

1988

Walter E. Heller Western Incorporated, a California  
coproation v. U.S. Rock Wool Company, Inc., a  
Utah coporation; V. Ross Ekins; S.O. Ekins :  
Response to Petition for Rehearing

Utah Court of Appeals

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**ENVIRONMENT**

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**.A10**

DOCKET NO.

880071-CA

WALTER E. HELLER WESTERN  
INCORPORATED, a California  
corporation,

Appellant,

**vs.**

U.S. ROCK WOOL COMPANY, INC.,  
a Utah corporation; V. ROSS  
EKINS; S. O. EKINS,

Respondents.

**APPELLANT'S RESPONSE TO  
RESPONDENTS' PETITION  
FOR REHEARING**

Court of Appeals  
No. 880071-CA

Appeal from a Judgment of the District Court  
of Salt Lake County, State of Utah

The Honorable David B. Dee, Judge

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**FILED**

JAN 17 1989

Mary T. Williams  
Clerk of the Court

WALTER E. HELLER WESTERN  
INCORPORATED, a California  
corporation,

Appellant,

VS.

U.S. ROCK WOOL COMPANY, INC.,  
a Utah corporation; V. ROSS  
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## I. PRELIMINARY STATEMENT

In their petition for rehearing, respondents, V. Ross Ekins and S. O. Ekins (collectively, the "Ekins") advance a final series of arguments intended to relieve them from their obligation to repay appellant, Walter E. Heller Western Incorporated ("Heller") the numerous loans which it made to U.S. Rock Wool Company, Inc. ("Rock Wool") -- a corporation in which the Ekins had a 99.6% interest. As demonstrated below, each of those arguments is without merit and has already been argued, addressed and rejected by this Court.

In order to justify rehearing, the Ekins must demonstrate that this Court has overlooked or misapprehended some point of law or controlling fact. Rule 35 of the Rules of the Utah Court of Appeals permits rehearings in limited circumstances and was not intended to serve as a crutch for counsel seeking a second opportunity to present their arguments; the rule does not permit reargument of the same matters already adjudicated absent demonstrable mistake. See United States v. Doe, 455 F.2d 753, 762 (1st Cir. 1972), vacated on other ground sub nom. Gravie v. United States, 408 U.S. 606 (1972) (interpreting the federal counterpart of Rule 35). Cf. Harlin Construction Co. v. Continental Bank & Trust Co., 25 Utah 2d 271, 480 P.2d 464 (1971). Without a showing that the court has overlooked or misapprehended controlling facts

or authority, rehearing a fully litigated and decided case would operate directly contrary to the "fundamental rule of repose" and the public policy that "there must be some end to litigation . . . ." 1B J. Moore, W. Taggart & J. Wicker, Moore's Federal Practice 10.405, at 186-87 (1988 ed.) In their petition for rehearing, the Ekins have failed to present any authority from California or any other jurisdiction which indicates that this Court "overlooked or misapprehended" any facts or points of law such as to merit the rehearing of this Court's well-reasoned opinion. Their petition for rehearing should be denied.

## II. ARGUMENT

### A. The Court Correctly Interpreted The Unconditional Guaranty As A Waiver Of The Ekins' Objection To The Alleged Impairment Of The Collateral

Regardless of how they phrase it, the main thrust of the Ekins' argument in Points I and II (Heller's supposed breaches of the contracts with Rock Wool and the Ekins), as well as Points III (an unconditional guaranty is not really "unconditional") and IV (failure to dispose of collateral in a commercially reasonable manner) of their Petition is the same: Heller acted unreasonably in its treatment and disposition of the collateral for the Rock Wool loan and thereby impaired the value of the collateral. The Ekins argue that as a result of this conduct, Heller discharged the



guarantors from any liability for payment of Rock Wool's debt to Heller. These are the very same arguments which both parties addressed exhaustively in their principal briefs<sup>1</sup> and which this Court fully addressed in its thoughtful opinion. The Ekins provide no relevant facts or legal authority which were overlooked or misapprehended to warrant reconsideration of this argument.

In a transparent attempt to present an old argument as a new issue, the Ekins devote significant attention in their Petition to the claim that a guarantor has not waived its right to assert the defense of impairment of collateral by the fact that its guaranty is absolute and unconditional. Yet this argument flies in the face of the plain language of the guaranty herein which was not only absolute and unconditional, but also contained an unequivocal waiver of rights in the collateral:

The undersigned . . . waive notice of any consents [sic] to the granting of indulgence or extension of time payment, the taking and releasing of security in respect of any said receivable, agreements, obligations, indebtedness or liabilities so guaranteed hereunder, or our accepting partial payments thereon or your settling, compromising or compounding any of the same in such manner and at such times as you may deem advisable,

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<sup>1</sup> In support of its position, and this Court's decision that the Ekins did unequivocally waive the defense of impairment of collateral, Heller incorporates by reference the points and authorities set forth in pages 20-28 of its principal brief.

without in anyway impairing or affecting our liability for the full amount thereof . . .

Heller v. U.S. Rock Wool Co., Inc. 93 Utah Adv. Rep. 8, 9-10 (1988).

As the Court correctly noted in its decision enforcing the guaranty, California appellate courts have consistently enforced similar waivers. Id. (quoting American Security Bank v. Clarno, 151 Cal. App. 3d 874, 199 Cal. Rptr. 127 (1984)). In fact, no case has been found from any jurisdiction in which language comparable to that in the Heller guaranty did not operate to waive a guarantor's defense of impaired collateral.<sup>2</sup> More significantly, however, the Ekins have found no authority in which a court has

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<sup>2</sup> Because this Court has already ruled correctly that the Ekins waived the defense of impaired collateral, Heller declines to engage in reargument as to this issue and rather supplements that authority already supplied as follows: See Simpson v. M Bank Dallas, N.A., 724 S.W.2d 102 (Texas 1987) (defense of impairment may be waived); First Security, Bank of Idaho, H.A. v. Mountain View Equipment Co., Inc., 739 P.2d 1078 (Idaho Ct. App. 1986) aff'd on different grounds 739 P.2d 39 (1987) (waiver will be given effect); H & H Operations, Inc. v. West Georgia National Bank of Carrollton, 181 Ga. App. 766, 353 S.E.2d 633 (Ga. Ct. App. 1987); United States v. Kukowski, 735 F.2d 1057, 1059 (8th Cir. 1984) ("Where a guarantee is unconditional, a creditor, at least absent willful or grossly negligent waste or misconduct may recover a deficiency judgment from an unconditional guarantor without regard to the creditor's treatment of the collateral."); Kansas State Bank & Trust Co., v. Delorean, 7 Kan. App.2d 246, 640 P.2d 343 (1982) (absolute nature of guarantee does not waive rights to unimpaired collateral, but consent similar to that in the Heller guaranty does waive rights).

refused to enforce such a waiver. Indeed, the principal case on which the Ekins rely actually supports Heller's position. See e.g., Valley Bank and Trust Company v. Rite Way Concrete Forming, Inc., 742 P.2d 105, 107-109 (Utah App. 1987) ("an absolute guarantor may explicitly waive his rights against collateral") cited at Respondents' Brief in Support of Petition for Rehearing at 6.

Further, this Court correctly recognized that to excuse the Ekins from liability on the theory that Heller impaired the value of the collateral by not disposing of it in a commercially reasonable manner is to impose upon the contract an interpretation contrary to the stated intent of the parties. The express language of the guaranty contract gives Heller the unfettered right to release the collateral. By giving Heller this right, the Ekins foreclosed themselves from objecting that the collateral was disposed of unreasonably. United States v. Bertie, 529 F.2d 506, 507 (9th Cir. 1976) (court denied defense of commercial reasonableness to a guarantor where "[t]he terms of the agreement imposed no duty on the [creditor] with reference to the collateral. Indeed, the agreement permitted the [creditor] to release the collateral entirely without consent of the guarantors."); Western Bank v. Aqua Leisure, Ltd., 737 P.2d 537 (N.M. 1987) (New Mexico Supreme Court held that the defense of commercial reasonableness was not available to a guarantor who had agreed that the creditor

could "sell . . . at such price and upon such terms as it may deem reasonable any collateral now or hereafter held by it . . . without in any manner affecting the liability of the [guarantor]."). See also Morris v. Columbia National Bank of Chicago, 79 B.R. 777 (N.D. Ill. 1987) (commercial reasonableness waived).

In sum, this Court, like California courts that have interpreted similar language, merely held the guarantors to the agreement that the guarantors made. The guaranty was absolute and unconditional and gave the creditor complete freedom in the disposition of the collateral. By executing this guaranty, the Ekins waived any rights that they may have had under § 2819 of the California Civil Code. Clarno, supra.

B. Heller's Supposed Breaches Of Its  
Obligations To Rock Wool Did Not Relieve  
The Ekins From Their Unconditional Guaranty.

In Points One and Two of their argument the Ekins rely upon the trial court's Findings of Fact 9 and 10 to support their contention that because the trial court found Heller to have breached its contract with Rock Wool and the Ekins, the Ekins are released from their guaranty. This argument was fully addressed and rejected by this Court in its opinion where it stated as follows:

However, the challenged findings pertain only to the loan agreement between Rock Wool and Heller. Heller's obligations thereunder are not conditions to the Ekinses' liability under

their unconditional guaranty. We conclude that findings as to bad faith under the loan agreement are not pertinent to the question of liability on the personal guaranty.

Heller v. U.S. Rock Wool Co., 93 Utah Adv. Rep. at 9 (1988). This Court's disposition of the Ekins' argument was correct for three reasons, each of which is independently dispositive of the issue: in the Guaranty, the Ekins waived the right to assert any arguable defense Rock Wool might have to liability; the trial court's Findings of Fact do not support the legal conclusion that Heller materially breached its contract with either Rock Wool or the Ekins; and, the trial court was without jurisdiction to adjudicate Rock Wool's liability under the loan agreement.

In the Guaranty, the Ekins waived any rights they might arguably have had to assert any of Rock Wool's defenses to liability by agreeing to be primarily, absolutely and unconditionally liable and by further agreeing to remain fully liable for Rock Wool's indebtedness even if Heller compromised or settled Rock Wool's "obligations, indebtedness or liabilities . . ." Thus, as this Court has already held, the Ekins' argument which relies upon the unsupportable allegations that Heller breached its contract with Rock Wool fails on its face.<sup>3</sup>

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<sup>3</sup> Heller buttresses this Court's conclusion that the Findings of Fact regarding the Rock Wool contract are irrelevant with the following authority: Victory Highway Village, Inc. v. Weaver, 480 F. Supp. 71 (D. Minn. 1979); (guarantor remains liable regardless

Moreover, even if Heller had not agreed to waive Rock Wool's defenses to liability, the Ekins can take no comfort in the longstanding principle that a party to a contract may be discharged by the other party's material breach of the agreement. Here the trial court made no specific finding that any of the supposed "breaches" committed by Heller was material. Indeed, it could hardly do so since under California law, a "material breach is one that is so dominant and pervasive as in any real or substantial measure to frustrate the purpose of the undertaking." Fantasy, Inc. v. Fogerty, 664 F. Supp. 1345, 1354 (N.D. Cal. 1987). The purpose of the undertaking in this case was the loan of money to Rock Wool. Heller clearly fulfilled the purpose of the undertaking by lending Rock Wool over \$70,000. For this reason, none of the supposed "breaches of contract" identified by the trial court in

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of whether the obligation of the principal debtor has been released, discharged or altered in any manner where guaranty clearly provides for the unconditional liability of the guarantors); First Security Bank of Idaho, supra (although release of a principal debts usually discharges a guarantor, the unequivocal language of the guaranty agreement at issue effectively waived the defense of release); See also McGill v. Idaho Bank & Trust Co., 102 Idaho 494, 632 P.2d 683 (1981); United States v. Beardslee, 562 F.2d 1016 (6th Cir. 1977); Restatement of Security (1944) § 122 at 322.

Findings of Fact 9(a),<sup>4</sup> 9(b),<sup>5</sup> 9(c) and 10<sup>6</sup> was sufficiently material to relieve Rock Wool and the Ekins of the obligation to repay the loan.

Finally, the trial court was without jurisdiction to issue Findings of Fact 9 which purported to adjudicate Rock Wool's liability to Heller. When Rock Wool filed its petition in bankruptcy, the petition operated as a stay of all proceedings involving in any way the bankrupt's estate. 11 U.S.C. § 362. Acts

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<sup>4</sup>Finding of Fact 9(a) is essentially a finding that Heller refused to extend Rock Wool additional credit. Even if Heller's conduct were a breach (which it was not), Rock Wool and Ekins would not be relieved from their contractual obligations to repay any amounts previously loaned and outstanding. See, e.g., Crider v. First National Bank of Louisville, 144 Ga. App. 536, 241 S.E.2d 638, 642 (1978) ("the general rule [is] that failure to fund money or lend to a principal additional sums does not operate to discharge guarantors from liability for the amount which was actually advanced by the lender.").

<sup>5</sup>The trial court's finding in 9(b) does not support a finding of a breach, much less a material breach. Finding of Fact 9(b) concerns Heller's supposed negligence in notifying Rock Wool's customers that payments were to be made to Heller. Since there was nothing in the lending agreement that dealt with the manner of notifying Rock Wool's customers, there is no basis for the claim that this conduct breached the lending agreement.

<sup>6</sup>Findings of Fact 9(c) and 10 describe nothing more than Heller's lawful exercise of its right to enforce its contractual rights by foreclosing on its trust deed and seeking judgment on the Ekins' personal guaranty. There is no provision in either the subordination agreement with Valley Bank (to which the Ekins were not even party) or the guaranty agreement which inhibits Heller from fully enforcing their contractual rights in the manner described in these findings.

performed in violation of the automatic stay are void from their inception. In the Matter of Clark, 60 B.R. 13, 14 (Bkrtcy N.D. Ohio 1986) ("It is well established that acts taken in violation of the automatic stay are void ab initio, regardless of whether or not the parties so acting had notice of the filing of the bankruptcy petition.") Accord, Zestee Foods, Inc. v. Phillips Foods Corp., 536 F.2d 334 (10th Cir. 1976). Moreover, the commencement of a bankruptcy case creates an estate comprised of ". . . all legal or equitable interest of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Obviously, such property includes the debtor's interest in contracts with third parties.

Because of the automatic stay imposed by Rock Wool's bankruptcy filing and of the estate created by that filing, it was necessary to obtain from the Bankruptcy Court an order granting limited relief from the stay in order to permit Heller to proceed against the Ekins on their guaranty. (See App. i). Accordingly, the Bankruptcy Court issued an order which stated:

The automatic stay imposed by 11 U.S.C. § 362 shall be, and the same hereby is, lifted for the limited purpose of permitting Walter E. Heller Western, Inc. to seek to establish in certain pending state court proceedings the extent of [Rock Wool's] liability to Heller under a certain accounts financing security agreement dated December 27, 1979, and thereby enable Heller to seek a determination respecting the liability of the debtor's



accommodation parties, V. Ross Ekins and S. O. Ekins, under a certain Guaranty Agreement dated December 27, 1979. (Emphasis added.)

Under the relief order, the only issue the trial court had jurisdiction to determine with respect to Rock Wool was the amount it owed to Heller under the loan agreement. The relief order did not extend to permit state court excursions into issues of the nature and legal sufficiency of Heller's performance of obligations owed to Rock Wool under the loan agreement. To the extent that the trial court in Findings of fact 9 purported to identify Heller's breaches of its contract with Rock Wool, the trial court lacked jurisdiction since it clearly violated the scope of the stay order. For the same reason, the Ekins' reliance upon these Findings of Fact to support their claim that Heller's breach of its contracts with Rock Wool reduces or eliminates their liability under the Guaranty must fail -- only the bankruptcy court is empowered to determine the precise nature and extent of Heller's alleged breach of its contracts with Rock Wool and the extent to which any such breaches caused damages to Rock Wool.

C. The Court Properly Rejected the Ekins' Bad Faith Argument.

The Ekins' arguments regarding bad faith are meritless. This issue has already been addressed by the Court:

Heller next argues that the trial court erred in finding Heller breached its obligations to act in good faith and in a commercially

reasonable manner. . . . However, the challenged findings pertain only to the loan agreement between Rock Wool and Heller. . . . We conclude that findings as to bad faith under the loan agreement are not pertinent to the question of liability on the personal guaranty.

See 93 Utah Adv. Rep. at 10. Because this Court has already considered and rejected the Ekins' contentions regarding good faith, this issue must not now be reconsidered absent some indication, which the Ekins have failed to provide, that in reaching its decision this Court overlooked or misapprehended some controlling fact or law.

Finally, even accepting as true, all of the trial court's findings of fact, these findings fail to support a conclusion that Heller acted in bad faith under California law, or for that matter, under any jurisdiction's definition of bad faith of which we are aware. In Clarno, the court in rejecting the guarantor's contention that the duty of good faith was violated when the creditor failed to perfect a security interest, explained that the duty of good faith only requires "a creditor to disclose pertinent facts which would materially increase the risk the surety intended to assume." 199 Cal. Rptr. at 133. Here the Ekins cannot plausibly complain of nondisclosure of facts about the debtor, Rock Wool, that would have materially increased their risk since the

Ekins, as principals of Rock Wool, presumably had the greatest knowledge of Rock Wool's financial condition.

D. The Court Correctly Remanded this Case to the Trial Court for Entry of Judgment in Favor of Heller.

The Ekins contend in their Petition that this Court erred in remanding this case with directions for the trial court to enter judgment for Heller in the amount of Rock Wool's indebtedness, citing Finding of Fact 13 for the proposition that the trial court already had found that Heller had failed to prove any damages. The trial court's Finding of Fact 13, regarding damages, embodied all of the erroneous conclusions of law challenged on appeal and, although denominated a Finding of Fact, is itself, a conclusion of law. This Court has already properly overturned this conclusion on the ground that because of the absolute and unconditional nature of the Guaranty, the Ekins are liable for the repayment of the money advanced to Rock Wool notwithstanding any arguable defense Rock Wool might have to its liability for repayment.

Furthermore, the record in this case is replete with evidence establishing the amount of the Ekins' liability to Heller under the Guaranty. First, on May 3, 1984, Heller filed a proof of claim with the bankruptcy court to assert and preserve its secured claim against Rock Wool in the amount of \$71,780.48, plus accrued and accruing post-petition interest, late charges, services charges and

attorneys' fees. (See, Trial Exhibit "Z" attached hereto as App. ii). The Ekins, as controlling shareholders of Rock Wool, adduced no evidence establishing that Rock Wool ever objected to Heller's proof of claim. That failure resulted in conclusive allowance of the proof of claim pursuant to 11 U.S.C. § 502(a) which provides:

"A claim or interest, proof of which is filed under § 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a partner in the partnership that is a debtor in a case under Chapter 7 of this title, objects."

At trial, Heller's real estate loan supervisor, Dennis Nye, the custodian of Heller's books and records of account relating to the Rock Wool loan, testified that, after taking into account post-petition interest (accruing at the rate of \$37.45 per day) and attorney's fees, the amount due and owing as of November 25, 1985 was \$86,081.06. (See, R. 1423-1480; Trial Exhibit "CC" attached hereto as App. iii).

Finally, the Ekins argue that this Court's instructions for remand should have included directions for the reinstatement of their counterclaim. The Ekins' argument borders on the frivolous. All of the grounds supposedly supporting the Ekins' defenses to their liability on the guaranty are the same grounds upon which the trial court relied in rendering judgment in favor of Ekins on their counterclaim. Accordingly, the reversal of the trial court's

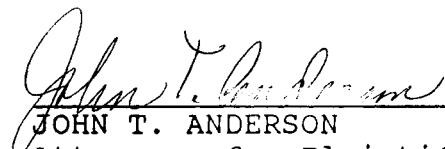
judgment against Heller on Heller's complaint, necessarily precludes reinstatement of any judgment against Heller on the Ekins' counterclaim.

### III. CONCLUSION

For the foregoing reasons, the court should deny the Ekins' Petition for Rehearing and decline to modify or supplement its well-reasoned decision dated October 14, 1988. Heller respectfully requests that in the unlikely event that this Court should grant the Ekins' Petition for Rehearing, that the Court order reargument pursuant to Rule 35 of the Rules of the Utah Court of Appeals.

DATED this 17th day of January, 1989.


BIELE, HASLAM & HATCH

  
JOHN T. ANDERSON  
Attorneys for Plaintiff/  
Appellant

### CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of January, 1989, I caused four true and correct copies of the foregoing appellant's response to respondents' petition for rehearing to be hand delivered to the following counsel of record:

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IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE DISTRICT OF UTAH  
 CENTRAL DIVISION

—————oo0oo—————

IN RE:	:	
	:	Bankruptcy No. 83-A-03213
U. S. ROCK WOOL COMPANY, INC.	:	
	:	
Debtor.	:	

—————oo0oo—————

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STIPULATION, MOTION AND ORDER RESPECTING  
 LIMITED RELIEF FROM AUTOMATIC STAY

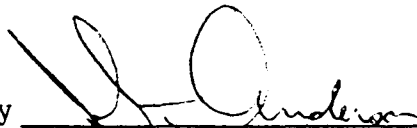
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Walter E. Heller Western Incorporated ("Heller"), a secured creditor of the above named debtor, through its counsel, John T. Anderson, Hansen Jones Maycock & Leta, and the debtor, through its counsel, Anna W. Drake, Nielsen & Senior, hereby stipulate and agree, and Heller's counsel moves, that Heller be granted relief from the automatic stay imposed by 11 U.S.C. § 362 to the extent necessary to permit Heller to seek an adjudication from the Third Judicial District Court of Salt Lake County, State of Utah, respecting the precise extent of debtor's liability to Heller under a certain Accounts Financing Security Agreement dated December 27, 1979. That issue is presently being litigated in proceedings

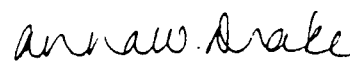
captioned, Walter E. Heller Western Incorporated v. U. S. Rock Wool Company, Inc., et al., Third Judicial District Court of Salt Lake County, State of Utah, Civil No. C-83-2368. Resolution of that issue is required to fix the liability of the debtor's accomodation parties, V. Ross Ekins and S. O. Ekins, under a certain Guaranty Agreement dated December 27, 1979.

DATED this 5<sup>th</sup> day of January, 1984 ~~December, 1983~~.

HANSEN JONES MAYCOCK & LETA

By   
Cary D. Jones  
John T. Anderson  
Attorneys for Walter E. Heller  
Western Incorporated

NIELSEN & SENIOR

By   
Anna W. Drake  
Attorneys for Debtor

ORDER


Based on the foregoing stipulation and good cause appearing therefor, it is hereby.

ORDERED that the automatic stay imposed by 11 U.S.C. § 362 shall be, and the same hereby is, lifted for the limited purpose of permitting Walter E. Heller Western Incorporated to seek to establish in certain pending state court proceedings the extent of debtor's liability to Heller under a certain Accounts Financing Security Agreement dated December 27, 1979, and thereby enable Heller to seek a determination respecting the liability of the debtor's

accommodation parties, V. Ross Ekins and S. O. Ekins, under a certain Guaranty Agreement dated December 27, 1979.

DATED this \_\_\_\_\_ day of <sup>January</sup> December, 1983.

BY THE COURT:

  
\_\_\_\_\_  
The Honorable John H. Allen  
United States Bankruptcy Judge

CERTIFICATE OF MAILING

I hereby certify that on the 12<sup>th</sup> day of December, 1983, a true and correct copy of the foregoing instrument was sent, postage prepaid in the United States mail to the following:

Anna W. Drake, Esq.  
NIELSEN & SENIOR  
Suite 1100, Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111

  
\_\_\_\_\_



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

FILED  
JUN 11 1981  
CLERK

Z

In re

U. S. ROCK WOOL COMPANY, INC.

Debtor(s).

Bankruptcy Case No. 83-A-3213

PROOF OF CLAIM

Please print or type. Attach additional pages if needed.

1. Claimant's name and address: Walter E. Heller Western Incorporated

333 Market Street, Suite 240

San Francisco, California 94105

2. The debtor was on the date the bankruptcy petition was filed, and still is, indebted to this claimant in the sum of \$ 71,780.48 plus\* which includes:

\$ 71,780.48 principal (if applicable)

\$ \_\_\_\_\_ earned interest (if applicable)

\$ \_\_\_\_\_ other (explain) \_\_\_\_\_

3. The debtor owes this money because: Periodic loan advances made pursuant to an Accounts Financing Security Agreement dated 12/27/79, an Inventory Loan Security Agreement dated 12/27/79 and a Chattel Mortgage Security Agreement

4. A copy of any writing upon which this claim is based is attached. dated 12/27/79.

5. The only security interest (collateral) held for this claim is: Collateral described in the written Security Agreement identified in ¶¶ 3 and 4 above. True and correct copies of financing statements filed in the Office of the Utah Secretary of State for the purpose of perfecting this \*\*\*. (attach writing, if any)

Unsecured \$ \_\_\_\_\_

6. The claim is x Secured\* \$ 71,780.48, plus post-petition interest, late charges, service charges and attorneys' fees.  
Priority\*\* \$ \_\_\_\_\_

\$ 71,780.48 plus\*

TOTAL AMOUNT CLAIMED

\*The claim is unsecured except to the extent that the security interest has value sufficient to satisfy it.

\*\*If priority is claimed, state basis under bankruptcy law: \_\_\_\_\_

DATED: May 3, 1981

Signature: [Signature]

Title: Attorney for Walter E. Heller Western Incorporated  
(if not signed by claimant personally)

Claim Number  
(for office use only)

[Empty box for Claim Number]

WARNING: Presenting a fraudulent claim in a bankruptcy case is a federal crime, bearing a penalty of a \$5,000 maximum fine and imprisonment of up to five years. 18 U.S.C. §152

\* post-petition interest, late charges, service fees and attorneys' fees.

\*\*\* claimant's security interest in the described collateral are attached hereto and incorporated herein by reference.

U.S. ROCKWELL  
RECONCILIATION

App. iii

	(1)	(2)	(3)	(4)	(5)	LINE NO.
14 366 DAY BASE						
15 365 " "	ADVANCES	LEGAL FEES	INTEREST	COLLECTIONS	BALANCE DUE:	
					71780.48	1
1/4% (37.75)			1170.75		72950.73	2
		329.80			73280.53	3
1/4% (39.54)			1186.20		74466.73	4
		681.05			75067.78	5
				<12086.59>	62977.19	6
1/4% 14 @ 34.54 34.54 14 @ 34.54 34.54 14 @ 34.54 34.54			1150.22		64121.41	7
		1678.33			65799.74	8
1/4% (35.30)			1100.50		66899.24	9
		3507.90			70407.14	10
1/2% 4 @ 35.54 142.56 26 @ 37.51 975.26			1117.82		71524.96	11
		625.60			72147.56	12
				<166.84>	71981.22	13
1/2% 15 @ 36.96 554.40 16 @ 36.97 591.52			1144.32		73125.54	14
		145.-			73270.54	15
				<6387.25>	66883.29	16
1/2% 26 @ 36.03 936.78 4 @ 37.59 151.56			1068.34		67951.63	17
		105.70			68057.33	18
				<3829.07>	64228.26	19
1/2% 13 @ 35.54 462.02 2 @ 37.51 75.02 12 @ 37.51 450.12			980.64		65208.90	20
1/2% (30.81)		365.33	955.11		66529.34	21
1/2% (31.44)		882.32	880.32	<706.->	67545.98	22
1/2% (31.92)		2477.60	989.52		72013.10	23
1/2% (34.03)		206.94	1020.90		73240.94	24
1/2% (33.61)		168.99	1041.91		74451.84	25
1/2% (33.41)		3790.80	994.20		79236.84	26
1/2% (35.27)		115.50	1093.37		80445.71	27
1/2% (35.81)		222.99	1110.11		81778.81	28
1/2% (36.40)		2.21	1092.-		82873.02	29
1/2% (36.89)		120.90	1148.59		84157.51	30
1/2% (37.45) 24 3475		1044.75	898.80		86081.06	31
						32
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