

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05-CVS-1938

KAY W. FISHER, ORVILLE WIGGINS,
DALE C. BONE, THOMAS N. RHOAD,
LINWOOD SCOTT, JR., ROBERT C.
BOYETTE, RICHARD RENEGAR, AND
KENDALL HILL AND OTHERS SIMILARLY
SITUATED,

Plaintiffs,

vs.

FLUE-CURED TOBACCO COOPERATIVE
STABILIZATION CORPORATION, KEITH
BEAVERS, MCDANIEL WYNNE, BRUCE L.
FLYE, RICHARD J. JENKS, CLAUDE B.
FRENCH, AND ANDREW Q. SHEPHERD,

Defendants.

**ANSWER, MOTION TO STRIKE,
AND COUNTERCLAIM OF
DEFENDANTS**
(ANSW-Response)(STRK) (CTCL)

FILED
2005 JUN 13 11 09:50
CLERK OF SUPERIOR COURT
WAKE COUNTY, N.C.

Defendants Flue-Cured Tobacco Cooperative Stabilization Corporation
("Stabilization"), Keith Beavers, McDaniel Wynne, Bruce L. Flye, Richard J. Jenks, Claude B.
French, and Andrew Q. Shepherd (the "Defendant Directors") (Stabilization and the Defendant
Directors are referred to hereinafter, collectively, as the "Defendants"), responding to the First
Amended Complaint ("Amended Complaint") of the plaintiffs, allege and say as follows:

INTRODUCTION

1. Plaintiffs' Amended Complaint is the second in a series of lawsuits filed in this
Court, purportedly on behalf of a class of Stabilization's members who claim an interest in, and
seek to force a distribution of, Stabilization's accumulated reserves. Unlike the first action,
plaintiffs in this case single out for unjustified attack six directors of Stabilization who,

collectively, have provided decades of dedicated and selfless service to Stabilization and its members.

2. Plaintiffs have failed utterly to include any well-pleaded facts to support their allegations of wrongdoing. Instead, the Amended Complaint is founded on the conclusory and factually incorrect allegations that the six Defendant Directors have acted together to influence or control certain decisions of Stabilization's Board, and that the Defendant Directors have converted Stabilization's assets to their own use.

3. In truth: (i) there is no basis to single out any of the six Defendant Directors; (ii) all of the Board's actions have been properly taken in accordance with lawful procedures; (iii) all of the Defendant Directors, and the Board as a whole, have acted in good faith and in the exercise of their reasonable business judgment; and (iv) all of Stabilization's assets have been properly managed and accounted for, and no Defendant Director has "converted" anything that belongs to the cooperative.

4. In addition to mischaracterizing the Board's actions, plaintiffs' Amended Complaint is filled with other fundamental errors concerning their alleged rights and interests in Stabilization's assets, which are contradicted by plaintiffs' own stock certificates, Stabilization's Articles of Incorporation and By-Laws, and by the federal statutes and contracts under which Stabilization administered the Federal Tobacco Price Support Program. There is no legal or equitable basis for any of plaintiffs' claims and all of the claims should be dismissed.

FIRST DEFENSE

This case presents numerous complex issues of business law. Defendants believe it is important that these issues be decided under the special rules applicable to cases designated as

Complex Business Cases, including the rules providing for the issuance of written opinions. Accordingly, Stabilization requests that the Court adopt procedures for this case comparable to those that would be available were this case assigned to the Business Court or, alternatively, that the Court recommend that this case be reassigned to the North Carolina Business Court for all further proceedings.

SECOND DEFENSE

The Amended Complaint fails to state a claim upon which relief may be granted and should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Plaintiffs have not alleged and cannot establish the necessary elements of any of the claims asserted in the Amended Complaint. All such claims are based on conclusory and erroneous factual or legal assumptions that are controverted by applicable statutes and/or by controlling documents referenced in the Amended Complaint. In particular, but without limitation, plaintiffs' claims are deficient in the following respects, among others:

(a) Plaintiffs' allegation that, upon issuance of a share of Stabilization common stock, farmers were guaranteed a lifetime membership that could not be cancelled is refuted by the requirements for membership set forth on the face of each share of Stabilization's common stock, Stabilization's Articles of Incorporation and By-Laws, and the provisions of the North Carolina Cooperative Marketing Act;

(b) Plaintiffs' allegation that Defendants have illegally attempted to fix the price of tobacco by requiring members to execute marketing agreements is without legal or factual basis, and is refuted by (i) the terms of the marketing agreements themselves; and (ii) applicable provisions of the North Carolina Marketing Act and long-standing precedent of the North Carolina Supreme Court, which together affirm that a cooperative may require its

members to execute marketing agreements as a condition of continued membership and that such marketing agreements shall not be deemed illegal or in restraint of trade;

(c) Plaintiffs' allegation that Stabilization's members retain an ownership interest in tobacco that was delivered to Stabilization in return for a price support payment, or in any net profits realized from the sale of such tobacco, is refuted by (i) the federal statutes governing Stabilization's "No Net Cost Account" and the Federal Tobacco Price Support Program; (ii) the loan agreements between Stabilization and the Commodity Credit Corporation ("CCC"), pursuant to which Stabilization administered the Federal Tobacco Price Support Program, and (iii) the treatment of the transaction by all parties as a completed sale for income tax and other purposes;

(d) Plaintiffs' allegation that at the close of the Federal Tobacco Price Support Program Stabilization will receive millions of dollars that are remaining in the No Net Cost Account is refuted by (i) the federal statutes governing the No Net Cost Account; (ii) the loan agreements between Stabilization and the CCC, pursuant to which Stabilization administered the Federal Tobacco Price Support Program; and (iii) applicable provisions of the Fair and Equitable Tobacco Reform Act of 2004 ("FETRA");

(e) Plaintiffs' allegation that Stabilization's loan obligations with the CCC have been satisfied and that Stabilization has assumed control and ownership of the tobacco pledged as security for those loans is refuted by the applicable provisions of FETRA, which govern the treatment of tobacco loan pool stocks and outstanding loan costs;

(f) Plaintiffs' allegation that the Defendant Directors converted for their own use the net profits allegedly realized from the sale of inventory tobacco and that the Defendant Directors converted the alleged proceeds of the No Net Cost Account are entirely conclusory

and are without any underlying factual support. In addition, the allegations are refuted by (i) Plaintiffs' own contradictory allegations that Stabilization has retained the net profits from tobacco sales in its corporate reserves, (ii) federal statutes governing the No Net Cost Account; and (iii) Stabilization's loan agreements with the CCC, which make it clear that CCC controls the application and disposition of the funds in question;

(g) Each of plaintiffs' claims fails for numerous additional reasons as will be shown upon the hearing of Defendants' motions.

THIRD DEFENSE

Plaintiffs' alleged claims of Fraud, Fraud in the Inducement, Conspiracy, and Breach of Contract Accompanied by a Fraudulent Act should be dismissed for failure to plead fraud with particularity, as required by Rule 9(b) of the North Carolina Rules of Civil Procedure.

FOURTH DEFENSE AND MOTION TO STRIKE

Pursuant to Rule 12(f) of the North Carolina Rules of Civil Procedure, Defendants move to strike (i) all allegations that the Defendant Directors have converted the assets of Stabilization to their personal use, and (ii) the allegations of paragraphs 102-105 of the Amended Complaint concerning the purported role of Stabilization's General Counsel in connection with any alleged fraud, misrepresentation or other wrongful conduct. The aforesaid allegations consist entirely of conclusory, irrelevant, impertinent and scandalous matters, which are not consistent with any proper purpose in this litigation and which reasonable inquiry would have shown to be false.

FIFTH DEFENSE

To the extent that plaintiffs, or any members of the putative class, do not currently patronize Stabilization in accordance with the requirements of the corporation, then they do not

qualify as members of Stabilization pursuant to its Articles of Incorporation and By-Laws and do not have standing to assert any claim on behalf of any alleged "class" of Stabilization's members.

SIXTH DEFENSE AND ANSWER

Responding to the individually numbered paragraphs of the Amended Complaint, Stabilization and the Defendant Directors allege and say as follows:

1-10. Upon information and belief, it is admitted that certain of the plaintiffs have farmed tobacco at various times, either directly or through organizations in which they hold an interest. Except as admitted, the Defendants are without knowledge or information sufficient to admit or deny the remaining allegations of paragraphs 1 through 10.

11. It is admitted that Stabilization was organized as a non-profit cooperative marketing association with capital stock, under the provisions of Sub-chapter V of Chapter 54 of the General Statutes of North Carolina. It is admitted that Stabilization's principal place of business is in Wake County, North Carolina. Except as admitted, denied.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Stabilization realleges and incorporates its response to paragraph 11 above. It is admitted that Stabilization filed its Certificate of Incorporation on June 1, 1946. Except as admitted, denied.

19. It is admitted that Stabilization's purposes are stated in its Charter, as amended by various Articles of Amendment, which documents speak for themselves. It is admitted that Stabilization's authorized purposes include, but are not limited to, the purposes summarized by plaintiffs in paragraph 19 of the Amended Complaint. Except as admitted, denied. It is expressly denied that Stabilization is only authorized to engage in the handling of members' tobacco on an agency basis.

20. Stabilization's Articles of Incorporation ("Articles") speak for themselves. To the extent any further response is required, it is admitted that the Articles provide that the common stock of the corporation may be purchased, owned or held only by producers who shall patronize the corporation in accordance with uniform terms and conditions prescribed thereby and only such persons shall be regarded as eligible members of the corporation. Except as admitted, denied.

21. Denied.

22. It is admitted that, pursuant to Stabilization's Articles and By-Laws, only those shareholders who satisfy the eligibility requirements for membership are entitled to any rights or privileges of membership or any vote or voice in the management or affairs of the corporation. The rights and privileges of shareholders who satisfy the requirements for membership are set forth more specifically in the Articles and By-Laws, which documents speak for themselves. Except as admitted, denied.

23. It is admitted that Stabilization administered the Federal Tobacco Price Support Program under loan agreements with the CCC, the terms of which speak for themselves. The remaining allegations of paragraph 23 state conclusions of law, as to which no response is

required. Except as admitted, and to the extent any further response may be deemed to be required, denied.

24. It is admitted that some or all of the plaintiffs are shareholders of Stabilization. It is admitted that certain of the plaintiffs have, in the past, sold tobacco at auction and obtained price support advances under the Federal Tobacco Price Support Program administered by Stabilization. Upon information and belief, it is affirmatively alleged that some or all of the plaintiffs abandoned the auction system prior to the ending of the Federal Tobacco Price Support Program and began selling their tobacco directly to large tobacco manufacturers. Except as admitted, denied.

25. It is admitted that certain of Stabilization's members sold their tobacco at public auction warehouses or at marketing centers operated by Stabilization. It is admitted that tobacco delivered to the auction warehouse was made available for sale to the highest bidder, and that tobacco which did not receive a bid in excess of the applicable minimum price set by the USDA became eligible for federal price support. Except as admitted, denied.

26. It is denied that Stabilization's members "consigned" tobacco to Stabilization for storage or resale on their behalf, or that members retained any ownership rights or interest in tobacco once they accepted price support. It is admitted that farmers whose tobacco qualified for price support were paid at the auction warehouse, and that all parties treated the transaction as a completed sale for income tax and other purposes. It is admitted that CCC loaned Stabilization the funds necessary to administer the price support program. It is admitted that tobacco that was placed under loan was pledged to CCC and stored for its benefit, and that CCC held the right to receive all proceeds from the sale of such tobacco as security for the price support loans. Except as admitted, denied.

27. Denied.

28. Stabilization realleges and incorporates its response to paragraph 26 above. It is admitted that tobacco that was placed under loan was pledged to CCC and was stored for its benefit until the tobacco could be sold. It is admitted that when the inventory for any particular crop year was sold, Stabilization was required to pay the proceeds to CCC, to be applied against the principal and interest on the loan for that crop year. It is admitted that, since 1982, CCC has been authorized to apply any excess proceeds from inventory sales against outstanding loans for prior crop years, or to retain such proceeds as a reserve against losses on future loans. Except as admitted, denied.

29. It is denied that Stabilization has regularly received any proceeds from the sale of inventory tobacco that exceeded Stabilization's loan obligations to CCC, or that members retained any "consignment" interest in such inventory. It is admitted that any tobacco or net proceeds that have been released or returned to Stabilization by the CCC have been maintained and accounted for by Stabilization in accordance with the requirements of its Articles of Incorporation and By-Laws. Except as admitted, denied.

30. It is admitted that Stabilization has the duties set forth in its Articles and By-Laws, which speak for themselves. It is affirmatively alleged that Stabilization has complied with all such duties. Except as admitted, denied.

31. Denied.

32. Defendants reallege and incorporate their response to paragraph 29 above. It is admitted that Stabilization has not made, and has not been required to make, any distribution to its members in many years. Except as admitted, denied.

33. Defendants reallege and incorporate their responses to paragraphs 26-28, above. Except as admitted, denied.

34. Denied.

35. It is admitted that, pursuant to its loan agreement with CCC, Stabilization continues to hold tobacco pledged to CCC as security for outstanding price support loans. Except as admitted, denied.

36. Denied.

37. It is admitted that, in accordance with applicable federal statutes, Stabilization maintained a No Net Cost Fund on behalf of its member from 1982 until approximately 1985, at which time all monies in the No Net Cost Fund were transferred to a No Net Cost Account controlled by CCC. Except as admitted, denied.

38. It is admitted that the No Net Cost Fund and the No Net Cost Account were established and maintained pursuant to federal statutes enacted in 1982. It is admitted that, beginning in 1982, all tobacco farmers who sold tobacco at auction were required to pay an assessment on each pound of tobacco sold to protect CCC against potential losses on loans made by CCC under the Federal Tobacco Price Support Program. Except as admitted, denied.

39. Defendants incorporate their responses to paragraphs 37 and 38 above. It is admitted that the monies in the No Net Cost Fund and the No Net Cost Account were subject to significant restrictions on use under applicable federal statutes and Stabilization's loan agreements with CCC, which documents speak for themselves. Except as admitted, denied.

40. It is admitted that CCC has applied or will apply all monies in the No Net Cost Account in partial satisfaction of the outstanding CCC loans. Except as admitted, denied. It is expressly denied that there will be any monies remaining in the No Net Cost Account after the

CCC loans are satisfied, or that Stabilization or its members will receive a return of any previously paid assessments as the result of the close of the Federal Tobacco Price Support Program.

41. Denied.

42. Denied.

43. Denied.

44. Denied. It is expressly denied that Stabilization controls any proceeds in the No Net Cost Account, or that Stabilization has any right or ability to pay over such funds to Stabilization's members.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. It is denied that Stabilization has attempted to reduce the number of its members. It is denied that plaintiffs have accurately described or characterized their alleged membership rights, or that Stabilization has "changed" the underlying requirements for membership, which have always depended on a member's willingness to patronize the cooperative. It is admitted that, for the 2005 growing season, Stabilization offered all tobacco producers an opportunity to enter into either exclusive or non-exclusive marketing agreements with Stabilization. It is admitted that, pursuant to Stabilization's Articles and By-Laws, members who do not agree to patronize Stabilization in accordance with the terms of the

aforesaid agreements will not be regarded as eligible members of Stabilization. Except as admitted, denied.

52. Denied.

53. Denied.

54. Denied.

55. It is admitted that plaintiffs seek to bring this action on behalf of a purported class of persons, as described in paragraph 55. It is denied that plaintiffs are adequate class representatives, or that they have identified any "class" that is capable of certification. To the extent any further response is required, the allegations of paragraph 55 are denied.

56. It is admitted that the class proposed by plaintiffs is numerous and that joinder of all members of the putative class is impractical. It is admitted that the class definition proposed by plaintiffs potentially includes hundreds of thousands of individuals. It is denied that plaintiffs have identified a "class" that is capable of certification. To the extent any further response is required, the allegations of paragraph 56 are denied.

57. Upon information and belief, it is admitted that plaintiffs' counsel have previously filed certain types of class actions. Defendants are without knowledge or information sufficient to respond more specifically as to the qualifications of plaintiffs' counsel. The remaining allegations of paragraph 57 are denied.

58. Denied.

59. Denied.

60. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

61. Denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

68. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

82. The allegations of paragraph 82 state conclusions of law, as to which no response is required. To the extent any further response may be deemed to be required, it is admitted that the Defendant Directors have such duties as are imposed by law on directors of cooperative marketing associations. Except as admitted, denied.

83. Denied.

84. Denied.

85. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

92. Denied.

93. It is admitted that Stabilization has at certain times served as agent for its members for certain limited purposes. It is admitted that Stabilization has those duties set forth in its Articles of Incorporation and By-Laws, which speak for themselves. Except as admitted, denied.

94. Denied.

95. Denied.

96. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

97. Denied.

98. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

99. Admitted.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

107. Denied.

108. Denied.

109. Denied.

110. It is denied that any officer, agent or director of Stabilization intentionally communicated any false or misleading statement to plaintiffs or any member of the putative class. The remaining allegations of paragraph 110 state conclusions of law, as to which no response is required. To the extent any further response may be deemed to be required, denied.

111. Denied.

112. The allegations of paragraph 112 consist of plaintiffs' characterization of Count IX of the Amended Complaint, as to which no response is required. To the extent any further response may be deemed to be required, denied.

113. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

114. Denied.

115. Denied.

116. Denied.

117. It is denied that any officer, agent or director of Stabilization made any false or misleading statement concerning any of the matters alleged in Counts IX and X of the Amended Complaint. It is further affirmatively alleged that plaintiffs and the members of the putative class at all times had the opportunity and ability to determine the truth of such matters.

118. It is denied that plaintiffs were fraudulently induced to do anything with respect to Stabilization, or that they have been damaged in any regard. To the contrary, it is affirmatively alleged that plaintiffs have voluntarily accepted the benefits of their membership in Stabilization and their participation in the Federal Tobacco Price Support Program, with full knowledge of all relevant facts.

119. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

120. Denied.

121. Denied.

122. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Defendants reallege and incorporate their responses to each of their allegations of the Amended Complaint as fully as if set forth individually herein.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

133. The allegations of paragraph 133 consist of plaintiffs' demand for a jury trial, as to which no response is required.

134. Denied.

SEVENTH DEFENSE

Plaintiffs cannot satisfy the requirements for certification of a class. In particular, and without limitation, the class alleged by plaintiffs cannot be certified for one or more of the following independent reasons:

a. The class that the named plaintiffs purport to represent does not constitute a recognizable class under Rule 23 of the North Carolina Rules of Civil Procedure;

b. Plaintiffs are not adequate representatives of any alleged class and lack standing to proceed on behalf of the purported class;

c. Plaintiffs' claims are not typical or representative of the claims of other Stabilization members;

d. There are numerous conflicts within the purported class, as evidenced, among other things, by the existence of a competing class action filed by other members of Stabilization who seek different and inconsistent relief;

e. The circumstances of plaintiffs' individual claims vary too widely to conclude that plaintiffs and the class are similarly situated with respect to such claims;

f. Plaintiffs' claims raise numerous individual issues, including issues relating to class membership, liability, reliance, causation and damages, that cannot be determined on a class-wide basis and that will predominate over any allegedly common issues;

g. Plaintiffs' claims give rise to numerous potential defenses that will require highly individualized inquiries and evidence concerning each of the named plaintiffs and each member of the purported class;

h. A class action is not the superior method for adjudicating this controversy, as the individual questions particular to each of the named plaintiffs and each member of the purported class will be unduly burdensome to the Court and the defendant to manage as a collective claim;

i. Plaintiffs cannot satisfy the requirements for class certification for further and additional reasons as may be shown through discovery in this action.

EIGHTH DEFENSE

Plaintiffs' claims on behalf of the putative class are barred in that some or all of the alleged class members either do not support or actively oppose such claims.

NINTH DEFENSE

Plaintiffs' claims, and the claims of the putative class, are barred by the doctrines of ratification, waiver, estoppel and unclean hands.

TENTH DEFENSE

Plaintiffs' claims, and the claims of the putative class, are barred by the applicable statutes of limitation and/or the doctrine of laches. Stabilization's Board of Directors established stabilization's capital reserves over a period of many years for the express purpose of allowing Stabilization to continue to operate and serve its members at such time as the Federal Tobacco Program was ended. Plaintiffs and the putative class members were fully apprised of Stabilization's decisions in this regard. Until the filing of the original Complaint in this action, plaintiffs and the putative class members failed to assert any claim of "ownership" in or to Stabilization's assets, failed to seek to force a distribution of any kind with respect to Stabilization's capital reserves, and either actively supported or did not object to the Board's decision to establish and maintain these reserves.

ELEVENTH DEFENSE

Plaintiffs' claims are an attack, directly or indirectly, on the decision of Stabilization's Board to maintain and use Stabilization's capital reserves for the ongoing business of the cooperative. All of the Board's decisions have been authorized and approved by the required majority of directors in accordance with Stabilization's Articles of Incorporation and By-Laws and in the good faith exercise of their reasonable business judgment. Accordingly, plaintiffs' claims are barred by the "business judgment rule."

TWELFTH DEFENSE

Defendants expressly deny that plaintiffs or any of the putative class members have been damaged by any alleged act of the Defendants. In the event that plaintiffs are determined to have been damaged in any regard, plaintiffs have failed to mitigate their damage or avoid the consequences of the alleged harm, and have assumed the risk of any alleged loss.

THIRTEENTH DEFENSE

To the extent plaintiffs' claims are based on any alleged right or interest in Stabilization's assets, which does not derive from that persons' patronage of the cooperative as defined in and prescribed by Stabilization's Articles of Incorporation and By-Laws, such claims are barred by a failure of consideration.

FOURTEENTH DEFENSE

To the extent any claim alleged by plaintiffs is determined to be derivative in nature, plaintiffs' claims are barred for failure of plaintiffs to satisfy the requirements of the North Carolina statutes applicable to derivative actions.

FIFTEENTH DEFENSE AND COUNTERCLAIM

For their Fifteenth Defense and Counterclaim against the plaintiffs, Defendants allege and say as follows:

1. The allegations of the Amended Complaint concerning the alleged wrongful actions of the Defendant Directors are false and, upon information and belief, were knowingly and maliciously made by plaintiffs in an effort to discredit the Defendant Directors, influence the outcome of upcoming district elections, and to otherwise disrupt the operations of Stabilization's Board.

2. Upon information and belief, plaintiffs' false allegations of wrongful conduct have been repeated by plaintiffs outside the context of this litigation.

3. Pursuant to § 54-157 of the North Carolina General Statutes, plaintiffs are guilty of a class 2 misdemeanor and are subject to a fine of not less than one hundred dollars and not more than one thousand dollars for the aforesaid offenses. In addition, plaintiffs are liable to Stabilization in the penal sum of \$500.00 for each such offense.

RESERVATION OF RIGHT TO ASSERT ADDITIONAL DEFENSES

Stabilization reserves the right to assert such further and additional defenses as may become apparent during the course of discovery in this action.

PRAYER FOR RELIEF

WHEREFORE, having fully responded to the Amended Complaint of the plaintiffs, Defendants respectfully pray for relief as follows:

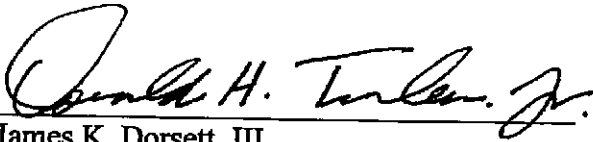
1. That all of plaintiffs' claims be dismissed with prejudice;
2. That plaintiffs' request that this case be certified as a class action be denied;
3. That plaintiffs' request for a constructive trust be denied;
4. That plaintiffs' request for a declaratory judgment in their favor on the issues and claims set forth in the Amended Complaint be denied;
5. That plaintiffs, and the putative class, have and recover nothing against Defendants;
6. That all of the costs of this action be taxed against the plaintiffs;
7. That Stabilization be awarded the penal sums authorized by N.C. Gen. Stat. § 54-157;
8. That Defendants be awarded their reasonable attorneys' fees;

9. That a trial by jury be had on all issues so triable; and
10. For such other and further relief as the Court may deem just and proper.

This the 18th day of March 2005.

SMITH, ANDERSON, BLOUNT, DORSETT
MITCHELL & JERNIGAN, L.L.P.

By:



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CERTIFICATE OF SERVICE


This is to certify that the undersigned has this date served the foregoing document in the above-entitled action upon all other parties to this cause by depositing a copy thereof, postage paid, in the United States mail, addressed to the party or the attorney for said party as follows:

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This the 28th day March 2005.



Donald H. Tucker, Jr.