

RICHARD SHOFER
VS.

THE STUART HACK CO., ET AL.
CASE NO: 88102069/CL-79993
VOLUME 1 of 4

EXHIBITS ----- NO
TRANSCRIPTS ----- YES

one Cross Appeal / one Record

*209-98)
326*

Court of Special Appeals

No. 523, September Term, 1995

Richard Shofer

v.

The Stuart Hack Company et al.

DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS:

January 2, 1996: Opinion by Fischer, J.
Appeal dismissed. Appellant to pay costs.

February 1, 1996: Mandate issued.

RECORD RETURNED TO CLERK OF CIRCUIT COURT FOR:

BALTIMORE CITY

BALTIMORE, MD 21202

DATE: 2/01/96

BY: HAND DELIVERED

REMARKS:

Ledie D. Gadet



MANDATE

Court of Special Appeals

Maryland Relay Service
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No. 523, September Term, 1995

Richard Shofer
v.
The Stuart Hack Company et al.

JUDGMENT: January 2, 1996: Opinion by Fischer, J.
Appeal dismissed. Appellant to pay costs.
February 1, 1996: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for BALTIMORE CITY
88102069A , CL79993

Record.....	60.00
Stenographer Costs.....	517.50
* Total *	577.50 *

In Court of Special Appeals:

Printing Brief for Appellant.....	169.20
Reply Brief.....	93.60
Portion of Record Extract--Appellant....	1504.80
* Total *	1767.60 *
Printing Brief for Appellee.....	237.60
Filing Cross-Appeal.....	50.00
Reply Brief.....	68.40
* Total *	356.00 *

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this 1st day of February A.D. 1996

Ledie D. Hadest
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 523

September Term, 1995

Richard Shofer

v.

The Stuart Hack Company, et al.

Fischer,
Cathell,
Murphy,

JJ.

Opinion by Fischer, J.

Filed: January 2, 1996

Richard Shofer appeals from three separate orders of the Circuit Court for Baltimore City. The three orders, entered by three different circuit court judges during three separate hearings over the course of four years, dismissed individual damage claims from Shofer's complaint against The Stuart Hack Company (Hack Co.) and Stuart Hack (Hack) personally. The circuit court, pursuant to Maryland Rule 2-602 (b), certified the three orders as final judgments so they could be directly appealed to this Court. In appealing the three orders, Shofer presents the following issues for our consideration, which have been reworded:

- I. Should the Court of Appeals decision in *Shofer v. Hack Co.*, 324 Md. 92 (1991) be modified on the issue of damages in light of developing case law subsequent thereto?
- II. Did the circuit court err in entering the three orders that limited Shofer's damages claims?
- III. Did the circuit court's orders constitute a violation of Shofer's right to due process pursuant to the United States Constitution and the Maryland Declaration of Rights?

We choose, however, to address the dispositive procedural question that neither party discussed in their briefs, but which we inquired about during oral argument:

- I. Did the circuit court err in certifying for appeal three interlocutory orders that were neither final judgments nor exceptions to the final judgment rule?

FACTS

This case is yet another stop on the never-ending litigational odyssey otherwise known as *Shofer v. Hack Co.* Shofer is an

automobile dealer who is the sole stockholder and president of Catalina Enterprises, Inc. (Catalina), which trades as Crown Motors. In 1971, Catalina adopted a pension plan that qualified under the Internal Revenue Code.

Hack is president of Hack Co., which coordinates and organizes pension plans for businesses. Hack Co. administered Catalina's pension plan. Hack provided professional assistance to Catalina, which included advice on tax issues.

A single event gave rise to Shofer's lawsuit. In 1984, Shofer asked Hack whether he could legally borrow money from the pension fund. Hack, in a letter, answered Shofer's question in the affirmative. Between 1984 and 1986 Shofer proceeded to borrow \$375,000 from his pension fund. Subsequently, Shofer's accountants informed him that he owed taxes on the money he borrowed from the pension fund. Shofer paid a total of \$120,428.19 in both federal and Maryland taxes and tax penalties.

After paying his taxes and tax penalties, Shofer sued Hack and Hack Co. in the circuit court. Shofer contended that Hack, as a pension consultant to Catalina, should have advised him about the potential tax consequences of borrowing money from the pension fund. After the circuit court dismissed Shofer's claim with prejudice, Shofer appealed to this Court. Before this Court heard the appeal, the Court of Appeals granted certiorari. The Court of Appeals held: (1) that the contract and tort claims based on malpractice were not preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461 (1988); and (2) that the claim based on breach of duty was preempted by ERISA.

The case was remanded to the circuit court for a trial on the remaining damages issues.¹ *Shofer v. Hack*, 324 Md. 92 (1991).

This appeal involves three separate orders from three different circuit court judges resulting from a series of motions and answers filed by the parties following *Shofer I*.

Judge Thomas Ward's Order

After *Shofer I*, *Shofer* filed his Third Amended Complaint in the circuit court. *Hack* moved to dismiss certain damage claims from *Shofer's* complaint. Specifically, *Hack* sought to exclude the damage claims arising out of excise taxes, prohibited transactions, and possible disqualification of *Shofer's* pension. On February 17, 1991 Judge Ward, in accord with *Shofer I*, granted *Hack's* motion. Additionally, Judge Ward dismissed *Shofer's* claims for punitive damages and attorney's fees. In this appeal, *Shofer* challenges Judge Ward's rulings on the damages issues.

Judge Ellen Hollander's Order

Following Judge Ward's decision, and as discovery continued, *Shofer* filed a memorandum intended to supplement a previous answer to interrogatories. In the supplemental answer, *Shofer* revealed that he was seeking damages for additional taxes that might flow from a decision of the Internal Revenue Service that the loans constituted prohibited transactions, excise taxes on prohibited transactions, tax penalties arising out of his failure to follow proper procedures in borrowing from his pension, damages due to his inability to refinance his Virgin Islands property, lost salary,

¹ The Court of Appeals case will be referred to as *Shofer I*.

and lost business profits. Hack moved for summary judgment on the following grounds: (1) that Shofer's damage claims were unforeseeable, too speculative, or otherwise not recoverable; and (2) that on the whole, the Third Amended Complaint was preempted under *Mertins v. Hewitt Assoc.* ___ U.S. ___, 113 S. Ct. 2063 (1993). On July 11, 1994, Judge Hollander granted partial summary judgment for Hack and dismissed Shofer's damage claims. Judge Hollander did not grant summary judgment on the preemption issue. Shofer challenges the award of partial summary judgment in this appeal.

Judge Andre M. Davis' Order

Following Judge Hollander's order, Shofer filed new damage claims for loss of sheltered earnings and losses attributable to tax penalties and interest. Hack filed a motion to dismiss the new damage claims. Judge Davis granted Hack's motion to dismiss the damage claim for loss of sheltered earnings, but denied the motion on the tax penalties and interest. Shofer challenges the dismissal of the damage claim for loss of sheltered earnings in this appeal.

At a pretrial conference in the circuit court, Shofer announced that he planned to appeal the three previous orders regardless of the result of the upcoming non-jury trial. Pursuant to Rule 2-602 (b), Judge Davis certified the three orders as final judgments so Shofer could directly appeal to this Court before the start of the trial on the merits. Subsequently, Shofer filed a timely appeal before this Court.

STANDARD OF REVIEW

It is this Court's duty to examine a circuit court's certification decision under Maryland Rule 2-602. See *Planning Bd. v. Mortimer*, 310 Md. 639, 648 (1987). If the certification was improper, the appeal will be dismissed. Certification under Rule 2-602 is a question of law. Accordingly, this Court will afford no deference to the trial judge's decision. See, *Davis v. Davis*, 280 Md. 119, 124-126, cert. denied, 434 U.S. 939 (1977).

DISCUSSION

Generally, Maryland appellate courts cannot exercise subject matter jurisdiction over a case on appeal unless that case is the product of a final judgment from a lower court. Md. Code, (1974, 1995 Repl. Vol. 1995 Supp.) § 12-301 of the Cts. & Jud. Proc. Art.² Section 12-301 outlines this final judgment rule, which is the foundation for appellate jurisdiction in Maryland.³ To qualify as a final judgment, "The judgment [of the lower court] must settle the rights of the parties, thereby concluding the cause of action.

² Section 12-301 reads, in part:

Except as provided in § 12-302 of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. . . .

³ Unless otherwise indicated, all statutory references throughout this opinion will be from Md. Code, (1974, 1995 Repl. Vol. 1995 Supp.) § 1-101 et seq. of the Cts. & Jud. Proc. Art.

. . ." *Estep v. Georgetown Leather*, 320 Md. 277, 282 (1990); see also *County Comm'rs v. Schrodel*, 320 Md. 202, 209 (1990) (stating that "[o]rdinarily a judgment is final, for the purposes of an appeal under § 12-301, 'only if it terminates the action in [the trial] court'" (quoting *Bunting v. State*, 312 Md. 472, 476 (1988))); Md. Code, (1974, 1995 Repl. Vol., 1995 Supp.) § 12-101 (f) of the Cts. & Jud. Proc. Art. (defining final judgment as "a judgment, decree, sentence, order, determination, decision, or other action by a court . . . from which an appeal . . . may be taken").

Generally, interlocutory orders, such as the three orders in this case, do not qualify as appealable orders under section 12-301.⁴ Most interlocutory orders lack the "finality" characteristic that section 12-301 requires. Therefore, without a final judgment parties cannot generally appeal interlocutory orders. See Md. Rule 8-131 (d).

This is not to say that parties can never directly appeal an interlocutory order during the course of a trial proceeding. There are several limited exceptions to section 12-301 that provide for the appeal of interlocutory orders. For example, section 12-303,⁵

⁴ Interlocutory is defined as, *inter alia*, "Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy." Black's Law Dictionary 815 (6th ed. 1991).

⁵ Section 12-303 reads, in part, "A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case. . . ." Section 12-303 then provides a laundry list of appealable interlocutory orders. None of these legislatively created exceptions to the final judgment rule apply in this appeal.

the collateral order doctrine,⁶ and Maryland Rule 2-602⁷ all provide for the direct appeal of interlocutory orders.

This case concerns the appeal of three interlocutory orders

⁶ The collateral order doctrine "treats as final and appealable a limited class of orders which [sic] do not terminate the litigation in the trial court." *Public Service Comm'n v. Patuxant Valley*, 300 Md. 200, 206 (1984). To qualify under the collateral order doctrine, an order must:

[(1)] conclusively determine the disputed question, [(2)] resolve an important issue [, (3) be] completely separate from the merits of the action, and [(4)] be effectively unreviewable on appeal from a final judgment.

County Comm'rs, 320 Md. 202 at 211 (quoting *Clark v. Elza*, 286 Md. 208, 212 (1979)); see also *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-547 (1949).

The collateral order doctrine is not applicable to the facts of this case.

⁷ Maryland Rule 2-602 reads:

(a) Generally. - Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, crossclaim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:

(1) is not a final judgment;
(2) does not terminate the action as to any of the claims or any of the parties; and
(3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

(b) When Allowed. - If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:

(1) as to one or more but fewer than all of the claims or parties; or amount requested in a claim seeking money relief only.

pursuant to Rule 2-602. This rule permits trial judges to certify an interlocutory order for final judgment that otherwise does not qualify as a final judgment under section 12-301. *Keen Corp. v. Levin*, 330 Md. 287, 291 (1993). The purpose of this section and the final judgment rule is to ensure a uniform appellate process and to prevent piecemeal appeals.⁸ See *Jolly v. State*, 282 Md. 353, 356 (1978).

Rule 2-602 is not a conduit for trial judges to certify any interlocutory order as a final judgment so as to acquire an advisory opinion from this Court on a pressing legal issue. The certification process is "limited to orders which, by their nature, have a characteristic of finality. Such orders must be completely dispositive of an entire claim or party." *Snowden v. Baltimore Gas & Electric*, 300 Md. 555, 563 (1984); see also *Pearlstein v. Maryland Deposit Ins.*, 79 Md. App. 41, 51 (1989) (stating that "[a]n order that merely resolves an issue within a claim rather than an entire claim may not be certified pursuant to this rule"). A trial judge should only certify orders for final judgment in extraordinary circumstances and in an effort to prevent "sufficient hardship or unfairness." *Planning Bd. v. Mortimer*, 310 Md. 639, 648 (1987).

⁸ The Maryland appellate system differs from that of the Federal Judiciary. In the federal system, a trial judge can certify for final judgment any interlocutory order that "involves a controlling question of law as to which there is substantial ground for difference of opinion" and where "an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292 (b) (1988); See generally John A. Lynch Jr. & Richard W. Bourne, *Modern Maryland Civil Procedure* § 11.2 (1993, 1994 Supp.) (discussing trial orders reviewable on appeal).

The first step in our analysis is to determine whether each of the three orders disposed of an entire claim for relief or whether they each dealt with the specific issue of damages. Shofer's third amended complaint outlined two causes of action -- negligence (count I) and breach of contract (count II). The three orders, though substantially limiting Shofer's ability to collect money damages, did not dispose of either of these counts. Throughout the course of this case's procedural marathon, the causes of action remained the same -- negligence and breach of contract stemming from Hack's alleged failure to advise Shofer about potential tax liability for borrowing money from his pension fund. Even after the three orders, Shofer could have gone to trial and received damages if the trial judge found either negligence or breach of contract.

The three orders concerned the damage issues encompassed in Shofer's complaint as a whole. Judge Ward's Order struck out certain damages sought by Shofer, but did not exclude Shofer from pursuing his cause of action for different types of damages. Judge Hollander's Order also struck out certain specific damages requested by Shofer, but ruled the complaint, as a whole, was still viable. Judge Davis' Order struck the damages claim for loss of sheltered earnings, but kept intact the damage claim for losses attributable to tax penalties and interest.

Not only did the certification of the three orders not dispose of an entire claim, it did not comply with Rule 2-602's requirement that there exist "no just cause for delay" with respect to hearing an appeal. This Court examines four factors to determine whether

"no just cause for delay" exists:

- a. Whether delay of an appeal would work some harsh impact, including economic impact, on the litigant;
- b. Whether there is a danger that the same issues will be considered in subsequent appeals;
- c. Whether disposition of the remaining claims might moot the need for an immediate appeal; and
- d. Whether entertaining an immediate appeal would require the appellate court to determine questions that are still before the trial court.

John A. Lynch, Jr. & Richard W. Bourne, *Modern Maryland Civil Procedure* § 11.2, at 808 (1993, 1994 Supp.) (citing *Canterbury Rid. Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635, 651-654 (1986)).

In this case, Shofer's case does not meet the "no just cause for delay" burden. Our not hearing the appeal will have no additional "harsh impact" on Shofer. The disposition of the claims may render moot the need to address the damages issues on appeal. Finally, not only are these issues before the circuit court, there is a chance these very issues will be considered in a subsequent appeal following the circuit court's eventual decision.

Shofer's threat to appeal the three orders "no matter what the result of the upcoming non-jury trial" has no effect on this Court's decision not to accept jurisdiction of the appeal. Appellate jurisdiction is established by "constitutional provisions, statutory provisions, and rules; jurisdiction cannot be conferred by consent of the parties," *Pearlstein*, 79 Md. App. at 48. This Court does not have jurisdiction to hear a case because one party wishes to appeal an interlocutory order adverse to its

position. The role of this Court is not to furnish the Maryland Circuit Courts, or litigants before them, with advisory opinions. Our duty upon appellate review is to answer legal questions derived from a final judgment of a lower court.

This case illustrates the practical problem that can occur when trial judges remove, prior to trial, damage requests from claimants' causes of action. Where appropriate, trial judges can avoid this problem by presenting damage claims to the fact finder. After a decision on liability and damages, upon proper motion, the trial court can modify an award that is believed to be inconsistent with Maryland law. On appeal, if this Court disagrees with the trial judge's decision, then we can reinstate all or part of an award. This approach avoids the disjunctive yo-yo effect of multiple trials and multiple appeals, and might have alleviated some of the problems associated with this case.

This is not to say the trial judges should routinely submit all damage claims, regardless of their validity, to the fact finder. When appropriate, trial judges should strike invalid claims that might tend to confuse the fact finder (in the event the fact finder is a jury) or for which substantial evidence might need to be introduced that otherwise would be irrelevant or prejudicial. In those cases, however, where a reasonable possibility exists that the claims have validity, a verdict should be obtained.

The circuit court's certification and Shofer's appeal in the case *sub judice* were counter productive to reaching a conclusion in the long, torturous trip of *Shofer v. Hack Co.* We have no choice but to remand this case for a trial on the remaining damage items.

In the meantime, the parties are no closer to ending this seemingly never ending dispute than they were before the circuit court's certification.

For the foregoing reasons, this Court dismisses Shofer's appeal.

APPEAL DISMISSED.

APPELLANT TO PAY COSTS.

Civil
Professional
malpractice

No. 523, SEPTEMBER TERM, 1995
(LEAVE BLANK)

1 of 4 volumes

TRANSCRIPT OF RECORD

FROM THE

FF
ee-50

CIRCUIT COURT FOR BALTIMORE CITY

Judge: HONORABLE ANDRE M. DAVIS

IN THE CASE OF
ONE CROSS APPEAL / ONE RECORD
✓ RICHARD SHOFER

Appellant

v.

✓ THE STUART HACK COMPANY et al.

Appellee

TO THE SPECIAL COURT OF APPEALS OF MARYLAND

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(202) 371-1800

FOR APPELLEE

C# 2011724140
6.5.95

Filed

6/6/95

(LEAVE BLANK)

7/17

12/95

88102069/CL79993

PHC 136/95 NC

Start 10.17.91

Judgment 3.6.95

Appeal 3.20.95



SAUNDRA E. BANKS,
Clerk

**CIRCUIT COURT FOR BALTIMORE CITY
CIVIL DIVISION**

Room 462 Court House East
111 N. Calvert Street
Baltimore, Md. 21202

General Information (301) 6
Law (301) 6
Equity (301) 6

Leslie D. Gradet, Clerk
Court of Special Appeals
Courts of Appeals Bldg.
P.O. Box 431
Annapolis, Md 21401

Re: Richard shofer
vs.
The Stuart Hack, Co., et al.
Case No: 88102069/CL-79993


Dear Ms Gradet.

The above entitled case is an Appeal filed in the Circuit Court for Baltimore City.

Enclosed please find check no. #1607 in the amount of fifty (\$50.00) dollars to defray the costs in this case.

Attorney (s) for the appellant and/or appellee did not wish to peruse the record in this matter;

Very truly yours,


Sandra E. Banks, Clerk

CIRCUIT COURT FOR BALTIMORE CITY
MSV523 CASE INQUIRY

DATE: 06/02/95
TIME: 11:08
TERMINAL: V165

CASE NUMBER: 88102069 SHOFR V STUART HACK COMPANY CL79993
CATEGORY: CONTR
ORIG COURT: CL AMOUNT OF SUIT :\$ 1,000,00 LAST PLEA DATE : 04/07/95
DATE FILED: 04/11/88 TRANSCRIPT PAGES : TERMINATION DATE: 04/07/96
STATUS: P CONSOLIDATED CASE: BOOK NUMBER :
STATUS CODE: 03/24/95 PROTRACTED: J. DAVIS PAGE NUMBER :
WHO PAYS COSTS :
LAST MODIFIED ON: 06/02/95

DATE	CODE	AMOUNT	BAD CK/ RECPT #	BANK NUMBER	CHECK NUMBER
04/11/88	CLERK	\$ 80.00			
04/11/88	LIBRA	\$ 5.00			
04/11/88	PAYMT	\$ 85.00	8355		
10/16/90	CLERK	\$ 10.00			
10/16/90	LIBRA	\$ 5.00			
10/16/90	RECOR	\$ 50.00			
10/16/90	PAYMT	\$ 65.00	6753		
12/26/90	COFYS	\$ 7.00			

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CIRCUIT COURT FOR BALTIMORE CITY
MSV523 CASE INQUIRY
CASE NUMBER: 88102069 SHOFR V STUART HACK COMPANY CL79993

DATE: 06/02/95
TIME: 11:08

12/26/90	PAYMT	\$ 7.00	4266
03/24/95	RECOR	\$ 60.00	
03/24/95	PAYMT	\$ 60.00	2655

DATE	CODE	TIME	PART	ROOM	SCHED	ACTUAL	DISP	REAS	JUDGE	ID	FUT	CAL
01/01/80			#####			PROTRACTED TO JUDGE DAVIS	#####					
01/01/88	MEMO					-----UPDATE PAGE 18-----						
04/11/88	FILE		COMPLAINT.			(\$1,000,000.00)	(1)					
04/11/88	PROC		DEF STUART HACK			COPRIVATE		CREATED: 04/11/88		SERVED: / / .		
04/11/88	PROC		DEF HACK, STUART			PRIVATE		CREATED: 04/11/88		SERVED: / / .		
05/09/88	PLEA		AFFIDAVIT OF SERVICE			AS TO DEFTS (THE STUART HACK CO		4/25/88 AND				
05/09/88			MR STUART HACK			4/30/88)	(2)					
05/17/88	PLEA		PLTFF'S AMENDED			COMPLAINT	(3)					
05/27/88	ANSW		APP OF DANIEL W			WHITNEY ATTY FOR DEFTS		SAME DAY ANSWER		(4)		
06/15/88	PLEA		ENTER TRIAL			SCHEDULE	(5)					
06/17/88	PLEA		PLTFF'S REQUEST			FOR PRODUCTION OF DOCUMENTS	(6)					
06/27/88	PLEA		DEFT'S ANS. TO			PLTFF'S REQUEST FOR PRODUCTION OF DOCUMENTS.	(7)					

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PAGE: 002

CIRCUIT COURT FOR BALTIMORE CITY DATE: 06/02/95
MSV523 CASE INQUIRY TIME: 11:08
CASE NUMBER: 88102069 SHOFR V STUART HACK COMPANY CL79993

06/29/88 PLEA DEFT., STUART HACK, REQUEST FOR PRODUCTION OF DOCUMENTS (8)
06/29/88 PLEA DEFT., HACK, INTERROG. FD. (9)
11/09/88 MOTN DEFT. MOTION FOR ORDER COMPELLING DISCOVERY FD. (10)
11/14/88 PLEA PLTFFS. ANSWERS TO INTERROGATORIES FD. (11)
11/22/88 PLEA PLTFF'S RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS (12)
11/25/88 PLEA PLTFFS RESPONSE TO MOTION FOR ORDER COMPELLING DISCOVERY (13)
11/30/88 PLEA DEFTS NOTICE TO WITHDRAW THEIR MOTION TO COMPEL (14)
02/02/89 PLEA NOTICE OF DEPOSITION FD (15)
03/07/89 PLEA PLTFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS (16)
04/05/89 PLEA ENTER TRIAL SCHEDULE (17)
04/08/89 PLEA DEFTD (THE STUART HACK COM) & STUART HOCK. THIRD PARTY COMPLAINT
04/08/89 FILED. (18)
04/19/89 PLEA WRIT ISSUED ON THIRD PARTY COMPLAINT
04/19/89 PROC DEF GRABUSH NEWMANPRIVATE CREATED: 04/19/89 SERVED: / / .
05/18/89 ANSW APP. OF ATTY'S (LINDA M. SCHUETT & JOHN J. RYAN) FOR THIRD PARTY
05/18/89 DEFTS. SAME DAY ANSWER TO 3RD PARTY CLAIM (19)
08/22/89 PLEA PLTFFS. FIRST REQUEST FOR ADMISSION (20)

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CIRCUIT COURT FOR BALTIMORE CITY DATE: 06/02/95
MSV523 CASE INQUIRY TIME: 11:08
CASE NUMBER: 88102069 SHOFR V STUART HACK COMPANY CL79993

09/29/89 ANSW DEFTS (S. HACKS CO. & S. HACKS) ANSWER TO REQUEST FOR ADMISSION
09/29/89 OF FACTS & GENUINENESS OF DOCUMENTS (21)
11/17/89 CAL 09:30 219W CT CANC CANC CAN ROSS, D 8817
12/18/89 CAL 09:30 219W CT CANC CANC CAN ROSS, D 8817
02/12/90 PLEA DEFT GRABUSH NEWMAN & CO P.A. FIRST REQUEST FOR PRODUCTION OF DOCU
02/12/90 MENTS FD. (22)
02/14/90 PLEA DEFT. (NEWMAN) INTERROGATORIES (23)
02/14/90 PLEA DEFT. (NEWMAN) FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (24)
02/20/90 ANSW DEFTS THE STUART HACK CO & SUART HACK ANSWER TO THIRD PARTY
02/20/90 DEFTS FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (25)
02/23/90 PLEA DEFTS AMENDED ANSWERS TO PLTFFS AMENDED COMPLAINT (26)
03/06/90 MOTN DEFTS. (STUART HACK CO. & STUART HACK) MOTION TO DISMISS FOR LACK
03/06/90 OF SUBJECT MATTER JURISDICTION, REQUEST FOR HEARING (27)
03/12/90 PLEA THIRD PARTY DEFTS INTERROGATORIES AS TO PLTFF (28)
03/15/90 APPR ENTER THE APP. OF (LEE B. ZABEN) AS COUNSEL FOR DEFTS' (29)
03/16/90 PLEA DEFT (STUART HACK) REQUEST FOR PRODUCTION OF DOCUMENTS AN
03/16/90 TO DEFT (GARBUSH, NEWMAN CO) (30)

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CIRCUIT COURT FOR BALTIMORE CITY

MSV523

C A S E I N Q U I R Y

CASE NUMBER: 88102069

SHOFER V STUART HACK COMPANY

CL79993

DATE: 06/02/95

TIME: 11:08

03/20/90 PLEA THIRD PARTY DEFTS RESPONSE TO THIRD PARTY PLTFF REQUEST FOR
03/20/90 PRODUCTION OF DOCUMENTS FD (31)
03/23/90 PLEA PLTFFS RESPONSE TO MOTION TO DISMISS & AFFDT. (32)
03/29/90 PLEA DEFTD'S REPLY TO PLTFF'S RESPONSE TO MOTION TO DISMISS (33)
04/24/90 CAL 09:30 219W CT CONF POST PJ ROSS, D 8817
05/08/90 PLEA PLTFF'S INTERROGATORIES AS TO DEFT. (THE STUART HACK CO.) (34)
06/07/90 PLEA PLTFFS ANSWER TO THIRD PARTY DEFTS INTERROGATORIES FD. (35)
06/07/90 PLEA PLTFF RESPONSE TO THIRD PARTY DEFTS FIRST REQUEST FOR PRODUCTION
06/07/90 OF DOCUMENTS (36)
07/02/90 CAL P19 03:30 561 MOT MOT HRD ROSS, D 8817
07/02/90 ORDR ORDER OF COURT THAT THE DEFTS MOTION TO DISMISSD COUNT 4 OF COM-
07/02/90 PLAINT IS "GRANTED" & COUNT 4 IS DISMISSED WITH LEAVE TO AMEND
07/02/90 FD. (ROSS, J) (37)
07/30/90 PLEA THIRD PARTY PLTF'S ANSWERS TO THIRD PARTY DEFTD'S INTERROGATORIES
07/30/90 AND AFFIRMATION. (38)
07/30/90 PLEA DEFTD (THE STUART HACK COMPANY) ANSWER TO PLTFF'S INTERROGA-
07/30/90 TORIES AND AFFIRMATION. (39)

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CIRCUIT COURT FOR BALTIMORE CITY

MSV523

C A S E I N Q U I R Y

CASE NUMBER: 88102069

SHOFER V STUART HACK COMPANY

CL79993

DATE: 06/02/95

TIME: 11:08

08/01/90 PLEA PLTFFS INTERROGATORIES AS TO DEFT (STUART HACK) (40)
08/09/90 PLEA PLTFF'S SECOND AMENDED COMPLAINT. (41)
08/24/90 MOTN DEFTS. (STUART HACK CO. & STUART HACK) MOTION TO DISMISS THE
08/24/90 SECOND AMENDED COMPLAINT, REQUEST FOR HEARING (42)
08/27/90 MOTN PLTFFS. MOTION FOR ORDER COMPELLING DISCOVERY (43)
09/04/90 MOTN PLTFFS MOTION FOR RECONSIDERATION WITH RESPECT TO CONTINUANCE
09/04/90 OF TRIAL, AFFDT AND PROPOSED ORDER FD (44)
09/05/90 PLEA DEFT. STUART HACK CO. RESPONSE TO PLTFF'S. MOTION FOR ORDER
09/05/90 COMPELLING DISCOVERY, FD. (45)
09/10/90 TOP JUDGE WARD
09/12/90 PLEA DEFT (STUART HACK) INTERROGATORIES FD (45A)
09/13/90 ORDR ORDER OF COURT THAT PLTFFS MOTIONFOR ORDER COMPELLING DISCOVERY
09/13/90 IS "DENIED IN PART" AND "GRANTED IN PART" FD (WARD) (46)
09/13/90 APPR APPR OF ANTHONY P. PALAIGOS FOR PLTFFS (47)
09/20/90 PLEA PLTFFS RESPONSE IN OPPOSITION TO DEFTS MOTION TO DISMISS THE
09/20/90 SECOND AMENDED COMPLAINT (48)
09/20/90 PLEA DEFT. (STUART HACK CO.) SUPPLEMENTAL ANSWER TO INTERROGATORIES

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CL79993

DATE: 06/02/95

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09/20/90 NO. 27 (49)
09/20/90 PLEA DEFT (STUART HACK CO) SUPPLEMENTAL ANSWER TO INTERRS #3 (49A)
09/21/90 MOTN THIRD PARTY DEFTS. MOTION FOR SUMMARY JUDGMENT, REQUEST FOR
09/21/90 HEARING, FD. (50)
09/27/90 JUDGE FRIEDMAN
10/05/90 PLEA DEFDT'S REPLY TO PLTF'S OPPOSITION TO DEFENDANTS' MOTION TO
10/05/90 DISMISS, DEPOSITION EXHIBIT LARASH #5 AND EXHIBITS. (53)
10/09/90 PLEA DEFDT'S AND THIRD-PARTY PLTF'S OPPOSITION TO THIRD PARTY
10/09/90 DEFENANT'S MOTION FOR SUMMARY JUDGMENT AND CARBON COPY OF
10/09/90 TRANSCRIPT. (54)
10/11/90 MEMO REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
10/11/90 ON THIRD PARTY CLAIM. (55)
10/12/90 CAL P19 11:40 561 MOT MOT HRD ROSS, D 8817
10/12/90 ORDR ORDER OF COURT THAT DEFTS (HACK) MOTION TO DISMISS IS "GRANTED"
10/12/90 AND THE SECOND AMENDED COMPLAINT IS DISMISSED, WITHOUT LEAVE TO
10/12/90 AMEND FD. (ROSS, J) (51)
10/16/90 APPL NOTICE OF APPEAL TO THE CT.OF SPECIAL APPEALS OF MARYLAND BEHALF

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CASE NUMBER: 88102069

SHOFER V STUART HACK COMPANY

CL79993

DATE: 06/02/95

TIME: 11:08

10/16/90 PLAINTIFF, FROM THE ORDER OF OCT. 12, 1990. FD (52)
10/22/90 CAL 09:30 219W CT CANC CANC CAN ADMINISTRATIVE 8800
10/24/90 PLEA DIRECTIVE FOR TRANSCRIPT OF THE MOTIONS HEARING TO M'S TAGGART,
10/24/90 COURT REPORTER, DTD. OCT. 23, 1990, FM. THOMAS A. BOWDEN, ESQ.,
10/24/90 FD. (56)
10/31/90 ORDR ORDER TO PROCEED WITHOUT A PREHEARING CONFERENCE /S/ J. KARWACKI,
10/31/90 COURT OF SPECIAL APPEALS, FD. (57).
12/19/90 MEMO STENO. TEST., DTD. OCT. 12, 1990, PGS. 1-33, COURT REPORTER,
12/19/90 RITA M.E. TAGGART, FD. (57A)
12/27/90 MEMO ORIGINAL PAPERS FORWARDED TO THE COURT OF SPECIAL APPEALS VIA
12/27/90 CERTIFIED MAIL #P 724 023 200, FD.
12/27/90 ORDR ORDER OF COURT DATED 12-27-90 FROM COURT OF SPECIAL APPEALS THAT
12/27/90 APPELLANT'S MOTION IS "GRANTED"/S/LESLIE D. GRADET, CLERK (58)
10/21/91 MEMO ORIGINAL PAPERS RETURNED FROM THE COURT OF SPECIAL APPEALS.
10/21/91 PLEA 2/4/91, APPELLEE'S MOTION TO CORRECT AND SUPPLEMENT RECORD,
10/21/91 & ORDER, DTD. 2/5/91, GRANTED AND THIS ORDER SHALL CONSTITUTE THE
10/21/91 AMENNDMENT OF THE DOCKET ENTRIES TO REFLECT THE TRANSCRIPT OF

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10/21/91 PROCEEDINGS OF JULY 2, 1990. IT IS FURTHER ORDERED THAT THE
10/21/91 RECORD IS SUPPLEMENTED TO INCLUDE THE TRANSCRIPT OF PROCEEDINGS
10/21/91 OF JULY 2, 1990, /S/ GARRITY, J., FD. (59).
10/21/91 ORDR 2/26/91, WRIT OF CERTIORARI, COURT OF APPEALS OF MARYLAND,
10/21/91 DTD. 2/26/91, /S/ ALEXANDER L. CUMMINGS, CLERK, & ORDER,
10/21/91 2/26/91, ORDERED THAT COUNSEL SHALL FILE BRIEFS AND PRINTED
10/21/91 EXTRACT IN ACCORDANCE WITH RULES 8-501 AND 8-502, APPELLEE'S
10/21/91 BRIED TO BE FILED ON OR BEFORE MARCH 11, 1991, /S/ ROBERT C.
10/21/91 MURPHY, CHIEF JUDGE, FILED, (60).
10/21/91 ORDR OPINION BY RODOWSKY, DATED SEPT. 17, 1991, COURT OF APPEALS OF
10/21/91 MARYLAND, FD. (61).
10/21/91 ORDR MANDATE: COURT OF APPEALS OF MARYLAND:
10/21/91 APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY PURSUANT TO
10/21/91 CERTIORARI TO COURT OF SPECIAL APPEALS.
10/21/91 MARCH 7, 1991: NOTICE OF AMITTED PAGES IN JOINT RECORD EXTRACT
10/21/91 FILED.
10/21/91 SEPT. 17, 1991: JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY

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CIRCUIT COURT FOR BALTIMORE CITY DATE: 06/02/95
MSV523 CASE INQUIRY TIME: 11:08
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10/21/91 AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THAT
10/21/91 COURT FOR FURTHER PROCEEDINGS, CONSISTENT WITH THIS OPINION, ON
10/21/91 COMPLAINT. COSTS TO BE PAIF ONE-HALF BY THE PETITIONER AND ONE-
10/21/91 HALF BY THE RESPONDENTS.
10/21/91 ISSU OPINION BY RODOWSKY, J., FILED, (62).
03/05/92 APPR NOTICE STRIKING J.J. KENNY AND ENTER ALLAN P. HILLMAN AND MARK T.
03/05/92 HOLTSCHEIDER AS ATTY FOR THIRD PARTY DEFT FD. (63)
04/06/92 PLEA THIRD PARTY DEFT GARBUSH NEWMAN & CO. DISCOVERY NOTICE FD. (64)
05/08/92 PLEA REQUEST FOR HEARING (65)
05/20/92 MOTN MOTION TO STRIKE THE APPEARANCE OF SEMMES, BOWEN AND SEMMES
05/20/92 AND ENTER THE APPEARANCE OF JANET M. TRUHE AND BERNSTEIN,
05/20/92 SAKELLARIS AND WARD FOR DEFDTs. (65-A)
06/24/92 APPR WITHDRAWAL OF APP. OF LINDA M. SCHUETH AND JOHN J. RYAN AS COUN-
06/24/92 SEL FOR 3RD PARTY DEFT FILED. (66)
06/24/92 ORDR HEARING HELD BEFORE THE HON. ROBERT H. HAMMERMAN IN OPEN COURT
06/24/92 ORDR MOTION FOR SUMMARY JUDGMENT FILED BY 3RD PARTY DEFT (GRABUSH
06/24/92 NEWMAN & CO P.A.) WAS HEARD AND "DENIED". (HAMMERMAN, J) (67)

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09/01/92 APPR ENTER THE APP. OF ATTY MARK A. GILDAY FOR THIRD PARTY DEFT
09/01/92 STRIKE A.P.HILLMAN,M.T.HOLTSCHNEIDER (68)
09/23/92 APPR ENTER THE APP. OF ATTY (THOMAS H. BORNHORST) AND STRIKE THE APP.
09/23/92 THOMAS A. BOWDEN, LLOYD MAILMAN AND ANTHONY PALAIGOS (69)
12/10/92 PLEA PLTFFS THIRD AMENDED COMPLAINT FD. (70)
12/10/92 PLEA ENTER TRIAL SCHEDULE FD. (71)
12/15/92 ANSW DEFT (STUART HACK) ANSWER TO PLTFFS THIRD AMENDED COMPLAINT FD.
12/15/92 (72)
12/31/92 ORDR CIVIL POSTPONEMENT "DENIED". (J. FRIEDMAN) FD. (73)
01/05/93 MOTN DEFTS., STUART HACK CO. AND STUART HACK, PARTIAL MOT. TO DISMISS
01/05/93 PLTFF'S 3RD AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM, MEMO,
01/05/93 AND REQUEST FOR HEARING (74)
01/25/93 APPR MOTION TO STRIKE THE APP. OF ATTY (LEE B. ZABEN & DANIEL W.
01/25/93 WHITNEY) FD. (75)
02/10/93 CAL P22 10:00 528 MOT MOT HRD WARD, T 8836
02/17/93 ORDR ORDERED THAT IN ACCORDANCE WITH THE COURT OF APPEALS OPINION
02/17/93 THE PLA MAY NOT RECOVER DAMAGES FOR EXCISE TAXES, PROHIBITED

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MSV523 CASE INQUIRY TIME: 11:08
CASE NUMBER: 88102069 SHOFR V STUART HACK COMPANY CL79993

02/17/93 TRANSACTIONS OR PLAN DISQUALIFICATION UNDER COUNTS I AND II OF
02/17/93 THE THIRD AMENDED COMPLAINT, AND BE IT FURTHER ORDERED, THAT PLAS
02/17/93 CLAIMS FOR PUNITIVE DAMAGES UNDER COUNTS I AND II ARE DISMISSED
02/17/93 AND BE IT FURTHER ORDERED THAT PLA'S REQUEST FOR ATTYS FEES IN
02/17/93 PROSECUTING THE INSTANT ACTION IS DISMISSED, ETC (J,WARD) (76)
03/09/93 CAL P03 08:30 428W PTC PTC CANC CAN ADMINISTRATIVE 8800
03/29/93 PLEA CIVIL TRIAL POSTPONEMENT DENIED' (J HELLER) (77)
04/01/93 MOTN MOT. FOR SPECIAL ADMISSION OF OUT-OF-STATE ATTY. UNDER RULE 14
04/01/93 OF THE RULES GOVERNING ADMISSION (78)
04/01/93 ORDR CIVIL POSTPONEMENT "APPROVED" (JUDGE DAVIS) (79)
04/02/93 MEMO CASE SENT TO J., MCCURDY
04/07/93 ORDR ORDERED THAT JOHN TREMAIN MAY IS ADMITTED SPECIALLY FOR THE
04/07/93 LIMITED PURPOSE OF APPEARING, ETC (J,MCCURDY) (80)
04/09/93 CAL 09:30 219W CT CONF POST PJ DAVIS, A.M. 8851
07/13/93 PLEA CIVIL POSTPONEMENT APPROVED(J BYRNES) (81)
07/20/93 ORDR CIVIL POSTPONEMENT "APPROVED". NEW TRIAL DATE 5-23-94. (BYRNES,
07/20/93 J) FD. (82)

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08/26/93 CAL P33 09:30 508 PTC CONF POST PJ HELLER, ELLEN 8848
09/27/93 CAL 09:30 219W CT CONF POST PJ BYRNES, J C 8835
01/24/94 CAL 09:30 219W CT CONF POST PJ BYRNES, J C 8835
02/28/94 MOTN DEFTS., STUART HACK CO. AND STUART HACK, MOT. FOR SUM. JUDG. OR,
02/28/94 IN THE ALTERNATIVE, PARTIAL SUM. JUDG. AS TO PLTFF'S DAMAGES,
02/28/94 MEMO, EXHIBITS, REQUEST FOR HEARING AND PROPOSED ORDER FD. (83)
03/10/94 MOTN PLTFF AND THE PARTIES CONSENT MOTION FOR ENLARGEMENT OF TIME AND
03/10/94 LEAVE TO FILE PLTFF'S RESPONSE TO DEFT'S MOTION FOR SUMMARY JUD-
03/10/94 GMENT (OR PARTIAL SUMMARY JUDGMENT AS TO PLTFF'S DAMAGES FD. (84)
03/16/94 MEMO CASE SENT TO JUDGE CAPLAN ON ENTRY 84
03/16/94 PLEA PLTFFS OPPOSITION TO DEFTS MOTION FOR SUMMARY JUDGMENT OR PARTIAL
03/16/94 SUMMARY JUDGMENT AS TO PLTFFS DAMAGES, WITH ATTACHED EXHIBITS (85)
03/18/94 PLEA CIVIL TRIAL POSTPONEMENT FD. (86)
03/24/94 ORDR ORDER DATED 3-22-94. ORDERED, THAT THE CONSENT MOTION FOR EN-
03/24/94 LARGMENT OF TIME IS HEREBY GRANTED THE PLTFF'S RESPONSE SHALL BE
03/24/94 DUE ON OR BEFORE MARCH 16, 1994. JUDGE CAPLAN (87)
03/25/94 APPR ENTER THE APPEARANCE OF ATTY JAYSON L. SPIEGEL FOR DEFT (GRABUSH

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03/25/94 NEWMAN & CO) AND WITHDRAW THE APP. OF MARK A.GILDAY AS COUNSEL
03/25/94 FD. (88)
04/13/94 PLEA DEFTS REPLY TO PLTFFS OPPOSITION TO DEFTS MOTION FOR SUMMARY JUDG
04/13/94 MENT OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT AS TO PLTFFS
04/13/94 DAMAGES FD. (89)
04/21/94 MOTN DEFTS MOTION TO CONSOLIDATE CASES FD. (90)
04/22/94 CAL P15 02:30 330B MOT POSTPONED J.BYRNES 8835
04/22/94 CAL P33 09:30 508 PTC CANC POST PJ KAPLAN, J H H 8825
05/04/94 CAL P15 12:00 330B MOT CANC POST PJ KAPLAN, J H H 8825
05/06/94 PLEA DEFT./COUNTER-PLTFF. (BLUM YUMKAS) OPPOSITION TO MOTION TO
05/06/94 CONSOLIDATE CASES, FD. (90A)
05/06/94 APPR NOTICE WITHDRAWING THE APPEARANCE OF (LAURIE A. LYTE, ESQ) AND
05/06/94 ENTER THE APPEARANCE OF (MARK ANTHONY KOZLOWSKI, ESQ.) AS CO-
05/06/94 COUNSEL FOR THE DEFT./COUNTER-PLTFF., FD. (90B)
05/23/94 CAL 09:30 219W CT CT POST PJ KAPLAN, J H H 8825
05/31/94 CAL P20 09:30 406W MOT CANC CANC CAN ADMINISTRATIVE 8800
07/06/94 CAL P20 09:15 406W PTC CANC CANC CAN ADMINISTRATIVE 8800

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07/12/94 PLEA AFFDVT OF SERVICE DATED 5-18-94 AS TO ANDREA JACKSON FD. (91)
07/12/94 ORDR ORDER DATED 7-11-94 DEFT'S MOTION FOR SUMMARY JUDGMENT "DENIED"
07/12/94 AND IT IS FURTHER ORDERED THAT DEFT'S MOTION FOR PARTIAL
07/12/94 SUMMARY JUDGMENT "GRANTED" (HOLLANDER J) (92)
09/26/94 APPR NOTICE WITHDRAWING THE APP. OF JAYSON L. SPIEGEL AND ENTERING THE
09/26/94 APP. OF DEBORAH M. WHELIHAN AS COUNSEL FOR DEFT., STUART HACK
09/26/94 CO. (93)
10/31/94 PLEA THIRD PARTY DEFT CERTIFICATE REGARDING DISCOVERY (94)
12/16/94 MOTN DEFTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO PLTFF'S DAMAGES,
12/16/94 MEMORANDUM AND REQUEST FOR HEARING (95)
12/31/94 MEMO LETTER PROTRACTING CASE TO JUDGE ANDRE DAVIS
01/01/95 ##### PROTRACTED TO JUDGE DAVIS #####
01/11/95 PLEA PLTFF'S RESPONSE AND OPPOSITION TO DEFT'S MOTIN FOR PARTIAL
01/11/95 SUMMARY JUDGMENT TO PLTFF'S. DAMAGES & REQUEST FOR HEARING (96)
01/20/95 PLEA DEFTS' REPLY TO PLTFF'S RESPONSE AND OPPOSITION TO DEFTS' MOT.
01/20/95 FOR PARTIAL SUM. JUDG. AS TO PLTFF'S DAMAGES (97)
01/30/95 CAL P02 09:30 636W MOT MOT OTBS DAVIS, A.M. 8851

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SHOFER V STUART HACK COMPANY

CL79993

DATE: 06/02/95

TIME: 11:08

02/03/95 ORDR ORDER OF COURT DATED 1/31/95, DENYING DEFTS MOTION WITHOUT
02/03/95 PREJUDICE. DEFTS MOTION IS GRANTED AS TO PLAINTIFFS CLAIM FOR
02/03/95 LOST EARNINGS (DAVIS) (98)
02/22/95 MOTN CONSENT MOTION FOR REVISION OF PRIOR ORDER. (98A)
03/06/95 ORDR ORDER DATED 2-23-95 DEFT'S MOTION FOR PARTIAL SUMMARY JUDGMENT
03/06/95 "DENIED W/O PREJUDICE" AS TO TAX PENALTIES & INTEREST AND
03/06/95 "GRANTED" AS TO PLTFF'S CLAIM FOR LOST EARNINGS (DAVIS J) (99)
03/06/95 CLOS ORDER DATED 2-23-95 FINAL JUDGMENT BE ENTERED AS TO THE RULINGS
03/06/95 CONTAINED IN THE ORDERS DATED 2-17-93, 7-11-94, 1-31-95 AS
03/06/95 REVISED ON 2-23-95 (DAVIS J) (100)
03/20/95 PLEA NOTICE OF INTERLOCUTORY APPEAL FD. (101)
03/24/95 APPL NOTICE OF CROSS APPEAL, FD. (102)
04/07/95 APPR LINE/NOTICE OF THE APPEARANCE OF THOMAS H. BORNHURST, ESQ.
04/07/95 NOT BE ENTERED IN THE APPEAL NOW PENDING IN THE COURT OF
04/07/95 SPECIAL APPEALS OF MARYLAND AND/OR TO THE COURT OF APPEALS OF
04/07/95 MARYLAND ON BEHALD OF PLTFF./APPELLANT, RICHARD SHOFER (103)
04/07/95 ORDR ORDER OF COURT: ORDERS AND DIRECTS THE APPEAL PROCEED WITHOUT A

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04/07/95 PREHEARING CONFERENCE/S/ WILNER (104)
04/20/95 MEMO STENO. TEST., DTD 7/2/90, PGS. 1-20, COURT REPORTER,
04/20/95 MEMO ROBERT GAVIN ODDO, FD.
06/01/95 MEMO STENO. TEST. DTD 6/01/94, PGS 1-60, OFFICIAL COURT REPORTER,
06/01/95 JOHN T. TROWBRIDGE, FD.
06/01/95 MEMO STENO. TEST. DATED 1/30/95, PAGES 1-60, OFFICIAL COURT REPORTER,
06/01/95 JOHN T. TROWBRIDGE, FD.
06/02/95 APPR LINE/NOTICE OF THE APPEARANCE OF DOUGLAS R. TAYLOR, ESQ. AS ATTY.
06/02/95 FOR PLTFF/APPELLANT, FD. (105)
06/05/95 MEMO ORIGINAL PAPERS FORWARDED TO THE COURT OF SPECIAL APPEALS VIA
06/05/95 CERTIFIED MAIL #Z 011 724 140

CONN NAME

DEF *GRABUSH NEWMAN AND COMPANY P A
S/O BARRY BONDROFF PRESIDENT
515 FAIRMOUNT AVENUE SUITE 400
BALTIMORE MD 21204

IDENT N17657

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CIRCUIT COURT FOR BALTIMORE CITY
MSV523 CASE INQUIRY
CASE NUMBER: 88102069 SHOFR V STUART HACK COMPANY

DATE: 06/02/95
TIME: 11:08

CL79993

DEF *STUART HACK COMPANY
S/O STUART HACK
4623 FALLS RD
BALTIMORE MD 21209

IDENT K00251

ADS GILDAY, MARK A
NO ADDRESS EXISTS

IDENT 914532

DEF HACK, STUART
11 PEMBERLY LANE
REISTERTOW MD 21136

IDENT Q87295

ADS HILLMAN, ALLAN
NO ADDRESS EXISTS

IDENT 500054

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CASE NUMBER: 88102069

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CL79993

DATE: 06/02/95

TIME: 11:08

APS MAILMAN, LLOYD
NO ADDRESS EXISTS

IDENT 262499
202

APS PALAIGOS, ANTHONY
NO ADDRESS EXISTS

IDENT 482587
202

PLA SHOFER, RICHARD
NO ADDRESS ON RECORD

IDENT K01815
202

APL TAYLOR, DOUGLAS R
P.O. BOX 4566
ROCKVILLE MD 20850

IDENT N84292
PHONE 301 565-0209

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RICHARD SHOFER
VS.
STUART HACK AND
THE STUART HACK CO.

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THE STUART HACK CO., ET AL
Third party plttf.
VS.
GRABUSH, NEWMAN & CO.,P.A.
Third party deft.

CASE NO: 88102069/C1-79993

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RICHARD SHOFER
 VS.
 STUART HACK AND
 THE STUART HACK CO.
 88102069/CL-79993

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THE STUART HACK CO., ET AL
 Third party plttf.
 VS.
 GRABUSH, NEWMAN & CO.,P.A.
 Third party deft.

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RICHARD SHOFER
 VS.
 STUART HACK AND
 THE STUART HACK CO.
 88102069/CL-79993

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THE STUART HACK CO., ET AL
 Third party plttf.
 VS.
 GRABUSH, NEWMAN & CO., P.A.
 Third party deft.

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 VS. * THIRD PARTY PLTFF.
 STUART HACK AND * VS.
 THE STUART HACK CO. * GRABUSH, NEWMAN & CO., P.A.
 CASE NO: 88102069/CL-79993 * THIRD PARTY DEFT.

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RICHARD SHOFER
 VS.
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 88102069/CL-79993

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THE STUART HACK CO., ET AL
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RICHARD SHOFER
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 STUART HACK AND
 THE STUART HACK CO.
 88102069/CL-79993

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VS.

**IN THE
CIRCUIT COURT FOR
BALTIMORE CITY**

THE STUART HACK CO., ET AL

Sandra E. Banks, Clerk

CERTIFICATE BY CLERK OF THE COURT, TO TRANSCRIPT OF RECORD.

State of Maryland, Baltimore City, Set.:

I, Sandra E. Banks, Clerk of the Circuit Court for Baltimore City, hereby certify that the foregoing is a true transcript, taken from the record and proceedings of the said Court, in the Therein entitled cause.

I further certify that all counsel of record, heretofore, have been notified to inspect the foregoing transcript of record, prior to its transmission, and that said counsel have had ample opportunity for such inspection.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Baltimore City aforesaid, on this day of April 21st, 1995.
Cost to be paid in the Circuit Court for Baltimore City

SEAL OF
THE COURT

TRANSCRIPT OF RECORD	----	\$60.00
OPEN COURT COST	----	\$00.00
TOTAL COST	----	\$60.00

Sandra E. Banks, Clerk
Clerk of the Circuit Court for Baltimore City

STENOGRAPHIC TESTIMONY	---	YES
COURT REPORTER	---	SEE NEXT PAGE
EXHIBITS	---	NO

RICHARD SHOFER
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COURT REPORTER/COST

Rita M.E. Taggart/\$82.50

Robert Gavin Oddo/\$50.00

John T. Trowbridge/\$235.00

John T. Trowbridge/\$150.00

RICHARD SHOFER
216 St. Dunstan's Road
Baltimore, Maryland 21212

Plaintiff

v.

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209

Serve on: Stuart Hack
4623 Falls Road
Baltimore, MD 21209

-and-

STUART HACK
11 Pemberly Lane
Reistertown, Maryland 21136

Defendants

IN THE

FILED

CIRCUIT COURT

APR 11 1988

CIRCUIT COURT FOR
BALTIMORE CITY

FOR

BALTIMORE CITY

88102069

Civil Action No.

CL 79993

8:50AM04/12/88 001#8355 A ###

#0881020

#0000069

CIVIL \$80.00

LIBRA \$5.00

CHECK \$90.00

COMPLAINT

Richard Shofer, plaintiff, by Lloyd S. Mailman, Thomas A. Bowden, and Blum, Yumkas, Mailman, Gutman & Denick, P.A., sues The Stuart Hack Company, a Maryland corporation, and Stuart Hack, defendants, and for his cause of action states as follows:

Facts Common to All Counts

1. The Stuart Hack Company is a corporation organized under the law of Maryland which holds itself out as professional actuaries and consultants who provide professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

2. Stuart Hack is an attorney licensed to practice in Maryland and is an employee of the Stuart Hack Company and holds

himself out as a professional actuary and consultant who provides professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

3. Richard Shofer ("Shofer") is the sole stockholder and president of Catalina Enterprises, Inc. t/a Crown Motors ("Catalina").

4. Catalina Enterprises, Inc. Pension Plan (the "Plan") is a qualified pension plan established by defendants in 1971 for employees of Catalina.

5. At all relevant times, Shofer was the Plan's sole trustee.

6. From 1971 through 1985, The Stuart Hack Company prepared certain of the Plan's annual federal returns as well as its statements to participants.

7. During the course of their relationship with Catalina, Shofer, and the Plan, defendants held themselves out as expert in the tax aspects of pension planning and frequently rendered advice in this area.

8. Based on this course of dealing and on defendants' representations as to their expertise, Shofer reasonably expected that any possible tax consequences resulting from their advice would be brought to his attention by defendants.

9. By December 31, 1983, Shofer had accumulated \$209,415.95 in his own voluntary account in the Plan.

10. At some time prior to August 9, 1984, Shofer sought defendants' advice as to whether it would be advisable to

borrow money from the Plan or to use the Plan's assets as collateral for a loan.

11. Defendants responded with an opinion letter dated August 9, 1984, stating that Shofer could borrow up to 100% of his voluntary account and making no mention of any tax consequences of such a transaction.

12. Reasonably relying on this advice, and not knowing or suspecting that a loan advance could be taxed as income, Shofer proceeded to borrow \$200,000.00 from his voluntary account in the Plan in 1984, \$80,000.00 in 1985, and \$35,000.00 in 1986.

13. Because these borrowings were in fact taxable to Shofer as income, Shofer incurred substantial federal and state tax liabilities as a result of these transactions.

14. Shofer has also incurred expenses for accountants, pension consultants, and other professionals to rectify his tax filings.

15. If he had been properly advised by defendants as to the tax consequences of these transactions, Shofer would not have borrowed from his voluntary account in the Plan.

16. The Stuart Hack Company continued to render incorrect advice concerning the loan transactions as late as December 16, 1986, when The Stuart Hack Company issued a memorandum attempting to persuade Shofer's accountants that the risk of tax liability was very low.

COUNT I
(Negligence)

17. Plaintiff incorporates paragraphs 1 through 16 in this count.

18. At all times relevant to the allegations of this Complaint, defendants held themselves out to the public in general, and represented themselves to Shofer in particular, as possessing that degree of knowledge, experience, skill, and judgment in the area of advising as to the tax consequences of transactions involving voluntary accounts in pension funds that was to be expected of a reasonably competent actuary and consultant in such business in Maryland in 1984.

19. Defendants owed a duty of reasonable care to Shofer to provide him with reasonably competent advice as to the tax consequences of borrowing from his voluntary account in the Plan.

20. Defendants breached their duty to Shofer by advising him that he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have known and advised Shofer he could not legally do so.

21. As a direct and proximate result of the acts and omissions of defendants Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT II
(Breach of contract)

22. Plaintiff incorporates paragraphs 1 through 21 in this count.

23. Shofer hired defendants to provide Shofer with expert and reasonably competent advice as to the tax consequences of borrowing from Shofer's voluntary account in the Plan.

24. Defendants breached that contract by, among other things, neglecting to inform Shofer that his borrowings against his voluntary account would cause him to incur tax and other liabilities.

25. As a direct and proximate result of the acts and omissions of defendants, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) com-

pensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT III
(Breach of fiduciary duty)

26. Plaintiff incorporates paragraphs 1 through 25 in this count.

27. Defendants represented to Shofer that Shofer was justified in reposing special trust and confidence in the expertise and competence of defendants in matters relating to the tax consequences of withdrawals from voluntary pension accounts, and invited Shofer to enter into a special relationship.

28. Shofer relied upon the representation of defendants that defendants possessed special expertise and knowledge, and Shofer reposed special trust and confidence in defendants to advise Shofer as to the tax consequences of borrowing from his voluntary account in the Plan.

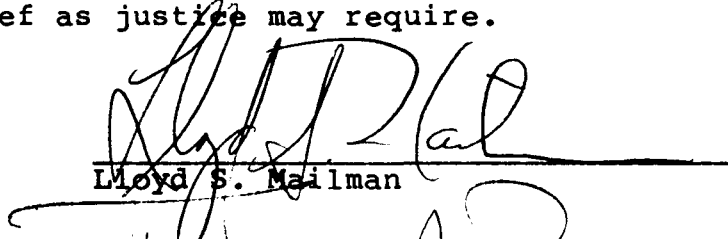
29. As a result of the relationship of special trust and confidence between defendants and Shofer, as alleged herein, defendants owed Shofer a fiduciary duty.

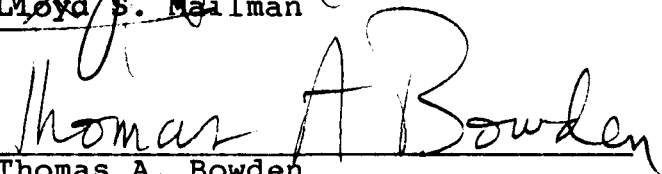
30. Defendants breached that duty to Shofer by advising him he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have advised Shofer he could not do so.

31. As a direct and proximate result of the acts and

omissions of defendants, as alleged herein, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages and Two Hundred Fifty Thousand Dollars (\$250,000.00) punitive damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.


Lloyd S. Mailman


Thomas A. Bowden
Blum, Yunkas, Mailman, Gutman &
Denick, P.A.
1200 Mercantile Bank & Trust
Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201

Attorneys for Plaintiff

CIRCUIT COURT FOR BALTIMORE CITY
 SAUNDRA E. BANKS, CLERK
 111 N. CALVERT ST. - ROOM 462
 BALTIMORE, MD. 21202

WRIT OF SUMMONS CASE NUMBER 88102069 CL79993

STATE OF MARYLAND, COUNTY TO WIT: PRIVATE PROCESS

TO: THE STUART HACK COMPANY
 S/O STUART HACK
 4623 FALLS ROAD
 BALTIMORE MD 21209

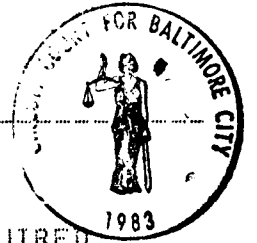
YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION
 IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY

RICHARD SHOFER
 216 ST. DUNSTAN'S ROAD BALTIMORE MD 21212

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU.
 WITNESS THE HONORABLE CHIEF JUDGE OF THE EIGHTH JUDICIAL CIRCUIT OF MARYLAND

Sandra E. Banks

 Clerk CLERK
 Circuit Court for Balto. City



DATE ISSUED 04-11-88

TO THE PERSON SUMMONED:

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGEMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF(S) RETURN.

PERSON SERVED _____	TIME _____	DATE _____
PERSON SERVED _____	TIME _____	DATE _____
NON EST(REASON) _____		

FEE \$ _____ SHERIFF _____
 NOTE:

1. THIS SUMMONS IS EFFECTIVE FOR SERVICE ONLY IF SERVED WITHIN 60 DAYS AFTER THE DATE IS ISSUED.
2. PROOF OF SERVICE SHALL SET OUT THE NAME OF THE PERSON SERVED, DATE AND THE PARTICULAR PLACE AND MANNER OF SERVICE. IF SERVICE IS NOT MADE, PLEASE STATE THE REASONS.
3. RETURN OF SERVED OR UNSERVED PROCESS SHALL BE MADE PROMPTLY AND IN ACCORDANCE WITH RULE 2-126.
4. IF THIS SUMMONS IS SERVED BY PRIVATE PROCESS, PROCESS SERVER SHALL FILE A SEPERATE AFFIDAVIT AS REQUIRED BY RULE 2-126(A).

CIRCUIT COURT FOR BALTIMORE CITY
SAUNDRA E. BANKS, CLERK
111 N. CALVERT ST. - ROOM 462
BALTIMORE, MD. 21202

WRIT OF SUMMONS

CASE NUMBER 88102069 CL79993

STATE OF MARYLAND,

COUNTY TO WIT: PRIVATE PROCESS

TO:

STUART HACK
11 PEMBERLY LAND
REISTERTOW MD 21136

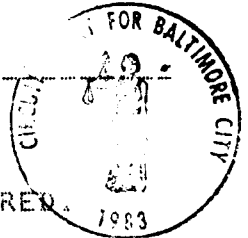
YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION
THIS COURT TO THE ATTACHED COMPLAINT FILED BY

RICHARD SHOFR
216 ST. DUNSTAN'S ROAD BALTIMORE MD 21212

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU.
WITNESS THE HONORABLE CHIEF JUDGE OF THE EIGHTH JUDICIAL CIRCUIT OF MARYLAND.

DATE ISSUED 04-11-88

Sandra E. Banks
CLERK



TO THE PERSON SUMMONED:

Clerk
Circuit Court for Balto. City

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGEMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF(S) RETURN.

PERSON SERVED _____ TIME _____ DATE _____

PERSON SERVED _____ TIME _____ DATE _____

NON EST(REASON) _____

FEE \$ _____ SHERIFF _____

NOTE:

1. THIS SUMMONS IS EFFECTIVE FOR SERVICE ONLY IF SERVED WITHIN 60 DAYS AFTER THE DATE IS ISSUED.
2. PROOF OF SERVICE SHALL SET OUT THE NAME OF THE PERSON SERVED, DATE AND THE PARTICULAR PLACE AND MANNER OF SERVICE. IF SERVICE IS NOT MADE, PLEASE STATE THE REASONS.
3. RETURN OF SERVED OR UNSERVED PROCESS SHALL BE MADE PROMPTLY AND IN ACCORDANCE WITH RULE 2-126.
4. IF THIS SUMMONS IS SERVED BY PRIVATE PROCESS. PROCESS SERVER SHALL FILE A SEPERATE AFFIDAVIT AS REQUIRED BY RULE 2-126(A).

2
FILED

MAY 9 1988

CIRCUIT COURT FOR
BALTIMORE CITY

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY, et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY

* Civil Action No. 88102069/
* CL79993

* * * * *

AFFIDAVIT OF SERVICE

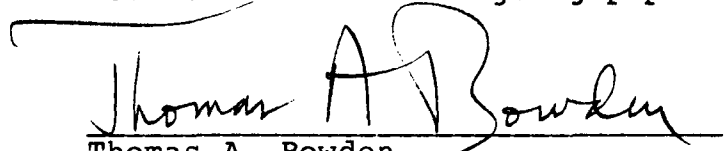
I, Thomas A. Bowden, attorney for plaintiff, certify that on April 22, 1988, pursuant to Rule 2-121(a), I mailed a copy of the Summons and Complaint in this case by certified mail, return receipt requested, show to whom, date, address of delivery to:

Mr. Stuart Hack
11 Pemberly Lane
Reisterstown, Maryland 21136

The Stuart Hack Company
S/O Stuart Hack
4623 Falls Road
Baltimore, Maryland 21209

These documents were received by the defendant on April 30 and 25, respectively, as evidenced by the attached original return receipts (Exhibit 1).

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

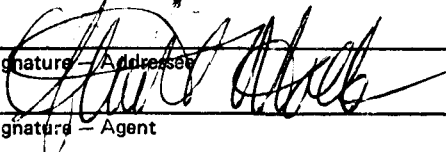


Thomas A. Bowden
Blum, Yumkas, Mailman, Gutman &
Denick, P.A.
1200 Mercantile Bank & Trust
Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000



SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.


3. Article Addressed to: Mr. Stuart Hack 11 Pemberly Land Reisterstown, Maryland 21136	4. Article Number P-529 328 570
	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
Always obtain signature of addressee or agent and DATE DELIVERED .	
5. Signature - Addressee X 	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X	
7. Date of Delivery 4/30/58	

PS Form 3811, Feb. 1986

DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery.

3. Article Addressed to: The Stuart Hack Company S/O Stuart Hack 4623 Falls Road Baltimore, Maryland 21209	4. Article Number P-529 328 569
	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
Always obtain signature of addressee or agent and DATE DELIVERED .	
5. Signature - Addressee X 	8. Addressee's Address (ONLY if requested and fee paid) 4623 Falls Rd 21209
6. Signature - Agent X	
7. Date of Delivery 4-25-58	

PS Form 3811, Feb. 1986

DOMESTIC RETURN RECEIPT

EXHIBIT 1

FILED

MAY 17 1988

CIRCUIT COURT FOR BALTIMORE CITY

RICHARD SHOFER
216 St. Dunstan's Road
Baltimore, Maryland 21212

Plaintiff

v.

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209

Serve on: Stuart Hack
4623 Falls Road
Baltimore, MD 21209

-and-

STUART HACK
11 Pemberly Lane
Reistertown, Maryland 21136

Defendants

IN THE
CIRCUIT COURT

FOR
BALTIMORE CITY

Civil Action No. 88102069/
CL79993

301

AMENDED COMPLAINT

Richard Shofer, plaintiff, by Lloyd S. Mailman, Thomas A. Bowden, and Blum, Yumkas, Mailman, Gutman & Denick, P.A., files this Amended Complaint.

Facts Common to All Counts

1. The Stuart Hack Company is a corporation organized under the law of Maryland which holds itself out as professional actuaries and consultants who provide professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

2. Stuart Hack is an attorney licensed to practice in Maryland and is an employee of the Stuart Hack Company and holds

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himself out as a professional actuary and consultant who provides professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

3. Richard Shofer ("Shofer") is the sole stockholder and president of Catalina Enterprises, Inc. t/a Crown Motors ("Catalina").

4. Catalina Enterprises, Inc. Pension Plan (the "Plan") is a qualified pension plan established by defendants in 1971 for employees of Catalina.

5. At all relevant times, Shofer was the Plan's sole trustee.

6. From 1971 through 1985, The Stuart Hack Company prepared certain of the Plan's annual federal returns as well as its statements to participants.

7. During the course of their relationship with Catalina, Shofer, and the Plan, defendants held themselves out as expert in the tax aspects of pension planning and frequently rendered advice in this area.

8. Based on this course of dealing and on defendants' representations as to their expertise, Shofer reasonably expected that any possible tax consequences resulting from their advice would be brought to his attention by defendants.

9. By December 31, 1983, Shofer had accumulated \$209,415.95 in his own voluntary account in the Plan.

10. At some time prior to August 9, 1984, Shofer sought defendants' advice as to whether it would be advisable to

borrow money from the Plan or to use the Plan's assets as collateral for a loan.

11. Defendants responded with an opinion letter dated August 9, 1984, stating that Shofer could borrow up to 100% of his voluntary account and making no mention of any tax consequences of such a transaction.

12. Reasonably relying on this advice, and not knowing or suspecting that a loan advance could be taxed as income, Shofer proceeded to borrow \$200,000.00 from his voluntary account in the Plan in 1984, \$80,000.00 in 1985, and \$35,000.00 in 1986.

13. Because these borrowings were in fact taxable to Shofer as income, Shofer incurred substantial federal and state tax liabilities as a result of these transactions.

14. Shofer has also incurred expenses for accountants, pension consultants, and other professionals to rectify his tax filings.

15. If he had been properly advised by defendants as to the tax consequences of these transactions, Shofer would not have borrowed from his voluntary account in the Plan.

16. The Stuart Hack Company continued to render incorrect advice concerning the loan transactions as late as December 16, 1986, when The Stuart Hack Company issued a memorandum attempting to persuade Shofer's accountants that the risk of tax liability was very low.

COUNT I
(Negligence)

17. Plaintiff incorporates paragraphs 1 through 16 in this count.

18. At all times relevant to the allegations of this Complaint, defendants held themselves out to the public in general, and represented themselves to Shofer in particular, as possessing that degree of knowledge, experience, skill, and judgment in the area of advising as to the tax consequences of transactions involving voluntary accounts in pension funds that was to be expected of a reasonably competent actuary and consultant in such business in Maryland in 1984.

19. Defendants owed a duty of reasonable care to Shofer to provide him with reasonably competent advice as to the tax consequences of borrowing from his voluntary account in the Plan.

20. Defendants breached their duty to Shofer by advising him that he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have known and advised Shofer he could not legally do so.

21. As a direct and proximate result of the acts and omissions of defendants Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT II
(Breach of contract)

22. Plaintiff incorporates paragraphs 1 through 21 in this count.

23. Shofer hired defendants to provide Shofer with expert and reasonably competent advice as to the tax consequences of borrowing from Shofer's voluntary account in the Plan.

24. Defendants breached that contract by, among other things, neglecting to inform Shofer that his borrowings against his voluntary account would cause him to incur tax and other liabilities.

25. As a direct and proximate result of the acts and omissions of defendants, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) com-

pensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT III
(Breach of fiduciary duty)

26. Plaintiff incorporates paragraphs 1 through 25 in this count.

27. Defendants represented to Shofer that Shofer was justified in reposing special trust and confidence in the expertise and competence of defendants in matters relating to the tax consequences of withdrawals from voluntary pension accounts, and invited Shofer to enter into a special relationship.

28. Shofer relied upon the representation of defendants that defendants possessed special expertise and knowledge, and Shofer reposed special trust and confidence in defendants to advise Shofer as to the tax consequences of borrowing from his voluntary account in the Plan.

29. As a result of the relationship of special trust and confidence between defendants and Shofer, as alleged herein, defendants owed Shofer a fiduciary duty.

30. Defendants breached that duty to Shofer by advising him he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have advised Shofer he could not do so.

31. As a direct and proximate result of the acts and

omissions of defendants, as alleged herein, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages and Two Hundred Fifty Thousand Dollars (\$250,000.00) punitive damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT IV
(ERISA)

32. Plaintiff incorporates paragraphs 1 through 31 in this count.

33. Under the terms of the Plan, Catalina as administrator had the power, duty and responsibility to resolve and determine all disputes or questions arising under the Plan, including determination of the rights of participants.

34. Under the terms of the Plan, fiduciaries of Catalina were required to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

35. Hack and The Stuart Hack Company were at all relevant times retained by Catalina under the terms the Plan and therefore charged with the fiduciary duties imposed under the Plan.

36. Shofer was at all relevant times a participant under the Plan and therefore was entitled to the benefit of the fiduciary obligations imposed by the Plan on Hack and The Stuart Hack Company.

37. The advice at issue in this case, rendered by Hack and The Stuart Hack Company, was rendered in violation of the fiduciary duties imposed on Hack and The Stuart Hack Company by the Plan.

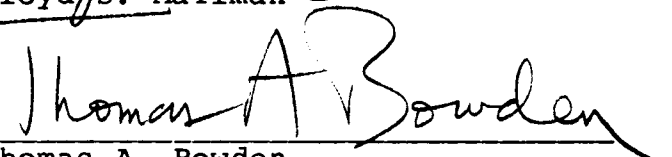
38. A civil cause of action by a participant in a plan to enforce his rights under the plan is provided by 29 U.S.C.A. § 1132.

39. As a direct and proximate result of the Acts and omissions of defendants, as alleged herein, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountants' fees and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages plus prejudgment interest; his costs in this case, including a reasonable attorney's fee pursuant to

29 U.S.C.A. 1132(g); and such other and further relief as justice may require.


Lloyd S. Mailman

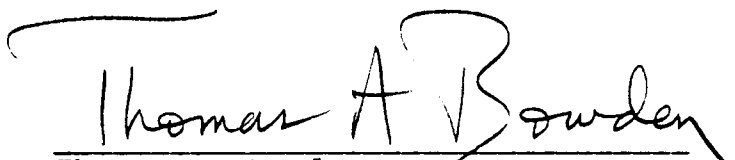

Thomas A. Bowden
Blum, Yumkas, Mailman, Gutman &
Denick, P.A.
1200 Mercantile Bank & Trust
Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 16th day of May, 1988, a copy of this Amended Complaint was mailed first class, postage prepaid to:

Stuart Hack, Resident Agent
The Stuart Hack Company
4623 Falls Road
Baltimore, Maryland 21209

Stuart Hack
11 Pemberly Lane
Reisterstown, Maryland 21136


Thomas A. Bowden

FILED

MAY 27 1988

CIRCUIT COURT FOR BALTIMORE CITY

RICHARD SHOFR
Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993

* * * * *

ANSWER TO COMPLAINT

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe and Semmes, Bowen & Semmes, in answer to the Complaint and each and every Count thereof, says:

FIRST DEFENSE

1. The defendants generally deny liability and generally deny the plaintiff's allegations.

SECOND DEFENSE

2. Plaintiff is barred by limitations.

THIRD DEFENSE

3. The plaintiff has failed to state a claim upon which relief can be granted.

Daniel W. Whitney
Daniel W. Whitney

SEMME, BOWEN & SEMME
220 W. Pratt Street
Baltimore, Md. 21201

[Handwritten mark]

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 1988, a copy of the foregoing Answer to Complaint was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Daniel W. Whitney, Jr.
Daniel W. Whitney

895

FILED

RICHARD SHOFER

* IN THE

Plaintiff

* CIRCUIT COURT

JUN 15 1988

v.

* FOR

**CIRCUIT COURT FOR
BALTIMORE CITY**

THE STUART HACK COMPANY, et al.

* BALTIMORE CITY

Defendants

* Civil Action No. 88102069/
CL79993

NOTICE TO PLACE CASE ON TRIAL DOCKET

Dear Clerk:

This matter being at issue, please place it on the trial docket.

Lloyd S. Mailman
Lloyd S. Mailman *LP*

Thomas A. Bowden
Thomas A. Bowden
Blum, Yumkas, Mailman, Gutman & Denick, P.A.
1200 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000

Attorneys for Plaintiff

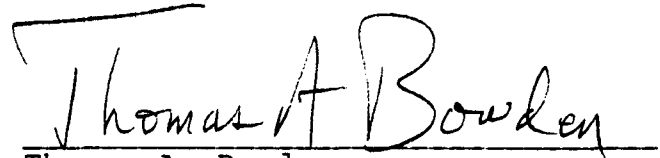
CERTIFICATE OF SERVICE

I CERTIFY that on this 14th day of June, 1988, a copy of this Notice to Place Case on Trial Docket was mailed first

class, postage prepaid to:

Janet M. Truhe, Esquire
Daniel W. Whitney, Esquire
Semmes, Bowen & Semmes, P.A.
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendant.


Thomas A. Bowden

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY, et al.

Defendants

*
*
*
*
*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Civil Action No. 88102069/
CL79993

FILED

JUN 17 1988

CIRCUIT COURT FOR
BALTIMORE CITY

PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO THE STUART HACK COMPANY

Plaintiff, by his attorneys, requests that The Stuart Hack Company produce the following documents pursuant to Rule 2-422.

Definitions

"You" means The Stuart Hack Company, all its officers, directors, employees, servants, agents, and attorneys, and all other persons acting or purporting to act on its behalf.

"Document" means every tangible thing from which information can be obtained, perceived, or reproduced, and includes any written, recorded, or graphic matter, however produced or reproduced and whether or not now in existence, and also includes the original, all file copies, all other copies no matter how prepared, and all drafts prepared in connection with such document, whether used or not, and further includes but is not limited to papers; books; records; catalogs; price lists; pamphlets; periodicals; letters; correspondence; scrap books; note books; bulletins; circulars; forms; notices; post cards; telegrams; deposition transcripts; contracts; agreements; leases; reports; studies; working papers; charts; proposals; graphs; sketches; diagrams; indexes; maps; analyses; statistical records; reports; results of investigations; reviews; ledgers; journals; balance sheets; accounts; books of accounts; invoices; vouchers; purchase orders; receipts; expense accounts; cancelled checks; bank checks; statements; sound and tape recordings; videotapes; computer disks; electrical recordings; magnetic recordings; memoranda (including any type or form of notes, memoranda, or sound recordings of personal thoughts, recollections, or reminders, or of telephone or other conversations, or of acts, activities, agreements, meetings, or conferences); photostats; microfilms; instruction lists or forms; computer printouts or other computed data; minutes of director or committee meetings; inter-office or intra-office communications; diaries; calendar on desk pads; stenographers' notes; appointment books; and other

by

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papers or matters similar to any of the foregoing, however denominated, whether or not received by you or prepared by you for your own use or transmittal. If a document has been prepared in several copies or additional copies have been made, and the copies are not identical (or, by reason of subsequent modification or notation, are no longer identical), each nonidentical copy is a separate "document."

"Person" includes the plural as well as the singular and shall mean any natural person, partnership, firm, association, corporation, business, joint venture, government or government agency, or any other form of private or public entity.

"Shofer" means Richard Shofer, plaintiff.

"Catalina" means Catalina Enterprises, Inc.

"Crown" means Crown Motors.

"Plan" means the Catalina Enterprises, Inc. Pension Plan.

Instructions

A. Should you object to the production of any document or documents requested on the basis of any alleged privilege or immunity from discovery, please list in your written response to this request all such documents in chronological order, setting forth as to each the following information:

- (1) Date;
- (2) Author;
- (3) Addressee;
- (4) Title;
- (5) Type of document (e.g., letter, report, memorandum, etc.);
- (6) Subject matter (without revealing the information as to which privilege or immunity is claimed or objection made);
- (7) Basis for the claim of privilege, immunity or objection; and

(8) Identity of all persons to whom copies of such documents were sent.

B. If any document in response to this request was, but no longer is, in your possession, custody or control, please furnish a description of each such document and indicate the manner and circumstances under which it left your possession, custody or control, and its present whereabouts, if known.

C. Any request for production listed herein shall be construed to include any supplemental information, knowledge, data or documents responsive to these requests for production that are later discovered by you, your agents or attorneys.

Documents To Be Produced

1. All documents relating to the drafting and finalization of the Plan.

2. All documents relating to any advice ever given by you to, or work ever done by you for, any participant in the Plan other than Shofer.

3. Any written report of an expert of yours expected to testify at trial.

4. All documents relating to any advice ever given by you to, or work ever done by you for, Shofer as a participant in the Plan.

5. All documents relating to any advice given by you to, or work ever done by you for, Catalina or Crown.

6. All documents relating to any advice given by you to, or work ever done by you for, the Plan.

7. A resume or curriculum vitae of Stuart Hack, current as of the date of your response to these requests.

8. A resume or curriculum vitae of Stuart Hack,

current as of August 9, 1984.

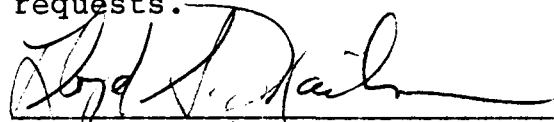
9. Copies of any insurance policies carried by you that may cover the wrongs alleged in the Complaint.

10. Any documents prepared for or at the request of, or received from, any agency, such as the federal government or Internal Revenue Service, regarding Shofer, Crown, Catalina, the Plan, or any participant in the Plan.

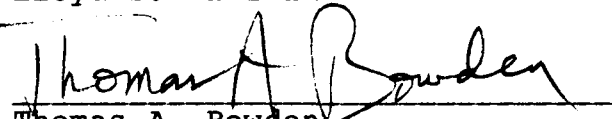
11. All documents relating to Judith Reed's memorandum of December 16, 1986.

12. All documents relating to Stuart Hack's letter of August 9, 1984.

13. All documents relating in any way to Shofer, Crown, Catalina, the Plan, or any of the Plan's participants not requested in any other of these requests.



Lloyd S. Mailman



Thomas A. Bowden
Blum, Yumkas, Mailman, Gutman &
Denick, P.A.
1200 Mercantile Bank & Trust
Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000

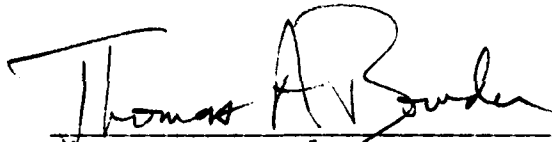
CERTIFICATE OF SERVICE

I CERTIFY that on this 15th day of June, 1988, a copy of this Plaintiff's Request for Production of Documents Directed

to the Stuart Hack Company was mailed first class, postage pre-
paid to:

Janet M. Truhe, Esquire
Daniel W. Whitney, Esquire
Semmes, Bowen & Semmes, P.A.
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendant.


Thomas A. Bowden

FILED

JUN 27 1988

RICHARD SHOFR

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993

* * * * *

DEFENDANTS' ANSWER TO PLAINTIFF'S
REQUEST FOR PRODUCTION OF DOCUMENTS

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe and Semmes, Bowen & Semmes, answer the plaintiff's request for production of documents as follows:

1. Defendants object to request no. 1 to the extent that it seeks copies of "all documents relating to the drafting and finalization of the Plan." This request is overbroad, and seeks documents which are irrelevant to the issue of the defendants' advice rendered on August 9, 1984. Without waiving this objection, defendants will produce a copy of the final Catalina Enterprises, Inc. Pension Plan.

2. Defendants refuse to produce the documents sought in request no. 2 as such documents are irrelevant to any of the issues in this case.

3. Defendants have not consulted an expert whom they presently intend to call at the time of trial. If such an expert is consulted, counsel for the plaintiff will be seasonably advised and furnished with a copy of any report rendered.

4. Defendants object to request no. 4 to the extent that it seeks the production of "all documents relating to any advice ever given by you." This request is overbroad, and seeks documents which are irrelevant to the issue of these defendants' advice of August 9, 1984. Without waiving this objection, defendants will produce the documents requested in paragraph no. 4 pertaining to the advice of August 9, 1984, except for any document which may be prepared in anticipation of litigation.

5. Defendants refuse to produce the documents sought in request no. 5 because such documents are irrelevant to any of the issues in this case.

6. Defendants object to request no. 6 to the extent that it seeks the production of "all documents relating to any advice given by you" to the Plan. This request is overbroad, and seeks documents which are irrelevant to the advice of August 9, 1984. Without waiving this objection, the defendants will produce documents requested in paragraph no. 6 which are relevant

to the advice of August 9, 1984, except for any document which may be prepared in anticipation of litigation.

7. Defendants will produce the document requested in paragraph no. 7.

8. Defendants do not possess the document requested in paragraph no. 8.

9. Defendants will produce the documents requested in paragraph no. 9.

10. Defendants object to request no. 10 to the extent that it requests the production of "any documents prepared for or at the request of or received from, any agency" in that this request seeks the production of documents prepared prior to August 9, 1984. Defendants also object to this request to the extent that it seeks the production of documents prepared for or on behalf of anyone other than the plaintiff. Without waiving these objections, defendants will produce the documents requested in paragraph no. 10 prepared after August 9, 1984 on behalf of the plaintiff only, except for any document which may be prepared in anticipation of litigation.

11. Defendants will produce the documents requested in paragraph no. 11, except for any document which may be prepared in anticipation of litigation.

12. Defendants will produce the documents requested in paragraph no. 12, except for any documents

which may be privileged or made in anticipation of litigation.

13. Defendants object to request no. 13 because it is overly broad and defendants are incapable of formulating an answer thereto.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 1988, a copy of the foregoing Defendants' Answer to Plaintiff's Request for Production of Documents was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Daniel W. Whitney
Daniel W. Whitney

8/24

FILED

JUN 29 1988

RICHARD SHOFER

Plaintiff

IN THE

CIRCUIT COURT

v.

CIRCUIT COURT FOR BALTIMORE CITY

FOR

* BALTIMORE CITY

THE STUART HACK COMPANY,
et al.

* Case No.
88102069/CL79993

Defendants

* * * * *

DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS

Stuart Hack, defendant, by his attorneys, Daniel W. Whitney, Janet M. Truhe, and Semmes, Bowen & Semmes, pursuant to Maryland Rule 2-422, requests that plaintiff produce the following documents:

1. The plaintiff's personal federal income tax returns for each year from 1980 to present, including any amended returns.

2. All financial statements prepared on behalf of the plaintiff from 1980 to present.

3. All documents pertaining to loans, including any loan agreement, made by the Catalina Enterprises, Inc. Pension Plan to the plaintiff from 1980 to present.

4. All documents pertaining to the use of or purpose for which monies were taken by the plaintiff from the Catalina Enterprises, Inc. Pension Plan.

SEMME, BOWEN & SEMME
250 W. Pratt Street
Baltimore, Md. 21201

5. All notes, memos, correspondence or other documents which pertain to advice or information from any source given to the plaintiff regarding the tax consequences of borrowing money from the Catalina Enterprises, Inc. Pension Plan.

6. All correspondence between the plaintiff and the defendants from 1980 to present.

7. All documents pertaining to any IRS audit of the plaintiff from 1980 to present.

8. All personal bank statements for the plaintiff from 1980 to present.

9. Copies of cancelled checks to Catalina Enterprises, Inc. Pension Plan from the plaintiff to repay loans from 1980 to present.

10. Copies of all notes payable to Catalina Enterprises, Inc. Pension Plan executed by the plaintiff from 1980 to present.

11. All documents pertaining to assets held by Catalina Enterprises, Inc. Pension Plan from 1980 to present.

12. All correspondence between the plaintiff and the person(s) who prepared his personal federal income tax returns for each year from 1980 to present.

13. All documents that itemize, support, contain evidence of, or relate in any way to plaintiff's claim for damages in this action.

14. All documents not heretofore identified upon which the plaintiff relies or intends to rely to support any claim or allegation asserted by him in this action.

Copies of the aforementioned documents may be mailed to counsel for the defendants.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 1988, a copy of the foregoing Defendants' Request for Production of documents was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile

Bank and Trust Building, 2 Hopkins Plaza, Baltimore,
Maryland 21201.

Daniel W. Whitney
Daniel W. Whitney

FILED

JUN 29 1988

RICHARD SHOFER

*

IN THE

CIRCUIT COURT FOR
BALTIMORE CITY

CIRCUIT COURT

v.

*

FOR

*

BALTIMORE CITY

THE STUART HACK COMPANY,
et al.

*

Case No.

88102069/CL79993

*

Defendants

*

* * * * *

INTERROGATORIES

TO: RICHARD SHOFER

BY: STUART HACK

These Interrogatories are propounded pursuant to the rules of procedure which require that they be signed and answered under oath. Where the name or identity of a person is requested, please state the full name and home and business address. Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrence or accident mentioned or complained of in the pleadings. Knowledge or information of a party shall include that of the party's agent, representatives and, unless privileged, attorneys. These Interrogatories are continuing in character, so as to require you to file supplemental answers if you obtain further or different information before trial.

1. State your full name, address, date of birth, marital status, and social security number.

2. If you have ever pleaded guilty to or have been convicted of any crime (other than minor traffic violations), state the nature, place, and date of the same, the court docket reference, and whether you were represented by counsel.

SEMMES, BOWEN
& SEMMES
250 W. Pratt Street
Baltimore, Md. 21201

3. Have you ever taken any money from the Catalina Enterprises, Inc. Pension Plan and, if so, please state the following for each such amount: (1) the date(s), (2) the amount(s), (3) the purpose or use for which any amount(s) was taken, (4) amount(s) of repayment, (5) interest rate(s), and (6) the person(s) who rendered any advice or gave you any information in connection with the taking of any money from the Plan.

4. State whether you have within your possession or control any documents pertaining to the matters referred to in interrogatory no. 3, and describe each such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

5. Describe the assets held by the Catalina Enterprises, Inc. Pension Plan from 1980 to present and for each please state: (1) the nature of the asset(s), (2) the value, and (3) the date it was acquired by the Plan.

6. State whether you have within your possession or control any documents pertaining to the matters referred to in interrogatory no. 5, and describe each such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

7. Give a precise statement of the facts as to how you contend the defendants were negligent in rendering advice as to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan.

8. State the date on which you first learned of any facts pertaining to your allegation that the defendants were negligent in advising you about the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan including (1) the name and address of all person(s) who provided you with such facts, (2) how you first learned of these facts, (3) the reason(s) why any person would bring such facts to your attention, and (4) what action you took upon learning of such facts.

9. State with particularity the amount and kind of each and every item of damage or loss resulting from the occurrence which were incurred by you or on your behalf.

10. If you contend that a person not a party to this action acted in such a manner as to cause or contribute to your alleged damages, give a concise statement of the facts upon which you rely.

11. State the content of and the name and address of any person to whom the defendants or anyone on the defendants' behalf made any oral statement which constitutes an admission with reference to any of the issues raised in this case.

12. State the names and addresses of all experts whom you propose to call as witnesses, the subject matter of their testimony, and attach to your answer copies of all written reports received from the same.

13. State the amount of earned income reported by you each year on your personal federal income tax returns from 1980 to present.

14. State the name and address of the person(s) who prepared your federal income tax returns from 1980 to present.

15. State the names and addresses of all persons from whom you have written or signed or recorded statements, attaching to your answer a copy of any such statement in your control given by the defendants, or any agent thereof.

16. State whether you have been audited by the IRS in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state the following: (1) the date(s), (2) the nature of the tax return, (3) the result of the audit, and (4) the names and addresses of person(s) who represented you.

17. State whether you have filed any amended tax return in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state: (1) the date(s), (2) the nature of the tax

return(s), (3) the nature of the corrected information, (4) the reason(s) for filing the amended return, and (5) the names and addresses of any person who advised you to file the amended return.

18. State the name and address of every individual who has given you any advice or information pertaining to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan or the tax consequences of pension planning generally.

19. State the name and address of any person not otherwise mentioned in answer to these interrogatories who has personal knowledge of facts material to this case.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 1988, a copy of the foregoing Interrogatories was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Daniel W. Whitney
Daniel W. Whitney

FILED

RICHARD SHOFER

IN THE

Plaintiff

NOV 9 1988

CIRCUIT COURT

W

v.

CIRCUIT COURT FOR BALTIMORE CITY

BALTIMORE CITY

THE STUART HACK COMPANY,
et al.

* Case No.
88102069/CL79993

Defendants

* * * * *

DEFENDANTS' MOTION FOR
ORDER COMPELLING DISCOVERY

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe, and Semmes, Bowen & Semmes, pursuant to Maryland Rule 2-432, move this Court for an Order compelling plaintiff to answer these defendants' interrogatories and request for production of documents. In accordance with Rule 2-431, counsel for the defendants have attempted to resolve this discovery dispute with the plaintiff by granting two extensions, but have thus far not received any of the plaintiff's responses to the defendants' discovery requests. In support of their motion, defendants state as reasons:

1. On June 29, 1988 the defendants sent interrogatories and a request for production of documents to the plaintiff.

2. More than thirty (30) days have elapsed since plaintiff was served with such interrogatories and request for production of documents.

3. Counsel for the defendants granted the plaintiff two extensions for responding to these discovery requests, specifically August 15, 1988 and September 30, 1988.

4. To date, plaintiff has not served defendants with a copy of his answers to either the interrogatories or the request for production of documents.

WHEREFORE, defendants request that this Court issue an Order compelling discovery.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of November, 1988, a copy of the foregoing Defendants' Motion for Order Compelling Discovery and Order was mailed to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Daniel W. Whitney
Daniel W. Whitney

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993

* * * * *

ORDER

Defendants' Motion for an Order Compelling
Discovery, having been considered by this Court, it is this
day of _____, 1988,

ORDERED

That defendants' motion is granted, and the
plaintiff has _____ days within which to file his
answers.

Judge

FILED

11/20/88

NOV 14 1988

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY, et al.

Defendants

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 88102069/CL79993

* * * * *

ANSWERS TO INTERROGATORIES
PROPOUNDED BY STUART HACK

Richard Shofer, Plaintiff, by his attorneys, files these Answers to the Interrogatories propounded by Stuart Hack.

a. The information supplied in these Answers is not based solely on the knowledge of the executing party, but includes the knowledge of the party, agents, representatives and attorneys unless privileged.

b. The word usage and sentence structure may be that of the attorney assisting in the preparation of these Answers and thus does not necessarily purport to be the precise language of the executing party.

ANSWERS

INTERROGATORY NO. 1: State your full name, address, date of birth, marital status, and social security number.

ANSWER NO. 1:

Richard Shofer

216 St. Dunstan's Road
Baltimore, Maryland 21212

Date of Birth: June 21, 1933

Martial Status: Divorced

Social Security Number: 219-28-1068

INTERROGATORY NO. 2: If you have ever pleaded guilty to or have been convicted of any crime (other than minor traffic violations), state the nature, place, and date of the same, the court docket reference, and whether you were represented by counsel.

ANSWER NO. 2: None.

INTERROGATORY NO. 3: Have you ever taken any money from the Catalina Enterprises, Inc. Pension Plan and, if so, please state the following for each such amount: (1) the date(s), (2) the amount(s), (3) the purpose or use for which any amount(s) was taken, (4) amount(s) of repayment, (5) interest rate(s), and (6) the person(s) who rendered any advice or gave you any information in connection with the taking of any money from the Plan.

ANSWER NO. 3:

Shofer borrowed money from the Catalina Enterprises, Inc.

Pension Plan as follows:

Transaction No. 1: Date: August 9, 1984
Amount: \$60,000.00
Purpose: Richard Shofer - repayment of loan from Crown Motors
Repayment: \$60,345.21 (August 23, 1984)
Interest rate: 15%
Person rendering advice: Stuart Hack

Transaction No. 2: Date: August 23, 1984
Amount: \$150,000.00
Purpose: Richard Shofer - repayment of loan from Crown Motors
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 3: Date: September 5, 1984
Amount: \$50,000.00
Purpose: Richard Shofer - repayment of loan from Crown Motors
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 4: Date: February 21, 1985
Amount: \$35,000.00
Purpose: Purchase of Virgin Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 5: Date: February 25, 1985
Amount: \$3,000.00
Purpose: Purchase of Virgin Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 6: Date: July 30, 1985
Amount: \$12,000.00
Purpose: Debt service, refurbishing re: Virgin
 Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 7: Date: August 13, 1985
Amount: \$25,000.00
Purpose: Debt service, refurbishing re: Virgin
 Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 8: Date: August 21, 1985
Amount: \$5,000.00
Purpose: Debt service, refurbishing re: Virgin
 Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 9: Date: September 30, 1986
Amount: \$35,000.00
Purpose: Debt service, refurbishing re: Virgin
 Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Shofer made the following repayments: Interest (\$29,556.13 on December 24, 1987, and \$90,256.86 on December 24, 1987) and principal (\$1,500.00 on May 24, 1988; \$7,000.00 on June 10, 1988, and \$2,800.00 on June 13, 1988). The interest payments were computed on the total outstanding principal of all loans as of December 31, 1988, with the \$29,556.13 check being allocated to interest on the \$75,000.00 secured by the second mortgage on the

Virgin Islands property, and the \$90,256.86 check being allocated to the balance of the outstanding principal. The three principal payments have not yet been allocated to repayment of particular transactions listed above.

INTERROGATORY NO. 4: State whether you have within your possession or control any documents pertaining to the matters referred to in Interrogatory No. 3, and describe such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

ANSWER NO. 4: These documents will be provided in response to the Request for Production of Documents.

INTERROGATORY NO. 5: Describe the assets held by the Catalina Enterprises, Inc. Pension Plan from 1980 to present and for each please state: (1) the nature of the asset(s), (2) the value, and (3) the date it was acquired by the Plan.

ANSWER NO. 5: Cash, customer receivables, land, buildings, and various other assets, acquired at various dates and of changing value, as more fully described on the Plan's balance sheets, in Defendants' custody and also being produced in response to Request for Production of Documents.

INTERROGATORY NO. 6: State whether you have within your possession or control any documents pertaining to the matters referred to in Interrogatory No. 5, and describe each such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

ANSWER NO. 6: These documents will be provided in response to the Request for Production of Documents.

INTERROGATORY NO. 7: Give a precise statement of the facts as to how you contend the defendants were negligent in rendering advice as to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan.

ANSWER NO. 7: Stuart Hack's letter of August 9, 1984, to Richard Shofer failed to advise Shofer of any tax consequences that might result from borrowing or collateralizing Shofer's

voluntary account. Hack also failed to make ordinary inquiries that would have revealed the nature and consequences of the loan transactions in which Shofer and the Pension Plan were engaging in time to forestall future transactions and reduce the detrimental effect of those already undertaken. Hack also failed to review the Plan itself to discover whether the loans made to Shofer were permitted under the terms of the Plan. Hack also failed to provide forms of promissory notes, security agreements, and other documents suitable for the proper recording of the various transactions between the Plan and Shofer. These omissions, in light of the fact that drastic tax consequences actually did flow from the borrowing recommended by Hack, constituted a failure to meet the standard of care of a competent pension advisor under the circumstances.

INTERROGATORY NO. 8: State the date on which you first learned of any facts pertaining to your allegation that the defendants were negligent in advising you about the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan including (1) the name and address of all person(s) who provided you with such facts, (2) how you first learned of these facts, (3) the reason(s) why any person would bring such facts to your attention, and (4) what action you took upon learning of such facts.

ANSWER NO. 8: As stated, this question is so broad as to include every fact involved in this case. Without waiving that objection, Plaintiff states that on or about November 4, 1986, Shofer was informed by Alan Marvel of Grabush, Newman & Company, P.A., Certified Public Accountants, Suite 350, the Quadrangle, the Village of Cross Keys, Baltimore, Maryland 21210 that certain of Shofer's borrowings from the Pension Plan might be taxable as income. Marvel was being paid to advise Shofer as to

general personal income tax matters. Upon receipt of said advice, Shofer undertook an extended process of discussion involving personnel of Grabush, Newman and personnel at the Stuart Hack Company, including Stuart Hack. Only when these discussions failed to arrive at a satisfactory resolution did Shofer pursue this litigation.

INTERROGATORY NO. 9: State with particularity the amount and kind of each and every item of damage or loss resulting from the occurrence which were incurred by you or on your behalf.

ANSWER NO. 9: The actual amount of damage has yet to be ascertained, primarily because there has been no resolution with the Internal Revenue Service or the State of Maryland as to taxes, penalties, interest, and other amounts owed. Shofer's debts and payments to the various governmental entities involved and to various professionals (including, but not limited to, lawyers and accountants) are still being negotiated and computed. When these figures are available, this answer will be supplemented. Shofer and Crown Motors have been damaged in that their credit standing has been diminished and they are unable to obtain loans that they requested. They have also lost interest on the use of the monies laid out for these various expenses, including the support of this litigation. Also, Crown Motors has suffered damage due to the loss of Richard Shofer's services during the time devoted to this litigation.

INTERROGATORY NO. 10: If you contend that a person not a party to this action acted in such a manner as to cause or contribute to your alleged damages, give a concise statement of the facts upon which you rely.

ANSWER NO. 10: It is possible that agents, employees, or independent contractors of the Stuart Hack Company and Stuart

Hack, whose names are now unknown, contributed to Shofer's damages.

INTERROGATORY NO. 11: State the content of and the name and address of any person to whom the defendants or anyone on the defendants' behalf made any oral statement which constitutes an admission with reference to any of the issues raised in this case.

ANSWER NO. 11: Hack and his employees spoke on numerous occasions with Richard Shofer. Hack and his employees have made oral statements to Kenneth Larash and Alan Marvel of Grabush, Newman (address given elsewhere herein) regarding the issues raised in this case. Hack or his employees have also had conversations with Pamela Somers, an employee of Catalina Enterprises, Inc., 5006 Liberty Heights Avenue, Baltimore, Maryland 21207. The precise content of such oral statements is not known at this time.

INTERROGATORY NO. 12: State the names and addresses of all experts whom you propose to call as witnesses, the subject matter of their testimony, and attach to your answer copies of all written reports received from the same.

ANSWER NO. 12: Edward J. Kabala, Esq., The Waterfront, 200 First Avenue, Pittsburgh, Pennsylvania, 15222. The subject matter of the testimony will include the standard of care of a competent pension adviser and the extent to which the conduct of Stuart Hack and The Stuart Hack Company fell short of that standard. A copy of a written report from Kabala is being produced.

INTERROGATORY NO. 13: State the amount of earned income reported by you each year on your personal federal income tax returns from 1980 to present:

ANSWER NO. 13:

<u>Year</u>	<u>Amount of Earned Income</u>
-------------	--------------------------------

1980	\$60,000.00
1981	\$60,000.00
1982	\$60,000.00
1983	\$60,000.00
1984	\$141,000.00
1985	\$200,000.00
1986	\$200,000.00
1987	\$200,000.00

INTERROGATORY NO. 14: State the name and address of the person(s) who prepared your federal income tax returns from 1980 to present.

ANSWER NO. 14: Grabush, Newman & Company, P.A., Certified Public Accountants, Suite 350, The Quadrangle, the Village of Cross Keys, Baltimore, Maryland 21210.

INTERROGATORY NO. 15: State the names and addresses of all persons from whom you have written or signed or recorded statements, attaching to your answer a copy of any such statement in your control given by the defendants, or any agent thereof.

ANSWER NO. 15: None at this time.

INTERROGATORY NO. 16: State whether you have been audited by the IRS in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state the following: (1) the date(s), (2) the nature of the tax return, (3) the result of the audit, and (4) the names and addresses of person(s) who represented you.

ANSWER NO. 16: No IRS audits have been initiated by the IRS. However, Shofer has voluntarily raised with the IRS the issue of the taxability of loans from the Plan to Shofer, and this issue is now being considered by the IRS. Shofer is being represented in his negotiations with the taxing authorities by Nicholas Giampetro, Esq., The Dulaney Center, Suite 108, 849 Fairmount Avenue, Towson, Maryland, 21204.

INTERROGATORY NO. 17: State whether you have filed any amended tax return in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state: (1) the date(s), (2) the nature of the tax return(s), (3) the nature of the corrected information, (4) the reason(s) for filing the amended return, and (5) the names and addresses of any person who advised you to file the amended return.

ANSWER NO. 17: Amended returns were filed on March 29, 1988, for taxable years 1984, 1985, and 1986. The tax returns were 1040 individual income tax returns, and the corrections were made to reflect taxable loans from the Catalina Enterprises, Inc. Pension Plan. The returns were filed in order to bring Shofer into compliance with relevant tax law. Kenneth Larash and Alan Marvel at Grabush, Newman advised Shofer to file the amended returns.

INTERROGATORY NO. 18: State the name and address of every individual who has given you any advice or information pertaining to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan or the tax consequences of pension planning generally.


ANSWER NO. 18: Kenneth Larash and Alan Marvel of Grabush, Newman; Nicholas Giampetro.

INTERROGATORY NO. 19: State the name and address of any person not otherwise mentioned in answer to these interrogatories who has personal knowledge of facts material to this case.

ANSWER NO. 19: Loan officers: Tim Krause, Dan Hernandez, Maryland National Bank, 10 Light Street, Baltimore, Maryland, 21202. Dean Docken, Jr., Hugh Robinson, First National Bank, 705 Frederick Road, Baltimore, Maryland 21228.


VERIFICATION

I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief.


Richard Shofer

BLUM, YUMKAS, MAILMAN, GUTMAN
& DENICK, P.A.



Lloyd S. Mailman


Thomas A. Bowden
1200 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 11th day of November,
1988, a copy of these Answers to Interrogatories Propounded by
Stuart Hack was mailed, postage prepaid, to each person listed
below:

Janet M. Truhe
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
Attorneys for Defendants


Thomas A. Bowden

G:07904009.P1
PBB:080488

FILED 12 JH

NOV 22 1988

CIRCUIT COURT FOR BALTIMORE CITY

RICHARD SHOFER

* IN THE

Plaintiff

* CIRCUIT COURT

v.

* FOR

* BALTIMORE CITY

THE STUART HACK COMPANY,
et al.

* Case No.

88102069/CL79993

Defendants

* * * * *

PLAINTIFF'S RESPONSE TO
DEFENDANT'S REQUEST FOR PRODUCTION OF DOCUMENTS

Richard Shofer, Plaintiff, by his attorneys, makes the following response to the Defendant's Request for Production of Documents.

REQUEST NO. 1: The plaintiff's personal federal income tax returns for each year from 1980 to present, including any amended returns.

RESPONSE NO. 1: These documents are being provided.

REQUEST NO. 2: All financial statements prepared on behalf of the plaintiff from 1980 to present.

RESPONSE NO. 2: These documents are being provided.

REQUEST NO. 3: All documents pertaining to loans, including any loan agreement, made by the Catalina Enterprises, Inc. Pension Plan to the plaintiff from 1980 to present.

RESPONSE NO. 3: These documents are being provided.

REQUEST NO. 4: All documents pertaining to the use of or purpose for which monies were taken by the plaintiff from the Catalina Enterprises, Inc. Pension Plan.

RESPONSE NO. 4: These documents are being provided.

REQUEST NO. 5: All notes, memos, correspondence or other documents which pertain to advice or information from any source given to the plaintiff regarding the tax consequences of borrowing money from the Catalina Enterprises, Inc. Pension Plan.

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RESPONSE NO. 5: These documents are being provided.

REQUEST NO. 6: All correspondence between the plaintiff and the defendants from 1980 to present.

RESPONSE NO. 6: These documents are being provided.

REQUEST NO. 7: All documents pertaining to any IRS audit of the plaintiff from 1980 to present.

RESPONSE NO. 7: No such audit has been conducted.

REQUEST NO. 8: All personal bank statements for the plaintiff from 1980 to present.

RESPONSE NO. 8: These documents are being provided.

REQUEST NO. 9: Copies of cancelled checks to Catalina Enterprises, Inc. Pension Plan from the plaintiff to repay loans from 1980 to present.

RESPONSE NO. 9: These documents are being provided.

REQUEST NO. 10: Copies of all notes payable to Catalina Enterprises, Inc. Pension Plan executed by the plaintiff from 1980 to present.

RESPONSE NO. 10: These documents are being provided.

REQUEST NO. 11: All documents pertaining to assets held by Catalina Enterprises, Inc. Pension Plan from 1980 to present.

RESPONSE NO. 11: These documents are being provided.

REQUEST NO. 12: All correspondence between the plaintiff and the person(s) who prepared his personal federal income tax returns for each year from 1980 to present.

RESPONSE NO. 12: These documents are being provided.

REQUEST NO. 13: All documents that itemize, support, contain evidence of, or relate in any way to plaintiff's claim for damages in this action.

RESPONSE NO. 13: These documents are being provided.

REQUEST NO. 14: All documents not heretofore identified upon which the plaintiff relies or intends to rely to support any claim or allegation asserted by him in this action.

RESPONSE NO. 14: These documents are being provided.

BLUM, YUMKAS, MAILMAN, GUTMAN
& DENICK, P.A.



Lloyd S. Mailman



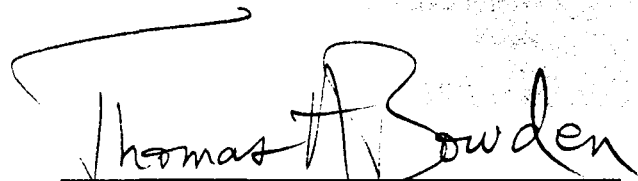
Thomas A. Bowden
1200 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 21st day of November,
1988, a copy of this Plaintiff's Response to Defendant's Request
for Production of Documents was ~~mailed, postage prepaid,~~ to each
person listed below: hand delivered

Janet M. Truhe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendants



Thomas A. Bowden

G:07904009.rp1

(13)

FILED

NOV 25 1988

CIRCUIT COURT FOR BALTIMORE CITY

RICHARD SHOFER
Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*
* * * * *

RESPONSE TO DEFENDANTS' MOTION FOR
ORDER COMPELLING DISCOVERY

Plaintiff, by his attorneys, files this Response to Defendants' Motion for Order Compelling Discovery.

1. Plaintiff filed Answers to Interrogatories Propounded by Stuart Hack on November 11, 1988.
2. Plaintiff filed Plaintiff's Response to Defendant's Request for Production of Documents on November 21, 1988.
3. These filings satisfy all the outstanding discovery requests by the Defendants. Hence, Defendants' Motion for Order Compelling Discovery is moot.

Lloyd S. Mailman
Lloyd S. Mailman

Thomas A. Bowden
Thomas A. Bowden
Blum, Yumkas, Mailman,
Gutman & Denick, P.A.
#2 Hopkins Plaza, Suite 1200
Baltimore, Maryland 21201
(301) 385-4000

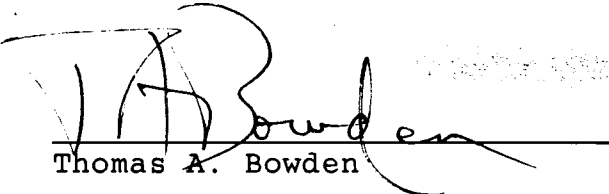
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 23rd day of November, 1988, a copy of this document was mailed, postage prepaid, to each person listed below:

Janet M. Truhe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendants


Thomas A. Bowden

FILED

NOV 30 1988

14 / 12/13

CIRCUIT COURT FOR
BALTIMORE CITY
: IN THE

RICHARD SHOFR

Plaintiff

vs.

THE STUART HACK COMPANY,
et al

Defendants

: CIRCUIT COURT

: FOR

: BALTIMORE CITY

: Case No. 88102069/CL79993

:

: : : : : : : : :

Mr. Clerk:

Please withdraw the defendants' motion to compel
for the reason that it has become moot.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 W. Pratt Street
Baltimore, Maryland 21201
539-5040
Attorneys for Defendants

I HEREBY CERTIFY that on this 30th day of November,
1988, a copy of the foregoing was mailed to Lloyd S. Mailman,
Esq. and Thomas A. Bowden, Esq., 1200 Mercantile Bank & Trust
Bldg., 2 Hopkins Plaza, Baltimore, Maryland 21201.

Janet M. Truhe
Janet M. Truhe

SEMME, BOWEN
& SEMME
250 W. Pratt Street
Baltimore, Md. 21201

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*
* * * * *

FILED

FEB 2 1989

CIRCUIT COURT FOR
BALTIMORE CITY

NOTICE OF DEPOSITION

Richard Shofer, Plaintiff, by Lloyd S. Mailman, Thomas A. Bowden, and Blum, Yumkas, Mailman, Gutman & Denick, P.A., his attorneys, will take the deposition upon oral examination of The Stuart Hack Company ("Deponent"), pursuant to Rule 2-411.

1. The deposition will begin at 9 a.m. on Wednesday, March 15, 1989, at the offices of Blum, Yumkas, Mailman, Gutman & Denick, P.A., #2 Hopkins Plaza, Suite 1200, Baltimore, Maryland, 21201, and will continue from day to day until completed. The deposition will be stenographically recorded.

2. Deponent's address is 4623 Falls Road, Baltimore, Maryland, 21209.

3. Deponent's designated representative shall bring with him to the deposition, and permit Plaintiff to inspect and make copies of, all documents not already provided (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained--translated, if necessary, by Deponent into reasonably usable form) which are in Deponent's possession, custody, or control and

Handwritten initials

which were requested in Plaintiff's Request for Production of Documents.

Lloyd S. Mailman
Lloyd S. Mailman

Thomas A. Bowden
Thomas A. Bowden
1200 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 1st day of February, 1989, a copy of this document was mailed, postage prepaid, to each person listed below:

Janet M. Truhe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendants

Thomas A. Bowden
Thomas A. Bowden

16 PD.

FILED

MAR 7 1989

CIRCUIT COURT FOR BALTIMORE CITY

RICHARD SHOFER * IN THE
 Plaintiff * CIRCUIT COURT
 v. * FOR
 * BALTIMORE CITY
 THE STUART HACK COMPANY, * Case No.
 et al. * 88102069/CL79993
 Defendants *
 * * * * *

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO THE STUART HACK COMPANY

Richard Shofer, Plaintiff, by Lloyd S. Mailman, Thomas A. Bowden, and Blum, Yumkas, Mailman, Gutman & Denick, P.A., his attorneys, requests that the following documents be produced by The Stuart Hack Company, Defendant, at 10 a.m. on the 7th day of April, 1989, in the offices of Blum, Yumkas, Mailman, Gutman & Denick, P.A., #2 Hopkins Plaza, Suite 1200, Baltimore, Maryland, 21201, for inspection and copying.

Definitions

"You" means The Stuart Hack Company, all its officers, directors, employees, servants, agents, and attorneys, and all other persons acting or purporting to act on its behalf.

"Interrogatory" means an interrogatory contained in the Interrogatories propounded to you in this case by the same party filing this Request for Production of Documents.

"Communication" means any transmittal of information, in any form whatever, from one or more persons to one or more other persons.

"Document" means every tangible thing from which information can be obtained, perceived, or reproduced, and includes any written, recorded, or graphic matter, however produced or reproduced and whether or not now in existence, and also includes the original, all file copies, all other copies no matter how

prepared, and all drafts prepared in connection with such document, whether used or not, and further includes but is not limited to papers; books; records; catalogs; price lists; pamphlets; periodicals; letters; correspondence; scrap books; note books; bulletins; circulars; forms; notices; post cards; telegrams; deposition transcripts; contracts; agreements; leases; reports; studies; working papers; charts; proposals; graphs; sketches; diagrams; indexes; maps; analyses; statistical records; reports; results of investigations; reviews; ledgers; journals; balance sheets; accounts; books of accounts; invoices; vouchers; purchase orders; receipts; expense accounts; cancelled checks; bank checks; statements; sound and tape recordings; videotapes; computer disks; electrical recordings; magnetic recordings; memoranda (including any type or form of notes, memoranda, or sound recordings of personal thoughts, recollections, or reminders, or of telephone or other conversations, or of acts, activities, agreements, meetings, or conferences); photostats; microfilms; instruction lists or forms; computer printouts or other computed data; minutes of director or committee meetings; inter-office or intra-office communications; diaries; calendar on desk pads; stenographers' notes; appointment books; and other papers or matters similar to any of the foregoing, however denominated, whether or not received by you or prepared by you for your own use or transmittal. If a document has been prepared in several copies or additional copies have been made, and the copies are not identical (or, by reason of subsequent modification or notation, are no longer identical), each nonidentical copy is a separate "document."

"Person" includes the plural as well as the singular and shall mean any natural person, partnership, firm, association, corporation, business, joint venture, government or government agency, or any other form of private or public entity.

Instructions

A. Should you object to the production of any document or documents requested on the basis of any alleged privilege or immunity from discovery, please list in your written response to this request all such documents in chronological order, setting forth as to each the following information:

- (1) Date;
- (2) Author;
- (3) Addressee;
- (4) Title;
- (5) Type of document (e.g., letter, report, memorandum, etc.);

(6) Subject matter (without revealing the information as to which privilege or immunity is claimed or objection made);

(7) Basis for the claim of privilege, immunity or objection; and

(8) Identity of all persons to whom copies of such documents were sent.


B. If any document in response to this request was, but no longer is, in your possession, custody or control, please furnish a description of each such document and indicate the manner and circumstances under which it left your possession, custody or control, and its present whereabouts, if known.

C. Any request for production listed herein shall be construed to include any supplemental information, knowledge, data or documents responsive to these requests for production that are later discovered by you, your agents or attorneys.

Documents To Be Produced

1. All internal memoranda, research reports, checklists, or other documents from January 1, 1982 through December 31, 1987, evidencing your general policies and procedures with respect to advising clients about loans from pension plans to participants. Such documents should include (but are not limited to) (1) memoranda or research reports advising your employees how to respond to inquiries from plans or participants about such loans, (2) checklists prepared for the purpose of ensuring that such loans satisfy all applicable pension and tax laws, and (3) sample documents (such as promissory notes) for in-house use or distribution to participants for use in such loan transactions.

BLUM, YUMKAS, MAILMAN, GUTMAN
& DENICK, P.A.


Lloyd S. Mailman

Thomas A. Bowden

Thomas A. Bowden
1200 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 4th day of March,
1989, a copy of this document was mailed, postage prepaid, to
each person listed below:

Janet M. Truhe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendants

Thomas A. Bowden
Thomas A. Bowden

LAW OFFICES
BLUM, YUMKAS, MAILMAN, GUTMAN & DENICK, P.
1200 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2914

(301) 385-4000
FAX (301) 385-4070

FILED

APR 5 1989

CIRCUIT COURT FOR
BALTIMORE CITY

WRITER'S DIRECT DIAL

(301) 385-4020

April 4, 1989

Saundra E. Banks, Clerk
Circuit Court for
Baltimore City
111 North Calvert Street
Room 462
Baltimore, Maryland 21202

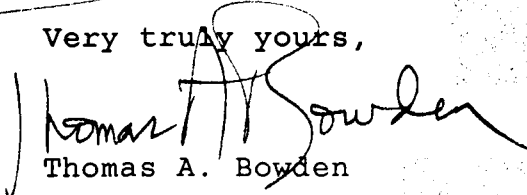
Re: Shofer v. The Stuart Hack Company, et al.
Case No. 88102069/CL79993

Dear Ms. Banks:

The above-referenced case being at issue, would you please see that it is set in for trial at the earliest possible date?

Thank you for your attention to this matter.

Very truly yours,


Thomas A. Bowden

cc: Mr. Richard Shofer
Janet Truhe, Esq.

APR 5 1989
CIRCUIT COURT FOR
BALTIMORE CITY

15
Dd.

RICHARD SHOFER
Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* * * *

THE STUART HACK COMPANY,
et al.

Third Party Plaintiffs

v.

GRABUSH, NEWMAN & CO., P.A.
SERVE ON:

Barry Bondroff, President
515 Fairmount Avenue
Suite 400
Baltimore, MD 21204

Third Party Defendant

* * * * *

THIRD PARTY CLAIM

Defendants, The Stuart Hack Company and Stuart Hack, by their attorneys, Daniel W. Whitney, Janet M. Truhe and Semmes, Bowen & Semmes, file this Third Party Claim against Grabush, Newman & Company, P.A., Third Party Defendant.

1. The Plaintiff, Richard Shofer, has filed suit against The Stuart Hack Company and Stuart Hack,

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*

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APR 18 1989

CIRCUIT COURT FOR
BALTIMORE CITY

SEMME, BOWEN
& SEMME
850 W Pratt Street
Baltimore, Md. 21201

pension consultants, alleging that these Defendants advised the Plaintiff that he could borrow up to 100% of his voluntary account without tax consequences.

2. In his Answers to Interrogatories, the Plaintiff stated that the accounting firm of Grabush, Newman & Company, P.A. prepared his state and federal income tax returns during the time of the events in question.

3. The Plaintiff has alleged that his increased tax liability for the years 1984, 1985 and 1986 and other damages were caused by the negligence of the Third Party Plaintiffs, The Stuart Hack Company and Stuart Hack, when they allegedly failed to advise the Plaintiff of the tax implications of borrowing from his voluntary account.

4. The Third Party Plaintiffs, The Stuart Hack Company and Stuart Hack, allege that the Plaintiffs' damages were caused entirely by the negligence of the Third Party Defendant, Grabush, Newman & Company, P.A., when they failed to properly prepare the Plaintiff's personal federal and state income tax returns for the years in question.

5. The Third Party Plaintiffs, The Stuart Hack Company and Stuart Hack, allege that if the facts alleged by the Plaintiff in his Complaint relating to the acts or omissions of The Stuart Hack Company and Stuart Hack are true, the Plaintiff's damages were caused solely by the negligence of Grabush, Newman & Company, P.A.

6. The Stuart Hack Company and Stuart Hack claim indemnity and/or contribution against Grabush, Newman & Company, P.A. for any judgment which may be rendered against The Stuart Hack Company and Stuart Hack, plus counsel fees, expenses and interest.

7. Copies of the Plaintiff's Complaint and all pleadings previously filed in this action are attached hereto.

Janet M. Truhe

Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Third Party
Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 1989, a copy of the foregoing Third Party Claim was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Janet M. Truhe

Janet M. Truhe

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*

* * * * *

PLAINTIFF'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO THE STUART HACK COMPANY

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"You" means The Stuart Hack Company, all its officers, directors, employees, servants, agents, and attorneys, and all other persons acting or purporting to act on its behalf.

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prepared, and all drafts prepared in connection with such document, whether used or not, and further includes but is not limited to papers; books; records; catalogs; price lists; pamphlets; periodicals; letters; correspondence; scrap books; note books; bulletins; circulars; forms; notices; post cards; telegrams; deposition transcripts; contracts; agreements; leases; reports; studies; working papers; charts; proposals; graphs; sketches; diagrams; indexes; maps; analyses; statistical records; reports; results of investigations; reviews; ledgers; journals; balance sheets; accounts; books of accounts; invoices; vouchers; purchase orders; receipts; expense accounts; cancelled checks; bank checks; statements; sound and tape recordings; videotapes; computer disks; electrical recordings; magnetic recordings; memoranda (including any type or form of notes, memoranda, or sound recordings of personal thoughts, recollections, or reminders, or of telephone or other conversations, or of acts, activities, agreements, meetings, or conferences); photostats; microfilms; instruction lists or forms; computer printouts or other computed data; minutes of director or committee meetings; inter-office or intra-office communications; diaries; calendar on desk pads; stenographers' notes; appointment books; and other papers or matters similar to any of the foregoing, however denominated, whether or not received by you or prepared by you for your own use or transmittal. If a document has been prepared in several copies or additional copies have been made, and the copies are not identical (or, by reason of subsequent modification or notation, are no longer identical), each nonidentical copy is a separate "document."

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- (1) Date;
- (2) Author;
- (3) Addressee;
- (4) Title;
- (5) Type of document (e.g., letter, report, memorandum, etc.);

(6) Subject matter (without revealing the information as to which privilege or immunity is claimed or objection made);

(7) Basis for the claim of privilege, immunity or objection; and

(8) Identity of all persons to whom copies of such documents were sent.

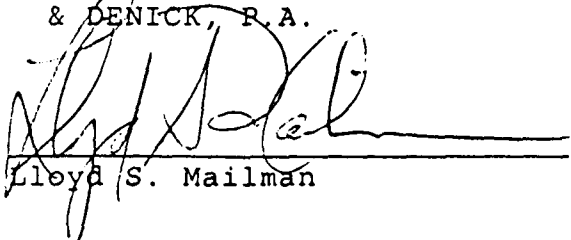
B. If any document in response to this request was, but no longer is, in your possession, custody or control, please furnish a description of each such document and indicate the manner and circumstances under which it left your possession, custody or control, and its present whereabouts, if known.

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Documents To Be Produced

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BLUM, YUMKAS, MAILMAN, GUTMAN
& DENICK, P.A.


Lloyd S. Mailman

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY, et al.

Defendants

* IN THE
 *
 * CIRCUIT COURT
 *
 * FOR
 *
 * BALTIMORE CITY
 *
 *
 * Case No. 88102069/CL79993
 *

* * * * *

ANSWERS TO INTERROGATORIES
PROPOUNDED BY STUART HACK

Richard Shofer, Plaintiff, by his attorneys, files these Answers to the Interrogatories propounded by Stuart Hack.

a. The information supplied in these Answers is not based solely on the knowledge of the executing party, but includes the knowledge of the party, agents, representatives and attorneys unless privileged.

b. The word usage and sentence structure may be that of the attorney assisting in the preparation of these Answers and thus does not necessarily purport to be the precise language of the executing party.

ANSWERS

INTERROGATORY NO. 1: State your full name, address, date of birth, marital status, and social security number.

ANSWER NO. 1:

Richard Shofer

216 St. Dunstan's Road
Baltimore, Maryland 21212

Date of Birth: June 21, 1933

Martial Status: Divorced

Social Security Number: 219-28-1068

INTERROGATORY NO. 2: If you have ever pleaded guilty to or have been convicted of any crime (other than minor traffic violations), state the nature, place, and date of the same, the court docket reference, and whether you were represented by counsel.

ANSWER NO. 2: None.

INTERROGATORY NO. 3: Have you ever taken any money from the Catalina Enterprises, Inc. Pension Plan and, if so, please state the following for each such amount: (1) the date(s), (2) the amount(s), (3) the purpose or use for which any amount(s) was taken, (4) amount(s) of repayment, (5) interest rate(s), and (6) the person(s) who rendered any advice or gave you any information in connection with the taking of any money from the Plan.

ANSWER NO. 3:

Shofer borrowed money from the Catalina Enterprises, Inc.

Pension Plan as follows:

Transaction No. 1: Date: August 9, 1984
Amount: \$60,000.00
Purpose: Richard Shofer - repayment of loan from Crown Motors
Repayment: \$60,345.21 (August 23, 1984)
Interest rate: 15%
Person rendering advice: Stuart Hack

Transaction No. 2: Date: August 23, 1984
Amount: \$150,000.00
Purpose: Richard Shofer - repayment of loan from Crown Motors
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 3: Date: September 5, 1984
Amount: \$50,000.00
Purpose: Richard Shofer - repayment of loan from Crown Motors
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 4: Date: February 21, 1985
Amount: \$35,000.00
Purpose: Purchase of Virgin Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 5: Date: February 25, 1985
Amount: \$3,000.00
Purpose: Purchase of Virgin Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 6: Date: July 30, 1985
Amount: \$12,000.00
Purpose: Debt service, refurbishing re: Virgin
Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 7: Date: August 13, 1985
Amount: \$25,000.00
Purpose: Debt service, refurbishing re: Virgin
Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 8: Date: August 21, 1985
Amount: \$5,000.00
Purpose: Debt service, refurbishing re: Virgin
Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Transaction No. 9: Date: September 30, 1986
Amount: \$35,000.00
Purpose: Debt service, refurbishing re: Virgin
Islands property
Repayment: See below
Interest rate: 12%
Person rendering advice: Stuart Hack

Shofer made the following repayments: Interest (\$29,556.13 on December 24, 1987, and \$90,256.86 on December 24, 1987) and principal (\$1,500.00 on May 24, 1988; \$7,000.00 on June 10, 1988, and \$2,800.00 on June 13, 1988). The interest payments were computed on the total outstanding principal of all loans as of December 31, 1988, with the \$29,556.13 check being allocated to interest on the \$75,000.00 secured by the second mortgage on the

Virgin Islands property, and the \$90,256.86 check being allocated to the balance of the outstanding principal. The three principal payments have not yet been allocated to repayment of particular transactions listed above.

INTERROGATORY NO. 4: State whether you have within your possession or control any documents pertaining to the matters referred to in Interrogatory No. 3, and describe such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

ANSWER NO. 4: These documents will be provided in response to the Request for Production of Documents.

INTERROGATORY NO. 5: Describe the assets held by the Catalina Enterprises, Inc. Pension Plan from 1980 to present and for each please state: (1) the nature of the asset(s), (2) the value, and (3) the date it was acquired by the Plan.

ANSWER NO. 5: Cash, customer receivables, land, buildings, and various other assets, acquired at various dates and of changing value, as more fully described on the Plan's balance sheets, in Defendants' custody and also being produced in response to Request for Production of Documents.

INTERROGATORY NO. 6: State whether you have within your possession or control any documents pertaining to the matters referred to in Interrogatory No. 5, and describe each such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

ANSWER NO. 6: These documents will be provided in response to the Request for Production of Documents.

INTERROGATORY NO. 7: Give a precise statement of the facts as to how you contend the defendants were negligent in rendering advice as to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan.

ANSWER NO. 7: Stuart Hack's letter of August 9, 1984, to Richard Shofer failed to advise Shofer of any tax consequences that might result from borrowing or collateralizing Shofer's

voluntary account. Hack also failed to make ordinary inquiries that would have revealed the nature and consequences of the loan transactions in which Shofer and the Pension Plan were engaging in time to forestall future transactions and reduce the detrimental effect of those already undertaken. Hack also failed to review the Plan itself to discover whether the loans made to Shofer were permitted under the terms of the Plan. Hack also failed to provide forms of promissory notes, security agreements, and other documents suitable for the proper recording of the various transactions between the Plan and Shofer. These omissions, in light of the fact that drastic tax consequences actually did flow from the borrowing recommended by Hack, constituted a failure to meet the standard of care of a competent pension advisor under the circumstances.

INTERROGATORY NO. 8: State the date on which you first learned of any facts pertaining to your allegation that the defendants were negligent in advising you about the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan including (1) the name and address of all person(s) who provided you with such facts, (2) how you first learned of these facts, (3) the reason(s) why any person would bring such facts to your attention, and (4) what action you took upon learning of such facts.

ANSWER NO. 8: As stated, this question is so broad as to include every fact involved in this case. Without waiving that objection, Plaintiff states that on or about November 4, 1986, Shofer was informed by Alan Marvel of Grabush, Newman & Company, P.A., Certified Public Accountants, ^{615 E. Pratt Street} Suite 350, the Quadrangle, ^{Suite 400, Baltimore, Md 21204 Harry Bondroff (pres.)} the Village of Cross Keys, Baltimore, Maryland 21210 that certain of Shofer's borrowings from the Pension Plan might be taxable as income. Marvel was being paid to advise Shofer as to

292-2700

general personal income tax matters. Upon receipt of said advice, Shofer undertook an extended process of discussion involving personnel of Grabush, Newman and personnel at the Stuart Hack Company, including Stuart Hack. Only when these discussions failed to arrive at a satisfactory resolution did Shofer pursue this litigation.

INTERROGATORY NO. 9: State with particularity the amount and kind of each and every item of damage or loss resulting from the occurrence which were incurred by you or on your behalf.

ANSWER NO. 9: The actual amount of damage has yet to be ascertained, primarily because there has been no resolution with the Internal Revenue Service or the State of Maryland as to taxes, penalties, interest, and other amounts owed. Shofer's debts and payments to the various governmental entities involved and to various professionals (including, but not limited to, lawyers and accountants) are still being negotiated and computed. When these figures are available, this answer will be supplemented. Shofer and Crown Motors have been damaged in that their credit standing has been diminished and they are unable to obtain loans that they requested. They have also lost interest on the use of the monies laid out for these various expenses, including the support of this litigation. Also, Crown Motors has suffered damage due to the loss of Richard Shofer's services during the time devoted to this litigation.

INTERROGATORY NO. 10: If you contend that a person not a party to this action acted in such a manner as to cause or contribute to your alleged damages, give a concise statement of the facts upon which you rely.

ANSWER NO. 10: It is possible that agents, employees, or independent contractors of the Stuart Hack Company and Stuart

Hack, whose names are now unknown, contributed to Shofer's damages.

INTERROGATORY NO. 11: State the content of and the name and address of any person to whom the defendants or anyone on the defendants' behalf made any oral statement which constitutes an admission with reference to any of the issues raised in this case.

ANSWER NO. 11: Hack and his employees spoke on numerous occasions with Richard Shofer. Hack and his employees have made oral statements to Kenneth Larash and Alan Marvel of Grabush, Newman (address given elsewhere herein) regarding the issues raised in this case. Hack or his employees have also had conversations with Pamela Somers, an employee of Catalina Enterprises, Inc., 5006 Liberty Heights Avenue, Baltimore, Maryland 21207. The precise content of such oral statements is not known at this time.

INTERROGATORY NO. 12: State the names and addresses of all experts whom you propose to call as witnesses, the subject matter of their testimony, and attach to your answer copies of all written reports received from the same.

ANSWER NO. 12: Edward J. Kabala, Esq., The Waterfront, 200 First Avenue, Pittsburgh, Pennsylvania, 15222. The subject matter of the testimony will include the standard of care of a competent pension adviser and the extent to which the conduct of Stuart Hack and The Stuart Hack Company fell short of that standard. A copy of a written report from Kabala is being produced.

INTERROGATORY NO. 13: State the amount of earned income reported by you each year on your personal federal income tax returns from 1980 to present:

ANSWER NO. 13:

<u>Year</u>	<u>Amount of Earned Income</u>
-------------	--------------------------------

1980	\$60,000.00
1981	\$60,000.00
1982	\$60,000.00
1983	\$60,000.00
1984	\$141,000.00
1985	\$200,000.00
1986	\$200,000.00
1987	\$200,000.00

INTERROGATORY NO. 14: State the name and address of the person(s) who prepared your federal income tax returns from 1980 to present.

ANSWER NO. 14: Grabush, Newman & Company, P.A., Certified Public Accountants, Suite 350, The Quadrangle, the Village of Cross Keys, Baltimore, Maryland 21210.

INTERROGATORY NO. 15: State the names and addresses of all persons from whom you have written or signed or recorded statements, attaching to your answer a copy of any such statement in your control given by the defendants, or any agent thereof.

ANSWER NO. 15: None at this time.

INTERROGATORY NO. 16: State whether you have been audited by the IRS in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state the following: (1) the date(s), (2) the nature of the tax return, (3) the result of the audit, and (4) the names and addresses of person(s) who represented you.

ANSWER NO. 16: No IRS audits have been initiated by the IRS. However, Shofer has voluntarily raised with the IRS the issue of the taxability of loans from the Plan to Shofer, and this issue is now being considered by the IRS. Shofer is being represented in his negotiations with the taxing authorities by Nicholas Giampetro, Esq., The Dulaney Center, Suite 108, 849 Fairmount Avenue, Towson, Maryland, 21204.

INTERROGATORY NO. 17: State whether you have filed any amended tax return in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state: (1) the date(s), (2) the nature of the tax return(s), (3) the nature of the corrected information, (4) the reason(s) for filing the amended return, and (5) the names and addresses of any person who advised you to file the amended return.

ANSWER NO. 17: Amended returns were filed on March 29, 1988, for taxable years 1984, 1985, and 1986. The tax returns were 1040 individual income tax returns, and the corrections were made to reflect taxable loans from the Catalina Enterprises, Inc. Pension Plan. The returns were filed in order to bring Shofer into compliance with relevant tax law. Kenneth Larash and Alan Marvel at Grabush, Newman advised Shofer to file the amended returns.

INTERROGATORY NO. 18: State the name and address of every individual who has given you any advice or information pertaining to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan or the tax consequences of pension planning generally.


ANSWER NO. 18: Kenneth Larash and Alan Marvel of Grabush, Newman; Nicholas Giampetro.

INTERROGATORY NO. 19: State the name and address of any person not otherwise mentioned in answer to these interrogatories who has personal knowledge of facts material to this case.

ANSWER NO. 19: Loan officers: Tim Krause, Dan Hernandez, Maryland National Bank, 10 Light Street, Baltimore, Maryland, 21202. Dean Docken, Jr., Hugh Robinson, First National Bank, 705 Frederick Road, Baltimore, Maryland 21228.


VERIFICATION

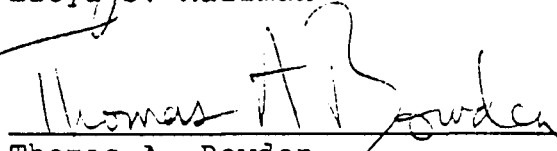
I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief.



Richard Shofer

BLUM, YUMKAS, MAILMAN, GUTMAN
& DENICK, P.A.

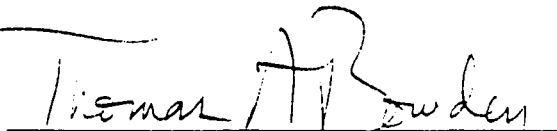

Lloyd S. Mailman


Thomas A. Bowden
1200 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 11th day of November,
1988, a copy of these Answers to Interrogatories Propounded by
Stuart Hack was mailed, postage prepaid, to each person listed
below:

Janet M. Truhe
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
Attorneys for Defendants


Thomas A. Bowden

G:07904009.P1
PBB:080488

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*

* * * * *

NOTICE OF DEPOSITION

Richard Shofer, Plaintiff, by Lloyd S. Mailman, Thomas A. Bowden, and Blum, Yumkas, Mailman, Gutman & Denick, P.A., his attorneys, will take the deposition upon oral examination of The Stuart Hack Company ("Deponent"), pursuant to Rule 2-411.

1. The deposition will begin at 9 a.m. on Wednesday, March 15, 1989, at the offices of Blum, Yumkas, Mailman, Gutman & Denick, P.A., #2 Hopkins Plaza, Suite 1200, Baltimore, Maryland, 21201, and will continue from day to day until completed. The deposition will be stenographically recorded.

2. Deponent's address is 4623 Falls Road, Baltimore, Maryland, 21209.

3. Deponent's designated representative shall bring with him to the deposition, and permit Plaintiff to inspect and make copies of, all documents not already provided (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained-- translated, if necessary, by Deponent into reasonably usable form) which are in Deponent's possession, custody, or control and

which were requested in Plaintiff's Request for Production of Documents.

Lloyd S. Mailman *LS*
Lloyd S. Mailman

Thomas A. Bowden
Thomas A. Bowden
1200 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 1st day of February, 1989, a copy of this document was mailed, postage prepaid, to each person listed below:

Janet M. Truhe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendants

Thomas A. Bowden
Thomas A. Bowden

RICHARD SHOFER : IN THE
 Plaintiff : CIRCUIT COURT
 vs. : FOR
 THE STUART HACK COMPANY, : BALTIMORE CITY
 et al : Case No. 88102069/CL79993
 Defendants :
 :
 : : : : : : : : :

Mr. Clerk:

Please withdraw the defendants' motion to compel for the reason that it has become moot.

Daniel W. Whitney
 Daniel W. Whitney

Janet M. Truhe
 Janet M. Truhe

Semmes, Bowen & Semmes
 Semmes, Bowen & Semmes
 250 W. Pratt Street
 Baltimore, Maryland 21201
 539-5040
 Attorneys for Defendants

I HEREBY CERTIFY that on this 30th day of November, 1988, a copy of the foregoing was mailed to Lloyd S. Mailman, Esq. and Thomas A. Bowden, Esq., 1200 Mercantile Bank & Trust Bldg., 2 Hopkins Plaza, Baltimore, Maryland 21201.

SEMME, BOWEN & SEMME
 250 W. Pratt Street
 Baltimore, Md. 21201

*original filed
 + copy mailed
 11-30-88*

Janet M. Truhe
 Janet M. Truhe

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993

* * * * *

RESPONSE TO DEFENDANTS' MOTION FOR
ORDER COMPELLING DISCOVERY

Plaintiff, by his attorneys, files this Response to Defendants' Motion for Order Compelling Discovery.

1. Plaintiff filed Answers to Interrogatories Propounded by Stuart Hack on November 11, 1988.

2. Plaintiff filed Plaintiff's Response to Defendant's Request for Production of Documents on November 21, 1988.

3. These filings satisfy all the outstanding discovery requests by the Defendants. Hence, Defendants' Motion for Order Compelling Discovery is moot.

Lloyd S. Mailman
Lloyd S. Mailman

Thomas A. Bowden
Thomas A. Bowden

Blum, Yumkas, Mailman,
Gutman & Denick, P.A.
#2 Hopkins Plaza, Suite 1200
Baltimore, Maryland 21201
(301) 385-4000

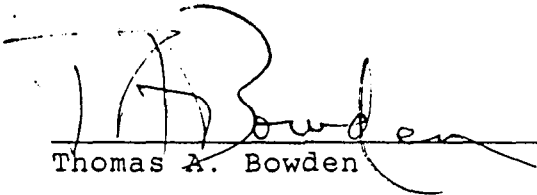
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I CERTIFY that on this 23rd day of November, 1988, a copy of this document was mailed, postage prepaid, to each person listed below:

Janet M. Trihe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendants


Thomas A. Bowden

RICHARD SHOFER	*	IN THE
	*	CIRCUIT COURT
Plaintiff	*	
v.	*	FOR
	*	BALTIMORE CITY
THE STUART HACK COMPANY,	*	Case No.
et al.	*	88102069/CL79993
	*	
Defendants	*	
	*	
	*	
	*	
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* * * * *

DEFENDANTS' MOTION FOR
ORDER COMPELLING DISCOVERY

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe, and Semmes, Bowen & Semmes, pursuant to Maryland Rule 2-432, move this Court for an Order compelling plaintiff to answer these defendants' interrogatories and request for production of documents. In accordance with Rule 2-431, counsel for the defendants have attempted to resolve this discovery dispute with the plaintiff by granting two extensions, but have thus far not received any of the plaintiff's responses to the defendants' discovery requests. In support of their motion, defendants state as reasons:

1. On June 29, 1988 the defendants sent interrogatories and a request for production of documents to the plaintiff.

SEMME, BOWEN
& SEMME
850 W. Pratt Street
Baltimore, Md. 21201

2. More than thirty (30) days have elapsed since plaintiff was served with such interrogatories and request for production of documents.

3. Counsel for the defendants granted the plaintiff two extensions for responding to these discovery requests, specifically August 15, 1988 and September 30, 1988.

4. To date, plaintiff has not served defendants with a copy of his answers to either the interrogatories or the request for production of documents.

WHEREFORE, defendants request that this Court issue an Order compelling discovery.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of November, 1988, a copy of the foregoing Defendants' Motion for Order Compelling Discovery and Order was mailed to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Daniel W. Whitney
Daniel W. Whitney

*Copy mailed 11-8-88
original filed 11-9-88*

HEMMER, BOWEN
& SEMMER
880 W. Pratt Street
Baltimore, Md. 21201

RICHARD SHOFR

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*

* * * * *

ORDER

Defendants' Motion for an Order Compelling
Discovery, having been considered by this Court, it is this
day of _____, 1988,

ORDERED

That defendants' motion is granted, and the
plaintiff has _____ days within which to file his
answers.

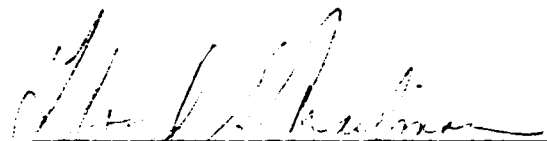
Judge

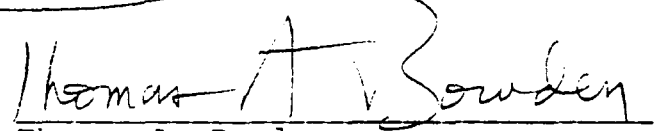
)
 RICHARD SHOFER * IN THE
 Plaintiff * CIRCUIT COURT
 v. * FOR
 THE STUART HACK COMPANY, et al. * BALTIMORE CITY
 Defendants * Civil Action No. 88102069/
 CL79993
 * * * * *

NOTICE TO PLACE CASE ON TRIAL DOCKET

Dear Clerk:

This matter being at issue, please place it on the trial docket.


 Lloyd S. Mailman


 Thomas A. Bowden
 Blum, Yumkas, Mailman, Gutman &
 Denick, P.A.
 1200 Mercantile Bank & Trust
 Bldg.
 2 Hopkins Plaza
 Baltimore, Maryland 21201
 (301) 385-4000

Attorneys for Plaintiff

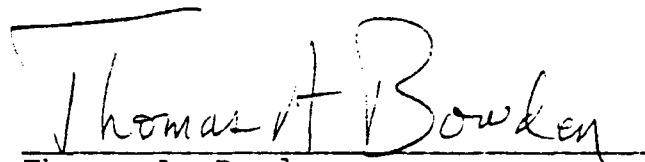
CERTIFICATE OF SERVICE

I CERTIFY that on this 14th day of June, 1988, a copy of this Notice to Place Case on Trial Docket was mailed first

class, postage prepaid to:

Janet M. Truhe, Esquire
Daniel W. Whitney, Esquire
Semmes, Bowen & Semmes, P.A.
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendant.


Thomas A. Bowden

5. All notes, memos, correspondence or other documents which pertain to advice or information from any source given to the plaintiff regarding the tax consequences of borrowing money from the Catalina Enterprises, Inc. Pension Plan.

6. All correspondence between the plaintiff and the defendants from 1980 to present.

7. All documents pertaining to any IRS audit of the plaintiff from 1980 to present.

8. All personal bank statements for the plaintiff from 1980 to present.

9. Copies of cancelled checks to Catalina Enterprises, Inc. Pension Plan from the plaintiff to repay loans from 1980 to present.

10. Copies of all notes payable to Catalina Enterprises, Inc. Pension Plan executed by the plaintiff from 1980 to present.

11. All documents pertaining to assets held by Catalina Enterprises, Inc. Pension Plan from 1980 to present.

12. All correspondence between the plaintiff and the person(s) who prepared his personal federal income tax returns for each year from 1980 to present.

13. All documents that itemize, support, contain evidence of, or relate in any way to plaintiff's claim for damages in this action.

14. All documents not heretofore identified upon which the plaintiff relies or intends to rely to support any claim or allegation asserted by him in this action.

Copies of the aforementioned documents may be mailed to counsel for the defendants.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 1988, a copy of the foregoing Defendants' Request for Production of documents was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile

SEMMES, BOWEN
& SEMMES
250 W. Pratt Street
Baltimore, Md. 21201

Bank and Trust Building, 2 Hopkins Plaza, Baltimore,
Maryland 21201.

Daniel W. Whitney
Daniel W. Whitney

SEMME, HOWEN
& SEMME
250 W Pratt Street
Baltimore, Md. 21201

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993

* * * * *

INTERROGATORIES

TO: RICHARD SHOFER

BY: STUART HACK

These Interrogatories are propounded pursuant to the rules of procedure which require that they be signed and answered under oath. Where the name or identity of a person is requested, please state the full name and home and business address. Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrence or accident mentioned or complained of in the pleadings. Knowledge or information of a party shall include that of the party's agent, representatives and, unless privileged, attorneys. These Interrogatories are continuing in character, so as to require you to file supplemental answers if you obtain further or different information before trial.

1. State your full name, address, date of birth, marital status, and social security number.

2. If you have ever pleaded guilty to or have been convicted of any crime (other than minor traffic violations), state the nature, place, and date of the same, the court docket reference, and whether you were represented by counsel.

3. Have you ever taken any money from the Catalina Enterprises, Inc. Pension Plan and, if so, please state the following for each such amount: (1) the date(s), (2) the amount(s), (3) the purpose or use for which any amount(s) was taken, (4) amount(s) of repayment, (5) interest rate(s), and (6) the person(s) who rendered any advice or gave you any information in connection with the taking of any money from the Plan.

4. State whether you have within your possession or control any documents pertaining to the matters referred to in interrogatory no. 3, and describe each such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

5. Describe the assets held by the Catalina Enterprises, Inc. Pension Plan from 1980 to present and for each please state: (1) the nature of the asset(s), (2) the value, and (3) the date it was acquired by the Plan.

6. State whether you have within your possession or control any documents pertaining to the matters referred to in interrogatory no. 5, and describe each such document including a complete description of its contents or in lieu thereof, attach a copy of each such document to your answers.

7. Give a precise statement of the facts as to how you contend the defendants were negligent in rendering advice as to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan.

8. State the date on which you first learned of any facts pertaining to your allegation that the defendants were negligent in advising you about the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan including (1) the name and address of all person(s) who provided you with such facts, (2) how you first learned of these facts, (3) the reason(s) why any person would bring such facts to your attention, and (4) what action you took upon learning of such facts.

9. State with particularity the amount and kind of each and every item of damage or loss resulting from the occurrence which were incurred by you or on your behalf.

10. If you contend that a person not a party to this action acted in such a manner as to cause or contribute to your alleged damages, give a concise statement of the facts upon which you rely.

11. State the content of and the name and address of any person to whom the defendants or anyone on the defendants' behalf made any oral statement which constitutes an admission with reference to any of the issues raised in this case.

12. State the names and addresses of all experts whom you propose to call as witnesses, the subject matter of their testimony, and attach to your answer copies of all written reports received from the same.

13. State the amount of earned income reported by you each year on your personal federal income tax returns from 1980 to present.

14. State the name and address of the person(s) who prepared your federal income tax returns from 1980 to present.

15. State the names and addresses of all persons from whom you have written or signed or recorded statements, attaching to your answer a copy of any such statement in your control given by the defendants, or any agent thereof.

16. State whether you have been audited by the IRS in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state the following: (1) the date(s), (2) the nature of the tax return, (3) the result of the audit, and (4) the names and addresses of person(s) who represented you.

17. State whether you have filed any amended tax return in connection with monies which you borrowed from the Catalina Enterprises, Inc. Pension Plan and, if so, state: (1) the date(s), (2) the nature of the tax

)

return(s), (3) the nature of the corrected information, (4) the reason(s) for filing the amended return, and (5) the names and addresses of any person who advised you to file the amended return.

18. State the name and address of every individual who has given you any advice or information pertaining to the tax consequences of borrowing from the Catalina Enterprises, Inc. Pension Plan or the tax consequences of pension planning generally.

19. State the name and address of any person not otherwise mentioned in answer to these interrogatories who has personal knowledge of facts material to this case.

Daniel W. Whitney ^{out}
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

SEMME, BOWEN
& SEMME
250 W. Pratt Street
Baltimore, Md. 21201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of June, 1988, a copy of the foregoing Interrogatories was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

Daniel W. Whitney
Daniel W. Whitney

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*
*

* * * * *

DEFENDANTS' ANSWER TO PLAINTIFF'S
REQUEST FOR PRODUCTION OF DOCUMENTS

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe and Semmes, Bowen & Semmes, answer the plaintiff's request for production of documents as follows:

1. Defendants object to request no. 1 to the extent that it seeks copies of "all documents relating to the drafting and finalization of the Plan." This request is overbroad, and seeks documents which are irrelevant to the issue of the defendants' advice rendered on August 9, 1984. Without waiving this objection, defendants will produce a copy of the final Catalina Enterprises, Inc. Pension Plan.

2. Defendants refuse to produce the documents sought in request no. 2 as such documents are irrelevant to any of the issues in this case.

3. Defendants have not consulted an expert whom they presently intend to call at the time of trial. If such an expert is consulted, counsel for the plaintiff will be seasonably advised and furnished with a copy of any report rendered.

4. Defendants object to request no. 4 to the extent that it seeks the production of "all documents relating to any advice ever given by you." This request is overbroad, and seeks documents which are irrelevant to the issue of these defendants' advice of August 9, 1984. Without waiving this objection, defendants will produce the documents requested in paragraph no. 4 pertaining to the advice of August 9, 1984, except for any document which may be prepared in anticipation of litigation.

5. Defendants refuse to produce the documents sought in request no. 5 because such documents are irrelevant to any of the issues in this case.

6. Defendants object to request no. 6 to the extent that it seeks the production of "all documents relating to any advice given by you" to the Plan. This request is overbroad, and seeks documents which are irrelevant to the advice of August 9, 1984. Without waiving this objection, the defendants will produce documents requested in paragraph no. 6 which are relevant

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to the advice of August 9, 1984, except for any document which may be prepared in anticipation of litigation.

7. Defendants will produce the document requested in paragraph no. 7.

8. Defendants do not possess the document requested in paragraph no. 8.

9. Defendants will produce the documents requested in paragraph no. 9.

10. Defendants object to request no. 10 to the extent that it requests the production of "any documents prepared for or at the request of or received from, any agency" in that this request seeks the production of documents prepared prior to August 9, 1984. Defendants also object to this request to the extent that it seeks the production of documents prepared for or on behalf of anyone other than the plaintiff. Without waiving these objections, defendants will produce the documents requested in paragraph no. 10 prepared after August 9, 1984 on behalf of the plaintiff only, except for any document which may be prepared in anticipation of litigation.

11. Defendants will produce the documents requested in paragraph no. 11, except for any document which may be prepared in anticipation of litigation.

12. Defendants will produce the documents requested in paragraph no. 12, except for any documents

which may be privileged or made in anticipation of litigation.

13. Defendants object to request no. 13 because it is overly broad and defendants are incapable of formulating an answer thereto.

Daniel W. Whitney

Janet M. Truhe

Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 1988, a copy of the foregoing Defendants' Answer to Plaintiff's Request for Production of Documents was mailed postage prepaid to Lloyd S. Mailman, Esquire and Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.

SEMME, BOWEN
& SEMME
250 W. Pratt Street
Baltimore, MD 21201

*original filed +
copy mailed
6-27-88*

Daniel W. Whitney

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY, et al.

Defendants

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Civil Action No. 88102069/
CL79993

PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO THE STUART HACK COMPANY

Plaintiff, by his attorneys, requests that The Stuart Hack Company produce the following documents pursuant to Rule 2-422.

Definitions

"You" means The Stuart Hack Company, all its officers, directors, employees, servants, agents, and attorneys, and all other persons acting or purporting to act on its behalf.

"Document" means every tangible thing from which information can be obtained, perceived, or reproduced, and includes any written, recorded, or graphic matter, however produced or reproduced and whether or not now in existence, and also includes the original, all file copies, all other copies no matter how prepared, and all drafts prepared in connection with such document, whether used or not, and further includes but is not limited to papers; books; records; catalogs; price lists; pamphlets; periodicals; letters; correspondence; scrap books; note books; bulletins; circulars; forms; notices; post cards; telegrams; deposition transcripts; contracts; agreements; leases; reports; studies; working papers; charts; proposals; graphs; sketches; diagrams; indexes; maps; analyses; statistical records; reports; results of investigations; reviews; ledgers; journals; balance sheets; accounts; books of accounts; invoices; vouchers; purchase orders; receipts; expense accounts; cancelled checks; bank checks; statements; sound and tape recordings; videotapes; computer disks; electrical recordings; magnetic recordings; memoranda (including any type or form of notes, memoranda, or sound recordings of personal thoughts, recollections, or reminders, or of telephone or other conversations, or of acts, activities, agreements, meetings, or conferences); photostats; microfilms; instruction lists or forms; computer printouts or other computed data; minutes of director or committee meetings; inter-office or intra-office communications; diaries; calendar on desk pads; stenographers' notes; appointment books; and other

papers or matters similar to any of the foregoing, however denominated, whether or not received by you or prepared by you for your own use or transmittal. If a document has been prepared in several copies or additional copies have been made, and the copies are not identical (or, by reason of subsequent modification or notation, are no longer identical), each nonidentical copy is a separate "document."

"Person" includes the plural as well as the singular and shall mean any natural person, partnership, firm, association, corporation, business, joint venture, government or government agency, or any other form of private or public entity.

"Shofer" means Richard Shofer, plaintiff.

"Catalina" means Catalina Enterprises, Inc.

"Crown" means Crown Motors.

"Plan" means the Catalina Enterprises, Inc. Pension Plan.

Instructions

A. Should you object to the production of any document or documents requested on the basis of any alleged privilege or immunity from discovery, please list in your written response to this request all such documents in chronological order, setting forth as to each the following information:

- (1) Date;
- (2) Author;
- (3) Addressee;
- (4) Title;
- (5) Type of document (e.g., letter, report, memorandum, etc.);
- (6) Subject matter (without revealing the information as to which privilege or immunity is claimed or objection made);
- (7) Basis for the claim of privilege, immunity or objection; and

(8) Identity of all persons to whom copies of such documents were sent.

B. If any document in response to this request was, but no longer is, in your possession, custody or control, please furnish a description of each such document and indicate the manner and circumstances under which it left your possession, custody or control, and its present whereabouts, if known.

C. Any request for production listed herein shall be construed to include any supplemental information, knowledge, data or documents responsive to these requests for production that are later discovered by you, your agents or attorneys.

Documents To Be Produced

1. All documents relating to the drafting and finalization of the Plan.

2. All documents relating to any advice ever given by you to, or work ever done by you for, any participant in the Plan other than Shofer.

3. Any written report of an expert of yours expected to testify at trial.

4. All documents relating to any advice ever given by you to, or work ever done by you for, Shofer as a participant in the Plan.

5. All documents relating to any advice given by you to, or work ever done by you for, Catalina or Crown.

6. All documents relating to any advice given by you to, or work ever done by you for, the Plan.

7. A resume or curriculum vitae of Stuart Hack, current as of the date of your response to these requests.

8. A resume or curriculum vitae of Stuart Hack,

current as of August 9, 1984.

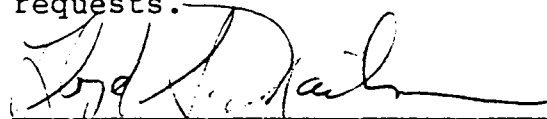
9. Copies of any insurance policies carried by you that may cover the wrongs alleged in the Complaint.

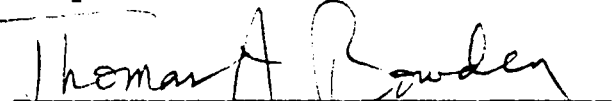
10. Any documents prepared for or at the request of, or received from, any agency, such as the federal government or Internal Revenue Service, regarding Shofer, Crown, Catalina, the Plan, or any participant in the Plan.

11. All documents relating to Judith Reed's memorandum of December 16, 1986.

12. All documents relating to Stuart Hack's letter of August 9, 1984.

13. All documents relating in any way to Shofer, Crown, Catalina, the Plan, or any of the Plan's participants not requested in any other of these requests.


Lloyd S. Mailman


Thomas A. Bowden
Blum, Yumkas, Mailman, Gutman &
Denick, P.A.
1200 Mercantile Bank & Trust
Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000

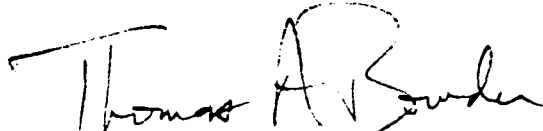
CERTIFICATE OF SERVICE

I CERTIFY that on this 15th day of June, 1988, a copy of this Plaintiff's Request for Production of Documents Directed

to the Stuart Hack Company was mailed first class, postage pre-
paid to:

Janet M. Truhe, Esquire
Daniel W. Whitney, Esquire
Semmes, Bowen & Semmes, P.A.
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendant.


Thomas A. Bowden

RICHARD SHOFR

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*

* * * * *

ANSWER TO COMPLAINT

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe and Semmes, Bowen & Semmes, in answer to the Complaint and each and every Count thereof, says:

FIRST DEFENSE

1. The defendants generally deny liability and generally deny the plaintiff's allegations.

SECOND DEFENSE

2. Plaintiff is barred by limitations.

THIRD DEFENSE

3. The plaintiff has failed to state a claim upon which relief can be granted.

Daniel W. Whitney
Daniel W. Whitney

SEMME, BOWEN
& SEMME
850 W. Pratt Street
Baltimore, Md. 21201

RICHARD SHOFER
216 St. Dunstan's Road
Baltimore, Maryland 21212

Plaintiff

v.

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209

Serve on: Stuart Hack
4623 Falls Road
Baltimore, MD 21209

-and-

STUART HACK
11 Pemberly Lane
Reistertown, Maryland 21136

Defendants

IN THE
CIRCUIT COURT

FOR

BALTIMORE CITY

Civil Action No.

RECEIVED
MAY 16 1988
MICHAEL CARROLL

COMPLAINT

Richard Shofer, plaintiff, by Lloyd S. Mailman, Thomas A. Bowden, and Blum, Yumkas, Mailman, Gutman & Denick, P.A., sues The Stuart Hack Company, a Maryland corporation, and Stuart Hack, defendants, and for his cause of action states as follows:

Facts Common to All Counts

1. The Stuart Hack Company is a corporation organized under the law of Maryland which holds itself out as professional actuaries and consultants who provide professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

2. Stuart Hack is an attorney licensed to practice in Maryland and is an employee of the Stuart Hack Company and holds

himself out as a professional actuary and consultant who provides professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

3. Richard Shofer ("Shofer") is the sole stockholder and president of Catalina Enterprises, Inc. t/a Crown Motors ("Catalina").

4. Catalina Enterprises, Inc. Pension Plan (the "Plan") is a qualified pension plan established by defendants in 1971 for employees of Catalina.

5. At all relevant times, Shofer was the Plan's sole trustee.

6. From 1971 through 1985, The Stuart Hack Company prepared certain of the Plan's annual federal returns, as well as its statements to participants.

7. During the course of their relationship with Catalina, Shofer, and the Plan, defendants held themselves out as expert in the tax aspects of pension planning and frequently rendered advice in this area.

8. Based on this course of dealing and on defendants' representations as to their expertise, Shofer reasonably expected that any possible tax consequences resulting from their advice would be brought to his attention by defendants.

9. By December 31, 1983, Shofer had accumulated \$209,415.95 in his own voluntary account in the Plan.

10. At some time prior to August 9, 1984, Shofer sought defendants' advice as to whether it would be advisable to

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MAY 16 1988
MICHAEL CARROLL

borrow money from the Plan or to use the Plan's assets as collateral for a loan.

11. Defendants responded with an opinion letter dated August 9, 1984, stating that Shofer could borrow up to 100% of his voluntary account and making no mention of any tax consequences of such a transaction.

12. Reasonably relying on this advice, and not knowing or suspecting that a loan advance could be taxed as income, Shofer proceeded to borrow \$200,000.00 from his voluntary account in the Plan in 1984, \$80,000.00 in 1985, and \$35,000.00 in 1986.

13. Because these borrowings were in fact taxable to Shofer as income, Shofer incurred substantial federal and state tax liabilities as a result of these transactions.

14. Shofer has also incurred expenses for accountants, pension consultants, and other professionals to rectify his tax filings.

15. If he had been properly advised by defendants as to the tax consequences of these transactions, Shofer would not have borrowed from his voluntary account in the Plan.

16. The Stuart Hack Company continued to render incorrect advice concerning the loan transactions as late as December 16, 1986, when The Stuart Hack Company issued a memorandum attempting to persuade Shofer's accountants that the risk of tax liability was very low.

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MAY 16 1988
MICHAEL CARROLL

))
COUNT I
(Negligence)

17. Plaintiff incorporates paragraphs 1 through 16 in this count.

18. At all times relevant to the allegations of this Complaint, defendants held themselves out to the public in general, and represented themselves to Shofer in particular, as possessing that degree of knowledge, experience, skill, and judgment in the area of advising as to the tax consequences of transactions involving voluntary accounts in pension funds that was to be expected of a reasonably competent actuary and consultant in such business in Maryland in 1984.

19. Defendants owed a duty of reasonable care to Shofer to provide him with reasonably competent advice as to the tax consequences of borrowing from his voluntary account in the Plan.

20. Defendants breached their duty to Shofer by advising him that he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have known and advised Shofer he could not legally do so.

21. As a direct and proximate result of the acts and omissions of defendants Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

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MAY 16 1988

MICHAEL CARROLL

121

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT II
(Breach of contract)

22. Plaintiff incorporates paragraphs 1 through 21 in this count.

23. Shofer hired defendants to provide Shofer with expert and reasonably competent advice as to the tax consequences of borrowing from Shofer's voluntary account in the Plan.

24. Defendants breached that contract by, among other things, neglecting to inform Shofer that his borrowings against his voluntary account would cause him to incur tax and other liabilities.

25. As a direct and proximate result of the acts and omissions of defendants, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) com-

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MAY 16 1988
MICHAEL CARROLL

pensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT III
(Breach of fiduciary duty)

26. Plaintiff incorporates paragraphs 1 through 25 in this count.

27. Defendants represented to Shofer that Shofer was justified in reposing special trust and confidence in the expertise and competence of defendants in matters relating to the tax consequences of withdrawals from voluntary pension accounts, and invited Shofer to enter into a special relationship.

28. Shofer relied upon the representation of defendants that defendants possessed special expertise and knowledge, and Shofer reposed special trust and confidence in defendants to advise Shofer as to the tax consequences of borrowing from his voluntary account in the Plan.

29. As a result of the relationship of special trust and confidence between defendants and Shofer, as alleged herein, defendants owed Shofer a fiduciary duty.


30. Defendants breached that duty to Shofer by advising him he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have advised Shofer he could not do so.

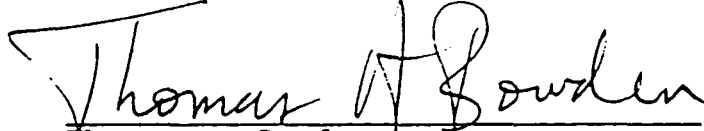
31. As a direct and proximate result of the acts and

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MAY 10 1988
MICHAEL CARROLL

omissions of defendants, as alleged herein, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages and Two Hundred Fifty Thousand Dollars (\$250,000.00) punitive damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.


Lloyd S. Mailman


Thomas A. Bowden
Blum, Yumkas, Mailman, Gutman &
Denick, P.A.
1200 Mercantile Bank & Trust
Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201

Attorneys for Plaintiff

RECEIVED
MAY 16 1988
MICHAEL CARROLL

LAW OFFICES

BLUM, YUMKAS, MAILMAN, GUTMAN & DENICK, P. A.

1200 MERCANTILE BANK & TRUST BUILDING

2 HOPKINS PLAZA

BALTIMORE, MARYLAND 21201-2914

(301) 385-4000

FAX (301) 385-4070

WRITER'S DIRECT DIAL

(301) 385-4000

May 16, 1988

Clerk
Circuit Court for Baltimore
City
Civil Section
Room 462, Courthouse East
Baltimore, Maryland 21202

Re: Richard Shofer v. The Stuart Rack Company, et al.

C

Dear Clerk:

O

Enclosed please find an Amended Complaint to be filed
in the above-referenced case.

P

Very truly yours,

Thomas A. Bowden

Y

TAB/aea
Enclosure
15WD6:L37

✓ cc: Mr. Richard Shofer

RICHARD SHOFER
216 St. Dunstan's Road
Baltimore, Maryland 21212

Plaintiff

v.

THE STUART HACK COMPANY
4623 Falls Road
Baltimore, Maryland 21209

Serve on: Stuart Hack
4623 Falls Road
Baltimore, MD 21209

-and-

STUART HACK
11 Pemberly Lane
Reistertown, Maryland 21136

Defendants

IN THE
CIRCUIT COURT

FOR

BALTIMORE CITY

Civil Action No. 88102069/
CL79993

AMENDED COMPLAINT

Richard Shofer, plaintiff, by Lloyd S. Mailman, Thomas A. Bowden, and Blum, Yumkas, Mailman, Gutman & Denick, P.A., files this Amended Complaint.

Facts Common to All Counts

1. The Stuart Hack Company is a corporation organized under the law of Maryland which holds itself out as professional actuaries and consultants who provide professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

2. Stuart Hack is an attorney licensed to practice in Maryland and is an employee of the Stuart Hack Company and holds

himself out as a professional actuary and consultant who provides professional advice to trustees and beneficiaries of pension plans as to the proper use of assets of such plans.

3. Richard Shofer ("Shofer") is the sole stockholder and president of Catalina Enterprises, Inc. t/a Crown Motors ("Catalina").

4. Catalina Enterprises, Inc. Pension Plan (the "Plan") is a qualified pension plan established by defendants in 1971 for employees of Catalina.

5. At all relevant times, Shofer was the Plan's sole trustee.

6. From 1971 through 1985, The Stuart Hack Company prepared certain of the Plan's annual federal returns as well as its statements to participants.

7. During the course of their relationship with Catalina, Shofer, and the Plan, defendants held themselves out as expert in the tax aspects of pension planning and frequently rendered advice in this area.

8. Based on this course of dealing and on defendants' representations as to their expertise, Shofer reasonably expected that any possible tax consequences resulting from their advice would be brought to his attention by defendants.

9. By December 31, 1983, Shofer had accumulated \$209,415.95 in his own voluntary account in the Plan.

10. At some time prior to August 9, 1984, Shofer sought defendants' advice as to whether it would be advisable to

borrow money from the Plan or to use the Plan's assets as collateral for a loan.

11. Defendants responded with an opinion letter dated August 9, 1984, stating that Shofer could borrow up to 100% of his voluntary account and making no mention of any tax consequences of such a transaction.

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13. Because these borrowings were in fact taxable to Shofer as income, Shofer incurred substantial federal and state tax liabilities as a result of these transactions.

14. Shofer has also incurred expenses for accountants, pension consultants, and other professionals to rectify his tax filings.

15. If he had been properly advised by defendants as to the tax consequences of these transactions, Shofer would not have borrowed from his voluntary account in the Plan.

16. The Stuart Hack Company continued to render incorrect advice concerning the loan transactions as late as December 16, 1986, when The Stuart Hack Company issued a memorandum attempting to persuade Shofer's accountants that the risk of tax liability was very low.

COUNT I
(Negligence)

17. Plaintiff incorporates paragraphs 1 through 16 in this count.

18. At all times relevant to the allegations of this Complaint, defendants held themselves out to the public in general, and represented themselves to Shofer in particular, as possessing that degree of knowledge, experience, skill, and judgment in the area of advising as to the tax consequences of transactions involving voluntary accounts in pension funds that was to be expected of a reasonably competent actuary and consultant in such business in Maryland in 1984.

19. Defendants owed a duty of reasonable care to Shofer to provide him with reasonably competent advice as to the tax consequences of borrowing from his voluntary account in the Plan.

20. Defendants breached their duty to Shofer by advising him that he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have known and advised Shofer he could not legally do so.

21. As a direct and proximate result of the acts and omissions of defendants Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT II
(Breach of contract)

22. Plaintiff incorporates paragraphs 1 through 21 in this count.

23. Shofer hired defendants to provide Shofer with expert and reasonably competent advice as to the tax consequences of borrowing from Shofer's voluntary account in the Plan.

24. Defendants breached that contract by, among other things, neglecting to inform Shofer that his borrowings against his voluntary account would cause him to incur tax and other liabilities.

25. As a direct and proximate result of the acts and omissions of defendants, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

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pensatory damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT III
(Breach of fiduciary duty)

26. Plaintiff incorporates paragraphs 1 through 25 in this count.

27. Defendants represented to Shofer that Shofer was justified in reposing special trust and confidence in the expertise and competence of defendants in matters relating to the tax consequences of withdrawals from voluntary pension accounts, and invited Shofer to enter into a special relationship.

28. Shofer relied upon the representation of defendants that defendants possessed special expertise and knowledge, and Shofer reposed special trust and confidence in defendants to advise Shofer as to the tax consequences of borrowing from his voluntary account in the Plan.

29. As a result of the relationship of special trust and confidence between defendants and Shofer, as alleged herein, defendants owed Shofer a fiduciary duty.

30. Defendants breached that duty to Shofer by advising him he could borrow up to 100% of his voluntary account in the Plan without incurring tax liability, when a reasonably competent actuary and professional in this area would have advised Shofer he could not do so.

31. As a direct and proximate result of the acts and

omissions of defendants, as alleged herein, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountant's fees, and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages and Two Hundred Fifty Thousand Dollars (\$250,000.00) punitive damages, plus prejudgment interest; his costs in this case, including a reasonable attorney's fee; and such other and further relief as justice may require.

COUNT IV
(ERISA)

32. Plaintiff incorporates paragraphs 1 through 31 in this count.

33. Under the terms of the Plan, Catalina as administrator had the power, duty and responsibility to resolve and determine all disputes or questions arising under the Plan, including determination of the rights of participants.

34. Under the terms of the Plan, fiduciaries of Catalina were required to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

35. Hack and The Stuart Hack Company were at all relevant times retained by Catalina under the terms the Plan and therefore charged with the fiduciary duties imposed under the Plan.

36. Shofer was at all relevant times a participant under the Plan and therefore was entitled to the benefit of the fiduciary obligations imposed by the Plan on Hack and The Stuart Hack Company.

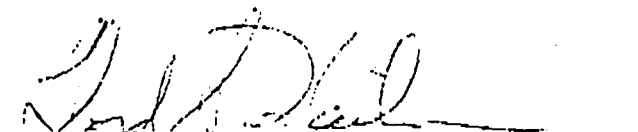
37. The advice at issue in this case, rendered by Hack and The Stuart Hack Company, was rendered in violation of the fiduciary duties imposed on Hack and The Stuart Hack Company by the Plan.

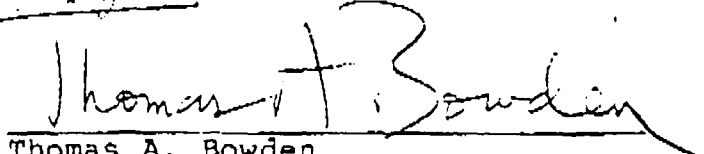
38. A civil cause of action by a participant in a plan to enforce his rights under the plan is provided by 29 U.S.C.A. § 1132.

39. As a direct and proximate result of the Acts and omissions of defendants, as alleged herein, Shofer has incurred, and will in the future incur additional tax, interest, penalties, attorney's fees, accountants' fees and other expenses he would otherwise not have incurred.

WHEREFORE, plaintiff Richard Shofer demands judgment against defendants The Stuart Hack Company and Stuart Hack in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) compensatory damages plus prejudgment interest; his costs in this case, including a reasonable attorney's fee pursuant to

29 U.S.C.A. 1132(g); and such other and further relief as justice may require.


Lloyd S. Mailman

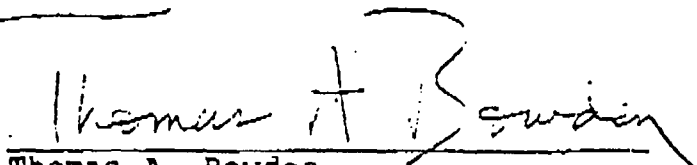

Thomas A. Bowden
Blum, Yumkas, Mailman, Gutman & Denick, P.A.
1200 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
Attorneys for Plaintiff

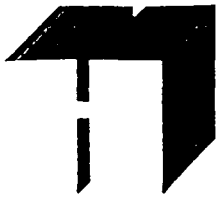
CERTIFICATE OF SERVICE

I CERTIFY that on this 15th day of May, 1988, a copy of this Amended Complaint was mailed first class, postage prepaid to:

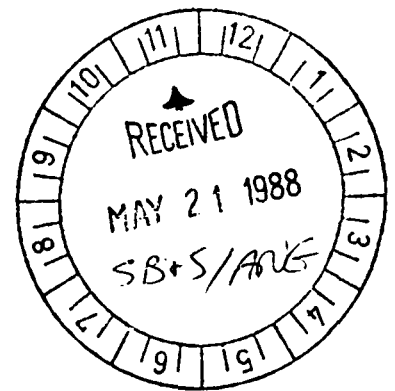
Stuart Hack, Resident Agent
The Stuart Hack Company
4623 Falls Road
Baltimore, Maryland 21209

Stuart Hack
11 Pemberly Lane
Reisterstown, Maryland 21136


Thomas A. Bowden



THE STUART HACK COMPANY
Consultants & Actuaries



May 2, 1988

Stuart Hack, J.D., C.L.U.
Marianne Dubos, M.Ed., M.B.A., J.D.
Alan Vandendriessche
Donna Barnham Welsh

Ms. Rhoda C. James
Sr. Claims Representative
Crum & Forster Managers Corporation
200 S. Wacker Drive
Chicago, Illinois 60606

RECEIVED
MAY 1 1988
MICHAEL CARROLL

Reference: Catalina Enterprises/Richard Shofer
Claim # CBD 80001282

Dear Ms. James:

Enclosed is the original of a complaint and summons. It requires a response within 30 days.

This is a duplicate of the complaint and summons received by me at The Stuart Hack Company 4623 Falls Road address, the original of which was forwarded to you on April 29, 1988.

Sincerely,

Stuart Hack

SH:cs
Enclosure

cc: Mr. Steven R. Cohen
Cal-Surance Associates, Inc.
(National Union Fire Insurance Company)
Ms. Cynthia L. Lesane
The CIMA Companies, Inc.
(American Empire Surplus Lines Insurance Company)
David Rudow, Esq.

LAW OFFICES
BLUM, YUMKAS, MAILMAN, GUTMAN & DENICK, P. A.
1200 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

(301) 539-4151

April 22, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
"RESTRICTED DELIVERY - SHOW TO
WHOM, DATE, ADDRESS OF DELIVERY"

RECEIVED
MAY 10 1988
MICHAEL CARROLL

Mr. Stuart Hack
11 Pemberly Land
Reisterstown, Maryland 21136

Re: Richard Shofer v. The Stuart Hack Company, Inc.
and Stuart Hack
Case No.: 88102069

Dear Mr. Hack:

Enclosed please find a Complaint and Summons in the
above-referenced case.

Please note that you must file a response within 30
days. You should forward these papers immediately to your attorney.

Very truly yours,


Thomas A. Bowden

TAB/aes
Enclosure
15WD13C:L76

IN THE CIRCUIT COURT FOR BALTIMORE CITY

FILED

MAY 18 1989

19

RICHARD SHOFRER,

Plaintiff

v.

THE STUART HACK COMPANY,
et al.,

Defendants

* * * *

THE STUART HACK COMPANY,
et al.,

Third Party
Plaintiffs

v.

GRABUSH, NEWMAN & CO., P.A.,

Third Party
Defendant

* * * * *

ANSWER TO THIRD PARTY CLAIM

Defendant, Grabush, Newman & Co., P.A., by its attorneys, Linda M. Schuett and John J. Ryan, answers the Third Party Claim filed by Defendants, The Stuart Hack Company and Stuart Hack, as follows:

I.

The Third Party Claim fails to state a claim upon which can be granted.

II.

Grabush, Newman & Co. generally denies liability for the

claims made in the Third Party Claim.

III.
(Affirmative Defenses)

1. Defendants assumed all risks associated with the advice given by them to Plaintiff, as alleged in Plaintiff's Complaint.

2. Defendants are estopped to assert any claims against Third Party Defendant.

3. Defendants' Third Party Claim is barred by the statute of limitations.

4. Defendants have waived any and all potential claims against Third Party Defendant.

5. Third Party Defendant's actions were privileged.

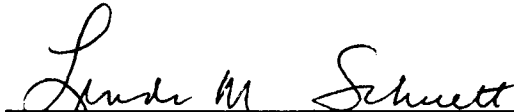
IV.
(Specific Admissions/Denials)

1. The allegations of paragraphs 1, 2, and 3 do not require a specific admission or denial. Third Party Defendant states that the Complaint, Answers to Interrogatories, and other allegations contained in pleadings speak for themselves. To the extent that any of these paragraphs require a specific admission or denial, Third Party Defendant denies them.

2. Third Party Defendant denies the allegations of paragraphs 4 and 5.

3. Third Party Defendant vehemently denies any liability whatsoever for indemnity or contribution, counsel fees, expenses, or interest. Third Party Defendant denies all remaining allegations of paragraph 6.

4. Third Party Defendant admits that a copy of the Plaintiff's Complaint was attached to the Third Party Claim. Third Party Defendant is without sufficient information to admit or deny the remaining allegations of paragraph 7 and, therefore, these allegations are denied.



Linda M. Schuett
John J. Ryan
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

CERTIFICATE OF SERVICE

I CERTIFY on this 18th day of May, 1989 that a copy of the foregoing Answer to Third Party Claim was mailed, postage pre-paid, to:

Janet M. Truhe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Lloyd S. Mailman, Esquire
Thomas A. Bowden, Esquire
Blum, Yumkas, Mailman, Gutman
& Denick, P.A.
1200 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201


Linda M. Schuett

Circuit Court for Baltimore City
Saundra E. Banks, Clerk
111 N. Calvert St. - Room 462
Baltimore, Md. 21202

WRIT OF SUMMONS

Case Number 88102069/CL79993

STATE OF MARYLAND,

CITY OF BALTIMORE TO WIT:

THIRD PARTY COMPLAINT
PRIVATE PROCESS

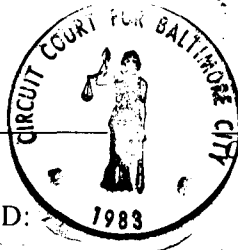
TO: Grabush, Newman & Co., P. A.
Serve On: Barry Bondroff, President
515 Fairmount Avenue
Suite 400
Baltimore, Maryland 21204

You are hereby summoned to file a written response by pleading or motion in this Court to the attached
Complaint filed by The Stuart Hack Company, etal
4623 Falls Road, Baltimore, Maryland 21209 (Name & Address)

within 30 days after service of this summons upon you.

WITNESS the Honorable Chief Judge of the Eighth Judicial Circuit of Maryland.

Date Issued 4/19/89



Saundra E. Banks
CLERK

TO THE PERSON SUMMONED:

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF'S RETURN

Person Served _____	Time _____	Date _____
Person Served _____	Time _____	Date _____
Non Est (Reason) _____		
Fee \$ _____	Sheriff _____	

NOTE:

1. This summons is effective for service only if served within 60 days after the date it is issued
2. Proof of service shall set out the name of the person served, date and the particular place and manner of service. If service is not made, please state the reasons.
3. Return of served or unserved process shall be made promptly and in accordance with Rule 2-126.
4. If this summons is served by private process, Process server shall file a separate affidavit as required by Rule 2-126 (a).

140 *SB*

RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*

20
JD

FILED

AUG 22 1989

CIRCUIT COURT FOR
BALTIMORE CITY

* * * * *

PLAINTIFF'S FIRST REQUESTS FOR ADMISSION

Plaintiff, by his attorneys, directs the following requests for admission to Stuart Hack and The Stuart Hack Company, Defendants, pursuant to Rule 2-424.

Definitions

"You" means Stuart Hack.

The "Company" means The Stuart Hack Company, all its officers, directors, employees, servants, agents, and attorneys, all its predecessors and successors, and all other persons acting or purporting to act on its behalf.

The "Letter" means the letter dated August 9, 1984 (attached as Exhibit A) from you to Richard Shofer.

The "Reed Memo" means the memorandum dated December 16, 1986 from Judith Reed to you.

"Governing Law" means all applicable statutes, regulations, and other laws applying to the Plan during the month of August, 1984, unless otherwise noted.

The "Code" means the Internal Revenue Code as it was in force during the month of August, 1984, unless otherwise noted.

"Section 72(p)" means Section 72(p) of the Code.

"Shofer" means Richard Shofer, Plaintiff.

The "Plan" means the Catalina Enterprises, Inc. Pension Plan in all of its various forms, from its inception to the present.

141

The "Plan Documents" means the plan documents of the Catalina Enterprises, Inc. Pension Plan in all of its various forms, from its inception to the present.

The "Restated Plan" means the Plan in all its various forms including and following the 1984 Amending Restatement.

The "Original Plan" means the Plan in all its various forms from its inception but prior to the Restated Plan.

The "Voluntary Account" means Shofer's voluntary account in the Plan.

The "Employer Account" means Shofer's employer account in the Plan.

"Plan Loan" means a loan transaction in which a participant, such as Shofer, receives cash from the Plan and the Plan uses as collateral the participant's account(s) in the Plan.

"Third-Party Loan" means a loan transaction in which a participant, such as Shofer, receives cash from a third-party lender who accepts as collateral the participant's account(s) in the Plan.

PLEASE NOTE: All page and line citations refer to your deposition testimony unless otherwise noted.

Instructions

1. Each of the matters listed below shall be deemed admitted unless, within 30 days after service of these requests, a response is filed.
2. Each response shall contain one of the following:
 - a. An admission of the truth of the statement or the genuineness of the documents
 - b. A denial of the truth of the statement or the genuineness of the documents (however, please note: A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and deny or qualify the remainder.)
 - c. An objection to the request for admission, along with the reasons for the objection (however, please note: An assertion that the matter of which an admission is requested presents a genuine

issue for trial may not constitute the sole reason for objecting to a request), or

- d. A declaration that the truth of the statement or the genuineness of the documents cannot be truthfully admitted, along with detailed reasons for the declaration. (Please note: Lack of information or knowledge may not be given as a reason for the failure to admit or deny unless the responding party states in the response that after reasonable inquiry the information known or readily obtainable by the responding party is insufficient to enable the responding party to admit or deny.)

Requests for Admission

PLEASE ADMIT THE GENUINENESS OF THE FOLLOWING DOCUMENTS:

1. Each exhibit (numbered H-1 through H-19) introduced into evidence during the first two sessions of your deposition.
2. The letter dated August 9, 1984, signed by you and attached as Exhibit A.

PLEASE ADMIT THE TRUTH OF THE FOLLOWING FACTS:

3. The text of Exhibit B (attached) contains the language of Section 72(p) of the as it was in effect during the month of August, 1984.

4. You composed the language of the Letter.
5. No one helped you draft the language of the Letter.
6. The Letter was mailed to Shofer via first class U.S. mail.
7. The Letter was sent to Shofer on August 9, 1984.
8. You did not show the text of the Letter or any draft to anyone (other than secretarial or clerical help) prior to mailing it to Shofer.
9. One of your purposes in the Letter was to respond to a specific request from Shofer for your opinion of the personal tax

implications of one or more contemplated loan transactions.

10. A "money purchase pension plan" is a type of pension plan in which the employer makes annual deposits to the plan in a nondiscretionary amount, and these deposits are allocated into accounts for eligible employees in a predetermined nondiscriminatory fashion.

11. Page 167, Line 11 refers to a Plan Loan.

12. On Page 167, Lines 12-13, the phrase "put up his voluntary account as collateral and make a loan against it" refers to a Third-Party Loan.

13. Page 169, Lines 2-3 refer to a Plan Loan.

14. Page 169, Line 14 refers to a Plan Loan.

15. Page 169, Lines 15-16 refer to a Third-Party Loan.

16. Page 184, Lines 13-15 refer to a Third-Party Loan.

17. Page 184, Line 16 refers to a Plan Loan.

18. In Paragraph 1 of the Letter, the term "be used as collateral for loans" refers to a Third-Party Loan transaction.

19. In Paragraph 1 of the Letter, the term "borrow against these plans" refers to a Plan Loan transaction.

20. In Paragraph 2, Sentence 2 of the Letter, the term "be put up as collateral for a loan" refers to a Third-Party Loan transaction.

21. In Paragraph 2, Sentence 2 of the Letter, the term "loans to participants against their employer account" refers to a Plan Loan transaction.

22. In Paragraph 2, Sentence 3 of the Letter, the term "loans against an employer account" refers to a Plan Loan

transaction.

23. In Paragraph 3, Sentence 2 of the Letter, the term "borrowed against the account" refers to a Plan Loan transaction.

24. In Paragraph 3, Sentence 3 of the Letter, the term "loan against the voluntary account" refers to a Plan Loan transaction.

25. Paragraph 3, Sentence 4 of the Letter refers to a Third-Party Loan transaction.

26. Paragraph 4, Sentence 1 of the Letter refers to a Third-Party Loan transaction.

27. Paragraph 4, Sentence 2 of the Letter refers to a Third-Party Loan transaction.

28. In Paragraph 4, Sentence 4 of the Letter, the phrase "use your voluntary account as collateral for a loan" refers to a Third-Party Loan transaction.

29. In Paragraph 4, Sentence 4 of the Letter, the phrase "borrow up to 100% of your voluntary account" refers to a Plan Loan transaction.

30. Paragraph 1 of the Letter does not recite all of the questions Shofer asked you in your telephone conversations during the week prior to August 9, 1984.

31. In writing the Letter, your main concern was to inform Shofer of any tax, legal, or economic problems that would arise upon Shofer's making a Plan Loan or a Third-Party Loan.

32. In Paragraph 1, Sentence 1, the word "can" is meant to convey the concept of Shofer's ability to engage in the designated transactions without encountering tax, legal, or economic

problems.

33. In Paragraph 1, Sentence 1, the word "can" is not meant to convey the concept of Shofer's legal right to engage in the designated transactions.

34. In the Letter, the term "voluntary account" referred to the account labeled "Employee Voluntary" under the name "SHOFER, R." in the table called "Allocation Summary for all Participants in the CATALINA ENTERPRISES, INC. PENSION PLAN" in the Annual Statement issued by the Company for the plan year ending December 31, 1983.

35. In the Letter, the term "employer account" referred to the account labeled "Employer Account" under the name "SHOFER, R." in the table called "Allocation Summary for all Participants in the CATALINA ENTERPRISES, INC. PENSION PLAN" in the Annual Statement issued by the Company for the plan year ending December 31, 1983.

36. Section 72(p) contained no distinction between voluntary accounts and employer accounts.

37. The Code contained no distinction between voluntary accounts and employer accounts that was relevant to the issues you intended to address in the Letter.

38. Governing Law contained no distinction between voluntary accounts and employer accounts that was relevant to the issues you intended to address in the Letter.

39. The reference in Section 72(p)(1)(A) to "a qualified employer plan" included both the Voluntary Account and the Employer Account.

40. In Paragraph 2, Sentence 2, the phrase "up to a maximum of five years (for a longer period of time if used for the purchase or substantial improvement to a primary residence)" was intended to refer to requirement found in Section 72(p)(2)(B) that no loan shall be eligible for the exception under Section 72(p)(2)(A) unless the loan, by its terms, is required to be repaid within five years.

41. You did not read any portion of Section 72(p) for the purpose of preparing, drafting, or finalizing the Letter.

42. The language in Paragraph 2, Sentence 2 of the Letter does not convey the idea that, in order not to be taxable as a distribution, any loan (other than the designated home loans) should, by its terms, be required to be repaid within five years.

43. The language in Paragraph 2, Sentence 2 of the Letter does not convey the idea that Shofer should concern himself with ensuring that any particular loan should, by its terms, be required to be repaid within five years.

44. With regard to the collateral in addition to the account value referred to in Paragraph 2, Sentence 3, a promissory note is usually adequate collateral.

45. With regard to the collateral in addition to the account value referred to in Paragraph 2, Sentence 3, a promissory note would have constituted adequate collateral for the loan transactions about which you were advising Shofer.

46. Paragraph 3, Sentence 1 of the Letter is incorrect.

47. Paragraph 3, Sentence 1 of the Letter had no basis in Section 72(p).

48. Paragraph 3, Sentence 1 of the Letter had no basis in the Code.

49. Paragraph 3, Sentence 1 of the Letter had no basis in Governing Law.

50. The five-year repayment requirement of Section 72(p)(2)(B) applied to loans from the Voluntary Account as well as the Employer Account.

51. To the extent that Paragraph 3, Sentence 2 of the Letter conveys the idea that the five-year repayment requirement of Section 72(p)(2)(B) did not apply to loans involving the Voluntary Account, that sentence was incorrect.

52. To the extent that Paragraph 3, Sentence 3 of the Letter conveys the idea that the Employer Account could not stand as collateral in a Plan Loan transaction but that the Voluntary Account could, that sentence was incorrect.

53. To the extent that Paragraph 3, Sentence 4 of the Letter conveys the idea that the Employer Account could not be put up as collateral in a Third-Party Loan transaction but that the Voluntary Account could, that sentence was incorrect.

54. Paragraph 3, Sentence 5 of the Letter had no basis in Section 72(p).

55. Paragraph 3, Sentence 5 of the Letter had no basis in the Code.

56. Paragraph 3, Sentence 5 of the Letter had no basis in Governing Law.

57. Paragraph 4, Sentence 1 of the Letter had no basis in Section 72(p).

58. Paragraph 4, Sentence 1 of the Letter had no basis in the Code.

59. Paragraph 4, Sentence 1 of the Letter had no basis in Governing Law.

60. To the extent that Paragraph 4, Sentence 2 of the Letter conveys the idea that no adverse tax consequences would flow from the use of part or all of the Voluntary Account as collateral for a loan, that sentence is incorrect.

61. The Letter does not mention any tax consequences that might affect Shofer if he were to make any of the loan transactions contemplated in the Letter.

62. The Letter does not mention any adverse tax consequences that might affect Shofer if he were to make any of the loan transactions contemplated in the Letter.

63. Neither you nor the Company ever advised Shofer in August of 1984 about any tax consequences, adverse or otherwise, that would flow from engaging in any of the types of loan transactions discussed in the Letter.

64. Paragraph 4, Sentence 3 of the Letter had no basis in Section 72(p).

65. Paragraph 4, Sentence 3 of the Letter had no basis in the Code.

66. Paragraph 4, Sentence 3 of the Letter had no basis in Governing Law.

67. Paragraph 4, Sentence 3 of the Letter is incorrect.

68. With respect to the opinion rendered in Paragraph 4, Sentence 4 of the Letter, you foresaw that Shofer might rely on

that opinion in entering into future loan transactions.

69. Neither you nor the Company ever advised Shofer, orally or in writing, to consult with you in the event that he decided to enter into any of the types of loan transactions discussed in the Letter.

70. To the extent that Paragraph 4, Sentence 5 of the Letter conveys the idea that a loan repayment period of more than five years is permissible under Section 72(p) so long as the payback period is "reasonable," that sentence is incorrect.

71. To the extent that Paragraph 4, Sentence 5 of the Letter conveys the idea that a loan repayment period of more than five years is permissible under the Code so long as the payback period is "reasonable," that sentence is incorrect.

72. To the extent that Paragraph 4, Sentence 5 of the Letter conveys the idea that a loan repayment period of more than five years is permissible under Governing Law so long as the payback period is "reasonable," that sentence is incorrect.

73. To the extent that Paragraph 4, Sentence 5 of the Letter conveys the idea that a loan repayment period of more than five years is consistent with the obtaining of an exception to distribution treatment under Section 72(p)(2)(A) and (B), that sentence is incorrect.

74. You never mentioned in the Letter any danger that the contemplated loan transactions might be construed as prohibited transactions under ERISA.

75. Neither you nor the Company ever mentioned to Shofer at any time during 1984 that the types of loan transactions dis-

cussed in the letter might be construed as prohibited transactions under ERISA.

76. Neither you nor the Company ever drew Shofer's attention in August, 1984 to any provisions of the Plan Documents that might have affected his decision to enter into the types loan transactions discussed in the Letter.

77. Neither you nor the Company ever drew Shofer's attention in August, 1984 to any provisions of the Plan Documents that might have clarified the technical requirements (such as required payback period) for the loan transactions discussed in the Letter.

78. You knew on August 9, 1984 that the balance in the Voluntary Account exceeded \$200,000.00.

79. During your preparation of the Letter, you did not consult the Plan Documents.

80. On several occasions prior to August 9, 1984, you had advised Shofer of the tax consequences, both adverse and favorable, of contemplated transactions involving the Plan.

81. It would have been reasonable for Shofer to assume in August, 1984, that you would have mentioned in the Letter any adverse tax consequences that would flow from the types of loan transactions discussed in the Letter, if such potential adverse tax consequences existed.

82. You did not attach a copy of Section 72(p) to the Letter.

83. Neither you nor the Company advised Shofer in August, 1984, that the loan transactions discussed in the Letter, if

entered into by Shofer, could possibly lead to the disqualification of the Plan.

84. In reasonable reliance on the advice in the Letter, Shofer could have borrowed his entire balance in the Voluntary Account and \$50,000 in the Employer Account.

85. If Shofer had engaged in the transactions described in the immediately preceding Request, he would have caused an in-service distribution to be made, which is a prohibited transaction under ERISA.

86. Neither you nor the Company advised Shofer in 1984, 1985, or the first half of 1986 as to the proper documentation for the loans discussed in the Letter.

87. Neither you nor the Company ever inquired of Shofer in 1984, 1985, or the first half of 1986 whether he had entered into any of the types of loan transactions discussed in the Letter.

88. In August of 1984 and thereafter, neither you nor the Company ever advised Shofer of any need for promissory notes in connection with the loan transactions discussed in the Letter.

89. Neither you nor the Company examined the Plan's balance sheets in 1985 to determine whether loans to participants had been made by the Plan.

90. Section 72(p) did not prohibit loans to participants above \$50,000.

91. The Code did not prohibit loans to participants above \$50,000.

92. Governing Law in August, 1984 did not prohibit loans to participants above \$50,000.

93. The balance in the Voluntary Account was sufficiently large from 1983 through 1986 that the amount computed at any time during that period pursuant to Section 72(p)(2)(A)(ii)(I) always exceeded \$50,000.

94. Because of the facts stated in the immediately preceding item, the applicable amount of the exception made available to Shofer in Section 72(p)(2)(A) was \$50,000.

95. Section 72(p) deemed as distributions the amount of loans to participants in excess of any amount excepted in Section 72(p)(2).

96. You had sufficient information in the Company's files prior to December 16, 1986 in order to determine the years in which Shofer borrowed money from the Voluntary Account and the yearly totals of such borrowings.

97. In Paragraph 1, Sentence 2 of the Reed Memo, the reference to Revenue Ruling 82-202 is a typographical error that was intended to refer to Revenue Ruling 82-22.

98. Paragraph 3, Sentence 1 of the Reed Memo is accurate.

99. In Paragraph 5 of the Reed Memo, the reference to \$76,000 is an error that should have read \$76,600.

100. In Paragraph 7 of the Reed Memo, the reference to "12/31/85" is an error that should have read "12/31/82."

101. If, as the Reed Memo suggests at Paragraph 7, Shofer in to the Company's knowledge had in fact withdrawn at least \$42,824.54 more from the Plan than the balance in the Voluntary Account, a prohibited transaction under ERISA would have occurred.

102. Neither you nor the Company advised Shofer in 1986 that a prohibited transaction might have occurred with respect to Shofer's borrowings from the Plan.

103. Neither you nor the Company advised Shofer in 1985 that a prohibited transaction might have occurred with respect to Shofer's borrowings from the Plan.

104. Neither you nor the Company prepared or filed amended 5500 forms to reflect any prohibited transactions with respect to Shofer's borrowings from the Plan.

105. In Paragraph 8 of the Reed Memo, the figure "\$208,000" is an error that should read "\$280,000."

106. Any loan transactions not made in accordance with the provisions of the Plan Documents were prohibited transactions under 29 U.S.C. 4975(d)(1)(c).

Lloyd S. Mailman
Lloyd S. Mailman

Thomas A. Bowden
Thomas A. Bowden
1200 Mercantile Bank &
Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
(301) 385-4000
Attorneys for Plaintiff

CERTIFICATE OF SERVICE


I CERTIFY that on this 18th day of August, 1989, a copy of this document was ~~mailed, postage prepaid,~~ to each person listed below:
hand-delivered

Janet M. Truhe, Esquire
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201

Attorneys for Defendants

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Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202

Attorneys for Third-Party Defendant


Thomas A. Bowden

21
JH
JH

RICHARD SHOFER

* IN THE

Plaintiff

CIRCUIT COURT

v.

FILED
SEP 29 1980
CIRCUIT COURT FOR
BALTIMORE CITY

FOR

BALTIMORE CITY

THE STUART HACK COMPANY,
et al.

Case No.
88102069/CL79993

Defendants

* * * * *

DEFENDANTS' ANSWER TO PLAINTIFF'S
REQUEST FOR ADMISSION OF
FACTS AND GENUINENESS OF DOCUMENTS

Defendants, The Stuart Hack Company and Stuart Hack, by their attorneys, Daniel W. Whitney, Janet M. Truhe, and Semmes, Bowen & Semmes, in response to plaintiff's request for admission of facts and genuineness of documents state as follows:

1. Admitted.
2. Admitted.
3. The respondents are unable to admit or deny request no. 3 as framed.
4. Admitted.
5. Admitted.
6. Admitted.

7. The respondents admit that the Letter was sent via first class U.S. mail to Mr. Shofer on August 9, 1984.

8. Admitted.

9. Denied.

10. Admitted.

11. Denied.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Admitted.

30. Admitted.

31. Denied.

32. Denied.

33. Denied.

34. Admitted.

35. Admitted.

36. Respondents object to request no. 36 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact. See Randall v. Yost, Md. Discovery Op. at p. 72.

37. Respondents object to request no. 37 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

38. Respondents object to request no. 38 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

39. Respondents object to request no. 39 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

40. Admitted.

41. Denied.

42. Respondents object to request no. 42 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

43. Respondents object to request no. 43 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

44. Respondents object to request no. 44 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

45. Respondents object to request no. 45 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

46. Respondents object to request no. 46 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

47. Respondents object to request no. 47 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

48. Respondents object to request no. 48 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

49. Respondents object to request no. 49 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

50. Respondents object to request no. 50 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

51. Respondents object to request no. 51 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

52. Respondents object to request no. 52 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

53. Respondents object to request no. 53 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

54. Respondents object to request no. 54 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

55. Respondents object to request no. 55 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

56. Respondents object to request no. 56 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

57. Respondents object to request no. 57 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

58. Respondents object to request no. 58 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

59. Respondents object to request no. 59 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

60. Respondents object to request no. 60 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

61. The Letter of August 9, 1984 speaks for itself. Respondents further object to request no. 61 on the grounds that it is vague, ambiguous, and overbroad.

62. The Letter of August 9, 1984 speaks for itself. Respondents further object to request no. 62 on the grounds that it is vague, ambiguous, and overbroad.

63. Respondents are unable to admit or deny request no. 63 because they cannot specifically recall whether they ever advised Mr. Shofer in August of 1984 about any tax consequences, adverse or otherwise, that would flow from engaging in any of the types of loan transactions discussed in the Letter.

64. Respondents object to request no. 64 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

65. Respondents object to request no. 65 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

66. Respondents object to request no. 66 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

67. Respondents object to request no. 67 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

68. Respondents are unable to admit or deny request no. 68 on the grounds that this request is vague, ambiguous, and overbroad.

69. Denied.

70. Respondents object to request no. 70 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

71. Respondents object to request no. 71 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

72. Respondents object to request no. 72 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

73. Respondents object to request no. 73 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

74. Respondents object to request no. 74 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

75. Respondents are unable to admit or deny request no. 75 because respondents cannot specifically recall whether they ever mentioned to Mr. Shofer at any time during 1984 that the types of loan transactions discussed in the letter of August 9, 1984 might be construed as prohibited transactions under ERISA.

76. Respondents are unable to admit or deny request no. 76 on the grounds that this request is vague, ambiguous, and overbroad.

77. Respondents are unable to admit or deny request no. 77 on the grounds that this request is vague, ambiguous, and overbroad.

78. Denied.

79. Respondents are unable to admit or deny request no. 79 on the grounds that this request is vague, ambiguous, and overbroad.

80. Admitted.

81. Respondents object to request no. 81 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

82. Admitted.

83. Denied.

84. Respondents object to request no. 85 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

85. Respondents object to request no. 85 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

86. Respondents did not advise Mr. Shofer in 1984, 1985, or the first half of 1986 as to the proper documentation for the loans discussed in the Letter, because respondents were unaware that Mr. Shofer ever took any loan from his pension plan during this time period until September of 1986 when Mr. Shofer's accountants contacted the Stuart Hack Company and informed them that Mr. Shofer had in fact taken loans from the Plan.

87. Denied.

88. Respondents never advised Mr. Shofer of any need for promissory notes in connection with loans from the Plan, because Mr. Shofer never informed them that he was in fact going to take any loan from his pension plan and never asked respondents about the requirements for taking such a loan.

89. Respondents were unable to examine the Plan's balance sheets in 1985 because they were never given to the respondents at any time during 1985 by Mr. Shofer, despite repeated requests for these balance sheets by the respondents.

90. Respondents object to request no. 90 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

91. Respondents object to request no. 91 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

92. Respondents object to request no. 92 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

93. Respondents object to request no. 93 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

94. Respondents object to request no. 94 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

95. Respondents object to request no. 95 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

96. Respondents are unable to admit or deny request no. 96 on the grounds that it is vague, ambiguous, and overbroad.

97. Respondents are unable to admit or deny request no. 97 because there was no Reed Memo dated December 16, 1986 which was addressed to these respondents.

In addition, these defendants are unable to express any opinion as to the intent of Judith Reed.

98. Respondents are unable to admit or deny request no. 98 because there was no Reed Memo dated December 16, 1986 which was addressed to these respondents. In addition, these defendants are unable to express any opinion as to the intent of Judith Reed.

99. Respondents are unable to admit or deny request no. 99 because there was no Reed Memo dated December 16, 1986 which was addressed to these respondents. In addition, these defendants are unable to express any opinion as to the intent of Judith Reed.

100. Respondents are unable to admit or deny request no. 100 because there was no Reed Memo dated December 16, 1986 which was addressed to these respondents. In addition, these defendants are unable to express any opinion as to the intent of Judith Reed.

101. Respondents are unable to admit or deny request no. 101 because there was no Reed Memo dated December 16, 1986 which was addressed to these respondents. In addition, these defendants are unable to express any opinion as to the intent of Judith Reed. Respondents also object to request no. 101 because it calls for a conclusion of mixed fact and law rather than an admission of fact.

102. Respondents object to request no. 102 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

103. Respondents object to request no. 103 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact. In addition, respondents were unaware that Mr. Shofer had taken any loan from the Plan in 1984, 1985, or 1986 until September of 1986 when Mr. Shofer's accountants contacted the Stuart Hack Company and informed them that Mr. Shofer had in fact taken loans from the Plan during this time period.

104. Respondents object to request no. 104 on the grounds that this request is vague, ambiguous, and overbroad. Respondents further object to request no. 104 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

105. Respondents are unable to admit or deny request no. 105 because there was no Reed Memo dated December 16, 1986 which was addressed to these respondents. In addition, these defendants are unable to express any opinion as to the intent of Judith Reed.

106. Respondents object to request no. 106 as being improper in that it calls for a conclusion of mixed fact and law rather than an admission of fact.

Daniel W. Whitney *DMW*
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of September, 1989, a copy of the foregoing Defendants' Answer to Plaintiff's Request for Admission of facts and Genuineness of Documents was hand delivered to Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201; and Linda Schuett, Esq., Frank, Bernstein, Conaway & Goldman, 300 E. Lombard Street, Baltimore, Maryland 21202.

SEMME, BOWEN
& SEMME
250 W. Pratt Street
Baltimore, Md. 21201

Janet M. Truhe
Janet M. Truhe

FILED

(Handwritten initials)

IN THE CIRCUIT COURT FOR BALTIMORE CITY FEB 12 1990

RICHARD SHOFER, *
Plaintiff *

CIRCUIT COURT FOR
BALTIMORE CITY

v. *

Case No.: 88102069/CL79993

THE STUART HACK COMPANY, et al., *
Defendants *

* * * * *

THIRD PARTY DEFENDANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

TO: THE STUART HACK COMPANY and STUART HACK, Defendants
FROM: GRABUSH, NEWMAN & CO., P.A., Third-Party Defendant
Third-Party Defendant, Grabush, Newman & Co., P.A.
("Grabush"), by its attorneys, Linda M. Schuett and John J.
Ryan, pursuant to Rule 2-422, requests that Defendants, The
Stuart Hack Company and Stuart Hack, produce the following
documents or types of documents and give Grabush and its
attorneys and agents the opportunity to inspect and copy the
original of each such document. Unless counsel mutually agree
otherwise, production and inspection of documents shall be at
the offices of Frank, Bernstein, Conaway & Goldman, 300 East
Lombard Street, 16th Floor, Baltimore, Maryland 21202, on
Monday, March 12, 1990, at 10:00 a.m.

INSTRUCTIONS AND DEFINITIONS

A. All requests for production, inspection, and copy-
ing of documents are continuing in character so as to require
you to produce and permit inspection and copying of any
additional documents or other clarifying or corrected
information that may come into your possession or control at
any time before trial.

B. The term "document" means any written, recorded, or graphic matter of any nature, however produced or reproduced, whether transcribed by hand or by some mechanical, electronic, photographic, or other means, whether or not the original is now in existence, and includes the original and all copies and drafts prepared in connection with the document, regardless of the manner in which those copies or drafts were prepared or whether they were ever used, and further includes, but is not limited to: papers; books; records; letters; correspondence; notebooks; bulletins; forms; transcripts; contracts; agreements; certificates; minutes; reports; studies; charts; graphs; maps; analyses; statistical records; ledgers; journals; receipts; cancelled checks; statements; video tapes; sound or tape recordings; memoranda (including any type or form of notes, memoranda, or sound recordings of personal thoughts, recollections, or reminders, or of telephone or other conversations, or of acts, activities, agreements, meetings, or conferences); photostats; microfilm; microfiche; interoffice or intraoffice communications; cancelled tickets; diaries; calendars or desk pads; stenographers' notebooks; appointment books; and other papers or matters similar to any of the foregoing, however denominated, whether received by you or prepared by you for your own use or for transmittal. If a document has been prepared and several copies or additional copies have been made, and the copies are not identical (or which, by reason of subsequent modification or notation are no longer identical), each non-identical copy is a separate "document." The phrase "each and every document" shall mean each and every document which can be designated or located on premises owned by Defendant or elsewhere.

C. If particular documents requested are not available or no longer exist, state the precise reason for their unavailability or nonexistence. If particular documents requested are unavailable because they are not in your possession, identify their location and from whom they may be obtained.

D. "You" and "your" refer to the party to whom this Request for Production of Documents is addressed, as well as the party's agents, servants, employees, representatives, accountants, and, unless privileged, attorneys, as well as any partnership, corporation, joint venture, or other entity formed by, controlled by, or otherwise affiliated with the party to whom this Request for Production of Documents is addressed.

E. The term "person" shall mean, in the plural as well as the singular, any natural person, firm, association, partnership, corporation, joint venture, or other business or legal entity, unless the context indicates otherwise.

F. Throughout this Request for Production of Documents, the plural shall include the singular and the singular shall include the plural.

G. With regard to any document withheld on any claim of privilege, identify each document in your Response to this Request for Production of Documents, including the author of the document and the addressee(s), if any, the person or persons to whom copies were furnished, the date and subject matter of the document, the person or persons who currently have possession of the original or any copies or drafts, and the basis for your claim of privilege.

REQUESTS

1. Each document identified in any Answers to Interrogatories filed by you in this case.

2. Each document referred to in preparing any Answers to Interrogatories filed by you in this case.

3. Each document that constitutes, evidences, refers, or relates to any admission of any of the parties concerning any issue in this case.

4. Each document that constitutes, evidences, refers, or relates to any of the defenses raised in your Answer.

5. Each document that constitutes, evidences, refers, or relates to any reports by any expert whom you expect to call as a witness at trial.

6. The most recent resume or curriculum vitae of each expert whom you expect to call as an expert witness at trial.

7. All notes, diagrams, or other documents prepared or reviewed in this case by each person whom you expect to call as an expert witness at trial.

8. All written or recorded statements by Grabush, or by any agent, representative, or employee of Grabush, concerning the subject matter of this action.

9. All insurance contracts or agreements under which an insurance company may be liable to satisfy part or all of any judgment which may be entered against you or to indemnify or reimburse you for payments made to satisfy any such judgment.

10. Each document that constitutes, evidences, refers, or relates to your policy with respect to retention and destruction of documents and business records.

11. Each document that constitutes, evidences, refers, or relates in any way to any correspondence or other communication between you and Grabush which refers or in any way relates to the subject matter of this action.

12. Each document that constitutes, evidences, refers, or relates in any way to any correspondence or other communication between you and Shofer which refers or in any way relates to the subject matter of this action.

13. Each document that constitutes, evidences, refers, or relates in any way to any correspondence or other communication between you and any other person which refers or in any way relates to the subject matter of this action.

14. All documents produced by you to Shofer in connection with Shofer's Requests for Production of Documents.

15. An identification in accordance with Instruction G of any documents withheld from production on a claim of

privilege, either in response to Shofer's Requests for Production of Documents or in response to this Request.

16. Any other documents provided by you to Shofer that refer or in any way relate to the subject matter of this action.

17. All documents produced by Shofer to you in connection with your Request for Production of Documents.


18. All documents provided by Shofer to you that refer or in any way relate to the subject matter of this action.

19. All 1099's issued by you in connection with the Catalina Enterprises, Inc. Pension Plan from its inception to the present time.

20. All documents that evidence, refer, or in any way relate to any contracts entered into at any time between you and Grabush.

21. All documents that itemize, support, contain evidence of, or relate in any way to your claim for damages against Grabush.

22. All documents not otherwise requested in this Request for Production of Documents upon which you rely or intend to rely to support any claim or allegation asserted by you in this case.

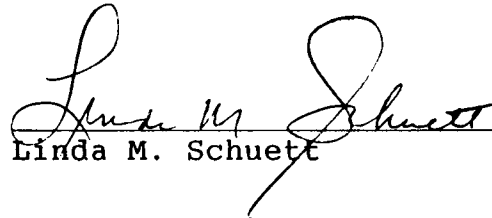

Linda M. Schuett
John J. Ryan

Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

Attorneys for Third-Party Defendant

CERTIFICATE OF SERVICE

I CERTIFY on this 9th day of February, 1990, that a copy of Third-Party Defendant's First Request for Production of Documents was mailed, postage prepaid, to Daniel W. Whitney and Janet M. Truhe, Semmes, Bowen and Semmes, 250 W. Pratt Street, Baltimore, Maryland 21201, and to Lloyd S. Mailman and Thomas A. Bowden, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank & Trust Building., 2 Hopkins Plaza, Baltimore, Maryland 21201.


Linda M. Schuett

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FEB 14 1990

CIRCUIT COURT FOR
BALTIMORE CITY

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

RICHARD SHOFER,

*

Plaintiff

*

v.

*

Case No. 88102069/
CL79993

THE STUART HACK COMPANY, et al.

*

Defendants

*

* * * * *

THIRD-PARTY DEFENDANT'S INTERROGATORIES TO PLAINTIFF

TO: RICHARD SHOFER, Plaintiff

FROM: GRABUSH, NEWMAN & CO., P.A., Third-Party Defendant

Pursuant to Rule 2-421, Third-Party Defendant, Grabush Newman & Co., P.A. ("Grabush"), propounds the following Interrogatories on Plaintiff, Richard Shofer.

DEFINITIONS AND INSTRUCTIONS

A. These Interrogatories are continuing in character so as to require you to file Supplemental Answers if you obtain further or different information before trial.

B. Unless otherwise indicated, these Interrogatories refer to the time, place, and circumstances of the transaction or occurrence mentioned or complained of in the pleadings.

C. When knowledge or information in possession of a party is requested, such request includes knowledge of the party's employees, agents, representatives, members, accountants, or other firms or business entities directly or indirectly subject to the control in any way whatsoever of any party, and unless privileged, its attorneys.

D. The pronoun "you" or "your" refers to the party to whom these Interrogatories are addressed and to the persons mentioned in Paragraph C.

E. "Identify" or "identification," when used in reference to an individual person, means to state, if known, the person's full name, age, present or last known home or

residence address and telephone number, and present or last known business address, telephone number, and title or occupation. "Identify" or "identification," when used in reference to a document or writing, means to state the type of document or writing (e.g., letter, memorandum, telegram, chart, etc.) and information sufficient to enable Plaintiff to identify the document (e.g., its date, the names of addressee and signee, the letter or heading and approximate number of pages, its present location, and the name and address of its custodian). If any such document was, but is no longer, in your possession or subject to your control, state what disposition was made of it, the reason for such disposition, and who, if anyone, has possession or control of the document.

F. Provide the following information in chronological order with respect to each communication, whether oral or written, which is the subject matter in whole or in part of any of these Interrogatories or Answers to Interrogatories:

- (1) an identification of the persons involved;
- (2) the dates;
- (3) where the communication occurred, e.g., if in person to person conversation, the place from which each person involved actually participated;
- (4) what was communicated by each person involved, to whom, and the order in which the communication was made, identifying what was communicated by each person; and
- (5) the manner in which each communication was made, e.g., whether oral or written or otherwise.

G. The term "person" means the plural as well as the singular, any natural person, firm, association, partnership, corporation, or other form of legal entity, unless the context indicates otherwise.

H. The term "document" or "writing" means any written, recorded, or graphic matter, however produced or reproduced, and whether or not now in existence and includes the original, all file copies, all other copies no matter how prepared, and all drafts prepared in connection with the document, whether used or not, and further includes but is not limited to papers, books, records, catalogs, price lists, pamphlets, periodicals, letters, correspondence, scrap books, notebooks, bulletins, circulars, forms, notices, postcards, telegrams, deposition transcripts, contracts, agreements, leases, reports, studies, working papers, charts, proposals, graphs, sketches, diagrams, indexes, maps, analyses, statistical

reports, reports, results of investigations, reviews, ledgers, journals, balance sheets, accounts, books of accounts, invoices, vouchers, purchase orders, expense accounts, cancelled checks, bank checks, statements, sound and tape recordings, video tapes, audio tapes, memoranda (including any type or form of notes, memoranda, or sound recordings of personal thoughts, recollections, or reminders, or of telephone or other conversations or of acts, activities, agreements, meetings, or conferences), photostats, microfilm, instruction lists or forms, computer printouts or other computer data, minutes of directors or committee meetings, interoffice or intraoffice communications, documents, diaries, calendar or desk pads, stenographers' notebooks, appointment books, and other papers or matters similar to any of the foregoing, however denominated, whether received by you or prepared by you for your own use or transmittal. If a document has been prepared in several copies, or additional copies have been made and the copies are not identical (or which by reason of subsequent modification or notation are no longer identical), each non-identical copy is a separate document.

I. If you claim a privilege about any communication as to which information is requested by these Interrogatories, specify the privilege claimed, the communication and Answer as to which the claim is made, the topic discussed in the communication, and the basis on which you assert the claim of privilege.

J. If information used to answer any of these Interrogatories is obtained from a person or persons other than the person or persons signing the Answers to these Interrogatories, include in each Answer the name and present address of the person or persons contributing information used in the Answer and the nature of the information contributed by each such person or persons.

INTERROGATORIES

1. Identify in accordance with Instruction E the person or persons signing the Answers to these Interrogatories and in accordance with Instructions E and J any person or persons aiding in the answering of these Interrogatories.

2. Identify in accordance with Instruction E all persons known to you to have personal knowledge of any allegation, fact, event, transaction, or occurrence on which you rely

or which forms a basis for your Answers to these Interrogatories or which is in any other manner relevant to this case, including in your Answer an identification of the particular subject matter or areas of their knowledge.

3. Identify in accordance with Instruction E any experts whom you propose to call as witnesses with regard to any matter or issue relating to this action, including in your Answer the nature of each expert's specialty, the subject matter of each expert's testimony, the substance of the findings and opinions to which each expert is expected to testify, the facts upon which each expert's opinions are based, and a summary of the grounds for each opinion. Attach to your Answers a copy of any and all expert reports.

4. Describe in detail any facts or circumstances that may constitute an admission made by any of the parties to this action, including in your Answer an identification in accordance with Instruction E of any document in which the purported admission was made.

5. Identify in accordance with Instruction E all documents and other sources of information that you have used or consulted to answer these Interrogatories, whether or not information was actually obtained from those sources.

6. Identify in accordance with Instruction E all persons who have given written or recorded statements concerning the subject matter of this action, including in your Answer the

date of each such statement, the identity of the person taking the statement, and the identity of its present custodian.

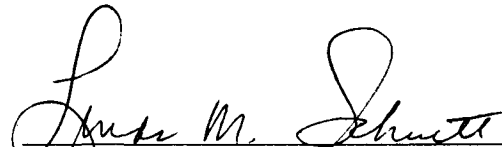
7. If you have any knowledge about or are aware of any written or oral statements concerning the subject matter of this action made by Grabush or any agent, representative, or employee of Grabush, describe the substance of each such statement, the place and date that the statement was made, the identity of the person making the statement, the identity of the person to whom it was made, and an identification in accordance with Instruction E of all documents concerning the statement.

8. Describe in detail your policy with respect to retention and destruction of documents and business records, including in your Answer an identification in accordance with Instruction E of each document that sets forth any such policy or change in policy.

9. Identify in accordance with Instruction E any documents that refer or in any way relate to the subject matter of this action that are known to you to be missing, destroyed, or otherwise disposed of, including in your Answer the disposition made of each document, the date of disposition, whether such disposition was consistent with any policy you may have for the retention or destruction of documents, the identity of the person last known to have the document in his or her possession or subject to his or her control, and the identity

of each person you have reason to believe had knowledge of its contents or who received a copy of any such document.

10. Itemize in detail all damages you claim in this action.

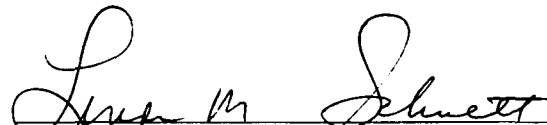

Linda M. Schuett
John J. Ryan

Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

Attorneys for Third-Party
Defendant, Grabush, Newman &
Co., P.A.

CERTIFICATE OF SERVICE

I CERTIFY on this 12th day of February, 1990, that a copy of Third-Party Defendant's Interrogatories to Plaintiff was mailed, postage prepaid, to Daniel W. Whitney and Janet M. Truhe, Semmes, Bowen and Semmes, 250 W. Pratt Street, Baltimore, Maryland 21201, and to Lloyd S. Mailman and Thomas A. Bowden, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201.


Linda M. Schuett

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FILED

FEB 14 1990

CIRCUIT COURT FOR BALTIMORE CITY

IN THE CIRCUIT COURT FOR BALTIMORE CITY

RICHARD SHOFER, *
Plaintiff *

v. * Case No.: 88102069/CL79993

THE STUART HACK COMPANY, et al., *
Defendants *

* * * * *

THIRD-PARTY DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF

TO: RICHARD SHOFER, Plaintiff

FROM: GRABUSH, NEWMAN & CO., P.A., Third-Party Defendant

Third-Party Defendant, Grabush, Newman & Co., P.A. ("Grabush"), by its attorneys, Linda M. Schuett and John J. Ryan, pursuant to Rule 2-422, requests that Plaintiff, Richard Shofer, produce the following documents or types of documents and give Grabush and its attorneys and agents the opportunity to inspect and copy the original of each such document. Unless counsel mutually agree otherwise, production and inspection of documents shall be at the offices of Frank, Bernstein, Conaway & Goldman, 300 East Lombard Street, 16th Floor, Baltimore, Maryland 21202, on Monday, March 19, 1990, at 10:00 a.m.

INSTRUCTIONS AND DEFINITIONS

A. All requests for production, inspection, and copying of documents are continuing in character so as to require you to produce and permit inspection and copying of any additional documents or other clarifying or corrected information that may come into your possession or control at any time before trial.

B. The term "document" means any written, recorded, or graphic matter of any nature, however produced or reproduced, whether transcribed by hand or by some mechanical, electronic, photographic, or other means, whether or not the original is now in existence, and includes the original and all copies and drafts prepared in connection with the document, regardless of the manner in which those copies or drafts were prepared or whether they were ever used, and further includes, but is not limited to: papers; books; records; letters; correspondence; notebooks; bulletins; forms; transcripts; contracts; agreements; certificates; minutes; reports; studies; charts; graphs; maps; analyses; statistical records; ledgers; journals; receipts; cancelled checks; statements; video tapes; sound or tape recordings; memoranda (including any type or form of notes, memoranda, or sound recordings of personal thoughts, recollections, or reminders, or of telephone or other conversations, or of acts, activities, agreements, meetings, or conferences); photostats; microfilm; microfiche; interoffice or intraoffice communications; cancelled tickets; diaries; calendars or desk pads; stenographers' notebooks; appointment books; and other papers or matters similar to any of the foregoing, however denominated, whether received by you or prepared by you for your own use or for transmittal. If a document has been prepared and several copies or additional copies have been made, and the copies are not identical (or which, by reason of subsequent modification or notation are no longer identical), each non-identical copy is a separate "document." The phrase "each and every document" shall mean each and every document which can be designated or located on premises owned by Defendant or elsewhere.

C. If particular documents requested are not available or no longer exist, state the precise reason for their unavailability or nonexistence. If particular documents requested are unavailable because they are not in your possession, identify their location and from whom they may be obtained.

D. "You" and "your" refer to the party to whom this Request for Production of Documents is addressed, as well as the party's agents, servants, employees, representatives, accountants, and, unless privileged, attorneys, as well as any partnership, corporation, joint venture, or other entity formed by, controlled by, or otherwise affiliated with the party to whom this Request for Production of Documents is addressed.

E. The term "person" shall mean, in the plural as well as the singular, any natural person, firm, association, partnership, corporation, joint venture, or other business or legal entity, unless the context indicates otherwise.

F. Throughout this Request for Production of Documents, the plural shall include the singular and the singular shall include the plural.

G. With regard to any document withheld on any claim of privilege, identify each document in your Response to this Request for Production of Documents, including the author of the document and the addressee(s), if any, the person or persons to whom copies were furnished, the date and subject matter of the document, the person or persons who currently have possession of the original or any copies or drafts, and the basis for your claim of privilege.

REQUESTS

1. Each document identified in any Answers to Interrogatories filed by you in this case.

2. Each document referred to in preparing any Answers to Interrogatories filed by you in this case.

3. Each document that constitutes, evidences, refers, or relates to any admission of any of the parties concerning any issue in this case.

4. Each document that constitutes, evidences, refers, or relates to any of the allegations or issues raised in your Complaint.

5. Each document that constitutes, evidences, refers, or relates to any reports by any expert whom you expect to call as a witness at trial.

6. The most recent resume or curriculum vitae of each expert whom you expect to call as an expert witness at trial.

7. All notes, diagrams, or other documents prepared or reviewed in this case by each person whom you expect to call as an expert witness at trial.

8. All written or recorded statements by Grabush, or by any agent, representative, or employee of Grabush, concerning the subject matter of this action.

9. Each document that constitutes, evidences, refers, or relates to your policy with respect to retention and destruction of documents and business records.

10. Each document that constitutes, evidences, refers, or relates in any way to any correspondence or other communication between you and Grabush which refers or in any way relates to the subject matter of this action.

11. Each document that constitutes, evidences, refers, or relates in any way to any correspondence or other communication between you and The Stuart Hack Company or Stuart Hack ("Hack") which refers or in any way relates to the subject matter of this action.

12. Each document that constitutes, evidences, refers, or relates in any way to any correspondence or other communication between you and any other person which refers or in any way relates to the subject matter of this action.

13. All documents produced by you to Hack in connection with Hack's Request for Production of Documents.

14. An identification in accordance with Instruction G of any documents withheld from production on a claim of privilege, either in response to Hack's Request for Production of Documents or in response to this Request.


15. Any other documents provided by you to Hack that refer or in any way relate to the subject matter of this action.

16. All documents produced by Hack to you in connection with your Requests for Production of Documents.

17. All documents provided by Hack to you that refer or in any way relate to the subject matter of this action.

18. All 1099's issued in connection with the Catalina Enterprises, Inc. Pension Plan from its inception to the present time.

19. All documents not otherwise requested in this Request for Production of Documents upon which you rely or intend to rely to support any claim or allegation asserted by you in this case.


Linda M. Schuett
John J. Ryan

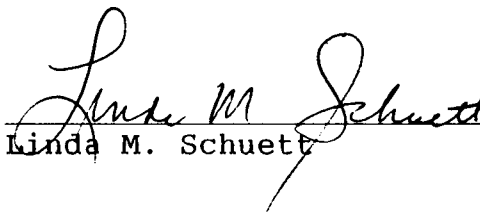
Frank, Bernstein, Conaway & Goldman
300 East Lombard Street
Baltimore, Maryland 21202
(301) 625-3500

Attorneys for Third-Party Defendant

CERTIFICATE OF SERVICE

I CERTIFY on this 12th day of February, 1990, that a copy of Third-Party Defendant's First Request for Production of Documents to Plaintiff was mailed, postage prepaid, to Daniel W. Whitney and Janet M. Truhe, Semmes, Bowen and Semmes, 250 W. Pratt Street, Baltimore, Maryland 21201, and to Lloyd S. Mailman and Thomas A. Bowden, Blum, Yumkas, Mailman, Gutman &

Denick, P.A., 1200 Mercantile Bank & Trust Building, 2 Hopkins
Plaza, Baltimore, Maryland 21201.


Linda M. Schuett

4921L

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FILED

FEB 20 1990

RICHARD SHOFR
Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT FOR
* BALTIMORE CITY
* FOR
* BALTIMORE CITY
* Case No.: 88102069/
* CL79993

* * * * *

DEFENDANTS' ANSWER TO
THIRD-PARTY DEFENDANT'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS

The Stuart Hack Company and Stuart Hack, defendants,
by their attorneys, Daniel W. Whitney, Janet M. Truhe and
Semmes, Bowen & Semmes, answer the third-party defendant's
First Request for Production of Documents as follows:

1. These defendants have never filed Answers to Interrogatories in this case.
2. See Response to Request No. 1.
3. Defendants refuse to produce the documents requested in Paragraph No. 3 for the reason that they call for legal conclusions.
4. Defendants will produce the documents requested in Paragraph No. 4, except for any documents which may be privileged or made in anticipation of litigation.
5. Defendants have not consulted an expert whom they presently intend to call at the time of trial. If such an expert is consulted, counsel for all parties will be

SEMME, BOWEN
& SEMME
250 W. Pratt Street
Baltimore, Md. 21201

for

seasonably advised and furnished with a copy of any report rendered.

6. See Response to Request No. 5.

7. See Response to Request No. 5.

8. Defendants do not possess the documents requested in Paragraph No. 8.

9. Defendants will produce the documents requested in Paragraph No. 9.

10. Defendants do not possess the documents requested in Paragraph No. 10.

11. Defendants will produce the documents requested in Paragraph No. 11, except for any documents which may be privileged or made in anticipation of litigation.

12. Defendants will produce the documents requested in Paragraph No. 12.

13. Defendants will produce the documents requested in Paragraph No. 13, except for any documents which may be privileged or made in anticipation of litigation.

14. Defendants will produce the documents requested in Paragraph No. 14.

15. Defendants will identify the documents withheld from production.

16. Defendants will produce the documents requested in Paragraph No. 16.

17. Defendants will produce the documents requested in Paragraph No. 17.

18. Defendants will produce the documents requested in Paragraph No. 18.

19. Defendants do not possess the documents requested in Paragraph No. 19.

20. Defendants do not possess the documents requested in Paragraph No. 20.

21. Defendants will produce the documents requested in Paragraph No. 21.

22. Defendants refuse to produce the documents requested in Paragraph No. 22 on the grounds that this request is overbroad to the extent that it seeks production of impeachment evidence which is not subject to discovery.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe


Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 W. Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 1990, a copy of the foregoing Answer to Third-Party

Defendant's First Request for Production of Documents was mailed, postage prepaid, to Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201; and Linda Schuett, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard Street, Baltimore, Maryland 21202.


Janet M. Truhe

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RICHARD SHOFR

FEB 23 1990

Plaintiff

* CIRCUIT COURT
CIRCUIT COURT FOR
BALTIMORE CITY

v.

* BALTIMORE CITY

THE STUART HACK COMPANY,
et al.

* Case No.
88102069/CL79993

Defendants

*
*

* * * * *

DEFENDANTS' AMENDED ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe and Semmes, Bowen & Semmes, amend their answer to the plaintiff's Amended Complaint as follows:

FIRST DEFENSE

They generally deny liability as to each allegation of the Complaint in accordance with Rule 2-323 (d).

SECOND DEFENSE

The Amended Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The claims are barred by the statute of limitations.

FOURTH DEFENSE

That if plaintiff suffered damages as alleged, such damages were caused by the plaintiff's own sole or contributory negligence.

FIFTH DEFENSE

That if plaintiff suffered damages as alleged, such damages were caused because the plaintiff assumed the risk thereof.

SIXTH DEFENSE

The plaintiff is estopped to complain about any advice rendered by these defendants pertaining to loans taken by the plaintiff from the Catalina Enterprises, Inc. Pension Plan.

SEVENTH DEFENSE

The plaintiff has waived any claim arising out of advice rendered by these defendants pertaining to loans taken by the plaintiff from the Catalina Enterprises, Inc. Pension Plan.

EIGHTH DEFENSE

The plaintiff's claims are barred by laches.

NINTH DEFENSE

The Court lacks subject matter jurisdiction over Count IV (ERISA).

TENTH DEFENSE

The plaintiff's reliance on advice rendered by these defendants pertaining to loans from the Catalina Enterprises, Inc. Pension Plan was unjustified when he proceeded to borrow from the Plan in 1984, 1985, and 1986.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants

I HEREBY CERTIFY that on this 23d day of February, 1990, a copy of the foregoing Defendants' Amended Answer to Plaintiff's Amended Complaint was mailed to Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201; and Linda Schuett, Esquire, Frank, Bernstein, Conaway & Goldman, 300 E. Lombard Street, Baltimore, Maryland 21202.

SEMME, BOWEN
& SEMME
250 W Pratt Street
Baltimore, Md. 21201

Janet M. Truhe
Janet M. Truhe

FILED

MAR 6 1990

RICHARD SHOFR

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE

* CIRCUIT COURT FOR
BALTIMORE CITY

* FOR

* BALTIMORE CITY

* Case No.

88102069/CL79993

* * * * *

DEFENDANTS' MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe, and Semmes, Bowen & Semmes, pursuant to Maryland Rule 2-324(b), move this Court for an Order dismissing Count IV of plaintiff's Amended Complaint on the following grounds:

1. That plaintiff has filed an action in state court against these defendants for negligence (Count I), breach of contract (Count II), common law breach of fiduciary duty (Count III), and breach of fiduciary duty under ERISA (Count IV) arising out of their alleged failure to advise the plaintiff about certain tax consequences which would occur when the plaintiff took personal loans from his pension plan.

2. That this Court lacks subject matter jurisdiction over the cause of action contained in Count IV

(ERISA) pursuant to 29 U.S.C. § 1132(e)(1) which provides for exclusive federal court jurisdiction over claims against fiduciaries for breach of their duties under ERISA.

Grounds for this Motion are more fully set forth in the accompanying Memorandum.

Daniel W. Whitney
Daniel W. Whitney

Janet M. Truhe
Janet M. Truhe

Semmes, Bowen & Semmes
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
(301) 539-5040

Attorneys for Defendants,
The Stuart Hack Company and
Stuart Hack

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 1990, a copy of the foregoing Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, Memorandum in Support, Request for Hearing and Order was hand delivered to Thomas A. Bowden, Esquire, Blum, Yumkas, Mailman, Gutman & Denick, P.A., 1200 Mercantile Bank and Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201; and Linda

Schuett, Esquire, Frank, Bernstein, Conaway & Goldman, 300
E. Lombard Street, Baltimore, Maryland 21202.

Janet M. Truhe

Janet M. Truhe

SEMMES, HOWEN
& SEMMES
850 W. Pratt Street
Baltimore, Md. 21201

RICHARD SHOFER	*	IN THE
	*	CIRCUIT COURT
Plaintiff	*	FOR
v.	*	BALTIMORE CITY
	*	Case No.
THE STUART HACK COMPANY,	*	88102069/CL79993
et al.	*	
	*	
Defendants	*	
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MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION
TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION

The Stuart Hack Company and Stuart Hack, defendants, by their attorneys, Daniel W. Whitney, Janet M. Truhe and Semmes, Bowen & Semmes, file the following Memorandum in Support of their Motion to Dismiss Count IV of plaintiff's Amended Complaint for lack of subject matter jurisdiction.¹

The plaintiff, Richard Shofer, has filed an Amended Complaint in state court against the Stuart Hack Company and Stuart Hack. He is alleging claims for negligence (Count I), breach of contract (Count II), common law breach of fiduciary duty (Count III), and breach of fiduciary duty under ERISA (Count IV). The gist of each of these claims is that these defendants failed to advise the

¹The question of jurisdiction over the subject matter may be raised at any time. Resh v. Resh, 271 Md. 133, 314 A.2d 109 (1974).

plaintiff about tax consequences which would occur when the plaintiff borrowed money from his pension plan.²

Count IV of the Amended Complaint is specifically styled as an ERISA claim and alleges that defendants Stuart Hack and the Stuart Hack Company breached a fiduciary duty owed to the Plan under the Employee Retirement Income Security Act ("ERISA") of 1974. 29 U.S.C.A. § 1001, et seq. As a participant under the Plan, plaintiff asserts in Count IV that he is seeking civil damages under 29 U.S.C.A. § 1132 for defendants' "violation of the[ir] fiduciary duties." See Amended Complaint at paragraphs 36, 37, and 38. ERISA is a federal statute which regulates all employee benefit plans established by an employer engaged in interstate commerce or any industry affecting interstate commerce. 29 U.S.C.A. § 1003(a)(1). Thus, the Catalina Enterprises employee pension plan which is the subject of the instant case is governed by ERISA.

Under the statutory language of 29 U.S.C.A. § 1132, which concerns jurisdiction over ERISA actions, the

²The Catalina Enterprises, Inc. Pension Plan (the "Plan") is a qualified pension plan established by the defendants in 1971 for employees of Catalina Enterprises, Inc., a car dealership owned and operated by the plaintiff. See Amended Complaint at paragraphs 3 and 4. The Stuart Hack Company and Stuart Hack thereafter provided various pension consulting services to the plaintiff in connection with the Plan. See, id. at paragraph 6. The plaintiff is a shareholder and employee of Catalina, a beneficiary of the Plan, and is named in the Plan as trustee. See, id. at paragraphs 3 and 5.

plaintiff is precluded from bringing his Count IV ERISA claim in state court. Jurisdiction over this cause of action is exclusively federal. Section 1132(e)(1) mandates in pertinent part that:

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

29 U.S.C.A. § 1132(e)(1) (emphasis added).

Subsection (a)(1)(B) provides a civil cause of action for a participant "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan". 29 U.S.C.A. § 1132(a)(1)(B). In such cases, jurisdiction is concurrent under the statute. This section does not apply, however, in the present case because Shofer is not seeking to recover benefits under the Plan, enforce his rights under the Plan, or clarify his right to future benefits. Rather, he is seeking to impose liability on these defendants specifically for breach of their fiduciary duties to the Plan. Subsection 1132(a)(2) provides that a civil action

may also be brought by a participant "for appropriate relief under section 1109 of this title." Section 1109 provides:

§1109. Liability for breach of fiduciary duty.

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

Section 1132(e) only confers upon state courts jurisdiction to determine actions brought under subsection (a)(1)(B) -- i.e., actions to recover benefits due under the terms of an employee benefit plan; it does not confer jurisdiction upon state courts to determine actions brought under subsection (a)(2) -- i.e., actions against fiduciaries for the breach of their duties under ERISA. Exclusive jurisdiction over the latter actions lies in "the

district courts of the United States." 29 U.S.C. §1132(e)(1).

Section 1132, therefore, clearly distinguishes between (1) an action brought by a participant in a pension plan to recover benefits due him under the terms of his plan, and (2) an action brought by a participant against fiduciaries to the plan for breach of their fiduciary duties. The latter is being brought by the plaintiff in Count IV and may be prosecuted only in federal court. See Levy v. Lewis, 635 F.2d 960, 967 (2d Cir. 1980) (claim for breach of fiduciary duties is one which carries with it exclusive federal jurisdiction); Central States, Southeast and Southwest Areas Health and Welfare Fund v. Old Securities Life Ins. Co., 600 F.2d 671, 676 (7th Cir. 1979) (that the federal courts have exclusive jurisdiction over ERISA claims for breach of fiduciary duty is settled); Green v. Indal, Inc., 565 F.Supp. 805, 806 (S.D. Ill. 1983) (breach of fiduciary duty is a claim that is committed to the exclusive jurisdiction of the federal district courts); Wong v. Bacon, 445 F.Supp. 1177, 1185-86 (N.D. Cal. 1977) (Congress has given federal courts exclusive jurisdiction over claims involving breach of fiduciary duties). Moreover, an ERISA breach of fiduciary duty claim must be decided in federal court even if begun in state court.

Marshall v. Chase Manhattan Bank, 558 F.2d 680, 682 (2d Cir. 1977).

State courts which have addressed this issue have also held that ERISA breach of fiduciary duty actions are beyond their subject matter jurisdiction. See, Duffy v. Brannen, 529 A.2d 643, 650 (Vt. 1987) ("Since a claim alleging breach of fiduciary obligations is not within the exception to exclusive federal jurisdiction contained in 29 U.S.C.A. § 1132(a)(1)(B), it follows that only federal courts have jurisdiction to adjudicate such claims under § 1132(e)."); Lembo v. Texaco, Inc., 182 Cal. App.3d. 299, 227 Cal. Rptr. 289, 293 (1986) ("[a]ctions involving breaches of fiduciary duties ... are within the exclusive jurisdiction of the federal courts."); Pierce v. P.J.G. & Associates, Inc., 128 Ill. App.3d 471, 470 N.E.2d 1096, 1098 (1984) ("The appropriate forum for civil actions involving fiduciary responsibilities, as here, is exclusively in federal courts."); Young v. Sheet Metal Workers' International, 112 Misc.2d 692, 700, 447 N.Y.S.2d 798, 803 (Sup. Ct. 1981) (actions alleging breach of fiduciary duty are within the exclusive jurisdiction of federal courts); Goldberg v. Caplan, 277 Pa. Super. 47, 419 A.2d 653, 657 (1980) (ERISA "does not confer jurisdiction upon state courts to determine actions ... against fiduciaries for the breach of their duties under ERISA.").

The jurisdictional mandate of 29 U.S.C.A. § 1132(e) requires that a state court dismiss an ERISA breach of fiduciary duty claim such as the one brought here by the plaintiff in Count IV. Congress' intent to authorize jurisdiction for breach of fiduciary duties under ERISA exclusively in federal courts is clear under the language of the statute.³ Where such exclusive jurisdiction is granted to the federal courts, "the state court has no power to adjudicate the subject matter of the case." International Longshoremen's Association v. Davis, 476 U.S. 380, 393 (1986).

For the foregoing reasons, defendants, the Stuart Hack Company and Stuart Hack, respectfully request that this Court grant defendants' Motion to Dismiss Count IV of plaintiff's Amended Complaint for lack of subject matter jurisdiction.

Respectfully submitted,

Daniel W. Whitney
Daniel W. Whitney

³Early drafts of the Act provided that all civil actions "might be brought in any court of competent jurisdiction, State or Federal." See H.R. 2, 93d Cong., 1st Sess. § 503(g)(1) (1973). The final version, however, vests exclusive jurisdiction in the federal courts with the single exception for actions brought under 29 U.S.C.A. § 1132(a)(1)(B). See Cartledge v. Miller, 457 F. Supp. 1146, 1151 n.22 (S.D.N.Y. 1978).

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RICHARD SHOFR

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993
*
*

* * * * *

REQUEST FOR HEARING

The Stuart Hack Company and Stuart Hack, defendants, request a hearing on their Motion to Dismiss for Lack of Subject Matter Jurisdiction filed in the above-captioned case.

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RICHARD SHOFER

Plaintiff

v.

THE STUART HACK COMPANY,
et al.

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No.
* 88102069/CL79993

* * * * *

ORDER

Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, having been considered by this Court, and counsel having presented argument, it is this ___ day of _____, 1990, hereby

ORDERED,

That Defendants' Motion to Dismiss is granted and Count IV of Plaintiff's Amended Complaint is dismissed.

JUDGE

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System design by Dr. Edward C. Papenfuse and Nancy Bramucci.
Programmed in *Microsoft SQL Server* and *Cold Fusion 7.0* by Nancy Bramucci.
Technical support provided by Wei Yang, Dan Knight, Tony Darden, and Matt Davis.
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