

62. By reason of the actions of Jack MacKay, Kaye MacKay, Tripp MacKay and Rawlings, H&B has suffered immediate and irreparable injury and will continue to suffer such injury unless the MacKays and anyone in active concert or participation with them are further restrained and permanently enjoined from these unlawful activities by order of this Court. H&B has no adequate remedy at law or otherwise to address this injury save in a court of equity.

63. As a remedy for such misappropriation and/or breaches this Court should order Tripp MacKay and Kaye MacKay to assign their claims of interest in and to the Bat Patent application to H&B. Alternatively, to the extent that Kaye MacKay and Tripp MacKay are determined to have claims of interests in and to the Bat Patent, such claims of interest were obtained in violation of Jack MacKay's Agreement. As a remedy for such violation, H&B is entitled to be indemnified for the loss or damage to H&B occasioned thereby as measured by, *inter alia*, the difference in value between H&B having exclusive rights to the Bat Patent and having only non-exclusive rights thereto.

64. This Court should further order that Kaye MacKay has no rights in the Golf Club Patent application. Alternatively, to the extent that Kaye MacKay is determined to have rights in and to the Golf Club Patent application, such rights were obtained in violation of Jack MacKay's Agreement and the covenants contained in Jack MacKay's August 29, 1997 Assignment. As a remedy for such violation, H&B is entitled to be indemnified for the loss or damage to H&B occasioned thereby as measured by, *inter alia*, the difference in value between H&B having exclusive rights to the Golf Club Patent and having only non-exclusive rights thereto.

65. By reason of the MacKays' and Rawlings' actions, H&B is entitled to recover both the actual loss caused by the misappropriation and the unjust enrichment caused by the

misappropriation. Furthermore, in light of the MacKays' and Rawlings' willful and malicious conduct, H&B is entitled to an award of exemplary damages and recovery of its attorneys' fees.

**COUNT II: UNFAIR COMPETITION, UNFAIR BUSINESS PRACTICES,
DIVERSION OF CORPORATE OPPORTUNITY
(JACK MACKAY, KAYE MACKAY, TRIPP MACKAY, AND RAWLINGS)**

66. H&B adopts and realleges the allegations previously set forth in Paragraphs 1-65.

67. The acts of the MacKays and Rawlings constitute unfair competition, unfair business practices, and unlawful diversion of corporate opportunity.

68. As a result of said actions, H&B has been damaged in an amount to be determined by the evidence, and is entitled to an award of exemplary damages.

**COUNT III: MAIL AND WIRE FRAUD, INTERSTATE TRANSPORTATION OF STOLEN
MONEY, MONEY LAUNDERING, ENGAGEMENT IN MONETARY TRANSACTIONS
IN PROPERTY DERIVED FROM SPECIFIED UNLAWFUL ACTIVITY, AND RICO
(JACK MACKAY, BINGHAM, AND CLARK)**

69. H&B adopts and realleges the allegations previously set forth in Paragraphs 1-68.

70. Beginning at least as early as 1995, Defendants Jack MacKay, Michael G. Clark and Michael G. Clark, Inc., acting together and with Bingham or others, known or unknown, devised a series of schemes to steal from and defraud H&B with the intent and purpose to inflict direct property loss or injury on H&B.

71. As described in more detail below, the schemes to defraud used by Defendants Jack MacKay, Michael G. Clark and Michael G. Clark, Inc., acting in concert and with Bingham or others, involved the stealing of sporting good products from H&B for resale to third parties for their own personal gain.

72. Defendants Jack MacKay, Michael G. Clark, Michael G. Clark, Inc. and Bingham (collectively the "RICO Defendants") conducted their affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962 (a), (b), (c) and (d). This pattern of racketeering activity consisted of various acts in violation of 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. §1343 (wire fraud), 18 U.S.C. § 1952 (interstate travel in aid of racketeering), 18 U.S.C. § 2314 (interstate transportation of goods and money), 18 U.S.C. § 1956 (money laundering), and 18 U.S.C. § 1957(monetary transactions in property derived from specified unlawful activity), and also consisted of other acts of deception and fraud identified below, including the unlawful laundering of money, each of which occurred within the last ten years.

A. THE THEFT OF H&B'S SPORTING GOOD EQUIPMENT

73. Beginning at least as early as 1995, Defendant Jack MacKay, acting in concert with Defendants Michael G. Clark and Michael G. Clark, Inc., and aided by Defendant Bingham or others, stole H&B's sporting good equipment for their own illicit gain. Over the course of at least 3 years, Defendant Jack MacKay placed orders for sporting good products from H&B ostensibly for collegiate contract program purposes. Unbeknownst to H&B, Defendant Jack MacKay, acting in concert with Defendants Michael G. Clark and Michael G. Clark, Inc., and aided by Defendant Bingham or others, stole and sold H&B's sporting good products to customers of H&B and others for their own illicit purposes and personal gain. Typically, the sporting good products were sold to third parties for less than the price such third parties could otherwise have purchased such products.

74. Defendant Bingham and others purchased H&B's sporting good products from Defendant Jack MacKay, that they knew or should have known had been stolen from H&B.

On information and belief, Bingham and others resold the products to third parties and derived additional profits therefrom.

75. The RICO Defendants deliberately concealed their activities from H&B. H&B was not aware of these sales, did not consent to such sales, and did not receive any of the proceeds derived from the unlawful sales of such sporting good products.

76. The fraudulent orders of product from H&B and resulting unlawful shipments and sales of H&B's products were made using the instrumentalities of interstate commerce, including the mails, private or commercial interstate carriers, telephone calls, and telephonic facsimile communications.

77. In furtherance of the schemes to defraud H&B, and in order to conceal their criminal conduct, disguise the location and impede recovery of the stolen product, Defendants Jack MacKay, Michael G. Clark and Michael G. Clark, Inc., acting together and with Bingham or others, named and not named, transferred the proceeds of the schemes to Defendant Michael G. Clark, Inc. and others for money-laundering purposes.

78. Typically, Defendant Jack MacKay directed the "purchasers" of H&B's stolen product to pay for the product with checks made payable to Defendant Michael G. Clark, Inc. On information and belief, over a period of 3 years, in excess of \$600,000 was transferred to Michael G. Clark, Inc. in furtherance of the schemes to defraud H&B. Defendants Michael G. Clark and/or Michael G. Clark, Inc. then received a "cut" of the monies derived from the unlawful sale of H&B's sporting good equipment, and the remaining monies were distributed, at least in part, to certain creditors of Defendant Jack MacKay, at Jack MacKay's direction.

B. THE RICO DEFENDANTS' ILLEGAL ACTS AND UNLAWFUL SCHEMES IN FURTHERANCE OF A PATTERN OF RACKETEERING ACTIVITY

79. From at least 1995 and continuing until recently, Defendants Jack MacKay, Michael G. Clark and Michael G. Clark, Inc., acting together and with Bingham or others, repeatedly engaged in acts indictable under 18 U.S.C. § 1341 (relating to mail fraud), 18 U.S.C. § 1343 (relating to wire fraud), 18 U.S.C. § 1952 (interstate travel in aid of racketeering), 18 U.S.C. § 2314 (transportation of stolen property), 18 U.S.C. § 1956 (relating to the laundering of monetary instruments), and 18 U.S.C. § 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), and used the United States mail and private or commercial interstate carriers, as well as wire and other communications in interstate commerce, in connection with these acts and thereby continually engaged in "racketeering activity" within the meaning of 18 U.S.C. § 1961(1)(B) in the course of the described criminal schemes.

80. Since at least 1995 and continuing until recently, in furtherance of and for the purpose of executing the described schemes and artifices to defraud and obtaining money by means of false and fraudulent pretenses as alleged in paragraphs 74 through 79 above, the RICO Defendants (and others acting in concert with them), on numerous occasions used and caused to be used mail depositories of the United States Postal Service and/or private or commercial interstate carriers by both placing and causing to be placed correspondence and other mailable matter in the depositories of such entities, and by removing and causing to be removed correspondence and other mailable matter from the depositories of such entities. Each such use of the mails in connection with the described schemes and artifices to defraud and to obtain money by means of false pretenses constitutes a separate and distinct violation

of 18 U.S.C. § 1341. A schedule of some, but not all, of the relevant uses of the mails is set forth in Exhibit A attached hereto and incorporated herein.

81. In furtherance of and for the purpose of executing and attempting to execute the described schemes and artifices to defraud and to obtain money by false pretenses, the RICO Defendants on numerous occasions used and caused to be used wire communications in interstate commerce, by both making and causing to be made wire communications. Each such use of a wire communication in connection with the described schemes and artifices to defraud and obtain money by means of false pretenses constitutes a separate and distinct violation of 18 U.S.C. § 1343. A schedule of some, but not all, of the relevant uses of wire communications is set forth in Exhibit B attached hereto and incorporated herein.

82. In furtherance of and for the purpose of executing and attempting to execute the described schemes and artifices to defraud and to obtain money by false pretenses, the RICO Defendants on numerous occasions did knowingly and willfully transport and cause to be transported in interstate commerce goods and money of the value of \$5,000 or more, knowing that said money and goods of the value of \$5,000 or more had been taken by fraud. Each such act constitutes a separate and distinct violation of 18 U.S.C. § 2314. A schedule of some, but not all, of the relevant acts of transporting money or goods is set forth in Exhibit A attached hereto and incorporated herein.

83. In furtherance of the schemes to defraud H&B, and in an effort to conceal and promote their criminal conduct and disguise the location of and impede and otherwise prevent the recovery of the stolen sporting good products of H&B, Defendants Jack MacKay, Michael G. Clark and Defendants Michael G. Clark, Inc., acting together and with Bingham or others, have, from at least 1995 and continuing until recently, knowingly engaged in one or more financial transactions in criminally derived property and/or money transactions in

such property, derived as a result of the schemes and artifices to defraud, in violation of 18 U.S.C. §§ 1341, 1343, 2314, as previously set out in this Amended Consolidated Complaint.

84. Each of the activities described in paragraphs 80 through 83 was engaged in by the above RICO Defendants for the purposes described in the preceding paragraph and each constitutes a separate and distinct activity indictable under 18 U.S.C. §§ 1956, 1957 and 2314.

C. VIOLATIONS OF 18 U.S.C. § 1962(A) AND (D) OF RICO

85. The RICO Defendants knowingly, recklessly, or culpably engaged in the foregoing schemes by conduct including but not limited to: (a) making illegal and fraudulent representations regarding product obtained; (b) making false and fraudulent representations that H&B's sporting good products were being used in the collegiate advisory program when they were not; (c) stealing sporting good products from H&B; (d) reselling or otherwise improperly distributing H&B's property to third parties; (e) paying self-dealing "cuts" to Defendants Jack MacKay and Michael G. Clark and/or Michael G. Clark, Inc. out of the unlawfully derived proceeds of these schemes; (f) contriving to arrange and accepting fraudulent transfers of H&B's products; (g) using certain proceeds from the unlawful sales of H&B's sporting good products to pay Jack MacKay's creditors; and (h) using certain proceeds from the unlawful sales to acquire an interest in, establish and/or operate the enterprise or enterprises.

86. Each RICO Defendant is a "person" as defined in 18 U.S.C. § 1961(3).

87. At all times relevant to the events alleged in this Amended Consolidated Complaint, the RICO Defendants were associated as an "enterprise," as that term is defined in § 1961(4), which was engaged in interstate commerce and the activities of which affected interstate commerce. For purposes of this claim under 1962(a) and (d) of RICO, the

enterprise consisted of an association-in-fact of Jack MacKay, Michael G. Clark, Inc. and Michael G. Clark, or, in the alternative, Defendant Michael G. Clark, Inc.

88. In violation of § 1962(a) and (d) of RICO, the RICO Defendants have received and conspired to receive, directly or indirectly, income derived from a pattern of racketeering activity and have used or invested, or conspired to use or invest, directly or indirectly, such income, or the proceeds of such income, in the operation of an association-in-fact of Defendants Jack MacKay, Michael G. Clark, Inc. and Michael G. Clark, or, in the alternative, Michael G. Clark, Inc. The above-referenced income exceeds \$600,000.

89. The RICO Defendants engaged in the above-referenced violations of § 1962(a) and (d) of RICO through a pattern of racketeering activity, as that term is defined in § 1961(1)(B) of RICO. The racketeering activity in which the RICO Defendants engaged is alleged in greater detail in paragraphs 79 through 84 of this Amended Consolidated Complaint.

90. Each of the RICO Defendants' racketeering activities were undertaken for the purpose of furthering their common scheme or artifices to steal from and to defraud H&B. Each such act of racketeering activity had a similar purpose, involved the same or similar participants and had similar results impacting similar victims, predominantly H&B, and was part of an ongoing and recurring pattern of similar schemes and thus constituted a pattern of racketeering activity as that term is defined in § 1961(5). Each of the RICO Defendants agreed and conspired with each other and/or co-actors to commit the above-referenced predicate acts.

91. As a direct and proximate result of the RICO Defendants' activities and conduct in violation of § 1962(a) and (d) of RICO, H&B has been injured in its business and property in an amount to be determined by the evidence at trial.

D. VIOLATIONS OF 18 U.S.C. § 1962(B) AND (D) OF RICO

92. The RICO Defendants knowingly, recklessly or culpably engaged in the above-described schemes by conduct including but not limited to: (a) making illegal and fraudulent representations regarding product obtained; (b) making false and fraudulent representations that H&B's sporting good products were being used in the collegiate advisory program when they are not; (c) stealing sporting good products from H&B; (d) reselling or otherwise improperly distributing H&B's property to third parties; (e) paying self-dealing "cuts" to Defendants Jack MacKay and Michael G. Clark and/or Michael G. Clark, Inc. out of the unlawfully derived proceeds of these schemes; (f) contriving to arrange and accepting fraudulent transfers of H&B's products; (g) using certain proceeds from the unlawful sales of H&B's sporting good products to pay Jack MacKay's creditors; and (h) using certain proceeds from the unlawful sales to acquire an interest in, establish and/or operate the enterprise or enterprises.

93. Each RICO Defendant is a "person" as defined in 18 U.S.C. § 1961(3).

94. At all times relevant to the events alleged in this Amended Consolidated Complaint, the RICO Defendants were associated as an "enterprise," as that term is defined in § 1961(4) which was engaged in interstate commerce and the activities of which affected interstate commerce. For purposes of this claim under § 1962(b) and (d), H&B was the enterprise. In the alternative, the enterprise consisted of an association-in-fact of Defendants Jack MacKay, Michael G. Clark, Inc. and Michael G. Clark or, in the alternative, Michael G. Clark Inc.

95. In violation of § 1962(b) and (d) of RICO, the RICO Defendants have conspired to acquire or maintain, directly or indirectly, and have acquired or maintained, directly or indirectly, their interest in or control of the enterprise, H&B, or alternatively, an

association-in-fact of Jack MacKay, Michael G. Clark, Inc. and Michael G. Clark, or, alternatively, Michael G. Clark, Inc., through a pattern of racketeering activities.

96. The RICO Defendants engaged in the above-referenced violations of § 1962(b) and (d) of RICO through a pattern of racketeering activity, as that term is defined in § 1961(1)(B) of RICO. The racketeering activity in which the RICO Defendants engaged is alleged in greater detail in paragraphs 79 through 84 above of this Amended Consolidated Complaint. —

97. Each of the RICO Defendants' racketeering activities were undertaken for the purpose of furthering their common scheme or artifice to infiltrate the enterprise and gain access to H&B's sporting good products, and otherwise promote the RICO Defendants' criminal activity. Each such act of racketeering activity had similar purposes, involved the same or similar participants and had similar results impacting similar victims, predominantly H&B, and was part of an ongoing and recurring pattern of similar schemes and thus constituted a pattern of racketeering activity as that term is defined in § 1961(5). Each of the RICO Defendants agreed and conspired with each other and/or co-actors to commit the above-referenced predicate acts.

98. As a direct and proximate result of the RICO Defendants' activities and conduct in violation of § 1962(b) and (d), H&B has been injured in its business and property in an amount to be determined by the evidence at trial.

E. VIOLATIONS OF 18 U.S.C. § 1962(C) AND (D)

99. The RICO Defendants knowingly, recklessly or culpably engaged in the above-described schemes by conduct including but not limited to: (a) making illegal and fraudulent representations regarding product obtained; (b) making false and fraudulent representations that H&B's sporting good products were being used in the collegiate advisory program when

they were not; (c) stealing sporting good products from H&B; (d) reselling or otherwise improperly distributing H&B's property to third parties; (e) paying self-dealing "cuts" to Defendants Jack MacKay and Michael G. Clark and/or Michael G. Clark, Inc. out of the unlawfully derived proceeds of these schemes; (f) contriving to arrange and accepting fraudulent transfers of H&B's products; (g) using certain proceeds from the unlawful sales of H&B's sporting good products to pay Jack MacKay creditors; and (h) using certain proceeds from the unlawful sales to acquire an interest in, establish and/or operate the enterprise or enterprises.

100. Each RICO Defendant is a "person" as defined in 18 U.S.C. § 1961(3).

101. At all times relevant to the events alleged in this Amended Consolidated Complaint, the RICO Defendants were employed by or associated with an "enterprise" as that term is defined in § 1961(4) which was engaged in interstate commerce and the activities of which affected interstate commerce. For purposes of this claim under § 1962(c) and (d), the enterprise consisted of H&B, or, in the alternative, an association-in-fact of Defendants Jack MacKay, Michael G. Clark and Michael G. Clark, Inc., or, in the alternative, Defendant Michael G. Clark, Inc.

102. In violation of § 1962(c) and (d) of RICO, the RICO Defendants have conspired to conduct and to participate in, directly or indirectly, and conducted and participated in, directly or indirectly, the affairs of an enterprise, Plaintiff H&B or, alternatively, an association-in-fact of Defendants Jack MacKay, Michael G. Clark and Michael G. Clark, Inc., or, alternatively, Defendant Michael G. Clark, Inc., through a pattern of racketeering activity.

103. The RICO Defendants engaged in the above-referenced violations of § 1962(c) and (d) of RICO through a pattern of racketeering activity as that term is defined in

§ 1961(1)(B) of RICO. The racketeering activity in which the RICO Defendants engaged is alleged in greater detail in paragraphs 79 through 84 above of this Amended Consolidated Complaint.

104. Each of the RICO Defendants' racketeering activities were undertaken for the purpose of furthering their common scheme or artifice to infiltrate H&B and gain access to its sporting good products and otherwise promote the RICO Defendants' criminal activity engaged in by them. Each such act of racketeering activity had similar purposes, involved the same or similar participants, had similar results impacting similar victims, namely H&B, and the common purpose and common results of stealing from and defrauding H&B and enriching the RICO Defendants at H&B's expense while concealing the RICO Defendants' criminal activities. As such, this conduct constitutes a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5). Each of the RICO Defendants agreed and conspired with each other and/or co-actors to commit the above-referenced predicate acts.

105. As a direct and proximate result of the RICO Defendants' activities and conduct in violation of 18 U.S.C. § 1962(c) and (d) of RICO, H&B has been injured in its business and property in an amount to be determined by the evidence at trial.

**COUNT IV: CONVERSION
(ALL DEFENDANTS)**

106. H&B adopts and realleges the allegations previously set forth in Paragraphs 1-105.

107. The actions of the Defendants constitute wrongful conversion of Plaintiff's real and personal property.

108. As a result of said actions, H&B has been damaged in an amount to be determined by the evidence, and is entitled to an award of exemplary damages.

**COUNT V: TORTIOUS INTERFERENCE WITH ACTUAL
OR PROSPECTIVE CONTRACTS AND BUSINESS RELATIONSHIPS
(JACK MACKAY, KAYE MACKAY AND RAWLINGS)**

109. H&B adopts and realleges the allegations previously set forth in Paragraph 1-108.

110. The above named Defendants have tortiously interfered and threatened to tortiously interfere with H&B's contractual relations without justification.

111.- H&B has legal, reasonable, and enforceable contractual and business relations with the MacKays, and with various collegiate coaches.

112. Rawlings knew or should have known of the existence of the MacKays' contractual and business relations with H&B, and knew of H&B contracts with collegiate coaches.

113. By the above described conduct, Rawlings has conspired with, aided, assisted, or induced Jack MacKay, and his wife, Kaye MacKay, to intentionally breach their contractual and fiduciary duties to H&B, and to interfere with H&B's collegiate coaching contracts.

114. Upon information and belief, Jack MacKay interfered with, sought to induce breaches of, and otherwise harmed contractual relations between H&B and various collegiate coaches.

115. Upon information and belief, Kaye MacKay, individually or acting as the agent of Jack MacKay and Rawlings, interfered with, sought to induce breaches of, and otherwise harmed contractual relations between H&B and various collegiate coaches.

116. As a result of said actions, H&B has been damaged in an amount to be determined by the evidence, and is entitled to an award of exemplary damages.

**COUNT VI: BREACH OF CONTRACTUAL DUTIES
(JACK MACKAY AND KAYE MACKAY)**

117. H&B adopts and realleges the allegations previously set forth in Paragraphs 1-116.

118. The activities of Jack MacKay and Kaye MacKay constitute actual and anticipatory breaches of their contractual duties to H&B.

119. As a result of said actions, H&B has been damaged in an amount to be determined by the evidence.

120. In the alternative, to the extent necessary, H&B is also entitled to reformation of the Amended and Restated Consulting Agreement's non-competition covenant pursuant to TEX. BUS.& COM. CODE ANN. § 15.51(c) (Vernon Supp. 1998).

**COUNT VII: BREACH OF FIDUCIARY DUTIES AND CONFIDENTIAL RELATIONSHIPS
(JACK MACKAY AND KAYE MACKAY)**

121. H&B adopts and realleges the allegations previously set forth in Paragraphs 1-120.

122. The acts, conduct, and transactions of Jack MacKay and Kaye MacKay constitute a breach of their fiduciary duties and confidential relationships with H&B.

123. As a result of said actions, H&B has been damaged in an amount to be determined by the evidence.

**COUNT VIII: CONSPIRACY
(ALL DEFENDANTS)**

124. H&B adopts and realleges the allegations previously set forth in Paragraphs 1-123.

125. The activities of the Defendants constitute unlawful conspiracies to commit specified tortious or otherwise unlawful acts. As a result of said actions, H&B has been

damaged in an amount to be determined by the evidence, and is entitled to an award of exemplary damages.

**COUNT IX: UNJUST ENRICHMENT AND QUANTUM MERUIT
(ALL DEFENDANTS)**

126. H&B readopts and realleges the allegations previously set forth in Paragraphs 1-125.

127. The Defendants have been unjustly enriched to the detriment of H&B, for which H&B is entitled to relief, including restitution. The Defendants, or some of them, are in possession of property of H&B, or claim to have rights to property of H&B which, in good conscience, they should immediately deliver or assign to H&B, and which this Court should order. In addition, the Defendants, or some of them, have received goods and/or services from H&B, either directly or indirectly, for which H&B reasonably expected compensation, and for which H&B has not been compensated. H&B is entitled to receive compensation for the reasonable value of this property and these goods and services.

**COUNT X: NEGLIGENT MISREPRESENTATION
(JACK MACKAY AND KAYE MACKAY)**

128. H&B readopts and realleges the allegations previously set forth in Paragraphs 1-127.

129. What is alleged to be Tripp MacKay's likeness appeared in H&B's 1997 catalog at the request of and based upon express representations from Jack MacKay and Kaye MacKay. The MacKays asked for a picture of Tripp MacKay to appear in H&B's catalog. Jack MacKay and Kaye MacKay expressly represented to H&B and its representatives that the MacKays had the authority, and that H&B and its representatives had the right, to use this photograph in H&B's 1997 catalog. Tripp MacKay has now claimed that H&B

willfully and without his consent misappropriated Tripp MacKay's likeness by using this photograph in promotional materials.

130. To the extent that H&B is exposed to any damages from claims by Tripp MacKay for use of his likeness, H&B would show that Jack MacKay and Kaye MacKay would be required to fully indemnify and hold harmless H&B by reason of their misrepresentations regarding authorization, approval, and/or consent for its use, upon which H&B justifiably relied.

**COUNT XI: INDEMNIFICATION
(JACK MACKAY)**

131. H&B readopts and realleges the allegations previously set forth in Paragraphs 1-130.

132. Pursuant to his Agreement with H&B, Jack MacKay agreed as follows:

Indemnification. Consultant shall at all times during the Term and thereafter indemnify and hold harmless the Company and its directors, officers, employees, agents, affiliates and their personal representatives, heirs, successors and assigns, and each of them, from and against any and all claims, liabilities, losses, demands, penalties, fines, suits, judgments, settlements, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Company or any such person or entities, arising out of or related to any act or omission of Consultant or anyone engaged by Consultant in connection with the Services, or the failure, breach or default by Consultant of any of the representations, covenants or other agreements of Consultant contained in the Agreement.

133. H&B would show that to the extent that Kaye MacKay or Tripp MacKay are found to be entitled to any relief from H&B related to their claims of rights or entitlements to either the Bat Patent or the Golf Club Patent, or the alleged misappropriation of Tripp MacKay's likeness, H&B would be entitled to complete indemnification for any damages or harm arising as a result of such claims from Jack MacKay, in accordance with the terms of the Agreement.

134. H&B would further show that it has incurred additional costs and expenses arising out of Jack MacKay's acts, omissions, breaches, and defaults under the Agreement. Pursuant to the above referenced language contained in the Agreement, H&B hereby seeks indemnification from Jack MacKay for all such expenses.

**COUNT XII: INJUNCTIVE RELIEF
(ALL DEFENDANTS)**

135. H&B readopts and realleges the allegations previously set forth in Paragraphs 1-134.

136. Jack MacKay, Kaye MacKay, Tripp MacKay, and Rawlings, are in possession of H&B's confidential and proprietary information, trade secrets, and other property of H&B.

137. The MacKays' and Rawlings' actions with regard to the confidential and proprietary information of H&B are in violation of their contractual and common law duties to H&B. Given the confidential, unique and specialized nature of the research and development, and work performed for H&B by the MacKays, the actual and threatened use and disclosure of H&B's confidential and proprietary information and trade secrets constitute an unlawful misappropriation of H&B's property rights.

138. By reason of the MacKays' and Rawlings' acts, H&B has and will suffer serious and irreparable harm for which there is no adequate remedy at law.

139. Accordingly, H&B is entitled to further injunctive relief, preliminarily and permanently enjoining the MacKays and Rawlings, and those acting in concert with them, from such activities and the violation of their statutory, common law, contractual and fiduciary duties.

140. Given the nature of the MacKays' and Rawlings' activities, H&B has no adequate remedy at law, or otherwise, to address this injury save in a court of equity.

**COUNT XIII: REQUEST FOR DECLARATORY RELIEF
(ALL DEFENDANTS)**

141. H&B readopts and realleges the allegations previously set forth in Paragraphs 1-140.

142. An actual and immediate controversy exists between the parties, which requires an order declaring the rights and duties of the parties, including but not limited to a declaration as to rights of the parties in H&B's property. Among other actions, this Court should declare that all rights to the Bat Patent application and the Golf Club Patent application and the inventions thereof are the sole property of H&B and take such other and further action necessary to protect H&B's rights in its property, including but not limited to the imposition of a constructive trust for the benefit of H&B with regard to any ownership claims by Kaye MacKay or Tripp MacKay related to the Bat Patent or the Golf Club Patent; and order assignment to H&B of any and all rights to these patent applications and the inventions thereof, or patents, which may be asserted by Kaye MacKay or Tripp MacKay.

FOR THESE REASONS, Hillerich & Bradsby Co. respectfully seeks the following relief against the Defendants:

A. For an order restraining and enjoining the Defendants and anyone acting in concert with them from engaging, either directly or indirectly, or through their agents, in the foregoing unlawful activities, from engaging in unlawful competition, from denying H&B the rights to its properties and from using or disclosing, to any third parties, H&B's inventions, contract terms and other proprietary and confidential information and trade secrets;

B. An order requiring Jack MacKay, Kaye MacKay, Tripp MacKay, and Rawlings to return all originals and copies and refrain from using the records, data, and other property of H&B in their possession or control, and to relinquish possession of any of H&B's real and personal property over which they maintain custody or control;

C. An order requiring Kaye MacKay and Tripp MacKay to assign their alleged rights concerning the Bat Patent or Golf Club Patent to H&B, or alternatively, an order imposing a constructive trust upon any and all proceeds derived by Kaye MacKay, Tripp MacKay, or Jack MacKay, as a result of their wrongful use of, or benefit from this H&B trade secret and proprietary information.

D. An order enjoining Kaye MacKay, Tripp MacKay, and Jack MacKay from making any future claims to any right, title or interest in or to the patent applications now on file with the United States Patent and Trademark Office pertaining to the Bat Patent or the Golf Club Patent, and further enjoining Kaye MacKay, Tripp MacKay, Jack MacKay, or anyone in active concert or participation with them, from engaging in any efforts to make, use, sell, have made, license or otherwise exploit or engage in any use whatsoever of the Bat Patent or the Golf Club Patent inventions, patent applications or any patents that may issue from or be derived from this information or these inventions and patent applications.

E. A declaration that all rights to the Bat Patent application and the Golf Club Patent application and the invention thereof, and any patents that may issue or be derived therefrom, are the sole and exclusive property of H&B.

F. For the imposition of a constructive trust with regard to any rights claimed and proceeds received, directly or indirectly, by Kaye MacKay, Tripp MacKay, or Jack MacKay for the Bat Patent or Golf Club Patent.

G. For an award of actual, compensatory, and treble damages against the Defendants and anyone acting in concert with them, in an amount to be determined by the evidence to be presented at trial;

H. In the alternative, reformation of the Amended and Restated Consulting Agreement's non-competition clause so as to comply with TEX. BUS. & COM. CODE ANN. § 15.51(c) (Vernon Supp. 1998).

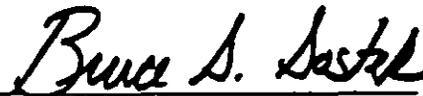
I. For an award of punitive or exemplary damages against the Defendants and anyone acting in concert with them in an amount to be determined by the trier of fact as a result of their intentional, and willful activities, manifesting an intentional disregard for the rights and interests of H&B;

J. For an award of attorneys' fees, costs, and expenses expended herein;

K. For a trial by jury; and

L. For all other relief to which H&B may be entitled in the interests of justice.

Respectfully submitted,



Bruce S. Sostek
Attorney-in-Charge
Texas Bar No. 18855700

Jane Politz Brandt
Of Counsel
Texas Bar No. 02882090

THOMPSON & KNIGHT
A PROFESSIONAL CORPORATION
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201
(214) 969-1700
(214) 969-1751 (FAX)

- and -

Robert W. Weber
Of Counsel
Texas Bar No. 21044800

ATCHELY, RUSSELL, WALDROP &
HLAVINKA, L.L.P.
1710 Moores Lane
Texarkana, Texas 75505
(903) 792-8246
(903) 792-5801 (FAX)

ATTORNEYS FOR DEFENDANT
HILLERICH & BRADSBY CO.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of H&B's First Amended Consolidated Complaint was served upon all counsel of record via facsimile, on this the 7th day of August, 1998.


Robert W. Weber

**EXHIBIT A
MAIL FRAUD**

1. On or about November 4, 1996, David Bingham issued a check for \$1500.00 to Mike Clark, Inc. The check was mailed from Lawrence Kansas to Mike Clark Inc., in Mt. Pleasant, Texas.
2. On or about April 1, 1997, Jack MacKay issued an Invoice in the amount of \$400.00 for Louisville Slugger sports equipment to David Bingham. That invoice was mailed from Mt. Pleasant, Texas to Lawrence, Kansas.
3. On or about April 1, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods consisting of softball bats. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Dave Bingham in Lawrence, Kansas.
4. On or about October 21, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods consisting of approximately 42 bats. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Dave Bingham in Lawrence; Kansas.
5. On or about December 11, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods consisting of approximately 12 bats and 2 gloves. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Dave Bingham in Lawrence, Kansas.
6. On or about February 26, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods consisting of approximately 12 bats. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Dave Bingham in Lawrence, Kansas.
7. On or about March 27, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods consisting of approximately 8 bats. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Dave Bingham in Lawrence, Kansas.
8. On or about April 10, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods consisting of approximately 12 bats. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Dave Bingham in Lawrence, Kansas.
9. On or about April 10, 1997, David Bingham issued a check for \$600.00 to Mike Clark, Inc. The check was mailed from Lawrence Kansas to Mike Clark Inc., in Mt. Pleasant, Texas.

10. On or about March 28, 1997, David Bingham issued a check for \$800.00 to Mike Clark, Inc. The check was mailed from Lawrence, Kansas to Mike Clark Inc., in Mt. Pleasant, Texas.
11. On or about December 12, 1997, David Bingham issued a check for \$500.00 to Mike Clark, Inc. The check was mailed from Lawrence, Kansas to Mike Clark Inc., in Mt. Pleasant, Texas.
12. On or about February 26, 1997, David Bingham issued a check for \$700.00 to Mike Clark, Inc. The check was mailed from Lawrence, Kansas to Mike Clark Inc., in Mt. Pleasant, Texas.
13. On or about July 25, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 16.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
14. On or about August 24, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 6.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
15. On or about October 24, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
16. On or about November 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 8.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
17. On or about December 7, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 20 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
18. On or about January 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
19. On or about March 11, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 21.5 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.

20. On or about July 24, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 13.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
21. On or about November 22, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 3.7 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
22. On or about February 12, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
23. On or about March 11, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.7 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments, d/b/a Sport Scene in Longview, Texas.
24. On or about October 6, 1995, a check for \$800.00 was issued by Sport Scene to Michael Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
25. On or about November 21, 1995, a check for \$1,600.00 was issued by Sport Scene to Jack MacKay. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
26. On or about December 15, 1995, a check for \$6,000.00 was issued by Sport Scene to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
27. On or about January 12, 1996, a check for \$3,136.00 was issued by Sport Scene to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
28. On or about February 9, 1996, a check for \$3,121.00 was issued by Sport Scene to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
29. On or about June 27, 1996, a check for \$650.00 was issued by Sport Scene to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
30. On or about October 1, 1995, a check for \$15,000.00 was issued by Mike D. Lee to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.

31. On or about May 25, 1995, a check for \$6,000.00 was issued by W. C. Beville to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
32. On or about June 15, 1995, a check for \$2,800.00 was issued by W. C. Beville to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
33. On or about March 11, 1996, a check for \$3,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
34. On or about March 18, 1996, a check for \$6,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
35. On or about April 17, 1996, a check for \$2,466.33 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
36. On or about May 7, 1996, a check for \$4,899.85 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
37. On or about September 1, 1996, a check for \$3,200.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
38. On or about September 9, 1996, a check for \$1,049.00 was issued by Sport Scene, Inc. to Michael G. Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
39. On or about September 15, 1996, a check for \$1,680.00 was issued by Sport Scene, Inc. to Michael G. Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
40. On or about October 1, 1996, a check for \$3,200.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
41. On or about October 15, 1996, a check for \$1,680.00 was issued by Sport Scene, Inc. to Michael G. Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
42. On or about November 1, 1996, a check for \$3,200.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.

43. On or about November 15, 1996, a check for \$3,710.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
44. On or about November 15, 1996, a check for \$1,680.00 was issued by Sport Scene, Inc. to Michael G. Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
45. On or about December 1, 1996, a check for \$3,200.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
46. On or about December 1, 1996, a check for \$3,710.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
47. On or about December 6, 1996, a check for \$2,911.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
48. On or about December 15, 1996, a check for \$1,680.00 was issued by Sport Scene, Inc. to Michael G. Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
49. On or about December 15, 1996, a check for \$6,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
50. On or about February 3, 1997, a check for \$4,800.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
51. On or about February 4, 1997, a check for \$2,436.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
52. On or about February 14, 1997, a check for \$13,800.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
53. On or about February 27, 1997, a check for \$2,385.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
54. On or about March 1, 1997, a check for \$1,660.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.

55. On or about March 15, 1997, a check for \$5,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
56. On or about March 17, 1997, a check for \$2,368.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
57. On or about April 3, 1997, a check for \$1,430.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
58. On or about April 15, 1997, a check for \$6,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
59. On or about May 1, 1997, a check for \$6,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
60. On or about May 15, 1997, a check for \$7,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
61. On or about May 22, 1997, a check for \$2,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
62. On or about June 1, 1997, a check for \$5,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
63. On or about June 6, 1997, a check for \$1,000.00 was issued by Sport Scene, Inc. to Mike Clark, Inc. The check was mailed from Longview, Texas to Mt. Pleasant, Texas.
64. On or about January 30, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 6.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
65. On or about March 9, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.7 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
66. On or about March 9, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 12.2 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.

67. On or about March 9, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
68. On or about March 14, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.6 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
69. On or about March 14, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
70. On or about March 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
71. On or about March 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 5.1 pounds each, for a total shipment weight of 10.2. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
72. On or about March 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.6 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
73. On or about March 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
74. On or about March 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
75. On or about May 22, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
76. On or about May 24, 1995, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 23.3 pounds each, for a total shipment weight of 46.6 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
77. On or about June 5, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 13.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.

78. On or about June 5, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 12.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
79. On or about June 6, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.7 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Sport Scene in Longview, Texas.
80. On or about April 2, 1996, Jack MacKay shipped, via a commercial interstate carrier, 5 shipments of sporting goods, weighing 19.9 pounds each, for a total shipment weight of 99.5 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to SportsScene in Farmers Branch, Texas.
81. On or about April 2, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 20.2 pounds each, for a total shipment weight of 40.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to SportsScene in Farmers Branch, Texas.
82. On or about April 18, 1996, Jack MacKay shipped, via a commercial interstate carrier, 8 shipments of sporting goods, weighing 14.4 pounds each, for a total shipment weight of 115.2 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to SportsScene in Dallas, Texas.
83. On or about April 18, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 15.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to SportsScene in Dallas, Texas.
84. On or about August 7, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.7 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
85. On or about August 29, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.2 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
86. On or about August 29, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 8.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
87. On or about August 29, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

88. On or about August 29, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
89. On or about August 29, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.5 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
90. On or about August 29, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.5 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
91. On or about September 20, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
92. On or about September 20, 1995, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 6.7 pounds each, for a total shipment weight of 13.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
93. On or about October 24, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
94. On or about November 1, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
95. On or about November 6, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
96. On or about November 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.6 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

97. On or about November 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
98. On or about November 21, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
99. On or about December 7, 1995, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 11.7 pounds each, for a total shipment weight of 23.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
100. On or about December 7, 1995, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
101. On or about December 7, 1995, Jack MacKay shipped, via a commercial interstate carrier, 3 shipments of sporting goods, weighing 10.7 pounds each, for a total shipment weight of 32.1 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
102. On or about January 2, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 16.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
103. On or about January 2, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 15.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
104. On or about January 4, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 6.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
105. On or about January 22, 1996, Jack MacKay shipped, via a commercial interstate carrier, 6 shipments of sporting goods, weighing 10.4 pounds each, for a total shipment weight of 62.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

106. On or about January 22, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 21.5 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
107. On or about January 23, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 8.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
108. On or about January 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 18.0 pounds each, for a total shipment weight of 36.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
109. On or about January 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, 3 shipments of sporting goods, weighing 20.0 pounds each, for a total of 60.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
110. On or about February 1, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 20.2 pounds each, for a total shipment weight of 40.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
111. On or about February 1, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 23.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
112. On or about February 1, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 12.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
113. On or about February 2, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
114. On or about February 19, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

115. On or about February 22, 1996, Jack MacKay shipped, via a commercial interstate carrier, 4 shipments of sporting goods, weighing 18.4 pounds each, for a total shipment weight of 73.6 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
116. On or about February 27, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 6.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
117. On or about February 27, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 13.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
118. On or about March 11, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 12.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
119. On or about March 11, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 41.2 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
120. On or about March 13, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 13.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
121. On or about March 13, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 20.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
122. On or about March 15, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
123. On or about April 4, 1996, Jack MacKay shipped, via a commercial interstate carrier, 4 shipments of sporting goods, weighing 11.0 pounds each, for a total shipment weight of 44.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

124. On or about April 4, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.5 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
125. On or about April 8, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 20.1 pounds each, for a total shipment weight of 40.2 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
126. On or about April 8, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 21.2 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
127. On or about April 29, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
128. On or about May 21, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.6 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
129. On or about June 4, 1996, Jack MacKay shipped, via a commercial interstate carrier, 5 shipments of sporting goods, weighing 21.5 pounds each, for a total shipment weight of 107.5 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
130. On or about June 4, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 12.0 pounds each, for a total shipment weight of 24.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
131. On or about June 24, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 19.9 pounds each, for a total shipment weight of 39.8 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
132. On or about June 24, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

133. On or about June 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 20.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
134. On or about June 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 19.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
135. On or about June 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 19.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
136. On or about June 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
137. On or about July 12, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 17.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
138. On or about July 15, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 13.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
139. On or about July 15, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
140. On or about July 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 8.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
141. On or about July 25, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 8.1 pounds each, for a total shipment weight of 16.2 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

142. On or about August 19, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
143. On or about August 19, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 20.0 pounds each, for a total shipment weight of 40.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
144. On or about August 23, 1996, Jack MacKay shipped, via a commercial interstate carrier, 20 shipments of sporting goods, weighing 9.6 pounds each, for a total shipment weight of 192.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
145. On or about August 23, 1996, Jack MacKay shipped, via a commercial interstate carrier, 4 shipments of sporting goods, weighing 9.9 pounds each, for a total shipment weight of 39.6 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
146. On or about September 3, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
147. On or about September 18, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
148. On or about September 27, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
149. On or about October 1, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.2 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
150. On or about October 3, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

151. On or about October 8, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 18.7 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
152. On or about October 24, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
153. On or about October 24, 1996, Jack MacKay shipped, via a commercial interstate carrier, 5 shipments of sporting goods, weighing 4.4 pounds each, for a total shipment weight of 22.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
154. On or about November 13, 1996, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 9.4 pounds each, for a total shipment weight of 18.8 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
155. On or about November 19, 1996, Jack MacKay shipped, via a commercial interstate carrier, 5 shipments of sporting goods, weighing 7.0 pounds each, for a total shipment weight of 35.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
156. On or about November 19, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
157. On or about November 22, 1996, Jack MacKay shipped, via a commercial interstate carrier, 3 shipments of sporting goods, weighing 6.5 pounds each, for a total shipment weight of 19.5 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
158. On or about January 2, 1997, Jack MacKay shipped, via a commercial interstate carrier, 9 shipments of sporting goods, weighing 14.7 pounds each, for a total shipment weight of 132.3 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
159. On or about January 2, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.5 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

160. On or about January 3, 1997, Jack MacKay shipped, via a commercial interstate carrier, 6 shipments of sporting goods, weighing 13.3 pounds each, for a total shipment weight of 79.8 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
161. On or about January 3, 1997, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 13.2 pounds each, for a total shipment weight of 26.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
162. On or about January 21, 1997, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 10.4 pounds each, for a total shipment weight of 20.8 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
163. On or about January 21, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
164. On or about January 21, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
165. On or about January 28, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 8.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
166. On or about January 30, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.2 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
167. On or about January 30, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
168. On or about February 4, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 12.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

169. On or about February 5, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 5.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
170. On or about February 6, 1997, Jack MacKay shipped, via a commercial interstate carrier, 4 shipments of sporting goods, weighing 11.6 pounds each, for a total shipment weight of 46.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
171. On or about February 6, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
172. On or about February 12, 1997, Jack MacKay shipped, via a commercial interstate carrier, 5 shipments of sporting goods, weighing 17.2 pounds each, for a total shipment weight of 86.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
173. On or about February 12, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 9.5 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
174. On or about February 14, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
175. On or about February 14, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 13.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
176. On or about February 18, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 13.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
177. On or about February 21, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 6.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

178. On or about February 25, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 14.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
179. On or about February 26, 1997, Jack MacKay shipped, via a commercial interstate carrier, 4 shipments of sporting goods, weighing 11.1 pounds each, for a total shipment weight of 44.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
180. On or about February 26, 1997, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 11.2 pounds each, for a total shipment weight of 22.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
181. On or about March 3, 1997, Jack MacKay shipped, via a commercial interstate carrier, 16 shipments of sporting goods, weighing 9.7 pounds each, for a total shipment weight of 155.2 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
182. On or about March 3, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
183. On or about March 11, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
184. On or about March 11, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
185. On or about March 11, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 6.2 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
186. On or about March 11, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.

187. On or about March 25, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Mid-South Investments in Longview, Texas.
188. On or about the week ending June 14, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to 3201 Restview in Longview, Texas.
189. On or about the week ending July 26, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to 3201 Restview in Longview, Texas.
190. On or about March 24, 1997, a check for \$8,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
191. On or about March 24, 1997, a check for \$9,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
192. On or about March 24, 1997, a check for \$5,600.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
193. On or about April 15, 1997, a check for \$4,000.00 was issued by Charlie Rose Corporation to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
194. On or about May 1, 1997, a check for \$4,000.00 was issued by Charlie Rose Corporation to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
195. On or about May 16, 1997, a check for \$5,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
196. On or about May 25, 1997, a check for \$45,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
197. On or about June 13, 1997, a check for \$2,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.

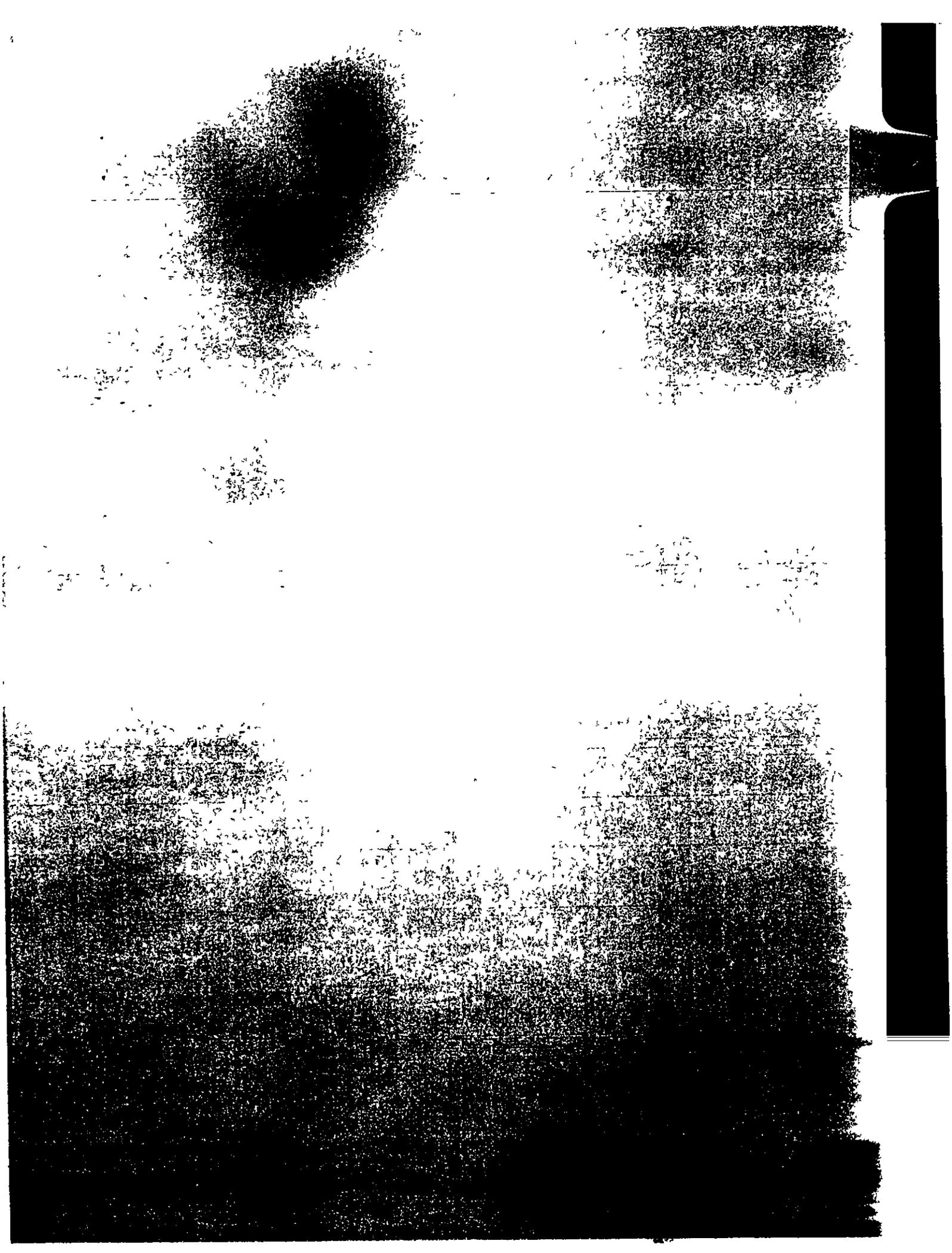
198. On or about June 15, 1997, a check for \$7,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
199. On or about June 15, 1997, a check for \$15,000.00 was issued by Charlie Rose Baseball of Omaha, Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
200. On or about June 15, 1997, a check for \$20,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
201. On or about July 1, 1997, a check for \$27,000.00 was issued by Charlie Rose Baseball of Omaha, Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
202. On or about July 1, 1997, a check for \$10,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
203. On or about August 1, 1997, a check for \$20,000.00 was issued by Charlie Rose Baseball Inc. to Mike Clark, Inc. The check was mailed from Omaha, Nebraska to Mt. Pleasant, Texas.
204. On or about December 16, 1996, Jack MacKay shipped, via a commercial interstate carrier, 8 shipments of sporting goods, weighing 11.6 pounds each, for a total shipment weight of 92.8 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
205. On or about December 16, 1996, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.0 pounds. This shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
206. On or about January 9, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 26.7 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
207. On or about January 9, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 27.3 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.

208. On or about February 13, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 10.4 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
209. On or about March 13, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.1 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
210. On or about March 13, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.8 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
211. On or about March 13, 1997, Jack MacKay shipped, via a commercial interstate carrier, 2 shipments of sporting goods, weighing 23.0 pounds each, for a total shipment weight of 46 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
212. On or about March 13, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 7.9 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
213. On or about March 25, 1997, Jack MacKay shipped, via a commercial interstate carrier, 7 shipments of sporting goods, weighing 7.0 pounds each, for a total shipment weight of 49 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
214. On or about March 25, 1997, Jack MacKay shipped, via a commercial interstate carrier, 3 shipments of sporting goods, weighing 7.1 pounds each, for a total shipment weight of 21.3 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
215. On or about March 26, 1997, Jack MacKay shipped, via a commercial interstate carrier, 6 shipments of sporting goods, weighing 6.9 pounds each, for a total shipment weight of 41.4 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
216. On or about March 26, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 6.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.

217. On or about March 26, 1997, Jack MacKay shipped, via a commercial interstate carrier, 2 shipment of sporting goods, weighing 5.1 pounds each, for a total shipment weight of 10.2 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
218. On or about March 27, 1997, Jack MacKay shipped, via a commercial interstate carrier, 6 shipments of sporting goods, weighing 7.0 pounds each, for a total shipment weight of 49 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Charlie Rose Baseball in Omaha, Nebraska.
219. On or about the week ending April 19, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 12.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Pete McCann in Omaha, Nebraska.
220. On or about the week ending June 7, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 4.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Pete McCann in Omaha, Nebraska.
221. On or about the week ending June 14, 1997, Jack MacKay shipped, via a commercial interstate carrier, a shipment of sporting goods, weighing 11.0 pounds. That shipment was sent from the H&B facility at Mt. Pleasant, Texas to Pete McCann in Omaha, Nebraska.
222. On or about the week ending June 14, 1997, Jack MacKay shipped, via a commercial interstate carrier, 10 shipments of sporting goods, weighing 12.0 pounds each, for a total shipment weight of 120 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Pete McCann in Omaha, Nebraska.
223. On or about the week ending July 5, 1997, Jack MacKay shipped, via a commercial interstate carrier, 12 shipments of sporting goods, weighing 8.0 pounds each, for a total shipment weight of 96 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Pete McCann in Omaha, Nebraska.
224. On or about July 25, 1997, a check for \$2,100.00 was issued by Georgia State University to Northeast Texas Sluggers. The check was mailed from Atlanta, Georgia to Mt. Pleasant, Texas.
225. On or about August 13, 1997, a check for \$2,250.00 was issued by Georgia State University to Northeast Texas Sluggers. The check was mailed from Atlanta, Georgia to Mt. Pleasant, Texas.
226. On or about the week ending June 21, 1997, Jack MacKay shipped, via a commercial interstate carrier, 14 shipments of sporting goods, weighing 12.0 pounds each, for a total shipment weight of 168.0 pounds. These shipments were sent from the H&B facility at Mt. Pleasant, Texas to Mike Hurst in Atlanta, Georgia.

**EXHIBIT B
WIRE FRAUD**

1. On or about January 11, 1995, Kaye MacKay, signing for Jack MacKay, sent a facsimile transmission from Mt. Pleasant, Texas, to Richard M. Gordon of Richard Gordon Interests, in Hartford, Connecticut, informing that payment for H&B's products, sold by MacKay and purchased by Gordon, be sent to Michael Clark, Inc.
2. On or about October 21, 1996, David Bingham placed a phone call from Lawrence, Kansas, to Jack MacKay, in Mt. Pleasant, Texas, to inquire about the purchase of H&B equipment from Jack MacKay.
3. On or about October 8, 1996, Kaye MacKay, signing the name of Mike Clark, sent a facsimile transmission from Mt. Pleasant, Texas, to Jim Brady in St. Louis, Missouri, which included order forms and product descriptions of H&B products for purchase.
4. On or about the month of March of 1997, Jack MacKay placed a phone call from Mt. Pleasant, Texas, to Pete McCann at Charlie Rose Baseball, in Omaha, Nebraska in furtherance of the illegal sale of H&B's products.
5. On or about June 16, 1997, in a phone call between Jack MacKay, in Mt. Pleasant, Texas, and Michael G. Hurst, in Atlanta, Georgia, MacKay arranged for Georgia State to purchase H&B's products but to pay Michael Clark, Inc.
6. On or about September 12, 1997, Jack MacKay called Michael G. Hurst in Georgia from Texas to collect payment for H&B's products sold to Georgia State.
7. On or about June of 1997, Jack MacKay placed a phone call from Mt. Pleasant, Texas, to Gary Murphy in Charleston, South Carolina to "sell" H&B's products to Charleston Southern University baseball program and to instruct Murphy to remit payment to Michael Clark, Inc.
8. On or about January of 1997, Jack MacKay placed a call from Mt. Pleasant, Texas, to Lyle Smith in Ames, Iowa, to discuss the "purchase" of H&B's equipment.



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

FRIEDRICH WILHELM WAFFENSCHMIDT,
ANNA WAFFENSCHMIDT and SUNBURST
FARMS, INC.

PLAINTIFFS

VERSUS

NO. EC83-81-WK-P

JACK W. MACKAY, JR.

DEFENDANT

SPECIAL VERDICT

INSTRUCTIONS TO THE JURY:

Please begin with Question No. 1. Please answer all
questions in numerical order.

FILED

This 17th day of OCT, 1984

Rossan L. Gillespie, Clerk

by William S. [Signature]
Deputy Clerk

Question No. 1 (Common Law Fraud)

Do you find that Jack W. MacKay, Jr. committed a fraud upon the Waffenschmidts?

Yes _____

No _____

If your answer is "no", please go on to Question No. 2. If your answer is "yes", what amount do you find is the difference between what the Waffenschmidts paid for what they purchased and the value of what they received in turn?

Answer in dollars: \$ 0

Question No. 2 (Breach of Contract)

Do you find that Jack W. MacKay, Jr. breached the warranties in the Memorandum of Understanding?

Yes _____

No _____

If your answer is "no", please go on to Question No. 3. If your answer is "yes", what amount do you find will adequately compensate the Waffenschmidts for these damages suffered as a consequence of the breach of warranties in the Memorandum of Understanding by Jack W. MacKay, Jr., which damages were reasonably foreseeable at the time the Memorandum of Understanding was signed?

Answer in dollars: \$ 15,000

Question No. 3

3(a) (Material Misrepresentations in Connection with Sales of Stock)

Do you find that Jack W. MacKay, Jr. was a controlling person or a substantial factor or materially aided in the sale of shares of Sunburst Farms, Inc. to the Waffenschmidts and that he either had knowledge of the material misrepresentations or, in the exercise of reasonable care, could have learned of such misrepresentations?

Yes

No

3(b) (Fraudulent Misrepresentations in Connection with Sales of Stock)

Do you find that Jack W. MacKay, Jr. knowingly or recklessly either made fraudulent misrepresentations or aided and abetted others in doing so, upon which representations the Waffenschmidts justifiably relied in purchasing shares in Sunburst Farms, Inc.?

Yes

No

3(c) (Failure to Disclose All Material Matters Requires Registration of Shares)

Do you find that Jack W. MacKay, Jr. failed to disclose fully and accurately to the Waffenschmidts all material matters relating to an offer or sale to the Waffenschmidts of shares in Sunburst Farms, Inc.?

Yes

No

3(d) If your answer is "no" to all three subparts of Question No. 3, please go on to Question No. 4. If your answer is "yes" to any one or more of the three subparts of Question No. 3 for either or both of the transactions closing on March 19, 1982 (the "First Closing") and June 2-4, 1982 (the "Second Closing"), your verdict for damages should be the following:

(i) For the First Closing

(A)	amount paid at First Closing	\$3,300,000
(b)	plus interest at 8% per year	<u>680,917</u>
		\$3,980,917

(ii) For the Second Closing

(A)	amount paid at Second Closing	\$2,401,698
(B)	plus interest at 8% per year	<u>459,866</u>
		\$2,861,564

(iii) Plus reasonable costs, including attorneys' fees stipulated by the parties \$ 400,000

If you find MacKay liable in respect to both the First and Second Closings, then your verdict for damages will be for the amounts in (i), (ii) and (iii).

Alternatively, if you find MacKay liable only for the First Closing, then your verdict for damages will be the amounts in (i) and (iii).

If you find MacKay liable for only the Second Closing, then your verdict for damages will be the amounts in (ii) and (iii).

Amount in dollars:

\$ 7,242,481

Question No. 4 (Racketeering Activity)

Do you find that Jack W. MacKay, Jr. violated the Racketeer Influenced and Corrupt Organizations Act of 1970 with respect to the Plaintiffs by engaging in "a pattern of racketeering activity" as defined in the Court's instructions?

Yes _____

No _____

If your answer is "no", please go on to Question No. 5. If your answer is "yes", what amount do you find will adequately compensate Plaintiffs for their damages resulting from the violations of Section 901(a) of the Racketeer Influenced and Corrupt Organizations Act by Jack W. MacKay, Jr. multiplied by a factor of three, plus the reasonable costs of this suit to Plaintiffs, including stipulated attorneys' fees?

Answer in dollars and cents:

a. Damages \$ 100,000

b. Trebled
(multiply amount in
line a by 3) _____ x 3

\$ 300,000

c. Add stipulated
reasonable costs, inclu-
ding attorneys' fees
incurred by Plaintiffs \$ 400,000.00

d. Verdict for Plaintiffs
(add b and c) \$ 700,000

Question No. 5

Do you find that Jack W. MacKay, Jr. converted farm machinery and equipment of Sunburst Farms, Inc.?

Yes ✓

No _____

If your answer is "no", please go on to Question No. 6; provided, however, if your answers are also "no" to Question Nos. 1 and 2, you are to answer no further. If your answer is "yes", what amount do you find will fairly and adequately compensate Sunburst Farms, Inc. for the loss of its property ~~and~~ resulting from the acts of conversion of Jack W. MacKay, Jr.?

Answer in dollars

\$ 42,200

Question No. 6 (Punitive Damages - the Waffenschmidts)

If your answer to either of Question Nos. 1 or 2 was "yes", and if you find that the conduct of Jack W. MacKay, Jr. involved intentional wrong, malice, wilfulness or callous and reckless indifference to the rights of others, then you may assess punitive damages against Jack W. MacKay, Jr. as you find appropriate.

Amount of punitive damages
in dollars

\$ 500,000

Question No. 7 (Punitive Damages - Sunburst Farms, Inc.)

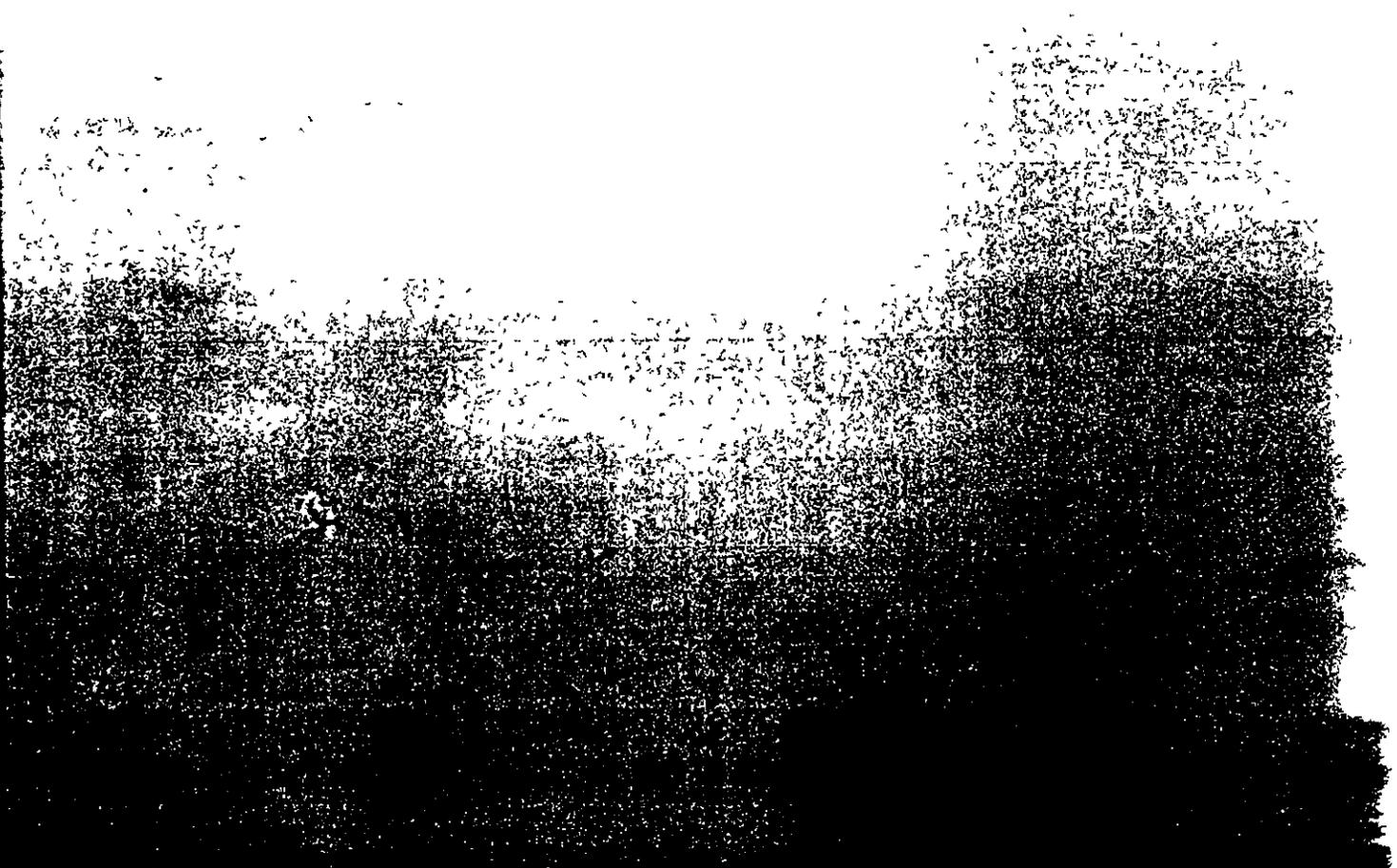
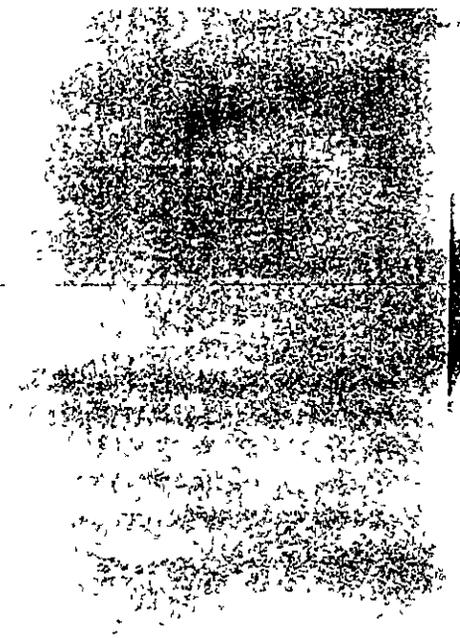
If your answer to Question No. 5 was "yes", and if you find that the conduct of Jack W. MacKay, Jr. toward Sunburst Farms, Inc. involved intentional wrong, malice, wilfulness or callous and reckless indifference to the rights of others, then you may assess punitive damages against Jack W. MacKay, Jr. as you find appropriate.

Amount of punitive damages
in dollars

\$ 100,000

Dated: 5-17-17 1942

Belle Ann Prince
JURY FOREMAN



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

FRIEDRICH WILHELM WAFFENSCHMIDT,)
et al.,)
Plaintiffs,)
v.) CIVIL ACTION
JACK W. MACKAY, JR., et al.,) NO. EC 83-81-WK-P
Defendants.)

ORDER OF CONTEMPT

The Court has for consideration plaintiffs' motion for an order holding in civil contempt Jack W. MacKay, Jr., who was temporarily enjoined by this Court on March 16, 1983, from making transfers or other dispositions of certain funds and property, for violating the temporary restraining order and a preliminary injunction requiring turnover of property and funds entered by this Court on May 27, 1983, after notice and full hearings.

Pursuant to an order to show cause entered June 23, 1983, after due notice, hearings were held before the Court on July 1, 5 and 15, 1983. Thereafter at the aforesaid hearings, the plaintiffs offered oral and documentary evidence, as did defendant MacKay.

Upon consideration of the evidence and written

briefs of counsel, the Court hereby makes findings of fact and conclusions of law incorporated herein.

It is, therefore, ORDERED as follows:

1. The defendant MacKay is hereby held in contempt for violations of the temporary restraining order and preliminary injunction as set forth hereafter:

a. MacKay made prohibited transfers and caused and permitted encumbrances to be placed on the proceeds of the fraud practiced upon plaintiffs on March 17, 1983 (\$100,000), April 15, 1983 (\$15,000), April 28, 1983 (\$15,000), May 4, 1983 (\$100,000) at the First National Bank of Mount Vernon, Texas, \$100,000 to Palmore Currey, and \$100,000 to Kendall Johnson and/or D & K Motor Sports, Inc., both in or about the end of May or early June 1983. MacKay further made prohibited transfers, pledges and encumbrances as aforesaid in respect to the ordering, without permission of the Court, of a 1984 Corvette on March 28, 1983, and thereafter attempted to pledge it for a \$20,634.58 loan thereon

on June 2, 1983, and the sale of a twenty-foot Centurion boat for \$10,000 on April 25, 1983.

b. MacKay has failed to honestly, accurately and completely report to the Court and to deliver the aforesaid property to the Clerk of this Court as heretofore ordered.

2. The Court finds that MacKay's testimony at the hearings was patently false and, in light of clear and convincing evidence, demonstrated that he has flaunted this Court's prior orders to such substantial extent that the Court finds he is guilty of civil contempt and should suffer punishment for his contumacious behavior, until such time as he purges himself of such contempt.

3. It is therefore ORDERED that the defendant MacKay shall, unless he turn over or cause to be turned over to the Clerk of this Court within ten (10) days expiring at 12:00 Noon on August 22, 1983:

a. \$430,000 cash or its equivalent in Treasury Bills to replace two \$100,000 Treasury Notes with \$30,000 coupons attached improperly negotiated to the

First National Bank of Mount Vernon, the \$100,000 Treasury Note held by Palmore Currey as the agent of and for the benefit of MacKay, and the \$100,000 Treasury Note held as agents for the said MacKay and improperly negotiated to Kendall Johnson and/or D & K Motor Sports, Inc.;

b. Secure the release of the bank's lien for \$20,634.58 on his 1984 Corvette so that vehicle shall be held by the Clerk of this Court free of lien and turn over the twenty-foot Centurion boat improperly sold on April 25, 1983, or \$10,000 cash representing the sale proceeds thereof;

surrender himself at Oxford, Mississippi, to the United States Marshal of the Northern District of Mississippi to be incarcerated in such institution as the Marshal may designate until he shall fully purge himself of civil contempt by delivery of the funds and/or property to the Clerk of this Court as hereinabove provided.

The Court further **ORDERS** that the applications of the said Jack MacKay for an award of living expenses

and for payment of additional attorney's fees be denied in its entirety. Apart from the contumacious conduct practiced by the said MacKay with respect to the temporary restraining order and preliminary injunction heretofore entered by this Court, the evidence overwhelmingly shows that he has engaged in wasteful and extravagant practices which far exceed ordinary costs of living on any reasonable scale. For that reason, there is no equity in MacKay's petition to be granted an allowance for further living expenses, for attorney's fees or any other item not essential to the protection of the property held in custodia legis.

The defendant Kay Kerley is exonerated of all charges of contempt as plaintiffs' evidence does not show by a clear and preponderance standard that she has been a knowing participant in the contumacious conduct of defendant MacKay.

Plaintiffs' motion for award of attorney's fees is also denied.

Issued at Greenville, Mississippi, this 12th day of August, 1983, at 10:00 A.M.

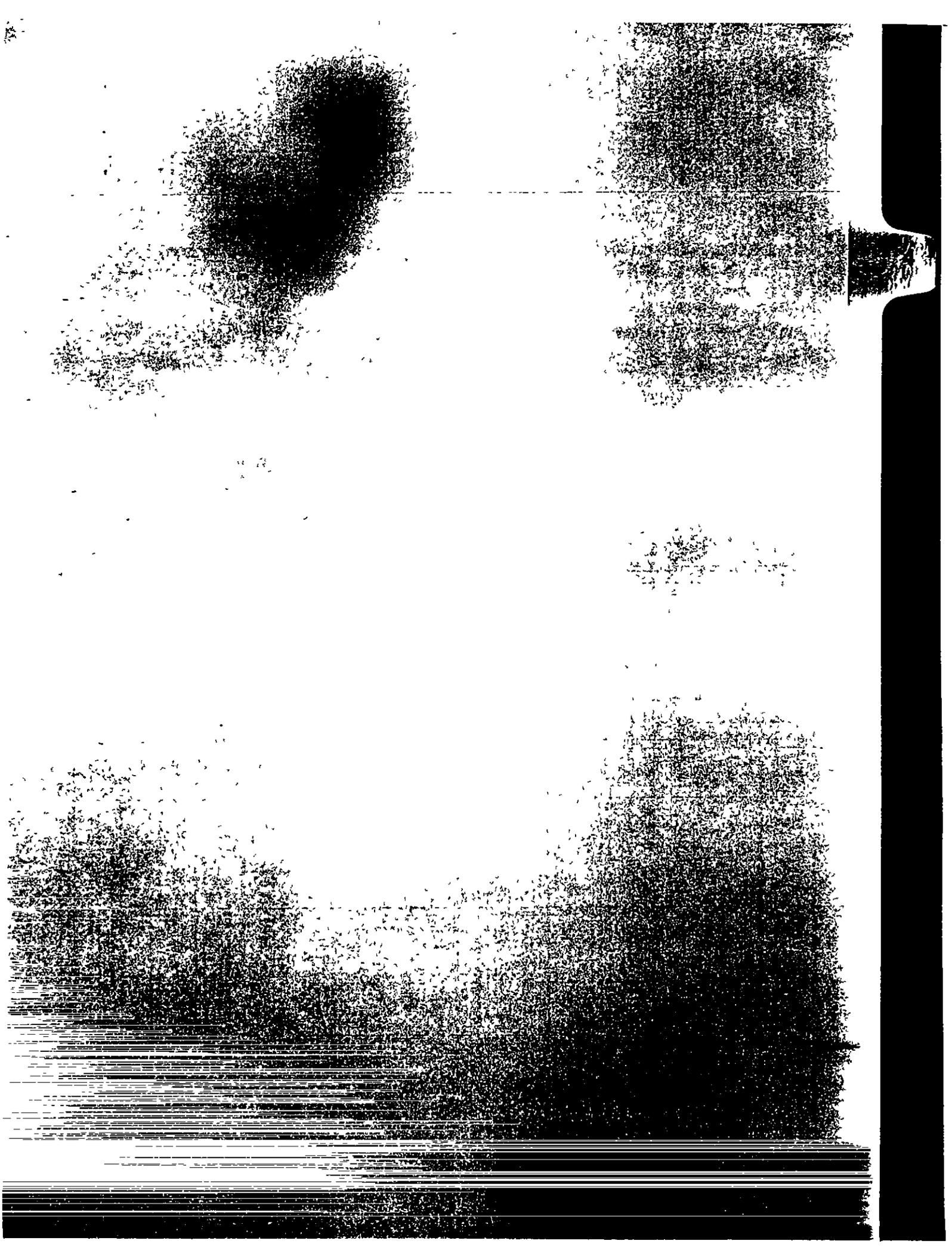
William C. Keagy
United States District Judge

CERTIFYING STAMP

I hereby certify that the foregoing
is a true copy of the original thereof
now in my office.

Dated 8-12-83
Norma L. Gillespie, Clerk

[Signature]



COPY



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

OFFICE OF THE GENERAL COUNSEL

Stephen Lemberg
Assistant General Counsel
Tel 301-504-0980 ext. 2218
E-Mail slemberg@cpsc.gov

May 23, 2000

J.W. MacKay, Jr.
Route 9 Box 185, Highway 49
Mt. Pleasant, Texas 75455

Dear Mr. MacKay

Your letter dated April 11, 2000 requesting that the Commission issue a rule concerning the performance of non-wood baseball bats has been forwarded to the Office of General Counsel for a determination of whether your request should be docketed as a petition for rulemaking. You request that the Commission issue a rule requiring that non-wood baseball bats "perform like wood bats," recall "dangerous" bats, and "levy penalties" against bat manufacturers who have not reported injury information about their bats. Although your request for a standard meets the Commission's minimal requirements for docketing petitions as set forth in 16 C.F.R. Part 1051¹ and will therefore be docketed, there are a number of difficult issues that would need to be addressed before the Commission could consider issuing the kind of rule you request.

First, you assert that non-wood bats pose an unreasonable risk of injury, and you provide data reporting pitchers being struck by balls that were hit by such bats. However, the materials you provided do not establish a causal link between the particular bats and these injuries. You indicate that there has been an increase in injuries from batted balls. However, assuming this is true, numerous other factors, such as changes in the construction of the balls and increased strength of the players, may also explain these injuries.

Second, the materials you provide do not demonstrate that there has been an increase in injuries involving batted balls. Among the materials you recently submitted was a statement by Little League Baseball reporting a 76 percent decrease in reported injuries to pitchers resulting from batted balls from 1992 to 1999. As you acknowledge, the NCAA's injury reports are not complete. However, you also provided a news article indicating that the NCAA is seeing a decrease in injuries to pitchers so far this season compared to last year.

Third, several questions exist about development of a standard. For the Commission to issue a product safety standard, it must evaluate the potential benefits of a rule against its costs. If the Commission set a standard for non-wood baseball bats, it would have to be able to conclude that the standard would reduce the risk of being hit by a batted ball by some specific

¹ A copy of which is enclosed

Page 2

amount. Presently the Commission does not have information that it could use to quantify the risk and make such a determination

Finally, it is unclear from your submissions what an acceptable level of risk would be. You state that a non-wood bat should perform like a wood bat. But, what would this mean in terms of injury reduction? Extensive testing would likely need to be done to determine accurate performance measurements for wood bats and corresponding levels for non-wood bats. Moreover, even this information by itself would not provide the data needed to estimate the differences in risk between wood and non-wood bats. Human reaction time, which likely varies substantially between people, has not been well studied.

Your other two requests – for recalls and penalties – do not meet the Commission's requirements for docketing petitions. We can only docket as petitions requests for action that the Commission can take by issuing a rule 16 C.F.R. § 1051.5(a). Although, the Commission does have the authority to order recalls, 15 U.S.C. § 2064(c), it does not do so through rulemaking. Similarly, when the Commission imposes penalties for failure to report a dangerous product, it does not do so through rulemaking 15 U.S.C. § 2064(b). Therefore, neither of these requests can be docketed as a petition. However, we are forwarding these requests to the Office of Compliance for consideration of any appropriate action.

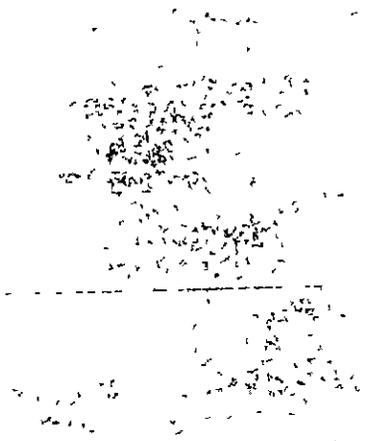
In this letter, we have identified a number of areas for which additional data would be important to establish the role of non-wood bats in an increased risk of injury. To the extent that you or others have this additional data, we would encourage you to submit it to the Commission. I appreciate your sharing your concerns with the Commission. The staff will be reviewing your information concerning development of a performance standard.

Sincerely,



Stephen Lemberg
Assistant General Counsel

Enclosure



5



MEN AT WORK

—
The Craft of Baseball

GEORGE F. WILL

Macmillan Publishing Company
New York
Collier Macmillan Publishers
London

... an
ball to se

Copyright © 1990 by GEORGE F WILL

Grateful acknowledgment is made for permission to reprint excerpts from the following

- The Crack-Up* by F Scott Fitzgerald Copyright 1945 by New Directions Publishing Corporation Reprinted by permission of New Directions Publishing Corporation.
- "The Sporting Scene—Hard Times (The Movie)" by Roger Angell from *The New Yorker* Copyright © 1988 Reprinted by special permission All rights reserved
- "Hub Fans Bid Kid Adieu" from *Assorted Prose* by John Updike Reprinted by permission of Alfred A Knopf, a division of Random House, Inc
- The Bill James Historical Baseball Abstract* by Bill James Reprinted by permission of Villard Books, a division of Random House, Inc
- "Seven and a Half Cents" from *The Pajama Game* Reprinted by permission of Richard Adler Music and J and J Roth Company Administered by the Songwriters Guild of America.
- The Bill Durham* screenplay by Ron Shelton. Reprinted courtesy of Orion Pictures Corporation

All rights reserved No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the Publisher

Macmillan Publishing Company
866 Third Avenue, New York, NY 10022
Collier Macmillan Canada, Inc

Library of Congress Cataloging-in-Publication Data
Will, George F
Men at work

I Baseball—United States—History I Title
GV863 A1W53 1990 796 357'0973 89-13265
ISBN 0-02-628470-7

Macmillan books are available at special discounts for bulk purchases for sales promotions, premiums, fund-raising, or educational use For details, contact

Special Sales Director
Macmillan Publishing Company
866 Third Avenue
New York, NY 10022

10 9 8 7 6 5 4 3 2 1

Printed in the United States of America

Beir
form o
Basebe
one at
The ga
derstar
detail f
Based
baseba
Men at
of the f
plars of
Part
aration,
pies, fr
to execi
steal pl
Oakland
Part:
Hershis
record o
Will car
season
tween tr
includes
Indians,
gram, ar
a man w
inning re
In Par
Gwynn o
secutve
student o
the stoler
of basebe
In Part
Cal Ripke

is wood wonder-
think that I shall
om them.

have important
interested in, and
which they pursue
s Joe Jackson be-
na to stay warm.
average.) Richie
tely, on the road.
a hit. His reason-
y so many hits in
using a bat from
Williams is said to
the lathe opera-
ch when turning

bats. One day at
ndered into the
aluminum thing
per" weighed 31
ppy relationship
en he became a
a bat of the same
with a big barrel.
arrels of his bats
, " with a portion
ottom of a wine
1984, when he
hanged to a bat
lf an inch longer.
young Babe Ruth
s "only" 44 to 48

See Willie Keeler
and weighed only
t 200-hit seasons.
second basemen,
s's 32-ounce bat
nd Henry Aaron

exemplified a new kind of power hitter. They used thin-handled bats that they whipped with their quick, strong wrists

Thin-handled bats break—often. But all bats are breakable. On July 15, 1887, Pete Browning, an outfielder for the Louisville club, broke his bat. A fan who also was a wood-turner made Browning a new one. The fan's name was John Andrew (Bud) Hillerich. Browning went 3-for-3 in his first game with the new bat and he soon became known as "The Louisville Slugger." So did his bat. A company, and one of America's most famous trademarks, was born.

For many years bats did not break nearly as often as they do now. Lefty Gomez, the Hall of Fame wit and pitcher, said he broke only one bat: "I ran over it backing out of the garage." There have been people who, unlike Gomez, were good at bringing their bats into contact with pitched balls and broke remarkably few bats. Bill Terry used only two bats in 1930 while hitting .401 with 254 hits. Ira Berkow, sports columnist for *The New York Times*, reports that Joe Sewell, the last living member of the 1920 Indians' team that beat the Dodgers in a seven-game (5-2) World Series, still has in a glass case at his home in Mobile, Alabama, the one bat he used throughout his 14-year career. It is long (35 inches) and hefty (40 ounces) and must be enjoying retirement because it had a hard working life: Not only did it bang out 2,226 hits but it was constantly making contact. Sewell struck out only 114 times in 7,132 at bats, the fewest strikeouts recorded in any extended career. The fact that Jim Rice several times snapped bats on checked swings may reveal as much about the nature of today's bats as about Rice's wrists, powerful though they undoubtedly are. Bo Jackson is an impressive specimen, but when he breaks bats over his knee, and even over his head (wearing a batting helmet), one does wonder about the wood, or whether today's batters have gone a bit too far in favoring thin handles. Whatever the reason for so many bats breaking (some baseball people say that wood isn't what it used to be), the fact that so many are breaking has an interesting consequence. A college player's baseball education begins when he leaves school—and it begins immediately.

"I learned the day after I was signed, in Walla Walla," Gwynn says. "The first hack I took in batting practice I got jammed, tried to fight it off, shattered my bat, stung my hands. I took that one swing and that was it. You realize you're not going to make a living swinging a bat like that. You've got to get the barrel of the bat on the ball.



Dave Destler

Metal vs. Wood

The controversy rages on. Some say the wooden bat is the only true tool for hitting a baseball, and others tell those old loyalist die-hards to wake up and embrace the future.

Both have valid points, although neither seem to utilize them to their greatest advantage.

Advocates for wood bats in youth leagues contend that the childrens' safety is the primary issue, while those who would have high school and college players switch to wood cite the offensive explosion brought about by high-tech aluminum bats, changing the nature of the game.

Recent sports channel "exposés" have sensationalized the safety factor - as the broadcast media seems to do all too much these days.

Although kids *do* get hurt on occasion from come-backers to the mound, or bad hops to the infield, it is unrealistic to conclude that all or most of these unfortunate injuries would have been avoided if the batters were swinging lumber instead of metal.

At the younger levels, the sheer bat speed (or lack thereof) limits the speed of a hit ball, regardless of the type of bat, and the differences in exit speed off the bat between wood and metal are negligible! And exit speed is the only factor that matters at all when discussing this issue.

However, the benefits of light-weight metal bats for younger players cannot be overlooked.

A lighter bat will allow an as-yet

- physically undeveloped child to learn proper swing mechanics,
- building muscle memory that will carry into his teen and older years.
- A heavy wooden bat (most are as much as a half-pound heavier than metal for a given length) will create a physical obstacle to learning proper mechanics, as the child struggles to swing the extra weight.

- Fact is, most - if not virtually all - injuries occurring to younger kids due to batted balls would have happened anyway regardless of whether the bat was wood or metal. Most of the time it comes down to chance, that freak bad bounce, or lack of fielding skill.

- People whose kids are hurt in one of these situations oftentimes need to find a villain, and the metal bat is the obvious scape goat.

- Many high school and college players swing wood bats in B.P. or training (see "Hitting With Wood" last issue). So why is wood not used in the game? Originally, cost was an issue, as wood bats break and must be replaced, while metal cost a bit more but never wore out.

- Nowadays, high performance metal bats are very expensive, and can lose 'pop' after a season, requiring replacement. But injury statistics have *not* increased, as some would have you believe.

- Should college players switch to wood? That's not for me to say. But take advantage of the benefits of modern alloy bats for younger kids, and perhaps someday they'll be swinging wood for a living!

Junior League BASEBALL
 JULY/AUG 1998 Volume 3, Number 4

Publisher/Editor
 Dave Destler

Publishing Director
 Danya Destler

Managing Editor
 Don Martin

Editorial Contributors
 Ray Biele, John Hillman,
 Brock Hebe, Jack Strain

Chief Equipment Tester
 Dany Destler

Pre-Press/Film
 RC Graphics

ADVERTISING & BUSINESS OFFICES
 Phone: (818) 710-1234
 Fax: (818) 710-1877
 E-mail: editor@jlbmag.com

SUBSCRIPTIONS
 Order Line: 1-888-ITS-A-HIT
 (818) 710-1234
 1 year \$17.70
 2 years U.S. (818) 710-1234
 1 year \$27.70 US funds
 2 years \$47.70 US funds

MAILING ADDRESS
 JUNIOR LEAGUE BASEBALL
 P.O. Box 9099
 Cotogna Park, CA 91309

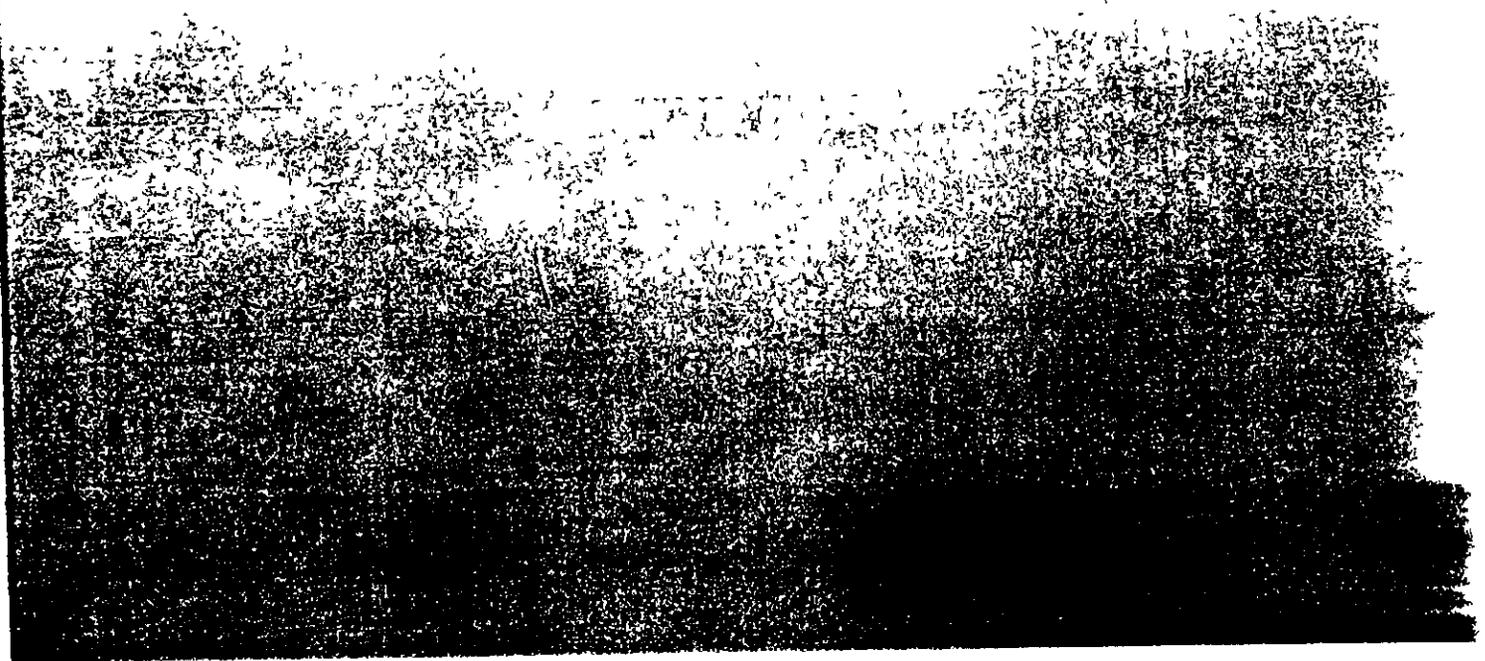
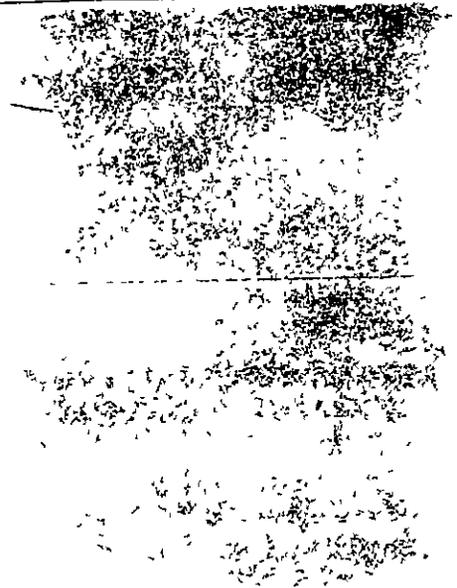
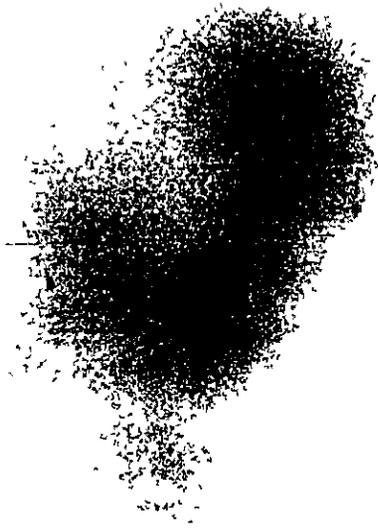
EXPRESS DELIVERIES
 20 PUBLISHING
 22026 Gault St
 Cotogna Park, CA 91303

WEBSITE & TOURNAMENT LISTINGS
<http://www.jlbmag.com>

PRINTED IN THE U.S.A.
 JUNIOR LEAGUE BASEBALL is published six times per year by 20 PUBLISHING, 22026 Gault St., Cotogna Park, Cotogna, CA 91309. Copyright 1998. All rights reserved. Reproduction without permission is prohibited. Unpublished materials and information obtained by the Editor, Publisher, or any other person are subject to legal and copyright. The authors do not necessarily represent points of view or opinions of the publisher. Please consult a copyright attorney for more information of this program.

Moved?
 PLEASE INFORM US OF
 YOUR CHANGE OF
 ADDRESS IMMEDIATELY!

Post Office does not forward!
 Call, mail, fax, or e-mail changes of
 address to our offices



United States District Court

FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Hillerich & Bradsby Co.,
Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

Jack W. MacKay, Jr., et al.,
Defendants.

CASE NUMBER: 5:97-CV-244
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

TO: Custodian of Records For: Mississippi State University
Barr Avenue
Starkville, MS 39762 (601) 325-2323

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
The office of the custodian: Barr Avenue Starkville, MS 39762	SEPT. 2, 1998 10:00 AM

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Any and all scholastic records, including but not limited to, applications for admission, transcripts, reports, reviews, graduation records, guidance/counseling records, disciplinary and/or scholarship records.

PLACE	DATE AND TIME
The office of the custodian: Barr Avenue Starkville, MS 39762	SEPT. 2, 1998 10:00 AM

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
Jane P. Brandt Attorney for Plaintiff	8-20-98

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Jane P. Brandt
A-Legal Copy & Records Services
1412 Main, Suite 800, Dallas, TX 75202 (214) 748-9210 Fax (214) 748-9244

PROOF OF SERVICE

SERVED	DATE	PLACE
	8-21-98	MSU Reg. STRAS OFFICE STARKVILLE, MS OKTIBBEHA CO.
SERVED ON (PRINT NAME)		MANNER OF SERVICE
ELLA ROGER		PERSONAL
SERVED BY (PRINT NAME)		TITLE
		Constable / PROCESS SERVER

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 8-21-98
DATE

Curtis D. Randle
SIGNATURE OF SERVER

104 Felix Long DR. STARKVILLE, MS
ADDRESS OF SERVER

Nona Holiday D.C.
12-21-99

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel the production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person,

except that, subject to the provisions of clauses (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and not exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.