still not be sustainable.⁵

The plurality then rested its holding on an entirely different ground, the reasoning of the 1912 opinion, *Diaz v United States*.⁶ In that case, the Court had rejected the double jeopardy claim of a defendant convicted of assault, then tried a second time for murder when the victim died after the first trial had concluded. Because the murder charge could not have been brought at the time of the assault trial, the opinion concluded, the defendant had not been twice in jeopardy. The *Garrett* plurality followed the same course: “

In the present case, as in *Diaz*, the continuing criminal enterprise charged against Garrett in Florida had not been completed at the time that he was indicted in Washington.

* * * * *

We think this evidence not only permits but requires the conclusion that the CCE . . . was under *Diaz* a different offense from that charged in the Washington indictment.⁷

The *Garrett* plurality opinion, therefore, concluded that the CCE prosecution of Garrett “does not violate the Double Jeopardy Clause under the facts of this case. . . .”⁸ Neither the words nor the logic of the opinion imply that a predicate offense would not be considered a lesser included offense within a CCE charge once the CCE had been completed.

Justice O'Connor's concurrence rested on a similar analysis:

4. *Id.*, — U.S. at —, 105 S.Ct. at 2418, 85 L.Ed.2d at 779.

5. *Id.*

6. 223 U.S. 42, 32 S.Ct. 250, 56 L.Ed. 500 (1912).

7. — U.S. at —, 105 S.Ct. at 2418, 85 L.Ed.2d at 779.

Where the defendant continues unlawful conduct after the time the Government prosecutes him for a predicate offense, I do not think he can later contend that the Government is foreclosed from using that offense in another prosecution to prove the continuing violation of § 848.

* * * * *

Moreover, I note that we do not decide in this case whether a defendant would have a valid double jeopardy claim if the Government failed in a later prosecution to allege and present evidence of a continuing violation of § 848 after an earlier conviction for a predicate offense. Certainly the defendant's interest in finality would be more compelling where there is no indication of continuing wrongdoing after the first prosecution.⁹

My brothers correctly note that the plurality stopped short of the result they now reach. Taking the carefully chosen words of Justice O'Connor's concurrence into account, even though she ultimately joined in the plurality opinion, I think their willingness to further limit the double jeopardy clause is unwarranted. The continuing criminal enterprise with which Guthrie was charged had ended before his acquittal. The Morgan City smuggling charge that Guthrie now protests was relied upon as a predicate offense to prove the CCE charge: It was the centerpiece of the government's case, involving eight witnesses and hundreds of pages of testimony, all of which must now be repeated in an attempt to prove a second time that Guthrie committed the same criminal act.

The government denies prosecutorial misconduct, asserting that it could not have charged the Morgan City offense in the CCE indictment because venue for that offense was improper in Florida where the

8. *Id.*, — U.S. at —, 105 S.Ct. at 2419, 85 L.Ed.2d at 780.

9. *Id.*, — U.S. at —, 105 S.Ct. at 2420, 2422, 85 L.Ed.2d at 784 (O'Connor J., concurring).

CCE and conspiracy charges were brought. This rationalization does not withstand analysis. First, venue is not a jurisdictional limitation but a privilege that may be waived by the defendant.¹⁰ The government was free to include the Morgan City offense in the Florida indictment, leaving to Guthrie the choice of objecting to the improper venue or of waiving the venue question and defending himself from all charges in a single proceeding. More important, venue for the offenses tried in Florida was also proper in Louisiana, where the Morgan City episode took place, because that episode was included as a predicate offense in both the conspiracy and the CCE charges.¹¹ Thus, all charges could have been brought in Louisiana at a single trial, and respect for proper venue did not necessitate successive prosecutions.

The concern expressed by the *Garrett* plurality, that in some circumstances a criminal might insulate himself from CCE charges by pleading guilty in advance to a single minor predicate offense, has no basis when the CCE prosecution is brought first. The government then has full control. If, with full knowledge of the facts, it chooses—as it did with Guthrie—to prosecute first for the CCE and not then to include separate charges for each of the predicate offenses, the government should be held to its choice. Otherwise the government might prosecute a defendant for CCE and then, if he were acquitted, as Guthrie was, or if the government were dissatisfied with his sentence, it might prosecute him not only for one but for each of the predicate offenses *seriatim*. More than collateral estoppel bars this kind of governmental manipulation. This is precisely the kind of peril the double jeopardy clause was designed to prevent. The Constitution does not permit prosecutors so much rope for repeated attempts to string up the accused.

Guthrie should not be forced to defend himself a second time against a crime that was relied upon as a necessary element of proof in an earlier trial at which the prosecution was unsuccessful.



Daisy DORTON, Plaintiff-Appellant,

v.

Margaret M. HECKLER, Secretary of
Health and Human Services,
Defendant-Appellee.

No. 85-1502.

United States Court of Appeals,
Sixth Circuit.

Submitted Jan. 7, 1986.

Decided Jan. 24, 1986.

Claimant sought widow's disability benefits. The United States District Court for the Eastern District of Michigan, Robert E. DeMascio, J., rendered judgment for Secretary of Health and Human Services, and claimant appealed. The Court of Appeals held that: (1) claimant did not demonstrate with specific clinical findings that she met requirements for listed impairment concerning ischemic heart disease with chest pain of cardiac origin, notwithstanding that she presented substantial evidence that she had such heart disease, and (2) substantial evidence failed to support finding that claimant's physical impairments, even when taken together, were sufficiently severe to prevent her from engaging in

10. *United States v. Marcello* 423 F.2d 993, 1001-06 (5th Cir.), *cert. denied*, 398 U.S. 959, 90 S.Ct. 2172, 26 L.Ed.2d 543 (1970); 2 C. Wright, Federal Practice and Procedure: Criminal § 306 (2d ed.1982).

11. See *United States v. ...* 413 F.Supp. 1269 1273 (E.D.Mich., 1976), *aff'd mem.*, 559 F.2d 1221

(6th Cir.1977); 2 C. Wright, Federal Practice and Procedure: Criminal § 303 at 205 (2d ed.1982); *United States v. Diaz*, 685 F.2d 252, 255 (8th Cir.1982); *Downing v. United States*, 348 F.2d 594, 598 (5th Cir.), *cert. denied*, 382 U.S. 901, 36 S.Ct. 235, 15 L.Ed.2d 155 (1965).