

1990

LeAnna Broadwater Robbins v. Old Republic
Surety, Northwestern National Insurance
Company of Milwaukee, Wisconsin, Atlas Stock
Transfer, Check Rite International, Inc., Cardinal
Energy Corporation, Scott J. Fletcher : Brief of
Appellee

Utah Supreme Court

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DOCKET NO

BRIEF

900508

IN THE SUPREME COURT OF THE STATE OF UTAH

LeANNA (BROADWATER) ROBBINS,)

Cross-Appellant/Plaintiff,)

vs.)

OLD REPUBLIC SURETY, a Wisconsin)

corporation doing business in)

Utah, NORTHWESTERN NATIONAL)

INSURANCE COMPANY OF)

MILWAUKEE, WISCONSIN, a Wisconsin)

corporation, doing business in)

Utah, ATLAS STOCK TRANSFER, a)

Utah Corporation, CHECK-RITE)

INTERNATIONAL, INC., f/k/a)

CARDINAL ENERGY CORPORATION,)

a Utah corporation, and SCOTT J.)

FLETCHER, a Utah resident,)

Cross-Appellees/Defendants.)

Case No. 900508

Priority 16(b)

BRIEF OF CROSS-APPELLEES OLD REPUBLIC SURETY AND NORTHWESTERN NATIONAL INSURANCE COMPANY

Appeal from Order of the Third Judicial District Court of Salt Lake County
Granting Cross-Appellees/Defendants' Motion for Partial Summary Judgment
Honorable Raymond S. Uno, Presiding

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FILED

OCT 11 1991

CLERK SUPREME COURT
UTAH

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**BRIEF OF CROSS-APPELLEES OLD REPUBLIC SURETY AND
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JURISDICTION STATEMENT AND CASE HISTORY

Jurisdiction lies with this court pursuant to Utah Code Annotated § 78-2-2(3)(j) (Supp. 1991). Plaintiff has brought this cross-appeal from the May 24, 1990 Order of the Third Judicial District Court of Salt Lake County, Honorable Raymond S. Uno presiding, granting partial summary judgment in favor of cross-appellees/defendants Old Republic Surety and Northwestern National Insurance on Counts III, IV, and V of plaintiff's amended complaint. This order of partial summary judgment was certified as a final appealable order, pursuant to Rule 54(b), U.R.C.P., on October 19, 1990.

STATEMENT OF ISSUES

1. Did the trial court err in finding that plaintiff was not a third-party beneficiary to the indemnity bond contract and, therefore, had no basis for bringing a contract-based action against the Bonding Companies?

Standard of Review:

In considering an appeal from grant of summary judgment, this Court views the facts in a light most favorable to the losing party below. In determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below, this Court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Utah 1989).

2. Did the trial court err in finding that plaintiff lacked privity of contract and, therefore, could not maintain a claim of insurer bad faith against the Bonding Companies?

Standard of Review:

In considering an appeal from grant of summary judgment, this Court views the facts in a light most favorable to the losing party below. In determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below, this Court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Utah 1989).

3. Did the trial court err in finding that the Bonding Companies owed no duty and assume no duty of care to plaintiff that would give rise to a tort-based claim for bad faith?

Standard of Review:

In considering an appeal from grant of summary judgment, this Court views the facts in a light most favorable to the losing party below. In determining whether those facts require, as a matter of law, the entry of judgment for the prevailing party below, this Court gives no deference to the trial court's conclusions of law, which are reviewed for correctness. Blue Cross & Blue Shield v. State, 779 P.2d 634 (Utah 1989).

DETERMINATIVE AUTHORITIES

Rule 56(c) of the Utah Rules of Civil Procedure is determinative on appeal. Rule 56(c), U.R.C.P., provides in pertinent part as follows:

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.

STATEMENT OF THE CASE

Cross-appellant/plaintiff LeAnna (Broadwater) Robbins ("Plaintiff") is the holder of 8,000 shares of stock in Cardinal Energy Corporation ("Cardinal Energy"), now known as Check-Rite International Inc. ("Check-Rite"). Plaintiff's shares, represented by Cardinal Energy stock Certificate No. 258, are the subject of this dispute. (R. 69-200)

Cross-appellee/defendant Old Republic Surety is the successor in interest to defendant Northwestern National Insurance Company of Milwaukee, (hereinafter collectively the "Bonding Companies"), and is the surety on a lost instruments indemnity bond, Bond No. UMI 871385, which is involved in this dispute. (Id.) Defendant Atlas Stock Transfer Corporation ("Atlas") is a Utah corporation and is the transfer agent for defendant Check-Rite. (Id.)

Defendant Scott J. Fletcher is the purchaser of and the principal on the indemnity bond at issue in this case. In addition, Fletcher was the original purchaser and holder of

Cardinal Energy Certificate No. 258. (Id.) On July 17, 1981, defendant Fletcher placed two orders with Potter Investment Company ("Potter Investment") to sell 8,000 shares of Cardinal stock. (Id.) On July 27, 1981, Fletcher allegedly delivered Cardinal Energy Stock Certificate No. 258, representing 8,000 shares issued in his name, to Potter Investment pursuant to his previous directive to Potter Investment to sell such stock. (Id.)

Plaintiff claims to have purchased her 8,000 shares of Cardinal Energy stock on September 21, 1981, from Potter Investment. Potter Investment then delivered Certificate No. 258 to plaintiff which allegedly had been endorsed over by Fletcher. (Id.)

Later in August, 1982, Fletcher informed Atlas that Certificate No. 258 had been lost or stolen. Fletcher then posted a lost instruments bond, Bond No. UMI 871385, through Old Republic's predecessor in interest, Northwestern National, and paid the premium thereon. (R. 43) Upon posting of the bond, Atlas issued Fletcher a new Cardinal Energy stock certificate in the amount of 8,000 shares to replace Certificate No. 258. (R. 69-100) The lost instruments bonds purchased by Fletcher named Fletcher as principal, Northwestern as the obligor, and Cardinal Energy and its present and future transfer agents as obligees under the bond. (R. 43)

Sometime prior to May 4, 1988, plaintiff presented Certificate No. 258 to Atlas for transfer into her name in accordance with Utah

Code Ann. § 70A-8-306 (1953). (R. 77, 111) Atlas refused to register the stock in her name because the certificate had been reported lost and pursuant to the subject bond, a new security had been issued. Plaintiff learned of Atlas' refusal on or about May 4, 1988.

After learning of the alleged conversion of her stock, plaintiff notified Old Republic's local Salt Lake City branch office on May 20, 1988, of her potential claim. (R. 519) Later, plaintiff contacted Paul Guardalabene, Assistant Claims Attorney for Old Republic, in Milwaukee, Wisconsin. On or about July 11, 1988, plaintiff corresponded with Mr. Guardalabene setting forth her claim to the "lost" stock certificate. (R. 112) Guardalabene indicated to plaintiff that he would appreciate any assistance that plaintiff could give him to investigate the matter further. (R. 521) Guardalabene never informed plaintiff that she was an obligee or third-party beneficiary under the subject lost instruments bond. (Id.)

After the price of Check-Rite stock fell, plaintiff filed suit in April, 1989 against several defendants, including the Bonding Companies. Plaintiff's third cause of action asserts that the "relationship" between plaintiff, Old Republic and Northwestern required the Bonding Companies to deal "fairly with plaintiff and otherwise act in good faith." (R. 85) Plaintiff further alleged that the Bonding Companies had breached their "implied covenant of

good faith and fair dealing," and in so doing had damaged her. (Id.)

Plaintiff's fourth cause of action asserts that she was a "third-party beneficiary" of the lost instruments bond and that as such, she has standing to sue for the Bonding Companies' alleged "failure to honor the bond." (R. 85-86)

Plaintiff's fifth cause of action asserts that the Bonding Companies' actions in this case constitute insurer bad faith. (R. 86-87)

On or about June 26, 1989, the Bonding Companies moved pursuant to Rule 12(b)(6), U.R.C.P., to dismiss plaintiff's amended complaint, including the third through fifth causes of action, for failure to state a claim upon which relief could be granted. (R. 138-39) Plaintiff resisted the Bonding Companies' motion to dismiss by submitting plaintiff's affidavit in opposition, a Rule 56(f) affidavit of counsel, and a memorandum in opposition. (R. 183-217) On or about September 5, 1989, the trial court entered its Minute Entry denying the Bonding Companies' motion to dismiss "until Plaintiff completes discovery." An order to that effect was entered shortly thereafter on September 11, 1989. (R. 259-60)

On or about February 27, 1990, the Bonding Companies filed a motion for partial summary judgment dismissing Counts III, IV, and V of the plaintiff's amended complaint. During the more than five months between the trial court's order of September 11, 1989 and the filing of the Bonding Companies' motion for partial summary

judgment, plaintiff took only one deposition and submitted extensive written discovery requests, all of which were duly responded to by the various defendants.

Plaintiff resisted the Bonding Companies' motion by filing her own opposing affidavit, another affidavit supporting her motion for summary judgment on Counts I and II, and a Rule 56(f) affidavit of counsel.

On or about May 24, 1990, the lower court granted the Bonding Companies' motion for partial summary judgment dismissing Counts III, IV, and V of plaintiff's amended complaint. (R. 710-12) The plaintiff duly perfected her cross-appeal, following to a Rule 54(b) certification order.

SUMMARY OF ARGUMENT

Plaintiff's third, fourth and fifth causes of action allege breach of the implied covenant of good faith and fair dealing, breach of an implied third-party beneficiary contract, and "bad faith refusal" on the part of the Bonding Companies, all causes of action sounding in contract. The undisputed evidence presented to the trial court established that plaintiff lacked any contractual privity with the Bonding Companies at all times pertinent to this action. This action arises out of the issuance of a lost instruments bond by Old Republic's predecessor in interest, Northwestern National, to defendant Scott Fletcher. The subject lost instruments bond specifically listed Mr. Fletcher as principal, Northwestern National as surety, and Cardinal Energy and

its present and future transfer agents as obligees under the bond. The Bonding Companies' obligations under the subject bond run solely to the principal and the obligees specifically enumerated in the bond. Plaintiff, as a third-party claimant, has no contractual privity with the Bonding Companies. As a result, the Bonding Companies had no duty to deal fairly and in good faith with plaintiff.

Plaintiff asserts that she has contractual privity with the Bonding Companies because she is a third-party beneficiary to the lost instruments bond. The undisputed evidence before the trial court was that, at best, plaintiff should be considered an incidental third-party beneficiary. The law of the State of Utah is clear that mere incidental third-party beneficiaries have no right to enforce contractual agreements to which they are not a party.

Plaintiff's assertion that she gained privity of contract due to the actions of the Bonding Companies is likewise unsupported in the facts and the law. There was no allegation within the plaintiff's amended complaint nor any evidence presented to the trial court which would support a finding that the Bonding Companies are estopped from denying that plaintiff is in privity of contract with them under the subject lost instruments bond. There is no evidence that the Bonding Companies ever owed any duty of good faith toward plaintiff, nor that the Bonding Companies ever assumed any duty of good faith and fair dealing toward plaintiff.

Absent any evidence that the Bonding Companies had or assumed a special relationship with plaintiff in reviewing the merits of her claim, plaintiff's claims of bad faith and unfair dealing fail as a matter of law. Therefore, the trial court's granting of partial summary judgment in favor of the Bonding Companies on Counts III, IV and V of plaintiff's complaint should be affirmed.

ARGUMENT

POINT I.

PLAINTIFF IS NOT A THIRD-PARTY BENEFICIARY TO THE INDEMNITY BOND CONTRACT AND HAS NO BASIS FOR BRINGING A CONTRACT-BASED ACTION.

The lower court's ruling granting the Bonding Companies' motion for partial summary judgment on plaintiff's third, fourth, and fifth causes of action should be affirmed, if but for the sole reason that all three causes of action fail due to the lack of contractual privity between the Bonding Companies and plaintiff. Plaintiff attacks the lower court's ruling by baselessly alleging that the lower court's action was a "mere trade-off" for the court's granting of plaintiff's motion for partial summary judgment on Counts I and II of her amended complaint. (Cross-Appellant's Brief, p. 11) Nevertheless, well-established principles of law clearly support the lower court's granting of partial summary judgment in favor of the Bonding Companies.

The Bonding Companies properly asserted in the court below that plaintiff is not a third-party beneficiary to the indemnity bond posted by Fletcher. The bond reads as follows:

Know all men by these presents, that Scott J. Fletcher as principal, and Northwestern National Insurance Company . . . as surety . . . are held and firmly bound unto Cardinal Energy Corporation and Atlas Stock Transfer and unto all such individuals, firms and corporations, as may now and/or hereafter be acting as transfer agents and/or registrars (emphasis added)

(See Addendum, Exhibit 1.)

The language of the subject lost instruments bond clearly and unambiguously enumerates all intended third-party beneficiaries: Cardinal Energy Corp. (now Check-Rite), Atlas Stock Transfer, and any other party "acting as transfer agent". (emphasis added) The intention of the parties to the bond is clear. The intended third-party beneficiaries to the Bonding Companies' contractual covenants are specifically identified and limited by the language of the bond. Plaintiff produced no evidence that the parties to the bonding agreement ever intended to directly benefit her or anyone similarly situated to her. The benefits of the bond's indemnity provision run directly to two parties: Atlas Stock Transfer Co. and Check-Rite.

The Utah Court of Appeals has stated as a general rule that the "rights of third-party beneficiaries are determined by the intentions of the parties to the subject contract." Hansen v. Green River Group, 748 P.2d 1102, 1104 (Utah Ct. App. 1988). In Hansen, the plaintiff had a contract to sell motel to certain purchaser. The purchaser then contracted to sell the notice to a sub-purchaser. Upon the sub-purchaser's breach of its contract,

the plaintiff attempted to bring an action against the sub-purchaser based on a theory of third-party beneficiary. The Court of Appeals affirmed the dismissal of the plaintiff's action against the sub-purchaser because of lack of privity by stating, "for a third-party beneficiary to have a right to enforce a right, the intention of the contracting parties to confer a separate and distinct benefit upon the third party must be clear." Id. at 1105 (quoting Rio Algom Corp. v. Jimco Ltd., 618 P.2d 497, 506 (Utah 1980)). See also, Mel Trimble Real Estate v. Fitzgerald, 626 P.2d 453 (Utah 1981).

Furthermore, the Utah Supreme Court has also adopted the same general rule pertaining to third-party beneficiaries. In Schwinghammer v. Alexander, 21 Utah 2d 418, P.2d 414 (Utah 1968), the builder of a home entered into an escrow agreement with the bank to insure the completion of the home's basement. When the basement went unfinished, the plaintiff homeowner attempted to claim third-party beneficiary rights under the escrow agreement. The Utah Supreme Court held that the plaintiff had no action against the bank under the escrow agreement. Quoting Corbin On Contracts, the Court used the following illustration which is analogous to the instant case:

Where A owes money to a creditor C or to several creditors, and B promises A to supply him with money necessary to pay such debts, no creditor can maintain suit against B on the promise . . . In such cases the performance promised by B does not itself discharge A's duty to C or in any other way affect the legal relations of C. It may, indeed, tend towards C's getting what A

owes him, since it supplies A with the money or material that will enable A to perform, but such a result requires the intervening voluntary action of A . . . in such cases, therefore, C is called an incidental beneficiary and is held to have no right.

Id. at 416. See also Tracy Collins Bank and Trust v. Dickamore, 652 P.2d 1314 (Utah 1982).

In the case at bar, plaintiff is in the same position as the homeowner in Schwinghammer. The purpose of the bond was to indemnify Check-Rite or Atlas against their liability for any future claims made by potential creditors demanding payment on the "lost" stock certificates. The bond in no way affects the legal relationship between plaintiff, Check-Rite and Atlas. In this case, plaintiff made a claim against Check-Rite and Atlas for their failure to register the stock certificates in her name. The fact that Check-Rite and Atlas are "protected" by the bond confers no contractual privity upon plaintiff. The subject bond merely indemnifies Check-Rite and Atlas for any liability they might incur when presented with the lost stock certificates by a bona fide purchaser. As a result, this court should find that plaintiff is merely an incidental beneficiary to the bonding contract and, therefore, has no contract-based rights against the Bonding Companies.

Plaintiff contends that she is a creditor third-party beneficiary to the bond contract. As support for this contention, she cites to a concurring opinion in Fleck v. National Property Management, Inc., 590 P.2d 1254 (Utah 1979). Proper analysis of

the concurring opinion in Fleck reveals that plaintiff cannot possibly be a creditor third-party beneficiary. The concurring opinion states, "it has been a long-standing rule that notwithstanding the theory of third-party beneficiaries, a third person who is not named in the bond cannot recover." Id. at 1256. Moreover, the concurring opinion, quoting from Corbin On Contracts, defines a creditor third-party beneficiary as follows:

If, on the other hand, the promisee's expressed intent is that some third party shall receive the performance in satisfaction and discharge of some actual or supposed duty or liability of the promisee, the third party is a creditor beneficiary.

Id. (Hall, J. concurring) (emphasis added). There is no doubt the parties to the bond in this case did not expressly identify plaintiff, as an intended creditor third-party beneficiary. The Bonding Companies' sole contractual obligation under the bond runs only to Atlas and Check-Rite.

Plaintiff mistakenly relies on the following bond language to support her contention that she is an intended creditor third-party beneficiary:

The surety agrees that its liability herein under shall be absolute, regardless of any liability of the Principal hereunder, whether by reason of any irregular or unauthorized execution of, or failure to execute this bond, or any absence or interest of the Principal and the subject matter hereof, or otherwise.

(See Addendum, Exhibit 1) The word "absolute" contained in the bond simply creates "absolute" liability for those intended beneficiaries expressly identified in the bond itself, i.e., Atlas

arid Check-Rite. Certainly, plaintiff cannot reasonably expect that the Bonding Companies' liability on the bond is "absolute" for any person alleging a claim against them. No insurer would create for itself such a large scope of liability as the plaintiff maintains. The only parties who have standing to make a claim under the bond are Atlas and Check-Rite.

The lower court correctly denied plaintiff's attempt to create contractual rights for herself by taking the bond's language out of context. The lower court rightly recognized plaintiff as nothing more than an incidental third-party beneficiary of the Bonding Companies' duties to Atlas and Check-Rite. There is nothing in the subject bond evidencing any intention on the part of the parties to the bond to assume any duty or obligation towards plaintiff. It is clear that Utah law does not accord an incidental third-party beneficiary any right to maintain an action sounding in contract. Recognizing this, the lower court appropriately granted the bonding companies' motion for partial summary judgment, dismissing plaintiff's third, fourth and fifth causes of action set forth in her amended complaint. Consequently, the trial court's granting of partial summary judgment should be affirmed.

POINT II.

**PLAINTIFF LACKS PRIVACY OF CONTRACT, AND AS SUCH
CANNOT MAINTAIN A CLAIM OF BAD FAITH AGAINST THE
BONDING COMPANIES.**

The lower court in granting the Bonding Companies' motion for partial summary judgment dismissed plaintiff's third and fifth

causes of action which alleged breach of the implied covenant of good faith and fair dealing. The lower court's dismissal of plaintiff's bad faith claim was proper due to plaintiff's lack of privity of contract with the Bonding Companies. Several recent Utah cases support the lower court's findings. In Amica Mutual Ins. Co. v. Schettler, 768 P.2d 950 (Utah Ct. App. 1989), the Utah Court of Appeals affirmed the trial court's dismissal of a bad faith claim. The defendant made a counterclaim against his insurer alleging bad faith. The Court of Appeals stated:

In order to maintain an action under a contractual theory of insurer bad faith, the parties must be in privity of contract at the time of the alleged wrong.

Id. at 958.

The Utah Supreme Court in Beck v. Farmers Insurance Exchange, 701 P.2d 795 (Utah 1985), also recognized that the duty of insurer good faith arises from a contractual relationship and in the absence of such a relationship, there can be no insurer bad faith. Since there is no contractual privity between the bonding companies and plaintiff, plaintiff has no cause of action against the bonding companies under her third and fifth causes of action for breach of an implied covenant of good faith and fair dealing.

Most recently in Pixton v. State Farm Mutual Auto. Ins. Co., 809 P.2d 746 (Utah App. 1991), the court reaffirmed that an insurer has no duty to deal fairly and in good faith with an aggrieved or injured party who has made claim against the company's insured. In Pixton, the plaintiff, a third-party claimant, brought suit against

State Farm alleging bad faith in the handling of her claim against a State Farm insured. Specifically, the plaintiff alleged that State Farm had not settled her claim promptly and fairly, had wrongly refused to give her the information she needed to evaluate the potential value of her claim, and had employed an adjuster who had a conflict of interest in handling her claim. In affirming the trial court's granting of summary judgment in favor of State Farm, the Utah Court of Appeals stated:

In sum, we are persuaded that there is no duty of good faith and fair dealing imposed upon an insurer running to a third-party claimant, such as Pixton, seeking to recover against the company's insured. This conclusion is consistent with the commentators and the great majority of courts in other jurisdictions that have been confronted with the issue. As one well-known commentator on insurance law noted, "[t]he duty to exercise due care or good faith is owed to the insured and not to a third party." 14 G. Couch, Couch on Insurance, § 51:136 (Rev. 2d ed. 1982).

Id. at 749-50.

Plaintiff erroneously argues that privity of contract may be created by the conduct of the Bonding Companies, and that such conduct should estop the Bonding Companies from denying that plaintiff is in privity. The conduct plaintiff speaks of is simply the Bonding Companies' willingness to examine the facts surrounding her claim made against Atlas and Check-Rite, the obligees under the bonding contract.

It is well established law that the doctrine of estoppel cannot be used to create a right in one party that could not have

possibly been obtained otherwise by that party. Heltzel v. Mecham Pontiac, 730 P.2d 235 (Ariz. 1986). Plaintiff was not in privity of contract and had no possible way of obtaining privity to the bonding contract. Plaintiff did not forego any right which might have otherwise existed by relying on the Bonding Companies' conduct. Further, the fact that the Bonding Companies inquired into the validity of plaintiff's claim against the obligees under the bond can in no way be construed to create contractual privity. Privity of contract either exists or it does not exist. It cannot be created by conduct.

Moreover, at the very most, the Bonding Companies' conduct simply led to a delay in determining the validity of plaintiff's claim. Delay or lapse of time alone cannot work an estoppel. Blumenthal v. Concrete Contractors Co. of Albuquerque, Inc., 692 P.2d 50 (N.M. Ct. App. 1984).

Equitable estoppel or estoppel by conduct is generally not favored by the courts and should not be used except in extreme circumstances where each element is clearly established. Kenneth D. Collins Agency v. Hagerott, 684 P.2d 487 (Mont. 1984); Mercer v. State, 739 P.2d 703 (Wash. App. 1987). Plaintiff's attempt to create privity of contract out of the conduct of the Bonding Companies is nothing more than an ill-fated attempt to manufacture a bad faith claim in hopes of increasing her damage claim. Recognizing this, the lower court rightly dismissed plaintiff's bad faith claims.

POINT III.

**THE BONDING COMPANIES OWED NO DUTY AND ASSUMED
NO DUTY OF CARE TO PLAINTIFF.**

Plaintiff asserts that Counts III and V of her amended complaint allege "tort action[s] for the IVAs' bad faith refusal or bad faith bargaining with her and Cross-Appellees Atlas and Check Rite." (Cross-Appellant's Brief, pp. 21-22) It should first be noted that neither Atlas nor Check-Rite have ever asserted a bad faith claim against the Bonding Companies. Secondly, plaintiff's claims of tort based claims of bad faith against the Bonding Companies ignore a long line of Utah cases which have consistently held that insurance bad faith is a contract-based action, not a tort-based action. Pixton, 809 P.2d at 748; Gagon v. State Farm Mutual Auto. Ins. Co., 771 P.2d 325 (Utah 1988) (Zimmerman, J., concurring); Schettler, 768 P.2d at 958; Beck, 701 P.2d at 800.

Even if plaintiff's third and fifth causes of action are to be construed as alleging some cause of action other than insurer bad faith, plaintiff must still establish that the Bonding Companies owed a duty to her. Plaintiff asserts that the Bonding Companies owed her certain duties, although of an unspecified nature and origin.

Assuming arguendo that the issue of duty is relevant to the resolution of this appeal, the Bonding Companies assert that they owed no duty of fair dealing to plaintiff. For a duty to exist under tort law, the plaintiff is obligated to prove that a special relationship existed between her and the Bonding Companies. See

Beach v. University of Utah, 726 P.2d 413 (Utah 1986). In Beach, this Court, citing the Restatement (Second) of Torts § 314(A) (1964), stated that, "The law imposes upon one an affirmative duty to act only when certain special relationships exist between the parties." Id. at 415. This Court went on to note that, "To avoid summary judgment, [plaintiff] was obligated to prove that she had a special relationship with the university which obligated the university to supervise and protect her and that the duty was breached causing her injuries." Id. at 416.

Plaintiff's amended complaint in the instant case does not even allege the existence of a special relationship between her and the Bonding Companies. Plaintiff asserts that her efforts to contact the Bonding Companies to ask for their help and the Bonding Companies' apparent efforts to "investigate" plaintiff's situation give rise to a "special relationship." It is undisputed that the Bonding Companies considered plaintiff to be an interested party who might be willing to assist them in investigating the facts and circumstances surrounding the appearance of the lost security, Check-Rite stock Certificate No. 258. Furthermore, the Bonding Companies did request that plaintiff submit any documentation she might have that would assist them in resolving any claim brought by an obligee on the bond. (Id.) Nevertheless, the efforts made by the Bonding Companies in this case cannot give rise to the type of special relationship required in order for the imposition of an

affirmative duty to deal in good faith with plaintiff, as though she were a party to the bonding agreement.

The only fiduciary duties owed by the Bonding Companies in this case were owed to Atlas and Check-Rite, the obligees under the subject bond. There is no basis for maintaining that such a fiduciary duty or special relationship exists between the Bonding Companies and a third-party claimant, such as plaintiff. See Pixton, 809 P.2d at 749.

Even if this Court were to find that plaintiff's third and fifth causes of action state cognizable tort claims against the Bonding Companies for the manner in which plaintiff's "claim" was handled, it is clear that plaintiff sustained no damage as a result of the conduct of the Bonding Companies. As demonstrated in defendants Old Republic and Northwestern's initial appellants' brief, plaintiff's damages, if any, were caused and were fixed within 30 days after the alleged conversion of plaintiff's stock by Atlas and Check-Rite, at least several weeks before plaintiff contacted the Bonding Companies' claims attorney, Paul Guardalabene. As a result, any upward or downward price fluctuation in Check-Rite stock after the alleged conversion by Atlas and Check-Rite on or about May 4, 1988, would be irrelevant.

CONCLUSION

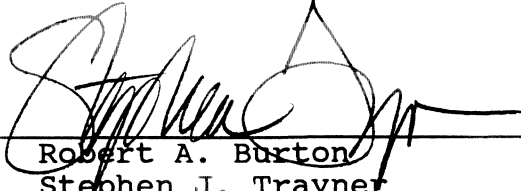
Based upon the foregoing, defendants/cross-appellees Old Republic and Northwestern request that this Court affirm the

summary dismissal of plaintiff's third, fourth, and fifth causes of action.

Dated this 11th day of October, 1991.

STRONG & HANNI

By


Robert A. Burton

Stephen J. Trayner

Attorneys for Defendants Old
Republic Surety and Northwestern
National

MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing document were mailed, first-class postage prepaid, this 11th day of October, 1991, to the following:

John Michael Coombs
72 East 400 South, Suite 220
Salt Lake City, Utah 84111
Attorney for Cross-Appellant, Plaintiff



ADDENDUM

Exhibit 1 (Bond No. UMI 871385)	A1
Affidavit of Paul S. Guardalabene	A3



Bond for Lost Instrument - Penalty

NORTHWESTERN NATIONAL INSURANCE COMPANY

of Milwaukee, Wisconsin

Bond No. UMI 871385

Know all Men by these Presents, THAT Scott J. Fletcheras Principal, and NORTHWESTERN NATIONAL INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Wisconsin, duly authorized to transact the business of indemnity and suretyship in the State of Utah and having an office and principal place of business in said Stateat 525 E 4500 S, Salt Lake City, Ut as Surety (hereinafter collectively called the "Obligors"), are held and firmly bound untoCardinal Energy Corporation
and
Atlas Stock Transfer

and unto all such individuals, firms and corporations, as may now and/or hereafter be acting as Transfer Agent(s) and/or Registrar(s) of the below-mentioned stock (hereinafter collectively called the "Obligees"), in an amount, payable in lawful money of the United States, sufficient to indemnify the Obligees under the condition of this bond as hereinafter set forth, not to exceed, however, the maximum amount of risk which may be legally assumed by the Surety under any law governing the validity or performance of this bond, to be paid to the Obligees, and each of them, and to their respective legal representatives, successors and assigns, as interest may appear; for which payment well and truly to be made, the Obligors do bind themselves, and their respective successors, assigns, heirs and legal representatives, jointly and severally, firmly by these presents.

SEALED with the seals of the Obligors and executed in ONE counterparts, this 23rd day of August, 19 82

WHEREAS, the Principal represents that said Principal is the owner of Certificate(s) No.(s) 258 representing 8,000 shares of Cardinal Energy Corporation stock issued June 17, 1981;

registered in the name of *676 Scott J. Fletcher 285970 (hereinafter called "old certificate(s)"); that the old certificate(s) has been lost, destroyed or stolen so that the same cannot be found or produced; and that said Principal has not sold, pledged, hypothecated or otherwise transferred the old certificate(s), or the shares represented thereby, or any interest therein or right thereto.

WHEREAS, the Obligees, in reliance upon said representations and at the request of the Obligors, are willing to issue and deliver a new certificate(s) in the place and stead of the old certificate(s), upon the execution and delivery of this bond;

NOW, THEREFORE, the condition of this obligation is such that, if the Principal shall at all times indemnify and keep indemnified and save harmless the Obligees, and each of them, and their respective legal representatives, successors and assigns, from and against any and all actions and suits, whether groundless or otherwise, and from and against any and all losses, damages, costs, charges, counsel fees, payments, expenses and liabilities whatsoever, which the Obligees, or any of them, or their respective legal representatives, successors or assigns, at any time shall or may sustain or incur (1) by reason of said issue and delivery of such new certificate(s), or (2) by reason of any claim which may be made in respect of the old certificate(s), or (3) by reason of any payment, transfer, exchange or other act which said Obligees, or any of them, or their respective legal representatives, successors or assigns, may make or do in respect of the old certificate(s), whether made or done through accident, oversight, or neglect, or whether made or done upon presentation thereof without contesting the propriety of such payment, transfer, exchange or other act, or (4) by reason of any other matter or thing arising out of the recognition of the aforesaid request of the Obligors, then this obligation shall be void; otherwise it shall remain in full force and effect.

The Surety agrees that its liability hereunder shall be absolute, regardless of any liability of the Principal hereunder, whether by reason of any irregular or unauthorized execution of, or failure to execute, this bond, or any absence of interest of the Principal in the subject matter hereof, or otherwise.

It is understood that the obligation hereby created in favor of any such Transfer Agent or Registrar shall not be affected by the termination of the agency of such Transfer Agent or Registrar.

Scott J. Fletcher (L.S.)
NORTHWESTERN NATIONAL INSURANCE COMPANY,

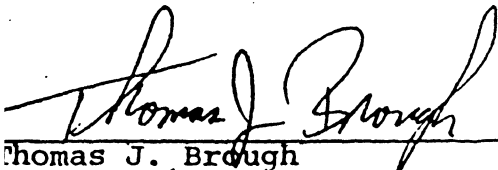
By Thomas J. Brough
Attorney-in-Fact

Thomas J. Brough

AFFIDAVIT OF QUALIFICATION

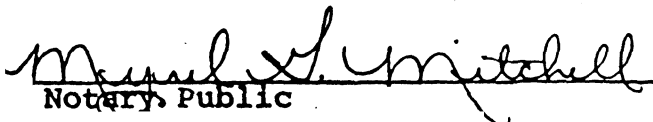
STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

Thomas J. Brough, being first duly sworn, on oath desposes and says that he is the ATTORNEY-IN-FACT of the NORTHWESTERN NATIONAL INSURANCE COMPANY, and that he is duly authorized to execute and deliver the foregoing obligations; that said company is authorized to execute the same and has complied in all respects with the laws of Utah in referenced to becoming sole Surety upon bond, undertakings and obligations.


Thomas J. Brough
Attorney-in-Fact

Subscribed and sworn to before me this 23rd Day of August, 1982.

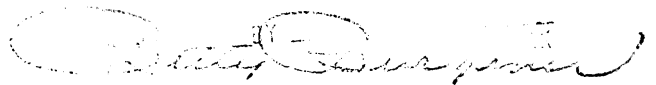
My Commission Expires: My Commission Expires April 15, 1984


Notary Public

Robert A. Burton, #0516
Stephen J. Trayner, #4928
STRONG & HANNI
Attorneys for Defendants
Sixth Floor Boston Building
Salt Lake City, Utah 84111
Telephone: (801) 532-7080

FILED
COURT

NOV 13 1990



IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

LeANNA BROADWATER

Plaintiff,

vs.

OLD REPUBLIC SURETY, a Wisconsin
corporation doing business in
Utah, NORTHWESTERN NATIONAL
INSURANCE COMPANY OF MILWAUKEE,
WISCONSIN, a Wisconsin corpo-
ration, doing business in Utah,
ATLAS STOCK TRANSFER, a Utah
corporation, CHECK RITE INTER-
NATIONAL, INC. f/k/a CARDINAL
ENERGY CORPORATION, a Utah
corporation, and SCOTT J.
FLETCHER, a Utah resident,

Defendants.

AFFIDAVIT OF PAUL S.
GUARDALABENE

Civil No. 89-0902684-CV
Honorable Raymond S. Uno

STATE OF WISCONSIN)
: ss
COUNTY OF _____)

Affiant, Paul S. Guardalabene, having been first duly
sworn, deposes and states as follows:

1. Affiant is a resident of the State of Wisconsin and
is at least 18 years of age.
2. At all times pertinent affiant has served as

assistant claim attorney for Old Republic Surety Company.

3. Affiant is responsible for supervising the claims handling process with respect to bond no. UMI 871385, and is authorized by Old Republic Surety to testify as to the facts set forth in this affidavit.

4. In preparation of this affidavit, affiant has personally reviewed the claims file maintained at the offices of Old Republic Surety on bond no. UMI 871385.

5. Affiant is aware that the documents found in said claims file are prepared in the normal course and scope of defendant's business and reflect transactions or occurrences contemporaneous to the entries found in said file.

6. Defendant Old Republic received first notice of a potential claim being made on bond no. UMI 871385 on or about May 20, 1988. On that date, Old Republic's Salt Lake Office notified the home office of a potential claim on the bond. See Exhibit 1.

7. On or about May 24, 1988, affiant spoke with defendant Scott Fletcher concerning the potential claim being made on the bond.

8. On or about May 25, 1988, affiant wrote to Mr. Fletcher, requesting that he contact "the necessary parties to determine what happened and what can be done to settle this claim". See Exhibit 2.

9. On June 13, 1988, affiant corresponded with counsel for Mr. Fletcher requesting his assistance. See Exhibit 3.

10. On or about July 19, 1988, affiant received plaintiff's July 11, 1988 correspondence advising affiant of plaintiff's interest in the subject stock certificate and informing affiant that the market for said stock appeared to be "firming up". See Exhibit 4.

11. On or about July 20, 1988, affiant corresponded with counsel for Mr. Fletcher requesting that Fletcher respond to plaintiff's most recent letter. See Exhibit 5.

12. On or about August 1, 1988, affiant received plaintiff's July 27, 1988 correspondence in which she supplied various documents evidencing her alleged ownership of the subject stock certificates. The materials supplied by plaintiff included reference to a Kasu Securities, Inc., a securities business in which plaintiff was serving as president and treasurer. See Exhibit 6.

13. On August 8, 1988, affiant corresponded with plaintiff clearly indicating that Old Republic would handle its liability on the bond directly with the obligees under the bond. See Exhibit 7.

14. On or about August 11, 1988, affiant corresponded with Mr. Franklin L. Kimball of the Atlas Stock Transfer Co.

concerning a potential claim being made under bond no. UMI 871385, a copy of this correspondence was sent to plaintiff. See Exhibit 8.

15. On or about August 23, 1988, affiant received an August 18, 1988 letter from Mr. Franklin L. Kimball of the Atlas Stock Transfer Corp., detailing the trading history of Cardinal Energy Corp. certificate no. 258. See Exhibit 9.

16. On or about August 29, 1988, affiant once again corresponded with Mr. Franklin L. Kimball, a copy of his correspondence is once again being sent to plaintiff. See Exhibit 10.

17. On or about September 26, 1988, affiant received a demand letter from plaintiff's current counsel, John Michael Coombs. See Exhibit 11.

18. During the course of the claim history on bond no. UMI 871385, affiant recalls only two telephone conversations with plaintiff.

19. Affiant recalls that plaintiff contacted him by telephone sometime in June 1988 to discuss the stop transfer order issued by Atlas Stock Transfer Corp.

20. During the initial June 1988 conversation, affiant indicated that he would appreciate any assistance that plaintiff might give him investigating the matter further. Affiant

indicated that he would need various documents from plaintiff and other individuals before he could formally resolve any claim by an obligee on the bond.

21. Since plaintiff represented herself to affiant as the holder of the lost security, affiant requested that plaintiff submit any documentation that she might have that would confirm her ownership of certificate no. 258.

22. On or about July 27, 1988, plaintiff once again telephoned affiant to confirm that the documentation she had gathered would be sufficient for his needs.

23. At no time did affiant ever inform plaintiff that she was an obligee or a third-party beneficiary under the bond.

24. At no time did affiant consider it his duty to inform plaintiff of any legal duty or obligations that she might have as an interested party in the matter.

25. At all times during their dealings, affiant considered plaintiff as an interested party who might be willing to assist him in investigating the facts and circumstances surrounding the appearance of the lost security.


26. At no time during my dealings with plaintiff did affiant indicate or infer that plaintiff had a right to recover any damages directly from Old Republic.

27. At no time during affiant's dealings with plaintiff

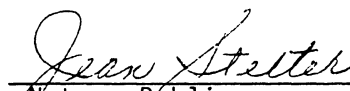
did affiant intend to or do anything to stall or delay the claims handling process and the ultimate resolution of the potential obligees' claims under the subject bond.

28. At no time did affiant intend that any of his actions lull plaintiff into inaction with respect to any legal duties or obligations she might have had to enter the market place in order to mitigate her damages.

DATED this 27th day of February, 1990.


Paul S. Guardalabene

Subscribed and sworn to before me this 27th day of February, 1990.


Notary Public
Residing at Milwaukee, Wisconsin

My Commission Expires:
Notary Public, State of Wisconsin
My Commission Expires 1-31-93

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed postage prepaid, this 5th day

of March 1990 to:

John Michael Coombs
Attorney for Plaintiff
72 East 400 South, Suite 22.
Salt Lake City, UT 84111

Blake T. Ostler
KIRTON & McCONKIE
Attorneys for Defendant Fletcher
330 South Third East
Salt Lake City, UT 84111

Larry G. Reed
PARSONS & CROWTHER
Attorneys for Atlas Stock Transfer Corp.
455 South 300 East, Suite 300
Salt Lake City, UT 84111

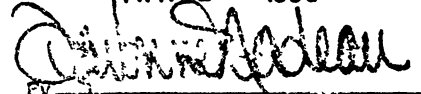
Philip R. Hughes, Esq.
Attorney for Check Rite
844 South 200 East, #100
Salt Lake City UT 84111

C.
St. Louis

EXHIBITS TO
AFFIDAVIT
OF
PAUL S. GUARDALABENE

FILED DISTRICT COURT
Tenth Judicial District

MAY 24 1990


by _____ Deputy Clerk

890902684

PAUL GUANDAGENZ	OFFICE-DEPT H.O. CLAIMS	DATE 5-20-88
Mr Paul	OFFICE-DEPT SLC	SUBJECT SCOTT FLETCHER

Bono # 871385

Box 307

PAUL. ATTACHED IS CLAIM LETTER
w/ COPY OF ORIGINAL FOR RE:
LOST SECURITY Bono CLAIM. WE

HAD ANOTHER LOSS BY THIS PRINCIPAL IN 85. YOU MIGHT CROSS REFERENCE
CHECK Bono # 902168 (CLAIM # 048-13192 "D")

THANKS

MEL

5-24-88

I CALLED PRINC He remembers
VERY little about this incident.
He said that he still is
barely making ends meet financially



Old Republic Surety

Old Republic Surety Company
Old Republic Insurance Company
Lawyers Surety Corporation
State Surety Company

July 20, 1988

Douglas Mortenson, Esq.
648 East First South
Salt Lake City, UT 84102

Re: Claim No.: 00001049
Bond No.: UMI 871385
Principal: Scott J. Fletcher
Obligee: Cardinal Energy Corporation and
Atlas Stock Transfer Corporation
Bond Type: Lost Security
Company: Northwestern National Insurance Co.

Dear Mr. Mortenson:

We just received the attached letter from the claimant who purchased the 8,000 shares of Cardinal Energy Stock but has been unable to get the shares put in her name. Please let me have your client's response to the claimant's letter and the other materials which I previously submitted. Your immediate cooperation will be very much appreciated.

Very truly yours,

OLD REPUBLIC SURETY

Paul S. Guardalabene
Assistant Claim Attorney

PSG/kmr
Enclosure

cc: Mr. Scott J. Fletcher
9916 Petunia Way
Sandy, UT 84092

EXHIBIT 3

July 11, 1988

JUL 19 1988

Mr. Paul S. Guardatabene
Old Republic Insurance Co.
P. O. Box 1635
Milwaukee, Wisconsin 53201

Dear Mr. Guardatabene:

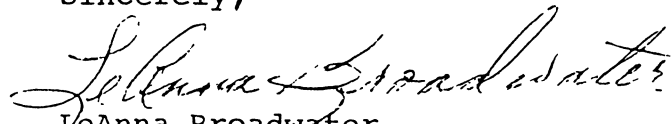
Pursuant to our telephone conversation of last week, this letter will confirm my purchase of 8,000 shares of Check Rite International (formerly Cardinal Energy) from Potter Investment Company, Salt Lake City, Utah, on September 21, 1981. The certificate which was delivered to me by Potter Investment Company was #258, in the name of Scott J. Fletcher, 9916 Petunia Way, Sandy, Utah 84092. The amount I paid for the stock at that time was \$.31.

As I indicated to you on the phone, I purchased this stock in good faith from Potter Investment Company for investment purposes, and I will in no way accept what you proposed as far as settling with me for my original purchase price.

After further consideration, I feel that it would be in everyone's best interests to simply replace the stock so that I will be free to sell it whenever I choose. The market seems to be firming up on said stock, so consequently, this matter should be resolved as quickly as possible.

I look forward to hearing from you in the very near future.

Sincerely,


LeAnna Broadwater
3576 Oak Rim Way
Salt Lake City, Utah
Phone: (801) 277-3068

1b



Old Republic *Surety Company*

June 13, 1988

Douglas Mortenson, Esq.
648 East First South
Salt Lake City, Utah 84102

(20)
363-2244

Re:	Claim No.:	00001049
	Principal:	Scott J. Fletcher
	Bond No.:	UMI 871385
	Company:	Northwestern National Insurance Company
	Obligee:	Cardinal Energy Corporation and Atlas Stock Transfer Corporation
	Bond Type:	Lost Security

Dear Mr. Mortenson:

Scott Fletcher advised me that you will be representing him with regard to the above matter. I am enclosing a copy of our file on this new claim, along with a copy of a file regarding another lost security bond which we issued for Mr. Fletcher.

As you will see, we paid a claim on Mr. Fletcher's behalf in 1984 and we are not sure what our and Mr. Fletcher's liability might be under the second bond. Please review the enclosures and give me your analysis at your earliest convenience. Thank you very much for your assistance.

Very truly yours,

OLD REPUBLIC SURETY COMPANY

Paul S. Guardalabene
Assistant Claim Attorney

PSG/jh

Enclosures

cc/enc: Mr. Scott J. Fletcher
9916 Petunia Way
Sandy, Utah 84092



Old Republic *Surety Company*

May 25, 1988

Mr. Scott J. Fletcher
9916 Petunia Way
Sandy, UT 84092

Re: **Claim No.:** 001049
Principal: Scott J. Fletcher
Bond No.: UMI 871385
Company: Northwestern National Insurance Company
Obligee: Cardinal Energy Corporation and
Atlas Stock Transfer Corporation
Bond Type: Lost Securities

Dear Mr. Fletcher:

This is a follow-up to our telephone conversation of May 24, 1988. Enclosed is a copy of the claim which is being made against the above bond, which our predecessor in interest, Northwestern National Insurance Company, issued on your behalf in 1982. We ask that you review the claim and contact the necessary parties to determine what happened and what can be done to settle this claim.

We paid another lost securities bond claim for you in 1985 and assume that your sense of morality and fair play will not allow us to suffer another loss, especially since the second loss would not be discharged by your bankruptcy of a few years ago. I am also enclosing a copy of the Indemnity Agreement which you signed in 1982. It gives us the right to recover from you any loss which arises from our issuing the bond for you.

Please investigate this matter and get back to me within 14 days of the date of this letter. If I do not hear from you within that time frame, I will adjust this claim based on the information which I have already obtained. Your cooperation will be greatly appreciated by us and will save you money and unnecessary legal hassles.

Very truly yours,

OLD REPUBLIC SURETY COMPANY

Paul S. Guardalabene
Assistant Claim Attorney

PSG/mb

Enclosures

cc: Mr. Franklin L. Kimball
Atlas Stock Transfer Corporation
5899 South State Street
Salt Lake City, UT 84107

Mr. Robert Hughes
Potter Investment
335 South Main Street
Salt Lake City, UT 84111

EXHIBIT 6

July 27, 1988

AUG 1 1988

Mr. Paul S. Guardalabene
Old Republic Surety Company
P. O. Box 1635
Milwaukee, Wisconsin 53201

Dear Mr. Guardalabene:

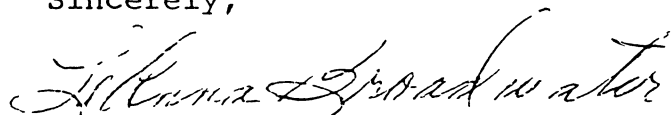
Regarding our telephone conversation of today, enclosed please find documents which should clarify my position and status with KASU Securities, Inc. and the fact that I am the legal owner of the 8,000 shares of Check-Rite International (formerly Cardinal Energy).

I have high-lighted the pertinent information on enclosed documents for your convenience.

As I stated to you today, the subject stock is now trading at \$1.00 and could continue to go much higher.

I will be waiting to hear from you soon.

Sincerely,



LeAnna Broadwater
3576 Oak Rim Way
Salt Lake City, Utah
Phone: (801) 277-3068

lb
encl.

GEO. "JOHN" POTTER
President

335 SOUTH MAIN STREET
SALT LAKE CITY UTAH 84111
PHONE 801-364-3595
WAITS 800-453-4267

HIGHWAY OR NO.		CODES				WATTS 800-453-426		
		TRANS NO	TR	CAP	SETT	TRADE DATE	SETTLEMENT DATE	DELIVERY DATE
092181		11423		1		09-21-81	09-28-81	
IDENTIFICATION NO	CONTRA PARTY			CH NUMBER		SPECIAL DELIVERY INSTRUCTIONS		
092181								

WE ARE MARKET MAKER IN THIS
SECURITY

WL	QUANTITY	CUSIP NUMBER	SECURITY DESCRIPTION	UNIT COST
	40,000		CARDINAL ENERGY CORP	\$12,400.00

[illegible]

CONTRA: 401265

PRICE	EXTENSION	SER CHG (MILKIN)	TAXES & MISC
21.000	12,400.00		

RECEIPT	ACCOUNT	TRANS NO	STOCK NUMBER	SHARES
DL	201945	11623	01265	40,000

MELTS CERTIFICATES ~~RECEIVED~~/DELIVERED

-0000591 X 1000 Langhinsich's Tender
-0000592 X 1000 " "
-0000598 X 2000 Jeanne C. Winder
-0000596 X 2000 Wilcox
-0000006 X 2000 Boyd V. Applegate
-0000007 X 2000 Carl Martin

KASU SECURITIES
SL-0000593 X 1000 Langhinsich's
SL-0000474 X 4000 Ella Sharp
SL-0000369 X 5000 Const. Co. Tower
SL-0000475 X 4000 Nancy Sharp
SL-0000047 X 8000 Paul Hodges

REC'D BY: L. J. [unclear] DATE: [unclear]

AFCD BY

✓ *Sinensis*
 - *abundant* found
 - *in* *the* *mountain* *at* *Hutchinson*
 00002



CORPORATION ANNUAL REPORT
MUST BE FILED EACH YEAR PRIOR TO MARCH 1ST

In compliance with Section 16-10-121 & 122 and Section 16-10-12 or 16-10-110 U.C.A. 1953 the following report and if applicable the statement of change of registered office and/or agent is submitted (PLEASE TYPE OR PRINT CLEARLY)

① EXACT CORPORATE NAME, REGISTERED AGENT AND REGISTERED OFFICE IN UTAH.

CE5221 DATE OF INC. 01/22/1980

KASU SECURITIES, INC.

LEANNA N. MORTENSEN
3576 OAK FIRM WAY
SLC, UTAH
84109

ew Registered Agent No change

ew Registered Office #15 East 400 South City SLC State Utah Zip 84111
(Street Address)

(With the above change the address of the registered office and the address of the business office of the registered agent are identical.)

INCORPORATED UNDER THE LAWS OF Utah (STATE OR COUNTRY).

INCORPORATED OUTSIDE THE STATE OF UTAH, GIVE THE ADDRESS OF THE PRINCIPAL OFFICE IN THE STATE OR COUNTRY OF INCORPORATION.

(Street Address) City _____ State or Country _____ Zip _____

TYPE OF BUSINESS CONDUCTED IN UTAH Securities Business

NAMES AND RESPECTIVE ADDRESSES OF THE OFFICERS AND DIRECTORS OF THE CORPORATION.

NAME	STREET ADDRESS	CITY, STATE, ZIP
------	----------------	------------------

ident Same

ve at least 3) IF DIRECTORS THE SAME AS OFFICERS INDICATE SAME

AUTHORIZED SHARES (DO NOT CHANGE THE INFORMATION LISTED.)

Number of Shares Authorized	Itemized By Class	Series If Any Within A Class	Par Value Of Shares	Number of Shares Without Par Value
50,000			1.000	

NUMBER OF SHARES ISSUED (MUST BE COMPLETED.)

Number of Shares Issued	Itemized By Class	Series If Any Within A Class	Par Value Of Shares	Number of Shares Without Par Value
1,000	Class "A"	Common	\$1.00	-0-

ATED CAPITAL (SEE INSTRUCTIONS) AS OF THE DATE OF THIS REPORT. \$ 1,000.00

der the penalties of perjury and as an authorized officer, I declare that this annual report and if applicable the statement of change of registered office and/or agent has been examined by me and is to the best of my knowledge and belief true, correct, and complete.

Leanna N. Mortensen
Authorized Officer

⑪ President
Title or Position

⑫ DATE 2/24, 19 81

id Agent and/or Registered Office
longed on this form, the President
ident must sign.)

STATEMENT OF INTENT TO DISSOLVE

KASU SECURITIES, INC.

(Corporate name)

BY ACT OF THE CORPORATION

To the Division of Corporations and Commercial Code
State of Utah

Pursuant to the provisions of Section 16-10-79 of the Utah Business Corporation Act, the undersigned corporation submits the following statement of intent to dissolve the corporation by act of the corporation

FIRST: The name of the corporation is KASU Securities, Inc.

SECOND: The names and respective addresses of its officers are:

Name	Address
<u>LeAnna N. Mortensen</u>	President <u>3576 Oak Rim Way, SLC, Utah</u>
<u>Claine A. Nelson</u>	Vice-Pres. <u>607 North 2nd East, Tremonton, Ut.</u>
<u>LaRae Nelson</u>	Secretary <u>607 North 2nd East, Tremonton, Ut.</u>
<u>LeAnna N. Mortensen</u>	Treasurer <u>3576 Oak Rim Way, SLC, Utah</u>

THIRD: The names and respective addresses of its directors are:

Name	Address
<u>LeAnna N. Mortensen</u>	<u>3576 Oak Rim Way, SLC, Utah</u>
<u>Claine A. Nelson</u>	<u>607 North 2nd East, Tremonton, Ut.</u>
<u>LaRae Nelson</u>	<u>607 North 2nd East, Tremonton, Ut.</u>

FOURTH: The following resolution to dissolve the corporation was adopted by the shareholders of the corporation on November 4, 19 86.

(Attach a copy of resolution)

FIFTH: The number of shares of the corporation outstanding at the time of such adoption was 1,000, and the number of shares entitled to vote thereon was 1,000

Class	"A" Common	Number of shares	1,000
-------	------------	------------------	-------

SIXTH: The number of shares voted for such resolutions was 1,000, and the number of shares voted against such resolution was -0-

Class	"A" Common	Number of Shares Voted
For	1,000	Against -0-

Dated November 7, 19 86

Under penalties of perjury, we declare that this document has been examined by us and is, to the best of our knowledge and belief true, correct and complete

____ KASU Securities, Inc. _____
 By LeAnna N. Mortensen
 President

ASSUMPTION OF LIABILITY CERTIFICATE

To the Utah State Tax Commission:

In order to expedite the processing of the proposed liquidation and
dissolution of KASU Securities, Inc. Charter # 085221

I LeAnna Mortensen hereby agree:

1. To file on a timely basis all Utah State
Tax returns required and pay all taxes due
and or determined to be due upon review to
the State of Utah for filing periods through
December 31, 1986.
2. Maintain the corporate records and make them
available for Audit upon request for a period
of three years.

IN WITNESS WHEREOF, the undersigned has hereunto caused this
Assumption of Liability Certificate to be executed in duplicate.

This 26th day of November, 1986.

LeAnna Mortensen
Signature

Subscribed and sworn to before me this

26 day of November 1986.

My Commission Expires Sept 30, 1987.

[Signature]
Notary Public

PRELIMINARY RETURN OF INFORMATION BY DOMESTIC UTAH CORPORATIONS WHICH HAVE
CEASED TO DO BUSINESS, OR WHICH CONTEMPLATE CEASING TO DO BUSINESS

KASU SECURITIES, INC.
(Name of Corporation)

3576 Oak Rim Way
(Street and Number)

Salt Lake City, Salt Lake Utah
(Post Office) (County) (State)

1. SUBMIT A COMPLETED COPY OF APPLICABLE FEDERAL FORMS 964 or 966 AND ALL ATTACHMENTS INCLUDING A LIST OF SHAREHOLDER'S NAMES, ADDRESSES, NO SHARE OWNED AND DISTRIBUTIONS

2. Date on which corporation ceased, or contemplates ceasing to do business November 30,
1986.

3. Have any corporation assets been sold or distributed to the stock holders since adoption of the resolution to cease doing business ☒ Yes ☐ No

Note: If any such sales or distributions have been made, attach a separate sheet giving details, including date and nature of the distributions, to whom made, consideration received, etc

4. Will the business formerly conducted by the corporation be continued by a successor business or interest? ☐ Yes ☒ No

Note: If the business formerly conducted by the corporation is now conducted by a successor business or interest, please provide the following information.

Name of successor business or interest _____

Address _____

☐ Individual ☐ Partnership ☐ Corporation

☐ Fiduciary ☐ Other _____

Date on which successor business or interest took over the operation of the business formerly conducted by the corporation _____ 19 ____.

I hereby certify that the statements contained herein are true and correct

Date Signature Title President

FAILURE TO COMPLETE ALL APPLICABLE SECTIONS OR ATTACH COPIES OF FEDERAL FORMS
MAY DELAY ISSUANCE OF A TAX CLEARANCE TO THE SECRETARY OF STATE

SHAREHOLDER OF KASU SECURITIES, INC.
 SHARES OWNED AND
 DISTRIBUTION

<u>SHAREHOLDERS</u>	<u>SHARES OWNED</u>	<u>DISTRIBUTION</u>
LeAnna N. Mortensen 3576 Oak Rim Way Salt Lake City, Utah 84109	998	\$ 73,092.52 (\$22,415.02 - Cash \$50,677.50 - Stocks)
Claine A. Nelson 607 North 2nd East Tremonton, Utah 84337	1	\$ 73.24 (Cash)
LaRae Nelson 607 North 2nd EAst Tremonton, Utah 84337	1	\$ 73.24 (Cash)

KASU Securities, Inc.

~~3576 Oak Rim Way, SLC, Ut. 84109~~

3576 Oak Rim Way, SLC, Ut. 84109

277-3068

December 15, 1986

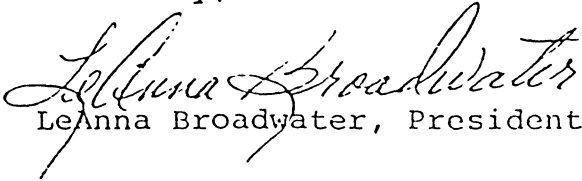
Mrs. Nadine Kee
Potter Investment Co.
335 South Main St.
SLC, Utah 84111

Dear Nadine:

This letter will serve as your authorization to transfer all assets from the account of KASU Securities, Inc., Acct. No. 148325, to my account - LeAnna Broadwater, Acct. No. 110886, for the purpose of dissolving the Corporation.

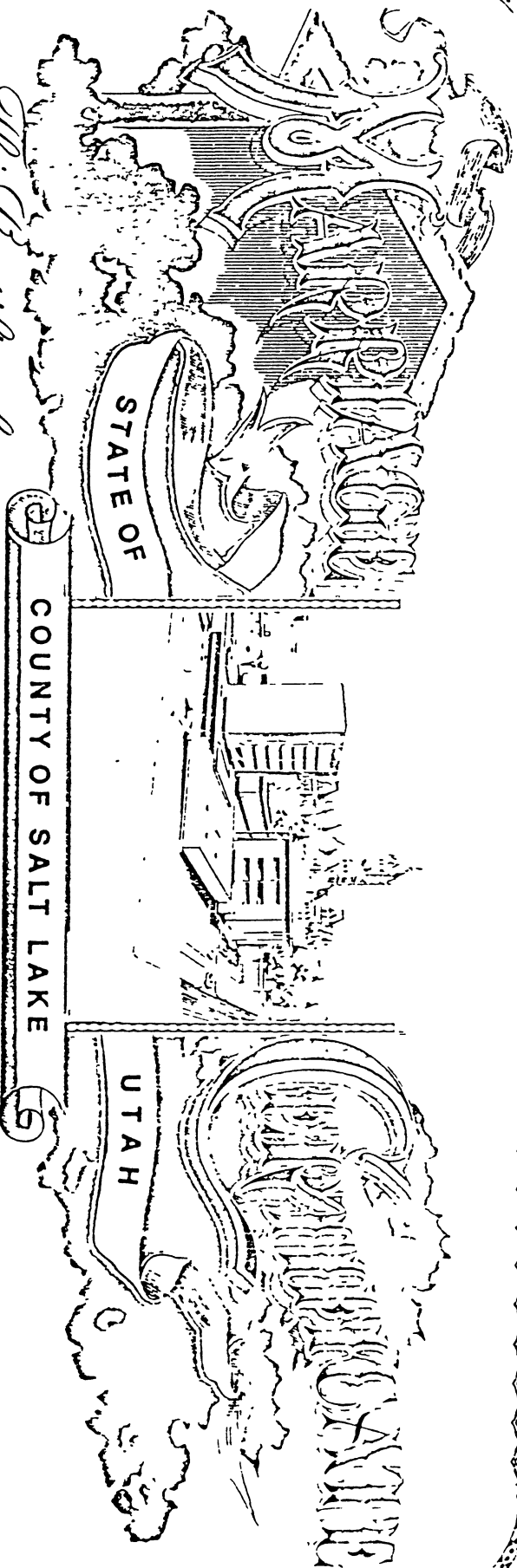
Thank you for your considerations.

Sincerely,


LeAnna Broadwater, President

1b

000000



COUNTY OF SALT LAKE

This Certifies that

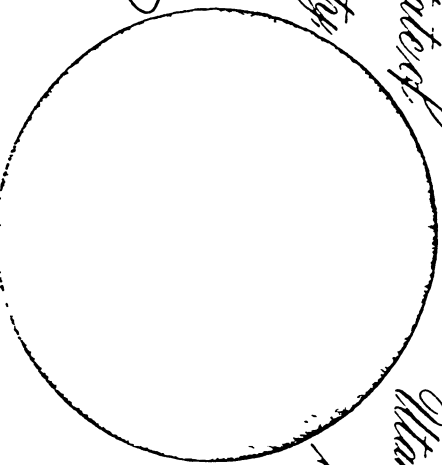
that Ellen Brewster of Salt Lake State of Utah
do hereby solemnly swear that she is of legal age and of
sound mind and the laws of the State of
Utah and the laws of the State of
Utah at Salt Lake City

in Salt Lake County
in the year of our Lord One

1906
in the presence of
William Nelson Peterson
Bride

Dwight Peterson
Witness

James B. Evans
Witness



on the 18 day of February
A. M. and J. M. Standard S.

Signature of official
LDS STATE CLERK

LICENSE NO 50860 ISSUED BY THE CLERK OF
SALT LAKE COUNTY, W. STERLING EVANS,
January 9, 1906



EXHIBIT /
Old Republic Surety

Old Republic Surety Company
Old Republic Insurance Company
Lawyers Surety Corporation
State Surety Company

August 10, 1988

Ms. LeAnna Broadwater
3576 Oak Rim Way
Salt Lake City, UT 84111

Re: **Claim No.:** 48-1319
Bond No.: UMI 902168

Claim No.: 001049
Bond No.: UMI 871385

Principal: Scott J. Fletcher
Obligee: Cardinal Energy Corporation and Atlas Stock Transfer
Company: Northwestern National Insurance Company

Dear Ms. Broadwater:

We have just received yours of July 27, 1988. We are taking this matter up with the Transfer Agent, Atlas Stock Transfer Corporation. As I have indicated to you, it is our purpose to make settlement of all proper claims under Northwestern Insurance Company's bonds as promptly and fairly as possible. However, we must point out that the bond written by Northwestern indicates the obligees are Cardinal Energy and Atlas Stock Transfer and this company will handle this matter directly with the obligee or obligees as indicated on the bond.

While we attempt to mitigate losses, we have not been presented with proper documentation from our obligee and therefore cannot settle directly with you.

Concurrently with this letter to you, we are proceeding with communication and investigation directly with Atlas Stock Transfer.

Very truly yours,

OLD REPUBLIC SURETY

Paul S. Guardalabene
Assistant Claim Attorney

PSG/kmr

00622

Ms. LeAnna Broadwater
August 10, 1988
Page Two

cc: Mr. Franklin L. Kimball
Transfer Agent
Atlas Stock Transfer Corporation
5899 South State Street
Salt Lake City, UT 84107

Douglas Mortenson, Esq.
648 East First South
Salt Lake City, UT 84102

Mr. Scott J. Fletcher
9916 Petunia Way
Sandy, UT 84092



EXHIBIT 8
Old Republic Surety

Old Republic Surety Company
Old Republic Insurance Company
Lawyers Surety Corporation
State Surety Company

August 11, 1988

Mr. Franklin L. Kimball
Transfer Agent
Atlas Stock Transfer Corporation
5899 South State Street
Salt Lake City, UT 84107

Re: **Claim No.:** 48-13192
Bond No.: UMI 902168

Claim No.: 001049
Bond No.: UMI 871385

Principal: Scott J. Fletcher
Obligee: Cardinal Energy and Atlas Stock Transfer Corporation
Company: Northwestern National Insurance Company

Dear Mr. Kimball:

As you are aware from our previous communications, this company has attempted to involve Mr. Fletcher and his representatives and/or attorneys not only to satisfy this matter as he is the principal participant, but also to obtain from him data necessary for us to properly adjust this claim. We shall continue to press Mr. Fletcher for his cooperation and will pursue him for reimbursement of any loss or cost incurred by this company on behalf of Northwestern National Insurance Company, (hereinafter referred to as "NN"). In the meantime, however, we need to present to you the information available to us so that you may advise us of your position and respond to this letter.

Please note my letter to Ms. Broadwater informing her that NN's obligation is to the named obligees only. The records of NN indicate that the company executed two bonds which both show Scott J. Fletcher as principal, and Cardinal Energy and Atlas Stock Transfer as obligees as follows:

1. Bond UMI 902168, dated November 23, 1983, refers to Certificate No. 676 representing 8,000 shares of Cardinal Energy stock issued August 23, 1982.
2. Bond UMI 871385, dated August 23, 1982, refers to Certificate No. 258 representing 8,000 shares of Cardinal Energy stock issued June 17, 1981.

On October 2, 1985 you, on behalf of Atlas Stock Transfer Corporation, made demand on NN in a letter addressed to Robert Sawyer of NN's Salt Lake City, Utah office in which you enclosed a copy of cancelled certificate number

SL 000676 for 8,000 shares of Cardinal Energy Corporation indicating the values of those shares held by Potter Investment Company as Bid .05 Ask .10.

On October 11, 1985 NN remitted to you \$400.00 in Full and Final Payment as per the attached copy of the draft. In connection with that claim, NN's Claim Representative received from the attorney representing Mr. Fletcher at that time, Mark S. Gustavson, the attached letter of October 10, 1984.

As we read Mr. Gustavson's letter, we believe that through a misunderstanding of the parties, Cardinal Energy issued certificates in the name of Mr. Fletcher representing 16,000 shares of Cardinal Energy stock. Later, Cardinal Energy apparently recognized it had erred and that Mr. Fletcher's ownership was indeed only 8,000 shares, not 16,000.

Northwestern's payment and settlement with Atlas involves settlement of this situation and we believe that there was no original certificate ever issued and therefore, there should be no duplication on the stock records of Cardinal Energy Corporation.

In any event, we would appreciate your prompt response to this letter. If you disagree with the facts as here presented, please provide us with full details and documentation. In the meantime, in view of Atlas and/or Cardinal Energy's alleged error in representing the improper ownership, to Mr. Fletcher in 1982, this company, on behalf of NN, reserves all of its rights and defenses available, especially in view of the increase of value of the stocks. We suggest that you take whatever steps are necessary to mitigate any potential loss which Atlas and/or Cardinal Energy may sustain due to the fluctuation in the stock prices. Also, we just received data submitted by Ms. Broadwater which we enclose for your comments.

Very truly yours,

OLD REPUBLIC SURETY

Paul S. Guardalabene
Assistant Claim Attorney

PSG/kmr

cc: Ms. LeAnna Broadwater
3576 Oak Rim Way
Salt Lake City, UT 84111

Mr. Scott J. Fletcher
9916 Petunia Way
Sandy, UT 84092

ATLAS STOCK TRANSFER
C O R P O R A T I O N

August 18, 1988

AUG 23 1988

Old Republic Surety
Paul S. Guardalabene
P. O. Box 1635
Milwaukee, Wisconsin 53201

RE: CheckRite

Dear Mr. Guardalabene:

You requested details and documentation relating to the shares of stock issued to Scott J. Fletcher. The history, according to our records is as follows:

- (1) Certificate No. 258 was issued to Mr. Fletcher on June 17, 1981 for 8,000 shares. This certificate was cancelled on August 23, 1982 because a bond was provided from Northwestern National. A new replacement certificate No. 676 was issued to Mr. Fletcher for 8,000 shares on that same date. A copy of that transfer is enclosed.
- (2) Certificate No. 676 was cancelled on November 23, 1983 because a bond was provided from Northwestern National. A new replacement certificate No. 1228 was issued to Mr. Fletcher for 8,000 shares on that same date. A copy of that transfer is enclosed.

When that actual certificate No. 676 (copy enclosed) was submitted for transfer, we made demand for the return of 8,000 shares or equivalent value. Your company remitted \$400.00 in payment.

Certificate No. 258 (copy enclosed) has now been submitted from transfer and we are requesting the return of another 8,000 shares or the equivalent value.

Your letter referred to a letter from Mark S. Gustavson dated October 10, 1984 which you indicated was attached. It was not attached. We are not aware of any alleged error or

August 18, 1988
Page 2

misunderstanding relating to these transfers.

We anticipate that this claim can be settled soon.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Franklin L. Kimball".

Franklin L. Kimball
Transfer Agent

FLK:pg
Enclosures

cc: Ms. LeAnna Broadwater
3576 Oak Rim Way
Salt Lake City, Utah 84111

CANCELLED

ATLAS STOCK TRANSFER

CARDINAL ENERGY CORPORATION

INCORPORATED UNDER THE LAWS OF THE STATE OF UTAH

SCOTT J FLETCHER

CANCELLED

ATLAS STOCK TRANSFER

EIGHT THOUSAND

FULLY-PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF THE PAR VALUE OF \$0.01 EACH, OF

CARDINAL ENERGY CORPORATION

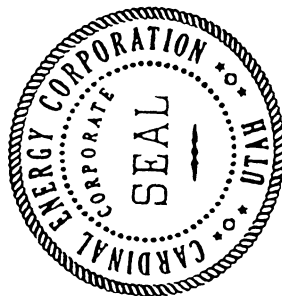
is the registered holder of

transferable on the books of the Corporation by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. This certificate is not valid until countersigned by the Transfer Agent and Registrar.

Witness the facsimile seal of the Corporation and the facsimile signatures of the duly authorized officers.

Dated: 8-23-82

R. W. Warner
SECRETARY



AUTHORIZED SIGNATURE

F. J. Fuld
PRESIDENT

TRANSFER AGENT AND REGISTRAR
ATLAS STOCK TRANSFER CORPORATION
5888 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84107
COUNTERSIGNED AND REGISTERED

BY

[Signature]
AUTHORIZED SIGNATURE

00680

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM —as tenants in common
TEN ENT —as tenants by the entireties
JT TEN —as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT—... Custodian.....
(Trust) (Minor)
under Uniform Gifts to Minors Act.....
(State)

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

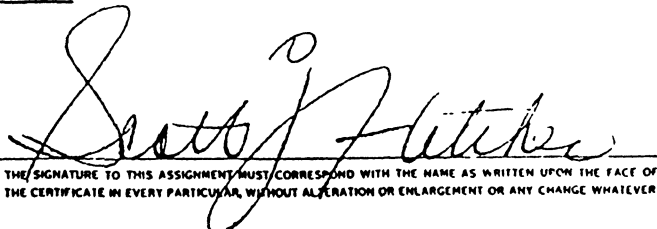
TRANSFER ONLY AS DIRECTED
VENHU SECURITIES, INC.

(PLEASE PRINT, OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____ Shares
of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

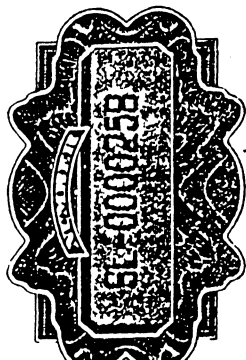
_____ Attorney
to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____


NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER

SIGNATURE GUARANTEED

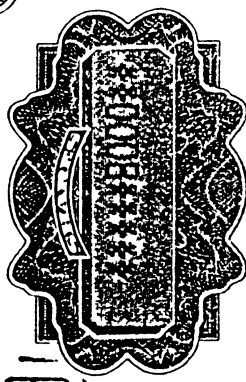
By Balraa Ch
POTTER INVESTMENT COMPANY
Member of Intermountain Stock Exchange



Cancelled
65-33-83



ATLAS STOCK TRANSFER
CANCELLED



CARDINAL ENERGY CORPORATION

INCORPORATED UNDER THE LAWS OF THE STATE OF UTAH

SEE REVERSE FOR CERTAIN DEFINITIONS

This Certifies that

285970

SCOTT J FLETCHER
9916 PETUNIA WAY
SANDY

these securities have been sold pursuant to the
interests exemption contained in Section 3(a)
(11) of the Securities Act of 1933 and, as such,
may not be resold to persons other than bona fide
resident of the state of Utah for a period of nine
months from the date of the last sale by the
Company pursuant to this offering.

UTAH 84092

CANCELLED

is the registered holder of

** EIGHT THOUSAND
FULLY-PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF THE PAR VALUE OF \$0.01 FACED
CARDINAL ENERGY CORPORATION

BY

TRANSFER AGENT AND REGISTRAR
ATLAS STOCK TRANSFER CORPORATION
5899 SOUTH STATE STREET
SALT LAKE CITY UTAH 84107
COUNTERSIGNED AND REGISTERED

transferable on the books of the Corporation by the holder hereof, in person or by duly
authorized attorney upon surrender of this certificate properly endorsed. This certifi-
cate is not valid until countersigned by the Transfer Agent and Registrar.

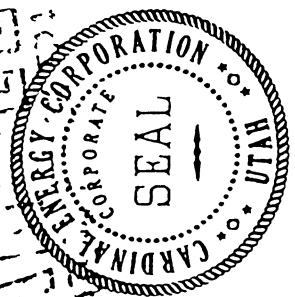
Witness the facsimile seal of the Corporation and the facsimile signatures of its
duly authorized officers.

Dated: 05-17-81

R. Dammann
SECRETARY

P. Gray
AUTHORIZED SIGNATURE

F. Stillel
PRESIDENT



The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations

TEN COM —as tenants in common
TEN ENT —as tenants by the entireties
JT TEN —as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT— Custodian
(Cust) (Minor)
under Uniform Gifts to Minors Act
(State)

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

Shares
of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Attorney
to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

Scott J. Fletcher

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER

These securities have been sold pursuant to the intrastate exemption contained in Section 3(a)(11) of the Securities Act of 1933 and, as such, may not be resold to persons other than bona fide resident of the state of Utah for a period of nine months from the date of the last sale by the Company pursuant to this offering.

Walter A. Allen



ATLAS STOCK TRANSFER

5899 SOUTH STATE ST.
SALT LAKE CITY, UTAH 84107

99701
CLIENT 11-23-83

SCOTT J FLETCHER

③

COMPANY
CARDINAL ENERGY

WE ACKNOWLEDGE RECEIPT OF CERTIFICATES OF STOCK OF THE ABOVE COMPANY AS LISTED BELOW

IN ACCORDANCE WITH YOUR REQUEST, WE HAND YOU HERewith THE FOLLOWING CERTIF
LISTED BELOW:

CERTIFICATE NUMBER	NAME	NUMBER SHARES	CERTIFICATE NUMBER	NAME	NUMBER SHARES
676	SCOTT J FLETCHER (BOND) CANCELLED CANCELLED	8,000	1228	SCOTT J FLETCHER 289970 ISSUED	8,000



ATLAS STOCK TRANSFER

5899 SOUTH STATE ST.
SALT LAKE CITY, UTAH 84107

3 99701

CLIENT

8-23-82

Scott J Fletcher

COMPANY

Cardinal Energy Corporation

WE ACKNOWLEDGE RECEIPT OF CERTIFICATES OF STOCK OF THE ABOVE COMPANY AS LISTED BELOW:

IN ACCORDANCE WITH YOUR REQUEST, WE HAND YOU HERewith THE FOLLOWING CERTIFI
LISTED BELOW:

CERTIFICATE NUMBER	NAME	NUMBER SHARES	CERTIFICATE NUMBER	NAME	NUMBER SHARES
258	SCOTT J FLETCHER 285970 CANCELED	8,000	676	SCOTT J FLETCHER 285970 ISSUED	8,0
BOND					