

2-21-2008

Vreeken v. Lockwood Engineering, B.V. Clerk's Record v. 6 Dckt. 34817

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LAW CLERK IN THE SUPREME COURT

OF THE STATE OF IDAHO

COPY

THOMAS R GOLD, RICHARD L. GOLD

TOMAC PACKAGING, INC.,

Plaintiff and

Respondents vs.

LOCKWOOD PACKAGING CORPORATION,

Defendant and

Appellants

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Jon J. Shindurling, District Judge

Kipp Manwaring

381 Shoup Avenue, Suite 210 Idaho Falls, ID 83402

Attorney for Appellant

Charles A. Homer

P.O. Box 50130, Idaho Falls, ID 83405

Attorney for Respondent

Filed this day of 20

FILED COPY

FEB 21 2008

Clerk

By Supreme Court Court of Appeals Deputy

Entered on ATS by:

34817



DISTRICT COURT,
7TH JUDICIAL DISTRICT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

5 JUN -7 P 3:49

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

BONNEVILLE

CHRISTIANNE VREEKEN,)

Plaintiff,)

vs.)

LOCKWOOD ENGINEERING, B.V.,)

a Netherlands corporation;)

GERBROEDERS MEIJER BELEGGING,)

B.V., a Netherlands corporation;)

JAN VREEKEN, an individual, and)

THOMAS R. GOLD, an individual,)

Defendant.)

THOMAS R. GOLD, an individual,)

Cross-Claimant,)

vs.)

LOCKWOOD ENGINEERING, B.V.,)

a Netherlands corporation;)

GERBROEDERS MEIJER BELEGGING,)

B.V., a Netherlands corporation a/k/a;)

GERBROEDERS MEIJER BELEGGING,)

B.V.; and JAN VREEKEN, an individual,)

Cross-Defendants.)

THOMAS R. GOLD, an individual,)

RICHARD L. GOLD, an individual, and)

TOMAC PACKAGING, INC., a)

Massachusetts corporation)

Cross-Claimants and)

Third-Party Plaintiffs,)

Case No. CV-2001-2279

ORDER FOR STATUS CONFERENCE

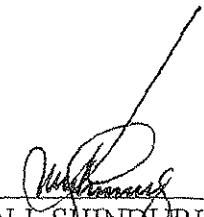
vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, and Idaho)
 Corporation ("LPC Idaho"),)
)
 Third Party Defendants.)
 _____)

It appearing that the above action is at issue or is ready for further proceedings,

IT IS HEREBY ORDERED that counsel of record appear for a status conference on the 14th day of June, 2005, at the hour of 9:30 a.m., before the Honorable Jon J. Shindurling, District Judge, at Bonneville County Courthouse to report on the status of this action and to schedule further proceedings.

A telephone conference may be held upon request of counsel. If counsel wishes this matter be heard via telephone conference, counsel must advise the court at least 24 hours prior to the hearing date. Counsel requesting the telephone conference must contact opposing counsel, informing them of the request for the telephone conference and initiate the call to (208) 529-1350 Ext. 1378.

Dated this 2nd day of June, 2005.



 JON J. SHINDURLING
 District Judge

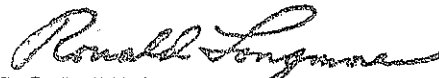
CERTIFICATE OF SERVICE


I hereby certify that on this 7th day of June, 2005, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Charles A. Homer
HOLDEN, KIDWELL, HAHN & CRAPO
Courthouse Box
Idaho Falls, Idaho 83402

Paul B. Rippel
HOPKINS, RODEN, CROCKETT,
HANSEN & HOOPES, PLLC
Courthouse Box
Idaho Falls, Idaho 83402

Brent T. Robinson
LING & ROBINSON LAW OFFICE
P.O. Box 396
Rupert, Idaho 83350


RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
Defendant.)

Case No. CV-2001-2279

MINUTE ENTRY

THOMAS R. GOLD, an individual,)
Cross-Claimant,)
vs.)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
Cross-Defendants.)

THOMAS R. GOLD, an individual,)
 RICHARD L. GOLD, an individual, and)
 TOMAC PACKAGING, INC., a)
 Massachusetts corporation)
)
 Cross-Claimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, and Idaho)
 Corporation ("LPC Idaho"),)
)
 Third Party Defendants.)
 _____)

June 14, 2005, a status conference came on for hearing before the Honorable Jon J.

Shindurling, District Judge, sitting in chambers at Idaho Falls, Idaho.

Ms. Rhonda Quintana, Deputy Court Clerk, was present.

Mr. Brent T. Robinson appeared telephonically on behalf of the defendant.

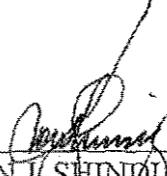
Mr. Chuck Homer appeared in person on behalf of the defendant and third party plaintiffs.

The parties requested that the Court schedule a time for a motion hearing.

The Court scheduled the Motion for Reconsideration Hearing for July 11, 2005 at 10:30 a.m.

The Court re-scheduled a trial for January 9, 2006, at 1:30 p.m. A pre-trial was scheduled for December 13, 2005, at 9:45 a.m.

Court was thus adjourned.



JON J. SHINZURLING
District Judge

c: Brent Robinson
Chuck Homer

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

DISTRICT COURT
7TH JUDICIAL DISTRICT
5 JUN 16 2:41
BONNEVILLE
IDAHO

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
Defendant.)

Case No. CV-2001-2279
**THIRD AMENDED ORDER
SETTING PRETRIAL
CONFERENCE AND TRIAL**

THOMAS R. GOLD, an individual,)
Cross-Claimant,)
vs.)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
Cross-Defendants.)

THOMAS R. GOLD, an individual,)
 RICHARD L. GOLD, an individual, and)
 TOMAC PACKAGING, INC., a)
 Massachusetts corporation)
)
 Cross-Claimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, and Idaho)
 Corporation ("LPC Idaho"),)
)
 Third Party Defendants.)
 _____)

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following pre-trial schedule shall govern all proceedings in this case:

I. IT IS HEREBY ORDERED:

1. A pre-trial conference shall be held at 9:45 a.m., on December 13, 2005.
2. Court trial shall commence at 1:30 p.m., on January 9, 2005, and continue for a one (1) week setting.
3. No later than ninety (90) days before the date set for trial, counsel shall disclose the names, addresses, and telephone numbers of expert witnesses that may be called to testify at trial.
4. All discovery shall be completed seventy (70) days prior to trial.¹
5. All Motions for Summary Judgment must be filed sixty (60) days prior to trial in conformance with Rule 56(a), I.R.C.P.
6. All Motions for Summary Judgment must be heard at least twenty-eight (28) days prior to trial.

¹ Discovery requests must be served so that timely responses will be due prior to the discovery cutoff date.

II. IT IS FURTHER ORDERED that each attorney shall, no later than fourteen (14) days before trial:

1. Submit a list of names to the court of persons who may be called to testify.
2. Submit a descriptive list of all exhibits proposed to be offered into evidence to the court indicating which exhibits counsel have agreed will be received in evidence without objection and those to which objections will be made, including the basis upon which each objection will be made.
3. Submit a brief to the court citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. If this is a jury trial, counsel shall submit proposed jury instructions to all parties to the action and the court. All requested instructions submitted to the court shall be in duplicate form as set out in Idaho Rule of Civil Procedure 51(a)(1).
5. Submit that counsel have in good faith tried to settle this action.
6. State whether liability is disputed.

III. IT IS FURTHER ORDERED that each attorney shall no later than seven (7) days before trial:

1. Submit any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.
2. Deposit with the clerk of the court all exhibits to be introduced, except those for impeachment. The clerk shall mark plaintiff's exhibits in numerical sequence as requested by plaintiff and shall mark all defendant's exhibits in alphabetical sequence as requested by defendant.
3. A duplicate set of all exhibits to be introduced, except those for impeachment, shall be placed in binders, indexed, and deposited with the clerk of the court.

IV. IT IS FURTHER ORDERED that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.

2. No exhibits shall be admitted into evidence at trial other than those disclosed, listed and submitted to the clerk of the court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.
3. This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice.
4. The court may impose appropriate sanctions for violation of this order.

DATED this 16 day of June, 2005.



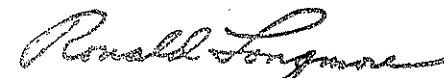
JON J. SHINDURLING
District Judge

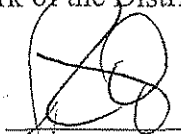
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2005, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Charles A. Homer
HOLDEN, KIDWELL, HAHN & CRAPO
Courthouse Box
Idaho Falls, Idaho 83402

Brent T. Robinson
LING & ROBINSON LAW OFFICE
P.O. Box 396
Rupert, Idaho 83350


RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
)
Defendants.)
_____)

Case No. CV-2001-2279

MINUTE ENTRY

THOMAS R. GOLD, an individual,)
)
Cross-Claimant,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants.)
_____)

THOMAS R. GOLD, an individual,)
RICHARD L. GOLD, an individual, and)
TOMAC PACKAGING, INC., a)
Massachusetts corporation)
)
Cross-Claimants and)
Third-Party Plaintiffs,)
)

vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 (“LPC”); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, and Idaho)
 Corporation (“LPC Idaho”),)
)
 Third Party Defendants.)
 _____)

July 11, 2005, a Plaintiff’s Motion to Reconsider, and Defendant’s Motion to Reconsider came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter and Ms. Rhonda Quintana, Deputy Court Clerk, were present.

Mr. Brent T. Robinson appeared on behalf of the defendant, Jan Vreeken.

Mr. Chuck Homer and Mr. Robert Follett appeared behalf of the defendant and third party plaintiffs, Gold’s.

Mr. Homer addressed the Court in support of the Motion to Reconsider.

Mr. Robinson responded in opposition to the motion.

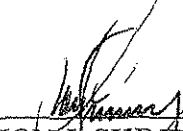
Mr. Robinson addressed the Court in support of his Motion to Reconsider.

Mr. Homer offered rebuttal to the argument in support of the motion.

Mr. Robinson offered rebuttal argument in opposition to the motion.

The Court will take this matter under advisement and will issue an opinion and decision in due course.

Court was thus adjourned.



JON J SHINDURLING
District Judge

c: Chuck Homer
Brent Robinson
CC-2005-986/995 @ 990/0

7TH JUDICIAL DISTRICT

5 SEP -2 P1:24

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

v.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation;
GERBROEDERS MEIJER BELEGGING,
B.V., a Netherlands corporation;
JAN VREEKEN, an individual; and
THOMAS R. GOLD, an individual,

Defendants.

Case No. CV-01-2279

OPINION, DECISION, AND ORDER ON
THOMAS R. GOLD, RICHARD L.
GOLD, AND TOMAC PACKAGING,
INC.'S MOTION FOR
RECONSIDERATION, and
LOCKWOOD ENGINEERING B.V.,
GERBROEDERS MEIJER BELEGGING,
B.V., AND JAN VREEKEN'S MOTION
TO RECONSIDER, ALTER OR AMEND

THOMAS R. GOLD, an individual,

Cross-Claimant,

v.

LOCKWOOD ENGINEERING B.V., a
Netherlands corporation;
GERBROEDERS MEIJER BELEGGING,
B.V., a Netherlands corporation; and JAN
VREEKEN, an individual,

Cross-Defendants.

THOMAS R. GOLD, an individual;
RICHARD L. GOLD, an individual;
and TOMAC PACKAGING, INC.,
a Massachusetts corporation,

Cross-Claimants and Third
Party Plaintiffs,

v.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Lockwood Engineering B.V. ("Lockwood") is a foreign corporation organized in The Netherlands; Defendant Gerbroeders Meijer Belegging, B.V. ("Gerbroeders")¹ is a foreign corporation organized in The Netherlands; Third Party Defendant Lockwood Packaging Corporation ("LPC") is a Delaware corporation; Third Party Defendant Lockwood Packaging Corporation Idaho ("LPCI") is an Idaho corporation and a wholly-owned subsidiary of LPC. Lockwood, Gerbroeders, LPC, and LPCI ("Defendant corporations") were at all relevant times doing business in Idaho, as defined in I.C. § 5-514(a).

Defendant Jan Vreeken ("Vreeken"), a citizen of The Netherlands, owns real property and a residence in Bonneville County, Idaho, and is an officer, director and shareholder of the Defendant corporations. Vreeken together with Defendant corporations hereinafter "Cross-Defendants."

¹ Gerbroeders is apparently the parent corporation of all the Vreeken corporate entities (the Defendant corporations).

Defendant and Third Party Plaintiff Thomas R. Gold ("T. Gold") is a Massachusetts resident and former officer of LPCI; Third Party Plaintiff Richard L. Gold ("R. Gold") is a Massachusetts resident; Tomac Packaging, Inc. ("Tomac") is a Massachusetts corporation. T. Gold, R. Gold, and Tomac ("Golds") were at all relevant times doing business in Idaho.

Plaintiff Christianne Vreeken ("Christianne") is the daughter of Vreeken and the successor in interest of the Bank of Idaho, the original plaintiff in this case.

Vreeken and the Defendant corporations were engaged in a joint venture with the Golds, initially selling produce packaging machinery and equipment in the United States and elsewhere. The equipment was to be sold to LPC as a jointly owned and/or controlled master distributor in the U.S. for further distribution to distributors and end users. LPCI was created as the distributor of the equipment in the Northwest United States.

In 1997, the parties entered into financial dealings with the Bank of Idaho ("Bank") in Idaho Falls, Idaho. On January 13, 1999, Lockwood executed a guarantee of present and future LPCI indebtedness up to the principal amount of \$300,500.00, plus accrued interest. On October 8, 1999, Gerbroeders executed a guarantee of present and future LPCI indebtedness up to the principal amount of \$800,500.00, plus accrued interest. On November 18, 1999, T. Gold executed a personal guarantee of present and future LPCI indebtedness up to the principal amount of \$800,500.00, plus accrued interest. Also on November 18, 1999, LPCI entered into a multiple advance promissory note and security agreement (Loan No. 15535842) with the Bank in the principal sum of \$800,000. The note and security agreement were executed by T. Gold, as an officer of LPCI.

By the end of 1999, the relationships between the joint venture parties had broken down and on May 12, 2000, the parties' settlement agreement was reduced to a writing entitled Memorandum of Understanding ("Settlement Agreement"). This Settlement Agreement was executed by the Golds

and Vreeken, (at all relevant times an officer, director, and shareholder of the Defendant corporations) in which control of LPC and LPCI was transferred to Vreeken. Vreeken agreed, among other things, to pay a certain sum to the Golds, secured by the assets of LPC and LPCI, and also agreed to obtain release of T. Gold from his personal guarantees with the Bank on the LPCI loan. Indemnification of any liability incurred by the Golds on any Bank guarantees was also secured by the assets of LPC and LPCI, which security interest was to be perfected and subordinate only to the Bank's security interest as per the loan. Payment of the LPCI note was to be made from LPC and LPCI business proceeds. Vreeken also agreed to restrict any transfer of assets from LPC and LPCI.

On November 24, 2000, Vreeken executed a personal guarantee of present and future LPCI indebtedness with the Bank up to the principal amount of \$612,381.97, plus accrued interest. On April 25, 2001, principal and interest on the LPCI note was due and owing in the amount of \$619,937.11 plus accruing interest. The Bank made demand on LPCI, notified all of the guarantors, and on April 27, 2001, the Bank filed its Complaint against the guarantors. On June 26, 2001, T. Gold filed his Answer, Cross-Claim and Third Party Complaint joining R. Gold and Tomac as Third Party Plaintiffs and naming LPC and LPCI as Third-Party Defendants.

Sometime prior to October 12, 2001, the Bank agreed to accept \$617,870.59 as full satisfaction of the LPCI indebtedness, and required that a check for \$200,000 be issued by LPC to the Bank of Commerce by October 12, 2001, in order to retain the Bank's acceptance. On October 12, 2001, LPC agent and representative William Wendels paid a Bank of Commerce cashier's check (No. 160346) in the amount of \$200,000 to the Bank, and on October 15, 2001, the balance of the funds to Bank of Commerce were paid, in the amount of \$417,870.59. That same day, a document entitled "Assignment and Acceptance" ("Assignment") was executed by Christianne and the Bank.

The Assignment states that Christianne paid consideration of \$617,870.59 by a Bank of Commerce cashier's check, No. 160346, dated October 12, 2001, in the amount of \$200,000 and a Bank of Commerce cashier's check, No. 160355, dated October 15, 2001, in the amount of \$417,870.59. It further states that the Bank assigns to Christianne its rights under the LPCI loan dated November 18, 1999, including the right to enforce the loan against the guarantors; and that the Bank also assigns its security interests in the LPCI assets.

The funds Christianne used to acquire the assignment from the Bank came from Vreeken. Vreeken claims he provided the money to Christianne as an advance on her inheritance and then asked whether Christianne would be willing to use those funds to satisfy the indebtedness to the Bank and step into the Bank's shoes. Vreeken also claims Christianne was not required to purchase the note from the Bank as a prerequisite to getting the advance on her inheritance; rather, she chose to do so of her own free will. The Golds, on the other hand, contend Christianne merely acted as the conduit through which Vreeken satisfied the obligation owed to the Bank.

On December 1, 2004, this Court issued an opinion, decision, and order dismissing with prejudice Christianne's Complaint against all named defendants as a sanction for repeatedly failing to appear at her deposition and refusing to be deposed. Any and all obligations that were the subject of Christianne's Complaint were deemed fully satisfied and paid in full.

On May 3, 2005, this Court issued its Opinion, Decision, and Order on Thomas R. Gold, Richard L. Gold, and Tomac Packaging, Inc.'s Motion for Summary Judgment ("Opinion"). The Court granted the motion in part and denied the motion in part. The Golds filed a Motion for Reconsideration on May 17, 2005. Cross-Defendants filed a Motion to Reconsider, Alter, or Amend on May 17, 2005. Hearing on both motions was held on July 11, 2005. The Court then took the

motions under advisement. After considering the Court's file, pleadings, depositions, admissions, affidavits, and the argument of counsel, the Court renders the following opinion.

II. STANDARD OF REVIEW

The decision to grant or deny a request for reconsideration generally rests in the sound discretion of the trial court. *Jordan v. Beeks*, 135 Idaho 586, 21 P.3d 908 (2001). *See also, Watson v. Navistar Int'l Transp. Corp.*, 121 Idaho 643, 827 P.2d 656 (1992); *Slaathaug v. Allstate Ins. Co.*, 132 Idaho 705, 979 P.2d 107 (1999).

Idaho Rule of Civil Procedure 11(a)(2)(B) provides the authority for a district court to reconsider and vacate interlocutory orders so long as final judgment has not yet been ordered. *Telford v. Mart Produce, Inc.*, 130 Idaho 932, 950 P.2d 1271 (1998). *See also Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997); *Farmers Nat'l Bank v. Shirey*, 126 Idaho 63, 68, 878 P.2d 762, 767 (1994).

On a motion for reconsideration pursuant to I.R.C.P. 11(a)(2)(B), the trial court should take into account any new facts presented by the moving party that bear on the correctness of the interlocutory order. *Coeur d'Alene Mining Co. v. First Nat'l Bank*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990). A party filing a motion to reconsider pursuant to Rule 11(a)(2)(B) carries the burden of bringing to the trial court's attention the new facts. *Id.*; *See also Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir & Canal Co.*, 126 Idaho 202, 879 P.2d 1135 (1994).

The trial court has discretion to grant or deny a motion to alter or amend under I.R.C.P. 59(e):

A Rule 59(e) motion to amend a judgment is addressed to the discretion of the court. An order denying a motion made under Rule 59(e) to alter or amend a judgment is appealable, but only on the question of whether there has been a manifest abuse of discretion. Rule 59(e) proceedings afford the trial court the opportunity to correct errors both of fact or law that had occurred in its proceedings; it thereby provides a mechanism for corrective action short of an appeal. Such proceedings must of necessity, therefore, be directed to the status of the case as it existed when

the court rendered the decision upon which the judgment is based.

Coeur d'Alene Mining Co., 118 Idaho at 832, 800 P.2d at 1037, citing *Lowe v. Lym*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Ct. App. 1982).

III.
CROSS-DEFENDANTS' FRAUD/MISREPRESENTATION CLAIM

This Court previously held that Vreeken's reliance on any oral statements by T. Gold was unreasonable. (Opinion p. 14). Cross-Defendants' argue that Vreeken's reliance upon representations made by T. Gold was not unreasonable and contend the Court did not consider "several key factors that made Vreeken's reliance reasonable." (Cross-Defendants' Mem. in Supp. of Mot. to Reconsider, Alter, or Amend at 4). Cross-Defendants argue T. Gold's August 29, 1999 letter, sent in response to the Management Letter, minimized problems at LPCI, and it was reasonable for Vreeken to rely on the assertions in T. Gold's letter. Further, Cross-Defendants ask this Court to review Steve Snow's representations, Vreeken's statements at his deposition, and the 1998 tax return situation in order to conclude Vreeken's reliance was reasonable.

Cross-Defendants claim Vreeken relied on oral and written representations. At his deposition, Vreeken was clear that he did not rely on anything but conversations with T. Gold. (See Vreeken Dep. p. 84, ll. 22-24; p. 85, l. 19 – p. 86, l. 10; and p. 87, ll. 11-21.) Assuming Vreeken considered oral and written information regarding LPC and LPCI, Vreeken cannot claim his reliance on the information was reasonable. Vreeken received information in the Management Letter regarding LPC and LPCI from his own employees, Ceuppens and Schipper, that painted a negative financial picture at LPCI. (See Management Letter pp. 1-3.) Vreeken cannot claim to rely on T. Gold's response to the Management Letter considering the strained relationship in the joint venture and the highly contested negotiations between the parties. Vreeken himself stated that the financial organization of the companies was in shambles. Correspondence between the two makes it clear that

Vreeken did not trust T. Gold or his valuation of the companies. (See Jan Vreeken's Nov. 12, 1999 letter to Tom Gold pp. 1-4.) Vreeken's claimed reliance on any written or oral statements by T. Gold was unreasonable.

Cross-Defendants also argue Vreeken relied on false statements made by Steve Snow regarding accounts with Garden Fresh and Automatic Bagging Services, Inc. Vreeken testified that people in Idaho told him the Golds directed Snow to give Vreeken false information. (Dep. of Jan Vreeken p. 99, l. 6 – p. 100, l. 23). Specifically, Vreeken says Lorna Schubert told him Snow was directed to give Vreeken false information. (*Id.* at p. 100, ll. 12-23). However, Vreeken's assertions are not supported by Schubert's testimony:

Q. Were you told by Tom Gold or anyone else that you were to hold back information or not give information to Mr. Vreeken or any of his associates?

A. [By Lorna Schubert] Not by the Golds. But it was well know at the office that Jan wasn't to know about how much money he had lost until like the Indian Valley deal went through.

(Dep. of Lorna Schubert, p. 20, ll. 5-11).

Q. So is that the first time you got any information that he wasn't to receive this knowledge, I guess?

A. I just heard him tell Dennis Coffey that Jan Vreeken can't know how much money he has lost until this Indian Valley deal goes through.

Q. Now, you heard –

A. Steve tell Dennis Coffey.

Q. Steve Snow tell Dennis Coffey?

A. Yes.

(*Id.* at p. 20, l. 19 – p. 21, l. 3).

Q. Now, do you know whether or not the Golds were involved in any of this stuff that Steve was telling Dennis Coffey to do or not do?

A. I don't know that for a fact. I don't.

Q. Have you heard anything about that from anybody?

A. No.

(*Id.* at p. 23, ll. 18-24). Vreeken has no factual basis to support his assertion that the Golds directed Snow to give him false information.

Finally, Cross-Defendants argue that the Settlement Agreement misrepresented that all federal, state, and local tax returns were filed, except 1999 and 2000 tax returns, because the 1998 tax return was not filed as well. Cross-Defendants claim Vreeken did not have a clear financial picture of LPCI because the 1998 tax return was not filed. However, Vreeken knew LPCI had financial problems before the accountants discovered the 1998 tax return was not filed. In September or October 2000, the accountants discovered that the 1998 tax return was not filed. (Cross-Defendants' Mem. in Supp. of Mot. to Reconsider, Alter, or Amend at 12). Vreeken knew LPCI had financial problems well before the tax return error was discovered, evidenced by Vreeken's Nov. 12, 1999 letter to T. Gold. Cross-Defendants present no evidence that the 1998 tax return was intentionally not filed or that the Golds intentionally misrepresented that the 1998 return was filed. Further, the Cross-Defendants present no evidence that Vreeken relied on the information in the 1998 tax return.

The Court finds Vreeken's alleged reliance upon any oral or written representations made by T. Gold was unreasonable. Therefore, the Golds are entitled to summary judgment dismissing Cross-Defendants' claim for fraud/misrepresentation.

IV. GOLDS' CLAIMS

A. The Citizens Bank Loan

This Court previously held that genuine issues of material fact exist regarding the amount of principal remaining on the Citizens Bank loan and the interest rate applicable to that loan. Opinion p. 20.) Golds argue there is sufficient evidence in the Affidavit of Richard Gold in Support of Motion for Summary Judgment to determine the amounts due on the Citizens Bank loan.

Verified affidavits, as opposed to unverified statements, have probative weight in a motion for summary judgment. *Golay v. Loomis*, 118 Idaho 387, 389, 797 P.2d 95, 97 (1990). Considering

Golay, the Court finds there is sufficient evidence in the affidavit of R. Gold to determine the amounts due on the Citizen Bank loan. The Court alters its previous decision and declares the amount due on the Citizen Bank loan principal is \$217,710.86, amount of interest paid through Jan. 10, 2005 is \$52,724.67, and the amount of interest accruing per day after Feb. 14, 2005 is \$39.12. The judgment rate of interest will accrue on these amounts hereafter.

B. Personal Liability of Jan Vreeken for the Citizens Bank Loan & EIEDC Loan & Payout Notes

The Golds seek a declaration that Vreeken is personally liable to the Golds for payment of the obligations with the EIEDC, Bank of Idaho, and Citizens Bank loans. The Settlement Agreement, Paragraph 2.c. provides:

The Lockwood Entities [Lockwood, LPC, and LPCI] will use their best efforts to effect the release of: (i) [T. Gold] and [R. Gold] from certain personal guarantees they have made with regard to the following loans and (ii) certain securities pledged by [R. Gold] which is being held as collateral for the Citizen's Loan, as defined below. If necessary to effect such releases, Vreeken agrees to personally guarantee such loans. If the Lockwood Entities fail to provide such release by the earlier of: (w) three (3) months after all audited financials for fiscal years 1999 and 2000 are completed or (x) March 1, 2001, then [T. Gold] and [R. Gold] shall have the option of terminating this Agreement as provided in Section 11 hereof, unless Vreeken shall expressly opt to indemnify [T. Gold] and [R. Gold] from any damages they may incur as a result of such personal guarantees. Until the earlier to occur of: (y) the releases pursuant to this Section 2(c) are effected or (z) this Agreement is terminated as provided herein, any damage [T. Gold] or [R. Gold] may incur as a result of such personal guarantees not being released shall be secured by the assets of Lockwood Packaging and Lookwood Packaging Idaho.

The Settlement Agreement lists the Citizens Bank loan and the EIEDC loan as the "following loans" referred to in Paragraph 2.c.

There is no dispute the releases contemplated by Paragraph 2.c. have never been obtained, and there is no dispute that the Settlement Agreement was never terminated. According to the Settlement Agreement, the Lockwood Entities agreed to use the best efforts to release the Golds from personal guarantees. Implicit in the agreement to use best efforts is the understanding that Vreeken

and the Lockwood entities will hold the Golds harmless in this agreement. Further, Vreeken agreed to personally guarantee the loans, if such guarantee was necessary to effect the release of T. Gold and R. Gold from the loans. Therefore, the Court orders Vreeken to effectuate a personal guarantee to Citizens Bank for the Citizens Bank loan. Vreeken is personally liable for the Citizens Bank loan because he agreed to be personally liable in the Settlement Agreement.

The Court finds that Vreeken, Lockwood, LPC, and LPCI are jointly and severally obligated to R. Gold for interest payments made in the amount of \$52,724.67 plus interest. Vreeken, Lockwood, LPC, and LPCI are obligated to R. Gold for principal due on the Citizens Bank loan for the amount of \$217,710.86 plus interest. A court has already held that Vreeken, T. Gold, LPC, LPCI, and Lockwood are jointly and severally liable to EIEDC for a loan in the amount \$253,331.95 plus interest. *Eastern Idaho Economic Development Council v. Lockwood Packaging Corp. Idaho et al.*, Bonneville County Case No. CV01-5449 (2004).

The Golds seek a specific declaration that Vreeken is primary liable for the Citizens Bank loan. The Court declines to enter such a declaration because a determination of priority it is not necessary to protect the Golds interests in this case. Once Vreeken effects a personal guarantee, he is personally liable for the Citizens Bank loan. According to the Settlement Agreement, the Golds have a security interest in the assets of the LPC and LPCI until they are released from the Citizens Bank and EIEDC loans. Vreeken, Lockwood, LPC, and LPCI are jointly and severally liable on the Citizens Bank loan and the Golds may seek satisfaction of the loan from any of the responsible parties.

This Court previously ordered Vreeken, along with the Defendant corporations, "to pay R. Gold the principal amount of \$100,000.00 on the payout note plus interest at the annual rate of three (3%) percent from November 12, 2000, to the date of this opinion, or \$8.22 per day for total of

\$13,423.26, and at the judgment rate of interest thereafter.” (Opinion, p. 23). The Golds seek a clarification whether Vreeken is personally liable on the payout note. The Settlement Agreement, Paragraph 2.a. provides:

The Lockwood Entities [Lockwood, LPC, and LPCI] will give [R. Gold] a promissory note in the principal amount of \$100,000 and [T. Gold] a promissory note in the principal amount of \$450,000 (the “Payout Notes”), such amounts being subject to adjustment in accordance with Section 2(b) below. The principal due under the Payout Notes will: (i) be paid quarterly, beginning with the first anniversary of the Payout Notes, so that the Payout Notes are fully amortized by the fifth anniversary of the date of the Payout Notes and (ii) accrue interest at the annual rate of three (3%) percent with such interest to be paid quarterly. All principal and unpaid interest shall be due and payable on the earlier of the fifth anniversary of such Payout Notes or after an Event of Default, as defined below. The Payout Notes will be secured by the assets of Lockwood Packaging and Lockwood Packaging Idaho, with such security interest being subordinate to all current bank loans, all current security positions on record, and any future refinancing of such bank loans.

According to the Settlement Agreement, Lockwood, LPC, and LPCI are liable to R. Gold for the principal amount of \$100,000 plus interest on the payout note. Vreeken is not liable to R. Gold for the payout note. Neither is Vreeken liable to T. Gold for the \$450,000 payout note. Paragraph 2.a of the Settlement Agreement states that the Lockwood Entities are liable on the notes. When the Settlement Agreements binds both the Lockwood Entities and Vreeken, both parties are specifically named. (See e.g., Settlement Agreement ¶¶ 2.f., 2.g., and 2.h.) After reviewing other provisions in the Settlement Agreement, the Court construes the omission of Vreeken’s name from Paragraph 2.c. as a deliberate decision by the drafters to exclude Vreeken from personal liability on the payout notes.

C. Writ of Possession

This Court previously declined to issue a writ of possession entitling the Golds to obtain possession of the assets and collateral granted to them in the Settlement Agreement. (Opinion pp. 22-23). The Golds contend the Cross-Defendants are in default of the Settlement Agreement and

argue that Massachusetts law allows a secured party to take possession of the collateral after default.

Mass. Gen. Laws ch. 106, § 9-609.

The Court declines to issue a writ of possession at this time. Although the Golds may have a possessory right to the assets of LPC and LPCI under Mass. Gen. Laws ch. 106, § 9-609, the Golds have not shown this Court what procedures are necessary to obtain possession. If the Golds are seeking a judicial determination of possession, they must follow the procedures in Idaho Code § 8-302 or the equivalent Massachusetts law to obtain a writ of possession. The Court does not take a position at this time whether Idaho or Massachusetts law should be applied to obtain a writ of possession.

D. Security Interests Granted by Vreeken, LPC, and LPCI

The Golds argue the Court should “determine that all security interests granted by Vreeken, LPC, and LPCI to entities wholly owned and/or operated by Vreeken, such as any security interest granted to Lockwood and/or other persons or entities named as parties to this action, which security interests purport to have priority against the security interests in favor of the Defendants by reason of the Security Agreement, in contravention of the promises and obligations as set forth in the Settlement Agreement, are void or should be deemed to be subordinated to the interests of the [Golds].” (Mem. in Supp. of Mot. for Reconsideration at 13.)

The Court previously declined to grant such a declaration of priority because the Settlement Agreement does not restrict LPC or LPCI from granting security interests to Lockwood, Gerbroeders, or Vreeken. (Opinion p. 21.) Upon reconsideration, the Court again declines to grant such a determination of priority. In its previous Opinion, the Court incorrectly stated that the security interests granted to the Golds were “*only* to be subordinate to current bank loans, all security positions on record, and any future financing of such bank loans.” (Opinion p. 22 (emphasis added).)

The Settlement Agreement, Paragraph 2.a. states: "The Payout Notes will be secured by assets of [LPC] and [LPCI], with such security interest being subordinate to all current bank loans, all current security positions on record, and any future refinancing of such bank loans." The language of the Settlement Agreement is clear that the security interests granted to the Golds are subordinate to those interests named in the Settlement Agreement.

The Golds seek an equitable judgment voiding other security interests or subordinating interests to those of the Golds. The Court declines to make an equitable judgment when there is an adequate remedy at law. In this case, if Vreeken granted security interests having priority over those granted to the Golds, such would be a breach of the Settlement Agreement and may entitle the Golds to damages. The Court will enforce the agreed upon terms of the Settlement Agreement.

V. CONCLUSION

The Cross-Defendants' Motion to Reconsider, Alter, or Amend is denied. The Golds' Motion to Reconsider is granted in part and denied in part

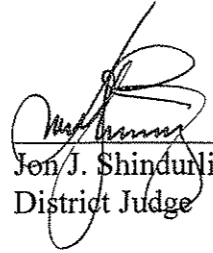
Cross-Defendants' fraud/misrepresentation claim is dismissed.

The Court clarifies that, pursuant to Paragraph 2.c. of the Settlement Agreement, any damages incurred by the Golds as a result of Vreeken, Lockwood, LPC, and LPCI's failure to obtain the releases of the loans specified there are secured by the assets of LPC and LPCI. R. Gold possess a security in the amount of \$270,435.53 plus interest for damaged incurred as a result of Lockwood, LPC, and LPCI's failure to obtain a release of the Citizens Bank loan. T. Gold possesses a security interest in the assets of LPC and LPCI in the amount of \$253,331.95 plus interest for damage incurred as a result of Lockwood, LPC, and LPCI's failure to obtain a release of the EIEDC loan.

Vreeken is ordered to effectuate a personal guarantee for the Citizens Bank loan with Citizens Bank.

IT IS SO ORDERED.

Dated this 2nd day of September, 2005.



Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2005, I served a true and correct copy of the foregoing OPINION, DECISION, AND ORDER ON THOMAS R. GOLD, RICHARD L. GOLD, AND TOMAC PACKAGING, INC.'S MOTION FOR RECONSIDERATION, and LOCKWOOD ENGINEERING B.V., GERBROEDERS MEIJER BELEGGING, B.V., AND JAN VREEKEN'S MOTION TO RECONSIDER, ALTER OR AMEND upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

Attorney for Plaintiff

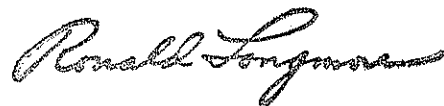
Paul B. Rippel, Esq.
HOPKINS RODEN CROCKETT HANSEN & HOOPES, PLLC
428 Park Ave.
P.O. Box 51219
Idaho Falls, Idaho 83405-1219

Attorney for Defendants, Cross-Defendants, and Third-Party Defendants

Brent T. Robinson, Esq.
LING & ROBINSON
P.O. Box 396
Rupert, Idaho 83350

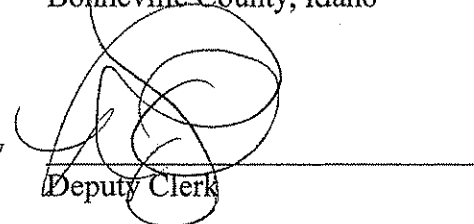
Attorneys for Defendant T. Gold, Cross-Claimant, and Third Party Claimants

Charles A. Homer, Esq.
Robert M. Follet
HOLDEN KIDWELL HAHN & CRAPO
P.O. Box 50130
Idaho Falls, Idaho 83405-0130



Ronald Longmore
Clerk of the District Court
Bonneville County, Idaho

by


Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
))
Plaintiff,)
vs.)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
))
Defendants.)

Case No. CV-2001-2279

MINUTE ENTRY

THOMAS R. GOLD, an individual,)
))
Cross-Claimant,)
vs.)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
))
Cross-Defendants.)

THOMAS R. GOLD, an individual,)
RICHARD L. GOLD, an individual, and)
TOMAC PACKAGING, INC., a)
Massachusetts corporation)
))
Cross-Claimants and)
Third-Party Plaintiffs,)

vs.)
)

LOCKWOOD PACKAGING)
CORPORATION, a Delaware corporation)
("LPC"); and LOCKWOOD PACKAGING)
CORPORATION IDAHO, and Idaho)
Corporation ("LPC Idaho"),)
)
Third Party Defendants.)
_____)

October 25, 2005, a Motion to Withdraw came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter and Ms. Rhonda Quintana, Deputy Court Clerk, were present.

Mr. Brent T. Robinson appeared telephonically on behalf of the defendant.

Mr. Chuck Homer appeared behalf of the defendant and third party plaintiffs.

Mr. Robinson addressed the Court in support of the Motion.

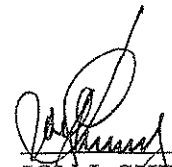
Mr. Homer responded in with opposition to the motion.

The Court granted the motion and asked Mr. Robinson to prepare an appropriate order.

Mr. Homer inquired as to the order of scheduling regarding motions for summary judgment.

The Court will stay the order for scheduling until further notice from the parties and/or new counsel of record.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Chuck Homer
Brent Robinson
Shind102505AM #5

BONNEVILLE COUNTY
IDAHO

5 NOV -8 AM 11:55

1 Brent T. Robinson, Esq.
LING, ROBINSON & WALKER
2 Attorneys at Law
P.O. Box 396
3 Rupert, Idaho 83350
Telephone (208) 436-4717
4 Facsimile (208) 436-6804
ISB #1932

5
6 Attorneys for Lockwood Engineering, B. V.,
Gerbroeders Meijer Belegging, B. V., Jan Vreeken
7 Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho
8

9
10
11 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
12 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE
13

14 CHRISTIANNE VREEKEN,)

Case No. CV 01-2279

15 Plaintiff,)

16 vs.)

17 LOCKWOOD ENGINEERING, B. V.,)
18 a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
19 B.V., a Netherlands corpo-)
20 ration; JAN VREEKEN, an)
individual, and THOMAS R.)
21 GOLD, an individual,)

ORDER RE:
MOTION FOR LEAVE
TO WITHDRAW AS
ATTORNEYS OF RECORD

22 Defendants.)

23 THOMAS R. GOLD, an individual,)

24 Crossclaimant,)

25 vs.)

26 LOCKWOOD ENGINEERING, B.V.,)
27 a Netherlands corporation,)

28 Order Re: Motion for Leave to
Withdraw as Attorneys of Record - 1

1139

OCT 31 2005

LING, ROBINSON & WALKER

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

1 GERBROEDERS MEIJER BELEGGING,)
 2 B.V., a Netherlands corpo-)
 3 ration, a/k/a GERBROEDERS)
 4 MEIJER BELEGGING, B.V.;)
 5 and JAN VREEKEN, an individual,)
 6 Cross-Defendants,)
 7 THOMAS R. GOLD, an individual,)
 8 RICHARD L. GOLD, an individual,)
 9 and TOMAC PACKAGING, INC.,)
 10 a Massachusetts corporation,)
 11 Crossclaimants and)
 12 Third-Party Plaintiffs,)
 13 vs.)
 14 LOCKWOOD PACKAGING)
 15 CORPORATION,)
 16 a Delaware Corporation ("LPC");)
 17 and LOCKWOOD PACKAGING)
 18 CORPORATION IDAHO, an Idaho)
 19 corporation ("LPC Idaho"),)
 20 Third-Party Defendants.)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)

The matter of the law firm of Ling, Robinson & Walker's motion for leave to withdraw as the attorneys of record for Jan Vreeken, Lockwood Packaging Corporation, Lockwood Packaging Corporation Idaho, Lockwood Engineering, B.V., and Gerbroeders Meijer Belegging, B.V., having come before the court by and through Brent T. Robinson of said firm via telephone conference with the Honorable Jon J. Shindurling and Charles Homer, attorney of record for Thomas R. Gold, Richard L. Gold and Tomac Packaging, Inc., on October 25, 2005, and the Court, being fully advised in the premises, enters its order as follows.

Order Re: Motion for Leave to
 Withdraw as Attorneys of Record - 2

LING, ROBINSON & WALKER
ATTORNEYS AT LAW
RUPERT, IDAHO 83350-0396

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CLERK'S CERTIFICATE OF MAILING

I hereby certify that on this 1st day of October, 2005, I served a copy of the within and foregoing Order Re: *Motion for Leave to Withdraw as Attorneys of Record* upon:

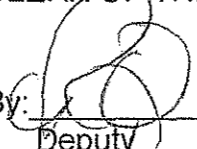
Paul B. Rippel
HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
P.O. Box 51219
Idaho Falls, ID 83405-1219

Charles A. Homer
Robert M. Follett
HOLDEN, KIDWELL, HAHN &
CRAPO, P.L.L.C.
P.O. Box 50130
Idaho Falls, ID 83405

Brent T. Robinson
LING, ROBINSON & WALKER
P. O. Box 396
Rupert, Idaho 83350

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said persons at the foregoing addresses.

CLERK OF THE DISTRICT COURT

By:  _____
Deputy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
)
Defendant.)

Case No. CV-2001-2279

**MINUTE ENTRY
STATUS CONFERENCE**

THOMAS R. GOLD, an individual,)
)
Cross-Claimant,)
)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants.)

THOMAS R. GOLD, an individual,)
 RICHARD L. GOLD, an individual, and)
 TOMAC PACKAGING, INC., a)
 Massachusetts corporation)
)
 Cross-Claimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, an Idaho)
 Corporation ("LPC Idaho"),)
)
 Third-Party Defendants.)

February 27, 2006, a status conference came on for hearing before the Honorable Jon J.

Shindurling, District Judge, sitting in chambers at Idaho Falls, Idaho.

Ms. Rhonda Quintana, Deputy Court Clerk, was present.

Mr. Chuck Homer appeared in person on behalf of the defendant and third party plaintiffs.

Mr. Kipp Manwaring appeared on behalf of the third party defendants.

The Court re-scheduled a trial for October 23, 2006, at 1:30 p.m. A pre-trial was scheduled for October 10, 2006, at 9:00 a.m. The Court further scheduled the Motion for Summary Judgment hearing for May 2, 2006, at 10:00 a.m.

Dated this 5 day of March, 2006



 JON J. SHINDURLING
 District Judge

c: Chuck Homer
 Kipp Manwaring

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
)
Defendant.)
_____)

Case No. CV-2001-2279

**FOURTH ORDER
RE-SETTING PRETRIAL
CONFERENCE AND TRIAL**

)
THOMAS R. GOLD, an individual,)
)
Cross-Claimant,)
)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants.)
_____)

THOMAS R. GOLD, an individual,)
 RICHARD L. GOLD, an individual, and)
 TOMAC PACKAGING, INC., a)
 Massachusetts corporation)
)
 Cross-Claimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, ad Idaho)
 Corporation ("LPC Idaho"),)
)
 Third-Party Defendants.)
 _____)

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following pre-trial schedule shall govern all proceedings in this case:

I. IT IS HEREBY ORDERED:

1. A pre-trial conference shall be held at 9:00 a.m., on October 10, 2006.
2. Court trial shall commence at 1:30 p.m., on October 23, 2006.
3. No later than ninety (90) days before the date set for trial, counsel shall disclose the names, addresses, and telephone numbers of expert witnesses that may be called to testify at trial.
4. All discovery shall be completed seventy (70) days prior to trial.¹
5. All Motions for Summary Judgment must be filed sixty (60) days prior to trial in conformance with Rule 56(a), I.R.C.P.
6. All Motions for Summary Judgment must be heard at least twenty-eight (28) days prior to trial.

¹ Discovery requests must be served so that timely responses will be due prior to the discovery cutoff date.

II. IT IS FURTHER ORDERED that each attorney shall, no later than fourteen (14) days before trial:

1. Submit a list of names to the court of persons who may be called to testify.
2. Submit a descriptive list of all exhibits proposed to be offered into evidence to the court indicating which exhibits counsel have agreed will be received in evidence without objection and those to which objections will be made, including the basis upon which each objection will be made.
3. Submit a brief to the court citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. If this is a jury trial, counsel shall submit proposed jury instructions to all parties to the action and the court. All requested instructions submitted to the court shall be in duplicate form as set out in Idaho Rule of Civil Procedure 51(a)(1).
5. Submit that counsel have in good faith tried to settle this action.
6. State whether liability is disputed.

III. IT IS FURTHER ORDERED that each attorney shall no later than seven (7) days before trial:

1. Submit any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.
2. Deposit with the clerk of the court all exhibits to be introduced, except those for impeachment. The clerk shall mark plaintiff's exhibits in numerical sequence as requested by plaintiff and shall mark all defendant's exhibits in alphabetical sequence as requested by defendant.
3. A duplicate set of all exhibits to be introduced, except those for impeachment, shall be placed in binders, indexed, and deposited with the clerk of the court.

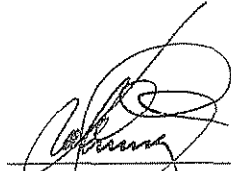
IV. IT IS FURTHER ORDERED that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.
2. No exhibits shall be admitted into evidence at trial other than those disclosed,

listed and submitted to the clerk of the court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.

3. This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice.
4. The court may impose appropriate sanctions for violation of this order.

DATED this 3 day of March, 2006.



JON J. SHINDURLING
District Judge

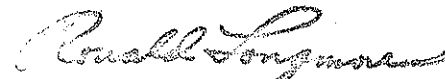
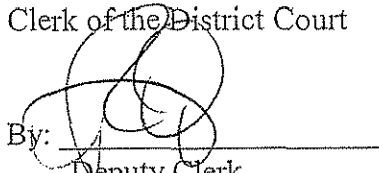
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CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of March, 2006, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Charles A. Homer
HOLDEN, KIDWELL, HAHN & CRAPO
Courthouse Box
Idaho Falls, Idaho 83402

Kipp Manwaring
MANWARING LAW OFFICE, P.A.
Courthouse Box
Idaho Falls, Idaho 83402


RONALD LONGMORE
Clerk of the District Court
By:  _____
Deputy Clerk

Charles A. Homer, Esq. (ISB No. 1630)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P. O. Box 50130
Idaho Falls, Idaho 83405-0130
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

SEP 21 AM 11:49

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

AFFIDAVIT OF THOMAS R. GOLD

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

STATE OF MASSACHUSETTS)
) ss
County of Middlesex)

Thomas R. Gold, being first duly sworn on oath, deposes and says as follows:

1. Attached hereto as Exhibits A and B are copies of the Judgment and Amendment Judgment entered in Case No. CV-01-5449 in the District Court in the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville. The Amended Judgment dated February 19, 2004, set forth a total amended judgment amount of \$253,331.95. To the best of the knowledge of the undersigned the only payment which has been paid on such Amended Judgment balance is a payment in the amount of \$406.94 which was received through a Bonneville County Sheriff's sale held on March 12, 2003. Therefore, after crediting such amount of \$406.94 on the Amended Judgment amount, there remains

2 AFFIDAVIT OF THOMAS R. GOLD


1150 A

due and owing on the Amended Judgment the amount of \$252,925.01, together with interest accruing thereon at the judgment rate from and after February 19, 2004.

2. Attached hereto as Exhibit C and D are copies of the UCC-1 Financing Statements filed with the Idaho Secretary of State of August 23, 2000, under filing numbers B879148 and B879149.

3. The undersigned has reviewed the documents produced for inspection by the parties in the above entitled action and there has not been any documentation produced evidencing the granting of a security interest in the property described in the attached UCC-1 Financing Statement, except for the letter dated September 10, 1997, attached hereto as Exhibit E. Such letter attached hereto as Exhibit E provides for a security interest in the accounts receivable of Lockwood Packaging Corporation, but does not provide for a security interest in any other assets of Lockwood Packaging Corporation or any assets of Lockwood Packaging Corporation Idaho. The undersigned is not aware of any documents wherein Lockwood Packaging Corporation Idaho or Lockwood Packaging Corporation granted a security interest pertaining to the property described in the attached UCC-1 Financing Statements except for the security interest which may have been granted pursuant to the letter attached hereto as Exhibit E.

Dated this 17th day of August, 2006.




Thomas R. Gold

STATE OF MASSACHUSETTS)

County of Middlesex)ss.
)

SUBSCRIBED AND SWORN TO before me this 7th day of August, 2004⁶.



Notary Public for Massachusetts
Residing at: 9 NEWTON STREET, WILMINGTON, MA 01891
My Commission Expires: APRIL 12, 2013

(seal)



SHELLY M. BUTLER
Notary Public
Commonwealth of Massachusetts
My Commission Expires
April 12, 2013

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

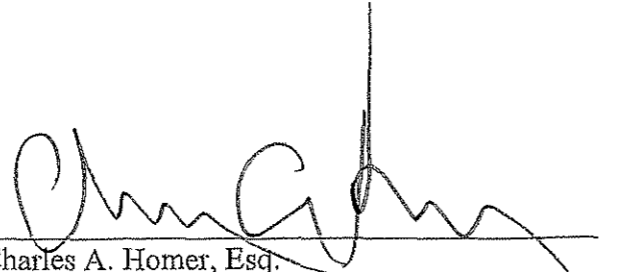
DOCUMENT SERVED: AFFIDAVIT OF THOMAS R. GOLD

ATTORNEYS SERVED:

Kipp L. Manwaring First Class Mail
381 Shoup Avenue, Suite 210 Hand Delivery
Idaho Falls, Idaho 83402 Facsimile
Fax: 208-523-9109

Paul B. Rippel First Class Mail
Hopkins Roden Crockett Hansen Hand Delivery
& Hoopes, PLLC Facsimile
428 Park Ave
Post Office Box 51219
Idaho Falls, ID 83405-1219
Fax: 208-523-4474

Dated: August 21, 2006



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\CAH\10199\2006 Pleadings\AffidavitTR Gold.vwpd

Stephen J. McGrath, Esq., ISB No. 1569
McGRATH, MEACHAM & SMITH, PLLC
414 Shoup Avenue
P. O. Box 50731
Idaho Falls, Idaho 83405
Telephone: (208) 524-0731
Telefax: (208) 529-4166

2004 FEB 19 PM 2:22

DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

EASTERN IDAHO ECONOMIC)
DEVELOPMENT COUNCIL, dba EASTERN)
IDAHO COMMUNITY REUSE)
ORGANIZATION, an Idaho non-profit)
corporation,)

Plaintiff,)

vs.)

LOCKWOOD PACKAGING)
CORPORATION IDAHO, an Idaho)
Corporation; LOCKWOOD PACKAGING)
CORPORATION, a Delaware Corporation;)
LOCKWOOD ENGINEERING B.V., a)
Netherlands Corporation; THOMAS R.)
GOLD, individually; and JAN C. VREEKEN,)
Individually,)

Defendants.)

Case No. CV-01-5449

AMENDED JUDGMENT

IN THIS MATTER, the court having granted Plaintiff's Motion for Award of Attorney's

Fees and Costs in open court on February 18, 2004, as against all named defendants, to-wit:

LOCKWOOD PACKAGING CORPORATION IDAHO, an Idaho corporation, LOCKWOOD

AMENDED JUDGMENT - Page 1

PLAINTIFFS\DW\1632500184

PACKAGING CORPORATION, a Delaware corporation, LOCKWOOD ENGINEERING B.V.,
a Netherlands Corporation, THOMAS R. GOLD, individually, and JAN C. VREEKEN,
individually.

WHEREFORE, by reason of the law and the premises aforesaid, IT IS HEREBY
ORDERED, ADJUDGED AND DECREED that Eastern Idaho Economic Development Council,
dba Eastern Idaho Community Reuse Organization, plaintiff, does have and recover of and from said
defendants, LOCKWOOD PACKAGING CORPORATION IDAHO, an Idaho corporation,
LOCKWOOD PACKAGING CORPORATION, a Delaware corporation, LOCKWOOD
ENGINEERING B.V., a Netherlands Corporation, THOMAS R. GOLD, individually, and JAN C.
VREEKEN, individually, the principal sum of \$203,100.83, to include an additional \$700.24 in costs
and \$16,714.80 as attorney's fees for a total of \$17,415.04, plus \$2,816.08 as post-judgment
interest, for a total Amended Judgment of \$23,339.95 and that plaintiff further recover lawful
interest on the foregoing judgment until paid and that execution may issue on the foregoing
judgment.

DATED this 19th day of February, 2004.

Gregory S. Anderson
Gregory S. Anderson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of February, 2004, I served a true and correct copy of the following described document on the attorneys listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Document Served: **AMENDED JUDGMENT**

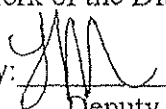
Attorneys Served:

Stephen J. McGrath, Esq.
McGRATH, MEACHAM & SMITH, PLLC
P. O. Box 50731
Idaho Falls, ID 83405-0731

Brent T. Robinson, Esq.
LING & ROBINSON
P. O. Box 396
Rupert, ID 83350

Charles A. Homer, Esq.
HOLDEN, KIDWELL,
HAHN & CRAPO, PLLC
P. O. Box 50130
Idaho Falls, ID 83405

Clerk of the District Court

By: 
Deputy Clerk

COPY

Stephen J. McGrath, Esq., ISB No. 1569
Justin R. Seamons, Esq. ISB No. 3903
McGRATH, MEACHAM, SMITH & SEAMONS, PLLC
414 Shoup Avenue
P. O. Box 50731
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Telephone: (208) 524-0731
Telefax: (208) 529-4166

2002 APR 16 PM 3:26
DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

EASTERN IDAHO ECONOMIC)
DEVELOPMENT COUNCIL, dba EASTERN)
IDAHO COMMUNITY REUSE)
ORGANIZATION, an Idaho non-profit)
corporation,)

Plaintiff,)

vs.)

LOCKWOOD PACKAGING)
CORPORATION IDAHO, an Idaho)
Corporation; LOCKWOOD PACKAGING)
CORPORATION, a Delaware Corporation;)
LOCKWOOD ENGINEERING B.V., a)
Netherlands Corporation; THOMAS R.)
GOLD, individually; and JAN C. VREEKEN,)
Individually,)

Defendants.)

Case No. CV-01-5449

JUDGMENT

IN THIS MATTER, the Court having entered its judgment in favor of Eastern Idaho Economic Development Council, d/b/a Eastern Idaho Community Reuse Organization and against Lockwood Packaging Corporation Idaho, Lockwood Packaging Corporation, Lockwood Engineering, B.V., Thomas R. Gold and Jan C. Vreeken on March 22, 2002 in the amount of \$194,586.33.

NOW ON THIS DAY, on application of Stephen J. McGrath, Esq., a member of the firm of McGrath, Meacham, Smith & Seamons, PLLC, attorneys for said plaintiff, it is hereby ordered that judgment be entered herein against the said defendants, LOCKWOOD PACKAGING CORPORATION IDAHO, an Idaho corporation, LOCKWOOD PACKAGING CORPORATION, a Delaware corporation, LOCKWOOD ENGINEERING B.V., a Netherlands Corporation, THOMAS R. GOLD, individually, and JAN C. VREEKEN, individually, in accordance with the Court's Summary Judgment on file herein.

WHEREFORE, by reason of the law and the premises aforesaid, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that EASTERN IDAHO ECONOMIC DEVELOPMENT COUNCIL, dba EASTERN IDAHO COMMUNITY REUSE ORGANIZATION, an Idaho non-profit corporation, plaintiff, does have and recover jointly and severally of and from said defendants, LOCKWOOD PACKAGING CORPORATION IDAHO, an Idaho corporation, LOCKWOOD PACKAGING CORPORATION, a Delaware corporation, LOCKWOOD ENGINEERING B.V., a Netherlands Corporation, THOMAS R. GOLD, individually, and JAN C. VREEKEN, individually, the principal sum of \$194,586.33, together with attorney's fees in the sum of \$ 8,437.50, together with costs of suit in the sum of \$77.00, for a total judgment of \$ 203,100.83

together with lawful interest from March 22, 2002 until paid; that execution may issue on the foregoing judgment.

JUDGMENT RENDERED this 16th day of April, 2002.

Gregory S. Anderson
Gregory S. Anderson
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of April, 2002, I served a true and correct copy of the following described document on the attorneys listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Document Served:

JUDGMENT

Attorneys Served:

Stephen J. McGrath, Esq. ✓
McGRATH, MEACHAM, SMITH &
SEAMONS, PLLC
P. O. Box 50731
Idaho Falls, Idaho 83405-0731

Brent T. Robinson, Esq.
LING & ROBINSON
P. O. Box 396
Rupert, ID 83350

Charles A. Homer, Esq.
HOLDEN, KIDWELL,
HAHN & CRAPO, PLLC
P. O. Box 50130
Idaho Falls, ID 83405

CLERK OF THE DISTRICT COURT

By: Tracy B. Lemke
Deputy Clerk

STATE OF IDAHO FINANCING STATEMENT - FORM UCC-1

Filing Office Use Only

Form approved by Pke Y. Genarusa, Secretary of State, UCC Division, Statehouse, Boise, ID 83720. Ph 200-334-3191

Debtor #1 (Last name, first, middle, title & mailing address) Lockwood Packaging Corporation Idaho, Inc, an Idaho corporation 75 Lindsay Blvd. Idaho Falls, ID 83405		Debtor #3	
Debtor #2 Lockwood Packaging Corporation, a Delaware corporation 19 Clinton Drive, Unit C Hollis, NH 03049		Debtor #4	
Secured Party and Address Lockwood Engineering, B.V., a Netherlands corporation Mr. Nennstichweg 85 9367 PC, P.O. Box 1 DeWijp (gn) The Netherlands		Assignee and Address	
Mailing Address for acknowledgment, if not Secured Party <p style="text-align: center;">RETURN TO: M. LARKIN CT Corporation System 101 Federal Street, Suite 300 Boston, MA 02110</p>		Check If Covered <input type="checkbox"/> Products of collateral are also cov If one of the following boxes is checked, the secured party may sign if financing statement. The collateral described herein is: <input type="checkbox"/> Brought into this state already subject to a security interest in another jurisdiction. <input type="checkbox"/> Subject to a security interest in another jurisdiction, and the debtor's location has changed to this state. <input type="checkbox"/> Proceeds of the original collateral described above in which a security interest was perfected. <input type="checkbox"/> The subject of a financing statement which has lapsed. <input type="checkbox"/> Subject to a security interest perfected under a prior name or name of the debtor.	

This financing statement covers the following types or items of property:
 (If this is a fixture, timber or mineral filing to be recorded with the County Recorder, include legal description and name of record owner, if required.)

A continuing security interest in all accounts, chattel paper, general intangibles, documents of title, instruments, investment property, inventory, machinery, equipment, fixtures and other goods (as those terms are defined in the Uniform Commercial Code).

Signature(s) of Debtor(s) Lockwood Packaging Corporation Idaho, Inc. X By: Jan Vreken, its President	
Secured Party Signature Lockwood Engineering, B.V. X By: Jan Vreken, its President	
1161	
TERMINATION STATEMENT - If Secured Party no longer claims a security interest under the financing statement.	
Secured Party or Assignee of Record	Date

Filing Office Use Only

IDAHO SECRETARY OF STATE
 08/23/2000 09:00
 CK: 129024521 CT: 3590 BH: 343224
 I E 6.00 = 6.00 UCC1 FILE # 2
 Filing Number: B 879148

Revised 7/91

Exhibit "C"

STATE OF IDAHO FINANCING STATEMENT - FORM UCC-1

Filing Office Use Only

Form approved by Dale T. Canarruso, Secretary of State, UCC Division, Statehouse, Boise, ID 83720. Ph 208-334-3191

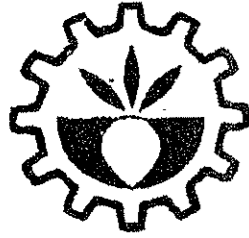
Debtor #1 (Last name, first, middle, title & mailing address) Lockwood Packaging Corporation Idaho, Inc, an Idaho corporation 75 Lindsay Blvd. Idaho Falls, ID 83405	Debtor #3
Debtor #2 Lockwood Packaging Corporation, a Delaware corporation 19 Clinton Drive, Unit C Hollis, NH 03049	Debtor #4

Secured Party and Address Gebroeders Meijer Belegging, B.V., a Netherlands corporation Mr. Nennstichtweg 85 9367 PC, P.O. Box 1 DeWijp (gn) The Netherlands	Assignee and Address
Mailing Address for acknowledgement, if not Secured Party <p style="text-align: center;">RETURN TO: M. LARKIN CT Corporation System 101 Federal Street, Suite 300 Boston, MA 02110</p>	Check if Covered <input type="checkbox"/> Products of collateral are also covered If one of the following boxes is checked, the secured party may sign financing statement. The collateral described herein is: <input type="checkbox"/> Brought into this state already subject to a security interest in another jurisdiction. <input type="checkbox"/> Subject to a security interest in another jurisdiction, and the debtor's location has changed to this state. <input type="checkbox"/> Proceeds of the original collateral described above in which a security interest was perfected. <input type="checkbox"/> The subject of a financing statement which has expired. <input type="checkbox"/> Subject to a security interest perfected under a prior name or/ of the debtor.

This financing statement covers the following types of items of property:
 (If this is a fixture, timber or mineral filing to be recorded with the County Recorder, include legal description and name of record owner, if required.)

A continuing security interest in all accounts, chattel paper, general intangibles, documents of title, instruments, investment property, inventory, machinery, equipment, fixtures and other goods (as those terms are defined in the Uniform Commercial Code).

Signature(s) of Debtor(s) Lockwood Packaging Corporation Idaho, Inc. By: Jan Vreeken, its President	Filing Office Use Only
Secured Party Signature Gebroeders Meijer Belegging, B.V. By: Jan Vreeken, its President	IDAHO SECRETARY OF STATE 08/23/2008 09:00 CK: 129824528 CT: 3598 BH: 343225 1 @ 6.00 = 6.00 UCCI FILE # 2 Filing Number: B 879149
TERMINATION STATEMENT - The Secured Party no longer claims a security interest under the financing statement. Secured Party or Assignee of Record _____ Date _____	



File:
Lockwood
Mayer
Lockwood

Telephone: 617-938-1500

800-641-3100

Fax: 617-938-7536

September 10, 1997

Mr. Jan C. Vreeken
Lockwood Engineering B. V.
Mr. Nennstiehlweg 85-9367 PC
Postbus 2, 9367 ZG De Wilp (Gr.)
The Netherlands

Dear Jan:

In consideration of your forbearance in collecting overdue accounts receivable owing by Lockwood Packaging Corporation to Lockwood Engineering B. V., Lockwood Packaging Corporation hereby grants you a security interest in its accounts receivable, until our account with you becomes current.

We undertake to execute such other and additional documents as you shall reasonably require to perfect the security interest.

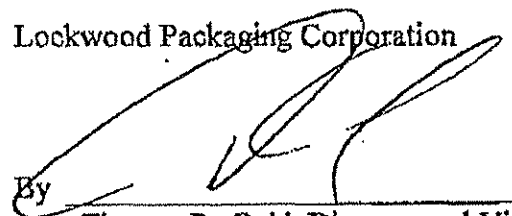
We also hereby confirm that any machine inventory in our possession which is not sold belongs to you and is held by us on consignment.

Please do not hesitate to contact me should you have any further questions.

Sincerely,

Lockwood Packaging Corporation

By


Thomas R. Gold, Director and Vice President

tlgvreeken

1163

Exhibit "E"

Charles A. Homer, Esq. (ISB No. 1630)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P. O. Box 50130
Idaho Falls, Idaho 83405-0130
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

2000 JUN 21 AM 11:09

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

MOTION FOR SUMMARY JUDGMENT
TO BE ENTERED ON BEHALF OF
THOMAS R. GOLD AND RICHARD L.
GOLD

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

COMES NOW, Thomas R. Gold ("TR Gold") and Richard L. Gold ("RL Gold"), by and through counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., and hereby requests that the Court enter, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, summary judgment in favor of such parties against Jan Vreeken ("Vreeken"), Lockwood Engineering, B.V., Lockwood Packaging Corporation and Lockwood Packaging Corporation Idaho (collectively the "Lockwood Entities"). TR Gold and RL Gold request summary judgment for the reason that there are no genuine issues as to any material fact and such parties are entitled to judgment as a matter of law.

TR Gold and RL Gold request that by summary judgment, the Court enter a judgment, order and decree for the following:

1. Entry of a money judgment on behalf of RL Gold against Vreeken in the principal amount of \$100,000.00, plus interest accrued from November 12, 2000, to May 3, 2005, in the

amount of \$13,423.26 for a total amount of \$113,423.26 with interest to accrue on such total amount of \$113,423.26 from and after May 3, 2005, at the judgment rate.

2. Entry of a money judgment on behalf of TR Gold against Vreeken in the principal amount of \$450,000.00, plus interest accrued from November 12, 2000, to May 3, 2005, in the amount of \$60,404.67 for a total amount of \$510,404.67 with interest to accrue on such total amount of \$510,404.67 from and after May 3, 2005, at the judgment rate of interest until paid.


3. Entry of a money judgment on behalf of TR Gold against Vreeken in the amount of \$252,925.01, plus interest accruing thereon at the judgment rate of interest from February 19, 2004, until paid to be used by TR Gold to pay off the judgment and amended judgment obtained against TR Gold by Eastern Idaho Economic Development Council ("EIEDC").

4. Entry of judgment against Vreeken and the Lockwood Entities which orders and decrees as follows: TR Gold and RL Gold are not liable to Vreeken, the Lockwood Entities or any related party for contribution, indemnification or otherwise on account of payments which may have previously been made or which hereafter may be made on account of the loans referred to in Paragraph 2C or the Promissory Notes referred to in Paragraph 2A of the Memorandum of Understanding herinafter described. The Memorandum of Understanding referenced above refers to the Confidential Memorandum of Understanding entered into in May, 2000, between the Lockwood Entities, TR Gold and RL Gold (the "Memorandum of Understanding").

5. Entry of a judgment which orders and decrees that Vreeken and the Lockwood Entities shall indemnify and hold harmless TR Gold and RL Gold from any liability, loss, cost, expense or damage on account of the loans referred to in Paragraph 2C of the Memorandum of Understanding.

The Court has previously issued Opinions on prior Motions for Summary Judgment finding that Lockwood Packaging Corporation, Lockwood Packaging Corporation Idaho and Lockwood Engineering, B.V. are obligated to pay to TR Gold and RL Gold the amounts set forth in paragraphs 1 and 2 above. TR Gold and RL Gold by this Motion for Summary Judgment are requesting that the Court find that Vreeken is also personally obligated to pay such amounts to TR Gold and RL Gold. The amount referred to in paragraph 3 above is the judgment amount found to be jointly and severally due and owing by TR Gold and Vreeken to EIEDC in Bonneville County Case No. CV-01-5449. By this Motion for Summary Judgment, TR Gold is requesting that the Court find that as between TR Gold and Vreeken that Vreeken has primary responsibility to pay such judgment amount due and owing to EIEDC. The grounds for the Motion for Summary Judgment requested herein are further set forth in detail in the Memorandum in Support of Motion for Summary Judgment filed contemporaneously with this Motion on behalf of TR Gold and RL Gold.

Dated this 21st day of August, 2006.



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

1167

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.


DOCUMENT SERVED: MOTION FOR SUMMARY JUDGMENT TO BE ENTERED ON BEHALF OF THOMAS R. GOLD AND RICHARD L. GOLD

ATTORNEYS SERVED:

Kipp L. Manwaring First Class Mail
381 Shoup Avenue, Suite 210 Hand Delivery
Idaho Falls, Idaho 83402 Facsimile
Fax: 208-523-9109

Paul B. Rippel First Class Mail
Hopkins Roden Crockett Hansen Hand Delivery
& Hoopes, PLLC Facsimile
428 Park Ave
Post Office Box 51219
Idaho Falls, ID 83405-1219
Fax: 208-523-4474

Dated: August 21, 2006



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Charles A. Homer, Esq. (ISB No. 1630)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
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Idaho Falls, Idaho 83405-0130
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

2001 JUN 21 AM 11:05

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

MOTION FOR ENTRY OF SUMMARY
JUDGMENT

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

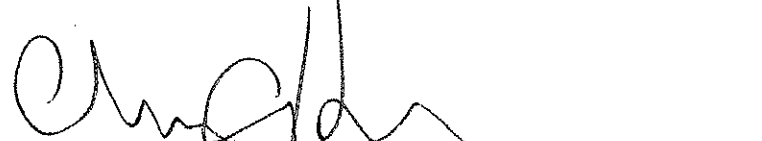
vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

COMES NOW, Thomas R. Gold, Richard L. Gold and Tomac Packaging, Inc., and hereby request that the Court enter summary judgment in this action in the form of Exhibit A attached hereto in accordance with and pursuant to the conclusions set forth in the Opinion, Decision and Order on Motion for Summary Judgment previously entered herein dated May 3, 2005, and the Opinion, Decision and Order on Motion to Reconsider previously entered herein dated September 2, 2005.

Dated this 21st day of August, 2006.



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

1170

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

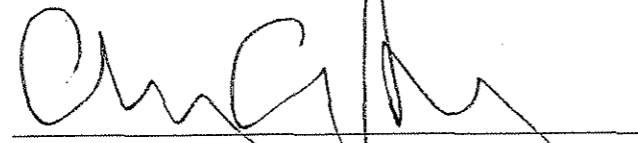
DOCUMENT SERVED: MOTION FOR ENTRY OF SUMMARY JUDGMENT

ATTORNEYS SERVED:

Kipp L. Manwaring First Class Mail
381 Shoup Avenue, Suite 210 Hand Delivery
Idaho Falls, Idaho 83402 Facsimile
Fax: 208-523-9109

Paul B. Rippel First Class Mail
Hopkins Roden Crockett Hansen Hand Delivery
& Hoopes, PLLC Facsimile
428 Park Ave
Post Office Box 51219
Idaho Falls, ID 83405-1219
Fax: 208-523-4474

Dated: August 21, 2006



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\CAH\10199\Summary Judgment Pleadings\Motion.SJ.May2306.wpd

Charles A. Homer, Esq. (ISB No. 1630)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P. O. Box 50130
Idaho Falls, Idaho 83405-0130
Telephone: (208) 523-0620
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Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

SUMMARY JUDGMENT

THOMAS R. GOLD, an individual,

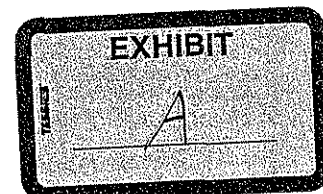
CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

1172



THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The Court having previously issued its Opinion, Decision and Order on Motion for Summary Judgment dated May 3, 2005, and its Opinion, Decision and Order on Motion for Reconsideration dated September 2, 2005 (collectively the "Opinions"), in accordance with the findings and conclusions set forth in the Opinions and good cause appearing therefore, the Court hereby enters summary judgment as follows:

1. That all claims of Lockwood Packaging Corporation Idaho ("LPCI") against Thomas R. Gold ("TR Gold"), Richard L. Gold ("RL Gold") and Tomac Packaging, Inc. ("Tomac") set forth in the Counterclaim and Cross-Claim on file herein dated November 1, 2001, are dismissed.

2. That all claims of LPCI, Jan Vreeken ("Vreeken"), Lockwood Packaging Corporation ("LPC"), Lockwood Engineering, B.V. ("LEBV") and Gerbroeders Meijer Belegging, B.V. ("GMBBV") against TR Gold, RL Gold and Tomac set forth in the Counterclaim and Cross-Claim on file herein dated July 8, 2003, are dismissed.

3. Summary judgment is entered on behalf of RL Gold, jointly and severally, against LPC, LPCI and LEBV in the principal amount of \$100,000.00, plus interest accrued from November 12, 2000 to May 3, 2005, in the amount of \$13,423.26 for a total amount of \$113,423.26 with interest to accrue on such total amount of \$113,423.26 from and after May 3, 2005, at the judgment rate of interest until paid.

4. Summary judgment is entered on behalf of TR Gold, jointly and severally, against LPC, LPCI and LEBV in the principal amount of \$450,000.00, plus interest accrued from November 12, 2000, to May 3, 2005, in the amount of \$60,404.67 for a total amount of \$510,404.67 with interest to accrue on such total amount of \$510,404.67 from and after May 3, 2005, at the judgment rate of interest until paid.

5. Summary judgment is also entered on behalf of RL Gold, jointly and severally, against LPC and LPCI in the principal amount of \$39,718.23, plus interest accruing thereon at the rate of twelve percent (12%) per annum from and after May 3, 2005, to the date of entry of final judgment herein, with interest to accrue from and after the date of entry of final judgment herein on such amount of \$39,718.23 and on any additional unpaid accrued interest due as of the date final judgment is entered herein at the judgment rate of interest.

6. Summary judgment is also entered on behalf of RL Gold against Vreeken, LEBV, LPC and LPCI, jointly and severally, for the following amounts: (i) \$217,710.86 plus interest accruing thereon at the rate of \$39.12 per day from and after February 14, 2005, until the date of entry of final judgment herein and at the legal rate of interest thereon until paid and (ii) the amount of \$52,724.67 plus interest accruing thereon at the twelve percent (12%) per annum legal rate of interest from and after February 14, 2005 to the date of entry of final judgment herein and at the judgment rate of interest thereafter.

Dated this ____ day of _____, 2006.

Jon J. Shindurling
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following, by mailing, with the necessary postage affixed thereto.

DOCUMENT SERVED: SUMMARY JUDGMENT

ATTORNEYS SERVED:

Charles A. Homer
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
Post Office Box 50103
Idaho Falls, Idaho 83405
Fax: 208-523-9518
Via Courthouse Box

Kipp L. Manwaring
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Fax: 208- 523-9109
Via First Class Mail

Paul B. Rippel
Hopkins Roden Crockett Hansen
& Hoopes, PLLC
428 Park Ave
Post Office Box 51219
Idaho Falls, ID 83405-1219
208-523-4474
Via First Class Mail

Dated: _____

CLERK OF THE DISTRICT COURT

By: _____
Deputy Clerk

G:\WPDATA\CAHN\10199\2006 Pleadings\SJ.May2306.wpd

Charles A. Homer, Esq. (ISB No. 1630)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
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Idaho Falls, Idaho 83405-0130
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BONNEVILLE COUNTY
IDAHO

6 AUG 25 P1:43

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

CASE NO. CV-01-2279

ORDER AMENDING FOURTH ORDER
RE-SETTING PRETRIAL CONFERENCE
AND TRIAL

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

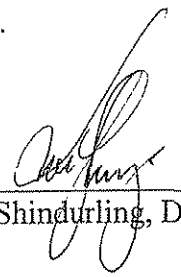
vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The Court has previously issued a Fourth Order Re-Setting Pretrial Conference and Trial in the above entitled case dated March 3, 2006. The Fourth Order Re-Setting Pretrial Conference and Trial is hereby amended to provide that all Motions for Summary Judgment must be heard on or before October 10, 2006. The Fourth Order Re-Setting Pretrial Conference and Trial is not otherwise altered or affected by this Order.

Dated this 25 day of August, 2006.



Jon J. Shindurling, District Judge

1178

CLERK'S CERTIFICATE OF MAILING

I hereby certify that I served a true copy of the foregoing document upon the following, by U.S. Mail, with the necessary postage affixed thereto.

DOCUMENT SERVED: ORDER AMENDING FOURTH ORDER RE-SETTING PRETRIAL CONFERENCE AND TRIAL

ATTORNEYS SERVED:

Kipp L. Manwaring
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Fax: 208-523-9109

First Class Mail
 Hand Delivery
 Facsimile
 Courthouse Box

Paul B. Rippel
Hopkins Roden Crockett Hansen
& Hoopes, PLLC
428 Park Ave
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Idaho Falls, ID 83405-1219
Fax: 208-523-4474

First Class Mail
 Hand Delivery
 Facsimile
 Courthouse Box


Charles A. Homer
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
1000 Riverwalk Drive, Suite 200
Idaho Falls, Idaho 83405
Fax: 208-523-9518

First Class Mail
 Hand Delivery
 Facsimile
 Courthouse Box

Dated: 8/25/2006



CLERK OF THE DISTRICT COURT

By: 

Deputy Clerk

G:\WPDATA\CAH\10199\2006 Pleadings\Order Amending Fourth Order.082406.wpd

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
)
Defendants.)

Case No. CV-2001-2279

**MINUTE ENTRY
MOTION TO WITHDRAW**

THOMAS R. GOLD, an individual,)
)
Cross-Claimant,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants.)

THOMAS R. GOLD, an individual,)
RICHARD L. GOLD, an individual, and)
TOMAC PACKAGING, INC., a)
Massachusetts corporation)
)
Cross-Claimants and)
Third-Party Plaintiffs,)

vs.)

LOCKWOOD PACKAGING)
CORPORATION, a Delaware corporation)
("LPC"); and LOCKWOOD PACKAGING)
CORPORATION IDAHO, and Idaho)
Corporation ("LPC Idaho"),)
Third Party Defendants.)
_____)

August 28, 2006, a Motion to Withdraw as Counsel of Record for Christianne Vreeken came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter and Ms. Rhonda Quintana, Deputy Court Clerk, were present. Mr. Paul B. Rippel appeared on behalf of the plaintiff. Mr. Chuck Homer appeared behalf of the defendant and third party plaintiffs.

Mr. Kipp Manwaring submitted a Notice of No Objection to Motion for Withdrawal on behalf of the defendants/cross-defendants, Lockwood et al., prior to the hearing.


Mr. Rippel addressed the Court in support of the motion.

Mr. Homer responded with no objection only his concern for the trial settings.

The Court clarified that the trial settings would remain on the calendar as set.

The Court granted the motion and executed the order.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

c: Paul Rippel
Chuck Homer
Brent Robinson
082806AMShindurlin #5

1181

BONNEVILLE COUNTY
IDAHO

6 AUG 28 P4:51

Paul B. Rippel, ISBN 2762
HOPKINS RODEN CROCKETT
HANSEN & HOOPEs, PLLC
428 Park Avenue
P. O. Box 51219
Idaho Falls, Idaho 83405-1219
Telephone: 208-523-4445
Attorneys for Christianne Willemijn Vreeken

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a

CASE No. CV-01-2279

ORDER GRANTING LEAVE TO
WITHDRAW AS COUNSEL OF
RECORD FOR CHRISTIANNE
VREEKEN

1182

ORDER GRANTING LEAVE TO WITHDRAW
AS COUNSEL OF RECORD FOR CHRISTIANNE VREEKEN - 1

Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The above entitled action having come on regularly before the Court on the
11th day of September, 2006, pursuant to a Motion for Leave to Withdraw as Counsel
filed by the law firm of Hopkins Roden Crockett Hansen & Hoopes, PLLC and attorney
Paul B. Rippel, for leave to withdraw as counsel for Plaintiff, CHRISTIANNE
VREEKEN, in the above entitled action, and there being no objection thereto and the
Court being fully advised in the premises and good cause appearing therefor;

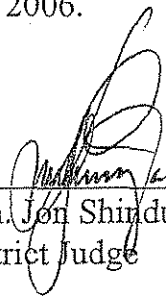
IT IS HEREBY ORDERED, that said Motion for Leave to Withdraw as
counsel be and the same is hereby granted and that the law firm of Hopkins Roden

ORDER GRANTING LEAVE TO WITHDRAW
AS COUNSEL OF RECORD FOR CHRISTIANNE VREEKEN - 2

Crockett Hansen & Hoopes, PLLC and attorney Paul B. Rippel, are hereby permitted to withdraw as counsel for Plaintiff, CHRISTIANNE VREEKEN, in the above entitled action on the date of this Order Granting Leave to Withdraw as Counsel, and the said Plaintiff, CHRISTIANNE VREEKEN, is hereby directed to appoint another attorney to appear, or to appear in person, by filing a written notice with the Court stating how she will represent herself, within twenty (20) days from the date hereof.

IT IS FURTHER ORDERED, that a copy of this Order Granting Leave to Withdraw as Counsel shall be forthwith served on said Plaintiff by mail to the last known address most likely to give notice to said Plaintiff.

DATED this 20 day of August, 2006.



Hon. Jon Shindurling
District Judge


1184

CERTIFICATE OF ENTRY

I, the undersigned and Clerk of the above-entitled court, hereby certify that pursuant to Idaho Rule of Civil Procedure 77(d), a copy of the foregoing was duly posted by first class mail to the defendant's and to plaintiff's counsel at the names and addresses stated below.

DATED this 28th day of September, 2006.

RONALD LONGMORE, CLERK

By 
Deputy Clerk

Charles A. Homer, Esq. Mail
Holden, Kidwell, Hahn & Crapo Hand
P.O. Box 50130 Facsimile
Idaho Falls, ID 83405-0130

Kipp Manwaring, Esq. Mail
381 Shoup Avenue, Ste. 211 Hand Delivery
P.O. Box 50271 Facsimile
Idaho Falls, ID 83405-0271

Paul B. Rippel, ESq. Mail
428 Park Ave. Hand Delivery
P. O. Box 51219 Facsimile
Idaho Falls, ID 83405-1219

1185

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
)
Defendant.)

Case No. CV-2001-2279

MINUTE ENTRY

THOMAS R. GOLD, an individual,)
)
Cross-Claimant,)
)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants.)

THOMAS R. GOLD, an individual,)
 RICHARD L. GOLD, an individual, and)
 TOMAC PACKAGING, INC., a)
 Massachusetts corporation)
)
 Cross-Claimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, and Idaho)
 Corporation ("LPC Idaho"),)
)
 Third Party Defendants.)
 _____)

October 10, 2006, a Defendant's Gold Motion for Summary Judgment and Pretrial
 Conference came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting
 in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter, and Ms. Rhonda Quintana, Deputy Court Clerk,
 were present.

Mr. Kipp Manwaring appeared on behalf of plaintiffs.

Mr. Charles A. Homer appeared on behalf of the third party defendants, Gold's.

Mr. Homer addressed the Court regarding Motion for Entry of Summary Judgment based
 on the prior orders of the Court and requested entry for the judgment.

The Court inquired as to the specific motion and request for judgments. The Court inquired of Mr. Manwaring as to the form as it related to the prior orders.

Mr. Manwaring responded and inquired regarding paragraph 6 of the order.

Mr. Homer offered clarification referring to the Courts second opinion and order.

The Court reviewed the opinion and concedes to the Courts order and requested Mr. Homer submit a judgment to the Court.

Mr. Homer addressed the Court in support of the Second Motion for Summary Judgment.

Mr. Manwaring responded and offered argument in opposition to the motion.


Mr. Homer argued in rebuttal.

The Court took this matter under advisement and will issue its opinion and decision.

The Court vacated the current trial setting and reset Court trial for **November 28, 2006 at**

9:00 a.m.

Court was thus adjourned.



JON J. SHINDURLING
District Judge

cc: Kipp Manwaring
Chuck Homer
101006AMShindurl #5

BONNEVILLE COUNTY
IDAHO

Charles A. Homer, Esq. (ISB No. 1630)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P. O. Box 50130
Idaho Falls, Idaho 83405-0130
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

76 OCT 12 PM 09

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

**PRETRIAL STATEMENT OF TOMAC
PACKAGING, INC., RICHARD L. GOLD
AND THOMAS R. GOLD**

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

1189

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The following is a Pretrial Statement submitted to the Court by Tomac Packaging Inc.,
Richard L. Gold and Thomas R. Gold in compliance with the Court's Fourth Order Re-Setting
Pretrial Conference and Trial dated March 3, 2006:

1. Liability is disputed between the Parties.
2. Counsel have tried in good faith to settle this dispute through mediation with
Dwight Baker which was unsuccessful.
3. The following witnesses will be called to testify at trial:
 - A. Richard L. Gold
 - B. Thomas R. Gold
 - C. Jan Vreeken
 - D. Melanie Harris
4. List of exhibits to be submitted at trial:

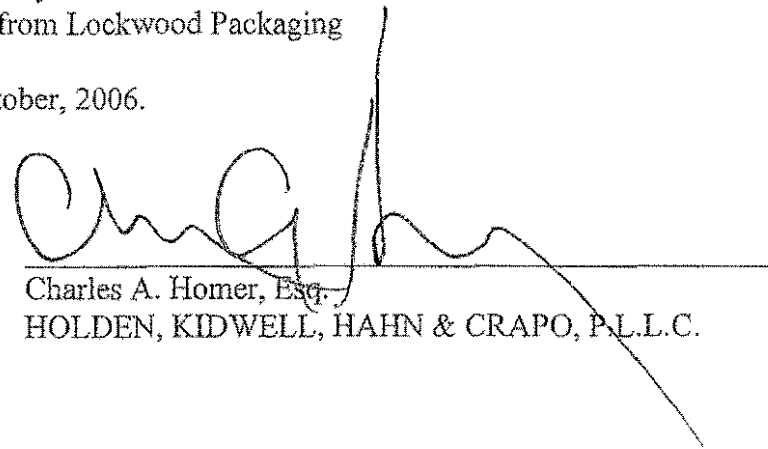
1190

	<u>Exhibit to be Admitted Without Objection</u>
A. Confidential Memorandum of Understanding	Yes
B. Gold Idaho UCC Financing Statement Filed Under Filing Number 879447	No
C. Gold Idaho UCC Financing Statement Filed Under Filing Number 900973	No
D. Gold Filed Massachusetts UCC Financing Statements	No
E. Gold Filed New Hampshire UCC Financing Statements	No
F. Gold Filed Delaware UCC Financing Statements	No
G. Lockwood Engineering Idaho UCC Financing Statement filed Under Filing Number 873842	Yes
H. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 873843	Yes
I. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 879148	Yes
J. GBBV Idaho UCC Financing Statement Filed Under Filing Number 879149	Yes
K. EIEDC Judgment and Amended Judgment	Yes
L. Bank of Idaho Assignment to Christianne Vreeken	Yes
M. Wire Transfer Receipts	Yes
N. Deposit Receipts and Check to Bank of Idaho	Yes
O. Carl Israel Correspondence to Richard Rosenstein With Attached UCC Financing Statements	No

P. Correspondence from Brent Robinson with Attached Documents on Transfer of Assets to Telford Yes

Q. September 10, 1997, Correspondence from Thomas R. Gold on Security Interest Granted to Lockwood Engineering from Lockwood Packaging Yes

Dated this 12th day of October, 2006.



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

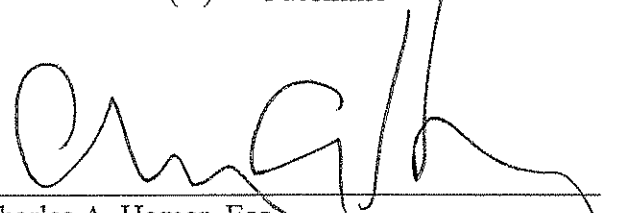
**DOCUMENT SERVED: PRETRIAL STATEMENT OF TOMAC PACKAGING, INC.,
RICHARD L. GOLD AND THOMAS R. GOLD**

ATTORNEYS SERVED:

Kipp L. Manwaring
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Fax: 208-523-9109

First Class Mail
 Hand Delivery
 Facsimile

Dated: 10/12/06



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Charles A. Homer, Esq. (ISB No. 1630)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
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Telephone: (208) 523-0620
Facsimile: (208) 523-9518

BONNEVILLE COUNTY
IDAHO

6 OCT 20 A8:57

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

SUMMARY JUDGMENT

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

1194

ORIGINAL

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The Court having previously issued its Opinion, Decision and Order on Motion for Summary Judgment dated May 3, 2005, and its Opinion, Decision and Order on Motion for Reconsideration dated September 2, 2005 (collectively the "Opinions"), in accordance with the findings and conclusions set forth in the Opinions and good cause appearing therefore, the Court hereby enters summary judgment as follows:

1. That all claims of Lockwood Packaging Corporation Idaho ("LPCI") against Thomas R. Gold ("TR Gold"), Richard L. Gold ("RL Gold") and Tomac Packaging, Inc. ("Tomac") set forth in the Counterclaim and Cross-Claim on file herein dated November 1, 2001, are dismissed.

2. That all claims of LPCI, Jan Vreeken ("Vreeken"), Lockwood Packaging Corporation ("LPC"), Lockwood Engineering, B.V. ("LEBV") and Gerbroeders Meijer Belegging, B.V. ("GMBBV") against TR Gold, RL Gold and Tomac set forth in the Counterclaim and Cross-Claim on file herein dated July 8, 2003, are dismissed.

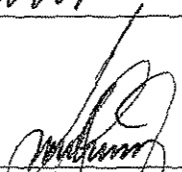
3. Summary judgment is entered on behalf of RL Gold, jointly and severally, against LPC, LPCI and LEBV in the principal amount of \$100,000.00, plus interest accrued from November 12, 2000 to May 3, 2005, in the amount of \$13,423.26 for a total amount of \$113,423.26 with interest to accrue on such total amount of \$113,423.26 from and after May 3, 2005, at the judgment rate of interest until paid.

4. Summary judgment is entered on behalf of TR Gold, jointly and severally, against LPC, LPCI and LEBV in the principal amount of \$450,000.00, plus interest accrued from November 12, 2000, to May 3, 2005, in the amount of \$60,404.67 for a total amount of \$510,404.67 with interest to accrue on such total amount of \$510,404.67 from and after May 3, 2005, at the judgment rate of interest until paid.

5. Summary judgment is also entered on behalf of RL Gold, jointly and severally, against LPC and LPCI in the principal amount of \$39,718.23, plus interest accruing thereon at the rate of twelve percent (12%) per annum from and after May 3, 2005, to the date of entry of final judgment herein, with interest to accrue from and after the date of entry of final judgment herein on such amount of \$39,718.23 and on any additional unpaid accrued interest due as of the date final judgment is entered herein at the judgment rate of interest.

6. Summary judgment is also entered on behalf of RL Gold against Vreeken, LEBV, LPC and LPCI, jointly and severally, for the following amounts: (i) \$217,710.86 plus interest accruing thereon at the rate of \$39.12 per day from and after February 14, 2005, until the date of entry of final judgment herein and at the legal rate of interest thereon until paid and (ii) the amount of \$52,724.67 plus interest accruing thereon at the twelve percent (12%) per annum legal rate of interest from and after February 14, 2005 to the date of entry of final judgment herein and at the judgment rate of interest thereafter.

Dated this 17 day of October, 2006.



Jon J. Shindurling
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following, by mailing, with the necessary postage affixed thereto.

DOCUMENT SERVED: SUMMARY JUDGMENT


ATTORNEYS SERVED:

Charles A. Homer
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
Post Office Box 50103
Idaho Falls, Idaho 83405
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Kipp L. Manwaring
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Idaho Falls, Idaho 83402
Fax: 208- 523-9109
Via First Class Mail

Dated October 20, 06


CLERK OF THE DISTRICT COURT

By: 
Deputy Clerk

BONNEVILLE COUNTY
IDAHO

6 NOV -8 A9:51

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

v.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation;
GERBROEDERS MEIJER BELEGGING,
B.V., a Netherlands corporation;
JAN VREEKEN, an individual; and
THOMAS R. GOLD, an individual,

Defendants.

Case No. CV-2001-2279

OPINION, DECISION, AND ORDER ON
THOMAS R. GOLD, RICHARD L.
GOLD, AND TOMAC PACKAGING,
INC.'S MOTION FOR SUMMARY
JUDGMENT

THOMAS R. GOLD, an individual,

Cross-Claimant,

v.

LOCKWOOD ENGINEERING B.V., a
Netherlands corporation;
GERBROEDERS MEIJER BELEGGING,
B.V., a Netherlands corporation; and JAN
VREEKEN, an individual,

Cross-Defendants.

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THOMAS R. GOLD, an individual;
RICHARD L. GOLD, an individual; and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

Cross-Claimant and Third
Party Plaintiffs,

v.

LOCKWOOD PACKAGING CORP., a
Delaware corporation; and LOCKWOOD
PACKAGING CORP. IDAHO, an Idaho
corporation,

Third Party Defendants.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant Gerbroeders Meijer Belegging, B.V. (“Gerbroeders”) is a foreign corporation organized in The Netherlands. Gerbroeders is apparently the parent corporation of the Vreeken corporate entities, including Defendant Lockwood Engineering B.V. (“Lockwood Engineering”), a foreign corporation organized in The Netherlands; Third Party Defendant Lockwood Packaging Corporation (“LPC”), a Delaware corporation; and Third Party Defendant Lockwood Packaging Corporation Idaho (“LPCI”), an Idaho corporation and a wholly-owned subsidiary of LPC. Lockwood, LPC, and LPCI (collectively the “Lockwood Entities”) were at all relevant times doing business in Idaho, as defined in I.C. § 5-514(a).

Defendant Jan Vreeken (“Vreeken”) is a citizen of The Netherlands. Vreeken, at all times relevant to this case, was the chief executive officer, director and sole beneficial owner of Gerbroeders and the Lockwood Entities. Plaintiff Christianne Vreeken (“Christianne”) is the

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daughter of Vreeken and the successor in interest of the Bank of Idaho, the original plaintiff in this case.

Defendant and Third Party Plaintiff Thomas R. Gold ("T. Gold") is a Massachusetts resident and former officer of LPCI. Third Party Plaintiff Richard L. Gold ("R. Gold") is a Massachusetts resident. Tomac Packaging, Inc. ("Tomac") is a Massachusetts corporation. T. Gold, R. Gold, and Tomac (collectively the "Golds") were at all relevant times doing business in Idaho.

Vreeken and the Lockwood Entities together with the Golds and Tomac were engaged in a joint venture initially selling produce packaging machinery and equipment in the United States and elsewhere. The equipment was to be sold to LPC as a jointly owned and/or controlled master distributor in the United States for further distribution to distributors and end users. LPCI was created as the distributor of the equipment in the Northwest United States.

In 1997, the parties entered into financial dealings with the Bank of Idaho in Idaho Falls, Idaho. On January 13, 1999, Lockwood executed a guarantee of present and future LPCI indebtedness up to the principal amount of \$300,500.00, plus accrued interest. On October 8, 1999, Gerbroeders executed a guarantee of present and future LPCI indebtedness up to the principal amount of \$800,500.00, plus accrued interest. On November 18, 1999, T. Gold executed a personal guarantee of present and future LPCI indebtedness up to the principal amount of \$800,500.00, plus accrued interest. Also on November 18, 1999, LPCI entered into a multiple advance promissory note and security agreement (Loan No. 15535842) with the Bank of Idaho in the principal sum of \$800,000. The note and security agreement were executed by T. Gold, as an officer of LPCI.

By the end of 1999, the relationships between the joint venture parties had broken down and on May 12, 2000, the parties entered into a settlement agreement entitled Confidential Memorandum of Understanding ("MOU"). The MOU was executed by the Golds and Vreeken, in which control of

LPC and LPCI was transferred to Vreeken. Vreeken agreed, among other things, to pay a certain sum to the Golds, secured by the assets of LPC and LPCI, and also agreed to obtain release of T. Gold from his personal guarantees with the Bank of Idaho on the LPCI loan. Indemnification of any liability incurred by the Golds on any Bank of Idaho guarantees was also secured by the assets of LPC and LPCI, which security interest was to be perfected and subordinate only to the Bank's security interest as per the loan. Payment of the LPCI note was to be made from LPC and LPCI business proceeds. Vreeken also agreed to restrict any transfer of assets from LPC and LPCI.

On November 24, 2000, Vreeken executed a personal guarantee of present and future LPCI indebtedness with the Bank of Idaho up to the principal amount of \$612,381.97, plus accrued interest. On April 25, 2001, principal and interest on the LPCI note was due and owing in the amount of \$619,937.11 plus accruing interest. The Bank of Idaho made demand on LPCI, notified all of the guarantors, and on April 27, 2001, the Bank of Idaho filed its Complaint against the guarantors. On June 26, 2001, T. Gold filed his Answer, Cross-Claim and Third Party Complaint joining R. Gold and Tomac as Third Party Plaintiffs and naming LPC and LPCI as Third-Party Defendants.

Sometime prior to October 12, 2001, the Bank of Idaho agreed to accept \$617,870.59 as full satisfaction of the LPCI indebtedness, and required that a check for \$200,000 be issued by LPC to the Bank of Commerce by October 12, 2001, in order to retain the Bank of Idaho's acceptance. On October 12, 2001, LPC agent and representative William Wendels paid a Bank of Commerce cashier's check (No. 160346) in the amount of \$200,000 to the Bank of Idaho, and on October 15, 2001, the balance of the funds to Bank of Commerce were paid, in the amount of \$417,870.59. That same day, a document entitled "Assignment and Acceptance" ("Assignment") was executed by Christianne and the Bank of Idaho.

The Assignment states that Christianne paid consideration of \$617,870.59 by a Bank of Commerce cashier's check, No. 160346, dated October 12, 2001, in the amount of \$200,000 and a Bank of Commerce cashier's check, No. 160355, dated October 15, 2001, in the amount of \$417,870.59. It further states that the Bank of Idaho assigns to Christianne its rights under the LPCI loan dated November 18, 1999, including the right to enforce the loan against the guarantors; and that the Bank of Idaho also assigns its security interests in the LPCI assets.

The funds Christianne used to acquire the assignment from the Bank of Idaho came from Vreeken. Vreeken claims he provided the money to Christianne as an advance on her inheritance and then asked whether Christianne would be willing to use those funds to satisfy the indebtedness to the Bank and step into the Bank's shoes. Vreeken also claims Christianne was not required to purchase the note from the Bank as a prerequisite to getting the advance on her inheritance; rather, she chose to do so of her own free will. The Golds, on the other hand, contend Christianne merely acted as the conduit through which Vreeken satisfied the obligation owed to the Bank of Idaho.

On December 1, 2004, this Court issued an opinion, decision, and order dismissing with prejudice Christianne's Complaint against all named defendants as a sanction for repeatedly failing to appear at her deposition and refusing to be deposed. Any and all obligations that were the subject of Christianne's Complaint were deemed fully satisfied and paid in full.

The Golds filed a motion for summary judgment on February 14, 2005, seeking dismissal with prejudice of all claims brought against them, a declaratory judgment regarding the performance of, and amount due under, the MOU, entry of a money judgment against Lockwood, LPC, and LPCI, and a writ of possession allowing the Golds to obtain possession of the assets of LPC and LPCI in order to foreclose the security interest allegedly held by the Golds in those assets.

On May 3, 2005, the Court issued its Opinion, Decision, and Order on Thomas R. Gold, Richard L. Gold, and Tomac Packaging, Inc.'s Motion for Summary Judgment. The Court dismissed Vreeken and the Lockwood Entities' claims for misrepresentation and breach of the implied covenant of good faith and fair dealing. The remainder of the claims brought by Vreeken and the Lockwood Entities were dismissed pursuant to section 2(h) of the MOU. With respect to the Golds' claims, the Court made the following findings:

1. The Lockwood Entities are in default under section 2(a) of the MOU. The Lockwood Entities are liable on the Payout Note to R. Gold in the principal amount of \$100,000.00 plus interest. The Lockwood Entities are liable on the Payout Note to T. Gold in the principal amount of \$450,000.00 plus interest. The debts are secured by the assets of the Lockwood Entities.

2. LPC and LPCI are ordered to reimburse R. Gold for \$32,814.56 in credit card charges plus interest and \$6,903.67 in rent plus interest.

3. LPC and LPCI are required to make annual payments to T. Gold in the amount equal to 25% of their respective net profits until the aggregate amount of such payments reaches \$100,000.00.

4. Any damages incurred by the Golds as a result of Vreeken, Lockwood, LPC, and LPCI's failure to obtain the releases of the specified loans are secured by the assets of LPC and LPCI. However, a genuine issue of material fact as to the amount of the security interest relating to the Citizens Bank loan precluded summary judgment.

The Golds filed a Motion for Reconsideration on May 17, 2005. Vreeken and the Lockwood Entities filed a Motion to Reconsider, Alter, or Amend on May 17, 2005. The parties sought reconsideration of the Court's prior opinion on the Golds' Motion for Summary Judgment. On September 2, 2005, the Court issued its Opinion, Decision, and Order on the Motions for

Reconsideration. The Court clarified that, pursuant to MOU § 2(c), any damages incurred by the Golds as a result of Vreeken, Lockwood, LPC, and LPCI's failure to obtain the releases of the loans specified there are secured by the assets of LPC and LPCI. R. Gold possesses a security in the amount of \$270,435.53 plus interest, for damages incurred as a result of Lockwood, LPC, and LPCI's failure to obtain a release of the Citizens Bank loan. T. Gold possesses a security interest in the assets of LPC and LPCI in the amount of \$253,331.95 plus interest for damage incurred as a result of Lockwood, LPC, and LPCI's failure to obtain a release of the Eastern Idaho Economic Development Council (EIEDC) loan. The Court ordered Vreeken to effectuate a personal guarantee on the Citizens Bank loan.

On August 21, 2006, the Golds filed a second Motion for Summary Judgment, arguing that Vreeken is personally liable on the Payout Notes. The Golds also filed a separate Motion for Entry of Summary Judgment, asking the Court to enter summary judgment pursuant to the Court's prior opinions on the Golds' first motion for summary judgment and the motions for reconsideration. The Court heard argument on the Golds' motions on October 10, 2006. The Court took the Golds' second summary judgment motion under advisement. On October 20, 2006, the Court entered summary judgment pursuant to its prior opinions. After considering the Court's file, pleadings, depositions, admissions, affidavits, and the argument of counsel, the Court renders the following opinion on the pending motion for summary judgment.

II. STANDARD OF REVIEW

Rule 56(c), Idaho Rules of Civil Procedure, provides that "summary judgment shall be granted forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled

to a judgment as a matter of law.” *DBSI/TRI V v. Bender*, 130 Idaho 796, 801, 948 P.2d 151, 156 (1997) (citing *Mutual of Enumclaw Ins. Co. v. Roberts*, 128 Idaho 232, 234, 912 P.2d 119, 121 (1996)).

When assessing the motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion. *Litz v. Robinson*, 131 Idaho 282, 283, 955 P.2d 113, 114 (Ct. App. 1998) citing *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991) and *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct. App. 1994). If reasonable people could reach different conclusions based on the evidence, the motion must be denied. *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 720, 791 P.2d 1285, 1299 (1990).

However, a different standard is applied when, as in this case, no jury has been requested and the facts are to be tried to the court. *Crown v. State, Dept. of Agriculture*, 127 Idaho 188, 191, 898 P.2d 1099, 1102 (Ct. App. 1994). “If the evidentiary facts are not in dispute, the court may grant summary judgment despite the possibility of conflicting inferences, because the court alone will be in the position of resolving the conflicting inferences at trial.” *Id.* (citing *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982)). Findings which are based on such inferences will not be disturbed on appeal if the uncontroverted evidentiary facts are sufficient to justify them. *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 519, 650 P.2d 657, 661 (1982).

The burden of proving the absence of material facts is upon the moving party. *Thomson v. City of Lewiston*, 137 Idaho 473, 476, 50 P.3d 488, 491 (2002). Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to show that a genuine issue of material fact on the challenged element of the claim does exist. *Id.* The nonmoving party “may

not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e). Failure to do so will result in an order granting summary judgment. *Id.* Therefore, the moving party is entitled to a judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *Thomson*, 137 Idaho at 476, 50 P.3d at 491; *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988).

III. ANALYSIS

The Golds seek summary judgment on the claims in their Amended Crossclaim and Third Party Complaint. The Golds contend that Vreeken is personally liable on the Payout Notes and ask the Court to grant a money judgment to T. Gold and R. Gold against Vreeken on the Payout Notes. The Golds argue the provisions of the MOU give rise to Vreeken's personal liability and indemnification obligation to the Golds. Additionally, the Golds argue Vreeken is personally liable on the Payout Notes because his conduct constitutes a breach of the implied covenant of good faith and fair dealing and a violation of Massachusetts General Laws Chapter 93A. The Court will address each claim in turn.

A. Claim for Declaratory Relief under the Memorandum of Understanding

In Count Two of the Amended Crossclaim and Third Party Complaint, the Golds request a declaration of the rights and obligations of the parties under the provisions of the MOU. On summary judgment, the Golds argue that Vreeken is personally liable on the Payout Notes because he executed the MOU in his individual capacity, breached the MOU, and interfered with the Lockwood Entities' performance under the MOU. In opposition, Vreeken argues the terms of the

MOU contemplate limited and conditional indemnification, rather than personal liability. Vreeken further argues his conduct with respect to certain UCC filings does not give rise to his personal liability on the Payout Notes because the filings do not violate the provisions of the MOU.

In order for the Court to make a declaration of the rights and obligations of the parties under the MOU, the Court must construe the terms of the contract. Interpretation of a written contract is a question of law. *Lumber Mut. Ins. Co. v. Zoltek Corp.*, 647 N.E.2d 395, 396 (Mass. 1995). “[I]f the words of a contract are plain and free from ambiguity, they must be construed in accordance with their ordinary and usual sense.” *Edwin R. Sage Co. v. Foley*, 421 N.E.2d 460, 465 (Mass. App. Ct. 1981). Contract language can be ambiguous if the terms are “susceptible of more than one meaning and reasonably intelligent persons would differ as to which meaning is the proper one.” *Citation Ins. Co. v. Gomez*, 688 N.E.2d 951, 952 (Mass. 1998). “However, an ambiguity is not created simply because a controversy exists between parties, each favoring an interpretation contrary to the others.” *Jefferson Ins. Co. of N.Y. v. City of Holyoke*, 503 N.E.2d 474, 476 (Mass. App. Ct. 1987).

1. The Language of the MOU

First, the Golds argue that Vreeken is personally liable on the Payout Notes according to the language of the MOU. The Golds point to the prefacing language in Section 2 of the MOU, which states: “The Lockwood Entities and Vreeken agree to do the following.” The Golds argue this language “effectively creates a guarantee by Vreeken” on the obligations of the Lockwood Entities. (Br. in Supp. of M. for Entry of Summ. J. at 13.) While the Golds acknowledge the MOU drafters specifically name the Lockwood Entities and Vreeken with respect to specific obligations, the Golds argue that this distinction only relates to the primary responsibility on a given obligation. Ultimately, the Golds argue, the prefacing language in Section 2 should be interpreted to mean that if one party does not perform its obligation, the other party will. In opposition, Vreeken contends that the

heading of Section 2 of the MOU cannot be interpreted to give rise to his personal liability. Vreeken also argues his obligations under the MOU are limited and do not constitute a personal guarantee of the Lockwood Entities' performance.

Section 2 of the MOU lists the duties of the Lockwood Entities and Vreeken with respect to ten obligations. The heading of Section 2 states: "Requirements of Lockwood Packaging, Lockwood Engineering and Vreeken." Section 9 of the MOU specifically limits the use of section headings as evidence of the contract's meaning, stating: "Section headings are used in this Agreement for reference only and shall not affect the interpretation or meaning of the Agreement." (MOU at 8.) Therefore, the Court will not look to the section heading to interpret the language in Section 2 of the MOU.

Under the heading of Section 2, the prefacing language states: "The Lockwood Entities and Vreeken agree to do the following." After the prefacing language, ten subsections follow and set forth the obligations of the parties. *See* MOU § 2(a)-(j). In each subsection, specific parties are named with respect to specific obligations. For example, Section 2(a) names the "Lockwood Entities," Section 2(b) names "Lockwood Packaging and Lockwood Packaging Idaho," and Section 2(g) names the "Lockwood Entities and Vreeken." Vreeken is named in Sections 2(c), 2(f), 2(g), and 2(h); Vreeken is not named in the other sections. This drafting structure, where the parties are introduced followed by specific obligations undertaken by the parties, is incorporated throughout the MOU. For example, Section 1 includes similar prefacing language: "TRG, RLG and Tomac agree to do the following." Nine subsections follow the prefacing language, wherein the Golds and Tomac are named with respect to certain obligations. In some subsections, the MOU binds "TRG, RLG, and Tomac." *See, e.g.*, MOU § 1(a). In other subsections, only the Golds are named. *See, e.g.*, MOU § 1(g).

The Golds argue that the prefacing language of Section 2 creates a personal guarantee by Vreeken for the performance of the Lockwood Entities on the Payout Notes. However, such a conclusion is not supported by the language of the MOU. The Court finds the language of Section 2 is “plain and free from ambiguity.” *Edwin R. Sage Co.*, 421 N.E.2d at 465. Reviewing the MOU, the Court finds the drafters prefaced sections by introducing the parties and the general obligations undertaken by those parties. This construction was used throughout the MOU. Considering the MOU as a whole, the Court construes this prefacing language to be a means of introducing parties, rather than an affirmative acceptance of personal liability contemplated by the drafters. Construing the language in any other manner also ignores the “ordinary and usual sense” of the language. *Id.* Therefore, the Court concludes that Vreeken is not personally liable based on the prefacing language of Section 2 of the MOU.

While the Golds agree that the drafters of the MOU named specific parties with respect to specific obligations, they argue such differentiation only relates to the party who is *primarily* responsible for the obligation. Thus, argue the Golds, if the party who is primarily responsible does not perform its obligation, the other party will be responsible. However, the Court concludes that the language of the MOU cannot support such an interpretation. The Court interprets the language of Section 2 to mean that specific parties are obligated to perform specific duties. When a party is not named, the Court construes such omission as a deliberate decision by the drafters to exclude that party from the obligation. For example, when the drafters intended that Vreeken and the Lockwood Entities perform a specific obligation, both parties are specifically named. *See, e.g.*, MOU §§ 2(f), 2(g), and 2(h). If the Court interpreted the MOU in the manner suggested by the Golds, the parties would be bound to obligations they did expressly accept in the MOU. Further, such an interpretation would go beyond the “ordinary and usual sense” of the text. *Edwin R. Sage Co.*, 421 N.E.2d at 465.

Therefore, when Vreeken is not named, the Court construes the omission of his name as a deliberate decision by the drafters that Vreeken is not obligated on that provision of the MOU. For these same reasons, the Court previously held that Vreeken is not personally liable on the Payout Notes because he is not named in Section 2(a) of the MOU. *See* Court's Opinion, Decision, and Order on the Motions for Reconsideration at 12.¹ On this motion for summary judgment, the Court again finds, as a matter of law, the text of the MOU, itself, does not give rise to Vreeken's personal liability on the Payout Notes.

2. Alleged Wrongdoing by Vreeken

Next, the Golds argue that Vreeken is personally liable on the Payout Notes because he breached Section 2 of the MOU. Similarly, the Golds argue Vreeken is personally liable because he improperly interfered with the obligations of LPC and LPCI under the MOU. The Golds contend that this alleged wrongdoing on the part of Vreeken exposes him to personal liability. In opposition, Vreeken argues summary judgment is inappropriate because the Golds' claim for personal liability based on alleged wrongdoing raises a genuine issue of material fact. The Court will analyze each action advanced by the Golds as evidence of Vreeken's alleged wrongdoing.

a. UCC Financing Statements

The Golds claim that Vreeken "filed or caused to be filed" certain UCC financing statements securing interests in the assets of LPC and LPCI. (Br. in Supp. of M. for Entry of Summ. J. at 8.) Such financing statements, argue the Golds, violate Section 2(a) of the MOU because the Payout Notes were to be secured by the assets of LPC and LPCI. Since the UCC financing statements were signed by Vreeken, the Golds argue these filings are evidence of Vreeken personal involvement

¹ There is a typographical error in the Court's Opinion, Decision, and Order on the Motions or Reconsideration, page 12, first full paragraph, last sentence. The correct reference is MOU § 2(a).

and intent to interfere with the ability of the Lockwood Entities to make payments on the Payout Notes. Further, the Golds argue there is no evidence the secured parties named in the financing statements filed by Vreeken hold any security interest in the assets described in the filings.

Vreeken contends that conduct relating to the financing statements does not give rise to his personal liability. Upon the default of LPC and LPCI, argues Vreeken, Gerbroeders and Lockwood Engineering were entitled take possession of the collateral named in the financing statements and dispose of the collateral according to Idaho Code §§ 28-9-609 and -610. The collateral was sold to Telford CWV, LLC (“Telford”). Thus, argues Vreeken, title to the collateral was transferred to Telford and the Golds’ security interests were discharged. Vreeken also claims that the Gold may have forged a financing statement because Vreeken’s purported signature on the Golds’ financing statement number B900973 is not his actual signature.

The Court reviewed the four financing statements in questions. The Golds filed a financing statement on Aug. 28, 2000 (filing no. B 879447), asserting a security interest in the certain assets of LPC and LPCI. The Golds filed another financing statement on May 25, 2001 (filing no. B 900973), asserting a security interest certain assets of LPC and LPCI. *See* Affidavit of Counsel in Supp. of Br. in Opp’n, Ex. A and B. Lockwood Engineering filed a financing statement on August 23, 2000 (filing no. B 879148), asserting a security interest in certain assets of LPC and LPCI. Gerbroeders filed a financing statement on August 23, 2000 (filing no. B 879149), asserting a security interest in the assets of LPC and LPCI. *See* Affidavit of Thomas R. Gold, Aug. 21, 1006, Ex. C and D.

Reviewing the record, the Court concludes there is insufficient evidence to substantiate the claims made by the parties with respect to the UCC filings. The Golds seek a finding by the Court that Vreeken intentionally “filed or caused to be filed” financing statements in violation of the MOU.

Other than from the financing statements, the Golds do not reference any affirmative evidence of Vreeken's intent. The Golds do refer to the Affidavit of Tomas R. Gold, wherein T. Gold states he is not aware of any documents where LPC or LPCI granted a security interest to the property described in the financing statements in question. (Aff. of Thomas R. Gold, Aug. 21, 2006, ¶ 3.) While that statement may raise questions as to the validity of the financing statements, the statement does not establish Vreeken's *intent* to interfere with the obligations of the LPC and LPCI. Considering the *evidence in the record*, the Court cannot make a finding that Vreeken intentionally interfered with the obligations of LPC and LPCI under the MOU.

Vreeken's arguments similarly rely on facts that are not in the record. If, in fact, Gerbroeders and Lockwood Engineering properly took possession of the LPC and LPCI collateral and disposed of such collateral in a commercial reasonable manner, there is no evidence in the record to support such a claim. Vreeken does not reference any deposition or affidavit that supports this claim. Similarly, Vreeken's forgery allegation lacks the requisite supporting evidence.

In a prior opinion, the Court stated: "In this case, if Vreeken granted security interests having priority over those granted to the Golds, such would be a breach of the Settlement Agreement and may entitle the Golds to damages." (Opinion, Decision and Order on the Motions for Reconsideration at 14.) The record has two financing statements filed by Vreeken and his corporations after the MOU was executed in May 2000. *See* Affidavit of Thomas R. Gold, Aug. 21, 2006, Ex. C and D. T. Gold contends he is not aware of any security agreement that would grant such interests to Vreeken, Gerbroeders, or Lockwood Engineering. Yet, Vreeken now contends that Gerbroeders and Lockwood Engineering were entitled to take possession of LPC and LPCI collateral upon the default of LPC and LPCI. Accordingly, the Court finds that genuine issues of material fact

exist with respect to the financing statements filed by the parties and whether any conduct relating to the filing of these financing statements violated the MOU.

b. Transfer of Funds to Christianne

The Golds also argue that Vreeken attempted to “undermine the terms, spirit and intent of the MOU” by transferring funds to Christianne, rather than using funds to satisfy the Bank of Idaho debt. (Br. in Supp. of M. for Entry of Summ. J. at 9.) The Golds contend that Vreeken was a guarantor of the Bank of Idaho debt, and the debt was an obligation of LPCI. Because Vreeken transferred funds to Christianne, the Golds argue, T. Gold was exposed to potential liability and LPCI was prevented from making payments on the Payout Notes.

However, the Golds fail to show how such a transfer of funds by Vreeken violated any provision of the MOU, and, consequently, Vreeken should be personally liable because of his wrongful conduct. Without more, the Court cannot find that Vreeken’s transfer to Christianne exposes him to personal liability on the Payout Notes.

c. Transfer of LPCI Assets to Telford Corp.

The Golds next argue that LPCI transferred assets to Telford Corp. in violation of Section 2(j) of the MOU:

Vreeken, despite the express provisions of the MOU, transferred, or caused LPC Idaho to transfer, or acquiesced in the transfer of substantially all of its assets to Telford Corporation, thereby hampering the ability of LPC Idaho to make payment on the Payout Notes, and completely impairing the collateral of the Golds under the MOU and with respect to the Payout Notes and Guarantees.

(Br. in Supp. of M. for Entry of Summ. J. at 10.)

The Golds advanced the same argument in their first motion for summary judgment. In response to this argument, the Court reasoned:

The Golds seek a declaration that Lockwood, LPC, LPCI, and Vreeken have violated their obligations under Paragraph 2.j. of the Settlement Agreement by transferring substantially all of the machinery and equipment of LPCI to Telford Corporation, an Idaho corporation, allegedly owned by C. Vreeken. Paragraph 2.j. states:

Lockwood Packaging and Lockwood Packaging Idaho shall, during the period the Payout Notes are outstanding, conduct business through the existing corporations and shall not transfer assets, lines of business or corporate opportunities to other entities which would have a material adverse effect on the ability of the Lockwood Entities to make payment under the Payout Notes.

At her deposition, Melanie Harris, who at the time was a bookkeeper for LPCI, testified that "in trying to settle some of the debt with Christianne [LPCI has] sold a lot of [its] equipment assets to Christianne to satisfy that part of her debt. And in turn we are in the process of setting up lease payments to her to use that equipment." (Dep. of Melanie Harris, p. 41, ll. 10-14.) However, the Golds presented no argument to indicate how such a transfer of equipment in payment of an outstanding debt and the subsequent lease of that equipment would have a material adverse effect on the ability of Lockwood, LPC, or LPCI to make payment under the Payout Notes. Therefore, the Court declines to enter such a declaration.

(Opinion, Decision, and Order on Thomas R. Gold, Richard R. Gold, and Tomac Packaging, Inc.'s M. for Summ. J. at 22.)

On this motion for summary judgment, the record still lacks evidence of how the transfer of LPCI assets and subsequent lease of such assets would have a material adverse effect on the ability of the Lockwood Entities to make payment under the Payout Notes. The Golds argue, "The transfer of substantially all of the equipment of LPC Idaho to an entity controlled by Christianne Vreeken clearly impairs the collateral." (Br. in Supp. of M. for Entry of Summ. J. at 10-11.) However, the Golds do not refer to any evidence to substantiate such a claim. Without such evidence, the Court cannot find on summary judgment that Vreeken violated the MOU and is personally liable on the Payout Notes based upon the transfer of LPCI's assets to Christianne.

d. Citizens Bank Loan and the EIEDC Loan

The Golds contend that Vreeken is obligated under the MOU to personally guarantee the Citizens Bank loan and the EIEDC loan. Since Vreeken has not obtained such personal guarantees, the Golds argue he violated the terms of the MOU. Vreeken, however, argues he only agreed to perform limited and conditional indemnification under the terms of the MOU, and did not agree to an express personal guarantee of the Lockwood Entities' performance.

Section 2(c) of the MOU outlines the parties' rights and obligations with respect to the Citizens Bank loan and the EIEDC loan:

The Lockwood Entities will use their best efforts to effect the release of: (i) [T. Gold] and [R. Gold] from certain personal guarantees they have made with regard to the following loans and (ii) certain securities pledged by [R. Gold] which is being held as collateral for the Citizen's Loan, as defined below. If necessary to effect such releases, Vreeken agrees to personally guarantee such loans. If the Lockwood Entities fail to provide such release by the earlier of: (w) three (3) months after all audited financials for fiscal years 1999 and 2000 are completed or (x) March 1, 2001, then [T. Gold] and [R. Gold] shall have the option of terminating this Agreement as provided in Section 11 hereof, unless Vreeken shall expressly opt to indemnify [T. Gold] and [R. Gold] from any damages they may incur as a result of such personal guarantees. Until the earlier to occur of: (y) the releases pursuant to this Section 2(c) are effected or (z) this Agreement is terminated as provided herein, any damage [T. Gold] or [R. Gold] may incur as a result of such personal guarantees not being released shall be secured by the assets of Lockwood Packaging and Lockwood Packaging Idaho.

Following this paragraph, the MOU references the loan from Citizen's Bank and the loan from EIEDC. See MOU § 2(c)(i) and (iii).

It is clear from language of Section 2(c) that Vreeken agreed to personally guarantee the loans and obligations referenced in the section: "If necessary to effect such releases, Vreeken agrees to personally guarantee such loans." Additionally, it is an undisputed fact that the Lockwood Entities have not obtained releases for the Golds on the Citizens Bank and EIEDC loans. Therefore, according to the clear language of the MOU, Vreeken has agreed to personally guarantee the Citizens

Bank loan and the EIEDC loan. In a prior opinion, the Court ordered Vreeken to “effectuate a personal guarantee to Citizens Bank for the Citizens Bank loan.” (Opinion, Decision, and Order on the M. for Reconsideration at 11.) At this time, the Court also orders Vreeken to effectuate a personal guarantee for the EIEDC loan.

Vreeken argues that he is not obligated to personally guarantee the loans named in the MOU because his obligation to indemnify the Golds is conditional and limited. However, this argument confuses Vreeken’s obligations under Section 2(c). The Court construes Section 2(c) of the MOU to contemplate two distinct obligations on the part of Vreeken. The first part of Section 2(c) includes Vreeken’s obligation to personally guarantee specific loans. As explained above, if the Lockwood Entities fail to obtain the releases from the Golds’ obligations on Citizens Bank and EIEDC loans, then “Vreeken agrees to personally guarantee such loans.” MOU § 2(c). The balance of the section discusses the consequences if the Lockwood Entities do not obtain “releases” from the loans and the Golds incur damages as a result. Here, Vreeken has a second obligation:

If the Lockwood Entities fail to provide such release . . . then [T. Gold] and [R. Gold] shall have the option of terminating this Agreement as provided in Section 11 hereof, unless Vreeken shall expressly opt to indemnify [T. Gold] and [R. Gold] from any damages they may incur as a result of such personal guarantees.

Id. (emphasis added). In this language, the conjunction “unless” creates a condition of performance. The Golds have the option to terminate the MOU if the Lockwood Entities do not perform their obligations under the section. However, this termination is conditioned upon Vreeken’s option to indemnify the Golds from damages incurred as result of the failure to obtain the releases. *See also* MOU § 11. The Court interprets these clauses to mean that if Vreeken chooses to indemnify the Golds for their damages, then the Golds may not terminate the MOU. Nevertheless, this optional

indemnification is completely separate from Vreeken's express obligation to personally guarantee the loans referenced in Section 2(c), including the Citizens Bank and EIEDC loans.

Further, the Court notes that the judgment in *Eastern Idaho Economic Development Council v. Lockwood Packaging Corp. Idaho et al.*, Bonneville County Case No. CV-2001-5449 (2004), finding Vreeken, T. Gold, and the Lockwood Entities jointly and severally liable on the EIEDC loan does not exclude Vreeken's obligation to personally guarantee the loan. Notwithstanding the judgment in the prior case, Vreeken has a distinct obligation to personally guarantee the EIEDC loan according to the terms of the MOU.

Therefore, the Court declares that Vreeken has agreed to personally guarantee the Citizens Bank loan and the EIEDC loan. Vreeken must effectuate a personal guarantee for both loans according to Section 2(c) of the MOU.

Ultimately, the Golds argue that Vreeken should be personally liable on the Payout Notes because he is obligated to personally guarantee loan obligations of LPC and LPCI under the MOU. Apart from this conclusory statement, the Golds do not cite any language in the MOU that would mandate such a finding. Therefore, the Court declines to find that Vreeken is personally liable on the Payout Notes because he is obligated to personally guarantee loans under Section 2(c) of the MOU.

e. Obligations of LPC and LPCI Under the MOU

The Golds argue that "Vreeken, caused LPC and LPCI to default in the performance of their respective obligations to the Golds and Tomac under the MOU, or acquiesced therein." (Br. in Supp. of M. for Entry of Summ. J. at 11.) The Golds also contend that Vreeken caused LPC and LPCI to stop making payments on the Payout Notes and caused all the loan obligations of LPC and LPCI to go into default. Because of these actions, the Golds ask the Court to find that Vreeken is personally liable on the Payout Notes.

Again, the Golds make the above allegations without referencing any affirmative evidence in support of their arguments. On summary judgment, the Golds must cite specific evidence in the record to substantiate these claims in order to obtain their desired relief. There must be evidence in the record that Vreeken *caused* LPC and LPCI to breach their duties under the MOU, or evidence that Vreeken *intentionally* interfered with the LPC and LPCI's performance. At this point in the litigation, the record does not support these allegations. Without such evidence, the Court cannot find that Vreeken is personally liable on the Payout Notes under the language of the MOU.

B. Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing

In Count Five of the Amended Crossclaim and Third Party Complaint, the Golds allege that Vreeken violated the implied covenant of good faith and fair dealing implied in the MOU. The Golds argue that Vreeken's alleged misconduct had the effect of destroying the Golds' reasonable expectations of performance under the MOU. The Golds contend that Vreeken should be personally liable on the Payout Notes because he breached the implied covenant. Vreeken, however, argues there is no evidence that he committed wrongful acts constituting a breach of the implied covenant.

A covenant of good faith and fair dealing is implied in every contract in Massachusetts. *Speakman v. Allmerica Financial Life Ins. & Annuity Co.*, 367 F.Supp.2d 122, 132 (D. Mass. 2005). The implied covenant provides that "neither party shall do anything that will have the effect of destroying or injuring the rights of the other party to receive the fruits of the contract." *Anthony's Pier Four, Inc. v. HBC Associates*, 583 N.E.2d 806, 820 (Mass. 1991) (citations omitted). "The covenant may not, however, be invoked to create rights and duties not otherwise provided for in the existing contractual relationship, as the purpose of the covenant is to guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance." *Uno Restaurants, Inc. v. Boston Kenmore Realty Corp.*, 805 N.E.2d 957, 964 (Mass. 2004). "The concept

of good faith and fair dealing in any one context is shaped by the nature of the contractual relationship from which the implied covenant derives. The scope of the covenant is only as broad as the contract that governs the particular relationship.” *Ayash v. Dana-Farber Cancer Institute*, 822 N.E.2d 667, 684 (Mass. 2005).

As evidence that Vreeken violated the implied covenant, the Golds advance the same acts of alleged wrongdoing discussed above. The record lacks evidence to substantiate some of Vreeken’s alleged wrongful acts. Also, the Court finds that genuine issues of material fact exist with respect to the UCC financing statements. However, it is undisputed that Vreeken has not executed personal guarantees for the Citizens Bank loan and the EIEDC loan. Vreeken is obligated to obtain such guarantees pursuant to Section 2(c) of the MOU. By not obtaining the personal guarantees, the Court finds that Vreeken has breached the MOU. The Golds have a right to expect that Vreeken would obtain such personal guarantees because Vreeken agreed to guarantee the loans. Surely, the personal guarantees to the Citizens Bank loan and EIEDC loans are “fruits of the contract” that the Golds are entitled to receive. By not executing the personal guarantees, Vreeken has injured the rights of the Golds to receive the fruits of the contract. *See Anthony’s Pier Four, Inc.*, 583 N.E.2d at 820. Therefore, the Court finds that Vreeken has breached the implied covenant of good faith and fair dealing, and the Court grants summary judgment in favor of the Golds.

The Golds claim that Vreeken is personally liable for the Payout Notes because he breached the implied covenant, and seek a declaration from the Court to that effect. However, Massachusetts law does not support this claim. The implied covenant of good faith and fair dealing may be not be “invoked to create rights and duties not otherwise provided for in the existing contractual relationship.” *Uno Restaurants, Inc.*, 805 N.E.2d at 964. Under Section 2(c) of the MOU, Vreeken is obligated to obtain personal guarantees for the Citizens Bank and EIEDC loan. However, neither

Section 2(c), nor any other section in the MOU, provides that Vreeken is personally liable on the Payout Notes in the event he does not obtain the personal guarantees on the loans. Moreover, if the Court declared that Vreeken was personally liable on the Payout Notes due to his breach of the MOU and breach of the implied covenant, the Court would be creating “rights and duties not otherwise provided for in the existing contractual relationship.” *Id.* For these reasons, the Court cannot find that Vreeken is liable on the Payout Notes because he breached the implied covenant of good faith and fair dealing.

C. Claim for Relief under Chapter 93A of the Massachusetts General Laws

In Count Six of the Amended Crossclaim and Third Party Complaint, the Golds allege that Vreeken violated Massachusetts General Laws chapter 93A, section 11 by engaging in unfair or deceptive trade practices. Vreeken contends he was not engaged in trade or commerce when he personally executed the MOU, thus, the statute does not apply. Additionally, Vreeken argues the Golds have failed to factually establish his conduct constitutes a violation the statute.

The Massachusetts General Laws provide that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

Mass. Gen. Laws ch. 93A, § 2. Section 11 of chapter 93A provides relief for persons damaged by such unlawful practices:

Any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair deceptive act or practice declared unlawful by section two . . . may, as hereinafter provided, bring an action . . . for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

...

If the court finds for the petitioner, recovery shall be in the amount of actual damages; or up to three, but not less than two, times such amount if the court finds that the use or employment of the method of competition or the act or practice was a willful or knowing violation of said section two.

...
No action shall be brought or maintained under this section unless the actions and the transactions constituting the alleged unfair method of competition or the unfair or deceptive act or practice occurred primarily and substantially within the commonwealth. For the purposes of this paragraph, the burden of proof shall be upon the person claiming that such transactions and actions did not occur primarily and substantially within the commonwealth.

The initial inquiry under Chapter 93A § 11 is whether the parties engaged in a commercial transaction. In *Szalla v. Locke*, 657 N.E.2d 1267 (Mass. 1995), the court explained this two-step inquiry:

[W]e conclude that c. 93A requires that there be a commercial transaction between a person engaged in trade or commerce with another person engaged in trade or commerce. Once it has been established that a commercial transaction exists, then one may address whether the individuals were acting in a “business context” and apply the test discussed in *Begelfer v. Najarian*, 381 Mass. 177, 190-191, 409 N.E.2d 167 (1980).

Id. at 1269. The *Begelfer* court outlined the “business context” test as follows:

To establish a private person’s liability under § 11 we assess the nature of the transaction, the character of the parties involved, and the activities engaged in by the parties. . . . Other relevant factors are whether similar transactions have been undertaken in the past, whether the transaction is motivated by business or personal reasons (as in the sale of a home), and whether the participant played an active part in the transaction. We do not read § 11 as requiring that a commercial transaction must take place only in the ordinary course of a person business or occupation before its participants may be subject to liability under G.L. c. 93A § 11.

Begelfer, 409 N.E.2d at 176.

If the parties were acting in a business context, a court is then required to define the acts of unfair or deceptive conduct that violate the statute. Massachusetts courts have stated that an act will be “unfair” under the statute, if it is “(1) within the penumbra of a common law, statutory, or other established concept of unfairness; (2) immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to competitors or other business people.” *Heller Financial v. Ins. Co. of North America*, 573 N.E.2d 8, 12-13 (Mass. 1991). Courts apply the above criteria to the circumstances of

each case to determine whether a trade or commercial practice violates the statute. *Levings v. Forbes & Wallace, Inc.*, 396 N.E.2d 149, 153 (Mass. App. Ct. 1979).

Finally, only misconduct that “occurred primarily and substantially” in Massachusetts is actionable under Ch. 93A § 11. To determine whether such unfair trade practices occurred primarily and substantially within the commonwealth, a court applies a three-factor analysis: “(1) where defendant committed the deception; (2) where plaintiff was deceived and acted upon the deception; and (3) the situs of the plaintiff’s losses due to the deception.” *Roche v. Royal Bank of Canada*, 109 F.3d 820, 829 (1st Cir. 1997).

1. The Nature of the Parties’ Transaction

The Court must determine whether the parties were engaged in a commercial transaction and whether the parties were acting in a business context.

Trade and commerce are defined in the statute to include the following acts:

[T]he advertising, the offering for sale, rent or lease, the sale, rent, lease or distribution of any services and any property, tangible or intangible, real, personal or mixed, any security . . . and any contract of sale of a commodity for future delivery, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this commonwealth.

Mass. Gen. Laws ch. 93A, § 1(b). The types of commercial transactions within the scope of the statute include “dealings between legally separate ‘persons’ engaged in arms-length transactions, and not to dealings between members of a single legal entity like a partnership.” *Newton v. Moffie*, 434 N.E.2d 656, 659 (Mass. App. Ct. 1982). With respect to joint ventures, dealings between coventurers “occurring while the relationship exists” are excluded from the statute. *Goldbaum v. Weiss*, 738 N.E.2d 1154, 1157 (Mass. App. Ct. 2000).

Vreeken and the Lockwood Entities with the Golds and Tomac were engaged in a joint

venture. When this relationship fell apart, the parties executed the MOU. The preamble of the MOU states that the purpose of the document is to “set forth certain understandings by and among [the parties] . . . with respect to the termination of the parties’ joint venture.” MOU at 1. At the time the MOU was executed, the joint venture had terminated. Therefore, it is clear to the Court that the parties were legally separate entities engaged in an arms-length transaction. *See Newton*, 434 N.E.2d at 659. It is undisputed the transaction involved a variety of property held by the parties. It is also undisputed that the Golds are residents of Massachusetts and Tomac is a Massachusetts corporation. The Court finds that the parties were involved in a commercial transaction within the scope of the statute.

Vreeken claims he was not engaged in trade or commerce because he executed the MOU in his individual capacity. However, this argument ignores the history of the parties’ joint venture and the undisputed roles of the parties. Clearly, Vreeken was a party to the MOU because he had certain commercial interests, as well as personal interests, in the subject matter of the MOU.

Next the Court must determine if the parties were acting in a business context. Applying the relevant factors from the test in *Begelfer*, there is no question the parties were acting in a business context when they executed the MOU. *See* 409 N.E.2d at 191. The nature of the transaction was commercial. The parties were sophisticated business persons and corporations, all formerly associated in a joint venture. The parties executed the MOU in order to clarify their rights and duties upon termination of the joint venture. The Court finds that the parties were acting in a business context.

For these reasons, the Court finds that the MOU is a transaction within the scope of the Chapter 93A.

2. Unfair or Deceptive Conduct and its Location

Since the MOU is a transaction within the scope of the statute, the next step in the analysis is to identify specific conduct with respect to MOU that constitutes unfair or deceptive acts prohibited by the statute. Additionally, the Court must find that the conduct “occurred primarily and substantially” within Massachusetts.

As evidence of Vreeken’s unfair or deceptive conduct, the Golds advance the same acts of alleged misconduct discussed previously. However, insufficient evidence in the record and genuine issues of material fact as to this conduct prevent the Court from specifically identifying which of Vreeken’s acts constitute unfair and deceptive conduct. Yet, the Court has found that Vreeken breached the MOU and the implied covenant of good faith and fair dealing because he did not execute personal guarantees on the Citizens Bank land and the EIEDC loan. The Golds contend this conduct is of the kind of unfair or deceptive conduct prohibited by the Chapter 93A.

A breach of contract, without more, is insufficient to constitute a violation of Chapter 93A. *Speakman*, 367 F.Supp.2d at 140. However, a breach of the implied covenant of good faith and fair dealing may constitute a violation of Chapter 93A because:

Inherent in such claim is “an element of either bad faith and improper motive or a breach of fair dealing . . .” that clearly falls within “ ‘established common law . . . concept[s] of unfairness.’ ”

Id. (citations omitted). Assuming, *arguendo*, that Vreeken’s breach of the implied covenant, amounts to unfair or deceptive conduct under the standards discussed in *Heller Financial*, that finding does not end the inquiry under Chapter 93A. The question still remains whether this breach of the implied covenant occurred primarily and substantially within Massachusetts. The Court cannot answer this question with the evidence in the record.

In their briefing on summary judgment, neither Vreeken nor the Golds addressed the location of the acts of alleged misconduct. At oral argument, Vreeken argued the conduct in question occurred outside Massachusetts. According to the statute, Vreeken bears the burden of proof that “such transactions and actions did not occur primarily and substantially within the commonwealth.” Mass. Gen. Law ch. 93A, § 11. However, Vreeken has not met this burden because he has not presented the requisite evidence.

At oral argument, the Golds argued that Vreeken’s misconduct is within the statute because the parties agreed to apply Massachusetts law. Section 10 of the MOU states: “This Agreement shall be governed by and construed in all respects in accordance with the laws of the Commonwealth of Massachusetts.” However, the fact that the parties agreed to apply Massachusetts law does not, by itself, satisfy the location requirement in the statute. In *WILJ International Ltd. v. Biochem Immonusystems, Inc.*, 4 F.Supp.2d 1 (D. Mass. 1998), the court responded to a similar argument and reasoned:

Massachusetts law, which the parties agreed would apply to their dispute, by *its terms* says that “no action shall be brought or maintained” under Mass. Gen. Laws ch. 93A, § 11, if the underlying conduct did not occur primarily and substantially in Massachusetts. Therefore, dismissal of this claim, which involves conduct that admittedly has no relationship whatsoever to Massachusetts, is entirely in accordance with both the letter of Massachusetts law and the choice of law clause of the Settlement Agreement. *See Roche v. The Royal Bank of Canada*, 109 F.3d 820, 826 n. 7 (1st Cir. 1997) (“The choice of law test and the ‘primary and substantially’ test, though similar in many respects, are not identical. That a judge should reach opposite results in applying these two tests in a single case is no sign of error.”).

Id. at 16. Accordingly, the Golds’ argument fails.

On summary judgment, the Court has the task of identifying specific unfair or deceptive acts by Vreeken with respect to his obligations under the MOU. However, the parties have not provided the requisite evidence so the Court can make findings under this claim. If, in fact, such unfair or

deceptive acts did occur, the Court is left to guess where the conduct took place: Massachusetts or elsewhere. The Court declines to speculate on this issue.

The Court finds that genuine issues of material fact exist as to the location of Vreeken's alleged misconduct. For most of the acts advanced by the Golds as evidence of Vreeken's misconduct, the Court also finds that genuine issues of material fact exist. Accordingly, summary judgment of the Golds' unfair or deceptive trade practices claim is denied.

D. Claim for Indemnification

In Count Four of the Amended Crossclaim and Third Party Complaint, the Golds allege a claim for indemnification and right of contribution. On summary judgment, the Golds seek specific findings:

[T]hat the Court confirm that should Vreeken, the Lockwood Entities, or any other related party pay or be required to pay or receive amounts on account of the Bank of Idaho loan, the EIEDC loan, the Citizens [Bank] loan or the Payout Notes that the Golds are not liable for payment, contribution or reimbursement for such amounts. The Golds are also requesting a summary judgment finding that Vreeken and the Lockwood Entities shall indemnify and hold harmless the Golds from any liability on account of the Bank of Idaho Loan, the EIEDC Loan and the Citizens Bank Loan and that TR Gold be awarded a money judgment against Vreeken in an amount equal to the amount due and owing on the EIEDC Judgment to be used by TR Gold to payoff the EIEDC Judgment.

(Br. in Supp. of M. for Entry of Summ. J. at 30-31.) In opposition, Vreeken argues that the MOU does not mandate "an express personal guarantee or indemnification of Lockwood, LPC, and LPCI's performance." (Br. in Opp'n at 4.) Vreeken contends he only has a limited indemnification obligation under the language of the MOU.

Under Massachusetts law, a contract-based right to indemnification arises in two circumstances. First, an express indemnification clause in a written contract may create a right to indemnification. *Araujo v. Woods Hole, Martha's Vineyard, Nantucket S.S. Auth.*, 693 F.2d 1, 2 (1st

Cir. 1982). Second, a right to indemnification may be implied from a contract where unique special factors demonstrate the parties intended such a right or where a recognized special relationship exists between the parties. *Id.*

The Court construes the language of Section 2(c) of the MOU to create an express right to indemnification. The section provides:

The Lockwood Entities *will use their best efforts* to effect the release of: (i) [T. Gold] and [R. Gold] from certain personal guarantees they have made with regard to the following loans and (ii) certain securities pledged by [R. Gold] which is being held as collateral for the Citizen's Loan, as defined below. *If necessary to effect such releases, Vreeken agrees to personally guarantee such loans.* If the Lockwood Entities fail to provide such release by the earlier of: (w) three (3) months after all audited financials for fiscal years 1999 and 2000 are completed or (x) March 1, 2001, then [T. Gold] and [R. Gold] shall have the option of terminating this Agreement as provided in Section 11 hereof, *unless Vreeken shall expressly opt to indemnify* [T. Gold] and [R. Gold] from any damages they may incur as a result of such personal guarantees. Until the earlier to occur of: (y) the releases pursuant to this Section 2(c) are effected or (z) this Agreement is terminated as provided herein, *any damage [T. Gold] or [R. Gold] may incur as a result of such personal guarantees not being released shall be secured by the assets of Lockwood Packaging and Lockwood Packaging Idaho.*

(Emphasis added). Additionally, Section 1(c) of the MOU refers to the indemnification language in Section 2(c). Section 1(c) states that its terms shall be inapplicable if "TRG and/or RLG are not being *indemnified* by Vreeken with regard to their personal guarantees as specified in Section 2(c)." (emphasis added).

According to the language of the MOU, the Court finds that Vreeken expressly agrees to personally guarantee the loans listed in the Section 2(c), specifically the obligations to the Citizens Bank, the Bank of Idaho, the EIEDC, and the Regional Development Alliance. MOU § 2(c)(i)-(iv). It is also evident that the drafters of the MOU intended Vreeken to indemnify the Golds for these specific obligations. In a prior opinion, the Court discussed this section of the MOU and stated: "Implicit in the agreement to use *best efforts* is the understanding that Vreeken and the Lockwood

[E]ntities will *hold the Golds harmless* in this agreement.” (emphasis added). Vreeken’s obligation to indemnify the Golds could not be more clear. Therefore, the Court declares, as a matter of law, that Vreeken has an obligation to indemnify R. Gold on the Citizens Bank loan. The Court also declares, as a matter of law, that Vreeken has an obligation to indemnify T. Gold on the EIEDC loan. The Court grants summary judgment on the Golds’ claim for indemnification.

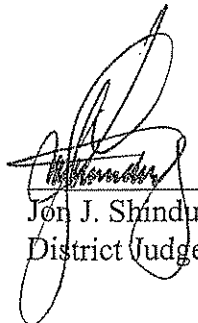
The Court declines to grant a money judgment against Vreeken so that T. Gold may satisfy that EIEDC Judgment. According to the language of the MOU, Vreeken is obligated to satisfy the Citizens Bank loan and the EIEDC loan. According to the MOU, T. Gold has a right of indemnification against Vreeken on the loan. If T. Gold chooses to satisfy the EIEDC Judgment, then he would have a claim for indemnification against Vreeken.

IV. CONCLUSION

The Golds’ Motion for Summary Judgment is granted in part and denied in part.

IT IS SO ORDERED.

Dated this 8th day of November, 2006.



Jon J. Shindurling
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2006, I served a true and correct copy of the foregoing OPINION, DECISION, AND ORDER ON THOMAS R. GOLD, RICHARD L. GOLD, AND TOMAC PACKAGING, INC.'S MOTION FOR SUMMARY JUDGMENT upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

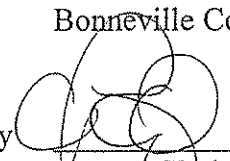
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by  _____
Deputy Clerk

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DISTRICT COURT
NINTH JUDICIAL DISTRICT
BOONVILLE COUNTY

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

**AMENDED PRETRIAL STATEMENT
OF TOMAC PACKAGING, INC.,
RICHARD L. GOLD AND THOMAS R.
GOLD**

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

1231

ORIGINAL

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The following is a Pretrial Statement submitted to the Court by Tomac Packaging Inc.,

Richard L. Gold and Thomas R. Gold :

1. Liability is disputed between the Parties.
2. Counsel have tried in good faith to settle this dispute through mediation with

Dwight Baker which was unsuccessful.

3. The following witnesses will be called to testify at trial:

- A. Richard L. Gold
- B. Thomas R. Gold
- C. Jan Vreeken
- D. Melanie Harris
- E. Lorna Schubert
- F. Randy Soucie

1232

4. List of exhibits to be submitted at trial:


	<u>Exhibit to be Admitted Without Objection</u>
A. Confidential Memorandum of Understanding	Yes
B. Gold Idaho UCC Financing Statement Filed Under Filing Number 879447	No
C. Gold Idaho UCC Financing Statement Filed Under Filing Number 900973	No
D. Gold Filed Massachusetts UCC Financing Statements	No
E. Gold Filed New Hampshire UCC Financing Statements	No
F. Gold Filed Delaware UCC Financing Statements	No
G. Lockwood Engineering Idaho UCC Financing Statement filed Under Filing Number 873842	Yes
H. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 873843	Yes
I. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 879148	Yes
J. GBBV Idaho UCC Financing Statement Filed Under Filing Number 879149	Yes
K. EIEDC Judgment and Amended Judgment	Yes
L. Bank of Idaho Assignment to Christianne Vreeken	Yes
M. Wire Transfer Receipts	Yes
N. Deposit Receipts and Check to Bank of Idaho	Yes
O. Carl Israel Correspondence to Richard Rosenstein With Attached UCC Financing Statements	No

1233

- P. Correspondence from Brent Robinson with Attached Documents on Transfer of Assets to Telford Yes
- Q. September 10, 1997, Correspondence from Thomas R. Gold on Security Interest Granted to Lockwood Engineering from Lockwood Packaging Yes

5. Tomac Packaging Inc., Richard L. Gold and Thomas R. Gold reserve the right to further amend this Pretrial Statement to add additional witnesses and exhibits and will do so no later than fourteen (14) days before trial.

Dated this 17th day of March, 2007.



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.


**DOCUMENT SERVED: AMENDED PRETRIAL STATEMENT OF TOMAC
PACKAGING, INC., RICHARD L. GOLD AND THOMAS R.
GOLD**

ATTORNEYS SERVED:

Kipp L. Manwaring
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Fax: 208-523-9109

First Class Mail
 Hand Delivery
 Facsimile

Dated: March 7, 2007


Jan N. Allred, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\CAHN\10199\2007 Amended Pretrial Statement.wpd

1235

Sheldon /mj

Charles A. Homer, Esq. (ISB No. 1630)
Jan N. Allred, Esq. (ISB No. 7415)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P. O. Box 50130
Idaho Falls, Idaho 83405-0130
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

DISTRICT 7TH JUDICIAL COURT
BONNEVILLE COUNTY, IDAHO

7 MAR 14 P4:30

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

**SECOND AMENDED PRETRIAL
STATEMENT OF TOMAC
PACKAGING, INC., RICHARD L. GOLD
AND THOMAS R. GOLD**

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The following is a Pretrial Statement submitted to the Court by Tomac Packaging Inc.,

Richard L. Gold and Thomas R. Gold :

1. Liability is disputed between the Parties.
2. Counsel have tried in good faith to settle this dispute through mediation with

Dwight Baker which was unsuccessful.

3. The following witnesses will be called to testify at trial:
 - A. Richard L. Gold
 - B. Thomas R. Gold
 - C. Jan Vreeken
 - D. Melanie Harris
 - E. Lorna Schubert
 - F. Randy Soucie
 - G. Jerry Ceuppens

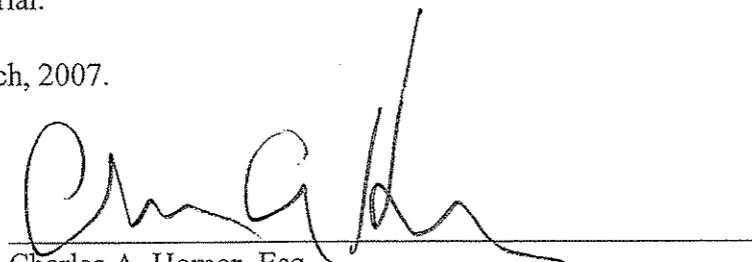
4. List of exhibits to be submitted at trial:

	<u>Exhibit to be Admitted Without Objection</u>
A. Confidential Memorandum of Understanding	Yes
B. Gold Idaho UCC Financing Statement Filed Under Filing Number 879447	No
C. Gold Idaho UCC Financing Statement Filed Under Filing Number 900973	No
D. Gold Filed Massachusetts UCC Financing Statements	No
E. Gold Filed New Hampshire UCC Financing Statements	No
F. Gold Filed Delaware UCC Financing Statements	No
G. Lockwood Engineering Idaho UCC Financing Statement filed Under Filing Number 873842	Yes
H. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 873843	Yes
I. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 879148	Yes
J. GBBV Idaho UCC Financing Statement Filed Under Filing Number 879149	Yes
K. EIEDC Judgment and Amended Judgment	Yes
L. Bank of Idaho Assignment to Christianne Vreeken	Yes
M. Wire Transfer Receipts	Yes
N. Deposit Receipts and Check to Bank of Idaho	Yes
O. Carl Israel Correspondence to Richard Rosenstein With Attached UCC Financing Statements	No

- P. Correspondence from Brent Robinson with Attached Documents on Transfer of Assets to Telford Yes
- Q. September 10, 1997, Correspondence from Thomas R. Gold on Security Interest Granted to Lockwood Engineering from Lockwood Packaging Yes

5. Tomac Packaging Inc., Richard L. Gold and Thomas R. Gold reserve the right to further amend this Pretrial Statement to add additional witnesses and exhibits and will do so no later than fourteen (14) days before trial.

Dated this 13th day of March, 2007.



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

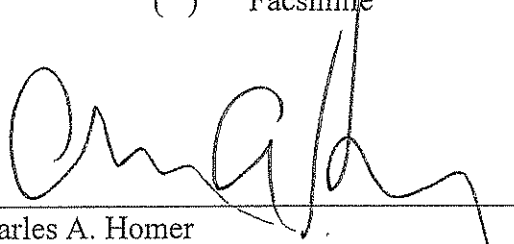
DOCUMENT SERVED: SECOND AMENDED PRETRIAL STATEMENT OF TOMAC PACKAGING, INC., RICHARD L. GOLD AND THOMAS R. GOLD

ATTORNEYS SERVED:

Kipp L. Manwaring
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Fax: 208-523-9109

First Class Mail
 Hand Delivery
 Facsimile

Dated: 3/13/07



Charles A. Homer
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\CAH\10199\2ND Amended Pretrial Statement.wpd

Sandra / w

Charles A. Homer, Esq. (ISB No. 1630)
Jan N. Allred, Esq. (ISB No. 7415)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P. O. Box 50130
Idaho Falls, Idaho 83405-0130
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

2007 MAR 19 PM 6:15
DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

CASE NO. CV-01-2279

**THIRD AMENDED PRETRIAL
STATEMENT OF TOMAC
PACKAGING, INC., RICHARD L. GOLD
AND THOMAS R. GOLD**

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

1241

ORIGINAL

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimant and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

The following is a Pretrial Statement submitted to the Court by Tomac Packaging Inc.,

Richard L. Gold and Thomas R. Gold :

1. Liability is disputed between the Parties.
2. Counsel have tried in good faith to settle this dispute through mediation with

Dwight Baker which was unsuccessful.

3. The following witnesses will be called to testify at trial:
 - A. Richard L. Gold
 - B. Thomas R. Gold
 - C. Jan Vreeken
 - D. Melanie Harris
 - E. Lorna Schubert
 - F. Randy Soucie
 - G. Jerry Ceuppens

1242

4. List of exhibits to be submitted at trial:

	<u>Exhibit to be Admitted Without Objection</u>
A. Confidential Memorandum of Understanding	Yes
B. Gold Idaho UCC Financing Statement Filed Under Filing Number 879447	No
C. Gold Idaho UCC Financing Statement Filed Under Filing Number 900973	No
D. Gold Filed Massachusetts UCC Financing Statements	No
E. Gold Filed New Hampshire UCC Financing Statements	No
F. Gold Filed Delaware UCC Financing Statements	No
G. Lockwood Engineering Idaho UCC Financing Statement filed Under Filing Number 873842	Yes
H. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 873843	Yes
I. Lockwood Engineering Idaho UCC Financing Statement Filed Under Filing Number 879148	Yes
J. GBBV Idaho UCC Financing Statement Filed Under Filing Number 879149	Yes
K. EIEDC Judgment and Amended Judgment	Yes
L. Bank of Idaho Assignment to Christianne Vreeken	Yes
M. Wire Transfer Receipts	Yes
N. Deposit Receipts and Check to Bank of Idaho	Yes
O. Carl Israel Correspondence to Richard Rosenstein With Attached UCC Financing Statements	No

- | | | |
|----|---|-----|
| P. | Correspondence from Brent Robinson with Attached Documents on Transfer of Assets to Telford | Yes |
| Q. | September 10, 1997, Correspondence from Thomas R. Gold on Security Interest Granted to Lockwood Engineering from Lockwood Packaging | Yes |
| R. | August 11, 2006 Letter from Kipp L. Manwaring to Telford CWV, LLC | No |
| S. | October 24, 2006 Invoice from Telford CWV LLC to Volm Bag Company | No |
| T. | EIEDC Idaho UCC Financing Statement With Attachment Filed Under Filing Number B 791757 | No |
| U. | Continuation of EIEDC Idaho UCC Financing Statement Filed Under Filing Number B 6408241 | No |
| V. | Assignment of EIEDC Idaho UCC Financing Statement To Richard L. Gold Filed Under Filing Number B 6464227 | No |
| W. | Continuation of Gold Idaho UCC Financing Statement Filed Under Filing Number B 6465193 | No |
| X. | Continuation of Gold Filed Delaware UCC Financing Statements | No |
| Y. | Continuation of Gold Filed New Hampshire UCC Financing Statement | No |
| Z. | Continuation of Gold Filed Massachusetts UCC Financing Statements | No |

Dated this 19 day of March, 2007.



 Charles A. Homer, Esq.
 HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

1244

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

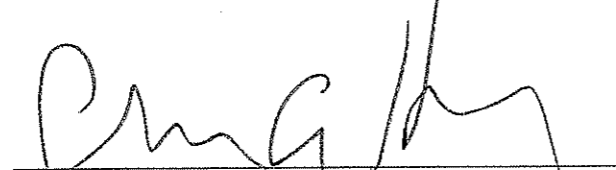
**DOCUMENT SERVED: THIRD AMENDED PRETRIAL STATEMENT OF TOMAC
PACKAGING, INC., RICHARD L. GOLD AND THOMAS R.
GOLD**

ATTORNEYS SERVED:

Kipp L. Manwaring
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Fax: 208-523-9109

First Class Mail
 Hand Delivery
 Facsimile

Dated: 3/19/07



Charles A. Homer
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\CAH\10199\3RD Amended Pretrial Statement.vpd

1245

BONNEVILLE COUNTY
IDAHO

7 MAR 27 P4:55

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
)
Defendant.)

Case No. CV-2001-2279

**ORDER APPOINTING
COURT INTERPRETER**

THOMAS R. GOLD, an individual,)
)
Cross-Claimant,)
)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants.)


1246

THOMAS R. GOLD, an individual,)
 RICHARD L. GOLD, an individual, and)
 TOMAC PACKAGING, INC., a)
 Massachusetts corporation)
)
 Cross-Claimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD PACKAGING)
 CORPORATION IDAHO, and Idaho)
 Corporation ("LPC Idaho"),)
)
 Third Party Defendants.)
 _____)

Defendant's Motion for Court Interpreter, having come before the Court, and the Court being fully advised in the premises, and good cause appearing therefore;

IT IS HEREBY ORDERED that an interpreter conversant in the Dutch language is hereby appointed, Hennie Woods, to assist in interpreting questions and responses at trial in the matter referenced above before the Honorable Jon J. Shindurling, District Judge, at Bonneville County Courthouse on April 2, 2007 at 1:30 p.m. through April 4, 2007.

Dated this 27th day of March, 2007.



 JON J. SHINDURLING
 District Judge

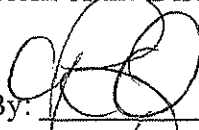
CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2007, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Charles A. Homer
HOLDEN, KIDWELL, HAHN & CRAPO
Courthouse Box
Idaho Falls, Idaho 83402

Kipp Manwaring
MANWARING LAW OFFICE
Courthouse Box
Idaho Falls, Idaho 83402

RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk

1248

MANWARING LAW OFFICE, P.A.
Kipp L. Manwaring ~ ISB 3817
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 782-2300
Facsimile: (208) 523-9109

BONNEVILLE COUNTY
IDAHO

7 MAR 29 P1:05

Attorney for Lockwood Engineering, B.V.
Gerbroeders Meijer Belegging, B.V., Jan Vreeken
Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)	
)	
Plaintiff,	)	Case No. CV-2001-2279
vs.)	
)	
LOCKWOOD ENGINEERING, B.V.,)	
a Netherlands corporation;)	
GERBROEDERS MEIJER BELEGGING,)	
B.V., a Netherlands corporation;)	
JAN VREEKEN, an individual, and	)	DEFENDANTS LOCKWOOD
THOMAS R. GOLD, an individual,	)	ENGINEERING, B.V.,
	)	GERBROEDERS MEIJER
Defendants.	)	BELEGGING, B.V., JAN
	)	VREEKEN LOCKWOOD
THOMAS R. GOLD, an individual,	)	PACKAGING CORPORATION,
	)	AND LOCKWOOD PACKAGING
Crossclaimant,	)	CORPORATION IDAHO
vs.	)	NOTICE OF LODGING TRIAL
	)	EXHIBITS
)	
LOCKWOOD ENGINEERING, B.V.,)	
a Netherlands corporation,)	
GERGROEDERS MEIJER BELEGGING,)	
B.V., a Netherlands corporation, a/k/a)	
GERBROEDERS MEIJER BELEGGING,)	
B.V.; and JAN VREEKEN, an individual,)	
)	
Cross-Defendants,)	
)	


1243

THOMAS R. GOLD, an individual,)
 RICHARDS L. GOLD, an individual,)
 and TOMAC PACKAGING, INC.,)
 a Massachusetts corporation,)
)
 Crossclaimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD)
 PACKAGING CORPORATION IDAHO,)
 an Idaho corporation ("LPC Idaho").)
)
 Third-Party Defendants.)
 _____)

To: Clerk of the Court, District Division

Defendants, Lockwood Engineering, B.V. Gerbroeders Meijer Belegging, B.V.,
 Jan Vreeken Lockwood Packaging Corporation, and Lockwood Packaging Corporation
 Idaho through their attorney of record files this Notice and the attached Trial Exhibits.

Dated this 28th day of March 2007.



 Kipp L. Manwaring
 Attorney for Lockwood Engineering, B.V.
 Gerbroeders Meijer Belegging, B.V., Jan Vreeken
 Lockwood Packaging Corporation, and Lockwood
 Packaging Corporation Idaho

1250

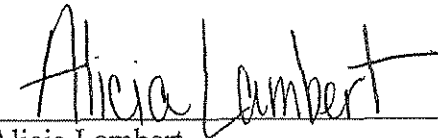
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 28th day of March 2007, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: NOTICE OF LODGING TRIAL EXHIBITS

PARTIES SERVED:

Charles A. Homer
Robert M. Follett
HOLDEN KIDWELL HAHN &
CRAPO, P.L.L.C.
PO Box 50130
Idaho Falls, Idaho 83405
HAND DELIVERED



Alicia Lambert
Legal Assistant

1251

MANWARING LAW OFFICE, P.A.
Kipp L. Manwaring ~ ISB 3817
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 782-2300
Facsimile: (208) 523-9109

BONNEVILLE COUNTY
IDAHO

7 MAR 29 P1:05

Attorney for Lockwood Engineering, B.V.
Gerbroeders Meijer Belegging, B.V., Jan Vreeken
Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)

vs.)

LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
Defendants.)

THOMAS R. GOLD, an individual,)
Crossclaimant,)

vs.)

LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation,)
GERGROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation, a/k/a)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
Cross-Defendants,)

Case No. CV-2001-2279

DEFENDANTS LOCKWOOD
ENGINEERING, B.V.,
GERBROEDERS MEIJER
BELEGGING, B.V., JAN
VREEKEN LOCKWOOD
PACKAGING CORPORATION,
AND LOCKWOOD PACKAGING
CORPORATION IDAHO
WITNESS AND EXHIBIT LIST

THOMAS R. GOLD, an individual,)
 RICHARDS L. GOLD, an individual,)
 and TOMAC PACKAGING, INC.,)
 a Massachusetts corporation,)
)
 Crossclaimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD)
 PACKAGING CORPORATION IDAHO,)
 an Idaho corporation ("LPC Idaho").)
)
 Third-Party Defendants.)
)

WITNESSES

Jan Vreeken
 Lockwood Engineering, B.V.
 795 Lindsay Blvd.
 Idaho Falls, Idaho 83402

Hans VanderSande
 603-883-8500
 978-376-1997

William Windells
 542-5056
 5152 E. Power House
 Idaho Falls, Idaho


1253

EXHIBITS

1. Assignment from Christianne Vreeken to Lockwood Packaging Corporation.
2. Letter from Altman & Owens, LLP, to Jan Vreeken, dated August 14, 2000.
3. Letter from Pepe & Hazard, LLP, to Jan Vreeken, dated December 21, 2000.
4. Findings from Jack & Jerry, to Tom Gold & Jan Vreeken, dated August 5, 1999.
5. Things we have to work out statement.
6. Letter from J.J. Schipper to Tom Gold, dated September 8, 1999.
7. Letter from Tom Gold to Jan Vreeken, dated September 10, 1997.
8. State of Idaho Financing Statement, dated April 6, 1998.
9. Letter from Jan Vreeken to Tom Gold, dated November 12, 1999.
10. Lockwood Lease Agreement, dated June 1, 2000.
11. Lockwood Lease Agreement, dated September 18, 2000.
12. Lockwood Lease Agreement, dated September 29, 1997.
13. Hoofdelijkheidsverklaring.
14. Algemene Pandovereenkomst.
15. Algemene Pandovereenkomst (inventaris, bedrijfsuitrusting of bepaalde zaken).
16. Algemene Pandovereenkomst (Vorderingen op naam).
17. Algemene Pandovereenkomst.
18. Algemene Pandovereenkomst (Voorraden en onderhanden werken).
19. Algemene Pandovereenkomst (Voorraden en onderhanden werken).
20. Accounting, dated 20-07-04.
21. Purchase Agreement, dated July 1999.

Plaintiff has no objection to the above exhibits.

Dated this 28th day of March 2007.


Kipp L. Manwaring
Attorney for Lockwood Engineering, B.V.
Gerbroeders Meijer Belegging, B.V., Jan Vreeken
Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho

1254

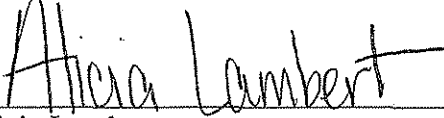
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 28th day of March 2007, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: WITNESS AND EXHIBIT LIST

PARTIES SERVED:

Charles A. Homer
Robert M. Follett
HOLDEN KIDWELL HAHN &
CRAPO, P.L.L.C.
PO Box 50130
Idaho Falls, Idaho 83405
HAND DELIVERED



Alicia Lambert
Legal Assistant

1255

MANWARING LAW OFFICE, P.A.
Kipp L. Manwaring ~ ISB 3817
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 782-2300
Facsimile: (208) 523-9109

BONNEVILLE COUNTY
IDAHO

7 MAR 29 P1:05

Attorney for Lockwood Engineering, B.V.
Gerbroeders Meijer Belegging, B.V., Jan Vreeken
Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)

Case No. CV-2001-2279

vs.)

LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)

PRETRIAL STATEMENT

Defendants.)

THOMAS R. GOLD, an individual,)

Crossclaimant,)

vs.)

LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation,)
GERGROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation, a/k/a)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)

Cross-Defendants,)

THOMAS R. GOLD, an individual,)
 RICHARDS L. GOLD, an individual,)
 and TOMAC PACKAGING, INC.,)
 a Massachusetts corporation,)
)
 Crossclaimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD)
 PACKAGING CORPORATION IDAHO,)
 an Idaho corporation ("LPC Idaho").)
)
 Third-Party Defendants.)
)

Since the Opinion, Decision, and Order of the court dated November 8, 2006 on the Plaintiffs' motion for summary judgment, the following claims remain for purposes of trial.

Count Two of the Amended Cross-claim and Third Party Complaint seeks declaratory judgment on the respective rights and obligations of the parties under the terms of the MOU, specifically, judgment declaring Jan Vreeken diminished the value of the Lockwood entities' assets and interfered with the Lockwood entities' performance under the MOU. According to the Plaintiffs' allegations, Vreeken breached Section 2 of the MOU by filing UCC financing statements on equipment purportedly owned by the Lockwood entities and sold some equipment purportedly owned by the Lockwood entities to Telford CWV, LLC.

Under the above cause of action, the Plaintiffs have the burden of proving: 1) Vreeken acted with intent to diminish the Plaintiffs' security interests by wrongfully in filing UCC financing statements on equipment held by the Lockwood entities; and 2) by selling equipment purportedly owned by the Lockwood entities, Vreeken acted with intent to interfere with the Lockwood entities' performance under the MOU or caused the Lockwood entities to breach their duties under the MOU.

Vreeken believes the Plaintiffs will fail to sustain their burden of proof and the above cause of action will be dismissed at the close of the Plaintiffs' case in chief.

Alternatively, if the Plaintiffs somehow manage to sustain their burden of proof, Vreeken and the other Defendants will present evidence refuting the Plaintiffs' proof.

The final remaining cause of action is Count Six of Amended Cross-claim and Third Party Complaint alleging Vreeken violated Massachusetts General Laws chapter 93A, section 11 by engaging in unfair or deceptive trade practices.

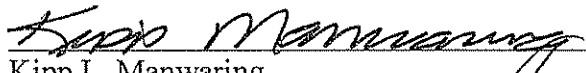
Under Count Six, the Plaintiffs have the burden of proving: 1) Vreeken actively engaged in some act of unfair or deceptive conduct defined as: established in common or statutory law as unfair, or immoral, unethical, oppressive, or unscrupulous business conduct and causes substantial injury to other businessmen. *Grand Pacific v. Brauer*, 57 Mass. App. Ct. 407, 783 N.E.2d 849 (2002), citing, *PMP Assocs., Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975).

Germane to the definition of unfair or deceptive conduct are the following decisions from the Massachusetts' appellate courts. *Shepard's Pharmacy, Inc. v. Stop & Shop Cos.*, 37 Mass.App.Ct. 516, 522 (1994)("sloppy" business activity is not unfair or deceptive); *Madan v. Royal Indem. Co.*, 26 Mass.App.Ct. at 764 (incomplete or imperfect negotiations not unfair or deceptive); *Townsend, Inc. v. Beaupre*, 47 Mass.App.Ct. at 754 (error of business judgment); or having exhibited "ineptitude," *Churgin v. Hobbie*, 39 Mass.App.Ct. 302, 308 (1995)(ineptitude is not unfair or deceptive); *Poly v. Moylan*, 423 Mass. 141, 151 (1996), cert. denied, 519 U.S. 1114 (1997)(negligence does not in itself translate into a c. 93A violation in a business context in the absence of other conduct involving dishonesty or fraud); see also, *Swanson v. Bankers Life Co.*, 389 Mass. 345, 349 (1983) and *MacGillivray v. W. Dana Bartlett Ins. Agency of Lexington, Inc.*, 14 Mass.App.Ct. 52, 59 (1982); *Schwanbeck v. Federal-Mogul Corp.*, 31 Mass.App.Ct. at 414 (conduct which a businessman would consider reprehensible); *Wang Labs., Inc. v. Business Incentives, Inc.*, 398 Mass. 854, 857- 858 (1986)(deliberate interference by an executive with a corporate colleague's position by presenting superiors with inadequate and false information about his performance in order to cause colleague's termination so as to advance executive's own interests); *Anthony's Pier Four, Inc. v. HBC Assocs.*, 411 Mass. 451, 471-474 (1991)(deliberate violation of an agreement in bad faith as a pretext to coerce financial concessions from the other party that deprived the party of the fruits of the agreement); *Massachusetts Employers Ins. Exch. v. Propac-Mass, Inc.*, 420 Mass. 39,

42-43 (1995)(deliberate refusal to cooperate despite contractual obligation to do so, combined with refusal to obtain requisite regulatory authority while engaged in coercive conduct undertaken as leverage to destroy the rights of another party to the agreement while the agreement was still in effect, all while jeopardizing interests of consumers); *Linkage Corp. v. Trustees of Boston Univ.*, 425 Mass. 1, 25-27, cert. denied, 527 U.S. 1015 (1997)(university's executives deliberately and pretextually repudiated binding agreements, usurped plaintiff's business, hired away plaintiff's employees in violation of a contractual prohibition, all in order to promote a purely self-serving agenda); *Piccicuto v. Dwyer*, 32 Mass.App.Ct. 137, 138- 139 (1992)(defendant deliberately violated his agreements, made unlawful demands not warranted under the agreements, engaged in campaign to sabotage the plaintiff's business relationships and harassed plaintiff with groundless complaints to police and unjustified eviction actions).

Vreeken believes the Plaintiffs cannot produce evidence that Vreeken engaged in unfair and deceptive practices and the above cause of action will be dismissed at the close of the Plaintiffs' case in chief. Alternatively, if the Plaintiffs somehow manage to sustain their burden of proof, Vreeken and the other Defendants will present evidence refuting the Plaintiffs' proof. Additionally, Vreeken will prove he did not primarily and substantially engage in business transactions within the state of Massachusetts.

Dated this 28th day of March 2007.


Kipp L. Manwaring
Attorney for Lockwood Engineering, B.V.
Gerbroeders Meijer Belegging, B.V., Jan Vreeken
Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho

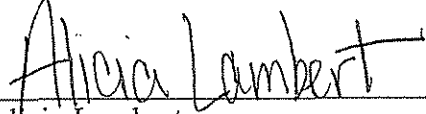
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 28th day of March 2007, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: PRETRIAL STATEMENT

PARTIES SERVED:

Charles A. Homer
Robert M. Follett
HOLDEN KIDWELL HAHN &
CRAPO, P.L.L.C.
PO Box 50130
Idaho Falls, Idaho 83405
MAILED



Alicia Lambert
Legal Assistant

1260

5

Charles A. Homer, Esq. (ISB No. 1630)

Jan N. Allred, Esq. (ISB No. 7415)

HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

1000 Riverwalk Drive, Suite 200

P. O. Box 50130

Idaho Falls, Idaho 83405-0130

Telephone: (208) 523-0620

Facsimile: (208) 523-9518

2007 MAR 30 PM 4: 25
DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY

Attorneys for Thomas R. Gold, Richard L. Gold and Tomac Packaging, Inc.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

CASE NO. CV-01-2279

**MOTION TO EXCLUDE TESTIMONY
AND EXHIBITS**

(ORAL ARGUMENT REQUESTED)

1261

ORIGINAL

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

CrossClaimants and Third
Party Plaintiffs,

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

COME NOW Thomas R. Gold, Richard L. Gold and Tomac Packaging, Inc. and move the Court to exclude from trial certain exhibits and the testimony of certain witnesses designated in the Witness and Exhibit List filed on March 28, 2007 by Defendants Lockwood Engineering, B.V., Gerbroeders Meijer Belegging, B.V., Lockwood Packaging Corporation and Lockwood Packaging Corporation Idaho (collectively referred to as the "Lockwood Entities") and Jan Vreeken ("Vreeken").

On June 16, 2005, this Court entered a Third Amended Order Setting Pretrial Conference and Trial (the "Order").¹ Among other things, the Court ordered that witness and exhibit lists be submitted no later than fourteen (14) days before trial and that exhibits be deposited with the court clerk no later than seven (7) days before trial. (Order, p. 3). The Court also set forth the consequences for failure to comply:

¹Although trial did not occur on the date set forth therein, the Order still governs. The Order states, in part, that it "shall control the course of this action unless modified for good cause shown to prevent manifest injustice." (Order, p. 4).

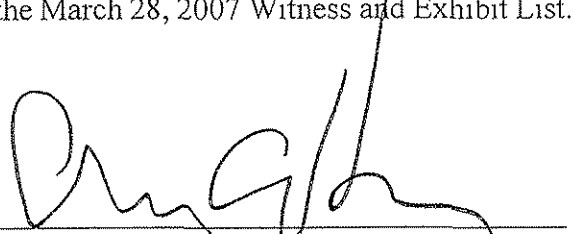
No exhibits shall be admitted into evidence at trial other than those disclosed, listed and submitted to the clerk of the court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.

(Order, p. 4). In addition, the Court stated that it “may impose appropriate sanctions for violation of this order.” *Id.*

In direct contravention of the Court’s Order, Vreeken and the Lockwood Entities submitted their amended witness and exhibit list and exhibits to the court clerk on March 28, 2007, only five days before trial.² In doing so, they included several witnesses and exhibits that were not designated in the witness and exhibit list that they filed in October, 2006. (A copy of the prior list is attached hereto as Exhibit A, while the new list is attached as Exhibit B.) The prior list designated only one witness, Jan Vreeken, and listed only the first three documents set forth in the new, untimely list. In addition, Vreeken and the Lockwood Entities failed to produce some of the newly designated documents in response to Requests for Production covering those documents. Pursuant to the Order and Rule 16(h) of the Idaho Rules of Civil Procedure, the Court should exclude the additional exhibits and the testimony of the new witnesses. Good cause does not exist to allow those exhibits to be admitted or those witnesses to testify at trial.

WHEREFORE, Thomas R. Gold, Richard L. Gold and Tomac Packaging, Inc. move the Court to exclude from the trial of this matter the testimony of Hans VanderSande and William Windells and the exhibits numbered 4 through 21 on the March 28, 2007 Witness and Exhibit List.

DATED this 30th day of March, 2007.



Charles A. Homer
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

²The new witness and exhibit list mistakenly states that “Plaintiff has no objection to the above exhibits.”

MANWARING LAW OFFICE, P.A.
Kipp L. Manwaring ~ ISB 3817
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Telephone: (208) 782-2300
Facsimile: (208) 523-9109

Attorney for Lockwood Engineering, B.V.
Gerbroeders Meijer Belegging, B.V., Jan Vreeken
Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)

Case No. CV-2001-2279

vs.)

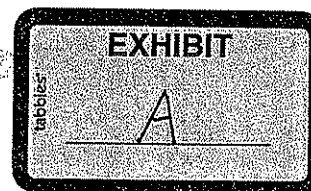
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
Defendants.)

DEFENDANTS LOCKWOOD
ENGINEERING, B.V.,
GERBROEDERS MEIJER
BELEGGING, B.V., JAN
VREEKEN LOCKWOOD
PACKAGING CORPORATION,
AND LOCKWOOD PACKAGING
CORPORATION IDAHO
WITNESS AND EXHIBIT LIST

THOMAS R. GOLD, an individual,)
)
Crossclaimant,)

vs.)

LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation,)
GERGROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation, a/k/a)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants,)



THOMAS R. GOLD, an individual,)
 RICHARDS L. GOLD, an individual,)
 and TOMAC PACKAGING, INC.,)
 a Massachusetts corporation,)
)
 Crossclaimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD)
 PACKAGING CORPORATION IDAHO,)
 an Idaho corporation ("LPC Idaho").)
)
 Third-Party Defendants.)
 _____)

WITNESSES

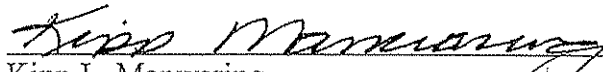
Jan Vreeken
 Lockwood Engineering, B.V.
 795 Lindsay Blvd.
 Idaho Falls, Idaho 83402

EXHIBITS

1. Assignment from Christianne Vreeken to Lockwood Packaging Corporation.
2. Letter from Altman & Owens, LLP, to Jan Vreeken, dated August 14, 2000.
3. Letter from Pepe & Hazard, LLP, to Jan Vreeken, dated December 21, 2000.

Plaintiff has no objection to the above exhibits.

Dated this 9th day of October 2006.



 Kipp L. Manwaring
 Attorney for Lockwood Engineering, B.V.
 Gerbroeders Meijer Belegging, B.V., Jan Vreeken
 Lockwood Packaging Corporation, and Lockwood
 Packaging Corporation Idaho

CERTIFICATE OF MAILING

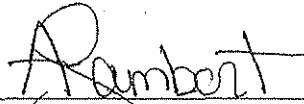
I HEREBY CERTIFY that on the 9th day of October 2006, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED:

WITNESS AND EXHIBIT LIST

PARTIES SERVED:

Charles A. Homer
Robert M. Follett
HOLDEN KIDWELL HAHN &
CRAPO, P.L.L.C.
PO Box 50130
Idaho Falls, Idaho 83405
MAILED



Alicia Lambert
Legal Assistant

MANWARING LAW OFFICE, P.A.
 Kipp L. Manwaring ~ JSB 3817
 381 Shoup Avenue, Suite 210
 Idaho Falls, Idaho 83402
 Telephone: (208) 782-2300
 Facsimile: (208) 523-9109

Attorney for Lockwood Engineering, B.V.
 Gerbroeders Meijer Belegging, B.V., Jan Vreeken
 Lockwood Packaging Corporation, and Lockwood
 Packaging Corporation Idaho

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
 Plaintiff,)

Case No. CV-2001-2279

vs.)

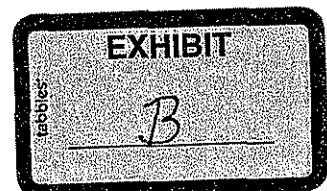
LOCKWOOD ENGINEERING, B.V.,)
 a Netherlands corporation;)
 GERBROEDERS MEIJER BELEGGING,)
 B.V., a Netherlands corporation;)
 JAN VREEKEN, an individual, and)
 THOMAS R. GOLD, an individual,)
 Defendants.)

DEFENDANTS LOCKWOOD
 ENGINEERING, B.V.,
 GERBROEDERS MEIJER
 BELEGGING, B.V., JAN
 VREEKEN LOCKWOOD
 PACKAGING CORPORATION,
 AND LOCKWOOD PACKAGING
 CORPORATION IDAHO
 WITNESS AND EXHIBIT LIST

THOMAS R. GOLD, an individual,)
 Crossclaimant,)

vs.)

LOCKWOOD ENGINEERING, B.V.,)
 a Netherlands corporation,)
 GERGROEDERS MEIJER BELEGGING,)
 B.V., a Netherlands corporation, a/k/a)
 GERBROEDERS MEIJER BELEGGING,)
 B.V.; and JAN VREEKEN, an individual,)
 Cross-Defendants,)



THOMAS R. GOLD, an individual,)
 RICHARDS L. GOLD, an individual,)
 and TOMAC PACKAGING, INC.,)
 a Massachusetts corporation,)
)
 Crossclaimants and)
 Third-Party Plaintiffs,)
)
 vs.)
)
 LOCKWOOD PACKAGING)
 CORPORATION, a Delaware corporation)
 ("LPC"); and LOCKWOOD)
 PACKAGING CORPORATION IDAHO,)
 an Idaho corporation ("LPC Idaho").)
)
 Third-Party Defendants.)
)
 _____)

WITNESSES

Jan Vreeken
 Lockwood Engineering, B.V.
 795 Lindsay Blvd.
 Idaho Falls, Idaho 83402

Hans VanderSande
 603-883-8500
 978-376-1997

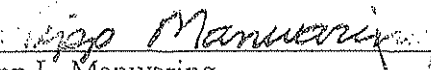
William Windells
 542-5056
 5152 E. Power House
 Idaho Falls, Idaho

EXHIBITS

1. Assignment from Christianne Vreeken to Lockwood Packaging Corporation.
2. Letter from Altman & Owens, LLP, to Jan Vreeken, dated August 14, 2000.
3. Letter from Pepe & Hazard, LLP, to Jan Vreeken, dated December 21, 2000.
4. Findings from Jack & Jerry, to Tom Gold & Jan Vreeken, dated August 5, 1999.
5. Things we have to work out statement.
6. Letter from J.J. Schipper to Tom Gold, dated September 8, 1999.
7. Letter from Tom Gold to Jan Vreeken, dated September 10, 1997.
8. State of Idaho Financing Statement, dated April 6, 1998.
9. Letter from Jan Vreeken to Tom Gold, dated November 12, 1999.
10. Lockwood Lease Agreement, dated June 1, 2000.
11. Lockwood Lease Agreement, dated September 18, 2000.
12. Lockwood Lease Agreement, dated September 29, 1997.
13. Hoofdelijkheidsverklaring.
14. Algemene Pandovereenkomst.
15. Algemene Pandovereenkomst (inventaris, bedrijfsuitrusting of bepaalde zaken).
16. Algemene Pandovereenkomst (Vorderingen op naam).
17. Algemene Pandovereenkomst.
18. Algemene Pandovereenkomst (Voorraden en onderhanden werken).
19. Algemene Pandovereenkomst (Voorraden en onderhanden werken).
20. Accounting, dated 20-07-04.
21. Purchase Agreement, dated July 1999.

Plaintiff has no objection to the above exhibits.

Dated this 28th day of March 2007.



Kipp L. Manwaring
Attorney for Lockwood Engineering, B.V.
Gerbroeders Meijer Belegging, B.V., Jan Vreeken
Lockwood Packaging Corporation, and Lockwood
Packaging Corporation Idaho

CERTIFICATE OF MAILING

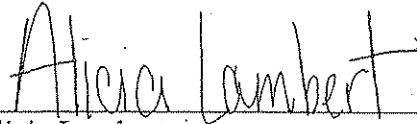
I HEREBY CERTIFY that on the 28th day of March 2007, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED:

WITNESS AND EXHIBIT LIST

PARTIES SERVED:

Charles A. Homer
Robert M. Follett
HOLDEN KIDWELL HAHN &
CRAPO, P.L.L.C.
PO Box 50130
Idaho Falls, Idaho 83405
HAND DELIVERED



Alicia Lambert
Legal Assistant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,)
)
Plaintiff,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation;)
JAN VREEKEN, an individual, and)
THOMAS R. GOLD, an individual,)
)
Defendants.)

Case No. CV-2001-2279
MINUTE ENTRY

THOMAS R. GOLD, an individual,)
)
Cross-Claimant,)
vs.)
)
LOCKWOOD ENGINEERING, B.V.,)
a Netherlands corporation;)
GERBROEDERS MEIJER BELEGGING,)
B.V., a Netherlands corporation a/k/a;)
GERBROEDERS MEIJER BELEGGING,)
B.V.; and JAN VREEKEN, an individual,)
)
Cross-Defendants.)

THOMAS R. GOLD, an individual,)
RICHARD L. GOLD, an individual, and)
TOMAC PACKAGING, INC., a)
Massachusetts corporation)
)
Cross-Claimants and)
Third-Party Plaintiffs,)

vs.)

1272

LOCKWOOD PACKAGING)
CORPORATION, a Delaware corporation)
("LPC"); and LOCKWOOD PACKAGING)
CORPORATION IDAHO, and Idaho)
Corporation ("LPC Idaho"),)
Third Party Defendants.)
_____)

April 2, 2007, a Court Trial came on for hearing before the Honorable Jon J. Shindurling, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Nancy Marlow, Court Reporter and Ms. Rhonda Quintana, Deputy Court Clerk, were present. Mrs. Hennie Woods, Dutch Court Interpreter, was duly sworn by the clerk.

The Court noted that the interpreter's qualifications are approved by the Court.

Mr. Chuck Homer appeared behalf of the cross-claimant and third party plaintiffs, Gold's d/b/a Tomac.

Mr. Kipp Manwaring appeared on behalf of the Defendants and Third Party Defendants, Lockwood Engineering et al.

Mr. Homer addressed the Motion in Limine regarding disclosure of exhibits and witnesses fourteen (14) days prior to trial.

The Court clarified the actual identity disclosure date of the witnesses.

Mr. Manwaring responded and offered clarification of the witnesses and exhibits disclosure.

Mr. Homer offered rebuttal argument in support.

The Court granted the motion in part and excluded Defendant's Exhibits 4 through 21 but would allow the witnesses because they had been previously disclosed.

Mr. Homer indicated both parties had waived their opening statements. He then called his first witness, Ms. Melanie Joy Harris, to the stand.

The witness was sworn in by the clerk and then took the stand.

Mr. Homer examined the witness and offered Plaintiff's Exhibit #1 for admittance.

Mr. Manwaring had no objection.

The Court admitted Plaintiff's Exhibit #1.

Plaintiff's Exhibit #2, previously marked, identified by the witness, and offered for admission by Mr. Homer.

There was no objection by Mr. Manwaring.

The Court admitted Plaintiff's Exhibit #2.

Mr. Homer continued with examination referring the witness to the exhibits.

Mr. Manwaring objected as to lack of foundation.

The Court overruled the objection.

Mr. Manwaring objected to hearsay and requested to inquire.

The Court granted inquiry of the witness.

Mr. Manwaring renewed his objection as to hearsay.

The Court inquired regarding the testimony being offered as the truth of the matter asserted or merely foundation.

Mr. Homer responded.

The Court overruled the objection and would interpret the testimony as merely foundation.

Mr. Homer continued with examination and requested Plaintiff's Exhibit #3.

Plaintiff's Exhibit #3, previously marked, identified by the witness, and offered for admission by Mr. Homer.

Mr. Manwaring inquired and then withdrew his question with no objection to the exhibit.

The Court admitted Plaintiff's Exhibit #3.

Mr. Homer continued with examination of the witness.

Mr. Manwaring conducted cross-examination of the witness.

Mr. Homer objected as to beyond the scope of cross-examination.

The Court sustained the objection.

Mr. Manwaring offered argument in support of the line of questioning.

The Court inquired of the witness and her representation.

The witness answered.

Mr. Manwaring continued with his cross-examination.

Mr. Homer offered redirect examination of the witness. Mr. Homer requested the deposition of this witness be published.

The Court published the deposition of Melanie Joy Harris dated September 8, 2003.

Mr. Homer continued with examination.

The witness was excused.

Mr. Homer called Ms. Lorna Schubert to the stand.

The witness was sworn in by the clerk and then took the stand.

Mr. Homer examined the witness.

The Court requested a brief recess.

The Court reconvened at 4:04 p.m.

Mr. Homer continued with examination of the witness and requested Plaintiff's Exhibit #3.

Mr. Homer requested Plaintiff's Exhibit #4 and had the witness identify it. Mr. Homer moved for the admission of Plaintiff's Exhibit #4.

Mr. Manwaring had no objection.

The Court admitted Plaintiff's Exhibit #4.

Mr. Homer continued with his examination and requested the witness be handed Plaintiff's Exhibit #11. Mr. Homer moved for its admission.

Mr. Manwaring objected as to lack of foundation.

The Court overruled the objection and admitted Plaintiff's Exhibit #11.

Mr. Homer continued with examination and requested Plaintiff's Exhibit #13 and asked that it be separated and remarked.

The Clerk remarked the exhibit as Plaintiff's Exhibit #13-A and #13-B.

Mr. Homer continued with examination and requested the admittance of Plaintiff's Exhibit #13-B.

Mr. Manwaring objected as to lack of foundation.

The Court overruled the objection and admitted Plaintiff's Exhibit #13-B.

Mr. Homer continued with examination.

Mr. Homer requested the witness be handed Plaintiff's Exhibit #5 and questioned the witness regarding it.

Mr. Homer moved for the admittance of Plaintiff's Exhibit #5.

Mr. Manwaring had no objection.

The Court admitted Plaintiff's Exhibit #5.

Mr. Homer continued with examination.

The Court recessed for the day and would reconvene at 9:00 a.m., April 3, 2007.

Court reconvened at 9:15 a.m. with all parties present.

The interpreter, Mrs. Hennie Woods, informed the Court she is currently at standby and not actively interpreting.

The Court so noted.

Mr. Homer called Mr. Randy Soucie to the stand.

The witness was sworn by the Clerk and then took the stand.

Mr. Homer examined the witness.

Mr. Homer requested the witness be handed Plaintiff's Exhibit #4 and #5 for reference.

Mr. Manwaring objected as to foundation.

The Court overruled the objection.

Mr. Manwaring objected as to hearsay.

The Court sustained the objection.

Mr. Manwaring offered cross-examination of the witness.

Mr. Homer objected as to beyond the scope of cross-examination.

The Court overruled the objection.

The witness responded and Mr. Manwaring continued with questioning.

Mr. Homer objected to as beyond the scope.

The Court sustained the objection and allowed further inquiry.

Mr. Manwaring continued with cross-examination.

Mr. Homer offered re-direct examination of the witness.

The Court took a brief recess.

The Court reconvened at 10:09 A.M. with all parties present.

Mr. Homer called Mr. Richard Gold to the stand.

The witness was sworn by the Clerk and then took the stand.

Mr. Homer offered direct examination of the witness and offered Plaintiff's Exhibit #6 for admittance.

Mr. Manwaring had no objection.

The Court admitted Plaintiff's Exhibit #6.

Mr. Homer continued his examination.

Plaintiff's Exhibit #7 previously marked, identified by the witness as an Amended Judgment, offered for admission by Mr. Homer, with no objection by Mr. Manwaring. Plaintiff's Exhibit #7 was admitted.

The witness was handed Plaintiff's Exhibit #8, which he identified. Mr. Homer offered for admission.

Mr. Manwaring had no objection.

The Court admitted Plaintiff's Exhibit #8.

Mr. Homer continued with direct examination.

Mr. Manwaring offered cross-examination of the witness.

Mr. Homer objected as to beyond the scope.

The Court sustained the objection.

Mr. Manwaring indicated he would re-call the witness and continued with questioning.

Mr. Homer objected as to beyond the scope.

The Court overruled the objection.

Mr. Manwaring continued with cross-examination.

Mr. Homer stipulated to the date noted on Plaintiff's Exhibit #6.

The Court so noted.

Mr. Manwaring continued with his examination.

The Court referred the parties to page 9 of Plaintiff's Exhibit #6 for clarification.

Mr. Homer objected as to beyond the scope.

The Court overruled the objection.

Mr. Manwaring continued with cross-examination.

Mr. Homer objected as to asked and answered.

The Court sustained the objection.

Mr. Manwaring furthered his line of questioning.

The Court took judicial notice of the date September 9, 2001, as the filing of the complaint in Bonneville County Case No. CV-2001-5449.

Mr. Manwaring excused the witness subject to recall.

The Court took a brief recess.

The Court reconvened at 11:35 a.m. with all parties present.

Mr. Homer called Mr. Thomas Robert Gold to the stand.

The witness was sworn by the Clerk and then took the stand.

Mr. Homer conducted direct examination of the witness.

Mr. Homer requested the witness be handed Plaintiff's Exhibit #9.

The witness identified the exhibit and Mr. Homer requested its admittance.

Mr. Manwaring had no objection.

The Court admitted Plaintiff's Exhibit #9.

Mr. Homer continued with examination.

Plaintiff's Exhibit #10 was previously marked, identified by the witness, offered for admission by Mr. Homer, with no objection by Mr. Manwaring. Plaintiff's Exhibit #9 was admitted.

Mr. Homer requested previously admitted Plaintiff's Exhibit #11 for the witnesses' reference.

Plaintiff's Exhibit #12 was previously marked, identified by the witness as a correspondence letter, offered for admission by Mr. Homer, with no objection by Mr. Manwaring. Plaintiff's Exhibit #12 was admitted.

The witness was excused subject to recall.

The Court recessed for lunch.

The Court reconvened at 1:35 P.M. with all parties present.

The witness, Lorna Schubert, was recalled for cross-examination by Mr. Manwaring.

The Clerk swore in the witness and she took the stand.

Mr. Manwaring conducted cross-examination and requested previously admitted Plaintiff's Exhibits #4 and #5.

Mr. Homer objected as to lack of foundation.

The Court overruled the objection.

The witness answered and Mr. Manwaring continued with cross-examination.

Mr. Manwaring requested Plaintiff's Exhibit #9 be handed to the witness and continued with cross-examination.

Mr. Homer objected as to beyond the scope.

The Court sustained the objection.

Mr. Manwaring continued cross-examination and requested previously admitted Plaintiff's Exhibit #3.

Mr. Homer offered re-direct examination of the witness and referred to Plaintiff's Exhibits #4 and #11.

The witness was excused subject to recall by Mr. Manwaring.

Mr. Manwaring requested to go out of order and called Mr. William F. Windels to the stand.

Mr. Homer had no objection.

The witness was sworn in by the Clerk and then took the stand.

Mr. Manwaring offered examination of the witness and referred him to Plaintiff's Exhibit #3.

The Court took a brief recess and reconvened at 3:43 P.M. with all parties present.

Mr. Homer offered cross-examination of the witness and requested that the deposition of Mr. Windels be published.

The Court received and published the deposition taken September 8, 2003.

Mr. Homer continued cross-examination referring to the deposition.

Mr. Homer requested that he refer to the deposition of the witness from September 18, 2001, but did not have an original to publish.

Mr. Manwaring objected as he has never reviewed such deposition.

The Court reviewed the deposition and overruled the objection.

Mr. Homer presented the deposition and referred the witness to Exhibit B.

The Court published the deposition.

Mr. Homer continued with cross-examination.

Mr. Manwaring objected on the record.

The Court overruled the objection and admonished that it would be referred to as stated on the record.

Mr. Homer continued his line of questioning.

Mr. Manwaring conducted re-direct examination of the witness.

The witness was excused.

The Court recessed for the evening and would reconvene at 9:00 a.m. on April 4, 2007.

The Court reconvened at 9:08 A.M. on April 4, 2007 with all parties present.

Mr. Daniel E. Williams, Court Reporter, was present for the morning proceedings.

Mr. Homer recalled Mr. Tom Gold for continued direct examination.

The Court ordered that the witness be re-sworn.

The Clerk swore in the witness and he took the stand.

Mr. Homer conducted examination and referred to the previously admitted Plaintiff's Exhibits #6 and #12.

Mr. Manwaring objected as to hearsay and moved to strike.

The Court overruled the objection.

Mr. Homer continued his examination of the witness.

Mr. Manwaring objected as to speculation.

The Court overruled the objection.

Mr. Homer continued with examination.

Mr. Manwaring objected as to asked and answered.

Mr. Homer stipulated.

The Court withdrew the question and response based on the stipulation.

Mr. Homer continued with examination of the witness.

Mr. Manwaring objected as to hearsay.

The Court overruled the objection.

The witness answered and Mr. Homer continued with examination.

Mr. Manwaring again objected as to hearsay.

The Court inquired of Mr. Homer regarding relevance of the questioning.

Mr. Homer responded and offered argument in support.

Mr. Manwaring argued in opposition.

The Court requested that the testimony be in the form of voir dire for his review prior to ruling.

Mr. Homer continued with questioning.

Mr. Manwaring requested the Court rule on the objection.

The Court overruled the objection as to hearsay per statute 801(d)(2).

Mr. Homer continued with his examination.

Mr. Manwaring offered cross-examination of the witness.

The Court took a brief recess.

The Court reconvened at 10:13 A.M.

Mr. Manwaring continued with cross-examination.

Mr. Homer objected as to previous rulings had been made by the Court.

The Court overruled the objection.

Mr. Manwaring continued with cross-examination.

The Court marked the Defendant's Exhibit H.

The parties stipulated its admittance to be used for illustrative purposes only.

The Court so admitted the exhibit.

Mr. Manwaring continued with cross-examination and referred to Plaintiff's Exhibit 12.

The Court took a brief recess.

The Court reconvened at 10:52 A.M. with all parties present.

Mr. Manwaring continued with examination of Mr. Tom Gold and requested admitted Plaintiff's Exhibits #9 and #10 for reference.

Plaintiff's Exhibit #13-A and #14 were previously marked and offered for admission by Mr. Manwaring, with no objection by Mr. Homer.

The Court admitted Plaintiff's Exhibits #13-A and #14.

Mr. Manwaring continued with cross-examination.

Mr. Homer objected as to speculation and no foundation.

The Court sustained the objection.

Mr. Manwaring referred the witness to Plaintiff's Exhibit #12 and continued with his line of questioning.

Mr. Manwaring requested Defendant's Exhibits D and E for reference.

Mr. Homer objected.

The Court overruled the objection and would allow the witness to review the exhibits for testimony reference.

Mr. Manwaring continued with cross-examination.

The Court recessed for lunch at 11:55 A.M.

Court reconvened at 1:35 P.M. with all parties present. The Court noted that Mr. Jack Fuller, Court Reporter, would dictate the rest of these proceedings.

Mr. Homer offered re-direct examination.

The witness was excused.

Mr. Homer called Mr. Jan Vreeken to the stand.

The Court swore in Mrs. Hennie Woods, Court Interpreter, for translation of this testimony.

The witness was sworn in by the Clerk and then took the witness stand.

Mr. Homer conducted examination and requested Plaintiff's Exhibit #1 and #14 for reference.

Mr. Homer offered the depositions of Jan Vreeken for publication by the Court.

Mr. Manwaring had no objection.

The Court published volumes one (1) and two (2) of the depositions of Mr. Jan Vreeken dated January 8, 2002 and September 4, 2003.

Mr. Homer then continued with examination.

The Court took a recess at 3:12 P.M.

The Court reconvened at 3:32 P.M. with all parties present.

Mr. Homer continued with examination of Mr. Jan Vreeken.

Mr. Manwaring waived cross-examination and would reserve examination of the witness.

Mr. Homer rested his case.

Mr. Manwaring moved the Court to dismiss the counterclaim against Massachusetts consumer protection statutes.

The Court would reserve ruling and issue its opinion upon judgment in this case.

Mr. Manwaring called Mr. Jan Vreeken to the stand.

The Court admonished the witness that he was still under oath and would now be examined by his attorney.

Mr. Manwaring conducted examination of the witness.

Mr. Homer objected as to hearsay.

The Court overruled the objection.

Mr. Manwaring continued with examination.

Mr. Homer objected as to the time period being prior to the M.O.U.

The Court overruled the objection and would allow testimony.

The witness answered and Mr. Manwaring continued with examination.

Mr. Homer objected as to the relevance.

The Court offered clarification of its interpretation of the response.

Mr. Manwaring returned to his examination.

Mr. Homer objected as to relevance.

The Court overruled the objection.

The witness answered and Mr. Manwaring continued with examination.

Mr. Homer objected as to relevance.

The Court inquired and requested Mr. Manwaring to clarify the specific UCC liens.

Mr. Manwaring responded and the witness answered.

The Court took a brief recess and reconvened at 5:00 P.M. with all parties present.

Mr. Homer conducted cross-examination of the witness.

Mr. Manwaring offered re-direct examination.

The witness was excused.

Mr. Manwaring made motion to conform the pleadings to the evidence presented.

The Court so noted. The Court requested that Mr. Homer present his closing argument trial brief by April 25, 2007. Mr. Manwaring was given until May 9, 2007. The Court indicated that the final brief be submitted by Mr. Homer on June 18, 2007. The Court will issue its decision and order in due course.

Court was thus adjourned.

c: Kipp Manwaring
Chuck Homer

040207PMShindurl #5 040307AMShindurl#3 040407AMShindurl #4



JON J. SHINDURLING
District Judge

7 JUN 25 A9:36

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

v.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

Case No. CV-01-2279

MEMORANDUM OPINION,
DECISION, AND ORDER WITH
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

TRIAL: April 2, 2007 – April 4, 2007

THOMAS R. GOLD, an individual,

Cross-Claimant,

v.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,

Cross-Defendants.

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THOMAS R. GOLD, an individual;
RICHARD L. GOLD, an individual; and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

Cross-Claimant and Third
Party Plaintiffs,

v.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation;
and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation,

Third Party Defendants.

I. FACTUAL AND PROCEDURAL HISTORY

Defendant Gerbroeders Meijer Belegging, B.V. (“Gerbroeders”) is a foreign corporation organized in The Netherlands. Gerbroeders is apparently the parent corporation of the Vreeken corporate entities, including Defendant Lockwood Engineering B.V. (“Lockwood Engineering”), a foreign corporation organized in The Netherlands; Third Party Defendant Lockwood Packaging Corporation (“LPC”), a Delaware corporation; and Third Party Defendant Lockwood Packaging Corporation Idaho (“LPCI”), an Idaho corporation and a wholly-owned subsidiary of LPC. Lockwood Engineering, LPC, and LPCI (collectively the “Lockwood Entities”) were at all relevant times doing business in Idaho, as defined in I.C. § 5-514(a).

Defendant Jan Vreeken (“Vreeken”) is a citizen of The Netherlands. Vreeken, at all times relevant to this case, was the chief executive officer, director and sole beneficial owner of Gerbroeders and the Lockwood Entities. Plaintiff Christianne Vreeken (“Christianne”) is the

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daughter of Vreeken and the successor in interest of the Bank of Idaho, the original plaintiff in this case.

Defendant and Third Party Plaintiff Thomas R. Gold ("T. Gold") is a Massachusetts resident and former officer of LPCI. Third Party Plaintiff Richard L. Gold ("R. Gold") is a Massachusetts resident. Tomac Packaging, Inc. ("Tomac") is a Massachusetts corporation. T. Gold, R. Gold, and Tomac (collectively the "Golds") were at all relevant times doing business in Idaho.

Vreeken and the Lockwood Entities together with the Golds and Tomac were engaged in a joint venture initially selling produce packaging machinery and equipment in the United States and elsewhere. The equipment was to be sold to LPC as a jointly owned and/or controlled master distributor in the United States for further distribution to distributors and end users. LPCI was created as the distributor of the equipment in the Northwest United States.

In 1997, the parties entered into financial dealings with the Bank of Idaho in Idaho Falls, Idaho. On January 13, 1999, Lockwood executed a guarantee of present and future LPCI indebtedness up to the principal amount of \$300,500.00, plus accrued interest. On October 8, 1999, Gerbroeders executed a guarantee of present and future LPCI indebtedness up to the principal amount of \$800,500.00, plus accrued interest. On November 18, 1999, T. Gold executed a personal guarantee of present and future LPCI indebtedness up to the principal amount of \$800,500.00, plus accrued interest. Also on November 18, 1999, LPCI entered into a multiple advance promissory note and security agreement (Loan No. 15535842) with the Bank of Idaho in the principal sum of \$800,000. The note and security agreement were executed by T. Gold, as an officer of LPCI.

By the end of 1999, the relationships between the joint venture parties had broken down and on May 12, 2000, the parties entered into a settlement agreement entitled Confidential Memorandum of Understanding ("MOU"). The MOU was executed by the Golds and Vreeken, in which control of

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LPC and LPCI was transferred to Vreeken. Vreeken agreed, among other things, to pay a certain sum to the Golds, secured by the assets of LPC and LPCI, and also agreed to obtain release of T. Gold from his personal guarantees with the Bank of Idaho on the LPCI loan. Indemnification of any liability incurred by the Golds on any Bank of Idaho guarantees was also secured by the assets of LPC and LPCI, which security interest was to be perfected and subordinate only to the Bank's security interest as per the loan. Payment of the LPCI note was to be made from LPC and LPCI business proceeds. Vreeken also agreed to restrict any transfer of assets from LPC and LPCI.

On November 24, 2000, Vreeken executed a personal guarantee of present and future LPCI indebtedness with the Bank of Idaho up to the principal amount of \$612,381.97, plus accrued interest. On April 25, 2001, principal and interest on the LPCI note was due and owing in the amount of \$619,937.11 plus accruing interest. The Bank of Idaho made demand on LPCI, notified all of the guarantors, and on April 27, 2001, the Bank of Idaho filed its Complaint against the guarantors. On June 26, 2001, T. Gold filed his Answer, Cross-Claim and Third Party Complaint joining R. Gold and Tomac as Third Party Plaintiffs and naming LPC and LPCI as Third-Party Defendants.

Sometime prior to October 12, 2001, the Bank of Idaho agreed to accept \$617,870.59 as full satisfaction of the LPCI indebtedness, and required that a check for \$200,000 be issued by LPC to the Bank of Commerce by October 12, 2001, in order to retain the Bank of Idaho's acceptance. On October 12, 2001, LPC agent and representative William Wendels paid a Bank of Commerce cashier's check (No. 160346) in the amount of \$200,000 to the Bank of Idaho, and on October 15, 2001, the balance of the funds to Bank of Commerce were paid, in the amount of \$417,870.59. That same day, a document entitled "Assignment and Acceptance" ("Assignment") was executed by Christianne and the Bank of Idaho.

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The Assignment states that Christianne paid consideration of \$617,870.59 by a Bank of Commerce cashier's check, No. 160346, dated October 12, 2001, in the amount of \$200,000 and a Bank of Commerce cashier's check, No. 160355, dated October 15, 2001, in the amount of \$417,870.59. It further states that the Bank of Idaho assigns to Christianne its rights under the LPCI loan dated November 18, 1999, including the right to enforce the loan against the guarantors; and that the Bank of Idaho also assigns its security interests in the LPCI assets.

The funds Christianne used to acquire the assignment from the Bank of Idaho came from Vreeken. Vreeken claims he provided the money to Christianne as an advance on her inheritance and then asked whether Christianne would be willing to use those funds to satisfy the indebtedness to the Bank and step into the Bank's shoes. Vreeken also claims Christianne was not required to purchase the note from the Bank as a prerequisite to getting the advance on her inheritance; rather, she chose to do so of her own free will. The Golds, on the other hand, contend Christianne merely acted as the conduit through which Vreeken satisfied the obligation owed to the Bank of Idaho.

On December 1, 2004, this Court issued an opinion, decision, and order dismissing with prejudice Christianne's Complaint against all named defendants as a sanction for repeatedly failing to appear at her deposition and refusing to be deposed. Any and all obligations that were the subject of Christianne's Complaint were deemed fully satisfied and paid in full.

The Golds filed a motion for summary judgment on February 14, 2005, seeking dismissal with prejudice of all claims brought against them, a declaratory judgment regarding the performance of, and amount due under, the MOU, entry of a money judgment against Lockwood, LPC, and LPCI, and a writ of possession allowing the Golds to obtain possession of the assets of LPC and LPCI in order to foreclose the security interest allegedly held by the Golds in those assets.

On May 3, 2005, the Court issued its Opinion, Decision, and Order on Thomas R. Gold, Richard L. Gold, and Tomac Packaging, Inc.'s Motion for Summary Judgment ("First SJ Opinion").

The Court dismissed Vreeken and the Lockwood Entities' claims for misrepresentation and breach of the implied covenant of good faith and fair dealing. The remainder of the claims brought by Vreeken and the Lockwood Entities were dismissed pursuant to section 2(h) of the MOU. With respect to the Golds' claims, the Court made the following findings pertinent to the current inquiry:

- 1) The Lockwood Entities are in default under section 2(a) of the MOU. The Lockwood Entities are liable on the Payout Note to R. Gold in the principal amount of \$100,000.00 plus interest. The Lockwood Entities are liable on the Payout Note to T. Gold in the principal amount of \$450,000.00 plus interest, secured by the assets of the Lockwood Entities.
- 2) LPC and LPCI are required to make annual payments to T. Gold in the amount equal to 25% of their respective net profits until the aggregate amount of such payments reaches \$100,000.00.

The Golds filed a Motion for Reconsideration on May 17, 2005. Vreeken and the Lockwood Entities filed a Motion to Reconsider, Alter, or Amend on May 17, 2005. The parties sought reconsideration of the Court's prior opinion on the Golds' Motion for Summary Judgment. On September 2, 2005, the Court issued its Opinion, Decision, and Order on the Motions for Reconsideration. The Court clarified that, pursuant to MOU § 2(c), any damages incurred by the Golds as a result of Vreeken, Lockwood, LPC, and LPCI's failure to obtain the releases of the loans specified there are secured by the assets of LPC and LPCI. R. Gold possesses a security in the amount of \$270,435.53 plus interest, for damages incurred as a result of Lockwood, LPC, and LPCI's failure to obtain a release of the Citizens Bank loan. T. Gold possesses a security interest in the assets of LPC and LPCI in the amount of \$253,331.95 plus interest for damage incurred as a

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result of Lockwood, LPC, and LPCI's failure to obtain a release of the Eastern Idaho Economic Development Council (EIEDC) loan. The Court ordered Vreeken to effectuate a personal guarantee on the Citizens Bank loan.

On August 21, 2006, the Golds filed a second Motion for Summary Judgment, arguing that Vreeken is personally liable on the Payout Notes. The Golds also filed a separate Motion for Entry of Summary Judgment, asking the Court to enter summary judgment pursuant to the Court's prior opinions on the Golds' first motion for summary judgment and the motions for reconsideration. The Court heard argument on the Golds' motions on October 10, 2006. The Court took the Golds' second summary judgment motion under advisement. On October 20, 2006, the Court entered summary judgment pursuant to its prior opinions. The Court took the Golds' second summary judgment motion under advisement, granting in part and denying in part on November 8, 2006 ("Second SJ Opinion"). In that opinion, the Court made the following pertinent determinations:

- 1) The MOU does not explicitly create a personal liability in Vreeken on the Payout Notes. While the flush language of section 2 of the MOU includes Vreeken's name, the omission of it in section 2(a) indicates the parties' intent to not hold him personally liable, absent breach.
- 2) Genuine issues of material fact existed at that time as to whether or not Vreeken intentionally interfered with the obligations of LPC and LPCI under the MOU by filing UCC liens. The legal analysis remained largely unexplored because the existence of genuine issues of material fact rendered summary judgment improper.
- 3) At that time, the Golds had failed to show sufficient evidence to find Vreeken personally liable on the Payout Notes because of the asset transfer to Christianne.
- 4) The record lacked evidence of how the transfer of LPCI assets to Telford was of material adverse effect on the ability of the Lockwood Entities to make payment on the Payout Notes.

The case continued to trial on those issues which could not be determined on summary judgment. The court trial took place from April 2, 2007 to April 4, 2007. Closing arguments were offered by brief and, after their receipt, the matter was fully taken under advisement on May 18, 2007.

After reviewing the evidence submitted at trial, the Court's file, and the argument of counsel, both oral and written, the Court issues the following Opinion with Findings of Fact and Conclusions of Law.

II.
OPINION WITH FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The two main issues to be proven at the trial were 1) whether Vreeken, by reason of his actions, opened the door to personal liability on the Payout Notes provided for in the MOU, and 2) whether the location of Vreeken's alleged misconduct occurred within Massachusetts to an extent required to trigger the operation of Massachusetts General Law ("MGL") Ch. 93 A. The Court holds that, by reason of his breach of the MOU, Jan Vreeken is personally liable to the Golds on the Payout Notes. The Court also holds that the locational nexus of Vreeken's acts (wrongful or not) with Massachusetts is insufficient to trigger MGL Ch. 93 A.

Previously, Defendants argued by brief that certain of Vreeken's actions constituted his breach of the MOU, wrongful interference with the MOU, breaches of the implied covenant of good faith and fair dealing, and/or a breach of MGL Ch. 93A. (Defendants' Brief in Support of Motion for Summary Judgment of August 21, 2006, at 7-8.) In its subsequent opinion, the Court found genuine issues of material fact existed as to some of those alleged actions, particularly whether Vreeken filed the UCC liens wrongfully and whether he transferred money to his daughter to purchase the Bank of Idaho debt (and thus the supposed right to take the assets of LPC and LPCI) through Telford

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Corporation with the intent to circumvent the obligations under the MOU. (Second SJ Opinion, at 22.)

After hearing witness testimony at trial and upon observation of the exhibits, the Court makes the following findings of fact:

- 1) All the assets listed in Plaintiffs' Exhibit 3 ("the assets") were the property of LPCI in the form of capital contributions from Vreeken.
- 2) Vreeken knowingly filed UCC financing statements wrongfully (Pls.' Ex. 13A) in an attempt to create a security interest in the assets of LPC and LPCI securing Lockwood Engineering (owned wholly by him) with a priority over any liens on those assets securing the Golds. While it is possible he may have had a security interest in the assets of these companies through the mechanism of capital contributions, they would have been lower in priority than that of the Golds'. His intent in filing the financing statements was for the primary purpose of interfering with the Golds' ability to act on those assets as security of the debt owed them by asserting a lien of higher priority than the Golds'.
- 3) Vreeken used his daughter, Christianne, through her apparently dummy corporation, Telford Co., to purchase the Bank of Idaho debt and to take possession of the assets of LPC and LPCI in an intentional attempt to circumvent the Golds' rightful security interest in those assets. The following sale of those assets to Volm Bag, Co. was done in furtherance of this attempt and the Golds' not receiving any money from the proceeds of that sale serves as evidence that the alienation of the LPCI assets to Telford did, in fact, impair those assets as security of the debt to the Golds. The assets are now tied up in litigation as a direct result of these various claims.

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- 4) Vreeken intentionally interfered with LPC's and LPCI's obligations under the MOU by not causing these companies to pay the Golds in satisfaction of the Payout Notes.
- 5) Vreeken's actions, taken together, show an overarching plan to siphon away the assets of the Lockwood Entities and to, thus, divest the Golds of their entitlements under the MOU.

The Court deems it necessary to explain the finding that the assets were the property of LPCI and not Vreeken. During the course of the trial, evidence was offered that many of the big-ticket assets used by LPCI were paid for by Vreeken (by him or through his many corporations). Defendants assert that these assets were capital contributions, while Plaintiff argues the assets were the property of Vreeken and were on lease to LPCI. Based on the evidence offered at trial, the Court finds that these assets were contributions of capital and were not the property of Vreeken.

A court's determination that assets are a capital contribution and not a loan must be supported by some evidence. *See Jensen v. Jensen*, 124 Idaho 162, 168-69, 857 P.2d 641, 647,48 (Ct. App. 1993). In past cases on this precise issue, the Idaho Supreme Court has considered whether the organization has made use of the assets and how closely-held the company may be, *Weyerhaeuser Co. v. Clark's Material Supply Co.*, 90 Idaho 455, 413 P.2d 180 (1966), as well as by looking at how the assets are accounted for on the books of the company and/or whether some other record indicates the intended status of the assets. *Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005).

There is no disagreement that LPCI used the assets purchased by Vreeken in its normal business operations. There is some limited dispute concerning the significance of the assets being listed on LPCI's books. Vreeken argues that the bookkeeping practices before 2001, when Melanie Harris began employment, were poor and did not properly account LPCI's operations. The Golds

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argue that the assets were listed as the property of LPCI in its sale of those assets to Telford. However, LPCI sold the assets to Telford, thereby acting as the owner, settling that dispute. Nothing substantial has been presented before the Court to indicate that Vreeken was leasing the assets to LPCI—no lease agreement nor a record of lease payments. No evidence exists on the record that Vreeken intended the assets as a loan to LPCI. There is no loan agreement or record of loan payments to Vreeken.

Given the evidence on record, the Court finds that the assets listed on Plaintiffs' Exhibit 3 were the property of LPCI in the form of capital contributions from Vreeken. Therefore, they shall be treated as such in the analyses, *infra*.

A. Vreeken's Personal Liability

The Court has already determined that, as a matter of law, Vreeken is not personally liable to the Golds on the Payout Notes by operation of the text of the MOU, taken alone. (Second SJ Opinion, at 10-13.) However, Vreeken hindered LPC's and LPCI's ability to satisfy the Payout Note debt by interfering with the disposition of the assets intended to secure the Payout Notes and otherwise preventing payment required under the MOU. Because Vreeken thus breached the implied covenant of good faith and fair dealing, he is liable for the damages resulting from that breach, namely, the inability of LPC and LPCI to pay off the Payout Notes and the Golds' prevention from foreclosing on the securing assets. In other words, Vreeken is personally liable to the Golds for the amount of the Payout Notes plus interest.

In May 12, 2000, Vreeken and the Golds executed the MOU. In that document, Vreeken and/or the companies under his control explicitly agreed to perform the following pertinent terms:

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2. Requirements of Lockwood Packaging, Lockwood Engineering, and Vreeken

The Lockwood Entities and Vreeken agree to do the following:

- a. The Lockwood Entities will give RLG (Richard Gold) a promissory note in the principal amount of \$100,000 and TRG (Thomas Gold) a promissory note in the principal amount of \$450,000 (the "Payout Notes").... **The Payout Notes will be secured by the assets of Lockwood Packaging and Lockwood Packaging Idaho**, with such security interest being subordinate to all current bank loans, all current security positions on record, and any future refinancing of such bank loans.

The following shall be events of default under such notes ("Events of Default"): ... (iii) transfer of all or a material portion of the assets or lines of business from Lockwood Packaging Idaho, unless it is to a related entity and provided that the security interest provided therein will continue on such assets....

- b. Lockwood Packaging and Lockwood Packaging Idaho will make annual payments to TRG in an amount equal to twenty-five (25%) percent of their net profits in accordance with GAAP (the "Payout Payments") until such time as the aggregate amount of the Payout Payments reaches \$100,000....
- c. The Lockwood Entities will use their best efforts to effect the release of: (i) TRG and RLG from certain personal guarantees they have made with regard to the following loans and (ii) certain securities pledged by RLG which is being held as collateral for the Citizen's Loan, as defined below. If necessary to effect such releases, Vreeken agrees to personally guarantee such loans.....

...

- j. Lockwood Packaging and Lockwood Packaging Idaho shall, during the period the Payout Notes are outstanding, conduct business through the existing corporations and **shall not transfer assets**, lines of business or corporate opportunities **to other entities which would have a material adverse effect on the ability of the Lockwood Entities to make payment under the Payout Notes**.

(Pls.' Ex. 6, Confidential Memorandum of Understanding ("MOU"), at 3-6) (emphases added). The MOU operated as a contract between the parties pending the execution of the "Definitive Documents." (Id., at 8.) Because those documents were never executed, the MOU serves as the sole memorial of the parties' contract.

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Breach of Express Terms

The Golds ask the Court to find that Vreeken is liable on the Payout Notes under the terms of the MOU. While, as they assert, it is generally true that an individual is liable for the damages resulting from that individual's breach of a contract, where there is no duty there can be no breach. The Golds have yet to show to the Court which of Vreeken's explicit duties under the MOU were supposedly breached, causing the injuries complained of. In section 2 of the MOU, only once is Vreeken specifically denominated: he promised to personally guarantee the contemplated bank loans if necessary to effect the Golds' release from them. This particular duty has been addressed in previous rulings and there are no other explicit duties contained within the MOU that immediately pertain to this opinion.

This reasoning is consistent with the Court's previous holding that, while the flush language of section 2 of the MOU includes Vreeken's name, the omission of it in section 2(a) indicates the parties' intent to not hold him personally liable, absent breach. Vreeken cannot be held personally liable on the Payout Notes on a theory of simple breach of contract because there is no express duty Vreeken breached which compromised the securing assets or brought about nonpayment of the Payout Notes.

Implied Covenant of Good Faith and Fair Dealing

Vreeken breached the implied covenant of good faith and fair dealing when he 1) failed to cause LPC and LPCI to pay their debt to the Golds and, 2) alienated the Payout Note securing assets to a company controlled by him through a nominal owner, his daughter.

The Court has already determined that the Massachusetts law controls vis-à-vis the MOU. In Massachusetts, "Every contract... is subject, to some extent, to an implied covenant of good faith and fair dealing." *Ayash v. Dana-Farber Cancer Institute*, 822 N.E.2d 667, 684 (Mass. 2005). See

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Anthony's Pier Four, Inc. v. HBC Associates, 583 N.E.2d 806, 820 (Mass. 1991); *Kerrigan v. Boston*, 278 N.E.2d 387 (Mass. 1972). Therefore, a covenant of good faith and fair dealing between the Golds and Vreeken (as well as the Lockwood Entities) is implied in the MOU. That covenant provides that “neither party shall do anything that will have the effect of destroying or injuring the rights of the other party to receive the fruits of the contract.” *Anthony's Pier Four*, 583 N.E.2d at 820 (citations omitted). As previously noted by the Court, however, the covenant “may not... be invoked to create rights and duties not otherwise provided for in the existing contractual relationship, as the purpose of the covenant is to guarantee that the parties remain faithful to **the intended and agreed expectations of the parties in their performance.**” *Uno Restaurants, Inc. v. Boston Kenmore Realty Corp.*, 805 N.E.2d 957, 964 (Mass. 2004) (emphasis added). The limits of the covenant are the limits of the contract—the covenant cannot be used to create duties *ex nihilo*, but may only be used as a mechanism to effectuate the intended and agreed-upon expectations of the parties. Stated more succinctly, “[t]he scope of the covenant is only as broad as the contract that governs the particular relationship.” *Ayash*, 822 N.E.2d at 684. Furthermore, the complaining party must only show that there was a lack of good faith—there is no requirement that a party acted in bad faith to be found in breach of the implied covenant of good faith and fair dealing. *Uno*, 805 N.E.2d at 964, n. 5 (citing *Nile v. Nile*, 734 N.E. 2d 1153 (Mass. 2000)).

In its Second SJ Opinion, the Court held that “if [it were] declared that Vreeken was personally liable on the Payout Notes due to his breach of the MOU and breach of the implied covenant, the Court would be creating ‘rights and duties not otherwise provided for in the existing contractual relationship.’” (Second SJ Opinion, at 23 (quoting *Uno*, 805 N.E.2d at 964)). However, in that opinion, the Court was making specific reference to Vreeken’s breach on the MOU as to those duties which attached to him as an individual (e.g. the duty to personally guarantee the loans, if

necessary, to accomplish the release of the Golds on those loans). Whether or not his conduct breached the implied covenant of good faith and fair dealing as to the duties of LPC and LPCI is a separate issue, and one that could not be determined at that time. Insufficient evidence had been presented to determine whether Vreeken had exerted himself to prevent the Golds from receiving the bargained-for benefit of the MOU. (*Id.*, at 20-21.) After trial, however, sufficient evidence has been presented before the Court to allow such a factual finding.

The evidence at trial amply showed that Vreeken operated through Gerbroeders Meijer Belegging and the Lockwood Entities (Lockwood Holdings, Lockwood Engineering, LPC, LPCI) with little distinction between himself and those companies. This was evidenced by how the employees of LPCI (Lorna Schubert, Melanie Harris, etc.), as they testified at trial, were rarely quite clear which company an amount of money came from. Towards the end of LPCI's life, \$150,000 in accounts receivable were collected. Vreeken directed Melanie Harris to pay him the entire amount of that money, as though money belonging to LPCI equally belonged to him. After Ms. Harris paid \$100,000 to employee tax withholding obligations, she paid \$50,000 to Vreeken's personal account. Whenever Melanie or Lorna had contact from higher-ups, it was invariably with Vreeken. His control over LPC and LPCI put him in a unique position to interfere with those companies' obligations under the MOU. At the very least, Vreeken failed to act in good faith as to the obligation of LPC and LPCI to pay the amount owed to the Golds—he, more than anyone, was in a position to cause some payment to be made. But rather than cause LPC's and LPCI's obligations to the Golds to be discharged, he consistently acted counter to that aim:

He filed a UCC financing statement on the assets of LPCI claiming a security interest superior to the Golds' (knowing their statement had not yet been filed) in the name of Lockwood Engineering a mere six weeks after signing the MOU.

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He directed his daughter, Christianne, through an empty company, Telford, to purchase the Bank of Idaho debt and take possession of the assets of LPCI securing the company's debt to the Golds. This was done either with money disguised as a "loan" or as her "inheritance" (either way, the terms seem to be cover words for Vreeken's channeling of his own funds) with the intent to turn around and sell the assets to another company—in this case, Volm Bag Company.

He caused a misinformed opinion letter (Pls.' Ex. 4) to be circulated to potential buyers, including Volm, stating that Lockwood Engineering's (and thus, Telford's) security interest in the assets for sale had a greater priority than that of the Golds.

He not only failed to direct that some of the accounts receivable money be paid to the Golds (under the MOU, the Golds were clearly entitled to some amount of those proceeds), he directed that all the money be sent to him personally; he received all that remained after bills were paid.

The Court is partially persuaded by the Golds' argument that the facts in this case are analogous to those in *The Community Builders, Inc. v. Indian Motorcycle Associates, Inc.*, 692 N.E.2d 964 (Mass. 1998). Where the defendants in that case exhibited conduct of an "extortionate quality," the higher court upheld a master's finding that those individuals could be held personally liable for the obligations of an entity where those individuals control the entity and have caused it to fail in those obligations. That court held that the defendants, by so doing, had "violated the covenant of good faith and fair dealing [on a contract of an entity under their control] and furnished a basis for Chapter 93A liability." *Indian*, 692 N.E.2d at 978-79. That case, as this one, was deciding on the allegation of a violation of the implied covenant of good faith and fair dealing as well as a Chapter 93A claim. It appears that the *Indian* court placed special emphasis on the extortionate quality of the defendants in order to establish a basis for Chapter 93A liability, but does not seem to link the extortionate quality to the covenant of good faith and fair dealing. While Vreeken's actions lack

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good faith, they are still not quite extortionate. However, the Court accepts the proposition that an individual with control over an entity can be held personally responsible for those obligations for which he deliberately causes the entity to fail to comply with.

Vreeken has consistently acted in a way that demonstrates his lack of concern with the Golds' receiving the intended fruits of the MOU. His interference with LPC's and LPCI's obligation to pay the Golds on the Payout Notes was a breach of the implied covenant of good faith and fair dealing. His conduct had the effect of injuring the rights of the Golds to receive the fruits of the MOU. Vreeken is, therefore, personally responsible for the direct consequence of that breach—the nonpayment of the Golds on the Payout Notes and their inability to pursue the securing assets.

Interference with a Contractual Relationship

Extensive analysis of the theory of interference with a contractual relationship would be superfluous. The Court has already determined that Vreeken is personally liable upon operation of a doctrine proved by substantially the same facts as required by a theory of interference with a contractual relationship. Application of those facts to this theory results in Vreeken being held personally liable, as those facts satisfy the four-prong test contemplated in *Cavicchi v. Koski*, 855 N.E.2d 1141 (Mass. 2006): 1) the Golds had a contract with LPC and LPCI; 2) Vreeken knowingly induced LPC and LPCI to alienate their assets in breach of the MOU; 3) Vreeken's involvement was intentional and performed with improper motive; and 4) the Golds were harmed because they received no payment on the Payout Notes and were robbed of access to the securing collateral. Therefore, Vreeken is also liable on this theory.

B. Massachusetts General Law Chapter 93A

The Massachusetts General Laws provide that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

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Mass. Gen. Laws ch. 93A, § 2. Section 11 of Chapter 93A provides relief for persons damaged by such unlawful practices:

Any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an **unfair method of competition or an unfair deceptive act or practice declared unlawful by section two**... may, as hereinafter provided, bring an action... for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

...

If the court finds for the petitioner, recovery shall be in the amount of actual damages; or up to three, but not less than two, times such amount if the court finds that the use or employment of the method of competition or the act or practice was a willful or knowing violation of said section two.

...

No action shall be brought or maintained under this section unless the actions and the transactions constituting the alleged unfair method of competition or the unfair or deceptive act or practice **occurred primarily and substantially within the commonwealth**. For the purposes of this paragraph, the burden of proof shall be upon the person claiming that such transactions and actions did not occur primarily and substantially within the commonwealth.

(emphasis added). This language opens the door to the possible multiplication of damages; therefore, the Court will fully analyze the potential personal liability of Vreeken under the statute. Also, because some of the acts were technically committed by one or more of the Lockwood Entities, it is important to note that “[i]t is settled that corporate officers may be held liable under c. 93A for their personal participation in conduct invoking its sanctions.” *Indian*, 692 N.E.2d at 979 (citations omitted). Therefore, if Vreeken, as a corporate officer, participated in conduct (by action or inaction) deemed to be deceptive or unfair, he may be held personally liable under Ch. 93A.

Following the Second SJ Opinion, there are two questions that remain to be determined in order to allow recovery under Chapter 93A. §11: 1) whether Vreeken’s conduct was unfair or deceptive as contemplated by the statute, and 2) whether that conduct occurred primarily and substantially within Massachusetts. The Court finds that Vreeken’s conduct was unfair and

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deceptive as contemplated by the statute, but that the conduct did not occur primarily or substantially within Massachusetts.

Unfair or Deceptive

In analyzing this element of Ch. 93A applicability, the Court follows the language from the Second SJ Opinion:

If the parties were acting in a business context, a court is then required to define the acts of unfair or deceptive conduct that violate the statute.... Massachusetts courts have stated that an act will be “unfair” under the statute, if it is “(1) within the penumbra of a common law, statutory, or other established concept of unfairness; (2) immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to competitors or other business people.” *Heller Financial v. Ins. Co. of North America*, 573 N.E.2d 8, 12-13 (Mass. 1991).

(Second SJ Opinion, at 24.) As explored previously by the Court, a breach of contract alone is insufficient to constitute a violation of Chapter 93A. *Speakman v. Allmerica Financial Life Ins. & Annuity Co.*, 367 F.Supp.2d 122, 140 (D. Mass. 2005); however, a breach of the implied covenant of good faith and fair dealing may constitute such a violation:

Inherent in such claim is “an element of either **bad faith** and improper motive or a **breach of fair dealing . . .**” that clearly falls within “ ‘established common law . . . concept[s] of unfairness.’ ”

Id. (citations omitted, emphasis added).

It has already been determined that Vreeken’s conduct manifested a lack of good faith and constituted a breach of fair dealing. As shown above, Vreeken’s actions, taken together, show an overarching plan to divest the Golds of their entitlements under the MOU. His conduct, more than simply showing a lack of good faith, manifests bad faith. He has attempted to nullify the MOU, to deprive the Golds’ of their rightful money or property, and to siphon away the remaining assets of the failing Lockwood Entities to his personal accounts. His conduct throughout his course of dealing with the Golds from the signing of the MOU through this current litigation has been deceptive and

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unfair. Therefore, his conduct falls within the purview of Ch. 93A, § 11. However, despite this determination, the location of the acts precludes the Golds' recovery under the chapter.

Location of Conduct Occurrence

Vreeken bears the burden of proof as to whether or not his deceptive and unfair acts took place primarily and substantially within Massachusetts. Mass. Gen. Law ch. 93A, §11. Vreeken has borne that burden and proven that his acts did not take place primarily and substantially within that State, but in Idaho.

The 1st Circuit Federal Court of Appeals had, pre-2000, developed a body of case law in favor of a three-factor analysis to determine where deceptive or unfair acts took place for a Ch. 93A analysis.¹ However, the Massachusetts Supreme Court rejected such tests out of hand, stating that, “we [have] declined to create a list of factors to be used in determining whether conduct alleged to be actionable under G.L. c. 93A, §11, occurred primarily and substantially within the Commonwealth.”

Kuwaiti Danish Computer Co. v. Digital Equipment Corp., 781 N.E.2d 787, 798 (Mass. 2003).

That court added:

We have misgivings about the utility of a formula for analyzing all cases under §11. Whether the [actions occurred within Massachusetts] is not a determination that can be reduced to any precise formula. Significant factors that can be identified for one case may be nonexistent in another.... **Any determination necessarily will be fact intensive and unique to each case.**

Id., at 798-99 (emphasis added). The *Kuwaiti* court makes clear throughout the opinion that the individual requirements of each case require that a trial court be given latitude in making the determination of where deceptive or unfair acts substantially and primarily occurred. The only nugget of guiding principle delivered by that court was that a court, “after making findings of fact,

¹ *Roche v. Royal Bank of Canada*, 109 F.3d 820, 829 (1st Cir. 1997); *Compagnie de Reassurance d'Ile de France v. New England Reinsurance Corp.*, 57 F.3d 56, 90 (1st Cir. 1995); *Clinton Hosp. Ass'n v. Corson Group, Inc.*, 907 F.2d 1260, 1265-66 (1st Cir. 1990)).¹

and after considering those findings in the context of the entire § 11 claim, [should] determine whether the center of gravity of circumstances that give rise to the claim is primarily and substantially within the Commonwealth.” *Id.*, at 798; *see Renwood Winery, Inc. v. Landmark Label, Inc.*, 835 N.E.2d 1178 (Mass.App.Ct. 2005). Therefore, it is before the Court to determine where the center of gravity of circumstances occurred with respect to Vreeken’s bad faith conduct.²

The signing of the MOU was not part of the acts complained of, therefore, whatever involvement Vreeken had with Massachusetts for that purpose have no bearing on this inquiry. After the MOU was entered into, Vreeken took his first bad faith step six weeks later when he filed the UCC financing statements. He did this in the State of Idaho. (Pls.’ Exs. 13A, B). His next unfair act on the record was to cause his daughter to use money secretly his to purchase the Bank of Idaho debt in order to gain access to the assets of LPCI (Pls.’ Ex. 3), as the Bank debt was secured by those assets. Christianne did not reside in Massachusetts at that time, the Bank of Idaho is located in Idaho, the assets were located in Idaho, and the transfer of the assets to Telford was effectuated by staff in Idaho. Vreeken’s next deceptive act was to cause Kip Manwaring’s possibly-misinformed opinion letter (Pls.’ Ex. 4) to be presented before potential buyers of the assets, including Volm Bag. Mr. Manwaring is located in Idaho. The subsequent sale of the assets to Volm for \$75,000 took place in Idaho. (Pls.’ Ex. 5.) Volm Bag is not located in Massachusetts. (*Id.*) Every one of Vreeken’s affirmative acts of bad faith occurred outside of Massachusetts and had no direct involvement with anyone in that State.

The Court is aware that the Golds were located in Massachusetts at all material times to this litigation and that they suffered harm there. However, the only harm that can be specifically

² On summary judgment and in their closing argument, the Golds argued that because the MOU’s choice of law clause specifies that Massachusetts law will apply, the locational requirement of the acts contemplated by Ch. 93A is thereby satisfied. The Court reiterates that this argument fails. *See* Second SJ Opinion, at 28.

ted to Massachusetts was the imminent foreclosure by EIEDC of Thomas R. Gold's personal residence. However, that foreclosure was the result of Vreeken's breach of his duties under the MOU. The Court has already found that a simple breach is not enough to make a finding under Ch. 93A. Therefore, because the act causing that particular item of damage can only be traced directly to a breach and indirectly a deceptive or unfair actions of Vreeken, it does not have much effect on the center of gravity.

The connection of these events to Massachusetts is tenuous when compared to the connection with Idaho. The center of gravity clearly lies in Idaho. The statute requires that the mal acts occur "primarily and substantially within the commonwealth." This requires something more being a resident of Massachusetts who suffered harm. Therefore, after making findings of fact, and after considering those findings in the context of the entire § 11 claim, the Court finds that the center of gravity of the deceptive and unfair acts of Vreeken occurred substantially and primarily in Idaho. The Golds are not entitled to recover under Massachusetts General Law Chapter 93A.

C. Bank of Idaho Loan Payment and the UCC Filings

Bank of Idaho Debt

The debt to Bank of Idaho was reduced by \$617,870.59 with two payments made on October 12 and 15, 2001 (respectively) drawn from LPCI's account with the Bank of Commerce. (Pls.' Ex. 2). It appears more likely than not that these funds originated from Lockwood Holdings, one of Vreeken's mother corporations. (Pls.' Ex. 1). Therefore, the Court finds that the Bank of Idaho debt was paid in full with the funds indicated in Plaintiffs' Exhibits 1 and 2.

UCC Filings

The Court has already found, *supra*, that the assets listed in Pls.' Ex. 3 were given to LPCI by

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Vreeken as contributions of capital. Vreeken is entitled to receive money in return for the value of his capital contributions, and maybe even the assets themselves, but only from what may remain after the satisfaction of LPCI's other obligations. Therefore, though Vreeken and his companies might still have some claim to the non-existent remains of LPCI, they do not have a security interest in the assets with a higher priority than that given to the Golds by the MOU. Therefore, the UCC financing statements represented by Pls.' Ex. 13A were improperly filed.


III. CONCLUSION

Vreeken is jointly and severally liable with Lockwood Packaging, Lockwood Packaging, Idaho, and Lockwood Engineering, B.V., to Thomas R. Gold in the total amount of \$510,404.67, with interest to accrue on such total amount of \$510,404.67 from and after May 3, 2005, at the judgment rate of interest until paid.

The Bank of Idaho debt was paid in full in the amount of \$617,870.59 by funds that originated from Lockwood Engineering, B.V.

The Idaho UCC financing statements of June 26, 2000 made by Lockwood Engineering and Gerbroeders Meijer Belegging, respectively, on the assets of Lockwood Packaging, Idaho were improperly filed.

Dated this 25th day of June, 2007.



Jon Shindurling
District Judge

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CERTIFICATE OF SERVICE

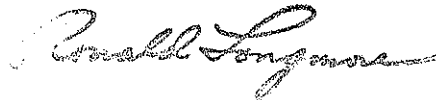
I hereby certify that on this 25th day of June, 2007, I served a true and correct copy of the foregoing MEMORANDUM OPINION, DECISION, AND ORDER WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW (TRIAL: April 2, 2007 – April 4, 2007) upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

Attorney for Defendants, Cross-Defendants, and Third Party Defendants

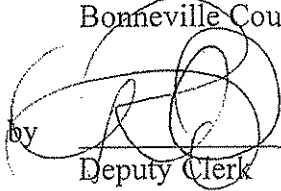
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Idaho Falls, ID 83405-0130



Ronald Longmore
Clerk of the District Court
Bonneville County, Idaho

by  _____
Deputy Clerk

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DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY, IDAHO

7 JUL -9 P4:06

Attorneys for Defendant Thomas R. Gold and
for Third Party Plaintiffs Richard L. Gold and Tomac Packaging, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

CHRISTIANNE VREEKEN,

Plaintiff,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; JAN VREEKEN, an individual,
and THOMAS R. GOLD, an individual,

Defendants.

THOMAS R. GOLD, an individual,

CrossClaimant,

vs.

LOCKWOOD ENGINEERING, B.V., a
Netherlands corporation; GERBROEDERS
MEIJER BELEGGING, B.V., a Netherlands
corporation; and JAN VREEKEN, an
individual,

CrossDefendants.

CASE NO. CV-01-2279

**MEMORANDUM OF
COSTS AND ATTORNEYS FEES
SUPPORTED BY AFFIDAVIT OF
CHARLES A. HOMER**

THOMAS R. GOLD, an individual,
RICHARD L. GOLD, an individual, and
TOMAC PACKAGING, INC., a
Massachusetts corporation,

*CrossClaimant and Third
Party Plaintiffs,*

vs.

LOCKWOOD PACKAGING
CORPORATION, a Delaware corporation
("LPC"); and LOCKWOOD PACKAGING
CORPORATION IDAHO, an Idaho
corporation ("LPC Idaho"),

Third Party Defendants.

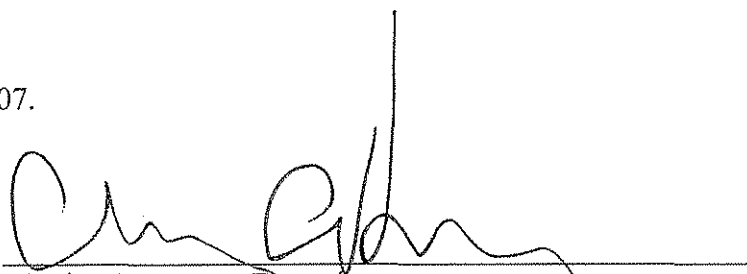
Defendant/Crossclaimant Thomas R. Gold ("TR Gold") and Third Party Plaintiff Richard L. Gold ("RL Gold"), by and through their counsel of record, Charles A. Homer of Holden Kidwell Hahn & Crapo, P.L.L.C., hereby submit this Memorandum of Costs and Attorneys Fees pursuant to Rule 54 of the Idaho Rules of Civil Procedure. By submitting this Memorandum, TR Gold and RL Gold are claiming the right, pursuant to Idaho Code §§12-120(3) and 12-121, and Rule 54 of the Idaho Rules of Civil Procedure, to recover costs and fees set forth in the attached Affidavit jointly and severally from Lockwood Packaging Corporation, Lockwood Packaging Corporation Idaho, Lockwood Engineering, B.V. and Jan Vreeken.

To the best of the knowledge and belief of Charles A. Homer, the amounts set forth herein for costs and fees are correct and such costs and fees are claimed by TR Gold and RL Gold in compliance with Rule 54 of the Idaho Rules of Civil Procedure. This Memorandum of Costs and Attorneys Fees is supported by the Affidavit filed simultaneously with this Memorandum and incorporated herein by reference.

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TR Gold has incurred attorneys fees in the above-entitled action in the amount of \$85,052.75 and costs in the amount of \$2,481.11, which fees and costs are specifically described and itemized in the Affidavit filed simultaneously with this Memorandum and incorporated herein by reference. RL Gold has incurred attorneys fees in the above-entitled action in the amount of \$85,052.75 and costs in the amount of \$2,481.11, which fees and costs are specifically described and itemized in the Affidavit filed simultaneously with this Memorandum and incorporated herein by reference.

Dated this 9th day of July, 2007.



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof.

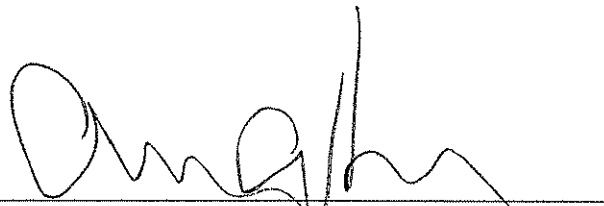
**DOCUMENT SERVED: MEMORANDUM OF COSTS AND ATTORNEYS FEES
SUPPORTED BY AFFIDAVIT OF CHARLES A. HOMER**

ATTORNEYS SERVED:

Kipp L. Manwaring
381 Shoup Avenue, Suite 210
Idaho Falls, Idaho 83402
Fax: 208-523-9109

First Class Mail
 Hand Delivery
 Facsimile

Dated: July 9, 2007



Charles A. Homer, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.