

1998

Macris & Associates, Inc v. Neways, Inc, Thomas E. Mower and Leslie D. Mower : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

MACRIS & ASSOCIATES, INC.,	:	
	:	
Plaintiff and Appellee	:	COURT OF APPEALS
	:	
vs.	:	No. 980004
	:	Priority No. 15
NEWAYS, INC., THOMAS E. MOWER,	:	
and LESLIE D. MOWER	:	Trial Court No. 950400093CN
	:	
Defendants and Appellants	:	

BRIEF OF APPELLANT

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
FOR UTAH COUNTY, STATE OF UTAH
THE HONORABLE JUDGE HOWARD H. MAETANI, DISTRICT COURT JUDGE

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MAR 16 1998

COURT OF APPEALS

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MACRIS & ASSOCIATES, INC.,

Plaintiff and Appellee

vs.

NEWAYS, INC., THOMAS E. MOWER,
and LESLIE D. MOWER

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JURISDICTIONAL STATEMENT

This appeal is taken from an Order Granting Neways' Motion for Summary Judgment and Macris' Cross Motion for Partial Summary Judgment and from the Judgment dated November 13, 1997, of the Fourth Judicial District Court, in and for Utah County, State of Utah, the Honorable Howard H. Maetani presiding. This case was assigned to the Utah Court of Appeals. The Utah Court of Appeals has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2a-3(j) (1997).

STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

1. Whether res judicata bars a claim for damages against an alleged successor corporation when the alleged successor corporation could have been and should have been included as a party to a previous action. R. 460. An appellate court accords no deference to a trial court's legal conclusions given to support the grant of summary judgment, but reviews them for correctness. *Schurtz v. BMW of N. Am., Inc.*, 814 P.2d 1108 (Utah 1991).

2. Whether the trial court erroneously granted summary judgment that Neways, Inc. ("Neways") was a successor company of Images & Attitudes, Inc. ("Images") when genuine issues of material fact exist that Eclat, Inc. ("Eclat"), not Neways, is the successor company of Images. R. 460. The appellate court must review the evidence in the light most favorable to the losing party, and affirms only where it appears there is no genuine dispute as to any material

issues of fact. *Hunt v. ESI Esg'g, Inc.*, 808 P.2d 1137 (Utah Ct. App.), *cert denied*, 826 P.2d 651 (Utah 1991).

**DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES, AND RULES**

Rule 56(c) of the Utah Rules of Civil Procedure states:

(C) Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Id.

STATEMENT OF THE CASE AND RELEVANT FACTS

On or about August 7, 1989, Macris & Associates ("Macris") became an independent distributor for Images, a multi-level marketing company. R. 228. When Macris became a distributor, Macris and Images entered into a contract that consisted of both a distributor application and an addendum. R. 228.

In March of 1991, Images terminated its contract with Macris. R. 228. Because of the termination, Macris filed a complaint against Images in the Fourth Judicial District Court, *Macris & Associates v. Images*, Civil No. 910400358, alleging breach of contract. R. 208-214. In June

of 1992, Macris amended his complaint and added two more causes of action. R. 227. The matter was scheduled for trial on September 28, 1992. R. 280.

In early September of 1992, Images ceased doing business. R. 227. Neways purchased only some of Images' assets and paid valuable consideration for them. R. 351. In the transfer of assets, Neways did not assume any of Images' obligations to Macris. *See* Asset Purchase Agreement, attached in Addendum; R. 325-49, 351. Further, the majority of the board of directors, shareholders, and officers for Neways and Images are not the same. R. 351. The remainder of the assets and liabilities were transferred to another corporation known as Eclat.

The September 28, 1992 trial for the *Macris & Associates v. Images* matter was vacated and eventually the trial occurred on February 16, 1995. R. 227. More than two years before trial, Macris learned that Images had ceased doing business and Neways had purchased some of its assets. R. 227. During these two years, the trial court reopened discovery and allowed Macris every opportunity to pursue its successor liability claim. R. 273-79, 507 p.12. Macris' counsel even took three days to review Neways documentation during this discovery period. R. 507 p.14. Macris never named Neways as a defendant in *Macris & Associates v. Images*.

On or about February 14, 1995, Macris filed a new complaint in the Fourth Judicial District Court of the State of Utah, *Macris & Associates v. Neways*, Civil No. 950400093, alleging future damages and successor liability. R. 1-12. The second action was filed two days before the Images trial. R. 227. All claims in the second action arise out of the same allegations

of breach of contract that were the basis for the first action, *Macris & Associates v. Images*. R. 507 p.8.

In the *Images* action, the Fourth Judicial District Court, Judge Burningham presiding, held that Images had breached its contract with Macris. R. 279. The court further awarded Macris damages that allegedly accrued between February 1, 1991, to August 31, 1992, the day Images stopped doing business. R. 279. The Utah Court of Appeals affirmed Judge Burningham's decision. *See Macris & Associates v. Images & Attitudes, Inc.*, 941 P.2d 636 (Utah Ct. App. 1997).

In October of 1995, Neways filed a Motion for Summary Judgment in *Macris & Associates v. Neways*, arguing that res judicata bars Macris' claims for future damages and successor liability in the second action. R. 184-229. Macris filed its own Motion for Summary Judgment, arguing that Neways is liable for Images' obligation to Macris, using a theory of successor liability. R. 284-85.

On September 19, 1997, the Fourth Judicial District Court, Judge Howard Maetani presiding, issued a Memorandum Decision in *Macris & Associates v. Neways*. R. 433. The trial court held that the doctrine of res judicata bars Images from claiming future damages against Neways, but failed to apply the doctrine of res judicata to bar Macris' claim of successor liability. R. 421-33. The trial court entered its order granting summary judgment on November 13, 1997. R. 465-67.

SUMMARY OF ARGUMENT

The trial court erroneously granted summary judgment in favor of Macris by holding that Neways was the successor corporation of Images. The doctrine of res judicata bars Macris' successor liability claim against Neways. Utah law is clear that res judicata will bar a claim if the claim for relief was once litigated on the merits. *See Salt Lake City v. Silver Fork Pipeline, Inc.*, 913 P.2d 731, 733 (Utah 1995). The Utah Supreme Court has established the following criteria to determine if a claim has been litigated on the merits:

First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

Madsen v. Borthick, 769 P.2d 245, 247 (Utah 1988).

As determined by the district court, all three elements of the res judicata test are satisfied. First, while Neways denies that it is the successor to Images, Neways is Images' privy because of the purchase of some of Images' assets and assumption of some of the liabilities. Second, Macris clearly could have and should have included its successor liability claim against Neways in the first action. The facts demonstrate that Macris knew for more than two years before trial that Neways had purchased some of Images' assets. Macris had full knowledge of his alleged claim against Neways but failed to amend his complaint to include Neways as a party. Third, there has been a final judgment on the first action that was affirmed on appeal. *See Macris & Associates, Inc. v. Images & Attitudes, Inc.*, 941 P.2d 636 (Utah Ct. App. 1997). Because of Macris' failure to

amend, both parties have had to pay excessive costs of court and attorney's fees while burdening judicial resources. Moreover, Neways was not given an opportunity to defend itself in the *Images* action. Therefore, Neways respectfully requests this Court to affirm the trial court's grant of summary judgment against Macris' new claims against Neways and extend the trial court's analysis to preclude Macris from pursuing successor liability against Neways.

In the alternative, if this Court finds that res judicata does not bar Macris' successor liability claim, then the trial court erroneously granted summary judgment because there are genuine issues of material fact as to whether Neways is Images' successor. Notwithstanding the fact that uncontradicted evidence presented to the trial court established that Neways gave valuable consideration to Images for the purchase of some of Images' assets, and that Neways and Images share only one director and officer, the trial court found that there was not valuable consideration given for the purchase of Images' assets by Neways. Further, the trial court held that Neways was a mere continuation of Images because the two companies have the same directors, officers, shareholders, employees and products. This finding is contradicted by the evidence. The evidence before the trial court clearly creates genuine issues of material fact. Therefore, the trial court erroneously held that Neways was Images' successor. Consequently, Neways requests that this Court reverse and remand to the trial court the issue of whether Neways is Images' successor corporation.

ARGUMENT

I. RES JUDICATA BARS MACRIS' SUCCESSOR LIABILITY CLAIM AGAINST NEWAYS

Macris' Complaint against Neways alleges three causes of action, namely: fraudulent transfer, successor liability, and alter ego. R. 1-12. These claims, including successor liability, all arise from the same breach of contract that was the basis of the first action against Images. As such, the doctrine of res judicata precludes all three claims, including successor liability, as a matter of law.

The doctrine of res judicata has two branches: claim preclusion and collateral estoppel, otherwise known as issue preclusion. The branch applicable to this appeal is claim preclusion. Claim preclusion "bars the litigation of a claim that previously has been fully litigated between the same parties." *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387, 389 (Utah Ct. App. 1987).

The reason for which claim preclusion bars a second claim is:

[h]aving been defeated on the merits in one action, a plaintiff sometimes attempts another action seeking the same or approximately the same relief but adducing a different substantive law premise or ground. This does not constitute the presentation of a new claim when the new premise or ground is related to the same transaction or series of transactions, and accordingly the second action should be held barred.

Berry v. Berry, 738 P.2d 246, 248 (Utah Ct. App. 1987) (quoting Restatement (Second) of Judgments § 25 comment d (1982)).

Res judicata bars a second action when the following three elements are met:

First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

Madsen v. Borthick, 769 P.2d 245, 247 (Utah 1988); *see Salt Lake City v. Silver Fork Pipeline, Inc.*, 913 P.2d 731, 733 (Utah 1995); *Schaer v. Utah Dept. Of Transportation*, 657 P.2d 1337, 1340 (Utah 1983); *State of Utah v. J.T.*, 877 P.2d 161, 163 (Utah Ct. App. 1994); *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387, 389 (Utah Ct. App. 1987). This doctrine “is based on the premise that the proper administration of justice is best served by limiting parties to one fair trial of an issue or cause.” *State of Utah v. J.T.*, 877 P.2d 161, 162 (Utah Ct. App. 1994) (quoting *Trimble Real Estate v. Monte Vista Ranch*, 758 P.2d 451, 453 (Utah Ct. App. 1988)). Further, the doctrine has evolved to protect the public interest by “‘fostering reliance on prior adjudication’, ‘preventing inconsistent judgments’, ‘relieving parties of the cost and vexation of multiple lawsuits’, and ‘conserving judicial resources’.” *Id.* (quoting *Office of Recovery Servs. v. V.G.P.*, 845 P.2d 944, 946 (Utah Ct. App. 1992)); *see Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980).

After having failed to plead Neways as a party in the first action, *Macris & Associates v. Images*, Civil No. 910400358, Macris tries in a second action to use a different substantive law premise, successor liability, to find Neways liable for Images’ breach of contract, *Macris &*

Associates v. Neways, Civil No. 950400093. However, the doctrine of res judicata bars the successor liability claim.

A. BOTH *MACRIS & ASSOCIATES V. IMAGES* AND *MACRIS & ASSOCIATES V. NEWAYS* INVOLVE THE SAME PARTIES OR THEIR PRIVIES.

The first element of res judicata is that both cases must involve the same parties or their privies. *See Madsen v. Borthick*, 769 P.2d 245, 247 (Utah 1988). This element is satisfied. Obviously, Macris & Associates is the same party plaintiff in both *Macris & Associates v. Images*, Civil No. 910400358, and *Macris & Associates v. Neways*, Civil No. 950400093. The remaining question, then, is whether Neways is the same party as Images or is at least Images' privy. For purposes of the underlying summary judgment motion, Neways acknowledged that it is Images' privy; however, Neways did not admit that it was the successor corporation of Images. R. 323-24.

Utah law is clear that a party can be the privy of another and not be the successor corporation, but a successor is necessarily a privy. "The legal definition of a person in privity with another, is a person so identified in interest with another that he represents the same legal right. This includes a mutual or successive relationship to rights in property." *Searle Bros. v. Searle*, 588 P.2d 689, 691 (Utah 1978); *see B.J.H. v. State of Utah*, 945 P.2d 158, 163 (Utah Ct. App. 1997); *Taylor v. Barker*, 262 P. 266, 268 (Utah 1927). The uncontradicted evidence established that Neways purchased assets from Images and therefore "had a successive right in property" with Images. If Neways is a "successor in interest of property that is the subject of pending litigation

to which his transferor [Images] is bound” then Neways is “entitled to the benefits of the rules of res judicata to the same extent as [its] transferor” Restatement (Second) of Judgments § 44 (1982); *Golden State Bottling Co., Inc. v. National Labor Relations Board*, 414 U.S. 168, 179 (1973).

Macris’ arguments before the trial court were self-contradicting. Macris denies the privity and argues that Neways is the successor corporation of Images. R. 287-93. A successor corporation is defined in the common law as:

The general rule seems to be that where a corporation sells or otherwise transfers all of its assets, its transferee is not necessarily liable for the debts and liabilities of the transferor. Under some circumstances, the transferee may be held liable for the debts of the transferor, to wit: (1) where there is an express or implied assumption of liability; (2) where the transaction amounts to a consolidation or merger; (3) where the transaction was fraudulent; (4) where some of the elements of a purchase in good faith were lacking, as where the transfer was without consideration and the creditors of the transferor were not provided for; or (5) where the transferee corporation was a mere continuation or reincarnation of the old corporation.

Memorandum Decision at p. 8, attached in Addendum (quoting 49 A.L.R. 3d 881, 883); R. 426.

While Neways admitted, for purposes of the summary judgment only, that Neways was a privy of Images, Neways contradicted, by affidavit, Macris’ claim that Neways was the successor of Images. Nonetheless, whether this Court finds that Neways is either in privity with or the successor of Images, the result is the same. If this Court finds that Neways is in privity with Images, then the first element of res judicata is satisfied. *See State of Utah v. J.T.*, 877 P.2d 161, 163 (Utah Ct. App. 1994). On the other hand, if this Court finds that Neways is the “successor in

interest of property that is the subject of pending litigation to which his transferor [Images] is bound” then Neways is “entitled to the benefits of the rules of res judicata to the same extent as [its] transferor ” and res judicata bars any new claims, including the successor liability claim. Restatement (Second) of Judgments § 44 (1982); *see Golden State Bottling Co., Inc. v. National Labor Relations Board*, 414 U.S. 168, 179 (1973) (“Persons acquiring an interest in property that is a subject of litigation are bound by, and entitled to the benefit of, subsequent judgment . . .”).

B. MACRIS’ SUCCESSOR LIABILITY CLAIM COULD HAVE AND SHOULD HAVE BEEN BROUGHT IN THE EARLIER ACTION.

In the second action, *Macris & Associates v. Neways*, Macris alleges that Neways should be forced to pay the judgment that Macris obtained against Images, applying a theory of successor liability. However, Macris did not allege successor liability against Neways in the first action, *Macris & Associates v. Images*. Because Macris could and should have brought the successor liability claim against Neways in the first action, res judicata bars Macris’ present successor liability claim.

1. **Macris’ successor liability claim is barred by res judicata because it could have been alleged in *Macris & Associates v. Images*.**

The trial court erroneously granted Macris’ summary judgment motion holding that Neways is the successor corporation of Images. Memorandum Decision at pp. 8, 9, attached in Addendum; R. 425-26. By holding Neways liable for the judgment against Images, the trial court ignored established prima facie res judicata law. *See Madsen v. Borthick*, 769 P.2d 245, 247

(Utah 1988); *Schaer v. Utah Dept. Of Transportation*, 657 P.2d 1337, 1340 (Utah 1983); *State of Utah v. J.T.*, 877 P.2d 161, 163 (Utah Ct. App. 1994); *Copper State Thrift and Loan v. Bruno*, 735 P.2d 387, 389 (Utah Ct. App. 1987).

The undisputed facts demonstrate that Macris could have brought the successor liability claim in *Macris & Associates v. Images*. Images transferred some of its assets to Neways in August of 1992. R. 344-49. Although the trial in *Macris & Associates v. Images* was to commence in the end of September 1992, the trial was postponed for two and a half years. R. 279. Macris learned of Neways' purchase of Images' assets more than two years before trial. R. 227. Discovery was then reopened until December of 1994. R. 507 p.12. After discovery reopened, Macris' counsel reviewed Neways documentation for three days at Neways' counsel's office. R. 298-99, 507 p.14. Macris could have joined Neways as a party alleging successor liability at that time; however, he did not.

2. Macris should have included the successor liability claim against Neways in the *Macris & Associates v. Images* lawsuit.

Although Utah courts have never ruled on whether a successor corporation should be included in a complaint if the successor corporation existed two years before trial, Utah courts have ruled on comparative issues. *See Ringwood v. Foreign Auto Works*, 786 P.2d 1350 (Utah Ct. App. 1990); *Masters v. Worsley*, 777 P.2d 499 (Utah Ct. App. 1989). These cases make it clear that Macris should have included the successor liability claim against Neways in the first action, *Macris & Associates v. Images*.

First, *Ringwood v. Foreign Auto Works*, 786 P.2d 1350 (Utah Ct. App. 1990), is instructive. In *Ringwood*, the plaintiff was barred from bringing a second action on a claim that could have and should have been brought in a previous action against the same defendant but was not because of the plaintiff's failure to amend its initial complaint to include the claim. *Id.* The plaintiff attempted to bring an action for breach of contract on a promissory note, which note the court determined was merged into a later agreement. *Id.* at 1358. The original case was dismissed on the merits and plaintiff attempted to bring a second action based on breach of the agreement, not the promissory note. *Id.* The court held:

Since Ringwood failed to assert a claim under the [later] agreement either initially or by amendment to his complaint, the case was properly dismissed. Obviously, a claim by Ringwood under the [later] agreement could have been decided in the prior action, as the agreement was extant and was in default. The only reason it was not decided was because Ringwood failed to raise the claim.

Id.

The Utah Court of Appeals case of *Masters v. Worsley*, 777 P.2d 499 (Utah Ct. App. 1989), is also helpful for comparison. In *Masters*, there was a first action in which a couple divorced and the wife received custody of the three minor children, the husband having to pay child support for all three. After the first trial, the husband discovered new evidence that cast serious doubt as to whether he was the father of the three children. The husband brought another action for fraud against his ex-wife, and the trial court dismissed the husband's claim holding that res judicata barred the fraud claim. *Id.* at 500.

The Utah Court of Appeals reversed holding that the fraud claim “could not have been tried” in the first proceedings because the husband had “no knowledge of the alleged facts supporting [the fraud] claim” until after the trial. *Id.* at 503. Consequently, because the husband could not have brought the claim, the fraud should not have been alleged in the first action.

These cases establish that if a plaintiff has knowledge of the facts to support a claim against a defendant or the defendant’s privy, the doctrine of res judicata requires that the plaintiff bring these claims in the existing action. Like Ringwood and unlike Masters, Ringwood had ***full knowledge of the facts supporting his claim before trial***. Applying these principles, it is clear that a successor liability claim could have and should have been brought in a first action, *Macris & Associates v. Images*, to avoid the res judicata application.

Similarly, Macris could have and should have raised the successor liability claim against Images and Neways by simply amending its complaint. Macris knew more than two years before the *Macris & Associates v. Images* trial that Neways may allegedly be the successor to Images. R. 227. Macris could have alleged successor liability. Further, Macris should have included its successor liability claim against Neways because it had full knowledge of the facts surrounding its claim. Successor liability was not alleged because Macris failed to do so; therefore, Macris should now be precluded from alleging successor liability by the doctrine of res judicata.

C. MACRIS & ASSOCIATES V. IMAGES HAS RESULTED IN A FINAL JUDGMENT ON THE MERITS.

The third element of res judicata is also satisfied. On or about the 7th of September, 1995, Judge Burningham entered Judgment in the first action, *Macris & Associates v. Images*, Civil No. 910400358. “[A] judgment is final for purposes of res judicata until it is reversed on appeal, modified, or set aside in the court of rendition.” D’Aston v. Aston, 844 P.2d 345, 351 (Utah Ct. App. 1992). The *Images* decision has been affirmed on appeal. See *Macris & Associates v. Images*, 941 P.2d 636 (Utah Ct. App. 1997). Therefore, for the purposes of res judicata, the judgment is final.

D. MACRIS’ SECOND LAWSUIT AGAINST NEWAYS VIOLATES THE PUBLIC INTEREST.

The doctrine of res judicata protects the public from multiple, burdensome lawsuits. The doctrine has evolved to protect the public interest by “‘fostering reliance on prior adjudication’, ‘preventing inconsistent judgments’, ‘relieving parties of the cost and vexation of multiple lawsuits’, and ‘conserving judicial resources’.” *State of Utah v. J.T.*, 877 P.2d 161, 162 (Utah Ct. App. 1994) (quoting *Office of Recovery Servs. v. V.G.P.*, 845 P.2d. 944, 946 (Utah Ct. App. 1992)); see *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980).

The second lawsuit, *Macris & Associates v. Neways*, violates the public policy behind the doctrine of res judicata. As mentioned, Macris could have and should have amended its complaint to include Neways as a successor corporation of Images. When Macris failed to amend its

complaint, Neways did not spend its corporate counsel's efforts to protect itself from a successor liability claim. Now, because of Macris' counsel's failure to include Neways, Neways has been forced to pay attorney's fees and costs of litigation even though Neways believed that a final adjudication in the first lawsuit would and should protect them. Further, both Neways and Macris have been forced to pay excessive attorney's fees and Macris' multiple lawsuits have wasted judicial resources. Macris should not be awarded for violating the public interest behind the doctrine of res judicata.

Because all three prongs of the res judicata test from *Madsen v. Borthick*, 769 P.2d 245, 247 (Utah 1988), are satisfied, and because Macris' second action violates the public interest, Macris should be barred from bringing a successor liability claim against Neways. Therefore, Neways respectfully requests that this Court reverse the trial court's decision and hold that res judicata bars Macris' successor liability claim against Neways.

II. EVEN IF RES JUDICATA DOES NOT BAR MACRIS' SUCCESSOR LIABILITY CLAIM, THE TRIAL COURT LACKED SUFFICIENT EVIDENCE TO SUPPORT A FINDING THAT NEWAYS IS IMAGES' SUCCESSOR CORPORATION

A. THE TRIAL COURT ERRONEOUSLY GRANTED SUMMARY JUDGMENT.

The trial court erroneously granted summary judgment against Neways, holding that Neways is the successor corporation of Images and should be liable for Images' debt to Macris. Summary judgment is only proper if there are no genuine issues of material fact. *See Billings v. Union Bankers Ins. Co.*, 819 P.2d 803 (Utah 1991); Rule 56 of the Utah Rules of Civil

Procedure. Further, all inferences are considered in the light most favorable to the non-moving party. *See Winegar v. Froerer Corp.*, 813 P.2d 104 (Utah 1991). The trial court based its ruling on conflicting evidence before the court. Therefore, genuine issues of material fact existed as to whether Neways was in fact Images' successor corporation.

Utah law is not well established as to the determination of successor liability of corporations. Therefore, the trial court adopted a common law definition of successor liability as follows:

The general rule seems to be that where a corporation sells or otherwise transfers *all of its assets*, its transferee is not necessarily liable for the debts and liabilities of the transferor. Under some circumstances, the transferee may be held liable for the debts of the transferor, to wit: (1) where there is an express or implied assumption of liability; (2) where the transaction amounts to a consolidation or merger; (3) where the transaction was fraudulent; (4) where some of the elements of a purchase in good faith were lacking, as where the transfer was without consideration and the creditors of the transferor were not provided for; or (5) where the transferee corporation was a mere continuation or reincarnation of the old corporation.

Memorandum Decision at p. 8, attached in Addendum (quoting 49 A.L.R. 3d 881, 883) (emphasis added); R. 426. The trial court then held that "it would seem that the transfer from Images to Neways would result in successor liability" based on the following two exceptions: (1) elements of good faith were lacking because the transfer was without consideration sufficient to provide for the creditors; and (2) the new corporation was a continuation of the old corporation. *Id.* at 8, 9; R. 425-26. These findings were erroneous and unsupported by the evidence.

**B. GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING WHETHER
NEWAYS SUCCEEDED TO THE OBLIGATIONS OF IMAGES UNDER IMAGES'
CONTRACT WITH MACRIS.**

**1. The contract between Neways and Images does not require Neways to
assume the obligation Images owed to Macris.**

The trial court erroneously granted summary judgment in favor of Macris because genuine issues of material fact exist concerning whether Neways is the successor to Images. Neways did not contractually agree to succeed to Images' obligations to Macris under the terms of the Asset Purchase Agreement. *See* Asset Purchase Agreement, attached to Addendum; R. 344-49. Therefore, Neways cannot be liable as a successor for the Images judgment. Whether the Asset Purchase Agreement between Neways and Images included an assumption by Neways of Images' obligation to Macris "depends on the terms of the assignment and the parties' intent." *Oquirrh Assoc's v. First Nat'l Leasing Co.*, 888 P.2d 659, 663 (Utah Ct. App. 1994) (quoting *Winegar v. Froerer Corp.*, 813 P.2d 104, 108 (Utah 1991)).

In *Oquirrh*, the appellant sold real property to the Loisesles. The real property was subsequently transferred to different parties through a succession of real estate purchase contracts. Upon default of the Oquirrh-Loiselle contract, Oquirrh attempted to recover its judgment against Loiselle from several parties, including one entity called Forthcoming. Oquirrh asserted that Forthcoming was the successor of the Loisesles, and therefore, contractually bound to the terms of the Oquirrh-Loiselle agreement. There, the Utah Court of Appeals held that "Forthcoming merely became a successor to the Loisesles' property interest, but absent agreement

to the contrary, the Loises retained their contractual rights and obligations with Oquirrh.” *Id.* at 663.

The Utah Court of Appeals compared the facts in *Oquirrh* with those in *Hansen v. Green River Group*, 748 P.2d 1102 (Utah Ct. App. 1988), which involved a subpurchase by subcontract rather than an assignment. In comparison, the Court stated:

In *Hansen*, this court concluded that while a subpurchase did create privity of estate between the original vendor and the subpurchaser, it did not create privity of contract between them unless the parties so agreed. The parties in this case reached no such agreement.

Oquirrh, 888 P.2d at 663 (citing *Hansen*, 748 P.2d at 1104, n. 2). Likewise, Neways and Images did not reach an agreement for Neways to assume Images’ obligations to Macris. Therefore, genuine issues of material fact exist as to whether Neways is Images’ successor.

2. The record contains no evidence to support the trial court’s finding that the transaction between Images and Neways lacked consideration.

The facts demonstrate that Neways paid valuable consideration for Images. Leslie DeeAnn Mower, Vice-president and CFO of Neways, testified by affidavit that “Neways provided valuable consideration for the assets it purchased from Images in approximately September of 1992.” R. 323. In addition, the court received no evidence as to if Images or its true successor corporation, Eclat, could satisfy the Macris obligation. In fact, the record contains no evidence regarding the true successor corporation. Further, the record contains no evidence regarding the value of the assets that Neways received from Images. After reviewing the facts in the light most

favorable to Neways, there are genuine issues of material fact as to whether Neways gave valuable consideration to Images for the assets it purchased and if Images or its true successor, Eclat, can satisfy Images' obligation to Macris. Therefore, Neways respectfully requests this court to reverse and remand this issue to the trial court so there can be a trial on the merits.

3. The record contains insufficient evidence to support the trial court's finding that Neways is a continuation of Images.

The trial court erroneously held that Neways is a mere continuation of Images, and therefore, is the successor. The trial court found that "Neways consists of substantially the same assets, products, officers, and employees as Images." Memorandum Decision at p 8, attached in Addendum; R. 425. The evidence does not support this finding.

Leslie DeeAnn Mower testified by affidavit that "Neways did not purchase all of the assets of Images." R. 323. However, according to common law, a corporation must purchase *all* assets of the old corporation in order to be the successor corporation. See Memorandum Decision at p. 8, attached in Addendum (quoting 49 A.L.R. 3d 881, 883); R. 426. The evidence merely established that Neways purchased a portion, not all, of the assets from Images.

Ms. Mower also testified that "[o]nly one of the three directors of Neways also sits on the board of directors for Images." R. 323. Further, the officers and shareholders of Neways and Images are not the same. R. 323. The court received no evidence to establish whether or not Neways and Images shared the same assets, products, officers, and employees. The trial court erroneously supported its findings by citing only to unsupported allegations in Macris' Complaint

that were either unequivocally denied in Neways' Answer or refuted in affidavits submitted by Neways to oppose Macris' Motion for Summary Judgment. R. 11, 94-5, 280, and 431. This lack of evidence creates genuine issues of material fact as to whether Neways is the same corporation as Images. This issue should go to a finder of fact. Thus, Neways respectfully requests that this Court reverse and remand the issue of Neways as Images' successor to the trial court.

CONCLUSION

Res judicata bars Macris' successor liability claim against Neways. There is privity between Neways and Images, Macris could have and should have brought the successor liability claim against Neways in the first action, and there has been a final judgment on the merits of the first action. Therefore, Neways respectfully requests this Court to reverse the trial court's decision and hold that the doctrine of res judicata bars Macris' successor liability claim.

In the alternative, if this Court finds that res judicata does not bar the successor liability claim, then Neways respectfully requests that this Court reverse and remand the successor liability claim to the trial court to allow the parties an opportunity to present evidence regarding the true successor to Images.

DATED this 12th day of March, 1998.




ALLEN K. DAVIS
CHRISTOPHER S. CRUMP
Attorneys for Neways/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 1998, I caused to be served two (2) true and correct copies of the foregoing **BRIEF OF APPELLANT** in Appeal No. 980004-CA via first class mail, postage pre-paid, to the following:

D. Frank Wilkins #3468
Chris R. Hogle #7223
BERMAN, GAUFIN, TOMSIC & SAVAGE
Attorneys for Plaintiff/Appellee
50 South Main Street, Suite 1250
Salt Lake City, Utah 84144



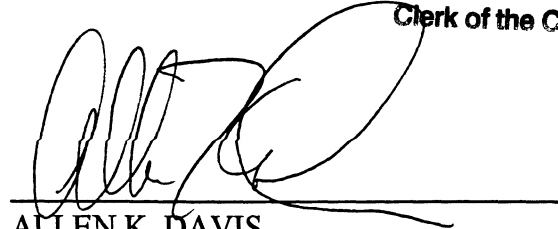
FILED

Utah Court of Appeals

MAR 16 1998

Julia D'Alesandro
Clerk of the Court

DATED this 12th day of March, 1998.



ALLEN K. DAVIS
CHRISTOPHER S. CRUMP
Attorneys for Neways/Appellant

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50 South Main Street, Suite 1250
Salt Lake City, Utah 84144



ADDENDUM

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

MACRIS & ASSOCIATES, INC., vs. NEWAYS, INC., THOMAS E. MOWER, and LESLIE D. MOWER, Defendants.	Plaintiff, Defendants.	MEMORANDUM DECISION CASE NO. 950400093CN DATE: September 19, 1997 JUDGE: HOWARD H. MAETANI
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This matter came before the Court on Defendants', Neways, Inc., Thomas Mower, and Leslie Mower, Motion for Summary Judgment, pursuant to the Utah Rules of Civil Procedure Rule 56(b), filed on or about October 16, 1995, and on Plaintiff's, Macris & Associates, Inc., Cross Motion for Partial Summary Judgment, pursuant to the Utah Rules of Civil Procedure Rule 56(a), filed on or about November 14, 1995. The Honorable Howard H. Maetani, Fourth District Court Judge, heard oral arguments on January 29, 1996, and stayed rulings on the motions before the Court pending a ruling by the Utah Court of Appeals on the appeal of a judgment in favor of Macris & Associates and Michael Macris in their lawsuit against Images, Inc., the predecessor corporation to Neways, Inc. The Court of Appeals rejected every argument raised on appeal and affirmed the judgment against Images, Inc. Dennis K. Poole and Andrea Nuffer represent Defendants, Neways, Inc., Thomas Mower, and Leslie Mower. Plaintiff, Macris & Associates, Inc., is represented by Thomas R. Karrenberg, Nathan B. Wilcox, and Jon V. Harper. This matter has again come before the Court through Plaintiff's Notice to Submit for Ruling, filed on September 3, 1997, by Plaintiff's new counsel,

Stephen T. Hard of Giauque, Crockett, Bendinger & Peterson. The Court has reviewed the file, considered the memoranda of counsel, and heard oral arguments, and upon being advised in the premises, now makes the following:

MEMORANDUM DECISION

I STATEMENT OF FACTS

The plaintiff, Macris & Associates, Inc. ("Macris"), is a Utah Corporation and at one time was a distributor for Images & Attitude, Inc. ("Images"), a Utah Corporation formerly engaged in multilevel marketing. *See Complaint* ¶¶ 1, 7, 11.

On or about August 1989, Macris entered into a distributorship agreement with Images and the parties agreed to allow Macris to have automatic qualification of its distributorship, and attached this provision to the agreement through the Addendum to Distributor Application. *See Complaint* ¶ 12.

Pursuant to the Addendum Agreement, Macris agreed to use its time, marketing expertise and contacts to build a downline organization within Images' multilevel program. For this commitment, Images agreed to pay Macris at the highest level of Images' marketing program for product sales made by the distributors in the Macris downline. *See Complaint* ¶¶ 13, 14.

On or about March 7, 1991, Macris received a letter from Images claiming that Macris was not sufficiently active and suspended the Auto Qualification Agreement, and subsequently terminated Macris as an Images distributor. *See Complaint* ¶ 22.

On or about April 17, 1991, Macris filed a lawsuit (Civil Case No. 910400358) against

Images and Thomas E. Mower for breach of contract, seeking relief in the form of damages worth the payments it would have received from Images but for the termination of the distributorship agreement. *See Complaint* ¶ 23.

Neways, Inc. (“Neways”), a Utah corporation, engaged in multilevel marketing and sale of health and beauty products, was incorporated in Utah on or about August 1992, with Thomas E. Mower as president and Leslie Mower as vice-president. *See Complaint* ¶¶ 2, 9.

In early September, 1992, Images transferred substantially all its assets to Neways, discontinuing its multilevel marketing business, at which time Neways took over the multilevel marketing operation, using the same facilities, with the same employees, selling the same products through essentially the same network of distributors. *See Defendants’ Memorandum in Support of Motion for Summary Judgment* ¶ 10; *Plaintiff’s Memorandum in Opposition to Motion for Summary Judgment* ¶ 3; *Macris v. Images Findings of Fact and Conclusions of Law* ¶ 17.

On or about September 15, 1995, the Fourth District Court of Utah County, Judge Guy R. Burningham presiding, entered a Judgment against Images on Macris & Associates’ cause of action for breach of contract. An appeal to this decision was filed on or about February 12, 1996. *See Defendants’ Memorandum in Support of Motion for Summary Judgment* ¶ 14.

On or about February 15, 1995, Plaintiff filed a complaint with the court of Judge Boyd L. Park, alleging fraudulent transfer, successor liability, and alter ego. *See Complaint* ¶¶ 30, 38, 45.

Based on these causes of action, Plaintiff asks to be awarded: punitive damages,

general damages from Thomas E. and Leslie Mower, an Order partially voiding the transfer from Images to Neways, and an Order making Thomas E. Mower, Leslie Mower, and Neways liable for commissions to Macris had its distributorship also been transferred to Neways. *See Complaint Prayer for Relief* ¶¶ 1, 2, 3, 4.

On or about October 17, 1995, Defendants filed *Defendant Neways, Inc. Motion For Summary Judgment* with an accompanying *Memorandum In Support Of Motion For Summary Judgment* filed on or about October 19, 1995, claiming that res judicata bars the plaintiff from recovering on its claims.

On or about November 13, 1995, Plaintiff, Macris & Associates, Inc., filed *Plaintiff's Memorandum In Opposition To Motion For Summary Judgment*.

On or about November 14, 1995, Defendants filed their *Reply Memorandum In Support Of Defendants' Motion For Summary Judgment*.

On or about November 14, 1995, Plaintiff filed *Plaintiff Macris & Associates, Inc. Motion for Summary Judgment* with an accompanying *Memorandum In Support of Motion For Summary Judgment*.

On or about November 24, 1995, Defendants filed *a Memorandum In Opposition To Plaintiff's Motion for Summary Judgment*.

On or about November 28, 1995, the current action was transferred from Judge Park to Judge Howard H. Maetani, pursuant to the 4th District Court's decision to reassign some cases.

On or about December 7, 1995, Plaintiff filed *a Reply Memorandum In Support Of*

Motion For Partial Summary Judgment.

Oral arguments were heard on the motions on or about January 29, 1996 in front of Judge Maetani.

A Stay of the Proceedings was entered on or about February 21, 1996, pending the completion of all appeals in the previous case.

On September 3, 1997, Plaintiff filed a *Notice to Submit for Ruling*, following the completion of all appeals in the previous case.

II STANDARD FOR MOTION FOR SUMMARY JUDGMENT

Under the Utah Rules of Civil Procedure, Rule 56(a) and (b), a party against whom a claim has been made, may at any time move for a summary judgment in his favor. The motion should be granted if “. . . the pleadings, deposition, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” URCP Rule 56(c).

III ISSUES

Defendants argue that the current action is barred by res judicata, claiming that the three elements have been met, in that; the parties are the same, the claim was or could have been presented in the first suit, and that there was a final judgment on the merits. For the

sake of this argument, Defendants acknowledge that Neways is in privity with Images, but contend that this does not make Neways the alter ego of Images, and that there is no successor liability attached to the acknowledgment.

Plaintiff contends that the elements of res judicata have not all been met, that Neways and Images are not the same parties, the claims are such that they should not have been brought into the first action, and that as the previous decision is being appealed, there has not been a final judgment. However, as Defendants have acknowledged the privity between Neways and Images, Plaintiff argues that it is entitled to a judgment on its claim for successor liability as a matter of law.

IV ANALYSIS

Claims are barred from being litigated by res judicata when the following three elements are satisfied:

First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

Madsen v. Borthick, 769 P.2d 245, 247 (Utah 1988).

A. PRIVITY BETWEEN NEWAYS AND IMAGES

“The legal definition of a person in privity with another, is a person so identified in interest with another that he represents the same legal right.” Searle Bros. v. Searle, 588 P.2d 689, 691 (Utah 1978). Neways has acknowledged that there is privity between itself and

Images for the purpose of proving res judicata, but denies that this in any way proves successor liability. Macris refuses to accept Neways' acknowledgment of privity for res judicata, but then uses it to claim successor liability as a matter of law.

If it is established that Neways is a “successor in interest of property that is the subject of pending litigation to which his transferor is bound” then the transferee is “entitled to the benefits of the rules of res judicata to the same extent as [its] transferor . . .” Restatement (Second) of Judgments § 44 (1982); Golden State Bottling Co. Inc. v. National Labor Relations Board, 414 U.S. 168, 179 (1973). Thus, as Neways is the successor in interest of the property that Images would have used to pay damages to Macris, Neways is entitled to argue res judicata to the same extent as Images.

Although Utah has not yet addressed the issue of generally establishing successor liability of corporations, a number of jurisdictions have well established rules in common. See Williams v. Bowman Livestock Equipment Co., 927 F.2d 1128,1131 (10th Cir. 1991) (a creditor based his claim against a corporation on successor liability, but the court ruled against him because “a prerequisite for the imposition of liability against a corporation as a mere continuation of a predecessor is a sale or transfer of all, or substantially all, the assets of the latter to the former.”); Kloberdanz v. Joy Manufacturing Co., 288 F. Supp. 817 (D. Co. 1968) (a company that purchased assets from a liable company was found to be not responsible because there was no hint of fraud, the transfer was made for a good consideration, and there was no connection between the two companies, such as officers or

stockholders); Koch v. Speedwell Motor Car Co., 140 P. 598 (Cal. App. 1914) (the court states that when a new corporation is merely a continuation of an old corporation, the new will be held liable for the debts of the old) ; Evanston Insurance Co. v. Luko, 783 P.2d 293 (Haw. App. 1989) (owners of a liable company formed a new company, but the new company was not liable as there was no transfer of assets; the court stated that successor liability presupposes a transfer of assets, and its intent is that the “rights of creditors are 'protected against a sale , transfer, or distribution of all the corporate property' in fraud of their rights. 18B Am. Jur. 2d *Corporations* § 2086 at 914 (1985).” A representation of what the common reasoning is behind successor liability is located in 49 A.L.R. 3d 881, 883:

The general rule seems to be that where a corporation sells or otherwise transfers all of its assets, its transferee is not necessarily liable for the debts and liabilities of the transferor. Under some circumstances, the transferee may be held liable for the debts of the transferor, to wit: (1) where there is an express or implied assumption of liability; (2) where the transaction amounts to a consolidation or merger; (3) where the transaction was fraudulent; (4) where some of the elements of a purchase in good faith were lacking, as where the transfer was without consideration and the creditors of the transferor were not provided for; or (5) where the transferee corporation was a mere continuation or reincarnation of the old corporation.

In the current action, it would seem that the transfer from Images to Neways would result in successor liability based on two of the exceptions. First, if as a result of the transfer, Images is unable to meet its obligation to Macris, it would indicate that some of the elements of a purchase in good faith were lacking in that the transfer was without consideration sufficient to provide for the creditors. In Malone v. Red Top Cab Co., 60 P.2d 543 (Cal.

App. 1936), the court held that in the case where one corporation takes all the assets of another corporation without passing any other property or cash to the selling corporation that could be used to meet any creditor's claim, the purchaser will be obligated to take responsibility for the seller's debts. Second, as Neways consists of substantially the same assets, products, officers, and employees as Images, it would seem that Neways is in fact a mere continuation of the same corporation. In G. P. Publications, Inc. v. Quebecor Printing--St. Paul, Inc., 481 S.E.2d 674 (N.C.App. 1997), the Court considered several factors in determining the applicability of successor liability, including whether there is identity of stockholders and directors between two corporations. "This...encompasses the situation where one corporation sells its assets to another with the same people owning both corporations." Id. at 680, quoting Ninth Ave. Remedial Group v. Allis-Chalmers Corp., 195 B.R. 716, 724 (N.D. Ind. 1996) (citing U.S. v. Carolina Transformer Co., 978 F.2d 832, 838 (4th Cir. 1992)).

Therefore, the court finds that Images and Neways are in privity with one another and that the element of res judicata has been met in barring a claim for further damages. However, the court finds that Neways does fall into the exceptions to the general rule on successor liability, and is responsible for meeting the obligation Images currently owes to Macris.

B. NEWNESS OF CLAIMS BROUGHT IN THE CURRENT ACTION

In both the previous and the current action, claims have arisen from a single breach of

a single contract, and in the first suit, Macris was awarded damages for that breach. Macris knew about the creation of Neways before the conclusion of the previous trial, and could have asked to include Neways in its earning projections if it felt such action was necessary to obtain sufficient relief from the breach of contract.

Basing a new claim for relief, from a previously adjudicated injury, on different issues, will not avoid res judicata. "Seeking the same or approximately the same relief but adducing a different substantive law premise or ground . . . does not constitute the presentation of a new claim when the new premise is related to the same transaction or series of transactions and accordingly the second action should be held barred." Berry v. Berry, 738 P.2d 246, 248 (Utah 1987) (quoting from the Restatement 2d of Judgments § 25 comment d (1982)).

As Macris knew of the transfer from Images to Neways before the conclusion of the previous action, Macris cannot now present a claim for new damages, based on the fact that there was a transfer of assets, when the injury is the same as before.

Typically, even when the injury caused by an actionable wrong extends into the future and will be felt beyond the date of judgment, the damages awarded by the judgment are nevertheless supposed to embody the money equivalent of the entire injury. Accordingly, if a plaintiff who has recovered a judgment against a defendant in a certain amount becomes dissatisfied with his recovery and commences a second action to obtain increased damages, the court will hold him precluded . . .

Restatement 2d of Judgments § 25 comment c (1982).

In National Finance Co. of Provo v. Daley, 382 P.2d 405 (Utah 1963), the Utah Supreme Court adopted this reasoning, saying:

In our judgment it better comports with the orderly processes of justice to require the plaintiff to bear the responsibility of pleading, proving and claiming the full benefit of whatever character of cause of action he possesses in the original action and of being bound thereby, than to allow another trial to come upon the same cause of action raising issues which could have been dealt with in the original action.

Because of Macris' knowledge of the transfer of Images' assets to Neways, the issue of damages in addition to those previously awarded should have been included in the first action.

Plaintiff argues that the claims brought forth in the current action are a result of a new injury, namely Neways failure to make payments to Macris under the terms of the agreement between Macris and Images. It would seem that it is plaintiff's contention that the distributorship agreement between the parties continued to exist beyond the date of the breach of the contract, and as such, was included in the transfer of assets from Images to Neways.

In fact, it would not be appropriate for plaintiff to receive damages, that are intended to make him whole, for a breached contract and then seek to have that same agreement performed.

Whenever there is a total breach of a contract by one party to it, the other is at liberty to treat the contract as broken and desist from any further effort on his part to perform it. In other words, he may abandon it and recover, as damages for the breach, the benefits he would have received by a full performance. . . . Where a contract is thus abandoned, the primary right to further performance of the promise of the other party is discharged and is replaced by a remedial right to damages for nonperformance.

17A AM. JUR. 2D *Contracts* § 726. In the suit between Macris and Images, Macris sought and was awarded damages for breach of contract. Because of this, Macris must be denied in its current attempt to claim that Neways has failed to perform under the same contract for

which there was already found to have been a breach.

Macris knew of the transfer from Images to Neways before the conclusion of the first action, and could have raised question regarding it in that suit. As such, the court finds that the second element of res judicata has been satisfied in that the issues in the current suit could and should have been brought forward in the previous action.

C. FINAL JUDGMENT ON THE MERITS

The plaintiff argues that as the first action is being appealed, there has not yet been a final judgment. In D'Aston v. Aston, 844 P.2d 345,351 (Ut. App. 1992), the court stated that “a judgment is final for purposes of res judicata until it is reversed on appeal, modified, or set aside in the court of rendition.” Because the judgment in the previous suit has not been reversed, this element of res judicata is satisfied.

V DECISION

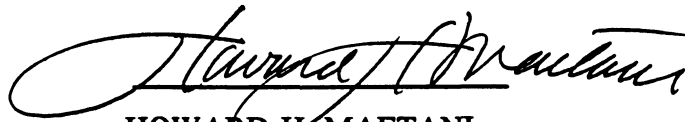
As discussed in the above analysis, the court finds that the elements of res judicata have been satisfied, thus barring Plaintiff's claims for further damages from Neways as a result of the breached contract with Images. However, the court also finds that Neways is the successor of Images and is liable for the previous judgment against Images.

Therefore, the court GRANTS Defendants', Neways, Inc., Thomas E. Mower, and Leslie D. Mower, Motion for Summary Judgment as to any claim for new damages.

The court also GRANTS a Partial Summary Judgment to the Plaintiff, Macris & Associates, Inc., making Neways, as Images' successor, liable for the previous judgment against Images.

Counsel for the Plaintiff, Macris & Associates, Inc., is instructed to prepare an Order consistent with this Decision.

Dated at Provo, Utah this 19th day of September, 1997.

A handwritten signature in dark ink, appearing to read "Howard H. Maetani", written over a horizontal line.

HOWARD H. MAETANI
Fourth District Court Judge

cc:\ Dennis K. Poole, Esq.
Andrea Nuffer, Esq.
Roger D. Sandack
Stephen T. Hard

ASSET PURCHASE AGREEMENT

EXHIBIT A

AGREEMENT made this 31st day of August, 1992 between Images and Attitude, Inc., a corporation organized under the laws of the State of Utah and having its principle place of business at 150 East 400 North, Salem, Utah (hereinafter referred to as Seller) and NEWAYS, Inc. a corporation organized under the laws of the state of Utah (hereinafter referred to as Buyer).

Buyer desires to acquire and Seller desires to sell the assets of Seller subject to the Seller's liability, as more fully shown by the financial records attached hereto and by reference made a part hereof as Exhibit "A", for good and valuable consideration.

NOW, THEREFORE, in consideration of the promises and mutual covenants, undertakings, and agreements hereinafter contained and subject to the terms and conditions hereof, the parties agree as follows:

SECTION 1

ACQUISITION OF ASSETS: Buyer shall acquire, as of the closing date, all of the assets subject to the liability of Seller listed in Exhibit "B" attached hereto and by reference made a part hereof, which liability Buyer assumes and agrees to pay as shown by the financial records attached hereto and as may be changed in the ordinary operation of Seller prior to closing date.

SECTION 2

PURCHASE PRICE: Buyer, in consideration of the covenants, conditions, and representations of Seller, recited herein, shall pay to Seller the purchase price of \$1,700,000 which is allocated as agreed by the parties hereto and payable as more fully described in Exhibit "C".

SECTION 3

WARRANTY AND COVENANTS OF SELLER: Seller agrees, represents and warrants as follows:

(a) Seller is duly incorporated and authorized to do business under the laws of the state of Utah.

(b) The execution of this agreement has been duly authorized by Seller's Board of Directors.

(c) Seller shall use its best efforts to obtain, on or before September 15, 1992, the approval of its shareholders of the terms and condition of this agreement and of the nature and amount of the consideration to be received by Seller hereunder.

(d) The financial statements of Seller attached to this agreement as Exhibit "A" made a part hereof by reference, fully and

correctly reflect the financial condition, assets and liabilities, and operations of Seller as of the dates stated in such documents.

(e) The list of accounts and notes receivable, attached hereto as Exhibit "D" and by reference made a part hereof, is complete as of this date. Any accounts or notes receivable so listed or acquired by Seller before the closing date or not fully paid when due, Seller agrees to pay them in full upon written notice by Buyer of any default provided the Seller's liability shall be limited to the amount exceeding the reserve----shown in Sellers balance sheet.

(f) Seller has good and marketable title to all assets and property sold hereunder, except as otherwise stated in the Exhibits attached hereto and except for property disposed of or encumbered in the ordinary course of business. All tangible properties sold hereunder are in good condition and repair and conform to all applicable zoning, building, safety and other regulations.

(g) Attached hereto is Exhibit "F" and by reference made a part hereof is a list of insurance policies in respect to the Seller's property and business as to the date of this agreement. Seller agrees to continue this insurance or insurance with similar coverage until the closing date.

(h) Seller agrees to use its best efforts to obtain in the necessary consents the assignment or transfer of any contract, lease, license, or permit to be assigned or transferred hereunder, enter performance duties under such contracts, leases, licenses, and permits without default until the closing date.

(i) Seller agrees to disclose to Buyer no later than five days after the closing date, all trade secrets, customer lists, and technical information held or controlled by Seller in relation to the business sold hereunder. Buyer shall not have the right to use the name Images and Attitude or any variation thereof in the United States or any other country.

(j) Until the closing date of this agreement, Seller shall not at the written consent of Buyer, disclose, dispose of or encumber any of the assets or property sold hereunder with the exception of transactions occurring in the ordinary course of Seller's business. Seller shall use its best efforts to preserve its business and good will. Seller further agrees to permit Buyer and its representatives full access to its property and records any time prior to the closing date during normal business hours and to

supply all information concerning its property and affairs as Buyer may reasonably demand.

SECTION 4

WARRANTIES OF BUYER: Buyer represents and warrants to Seller as follows:

(a) Buyer is a corporation existing under and doing business by virtue of the laws of the state of Utah, and that it is duly organized and a validly existing corporation.

(b) The Board of Directors of Buyer authorize the execution of this agreement.

SECTION 5

INDEMNIFICATION OF PARTIES: Except as otherwise expressly provided in this agreement, Seller shall indemnify Buyer against any liability connected with the assets or business sold hereunder occurring as a result of acts or omissions occurring before the closing date, and Buyer shall indemnify Seller against any and all liability occurring as a result of acts or omissions occurring after the closing date. Each party to this agreement shall cooperate with the other party in defending claims for which the other party is or may be liable under this provision by giving notice to the other party of the exertionary existence of such claim by furnishing such documents and information as may be useful in the defense of such claim.

SECTION 6

TRANSFER OF TITLE AND RISK OF LOSS: Title to the property and assets sold hereunder shall be passed to Buyer on the closing date and delivery to it of the proper instruments of transfer. If at any time, any of the tangible property sold hereunder shall have been lost or damaged, except for the damage or the loss through use and wear in the ordinary course of business, by any cause or event beyond the reasonable power and control of Seller, Buyer shall be entitled to collect all insurance proceeds collectable by reason of such loss or damage or, if the amount of loss or damage exceeds 50 percent of the value of the property, Buyer shall have the right to elect to complete the sale and collect all insurance proceeds or terminate this agreement in lieu of any other right or remedy. Buyer becomes entitled to collect insurance under this provision,

a purchase price of lost or damaged assets covered by insurance shall not be reduced.

SECTION 7

IMPOSSIBILITY OF PERFORMANCE: If, except as otherwise provided herein, either party shall be prevented from completing the sale, for any cause beyond its reasonable power and control, the other party may elect to except partial performance or, in lieu of any other remedy, elect to terminate this agreement.

SECTION 8

SALES AND USE TAX: Any sales and use tax payable by reason of the sale by any of the assets under this agreement shall be paid by Buyer, and such payment shall not be construed as part of the purchase price. Seller agrees to furnish to Buyer resale certificates for any items sold to Buyer for resale. Seller shall also obtain and deliver to Buyer a clearance receipt if requested of the states where Seller has transacted business for sales and use taxes due from Seller.

SECTION 9

INVENTORY OF GOODS TO BE SOLD: Inventory of all stock in trade, suppliers common fixtures, furnishings and equipment shall be taken on or about September 1, 1992. Inventory of Seller's stock in trade shall set forth the value for which items are to be sold under this agreement based on Sellers actual cost for each item.

SECTION 10

DISPOSITION OF RECORDS AND DOCUMENTS: Seller shall retain title to its documents and records, except those agreed to be transferred under this agreement. Any such documents or records that Buyer may reasonably require after the closing date for use in connection with the assets sold hereunder shall be delivered or made available to Buyer. Each party shall forward to the other party all correspondence, documents or payments relating to the assets sold hereunder to which the other party is entitled under the terms of this agreement. Before destroying any records or papers connected with the assets sold hereunder, each party shall first offer them to the other party.

SECTION 11

COSTS: Buyer shall bear the costs incidental to the sale hereunder in accordance with prevailing custom.

SECTION 12

INTERPRETATION OF AGREEMENT:

(a) There are no agreements, warranties, or representations, express or implied except those expressly set forth herein. All agreements, representations and warranties contained in this agreement shall apply as of the closing date shall survive the closing of this agreement.

(b) This agreement shall not be assignable by Buyer without written consent of Seller subject to this provision, this agreement shall be binding on and benefit the successors and assignee of the parties.

(c) This agreement is to be governed by and construed under the laws of the state of Utah.

SECTION 13

ACCOUNTS RECEIVABLE: This sale does not include any of Seller's accounts or notes receivable, all of which shall remain Seller's property. If, following the close of this sale, Buyer shall collect any of Seller's accounts or notes receivable, Buyer shall promptly remit the proceeds to Seller.

SECTION 14

DOCUMENTS TO BE DELIVERED BY SELLER AT CLOSING: At closing, Seller shall deliver to Buyer, properly executed, the following documents:

(a) A Bill of Sale with warranties and Affidavits of Title and all other instruments that are reasonably required by the Seller to transfer to the Buyer the asset of the business described in the agreement, free of all encumbrances except as disclosed.

SECTION 15

COMPLIANCE WITH BULK SALES LAW: In Compliance with Article Six of the Uniform Commercial Code of the state of Utah, Seller shall prepare and deliver to Buyer at the closing, a list of Seller's

creditors. The list shall be signed and sworn to or affirmed by Seller's agent. List shall contain the names, business addresses of all Seller's creditors, the amounts owed to them if known and the names and business addresses of all parties known by Seller who assert a claim against Seller even if the claims are disputed. The Seller has operated the business in its present location for more than three (3) years.

IMAGES & ATTITUDE, INC.

By

Its

Thomas Haver
President

NEWAYS, INC.

By

Its

Leslie S. Haver

EXHIBIT A
FINANCIAL RECORDS OF SELLER

IMAGES & ATTITUDES, INC.

BALANCE SHEET AS OF 08/31/92

ASSETS

CURRENT ASSETS

CREDIT CARD CLEARING-FSB	7,838.14
FSB SWEEP	24,959.66
CONVENTION ACCOUNT	830.33
ZIONS PAYROLL ACCOUNT	949.72
ZIONS DEPOSITORY	-2,912.07
GENERAL CHECKING-ZION	-50,304.69
SCHOOL ACCOUNT	74.47
WEST-ONE BANK	1,354.98
VAN ALYSTYNE ACCT.	120.42
CLARKE ACCOUNT	584.02
COMMISSION ACCT-ZIONS	-19,863.78
INTERBANK TRANSFERS	-1,200.00
PAYROLL CLEARING	-100.00
ACCOUNTS RECEIVABLE - TRADE	1,867.46
ACCOUNTS REC. - NEW ZEALAND	96,373.90
ACCOUNTS REC. - MALAYSIA	9,221.66
ACCOUNTS REC. - HONG KONG	91,743.56
A/R TOM MOWER JR.	13,052.51
DEPOSITS	5,419.00
LOAN REC.-OFFICERS	37,605.38
INVENTORY-MERCHANDISE	474,014.66
PREPAID TAXES	6,564.00

TOTAL CURRENT ASSETS

698,193.33

PROPERTY & EQUIPMENT

OFFICE FURNITURE	101,523.77
LESS: ACCUMULATED DEPRECIATION	-38,279.51
TELEPHONE EQUIPMENT	12,695.00
LESS: ACCUMULATED DEPRECIATION	-5,265.00
OFFICE EQUIPMENT	94,111.04
LESS: ACCUMULATED DEPRECIATION	-73,140.12
COMPUTER HARDWARE	155,284.55
LESS: ACCUMULATED DEPRECIATION	-33,916.68
COMPUTER SOFTWARE	21,146.59
MANUFACTURING EQUIPMENT	14,500.00
WAREHOUSING EQUIPMENT	152,102.82
LESS: ACCUMULATED DEPRECIATION	-24,540.38
VEHICLES	117,500.00
LESS: DEPRECIATION VEHICLES	-64,000.00
BUILDINGS-BUSINESS	31,066.30
BUILDING IMPROVEMENTS	132,569.52
LAND	24,507.46

TOTAL PROPERTY & EQUIPMENT

617,865.36

TOTAL ASSETS

1,316,058.69

IMAGES & ATTITUDES, INC.

BALANCE SHEET AS OF 08/31/92

LIABILITIES & STOCKHOLDERS EQUITY

CURRENT LIABILITIES

ACCOUNTS PAYABLE - TRADE	510,801.26
ACCRUED PAYROLL	40,972.12
ACCRUED EMPLOYER P/R TAXES	14,870.64
ACCRUED BONUSES	101,782.38

TOTAL CURRENT LIABILITIES

668,426.40

LONG TERM DEBT

NOTE PAY-CANADA	262,415.49
NOTE PAY-AUSTRALIA	699,276.55
NOTE PAY-NEW ZEALAND	31,893.08
NOTE PAY-PUERTO RICO	56.47
NOTE PAY-KOREA	5,994.54

TOTAL LONG TERM DEBT

999,636.13

STOCKHOLDERS EQUITY

COMMON STOCK	1,000.00
RETAINED EARNINGS	-21,544.00
NET INCOME OR LOSS (-)	-331,459.84

TOTAL STOCKHOLDERS EQUITY

-352,003.84

TOTAL LIABILITIES & STOCKHOLDERS EQUITY

1,316,058.69

IMAGES & ATTITUDES, INC.

STATEMENT OF INCOME AS OF 08/31/

	1 MONTH		8 MONTHS	
	CURR. PERIOD	RATIO	YR-TO-DATE	RATIO
<hr/>				
OPERATING EXPENSES				
ADMINISTRATIVE				
PAYROLL-ADMINISTRATION	65,453.75	15.3	569,753.59	12.6
EMPLOYER PORTION - SOC SEC TAX	7,743.23	1.8	66,864.71	1.5
FEDERAL UNEMPLOYMENT TAX	278.42	0.1	4,879.64	0.1
STATE UNEMPLOYMENT TAX	361.74	0.1	4,584.90	0.1
LIFE INSURANCE	111.54	0.0	83.75	0.0
GROUP HEALTH INSURANCE	7,703.47	1.8	45,421.50	1.0
TELEPHONE-LOCAL	3,962.96	0.9	38,777.84	0.9
TELEPHONE-LONG DISTANCE	5,726.42	1.3	57,685.15	1.3
EMPLOYEE BENEFITS	0.00	0.0	550.00	0.0
OFFICE SUPPLIES	2,143.08	0.5	38,742.39	0.9
EQUIPMENT LEASE	1,831.82	0.4	2,297.48	0.1
POSTAGE	9,200.26	2.2	35,330.43	0.8
TRAVEL & ENTERTAINMENT	9,020.12	2.1	72,230.99	1.6
MEALS NON-ENTERTAINMENT	308.42	0.1	1,854.36	0.0
TRAVEL OTHER	0.00	0.0	15,876.18	0.4
REPAIRS & MAINTENANCE	0.00	0.0	2,472.41	0.1
DUES AND SUBSCRIPTIONS	752.85	0.2	5,068.76	0.1
PRODUCT LIABILITY	3,532.19	0.8	10,119.11	0.2
WORKMAN'S COMP INSURANCE	1,146.61	0.3	7,684.33	0.2
LEGAL FEES	3,617.86	0.8	44,538.74	1.0
ACCOUNTING & PAYROLL FEES	431.15	0.1	4,779.22	0.1
COMPUTER SUPPLIES	6,010.00	1.4	4,250.67	0.1
INTEREST	263.77	0.1	2,692.64	0.1
INTEREST/TAXES	0.00	0.0	13,128.28	0.3
BUSINESS TAXES AND LICENSES	597.04	0.1	271.50	0.0
ARBITRATION SETTLEMENT	0.00	0.0	152,046.89	3.4
CONTRIBUTIONS	0.00	0.0	220.00	0.0
BANK CHARGES	1,239.05	0.3	9,066.60	0.2
EMPLOYEE TRAINING EXPENSE	774.43	0.2	6,688.88	0.1
MISC. OTHER	404.34	0.1	7,747.02	0.2
DEPRECIATION-EQUIPMENT	7,500.00	1.8	60,000.00	1.3
INSURANCE-VEHICLES	0.00	0.0	5,964.97	0.1
VEHICLE EXPENSE	2,635.95	0.6	15,771.37	0.3
125K PLAN	0.00	0.0	1,413.28-	0.0-
<hr/>				
TOTAL ADMINISTRATIVE	142,750.47	33.4	1,306,031.02	28.9
OCCUPANCY				
REPAIRS & MAINTENANCE	0.00	0.0	12,312.34	0.3
UTILITIES	1,809.72	0.4	15,986.19	0.4
SUPPLIES	0.00	0.0	948.31	0.0
REAL ESTATE TAXES	0.00	0.0	1,150.60	0.0
BUILDING RENT	12,798.00	3.0	12,798.00	0.3
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TOTAL OCCUPANCY	14,607.72	3.4	43,195.44	1.0
ADVERTISING				

IMAGES & ATTITUDES, INC.

STATEMENT OF INCOME AS OF 08/31,

	1 MONTH		8 MONTHS	
	CURR. PERIOD	RATIO	YR-TO-DATE	RATIO
MISC. PRINTING	8,208.66	1.9	213,310.66	4.7
TELEVISION ADVERTISING	0.00	0.0	350.00	0.0
CIRCULAR ADVERTISING	0.00	0.0	6,500.50	0.1
NEWSPAPER ADVERTISING	1,540.90	0.4	9,961.93	0.2
DIRECT MAIL ADVERTISING	0.00	0.0	535.15	0.0
OTHER ADVERTISING	1,400.00	0.3	18,495.16	0.4
TOTAL ADVERTISING	11,149.56	2.6	249,153.40	5.5
SELLING				
PROMOTIONAL ITEMS	6,614.74	1.5	25,197.05	0.6
TRAINING MEETINGS	0.00	0.0	10,170.10	0.2
TOTAL SELLING	6,614.74	1.5	35,367.15	0.8
WAREHOUSE & DELIVERY				
PAYROLL-WAREHOUSE	35,088.33	8.2	312,268.65	6.9
FEDERAL UNEMPLOYMENT TAX	0.00	0.0	5,993.23	0.1
GROUP HEALTH INSURANCE	0.00	0.0	11.09	0.0
TEMPORARY CONTRACT LABOR	5,162.88	1.2	163,852.70	3.6
TELEPHONE	0.00	0.0	9,022.48	0.2
UTILITIES	2,573.04	0.6	5,799.56	0.1
SUPPLIES	2,663.55	0.6	36,308.90	0.8
EQUIPMENT LEASED/RENTAL	0.00	0.0	2,104.67	0.0
POSTAGE/FREIGHT OUT	0.00	0.0	24,292.35	0.5
GAS & OIL	0.00	0.0	585.63	0.0
REPAIRS & MAINTENANCE	3,153.47	0.7	20,986.23	0.5
WASTE REMOVAL	380.00	0.1	1,665.00	0.0
LIABILITY INSURANCE	0.00	0.0	10,596.57	0.2
VEHICLE INSURANCE	0.00	0.0	455.38-	0.0-
RESEARCH & DEV.-PRODUCT	11,708.88	2.7	133,197.38	3.0
RESEARCH & DEV. -SALES AID	0.00	0.0	8,571.57	0.2
TOTAL WAREHOUSE & DELIVERY	60,730.15	14.2	734,800.63	16.3
TOTAL OPERATING EXPENSES	235,852.64	55.2	2,368,547.64	52.5
NET PROFIT OR LOSS (-)	62,184.74-	14.5-	•331,459.84-	7.3-

EXHIBIT B
LIST OF ASSETS PURCHASED

IMAGES & ATTITUDES, INC.
 FIXED ASSETS-VEHICLES
 08/31/92

CAT. EQUIPMENT	PURCHASE	BASIS	SL LIFE	ANNUAL DEPR	1992 DEPR EXPENSE	B. V. 12/31/91
VHE TRUCK, RED 1989	1989	14,000.00	3	4,666.67	4,666.67	0.00
VHE TRUCK, GRAY & RED 1990	1990	20,000.00	3	6,666.67	6,666.67	6,666.66
VHE LINCOLN, WHITE 1990	1990	28,000.00	3	9,333.33	9,333.33	9,333.34
VHE TRUCK, RED 1990	1990	20,000.00	3	6,666.67	6,666.67	6,666.66
<u>CHK #</u>						
3547 TRAILER	07-92	3,500.00	3	1,166.67	194.44	3,305.56
		<u>85,500.00</u>		<u>28,500.00</u>	<u>27,527.78</u>	<u>25,972.22</u>

IMAGES & ATTITUDES, INC.
 FIXED ASSETS-WAREHOUSE EQUIPMENT
 08/31/92

EQUIPMENT	QUANT.	PURCHASE	BASIS	SL LIFE	MONTH DEPR	1991 DEPR EXPENSE	B. V. 08/31/92
EXHAUST CLEANING SYSTEM	1	88-11	1,270.00	5	21.17	169	297
BOILER, (PARKER)	1	89-02	2,500.00	5	41.67	333	709
MACHINE, FILLER, MINI FOUR	1	89-11	3,250.00	5	54.17	433	1,409
MACHINE, LABELER, COSMOS MOTORIZED	1	89-11	4,395.00	5	73.25	586	1,905
INCUBATOR, SCIENCE TEACHING	1	89-11	750.00	5	12.50	100	325
HEATER, LARGE, FROM CEILING	2	90-02	1,200.00	5	20.00	160	580
CERAMIC DRYER, SERIAL # 808128	1	90-02	950.00	5	15.83	127	459
MIXER, 2 1/2 HORSEPOWER	1	90-03	325.00	5	5.42	43	163
MIXER, KITCHEN AID	1	90-04	199.80	5	3.33	27	103
MACHINE, SILK SCREEN, ALPINE INDUST	1	90-04	7,500.00	5	125.00	1,000	3,875
UV TESTER	1	90-04	600.00	5	10.00	80	310
SCALE BALANCE, SCIENTIFIC	1	90-04	295.00	5	4.92	39	153
MACHINE, FILLER, RESINA	1	90-04	3,750.00	5	62.50	500	1,938
AIR CONDITIONER, PORTABLE	1	90-06	250.00	5	4.17	33	138
REFRIGERATOR, FOR CHEMICALS	1	90-06	250.00	5	4.17	33	138
MACHINE, LABELER, MASTER (UNUSED)	1	90-07	3,700.00	5	61.67	493	2,097
MACHINE, FILLER, SIMPLEX	2	90-07	7,000.00	5	116.67	933	3,967
MIXER, 3 PHASE	1	90-09	890.00	5	14.83	119	534
VAT, 200 GAL, STAINLESS STEEL	1	90-09	300.00	5	5.00	40	180
MIXER, PLATFORM	1	90-11	1,860.00	5	31.00	248	1,178
TABLES, STAINLESS STEEL	4	90-11	1,800.00	5	30.00	240	1,140
HYDROGENATOR	1	91-02	3,500.00	5	58.33	467	2,391
FAN, UPRIGHT, 6 FT	1	91-02	270.00	5	4.50	36	185
SCALE BALANCE, SARTORIUS	1	91-02	215.00	5	3.58	29	147
UPRIGHTS, METAL	68	91-02	2,850.00	5	47.50	380	1,948
MACHINE, LABELER, AVERY	1	91-02	13,350.00	5	222.50	1,780	9,123
MACHINE, SHRINK WRAP, BESELER #T-14	1	91-03	2,500.00	5	41.67	333	1,750
MACHINE, FILLING, ELF, VIBRANT	1	91-03	6,000.00	5	100.00	800	4,200
MIXER, HOMOGENIZER	1	91-04	1,800.00	5	30.00	240	1,290
SCALE, SHIP MANIFEST, M3825	1	91-04	2,433.13	5	40.55	324	1,744
VAT, 350 GAL, STAINLESS STEEL	1	91-04	1,200.00	5	20.00	160	860
MACHINE, FILLER, MINI SIX	1	91-04	6,630.00	5	110.50	884	4,752
VAT, 350 GAL, PLASTICS	1	91-06	1,500.00	5	25.00	200	1,125
MIXER, 5 HP	1	91-06	400.00	5	6.67	53	300
PALLET JACK, FORK TRUCK, 5100	1	91-06	400.00	5	6.67	53	300
TANK, PRODUCT	1	91-06	375.00	5	6.25	50	281
SCALE, HOBART, #41-3132, GRAY, WORK	1	91-07	371.88	5	6.20	50	285
GRAVITY FLOW BAYS	12	91-08	6,480.53	5	108.01	864	5,076
SNOW FLOW & ATTACHMENTS (#593181FA)	1	91-10	2,767.31	5	46.12	369	2,250
FORK LIFT, NISSAN	1	91-10	3,500.00	5	58.33	467	2,858
VISCOMETER	1	91-10	270.00	5	4.50	36	221
MACHINE, SHRINK WRAP, X-RITE 710	1	91-10	1,200.00	5	20.00	160	980
SCALE, ACCULAB, ELECTRONIC DIGITAL	2	91-10	460.00	5	7.67	61	376
ROTOVAP, MODEL 011 (#59260)	1	91-10	850.00	5	14.17	113	695
SINK, STAINLESS STEEL, 3 TUBS	2	91-11	790.00	5	13.17	105	659
HEATER, PORTA-HEATER	1	91-11	220.00	5	3.67	29	184
WELDER, SONIC	1	91-12	1,800.00	5	30.00	240	1,530
AIR COMPRESSOR, SHP	1	91-12	600.00	5	10.00	80	510

MACHINE, CAP TIGHTNER, ELF	1	91-12	3,500.00	5	58.33	467	2,975
CONVEYER, SHIPPING	1	91-12	1,500.00	5	25.00	200	1,275
ENCODER, ACCUPRINT	1	91-12	1,848.00	5	30.80	246	1,571
MACHINE, CAPPER, RESINA	1	91-12	7,500.00	5	125.00	1,000	6,375
MACHINE, LABELER, COSMOS MOTORIZED	1	91-12	15,300.00	5	255.00	2,040	13,005

CHK # 1992 FIXED ASSETS

1407 EJ MCKERNON	92-01	14,500.00	5	241.67	1,933	12,567
3825 VACUUM DISTILLATION UNIT	92-08	6,610.00	5	110.17	110	6,500
3618 MESGUIDESCOPE	92-07	2,800.00	5	46.67	93	2,707
3615 REACTOR	92-07	500.00	5	8.33	17	483
4002 MISC. R & D EQUIPMENT FOR LAB	92-08	2,636.27	5	43.94	44	2,592
3148 HEAT VAT & STAND	92-06	2,500.00	5	41.67	125	2,375
3194 VISCOMETER	92-06	631.15	5	10.52	32	600
1674 PALLET JACKS	92-02	725.00	5	12.08	85	640
1503 SPECTROMIC SPECTROPHOTOM	92-01	1,416.29	5	23.60	165	1,251
		<u>167,734.36</u>		<u>2,795.57</u>	<u>20,659.23</u>	<u>122,540.48</u>

IMAGES & ATTITUDES
 FIXED ASSETS-COMPUTER SOFTWARE
 08/31/92

CHK #	CAT.	EQUIPMENT	QUANT.	PURCHASE	BASIS	SL LIFE	MONTH DEPR	1992 DEPR EXPENSE	B.V. 08/31/92
2247	CS	WRQ-REFLECT	3	03-92	597.00	5	9.95	79.60	517.40
2369	CS	PAGEMASTER, DISPLAY SERVER	1	04-92	977.50	5	16.29	130.33	847.17
2221	CS	BROCK SOFTWARE	1	03-92	19,240.92	5	320.68	2,565.46	16,675.46
2615	CS	BROCK SOFTWARE	1	04-92	2,500.07	5	41.67	333.34	2,166.73
1756	CS	20/21 SOFTWARE	1	02-92	1,200.00	5	20.00	160.00	1,040.00
					24,515.49		408.59	3,268.73	21,246.76

IMAGES & ATTITUDE, INC.
 FIXED ASSETS-OFFICE FURNITURE & FIXTURES
 08/31/92

DEPT.	EQUIPMENT	QUANT.	PURCHASE	BASIS	SL LIFE	MONTH DEPR	1992 DEPR	B.V.
							EXPENSE	08/31/92
FILE	FILE UNITS, TAB, ALMOND, 6 SHELVES	9	88-01 2,185.38	5	36.42	291	146	
WHS	DESK, BROWN, 4 DRAWERS, L SHAPED	1	88-05 425.94	5	7.10	57	57	
ACCT	DESK, EXEC, DRK BROWN	1	88-05 425.94	5	7.10	57	57	
COMP	DESK, EXEC, TAN, CORNER	1	88-06 388.00	5	5.80	48	45	
STOR	TABLE, BROWN TOP	1	88-06 458.00	5	7.50	60	68	
ORDER	DESK, WHEELS, BLACK	3	88-08 965.00	5	16.88	129	177	
KIT	MICROWAVE, AMANA RADARAGE, SILVER	1	89-04 288.00	5	3.33	27	63	
ACCT	DESK, EXEC, BLACK DRW, WALNUT TOP	1	89-06 488.00	5	6.67	53	148	
STOR	DESK, EXEC., BLACK	1	89-06 315.00	5	5.25	42	118	
FILE	TABLE, SIMULATED OAK, CONF. STYLE	1	89-06 275.00	5	4.58	37	96	
STOR	DESK, EXEC., DARK WALNUT	2	89-08 355.00	5	5.92	47	136	
EXEC OFF	TABLE, CONFERENCE, WOOD	1	90-01 275.00	5	4.58	37	128	
ORDER	FILE CABINET, 4 DWR, LEGAL, TAN	1	90-02 117.89	5	1.96	16	57	
RECEP	DESK, MARBLE LOOK, PINK	1	90-02 558.00	5	9.17	73	266	
RECEP	TABLE, COFFEE, GLASS TOP, METAL	2	90-02 358.00	5	5.83	47	169	
KIT	OVEN/RANGE, WHIRLPOOL, WHITE	1	90-03 425.00	5	7.88	57	212	
EXEC GN	DESK, EXEC, WOOD	1	90-04 425.00	5	7.88	57	219	
ART	DESK, BROWN TOP, METAL, TAN DWRS	2	90-04 325.00	5	5.42	43	168	
WHS	TABLE, 3 DWRS, WOOD	1	90-04 458.00	5	7.50	60	233	
EXEC OFF	DESK, EXEC., BROWN WOOD, CORNER	3	90-04 725.00	5	12.88	97	374	
COMP	PRINTER STAND, METAL, BLACK, LARGE	1	90-04 218.00	5	3.58	28	189	
EXEC OFF	REFRIGERATOR, SMALL, SQUARE	1	90-04 285.00	5	3.42	27	186	
ACCT	SAFE, GRAY BOX, BENTRY 1150	1	90-05 288.00	5	3.33	27	186	
EXEC GN	CHAIR, EXEC, HIGH BACK, WOOD, BLUE	1	90-05 258.00	5	4.17	33	134	
KIT	REFRIGERATOR, SEARS COLDSPOT, BROWN	1	90-05 758.00	5	12.58	108	488	
ART	DESK, BROWN SIMULATED WOOD	3	90-06 988.00	5	15.88	128	495	
RECEP	COUCH, WHITE, 2 PILLOWS	2	90-06 1,288.00	5	28.88	168	668	
RECEP	DISPLAY CASE, GLASS, 5 LEVEL	2	90-06 358.00	5	5.83	47	192	
RECEP	TABLE, END, GLASS TOP, BRASS	2	90-06 225.00	5	3.75	38	124	
KIT	DISHWASHER, MAYTAG, LBT TAN	1	90-06 358.00	5	5.83	47	192	
STOR	DESK, EXEC, BROWN WOOD	2	90-06 364.00	5	6.87	49	288	
KIT	MICROWAVE, LOGICK, WHITE, BLACK	1	90-06 358.00	5	5.83	47	192	
DWN CONF	TABLE, OAK, RECTANGLE	1	90-06 2,985.69	5	49.76	398	1,642	
ART	DESK, BROWN TOP & METAL DWRS, CORNE	1	90-08 388.00	5	5.88	48	175	
DWN CONF	CHAIRS, OFF WHITE, OAK WOOD, WHEELS	6	90-11 688.00	5	18.88	88	388	
EXEC OFF	CHAIR, VICTORIAN, CHERRY WOOD	1	91-02 225.00	5	3.75	38	154	
ART	DESK, TAN TOP, METAL, BLACK DWRS	1	91-02 415.00	5	6.92	55	284	
COMP	TABLE, FOLD UP, METAL, WALNUT TOP	8	91-02 159.92	5	2.67	21	118	
ATTY	DESK, BROWN	2	91-02 858.00	5	14.17	113	581	
UP CONF	TABLE, CONFERENCE, MED BROWN	1	91-03 425.00	5	7.88	57	297	
ORDER	BOOKCASE, ALL WOOD, BROWN	1	91-04 225.00	5	3.75	38	161	
EXEC OFF	CHAIR, EXEC, LEATHER, BROWN	1	91-04 458.00	5	7.50	60	323	
ORDER	DESK, EXEC, DARK WALNUT	1	91-04 179.95	5	3.88	24	125	
EXEC OFF	CHAIRS, WING, TAN	2	91-04 588.00	5	8.33	67	358	
ORDER	WORKSTATIONS, HIGH, PEACH	12	91-04 9,888.97	5	158.15	1,201	6,457	
RECEP	TABLE, MARBLE LOOK, PINK, LONG	1	91-04 558.00	5	9.17	73	395	
EXEC OFF	DESK, EXEC, WALNUT TOP, METAL, TAN	1	91-04 275.00	5	4.58	37	197	
STOR	DESK, WOOD TOP, CORNER, BROKE	1	91-04 214.00	5	3.57	29	153	

STOR	TABLE, BROWN, ROUND LEGS	1	91-04	425.00	5	7.00	57	304
W CALL	CABINET, 2 DWRS, TAN, METAL, LOCKS	1	91-04	350.00	5	5.83	47	251
W CALL	DESK, LST BROWN TOP, 5 DWRS	1	91-04	430.00	5	7.17	57	309
W CALL	CHAIR, EXEC, GRAY, WHEELS, ARMS	1	91-05	225.00	5	3.75	30	165
WHS OFF	DESK, EXEC, WOOD	3	91-06	400.00	5	8.00	64	360
WHS OFF	SHELF, 5 SHELVES, WOOD	3	91-07	325.00	5	5.42	43	250
W CALL	DESK, SECTIONAL, 3 DWRS W/ COUNTER	1	91-07	450.00	5	7.50	60	345
REB	WORK STATIONS, HIGH, PEACH	10	91-09	12,400.81	5	206.81	1,655	9,927
REB	WORK STATIONS, LOW, PEACH	8	91-09	8,327.84	5	130.78	1,110	6,662
SHIP	TABLE, LARGE, WOOD, WHITE TOP	1	91-10	200.00	5	3.33	27	163
WHS	DESK, WALNUT, 3 DWR	2	91-10	300.00	5	6.33	51	310
COMP	CHAIR, EXEC, HARDON, LEATHER	1	91-11	210.00	5	3.50	28	175
ATTY	CHAIR, EXEC, BLACK LEATHER	1	91-11	400.00	5	6.67	53	334
WHS	DESK, 2 DWR, LST WOOD	1	91-11	360.00	5	6.00	48	300

CHK #

1169	AMERICAN EXPRESS		92-01	1,958.44	5	32.64	261	1,697
1861	386/23 COMP, SEABATE DR, 120 MB HRD D	1	92-03	3,619.40	5	60.32	362	3,257
2311	BOOK SHELF ATTACHMENTS	8	92-04	935.00	5	15.58	78	857
1618	CABINETS DEE'S OFFICE	4	92-02	1,850.00	5	30.83	216	1,634
2315	WORLD TIME CLOCK	1	92-04	319.75	5	5.33	27	293
1768	MISC. OFFICE FURN—DEE'S OFFICE	6	92-02	820.75	5	13.81	97	732
2126	WORK STATIONS 4'x 60"	6	92-03	2,169.95	5	36.17	217	1,953
3853	QUEUE ALERT INDICATOR KIT	2	92-07	3,410.63	5	56.84	57	3,354

73,194.00

1,219.90 9,837.25 51,693.22

58105.09

IMAGES & ATTITUDE, INC.
 FIXED ASSETS-OFFICE EQUIPMENT
 08/31/92

DEPART	EQUIPMENT	TOTAL	DATE	BASIS	SL LIFE	MONTH 1991 DEPR DEPR	DEPR EXPENSE	B.V. 12/31/91
FRONT	TYPEWRITER, BROTHER-CORRECTRONIC 34	1	88-03	394.33	5	6.57	53	55
FRONT	COPIER, LANIER 526-AG	1	88-06	500.00	5	8.33	67	98
MAIL	POSTAGE METER, PITNEY BOWES, 6200	1	88-11	8,200.00	5	136.67	1,093	2,177
FILE	TYPEWRITER, BROTHER AX-24	1	89-04	250.00	5	4.17	33	72
WILL	TYPEWRITER, BLACK	1	89-05	212.00	5	3.53	28	59
FRONT	MICROCASSETTE SYS., CRAIG MOD. J585	2	89-06	397.98	5	6.63	53	151
WILL	COPY MACHINE, AR 460	1	89-06	1,500.00	5	25.00	200	665
WH OFF	COPY MACHINE, EP 6502	1	89-06	1,500.00	5	25.00	200	665
ORDER	COPIER, LANIER, MOD 6055	1	89-08	7,500.00	5	125.00	1,000	3,475
MAIL	COPIER, LANIER 6110	1	89-10	650.00	5	10.83	87	288
MAIL	FAX MACHINE, OMNIFAX 693	1	90-01	750.00	5	12.50	100	350
REG	TYPEWRITER, BROTHER, AX-24	1	90-03	235.00	5	3.92	31	107
REG	FOLDING MACHINE, MINOLTA F300	1	90-03	350.00	5	5.83	47	183
COMP	SAFE DEPOSIT BOX, SAF, COMBO LOCK	1	90-06	200.00	5	3.33	27	98
COMP	TYPEWRITER, BROTHER AX-26	1	90-06	250.00	5	4.17	33	132
REG	COPY MACHINE, LANIER 6242	1	90-07	4,800.00	5	80.00	640	3,170
WH OFF	SCALE, MEASURES GRAMS, GREEN	1	91-01	456.25	5	7.60	61	304
FRONT	FAX MACHINE, MINOLTA FAX 761	1	91-02	950.00	5	15.83	127	649
FILE	TYPEWRITER, PANASONIC R440	1	91-04	200.00	5	3.33	27	143
ATTY	T.V., QUASAR, 13"	1	91-05	400.00	5	6.67	53	294
FRONT	VACUUM, HOOVER UPRIGHT	1	91-05	632.12	5	10.54	84	464
ACCT	COOLER, COLD FRONT, BIONAIR BLK CF-5	1	91-06	270.00	5	4.50	36	203
ATTY	VCR, PANASONIC DIGITAL QUARTZ	5	91-06	2,000.00	5	33.33	267	1,500
ATTY	VIDEO IMAGE ENHANCER, DETAILER III	1	91-06	450.00	5	7.50	60	338
FRONT	MICROCASSETTE TRANSCRIBER, PANASONIC	3	91-08	669.98	5	11.17	89	525
ORDER	SHREDDER, DATATECH #9836 W/STAND	1	91-09	1,219.92	5	20.33	163	976
CHK #								
	1285 CHAIRS, WOODEN CASE		92-01	1,162.36	5	19.37	155	1,007
	1175 DAMARK		92-01	1,281.96	5	21.37	171	1,111
	1785 TELEPHONE EQUIPMENT		92-02	41,714.44	5	695.24	4,867	36,848
	2321 TELEPHONE SYSTEM HOOKUP AND MISC. SUPPLIES		92-04	8,381.76	5	139.70	698	7,683
	2443 TELEPHONE EQUIPMENT		92-04	6,417.62	5	106.96	535	5,883
				93,895.72		1,564.93	11,084.22	69,673.92

IMAGES & ATTITUDE, INC.
FIXED ASSETS ANALYSIS
TELEPHONE EQUIPMENT

DATE	EQUIPMENT	VENDOR	BASIS	SL LIFE	MONTH 1991 DEPR	B.V. 12/31/91	MO DP 1992	NOTES
89/06/30	OLD PHONE SYSTEM	3-D COMMUNICATION	8,000.00 =====	60	133.33	1,600	4,000	0
90/07/27	DALLAS PHONE SYSTEM	TSI	3,265.47 =====	60	54.42	653	2,286	54
91/01/02	PBX EQUIPMENT	3-D COMMUNICATION	181.38	60	3.02	36	145	3
91/01/11	TECH. EQUIPMENT	3-D COMMUNICATION	1,248.44 1,429.82 =====	60	20.81	250	999	21
92/02/01	OLD PHONE SYSTEM	3-D COMMUNICATION	(8,000.00)					(1)
92/02/01	PBX EQUIPMENT	3-D COMMUNICATION	48,132.06	60	802.20		802	
92/02/18	PBX EQUIPMENT	3-D COMMUNICATION	2,932.77	60	48.88		48.88	
92/02/19	PBX EQUIPMENT	3-D COMMUNICATION	167.61	60	2.79		2.79	
92/02/28	PA SYSTEM	3-D COMMUNICATION	2,868.75	60	47.81		47.81	
92/02/28	PBX EQUIPMENT	3-D COMMUNICATION	2,231.25 56,332.44 =====	60	37.19 938.87 =====		37.19 938.87 =====	
TOTAL			69,027.73		938.87	2,539	7,430	1,017

NOTES: (1) TRADED IN OLD PHONE SYSTEM ON NEW PBX.
BOOK VALUE -OLD SYSTEM \$4,000.
TRADE IN VALUE -OLD SYSTEM \$3,500.
LOSS ON TRADE IN \$500, INSIGNIFICANT-NOT BOOKED.

IMAGES & ATTITUDES, INC.
 FIXED ASSETS-COMPUTER EQUIPMENT
 08/31/92

DEPT.	CAT.	EQUIPMENT	QUANT.	PURCHASE	BASIS	LIFE	SL	MONTH	1992 DEPR	B. V.
								DEPR	EXPENSE	08/31/92
ORDER	CE	TERMINAL, "PERFECT"	9	87-09	2,475.00	5		41.25	338.00	8.00
ADMIN	CE	COMPUTER, PC EPSON XT	1	87-11	2,538.90	5		42.18	337.45	84.37
ART	CE	COMPUTER, PC 386, MITSUBISHI, TOWER, 80MGHD,	1	88-03	4,710.00	5		78.50	628.00	471.00
COMP	CE	PRINTER, PANASONIC/WIDE CARRIAGE C32MODEL #KX	1	88-03	1,002.00	5		16.70	133.60	100.20
WOFF	CE	COMPUTER, PC XT, SAMSUNG	1	88-04	3,049.24	5		50.82	406.57	355.74
ACCT	CE	COMPUTER, PC, SAMSUNG-XT	1	88-04	3,049.24	5		50.82	406.57	355.74
ORDER	CE	PRINTER, LABELS, OKIDATA, MICROLINE 320 (9 PI	1	88-09	480.00	5		8.00	64.00	96.00
COMP	CE	PRINTER, OKIDATA-MICROLINE 390/24 PIN	3	88-09	1,440.00	5		24.00	192.00	288.00
ORDER	CE	PRINTER, CANOI, OKIDATA, MICROLINE 320 (9 PIN	1	88-09	480.00	5		8.00	64.00	96.00
SHIP	CE	SHIP, PRINTER, LABEL, PANASONIC KXP-1180	1	89-01	350.00	5		5.83	46.67	93.33
SHIP	CE	SHIP, PRINTER, REPORT, PANASONIC KXP-1180	1	89-01	350.00	5		5.83	46.67	93.33
COMP	CE	PRINTER, PRINTRONIX, BIG	1	89-01	3,800.00	5		63.33	506.67	1,013.33
ART	CE	COMPUTER, PC 386, MITSUBISHI, TOWER, 1 RAM, 8	1	89-04	6,853.12	5		114.22	913.75	2,178.15
COMP	CE	TAPE BACKUP, INTERNAL, "MOUNTAIN" 150/250 MB	1	89-04	650.00	5		10.83	86.67	205.83
COMP	CE	PRINTER, DIGITAL DESIGN-636 LAZER CX PRINTER	1	89-05	6,784.00	5		113.87	904.53	2,261.34
WOFF	CE	PRINTER, EPSON LX-800	1	89-05	320.00	5		5.33	42.67	106.66
ADMIN	CE	COMPUTER, PC 286, MITSUBISHI	1	90-03	3,304.38	5		55.07	440.58	1,652.19
ACCT	CE	PRINTER, PANASONIC KX-P 10911	1	90-04	341.25	5		5.69	45.50	176.31
WOFF	CE	PRINTER, PANASONIC KX P1091	1	90-04	325.00	5		5.42	43.33	167.92
ORDER	CE	PRINTER, PANASONIC KX P1091i	1	90-05	400.00	5		6.67	53.33	213.34
ADMIN	CE	PRINTER, LASER, LANIER/3M "526"	1	90-06	3,000.00	5		50.00	400.00	1,650.00
ART	CE	PRINTER, IMAGEWRITER II	1	90-06	385.00	5		6.42	51.33	211.75
COMP	CE	SWITCHBOX, CURTIS DATASWITCH	4	90-06	210.00	5		3.50	28.00	115.50
OPER	CE	PRINTER, PANASONIC KX-P1180	1	90-07	380.00	5		6.33	50.67	215.33
ART	CE	PRINTER, LASER, LANIER 2006	1	90-12	2,700.00	5		45.00	360.00	1,755.00
SHIP	CE	SHIP, SCALE, DETECTO, PARCEL CONTROL SYS	1	91-02	500.00	5		8.33	66.67	341.66
ACCT	CE	PRINTER, OKIDATA - MICROLINE 320 PIN	1	91-03	504.69	5		8.41	67.29	353.29
COMP	CE	COMPUTER, SAMSUNG, CJ 4685, INTERN. SYSTEM, 1	1	91-03	2,799.58	5		46.66	373.28	1,949.70
ORDER	CE	PRINTER, INVOICER, OKIDATA, MICROLINE 320 (9	1	91-03	504.69	5		8.41	67.29	353.29
COMP	CE	COMPUTER, PC 486, EVEREX, 16 RAM, 600HD, 24PD	1	91-05	10,354.06	5		172.57	1,380.54	7,592.98
ADMIN	CE	COMPUTER, PC 286, SAMSUNG	2	91-05	2,071.88	5		34.53	276.25	1,519.38
WILL	CE	COMPUTER, PC, EPSON IE/COMMODORE 1403	1	91-06	899.00	5		14.98	119.87	674.25
ADMIN	CE	PRINTER, OKIDATA 390	1	91-06	480.00	5		8.00	64.00	360.00
ART	CE	MODEM, VIVA 2400	1	91-06	225.00	5		3.75	30.00	168.75
REG	CE	COMPUTER, PC 286, SAMSUNG	1	91-06	1,256.71	5		20.95	167.56	942.53
WILL	CE	TERMINAL, "PERFECT"	1	91-07	275.00	5		4.58	36.67	210.83
ADMIN	CE	TERMINAL, "PERFECT"	3	91-07	825.00	5		13.75	110.00	632.50
REG	CE	TERMINAL, "PERFECT"	5	91-07	1,375.00	5		22.92	183.33	1,054.17
COMP	CE	TERMINAL, "PERFECT"	7	91-07	1,925.00	5		32.00	256.67	1,475.83
ACCT	CE	TAPE BACKUP SYSTEM, EXTERNAL, MOUNTAIN	1	91-08	1,338.75	5		22.31	178.50	1,048.69
ART	CE	COMPUTER, MACINTOSH IICx, SAMSUNG MONITOR	1	91-09	5,825.00	5		97.08	776.67	4,668.00
ART	CE	PRINTER, LASER MASTER 1000	1	91-10	7,065.62	5		117.76	942.00	5,770.26
ART	CE	COMPUTER, MACINTOSH SE	1	91-10	1,200.00	5		20.00	160.00	980.00
COMP	CE	COMPUTER, PC 386, "SAMTRON"/GENERAL, 2MB RAM	1	91-10	3,500.00	5		58.33	466.67	2,858.33
ACCT	CE	COMPUTER, PC 386, CUMULUS	1	91-10	1,998.00	5		33.30	266.40	1,631.70
COMP	CE	COMPUTER, PROTEK 386SX, VOICE MAIL, 650MB HD	1	91-10	2,193.65	5		36.56	292.49	1,791.48
ACCT	CE	COMPUTER, PC 386, SYSTEM II	1	91-10	2,208.12	5		36.00	294.42	1,803.29
ADMIN	CE	COMPUTER, CUMULUS 386SX	1	91-11	999.00	5		16.65	133.20	832.50

COMP	CE	COMPUTER, INTEL 386SX, UNIX/BROCK, 32RAM,667M	1	91-11	6,288.00	5	184.67	837.33	5,233.34
ADMIN	CE	COMPUTER, PC 286, UNISONIC	1	91-11	999.00	5	16.65	133.28	832.58
COMP	CE	SEARGE PROTECTOR	1	91-11	1,321.75	5	22.83	176.23	1,181.46
ART	CE	SCANNER, XEROX 830/IMAGE	1	91-11	1,288.00	5	28.00	168.00	1,088.00
COMP	CE	COMPUTER, PROTEK 386SX, CANADIAN	1	91-11	1,825.00	5	17.88	136.67	854.16
COMP	CE	COMPUTER, INTEL 386SX, FAM BROCK	1	91-12	4,457.19	5	74.29	594.29	3,862.98
COMP	CE	TERMINAL, "WYSE"	1	91-12	258.00	5	4.17	33.33	245.83
ADMIN	CE	TERMINAL, "WYSE"	2	91-12	388.00	5	5.88	48.88	255.88
COMP	CE	MODEM, MULTI-MODEM V32	3	91-12	2,148.00	5	35.67	285.33	1,819.88

CHECK #

3438	88 MEG REMOVABLE HD & CARTRIDGE	1	92-07	921.19	5	15.35	38.71	898.48
2229	SCNR, 13" COLOR MONITOR, 52 MEG MACINTOSH HD	1	92-03	5,888.00	5	83.33	588.88	4,588.88
3812	386/33 COMPUTER, 128 MB HD, MOUSE, KEYBOARD		92-05	1,683.13	5	26.72	186.88	1,496.25
2877	386 COMPUTER, 88 MB HD, PRINTER	1	92-05	1,771.63	5	29.53	118.11	1,653.52
1926	RIA CORP		92-03	4,185.88	5	69.75	418.58	3,766.58
2318	28/21 SOFTWARE		92-04	3,388.88	5	55.88	275.88	3,025.88
2835	WYSE COMPUTER TERMINALS	3	92-03	518.88	5	8.58	51.88	459.88
1312	EPSON LQ-570/24 PIN PRINTER	2	92-01	897.28	5	14.95	119.63	777.57
1126	CUMULUS COMPUTERS 386/SX/48	4	92-01	2,231.82	5	37.18	297.47	1,933.55
1149	MAC IICI	1	92-01	3,481.78	5	58.83	464.24	3,017.54
1168	148 POWERBOOK LAPTOP MACINTOSH, 2488 BOD MODE	1	92-01	2,665.76	5	44.43	355.43	2,318.33
1868			92-01	1,534.25	5	25.57	284.57	1,329.68
1585	MODEM, 9600 BOD MULTI-TEC	2	92-02	1,135.68	5	18.93	132.49	1,003.11

146,982.38	2,448.37	18,762.79	94,328.53
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EXHIBIT C

PURCHASE PRICE

The purchase price shall consist of the assumption of the Seller's debt and the payment of cash for the amount the purchase price exceeds the debt. The final purchase price paid shall be adjusted based upon the total assets ultimately transferred by Seller and the debt actually assumed by Buyer.

EXHIBIT D

ACCOUNTS AND NOTES RECEIVABLE