

1990

Leanna Broadwater 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 Appellant

Utah Supreme Court

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Robert A. Burton; Stephen J. Trayner; Strong & Hanni; Larry Reed; Crowther & Reed; Phillip Hughes; Attorneys for Defendant-Appellants.

John Michael Coombs; Attorney for Appellee.

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## IN THE SUPREME COURT OF THE STATE OF UTAH

LEANNA BROADWATER,	)	
	)	
Plaintiff-Appellee,	)	
	)	Case No. 900508
vs.	)	
	)	
OLD REPUBLIC SURETY, a Wisconsin	)	Priority No. 16
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,	)	
and SCOTT J. FLETCHER, a Utah	)	
resident,	)	
	)	
Defendants-Appellants.	)	

## APPELLANTS' BRIEF ON APPEAL

Appeal from the Orders of the  
Third Judicial District Court of Salt Lake County  
The Honorable Raymond S. Uno, presiding

ROBERT A. BURTON  
STEPHEN J. TRAYNER  
STRONG & HANNI  
Sixth Floor Boston Building  
Salt Lake City, Utah 84111  
Attorneys for Defendants-Appellants  
Old Republic Surety and  
Northwestern National

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UTAH

Larry Reed  
CROWTHER & REED  
455 South 300 East, #300  
Salt Lake City, Utah 84111  
Attorneys for Defendant-Appellant  
Atlas Stock Transfer

Phillip Hughes  
844 South 200 East, #100  
Salt Lake City, Utah 84111  
Attorneys for Defendant-Appellant  
Check Rite International

John Michael Coombs  
72 East 400 South, #200  
Salt Lake City, Utah 84111  
Attorneys for Appellee

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Sixth Floor Boston Building  
Salt Lake City, Utah 84111  
Attorneys for Defendants-Appellants  
Old Republic Surety and  
Northwestern National

Larry Reed  
CROWTHER & REED  
455 South 300 East, #300  
Salt Lake City, Utah 84111  
Attorneys for Defendant-Appellant  
Atlas Stock Transfer

Phillip Hughes  
844 South 200 East, #100  
Salt Lake City, Utah 84111  
Attorneys for Defendant-Appellant  
Check Rite International

John Michael Coombs  
72 East 400 South, #200  
Salt Lake City, Utah 84111  
Attorneys for Appellee

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ATLAS STOCK TRANSFER, a Utah	)	
corporation, CHECK RITE	)	
INTERNATIONAL INC., f/k/a	)	
CARDINAL ENERGY CORPORATION,	)	
and SCOTT J. FLETCHER, a Utah	)	
resident,	)	
	)	
Defendants-Appellants.	)	

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**JURISDICTIONAL STATEMENT AND CASE HISTORY**

Jurisdiction lies with this court pursuant to Utah Code Ann. § 78-2-2(3)(j) (Supp. 1991). Defendants bring this appeal from the June 6, 1990 order by the Third Judicial District of Salt Lake County, the Honorable Raymond S. Uno presiding, granting partial summary judgment in favor of plaintiff, Leanna Broadwater, and denying defendants Old Republic Surety, Northwestern National Insurance Company, Atlas Stock Transfer, and Check Rite International, Inc.'s motion for partial summary judgment. Defendants also bring this appeal from the September 17, 1990 order awarding attorney's fees to plaintiff. Both orders were certified as final orders, pursuant to Rule 54(b), U.R.C.P., on October 19, 1990.

### **STATEMENT OF ISSUES**

1. Did the trial court err in granting plaintiff's motion and denying defendants' motion for partial summary judgment on Counts I and II of plaintiff's amended complaint?

#### **Standard of Review**

In considering an appeal from a 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 and Blue Shield v. State, 779 P.2d 634 (Utah 1989).

2. Did the trial court err in holding as a matter of law that plaintiff's damages, if any, under Counts I and II of her amended complaint should be determined as of August 4, 1988?

#### **Standard of Review**

Since summary judgment is granted as a matter of law rather than fact, this Court is free to reappraise the trial court's legal conclusions. Barber v. Farmers Ins. Exch., 751 P.2d 748 (Utah Ct. App. 1988).

3. Did the trial court err in awarding plaintiff her attorney's fees, pursuant to Utah Code Ann. § 78-27-56 (Supp. 1991), on Counts I and II of her amended complaint?

### Standard of Review

Since a summary judgment is granted as a matter of law rather than fact, this Court is free to reappraise the trial court's legal conclusion. Barber v. Farmers Ins. Exch., 751 P.2d 748 (Utah Ct. App. 1988). In order to award attorney's fees under § 78-27-56, the court must determine that "the action or defense to the action was without merit and not brought or asserted in good faith . . . ." Id. The determination of "without merit" is a question of law, and therefore this Court reviews it for correctness. Jeschke v. Willis, 811 P.2d 202, 203-04 (Utah Ct. App. 1991). The determination of "lack of good faith" is synonymous with the finding of "bad faith." A finding of bad faith is a question of fact and is reviewed by this Court under the clearly erroneous standard. Id. at 204.

### DETERMINATIVE AUTHORITIES

Rule 56(c) and (e) of the Utah Rules of Civil Procedure and Utah Code Ann. § 78-27-56 (Supp. 1991) are the determinative authorities on appeal. The texts of Rule 56(c) and (e), U.R.C.P., and Utah Code Ann § 78-27-56 (Supp. 1991), are set forth in their entirety, infra.

### STATEMENT OF THE CASE

Plaintiff-respondent Leanna Broadwater claims to be a bona fide purchaser of 8,000 shares of stock in Cardinal Energy Corp. ("Cardinal"), now known as Check Rite International, Inc. ("Check Rite") (R. 311) Sometime prior to May 4, 1988, plaintiff

presented those 8,000 shares of Cardinal stock, reflected by Certificate No. 258, to defendant Atlas Stock Transfer Company ("Atlas") and requested that said shares be transferred into her name in accordance with Utah Code Ann. § 70A-8-306 (1953). (Id.) This appeal arise out of the alleged wrongful refusal of Atlas and Check Rite to transfer the subject shares into plaintiff's name.

The 8,000 shares of stock in dispute were originally purchased on or about August 23, 1982, by defendant Scott J. Fletcher ("Fletcher"). (R. 71) During the period of time Fletcher owned the stock, he informed Atlas, the stock transfer agent of Cardinal, that Certificate No. 258 had been lost or stolen. (R. 72) In order to obtain a replacement certificate, Fletcher was required to obtain a lost instruments bond in accordance with Utah Code Ann. § 70A-8-405(2)(b) (1953). Fletcher eventually obtained a lost instruments bond on November 23, 1982 from Northwestern National Insurance Company, the predecessor in interest of Old Republic Surety Company ("Old Republic"). (R. 73, 107) After tendering the lost instruments bond to Atlas, Atlas issued Fletcher a new certificate, Certificate No. 676, representing 8,000 shares of Cardinal stock. (Id.) Subsequently, Atlas placed a stop transfer order on Certificate No. 258. (R. 77)

Apparently unknown to Fletcher, plaintiff on or before May 4, 1988, presented the previously lost Certificate No. 258 to Atlas for transfer. (R. 77, 311) Due to the existence of the stop transfer order on Certificate No. 258, Atlas refused to transfer

and register the subject shares in accordance with plaintiff's instructions. (R. 77, 111) Plaintiff was promptly notified of Atlas' refusal to transfer her stock by a letter of May 4, 1988 from Atlas. (R. 77, 111)

At the time Atlas refused to transfer Certificate No. 258, May 4, 1988, there was no trading of Check Rite stock on which to base a fair market price for such stock. (R. 324-26) However, over the course of the next several months, the trading price of Check Rite stock fluctuated widely:

<u>Date</u>	<u>Trading Price</u>
May 1-7, 1988	*
May 8-14, 1988	*
May 15-21, 1988	*
May 22-28, 1988	*
May 29 - June 4, 1988	*
June 5-11, 1988	0.25
June 12-18, 1988	0.41
June 19-25, 1988	0.30
June 26 - July 2, 1988	0.40
July 3-9, 1988	0.38
July 10-16, 1988	0.40
July 17-23, 1988	0.65

July 24-30, 1988

1.25<sup>1</sup>

\*Signifies no trading during this time period.

(R. 312, 324-26)

Following receipt of Atlas' correspondence of May 4, 1988, refusing plaintiff's requested transfer, plaintiff contacted Old Republic. (R. 77) Old Republic received first notice of a potential claim under its lost instruments bond on or about May 20, 1988. (R. 519) Plaintiff, by means of affidavit, asserted that from May, 1988 until the filing of her suit on April 28, 1989, plaintiff was "mistreated, misled, and 'lulled' by certain of the defendants," specifically Old Republic. (R. 389-92, 413-16) Defendants denied any such wrongful conduct and submitted the affidavit of Paul S. Guardalabene to contradict and refute plaintiff's factual claims. (R. 518-24)

Following defendants' continued refusal to transfer and register the subject shares in accordance with plaintiff's instructions, plaintiff brought suit on April 28, 1989. (R. 2) Plaintiff's amended complaint seeks damages in excess of \$250,000 against the various defendants for alleged statutory wrongful refusal to transfer, conversion, breach of implied covenant of good faith and fair dealing, breach of third-party beneficiary contract, bad faith, aiding and abetting, negligence, violation of § 12(2) of the 1933 Federal Securities Act, violation of § 61-1-22(1)(b) of

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<sup>1</sup>Plaintiff also submitted a conflicting affidavit claiming a trading price of 1 5/16 as of July 28, 1988. (R. 388)

the Utah Uniform Securities Act, fraud, and violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). (R. 98-100) Plaintiff's amended complaint also seeks attorney's fees under Utah Code Ann. § 78-27-56 (Supp. 1991). (R. 98)

Following brief discovery, the parties filed cross motions for partial summary judgment on Counts I and II of plaintiff's amended complaint for conversion and wrongful refusal to transfer of the subject stock. (R. 310-24, 352-78) For purposes of the cross motions for partial summary judgment, the parties assumed arguendo that Atlas and Check Rite's actions were wrongful and constituted a "conversion" of plaintiff's stock. The parties' principal dispute, therefore, was over the proper time for calculating plaintiff's damages. (R. 313) In conjunction with defendants' motion for partial summary judgment, defendants also moved to strike various affidavits submitted by plaintiff in support of her cross-motion for summary judgment. (R. 426-31, 609-12) Plaintiff's motion for partial summary judgment also included a prayer for an unspecified award of attorney's fees. (R. 372)

Oral argument on the motions was heard before The Honorable Raymond S. Uno on May 1, 1990. On June 6, 1990, The Honorable Raymond S. Uno, District Judge, entered an order granting partial summary judgment in favor of plaintiff and against defendants, finding that plaintiff's damages should be determined as of ninety days after the conversion, when the Check Rite stock reached its highest value after the conversion. (R. 710-12) The lower court

also denied defendants' motion to strike the affidavits submitted by plaintiff in support of her motion. (Id.) The trial court also initially took the matter of plaintiff's request for attorney fees under advisement. (R. 647, 710-12) Subsequently, on September 6, the trial court entered judgment awarding plaintiff attorney's fees in the amount of one-third of the principal judgment under Counts I and II of her amended complaint. (R. 818-19) On October 19, 1991, the trial court directed that the judgments and orders entered on July 6, 1990 and September 27, 1990, be certified as final and appealable under Rule 54(b), U.R.C.P. (R. 842-45) Defendants now bring this appeal from the above-mentioned judgments and orders.

#### SUMMARY OF ARGUMENT

In order for a court to grant plaintiff's motion for partial summary judgment, plaintiff has to establish by competent evidence that there were no genuine issues of material fact with respect to each and every element of plaintiff's cause of action for conversion and wrongful refusal to transfer stock. The principal dispute between the parties in this case was over the proper time for calculating plaintiff's damages for conversion and wrongful refusal to transfer stock. Therefore, plaintiff has the burden of establishing that there were no genuine issues of material fact with respect to calculating plaintiff's damages within the 90-day period of May 4, 1988, when the conversion occurred, and August 4, 1988, the date at which the trial court fixed the damages.

Utah adheres to the "New York rule" which provides that damages for the conversion of goods which fluctuate in value are fixed at the highest market price the converted goods reach at any time between the time the injured party has notice of the conversion and a "reasonable time" thereafter. Although courts have not uniformly applied the "New York rule", the overwhelming majority of courts have held that a period of thirty days or less constitutes a "reasonable time", as a matter of law, in which to fix damages for the conversion of stock certificates.

The trial court, in finding ninety days to be a "reasonable time" for fixing damages in this case relied on disputed and immaterial facts related to the alleged acts or omissions of Old Republic. By relying on such disputed and immaterial facts, the trial court erred in not holding as a matter of law that plaintiff's damages should be fixed at the highest price the subject stock reached within thirty days of plaintiff learning of the conversion.

The trial court also erred in awarding plaintiff attorney's fees under Counts I and II of plaintiff's amended complaint. It is well established that Utah Code Ann. § 78-27-56 requires that the trial court make specific findings as to the determination of the "merit" or "bad faith" of the nonprevailing party's action or defense to the action. In this case, the trial court made no findings as to merit or bad faith when awarding plaintiff's attorney's fees. Furthermore, the record is devoid of any other

basis to support the trial court's award of attorney's fees. Therefore, the trial court erred in awarding attorney's fees to the plaintiff.

### ARGUMENT

#### POINT I.

THE TRIAL COURT ERRED IN GRANTING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT, FINDING THAT A NINETY-DAY PERIOD WAS THE PROPER TIME FOR CALCULATING PLAINTIFF'S DAMAGES.

A. Utah Has Adopted the "New York Rule" to Fix Damages for the Conversion of and Wrongful Refusal to Transfer Stock.

Count I of plaintiff's amended complaint alleges that defendants Atlas and Check Rite failed to fulfill their statutory duty to effect a stock registration transfer requested by plaintiff on or about May 4, 1988. Count II of plaintiff's amended complaint alleges that the actions of Atlas and Check Rite tortiously interfered with her right to control and possess those shares, and thus constitute conversion. Although plaintiff asserts separate causes of action, courts generally treat the wrongful refusal to transfer stock as an act of conversion. F. Kristy and R. Appel, The Transfer of Stock, § 271 (5th Ed. 1975). Utah follows that general rule. See Cowan and Co. v. Atlas Stock Transfer Co., 695 P.2d 109, 112 (Utah 1984); Baglin v. Earl-Eagle Mining Co., 5 Utah 572, 184 P.2d 190, 194 (1919); Mundt v. Commercial National Bank of Ogden, 35 Utah 90, 99 P.2d 454, 456 (1909).

The key dispute between the parties is over the proper time for calculating plaintiff's damages for conversion and wrongful

refusal to transfer stock. As a general rule, the measure of damages for conversion is the fair market value of the converted goods at the time of conversion. See Murdock v. Blake, 26 Utah 2d 22, 484 P.2d 164 (1971); Lowe v. Rosenlof, 12 Utah 2d 190, 364 P.2d 418 (1961). However, most courts have adopted different rules for determining damages when the fair market value of the converted goods such as stocks, fluctuates widely. Approximately 10 states, including Utah, have adopted the "New York rule," whereby converted stock is valued at the highest market price of the stock between the time the customer has notice of the conversion and a reasonable time thereafter. This rule gives the stockholder a reasonable time within which to decide whether to go into the marketplace and replace the stock. The rule also gives the stockholder the option of claiming the stock's market value at the time of conversion, to afford him the basic remedy in a falling market. On the other hand, the New York rule also requires an injured party to mitigate his damages, by not permitting the party to sit idly by while the value of the converted stock rises. Annot., 21 A.L.R.3d 1286, 1322-23 (1970).

The Utah Supreme Court adopted the New York rule in Western Securities Co. v. Silver King Consolidated Mining Co., 57 Utah 88, 192 P. 664 (1920). In Western Securities, one Clark delivered more than 29,000 shares of stock in the defendant corporation to the corporation's officers, also party defendants, as collateral for five promissory notes. After Clark delivered the shares as

collateral, the defendants sold the shares for \$1.60 per share. Over the next four months, the value of the shares increased to more than \$2.00 per share. Plaintiff brought suit, claiming that the defendants had wrongfully converted his stock. Judgment was entered for the plaintiff. The Utah Supreme Court, in reversing and remanding the lower court's judgment, clearly recognized and adopted the New York rule:

The ordinary rule governing the measure of damages in cases where the pledge wrongfully converts the property pledged is the market value of the property pledged with interest from the time it was converted. If the pledged property consists of stocks or bonds of a fluctuating market price, then the measure of damages, under the New York rule, is the highest market price of such stocks or bonds within a reasonable time after the pledgor obtained notice of the sale of the stock or bonds which was illegally made. . . . As soon as the pledgor receives notice that a pledgee has converted his stocks or bonds, he may go into the market and replace them, or, if he chooses, he may rely on his damages. He must, however, act within a reasonable time, and cannot by his own will extend that time. . . . Utah is one of the jurisdictions wherein the New York rule has been adopted.

Western Securities, 192 P. at 672-3. See also, Lake v. Pinder, 13 Utah 2d 76, 368 P.2d 593, 594 (1962) (In an action for failure to deliver stock, court recognized that the aggrieved party is entitled to be paid "the highest market value of such stock within a reasonable time thereafter.")

The Tenth Circuit Court of Appeals in Nephi Processing Plant, Inc. v. Talbott, 247 F.2d 771 (10th Cir. 1957), also recognized

that Utah adheres to the New York rule. In Nephi Processing Plant, the court reviewed whether the trial court had erred in instructing that the jury could award the highest price the converted good had been sold for between the time of the conversion and a reasonable time after plaintiffs obtained notice of the conversion. In sustaining the trial court's jury instruction, the Tenth Circuit noted:

The Utah courts have recognized that as a general rule the measure of damage for conversion of property is the value of the property at the time of the conversion, plus interest. It has been held, however, that the rule has no application where the converted chattels are of a kind which have a fluctuating market value. In such cases the measure of damages is the highest market price of the property within the reasonable time after the owner has notice of the conversion. The Utah Supreme Court has accepted this rule. Western Securities Co. v. Silver King Consolidated Mining Co., supra.

Id. at 774 (citations omitted).

Based on the foregoing, it is clear that Utah courts adhere to the New York rule. As a result, plaintiff was entitled only to recover the highest value her stock reached within a "reasonable time" of her learning of Atlas' refusal to transfer her shares.

**B. The Trial Court Erred in Ruling That a Ninety-day Period Was a "Reasonable Time" to Fix Damages Under the New York Rule.**

The determination of what is a "reasonable time" under the New York rule for determining the value of stock has been held to be a question of law to be determined by the trial court. See Mullin v. J.J. Quinlin & Co., 195 N.Y. 109, 87 N.E. 1078 (1909); Fulley v.

Wasserman, 319 Pa. 420, 179 A. 595 (1935). Utah courts also have recognized that a "reasonable time" may be determined as a matter of law. In Pacific Development Co. v. Stewart, 113 Utah 403, 195 P.2d 748 (1948), the court reversed a judgment in favor of the defendants in a lawful detainer action. One of the principal issues on appeal was whether the plaintiffs had permitted the defendants a "reasonable time" in which to make up overdue payments under a real estate contract. In reversing the trial court's judgment, the Utah Supreme Court held as a matter of law that 23 days' notice constituted a "reasonable time." In so ruling, the court stated, "Where the facts surrounding are undisputed, as they are in this case, this court may determine, as a matter of law, what is reasonable time." Pacific Development, 195 P.2d at 751.

The material facts surrounding the case at hand are also undisputed. On May 4, 1988, plaintiff was given notice of Atlas and Check Rite's conversion of and wrongful refusal to transfer Certificate No. 258 into plaintiff's name. Atlas and Check Rite continued to refuse to transfer and register the subject shares in accordance with plaintiff's instructions from May to August, 1988. During this time, the value of plaintiff's Check Rite stock fluctuated widely. Since the material facts surrounding this case were undisputed, the trial court could determine, as a matter of law, what was a "reasonable time." The trial court, however, erred in concluding that 90 days was a "reasonable time" in this case.

1. Thirty Days Rather Than Ninety Days Constituted a "Reasonable Time" to Fix Damages Under the New York Rule.

Although courts have not recognized a single length of time as the definitive standard for valuing converted stock under the New York rule, the overwhelming majority of courts have held that a period of 30 days or less constitutes a "reasonable time." Courts holding that one month constitutes a reasonable time within the New York rule include: Isonberg v. Haupt, 235 A.D. 123, 256 N.Y.S. 411 (1932); Hamel v. Western Union Telegraph Co., 251 N.Y. 559, 168 N.E. 427 (1931); O'Connor v. Graff, 186 A.D. 116, 173 N.Y.S. 730 (1919), aff'd., 230 N.Y. 552, 130 N.E. 890 (1920); Strickland v. Magoun, 119 A.D. 113, 104 N.Y.S. 425 (1907), aff'd., 190 N.Y. 545, 83 N.E. 1132 (1907); and Burhorn v. Lockwood, 71 A.D. 301, 75 N.Y.S. 828 (1902), appeal dismissed, 177 N.Y. 539, 69 N.E. 1121 (1903), reh'g denied, 177 N.Y. 554, 69 N.E. 1121 (1903).

On at least two occasions, courts have construed two and a half to three weeks to be a "reasonable time." See Gelb v. Zimet Bros., Inc., 34 Misc. 2d 401, 228 N.Y.S.2d 111 (1962), aff'd., 18 A.D.2d 967, 237 N.Y.S.2d 989 (1963); Rosenbaum v. Stiebel, 137 A.D. 912, 122 N.Y.S. 131 (1910).

The following courts have also construed periods of time less than two weeks to be reasonable under the New York Rule: Citizen Street R. Co. v. Robbins, 144 Ind. 671, 42 N.E. 916 (1896), Supp. Op., 144 Ind. 687, 43 N.E. 649 (1896) (11 days); Satterwhite v. Harriman National Bank & Trust Co., 13 F. Supp. 493 (D. N.Y. 1935) (10 days); Keller v. Halsey, 130 A.D. 598, 115 N.Y.S. 564 (1909) (9

days); In Re Dickinson, 171 A.D. 486, 157 N.Y.S. 248 (1916) (8 days); James Wood General Trading Establishment v. Coe, 191 F.Supp. 330 (D. N.Y. 1961), rev'd. on other grounds, 297 F.2d 651 (2d Cir. 1961) (1 week); Phillips v. Bank of Athens Trust Co., 202 Misc. 698, 119 N.Y.S.2d 47 (1952) (1 week); Hartford Accident & Indemnity Co. v. Walston & Co., 291 N.Y.S.2d 366, 238 N.E.2d 754 (1968) (6 days); Durant v. Block, 113 N.J. 509, 174 A. 889 (1934) (2 days).

2. A Thirty-Day Period Meets the Test for Determining What Constitutes a "Reasonable Time" to Calculate Damages Under the New York Rule.

The Supreme Court of Minnesota has recently developed a test for determining what constitutes a "reasonable time" in cases such as the instant case. The Minnesota court's standard lends even more support to the premise that the trial court erred in granting plaintiff's motion for partial summary judgment and denying defendant's motion for partial summary judgment. In Hornblower and Weeks-Hemphill Noyes v. Lazere, 301 Minn. 462, 222 N.W.2d 799, 807 (1974), the Minnesota court stated:

[W]e conclude that the most important question to be considered by the trier of fact in determining the reasonable period of time is what amount of time is necessary to allow the owner of the stock a reasonable opportunity to consult counsel, to employ other brokers, and to watch the market in order to determine whether and at what price to repurchase other stocks in place of those converted.

Id. at 807.

It is undisputed that plaintiff learned on or about May 4, 1988 that Atlas and Check Rite would not transfer her stock in

accordance with her request. Within two weeks of learning of the conversion, plaintiff contacted Atlas and Old Republic about her situation. Plaintiff's own affidavits state that at that time she was in contact with various brokers making markets in Check Rite stock and was familiar with market conditions. (R. 389-92, 413-16) It also appears from her affidavits that plaintiff had some degree of expertise in securities. When applying the Hornblower test to the facts of this case, it is clear that thirty days was ample time for the plaintiff to consult counsel, to employ other brokers and to watch the market in order to determine whether and at what price to purchase other stocks to replace those which had been converted. Therefore, under the Hornblower test, thirty days would constitute a "reasonable time" to fix damages in this case.

**C. The Facts That Plaintiff Used to Support Her Argument for a Ninety-Day Period Were Disputed and Immaterial.**

Furthermore, in urging the trial court to grant her motion for partial summary judgment, plaintiff used numerous factual matters to support her ninety-day damage period that were not only disputed, but also irrelevant and immaterial to the alleged tortious conversion of plaintiff's stock by Atlas and Check Rite. Plaintiff offered only self-serving statements that as of May 4, 1988, she did not understand that the actions of defendants Atlas and Check Rite constituted conversion. Plaintiff also pointed to the alleged conduct of Old Republic as excusing her knowledge of the conversion. She argues that through June, July, and August of

1988, Old Republic purposely lulled her into believing that they would remedy her predicament.

Old Republic's actions with regard to the plaintiff in June, July, and August of 1988 are irrelevant and immaterial to the determination of when to fix the damages for the conversion of plaintiff's stock by Atlas and Check Rite for several reasons. First, Old Republic did not convert plaintiff's stock. Second, Old Republic had no reason to purposefully lull the plaintiff into believing that they would remedy her predicament while the price of her stock increased. Finally, there was no basis in fact or law for plaintiff to expect Old Republic to directly remedy the conversion of Atlas and Check Rite. Therefore, the alleged actions or omissions were irrelevant and immaterial to the determination of the appropriate time for calculating damages flowing from the conversion of plaintiff's stock.

Even if the alleged actions or omissions of Old Republic were relevant to the determination of when to fix plaintiff's damages, those factual matters were in dispute, and should have precluded summary judgment. If one compares plaintiff's affidavits with the affidavit of Paul S. Guardalabene, Assistant Claims Attorney for Old Republic, one finds the facts surrounding Old Republic's conduct are in conflict. For example, in his affidavit, Guardalabene states that he never indicated or inferred that plaintiff had a right to recover her damages directly from Old Republic. (R. 518-24) Plaintiff's affidavits state, without any

factual foundation, that Guardalabene had essentially told plaintiff that Old Republic could settle directly with her, and that plaintiff should rely on Old Republic to resolve the dispute. (R. 389-92, 413-16) Such "factual" assertions were clearly in dispute at the time of Judge Uno's ruling.

Based on the foregoing authority that thirty days rather than ninety days are a "reasonable time" under the New York rule, and that plaintiff's "lulling" facts are either irrelevant or in dispute, this Court should rule that the trial court erred in granting plaintiff's motion for partial summary judgment. Also, based on this overwhelming weight of authority, this Court should award defendants' motion for partial summary judgment on Counts I and II of plaintiff's complaint and fix her damages at a date no later than June 3, 1988, 30 days after she learned of the conversion of her stock.

**D. The Affidavits Upon Which Plaintiff Relied Did Not Comport With the Requirements of Rule 56(e) U.R.C.P., and Should Have Been Stricken.**

In conjunction with the parties' cross motions for partial summary judgment, defendants moved to strike the affidavits of plaintiff, Chuck Burton, Potter Investment, and Penny Grace. (R. 426-27) Defendants sought to strike the subject affidavits because the affidavits did not comply with Rule 56(e), U.R.C.P. Rule 56(e), U.R.P.C., governs the use of affidavits in conjunction with motions for summary judgment. Rule 56(e) states in pertinent part as follows:

Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such pertinent facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein . . . .

At the time of hearing, defendants pointed out the deficiencies in the affidavits upon which plaintiff relied. Plaintiff's affidavits contained opinion, legal conclusions and facts not supported by adequate foundation. (R. 389-92, 413-16, 428-31) The Chuck Burton affidavit contained hearsay, and lacked adequate foundation for many of the facts stated therein. (R. 379-80, 428-31) The affidavit from Potter Investment Co. likewise contained hearsay, lacked adequate foundation for many of the facts found therein, and impermissible legal conclusions. (R. 381-83, 428-31) Finally, the affidavit of Penny Grace lacked foundation for the facts stated therein. (R. 387-88)

The Utah Supreme Court in Walker v. Rocky Mountain Recreation Corp., 508 P.2d 538 (Utah 1973), affirmed a trial court's refusal to consider an affidavit containing unsubstantiated opinions and conclusions. In Walker, the action was brought to recover judgment for an amount stipulated to in a settlement agreement. Plaintiff moved for summary judgment. Defendant opposed the motion with an affidavit from defendant's president containing unsubstantiated opinions and conclusions. Summary judgment was entered in favor of plaintiff and defendant appealed. In affirming the summary

judgment, the court stated that:

Statements made merely on information and belief will be disregarded. Hearsay and opinion testimony that would not be admissible if testified to at trial may not properly be set forth in an affidavit. Id. at 542.

See also Treloggan v. Treloggan, 699 P.2d 747 (Utah 1985).

Likewise, in the instant case, the affidavits of plaintiff, Chuck Burton, Potter Investment and Penny Grace did not comport with the requirements of Rule 56(e) U.R.C.P., and should have been disregarded in considering the merits of the parties' respective cross motions for partial summary judgment. In refusing to strike the affidavits, the trial court committed error.

#### POINT II.

#### **THE TRIAL COURT ERRED IN AWARDING PLAINTIFF HER ATTORNEY'S FEES FOR PREVAILING ON COUNTS I AND II OF HER AMENDED COMPLAINT.**

On September 6, 1990, the trial court entered judgment awarding plaintiff's attorney's fees in the amount of one-third of the principal judgment under Counts I and II of her amended complaint. Assuming that the trial court was correct in awarding partial summary judgment to plaintiff on Counts I and II of her amended complaint, the trial court nevertheless erred in awarding attorney's fees to plaintiff.

Utah has consistently followed the well-established rule that attorney's fees should be awarded to the prevailing party only if they are provided for by contract or statute. Watkiss & Campbell

v. Foa & Son, 808 P.2d 1061 (Utah 1991) (citing Canyon Country Store v. Bracey, 781 P.2d 414, 419-20 (Utah 1989)); Turtle Management, Inc. v. Haggis Management, 645 P.2d 667, 671 (Utah 1982). In the case at hand, it is undisputed that there is no contractual basis for an award of attorney's fees. Therefore, plaintiff could recover attorney's fees only if such an award is provided for by statute.

Utah Code Ann. § 78-27-56 (Supp. 1991) provides as statutory basis for a trial court to award attorney's fees to a prevailing party whether there is evidence of "bad faith" litigation. Plaintiff's prayer for relief under Counts I and II, also asserted an entitlement to an award of attorney's fees under Utah Code Ann. § 78-27-56. Section 78-27-56 provides:

- (1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense of the action was without merit and not brought or asserted in good faith, except under Subsection (2).
- (2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:
  - (a) finds the party has filed an affidavit of impecuniosity in the action before the court; or
  - (b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

Id.

In 1991, the Utah Supreme Court in Watkiss & Campbell v. Foa & Sons, 808 P.2d 1061 (Utah 1991), examined the requirements of an award under Utah Code Ann. § 78-27-56. Watkiss involved an action by a law firm to recover fees from a former client. The trial court in the case awarded summary judgment in favor of the law firm. The trial court also awarded attorney's fees to the law firm, however it did not make specific findings as to how or why it awarded these attorney's fees.

On appeal, the law firm argued that a trial court is not required to enter specific findings as to why it awarded attorney's fees, but rather that such specific findings are required only when the trial court does not award attorney's fees. The Utah Supreme Court rejected such an argument by stating:

[W]hen a party seeks recovery of attorney's fees under § 78-27-56, the trial court must make specific findings with regard to each element of the statute. Specific findings further the ends of justice by allowing appeals court to better review the trial court's award. Without specific findings, a reviewing court cannot determine whether the award of attorney fees was based upon a meritless claim brought in bad faith or simply because the recovering party prevailed.

Id. at 1068.

Under Watkiss, a trial court must make specific findings as to why it awarded attorney's fees. No such findings were made in this case. (R. 818-19) The trial court's order gives no indication, let alone specific findings, as to why the trial court awarded attorney's fees. The order does not state that defendants' claims

were without merit and brought in bad faith. The order likewise does not even state that attorney's fees were awarded pursuant to § 78-27-56. The award of attorney's fees in this case does not give any guidance nor to this court as to why the trial court made such an award.

Based on the lack of specific findings in the trial court's order awarding attorney's fees and the Supreme Court of Utah's ruling in Watkiss requiring such specific findings, this court should find that the trial court erred in awarding attorney's fees to plaintiff. The issue of attorney's fees should be either be reversed as a matter of law or be vacated and remanded to the trial court for a determination of whether, pursuant to Utah Code Ann. § 78-27-56, attorney's fees should be awarded.

#### **CONCLUSION**

Based upon the foregoing, defendants respectfully request that this court reverse the order granting partial summary judgment in favor of plaintiff on Counts I and II and order that the trial court grant defendants' cross motion for partial summary judgment on Counts I and II. The defendants also respectfully request this court to reverse or in the alternative vacate and remand for further proceedings the trial court's order granting attorney's fees to plaintiff.

DATED this 27<sup>th</sup> day of August, 1991.

STRONG & HANNI

By 

Robert A. Burton  
Stephen J. Trayner  
Attorneys for Defendant-  
Appellants Old Republic Surety  
and Northwestern National

CROWTHER & REED

By 

Larry Reed  
Attorneys for Defendant-  
Appellant Atlas Stock Transfer

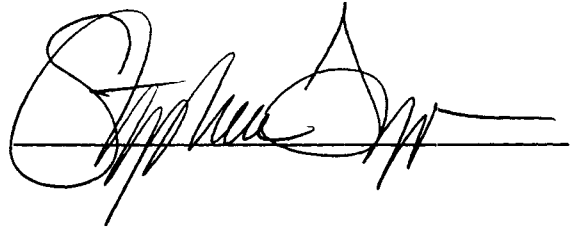
\_\_\_\_\_  
Phillip Hughes  
Attorneys for Defendant-Appellant  
Check Rite International

200746nh

CERTIFICATE OF SERVICE

I hereby certify that 4 true and correct copies of the foregoing document were mailed, first class postage prepaid, this 27<sup>th</sup> day of August, 1991.

John Michael Coombs  
72 East 400 South, #200  
Salt Lake City, Utah 84111  
Attorneys for Appellee

A handwritten signature in dark ink, appearing to read "John Michael Coombs", is written over a horizontal line.

ADDENDUM

Amended complaint and Jury Demand . . . . .	R. 69-114
Affidavit of Ernest Muth . . . . .	R. 324-26
Affidavit of Chuck Barton . . . . .	R. 379-80
Affidavit of Potter Investment Company . . . . .	R. 381-83
Supporting Affidavit of Penny G. Grace . . . . .	R. 387-88
Affidavit of Plaintiff in Support of Her Motion for Summary Judgment on Counts I and II of Her Amended Complaint . . . . .	R. 389-92
Affidavit of Plaintiff in Opposition to Defendants' Motion for Partial Summary Judgment . . .	R. 413-16
Affidavit of Paul S. Guardalabene . . . . .	R. 518-24
Judgment and Order . . . . .	R. 710-12
Judgment for Attorney's Fees . . . . .	R. 818-23
Order Granting Amended Rule 54(b) Motion to Certify Judgments as Final . . . . .	R. 842-45

JOHN MICHAEL COOMBS, No. 3639  
ATTORNEY for Plaintiff 72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

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

---

LeANNA BROADWATER,

Plaintiff,

v.

OLD REPUBLIC SURETY, a Wisconsin  
corporation doing business in  
Utah, NORTH WESTERN 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,

Defendants.

AMENDED COMPLAINT AND  
JURY DEMAND

Civil No. 89-0902684-CV

Judge Raymond S. Uno

---

Plaintiff LeAnna Broadwater hereby alleges and complains that Defendants jointly and  
severally or individually where otherwise indicated as follows:

PARTIES

1. Plaintiff LeAnna Broadwater is a Salt Lake County resident. She is the lawful and undisputed assignee or successor-in-interest of KASU Securities, Inc., the purchaser of certain shares of Cardinal Energy Corporation subject to this dispute.

2. Defendant Atlas Stock Transfer Corporation, ("Atlas") is a Utah corporation doing business in Salt Lake County. It is an obligee on the open penalty indemnity bond subject hereto.

3. Defendant Cardinal Energy Corporation ("Cardinal") n/k/a Check-Rite International, Inc., ("Check-Rite") is a publicly held Utah corporation and the issuer of the securities subject to this dispute. Its transfer agent is Atlas and it is an obligee on the open penalty indemnity bond subject hereto.

4. Defendant Northwestern National Insurance Company of Milwaukee, Wisconsin ("Northwestern") is a Wisconsin corporation licensed as a foreign corporation to do business in Utah and further licensed with the Utah Insurance Department to do business in this state. It is the obligor on the open penalty indemnity bond subject hereto.

5. Defendant Old Republic Surety ("Old Republic") is a Wisconsin corporation licensed as a foreign corporation to do business in the state of Utah and further licensed with the Utah Insurance Department to do business in this state. It is believed to have acquired Defendant Northwestern and therefore it is the assignee or successor-in-interest of all claims as against Defendant Northwestern.

6. Defendant Scott J. Fletcher is a Utah resident. He is the purchaser of and principal on the open penalty indemnity bond at issue in this case which he obtained through fraud as set forth below.

#### JURISDICTION

7. Jurisdiction over the parties is based on the fact that state courts are of general jurisdiction and Defendants Northwestern and Old Republic have consented to jurisdiction by being licensed in this state to do business. Jurisdiction is further based on 18 U.S.C. §1964(c) of the Racketeer Influenced and Corrupt Organizations Act.

#### FACTUAL ALLEGATIONS

8. On August 17, 1981, Defendant Fletcher placed an order to sell six thousand (6,000) shares of Cardinal Energy Corporation ("Cardinal") with Potter Investment Company ("Potter"), a local securities broker-dealer as evidenced by Exhibit "A" hereto, a true and correct copy of Fletcher's stock sale confirmation. On the same date, Fletcher placed a similar order with Potter to sell 2,000 Cardinal shares represented by Certificate 568 for the account of Jeanne Winder, Fletcher's neighbor, as further set forth below.

9. On August 27, 1981, Defendant Fletcher placed a another order with Potter to sell two thousand (2,000) additional shares of Cardinal as evidenced by Exhibit "B" hereto, a true and correct copy of Fletcher's stock sale confirmation.

10. To honor Fletcher's 8,000 share sale orders, Fletcher delivered Cardinal certificate No. 258, representing eight thousand (8,000) shares, and issued in his name to Potter on 7/27/81.

11. On 7/27/81, Potter issued a check to Fletcher in the amount of \$1,699.80 as payment for his sale of six thousand (6,000) Cardinal shares. It is undisputed that such check was received by Fletcher and deposited in his bank account as evidenced by Exhibit "C" hereto, a true and correct copy of such Potter check, front and reverse sides thereof.

12. On 8/4/81, Potter issued a check to Fletcher in the amount of five hundred sixty dollars (\$560.00) as payment for his 4/27/81 sale of two thousand (2,000) Cardinal shares. It is undisputed that such check was received by Fletcher and deposited in his bank account as evidenced by Exhibit "D", a true and correct copy of such Potter check, front and reverse sides thereof.

13. On or about September 21, 1981, Plaintiff Broadwater, acting on behalf of KASU Securities, purchased eight thousand (8,000) shares of Cardinal stock from Potter. Potter delivered certificate No. 258 to Plaintiff which had been signed over by Fletcher and properly signed guaranteed. Such is known in the securities industry as "street stock" and certificates representing such are negotiable instruments.

14. Approximately one (1) year later, on or about August 23, 1982, Fletcher falsely claimed that certificate No. 258 had been lost or stolen. Thereupon Fletcher posted a bond through Defendant Northwestern (now Old Republic) and paid the premium thereon. Fletcher was issued a new Cardinal certificate in the amount of eight thousand (8,000) shares. A true and correct copy on such bond which is the subject of this dispute, the premium of which was accepted by Defendant Northwestern, is attached hereto and incorporated by reference as Exhibit "E", denominated by bond No. UMI871385.

15. Such open penalty indemnity bond, Exhibit "E" hereto, sets forth Defendant Northwestern as the obligor thereon and Defendants Atlas and Cardinal (now Check-Rite) as obligees.

16. On or about August 9, 1982, Defendant Fletcher also sold, through Potter, Cardinal certificate No. 676, also representing eight thousand (8,000) shares and also registered in his name. A true and correct copy of Fletcher's stock sale confirmation is attached hereto and incorporated by reference as Plaintiff's Exhibit "F".

17. Defendant Fletcher received \$1,374.20 from Potter on 8/25/82 for his sale of certificate 676 as evidenced by Exhibit "G" hereto, a true and correct copy of Potter's returned check, front and reverse sides thereof, further evidencing deposit of such in Fletcher's bank account.

18. It is undisputed that after selling certificate No. 676 and receiving valuable consideration therefor, Fletcher on or about November 23, 1983, claimed and alleged that Cardinal certificate No. 676 had been lost or stolen.

19. On November 23, 1983, Fletcher, after having previously sold certificate No. 676, and having declared it lost or stolen, caused Defendant Northwestern to issue an additional open penalty indemnity bond to cancel certificate 676. A true and correct copy of this additional bond, obtained from Defendant Northwestern for Fletcher's benefit, is attached hereto and incorporated by reference as Exhibit "H" and denominated by Bond No. UMI902168.

20. A new replacement certificate was then issued to Fletcher on said date by Atlas in reliance on such bond.

21. Subsequently, certificate 676 surfaced and when it was submitted for transfer, Defendant Northwestern, after demand by Defendant Atlas, paid sufficient funds to replace that certificate in the amount of eight thousand (8,000) shares for its bona fide purchaser.

22. It is thus undisputed that Fletcher was issued an additional eight thousand (8,000) shares on at least two occasions or at total of 16,000 shares as a result of his posting two open penalty indemnity bonds through Defendant Northwestern.

23. Based on the foregoing, Fletcher was able to unlawfully obtain an additional sixteen thousand (16,000) shares to which he was not entitled and which he is also believed to have subsequently sold, as with the first sixteen thousand shares (16,000), in interstate commerce.

24. The foregoing actions of Fletcher were a fraud in that Fletcher had not lost or had stolen either certificate 258 or 676 inasmuch as he had sold such certificates and knew or had to have known he had done such.

25. The two frauds of Fletcher each constitute a "predicate act" of racketeering as contemplated in 18 U.S.C. §1961(1) of the Racketeer Influenced and Corrupt Organizations Act and a "pattern" in that regard as contemplated thereunder.

26. Plaintiff further asserts and believes that Fletcher was and has been under criminal investigation by the Utah Attorney General's office for such frauds, an investigation at one time spear-headed by David Baskam, a former Assistant Attorney General. Plaintiff further believes that Fletcher has been brought before an LDS Bishop's Court for his history and pattern of fraudulent activity. In this regard, Plaintiff asserts and believes that Fletcher, relative to a "project" in Green River, Utah, Fletcher was promoting, also

defrauded Jeanne C. Winder and her family out of approximately \$14,000. This conduct may constitute but another "predicate act(s) of racketeering" on the part of Fletcher as contemplated in RICO.

27. Plaintiff further asserts and believes that Defendant Fletcher is a sophisticated businessman who is knowledgeable about securities and brokerage affairs and who maintains numerous brokerage accounts. For this reason his actions are nothing less than intentional, let alone reckless, as contemplated in Section 61-1-22(1)(b) of the Utah Uniform Securities Act and otherwise under federal securities and other laws.

28. Plaintiff believes and asserts that Fletcher has engaged in similar if not identical "predicate acts of racketeering", namely by fraudulently obtaining lost instrument bonds on securities already sold or which he intends to sell and does sell in interstate commerce or through the mails.

29. Plaintiff further asserts that Fletcher was acting or has acted as an investment or business advisor for others, including one Jeanne C. Winder, believed to be an unsophisticated woman. Fletcher also has never registered under the Investment Advisor's Act or Utah's statutory counterpart thereto.

30. On the same day as Fletcher sold 6,000 Cardinal shares, namely 7/17/81, Fletcher also sold two thousand (2,000) shares of Cardinal through Potter for Winder's account and he, not Winder, received \$560 from Potter on 7/27/81. Fletcher delivered certificate No. 568 to Potter. On or about December 14, 1982, Fletcher, for Ms. Winder, posted an identical Northwestern open penalty indemnity bond on certificate No. 568, based on the belief that the certificate Fletcher sold, for Winder on 7/17/81, had been (like Fletcher's

two other certs) lost or stolen. A true and correct copy of a third bond Fletcher posted through Northwestern for Winder on alleged lost or stolen certificate 568 is attached hereto as Exhibit "I" and denominated by Bond No. UMI880735.

31. Ms. Winder was a neighbor of Fletcher and Plaintiff asserts that at all times Winder was acting at Fletcher's exclusive direction. Further, Fletcher was a "control person" of Winder as contemplated in Section 15 of the Securities Act of 1933 and Section 20(a) of the Securities Act of 1934 and therefore her acts are ascribable or attributable to Fletcher and he is thereby liable therefor.

32. Based on Fletcher's control of Winder, Plaintiff asserts and believes that the activity of Winder through Fletcher is but a third "predicate act of racketeering" ascribable and attributable to Fletcher. Plaintiff asserts that Winder would not have sold her two thousand shares (2,000) and then posted an identical lost instrument bond with the very same bonding company used twice by Fletcher unless she was acting under his exclusive control, direction, and advice.

33. On or during February, 1985, based on Winder's alleged lost certificate, Potter, who had purchased certificate 568 from Fletcher for Winder's account put a demand on Defendants Check-Rite, Atlas, and Northwestern to replace certificate No. 568 allegedly lost by Winder.

34. Potter obtained a quote on two thousand (2,000) shares of Check-Rite during February, 1985, and Defendant Northwestern honored its obligation on the Winder bond, purchasing such two thousand (2,000) shares in the open market to cover its liability.

Thereby, Potter received two thousand (2,000) replacement shares of Check-Rite which it delivered to the bona fide purchaser of certificate 568.

35. Based on the foregoing, Defendant Northwestern honored the Winder bond and the second bond posted by Fletcher on certificate 676 but, under absolutely identical circumstances, has refused to honor bond No. UMI871385 in bad faith and to the detriment of Plaintiff as set forth more fully hereinbelow. (See ¶21 hereinabove.)

36. In May, 1988, Plaintiff submitted Cardinal certificate 258 to Atlas Stock Transfer to be registered in her name. Until that time Plaintiff had held such certificate in her safe deposit box for purposes of investment until such time as she sought to have such shares transferred.

37. Atlas responded with a letter attached hereto and incorporated by reference as Exhibit "J" in which it refused to act on Plaintiff's lawful request.

38. Thereafter, Atlas directed Plaintiff to resolve the dispute directly with Defendant Northwestern and/or Potter.

39. Plaintiff telephoned Northwestern's local office in May 1988 and lodged her complaint which was ignored.

40. Based on the non-responsiveness of Northwestern and/or Old Republic's local office, Plaintiff, in May 1988, subsequently telephoned such Insurance Company Defendant's main offices in Milwaukee, and, over the ensuing months had numerous telephone conversations with one Paul S. Guardalabene ("Guardalabene"), Assistant Claims Attorney for Defendants Northwestern and Old Republic.

41. Guardalabene proceeded to delay the matter by requesting voluminous and totally unnecessary and irrelevant documentation as to how, why, and when Plaintiff obtained the eight thousand (8,000) shares from KASU Securities, Inc., etc. During such telephone conversations of which there were several, Plaintiff continually put demand on Guardalabene to replace her 8,000 shares consistent with the Insurance Company Defendants' obligations under the open penalty bond. During this time, Guardalabene treated Plaintiff and gave Plaintiff the reasonable impression that she was the obligee on the open penalty indemnity bond and that it was appropriate for her, as opposed to Atlas and Check-Rite, to deal directly with the Insurance Company Defendants.

42. Prior to July 1988, Guardalabene also had telephone discussions with Potter and was informed by and otherwise put on notice directly by John Potter that penny stocks such as Check-Rite were volatile and that therefore he (Guardalabene) ought to hurry and replace Plaintiff's eight thousand (8,000) share certificate.

43. Regardless of such demands and warnings, Guardalabene continued to stall and delay Plaintiff and based on Guardalabene's dishonor of the bond posted by Fletcher, Plaintiff sent a letter to Guardalabene dated July 11, 1988, a true and correct copy of which is attached hereto as Plaintiff's Exhibit "K". Such letter evidences but further uninterrupted demand made by Plaintiff on the Insurance Company/Obligor Defendants to replace Plaintiff's eight thousand (8,000) shares.

44. Plaintiff's continued demands were refused by Defendants Atlas, Check-Rite, and more particularly, the Insurance Company/Obligor Defendants.

45. On July 27, 1988, after continued irrational stalling and delay tactics on the part of Guardalabene, acting on behalf of the Insurance Company/Obligor Defendants, Plaintiff wrote another letter to Guardalabene, a true and correct copy of which is attached hereto as Exhibit "L", and which put Guardalabene on further unequivocal notice that Plaintiff not only demanded a replacement certificate but that Check-Rite stock had reached a price of one dollar per share and could continue to rise in price.

46. After receipt of Exhibits "K" and Exhibit "L" above, the Insurance Company/Obligor Defendants proceeded to do nothing and otherwise redress the damages caused Plaintiff.

47. Plaintiff asserts that on or about July 28, 1988, the price of Check-Rite Stock traded at \$1.25 per share in Salt Lake City. This is evidenced by a letter from Bagley Securities, Inc., a true and correct copy of which is attached hereto and incorporated by reference as Exhibit "M".

48. At this time Plaintiff was also in contact with one Chuck Burton, an account executive with Kober Financial in Denver, Colorado, a market maker in Check-Rite stock.

49. Kober Financial informed and has informed Plaintiff that the price of Check-Rite stock traded as high as a \$1.50 in Denver, Colorado on or after July 28, 1988. Chuck Burton has also telephoned Guardalabene and informed him personally of this fact.

50. The Defendants, knew or should have known that the price of Check-Rite stock would trade or could have traded as high as a \$1.50 per share after May 1988, which it did.

51. Had the Insurance Company/Obligor Defendants and issuer / transfer agent / obligee Defendants replaced Plaintiff's eight thousand (8,000) shares when request for transfer and registration was made, she could have and would have sold them at a \$1.50 per share in Denver or at least \$1.25 in Salt Lake City, Utah, in July, 1988, and/or at the beginning of August, 1988.

52. Plaintiff believes and asserts that Defendant Northwestern has a history and pattern of refusing to honor its open penalty indemnity bonds, particularly if they are in excess of a small amount of money, as further evidenced by a lawsuit involving Defendant Old Republic and filed in the Third Judicial District Court of Utah denominated by Civil No. C88-3713, assigned to the Honorable Raymond Uno. At such time that Plaintiff discovers additional "predicate acts" of racketeering on the part of the Insurance Company/Obligor Defendants, she shall seek to amend this complaint and state a cause of action against them under 18 U.S.C. §1962(a),(b),(c), and/or (d).

53. Defendants Atlas and Check-Rite have put substantial and repeated demands on Northwestern and Old Republic to honor its bond, the principal of which is Scott Fletcher. Such demands on the part of Atlas have been refused and ignored since May, 1988.

54. Plaintiff's counsel has further put continued and repeated demands on the Insurance Company/Obligor Defendants and on the issuer / transfer agent / obligee

Defendants to issue Plaintiff a replacement certificate or otherwise pay her damages of the highest price of the stock since the time Plaintiff could have sold her replacement shares but for Defendants' wrongful conduct. Evidence of such written formal demands include three (3) letters from Plaintiff's counsel directed to such Defendants dated September 21, 1988, September 30, 1988, and November 25, 1988.

55. Such Defendants with the exception of Defendant Fletcher have refused to make proper restitution to Plaintiff.

56. Plaintiff's counsel has spent at least 25 hours negotiating in good faith with Defendants to make restitution to Plaintiff, such negotiations being undertaken by Defendants in bad faith and therefore Plaintiff is entitled to attorney's fees of at least \$2,500.00, exclusive of attorney's fees paid her counsel to initiate this action.

57. The Defendants' refusals, with the exception of the Fletcher, have further been asserted in bad faith for which Plaintiff is entitled to an award of attorney's fees pursuant to Section 78-27-56, Utah Code Ann.

58. None of the Defendants have defended the demands of Plaintiff by asserting that the lost instrument bond in issue was not valid or binding or that the Defendants Northwestern and Old Republic did not receive or accept the premium in consideration for its issuance.

## CAUSES OF ACTION

### COUNT I

#### WRONGFUL REFUSAL TO TRANSFER

59. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

60. Plaintiff was a bona fide purchaser of eight thousand (8,000) shares of Cardinal (Check-Rite) as fully contemplated in §70A-8-401 and 405(3) Utah Uniform Commercial Code, Investment Securities.

61. Plaintiff had no knowledge of Defendant Fletcher's fraud nor did she know or had she ever heard of Fletcher at the time of her acquisition of such shares or otherwise until May, 1988.

62. Plaintiff, as a purchaser, had no notice of any adverse claims as contemplated in §70A-8-304, Utah Uniform Commercial Code ("U.U.C.C.").

63. In May, 1988, Plaintiff presented certificate 258 to Defendant Atlas Stock Transfer and lawfully requested transfer in accordance with §70A-8-306, U.U.C.C.

64. Certificate 258 was properly endorsed as fully contemplated in Article 8, U.U.C.C.

65. Plaintiff had no duty of inquiry into the problems posed by Defendant Fletcher's wrongful and fraudulent conduct.

66. Plaintiff had no obligation to register her transfer until such time until she sought to do so.

67. Plaintiff's right to registration was not affected by Fletcher's indorsement as such did not give notice of any adverse claims. (See Section 70A-8-310, U.U.C.C.)

68. Assuming Fletcher's indorsement on certificate 258 was unauthorized, which it was not, such was ratified by Fletcher's sale of certificate 258 through Potter in July 1981 and his receipt of valuable consideration for such sale. (See Section 70A-8-311, U.U.C.C.)

69. Plaintiff was a purchaser of certificate 258 for value and without notice of any adverse claims.

70. At the time of Plaintiff's purchase or assignment, she could not have known of any adverse claims as Fletcher waited one (1) year after he sold it before fraudulently claiming certificate 258 was lost or stolen.

71. A bona fide purchaser is entitled to transfer and registration without unreasonable delay as provided in §70A-8-401 and 405(3) U.U.C.C.

72. Defendant Atlas and Check-Rite should have transferred and registered Plaintiff's eight thousand (8,000) shares in May, 1988 when so presented.

73. Such Defendants' abject failure to do so has damaged Plaintiff in that she was unable to sell such eight thousand (8,000) shares in July or August, 1988, when Check-Rite stock reached a price of a \$1.50 per share.

74. Had Plaintiff obtained replacement shares in May 1988, she would have subsequently sold such shares and obtained approximately \$12,000.

75. Plaintiff prays for damages against Defendants Atlas and Check-Rite as set forth below.

COUNT II  
CONVERSION

76. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

77. Defendants Atlas and Check-Rite received delivery and possession of certificate 258, Plaintiff's certificate representing the eight thousand (8,000) shares, in May, 1988.

78. Such Defendants have interfered with Plaintiff's right to control and possess eight thousand (8,000) shares of Check-Rite since May, 1988.

79. Such wrongful interference has been intentional and has caused Plaintiff great expense, inconvenience, and damage.

80. Such Defendants have effectively converted eight thousand (8,000) shares of Check-Rite belonging to Plaintiff to their own use.

81. Such possession of certificate 258 by such Defendants since May, 1988 is inconsistent with Plaintiff's right of control and ownership thereof.

82. Such Defendants have virtually done nothing to remedy the dispute which, prior to filing this complaint, has caused Plaintiff to incur attorney's fees of approximately \$2,500.

83. A mistake of law or fact is not a defense to such Defendants' conversion.

84. Plaintiff prays for damages against Defendants Atlas and Check-Rite as set forth below.

COUNT III  
BREACH OF AN IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING

85. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

86. The relationship between Plaintiff and the Defendants, with the exception of Defendant Fletcher (with whom Plaintiff was not privy), required such Defendants to deal fairly with Plaintiff and otherwise act in good faith.

87. Such an obligation was a covenant that such Defendants each and all have breached.

88. Utah law recognizes such a cause of action and further that punitive damages are available hereunder.

89. Defendants, with the exception of Defendant Fletcher, are liable to Plaintiff for their breach of an implied covenant of good faith and fair dealing which has damaged Plaintiff damage as set forth below.

#### COUNT IV

##### BREACH OF AN IMPLIED THIRD PARTY BENEFICIARY CONTRACT ON THE PART OF THE INSURANCE COMPANY DEFENDANTS

90. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

91. Defendant Insurance Companies entered into an agreement whereby they agreed to indemnify Defendants Atlas and Check-Rite from any loss caused by the resurfacing of Check-Rite certificate 258.

92. The Insurance Company Defendants have breached such agreement by failing to honor the bond issued by them.

93. Such breach of contract on the part of the Insurance Company Defendants has caused Plaintiff, a bona fide purchaser of certificate 258, substantial damage and injury in that Plaintiff has not been able to seek restitution from Atlas and Check-Rite until such bond was honored by the Insurance Company Defendants.

94. The Insurance Company Defendants have no excuse or defense for their failure to honor the bond issued by them and they have maliciously lulled Plaintiff into the belief that she was an obligee on the bond.

95. Based on the Insurance Company Defendants' breach of contract which they knew and had reason to know would damage Plaintiff or a person similarly situated, such Defendants are liable to Plaintiff for all damages as a result of such breach as set forth below.

#### COUNT V

#### BAD FAITH REFUSAL ON THE PART OF THE INSURANCE COMPANY DEFENDANTS

96. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

97. The Insurance Company Defendants have no excuse for their failure to honor bond No. UMI871385.

98. Such Defendants have had since early May, 1988, to honor the bond issued by them.

99. Such Defendants acted negligently or otherwise intentionally in refusing to honor their bond obligation and otherwise remedy Plaintiff's damages immediately and reasonably.

100. Such Defendants have not acted reasonably and have acted in bad faith by innundating Plaintiff with false excuses for their failure to honor such bond and their legal commitment with respect thereto. Such excuses include but are not limited to (1) unreasonably demanding numerous documentation from Plaintiff that she was the lawful successor-in-interest of KASU Securities, Inc., (when Atlas had no dispute with such), (2) informing Plaintiff that they were in fact investigating the matter when they were not, (3) stalling several months and thereafter contending that the indorsement on certificate 258 was a forgery, and (4) ultimately informing Plaintiff that she had to deal with Atlas while all along leading her to believe that she should deal directly with the Insurance Company Defendants.

101. Plaintiff believes and asserts that the Insurance Company Defendants have refused to honor other bonds of a similar nature over the last ten (10) years, bonds in particular in which such Defendants' liability exceeds at least five hundred dollars (\$500.00).

102. On the other hand, the Insurance Company Defendants have singled Plaintiff out and not honored the bond covering her certificate while honoring the two other Fletcher bonds detailed hereinabove.

103. Such bad faith refusal on the part of the Insurance Company Defendants is so outrageous under the circumstances that Plaintiff is entitled to substantial punitive and exemplary damages to deter such wrongful and malicious conduct in the future as set forth below.

#### COUNT VI

#### AIDING AND ABETTING

104. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

105. The Insurance Company Defendants knew or should have known that they were putting Defendant Fletcher in a position where he could take advantage of and defraud others as further set forth elsewhere herein.

106. The Insurance Company Defendants did not investigate Defendant Fletcher reasonably, if at all. Had they done so, they would have either have not issued any bonds or, they would have immediately paid for a replacement certificate in May, 1988.

107. The Insurance Company Defendants should have known better than to rely on the false and fraudulent affidavits of Fletcher in issuing open penalty indemnity bonds for his benefit.

108. The Insurance Company Defendants have issued at least three (3) bonds which have benefited Fletcher, solely with regard to Check-Rite stock alone and may have issued other bonds in his favor with regard to the securities of other issuers.

109. But for the substantial assistance and aiding and abetting on the part of the Insurance Company Defendants, Fletcher would not have been able to fraudulently obtain an additional sixteen thousand (16,000) shares of Check-Rite which he did in fact obtain fraudulently and is believed to have thereafter sold in interstate commerce. But for the

Insurance Company Defendants' aiding and abetting and their subsequent bad faith refusals which have further aided and abetted Fletcher, Plaintiff would not have been damaged.

110. But for the substantial assistance of the Insurance Company Defendants, Fletcher would not of have been able to commit his frauds and racketeering as set forth below.

111. The Insurance Company Defendants' aiding and abetting of Fletcher has proximately caused Plaintiff damages as set forth below.

#### COUNT VII

#### NEGLIGENCE

112. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

113. Each and all of the Defendants owed Plaintiff the duty to prevent those damages of which she has been caused.

114. Each Defendant breached that duty under their respective circumstances which has been the proximate cause of Plaintiff's damages.

115. Reasonable persons in the same position of each of the Defendants would not have acted in the manner that each Defendant has in fact acted.

116. Plaintiff is entitled to punitive and exemplary damages against each of the Defendants for their individual and joint and several negligence which, under the circumstances, has exceeded all bounds of reasonableness and for which such additional damages are justified as set forth below.

COUNT VIII  
VIOLATION OF §12(2) OF THE SECURITIES ACT  
OF 1933 BY DEFENDANT FLETCHER

117. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

118. Defendant Fletcher sold a security by the use or the means of an instrument of interstate commerce or of the mails, by means of an oral communication, which included an untrue statement of a material fact or which omitted to state a material fact necessary in order to make his statements, in light of the circumstances under which they were made, not misleading.

119. Defendant Fletcher, when he sold certificate 258 representing eight thousand (8,000) shares, omitted to state that he would subsequently declare such certificate lost or stolen, that he would execute a false affidavit under oath to that effect, obtain a bond, receive an additional eight thousand (8,000) shares to which he was not entitled and otherwise put Plaintiff or someone like her in her present position.

120. Plaintiff did not know and there is no way or means by which she could have known of Fletcher's untruths or omissions when she obtained delivery of certificate 258 from Potter.

121. Defendant Fletcher cannot sustain the burden that he did not know and in the exercise of reasonable care could not have known of his untruths or omissions.

122. Defendant Fletcher is the proximate cause, culpable participant, significant factor, or proximate cause of the damages inflicted on Plaintiff and under §12(2) case law Plaintiff need not be in direct privity with him to recover damages hereunder. Plaintiff thus prays for damages against Fletcher as set forth below.

COUNT IX

VIOLATION OF SECTION 61-1-22(1)(b) OF  
THE UTAH UNIFORM SECURITIES ACT ON THE PART OF  
DEFENDANT FLETCHER

123. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

124. This count is the Utah statutory counterpart to Section 12(2) of the Securities Act of 1933, Plaintiff's preceding cause of action.

125. Plaintiff is entitled to an award of costs and attorney's fees hereunder.

126. Plaintiff is entitled to 12% interest from the date of payment for the stock subject to this dispute.

127. Plaintiff did not discover Defendant Fletcher's violation hereunder until May, 1988.

128. Defendant Fletcher's violation of this statute is reckless or intentional for which Plaintiff is entitled to damages of three times the consideration paid for the security with interest thereon at the rate of 12% as set forth below.

COUNT X

COMMON LAW FRAUD ON THE PART OF DEFENDANT FLETCHER

129. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

130. Defendant Fletcher engaged in a plan or scheme to defraud and injure Plaintiff or someone like her which has caused her and those similarly situated substantial injury and damage.

131. Defendant Fletcher, by selling certificate 258 through Potter Investment Company, impliedly represented that he would not subsequently encumber such certificate, knowing his representations as set forth hereinabove were false and that Plaintiff's problem which has been created by him would eventually occur.

132. The representations made by Fletcher as per certificate No. 258 itself through Potter and in turn to Plaintiff were false.

133. The false representations made by Defendant Fletcher concerned past or present facts.

134. The past or present facts about which Defendant Fletcher made false misrepresentations were material.

135. The material, false representations made by Defendant Fletcher about past or present facts were susceptible of knowledge by him.

136. Defendant Fletcher who so represented, knew that that which is alleged herein was false or in the alternative, asserted such false representations as of his own knowledge without knowing or discerning if such was true or false.

137. Defendant Fletcher intended that a customer of Potter be induced to act, or in misleading a customer of Potter such as Plaintiff into thinking that she or someone like her

was justified in purchasing the subject security and thereby relying on Fletcher's misrepresentations and omissions.

138. A customer of Potter namely Plaintiff, was in fact induced to act or was justified or reasonable under the circumstances in acting on Defendant Fletcher's false and fraudulent representations and omissions either impliedly or directly as per certificate 258 on its face.

139. Plaintiff's purchase of the securities was in reliance on the representations of Fletcher as he had endorsed certificate 258 and such was properly signed and guaranteed, creating the undeniable impression that it was a negotiable instrument.

140. Plaintiff has suffered damages which are attributable to the misrepresentations of Defendant Fletcher, based on his false and fraudulent representations or statements, including his affidavit, which are the direct and proximate cause of Plaintiff's injury and damage.

141. Defendant Fletcher's scheme or artifice to defraud a customer of Potter, which has occurred on at least three occasions with the same security and with the same Insurance Company Defendants, is malicious and harmful to the free enterprise system, interstate commerce, and the securities industry as a whole, and entitles Plaintiff to substantial punitive and exemplary damages to deter fraudulent schemes of this nature in which is a sophisticated Defendant such as Fletcher takes advantage of and defrauds an individual such as Plaintiff out of substantial funds.

142. Defendant Fletcher has engaged in such a plan scheme or artifice to defraud other individuals such as Plaintiff for the same purposes and under the same pretenses with regard to the same security in issue and also with regard to the securities of other issuers. In this regard, as set forth above, he is believed to have been the subject of a criminal investigation.

143. Plaintiff had no avenue or reasonable means of knowing or discovering that Fletcher's express and implied representations were false and fraudulent as Plaintiff was not apprised of what Fletcher would subsequently do.

144. Fletcher's scheme or plan or artifice to defraud Plaintiff and someone like her was designed to harm and injure her and those similarly situated.

145. The representations and/or omissions of Fletcher were false or fraudulent and when made were then and there known by Fletcher to be false and fraudulent and his misrepresentations were matters of material fact inducing Plaintiff's purchase of the securities.

146. Said misrepresentations and omissions of Fletcher were made knowingly and intentionally or with the reckless or holding negligent and wanton disregard for the truth for the express purpose of obtaining additional stock for which Fletcher was not entitled and thereby creating Plaintiff's present situation.

147. Defendant Fletcher had a duty not to make such representations to Plaintiff through Potter and had a duty to disclose facts and circumstances which he abjectly failed to disclose to Plaintiff through Potter.

148. As a direct and proximate result of Fletcher's breaches of duty owed Plaintiff and some one like her, Plaintiff has been substantially damaged and is entitled to have and recover against Fletcher, in addition to actual damages, punitive and exemplary damages in the amount of at least two hundred and fifty thousand dollars (\$250,000.00).

COUNT XI

VIOLATION OF THE RACKETEER INFLUENCED AND  
CORRUPT ORGANIZATIONS ACT ("RICO")  
ON THE PART OF DEFENDANT FLETCHER

149. Plaintiff incorporates each and every allegation elsewhere herein as if each were set forth more fully hereafter verbatim.

150. This court has jurisdiction over violations of the Racketeer Influenced and Corrupt Organizations Act.

151. Defendant Fletcher is believed to have engaged in racketeering activity within the meaning of 18 U.S.C. §1961(1) including, but not limited to the following indictable offenses:

(a) the transmission by such Defendant, by means of wire communication in interstate commerce, of writings, signals or sounds for the purpose of executing his scheme or artifice to defraud Plaintiff and other investors similarly situated in violation of 18 U.S.C. §1343;

(b) the use of the mails in violation of 18 U.S.C. §1341 to consummate this and/or a similar scheme;

(c) fraud in the sale of securities; and/or

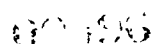
(d) any offense involving fraud connected with a case under Title 11 U.S.C., namely bankruptcy fraud.

152. The conduct of Defendant Fletcher as alleged herein constitutes a pattern of racketeering within the meaning of 18 U.S.C. §1961(5) insofar as Defendant Fletcher engaged in at least two acts of racketeering activity within the meaning of 18 U.S.C. §1961(1) within the last ten (10) years.

153. Defendant Fletcher has received income derived, directly or indirectly, from a pattern of racketeering activity and/or has used or invested, directly or indirectly, part of such income, or the proceeds of such income, in the acquisition of an interest in, and/or in the establishment or operation of, an enterprise or enterprises which is or are engaged in, or the activities of which affect interstate or foreign commerce, in violation of 18 U.S.C. §1962(a).

154. Defendant Fletcher has, through a pattern of racketeering activity, acquired and maintained, directly or indirectly, an interest in or control of an enterprise or enterprises which is or are engaged in, or the activities of which affect interstate or foreign commerce in violation of 18 U.S.C. §1962(b).

155. Defendant Fletcher has, while employed by or associated with an enterprise, engaged in, or the activities of which affect interstate commerce, conducted or participated, directly or indirectly in the conduct of such enterprise's(s') affairs through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c).



156. Defendant Fletcher has conspired with another (which may include the Insurance Company Defendants) to violate the provisions of 18 U.S.C. §§1962(a),(b), and (c) in violation of 18 U.S.C. §1962(d).

157. Plaintiff believes and asserts that Defendant Fletcher is a "person" and/or an "enterprise" as the case may be as necessary to satisfy the technical pleading requirement under the statute, particularly §1962(c), regarding such distinctions and Plaintiff asserts that she presently lacks sufficient information to presently make a more particularized distinction.

158. Defendant Fletcher aided, abetted, counseled, commanded, induced, procured, or willfully caused the commission of the racketeering activities, regardless of the capacities in which he acted, and therefore, is liable as a principal in and to said activity within the meaning of 18 U.S.C. §2.

159. Plaintiff has been injured in her business or property as a direct and proximate result of Defendant Fletcher's violations of 18 U.S.C. §1962 in an amount in excess of \$40,000.00, the precise amount of which damages is not yet ascertained, but which will be established at trial.

160. Pursuant to 18 U.S.C. §1964(c), Plaintiff is entitled to recover from and against Defendant Fletcher threefold the amount of the damages sustained by Plaintiff, in an amount believed to be in excess of \$40,000.00, to be proven on or before trial, plus the cost of this suit, interest, and resonable attorney's fees.

WHEREFORE, on all of Plaintiff's causes of action, Plaintiff prays for trial by jury;

1. On Counts I and II of Plaintiff's complaint, Plaintiff prays for judgment against Defendants Atlas and Check-Rite in the amount of the highest price of the stock since May, 1988, an amount to be proven on or before trial and which Plaintiff calculates to be at least \$12,000.00, for costs, pre and post-judgment interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any all further relief as the court deems fair and equitable;

2. On Count III of Plaintiff's complaint, Plaintiff prays for judgment against all Defendants with the exception of Defendant Fletcher in the amount of at least \$12,000 to be proven on or before trial, punitive damages of several thousand dollars, for costs, pre and post-judgment interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any and all further relief as the court deems fair and equitable;

3. On Count IV of Plaintiff's complaint, Plaintiff prays for judgment against the Insurance Company Defendants in the amount of the highest price that Check-Rite stock has attained since May, 1988, which Plaintiff calculates to be at least \$12,000.00, for costs, pre and post-judgment interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any and all further relief as the court deems fair and equitable;

4. On Count V of Plaintiff's complaint, Plaintiff prays for judgment against the Insurance Company Defendants in the amount of at least \$12,000 to be proven on or before trial, for punitive damages of at least \$200,000.00, for costs, pre and post-judgment

interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any and all further relief as the court deems fair and equitable;

5. On Count VI of Plaintiff's complaint, Plaintiff prays for judgment against the Insurance Company Defendants in amount to be determined on or before trial, for punitive damages of at least \$50,000.00, for costs, pre and post-judgment interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any and all further relief as the court deems fair and equitable;

6. On Count VII of Plaintiff's complaint, Plaintiff prays for judgment against Defendants jointly and severally in an amount to be proven on or before trial, but which includes all of the attorney's fees that Plaintiff has incurred in attempting to settle the matter without litigation, for substantial punitive and exemplary damages as against all Defendants jointly and severally, for costs, pre and post-judgment interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any and all further relief as the court deems fair and equitable;

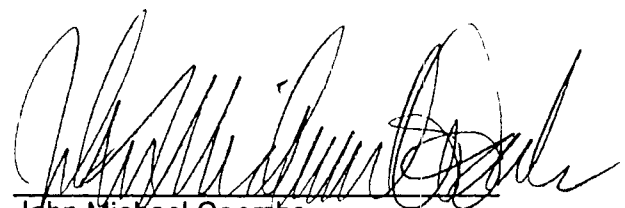
7. On Count VIII of Plaintiff's complaint, Plaintiff prays for judgment against Defendant Fletcher in an amount of her damages which Plaintiff believes to be at least \$12,000 and which further includes her needless incurring of substantial attorney's fees to date, costs, pre and post-judgment interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any and all further relief as the court deems fair and equitable;

8. On Count IX of Plaintiff's complaint, Plaintiff prays for judgment against Defendant Fletcher in the amount of three times the consideration paid for the security, for costs, pre and post-judgment interest at 12% per annum since September 1981, attorney's fees in accordance with §78-27-56 and §61-1-22(1), Utah Code Ann., and for any and all further relief as the court deems fair and equitable;

9. On Count X of Plaintiff's complaint, Plaintiff prays for judgment against Defendant Fletcher in the amount of at least \$12,000.00, including all attorney's fees that Plaintiff has needlessly been required to incur, punitive damages of at least \$250,000.00, for costs, pre and post-judgment interest at the highest legal rate, attorney's fees in accordance with §78-27-56, Utah Code Ann., and otherwise, and for any and all further relief as the court deems fair and equitable;

10. On Count XI of Plaintiff's complaint, Plaintiff prays for judgment against Defendant Fletcher for violation of any one of 18 U.S.C. §§1962(a),(b),(c), and/or (d) of the Racketeer Influenced and Corrupt Organizations Act in an amount of at least \$40,000.00, for costs, reasonable attorney's fees as provided therein, pre and post-judgment interest at the highest legal rate, and any and all further relief as the court deems fair and equitable.

DATED this 18th day of May, 1989.



John Michael Coombs,  
Attorney for Plaintiff

Plaintiff's Address:  
3576 Oak Rim Way  
Salt Lake City, Utah 84109

RECEIPT/DELIVERY



# Potter Investment Company

ESTABLISHED - 1951

GEO "JOHN" POTTER  
President

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

ORIGINATOR NO	TRANS NO	CODES		TRADE DATE	SETTLEMENT DATE	DELIVERY DATE
		TR	CAP			
	10228		1	07-17-81	07-24-81	

IDENTIFICATION NO	CONTRA PARTY	CH NUMBER	SPECIAL DELIVERY INSTRUCTIONS
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SCOTT FLETCHER  
8916 PETUNIA WAY  
SANDY UT 84092

UNSOLICITED ORDER

WE	QUANTITY	CUSIP NUMBER	SECURITY DESCRIPTION	NET AMOUNT
BUY	6000		CARDINAL ENERGY CORP	\$1,699.80

100 BULL

PRICE	EXTENSION	SER CHG OR COMM	TAXES & MISC
283.30	1,699.80		

ITS CERTIFICATES RECEIVED/DELIVERED

REC/DEL	ACCOUNT	TRANS NO	STOCK NUMBER	SHARES
BU	104338	10228	01265	6000

SCOTT FLETCHER  
8916 PETUNIA WAY  
SANDY UT 84092

REC'D BY \_\_\_\_\_ DATE \_\_\_\_\_

EXHIBIT "A"

DEIPT/DELIVERY



# Potter Investment Company

ESTABLISHED 1951

GEO JOHN POTTER  
President

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

INATOR NO	CODES				TRADE DATE	SETTLEMENT DATE	DELIVERY DATE
	TRANS NO	TR	CAP	SETT			
	10300		1		07-27-81	08-03-81	

NTIFICATION NO	CONTRA PARTY	CH NUMBER	SPECIAL DELIVERY INSTRUCTIONS
10300	07-27-81		
	LOTT FLETCHER 210 PETUNIA WAY SANDY UT 84092		UNCOLLECTED ORDER

WE	QUANTITY	CUSIP NUMBER	SECURITY DESCRIPTION	NET AMOUNT
0	2000		CARDINAL ENERGY CORP	\$100.00

01000  
CUNISH: 401260

PRICE	EXTENSION	SER CHG OR COMM	TAXES & MISC
0.50	1000.00		

5 CERTIFICATES RECEIVED/DELIVERED

REC/DEL	ACCOUNT	TRANS NO	STOCK NUMBER	SHARES
RL	104333	10300	01200	2000

LOTT FLETCHER  
210 PETUNIA WAY  
SANDY UT 84092

REC'D BY \_\_\_\_\_ DATE \_\_\_\_\_

EXHIBIT "B"

# POTTER INVESTMENT CO.

MEMBER INTERMOUNTAIN STOCK EXCHANGE  
335 SOUTH MAIN  
SALT LAKE CITY, UTAH 84111

No 6385

ZIONS  
FIRST NATIONAL BANK  
BROADWAY OFFICE  
SALT LAKE CITY, UTAH  
31-5/1240

Y. Presumed 1699.80 DATE 7/27/81 AMOUNT \$ 1699.80  
SCOTT FLETCHER  
104338

*Barbara L. Cline*

"00006385" :1240000054: 03 11482.4"

"00000169980"

*for deposit only*

111 05811

15-11-81

217, 31-62

2, 779

AT ART BANK BLDG  
OF UTAH N.A.  
SALT LAKE CITY, UTAH  
JY '81 27

EXHIBIT "C"

# POTTER INVESTMENT CO.

MEMBER INTERMOUNTAIN STOCK EXCHANGE  
335 SOUTH MAIN  
SALT LAKE CITY, UTAH 84111

No 6503

ZIONS  
FIRST NATIONAL BANK  
BROADWAY OFFICE  
SALT LAKE CITY, UTAH  
31-5/1240

The sum of \$560.00

DATE  
8/4/81

AMOUNT  
\$ 560.00

SCOTT FLETCHER  
9916 PETUNIA WAY  
SANDY UTAH 84092

*Henry Potter*

⑈0004503⑈ ⑆124000054⑆ 03 1482 4⑈

⑈0000056000⑈

EXHIBIT "D"

AG '81' 06  
31-1 PAY ANY BANK P.O.  
FIRST SECURITY BANK  
OF UTAH N.A.  
SALT LAKE CITY, UTAH 31-1

REC-681

31-62

31-62

6622 61409

*Scott Fletcher*

00042



# NORTHWESTERN NATIONAL INSURANCE COMPANY

## of Milwaukee, Wisconsin

Bond No. UMI 871385

Know all Men by these Presents, THAT Scott J. Fletcher

is 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 State at 525 E 4500 S, Salt Lake City, Ut, as Surety (hereinafter collectively called the Obligors'), 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 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 <sup>2670</sup> 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.

\_\_\_\_\_(L 8)  
Scott J. Fletcher  
NORTHWESTERN NATIONAL INSURANCE COMPANY,

By

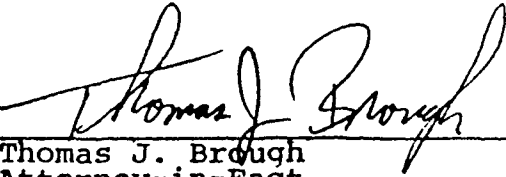
Attorney in Fact

"E"  
EXHIBIT

AFFIDAVIT OF QUALIFICATION

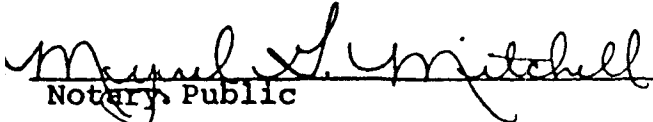
STATE OF UTAH            )  
                              ) SS  
COUNTY OF SALT LAKE )

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

RECEIPT/DELIVERY



# Potter Investment Company

ESTABLISHED - 1961

GEO. JOHN POTTER  
President

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

ORIGINATOR NO	CODES				TRADE DATE	SETTLEMENT DATE	DELIVERY DATE
	TRANS NO	TR	CAP	SETT			
	4571		2		8-09-82	8-16-82	

IDENTIFICATION NO	CONTRA PARTY	CH NUMBER	SPECIAL DELIVERY INSTRUCTIONS
-------------------	--------------	-----------	-------------------------------

SCOTT FLETCHER  
9216 PETUNIA WAY  
ANDY, UT 84092

AUG 25 1982

WE	QUANTITY	CUSIP NUMBER	SECURITY DESCRIPTION	NET AMOUNT
BUY	8,000	141999 2011	CARLINAL ENERGY	1,374.10
SELL	0.00	0000		

PRICE	EXTENSION	SER CHG DR COMM	TAXES & MISC
	1,500.00	125.90	.00

REC/DEL	ACCOUNT	TRANS NO	STOCK NUMBER	SHARES

AGENT'S CERTIFICATES RECEIVED/DELIVERED

8000 SL 0000676

Same

OK

8/25/82

REC'D BY

DATE

EXHIBIT

00103

"G"

EXHIBIT

<b>POTTER INVESTMENT CO.</b> <small>MEMBER INTERMOUNTAIN STOCK EXCHANGE</small> 335 SOUTH MAIN SALT LAKE CITY, UTAH 84111		<b>No 2967</b>	
<b>PAY</b> <i>The sum of 1374 and 10/100</i>		<b>ZIONS FIRST NATIONAL BANK</b> BROADWAY OFFICE SALT LAKE CITY, UTAH 31-5/1240	
<b>TO THE ORDER OF</b>	<b>SCOTT FLETCHER</b> 9916 PETUNIA WAY SANDY, UT 84092	<b>8/25/82</b>	<b>\$ 1,374.10</b>
<b>23231</b>		<i>Henry L. Potter</i>	
<b>0002967</b>		<b>0000137410</b>	

00100

90100

Seab Fletcher.

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010

293-850
CHENICAL 3.4.11.5.11
BUTENON 11.11.11
SALL 11.11.11



Blank for last in two 1 One's only

# NORTHWESTERN NATIONAL INSURANCE COMPANY

## of Milwaukee, Wisconsin

Bond No. UMI 902168 ✓

Know all Men by these Presents, THAT Scott J. Fletcher

as 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 surety ship in the State of Utah and having an office and principal place of business in said State

at 525 E 4500 S, Salt Lake City, Ut, as Surety (hereinafter collectively called the 'Obligors'), are held and firmly bound unto

Cardinal Energy  
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 TWO counterparts, this 23rd day of November 19 83 # 1228

WHEREAS, the Principal represents that said Principal is the owner of Certificate(s) No (s) 676 representing 8,000 shares of Cardinal Energy stock issued August 23, 1982

registered in the name of Scott J. Fletcher (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 termination of the foregoing 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.

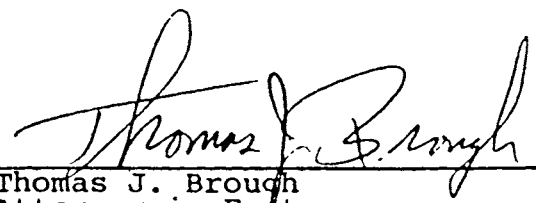
It is understood that the obligation hereby created in favor of any such Transfer Agent or Registrar shall not be affected by the termination of the agency of such Transfer Agent or Registrar

*Scott J. Fletcher*  
Scott J. Fletcher  
NORTHWESTERN NATIONAL INSURANCE COMPANY,  
By *Thomas J. Brugh*  
THOMAS J. BRUGH

## AFFIDAVIT OF QUALIFICATION

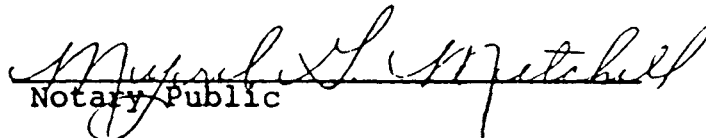
STATE OF UTAH                    )  
                                      ) SS  
COUNTY OF SALT LAKE )

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 November, 1983.

My Commission Expires: \_\_\_\_\_

  
Notary Public



# NORTHWESTERN NATIONAL INSURANCE COMPANY

of Milwaukee, Wisconsin

Bond No. UMI 880735

Know all Men by these Presents, THAT Jeanne Winder

as 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 State at 525 E 4500 S, Salt Lake City, Ut, as Surety (hereinafter collectively called the "Obligors"), are held and firmly bound unto Cardinal Energy

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 14th day of December, 1982

WHEREAS, the Principal represents that said Principal is the owner of Certificate(s) No.(s) 568 representing 2,000 shares of Cardinal Energy stock

\* 627

EXHIBIT "I"

05100

existing under the laws of the State of Wisconsin, duly authorized to transact the business of indemnity and surety-  
ship in the State of Utah and having an office and principal place of business in said State  
at 525 E 4500 S, Salt Lake City, Ut, as Surety (hereinafter collectively called the "Obligors"),  
are held and firmly bound unto  
Cardinal Energy

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, pay-  
able 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 representa-  
tives, jointly and severally, firmly by these presents.

SEALED with the seals of the Obligors and executed in ONE 14th  
of December 82, 1982, day

WHEREAS, the Principal represents that said Principal is the owner of Certificate(s) No.(s) 568 ✓  
representing 2,000 shares of Cardinal Energy stock

\* 627  
registered in the name of Jeanne Winder 946575  
(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 trans-  
ferred 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 here-  
under, 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.

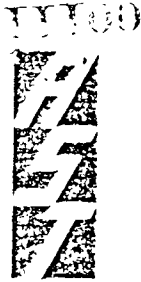
It is understood that the obligation hereby created in favor of any such Transfer Agent or Registrar shall not  
be affected by the termination of the agency of such Transfer Agent or Registrar.

CANCELLED 12-14-82

ISSUED 11-19-81

Jeanne Winder (L.S.)  
Jeanne Winder

NORTHWESTERN NATIONAL INSURANCE COMPANY,



ATLAS STOCK TRANSFER  
CORPORATION

May 4, 1988

LeAnna Broadwater  
3576 Oak Rim Way  
Salt Lake City, Utah 84109

RE: Checkrite International

Dear Ms. Broadwater:

Enclosed please find a photocopy of Cardinal Energy Corporation certificate number SL-0000258 for 8,000 shares registered in the name of Scott J. Fletcher.

This certificate was reported lost and in lieu of which a new security was issued under a bond of indemnity dated Aug. 23, 1982. Therefore, we must refuse your request for registration, and propose to retain and cancel this certificate.

Very truly yours,

Franklin L. Kimball  
Transfer Agent

FLK:pg  
Enclosures

EXHIBIT "J"

2710

July 11, 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 ~~for~~ subsequent 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

lb

EXHIBIT "K"

6770

July 27, 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.

EXHIBIT " L "

11100



Member NASD • SIPC

Mr. J. Michael Coombs  
72 East 400 South Suite 220  
Salt Lake City, UT 84111

November 25, 1988

Dear Mr. Coombs:

This letter is in response to your inquiring today regarding the market action of CHECK RITE INTERNATIONAL formerly Cardinal Energy.

Our firm is a primary market maker and has provided a continuous quotation for this stock to the investment community and the National Quotation Bureau. In researching our records, I find that CHECKRITE INTERNATIONAL had a high trade of \$1.25 per share on July 28, 1988.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ernest Muth', with a long horizontal flourish extending to the left.

Ernest Muth

EM/ka

EXHIBIT "M"

FEB 06 1990

JOHN MICHAEL COOMBS, No. 3639  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

By *Debra L. Bohne*  
Deputy Clerk

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

LeANNA BROADWATER,

Plaintiff,

v.

OLD REPUBLIC SURETY, a Wisconsin  
corporation doing business in  
Utah, NORTH WESTERN 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,

Defendants.

AFFIDAVIT OF ERNEST MUTH

Civil No. 89-0902684-CV

Judge Raymond S. Uno

STATE OF UTAH        )  
                          )ss.  
SALT LAKE COUNTY    )

Ernest Muth on his oath deposes and says as follows:

1. That your affiant is a stock broker employed by Bagley Securities, Inc., and  
for several years he has been a registered representative with the National Association of

Securities Dealers, Inc., ("NASD") and the Utah Securities Division. That he has personal knowledge and experience as to that which is contained herein.

2. That your affiant's firm, Bagley Securities, Inc., undertook transactions in the securities of Check-Rite from <sup>now JUNE</sup> May through August, 1988. That based on official records in the possession of Bagley Securities which your affiant has examined, the following is a list of the highest prices that the stock of Check-Rite was either bought or sold by Bagley Securities for the period(s) so indicated:

MAY, 1988:

FIRST WEEK:  
SECOND WEEK:  
THIRD WEEK:  
FOURTH WEEK:

HIGHEST  
PRICE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

JUNE, 1988:

FIRST WEEK:  
SECOND WEEK:  
THIRD WEEK:  
FOURTH WEEK:

HIGHEST  
PRICE

★ .25  
.41  
.30  
.40

JULY, 1988:

FIRST WEEK:  
SECOND WEEK:  
THIRD WEEK:  
FOURTH WEEK:

HIGHEST  
PRICE

.38  
.40  
.65  
\$1.25

AUGUST, 1988:

FIRST WEEK:  
SECOND WEEK:

HIGHEST  
PRICE

~~\$1.05~~ No Trade  
~~10~~ ✓ ✓

THIRD WEEK:  
FOURTH WEEK:

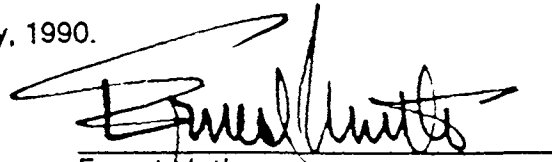
NO TRADES  
NO TRADES

3. To your affiant's best knowledge and belief, the highest price that the stock traded in Salt Lake City in 1988 was \$1.25 per share as evidenced by Exhibit "A" attached hereto and incorporated by reference, a true and correct copy of a Bagley Securities stock confirmation.

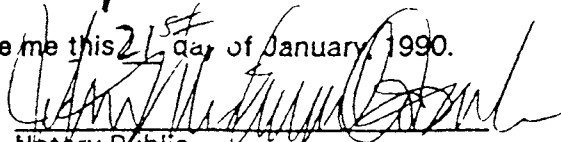
4. That Plaintiff LeAnna Broadwater has a brokerage account with your affiant and during the latter part of July and the beginning of August, 1988, your affiant was in regular communication with her about the price of Check Rite stock. That your affiant believes and is informed that if Ms. Broadwater had had a certificate of Check Rite to deliver, she would have sold it during the end of July or early August, 1988 when the price of the Company's stock achieved its highest price in 1988.

FURTHER SAITH AFFIANT NAUGHT.

DATED this 21<sup>st</sup> day of January, 1990.

  
Ernest Muth

SUBSCRIBED and SWORN to before me this 21<sup>st</sup> day of January, 1990.

  
Notary Public  
Residing at Salt Lake City, UT

My Commission Expires:

1/6/91

AFDVT.3

JOHN MICHAEL COOMBS, No. 3639  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

FILED  
COURT

FEB 17 1989

CLERK OF COURT  
SALT LAKE COUNTY

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

LeANNA BROADWATER,

Plaintiff,

v.

OLD REPUBLIC SURETY, a Wisconsin  
corporation doing business in  
Utah, NORTH WESTERN 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,

Defendants.

AFFIDAVIT OF CHUCK BURTON

Civil No. 89-0902684-CV

Judge Raymond S. Uno

STATE OF COLO. ) *COLORADO*  
                          ) ss.  
COUNTY OF \_\_\_\_\_ ) *DENVER*

Chuck Burton, on his oath, deposes and says as follows:

1. That your affiant has personal knowledge of that which is contained herein.

That during July and August 1988 your affiant was employed as an account executive with

~~Kobor Financial~~, a securities broker-dealer in Denver, Colorado.

*FITZGERALD TALMAN INC.,*

*(CB)*

2. That during the time your affiant was an account executive with ~~Kober~~ <sup>FITZGERALD TALMAN</sup> ~~Financial~~, it made a "market" in the stock of Check Rite International, Inc. (CB)

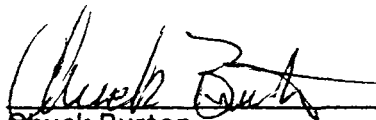
3. That your affiant recalls a conversation he had with Plaintiff LeAnna Broadwater some time in July 1988 in which she sought a quote on the stock of Check Rite.

4. That your affiant specifically recalls a transaction at ~~Kober Financial~~ <sup>FITZGERALD TALMAN INC</sup> in (CB) which a sale of Check Rite stock occurred at \$1 3/8 per share, exclusive of commissions.

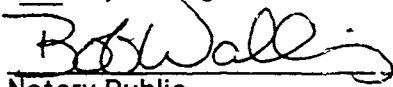
5. That your affiant believes and recalls that such transaction occurred at July 1988 end or early August 1988 and such was soon after your affiant's telephone conversation with Plaintiff LeAnna Broadwater.

FURTHER SAITH AFFIANT NAUGHT.

DATED this 18 day of ~~August~~ <sup>SEPTEMBER</sup> 1989. (CB)

  
Chuck Burton

SUBSCRIBED and SWORN to before me this 18th day of ~~August~~ <sup>SEPTEMBER</sup> 1989.

  
Notary Public  
Residing at Denver, Colorado

My Commission Expires:

11/2/91

STATE OF COLORADO  
COUNTY OF ARAPAHOE

JOHN MICHAEL COOMBS, No. 3639  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

---

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

---

LeANNA BROADWATER,

Plaintiff,

v.

OLD REPUBLIC SURETY, a Wisconsin  
corporation doing business in  
Utah, NORTH WESTERN 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,

Defendants.

AFFIDAVIT OF POTTER  
INVESTMENT COMPANY

Civil No. 89-0902684-CV

Judge Raymond S. Uno

---

STATE OF UTAH            )  
                                  )ss.  
SALT LAKE COUNTY        )

George "John" Potter, being first put on his oath deposes and says as follows  
on behalf of Potter Investment Company:

1. That your affiant is a principal of the securities brokerage firm here in Salt  
Lake City known as Potter Investment Company. That your affiant has power and authority

to make this affidavit on behalf of Potter Investment Company. That since the 1950's your affiant has been in the securities brokerage business and he has been a registered representative with the National Association of Securities Dealers, Inc., ("NASD") and the Utah Securities Division. That he has personal knowledge and experience as to that which is contained herein.

2. That Potter Investment Company bought certificate 258 from defendant Scott J. Fletcher and sold the same to plaintiff LeAnna Broadwater. That such certificate was properly endorsed by Fletcher and properly signature guaranteed as required in the industry. In the industry such a certificate is known as "street stock" and it was delivered to and accepted by plaintiff Broadwater on the settlement date of her purchase transaction with Potter Investment Company. That because Potter Investment Company received valuable consideration from Ms. Broadwater for her purchase of 8,000 shares of Check Rite, Potter Investment Company has and would have had no dispute as to whether Ms. Broadwater then became the true and lawful owner of certificate 258.

3. That sometime in mid-1988, Potter Investment Company learned about plaintiff's problem with respect to her request of Atlas Stock Transfer, Check Rite's transfer agent, to transfer and register Check Rite certificate 258 into her name.

4. That sometime in the end of June or the first week of July 1988 your affiant recalls engaging in a telephone conversation with an individual who identified himself as Paul S. Guardalabene and who further identified himself as an employee or agent of Old Republic Surety, the insurance company that had written a lost instrument bond on Check Rite certificate 258. That your affiant had a lengthy discussion with Mr. Guardalabene about penny stocks and lost instrument bonds, etc., one that lasted probably at least 30

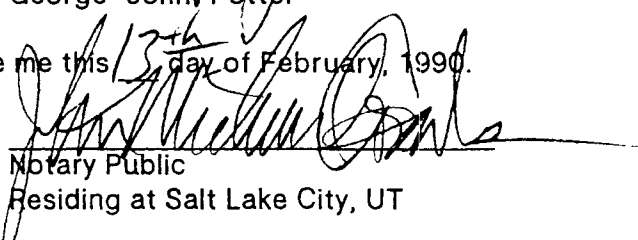
minutes or more. That during such conversation with Mr. Guardalabene, your affiant informed Mr. Guardalabene that penny stocks such as Check Rite were highly volatile and it was your affiant's suggestion to Mr. Guardalabene that it would be in Guardalabene's best interest to quickly resolve any dispute with plaintiff LeAnna Broadwater as the stock could appreciate in value.

FURTHER SAITH AFFIANT NAUGHT.

DATED this 13 day of February, 1990.

  
George "John" Potter

SUBSCRIBED and SWORN to before me this 13<sup>th</sup> day of February, 1990.

  
Notary Public  
Residing at Salt Lake City, UT

My Commission Expires:

4/6/91  
AFDVT.7

JOHN MICHAEL COOMBS, No. 3639  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

FILED  
JUN 13 1989  
CLERK OF DISTRICT COURT  
SALT LAKE COUNTY, UTAH

---

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

---

LeANNA BROADWATER,

Plaintiff,

v.

OLD REPUBLIC SURETY, a Wisconsin  
corporation doing business in  
Utah, NORTH WESTERN 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,

Defendants.

SUPPORTING AFFIDAVIT OF  
PENNY G. GRACE

Civil No. 89-0902684-CV

Judge Raymond S. Uno

---

Attached hereto in support of Plaintiff's Motion for Summary Judgment on  
Counts I and II of her Amended Complaint is the Affidavit of Penny G. Grace, Assistant Vice  
President of Thomson McKinnon Securities, Inc.

**THOMSON  
MCKINNON SECURITIES INC.**

333 CHESTERFIELD CENTER BLDG., SUITE 100, CHESTERFIELD, MISSOURI 63017 314 532-2400

August 8, 1989

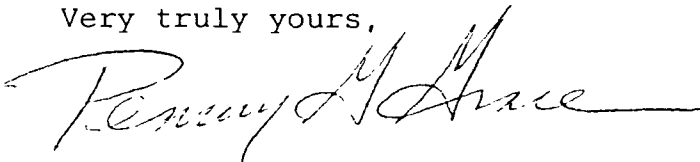
Mr. Michael Coombs  
72 East-400 South  
Suite 220  
Salt Lake City, Utah 84111

Dear Mr. Coombs:

In regard to your inquiry on the Checkrite stock, I can attest to the fact that I have been purchasing Checkrite stock for clients since September 17, 1987. I have purchased these shares for clients at various prices. The highest price I paid for the stock was at 1-5/16 on July 28, 1988 when I purchased 20,000 shares of Checkrite for various clients.

I have enclosed my business card. Please let me know if I can be of further assistance.

Very truly yours,



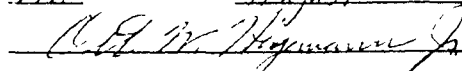
Penny G. Grace  
Asst. Vice President

PGG/kk

STATE OF Missouri  
COUNTY OF ST. LOUIS

PENNY GRACE BEING DULY SWORN, DEPOSES AND SAYS THAT SHE PERSONALLY APPEARED BEFORE ME AND SWORE TO THE ABOVE STATEMENT ON THIS

8th DAY OF August, 1989

  
NOTARY PUBLIC

MY COMMISSIONS EXPIRES Nov 28, 1990

[illegible]

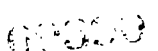
LeANNA BROADWATER,	:	
	:	
Plaintiff,	:	AFFIDAVIT OF PLAINTIFF IN
	:	SUPPORT OF HER MOTION FOR
v.	:	SUMMARY JUDGMENT ON COUNTS
	:	I AND II OF HER AMENDED
	:	COMPLAINT
OLD REPUBLIC SURETY, a Wisconsin	:	
corporation doing business in	:	
Utah, NORTH WESTERN NATIONAL	:	
INSURANCE COMPANY OF MILWAUKEE,	:	
WISCONSIN, a Wisconsin	:	
corporation, doing business in	:	
Utah, ATLAS STOCK TRANSFER, a	:	Civil No. 89-0902684-CV
Utah Corporation, CHECK RITE	:	
INTERNATIONAL INC., f/k/a	:	Judge Raymond S. Uno
CARDINAL ENERGY CORPORATION, a	:	
Utah corporation, and SCOTT J.	:	
FLETCHER, a Utah resident,	:	
	:	
Defendants.	:	

LeAnna Broadwater, on her oath, deposes and says as follows in Support of her Motion for Summary Judgment on Counts I and II of her Amended Complaint:

- 1 -

2. That your affiant has carefully read and helped prepare the Statement of Undisputed Facts in her Memorandum in Support of her Motion for Summary Judgment on counts I and II of her Amended Complaint and in fact, she personally participated in the drafting thereof. That in an effort not to duplicate each of such enumerated Facts as detailed therein in this affidavit, your affiant can attest that each and every such Statement of Undisputed Fact therein as it pertains to her and her knowledge and experience as to how she was mistreated, misled, and "lulled" by certain of the defendants and, as to what otherwise transpired in this case, is true and correct in all particulars.

3. That your affiant can attest that had she had a replacement certificate for Certificate 258 at July-end/August beginning 1988 she would have sold it. She further believes that she would have received the highest price that such stock reached in 1988, namely, \$1-5/16ths per share, or, at a minimum, at least \$1.25 per share. This is because your affiant knew of a pending Check Rite merger and she also had a brokerage account with Ernest Muth and was daily, if not very closely, following the price of the stock at that time. For instance, your affiant would have had an open order placed in which to sell the stock at that time. On the other hand, your affiant believes that had she had a replacement certificate at such time, she may have well received \$1-5/16ths per share as set forth in the supporting affidavit of Penny Grace. Thus, your affiant believes that she is entitled to at least \$10,000 in damages (8,000 shares x \$1.25 per share) and perhaps \$10,500 in damages (8,000 shares x \$1-5/16ths per share). Your affiant further believes that she is entitled to pre-judgment interest at the highest legal rate or at a rate of no less than 12% and in her Amended Complaint she has indeed asked for pre-judgment interest. Lastly, your affiant has incurred attorney fees of at least \$10,000 just trying to protect and enforce her rights,



and she believes that such incurred fees have caused her additional damage which would not have occurred but for the wrongful conduct of the insurance company defendants and defendants Atlas and Check Rite.

4. That your affiant believes that the defendants (with the exception of defendant Fletcher) had a duty to make her whole, a duty which included immediately going out into the market in May 1988 and buying 8,000 shares of stock to replace Certificate 258 on which a lost instrument bond had been posted. That the misfortune of this entire case is that no responsible entity or person would help your affiant in any way and no one wanted to take responsibility for the problem until there was nothing left to do but file a lawsuit -- and even then, the defendants would rather spend more money litigating this case than giving your affiant what she truly deserves.

5. That your affiant believes that Guardalabene's investigation of the matter was exclusively for his own employer and Fletcher, the principal on the bond, and had nothing to do with her inasmuch as she is and was a totally innocent victim. That your affiant believes that Atlas, Check Rite, and the insurance company defendants have no excuse not to have immediately purchased 8,000 shares of replacement stock in May 1988 and thereafter and immediately delivered the same to her.

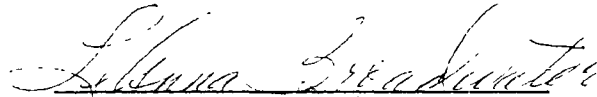
6. That your affiant does not believe that she had an obligation to go out and "cover", namely, to go out into the market herself and with her own money buy replacement stock for four reasons: (1) the problem was not her fault, (2) no one ever told her to "cover" or do anything else at any time, (3) she did not have the resources or cash on hand to have so bought replacement stock herself, and (4) she was not "short" the stock herself, namely, she had not sold it to or by or through anyone else and therefore she had no duty herself to

deliver 8,000 shares of replacement stock to any third party. That your affiant believes that had she been "short" 8,000 shares herself then she arguably would have had a duty to "cover", but under the circumstances of this case, she did not. That if anyone involved in the case had simply informed your affiant that your affiant should have "covered" -- just to avoid this lawsuit your affiant would have done so. Unfortunately, no one did and your affiant had no reason to think she was acting other than as reasonably as could be expected of anyone.

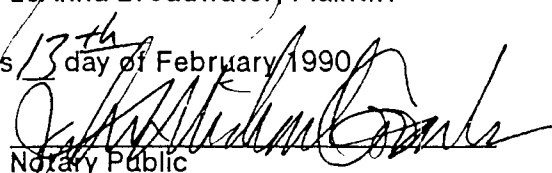
7. That your affiant has incurred additional damages of substantial unwarranted attorney fees, costs, including out-of-pocket expenses, and time expended and she believes that she is entitled to such additional damages on which there should be an evidentiary hearing.

FURTHER SAITH AFFIANT NAUGHT.

DATED this 13 day of February, 1990.

  
LeAnna Broadwater, Plaintiff

SUBSCRIBED and SWORN to before me this 13<sup>th</sup> day of February 1990

  
Notary Public  
Residing at Salt Lake City, UT

My Commission Expires:

1/6/91

B:AFDVT.8



1. That your affiant is the sole plaintiff in the above-matter and she has personal knowledge and experience as to that which is contained herein. That your affiant incorporates by reference her affidavit filed in support of her cross-motion for summary judgment on Counts I and II of her Amended Complaint.

2. That your affiant disputes the defendants' calculation of a "reasonable time" as set forth in their memorandum in support of their motion for partial summary judgment. That your affiant believes that she could not have acted more reasonably under the facts and circumstances of this case and she believes that defendants Atlas, Check Rite, Northwestern National, and Old Republic did not. That in fact, none of the responsible parties would assist her or do anything to resolve the problem and in fact there was nothing she could do under the circumstances other than eventually file this lawsuit.

3. That your affiant believes that the conduct of the above-mentioned defendants "lulled" her into thinking that they would resolve the matter when they would not and did not, and if the Court invokes a "reasonable time" period after the conversion and notice of conversion, such a period should be tolled or extended by virtue of the misconduct of the above-named defendants -- certainly not by any conduct on your affiant's part. That less than 90 days after the alleged date of conversion is a "reasonable time" in this case because your affiant acted reasonably during all that period and she does not know how it is possible that she could have acted more reasonably or diligently. That your affiant believes that no reasonable person in her shoes would have acted any differently and certainly no one, under the same circumstances, would have thought that he or she had an independent duty to effect "cover" and buy replacement stock, especially when no defendant informed your affiant of such and such only became an issue after this

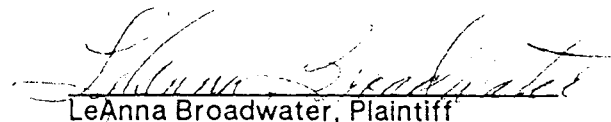
case was filed. That your affiant believes that no reasonable person would have spent several thousand dollars of his or her own money buying replacement stock when any such person, and your affiant in particular, is the sole victim of the gross negligence, malfeasance, misfeasance, and overall intentional conduct of the defendants.

4. Because your affiant acted reasonably and the culpable defendants did not, a "reasonable time" after the conversion and notice of conversion should include a time period up to and until July end/August beginning 1988 when the price of Check Rite stock admittedly attained its highest price of \$1-5/16th per share.

5. Lastly, your affiant should add that during one conversation with Guardalabene, Guardalabene tried to get your affiant to deal directly with Fletcher to resolve the problem. Your affiant responded that she did not think such was her responsibility. At that point, Guardalabene informed your affiant that because she was a "layman" and apparently didn't understand the situation, she should get a lawyer. Your affiant then understood Guardalabene to say that he would no longer deal with her directly until she consulted with legal counsel and had him talk directly to Guardalabene. Your affiant can attest that after she retained counsel, who in fact tried to negotiate unsuccessfully with Guardalabene, Guardalabene was still unwilling to resolve the problem and therefore, Guardalabene caused your affiant to incur unwarranted and unjustified attorney fees, not only prior to filing suit, but thereafter as well.

FURTHER SAITH AFFIANT NAUGHT.

DATED this 13<sup>th</sup> day of February, 1990.

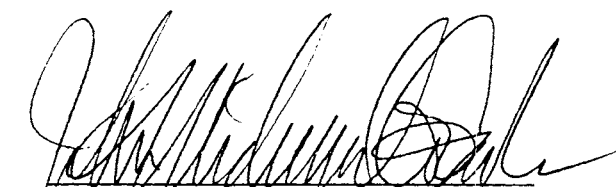
  
LeAnna Broadwater, Plaintiff

SUBSCRIBED and SWORN to before me this 13<sup>th</sup> day of February 1990.

My Commission Expires:

1/6/91

B:AFDVT.9

  
Notary Public  
Residing at Salt Lake City, UT

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

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

---

LeANNA BROADWATER	)	
	)	
Plaintiff,	)	AFFIDAVIT OF PAUL S.
	)	GUARDALABENE
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,	)	Civil No. 89-0902684-CV
ATLAS STOCK TRANSFER, a Utah	)	Honorable Raymond S. Uno
corporation, CHECK RITE INTER-	)	
NATIONAL, INC. f/k/a CARDINAL	)	
ENERGY CORPORATION, a Utah	)	
corporation, and SCOTT J.	)	
FLETCHER, a Utah resident,	)	
	)	
Defendants.	)	

---

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.

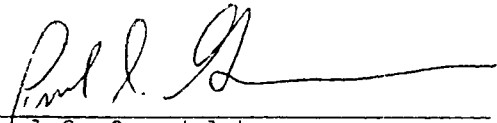
26. At no time during my dealings with plaintiff did affiant indicate or infer that plaintiff had a right to recover any damages directly from Old Republic.

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

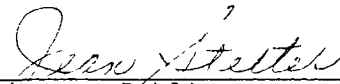
did affiant intend to or do anything to stall or delay the claims handling process and the ultimate resolution of the potential obligees' claims under the subject bond.

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 27<sup>th</sup> day of February, 1990.

  
\_\_\_\_\_  
Paul S. Guardalabene

Subscribed and sworn to before me this 27<sup>th</sup> day of February, 1990.

  
\_\_\_\_\_  
Notary Public  
Residing at Madison 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 5<sup>th</sup> day

of March, 1990, to:

John Michael Coombs  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
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  
Chadwick

FILED DISTRICT COURT  
Third Judicial District

JOHN MICHAEL COOMBS, No. 3639  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

JUN 6 1990  
By [Signature]  
Clerk

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

LeANNA BROADWATER,

Plaintiff,

v.

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,

Defendants.

JUDGMENT AND ORDER

2157473  
6-13-90 8:01 am

Civil No. 89-0902684-CV

Judge Raymond S. Uno

The Court having reviewed the file, having heard oral argument on May 1, 1990, including the memorandums and affidavits filed in support of and in opposition to several motions, the Court being fully advised and good cause further appearing, hereby enters judgment and further orders as follows:

1. Defendants' motion for summary judgment on plaintiff's first and second causes of action is denied.

2. Plaintiff's motion for summary judgment on Counts I and II of her amended complaint is granted and judgment is hereby entered in favor of plaintiff and against defendants Atlas Stock Transfer and Check Rite International, Inc., in the amount of \$10,500.00 with interest thereon at 10% per annum since July 31, 1988. Pursuant to Rule 54(d)(1) of the Utah Rules of Civil Procedure plaintiff is hereby awarded costs. Further, pursuant to §15-1-4, Utah Code Ann., interest shall accrue on this judgment from the date of its entry at the rate of 12% per annum. The matter of plaintiff's attorney's fees is taken under advisement and will be ruled upon after the submission of a detailed affidavit in support of such an award.

3. Defendants Old Republic Surety and Northwestern National's motion for an order striking the affidavits of plaintiff, Chuck Burton, Potter Investment Company, and Penny Grace is denied.

4. Defendant Old Republic Surety and Northwestern National's motion to strike certain portions of plaintiff's memorandum in opposition to defendants' motion for partial summary judgment and plaintiff's memorandum in support of her motion for partial summary judgment is granted.

5. Defendants Old Republic Surety and Northwestern National's motion for summary judgment dismissing plaintiff's third, fourth, and fifth causes of action in her amended complaint as against them is granted, but any award of attorney's fees is denied.

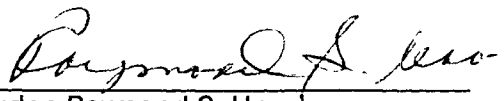
6. Plaintiff's motion for sanctions against the insurance company defendants and their counsel is denied.

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED this 6<sup>th</sup> day of June, 1990.

In re: Broadwater v. Old Republic Surety, et al.  
Civil No. 89-0902684-CV  
JUDGMENT AND ORDER

Third District Court

  
\_\_\_\_\_  
Judge Raymond S. Uno

0200:JUDG.1

FILED SEP 17 1990  
Third Judicial District

JOHN MICHAEL COOMBS, No. 3639  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

SEP 17 1990

By *[Signature]* SALT LAKE COUNTY  
Deputy Clerk

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

LeANNA BROADWATER,

Plaintiff,

v.

OLD REPUBLIC SURETY, a Wisconsin  
corporation doing business in  
Utah, NORTH WESTERN 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,

Defendants.

JUDGMENT FOR ATTORNEY'S  
FEES

Civil No. 89-0902684-CV

Judge Raymond S. Uno

A hearing having been held in the above-entitled Court on September 6, 1990,  
at the hour of 9:30 a.m., on the issue of attorney's fees; John Michael Coombs having  
appeared for plaintiff Broadwater; Stephen J. Trayner having appeared on behalf of  
defendants Old Republic Surety and Northwestern National Insurance Company of  
Milwaukee, Wisconsin; Larry G. Reed having appeared for defendant Atlas Stock Transfer;

no appearance having been made by defendant Check Rite International, Inc., in that its local counsel claims to have had no notice of the hearing, and <sup>local</sup> counsel for Check Rite was not included on the mailing certificate. PRT

The Court having heard the arguments of counsel and read the affidavits and memorandums on file; it having also heard the parties' oral stipulation that plaintiff is bound by the terms of her contingency fee arrangement with her counsel, and, in that regard, the Court having further acknowledged that plaintiff has a one-third (1/3)/two-thirds (2/3's) contingency fee arrangement with her counsel, as set forth in Exhibit "A" attached hereto and incorporated by reference, and good cause further appearing, the Court ruled as follows:

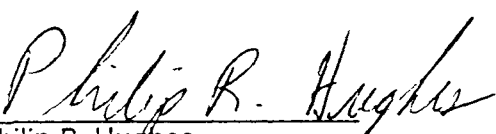
Plaintiff LeAnna Broadwater is hereby awarded a judgment against defendants Atlas Stock Transfer and Check Rite International, Inc., for attorney's fees in the amount of one-third (1/3) of the amount of the judgment entered against such defendants on June 6, 1990, a true and correct copy of which is attached hereto and incorporated into this judgment by reference as Exhibit "B".

DATED this 7<sup>th</sup> day of September, 1990.

THIRD DISTRICT COURT

  
Third District Judge Raymond S. Uno

Approved as to form:

  
Philip R. Hughes  
Counsel to Check Rite International, Inc.

March 22, 1989

Mr. John Michael Coombs, Lawyer  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111

Dear Michael:

I have searched my telephone records and, apparently, have given you all the information on calls I made to Guardalabene.

I have recieved the most recent offer and find it absolutely ridiculous. As you will note, in previous correspondence I sent to Guardalabene, dated July 11th, he had proposed over the phone to pay me the amount I had paid for the stock for settlement, which was \$2,480, and I flatly refused and asked that he just simply replace the stock and allow me to sell it at whatever price I chose. That is why I am so adamant about their paying me the highest price the stock traded at plus punitive damages or attorneys fees because of their unwillingness to settle the matter with me at that time.

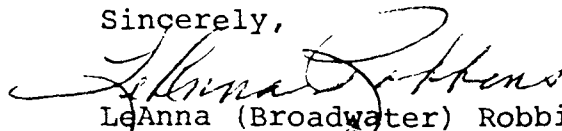
I'm not sure we want to go into such detail with Fletcher, but you're the expert and I will leave that decision up to you. You had mentioned previously about asking for a Summary Judgment. What is your thinking on that now?

Below I have outlined our agreement the way I believe we discussed it. If it is satisfactory to you, please make a copy, sign it and return for my files.

I have previously submitted a \$1,500 retainer to you which is to be deducted from your total fees.

It is agreed that you are entitled to one third of whatever is recovered. However, it is further agreed that if it is necessary to go to trial then you will be entitled to half of whatever is recovered. Except if punitive damages are awarded, I will be entitled to the first \$8,000 of whatever is awarded and then we will split the remainder on a 50/50 basis.


Sincerely,

  
LeAnna (Broadwater) Robbins

lr

AGREED AND ACCEPTED THIS 22<sup>th</sup> DAY OF March, 1989.

SIGNED:

  
J. Michael Coombs, Lawyer

FILED DISTRICT COURT  
Third Judicial District

JOHN MICHAEL COOMBS, No. 3639  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111  
Telephone No.: (801) 359-0833

JUN 6 1990  
*[Signature]*  
By \_\_\_\_\_ Deputy Clerk

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

LeANNA BROADWATER,

Plaintiff,

v.

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,

Defendants.

JUDGMENT AND ORDER

2157473  
6-13-90 8:01 am

Civil No. 89-0902684-CV

Judge Raymond S. Uno

The Court having reviewed the file, having heard oral argument on May 1, 1990, including the memorandums and affidavits filed in support of and in opposition to several motions, the Court being fully advised and good cause further appearing, hereby enters judgment and further orders as follows:

1. Defendants' motion for summary judgment on plaintiff's first and second causes of action is denied.

2. Plaintiff's motion for summary judgment on Counts I and II of her amended complaint is granted and judgment is hereby entered in favor of plaintiff and against defendants Atlas Stock Transfer and Check Rite International, Inc., in the amount of \$10,500.00 with interest thereon at 10% per annum since July 31, 1988. Pursuant to Rule 54(d)(1) of the Utah Rules of Civil Procedure plaintiff is hereby awarded costs. Further, pursuant to §15-1-4, Utah Code Ann., interest shall accrue on this judgment from the date of its entry at the rate of 12% per annum. The matter of plaintiff's attorney's fees is taken under advisement and will be ruled upon after the submission of a detailed affidavit in support of such an award.

3. Defendants Old Republic Surety and Northwestern National's motion for an order striking the affidavits of plaintiff, Chuck Burton, Potter Investment Company, and Penny Grace is denied.

4. Defendant Old Republic Surety and Northwestern National's motion to strike certain portions of plaintiff's memorandum in opposition to defendants' motion for partial summary judgment and plaintiff's memorandum in support of her motion for partial summary judgment is granted.

5. Defendants Old Republic Surety and Northwestern National's motion for summary judgment dismissing plaintiff's third, fourth, and fifth causes of action in her amended complaint as against them is granted, but any award of attorney's fees is denied.


6. Plaintiff's motion for sanctions against the insurance company defendants and their counsel is denied.

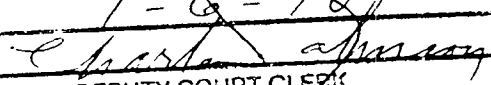
IT IS SO ORDERED, ADJUDGED AND DECREED.

DATED this 6<sup>th</sup> day of June, 1990.

In re: Broadwater v. Old Republic Surety, et al.  
Civil No. 89-0902684-CV  
JUDGMENT AND ORDER

Third District Court

  
\_\_\_\_\_  
Judge Raymond S. Uno

THAT THE DEPUTY COURT  
CLERK HAS FILED IN THE  
COURT, SALT LAKE COUNTY, STATE OF  
UTAH  
DATE 9-8-98  
  
\_\_\_\_\_  
DEPUTY COURT CLERK

0200:JUDG.1

Larry G. Reed - 2709  
Crowther & Reed  
Attorneys for Atlas Stock Transfer  
455 South 300 East, Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 531-9865

RECEIVED  
OCT 19 1990

OCT 19 1990  
By Raymond S. Uno  
Leah Clark

---

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

---

LeANNA BROADWATER,	)	
	)	
Plaintiff,	)	ORDER GRANTING AMENDED
	)	RULE 54(b) MOTION TO
vs.	)	CERTIFY JUDGMENTS AS
	)	FINAL
OLD REPUBLIC SURETY, a Wisconsin	)	
corporation doing business in	)	
Utah, NORTH WESTERN NATIONAL	)	
INSURANCE COMPANY OF MILWAUKEE	)	
WISCONSIN, a Wisconsin corpo-	)	
ration, doing business in Utah,	)	Civil No. 89-0902684-CV
ATLAS STOCK TRANSFER, a Utah	)	
Corporation, CHECK RITE INTER-	)	Honorable Raymond S. Uno
NATIONAL, INC. f/k/a CARDINAL	)	
ENERGY CORPORATION, a Utah	)	
corporation, and SCOTT J. FLETCHER,	)	
a Utah resident,	)	
	)	
Defendants.	)	

---

The Motion of defendants Atlas Stock Transfer Corp., Old Republic Surety, North Western National Insurance Company and Check Rite International, Inc. to Certify Judgment as final pursuant to Rule 54(b), *Utah Rules of Civil Procedure*, having come on for decision before the above entitled Court on October 18, 1990, the Honorable Raymond S. Uno, presiding, and plaintiff appearing

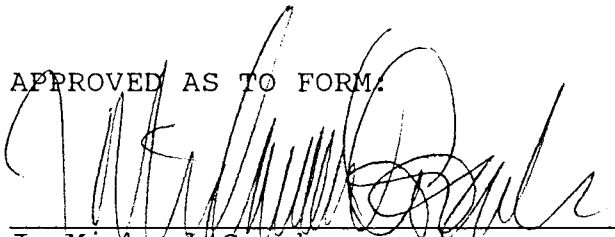
through counsel, J. Michael Coombs, defendant Atlas Stock Transfer Corp. appearing through counsel, Larry G. Reed, defendants Old Republic Surety and North Western National Insurance Company appearing through counsel, Stephen J. Trayner, and defendant Check Rite International through counsel, Phillip R. Hughes, and the Court having reviewed the Memoranda supporting and opposing said Motion and having heard the arguments and representations of counsel, and it appearing to the Court that multiple claims for relief have been presented in this action, that the Judgments dated June 6 and September 17, 1990 would be appealable but for the fact that other claims and parties remain in this action, and that there is no just reason for delay and further that the decision set forth in this Court's Memorandum Decision, dated May 24, 1990, constitutes a final determination of plaintiff's claims as set forth in Counts I and II of her Amended Complaint and good cause appearing therefor;

THE COURT HEREBY ORDERS and certifies that the Judgment entered by this Court on June 6, 1990 and the Judgment for Attorney's Fees, entered on September 17, 1990, are both final and appealable within the meaning of Rule 54 (b), *Utah Rules of Civil Procedure*.

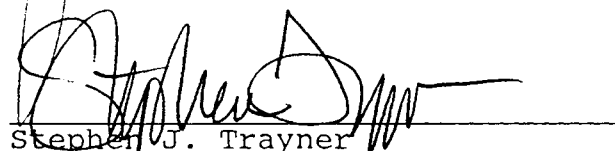
DATED this 19<sup>th</sup> day of October, 1990.

  
Honorable Raymond S. Uno

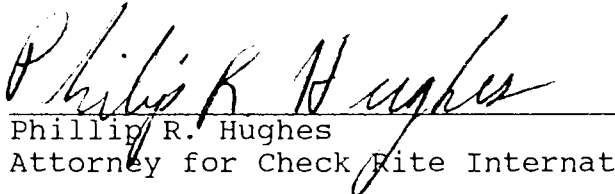
APPROVED AS TO FORM.



J. Michael Coombs  
Attorney for Plaintiff



Stephen J. Trayner  
Attorney for Old Republic Surety  
and North Western National Insurance



Phillip R. Hughes  
Attorney for Check Rite International, Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was mailed, postage prepaid, this 19 day of October, 1990, to:

J. Michael Coombs  
Attorney for Plaintiff  
72 East 400 South, Suite 220  
Salt Lake City, Utah 84111

Blake T. Ostler  
KIRTON, McCONKIE & POELMAN  
Attorneys for Defendant Fletcher  
60 East South Temple, Suite 1800  
Salt Lake City, Utah 84111

Phillip R. Hughes  
Attorney for Check Rite International, Inc.  
844 South 200 East, Suite 100  
Salt Lake City, Utah 84111

Stephen J. Trayner  
STRONG & HANNI  
Attorneys for Old Republic Surety  
9 Exchange Place, #600  
Salt Lake City, Utah 84111

