Case No. 03-10799-HH

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

LINDA GILCHRIST, JOANNE ZIPPERER, JACKIE VALENTINE,
Individually and on behalf of a class,

Plaintiffs/Appellees,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY, ALLSTATE INSURANCE COMPANY,
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,
GOVERNMENT EMPLOYEES INSURANCE CORPORATION,

Defendants/Appellants.

On Appeal from the United States District Court
For the Northern District of Florida

BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS/APPELLANTS

Robin S. Conrad
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337
Fax: (202) 463-5346

Donald J. Russell
Kathryn S. Zecca
ROBBINS, RUSSELL, ENGLERT,
ORSECK & UNTEREINER LLP
1801 K Street, N.W., Suite 411
Washington, D.C. 20006
(202) 775-4500
Fax: (202) 775-4510

Counsel for Amicus Curiae Chamber of Commerce of the United States

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1-1, in addition to the parties and entities identified in the Certificate of Interested Persons and Corporate Disclosure Statement of the Appellants/Defendants, which is hereby incorporated by reference into this Certificate, the Chamber of Commerce of the United States submits that the following additional persons and entities that have an interest in the outcome of this matter:

Amicus Curiae

Chamber of Commerce of the United States

Counsel for *Amicus Curiae*

Robin S. Conrad, Esquire, National Chamber Litigation Center, Inc.

Donald J. Russell, Esquire, Robbins, Russell, Englert, Orseck & Untereiner LLP, Washington, D.C.

Kathryn S. Zecca, Esquire, Robbins, Russell, Englert, Orseck & Untereiner LLP, Washington, D.C.

_____

Attorney of Record for *Amicus Curiae*
Chamber of Commerce of the United States

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

FEDERAL RULES:

MISCELLANEOUS:

INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States (the Chamber), a nonprofit corporation organized under the laws of the District of Columbia, is the world's largest business federation. The Chamber represents an underlying membership of more than three million companies and professional organizations of every size, in every industry section, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of vital concern to the nation's business community.

Chamber members are routinely named as defendants in litigation in which plaintiffs seek class certification. Because of their experience in these matters, the Chamber is well situated to brief this Court on the importance of the issues beyond the immediate concerns of the parties.

The Chamber takes no position on the merits of the underlying antitrust action here, but the Chamber emphatically agrees with appellants that the District Court's class certification decision in this case should be reversed. That decision rests on an incorrect view of the nature of the findings required to maintain a class action – a view that would eviscerate the strict requirements of Rule 23 and lead to the improper certification of classes in many cases.

That result would have severe negative consequences for the Chamber's members and for the public. Class certification can transform a modest case into

one with millions of claimants and billions of dollars in damages. Improper class certifications generate overwhelming pressure on defendants to settle cases, *regardless of the merits*, because defendants simply cannot "bet the company" on a single jury verdict, even if they believe there is an overwhelming likelihood that they will win a trial on the merits. For this reason, the Chamber and its members have a strong interest in promoting adherence to the strict requirements of Rule 23.

STATEMENT OF THE ISSUES

Did the District Court err in certifying a class under Fed. R. Civ. P. 23(b)(3) without conducting a rigorous analysis and finding that the plaintiffs had proved, not merely asserted, that the requirements for class certification were satisfied?

SUMMARY OF ARGUMENT

This case concerns the proper scope of a trial court's inquiry in class certification decisions. Fed. R. Civ. P. 23(b)(3) requires the court to weigh the evidence concerning the prerequisites for class actions and to "find" that those prerequisites are *actually* present before certifying a class action. The District Court in this case refused to do so. It based its certification decision merely on an *assumption* that plaintiffs' allegations were true and on a finding about the admissibility, but not the persuasiveness, of plaintiffs' expert testimony. The scope of the District Court's inquiry reflected a misreading of *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), a misreading that is refuted by subsequent

decisions by the Supreme Court, by this Court, and by the First, Third, Fifth, and Seventh Circuits. That misreading of *Eisen* should be expressly repudiated so as to ensure compliance with Rule 23, and to prevent erroneous class certifications that create irresistible pressure on defendants to settle class action lawsuits that lack merit.

ARGUMENT

THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT CERTIFIED A CLASS SOLELY ON THE BASIS OF PLAINTIFFS' DISPUTED ALLEGATIONS AND EXPERT TESTIMONY, AND WITHOUT FINDING THAT THE PLAINTIFFS HAD PROVED THE PREREQUISITES FOR MAINTAINING A CLASS ACTION.

This case presents an issue of fundamental importance to class action jurisprudence: what is the appropriate scope of a district court's inquiry when it decides whether an action may be maintained as a class action pursuant to Fed. R. Civ. P. 23(b)(3). That rule, by its terms, permits a class action only if the court "finds" that common questions of law or fact predominate and that a class action is superior to other methods for the fair and efficient adjudication of the controversy. Most courts have held that Rule 23 means what it says. A trial court must not "artificially limit" its "examination of the factors necessary to a reasoned determination of whether a plaintiff has met her burden of establishing each of the Rule 23 class action requirements." *Love v. Turlington*, 733 F.2d 1562, 1564 (11th Cir. 1984). "[B]efore deciding whether to allow a case to proceed as a class action

. . . a judge should make whatever factual and legal inquiries are necessary under Rule 23." *Johnston v. HBO Firm Mgmt, Inc.*, 265 F.3d 178, 188 (3d Cir. 2001). "Tough questions must be faced and squarely decided, if necessary by holding evidentiary hearings and choosing between competing perspectives." *West v. Prudential Sec., Inc.*, 282 F.3d 935, 938 (7th Cir. 2002).

The District Court in this case did not even try to face and decide the relevant questions. Believing, incorrectly, that the law required its inquiry to be tightly constrained, the District Court reached its class certification decision by "accept[ing] as true" all of "the substantive allegations contained in plaintiffs' complaint." Doc 207 at 4. The District Court acknowledged that it must "acquaint itself" with the allegations and claims in the case, and even that it should "probe beyond bare allegations that class treatment is appropriate" so long as this was "solely for the purpose of considering whether the proof to be offered by plaintiffs is sufficiently common that class action treatment is superior to individual actions." *Id*. But in doing so, the District Court expressly refused to weigh conflicting expert testimony relating to class certification issues or to resolve disputes between the experts. It refused to "consider the merits of the claim; that is, whether the plaintiffs will truly be able to show classwide impact." *Id*. at 7. Rather, the District Court deemed it sufficient that the plaintiffs' expert relied on a methodology that was "not so insubstantial and illusive as to amount to no method

at all." *Id*. at 8. And instead of a finding that a class action "is" superior for the "fair and efficient" adjudication of the controversy, as Rule 23 requires, the District Court determined only that the plaintiffs made a "threshold showing" that their proof will be "sufficiently generalized" that a class action would provide "savings of time and effort." *Id*. at 7.

Applying this minimalist standard, the District Court certified a class consisting of "[a]ll persons who paid premiums directly to [defendants] for automobile collision, comprehensive, or property damage insurance at any time between April 18, 1996 and the present." *Id*. at 12. This class is estimated to include more than 70 million policyholders.

Because the class certification order resulted from the application of an erroneous legal standard, the District Court abused its discretion and its order should be reversed. *Sikes v. Teleline, Inc.*, 281 F.3d 1350 (11th Cir. 2002).

1. The language of Rule 23 directs trial courts to decide whether the prerequisites for class actions are satisfied *in fact*, not merely whether the proponent of class certification has alleged that those prerequisites are satisfied, or proffered colorable evidence in support of those allegations.

Rule 23(b)(3) may be invoked to support class certification only if the trial court "finds" that common questions "predominate" and that a class action "is" superior to other methods of adjudication. "Find" means "to discover or ascertain

through observation, experience, or study" or "to decide on and make a declaration about" or "to come to a legal decision or verdict." *American Heritage Dictionary* (4th ed. 2000). It connotes both a consideration of evidence and the statement of a conclusion drawn from that evidence. The word is used in this sense not only in Rule 23, but elsewhere in the rules of civil procedure. *See, e.g.*, Fed. R. Civ. P. 16(f) (precluding sanctions if judge finds noncompliance with rule was justified); 37(b)(2) (precluding award of attorneys' fees if judge finds that failure to obey order was justified); 49(a) (findings by jury); 50(a) (basis for jury findings); 52 (findings by court and findings of fact); 53(e) (findings of fact by masters).

Two findings are required by the rule: that common questions of law or fact "predominate" over questions affecting only individual class members and that a class action "is" superior to other methods for the fair and efficient adjudication of the controversy. Nothing in this description of the essential findings suggests a class action may be certified merely because plaintiffs "state a claim" for class certification, within the meaning of Fed. R. Civ. P. 12(b)(6), or demonstrate the existence of "a genuine issue as to any material fact" relating to certification, within the meaning of Fed. R. Civ. P. 56. The rule's language is clear that the class action prerequisites must be satisfied *in fact*, and that the trial court must evaluate the evidence to arrive at such a conclusion before certifying a class.

The procedures contemplated by Rule 23(c)(1) emphasize the point. That rule states that a class certification order "may be conditional, and may be altered or amended before the decision on the merits." This power to amend certification orders is "critical, because the scope and contours of a class may change radically as discovery progresses and more information is gathered about the nature of the putative class members' claims." *Prado-Steiman v. Bush*, 221 F.3d 1266, 1273 (11th Cir. 2000). Class certification decisions should be "fluid and fact sensitive." *Id*. But there will be very little fluidity or sensitivity to the "facts" if a certification decision must rest solely on the pleadings, or if, after the plaintiff has presented the most minimal evidence in support of those pleadings, the decision cannot be revisited in response to new evidence from the defendant. In order to achieve the important benefits of conditional certification, trial courts must be free to decide on the basis of all of the evidence (including the evidence that militates *against* class certification) as it becomes available.

2. In this case, the District Court apparently construed *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974), to prohibit the resolution of any disputed class certification issues if those issues might also bear on the substantive merits of the case. *See* Doc 207 at 4-5. That is a misreading of *Eisen*.

In *Eisen*, the plaintiffs sought to impose on defendants the cost of providing notice to prospective class members. The trial court conducted a preliminary

hearing on the merits, concluded that plaintiffs were likely to prevail in the litigation, and on that basis ordered defendants to bear 90 percent of the costs of notice. The Supreme Court reversed, holding that Rule 23 provided no authority to shift the cost of notice to defendants. A necessary implication of that holding, of course, is that Rule 23 provides no authority to conduct a preliminary inquiry into the merits of a suit *in order to allocate such costs*. The Court's opinion, however, stated this conclusion with less precision: "We find nothing in . . . Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit *in order to determine whether it may be maintained as a class action*." *Id*. at 178 (emphasis added).

Other language in the *Eisen* decision suggests that this *dicta* was not intended to limit the scope of a trial court's inquiry when it decides whether class certification is appropriate. *Eisen* recognized the distinction between a preliminary inquiry focused solely on the merits of a suit and an inquiry asking whether the prerequisites for a class action are present, and quoted Judge Wisdom to explain that "the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, *but rather whether the requirements of Rule 23 are met*." *Id*. at 178 (quoting *Miller v. Mackey Int'l, Inc.*, 452 F.2d 424, 427 (5th Cir. 1971) (emphasis added). Indeed, just four years after *Eisen*, the Supreme Court observed that "the class determination generally involves considerations that

are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978) (citation and internal quotation omitted). And in *General Telephone Company of the Southwest v. Falcon*, 457 U.S. 147 (1982) the Supreme Court emphasized that a class action "may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *Id*. at 161. "Sometimes the issues are plain enough from the pleadings . . . and sometimes it may be necessary for the court to probe behind the pleadings . . . [A]ctual, not presumed, conformance with Rule 23(a) remains, however, indispensable." *Id*. at 160.

Despite *Falcon*, the dicta in the *Eisen* decision has continued to generate confusion. *See generally* Robert G. Bone & David S. Evans, *Class Certification and the Substantive Merits*, 51 DUKE LAW JOURNAL 1251, 1268-1276 (2002) (discussing post-*Falcon* decisions). As discussed below, however, most courts (unlike the District Court in this case) have concluded that "*Eisen* cannot . . . be read to forbid any pre-trial inquiry designed to establish the class action criteria that happens to touch on matters that may also relate to the merits of the class or individual claims as alleged." *Stastny v. S. Bell Tel. & Tel. Co.*, 628 F.2d 267, 275 n. 12 (4th Cir. 1980).

3. Several Courts of Appeal have required trial courts to make all factual and legal determinations relevant to the prerequisites for class certification, rather than the meager determinations that the District Court deemed to be sufficient.

Thus, in *Waste Management Holdings, Inc. v. Mowbray*, 208 F.3d 288 (1st Cir. 2000), the First Circuit affirmed a class certification decision that was based on "a case-specific analysis that went well beyond the pleadings" *id*. at 297, noting that "*Eisen*, fairly read, does not foreclose consideration of the probable course of the litigation at the class certification stage." *Id*., at 298.

The Third Circuit has endorsed the same view. It affirmed a denial of class certification because of deposition testimony and affidavits that contradicted plaintiffs' allegations that uniform misrepresentations had been communicated to putative class members, finding that "not only was it appropriate, but also necessary, for the district court to examine the factual record underlying plaintiffs' allegations in making its certification decision." *Johnston v. HBO Film Mgmt.*, *Inc.*, 265 F.3d 178, 189 (3d Cir. 2001).

The Fifth Circuit has held that district courts "*certainly* may look past the pleadings," *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 744 (5th Cir. 1996) (holding that trial court's consideration of common vs. individualized issues was inadequate) (emphasis added), and that "[g]oing beyond the pleadings is *necessary*, as a court must understand the claims, defenses, relevant facts, and applicable

substantive law in order to make a meaningful determination of the certification issues." *Id*. (emphasis added).

The Seventh Circuit has stated categorically that "[t]he proposition that a district judge must accept all of the complaint's allegations when deciding whether to certify a class cannot be found in Rule 23 and has nothing to recommend it." *Szabo v. Bridgeport Machines, Inc*., 249 F.3d 672, 675 (7th Cir. 2001). The findings required under Rule 23(b)(3) "differ in kind from legal rulings under Rule 12(b)(6). And if some of the considerations under Rule 23(b)(3) . . . overlap the merits . . . then the judge must make a preliminary inquiry into the merits." *Id*. at 676. That inquiry must not stop with the observation that relevant factual issues are in dispute or that the plaintiffs have produced admissible expert testimony in support of their position. "A district judge may not duck hard questions by observing that each side has some support, or that considerations relevant to class certification also may affect the decision on the merits. Tough questions must be faced and squarely decided, if necessary by holding evidentiary hearings and *choosing* between competing perspectives." *West v. Prudential Sec., Inc*., 282 F.3d 935, 938 (7th Cir. 2002) (emphasis added). [1]

[1] The First Circuit, however, continues to rely on *Eisen* in prohibiting the weighing of expert testimony in class certification proceedings. *Caridad v. Metro-North Commuter R.R.*, 191 F.3d 283, 293 (1st Cir. 1999); *see also In re Visa Check/MasterMoney Antitrust Litigation*, 280 F.3d 124, 135 (2d Cir. 2001).

This Court, too, has held that class certification decisions need not be based strictly on the plaintiffs' pleadings. *Love v. Turlington*, 733 F.2d 1562 (11th Cir. 1984) affirmed the denial of a class certification by the trial court after it considered defendants' uncontested affidavits, and in *Carter v. West Publishing Co.*, 225 F.3d 1258, this Court looked to the factual record to determine whether the named plaintiff had standing to sue, in light of questions regarding the statute of limitations. *Id*. at 1265-66. This factual issue was obviously relevant to the substantive merits of the plaintiff's case, but it was properly examined because it was "part of the class certification analysis." *Id*. at 1263. *Compare Kirkpatrick v. J. C. Bradford & Co.*, 827 F.2d 718, 723 (11th Cir. 1987) (reversing district court's denial of class certification "based upon *nothing other than* the [district] court's assessment of the plaintiffs' likelihood of success on the claims" (emphasis added)). *See also Prado-Steiman v. Bush*, 221 F.3d 1266 (11th Cir. 2000) (inquiry into standing of class representative is "necessarily fact-specific" and certification of sub-classes required "further factual development").

This Court should now make clear that *Eisen* does not require a district court to avoid resolution of contested factual and legal issues relevant to class certification. Rather, district courts must find, based on consideration and evaluation of the available evidence, that the prerequisites for class certification are present in fact, even if that finding overlaps with the merits of the case.

4. A failure to face and squarely decide class certification issues undermines the fairness of class action proceedings and the efficient administration of justice.

First, this permissive approach will lead to the certification of classes that would not be certified if the trial court actually resolved disputed Rule 23 issues after consideration of all available evidence. In many cases, plaintiffs will be able to assure class certification merely by artfully drafting a complaint (the merits of which will not be questioned) and hiring a competent expert (whose opinion cannot be challenged). For this reason, certification without a true resolution of the relevant Rule 23 issues "amounts to a delegation of judicial power to the plaintiffs." *West v. Prudential Sec., Inc.*, 282 F.3d 935, 938 (7th Cir. 2002); *see also Szabo v. Bridgeport Machines, Inc*., 249 F.3d 672, 677 (7th Cir. 2001) ("Certifying a class on the basis of incontestable allegations in the complaint moves the court's discretion to the plaintiff's attorneys"); Bone & Evans, *supra*, 1326-27 ("The practical result is to insulate almost any expert's statistical evidence from challenge at the certification stage and virtually guarantee plaintiffs' success in establishing certification requirements when they depend on such evidence.")

Second, "[c]ertification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v.*

Livesay, 437 U.S. 463, 476 (1978). Class certification may create "irresistible pressure to settle," *Prado-Steiman v. Bush*, 221 F.3d 1266, 1274 (11th Cir. 2000), because defendants cannot "stake their companies on the outcome of a single jury trial." *In re Rhone-Poulenc Rorer*, *Inc*, 51 F.3d 1293, 299 (7th Cir. 1995). The practical effect, in many cases, is that defendants are deprived of any meaningful opportunity for a judicial determination – by either the trial court or an appellate court – of *actual* conformance with the requirements for a class action *and* of the merits (or lack thereof) of the underlying claims. *See Szabo v. Bridgeport Machines, Inc*., 249 F.3d 672, 675 (7th Cir. 2001) ("At critical junctures the district judge['s class certification order] cited only decisions by other district judges, most in cases later settled and thus not subject to appellate consideration."). As one commenter observed:

> It is surely a curious circumstance in a country committed to the rule of law to accept the propositions (1) that class certification alone creates negotiating power, (2) that that power leads to actual settlements, sometimes large dollar settlements, and simultaneously (3) that this great negotiating power can be created without any judicial review of a claim on the merits and, in some cases, any merit to claim.

George L. Priest, *Procedural Versus Substantive Controls of Mass Tort Class Actions*, 26 J. LEGAL STUD. 521, 547 (1997).

The combination of these factors – that plaintiffs may easily secure class certifications that are not justified in fact, and that class certification alone is sufficient to compel favorable settlements – provides powerful incentives to file

class action lawsuits that lack merit. "This is a prescription for high error risks and a strong inducement to frivolous class action suits." Bone & Evans, *supra*, 1327. Such a prescription harms businesses who have done nothing wrong and wastes judicial resources that otherwise could be used to dispense justice.

Accordingly, to eliminate the very real risks associated with the erroneous certification of class action lawsuits, the Court should set forth a legal standard that will limit certification to actions that are in fact appropriate for class treatment.

CONCLUSION

The District Court's class certification order should be reversed.

July 16, 2003

Respectfully submitted,

_____

Robin S. Conrad
NATIONAL CHAMBER
LITIGATION CENTER, INC.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337
Fax: (202) 463-5346

Donald J. Russell
Kathryn S. Zecca
ROBBINS, RUSSELL, ENGLERT,
ORSECK & UNTEREINER LLP
1801 K Street, NW, Suite 411
Washington, DC 20006
(202) 775-4500
Fax: (202) 775-4510

Counsel for Chamber of Commerce of the United States

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation set forth in Federal Rules of Appellate Procedure 29(b) and 32(a)(7)(B). This brief uses a proportionally spaced font and contains 3,568 words.

_____

Kathryn S. Zecca

CERTIFICATE OF SERVICE

I, Kathryn S. Zecca, an attorney admitted to the bar of this Court, hereby certify that on July 16, 2003 two copies of this brief were served by Federal Express on each of the following counsel of record:

R. Stephen Berry, Esq.,
BERRY & LEFWICH
1717 Pennsylvania Avenue, N.W
Suite 450
Washington, D.C. 20006

Mark A. Avera
AVERA & AVERA P.A.
305 S.E. 2nd Avenue
Gainesville, Florida 32601

Charles M. Jones
JONES, OSTEEN, JONES & ARNOLD
206 E. Court Street
Hinesville, Georgia 31313

Jerome W. Hoffman
HOLLAND & KNIGHT LLP
315 South Calhoun Street
Tallahassee, FL 32301
(850) 224-7000
Fax: (850) 224-8832

Sheila Carmody
Dan W. Goldfine
SNELL & WILMER, L.L.P.
One Arizona Center
Phoenix, AZ 85004
(602) 382-6000
Fax: (602) 382-6070

William J. Baer
Robert N. Weiner
Nancy L. Perkins
ARNOLD & PORTER
Thurman Arnold Building
555 Twelfth Street N.W.
Washington, DC 20004-1202
(202) 942-5000
Fax: (202) 942-5999

Carey P. DeDeyn
John A. Chandler
John W. Bonds, Jr.
Teresa Wynn Roseborough
Kristin B. Wilhelm
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309
(404) 853-8000
Fax: (404) 853-8806

Chris S. Coutroulis
R. Benjamine Reid
D. Matthew Allen
CARLTON FIELDS, P.A.
One Harbor Place
Tampa, FL 33601-3239
(813) 223-7000
Fax: (813) 229-4133

Jeffrey P. Lennard
Richard L. Fenton
SONNENSCHEIN, NATH & ROSENTHAL
8000 Sears Tower
233 So. Wacker Drive
Chicago, IL 60606
(312) 876-8000
Fax: (312) 876-7934

Edward M. Waller
Richard G. Salazar
FOWLER, WHITE, BOGGS, BANKER, P.A.
Suite 1700
501 East Kennedy Boulevard
P.O. Box 1438
Tampa, FL 33601
(813) 228-7411
Fax: (813) 229-8313

Steven M. Brady
SWARTZ, CAMPBELL & DETWEILER
SunTrust Plaza, Suite 805, 2000 Main Street, Fort Myers, FL 33901
(941) 337-1101
Fax: (941) 334-3383

Michael R. Nelson
Craig A. Cohen
NELSON LEVINE DE LUCA & HORST
4 Sentry Parkway – Suite 300
Blue Bell, PA 19422
(610) 862-6500
Fax: (610) 862-6501

Pursuant to 11th Cir. Rule 31-5(c), I further certify that this brief was uploaded via the internet to the Eleventh Circuit's website at www.ca11.uscourts.gov on July 16, 2003 at 5:00 p.m.

_____
Kathryn S. Zecca