

done by setting forth a short and concise statement of the facts which are necessary to support their claim to pierce the veil. It is inappropriate at this stage of the pleadings to attempt to evaluate the evidence or to determine whether the Zanders will ultimately succeed in supporting their allegations.

Therefore, the Complaint will not be dismissed, although the individual causes of action will be disposed of in the same fashion as the respective causes of action in the Amended Counterclaim.

THE ZANDERS' MOTION TO DISMISS

The Zanders move to dismiss CITC's complaint for failure to comply with discovery requests and orders, or in the alternative for an order compelling CITC to respond to the discovery requests. Primarily, the Zanders rely on the failure of CITC personnel to appear for scheduled depositions and CITC's refusal to produce documents requested by the Zanders in February of this year.

CITC does not deny that it has not submitted to depositions or responded to the Zanders' discovery requests. Instead, it relies on a stipulation entered on October 1, 1988 (the Stipulation) in which the Zanders agreed not to notice any discovery until they had responded to CITC's then outstanding document request and had themselves submitted to depositions. CITC asserts that because the Zanders have produced fewer than 700 pages of documents in response to the document request referenced in the Stipulation they have not satisfied the terms of the Stipulation and CITC need not respond to their discovery requests. CITC also cross-moved for a stay of discovery pending the resolution of its motion to dismiss.

While it appears that CITC has been somewhat less than avid in meeting its discovery obligations, dismissal of its complaint is not warranted here. The preceding resolution of the motions to dismiss establishes that the Zanders have properly stated claims against CITC. The Zanders have also implicitly, if not explicitly, represented that they have produced all of the documents in their control which are responsive to the request referred to in the Stipulation. Therefore, there is no reason for either party to delay discovery further.

The motion to dismiss for failure to comply with discovery is denied, and both parties are hereby directed to proceed with discovery.

CONCLUSION

For all of the foregoing reasons, CITC's motion to dismiss the Amended Counterclaim and Amended Complaint is granted in part and denied in part. Leave is hereby granted to the Zanders to replead their Counterclaim and Third-Party Complaint for the sole purpose of clarifying and consolidating only those claims and allegations which have been approved in this opinion.

The Zanders' motion to dismiss is denied. It is so ordered.

ENDNOTES

- /1/ The third-party complaint also alleged the same thirteen claims against Citibank, incorporating by reference the respective paragraphs of the counterclaim. To avoid confusion, all references in this opinion to the Zanders' counterclaims should be deemed to apply equally to their third-party complaint unless otherwise noted.
- /2/ While estoppel may prevent a party from relying on § 15-301 to deny an oral modification to a contract, this generally requires that the party seeking to enforce the modification show substantial reliance on the modification. *Rose v. Spa Realty Associates*, 42 N.Y.2d 338, 397 N.Y.S.2d 922, 366 N.E.2d 1279 (1977). However, this exception applies only where the enforcing party has partially performed under the modification and "only if the partial performance be unequivocally referable to the oral modification. ..." *Id.* at 343. 397 N.Y.S.2d 922, 366 N.E.2d 1279. The Zanders' allegations here do not satisfy this test, and, therefore, their attempt to enforce the alleged oral modification must fail.



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA)
Plaintiff)
v.)
)
AMERICAN TOTALISATOR COMPANY INC.)
Defendant)

greekcorruption.dk

January 15, 1993

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, for its complaint herein alleges as follows:

1. Defendant American Totalisator Company, Inc. has engaged in acts and practices which constitute violations of Section 104(a) of the Foreign Corrupt Practices Act of 1977 (Act), *as amended*, 15 U.S.C. 78dd-2(a).

2. The plaintiff brings this action to enjoin such acts and practices pursuant to Section 104(d) of the Act, 15 U.S.C. § 78dd-2(d).

3. The Court has jurisdiction of this action pursuant to Section 104(d) of the Act, 15 U.S.C. § 78dd-2(d).

4. The defendant will, unless restrained and enjoined, continue to engage in the acts and practices set forth in this complaint and in acts and practices of similar purport and object.

5. The acts and practices constituting the violations herein have occurred within the District of Maryland and elsewhere.

6. The defendant, American Totalisator Company, Inc., a Delaware corporation, is engaged in the manufacture and sale of totalisator systems and maintains its principal place of business in Hunt Valley, Maryland. American Totalisator Company, Inc. is a wholly owned subsidiary of General Instrument Corporation, a Delaware corporation which maintains its principal place of business in Chicago, Illinois. American Totalisator Company, Inc. is a "domestic concern" as that term is defined in 15 U.S.C. § 78dd-2(h)(1)(B).

Violation of 15 U.S.C. 78dd-2(a)

7. Paragraphs 1 through 6 are hereby realleged and incorporated herein by reference.

8. The defendant, American Totalisator Company, Inc., has engaged in business with the Horse Races Administration of Greece (ODIE), an instrumentality of the Greek government, located in Athens, Greece,

in connection with the sale of a totalisator system and spare parts for the Phaleron racetrack in Athens, Greece.

9. Beginning in or about 1985 and continuing through the present, the defendant, American Totalisator Company, Inc., in the District of Maryland and elsewhere, corruptly used means and instrumentalities of interstate commerce, in furtherance of the offer, payment, promise to pay, and authorization of the payment of money, to a person, to wit, its Greek agent, while knowing that all or a portion of such money would be offered, given, or promised, directly or indirectly, to a foreign official, for purposes of influencing the acts and decisions of such foreign official in his official capacity or; inducing such foreign official to do or omit to do any act in violation of the lawful duty of such foreign official or; inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist the defendant, American Totalisator Company, Inc., in obtaining and retaining business in connection with its contract for the sale of a totalisator system and spare parts to ODIE, all in violation of Section 104(a)(3) of the Act, 15 U.S.C. § 78dd-2(a)(3).

10. By reason of the activities described in paragraphs 1 through 9 above, the defendant, American Totalisator Company, Inc., directly and indirectly, violated and may continue to violate Section 104(a) of the Foreign Corrupt Practices Act of 1977, *as amended*, 15 U.S.C. § 78dd-2(a).

WHEREFORE, the plaintiff, United States of America, respectfully prays and demands a Final Judgment of Permanent Injunction restraining and enjoining the defendant American Totalisator Company, Inc., its agents, servants, employees, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, from violating Sections 104(a)(1), (2), and (3) of the Foreign Corrupt Practices Act of 1977, *as amended*, 15 U.S.C. §§ 78dd-2(a)(1), (2), and (3), directly or indirectly, by using the mails, or any means or instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the

699.068

payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to:

(1) any foreign official for purposes of

(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates and subsidiaries, and those persons in active concert or participation with them, in obtaining or retaining business for or with, or directing business to, any person; or

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion

of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, in obtaining or retaining business for or with, or directing business to, any person.

AND, for such further relief as this Court deems appropriate under the circumstances.

Respectfully submitted,

RICHARD D. BENNETT
United States Attorney

By: Juliet A. Eurich
Assistant United States Attorney
Bar No. 420, Local Counsel
820 U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201
(410) 962-9929

Elizabethanne C. Stevens
Trial Attorney
U.S. Department of Justice

699.069

Criminal Division, Fraud Section
P.O. Box 28188, Central Station
Washington, D.C. 20038
(202) 514-0248

DATE: January 12, 1993

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA)
Plaintiff)
v.)
AMERICAN TOTALISATOR COMPANY INC.)
Defendant)

CONSENT AND UNDERTAKING

(1) The defendant, American Totalisator Company, Inc., without admitting or denying the allegations of the Complaint, solely for the purpose of this proceeding and for no other purpose whatsoever:

- (i) admits the jurisdiction of this Court over the subject matter of this action;
- (ii) admits the service upon it of the Summons and Complaint in this action;
- (iii) waives the filing of an Answer;
- (iv) waives the making of any Findings of Fact and Conclusions of Law under Rule 52 of the Federal Rules of Civil Procedure;
- (v) enters an appearance in this action; and
- (vi) hereby consents to the entry of the attached Final Judgment of Permanent Injunction without further notice

(2) The defendant, American Totalisator Company, Inc., hereby waives any right it may have to appeal from the entry of the Final Judgment of Permanent Injunction in the form attached hereto as Exhibit 1.

(3) The defendant, American Totalisator Company, Inc., will cooperate completely with the Department of Justice in a criminal investigation arising from the circumstances described in the Complaint filed herein.

(4) The defendant, American Totalisator Company, Inc., enters into this Consent and Undertaking voluntarily. A copy of the letter from the Department of Justice, dated December 29, 1992, indicating that the Department has declined criminal prosecution of General Instrument Corporation, American Totalisator Company, Inc., and its affiliated corporations, is hereby annexed as Exhibit 2.

(5) The defendant, American Totalisator Company, Inc., further consents and agrees that this Consent and Undertaking shall be incorporated by reference in the Final Judgment of Permanent Injunction, in the form attached hereto as Exhibit 1 to be entered by the Court in this action, and further agrees that the Court shall retain jurisdiction in this matter for all purposes.

AMERICAN TOTALISATOR COMPANY, INC.

By: President /s/

Witness: /s/

Dated: January 7, 1993

STATE OF MARYLAND

TO WIT:

COUNTY OF BALTIMORE

I HEREBY CERTIFY, that on this 7th day of, January, 1993, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Wesley O. Hoffman, who acknowledged himself to be the President of American Totalisator Company, Inc., a corporation, and that he as such President, being authorized to so do, executed the foregoing instrument for the purposes therein contained, by signing in my presence, the name of the corporation by himself as such President.

IN WITNESS WHEREOF, I hereunto set my hand and office seal.

Notary Public /s/

My Commission Expires: 12/24/93

Dated: 1/8/93

Richard E. Dunne, III /s/

HOGAN & HARTSON

111 South Calvert Street

Suite 1600

699.070

Baltimore, Maryland 21202
(410) 659-2700

Attorney for Defendant
American Totalisator Company, Inc.

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA)
Plaintiff)
v.)
AMERICAN TOTALISATOR COMPANY INC.)
Defendant)

**FINAL JUDGMENT OF
PERMANENT INJUNCTION**

Plaintiff United States of America having duly commenced this action by filing its Complaint for Permanent Injunction, and defendant American Totalisator Company, Inc., having appeared and admitted to the jurisdiction of this Court over it and over the subject matter of this action; having waived the making of any findings of fact or conclusions of law; before the taking of any testimony and without trial, argument, or adjudication of any issue of fact or law herein; without admitting or denying the allegations of the Complaint; having consented to the entry of this Final Judgment of Permanent Injunction; and having entered into certain undertakings contained in the Consent and Undertaking annexed hereto and incorporated herein, it is hereby

ORDERED, ADJUDGED, AND DECREED that American Totalisator Company, Inc., its officers, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Sections 104(a)(1), (2), and (3) of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-2(a)(1), (2), and (3),

directly or indirectly, by using the mails, or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to:

(1) any foreign official for purposes of

- (A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or
- (B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, in obtaining or retaining business for or with, or directing business to, any person; or

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of

- (A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or
- (B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, in obtaining or

retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, in obtaining or retaining business for or with, or directing business to, any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court retain jurisdiction of this matter for all purposes.

UNITED STATES DISTRICT JUDGE /s/
DATED: January 21, 1993

EXHIBIT 2

U.S. DEPARTMENT OF JUSTICE
Criminal Division
Washington, D.C. 20530
December 29, 1992

BY FACSIMILE

Richard E. Dunne, III, Esquire
Hogan & Hartson
111 South Calvert Street
Baltimore, Maryland 21202

Dear Mr. Dunne:

Re: General Instrument Corporations
American Totalisator Company, Inc.

The Fraud Section of the Criminal Division of the Department of Justice has completed its investigation of your client, General Instrument Corporation ("GI"), and its wholly owned subsidiary, American Totalisator Company, Incorporated ("ATC"), regarding allegations that illicit payments were made to officials of the Greek government and judiciary by ATC's agent, O. Nicholas Katsanis, in connection with ATC's contract with the Horse Races Administration of Greece for the sale of a totalisator system and spare parts for the Phaleron racetrack in Athens, Greece.

In your letters of December 17, 1992, and December 28, 1992, you stated that ATC would consent to the entry of an Order of Permanent Injunction in the event that, at the conclusion of the Fraud Section's investigation, the Section determined that a criminal prosecution of ATC or GI was not warranted, but that the Section deemed it appropriate for ATC to consent to such an Order. On the basis of the Fraud Section's investigation, we will decline criminal prosecution of GI, ATC, and its affiliated corporations provided, however, that ATC consent to the entry of an Order of Permanent Injunction barring future violations of the Foreign Corrupt Practices Act. Our declination of criminal prosecution of GI, ATC, and its affiliated corporations specifically does not include a declination of criminal prosecution of any past or present employee of the entities.

The Complaint for Permanent Injunction, the Consent and Undertaking, and the Final Judgment of Permanent Injunction will be filed in the United States District Court for the District of Maryland. The injunction will permanently restrain and enjoin ATC, its officers, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, from violating Sections 104(a)(1), (2), and

699.072

(3) of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-2(a)(1), (2), and (3).

Please telephone the undersigned at (202) 514-0831, so that we can make arrangements for the execution and filing of the appropriate documents.

Sincerely,

Gerald S. McDowell
Chief, Fraud Section
Criminal Division

By: Elizabethanne C. Stevens /s/
Trial Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA)
Plaintiff)
v.)
AMERICAN TOTALISATOR COMPANY INC.)
Defendant)

January 15, 1993

CERTIFIED COPY OF RESOLUTIONS

I, CLIFFORD L. CHILLEMI, hereby certify that I am the duly elected Secretary of American Totalisator Co., Inc.; that the Resolutions attached hereto are a full, true, and correct copy of Resolutions duly adopted by the Board of Directors of said Corporation by unanimous consent, and have not been rescinded or revoked; and that the Resolutions are not contrary to any provision in the Articles of Incorporation or By-Laws of American Totalisator Co., Inc.

IN WITNESS WHEREOF, I have hereunto signed my name as Secretary and affixed the Seal of said Corporation this 7th day of January 1993.

Clifford L. Chillemi /s/
Secretary

**AMERICAN TOTALISATOR COMPANY, INC.
ACTION OF DIRECTORS BY UNANIMOUS
WRITTEN CONSENT**

The undersigned, being all of the members of the Board of Directors of American Totalisator Company, Inc., a Delaware corporation (the "Corporation"), consent to the adoption of the following Resolutions and the recording of said Resolutions among the minutes of proceedings of the Board of Directors.

RESOLVED, that this Corporation, expecting to be named as a defendant in a civil action brought by the United States of America in the United States District Court for the District of Maryland in the United States of America, consents to a settlement of that action encompassing the entry of a Final Judgment of Permanent Injunction against American Totalisator Company, Inc. and the execution of a Consent and Undertaking in substantially the form reviewed by this Board of Directors at this meeting; and

RESOLVED FURTHER, that the President of this Corporation, be, and he hereby is, authorized to execute such Consent and Undertaking of American Totalisator Company, Inc. on behalf of this Corporation substantially in such form as reviewed by this Board of Directors at this meeting.

WITNESS the signatures of the undersigned directors this 7th day of January 1993.

Wesley O. Hoffman /s/ Sidney B. Landman /s/
Clifford L. Chillemi /s/ Joseph Friedman /s/
Randy A. Hudson /s/

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA)
Plaintiff)
v.)
AMERICAN TOTALISATOR COMPANY INC.)
Defendant)

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FINAL JUDGMENT OF
PERMANENT INJUNCTION

Plaintiff United States of America having duly commenced this action by filing its Complaint for Permanent Injunction, and defendant American Totalisator Company, Inc., having appeared and admitted to the jurisdiction of this Court over it and over the subject matter of this action; having waived the making of any findings of fact or conclusions of law; before the taking of any testimony and without trial, argument, or adjudication of any issue of fact or law herein; without admitting or denying the allegations of the Complaint; having consented to the entry of this Final Judgment of Permanent Injunction; and having entered into certain undertakings contained in the Consent and Undertaking annexed hereto and incorporated herein, it is hereby

ORDERED, ADJUDGED, AND DECREED that American Totalisator Company, Inc., its officers, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, and each of them, are hereby permanently restrained and enjoined from violating Sections 104(a)(1), (2), and (3) of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-2(a)(1), (2), and (3), directly or indirectly, by using the mails, or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to:

(1) any foreign official for purposes of

(A)(i) influencing any act or decision of such foreign official in his official capacity, or (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or

(B) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator

Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates and subsidiaries, and those persons in active concert or participation with them, in obtaining or retaining business for or with, or directing business to, any person; or

(2) any foreign political party or official thereof or any candidate for foreign political office for purposes of

(A)(i) influencing any act or decision of such party, official, or candidate in its or his official capacity, or (ii) inducing such party, official, or candidate to do or omit to do an act in violation of the lawful duty of such party, official, or candidate, or

(B) inducing such party, official, or candidate to use its or his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant, American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates, and subsidiaries, and those persons in active concert or participation with them, in obtaining or retaining business for or with, or directing business to, any person; or

(3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of

(A)(i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, or (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or

(B) inducing such foreign official, political party, party official, or candidate to use his or

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its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist the defendant American Totalisator Company, Inc., its officers, directors, agents, servants, employees, successors, assigns, attorneys in fact, affiliates and subsidiaries, and those persons in active concert or participation with them, in obtaining or

retaining business for or with, or directing business to, any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court retain jurisdiction of this matter for all purposes.

UNITED STATES DISTRICT JUDGE /s/

DATED: January 21, 1993

In the Matter of Jerry Bernstein, C.P.A.
Exchange Act Release No. 30848,
Administrative Proceeding File No. 3-7768. June 22, 1992.

**ORDER INSTITUTING PUBLIC
PROCEEDINGS PURSUANT TO RULE 2(e)
OF THE COMMISSION'S RULES OF
PRACTICE, AND OPINION AND ORDER OF
THE COMMISSION**

I.

The Securities and Exchange Commission (Commission) deems it appropriate and in the public interest that public administrative proceedings be instituted pursuant to Rule 2(e) of the Commission's Rules of Practice against Jerry Bernstein (Bernstein)./1/

In anticipation of the institution of these proceedings, Bernstein has submitted an Offer of Settlement (Offer) for the purpose of resolving these proceedings, which Offer the Commission has determined to accept. Solely for the purpose of this proceeding, and any other proceeding brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings contained herein, except as to the Commission's finding of jurisdiction and to the findings set forth in Section III, paragraphs A through D below, which he admits, Bernstein consents to the findings and sanctions set forth below.

II.

Accordingly, IT IS ORDERED that proceedings pursuant to Rule 2(e)(3) of the Commission's Rules of Practice be, and hereby are, instituted.

III.

On the basis of this Order Instituting Public proceedings Pursuant to Rule 2(e) of the Commission's Rules of Practice, and Opinion and Order of the Commission, and the Offer submitted by Bernstein, the Commission finds that:

A. Bernstein is a certified public accountant.

B. From January 1976 to September 1987, Bernstein was employed as Controller of Coated Sales, Incorporated (Coated).

C. On November 22, 1991, Bernstein pleaded guilty in U.S. District Court to Count 2 of Indictment 90-534 (S-2) (DRD) (D.N.J.), encaptioned *U.S. v. Kagan et al.*, filed by the U.S. Attorney for the District of New Jersey, charging him with racketeering, in violation of 18 U.S.C. § 1962(c), in connection with his actions at Coated. Count 2 of the Indictment alleged a pattern of racketeering activity at Coated, including wire and securities fraud.

D. On June 4, 1992, a Final Judgment of Permanent Injunction and Other Relief as to Jerry Bernstein (Final Judgment) was entered against Bernstein by the U.S. District Court for the District of New Jersey in *Securities and Exchange Commission v. Weinstein et al.*, Civ. Action No. 90-4276 (AJL, JR) (D.N.J.). The Final Judgment enjoins Bernstein from violations of § 17(a) of the Securities Act of 1933, Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 10b5, 13b2-1, 13b2-2, 14a-3

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