

**IN THE CHANCERY COURT FOR TWENTIETH JUDICIAL DISTRICT
OF TENNESSEE**

*****)
JACK PELHAM, and)
KAY PELHAM,)
)
Plaintiffs,)
)
vs.) Case No. 05-2259-III
)
THE NASHVILLE CHURCH, INC.,)
INTERNATIONAL CHURCHES OF)
CHRIST, INC., HOPE WORLDWIDE, LTD.,)
and CENTRAL AND SOUTH AMERICA)
WORLD SECTOR, INC.,)
)
Defendants.)
*****)

PLAINTIFFS' RESPONSE TO MOTION TO DISMISS BY DEFENDANT
THE NASHVILLE CHURCH, INC.

Come now the Plaintiffs, JACK PELHAM and KAY PELHAM, by and through their undersigned counsel, and for response to the Motion to Dismiss filed herein by the Defendant, THE NASHVILLE CHURCH, INC., would state as follows:

INTRODUCTION

The Plaintiffs, Jack Pelham and wife, Kay Pelham, bring this action seeking equitable relief in the form of restitution and a constructive trust, as well as for compensatory damages arising out of the Defendants' widespread pattern of fraud, misrepresentation and deceit in the solicitation of funds through coercion and false advertising. Specifically, the Plaintiffs allege that during the time the Plaintiffs were members of these church organizations, the Defendants, The Nashville Church, Inc., International Churches of Christ, Inc., Central and South America World

Sector, Inc. and Hope Worldwide, Ltd., engaged in the use of cult-like tactics in order to gain compliance with, and blind obedience to, coercive techniques such as: manipulation, peer pressure, placing guilt on parishioners who failed to strictly adhere to their policies and practices; group criticism of the slightest wavering or questioning, or resistance, or objection; restricting and controlling communication between its members; and manipulating them into “tithing” and making contributions under the guises of charitable benevolence and of “special missions contributions.” Plaintiffs further allege that the Defendants falsely represented that funds which they solicited from the Pelhams would be allocated exclusively either to international humanitarian endeavors, or to the funding of missionary church “plantings” worldwide. These contributions were instead treated by the Defendants as “unrestricted funds” and diverted by them for the personal inurement and benefit of several high-ranking employees and officers of the Defendant corporations.

The Defendant, The Nashville Church (“TNC”) has moved to dismiss the Complaint under Rules 9.02 and 12.02 Tenn.R.Civ.P. on the grounds that the complaint fails to set forth with sufficient particularity the factual bases for the Plaintiffs’ fraud and civil conspiracy claims. It also asserts that the Complaint fails to state a claim for negligent misrepresentation. The Plaintiffs have since filed a motion for leave to amend their complaint in order to plead with greater detail the facts surrounding the Defendants’ fraudulent scheme. (See Plaintiffs’ Motion To Amend and Proposed Amended Complaint filed on October 24, 2005). In their amended complaint the Plaintiffs not only cure the Rule 9.02 concerns raised by TNC, but also describe in detail the inter-relationship between the various defendants, and how they each participated in an enterprise and scheme to solicit money from the Plaintiffs, as well as other unsuspecting members, under

false pretenses.¹ Plaintiffs respectfully submit that this amended complaint complies with the notice pleading requirements of Rules 8 and 9.02 Tenn.R.Civ.P, and cures the sufficiency of pleading defenses raised by TNC. It also clearly states claims for fraud, civil conspiracy and conversion. Therefore, the Plaintiffs should be granted leave to file their proffered amended complaint before the defenses asserted by this Defendant are considered and ruled upon.

PARTIES

The Plaintiffs Jack and Kay Pelham are husband and wife and are adult citizens and residents of Red Boiling Springs, Tennessee. In October of 1998, Plaintiffs Jack and Kay Pelham (then Kay Davis) became members of The Nashville Church, Inc., having transferred their memberships from other ICOC congregations—that is from, The South Florida Church of Christ and The New York City Church of Christ, respectively. Upon becoming members of TNC, the Pelhams retained their existing membership in the International Churches of Christ, Inc. (“ICOC”).

The Defendant, The Nashville Church, Inc., (“TNC”) is a Tennessee corporation and has its corporate headquarters at 2416 Music Valley Drive, Nashville, Tennessee 37214. During the relevant time period that the Pelhams were members of TNC, it was a member church of the International Churches of Christ, Inc., as well as a member of the Central and South America World Sector, Inc. It also served as a conduit for the solicitation of funds by the Defendant

¹ The amended complaint omits the Plaintiffs’ claim for negligent misrepresentation and substitutes in its place a claim for the intentional tort of conversion.

HOPE Worldwide, Ltd., which was itself an integrated auxiliary of the International Churches of Christ, Inc.

The Defendant, International Churches of Christ, Inc., (“ICOC”) is a California corporation, and has its corporate headquarters at 3731 Wilshire Blvd., Suite 800, Los Angeles, California 90010. This Defendant served as the umbrella organization for several of its “affiliates” or “integrated auxiliaries” which were tied together by virtue of “Affiliation Agreements” and the corporate policy guidelines of ICOC. As shown in the Amended Complaint, during the relevant time period, ICOC exerted considerable control and influence over the management and operation of TNC, as well as the other corporate defendants, through its ICOC Policies and agreements with them.

The Defendant, Central and South America World Sector, Inc., (“CSA”) is a Florida corporation founded by ICOC, and maintains its corporate offices at 10 Goodyear Dr., Irvine, California 92618. This Defendant was one of many “world sector corporations” established by ICOC, and was the one which exercised hierarchical control over TNC.

The Defendant, Hope Worldwide, LTD., is a Delaware not for profit limited liability company founded by ICOC which maintains its corporate headquarters at 353 W. Lancaster Avenue, Wayne, Pennsylvania 19087. It was at all times an integrated auxiliary and affiliate of ICOC, and during the relevant time period, maintained a local affiliate in Tennessee known as HOPE World fo Tennessee, Inc.

FACTUAL ALLEGATIONS

The Plaintiffs adopt by reference herein as fully as though set forth verbatim the allegations contained in their proposed amended complaint and submit that these should be taken as true for the purposes of the Defendants' motion.

ARGUMENT

I. STANDARD UNDER RULE 12.02. WHEN THERE IS A MOTION TO AMEND.

Pursuant to Tenn. R. Civ. P 12.02(6), a motion to dismiss for failure to state a claim on which relief may be granted challenges the legal sufficiency of the complaint, not the strength of the plaintiff's proof. *Trau-Med of America, Inc. v. Allstate Ins. Co.*, 71 S.W.2d 691 (Tenn.2002). When considering a motion to dismiss, the court should construe the allegations set forth in a complaint liberally with all facts presumed to be true and the plaintiff given the benefit of all reasonable inferences. *Id.*, at 696-7, 71 S.W.2d 691. A motion to dismiss for failure to state a claim should not be granted unless it is clearly shown that the plaintiff can prove no set of facts supporting his claim that would warrant relief. *Id.*

The Plaintiffs in this case have filed a Motion To Amend and have supported their motion with a proposed amended complaint. Given the present procedural posture of this case, the Defendants' motion to dismiss is not considered a responsive pleading, and the Plaintiffs should be allowed to file their amended complaint under Rule 15 Tenn.R.Civ.P. :

A motion to dismiss for the failure to state a claim is the equivalent of a demurrer under our former practice. *Cornpropst v. Sloan*, 528 S.W.2d 188 (Tenn.1975).

When the court granted the demurrer, the original action was at an end. 61 Am.Jur.2d *Pleading*, § 283, p. 693. Yet, the plaintiff was almost universally allowed to amend after the demurrer had been sustained. *Id.*; *see also* Caruthers, *History of a Lawsuit*, § 198, pp. 243-244 (8th ed., 1963). Our modern rules also recognize that leave to amend should be freely given. Rule 15.01, Tenn.R.Civ.P. Thus, when the court grants a motion to dismiss for failure to state a claim, only extraordinary circumstances would prohibit the plaintiff from exercising the right to amend its complaint. Since a Tenn. R. Civ. P. rule 12.02(6) motion is not deemed to be a responsive pleading within the meaning of Tenn. R. Civ. P. Rule 15, Appellant should have been allowed to amend his complaint, and the trial court erred in denying the Motion to Amend.

Richmond Country Club v. CRC Equities, Inc., 832 S.W.2d 554 (Tenn.Ct.App.1991).²

II. THE AMENDED COMPLAINT SATISFIES THE PARTICULARITY REQUIREMENT UNDER RULE 9.02 TENN.R.CIV.P.

A complaint which alleges fraud requires a somewhat heightened pleading standard. Rule 9.02, Tenn. R. Civ. P. requires that "the circumstances constituting fraud or mistake shall be stated with particularity." *Strategic Capital Resources, Inc. v. Dylan Tire Industries, LLC.*, 102 S.W.3d 603 (Tenn.Crt.App. 2002). There is a companion rule set forth in Rule 8.06 that all pleadings shall be construed so as to do substantial justice. *See Ezell v. Graves*, 807 S.W.2d 700 (Tenn.Ct.App.1990); *cf. Sullivant v. Americana Homes, Inc.*, 605 S.W.2d 246 (Tenn.Ct.App.1980). In *City State Bank v. Dean Witter Reynolds*, 948 S.W.2d 729 (Tenn.Ct.App.1996), the court found the complaint sufficient where it "specifically identifies the time and place of each alleged false

² The Court's ruling in *Richmond Country Club* has been routinely applied in cases in which a motion to dismiss is met with a motion to amend the complaint. *See, accord, Demers v. Whittenberg*, 2004 WL 1196109 (Tenn.Crt.App., May 27, 2004)(Since a Tenn. R. Civ. P. rule 12.02(6) motion is not deemed to be a responsive pleading within the meaning of Tenn. R. Civ. P. rule 15, Appellant should have been allowed to amend his complaint, and the trial court erred in denying the Motion to Amend.)

representation, and identifies the manner in which each representation was deemed to have been fraudulent." 948 S.W.2d at 738.

In their 26 page Amended Complaint, the Plaintiffs set forth in specific detail the factual circumstances surrounding the Defendants' pattern of fraudulent conduct spanning over a period of three years, and how a veritable alphabet soup of overlapping corporate acronyms were used to conceal and obfuscate their misappropriation of charitable donations. Specifically, the Plaintiffs have set forth with particularity facts which, if taken as true, would support the following elements of their claim for fraudulent misrepresentation: (1) that the defendant made a representation of fact; (2) that the representation was false; (3) the representation related to a material fact; (4) the representation was made either knowingly, recklessly, or without belief in its truth; (5) that plaintiff acted reasonably in relying on the representation; and (6) that plaintiff suffered damage as a result of the representation. *Metro Gov't. of Nashville & Davidson County v. McKinney*, 852 S.W.2d 233, 237 (Tenn.App.1992).

(1) The Defendant made representations of fact regarding its intention to earmark certain solicited donations received under the guise of "Contributions for the Poor" and "Special Missions Contributions":

During the time the Pelhams were members of TNC, from October of 1998 to August of 2001, it functioned as a local congregation of ICOC and was governed by an Affiliation Agreement with ICOC. As such, it was required to adhere to ICOC policies (¶ 8 Amended Complaint);

Throughout the period of the Plaintiffs' membership in TNC, as part of a scheme and artifice to defraud, and as a means by which it and the other Defendants could obtain

money from Plaintiffs and others, the Defendants, acting jointly and intentionally, misrepresented to and concealed from the Plaintiffs and others, that they diverted certain funds raised by them. In fact, Defendants only devoted a small fraction of what they raised to such purposes and lavished the vast bulk of these funds to the personal inurement of their officers and employees. (¶ 11 Amended Complaint);

During the time that Plaintiffs were members of TNC they were approached to make the following gifts and donations of money: 1) a regular weekly contribution in the form of a tithe; 2) a weekly charitable donation called the “Contribution for the Poor”; and an annual gift which was designated by the Defendants as a “Special Missions Contribution” which was earmarked for benevolent service abroad. TNC routinely advertised that the Plaintiffs’ weekly “Contribution for the Poor” was for “local benevolence”, that it would not be sent out of town, and that it was not going into the church’s regular budget or benefitting any church employee. (¶ 12 Amended Complaint);

As members of TNC and ICOC, the Plaintiffs were required to contribute a portion of their earnings each year to the church in the form of tithes and offerings. (¶ 14 Amended Complaint)

In addition to their normal tithes and offerings, the Plaintiffs were instructed by the leadership of TNC to make annual “special missions contribution” donations of as much as fifteen times their normal weekly contributions, to a fund which was purportedly set aside exclusively for missions work in Third World countries. (¶ 15 Amended Complaint);

In addition, during the time that Plaintiffs were members of TNC, they were misled by the leadership of TNC and ICOC, including Woody Rowe and Doug Lambert, into believing that no part of the collection designated as “contributions for the poor” or “special missions contributions” would inure to the personal benefit of those in leadership positions within TNC, ICOC, HOPE or other entities affiliated with these corporations. In reliance on these representations, the Plaintiffs regularly made cash donations to these benevolent funds. (¶ 16 Amended Complaint);

At regular intervals during the period of the Plaintiffs' membership in TNC, this Defendant's leaders falsely misrepresented to the Pelhams that the amount imposed by CSA as their Special Mission Contribution “goal” was being used exclusively for Latin American missions. (¶ 49 Amended Complaint);

In 2003, after the misallocation of funds within ICOC, HOPE and CSA came to light, the CSA Leadership issued an apology letter in which it conceded the following: “In particular, they express their sorrow that some members have been under the impression that all the money collected through their churches' special contributions was distributed directly to Latin America.” CSA further resolved to change their previous compensation policy to the following: “Financial support of CSA employees will be prorated according to the percentage of their work that is focused directly on Latin American missions.” (¶ 50 Amended Complaint);

Plaintiffs allege that this change of policy constitutes an admission by the Defendants that former Special Mission Fund offerings which the Pelhams donated to TNC were not used for the advertised missionary purposes abroad, but had instead been

converted to support employees doing work for other purposes. (¶ 51 Amended Complaint);

This CSA apology letter was signed by both Doug Lambert (as Lead Evangelist for TNC) and Woody Rowe (Elder/Administrator of TNC and Delegate to CSA and member of the board of CSA). Plaintiffs therefore allege that these individuals were well aware of the misappropriation and hence are complicit, along with the other CSA Leaders, in the conversion of funds, and the fraud perpetrated upon the Plaintiffs. (¶ 52 Amended Complaint);

(2) The representations by TNC and its co-conspirators were false.

During the time that Plaintiffs were members of TNC, even though the above written ICOC policy required that “restricted” donations be reported separately from “unrestricted” donations, neither ICOC or TNC maintained any separate “asset account” designated for holding the “Contribution for the Poor” funds. Instead, these funds were co-mingled with others used to fund salaries and operating costs for the Defendants, and their “integrated auxiliary” organizations such as HOPE and CSA. (¶ 18 Amended Complaint);

On or about May 16, 2003, Bob Gempel, the President of HOPE Worldwide, Ltd., gave a presentation at The Radisson Ivanhoe in Orlando, FL, wherein he explained that HOPE collected funds from all ICOC local churches through what he described as a “Management Fee.” This “Management Fee” was 4% of the budget of each local church. Mr. Gempel further explained that each local church, including TNC, collected this fee

from their individual members in various methods, including weekly “poor contributions.” (¶ 17 Amended Complaint);

During this presentation, President Bob Gempel also stated that HOPE treated these “Management Fees” received from the contributions of local churches as “unrestricted funds.” He also explained that as “unrestricted funds” HOPE was free to use these monies to pay salaries and administrative overhead. (¶ 18 Amended Complaint);

Prior to this revelation by Mr. Gempel, and throughout the 17 years that the Plaintiffs were members of an ICOC church, they and other unsuspecting members of churches within the ICOC network of churches, were fraudulently informed that their donations to the “contributions to the poor” fund would not be used for salaries or administrative expense and overhead of ICOC or its corporate affiliates. Instead, the Plaintiffs and other parishioners were consistently told that these weekly contributions would be used exclusively to help people who were in need, both locally and on a worldwide level through HOPE Worldwide. (¶ 19 Amended Complaint);

The funds which were raised by TNC and other ICOC churches were also funneled to the Defendant, Central and South America World Sector, Inc., (“CSA”), an affiliate of ICOC. During a CSA conference in April of 2003, a CSA leader made the following admission of the miscommunications within ICOC and its member churches with regard to the use of funds:

The CSA Leadership has failed to communicate adequately with the churches in our group especially about the finances and administration of special contributions. Peter Garcia and Jaime De Anda sincerely apologize for this lack of sensitivity to the continual sacrifices of the individual churches and members. Their failure to provide an effective communication channel caused many disciples to feel excluded and disconnected from the administration and

finances of the CSA World Sector. In particular, they express their sorrow that some members have been under the impression that all the money collected through their churches' special contributions was distributed directly to Latin America. Although the majority of the CSA contributions were sent directly to the mission field, a percentage was also used to support the administrative and ministry oversight of the world sector.

(¶ 22 Amended Complaint);

In addition, the Plaintiffs have learned through a reliable source that contrary to the representations made to them by the Doug Lambert and Woody Rowe of ICOC and TNC, a significant portion of the yearly special missions contribution was often used to cover deficits accrued in the monthly budgets of the large American churches where the world sector leaders were based. (¶ 57 Amended Complaint);

(3) *The representations related to a material fact.*

All of the representations made by TNC as alleged in the Amended Complaint relate to material facts, *i.e.* its attempt, in conjunction with the other Defendants, to mislead the Plaintiffs regarding the reason they were asked to make certain contributions and its pattern of cover up and deceit regarding the actual use of these funds.

(4) *The representation was made either knowingly, recklessly, or without a belief in its truth.*

TNC leaders, including Doug Lambert (who was appointed by ICOC to a leadership position at TNC) and TNC's Elder/Administrator, Woody Rowe were aware that the representations made to the Plaintiffs during their membership in TNC regarding the "Contribution for the Poor" were false. (¶ 20 Amended Complaint);

Plaintiffs further allege that this misallocation was not merely the result of “inadequate communication”, as suggested in CSA's apology letter. Rather, it was the result of the deliberate representations made by CSA and church leadership made during the time Plaintiffs were members of TNC. . (¶ 53 Amended Complaint);

Specifically, on one occasion during the period of the Plaintiffs’ membership in TNC, Jim Taylor, a former member and former director of HOPE Worldwide—Tennessee, informed the Plaintiff Jack Pelham that his own salary was funded in part from the receipts of the “Contribution for the Poor” received from TNC. (¶ 35 Amended Complaint);

The funds which were solicited by TNC and ICOC within the State of Tennessee were also funneled to the Defendant, Central and South America World Sector, Inc., (“CSA”), an affiliate of ICOC. During a CSA conference in April of 2003, CSA leadership made the following admission of the miscommunications within ICOC and its member churches with regard to the use of funds:

The CSA Leadership has failed to communicate adequately with the churches in our group especially about the finances and administration of special contributions. Peter Garcia and Jaime De Anda sincerely apologize for this lack of sensitivity to the continual sacrifices of the individual churches and members. Their failure to provide an effective communication channel caused many disciples to feel excluded and disconnected from the administration and finances of the CSA World Sector. In particular, they express their sorrow that some members have been under the impression that all the money collected through their churches' special contributions was distributed directly to Latin America. Although the majority of the CSA contributions were sent directly to the mission field, a percentage was also used to support the administrative and ministry oversight of the world sector.

(¶ 42 of Amended Complaint)

The Amended Complaint further alleges that TNC was itself an affiliate member of CSA (Amended Complaint at ¶ 7), and it was also required to submit to the leadership of CSA. (*Id.* at ¶ 26). In addition, the Amended Complaint alleges that Woody Rowe, the

Elder/Administrator of TNC was a Delegate to CSA and member of the board of CSA. (*Id.* at ¶ 52).

(5) *The Plaintiffs acted reasonably in relying on the representation.*

In reliance on these representations, the Plaintiffs regularly made cash donations to these benevolent funds. (¶ 16 Amended Complaint);

Jack Pelham and Kay Davis Pelham relied upon the false representations of TNC regarding the Contribution for the Poor to be true and accurate. Had they known that they were being deceived as to the purpose of this collection, they would have ceased making these cash contributions and would have ceased to give any funds whatsoever to TNC or to any cause for which TNC solicited funds. (¶ 19 Amended Complaint);

Throughout their involvement as members of TNC and other ICOC churches, the Plaintiffs have participated in fund raising activities such as walk-a-thons and door-to-door solicitation campaigns, organized by the various churches and ICOC to “raise funds for HOPE.” It was the Plaintiffs’ shared and sincere belief, based on the representations of TNC and ICOC leaders, that these funds too were designated exclusively to benevolent endeavors, and would not be used to underwrite the administrative and salary expenses of HOPE Worldwide. (¶ 20 Amended Complaint);

Plaintiffs did, in fact, rely upon Defendants' fraudulent representations and contributed several thousands of dollars over the course of several years, and these funds were diverted by the Defendants to other uses. (¶ 63 Amended Complaint);

(6) The Plaintiffs were injured.

As members of an ICOC church, the Plaintiffs were subjected to subtle and even direct tactics involving coercion and manipulation to obtain their submission to the forced tithing and fund raising efforts by the Defendants. By illustration, and not by limitation, the Plaintiffs were: (1) told that their failure to participate in these programs would subject them to public exposure; (2) subjected to guilt-producing tactics; (3) subjected to threats of possible church discipline, including disfellowship or excommunication; and (4) warned about the loss of their eternal salvation. TNC, acting on its behalf and that of ICOC and HOPE, would even send representatives to the homes of its members to “collect” these contributions in the event that the members were absent from church meetings. Members who did not make their mandated contributions were subjected to phone calls and other forms of intimidation or harassment, including the public ridicule by having their names called at church meetings. (¶ 58 Amended Complaint);

As a direct and proximate result of Defendants' scheme and artifice to the Plaintiffs, the Plaintiffs have suffered damages. Therefore, Jack and Kay Pelham are entitled to recover the damages they have sustained as a result of Defendants' willfully fraudulent conduct in the sum of at least \$93,000. (¶ 59 Amended Complaint);

III. THE PLAINTIFFS HAVE PLEAD WITH SUFFICIENT PARTICULARITY TO SATISFY RULE 9.02 WITH REGARD TO THEIR CIVIL CONSPIRACY CLAIM.

A civil conspiracy is a "combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a purpose not in itself unlawful by unlawful

means." *Beaudreau v. Larry Hill Pontiac/Oldsmobile/GMC*, 160 S.W.3d 874 (Tenn.Crt.App. 2004)(quoting *Dale v. Thomas H. Temple Co.*, 186 Tenn. 69, 208 S.W.2d 344, 353 (1948)); *Chenault v. Walker*, 36 S.W.3d 45, 52 (Tenn.2001).

Each conspirator must have the intent to accomplish this common purpose, and each must know of the other's intent. *Dale*, 186 Tenn. at 90, 208 S.W.2d at 353-54. The agreement "need not be formal, the understanding may be a tacit one, and it is not essential that each conspirator have knowledge of the details of the conspiracy." *Id.* Finally, "it is [a] basic principle that each conspirator is responsible for everything done by his confederate which the execution of the common design makes probable as a consequence"; in other words, each conspirator is liable for the damage caused by the other. *Id.* 186 Tenn. at 90-91, 208 S.W.2d at 354;. . . *Brown v. Birman Managed Care, Inc.*, 42 S.W.3d 62, 67 (Tenn.2001).

In the instant case the Plaintiffs have alleged with specificity in their Amended Complaint that the Defendants have accomplished this scheme through an enterprise consisting of various interlocking corporations under the umbrella of ICOC and its various "affiliates" and "integrated auxiliaries." (Amended Complaint, ¶ 10). They further allege that throughout the course of the Plaintiffs' membership in TNC, the Defendants used an elaborate enterprise consisting of various corporations having overlapping boards of directors, employees, and interlocking policies all of which were woven together through what ICOC referred to as "Affiliation Agreements." *Id.* at ¶ 21. See also Exhibit A to Amended Complaint showing the inter-relationships of the Defendants through common board members and personnel.

These allegations are sufficient to place the Defendants on notice of the nature of the civil conspiracy and the unlawful and fraudulent misappropriation of funds attributed to the various actors within this conspiracy.

CONCLUSION

Based on the foregoing reasoning and authorities, the Defendant's motion to dismiss should be denied.

Respectfully submitted,

LARRY L. CRAIN, ESQ.
Tn.Sup.Crt. No. 9040
Law Offices of Brentwood
5214 Maryland Way, Suite 402
Brentwood, TN. 37027
(615) 376-2600
Lcrain@brentwoodlaw.com

Attorney for the Plaintiffs

CERTIFICATE OF SERVICE

I, Larry L. Crain, do hereby certify that a true and correct copy of the foregoing pleading was delivered to the following individuals on this the _____ day of _____, 2005, in the manner indicated below:

E. Todd Presnell
Miller and Martin, PLLC
1200 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219-2433

Charles K. Grant
Baker, Donelson, Bearman et al.
P.O. Box 190613
Nashville, TN 37219

Kathryn Ann Stephenson
Trauger, Ney & Tuke
The Southern Turf Building
222 Fourth Avenue North
Nashville, TN 37219-2117

Nancy King Crawford
Attorney at Law
1929 21st Avenue South
Nashville, TN 37212

- " U.S. Mail, Postage Prepaid
- " Overnight Delivery
- " Facsimile
- " Email
- " Hand Delivered

.....
LARRY L. CRAIN