IN THE SUPREME COURT OF THE STATE OF FLORIDA

IN RE AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE	**)**	**CASE NO.: SC05-179**

RESPONSE OF CIVIL PROCEDURE RULES COMMITTEE TO COMMENTS OF HENRY P. TRAWICK, JR., REGARDING RULES 1.380, 1.420, AND 1.510; BRUCE BERMAN REGARDING RULES 1.380 AND 1.510; AND JOSEPH F. SUMMONTE, JR., JUDGE RALPH ARTIGLIERE, AND WILLIAM S. DUFOE REGARDING RULE 1.420

Robert N. Clarke, Jr., chair of the Civil Procedure Rules Committee of The Florida Bar, submits the following response to the comments of Henry P. Trawick, Jr., dated March 11, 2005; Bruce Berman, dated April 1, 2005; Judge Ralph Artigliere, dated March 29, 2005; Joseph Summonte, dated December 8, 2004; and William S. Dufoe, dated March 17, 2005.

RULE 1.380:

1. Comments of Bruce Berman

Bruce Berman does not object to the proposal to add a good faith certification requirement to motions filed under subdivisions (a)(2) and (d) of Rule 1.380. However, he does oppose the proposed change in subdivision (a)(4). Under the proposed language of subdivision (a)(4), if a motion to compel is granted, the court shall require the award to the moving party of reasonable expenses incurred in obtaining the order, unless the court finds that the "movant failed to certify in the motion that a good faith effort was made to obtain the discovery without court action, that the . . ." Mr. Berman notes that this language is different from the language contained in the rule's federal counterpart, Fed. R. Civ. P. 37(a)(4)(A), which prohibits the sanction for award of costs "unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure of discovery without court action. . . ." This difference in language, according to Mr. Berman, would not achieve the Committee's purpose and would be redundant. Mr. Berman suggests that the language used in the federal rule be added in place of the language proposed by the Committee for subdivision (a)(4). While the Committee understands Mr. Berman's point, it must respectfully disagree with his suggestion that the federal language be incorporated into

subdivision (a)(4) in lieu of the language which it proposes. The Committee did consider all of the language contained in the federal counterpart to Rule 1.380 in drafting its proposed amendment. It was determined that the proposed language would be used instead of the federal language since the federal language would diminish the purpose and import of a good faith certification. If we were to adopt the language of the federal rule, it would raise the question that, if a court could find that a good faith effort was made to obtain the disclosure of discovery without court action, then why require that a certification of the good faith effort be included in the motion to compel in the first place? In other words, the Committee considered the federal language pointed out by Mr. Berman to be in conflict with the good faith certification requirement included in the other subdivisions of the rule. The Committee's proposed language conforms with the requirement that a motion to compel include a good faith certification, while the federal language would give the moving party an "out" if the certification is not made in the motion. The certification is the best proof that the moving party has made a good faith effort to confer with the person or party failing to make the discovery.

2. Comments of Henry Trawick

Henry P. Trawick, Jr. has objected to the proposed changes in Rule 1.380 by asserting that the requirement of a good faith certification that counsel confer is "unnecessary; it unfairly favors the delinquent party; and it increases the time for obtaining discovery in many instances." Mr. Trawick expresses doubt that the requirement of a good faith certification has or will do anything to "effectuate better or more prompt discovery." When the Committee discussed the proposed inclusion of the "good faith certification," members of the Committee volunteered their positive experiences in the federal court as well as in various state trial courts where local rules had similar requirements. The Committee discussed how this requirement promotes civility and professionalism between counsel and, how, many times, it helps avoids court action. There were some Committee members who would agree with Mr. Trawick that the good faith requirement may be unnecessary in some situations. However, the Committee overwhelmingly concluded that, in most cases, the change in the rule would at least make counsel attempt to confer and work out any discovery disputes without the involvement of the court. Clearly, the Committee's vote of 38-1 indicated its members' strong support for a requirement that a good faith certification be included in a motion to compel discovery.

Mr. Trawick also objected to the proposed language of subdivision (a)(4) of Rule 1.380. Specifically, he states that "[e]limination of attorney fees and expenses

against the delinquent party when the party seeking discovery fails to include the certificate is ridiculous." Mr. Trawick further states that the proposed rule "penalizes a party who has done nothing wrong, except to omit the certificate." The Committee respectfully disagrees with this objection. As stated in response to Mr. Berman's objection, the proposed language in this subdivision conforms with the requirement that a motion to compel include a good faith certification. The certification is the best proof that the moving party has made a good faith effort to confer with the person or party failing to make the discovery.

RULE 1.420:

1. Comments of Joseph F. Summonte, Jr.

Mr. Summonte has expressed his opposition to the proposed change to Rule 1.420(e) by stating that the change that would "eviscerate the adversarial system." It is his position that the rule as it stands now is a good one and does not need to be amended. In the years that the Committee addressed and debated the proposal to amend Rule 1.420(e), it received numerous complaints and comments from attorneys and judges that Rule 1.420(e) was unfair, was arbitrarily applied, and was a rule that penalized clients who were litigants for the actions or inactions of their attorneys. These comments and complaints were received from throughout the State of Florida over a period of approximately four years while the proposed amendment to the rule was debated and voted upon. The proposed change to the rule does not eviscerate the adversary system in any way, but rather seeks to change the rule and limit the harshness of its applicability, by simply requiring a notice to be given to the attorney for the plaintiff before a case can be dismissed for lack of prosecution.

2. Comments of Henry P. Trawick, Jr.

Henry P. Trawick has also submitted comments and objections to the proposed changes to Rule 1.420(e), as proposed by the Committee.

The first objection Mr. Trawick registers is that it would eliminate the use of the rule as an effective device in disposing of cases. The amendment to the rule would not eliminate it as an effective device in disposing of cases, but rather precludes the dismissal of the case for lack of prosecution without the required notice, in the event of a lack of record activity for a period of 10 months. The rule shortens the existing 12-month period to 10 months, and requires that a notice be

served upon all parties with respect to that lack of activity. The present rule generally results in dismissal of claims where no activity has occurred for 12 months after a notice of same has been sent to the parties by the court or the Office of the Clerk of the Court. By shortening the period of inactivity to 10 months and creating the proposition that dismissal cannot occur without the ten-month notice, the amendment to Rule 1.420(e) protects the parties to litigation against having their claims dismissed unfairly. However the amendment still retains a mechanism by which cases with no activity can be disposed of when that record inactivity occurs for a 60-day period beyond the service of the notice.

Mr. Trawick next argues that the rule as it exists is easy to comply with, and that lawyers who fail to comply with it do not deserve consideration by virtue of an amendment to the rule. The amendment to the rule is designed to protect the interests of party litigants and not their attorneys. It is the party litigants who ultimately are directly affected by the dismissal of their claims, and the giving of the notice after a ten-month period of inactivity is primarily designed for the benefit of the parties, not the lawyers. If attorneys benefit indirectly as a result of the amendment of the rule, so be it; however, our system of litigation is designed to protect the rights of parties involved. Whether or not a lawyer receives a benefit from the amendment to the rule should not be the basis for rejection of the amendment.

Mr. Trawick further argues that he has never heard a judge say the rule should be changed. A former member of our Committee, Judge Schwartz of the Third District Court of Appeal, and other judicial members of the Florida Rules of Civil Procedure Committee, have taken the position that not only should the rule be changed, but that it should even be abolished. Their position has been that litigation and the courts exist for the parties who litigate in the system, and that they should be the arbiter of how their cases proceed or do not proceed.

Mr. Trawick's final argument is that the mere fact that the statute of limitations may preclude a subsequent action and a decision on the merits as a result of a dismissal for lack of prosecution is not a reason for changing the rule, and that attorneys are supposed to take responsibility for their action or inaction. The change in the rule does not guarantee that an attorney's delinquencies will be excused. The Florida Supreme Court and the District Courts of Appeal have rather strictly enforced Rule 1.420(e) with respect to defining "excusable neglect" and/or "record activity," which has resulted in harsh results in some cases in which it was clear that attorneys did not conduct themselves in a way which would indicate that they had neglected a case or did not care whether or not it was dismissed. The

proposed rule change merely provides a requirement for notice to be given after a 10-month period of non-activity and that a case will be subject to dismissal in the event no record activity occurs in the ensuing 60-day period. It is still incumbent upon the attorney receiving the notice to ensure that some record activity occurs during that 60-day period, and if an attorney or party does not wish to proceed with the case, the case in all likelihood would be dismissed after the expiration of the 60-day period of record inactivity because it would then be much more difficult to prove excusable neglect or some other reason to avoid dismissal after the notice had been give. Again, the primary objective of the proposed amendment is to ensure fairness to the parties who litigate before our courts, and not for the protection of their attorneys.

The Committee as a whole, and the Subcommittee assigned to this proposed rule change, have received comments and objections over the many years that this amendment has been debated. The process of reaching the final version of the amendment has taken many years and countless hours of debate and discussion. Despite objections raised by members of the Committee that were similar in nature or identical to those raised by Mr. Trawick, the members of the Committee and the Subcommittee overwhelmingly have recommended approval of the proposed amendment after those extensive discussions.

3. The Circuit Court and County Court Judges of the Tenth Judicial Circuit, through Judge Ralph Artigliere, Circuit Judge, have filed a comment opposing the amendment to Rule 1.420(e) of the Florida Rules of Civil Procedure.

Representatives of the Committee have spoken at length with Judge Artigliere with regard to his concerns and the issues raised in the comments filed by the Judges of the Tenth Judicial Circuit. Similar to the comments of Mr. Trawick, has submitted three primary reasons for opposition to the amendment of Rule 1.420(e). The first one is similar to the comments of Mr. Trawick, and the last two are geared more toward the time limits imposed upon trial judges by the Florida Supreme Court in which to resolve civil litigation matters. Each issue will be addressed as it appears in the Comment from Judge Artigliere.

a. The proposed changes would destroy the effectiveness of Rule 1.420(e) as a device for enforcing diligent prosecution of cases, and the negative impacts would far outweigh the perceived benefit of the amendment.

Judge Artigliere argues that the current rule is a significant case management

tool for trial judges to enforce time standards and move their dockets, requiring parties to promptly and efficiently prosecute their cases and act affirmatively and do "something of substance." The rule as changed will still remain as a significant case management tool for trial judges. By providing the required 10-month lack of activity notice to the parties and their counsel, it will require the parties and their counsel to evaluate the case, decide how to proceed, and in all likelihood, spark either mediation, settlement, trial, or other disposition of the case, whether by lack of prosecution for subsequent lack of record activity or otherwise.

It can also be fairly assumed that under the present rule as it exists, the Clerk of Court or a judge's office sends out the notice which is furnished after 12 months of no record activity, and that some mechanism exists for such notices to be sent. In order for the 10-month notice to be sent, whatever system is currently used only needs to be adjusted to send the notice after expiration of 10 months of no record activity as opposed to 12 months of no record activity.

While it is understandable that judges are concerned about case management and moving their dockets along, it should be noted that during the long years of debate of this rule change before the Florida Rules of Civil Procedure Committee — a Committee made up of members including many judges throughout the state — the Tenth Circuit Judges are the only judges who have submitted a comment in opposition to the rule change.

In looking closely at the proposed change, one can also take the position that diligent defense attorneys can provide the 10-month lack of record activity notice to the parties and the court, and trigger the 60-day period in which record activity is required to take place, in the same fashion in which most diligent defense attorneys will currently file a motion to dismiss a case for lack of prosecution after 12-months of no record activity. Again, the objective and design for the proposed amendment was the protection of party litigants, not attorneys, and for a fair application of a rule that has had draconian and irreparable effects on parties to litigation.

Judge Artigliere further argues that the number of presumably aggrieved litigants that would benefit from the amendment is negligible. With all due respect to that argument, the input received by the Committee over the years, both from its members and from written correspondence received from attorneys throughout the state, and a reading of the cases that have been decided with respect to the applicability of the rule, do not support that conclusion. Over the years that this amendment has been discussed, debated, and its proposed amendments changed,

revised, and reviewed, both attorneys and judges have related anecdotes which clearly support the rule change, and indicate that the number of participants in the litigation system who would be impacted by the rule change is substantial. Clearly, when viewed in light of the objective of the rule change — *i.e.*, to create a fair application of a rule which dictates dismissal of cases for lack of prosecution — the benefits of this rule change far outweigh any perceived negative impact, and the number of potential beneficiaries of the rule change clearly warrants its approval.

b. The proposed changes will cause more cases to be out of time standards, which would create an unnecessary additional burden on an already stressed court system and civil clerk personnel.

Judge Artigliere next argues that under the amended rule there would no longer be an incentive for lawyers to maintain "tickler" systems or reminders to keep activity going in their cases. It is unlikely that lawyers would do away with their tickler systems or reminder systems in the event that the proposed rule amendment is approved, solely because of the creation of the 10-month lack of activity notice.

Lawyers presumably bring cases they believe have merit and have an interest in those cases progressing to conclusion. To suggest that attorneys would no longer utilize their diary or tickler systems to remind them to take actions to move their cases along is to suggest that those attorneys would no longer have an interest in bringing any of their cases to conclusion. As the rule exists today, cases are permitted to stay on the docket for period of 12 months without any record activity, or longer, in the event no motion to dismiss said cases have been made. In fact, cases which have languished in excess of 12 months without a notice having been received from the court, or a motion to dismiss having been made by the opposing party, can be continued, and resurrected, if record activity occurs prior to the court's notice or the opposing party's motion being served.

Under the new rule, once the 10-month notice is given, the 60-day period in which record activity is required to occur requires mandatory activity during that time, or the case <u>shall</u> be dismissed, absent a showing of good cause. Clearly, the standard for the showing of good cause after the giving of the 10-month notice will be much higher than presently exists, because the attorney will have received a notice from the court that action is required during that 60-day period or a dismissal of the case shall occur. It is conceivable that the proposed rule will contribute more to the movement of dockets than the existing one, allowing the

court or a party to trigger the 60-day record activity period after the expiration of 10 months, rather than under the existing rule, which requires the expiration of 12 months of no record activity before either the court's notice is received, or the opposing party serves a motion to dismiss.

The Tenth Circuit judges further argue that the proposed rule changes present a significant potential workload issue for judges and courts. During the time that the Committee and Subcommittee studied and debated this proposal, clerks of court throughout the state were contacted, as were judges throughout the state, and all indications received by the Committee were that the same system used by courts throughout the state in furnishing the 12-month notice of lack of record activity could easily be adopted to furnish the 10-month notice of no record activity. It has never been the intent of the Committee to increase the workload of any branch of the court system, and all indications received by the Committee support that position. In sum, from the inquiries and responses received by the Committee, the proposed amendment should not in any way cause hardship to the judges and clerks of our state, or significantly increase the work they are required to do above and beyond that which they already undertake.

c. The proposed changes reflect a change in the law applicable to the failure to prosecute that is inconsistent with the Rules of Judicial Administration, and current policies, guidelines and case time standards.

Judge Artigliere next argues, on behalf of the Tenth Circuit, that the proposed rule change will damage court efficiency, and runs counter to announced policies and written priorities for the judicial system. While the Committee certainly respects the views expressed by Judge Artigliere and the Tenth Circuit, it is simply contrary to the views expressed over the years to the Committee by lawyers and judges throughout the State of Florida.

Shortening the time from 12 months to 10 months for which the lack of record activity triggers these events to occur does not result in wholesale damage to the judicial system. Judge Artigliere states that lawyers and judges are under increased scrutiny and criticism from the public due to lack of professionalism at this time. He further states that lack of diligence and failure to advance a case on the docket is one of the common complaints of claimants about their lawyer and the court system. The rule change addresses that very issue, by furnishing a mechanism to remind attorneys of a lack of record activity for a period of 10 months, to protect the interest of their clients, who are the members of the public referred to in the Comment, and by providing a more efficient method by which to

dispose of cases where there is no record activity for a period of 10 months, and giving any interested person the opportunity of serving the notice of no record activity for 10 months, therefore triggering an absolute two-month period in which record activity must take place or a dismissal for lack of prosecution will be entered. This process does not preclude or limit judges from taking charge of their dockets and controlling the pace of litigation, by the use of status conferences pursuant to which the litigants are requested to move their case; by virtue of the court's ability to serve the 10-month notice of no record activity; and by virtue of the probable eventuality that the ability to survive a dismissal for lack of record activity for a 12-month period after having received the 10-month notice of no record activity will be an extremely difficult burden to overcome.

The proposed amendment does not attempt to protect or condone the inactivity of the few lawyers who do not meet minimal requirements for moving their cases. The proposed amendment to the rule, as previously stated herein, was conceived and designed primarily to protect the rights of party litigants by changing a rule which in the Committee's view has yielded harsh and even draconian results.

4. William S. Dufoe has also submitted a comment in opposition to the proposed amendment to Rule 1.420(e) as submitted by the Committee.

Mr. Dufoe's comment echoes much of what Mr. Trawick and Judge Artigliere have submitted in response to the proposed amendment, and those issues have already been addressed in this response. However, some of the comments of Mr. Dufoe are appropriate for additional response.

Mr. Dufoe writes that the amended rule's 60-day notice requirement will have the likely effect of generating perfunctory record activity in cases which have languished without good cause for more than 10 months solely for the purpose of avoiding dismissal. However, that very same avenue is available to plaintiff's counsel under the existing rule, who have up until the last day before the expiration of the 12-month period to file some type of record activity to keep the case from being subject to dismissal. However, with the 10-month notice having been given, plaintiff's attorneys are advised of the lack of record activity, and in cases in which there was a reason for that lack of record activity, the case can then be pursued. In cases which the plaintiff's counsel does not wish to pursue, options are then available to that counsel with respect to how to proceed; *i.e.*, settlement, dismissal, further discussions with the client, or other similar avenues.

Mr. Dufoe further argues that plaintiffs will be less vigilant and attentive to their cases in the event that the amendment is approved, knowing that a case cannot be dismissed for lack of prosecution until the 10-month notice has been served. However, the 10-month notice also provides defense counsel with a method to move their cases towards conclusion, if they so desire, and trigger the 60-day period during which record activity is required in order to avoid dismissal. The 10-month notice merely places a plaintiff's attorney and his client on notice of a lack of record activity, and advises that counsel and client of what will take place in the event that no record activity occurs. The potential result of any such lack of record activity is the same as it is today; *i.e.*, the dismissal of the action for lack of prosecution after a 12-month period of no record activity. Relatively inactive cases may still be kept alive today on an indefinite basis by some record activity at any time during the 12-month period. Under the proposed amendment, after the 10-month notice of inactivity is given, a party's counsel has 60 days in which to act, or be subject to the very same dismissal procedure in effect today. However, after notice is received, it can be expected that the standard to be applied to the showing of good faith why the case should not be dismissed after an additional 60 days of no record activity will be significantly higher than the standard applied today. While the number of cases dismissed for lack of prosecution may decline as a result of the proposal to amend Rule 1.420(e), the benefits of creating a fairer rule, and the avoidance of a harsh and draconian application of that rule, far outweigh the detriment of any such decline.

In sum, rather than focusing on what benefits attorneys will receive from this proposed rule change, and being concerned with attorneys who are perceived not to be diligent in their representation of clients, the Committee consistently approached this proposed rule change from the point of view of the effect of the application of the rule on clients who are parties to litigation. The Committee, after years of work dedicated to this proposed rule change, submits that the amendment to Rule 1.420(e) should be approved, and that the comments submitted in opposition to the rule change fall far short of outweighing the benefits of its approval.

RULE 1.510:

1. Comments of Henry Trawick

Henry P. Trawick, Jr. has objected to the proposed changes to Rule 1.510(c) "because it goes too far" for two reasons. First, Mr. Trawick objects that the rule

should not require parties filing or opposing summary judgment motions to furnish opposing parties with copies of the various factual materials that the court will be asked to consider, as the "opponent should already have them under our procedure." The Committee respectfully disagrees with Mr. Trawick's analysis. As an initial matter, the proposed revision would only require service of such material as "has not already been filed with the court." To the extent such material has not previously been filed with the court, it is entirely possible that the opposing party will not yet have it — as in the case of a self-authenticating document, for example. Even in the case where an opposing party does already have such information, the Committee believes that it is prudent to require exchange of material not previously filed with the court in order to eliminate the risk of any uncertainty or ambiguity with respect to the identity or contents of the material. The Committee further believes that the benefits of such an exchange will outweigh any resulting marginal burden on the filing party.

Mr. Trawick's second objection is that "[r]eferring to summary judgment evidence is stupid," as the "court considers the record at a summary judgment hearing." The Committee also respectfully disagrees with this objection. The proposed rule merely refers to the phrase "summary judgment evidence" as a defined term in order to avoid repeated, lengthier references to the types of factual material that the court would be asked to consider in connection with a summary judgment motion. Although a different defined term could certainly be used without changing the meaning of the rule, or the phrase "affidavits, answers to interrogatories, admissions, depositions, and other materials as would be admissible in evidence" could be repeated in lieu of using a defined term, there is nothing incorrect, inappropriate, or misleading about referring to such material — which is, in fact, evidentiary — as "summary judgment evidence" in the context of the rule. The Committee notes that Mr. Trawick's proposed alternate revision is both incomplete and inconsistent in its description of the types of material to be identified by the movant and to be served by the adverse party.

2. Comments of Bruce Berman

Bruce J. Berman has also objected to the proposed revision of Rule 1.510. Mr. Berman contends that there is no problem with the existing rule that would suggest a need for clarification or revision, and particularly objects to the proposed rule imposing an obligation on the party resisting summary judgment to identify any record evidence on which it relies. The Committee respectfully disagrees. The proposed revision is designed to further resolution of summary judgment motions on their merits by requiring fair notice of the parties' respective positions and

eliminating argument-by-ambush. A fair notice requirement is particularly important in the context of summary judgment motions, which are potentially case-dispositive and require the court to consider the entire range of relevant record evidence. Although, as Mr. Berman notes, there are "countless court decisions" addressing various aspects of the summary judgment rule, the decisions have not yet resulted in clear, fully-developed standards for advance identification of the parties' positions. See, e.g., BRUCE J. BERMAN, FLORIDA CIVIL PROCEDURE ¶ 510.5[2][a] (Thomson-West 2004 ed.) (noting that "the author has been unable to find decisional law expressly on point" with respect to whether the moving party must serve any non-affidavit evidence at least 20 days before the hearing). The advance notification requirement proposed by the Committee is consistent with modern summary judgment practice in the federal courts, which is typically even more formal than under the Committee's proposed revision. *See, e.g.*, N.D. Fla. Local R. 56.1, S.D. Fla. Local R. 7.5.

Mr. Berman also objects that adoption of the proposed revised rule would create uncertainty with respect to whether the court could consider record evidence that a party opposing summary judgment had failed to timely identify. In contrast, the Committee believes the issue is effectively addressed by existing case law with respect to a party's failure to timely serve opposing affidavits. Under the existing summary judgment rule,

> [d]espite the Supreme Court's implicit recognition of the importance of providing the moving party with practical pre-hearing notice of opposing affidavits, by changing the text of the rule to better accomplish that objective, Florida law remains remarkably lenient in this area. The generally enunciated principle is that a court may, but is not required to, refuse consideration of untimely opposing affidavits. However, the courts have also held that strict adherence to this requirement can also be excused. Further, at least some courts have shown a reluctance to be overly rigid at the cost of defeating a litigant's right to trial of a bona fide disputed issue, particularly in instances of attorney error. This liberality is further extended by case law on motions for rehearing, which suggests that opposing affidavits can be submitted even after entry of judgment if on a timely motion for rehearing.

BRUCE J. BERMAN, FLORIDA CIVIL PROCEDURE ¶ 510.5[3][b] (Thomson-West 2004 ed.) (footnotes omitted). Because these principles would be equally applicable to a party's failure to timely identify opposing record evidence, the Committee does not agree that the proposed revision would lead to any increased uncertainty in the summary judgment process. In any case, because any uncertainty that might

conceivably result is substantially outweighed by the benefits of requiring the parties to provide advance notice of their positions, the Committee believes that the proposed revision should be adopted.

Respectfully submitted _____, 2005.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States mail to: Hon. Ralph Artigliere, P.O. Box 9000, Drawer J-154, Bartow, FL, 33831-9000; Bruce Berman, 201 S. Biscayne Blvd., 22 Fl., Miami, FL 33131-4336; William Dufoe, P.O. Box 32092, Lakeland, Florida; Joseph Summonte, 2940 S. Tamiami Trail, Sarasota, FL 34239; Henry Trawick, P.O. Box 4009, Sarasota, FL 34230; John Graves, 200 S. Washington Blvd., Suite 7, Sarasota, FL 34236; Michael Tessitore, 215 E. Livingston St., Orlando, FL 32801-1508; and J. Brock McClane, 215 E. Livingston St., Orlando, FL 32801-1508, this ____ day of _____, 2005.

_____
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