

## **Exhibit 16**

1           IN THE CIRCUIT COURT  
2           THIRD JUDICIAL CIRCUIT  
3           MADISON COUNTY ILLINOIS

4 -----

5 DeWayne Hubbert, Elden L Graft,  
6 Chris Group, and Rhonda Byngton,  
7 individually and on behalf of all  
8 others similiary situated,

9  
10           Plaintiffs,

11  
12           versus                   Case Number: 02-L-786B

13  
14           Dell Inc.,

15  
16           Defendant.

17  
18 -----

19

20

21           206(a)(1) DEPOSITION

22           VIA TELEPHONE

23

24           The following is the 206(a)(1) deposition

25   of Edward Anderson taken by Jacqueline McKone,

26   Certified Shorthand Reporter, Notary Public, at the

27   law firm of Maslon Edelman, 90 South Seventh Street

21 #3300 in Minneapolis, Minnesota commencing at 1:06

22 p.m. on 29 September 2003.

23

24

25

1 APPEARANCES:

2 On Behalf of the Plaintiff via telephone

3 Stephen Tillery, Esquire  
Korein Tillery  
4 701 Market Street #300  
Saint Louis, Missouri 63101  
5 (314) 241-4844

6 On Behalf Defendant Dell Computers via telephone

7 Matthew Neumeier, Esquire  
Derek Witte, Esquire  
8 Jenner Block  
330 North Wabash #4000  
9 Chicago, Illinois 60611  
(312) 923-2749

10

On Behalf of Gateway via telephone

11

Joseph Whyte, Esquire  
12 Heyl Royster  
103 West Vandalia #100  
13 Edwardsville, Illinois 62023

(618) 656-4646

14

Oh Behalf of the National Arbitration Forum

15

Dawn Van Tassel, Esquire

16

Mason Edelman

90 South Seventh Street #3300

17

Minneapolis, Minnesota 55402

(612) 672-8377

18

19

# I N D E X      P A G E

20

Examination by Mr. Tillery      5

21

Examination by Mr. Whyte      97

Examination by Mr. Neumeier      99

22

23

24

25

1

# E X H I B I T S      P A G E

2 1      NAF code of procedure      30

3 2      Code of procedure      62

4 3      Code excerpt      75

5 4      NAF letter to Ballard Spahr      83

21 What percentage are done that way?  
22 A. I don't know.  
23 Q. Would you agree with me that the largest system  
24 of selection is the third one by the director?  
25 MS. VAN TASSEL: Objection. Foundation.

56

1 The witness just testified he doesn't know.  
2 BY MR. TILLERY:  
3 Q. You can answer sir.  
4 A. I know that when parties are in dispute that  
5 getting them to agree to any procedural --  
6 optional procedural device is challenging. In  
7 any given case, I don't know the answer to your  
8 question, but I'd say in any given case the  
9 likelihood that disputing parties will agree to  
10 a procedural device is low.  
11 Q. Does that mean that in your view the vast  
12 majority of these are selected through the  
13 director?

14 A. The director doesn't select the arbitrator in  
15 any event. The parties select the arbitrator.

16 Q. I can rephrase it. Does that mean that the vast  
17 majority are selected by a process that includes  
18 the director giving candidates?

19 MS. VAN TASSEL: Objection. Foundation.

20 THE WITNESS: I think I've answered the  
21 question. In any given case, it would seem to  
22 me that the likelihood would be that that's  
23 where the parties would end up. Whether that  
24 was good judgment on their part or not.

25 BY MR. TILLERY:

1 Q. You have certainly statistics that bear that  
2 out; right?

3 A. We have the identity of the arbitrator. I don't  
4 know that we have the data that shows the  
5 selection process.

21     sorry, different tasks that they perform are  
22     identified as being compensated at certain  
23     rates.  
24    Q. Give an example of what would cause a 66 and  
25     two-thirds percent type contract versus an 80

59

1     percent contract?  
2    A. I don't know off the top of my head.  
3    Q. Who knows that in National Arbitration Forum to  
4     your knowledge?  
5    A. Somebody who read the contract and had it in  
6     front of them.  
7    Q. You don't know who that would be?  
8    A. It would be me if I had the contract in front of  
9     me.  
10   Q. Are they all the same language contracts?  
11   A. There may have been some minor modifications  
12     over time. I don't know that, but they are  
13     substantively the same.

- 14 Q. If they don't get selected, they don't get paid;  
15 correct?
- 16 A. That's correct.
- 17 Q. The more arbitrations they do, the more they  
18 make; right?
- 19 A. Well, that's one of the variables.
- 20 Q. What are the other variables to increase the  
21 amount they make?
- 22 A. The size of the cases that they are involved in,  
23 and the number of sessions that those various  
24 cases take.
- 25 Q. So if they are involved in two different days of

- 1 arbitration, how would that change their  
2 compensation?
- 3 A. They get paid more.
- 4 Q. How much more?
- 5 A. The portion would be the same as the change in



21 Q. How many times have you met Mr. Kaplinski?

22 A. Twenty maybe. Maybe 12.

23 Q. Has he ever been retained by your firm?

24 A. No.

25 Q. Does he have any kind of financial relationship

86

1 with the National Arbitration Forum?

2 A. No.

3 Q. Do you agree with the first paragraph of the

4 letter?

5 A. The general thrust of the first sentence I think

6 is accurate. I don't know the second -- I don't

7 know anything about the second sentence.

8 Q. Have you ever seen this document before?

9 A. I don't recall seeing it. I may have.

10 Q. Do you dispute its authenticity sir?

11 A. Its authenticity as of what?

12 Q. A letter dated 1998 from Roger Haydock director

13 of arbitration to Alan Kaplinski.

## **Exhibit 17**

NORTH CAROLINA  
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

ADRIANA MCQUILLAN, and  
WALTER JAMES FAUST, on behalf  
of themselves and all other persons similarly  
situated,

Plaintiffs,

v.

CHECK 'N GO OF NORTH CAROLINA,  
INC., CNG FINANCIAL CORPORATION,  
JARED A. DAVIS and A. DAVID DAVIS,

Defendants.

AOC-CV-752

JAMES P. TORRENCE, SR., and BEN HUBERT  
CLINE, on behalf of themselves and all other  
persons similarly situated,

Plaintiffs,

v.

NATIONWIDE BUDGET FINANCE, QC  
HOLDINGS, INC., QC FINANCIAL  
SERVICES, INC., FINANCIAL SERVICES OF  
NORTH CAROLINA, INC., and DON EARLY,

Defendants.

05-CVS-0447

**AFFIDAVIT OF F. PAUL BLAND**

I, F. Paul Bland, Jr., being first duly sworn, deposes and says that:

1. I make this affidavit based on my personal knowledge. I am an attorney licensed to practice law in Maryland and the District of Columbia.

2. I was counsel for the consumer plaintiffs in *Toppings v. Meritech Mortgage, Inc.*, 569 S.E.2d 149 (W. Va. 2002), and co-argued that case in the West Virginia Supreme Court of

Appeals.

3. In the *Toppings* case, we filed a deposition notice and a subpoena duces tecum with the National Arbitration Forum ("NAF"). After some resistance and negotiation, the NAF agreed to search its files and produce documents responsive to that subpoena.

4. The documents that NAF produced pursuant to our subpoena, most of which were on the NAF's own letterhead, were admitted into evidence in the West Virginia state trial court in the *Toppings* case. Later, those documents were made part of the record on appeal when the case was before the West Virginia Supreme Court of Appeals.

5. The documents attached at Exhibits 1, 2, 3, 4, 5, 7, and 8 to this affidavit are true and accurate copies of some of the documents that were produced from the NAF's files and were submitted to the courts in the *Toppings* case.

6. I consulted informally for the consumer plaintiffs in a case that was litigated in Alabama state courts captioned *Bownes v. First USA*. The claims in this case included allegations that First USA was delaying the processing of consumers' payments on their credit cards, so that they could be charged late fees even if they had paid their bills by the due date. In the *Bownes* case, after great resistance and the entry of a court order, First USA produced sworn responses to interrogatories promulgated by plaintiffs.

7. A true and accurate copy of this set of First USA's interrogatory answers in the *Bownes* case are attached as Exhibit 6 hereto.

I, F. Paul Bland, Jr., do hereby declare under the penalties of perjury under the laws of North Carolina that the foregoing affidavit consisting of seven paragraphs is true and correct.

F. Paul Bland  
F. Paul Bland, Jr.

Subscribed and sworn to:

This 3<sup>th</sup> day of August, 2005.

Cassanova M.  
Notary Public

**Attachment 1**

**to the**

**Bland Affidavit**

The  
alternative  
to the  
million  
dollar  
lawsuit...

...reasonable costs.

...rational results.

*"Every contract of consequence ought to be treated as a candidate for binding private arbitration."*

— Warren Burger  
Chief Justice, United States Supreme Court

# ...real legal reform.



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**Attachment 2**

**to the**

**Bland Affidavit**

PLAINTIFF'S  
EXHIBIT

6-19-61

September 23, 1996

Richard E. Shephard  
Asst. Gen'l Counsel  
Saxon Mortgage, Inc.  
4880 Cox Rd.  
Glen Allen, VA 23060



NATIONAL  
ARBITRATION  
FORUM

Dear Richard:

Thanks for your call last week. It was good talking to you.

Following on our conversation, I am enclosing the National Arbitration Forum's 1996 Arbitration Overview for your review.

By adding arbitration language to your contracts, the National Arbitration Forum's national system of arbitration lets you minimize lawsuits, and the threat of lender liability jury verdicts.

We have successfully handled more than 20,000 creditor-debtor and other cases nationwide. You will probably be most interested in the Gammara case that is enclosed since it involves the National Arbitration Forum in a mortgage transaction.

After you have had a chance to review these materials, I will give you a call. In the meantime, if you have any questions, do not hesitate to contact me.

Sincerely,

Curtis D. Brown, Esq.  
Director of Development

CDB/ljs  
Enclosures

**Attachment 3**

**to the**

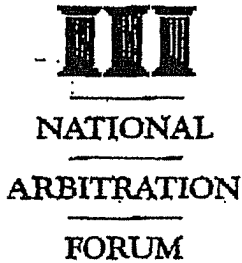
**Bland Affidavit**

January 29, 1997

received  
2/3/97

PLAINTIFF'S  
EXHIBIT

3  
6-19-01



Richard Sheppard  
General Counsel  
Saxon Mortgage, Inc.  
4880 Cox Rd.  
Glen Allen, VA 23060

Dear Richard:

Enclosed is the information you requested. As these articles point out, arbitration has great advantages over litigation. There is no reason for Saxon Mortgage, Inc. to be exposed to the costs and risks of the jury system.

When considering arbitration providers, remember, all arbitration is not the same. The Forum's procedures offer the most rational system for lenders and their customers. At the National Arbitration Forum:

Every issue is resolved according to the law.

Every decision is made by a legal professional.


Every award is limited to the amount claimed.

Every claim is decided on its own merits.

To review further information regarding arbitration law and implementing arbitration in your business, give us a call at 800/474-2371.

Sincerely,

National Arbitration Forum

  
Leif Stennes  
Policy Analyst

LMS:ls  
Enc



**Attachment 4**

**to the**

**Bland Affidavit**

## Legal Memorandum

DATE: October 1, 1997

TO: [REDACTED]

FROM: Forum Counsel

SUBJECT: Arbitration & Class Actions in Financing

CONCLUSION: Forum Arbitrations may not be consolidated into class actions unless all parties consent.

AUTHORITIES: Champ v. Siegel Trading Company, 55 F.3d 269 (7th Cir. 1995);  
Gamman v. Thorp Discount, 828 F. Supp. 673 (D. Minn. 1992)

In the court system, financing transactions are always at risk for Class Action treatment. Rule 23 of the Federal Rules of Civil Procedure (and the state equivalents) provides that claims will be consolidated if:

1. There are common questions of law or fact; and
2. The claims of the "representative" are typical of those of the purported members of the class.

Most often, the claims of class action plaintiffs' lawyers are based on printed or computer-generated documents or standard procedure manuals, which leave little room to argue against "commonality" and "typicality". Even when "fraud" claims are made, which sometimes are more "personal", lenders run the risk that some court will find the requisite standard.

Faced with this reality, even spurious "class" claims will frequently be settled, since the costs and risks (even when discounted for probability) are so extreme that defense cannot be economically justified. Numerous commentators have argued that these cases are among the most prominent examples of abuse of the court system, but no change in these standards seems likely in the near term.

Since California banks began using arbitration in financing transactions in 1985, attention has been focused on the interplay between arbitration procedures and "class action" type consolidation of claims. In these and other cases, plaintiffs' lawyers have argued that, although a case will be decided outside the court system, Rule 23 standards should be applied to the "bundling" of claims. Defendants, for the most part, have resisted. Accordingly, the courts have addressed the issue in a variety of circumstances.

### PRE-SOUTHLAND OPINIONS

Prior to the application of the Federal Arbitration Act to virtually all arbitration agreements by the U.S. Supreme Court (see opinions Southland v. Keating, 465 U.S. 1 (1985) through Allco-Bruce Terminex v. Dobson, 115 S.Ct. 834. (1995)).

some courts relied on the express language of the parties to the contract, the arbitration rules, or state law to allow "consolidation" or "joinder" of multiple parties into a single arbitration. The leading case in this regard is Compania Espanola de Petroleos v. Nereus Shipping, 527 F.2d 966 (2d Cir. 1975). Although procedurally complex, this case stood for the proposition that, absent language or arbitration rules to the contrary, under state law, the court had the authority to have the arbitrator(s) decide the claims of multiple parties, over the objection of one or more of the parties.

However, even prior to the "federalization" of arbitration law, the majority of federal courts had declined to adopt that standard. These courts held that, in cases in which the Federal Arbitration Act applied, the courts' authority was restricted to that granted by Section 4 of the Act. The court could only enforce the agreement of the parties, as reflected by the language of the agreement or the agreed rules of arbitration. Weyerhaeuser v. Western Seas Shipping, 743 F.2d 836 (9th Cir. 1984), cert. denied, 469 U.S. 1061 (1984); Del Webb Construction v. Richardson, 623 F.2d 145 (5th Cir. 1987); Baessler v. Continental Grain, 900 F.2d 1193 (8th Cir. 1990). Unless the arbitration rules provided for class treatment, there would be no class action.

#### "FEDERALIZATION" OF ARBITRATION LAW

Beginning in 1985, the U.S. Supreme court began to hear a series of cases which, when resolved, would "federalize" the law regarding all arbitration agreements. In the first of these opinions, Southland v. Keating, supra, the court, for the first time, prohibited state legislatures, courts, and regulators from applying higher standards to arbitration agreements than those applied to any other contract term. In a group of opinions culminating with the Terminex case, the court changed the law of arbitration to make it clear that the Federal Arbitration Act controlled almost all arbitrations.

These cases involved nearly every kind of agreement and every type of arbitration clause, including the consumer contracts litigated in Terminex. The Supreme Court regularly expanded the reach of FAA authority to the full breadth of the Commerce Clause. This result was reiterated in 1996, in Doctors Associates, Inc. v. Cesarotto, 116 S.Ct. 1652 (1996), where, after the Montana Supreme Court attempted to create a narrow exception to the blanket rule created by the Supreme Court, the Court held that arbitration agreements were always enforceable, except on the grounds that apply to all contract terms, such as fraud or unconscionability.

#### CLASS CLAIMS UNDER THE FAA

After the Supreme Court effectively applied the Federal Act to all arbitrations, few attempts have been made to claim "class" status for arbitrable claims. Those that have been asserted have been soundly rejected. Courts have addressed the issues squarely and have held that, where the arbitration rules did not specifically provide for arbitration on a class basis, under the FAA, the court may not order it. Champ v. Siegel Trading Company, 55 F.3d 269 (7th Cir. 1995); Gammaro v. Thorpe Discount, 828 F. Supp. 673 (D. Minn. 1993); McCarthy v. Providential Corp. 1994 WL 387852 (N.D. Cal. 1994). Of note, Gammaro (app. dismissed, 15 F.3d 93 (8th Cir. 1994)), involved a consumer lending document which incorporated the Code of the National Arbitration Forum. Although the claims were both "common" and "typical", Forum Rule 19.

A. was held to prohibit "class" treatment.

Courts have specifically held that signors of a mandatory arbitration agreement are excluded from a class action by similarly situated plaintiffs (who had not signed the arbitration agreement). Collins v. Int'l. Dairy Queen, Inc., 169 F.R.D. 690 (M.D. Ga. 1997). Similarly, where claimed class members had signed an agreement to arbitrate, the class action would be enjoined and individual arbitrations would be ordered. Doctor's Associates v. Hollingsworth, 949 F.Supp. 77 (D. Conn. 1996).

The current status of the law is that the FAA covers all but the most unusual arbitration agreements. Under the FAA, the courts' authority to consolidate claims in any way is severely limited and always limited by the arbitration rules. Therefore:

- If the parties provide for "class" treatment, by agreement or by arbitration rules, the court will order such a procedure;
- If the rules prohibit such treatment, as the Forum Code does, the courts will not order "class" treatment;
- If the rules are silent, as are the AAA rules and others, the result could vary from state to state or Circuit to Circuit.

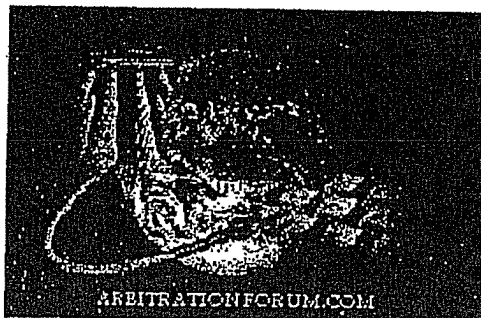
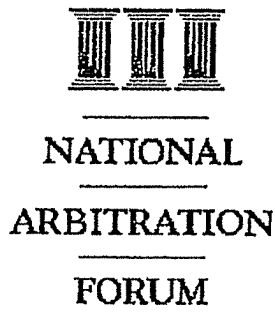


**Attachment 5**

**to the**

**Bland Affidavit**

**Legal Decisions . . . Worldwide.**



**Vol. , No.**

Welcome to Domain-News, a complimentary news service of the National Arbitration Forum. The Forum is one of the world's largest neutral administrators of arbitration services and one of four ICANN-approved providers. We invite you to visit our Web site at [www.arbitration-forum.com](http://www.arbitration-forum.com).

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**IN THIS ISSUE . . .**

**Rock Band Recovers Name**

**Forum Complaint Requirements**

**Online ADR Trade Association Forms**

**News From Around the World**

**RECENT DECISIONS**

**Master of Domains: [metallica.org](http://metallica.org)**

When the famous rock band Metallica contacted the "metallica.org" domain-name owner, he thought it was a prime opportunity. He offered to transfer the name to the band once a few conditions were met. The band refused to meet them. Metallica would not provide the domain-name owner with an interview or call his friends and leave messages for them. Instead, they filed a claim under the UDRP and prevailed. The Panel found that the Respondent's demands were

evidence of bad faith and ordered that the name be transferred to Metallica. *Metallica v. Josh Schneider*, FA 95636 (Nat. Arb. Forum, Oct. 18, 2000). <http://www.arbitration-forum.com/domains/decisions/95636.htm>

#### **Charged-Up Name: batteryplanet.com**

The Complainant has used its mark, Planet Battery, in commerce since 1997. The Respondent registered the domain name, "batteryplanet.com" in 1999 and provided links to other companies including the Complainant's. The Panel found that the names were not confusingly similar and that an Internet user would not be confused when trying to find the Complainant's site on the Internet. It ordered that the name registration remain with the Respondent. *Mule Lighting, Inc. v. CPA*, FA 95558 (Nat. Arb. Forum, Oct. 17, 2000). <http://www.arbitration-forum.com/domains/decisions/95558.htm>

#### **How Famous Can You Get?: wwwmarriot.com**

The Complainant has used its mark to identify its goods and services for over 40 years, and it has also had an Internet presence for over 6 years. The Panel found that these facts imputed constructive, if not actual knowledge, of Complainant's mark to the Respondent. The panel ordered that the name be transferred to the Complainant. *Marriott Int'l, Inc. v. Momm Amed Ia*, FA 95573 (Nat. Arb. Forum, Oct. 23, 2000). <http://www.arbitration-forum.com/domains/decisions/95573.htm>

#### **Buy Low, Sell High: stocksplus.com**

Although the Respondent removed all evidence from his web site "stocksplus.com" by the time Complainant filed its complaint, the Panel found that the site once displayed an offer. The site used to contain a notice stating that the domain name was for sale at a price of \$45,000. The Panel held that this was evidence of registration and use of a domain name in bad faith and ordered the Registrar to transfer the registration to the Complainant. *Pacific Invest. Mgmt. Co., LLC v. Alex Szabo*, FA 95614 (Nat. Arb. Forum, Oct. 18, 2000). <http://www.arbitration-forum.com/domains/decisions/95614.htm>

### **PROCEDURAL UPDATES**

Under the Forum's Supplemental Rules, a Complaint or Response can only be ten (10) pages long. However, the amount of annexed material is unlimited.

### **E-PRACTICE**

#### **Banding Together: Online ADR Providers Align with Each Other**

A group of online alternative dispute resolution (ADR) providers has formed a trade association. The Coalition of Internet Dispute Resolvers (CIDR) will primarily focus its efforts on asking the federal government to provide incentives for online companies utilizing online ADR services.

Online ADR appears to be the wave of the near future. As the e-commerce industry grows, businesses and end-users alike are displaying a need for a safe, reliable system for dispute resolution that reflects the nature of online transactions. Online ADR provides users with a fast and cost-effective method for resolving disputes.

Sources: Justin Kelly, Group to Seek Tax Incentive, Compliance Fund for Online ADR,

adrworld.com (Nov. 1, 2000).

## **IN THE NEWS**

### **Going Dotty Over Net Names**

Sydney Morning Herald (4 November 2000). With ICANN adopting new generic top-level domains (gTLDs) by year's end and ccTLDs registries increasing accessibility, domain-name registrants appear to have a wide range of choices. ICANN is currently accepting applications from Registrars wanting to offer the new gTLDs for registration.

### **Character Debate: CNNIC opposes foreign firms registering Chinese-language domain names**

China Online (4 November 2000). China Internet Network Information Center (CNNIC) officials are voicing their disdain at U.S. registrars offering Chinese-character domain names. CNNIC believes that the Chinese government must first approve this service.

### **Watch Out for the Partitioned Web**

The Globe and Mail (2 November 2000). With the introduction of new gTLDs, trademark attorneys are predicting a new wave of cybersquatting. There are currently proposals in front of ICANN to protect trademark owners' rights when the new gTLDs are offered for registration.

### **South Africa to Bid for Ownership of southafrica.com Name**

Africa News Service (1 November 2000). The South African communications department plans to file a UDRP complaint against a private U.S. company for the ownership<sup>3</sup> of the domain name southafrica.com. The resolution of geographic names under ICANN's UDRP has sparked some controversy among trademark law practitioners.

## **UPCOMING EVENTS**

The Forum's Acting Director of Arbitration, Roger Haydock, will be appearing at the online conference **Arbitration2000**. The conference will be held at [www.arbitration2000.com](http://www.arbitration2000.com) November 16-30, 2000.

ICANN's Annual Meeting will take place in Marina del Rey, California November 13-16, 2000.

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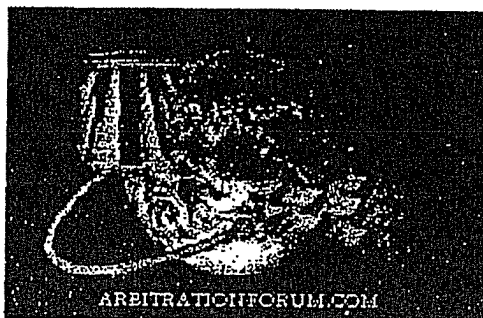
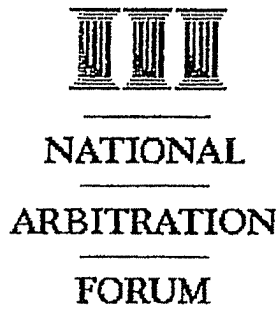
To file a domain name dispute resolution claim, see <http://www.arbitration-forum.com/domains>

Questions regarding domain name dispute resolution or e-commerce arbitration may be directed to Kristen Porter, Manager, E-Commerce Services, [kporter@arb-forum.com](mailto:kporter@arb-forum.com)

If for any reason you would like to unsubscribe, e-mail us at [domain-news@arb-forum.com](mailto:domain-news@arb-forum.com).

Simply write the word UNSUBSCRIBE in the subject bar.

**Note:** The information found in this newsletter is designed to provide accurate and authoritative information regarding the subject covered, but is not intended as legal advice.



**Vol. 2, No. 4**

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**IN THIS ISSUE . . .**

**Porn Star in Heated Dispute**

**Show Me the eMoney**

**Multiple Domain Filing Costs Less**

**RECENT DECISIONS**

**Rose Bowl Kicks Out Squatter**

When it comes to the Rose Bowl, everyone wants a piece of the action. This seventy-nine year collegiate football tradition was the subject of a domain name dispute. In this contest, the Pasadena Tournament of Roses Association came out the winner. A California webmaster registered the domain name [rosebowlgame.com](http://rosebowlgame.com), claiming he wanted it to become the official website for the Rose Bowl Game. The Panel found that the holder of the domain name was "squatting" in bad faith and ordered the name transferred. *Pasadena Tournament of Roses Ass'n Inc. v. Wholesale Co.*, FA 96675 (Nat. Arb. Forum Apr. 2, 2001). <http://www.arbitration-forum.com/domains/decisions/96675.htm>

## Parties Don't See Eye-to-Eye over Bankruptcy

In furtherance of a combined marketing effort between Premier Laser Systems, the owner of the "EYESYS" trademark, and EyeSys Vision Group, the latter acquired the **eyesys.com** domain name. This domain name linked to a website that marketed both parties' products. When Premier filed bankruptcy, the relationship between the two parties ended and a domain name dispute ensued. In transferring the domain name to Premier, the Panel brought the dispute into focus. The Panel found that, once the joint marketing deal ceased, EyeSys had no rights or legitimate interest to use Premier's EYESYS mark in a domain name. *Premier Laser Sys., Inc. v. EyeSys Vision Group*, FA 96638 (Nat. Arb. Forum Mar. 24, 2001). <http://www.arbitration-forum.com/domains/decisions/96638.htm>

## Johnny Unitas Wins Another One

Hall of Fame quarterback Johnny Unitas prevailed in a challenge with a Baltimore attorney over the Internet domain name, **johunits.com**. The dispute, was concluded in just five weeks. According to the Baltimore Sun, the director of business and legal affairs for Unitas' management company, Jonathan Gaber, was "surprised by the speed of the arbitration." *Unitas Management Corp. v. Noreserve Inc.*, FA 96671 (Nat. Arb. Forum Mar. 22, 2001). <http://www.arbitration-forum.com/domains/decisions/96671.htm>

## Panel Says "Show Me the eMoney" Mark

EMONEY GROUP, Inc., a Cleveland, Ohio company, sought to gain control of the domain name **emoney.com**. However, the three member Panel found that the terms contained in the domain name were generic and had not acquired secondary meaning as a trademark. The Panel held that because EMONEY Group was not able to demonstrate that it possessed any relevant trademark rights in the EMONEY mark, the Complaint must fail. *EMONEY GROUP, Inc. v. Eom, Sang Sik*, FA 96337 (Nat. Arb. Forum Mar. 26, 2001). <http://www.arbitration-forum.com/domains/decisions/96337.htm>

## Fictitious Corporate Front Can't Keep Domain Name

Amherst Corporate Sales and Solutions, a New Hampshire computer products and services company sought return of **customcommerce.com**, a domain name containing its CUSTOM COMMERCE registered trademark. Amherst's several attempts to locate Respondent proved fruitless. Respondent's corporation was not registered in California, not qualified to do business in California, not listed in any California phone directory, and did not accept mail at its listed address. The Panel determined that such conduct reveals bad faith registration and use. Such a party should not be allowed to retain a domain name where "it has sought to deceive the business community into believing that it is truly a corporation which has registered the domain name for legitimate use." *Amherst LLC v. IFC Corp.*, FA 96768 (Nat. Arb. Forum Apr. 3, 2001). <http://www.arbitration-forum.com/domains/decisions/96768.htm>

## PROCEDURAL UPDATES

### Forum Website Improvements

If you haven't visited recently, you may want to check out the Forum's newly enhanced website (<http://www.arbitration-forum.com>). In addition to updated forms and improved filing instructions, we have added Instructions for filing additional submissions and a searchable list of decisions and

panelists.

### **Multiple Domain Name Filing Easier, Faster, and Cheaper at the Forum**

On February 1, 2001, the Forum introduced a new rate structure that significantly reduced the filing fees for multiple domain name filings. The Forum continues to receive praise for our helpful website and conscientious case coordinators. Cases are completed on average in the shortest time. You can find our fee schedule online at the Forum website. For cases involving sixteen or more domain names, contact us at [info@arb-forum.com](mailto:info@arb-forum.com) or by telephone at 1-800-474-2371 for a fee calculation.

## **E-PRACTICE**

### **The National Arbitration Forum Selected as New.net Dispute Provider**

The latest entrant into the field of domain name registration is New.net (<http://www.new.net>), a Pasadena, California company that uses a browser plug-in to permits users access to twenty additional suffixes such as ".shop," ".kids," ".game," ".inc," ".xxx," etc. In an effort to prevent cybersquatting and to provide for resolution of disputes that may arise, New.net has adopted the Model Domain Name Dispute Resolution Policy (MDRP) based on ICANN's UDRP. New.net has chosen the Forum to be one of the dispute resolution providers under this Policy. The Forum anticipates that a dispute heard under the MDRP will be handled in a fashion virtually identical to ICANN UDRP disputes.

## **IN THE NEWS**

### **ICANN says new domains won't lead to cybersquatting**

Reuters (March 22, 2001). An official with the Internet's top naming authority told a congressional subcommittee on Thursday that the introduction of new domains such as .biz and .pro would not lead to an increase in cybersquatting.

Louis Touton, vice president and general counsel for the Internet Corporation for Assigned Names and Numbers (ICANN), told the House Judiciary Committee's intellectual-property subcommittee that companies in charge of the seven new domains will take steps to ensure that new Internet addresses such as [www.coke.biz](http://www.coke.biz) would only be awarded to legitimate copyright holders.

### **Top Adult Entertainer Prevails in Heated Domain Name Dispute**

Business Wire (April 9, 2001). Stacy Valentine, a well-known female adult entertainer, was recently awarded a [domain name using a] misspelling of her common-law trademark name ([staceyvalentine.com](http://staceyvalentine.com)).

"Going to The National Arbitration Forum was the best choice we could have made. [The proceeding] was based on facts, and policies were followed," said Keith Condon of Atlas Multimedia Inc., who prepared Valentine's argument and represented her through the dispute.

Valentine was recently the subject of acclaimed PBS filmmaker Christine Fugate's "Girl Next Door" movie, released last year in mainstream theaters across the United States.

### **ICANN warns against new domain preregistrations**



InfoWorld Daily News (March 28, 2001). With seven new Internet TLDs (top-level domains) due to officially become available later this year, some domain name registrars are getting an early start and offering preregistrations to companies. But that practice has risks for users, according to the organization that oversees the DNS.

Brett LaGrande, a spokesman for ICANN, said companies cannot be guaranteed the use of domain names that they preregister because all the details still have not been finalized for the planned addition of the new domains chosen last fall by the organization's board.

#### **Judge: Sex.com was stolen, \$65M owed**

USA Today (April 5, 2001). A fugitive cyberporn czar must pay a record \$65 million and relinquish all assets of Sex.com because he stole the coveted domain name, a federal judge ruled late Tuesday.

U.S. District Judge James Ware ordered Stephen Michael Cohen to transfer all Sex.com-related assets to Gary Kremen, a Silicon Valley executive who first registered the domain name in May 1994.

Cohen also owes Kremen \$40 million in compensatory damages and \$25 million in punitive damages, the judge said in an 11-page decision.

The ruling is the largest for damages in a domain-name dispute, Kremen's lawyers say.

#### **UPCOMING EVENTS**

The National Arbitration Forum will be at the ABA Third Annual ADR Conference, "Collaboration in the Capital: The Power of ADR" to be held in Arlington, VA, April 26-28, 2001. Roger Haydock, Director of Education, will host a booth – stop by with your questions and comments.

Ethan Katsh and Janet Rifkin, professors of legal studies at the University of Massachusetts, Amherst and codirectors of the Center for Information Technology and Dispute Resolution have authored *Online Dispute Resolution: Conflict Resolution in Cyberspace*, to be released by Jossey-Bass on April 26, 2001. The Center also sponsors the ADRonline Monthly, available at <http://www.umass.edu/dispute/adronline.html>.

The INTA Annual Meeting will take place in San Francisco, CA, May 5-9, 2001.

PLI will present an Advanced Trademark Seminar covering Domain Name Disputes in New York on May 23, 2001. Tim Cole, Assistant Director of Arbitration at the Forum, will be on the panel.

The American Bar Association Task Force on E-commerce & ADR is seeking input from a broad range of parties as part of its research and outreach efforts. The Task Force has created four online surveys in order to obtain responses from parties located in many parts of the world and throughout the United States.

The surveys can be found at the Task Force website and can be completed online:  
<http://www.law.washington.edu/ABa-eADR/surveys/index.html>.

Let us know of your upcoming events for listing in DomainNews. Send event listing information to: [domain-news@arb-forum.com](mailto:domain-news@arb-forum.com).

6/12/01

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To file a domain name dispute resolution claim, see [www.arbitration-forum.com/domains/](http://www.arbitration-forum.com/domains/)

Questions regarding domain name dispute resolution or e-commerce arbitration may be directed to Tim Cole, Assistant Director of Arbitration, [tcole@arb-forum.com](mailto:tcole@arb-forum.com).

If for any reason you would like to unsubscribe, e-mail us at [domain-news@arb-forum.com](mailto:domain-news@arb-forum.com). Simply write the word UNSUBSCRIBE in the subject bar.

Note: The information found in this newsletter is designed to provide accurate and authoritative information regarding the subject covered, but is not intended as legal advice.

**Attachment 6**

**to the**

**Bland Affidavit**

MAAPP file  
§ 2-II

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

MICHAEL A. BOWNES,

Plaintiff,

v.

FIRST USA BANK, N.A.; VISA U.S.A.,  
INC.; et al.,

Defendants.

Civil Action No. 99-2479-PR

**ANSWERS AND OBJECTIONS OF FIRST USA BANK, N.A. TO  
PLAINTIFF'S SECOND SET OF INTERROGATORIES**

COMES NOW the Defendant, First USA Bank, N.A. ("Bank") and for answer and objection to the Plaintiff's Second Set of Interrogatories, states as follows:

**GENERAL OBJECTIONS APPLICABLE TO ALL INTERROGATORIES**

1. The Bank objects generally to the interrogatories in their entirety on the grounds that the Plaintiff is required to arbitrate his claims against the Bank and discovery is unnecessary with respect to the arbitration issues. However, because the trial court has expressly authorized discovery on the arbitration issues, the Bank shall furnish its answers without waiver of its objection to discovery and without waiver of its motion to compel the Plaintiff to pursue his claims against the Bank in arbitration.

2. The Bank objects to responding to certain of the discovery requests that seek information related to the merits of this case. Discovery on the merits is improper because (1) this case must be arbitrated and (2) even if this litigation is allowed to go forward in

- (b) In whose favor the claim was resolved and the amount;
- (c) The name and address of the arbitrator; and
- (d) The name and address of the arbitration association.

**Answer/Objection:** All arbitrations have been conducted by the National Arbitration Forum ("NAF"). The Bank objects to furnishing the additional information requested on the grounds that it is irrelevant and immaterial to the arbitration issues pending before the Court and the furnishing of this information will not lead to the discovery of admissible evidence. The Bank further objects to providing the information requested because the rules of the NAF, which is the entity to conduct arbitrations between the Bank and cardmembers, specifically provide that the arbitration proceedings are confidential unless the parties agree otherwise. Without waiver of this objection, please see Exhibit 1 which depicts on a summary basis the number of arbitrations to which the Bank was a party and the outcome.

13. State the number of disputes in which you have invoked arbitration.

**Answer/Objection:** Approximately 51,000.

14. Fully describe each and every document or thing which this Defendant will rely upon or seek to introduce in defense of Plaintiff's claims with regard to the arbitration clause.

**Answer/Objection:** The attorneys for the Bank will decide which documents the Bank will rely upon or seek to introduce in defense of the Plaintiff's claims with regard to the arbitration provision.

15. State with particularity each and every document which discloses to

Arbitrations Filed By First USA BankOutcome of Arbitrations

| <u>Status</u>                            | <u>Total</u> |                      |              |
|--|--------------|----------------------|--------------|
| Desk Hearing Award-No Response           | 17293        | Cardmember prevailed | 87           |
| Desk Hearing Pending Filed by Cardmember | 1            | First USA Prevailed  | 19618        |
| Dismissed Per Agreement Settlement       | 4823         | Pending Claims       | 3066         |
| Dismissed-Arbitrator Paid by First USA   | 59           | Expired Claims       | <u>28248</u> |
| Dismissed-No Service In 90 Days          | 23425        | Total                | 51622        |
| Dismissed-Per Request of First USA       | 25           |                      |              |
| Dismissed-Without Prejudice              | 3            |                      |              |
| Doc Hearing Pending-Arbitrator Appointed | 5            |                      |              |
| Document Hearing Pending                 | 7            |                      |              |
| Document Hearing-Need Information        | 1            |                      |              |
| Document Hearing-Pending Mailing         | 21           |                      |              |
| Document Hearing Award                   | 2542         |                      |              |
| Exception-Extension Granted              | 1            |                      |              |
| Exception-Pending Information            | 1            |                      |              |
| Participatory Hearing Award              | 8            |                      |              |
| Pending Response                         | 391          |                      |              |
| Pending Service                          | 2905         |                      |              |
| Stay-Bankruptcy                          | <u>111</u>   |                      |              |
| Total Claims                             | 51622        |                      |              |

Arbitrations Filed Against First USA Bank

| <u>Status</u>           | <u>Total</u> |
|-------------------------|--------------|
| Settled                 | 1            |
| Pending                 | 1            |
| Award Against First USA | <u>2</u>     |
| Total                   | 4            |

Exhibit 1

**Attachment 7**

**to the**

**Bland Affidavit**



**NATIONAL  
ARBITRATION  
FORUM**

**CODE OF PROCEDURE**

- **ARBITRATORS FOLLOW THE LAW** - Predictable decisions based on legal standards.
- **AWARDS LIMITED** - Awards may not exceed claim for which fee paid
- **UNIFORM NATIONAL SYSTEM** - Same rules, same procedures - every case, everywhere.
- **PROFESSIONALS** - Decisions are made legal professional, not jurors or volunteers.
- **COST CONTROL** - The cost of arbitration is far lower than any lawsuit.
- **LIMITED DISCOVERY** - Very little, if any, discovery and pre-hearing maneuvering.
- **PRIVATE** - Arbitration proceedings are completely private.
- **NO SPURIOUS CLAIMS** - Arbitration procedures discourage lawsuit extortion.
- **LOSER PAYS** - Prevailing party may be awarded costs.

Minneapolis, MN

Atlanta, GA

Brunswick, NJ

Ft. Myers, FL

San Francisco, CA

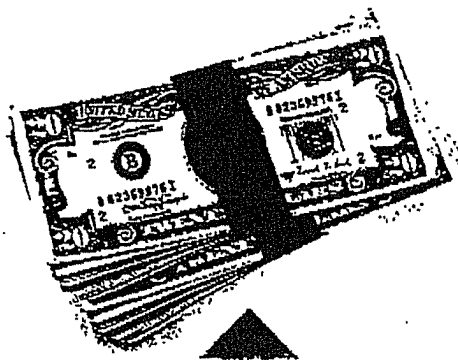
Washington, D.C.



**Attachment 8**

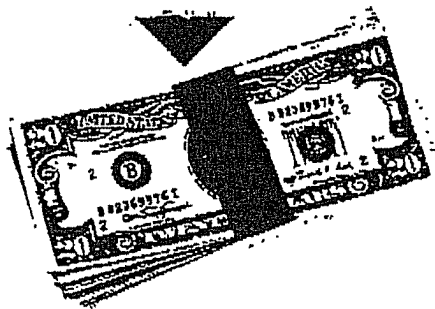
**to the**

**Bland Affidavit**



Keep this

spend that.



# Arbitration can save up to 66% of your collection costs.

Arbitration can save your money and your time collecting delinquent accounts. Sixty-six percent, according to *Corporate Cashflow*\*. Saving the money you've been spending on court costs, attorney fees, and discovery. And arbitration moves faster than litigation — putting you first in line. Learn how using arbitration can help you keep most of your collection costs. Call us at **1-800-474-2371**.

The National Arbitration Forum. One system, nationwide...  
deciding cases since 1986.



**NATIONAL  
ARBITRATION  
FORUM**

## **Exhibit 18**

N-R

**III**  
**NATIONAL**  
**ARBITRATION**  
**FORUM**

January 14, 1999

Robert S. Banks, Jr.  
KOIN Center, Suite 1450; 222 S.W. Columbia  
Portland, OR 97201

Dear Robert:

A number of courts around the country have held that a properly-drafted arbitration clause in credit applications and agreements eliminates class actions and ensures that credit-related lawsuits will be directed to arbitration, not a jury trial.

All arbitration is not the same. The Forum is one of the two largest arbitration providers in the country for a reason.

- The Forum is nationwide, with arbitrators in every federal judicial district.
- Forum arbitrators make decisions based on the law—not "equity" like some other arbitration providers. At a minimum, they have more than 15 years of legal experience and have arbitrated commercial, financial, and business disputes.
- The Forum's fees are reasonably priced to be accessible to consumers and businesses alike, making it the only system that truly works in consumer disputes.

We have a number of information resources on arbitration law and how arbitration will make a positive impact on the bottom line. Contact Leslee Nelson at 800-474-2371 for a free information packet.

Regards,



Curtis D. Brown  
V.P. and General Counsel

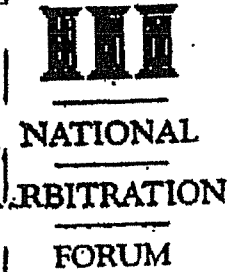
CDB/klf  
Enclosure



## **Exhibit 19**

Thursday, April 16, 1998

Alan Kaplinsky, Esq.  
Ballard, Spahr, Andrews & Ingersoll  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599



Dear Alan:

As you know, the only thing which will prevent "Year 2000" class actions is an arbitration clause in every contract, note, and security agreement. As you can see in the attached *Newsweek* article, the "class action" bar is preparing right now for those January, 2000 claims.

At the same time, important changes to the *National Arbitration Forum's Code of Procedure* make it easier than ever to move all claims to arbitration. Substantial reductions in fees for some cases make arbitration even more affordable. (See attached recent press release). These changes allow claims through the *Forum* to be resolved more quickly, fairly, and efficiently than ever.

The goal of the *National Arbitration Forum* is to provide a modern, efficient system for resolving disputes. The *Forum* is always striving to improve decision making and procedural systems.

Now you can join the others who have turned to the *Forum* for effective, inexpensive arbitration. (See attached list of some current *Forum* users). Give us a call to get a copy of the new *Code* and *Fee Schedule* or visit [www.arb-forum.com](http://www.arb-forum.com).

Call us to learn more about how these changes can benefit you or to receive our complimentary Legal Memorandum, *Arbitration & Class Actions*.

Sincerely,

  
Roger S. Haydock, Esq.  
Director of Arbitration

NATIONAL ARBITRATION FORUM

RSH:mkm

Enc

Minneapolis, MN

Atlanta, GA

Brunswick, NJ

Charlotte, NC

Fl. Myers, FL

Washington, D.C.