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CONSOLIDATED NO. 65001-7
COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

DAVID C. THOMPSON, an individual,

Respondent / Cross-Appellant,

v.

DATAMARINE INTERNATIONAL, INC, a Washington Corporation;
NARROWBAND NETWORK SYSTEMS, INC, a Washington
Corporation; and SEA INC. OF DELAWARE, a foreign corporation,

Defendants, and

DOLORES DRAIN, an individual, MARCUS DUFF, an individual, and
JAMES SYLVIA, an individual.

Appellants / Cross-Respondents.

Appeal from King County Superior Court
No. 06-2-20885-4 SEA

APPELLANTS/CROSS RESPONDENTS' REPLY BRIEF

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SEA INC. OF DELAWARE

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I. INTRODUCTION

Shareholders respectfully submit this brief in reply to Thompson's response to their appeal, and in response to Thompson's cross-appeal.

II. ARGUMENT

A. THOMPSON PROPOSES INCORRECT STANDARDS OF REVIEW AND MISFRAMES THE ISSUES.

Thompson re-frames the issues on appeal as: Was there "substantial evidence to support Judge Heller's findings and conclusions" that Thompson "did not breach his fiduciary duties and acted in good faith regarding" each of the three substantive claims. But the determination as to whether Thompson breached his fiduciary duties and acted in good faith are conclusions of law, or are the application of law to findings of fact, both reviewed *de novo*. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wash.2d 873, 880, 73 P.3d 369 (2003); American Nursery Products., Inc. v. Indian Wells Orchards, 115 Wn.2d 217, 222, 797 P.2d 477 (1990). Because of this error as to the standard of review and framing of the issues, much of Thompson's brief is addressed to matters not pertinent to this appeal.

Moreover, very little of the evidence Thompson advances in support of the trial court's conclusions of law are contained in the findings

of fact. *See, e.g., Respondent's Brief, pp.20-1, 24-5, 27* ("RB p._")

This Court reviews the record to see if there is support for the findings of fact, and independently determines whether the findings of fact support the conclusions of law. *American Nursery, supra*. That is a very different undertaking than what Thompson addresses in his brief.

B. THE BUSINESS JUDGMENT RULE DOES NOT APPLY.

Thompson attempts to put a gloss on the entire case, inviting the court not to examine the actual facts, but to rule on general principles and broad conclusory statements. Thompson argues that the business judgment rule should be the prism through which the court of appeals views this case. **RB p.17**. For the three substantive claims on appeal, the court only applied the business judgment rule to the LA License sale claim, not the preference or expense claims. **CP 73-76**. The claims here were not based on simple allegations of mismanagement, but self-dealing, to which the business judgment rule does not apply. *Grobow v. Perot*, 539 A. 2d 180, 187 (Del. 1988). The context in which the Court should consider this case, is the heightened scrutiny that comes when officers and directors deal with their companies on their own behalf.¹ *Saviano v.*

¹ Thompson claims that Shareholders have not challenged any of the trial court's conclusions of law, which are now the law of the case. **RB pp. 2, 17**. Shareholders have

Westport Amusements, 144 Wn.App. 72, 79-80, 180 P.3d 874 (Wash. 2008)

C. THOMPSON HAS SHOWN NO GROUNDS TO UPHOLD THE JUDGMENT ON THE LA LICENSE SALE CLAIM.

Shareholders' appeal on the LA License sale claim is based primarily on the trial court's errors in (1) determining the fair value of the LA Licenses² (FOF Q.4, **CP 68**); and (2) interpreting the Operating Agreement between Incom and NNS to apply to third parties who purchased assets from them (FOF Q.2, **CP 68**). Because he mis-framed the standard of review and issues, Thompson's main arguments are directed at demonstrating 'fair value' based on (rather thin) evidence in the record, not found in the court's findings of fact. **RB pp.20-21, CP 68.**

Thompson asserts that Shareholders have not assigned error to any of the trial court's findings of fact or conclusions of law. **RB p.2.** Clearly Shareholders have done so, and have identified those errors and issues

of course expressly challenged numerous conclusions of law, including those involving the business judgment rule. *See Appellants' Brief pp. 16, 18, 19, and 21 ("AB p._").*

² Thompson complains that the "Shareholders consistently and erroneously refer to the sale as the sale of 220 MHz Licenses". **RB p. 19.** The term fairly describes the core of the transaction, and was used at trial without confusion by Thompson's counsel (**RP 09/29/09**, Opening Statements, p.26), and Shareholders' counsel alike, including while questioning Thompson (**RP 10/06/09** p.85). It was also used by the parties to the transaction at the time (**Ex. 569** "Proposed Resolution of License Sale"), even on Gene Clothier's down payment check (**Ex. 440** "Deposit on LA Licenses"). Given that the management agreements sold to Gene Clothier included the right to acquire the licenses and related equipment and systems at no cost at any time, the term is frankly more accurate. **Ex. 431**, p.3, ¶7.

with enough clarity for Thompson to respond in detail. To the extent Thompson is faulting Shareholders for not putting their challenges to the findings of fact or conclusions of law in the proper location in the brief, a technical violation of the rules will not ordinarily bar appellate review where justice is to be served. Goehle v. Fred Hutchinson Cancer Research Center, 100 Wn.App. 609, 613, 1 P.3d 579 (2000). The appellate court will review the merits of the appeal where the nature of the challenge is perfectly clear and the challenged ruling is set forth in the appellate brief.

Id.

1. *No Evidence Supports Finding of Fact Q.4.*

Finding of Fact Q.4 contains clear error by holding “The revenues that these three licenses generated between 1997 and the middle of 2002 totaled \$71,923.50. Under the management agreements and Operating Agreement, SEA was entitled to 20% of that amount.” **CP 68** Thompson does not quite concede the error in the court’s interpretation of Ex. 41, but does not put up a vigorous defense.

Thompson argues that the court never states he relied on Ex. 41 to the exclusion of all evidence. **RB p.22**. Thompson’s mis-framing of the issues leads to error here. The trial court’s conclusions of law need to be supported by the findings of fact, but Thompson has not identified any

other findings on which the determination of value could be based. **Id.** The trial court's findings of fact need to be supported by evidence in the record, but Thompson cites nothing on which the revenue figures in FOF Q.2 could be based.

It is very clear that the court erred in accepting Thompson's mischaracterization of Ex. 41. The licenses generated royalties for NNS of at least \$71,923.50 from 1997 to mid-2002, not \$14,384.70. **Ex. 41** expressly states that there is "apx 17,000 in revenue per quarter for the three licenses / avg 1900 per license per month or 5700 per month / which we received 20%." That's about \$360,000 in revenue over the time period in question, which NNS received 20%. Thompson makes no attempt to explain how these numbers and FOF Q.4 can possibly be consistent.

Thompson also argues that Shareholders' argument should not be considered because they made a "calculated decision" not to "explore" their "interpretation" of Ex. 41 at trial, and waited 8 weeks after the entry of the Amended FOFCOL to bring their motion for reconsideration. **Id.**, citing Teratron v. Instit. Inv. Trust, 18 Wn.App. 481, 489-90, 569 P.2d 1198 (1997). First, Shareholders didn't even need to bring the motion for reconsideration to preserve their right to raise this issue on appeal. CR 52(b) provides, in pertinent part:

When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment.

Teratron is not on point because it involved the introduction of a new legal theory after trial, not a challenge to a finding of fact. Teratron, 18 Wn.App. at 489. Moreover, Shareholders can hardly be faulted for not catching Thompson's misinterpretation of Ex. 41 earlier. No one put on an income theory of valuation at trial. Thompson did not mention Ex. 41 or his misinterpretation of its revenue figures in pleadings (**CP 1-28, 41-46**), opening statement (**RP 09/29/09**, Opening Statements, pp. 19-21), his trial brief (**RCP 1-20**), or closing argument. **RP 10/09/09**, pp. 43, 46. He put on no witness to testify about, or based on, Ex. 41 or any other income figures.

The idea that Shareholders made a "calculated decision" not to explore Thompson's misinterpretation is outrageous given that a single look at one of the source documents (discussed *infra*) erases any possibility of confusion as to the nature of the numbers on Ex. 41. If Thompson had brought his misinterpretation into the clear light of day, it would have been immediately exposed. If there was any calculated decision on this matter, it was Thompson's.

Thompson also argues that the review of Ex. 41 should not be *de novo*, because Shareholders argue that the author of Ex. 41 “got it wrong”, and “[w]here competing documentary evidence has to be weighed and conflicts resolved, the substantial evidence standard of review applies.” **RB p. 23**, citing In re Marriage of Rideout, 150 Wn.2d 337, 351, 77 P. 3d 1174 (2003). What competing documentary evidence? What conflict? What “it”? Thompson does not say. The only point Shareholders made about the author of Ex. 41 ‘getting it wrong’ is that the royalty payments shown there can’t be used to calculate gross revenues generated by the licenses. The numbers themselves are perfectly fine, so long as one understands their limitations and doesn’t mistakenly reduce them by 80%.

In a footnote to this point, Thompson argues “[t]he Shareholders conceded [that the author of Ex. 41 got it wrong] when they offered an exhibit in their motion for reconsideration that they did not offer at trial.” **RB p.23, fn 10**. The document they are referring to is one of the source documents for Ex. 41, and it shows irrefutably that the table of quarterly revenue numbers on Ex. 41 reflects revenues received by NNS³. *See* Ex. B to Declaration of Thomas J. Seymour in Support of Motion for

³ The License Payee Summary Report for the So. Calif. Region shows (1) for Q1 2002, 20% payment for a 5 channel system in the region is \$1,124.11; (2) NNS has three systems in the So. Calif. Region; and (3) NNS is owed \$3,372.33 for Q1 2002. That is the exact number entered for Q1, 2002 on Ex. 41. The numbers in the tables on Ex. 41 can only reflect payments to NNS for the LA Licenses, not gross revenues for them.

Reconsideration, King County Superior Court Sub# 377, filed 1/27/10, Supplemental CP _____, **App. at A-22**. The document was produced to Thompson in discovery. **RCP 534**.

2. *The Court Erred by Ignoring Comparable Sales.*

Thompson argues that the trial court was justified in ignoring comparable sales because each license is unique and their value is dependent on a “whole host of variables.” **RB** p.24. Based on that, “Judge Heller *may well have* concluded that the value of other sales was of minimal importance...and instead focused on the particulars of the 2003 sale itself.” **Id.**, p.25. (emphasis added). Whatever the reason for ignoring comparable sales, there is nothing in the record to explain it.

Findings of fact must be sufficiently specific to permit meaningful review. In re Dependency of K.R., 128 Wn.2d 129, 143, 904 P.2d 1132 (1995). Where issues are complicated, the need for adequate findings of fact increases. Murray Pub. Co., Inc. v. Malmquist, 66 Wn.App. 318, 832 P.2d 493, rev. denied, 120 Wn.2d 1010, 841 P.2d 48 (1992), cited by Thompson (RB p.15), (court found error in numerous findings of fact and reversed the trial court’s judgment, citing factors important to the analysis for which there was no evidence at trial). See also In Re: Marriage of Berg, 47 Wn.App. 754 (1987) (“Because of the complexities involved in

valuing a closely held corporation, an appellate court must be able to determine the method by which the trial court determined valuation and the weight that the trial court gave to the factors relevant to valuation.”). The lack of findings on important factors for a complex determination is grounds for reversing a trial court’s judgment, not affirming it.

Only the Shareholders put on evidence addressing those factors—Fred Palidor’s work on evaluating the coverage of each of 16 licenses, taking into account geography and population coverage, as well as sales for each of those licenses, along with their underlying documentation, and analysis of the sales. **Exs. 432, 493.** David Andrade performed an analysis of the 13 reference transactions, and was able to develop a strong statistical model. **Ex. 495.** Andrade estimated that the fair market value of the LA Licenses, without equipment, would be in the range of \$174,000-\$230,000. (**Id.**). Thompson, on the other hand, points to Clothier testifying “I may have overpaid.” **RB pp. 20-1.**

3. *No Evidence Has Been Shown to Sustain Finding of Fact Q.2.*

Thompson claims that what was sold to his friend and business associate Gene Clothier were “the rights under three management agreements and certain equipment...” **RB p.19.** This statement (as quoted) is true. But Thompson goes on to say “what Mr. Clothier bought

was only 20% of a revenue stream and used equipment.” **Id.** This statement is false.

Each of the management agreements included the right for the Manager to acquire the licensee’s interest in the license at any time at no cost⁴, sell it to a third party, and keep all but a small percentage of the proceeds. **Ex. 433, p. 3, ¶¶7(a)-7(f).** This right belonged to NNS before the LA License Sale; it belonged to Clothier afterwards.

What is disputed is this: did the Operating Agreement continue to apply to licenses, or the management agreements, even if NNS sold them to third parties? In FOF Q.2, the Court held that it did, stating “Any purchaser of the management agreements would be subject to the provisions of the Operating agreement.” This was clear error. As noted by Thompson, this is a matter of contract interpretation. **RB** p.25. Thompson cites Berg v. Hudesmann, 115 Wn.2d 657, 667, 801 P.2d 222 (1990), for the proposition that extrinsic evidence is admissible as an aid in ascertaining the parties’ intent. **ID.** While not entirely clear, the argument appears to be that the court must have considered extrinsic evidence, and therefore the standard of review is substantial evidence, rather than *de novo*.

⁴ NNS or SEA paid a \$100 option fee to the licensee at the time of entry into the management agreement. Pending final disposition, the revenue payments owed the original licensee after acquisition were the same as before the acquisition.

The Supreme Court has made clear that the use of extrinsic evidence in contract interpretation is limited.

Initially *Berg* was viewed by some as authorizing unrestricted use of extrinsic evidence in contract analysis, thus creating unpredictability in contract interpretation. During the past eight years, the rule announced in *Berg* has been explained and refined by this court, resulting in a more consistent, predictable approach to contract interpretation in this state.

Hollis v. Garwall, Inc., 137 Wash.2d 683, 693, 974 P.2d 836 (1999). The courts are to search for intent through the objective manifest language of the contract itself. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wash.2d 493, 503, 115 P.3d 262 (2005).

Since *Berg*, we have explained that surrounding circumstances and other extrinsic evidence are to be used "to determine the meaning of *specific words and terms used*" and not to "show an intention independent of the instrument" or to "vary, contradict or modify the written word."

Hearst, 154 Wash.2d at 503, citing Hollis, 137 Wash.2d at 695-96., (emphasis added in Hearst).

There is no contract language identified in the trial court's findings of fact to support FOF Q.2. The Operating Agreement is an agreement between Incom and NNS with respect to the operation of their respective 220 MHz networks. At no point in the proceedings or in the responsive brief has Thompson identified what clause of the Operating Agreement expands its coverage to cover additional parties. The only extrinsic

evidence offered was entirely conclusory testimony. In fact, the language of the Operating Agreement is directly contrary to FOF Q.2:

Article VII
Right of First Refusal

7.1 No party to this Agreement shall sell or transfer any of its stock or any interest in its FCC Licenses, equipment, customers, contracts, agreements or other assets subject to this Agreement (hereinafter "Subject Assets") without first giving written notice of its intention to sell or transfer such stock or Subject Assets to the other Party and offering to sell or transfer such stock or Subject Assets to such other Party for the same price and under the same terms....If the offer contained in the notice is not accepted...the Party intending to sell or transfer may agree to sell or transfer the stock or Subject Assets referred to in the notice for the price and upon the terms and conditions set forth in the notice, if such sale or transfer is to a bona fide purchaser...

Ex. 437, p.13, ¶7.1.

Thompson has not disputed or attempted to retract his testimony that the right of first refusal was the only restriction the Operating Agreement placed on the ability of the companies to sell their assets. **RP 09/29/09**, p.54. There is no language in this clause or anywhere else in the Operating Agreement which makes it binding on anyone other than Incom and NNS. FOF Q.2 reflects an intention independent of the instrument, and contradicts the language of Paragraph 7.1. There is nothing in the contract on which that finding of fact can be sustained.

Moreover, to the extent extrinsic evidence were to be considered, the self-serving, conclusory testimony of the parties could not stand against the undisputed evidence of the parties course of dealing. *See, e.g., Ex. 508, Ex. 511, p.2, Ex. 512, p.1, etc.* The evidence showed that the clause was interpreted just as it reads: the parties had the right to sell any of their assets free and clear of the Operating Agreement, they need only provide the other party the right of first refusal. Thompson has not disputed that every one of the sales identified by Shareholders in their opening brief was a sale of the assets free and clear of the Operating Agreement. **AB p.27.**

D. THOMPSON HAS FAILED TO SHOW ANY BASIS FOR UPHOLDING THE JUDGMENTS ON PREFERENCES.

1. *The Proper Context to Consider Preferences is the Insolvency of the Companies and the Many Unpaid Creditors.*

Thompson begins his treatment of the preference issue by talking about the context in which the payments to Thompson occurred, pointing out the loans that Thompson made and the fact that the Companies never filed for bankruptcy or came under receivership. **AB pp. 28-30.** The Shareholders of course don't deny the existence of those loans—they are a prerequisite to a preference claim. Thompson doesn't mention that, during that same time frame, other parties' contributions to the Companies

dwarfed his. Investors alone contributed \$2.5 million through 9/30/00, **Ex 453, p.13**. Employees' unpaid wages and benefits, company vendors, all contributed. The employees were not paid on their wage claims. Even important vendors were not paid on their invoices. Income tax withholding and FICA tax deposits were not being paid. **CP 65**. 401(k) contributions were not being deposited in the employees' trust accounts. **Id.** The payments kept on being made to Thompson, though. He used his position of authority to prefer himself over other creditors. This is the context in which to view these preference claims.

2. *The "New Value" and "Ordinary Course" Defenses are Affirmative Defenses.*

Thompson of course doesn't deny that his "New Value" and "Ordinary Course of Business" theories are affirmative defenses, but argues that Shareholders did not cite any authority establishing that fact and the court should reject their argument on this basis. **RB** p.30. Thompson is mistaken. Shareholders cited Chrysler Credit Corp. v. Hall, 312 B.R. 797, 803, (E.D.VA 2004), which identifies the burden of proof for the 11 U.S.C. 547(c) defenses (which include the New Value and Ordinary Course of Business defenses—see **CP 74, 75**) as falling on the defending party. **AB 30**. It also explicitly identifies the 547(c) defenses as "affirmative defenses" Chrysler Credit, 312 B.R. at p. 809.

3. *Erring on the Burden of Proof Renders the Judgment Unsustainable.*

Judge Heller's conclusions of law on the preference claims are based on the affirmative defenses, and incorrectly placed the burden of proof for those defenses on Shareholders:

3. The agreement Thompson made with Kallshian in late 2001 regarding his back pay constituted "new value." The interveners have failed to meet their burden that Kallshian's back pay constituted a preference."
4. Similarly,...[Thompson's] continued employment constitutes 'new value.' The interveners have failed to meet their burden that the regular payments on the loan were preferences.
5. Thompson's loans to the companies were incurred in the ordinary course of business. The interveners have failed to meet their burden that the companies' regular payments on the loan were preferences.

CP 75.

Thompson argues that the burden of establishing the breach of fiduciary duty was on Shareholders (**RB p.31**), but that does not change that the court decided on the basis of the affirmative defenses, and clearly erred in placing the burden for establishing their non-existence on Shareholders.

4. *Trial Courts are not Free to Invent Law.*

Thompson argues that the trial court did not apply federal bankruptcy law, but looked to it for guidance, and "was not required to

apply those concepts strictly.” **RB p.32.** This argument amounts to saying that the trial court was entitled to make up its own law, and in itself is a strong admission that the findings of fact and judgment do not meet the standards of the very legal theories that Thompson urged the trial court to adopt. “The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness.” Coggle v. Snow, 56 Wn.App. 499, 504, 784 P.2d 554 (Wash.App. Div. 1 1990), *citing* Justice Benjamin Cardozo.

5. *Thompson Has No Law to Support His Theory of The New Value Defense.*

Thompson argues that but for the agreement to pay Kallshian both wages AND the money on his antecedent debt, Kallshian would have provided no services at all, therefore it’s all “new value” and none of it can be a preference. No authority is cited for this proposition, and for good reason. It is contrary to the law on the new value defense, as cited in Shareholder’s opening brief. **AB 31.**

“Similarly, the loan payments made by the companies on behalf of Mr. Thompson constituted new value...” **RB p.33.** Loan payments to a

creditor cannot constitute new value, they can only be forgiven by new value provided, but unpaid. Moreover, the payments to Thompson were not payments for anything other than the loans he had made. Again, the new value needs to be specifically quantified, the dates and amounts of the payments and new value advances detailed. In re Grand Chevrolet, 25 F.3d 728, 733 (9th Cir. 1994); In re: IRFM, 52 F.3d at p. 232. The findings of fact don't support the conclusions.

6. *The Ordinary Course of Business Defense is Not Sustainable.*

In addressing Shareholders' arguments concerning the "Ordinary Course" defense, Thompson completely fails to address the entirely irregular payments on his August 4, 2000 loan, or the credit card payments. See **AB 33**. Clearly there is no basis for any type of ordinary course defense for those payments. Nor does he address the irregular credit card payments, which were regular only in the sense that they were made every month.

Further, the argument that all loan payments are covered by the "new value" defense not only ignores that the new value defense also fails, but ignores that the court only found the new value defense to apply for "regular payments on the loan which secured his personal residence" **CP**

75 (see also CP 67). So the preference payments on the credit cards and other promissory notes cannot be saved by the ordinary course defense.

7. *The Proposed Alternative Grounds for Relief Do Not Save the Judgment as to Preferences.*

a. The Shareholders Have Standing.

Thompson argues that the Shareholders have no standing to bring a preference claim, because these claims are ordinarily brought by a creditor or by a receiver for the benefit of all creditors. No case barring Shareholders from bringing a preference claim is identified.

Shareholders are bringing this claim on behalf of the Companies, in a representative capacity. It is the Companies that would benefit. They are not personally entitled to any of the recovery, only the possibility of reimbursement for litigation expenses on a successful claim. This is less of a financial interest than a trustee or other typical representative would have, who would ordinarily not risk personal funds at all.

Creditors would benefit from the preference claims brought here as much as any claim brought by a receiver. Moreover, the courts have the power to fashion a remedy in a derivative suit to protect the interest of creditors, where distribution to the corporation would be improper.

Interlake Porsche v. Bucholz, 45 Wn.App. 502, 519-520, 728 P.2d 597 (1986). There is no authority to support Thompson's standing argument.

b. The Spokane Concrete Case Did Not Establish a New Test for Insolvency.

Thompson asks the court to uphold the judgment on the preference issues because the Companies were not insolvent under the Spokane Concrete case. **RB p.37** Insolvency has two commonly accepted definitions, (1) the inability of a debtor to pay its debts as they mature (equity definition), and (2) the debtor has more debts than assets (balance sheet definition). 15A Fletcher Cyclopedia Corporations, Insolvency and Bankruptcy, §7360. Some jurisdictions define the balance sheet test with two main parts, fewer assets than liabilities, with no reasonable prospect that the business can be successfully continued in the face thereof. *See e.g. Prod. Res. Group, L.L.C. v. NCT Group, Inc.*, 863 A.2d 772, 782 (Del.2004). Shareholders are not aware of any jurisdiction where the balance sheet definition is the exclusive definition of insolvency. The equity definition can be used as well. *Id.*

Thompson cites Spokane Concrete Products, Inc. v. U.S. Bank of Washington, 126 Wn.2d 269, 892 P.2d 98 (1995) for a theory that a company that is a going concern with prospects for the future cannot be

insolvent. **RB p.37.** Thompson appears to go further and state that a company that has not filed for bankruptcy protection or had a receiver appointed cannot be insolvent. **Id.** Spokane Concrete does not stand for either proposition.

Spokane Concrete did not establish a new test for insolvency, but appears to have been commenting on the second part of the balance sheet test. **Id.** at 280. But it did not hold that a company that has not filed for bankruptcy or receivership is not insolvent, nor did it say the balance sheet test is the only test of insolvency under Washington law. The trial court clearly correctly concluded that the Companies were insolvent, as is implicit in the ruling based on affirmative defenses. Thompson provides no basis for overturning the trial court's determination.

E. THOMPSON HAS CITED NO AUTHORITY TO CONTRADICT THAT HE HAD THE BURDEN OF PROOF WITH RESPECT TO THE EXPENSES.

Thompson complains of the difficulty in finding the sampling of unsupported expenses in the 191 pages of charges to his credit cards, paid for by the Companies. **RB p.40.** The dates of the transactions are provided, and the statements are arranged in chronological order, so finding the examples should not be overly taxing. **AB p.36.** Nevertheless, this brief includes an Appendix, with excerpts from the Exhibits.

While the list of charges paid to Thompson is indeed long, the evidence of actual expense reports is quite short. **Ex. 471**. Shareholders have stated that Thompson may have met his burden with respect to expenses attributed to third parties on the corporate records. But those records are equally clear that most of the charges were in fact for Thompson or at best had no indication. **Exs. 470A-D**.

Thompson complains of the unreasonableness of expecting him to establish that “each and every expense” was business related. But it is undisputed that the company policy required provision of expense reports and receipts to be reimbursed for business expenses.

Nothing in the findings of facts supports Thompson’s arguments that the accounting numbers establish the business nature of the charges. **CP 66-67**. Thompson ignores that the only personal expenses he admits, and claims to have reimbursed, also have an accounting number next to them: “140.6230”. **Ex. 470B, App. A**- The accounting numbers are meaningless, and do not in any way establish what charges were for, and whether they were incurred for a business purpose.

A. THE AWARD OF ATTORNEY FEES WAS CLEAR ERROR.

1. *Thompson does not Address the Lack of Findings and Conclusions.*

Thompson does not address the complete lack of findings of fact and conclusions of law with respect to attorney fees⁵. Washington law is clear as to the implication—the judgment must be reversed and remanded. Discretion must be exercised on articulable grounds, and awards must be based upon proper findings of fact and conclusions of law. Mahler v. Szucs, 135 Wn.2d 398, 435, 957 P.2d 632, 966 P.2d 305 (1998).

2. *Thompson does not Establish a Basis to Uphold the Judgment on Attorney Fees.*

Thompson's primary argument on the attorney fees claim is based on contract interpretation and a sort of estoppel argument. Thompson admits that he was only entitled to attorney fees based on contract language in the promissory notes. There was attorney fee provision relating to his claim for unreimbursed expenses.

a. Ennis does not Support the Award of Attorney Fees.

Thompson does not argue that defending against the breach of fiduciary duty claims, in and of itself, entitles him to attorney fees pursuant to the language of the promissory notes. Rather, Thompson's argument is: (1) the Shareholders argued that the statute of limitations

⁵ The one citation to the record on this issue in Thompson's brief is actually to the court's conclusions of law B2 and B3. Those concern the court's rulings on the statute of limitations, not any decisions on attorney fees. See **RB p.43, CP 72**.

does not apply to them because all of their claims are related to the promissory notes; and (2) having made that argument, they cannot contest that the breach of fiduciary duty claims ‘arise out of’ the promissory notes. Neither part of the argument is accurate.

First, the argument by Shareholders was that Ennis and its progeny established a broader rule than focusing on individual transactions, and allowed claims based on the relationship between the parties. Sea-First v. Siebol, 64 Wn.App. 401, 824 P.2d 1252 (1992) (In response to complaint on promissory notes, defendant allowed to raise expired counterclaim based on loan bank promised but then failed to make.)

What Thompson sued on here were claims based throughout his tenure at the Companies, which accrued in the course of, or arose out of, the performance of his duties, and based on his position and authority with the Companies, including the security interest he awarded himself, used to get money from the Companies, (**Ex. 569**) and unsuccessfully sued upon in this litigation. Shareholders argued that any claims arising out of that relationship could be used as a setoff, even if otherwise barred by the statute of limitations. Interveners’ Trial Brief, p.21, King County Superior Court Sub #300, filed 5/13/09, **Supplemental CP ____**. The trial court concluded that, the mere fact of asserting them as defenses or set-offs brought them within the rule of Ennis. **CP 72**. This was never

Shareholders' position, and can hardly be the basis for a sort of estoppel against Shareholders.

Second, Thompson could not have collected on his note whether or not Shareholders advanced Ennis as an alternative argument. **CR 54(b)** forbids entry of judgment as to fewer than all the claims or parties absent an express determination "supported by written findings, that there is no just reason for delay, and upon an express direction for the entry of judgment."

The Ennis defense was a third-line defense to the statute of limitations claim advanced by Thompson. Shareholders first and foremost defended based on the discovery rule, also on equitable estoppel, and finally based on Ennis. Interveners' Trial Brief, pp.19-21, King County Superior Court Sub #300, filed 5/13/09, **Supplemental CP ____**. Thompson's motion for summary judgment based on the statute of limitations was denied based on the discovery rule. Order Denying Motion for Summary Judgment, King County Superior Court Sub#249, filed 3/25/09, **Supplemental CP ____**. The claims went to the court standing on their own, and not based on any Ennis argument advanced by Shareholders. Absent an express determination by the trial court that Thompson was entitled to a separate judgment on his promissory notes, to be entered without delay, he had no right or ability to collect on them.

Thompson never requested such a judgment. Shareholders' assertion of Ennis caused Thompson no prejudice.

III. CONCLUSION

For the reasons stated above, Shareholders request that the Court of Appeals reverse the judgment of the trial court with respect to the LA License Claim, the preference claims, the expenses claim and the attorney fees award, and remand to the King County Superior Court for further proceedings consistent with the proceedings on this appeal.

IV. RESPONSE TO CROSS APPEAL

A. THE COURT SHOULD NOT REVIEW THOMPSON'S NEW LEGAL THEORY.

Parties may not raise new theories after trial, or on appeal.

Teratron v. Instit. Inv. Trust, 18 Wn.App. 481, 489-90, 569 P.2d 1198 (1997). (“A lawsuit cannot be tried on one theory and appealed on others”). Thompson attempts to advance a new theory for holding Shareholders personally liable for attorney fees, based on Brusso v. Running Springs Country Club, 228 Cal App. 3d 92, 278 Cal. Rptr. 758 (1991) a California case he has discovered since the court denied his requests for attorney fees against the Shareholders personally. This theory is based upon entirely different facts, law, and reasoning from the two theories advanced in trial court.

B. THOMPSON DID NOT PROVIDE ADEQUATE NOTICE OF HIS REQUEST FOR ATTORNEY FEES.

A party needs to provide adequate notice of a claim for attorney fees to be entitled to them. Tatum v. R&R Cable Inc., 30 Wn.App. 580, 585, 636 P.2d 508 (1981) (denying claim for attorney fees under 4.84.250 where not pleaded and no other notice was given). In Thompson's answer

to the counterclaims below, he simply requested an award of attorney fees in his prayer for relief, citing no statute or other basis—not even identifying a party. **CP 46**. Following the court’s entry of judgment against the Companies, Thompson unveiled numerous theories of entitlement to attorney fees against the Companies *and* against the Shareholders personally. **RCP 448-55**. Modern pleading requirements serve to provide notice of claims, and to prevent unfair surprise. Stockman v. Downs, 16 Fla. L. Weekly 160, 573 So.2d 835, 837 (Fla. 1991). “Raising entitlement to attorney’s fees only after judgment fails to serve either of these objectives. The existence or nonexistence of a motion for attorney’s fees may play an important role in decisions affecting a case.” **Id.** Parties should not be allowed to gain advantage by ambushing opponents.

C. THE COURT WAS WELL WITHIN ITS DISCRETION IN REJECTING THOMPSON’S MOTION FOR FEES AGAINST THE PLAINTIFFS INDIVIDUALLY.

a. *The Trial Court Properly Rejected the Alter Ego Theory.*

Fee decisions are entrusted to the discretion of the trial court, Mahler, 135 Wn.2d at p. 435, citing Boeing Co. v. Sierracin Corp., 108 Wash.2d 8, 65, 738 P.2d 665 (1987). Review is not *de novo*.

Washington follows the American rule in awarding attorney fees. Under that rule, a Court has no power to award attorney fees as a cost of litigation in the absence of contract, statute, or recognized ground of equity providing for fee recovery. Dayton v. Farmer's Insurance Group, 124 Wn.2d 277, 280, 876 P.2d 896 (1994), citing State ex rel. Macri v. Bremerton, 8 Wn.2d 93, 113-14, 111 P.2d 612 (1941). It is hard to imagine a more fundamental and long-standing rule in American law—it is a daily consideration in litigation and contract drafting.

Thompson's first argument below was that the Shareholders are liable because they "stand in the shoes" of the Corporations, citing LaHue v. Keystone Investment Co., 6 Wn.App 765, 779, 496 P.2d 343 (1972), and, as interveners, they are bound by any orders entered against the defendants, citing Globe Construction Co. v. Yost, 169 Wn. 319, 13 P.2d 433 (1932). **RCP 452**. The theory is not supported by the cited authority, neither of which has to do with awarding attorney fees against derivative plaintiffs personally. This amounts to an alter ego argument, and is contrary to the American Rule, as this theory clearly is NOT a recognized ground of equity providing for fee recovery. In fact,

LaHue at least involved a derivative suit, but to the extent it has any relevance to Thompson's theory, it cuts against it. In analyzing whether the judgment should be dismissed for failure to have joined the

corporation, the court held it unnecessary, upholding a judgment in favor of the corporation. The court held that the defense of res judicata or statute of limitations would be available on any future claim brought by other shareholders, because “[t]he stockholders in a derivative suit stand in the shoes of the corporation and are subject to the same defenses as are available against the corporation.” LaHue, 6 Wn.App at p. 779. This is a common sense rule, and was in fact followed in this case, in applying the statute of limitations. Thompson takes the general rule and twists it beyond recognition.

LaHue does not hold that derivative shareholders lose their separate identities and become one with the corporation. To the contrary, the Supreme Court reversed judgments awarded to shareholders in their individual capacity.

A stockholder's derivative suit, sometimes referred to as a representative and derivative suit, to enforce a corporate cause of action, is not for the individual benefit of the stockholder. It is established that both the cause of action and judgment thereon belong to the corporation.

Id., at p. 780.

The second authority for Thompson’s alter-ego claim for attorney fees against Shareholders, Globe Construction, did not involve a derivative claim, a claim advanced by a representative party, or the award of attorney fees. Globe Construction had acquired its interest in property

from another party and had been *substituted* for that party in an earlier proceeding, where an adverse decision was reached. The court reached the unsurprising conclusion that Globe Construction was bound by the result in that proceeding.

The Shareholders were not substituted for the Datamarine Companies in this case, who in fact remain in the litigation. Shareholders have no direct interest in the claims they are advancing on behalf of the Companies. Under Thompson's theory, derivative plaintiffs would be liable for attorney fees in any unsuccessful suit. It's actually hard to understand why they wouldn't be liable on the judgment itself under his theory, to the extent it's comprehensible.

Thompson's alter-ego motion for attorney fees was not based on a contract or statute, or a recognized ground of equity. To the contrary, Thompson stated in his memorandum requesting fees: "We are unaware of any cases, either in Washington or elsewhere, where interveners have been held liable for attorney's fees in a situation such as is presented here." **RCP 453**. Instead, the motion was advanced on two cases which didn't even support the theory. The trial court would have been within his discretion to sanction Thompson, and was well within his discretion denying the claim for attorney fees on this theory.

b. The Trial Court Properly Rejected The Claim for Fees Under RCW 23B.07.400.

Thompson's second theory for attorney fees against the Shareholders personally was brought under 23B.07.400, which authorizes attorney fees to be awarded against derivative parties if the court determines the proceeding was commenced without reasonable cause. **RCP 454.** Thompson advanced a one-sentence, conclusory argument in support of that motion. **RCP 455-6.** The trial court rejected that argument, specifically stating "the court finds that the proceeding was not commenced without reasonable cause." **CP 79.** Thompson has not appealed that conclusion.

D. THOMPSON'S NEW THEORY IS NOT RECOGNIZED UNDER WASHINGTON LAW AND DOES NOT APPLY TO TORT CLAIMS.

Even Thompson's new theory, taken on its own terms, does not apply here. Brusso was a derivative claim brought by shareholder plaintiffs advancing corporate contract claims, with a contractual right to attorney fees against defendants. In such a case, the court ruled that the defending party had the right, based on the interplay between the California reciprocal attorney fee statute and its derivative statutes, including a bond procedure, to recover fees against the derivative

plaintiffs individually. The court reasoned that because the corporation could recover attorney fees against defendants, and plaintiffs, if successful, could recover their fees from the corporation, the defendants should be allowed to recover against the derivative plaintiffs based on California Civil Code §1717, which provides for mutuality of contract attorney fees provisions. Brusso, 228 Cal.App.3d at 111.

Washington of course has never recognized such a theory of recovery based on RCW 4.84.330. Moreover, even on Brusso's own terms, recovery would not be appropriate. Brusso was based on derivative plaintiffs advancing a contract claim with a contractual right to attorney fees. In this case, Shareholders advanced tort claims on behalf of the Companies, and had no contractual right to attorney fees against Thompson. Recovery under the California reciprocal attorney fee statute is not allowed for claims based on tort. Alcott v. M. E. v. Corp., 238 Cal.Rptr. 520, 193 Cal.App.3d 797 (1987).

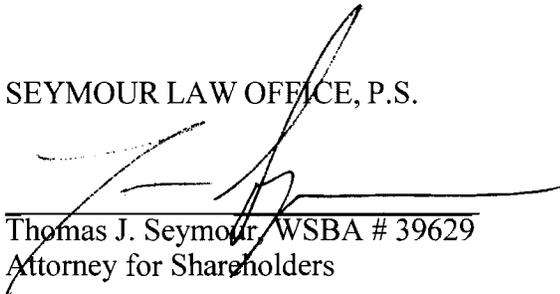
Assessing attorney's fees against plaintiffs simply because they do not finally prevail would substantially add to the risks inhering in most litigation. Hughes v. Rowe, 449 U.S. 5, 14-15 (1980). In refusing to extend the California fee-shifting statute to apply to derivative plaintiffs, the Alcott court recognized that it would be interfering with the legislative scheme for derivative claims:

[The California fee-shifting statute] was designed to further the aim of remedying an inequality in bargaining power. But one-sided statutory and judicially-mandated fee shifting provisions serve a specific public policy which would be vitiated by the grant of reciprocity. [Citation omitted] This court is disinclined to make new law, confident that such a role is best played by the entity to which the Constitution assigned it. We are even less inclined to make bad law.

Alcott, 193 Cal.App.3d, at p. 801. The court should follow the reasoning of Alcott, and leave any consideration of additional rights to attorney fees in derivative claims to the Washington State legislature.

DATED this 24rd day of November, 2010.

SEYMOUR LAW OFFICE, P.S.



Thomas J. Seymour / WSBA # 39629
Attorney for Shareholders

APPENDIX

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EXHIBIT 41

So. CA revenues for 3 licenses																		
	1997	1998	1999	2000	2001	2002												
Q1	2546.23	5709.25	800.41	4777.58	3397.6	3372.33												
Q2	4383.12	4827.55	931.22	4727.44	3392.59	2482.38												
Q3		5883.66	866.51	4025.44	3052.58													
Q4	3661.51	5452.02	919.13	4091.6	2623.35													
total	10590.86	21872.48	3517.27	17622.06	12466.12	5854.71												
<p>These numbers are from reports sent to NNS by ICC. The reports do not specify Call signs but do specify locations. From the ICC "Licensee Payment Summary Reports" the total amount of \$ collected during a quarter is stated, number of channels is stated and gross collection per singal channel is stated. This is then caculated to show gross collections per 5 channel system.</p> <p>Revenue due to NNS for a 5 channel system at 20% is calculated and that # is multilplied by the 3 systems. So the totals above divided by 3 would be the amount paid per system (or call sign) in SO. CAL. Those call signs are WPCP591, WPCR220, WPBQ871</p> <p>These systems sold for \$75K total-Management agreement and equipment. In the SMR 4 license sale (which should have been 8) and in the Tiger mountain sale the equipment itself was sold for 25K each license.</p> <p>NNS bought this equipment from SEA for \$8,100 each license (includes 2-504's)</p> <p>An Invoice to a regular dealer for this equipment was apx \$23962.5 (excludes 504's)</p> <p>Rick Brown was representing Clothier.</p>																		

A-2

EXCERPTS FROM EXHIBIT 470A

DCT flight to Paris (8/30/99)	A-4
DCT stay at Walt Disney Hilton (10/14/99).....	A-5,6
Tickets to Denver/Chicago (02/15/00)	A-7
Factory Direct Tire Sale charges (04/10/00); (08/02/02).....	A-8,9

Transactions (continued)

Date	Description	Card	Amount
Aug 17	Alaska Air T0277992218505 Seattle Phil M. ?	WA 110 V 6160	310.00
Aug 20	Delta Air 0067992981256 Derek Edmonds	WA 130 V 6160	963.36
Aug 23	United Air 0167992981280 Edmonds	WA 140 V 6160	132.95
Aug 23	United Air 0167992981281 Edmonds	WA 140 V 6160	132.90
Aug 23	United Air 0167992981283 Edmonds	WA 140 V 6160	132.90
Aug 23	United Air 0167992981284 Edmonds	WA 140 V 6160	132.90
Aug 23	United Air 0167992981285 Edmonds	WA 140 V 6160	132.90
Aug 25	United Air 0167992981440 Edmonds	WA 140 V 6160	132.90
Aug 27	Agent Fee 8908894286704 Edmonds	WA 140 V 6160	50.00
Aug 27	Agent Fee 8908894286523 Edmonds	WA 140 V 6160	10.00
Aug 27	Agent Fee 8908894286567 Edmonds	WA 130 V 6160	10.00
Aug 30	United Air 0167994166736 DCT Edmonds PARIS	WA 140 V 6160	1,381.32
Sep 3	Francis Malbone House Inn Newport DEERE	RI 130 V 6160	798.00
Sep 12	Payment - Thank You For Your Payment		-9,413.01
Sep 7	Late Payment Fee	140 . 6320	29.00

Finance Charge

Rate Category	Corresponding annual percentage rate	Periodic rate (may vary) 31 days in period	Corresponding finance charge balance	Finance charge
Purchases, Advances, Finance Charges & Fees	17.900%	0.049041%	\$12,204.70	\$185.54

FINANCE CHARGE (Due to Periodic Rate)*

\$185.54

ANNUAL PERCENTAGE RATE 17.89%

*See reverse side for explanation and important information.

140.6160 = 2,944.77
 140.6860 = 20.43
 140.6165 = 581.49
 110.6160 = 310.00
 130.6160 = 1,771.36
 140.6320 = 167.42

0999 m6049

\$ 5,795.47

POSTED
9/22/99

PALD
10/8/99
62679



ACCOUNT SUMMARY		ACCOUNT ACTIVITY	
Account Number	4673 641 917 687	Previous Balance	\$6,590.88
Total Credit Line	\$15,000	Payments	\$5,795.47
Total Available Credit	\$6,896	Other Credits	\$0.00
Cash Limit	\$15,000	Purchases	\$7,173.81
Cash Available	\$6,896	Cash Advances	\$0.00
Amount Past Due/Overlimit	\$0.00	Other Debits/Fees	\$0.00
Statement Closing Date	11/17/99	FINANCE CHARGE	\$134.06
New Balance	\$8,103.28	NEW BALANCE	\$8,103.28
Payment Due Date	12/06/99		
MINIMUM PAYMENT DUE	\$162.00		

Mileage Plus miles earned with First USA

Miles earned this month from purchases: **7,174** Call United at 1-800-421-4655 to check your total Mileage Plus balance.

TRANSACTIONS

Tran Date	Post Date	Description	Reference Number	Debits	Credits
10/06	10/14	# UNITED AIR 0167999853537 EDMONDS WA SEATTLE DENVER DENVER SEATTLE	247926290KSDLPSWR 11/24/99 1 UA V 2 UA V	164.70	
10/07	10/14	# AGENT FEE 8908890158733 EDMONDS WA XAA XAA	247170594GYWBYYXW 10/07/99 1 XD Y	10.00	
10/07	10/14	# AGENT FEE 8908890157498 EDMONDS WA XAA XAA	247170594GYWBYYXZD 10/07/99 1 XD Y	10.00	
10/12	10/14	# EMBASSY SUITES LYNNWOOD WA	24229708YOBZJH07	109.00	
10/12	10/14	# UNITED AIR 0167999853812 EDMONDS WA SEATTLE SAN FRANCISCO SAN FRANCISCO CHICAGO CHICAGO ORLANDO ORLANDO DENVER	24792628YKV2SRHH0 11/12/99 1 UA W 2 UA W 3 UA W 4 UA W	256.56	
10/13	10/14	# HILTON AT WALT DISNEY LK BUENA VSTA FL	2411039902VY5Z2H6	183.15	
10/13	10/14	# ARNIES RESTAURANT EDMONDS WA	24717058ZJNP2YBQ0	120.75	
10/14	10/14	# SAS AIRLINE 1171581416696 LYNDHURST NJ COPENHAGEN SEATTLE SEATTLE COPENHAGEN	242465191HM7LZ2JX 10/21/99 1 SK Q 2 SK Q	550.88	
10/14	10/14	# SAS AIRLINE 1171581416697 LYNDHURST NJ SEATTLE COPENHAGEN COPENHAGEN SEATTLE	242465191HM7LZ2K5 10/24/99 1 SK L 2 SK L	730.88	
10/15	10/15	# DELTA AIR 0061581416781 EDMONDS WA SEATTLE FORT WORTH FORT WORTH NEW ORLEANS NEW ORLEANS FORT WORTH	243990091AFRZVN0R 11/29/99 1 DL K 2 DL K 3 DL K	487.00	

7,307.87



MILEAGE PLUS

11/29/99 11/29/99

ACCOUNT SUMMARY

Account Number	4673 641 917 687
Credit Line	\$15,000
Limit Available Credit	\$6,896
Cash Limit	\$15,000
Limit Available	\$6,896
Amount Paid Through Overdraft	\$0.00
Statement Closing Date	11/01/99
New Balance	\$8,103.28
Payment Due Date	12/06/99
MINIMUM PAYMENT DUE	\$167.00

ACCOUNT ACTIVITY

Previous Balance	\$6,800.00
Payments	\$3,700.00
Other Credits	\$0.00
Purchases	\$7,150.00
Cash Advances	\$0.00
Other Debits/Fees	\$0.00
FINANCIAL CHARGE	\$163.06
NEW BALANCE	\$8,103.28

Mileage Plus miles earned with United USA

Miles earned this month from purchases 7,174 Call United at 1-800-421-4655 to check your total Mileage Plus balance.

TRANSACTIONS

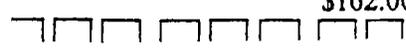
Tran Date	Post Date	Description	Reference Number	Debit	Credit
		SEATTLE DENVER	10/27/99 1 EA Y		140.6160
		DENVER SEATTLE	10/27/99 1 EA Y		140.6160
		XAA XAA	10/27/99 1 XD Y		140.6160
10/14		AGENTVILLE EDMONDS WA	242120594GYWBYXZD	10.00	140.6160
		XAA XAA	10/27/99 1 XD Y		140.6160
		SEATTLE SAN FRANCISCO	10/27/99 1 EA W	109.00	125.6160
		SAN FRANCISCO CHICAGO	10/27/99 1 EA W	109.00	140.6160
		CHICAGO ORLANDO	10/27/99 1 EA W		140.6160
		ORLANDO DENVER	10/27/99 1 EA W		140.6160
10/14	10/14	SAS AIRLINE 1171581416696 LYNDHURST NJ • EN9	242465191HM7L22JX	550.88	120.6160
		COPENHAGEN SEATTLE	10/21/99 1 SK Q		120.6160
		SEATTLE COPENHAGEN	2 SK Q		120.6160
10/14	10/14	SAS AIRLINE 1171581416697 LYNDHURST NJ • EN9	242465191HM7L22K5	730.88	120.6160
		SEATTLE COPENHAGEN	10/24/99 1 SK L		120.6160
		COPENHAGEN SEATTLE	2 SK L		120.6160
10/15	10/15	DELTA AIR 0061581416781 EDMONDS WA • DEW	243990091AFRZVN0R	487.00	130.6160
		SEATTLE FORT WORTH	11/29/99 1 DL K		130.6160
		FORT WORTH NEW ORLEANS	2 DL K		130.6160
		NEW ORLEANS FORT WORTH	3 DL K		130.6160

To ensure proper credit, please detach and return with your payment. Retain upper portion for your records.



Account Number 4673 641 917 687
 Payment Due Date 12/06/99
 \$8,103.28
 \$162.00

Checks payable to First USA Bank, N.A. write your account number on your check.



FOR INFORMATION ON YOUR CREDIT CARD

Please send inquiries to:
 PO BOX 8656 WILMINGTON DE 19899-8650
 Please send additional payments to:
 BOX 50882
 ANDERSON NV 89016-0882

For account information, please call 1-800-537-7783
 24 hours a day
 1-888-446-3308 (en Espanol)
 www.firstusa.com

116019

MILEAGE PLUS MILES EARNED

03-2000

Miles earned this month from purchases..... 7,592

8699-65

TRANSACTIONS

Tran Date	Post Date	Description	Reference Number	Debits	Credits
01/31	01/31	# AN ADJUSTMENT TO YOUR ACCOUNT	F471705E6000TR054		749.80
02/02	02/12	# EVA AIR 6951593986413562-565-6054 CA JAY SEATTLE TAIPEI	2426941DSE7LFSBNI 02/06/00 1 BR L	1,342.80	125.6160
02/12	02/12	# ANDYS MOTEL EDMONDS WA JENS 127.000.6160	2449398DW9N4B0PQ2	442.40	127.0006160
02/14	02/14	# ARCO CAR WASH/GAS CONCORD CA	2449215DYP4DWEHVY	11.10	140.6160
02/14	02/14	# UNITED AIR 0168402634366 EDMONDS WA	2479262EBKSDD9XGH	144.00	140.6160
02/14	02/14	# UNITED AIR 0168402634365 EDMONDS WA	2479262EBKSDD9XG0	144.00	140.6160
02/15	02/15	# SEATTLE-TACOMA INTL AIRP SEATTLE WA	2441800DZ1BTZL7MD	72.00	140.6160
02/15	02/15	# UNITED AIR 0161597523033 EDMONDS WA SEATTLE DENVER DENVER CHICAGO CHICAGO DENVER DENVER SEATTLE	2479262DZKV34A0GR 02/22/00 1 UA H 2 UA H 3 UA H 4 UA Q	1,165.00	140.6160
02/16	02/16	# ADVANCED CIRCUITS 800-2891724 CO	2449398E05SG6H1KX	208.00	120.6420
02/17	02/17	# ADVANCED CIRCUITS 800-289-1724 CO	2449398E15SG6L32V	248.00	120.6420
02/18	02/18	# AGENT FEE 8908890136982 EDMONDS WA XAA XAA	2471705EQGWPTP3AQ 02/18/00 1 XD Y	35.00	140.6160

To ensure proper credit, please detach and return with your payment. Retain upper portion for your records.



Account Number 4673 641 917 687
 Payment Due Date 04/08/00
 New Balance \$18,414.22
 Minimum Payment Due \$368.00
 Amount Enclosed \$

Make checks payable to First USA Bank, N.A.
 Please write your account number on your check.
 Back of this statement contains information regarding your account and annual renewal.

New Address or E-mail? Please see reverse side of form.



DAVID C THOMPSON
 7030 220 SW
 MOUNTLAKE TER WA 98043-2125

0036617

FIRST USA BANK, NA
 P.O. BOX 50882
 ANDERSON NV 89016-0882



0036800018414221

Est Date	Description	Reference Number	Debits	Credits
	SEATTLE SAN FRANCISCO	04/21/00 I UA Q		
	SAN FRANCISCO SEATTLE	2 UA Q		
03/31	PAYMENT - FRANK YOH	7/14/00 PERU 2311A6		1,140.686
04/01	SEATTLE SAN FRANCISCO	04/01/00 I XD Y	1,140.6160	4,142.63
	SEATTLE SAN FRANCISCO	04/28/00 I UA Q		1,140.6160
	SAN FRANCISCO SEATTLE	2 UA Q		
	SEATTLE SAN FRANCISCO	05/05/00 I UA Q		1,140.6160
	SAN FRANCISCO SEATTLE	2 UA Q		
	SEATTLE SAN FRANCISCO	05/12/00 I UA Q		1,140.6160
	SAN FRANCISCO SEATTLE	2 UA Q		
	SEATTLE SAN FRANCISCO	05/26/00 I UA Q		1,140.6160
	SAN FRANCISCO SEATTLE	2 UA Q		
	SEATTLE SAN FRANCISCO			1,140.6860
	SAN FRANCISCO SEATTLE			1,140.6160
	SEATTLE SAN FRANCISCO			1,140.6860
	SAN FRANCISCO SEATTLE			1,140.6860

PERIODIC RATE *FINANCE CHARGE*

308.93 - 000.8140

CARDMEMBER NEWS

GET MORE MILEAGE FROM YOUR SHOPPING AT EDDIE BAUER, SERVICE MERCHANDISE, THE SHARPER IMAGE, SPIEGEL - PLUS NEW MERCHANTS AKA GOURMET, MAGELLAN'S TRAVEL SUPPLIES, NATURAL WONDERS, T. SHIPLEY AND MORE. VISIT WWW.MILEAGEPLUSSHOPPING.COM OR CALL 1-888-581-9575.

FINANCE CHARGE CALCULATION							
	Daily Periodic Rate	CORRESPONDING ANNUAL PERCENTAGE RATE	Average Daily Balance	Finance Charge Resulting from Periodic Rate	Cash Advance Fees	Total	Days in Billing Cycle
Purchases	0.05109%	18.65%	\$20,156.60	\$308.93		\$308.93	30
Cash Advances	0.05109%	18.65%	\$0.00	\$0.00	\$0.00	\$0.00	30
ANNUAL PERCENTAGE RATE		18.65 %					

Visa® Statement

Minimum Payment Due for Credit Access Line

Balance of \$24,000.....\$311.00
Payment Due Date September 08, 2002

*OK #102309
08/30/02*

Account summary

Previous Balance\$16,002.45
Payments and credits- 650.00
Finance charges..... 190.45
Transactions.....\$43.75
New Balance\$15,586.65

Credit access line \$24,000
Available credit \$8,413
Cash advance line \$24,000
Available cash \$8,413
Available as of: August 14, 2002

Mileage Plus miles earned

Miles earned this statement from purchases 44
Total miles earned this statement..... 44

Stock up on Groceries and Earn Miles Toward Free Travel!
Earn 125 miles for every \$250 you spend at participating Safeway, Dominick's, Genuardi's, Pak'n Save, Pavilions or VONS stores. For fast, free enrollment, visit united.com/grocerymiles or call 1-800-645-4502.

The Hottest Restaurants, and 500 Bonus Miles Too!
Mileage Plus Visa cardholders will automatically earn 10 miles per dollar at 7,500+ Mileage Plus Dining restaurants. Plus, dine 3 times between 8/1 and 10/31 and earn 500 bonus miles. Visit united.com/dining to search for restaurants.

Congratulations! Your credit line has been increased to \$24,000. Use your new purchasing power for any purpose you choose. Thank you for being a wonderful customer.

Transactions

Date	Description	Amount
Aug 02	Factory Direct Tire Sale Edmonds WA	\$43.75
Aug 04	Payment - Thank You	- 650.00
Aug 14	*Finance Charge*	190.45

*140.60604375
000.8140 190.45
\$234.20*

[Signature]

0-13

Customer service
1-800-537-7783 (Within U.S.)
1-847-888-6600 (Outside U.S. collect)
1-800-955-8060 (Hearing impaired)

Account access online
www.cardmemberservices.com

Account inquiries
P.O. BOX 8650
MILFORD, DE 19899-8650

Additional payments
P.O. BOX 50882
HENDERSON, NV 89016-0882

EXCERPTS FROM EXHIBIT 470B

Thompson personal expenses w/ accounting number.....	A-11
D/Thompson travel charges/auto charges (06/01).....	A-12
Thompson flights to Chi, Den, 'XAO' (11/01).....	A-13
Unexplained airport charges (02/02).....	A-14

0.00 *
 291.16 +
 730.25 +
 200.07 +
 10.85 +
 145.00 +

Billing Period
 01/05/01 to 02/04/01

Business Payments, Credits, Adjustments and Fees

EA INC

Trans	Description	Payment
01/19	PAYMENT RECEIVED - THANK YOU	1,004.38 CR

1 Payment

\$1,004.38

Finance Charge Summary

	Nominal APR	Periodic FINANCE CHARGE	Cash Advance Fee/FINANCE CHARGE
Purchases	14.60%	\$0.00	
Cash Advances	21.10%	\$0.00	\$0.00
Total FINANCE CHARGE			\$0.00

Account Transaction Activity

DAVID C THOMPSON Individual Credit Line \$21,000.00

Account Number 5477 8690 0015 1564

Purchases

Trans	Post	Description	Promo ID	Charges
		Passngr: Z/	Trvl dt: 12/24/00	
		City of origin: XAA	Destination: XAA	
11/13	01/16	CITY PICTURE FRAME SAN FRANCISCO CA		291.16
11/16	01/17	AGRY GRAVEUR.VP1988301 PARIS 1 FRA		730.25
		Foreign Currency) 00005037.41 250 01-17 (RATE) 6.8981992		
11/16	01/18	DELTA 0067739977100 EDMONDS WA		411.00
		Passngr: MILLER/W	Trvl dt: 01/23/01	
		City of origin: HSV	Destination: CVG	
11/16	01/18	FRONTIER 42277399771014 EDMONDS WA		533.00
		Passngr: KOLBER/D	Trvl dt: 01/23/01	
		City of origin: ATL	Destination: SEA	
11/19	01/22	POSTAL-PRESC-SERV #024 PORTLAND OR		200.07
11/23	01/25	ARNIES RESTAURANT EDMONDS WA		113.36
11/26	01/29	KELLEY-ROSS PHARMACY, L SEATTLE WA		10.85
11/26	01/29	RAMADA INNS EDMONDS WA		99.48
		Arrival: 01/25/01 Resrvtn#: 69436131028503915010022		
		Svc#: 206-778-0200		
11/26	01/31	UNTER 2162133559437 SEATTLE WA		3.50
		Passngr: THOMPSON/DAVE	Trvl dt: 02/06/01	
		City of origin: SFO	Destination: DEN	
11/31	02/01	SEATTLE OPTICAL SEATTLE WA		145.00
11/30	02/01	SEATTLE-TACOMA INTL A SEATTLE WA		80.00
11/30	02/01	Passngr: THOMPSON/D	Trvl dt: 02/02/01	
		City of origin: SEA	Destination: SFO	
11/31	02/01	HILTON HOTELS LV ADV D LAS VEGAS NV		118.81
		Arrival: 03/25/01 Resrvtn#: 69427911032226400055662		
		Svc#: 800-555-1212 no recpts per Bonafidom M.		135.6160
11/31	02/02	HILTON HOTELS LV ADV D LAS VEGAS NV		118.81
		Arrival: 03/26/01 Resrvtn#: 69427911032226400055688		
		Svc#: 800-555-1212 " Norm S.		125.6160
11/31	02/02	HILTON HOTELS LV ADV D LAS VEGAS NV		118.81
		Arrival: 03/27/01 Resrvtn#: 69427911032226400055696		
		Svc#: 800-555-1212 Dave T.		140.6160
18 TRANSACTIONS				\$3,580.89

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 Total

BY 3/1/01

140.6160 = 1588.29
 125.6160 = 118.81
 135.6160 = 118.81
 140.6165 = 377.65

Information About Your AT&T Universal Business Card Account
 If You Have Questions About Your Account
 Call us 24 hours a day at 1 800 768-5680, or write to us at:

06/05/01 to 07/04/01

2615
 3:13 pm

Business Payments, Credits, Adjustments and Fees

SEA INC

Trans	Description	Payment
07/02	PAYMENT RECEIVED -- THANK YOU	790.58 CR
1 Payment		\$790.56

6/14 : 240.28

Finance Charge Summary

	Nominal APR	Periodic FINANCE CHARGE	Cash Advance Fee/FINANCE CHARGE
Purchases	12.10%	\$188.62	
Cash Advances	18.60%	\$0.00	\$0.00
Total FINANCE CHARGE			\$188.62

AMOUNT SHOWN
 DANCE WITH

Account Transaction Activity

DAVID C THOMPSON Individual Credit Line **\$21,000.00**
 Account Number **5477 8690 0015 1564**

Purchases

Trans	Post	Description	Promo ID	Charges
06/04	06/06	SEATTLE-TACOMA INTL A SEATTLE WA		70.00
06/04	06/06	LYNEX HOTEL FB WASHINGTON DC		17.50
		Arrival: 06/04/01 Resrvtn#: 76541861157072003453611		
		Svc#: 020-263-7472		
06/05	06/06	CROWNE PLAZA HOTEL FB WASHINGTON DC		35.25
06/04	06/06	UNITED 8100337472 EDMONDS WA		35.25
		Passngr: THOMPSON/D Trvl dt: 05/31/01		
		City of origin: XAA Destination: XAO		
06/06	06/11	UNITED 8100337472 EDMONDS WA		35.25
		Passngr: THOMPSON/D Trvl dt: 06/22/01		
		City of origin: SEA Destination: SFO		
06/01	06/13	AGNT FEE 89088942186782 EDMONDS WA		17.50
		Passngr: Z/ Trvl dt: 06/01/01		
		City of origin: XAA Destination: XAA		
06/14	06/15	SEATTLE-TACOMA INTL A SEATTLE WA		70.00
06/12	06/12	UNITED 8100337472 EDMONDS WA		35.25
		Passngr: THOMPSON/D Trvl dt: 06/29/01		
		City of origin: SEA Destination: SFO		
06/14	06/15	ANDYS AUTO LYNNWOOD WA		240.28
06/09	06/20	AGNT FEE 89088942186782 EDMONDS WA		17.50
		Passngr: Z/ Trvl dt: 06/08/01		
		City of origin: XAA Destination: XAA		
06/16	06/20	SEATTLE-TACOMA INTL A SEATTLE WA		70.00
06/15	06/27	AGNT FEE 89088942186782 EDMONDS WA		17.50
		Passngr: Z/ Trvl dt: 06/15/01		
		City of origin: XAA Destination: XAA		
06/15	06/27	SEATTLE-TACOMA INTL A SEATTLE WA		70.00
06/20	07/02	ATA AIR 36677589459140 EDMONDS WA		75.00
		Passngr: HOEFT/D Trvl dt: 06/21/01		
		City of origin: GRR Destination: MDW		
07/02	07/04	SEATTLE-TACOMA INTL A SEATTLE WA		70.00
15 TRANSACTIONS				\$1,625.23
Subtotal Balance for Account Number 5477 8690 0015 1564				\$1,625.23

8
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 78.00
 6.95

0007629 CS 3320 04 01 C

: 240.28

EXCERPTS FROM EXHIBIT 470D

Thompson/D flight to New York (5/17/00).....	A-16
DCT Meal and hotel charges in London (7/7-8/00).....	A-17
Payment to Headlands mortgage company (7/31/00).....	A-18
Thompson/D flight to Los Angeles (10/26/00).....	A-19

mbna

PLATINUM PLUS™

the new standard

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ACCOUNT NUMBER

5490 9941 2800 2888

PAYMENT DUE DATE

06/19/00

NEW BALANCE TOTAL

\$8,815.76

TOTAL MINIMUM PAYMENT DUE

AMOUNT ENCLOSED

PAYMENT HOLIDAY

DETACH TOP PORTION AND RETURN WITH PAYMENT

CARDHOLDER SINCE 1999



RICA
JX 15019
WILMINGTON, DE 19886-5019

For information call 1-800-789-6685
or provide address or new telephone number below

DAVID C THOMPSON
7030 220TH ST SW
MOUNTLAKE TERRA WA 98043-212530

17 00881576000079000005490994128002888

Account Number	Credit Line	Cash or Credit Available	Days in Billing Cycle	Closing Date	Total Minimum Payment Due	Payment Due Date
5490 9941 2800 2888	\$25,000.00	\$16,184.24	30	05/19/00	PAYMENT HOLIDAY	06/19/00

Posting Date	Transaction Date	Reference Number	Card Type	Category	Transactions	Charges	Credits (CR)
MAY 2000 STATEMENT							
PAYMENTS AND CREDITS							
5/08		5890	MC		PAYMENT - THANK YOU		602.30 CR
PURCHASES AND ADJUSTMENTS							
5/06	05/04	0654	MC	C	ANDYS ARCD LYNNWOOD WA	181.74	140.6860
			MC	C	SEATTLE-TACOMA INTL. A SEATTLE WA		140.6160
			MC	C	SEATTLE-TACOMA INTL. A SEATTLE WA		140.6165
			MC	C	SEATTLE-TACOMA INTL. A SEATTLE WA		140.6160
5/18	05/16	4005	MC	C	SEATTLE-TACOMA INTL. A SEATTLE WA	4.00	140.6160
5/19	05/17	3616	MC	C	UNITED THOMPSON/D EDMONDS WA	1,979.23	140.6160
TOTAL FOR BILLING CYCLE FROM 04/20/2000 THROUGH 05/19/2000						\$2,315.98	\$602.30 CR

M3109
5/19/00
2000-05
\$2,315.96

140.6160 = 2091.23
140.6860 = 181.74
140.6165 = 42.99

IMPORTANT NEWS

ENJOY THE SUMMER! USE THE ENCLOSED CHECKS ANYWHERE YOU WOULD WRITE A PERSONAL CHECK - FOR A QUICK GETAWAY, HOME RENOVATION, OR FOR ANY WEEKEND EXPEDITION.

CONGRATULATIONS - YOU HAVE QUALIFIED FOR A PAYMENT HOLIDAY. IF YOU SKIP THIS PAYMENT, THERE IS NO NEED TO NOTIFY US. FINANCE CHARGES WILL APPLY.

ACCESSING ADDITIONAL CASH IS EASY! PRESENT YOUR CREDIT CARD AT THE BANK COUNTER OR CALL 1-888-515-3307 TO REQUEST A PIN CODE FOR USE AT AN ATM.

SUMMARY OF TRANSACTIONS							TOTAL MINIMUM PAYMENT DUE	
Previous Balance	(-) Payments and Credits	(+) Cash Advances	(+) Purchases and Adjustments	(+) Periodic Rate FINANCE CHARGES	(+) Transaction Fee FINANCE CHARGES	(=) New Balance Total	Past Due Amount	\$0.00
\$7,037.51	\$602.30	\$0.00	\$2,315.96	\$64.59	\$0.00	\$8,815.76	Current Payment	\$0.00
							Total Minimum Payment	
							Due (OPTIONAL)	\$79.00

FINANCE CHARGE SCHEDULE Category	Periodic Rate	Corresponding Annual Percentage Rate	Balance Subject to Finance Charge
Cash Advances			
BALANCE TRANSFERS, CHECKS	0.030054% DLY	10.97%	\$0.00
ATM, BANK	0.030054% DLY	10.97%	\$0.00
PURCHASES	0.030054% DLY	10.97%	\$7,163.27

FOR YOUR SATISFACTION, EVERY HOUR, EVERY DAY

- For Customer Satisfaction and up to the minute automated information including balance, available credit, payments received, payments due, due date, payment address information, or to request duplicate statements, call 1-800-789-6685.
- For TDD (Telecommunication Device for the Deaf) assistance, call 1-800-346-3178.
- Mail payments to: MBNA AMERICA, P.O. BOX 15019, WILMINGTON, DE 19886-5019.
- Billing rights are preserved only by written inquiry. Mail billing inquiries, using form on the back, and other inquiries to: MBNA AMERICA, P.O. BOX 15026, WILMINGTON, DE

FOR THIS BILLING PERIOD:
ANNUAL PERCENTAGE RATE..... 10.97%
 (Includes Periodic Rate and Transaction Fee Finance Charges.)

51Q Y 3F5 0608 0400 00
PAGE 1 OF 1

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION

www.mbna.net/access.com

5490 9941 2800 2888	
PAYMENT DUE DATE	NEW BALANCE TOTAL
09/19/00	\$13,182.95
TOTAL MINIMUM PAYMENT DUE	AMOUNT ENCLOSED
\$135.00	
DETACH TOP PORTION AND RETURN WITH PAYMENT	

AMERICA
BOX 15019
WILMINGTON, DE 19886-5019

CARDHOLDER SINCE
1999

DAVID C THOMPSON
7030 220TH ST SW
MOUNTLAKE TERRA WA 98043-212530

Information call 1-800-789-6685
for address or new telephone number below

17 01318295000135000005490994128002888

Account Number	Credit Line	Cash or Credit Available	Days in Billing Cycle	Closing Date	Total Minimum Payment Due	Payment Due Date
5490 9941 2800 2888	\$25,000.00	\$11,817.05	32	08/21/00	\$135.00	09/19/00

Posting Date	Transaction Date	Reference Number	Card Type	Category	Transactions	Charges	Credits (CF)
AUGUST 2000 STATEMENT							
PURCHASES AND ADJUSTMENTS							
17/26	07/24	0002	MC	C	SEATTLE-TACOMA INTL. A SEATTLE WA	54.00	
17/28	07/26	2915	MC	C	ANDYS ARCO LYNNWOOD WA	412.52	
17/29	07/27	1768	MC	C	TEXACO INC 93002255658 MOUNTLAKE TE WA	13.68	
18/02	07/31	6409	MC	C	SEATTLE-TACOMA INTL. A SEATTLE WA	72.00	
18/02	07/31	0063	MC	C	HEADLANDS MORTGAGE CO. 415-4616790 CA	571.00	
18/03	07/31	9829	MC	C	NELLS RESTAURANT SEATTLE WA	145.92	
18/14	08/11	1539	MC	C	TEXACO INC 93002255658 MOUNTLAKE TE WA	12.36	
18/16	08/14	6307	MC	C	SEATTLE-TACOMA INTL. A SEATTLE WA	54.00	
18/17	08/15	5115	MC	C	ANDYS ARCO LYNNWOOD WA	233.44	
TOTAL FOR BILLING CYCLE FROM 07/21/2000 THROUGH 08/21/2000						\$1,568.92	\$0.00

2000-08
170.8140
140.6860
140.6860
140.6140
140.6165
140.6860
140.6160
140.6660
\$1689.81
Bank Fee

000.8140 = 120.89
140.6160 = 180.00
140.6860 = 672.00
140.6960 = 571.00
140.6165 = 145.92

POSTED
9/5/00

1-26-01 CK 65744 [6500] APPLIED BAL DUE = \$1,682.95

IMPORTANT NEWS

CUSTOMER SATISFACTION IS OUR TOP PRIORITY.

FOR UP-TO-DATE ACCOUNT INFORMATION, VISIT WWW.MBNANETACCESS.COM

INVEST IN MBNA GOLDPORTFOLIO CD AND MONEY MARKET ACCOUNTS. CALL 1-800-900-6702, MON-FRI 8AM TO 8PM & SAT 8-5 (EASTERN TIME). MEMBER FDIC.

ENJOY A GREAT FALL OR WINTER GETAWAY. 7-NIGHT CARIBBEAN CRUISES FROM \$699PP. CALL 1-877-229-5576 OR VISIT WWW.MBNATRAVEL.COM FOR MORE DETAILS.

SUMMARY OF TRANSACTIONS							TOTAL MINIMUM PAYMENT DUE	
Previous Balance	(-) Payments and Credits	(+) Cash Advances	(+) Purchases and Adjustments	(+) Periodic Rate FINANCE CHARGES	(+) Transaction Fee FINANCE CHARGES	(=) New Balance Total	Past Due Amount	\$0.00
\$11,493.14	\$0.00	\$0.00	\$1,568.92	\$120.89 000.8140	\$0.00	\$13,182.95	Current Payment	\$135.00
							Total Minimum Payment	\$135.00
							Due	\$135.00

FINANCE CHARGE SCHEDULE Category	Periodic Rate	Corresponding Annual Percentage Rate	Balance Subject to Finance Charge
Cash Advances			
BALANCE TRANSFERS, CHECKS	0.030054% DLY	10.97%	\$0.00
ATM, BANK	0.030054% DLY	10.97%	\$0.00
PURCHASES	0.030054% DLY	10.97%	\$12,569.53

FOR YOUR SATISFACTION, EVERY HOUR, EVERY DAY

- For Customer Satisfaction and up to the minute automated information include balance, available credit, payments received, payments due, due date, payee address information, or to request duplicate statements, call 1-800-789-6685
- For TDD (Telecommunication Device for the Deaf) assistance, call 1-800-346-3178.
- Mail payments to: MBNA AMERICA, P.O. BOX 15019, WILMINGTON, DE 19886-5019.
- Billing rights are preserved only by written inquiry. Mail billing inquiries, using form on the back, and other inquiries to: MBNA AMERICA, P.O. BOX 15026, WILMINGTON, DE 19850-5026.

FOR THIS BILLING PERIOD:
ANNUAL PERCENTAGE RATE
(Includes Periodic Rate and Transaction Fee Finance Charge)
PLEASE SEE REVERSE SIDE FOR IMPORTANT

1299 51N Y 1F9 1310 0300 00
300 2888 PAGE 4 OF 4

Card

the new standard

www.mbnanetaccess.com

5490 9941 2800 2888

PAYMENT DUE DATE	NEW BALANCE TOTAL
12/18/00	\$22,235.37
TOTAL MINIMUM PAYMENT DUE	AMOUNT ENCLOSED
\$230.00	

DETACH TOP PORTION AND RETURN WITH PAYMENT

CARDHOLDER SINCE 1999

MBNA AMERICA
P.O. BOX 15019
WILMINGTON, DE 19886-5019

DAVID C THOMPSON
7030 220TH ST SW
MOUNTLAKE TERRA WA 98043-212530

For account information call 1-800-789-6685
Print change of address or new telephone number below

Address _____
 City _____ State _____ Zip _____
 Home phone _____ Work phone _____

17 0223537000230000005490994128002888

Account Number	Credit Lines	Cash or Credit Available	Days in Billing Cycle	Closing Date	Total Minimum Payment Due	Payment Due Date
5490 9941 2800 2888		\$25,000.00	29	11/18/00	\$230.00	12/18/00

Posting Date	Transaction Date	Reference Number	Card Type	Category	Transactions	Charges	Credits (CR)
NOVEMBER 2000 STATEMENT							

PAYMENTS AND CREDITS

11/10 0023 MC PAYMENT - THANK YOU 2,000.00 CR

PURCHASES AND ADJUSTMENTS

10/21	10/19	6689	MC	C	AMERICAN STASIK/A	EDMONDS WA	✓ 1,510.80 -140.6160✓
10/25	10/23	0500	MC	C	UNITED THOMPSON/D	EDMONDS WA	✓ 158.00 -140.6160✓
10/26	10/24	5306	MC	C	SEATTLE-TACOMA INTL. A SEATTLE	EDMONDS WA	✓ 80.00 -140.6160✓
10/26	10/24	1198	MC	C	EMERSON SWISS FRANC	CH MAIL/PHONE	54.53 -120.6400
10/28	10/17	3078	MC	C	ARRIVAL DATE 10/23/00 COMM ELECTROTECHN. M/P GENEVE	CH MAIL/PHONE	✓ 54.53 -120.6400
10/28	10/26	8225	MC	C	UNITED THOMPSON/D	EDMONDS WA	235.00 -140.6160✓
10/28	10/26	8607	MC	C	SANIBEL HARBOUR RST & FT. MYERS	FL	✓ 1,731.71 -130.6160✓
11/01	10/20	7384	MC	C	ARRIVAL DATE 10/17/00 AGNT FEE	EDMONDS WA	✓ 17.50 -140.6160✓
11/01	10/30	4006	MC	C	Z/ SEATTLE-TACOMA INTL. A SEATTLE	EDMONDS WA	✓ 54.00 -140.6160✓

IMPORTANT NEWS

USE THE THREE ENCLOSED CHECKS TO TAKE ADVANTAGE OF YOUR LOW, PROMOTIONAL 7.99% APR THROUGH YOUR MARCH 2001 STATEMENT CLOSING DATE OR CALL 1-888-515-3308.

IT'S IMPORTANT TO HAVE ACCESS TO EXTRA CASH DURING THE HOLIDAYS. CALL 1-800-859-1933 TO REQUEST A PIN CODE TO USE WITH YOUR CREDIT CARD AT AN ATM.

FOR UP-TO-THE-MINUTE ACCOUNT INFORMATION, VISIT WWW.MBNANETACCESS.COM

SUMMARY OF TRANSACTIONS

Previous Balance	(-) Payments and Credits	(+) Cash Advances	(+) Purchases and Adjustments	(+) Periodic Rate FINANCE CHARGES	(+) Transaction Fee FINANCE CHARGES	(=) New Balance Total	TOTAL MINIMUM PAYMENT DUE	
\$16,449.56	\$2,000.00	\$0.00	\$7,569.93	\$215.88	\$0.00	\$22,235.37	Past Due Amount	\$0.00
							Current Payment	\$230.00
							Total Minimum Payment	\$230.00
							Due	\$230.00

FINANCE CHARGE SCHEDULE

Category	Periodic Rate	Corresponding Annual Percentage Rate	Balance Subject to Finance Charge
Cash Advances			
A. BALANCE TRANSFERS, CHECKS	0.021890% DLY	7.99%	\$0.00
B. ATM, BANK	0.035589% DLY	12.99%	\$0.00
C. PURCHASES	0.035589% DLY	12.99%	\$20,917.43

FOR YOUR SATISFACTION, EVERY HOUR, EVERY DAY

- For Customer Satisfaction and up to the minute automated information including balance, available credit, payments received, payments due, due date, payment address information, or to request duplicate statements, call 1-800-789-6685.
- For TDD (Telecommunication Device for the Deaf) assistance, call 1-800-346-3178.
- Mail payments to: MBNA AMERICA, P.O. BOX 15019, WILMINGTON, DE 19886-5019.
- Billing rights are preserved only by written inquiry. Mail billing inquiries, using info on the back, and other inquiries to: MBNA AMERICA, P.O. BOX 15026, WILMINGTON, DE 19886-5026.

FOR THIS BILLING PERIOD:

ANNUAL PERCENTAGE RATE _____

(Includes Periodic Rate and Transaction Fee Finance Charges)

ON PAGE SEE REVERSE SIDE FOR IMPORTANT

B93 52L Y OZR 0813 0300 00

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PAGE 1 OF 2

SUMMARY FROM EXHIBIT 471

D. THOMPSON BUSINESS
EXPENSE LOG

PAYMENT TO DCT

	<u>CHECK #</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>BUSINESS JUSTIFICATION?</u>	<u>DATE</u>	<u>Expenses to DCT</u>	<u>Expenses to be paid by Company</u>
1999	-	-	-	Comspace/AMTA Dallas	1/30/1999	80.85	546.67
	14186	2/9/1999	84	SF - Seascape	2/6/1999	34	79.29
	-	-	-	Kansas City - FT Lauderdale	3/28/1999	0	360.68
	-	-	-	IWCA - Las Vegas	4/30/1999	0	1134.19
	-	-	-	Washington DC	6/19/1999	0	682.22
	14688	10/14/1999	85.16	New York City	9/18/1999	52.7	1935.13
	-	-	-	Orlando Amtex	11/20/1999	0	571.32
2000	-	-	-	IWCA - Las Vegas	3/25/2000	32.11	1347.04
	1101	10/30/2000	173.4	Dallas, TX	10/28/2000	57.4	934.8
2001	-	-	-	Las Vegas - Maxon	1/5-1/9/01	119	482.51
	-	-	-	Kansas City	2/10/2001	2.92	587.36
	-	-	-	New York	3/2/2001	62	28
	1853	4/30/2001	1106.1	IWCA Las Vegas	3/31/2001	96.74	600.78
2002							
2003							
		Total:	2554.76			537.72	9289.99

“EXHIBIT B”

FROM DECLARATION OF THOMAS J. SEYMOUR IN
SUPPORT OF MOTION FOR RECONSIDERATION, TO
AMEND FINDINGS AND CONCLUSIONS, OR IN THE
ALTERNATIVE, FOR A NEW TRIAL

Licensee Payment Summary Report

Date: 4/8/02

Quarter: January - March 2002

Billing Region: So. Calif.

Income Summary

Outstanding Receivables Carried Over	\$133,458.72
Amount Collected during Current Quarter Less Adjustments	<u>(\$129,272.49)</u>
Receivables Uncollected	\$4,186.23
Amount Billed for Next Quarter Less Adjustments	<u>\$107,969.66</u>
Receivables Carried Forward	<u>\$112,155.89</u>

Distribution of Funds

Amount Collected during Current Quarter	\$129,272.49
Number of Channels	<u>115</u>
Gross Collections per Single Channel	\$1,124.11
Gross Collections per 5 Channel System	<u>\$5,620.54</u>

20% Payment for 5 Channel System \$1,124.11

Payment Summary

Name	Site	Percentage	No. Channels	Amount
Narrowband Network Systems	Santiago	20%	5	\$1,124.11
7030 220th S.W.	Otay	20%	5	\$1,124.11
Mountlake Terrace, WA 98043	Mission Valley	20%	5	\$1,124.11
				<u>\$3,372.33</u>

INT0011

Licensee Payment Summary Report

Date: 6/7/02

Page: 1

Billing Region: San Antonio

Quarter: January - March 2002

Revenue Summary

Amount Invoiced for Q - 1 2002	\$432.00
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Distribution of Funds

15% Payment for NNS	\$64.80
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Name

Amount

Narrowband Network Systems
7030 220th S.W.
Mountlake Terrace, WA 98043
Ref. San Antonio B Market

\$64.80

INT0029

Licensee Payment Summary Report

Date: 4/16/02
 Billing Region: New York

Page: 1
 Quarter: January - March 2002

Income Summary

Amount Billed for Current Quarter	\$7,908.25
Amount Collected during Current Quarter	<u>(\$3,021.18)</u>
Receivables Uncollected	\$4,887.07
Amount Billed for Next Quarter	<u>\$1,052.72</u>
Receivables Carried Forward	\$5,939.79

Distribution of Funds

Amount Collected during Current Quarter	\$3,021.18
Number of Channels	<u>17</u>
Gross Collections per Single Channel System	\$177.72
Gross Collections per 5 Channel System	<u>\$888.58</u>
15% Payment for 5 Channel System	\$133.29
20% Payment for 5 Channel System	\$177.72

Payment Summary

Name	Site	No. Channels	Percentage	Amount
NNS	Lincoln (Arizala)	5	20%	\$177.72
7030 220th SW	Broadway (Marton)	5	15%	<u>\$133.29</u>
Mountlake Terrace, WA 98043				\$311.00

INT0032

Licensee Payment Summary Report

Date: 4/8/02

Quarter January - March 2002

Billing Region: Chicago

Income Summary

Outstanding Receivables Carried Over	\$6,811.17
Amount Collected during Current Quarter	<u>(\$11,334.28)</u>
Receivables Uncollected	(\$4,523.11)
Amount Billed for Next Quarter	<u>\$7,115.26</u>
Receivables Carried Forward	\$2,592.15

Distribution of Funds

Amount Collected during Current Quarter	\$11,334.28
Number of Channels	<u>76</u>
Gross Collections per Single Channel	<u>\$149.14</u>
Gross Collections per 5 Channel System	<u>\$745.68</u>
10% Payment for 5 Channel System	\$74.57
20% Payment for 5 Channel System	\$149.14
30% Payment for 5 Channel System	\$223.70

Payment Summary

Name	Site	Percentage	Amount
Narrowband Network Systems	1st National	30.00%	\$223.70 (Halstead)
7030 220th S.W.	Milwaukee	20.00%	\$149.14 (Yakoo)
Mountlake Terrace, WA 98043	Milwaukee	20.00%	\$149.14 (Boissiere)
Total			\$521.97

INT0036

Licensee Payment Summary Report

Date: 4/8/02
 Billing Region: Texas

Page: 1
 Quarter: January - March 2002

Income Summary

Outstanding Receivables Carried Over	\$30,790.62
Amount Collected during Current Quarter	<u>(\$19,016.14)</u>
Receivables Uncollected	\$11,774.48
Amount Billed for Next Quarter	\$14,333.28
Receivables Carried Forward	\$26,107.76

Distribution of Funds

Amount Collected during Current Quarter	\$19,016.14
Number of Channels	<u>112</u>
Gross Collections per Single Channel System	\$169.79
Gross Collections for 5 Channel System	<u>\$848.93</u>

Payment Summary

<u>Name</u>	<u>Site</u>	<u>Percentage</u>	<u>Amount</u>
NNS	Commerce	20%	\$169.79
7030 220th SW	Commerce	20%	\$169.79
Mountlake Terrace, WA 98043	Commerce	20%	\$169.79
	901 Main Street	20%	<u>\$169.79</u>
	Total Channels		\$679.15

INT0040

Licensee Payment Summary Report

Date: 4/8/02
 Billing Region: No. Calif.

Page: 1
 Quarter: January - March 2002

Income Summary

Outstanding Receivables Carried Over	\$13,875.91
Amount Collected during Current Quarter	<u>(\$10,844.94)</u>
Receivables Uncollected	\$3,030.97
Amount Billed for Next Quarter	<u>\$7,357.46</u>
Receivables Carried Forward	\$10,388.43

Distribution of Funds

Amount Collected during Current Quarter	\$10,844.94
Number of Channels	<u>101</u>
Gross Collections per Single Channel	\$107.38
Gross Collections per 5 Channel System	<u>\$536.88</u>
10% Payment for 5 Channel System	\$53.69
20% Payment for 5 Channel System	\$107.38

Payment Summary

Name	Site	No. Channels	Percentage	Amount
MNS 7030 220th SW Mountlake Terrace, WA 98043	Bellaire (Davis)	5	20%	\$107.38
	Bellaire (Howe)	5	20%	\$107.38
	Clay Jones (Stapleton)	5	20%	\$107.38
	Bellaire (Kaufman)	5	20%	\$107.38
	Clay Jones (Andros)	5	20%	\$107.38
	Vaca (Lieberman)	3	10%	\$32.21
	1107 Ninth (Wireless)	5	20%	\$107.38
				<u>\$676.47</u>

INT0046

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

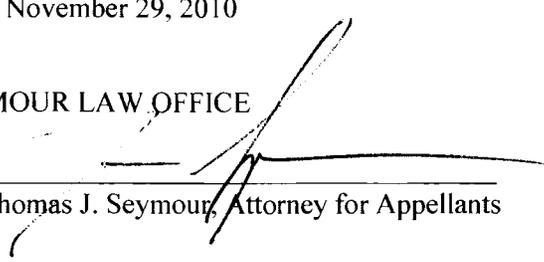
David Thompson,)	
)	
Respondent,)	No. 65001-7
v.)	
)	PROOF OF SERVICE
Datamarine International, Inc.,)	
Narrowband Network Systems, Inc., and)	
SEA, Inc. of Delaware,)	[Rule 5.4 (b)]
)	
Defendants,)	
and)	
)	
Dolores Draina, Marcus Duff, and James Sylvia)	
)	
Appellants)	

FILED
2010 NOV 29 AM 9:46
CLERK OF COURT

I certify, under penalty of perjury under the laws of the State of Washington, that on November 24, 2010, I served a true and correct copy of the Appellants/Cross-Respondents' Reply Brief on counsel of record for plaintiff, Howard (Terry) Hall, by electronic mail to thall@wpblaw.com, and by courier on November 29, 2010 to Terry Hall, Wolfstone, Panchot & Bloch, P.S., Inc., 1111 Third Avenue, Suite 1800, Seattle, WA 98101; and on defendants by U.S. Mail to PO Box 179, Mountlake Terrace, WA 98043.

Date: November 29, 2010

SEYMOUR LAW OFFICE

By: 
Thomas J. Seymour, Attorney for Appellants