

**ANAPOL, SCHWARTZ, WEISS, COHAN
 FELDMAN & SMALLEY, P.C.
 BY: LAWRENCE R. COHAN, ESQUIRE
 1040 N. Kings Highway, Suite 304
 Cherry Hill, New Jersey 08034
 856-482-1600
 Attorneys for Plaintiffs**

**ANDRES & BERGER
 Michael S. Berger, Esquire
 Kenneth G. Andres, Jr., Esquire
 264 Kings Highway East
 Haddonfield, New Jersey 08033
 Attorneys for Plaintiffs**

ANTHONY J. VITOLA and
 MELANIE VITOLA, h/w
 On behalf of themselves and all others
 Similarly situated

Plaintiffs

v.

BIOMEDICAL TISSUE SERVICES, LTD.,
 and LIFECELL CORPORATION, and
 LOST MOUNTAIN TISSUE BANK, and
 BLOOD AND TISSUE CENTER OF
 CENTRAL TEXAS, and TUTOGEN
 MEDICAL (UNITED STATES) INC., and
 REGENERATION TECHNOLOGIES,
 INC., and SPINALGRAFT
 TECHNOLOGIES, LLC as a subsidiary of
 MEDTRONIC SOFAMOR DANEK, INC.,
 and MICHAEL MASTROMARINO, and
 JOHN DOE CORPORATIONS (1-10),
 and JOHN DOE INDIVIDUALS (1-10)

Defendants

SUPERIOR COURT OF NEW JERSEY
 ATLANTIC COUNTY

LAW DIVISION

CIVIL ACTION

DOCKET NO.:

CLASS ACTION COMPLAINT

NATURE OF THE ACTION

Plaintiffs, Anthony J. Vitola and Melanie Vitola, husband and wife, bring this Class Action Complaint on their own behalf, and on the behalf of other similarly situated individuals,

against said Defendants, who upon information and belief were involved in a scheme whereby they participated in illegally obtaining human body parts from corpses such as bone, skin, tendons and other tissues and used these body parts in patients who needed bone and tissue transplants. These body parts were obtained without authorization and they were not screened for infectious diseases such as HIV, hepatitis B and C and syphilis.

INTRODUCTION

On or about July 27, 2005 Plaintiff, Anthony Vitola underwent surgery for an Anterior cervical diskectomy fusion with cadaver bone at Shore Memorial Hospital. The surgery was performed by Fernando Delasotta, M.D. On or about November 11, 2005, Dr. Delasotta was advised that Biomedical Tissue Services, LTD (hereafter BTS) was involved in a scheme of illegally obtaining body parts from corpses without properly screening the parts for certain infectious diseases. It was determined that Anthony Vitola was the recipient of certain bone and tissue transplants involved in the illegal scheme.

PARTIES

1. Plaintiffs, Anthony and Melanie Vitola (hereafter "Plaintiffs") are married adult individuals who reside at 120 Redstone Ridge Drive, Deptford, New Jersey 08096.
2. Defendant, Biomedical Tissue Services, LTD (hereafter BTS), upon information and belief, is a New Jersey corporation with its principle place of business located at 2125 Center Avenue, Suite 300, Fort Lee, New Jersey 07024.
3. Defendant, LifeCell Corporation, upon information and belief, is a Delaware corporation with its principle place of business located at One Millennium Way, Somerville, New Jersey 08876.

4. Defendant, Lost Mountain Tissue Bank, upon information and belief, is a Georgia corporation with its principle place of business located at 3175 Cherokee Street, Kennesaw, Georgia 30144.

5. Defendant, Blood and Tissue Center of Central Texas, upon information and belief, is a Texas corporation with its principle place of business located at 4300 North Lamar Boulevard, Austin, Texas 78756.

6. Defendant, Tutogen Medical (United States) Inc., upon information and belief, is a Florida corporation with its principle place of business located at 13709 Progress Boulevard, Suite 19, Alachua, Florida 32615.

7. Defendant, Regeneration Technologies, Inc, upon information and belief, is a Delaware corporation with its principle place of business located at 11621 Research Circle, Alachua, Florida 32615.

8. Defendant, SpinalGraft Technologies, LLC as a subsidiary of Medtronic Sofamor Danek, Inc. upon information and belief, is a Tennessee corporation with its principle place of business located at 4340 Swinnea Road, Suite 39, Memphis, Tennessee 38118.

9. Defendant, Michael Mastromarino, upon information and belief, owns, operates, directs and/or controls the New Jersey corporation, Biomedical Tissue Services, Ltd.

10. Defendants John Doe Corporations 1-10 are subsidiaries, sister corporations, holding corporations or other affiliated entities or agents of the other named Defendants, who were responsible for the injuries suffered by Plaintiffs.

11. Defendants John Doe Individuals 11-20 are individuals (fictitious names for individuals or entities whose actual identities are unknown) who to the best of Plaintiffs' knowledge and belief, are and were the owners, agents, subcontractors, employees, servants,

designers, manufacturers, assemblers, inspectors, distributors, packagers, and/or others who worked at the direction of, and/or on behalf of, Defendants and/or their owners, managers, and/or other personnel.

VENUE/JURISDICTION

12. This Court has jurisdiction over Defendants as these companies routinely conduct business in the State of New Jersey, including Atlantic County, and distribute products into and throughout New Jersey from which they deprive substantial financial benefits from consumers located throughout New Jersey. Further, some or all of the events giving rise to this Class Action Complaint occurred in Atlantic County, New Jersey.

CLASS ALLEGATIONS

13. Plaintiffs bring this action as a class action pursuant to R 4:32, on behalf of a class defined as:

All individuals who have had procedures whereby they received illegally obtained body parts through transplant surgery and have not yet suffered personal injuries as a result of receiving illegally obtained body parts but need medical monitoring.

14. The Class consists of hundreds of persons located in New Jersey and other states, thus, the members of the Class are so numerous that joinder of all Class members is impracticable.

15. There are common questions of law and fact affecting the rights of all of the class members, including the following:

- a. Whether Defendants fraudulently and/or falsely represented in their written brochures, promotional materials and advertisements, distributed throughout the United States and around the world, that the

human body parts intended for transplant recipients were safe and legally obtained from approved donors;

- b. Whether Defendants engaged in deceptive acts and practices, including but not limited to, representing that the human body parts intended for transplant recipients were safe and had been tested for infectious diseases;
- c. Whether Defendants represented that their supply of human body parts for transplants had certain approval, characteristics, affiliations or status that they did not have;
- d. Whether Defendants knowingly, or negligently misrepresented, concealed and/or suppressed the fact that the human body parts intended for transplant were never tested for infectious diseases, thereby putting each and every transplant recipient at risk of potentially contracting an infectious disease;
- e. Whether Defendants unfairly exploited unwarranted trust in their well-known name and improperly touted their reputations as reliable suppliers of human body parts for transplants;
- f. Whether Defendants committed consumer fraud, and were negligent with regard to distributing defective body parts for transplants, or acted with a lack of due care for the safety of unsuspecting transplant recipients located through the United States of America;

- g. Whether class members have sustained ascertainable losses, including but not limited to the cost of any screenings for the development of infectious diseases as a result of receiving defective body parts;
- h. Whether Defendants, as suppliers of body parts for transplant, had a duty to the class members and the breach of this duty was the proximate cause of severe emotional distress suffered by the class members;
- i. Whether defendants knew or should have known that supplying human body parts intended for transplant without testing such parts for infectious diseases would cause the class members severe emotional distress;
- j. Whether Defendants conduct was extreme and outrageous as to extend beyond all possible bounds of decency;
- k. Whether Defendants breached their contractual promises to the class members;
- l. Whether defendants breached their express warranty that the human body parts were suitable and safe for transplants; and
- m. Whether defendants breached their implied warranty of merchantability.

16. Each of these enumerated questions of law and fact is common to each member of the class.

17. Plaintiffs are members of the class and their claims arise from the same factual and legal basis as all those in the class.

18. Plaintiffs will fairly and adequately protect the interests of the class, having obtained qualified and competent legal counsel to represent themselves and those similarly situated.

19. The prosecution of separate actions by individual class members would create a risk of inconsistent adjudications and would cause needless expenditure of judicial resources.

20. Plaintiffs are typical of the class because their claims arise from the same legal theories.

21. The prosecution of separate actions by individual members of the class could create a risk of inconsistent or varying adjudications with respect to individual members of the class, which could establish incompatible standards of conduct for the Defendants.

22. A class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

FACTS

23. On or about July 27, 2005 Plaintiff, Anthony Vitola underwent surgery for an anterior cervical discectomy fusion with cadaver bone at Shore Memorial Hospital. The surgery was performed by Fernando Delasotta, M.D.

24. On or about November 11, 2005, Dr. Delasotta was advised that Biomedical Tissue Services, LTD (hereafter BTS) was involved in a scheme of illegally obtaining body parts from corpses without properly screening the parts for certain infectious diseases. It was later determined that Anthony Vitola was a recipient of certain bone and tissue that was illegally extracted from corpses.

25. BTS is in the business of supplying tissue processors with human tissue donated from corpses. BTS illegally obtained body parts from corpses without authorization. These

human donors may not have met FDA eligibility requirements and were most likely not screened for certain infectious diseases. BTS supplies human tissue to LifeCell Corporation, Lost Mountain Tissue Bank, Blood and Tissue Center of Central Texas, Tutogen Medical and Regeneration Technologies, Inc.

COUNT I: VIOLATION OF APPLICABLE CONSUMER FRAUD ACTS
PLAINTIFFS V. ALL DEFENDANTS

26. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

27. Defendants' sale of human tissue and bones falls within the purview of the New Jersey Consumer Fraud Act, N.J.S.A., 56:8-1 et seq. ("NJCFA") and all other Consumer Fraud Acts of the fifty (50) United States, as follows:

Ala. Code § 8-19.3
Alaska Stat. § 45-50-471
Ariz. Rev. Stat. Ann § 44-1521-1534
Ark. Stat. Ann. § 4-88-105
Cal. Civ. Code. § 1770
Col. Rev. Stat. § 6-1-101
Conn. Gen. Stat. Ann. § 42-110a-42-110g
6 Del. Code Ann. § 2513
D.C. Code Ann. § 28-3801
Fla. Stat. § 501.204
Ga. Code Ann. § 10-1-373
Hawaii Rev. Stat. § 481 A-3
Idaho Code § 48-603
Ill. Ann. Stat. Ch. 815 § 505/2
Ind. Code Ann. § 24-5-0.5-3
Iowa Code § 714.16
Kan. Stat. Ann. § 50-626
Ken. Rev. Stat. § 367.170
La. Rev. Stat. § 51:1405
Maine Rev. Stat. § 207
Mass. Ann. Laws Ch. 93A § 2
Md. Comm. Law Code Ann. § 13-302
Mich. Comp. L. § 445.903
Minn. Stat. Ann. § 325D.09
Miss. Code Ann. § 75-24-5

Mont. Code Ann. § 30-14-103
N.C. Gen. Stat. § 75-1.1
N.D. Cent. Code § 51-15-02
N.H. Rev. Stat. Ann. § 358-A:2
N.M. Stat. Ann. § 57-12-3
N.Y. Gen. Bus. L. § 349
Neb. Rev. Code § 59-1602
Nev. Rev. Stat. Ann. § 598.0915
Ohio Rev. Code Ann. § 1345.02
15 Okl. Stat. § 753
Or. Rev. Stat. § 646.608
73 P.S. § 201-3
R.I. Gen. Laws § 6-13.1-2
Rev. Stat. Mo. § 407.020
S.C. Code Ann. § 39-5-20
S.D. Code Laws § 37-24-6
Tenn. Code Ann. § 47-18-109
Tex. Bus. & Comm. Code § 17.46
Utah Code Ann. § 13-11-4
9 Ver. Stat. Ann. § 2451
W. Va. Code § 46A-6-104
Wash. Rev. Code § 19.86.020
Wis. Stat. § 100.18
Wyo. Stat. § 40-12-105

(collectively the “Act”).

28. Defendants as corporations, companies or sellers, are “persons” within the meaning of the Act, and as such are prohibited from engaging in deceptive acts and practices, as set forth more fully below.

29. Defendants have employed unconscionable commercial practices and/or fraud or other unlawful acts in connection with the sale and/or advertising of human body parts in violation of the Act; including but not limited to, making material misrepresentations about the quality, characteristics, benefits, affiliation and/or status of the body parts; and/or engaging in fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

30. The following acts, uses or employments by Defendants constitute unconscionable commercial practices, deceptions, frauds, false pretenses, false promises,

misrepresentations, or the knowing concealment, suppression, or omission of material facts with intent that Plaintiff and members of the class rely upon such concealment, suppression or omission, in connection with the sale and/or marketing of the human body parts are unlawful under the Act:

- a. Whether Defendants falsely represented in their written brochures, promotional materials and advertisements, distributed throughout the United States, that their supply of human tissues and bones are safe for use in surgical transplants and legally obtained from approved donors;
- b. Whether Defendants engaged in deceptive acts and practices, including but not limited to, representing that their supply of human tissues and bones have been tested for infectious diseases, lawfully came from authorized donors.
- c. Whether Defendants represented that their supply of human tissue and bones had certain approval, characteristics, affiliation or status that they do not have.
- d. Whether Defendants knowingly or negligently misrepresented, concealed and/or suppressed the fact that the supply of human tissue and bones were seriously defective, putting each recipient of such body parts at direct risk of harm and infectious diseases.
- e. Whether Defendants unfairly exploited unwarranted trust in their well known names and improperly touted their reputations for quality;
- f. Whether Defendants committed consumer fraud, were negligent and/or acted with reckless disregard for the rights, safety, and health of transplant recipients.

31. By reason of the foregoing, Plaintiff and members of the class have sustained pecuniary and emotional damages, statutory damages, and are entitled to treble damages.

32. The class has suffered an ascertainable loss as a result of Defendants use of unconscionable business practices described herein.

COUNT II: COMMON LAW FRAUD
PLAINTIFFS V. ALL DEFENDANTS

33. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

34. Plaintiffs assert that Defendants knowingly supplied defective human body parts intended for transplants.

35. Plaintiffs' assertions are premised on the fraudulent representations that Defendants ensured the human body parts were safe for transplants.

36. Based upon information and belief, the body parts intended for transplant supplied by Defendants were not safe and were never tested for infectious diseases.

37. Defendants' conduct included direct misrepresentations to class members, and fraud by supplying human body parts intended for transplants that were not safe and never tested for infectious diseases.

COUNT III: PRODUCTS LIABILITY (N.J.S.A. 2A:58C-1 et seq.)
PLAINTIFFS V. ALL DEFENDANTS

38. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

39. Defendants are sellers, distributors, marketers and/or suppliers of the illegally obtained body parts, which are defective and unreasonably dangerous to transplant recipients.

40. The illegal body parts were sold, distributed, supplied, marketed, and/or promoted by Defendants, and were expected to reach and did reach transplant recipients without substantial change in their condition.

41. The illegal body parts were defective and unreasonably dangerous in that they exposed recipients to significant health risks.

42. Defendants knew or should have known of the defects in the human body parts but continued to sell, distribute, supply, market and/or promote the body parts so as to maximize sales and profits at the expense of the public health and safety, in conscious disregard of the foreseeable harm caused by the body parts.

43. As a direct and proximate result of the defects of the illegal body parts, Plaintiffs and those similarly situated suffered injury and emotional distress to and about their person, and will continue to suffer injury, harm, distress and economic loss.

44. There was a safer alternative method for supplying the body parts to transplant recipients.

45. As a result of the above acts, omissions and activities, Plaintiffs and members of the class have been exposed to a substantially increased risk of harm and have suffered ascertainable losses.

COUNT IV: BREACH OF CONTRACT
PLAINTIFFS V. ALL DEFENDANTS

46. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

47. Defendants contracted with Plaintiffs and Class members to provide human tissues and bones for transplant that were free of inherent defects, including but not limited to, infectious diseases.

48. This contractual promise was false, and Defendants knew that it was false when it was made, and Defendants did not intend to and did not honor this contractual promise.

49. Defendants at no time furnished to Plaintiffs and Class members human body parts that were free of inherent defects. Defendants failed to perform and/or have repudiated the conditions of the contracts entered into with Plaintiffs and Class members.

50. As a direct and proximate result of this breach of contract, Plaintiffs and Class members have suffered damage.

COUNT V: BREACH OF EXPRESS WARRANTY
PLAINTIFFS V. ALL DEFENDANTS

51. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

52. Defendants, separately and independently, expressly warranted the human body parts to be suitable and safe.

53. Such warranties were breached because, as related to the illegal confiscation of the body parts without authorization, obtaining body parts from unapproved corpses and failure to test the body parts for infectious diseases, the body parts were neither suitable nor safe.

54. Defendants are liable for breach of express warranty as set forth above.

COUNT VI: BREACH OF IMPLIED WARRANTY
PLAINTIFFS V. ALL DEFENDANTS

55. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

56. The body parts transplanted in Plaintiff and the Class carried with them the implied warranty of merchantability. Plaintiffs allege that such implied warranties include that the body parts are safe and non-defective for their intended use. As applied to transplantable human tissues and bones, such warranty includes a warranty of reasonable safe protection from infectious diseases, which was breached in that the body parts, in fact, are defective and unreasonably dangerous with respect to potential infectious diseases.

57. Further, there is an implied warranty of merchantability that the body parts were obtained through legal means. Plaintiffs allege that such implied warranties include that there was authorization to extract the body parts from certain corpses. As applied to transplantable human tissues and bones, such warranty includes a warranty of legally obtained body parts for transplant, which was breached in that the body parts, in fact, were obtained through illegal means and without authorization.

58. These implied warranties have been breached in that: Human tissues and bone intended for transplant use were illegally extracted without authorization, the illegally extracted tissues and bones were not tested for infectious diseases; Defendants failed to develop adequate remedies and have failed to provide such remedies at its own cost.

59. Defendants failed to exercise good faith in determining the presence of safety-related defects by failing to follow internal procedures for making such determinations.

60. None of the above referenced warranties have been effectively disclaimed by any Defendant in this action.

61. Defendants are liable for breach of implied warranty of merchantability as set forth above.

COUNT VII: NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
PLAINTIFFS V. ALL DEFENDANTS

62. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

63. Defendants owed a duty of care to plaintiffs and similarly situated people as recipients of the human tissue and bone intended for transplant recipients.

64. Defendants breached their duty of care when they illegally obtained human tissue and bone without properly testing for infectious diseases.

65. Plaintiffs and similarly situated people have suffered severe emotional distress as a direct and proximate result of Defendants' breach.

66. Defendants are liable for negligent infliction of emotional distress as set forth above.

COUNT VIII: INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS
PLAINTIFFS V. ALL DEFENDANTS

67. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

68. Defendants' actions of illegally obtaining human tissue and bone without testing for infectious diseases caused Plaintiff and the members of the class to suffer severe emotional distress.

69. Defendants, through their actions as set forth above, intended to inflict emotional distress on Plaintiffs and class members or knew or should have known that Plaintiffs and class members would suffer emotional distress as a result of illegally obtaining human tissue and bones without testing for infectious diseases with the intention that such human body parts be implanted in transplant recipients.

70. Defendants' actions were extreme and outrageous to such a degree that it was beyond all possible bounds of decency, and utterly intolerable in a civilized community.

71. Defendants are liable for intentional infliction of emotional distress as set forth above.

COUNT IX: MEDICAL MONITORING
PLAINTIFFS V. ALL DEFENDANTS

72. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

73. As a result of Defendants' negligence, Plaintiffs and class members were exposed to the hazards of receiving human body parts through transplant surgery that were potentially infected with diseases.

74. This exposure was greater than normal because the transplanted body parts were never tested for infectious diseases.

75. As a direct and proximate result of receiving the illegally obtained human body parts, Plaintiffs and the class members have a significantly increased risk of contracting a serious latent disease.

76. Monitoring procedures exist that can make the early detection of disease possible.

77. The prescribed monitoring regime is different from that normally recommended in the absence of such exposure.

78. The prescribed monitoring regime is reasonably necessary according to contemporary scientific principles.

COUNT X: LOSS OF CONSORTIUM
PLAINTIFFS V. ALL DEFENDANTS

79. Plaintiffs incorporate the above averments by reference as if set forth fully at length herein.

80. Plaintiff, Melanie Vitola, is the wife of Plaintiff, Anthony J. Vitola, and is entitled to his care, comfort, companionship, services and consortium, as are similarly situated class members.

81. As a direct and proximate result of the negligence of the Defendants herein, Melanie Vitola and similarly situated class members have been, are and will be deprived of the care, comfort, companionship, services, and consortium of their spouses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment on behalf of themselves and the Class as follows:

- a. certify this matter as a class action on behalf of the proposed Class, designating Plaintiffs, Anthony Vitola and Melanie Vitola, as representatives of the Class pursuant to R 4:32;
- b. enter an order directing Defendants to distribute a court approved form of notice to the class, which accurately advises them of the nature of the defects and adequately advises them of the manner in which it may be eliminated or mitigated;
- c. enter an order for injunctive relief establishing at Defendants' expense, a program for medical monitoring for the class members;
- d. enter judgment in favor of each class member for damages suffered as a result of the conduct alleged herein, to include interest and pre-judgment interest;

- e. award Plaintiffs treble damages, reasonable attorneys fees, interest, attorneys' fees and costs; and
- f. grant such other and further legal and equitable relief as the Court deems just and equitable.

**ANAPOL, SCHWARTZ, WEISS, COHAN,
FELDMAN & SMALLEY, P.C.**

BY: 

LAWRENCE R. COHAN, ESQUIRE
Attorneys for Plaintiffs

ANDRES & BERGER

BY: 

MICHAEL BERGER, ESQUIRE
KENNETH G. ANDRES, JR., ESQUIRE
Attorneys for Plaintiffs

Dated: December 27, 2005

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that pursuant to Rule 4:25-4, Lawrence R. Cohan, Esquire, is hereby designated trial counsel.

**ANAPOL, SCHWARTZ, WEISS, COHAN,
FELDMAN & SMALLEY, P.C.**

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ANDRES & BERGER

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Attorneys for Plaintiffs

Dated: December 27, 2005

JURY DEMAND

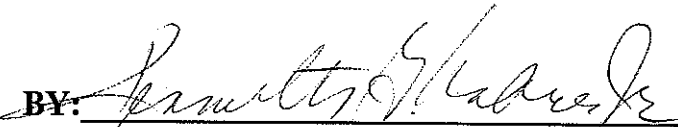
Plaintiffs hereby demand a trial by jury.

ANAPOL, SCHWARTZ, WEISS, COHAN,
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BY: 

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Attorneys for Plaintiffs

ANDRES & BERGER

BY: 

MICHAEL BERGER, ESQUIRE
KENNETH G. ANDRES, JR., ESQUIRE

Attorneys for Plaintiffs

Dated: December 27, 2005

CERTIFICATION PURSUANT TO RULE 4:5-1

I, Lawrence R. Cohan, Esquire, hereby certify that upon information and belief, there may be a related action filed in Atlantic County, New Jersey. We also certify that the facts contained in the within matter are true and correct to the best of our knowledge and belief. If any of these statements made by me are willfully false, we are subject to punishment.

**ANAPOL, SCHWARTZ, WEISS, COHAN,
FELDMAN & SMALLEY, P.C.**

BY: 

**LAWRENCE R. COHAN, ESQUIRE
Attorneys for Plaintiffs**

ANDRES & BERGER

BY: 

**MICHAEL BERGER, ESQUIRE
KENNETH G. ANDRES, JR., ESQUIRE**

Attorneys for Plaintiffs

Dated: December 27, 2005

DEMAND FOR DISCOVERY OF INSURANCE

Pursuant to NJ Court Rule 4:10-2, demand is hereby made for discovery and production of any agreement or contract for insurance and/or indemnification with respect to any Judgment which may be entered in this case within thirty (30) days from the date of service of the Complaint.

**ANAPOL, SCHWARTZ, WEISS, COHAN,
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**MICHAEL BERGER, ESQUIRE
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Attorneys for Plaintiffs

Dated: December 27, 2005