

**ONLY CONVICTION OF GARY LYNN MCDUFF**

SOUTHERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT

CRIMINAL DOCKET FOR CASE #: 4:03-CR-00161

VIOLATION 1988

INDICTMENT 1993

CONVICTION 1994

EARLY DISCHARGE FROM SUPERVISED RELEASE

1997



**U.S. District Court  
SOUTHERN DISTRICT OF TEXAS (Houston)  
CRIMINAL DOCKET FOR CASE #: 4:93-cr-00161 All Defendants**

Case title: USA v. McDuff, et al

Date Filed: 05/26/1993  
Date Terminated: 02/14/1994

Assigned to: Judge Lee H Rosenthal  
Appeals court case numbers: 94-  
20076, W.Faris

**Defendant (1)**

**Gary L McDuff**  
*TERMINATED: 01/26/1994*

represented by **D Randall Johnson**  
SCB Communications Inc  
175 E Houston  
Rm 264  
San Antonio, TX 78205  
210-351-3450  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED  
Designation: Retained*

**Thomas S Berg**  
600 Travis St  
Ste 1900  
Houston, TX 77002  
713-236-1900  
Email: tomberg@mgsounsel.com  
*TERMINATED: 01/26/1994  
LEAD ATTORNEY  
ATTORNEY TO BE NOTICED  
Designation: Public Defender or  
Community Defender Appointment*

**Pending Counts**

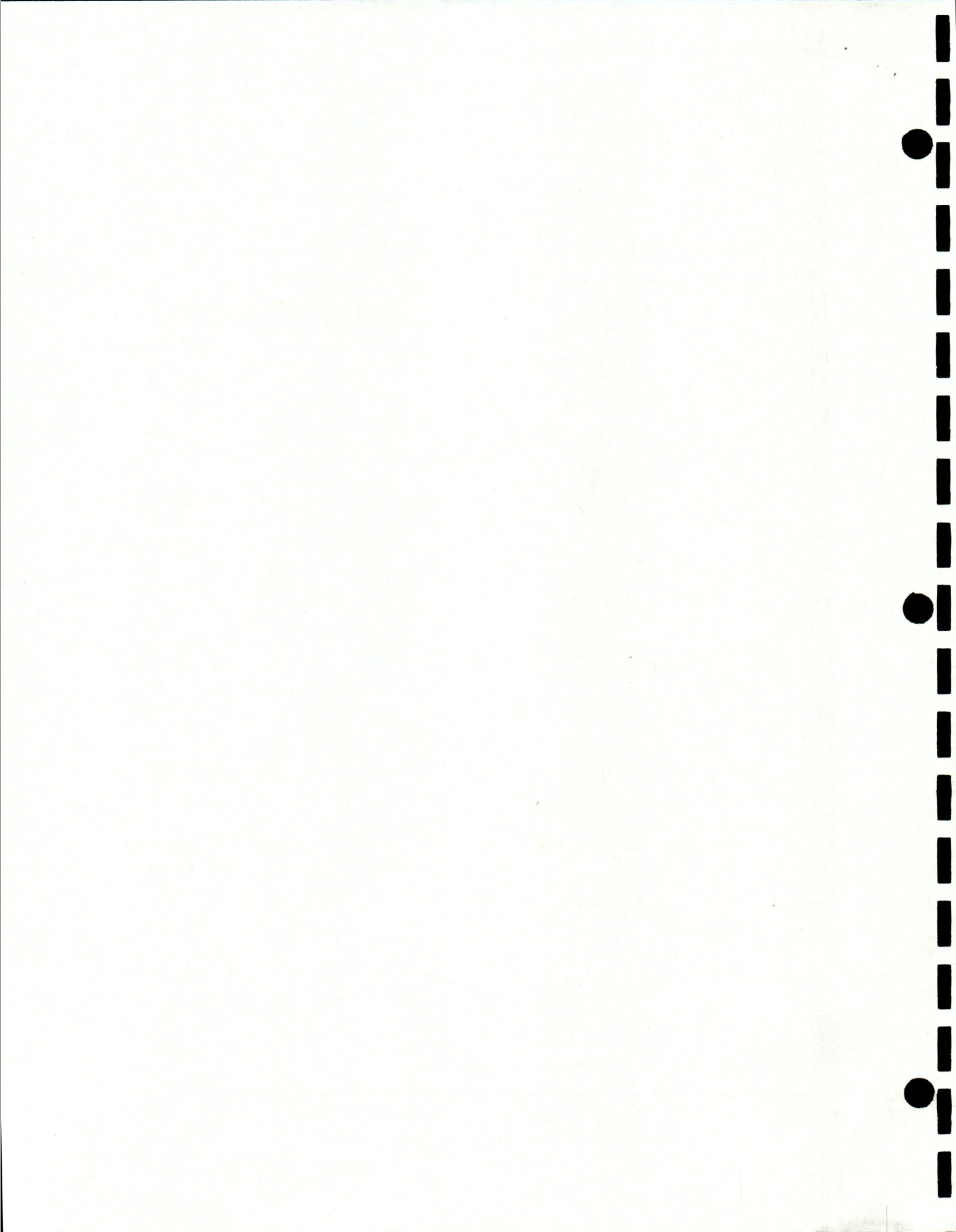
18:1957 Money Laundering  
**(OFFENSE DATE: 5/26/88) MAX**  
PENALTY: 10 yrs and/or \$250,000  
(1-2)

**Disposition**

37 mo. to serve, followed by 3 yrs  
SRT, as to each count, to run  
concurrently

**Highest Offense Level (Opening)**

Felony



UNITED STATES OF AMERICA

VS.

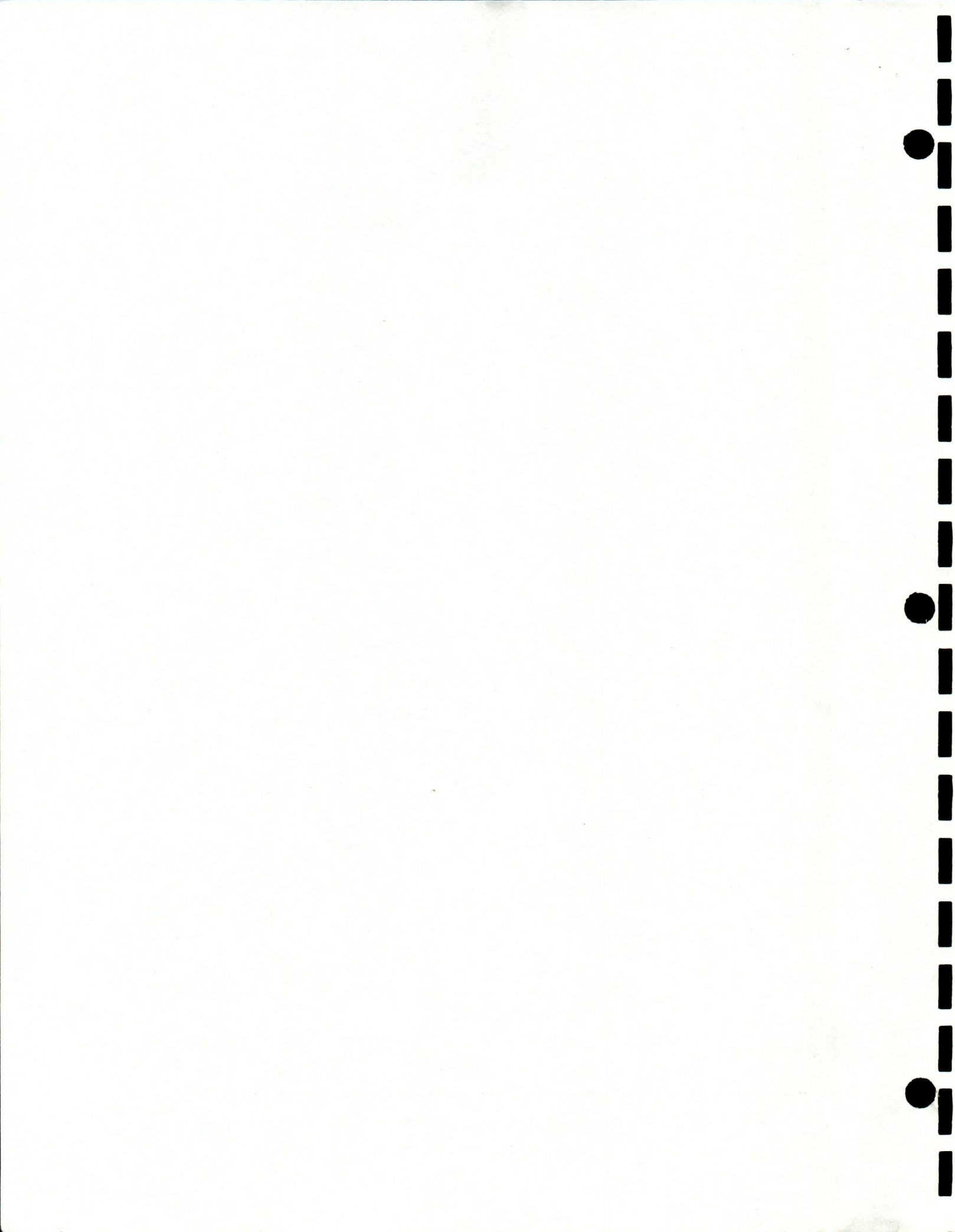
GARY L. MCDUFF

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OPINIONS EXPRESSED BY:

CHARLES L. WILLIAMS  
PRESIDENT  
FIDELITY EQUITY ALLIANCE

OCTOBER 12, 1993



I have been designated as a banking expert witness on the above entitled cause of action. I offer this report as an expression of my opinions on certain matters, and will be prepared to testify, if necessary, at the trial. I have reviewed information produced by the United States of America(**the government**) in this cause of action. That information included files from Cornerstone Savings Association (**Cornerstone**) that pertained to two loan transactions funded by Cornerstone to Sigma Investments, Inc. (**Sigma**).

1. Cornerstone funded two loan transactions (**the loans**) to Sigma. One loan in the amount of \$280,000 was secured by a first lien on a single family residence located at 1204 Coward Creed in Friendswood, Texas. Cornerstone had an appraisal on the house in the amount of \$560,000. That appraised value was based on the completion of the house. The loan to value ratio was 50% which is a very conservative ratio. The second loan funded by Cornerstone to Sigma was in the amount of \$275,000 secured by a first lien on a single family residence located in Pasadena, Texas. Cornerstone had an appraisal for the house in the amount of \$550,500. The loan to value ratio on the second loan was 50% which is a conservative ratio.
2. The funding of the loans by Cornerstone to Sigma was completed independently of any position of Mr. Gary L. McDuff (**Mr. McDuff**). Mr. McDuff was not an officer or employee of either Cornerstone or Sigma and could not and did not have any influence on the approval or funding of the loans.
3. Upon closing of the loans by Cornerstone, a portion of the loan proceeds were wire transferred to First Republic Bank for credit to the account of Title USA Company of Galveston for disbursement to the borrower. That action is a standard and acceptable method used by lenders like Cornerstone when funding loan transactions at or near the date of closing of a loan transaction.
4. Cornerstone made four advances on the Coward Creek loan and those advances were documented in the records of Cornerstone. The





advances that were funded by Cornerstone were made to Sigma. Each of the advances was funded by a wire transfer to Sigma's account at Commonwealth Savings Association based on documents contained in Cornerstone's files. The advances made are summarized below:

<u>DATE OF ADVANCE</u>	<u>AMOUNT OF ADVANCE</u>
July 8, 1988	\$ 16,000.00
August 3, 1988	\$ 20,000.00
August 12, 1988	\$ 51,900.00
August 29, 1988	\$ 12,534.30
Total Amount of Advances	\$100,434.30

After the loan advance that was made on August 29, 1988 there were no additional advances made by Cornerstone on the loan. Construction of the house was not completed.

5. Based on over fifteen years of experience making construction loans as well as many other types of real estate loans, it is my opinion that it has been standard and acceptable practice for a lender like Cornerstone to make a loan secured by real estate which is the primary source of repayment and commonly referred to as an "asset based loan". As in the case of the Sigma loans, the value of the houses were two times the amount of the loans. The primary source of repayment was the sale of the houses. In that case, those loan transactions can be defined as asset based loans.
6. While it does not happen often, I do have experience making loans on real estate projects that have had work started but not completed. There is nothing wrong with that type of loan in terms of regulations that would prohibit or keep a lender from making that type of loan.
7. After reviewing the information from the files of Cornerstone produced by the government I found no evidence that Mr. Gary McDuff had any ownership or was in any way connected with Sigma. Based on that



lack of documentation, it is my opinion that Mr. McDuff did not have any ownership or any control of Sigma and did not influence the actions of Sigma.

8. After reviewing documents from the files of Cornerstone produced by the government, I found no evidence that Mr. Gary McDuff had any connection with Cornerstone in terms of ownership or in terms of employment. Therefore, it is my opinion that Mr. McDuff did not have any influence or control over Cornerstone as to the funding of the two loans to Sigma.
9. In reviewing records relating to Mr. Gary McDuff's personal financial situation in 1988, I found that he was having sever financial problems with his business. Those financial problems caused Mr. McDuff to become delinquent on numerous financial obligations. In fact, his business, McDuff, Scott & Associates, had numerous slow payments as well as an I.R.S. tax lien recorded on a Dun & Bradstreet Report during 1988.
10. It is my experience as a banker for over 20 years that a business man who is having serious financial problems can take drastic actions to try to save his business, including selling his home at a below market price to try to raise money to use to save his business.
11. It is standard and prudent practice for a lender like Cornerstone to make an inspection of a house that is under construction prior to advancing funds to pay for construction. It is the responsibility of the lender to make those inspections before funds are advanced on the construction loan to protect the lender. I did not see any evidence that Cornerstone made any inspections prior to making the loan advances as defined in paragraph 4 of this report.
12. The four advances made by Cornerstone (as defined in paragraph 4 above) on the construction loan for the Friendswood house were made to the borrower - Sigma. I found no evidence that Mr. Gary McDuff had any control over those funds until after Sigma had possession of the



advances made by Cornerstone. The records indicate that of the \$100,434.00 that was funded by Cornerstone for construction on the Friendswood house, the building company only received \$53,650.00 of funds from Sigma for construction. All of the funds paid by Sigma to Mr. McDuff were used by Mr. McDuff to make improvements to the Friendswood house.

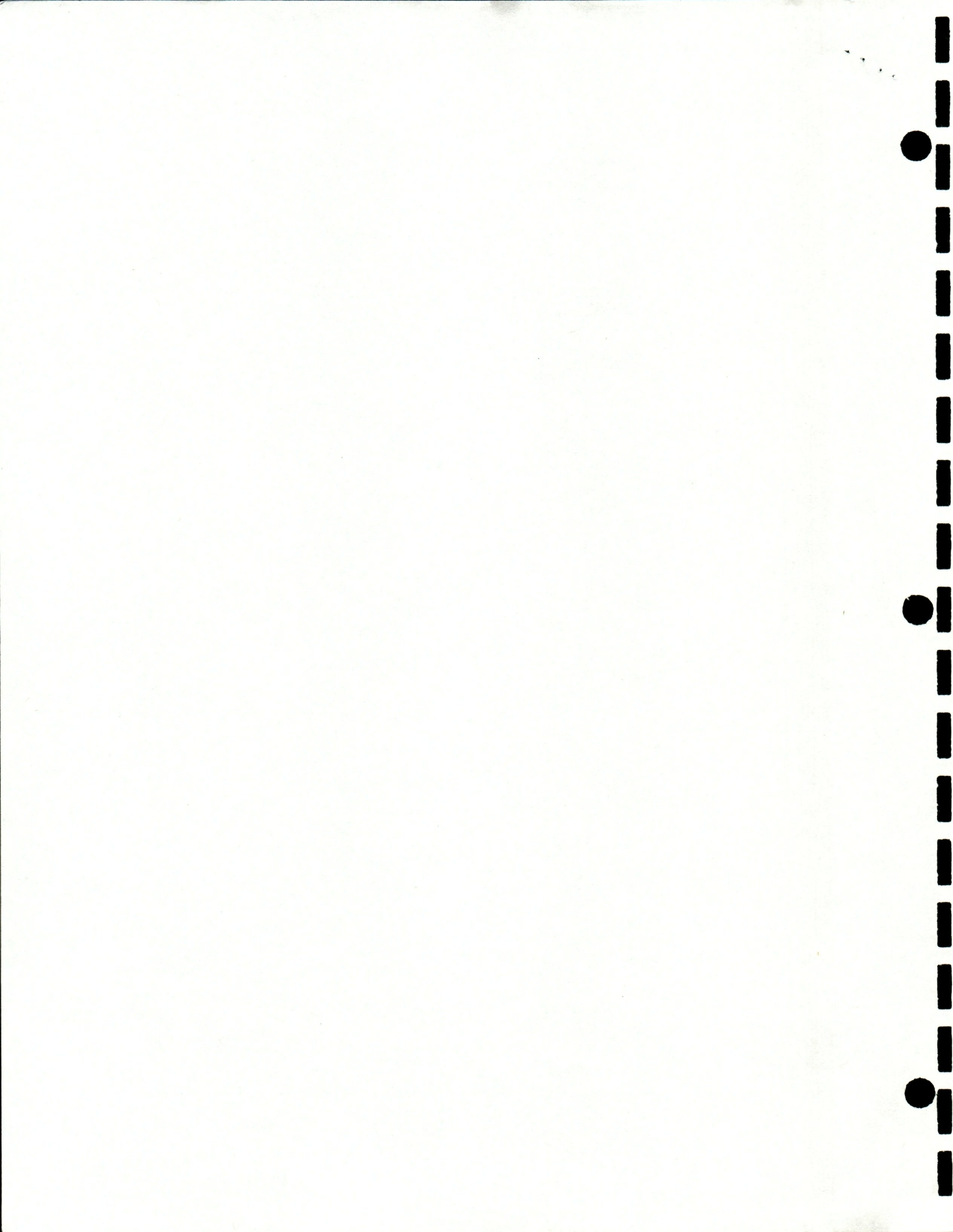
The opinions expressed in this report are my opinions as of the date of the report.

*Charles L. Williams*

Charles L. Williams  
President  
Fidelity Equity Alliance

*11/12/93*

Date



1 JUDGE ELLIOT: Well, not exactly.

2 Let me jump in here. Where were you aware  
3 there were two different funds?

4 THE WITNESS: At or about the time I learned  
5 this way back when, yes, I would -- SEC probably Ms.  
6 Huseman and I were running parallel at this time in that  
7 part of the world interviewing people and looking at  
8 documents. If I discovered it, she probably discovered  
9 it, may have discovered it before me; and I would have  
10 talked to Gary Lancaster about it. At the end of the  
11 day, I didn't care much about how many entities there  
12 were. I cared about the flow of funds and what was left  
13 and could I track it. So, I think whether there was 1,  
14 2, 3 or 8, I don't recall. But, yes, I knew about the  
15 fact that there was more than one of them.

16 Q The date it was created shows on the front  
17 bottom as being what, the very bottom of the page?

18 A (Reviewing document) It says the effective date  
19 of this memorandum is June 1, 2005.

20 Q And the Megafund had already been closed down  
21 at this time? Megafund was closed down in June 2005?

22 A I don't recall.

23 Q And this fund, do you recall tracing the money  
24 went to a Max International?

25 A Yes, sir. Thank you for reminding me. That

1 was a whole different movie.

1 was a whole different movie.

2 Q And do you recall Mr. Lancaster said that he  
3 did not tell myself anything about this Fund No. 2 or his  
4 movements or anything he was doing in that transaction or  
5 a gentleman by the name of Robert Trickle?

6 A That's true.

7 Q All of Lancorp Fund 2 was a creation of him all  
8 by himself?

9 A That's true.

10 Q That's what he admitted?

11 A Yes, that's true.

12 MS. FRANK: Your Honor --

13 JUDGE ELLIOT: That's not relevant.

14 Okay. So, we're done with Mr. Quilling. You're  
15 excused.

16 MS. FRANK: Your Honor, I was going to ask.

17 JUDGE ELLIOT: Oh, you have redirect?

18 MS. FRANK: One redirect question.

19 JUDGE ELLIOT: Go ahead. Yes.

20 REDIRECT EXAMINATION BY COUNSEL FOR THE

21 DIVISION OF ENFORCEMENT

22 BY MS. FRANK:

23 Q I wanted to know, Mr. Quilling, if in doing  
24 your duties and discharging your fiduciary to the court  
25 as a receiver, did you rely exclusively on what you



**MexBank S.A. de C.V.  
World Trade Center  
Montecito 38, Piso 39 Ofic 34  
Col. Napoles, C.P. 03810  
Mexico, DF**

**Adolfo Noriega, Chief Operations Officer  
Compliance-Department**

4/26/2006 C.E.

1. Merchant-Steven Renner  
Cash Cards International, LLC  
250 Second Avenue South, #145  
Minneapolis, Minnesota 55401  
Fax (612) 332-6032
2. Merchant-Sean Shiff  
Skolnick & Associates, P.A.  
527 Marquette Avenue South  
2100 Rand Tower  
Minneapolis, Minnesota 55402  
Fax (612) 677-7601
3. Merchant-Julia W. Huseman  
c/o "U.S. Securities and Exchange Commission"  
801 Cherry Street, 19<sup>th</sup> Floor  
Fort Worth, Texas 76106  
Fax (817) 978-4927
4. Merchant-Commissioners: Christopher Cox, Cynthia A. Glassman, Paul S. Atkins, Roel C. Campos  
and Annette L. Nazareth  
c/o "U.S. Securities and Exchange Commission"  
801 Cherry Street, 19<sup>th</sup> Floor  
Fort Worth, Texas 76106  
Fax (817) 978-4927

Dear Merchants: Steve Renner, Sean Shiff, Skolnick & Associates, Julia W. Huseman,  
Christopher Cox, Cynthia A. Glassman, Paul S. Atkins, Roel C. Campos and Annette L. Nazareth  
and To Whom It May Concern:

**Formal, Constructive and Public Notice to the above listed people and entities  
of intent to protect our rights against criminal and civil injury.**

**For the Record:**

Comes Now Adolfo Noriega, Sui Juris, Appearing Specially, Not Generally Or  
Voluntarily for MexBank S.A. de C.V. [hereinafter MexBank], responding to the alleged  
Subpoena duces tecum served by merchant-Julia W. Huseman upon Merchant-Steve Renner of  
Adolfo Noriega for MexBank - Formal, Constructive and Public Notice - Page 1 of 15

Appendix Doc. #7  
10 of 17

without hesitation, deliver the records and funds over to them. By circumventing these proper and lawful procedures merchants-SFC and Huseman give evidence to their fraud and other criminal activities involving this case and issue.

MexBank extended an offer to pay the legal fees associated with Cash Cards International defending the "privileged" and "protected matter" that MexBank must protect unless or until a valid order of a court having proper jurisdiction is obtained, Cash Cards International declined the offer and sided with merchant-Shift and the SEC to violate applicable procedural rules of law and the protection provided therein for the rights of MexBank to assert its objections. This has established a clearly defined "Tort" where the Commissioners, officers and agents of the SEC, Cash Cards International, LLC, Steve Renner, Skolnick & Associates, P.A. and merchant-Shift are jointly injuring MexBank;

"When more than one aggressor has contributed to a tort, generally the plaintiffs join the defendants together in one suit ("joinder"). However, this should not be allowed to override principle or rights or the original common-law rule of joinder. Defendants can be compulsorily joined only when all the parties acted in concert in a joint tortious enterprise.

In the case of truly joint torts, it also makes sense to have each of the joint aggressors equally liable for the entire amount of the damages. If it were otherwise, each criminal could dilute his own liability in advance by simply adding more criminals to their joint enterprise. Hence, since the action of all the aggressors was in concert, the tort was truly joint, so that

"all coming to do an unlawful act and of one part, the act of one is the act of the same part being present." Each was therefore liable for the entire damage done, although one might have battered the plaintiff, while another imprisoned him, and a third stole his silver buttons. All might be joined as defendants in the same action at law. [92] Prosser, Law of Torts, p.291, Also see, ibid, pp.293 ff."

MexBank has had to rely upon the person known as Gary McDuff (hereinafter McDuff) for information related to this SEC inquiry. McDuff is not a "control person" or shareholder, officer, record-keeper, or representative of MexBank SA de CV in any capacity. He has no authority, signatory or otherwise, over any MexBank-accounts or operations. He is a representative of a Belize based corporation, 100% owned by a Belize-Citizen that has a 1% equity-ownership in MexBank SA de CV. Acting for that owner, McDuff has presented MexBank with international corporate customers from time to time. McDuff has never been authorized to keep or safeguard any MexBank-files or

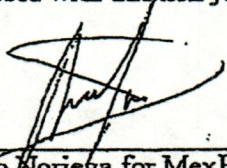
records. Mexican law requires MexBank to maintain its own files and records in Mexico. We have given McDuff no records of the accounts it appears the SEC is seeking for its unlawful purposes. MexBank does not now hold, or ever held, an account in McDuff's name, or in any other name reflecting McDuff as an authorized sole or joint signatory thereto.

MexBank has been denied the most basic procedures of international banking-rules which provide for MexBank to be formally presented with sufficient evidence that an account holder of MexBank is the subject of an investigation and certain funds received by them are in question. Upon receipt of such a request, properly validated, MexBank is required to place a hold on those funds, provided those funds are in the subject-account, pending a final disposition-order rendered by the court that heard and tried the merits of the case, resulting in a finding of guilt against the MexBank-customer. Whereupon, MexBank would deliver the funds to the court. MexBank has been denied its right to this remedy by the parties listed on page one of this Notice as 1., 2., 3., & 4.

Please respond within ten (10) days so that we can get this matter cleared up or we will conclude and evidence will bear that you do not have jurisdiction and we will close this issue. Failure to object timely means you have waived the objection.

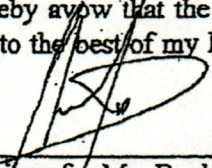
Hence, if you, merchants-Renner, Cash Cards International, LLC, Skolnick & Associates, P.A. and Shiff or your officers, agents, brokers or intermediaries give our private information to merchant-Huseman or any officer, agent, broker or intermediary of Huseman or the entity known as the "U.S. Securities and Exchange Commission" or the corporate United States of America without proper procedures we shall file a civil suit against you in the World Court and criminal charges in the International Criminal Court and proceed with this non-judicial lien-process.

Govern Yourselves Accordingly.

  
Adolfo Noriega for MexBank SA de CV

Avouchment

I, Adolfo Noriega for MexBank, do hereby avow that the foregoing "Notice and Demand for Clarification" is true, accurate and correct to the best of my knowledge, information and belief.


  
\_\_\_\_\_  
Adolfo Noriega for MexBank SA de CV

Mexico-Country :  
: asv.  
Mexico-City :

Certificate of Service and Interested Parties

I Hereby Certify that the foregoing "Notice and Demand for Clarification" was sent by fax and mail delivery by carrier on this- : 26<sup>th</sup> day of April 2006 Current Era to the following:

1. Merchant-Steven Renner  
Cash Cards International, LLC  
250 Second Avenue South, #145  
Minneapolis, Minnesota 55401  
Fax (612) 332-6032 (Fax)
2. Merchant-Skolnick & Associates, P.A.  
Attn: merchant-Sean Shiff  
527 Marquette Avenue South  
2100 Rand Tower  
Minneapolis, Minnesota 55402  
Fax (612) 677-7601
3. Merchant-Julia W. Huseman  
c/o "U.S. Securities and Exchange Commission"  
801 Cherry Street, 19<sup>th</sup> Floor  
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4. Merchant-Commissioners: Christopher Cox, Cynthia A. Glassman, Paul S. Atkins, Roel C. Campos  
and Annette L. Nazareth  
c/o "U.S. Securities and Exchange Commission"  
801 Cherry Street, 19<sup>th</sup> Floor  
Fort Worth, Texas 76106  
Fax (817) 978-4927

  
\_\_\_\_\_  
Adolfo Noriega for MexBank SA de CV

(using the broadest of interpretation in favor of the DOE - which is expressly denied by McDuff).

4). The ONESCO cases are:

- A. *The O.N. Equity Sales Company v. Steinke*  
504 F.Supp. 2d 913, August 27, 2007 U.S. Dist. LEXIS 64842  
(Central District of California)
- B. *The O.N. Equity Sales Company v. Pals*  
509 F.Supp. 2d 761, September 6, 2007 U.S. Dist. LEXIS 66121  
(Northern District of Iowa, WD)
- C. *The O.N. Equity Sales Company v. Venrick*  
508 F.Supp. 2d 872, September 17, 2007 U.S. Dist. LEXIS 68866  
(Western District of Washington)
- D. *The O.N. Equity Sales Company v. Gibson*  
514 F.Supp. 2d 857, October 1, 2007 U.S. Dist. LEXIS 74763  
(S.D. of West Virginia)
- E. *The O.N. Equity Sales Company v. Prins*  
519 F.Supp. 2d 1006, November 6, 2007 U.S. Dist. LEXIS 82748  
(District of Minnesota)
- F. *The O.N. Equity Sales Company v. Wallace*  
2007 U.S. Dist. LEXIS 84945  
(S.D. California), November 15, 2007
- G. *The O.N. Equity Sales Company v. Samuels*  
2007 U.S. Dist. LEXIS 90332  
(M.D. Florida), November 30, 2007
- H. *The O.N. Equity Sales Company v. Rahner*  
526 F.Supp. 2d 1195, November 30, 2007 U.S. Dist. LEXIS 90197  
(District of Columbia)
- I. *The O.N. Equity Sales Company v. Emmertz*  
526 F.Supp. 2d 523, December 19, 2007 U.S. Dist. LEXIS 93405  
(Eastern District of Pennsylvania)
- J. *The O.N. Equity Sales Company v. Thiers*  
590 F.Supp. 2d 1208, January 10, 2008 U.S. Dist. LEXIS 3765  
(District of Arizona)
- K. *The O.N. Equity Sales Company v. Cui*  
2008 U.S. Dist. LEXIS 6828  
(N.D. of California), January 16, 2008
- L. *The O.N. Equity Sales Company v. Charters*  
2008 U.S. Dist. LEXIS 74403  
(M.D. of Pennsylvania), January 25, 2008
- M. *The O.N. Equity Sales Company v. Nemes*  
2008 U.S. Dist. LEXIS 9189  
(N.D. of California), January 28, 2008
- N. *The O.N. Equity Sales Company v. Staudt*  
2008 U.S. Dist. LEXIS 7777

- O. (District of Vermont), January 30, 2008  
*The O.N. Equity Sales Company v. Cattan*  
2008 U.S. Dist. LEXIS 9827  
(S.D. of Texas), February 8, 2008
- P. *The O.N. Equity Sales Company v. Broderson*  
2008 U.S. Dist. LEXIS 11447  
(E.D. of Michigan), February 14, 2008
- Q. *The O.N. Equity Sales Company v. Pals*  
528 F.3d 564, March 10, 2008 U.S. App. LEXIS 12252  
(Eighth Circuit Court of Appeals)
- R. *The O.N. Equity Sales Company v. Stephens*  
2008 U.S. Dist. LEXIS 71623  
(N.D. of Florida), March 28, 2008
- S. *The O.N. Equity Sales Company v. Pals*  
551 F.Supp. 2d 821, May 5, 2008 U.S. Dist. LEXIS 36676
- T. *The O.N. Equity Sales Company v. Gibson*  
553 F.Supp. 2d 652, May 15, 2008 U.S. Dist. LEXIS 39763  
(S.D. of West Virginia)
- U. *The O.N. Equity Sales Company v. Emmertz*  
2008 U.S. Dist. LEXIS 5219  
(E.D. of Pennsylvania), July 30, 2008  
71 Fed. R. Serv. 3d (Callaghan) 320
- V. *The O.N. Equity Sales Company v. Robinson*  
2008 U.S. Dist. LEXIS 111778  
(E.D. of Virginia), August 25, 2008

5). The DOE neglects to make any attempt to establish a date of sale, or any of the requisites for determining any of the factors noted *supra* which would be used to distinguish a "sale" vs. an "introduction." (The US District courts found that occurred when Lancaster sent the insurance acknowledgement - a material intervening event.) The DOE's failure to do so is fatal to their obligations to plead and prove to this court their basis for a judgment. Specifically, ¶ 1-19 fail to allege any act attributable to McDuff (i.e. you can't conspire to be a broker/dealer) that is germane to the broker/dealer issue. [Dkt. 1] (underlying civil case). (DOE Tab 20).

There is no allegation in the complaint that McDuff was a Broker/Dealer. No allegation of an affiliation (term of art) with a broker/dealer. No allegation of sales as a broker or dealer. As a result, and in view of no time frame allegation of sales by the DOE there are insufficient pleadings to support any judgment regarding the Broker/Dealer issue.