

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

COBB COUNTY, GA
FILED IN OFFICE
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Joseph Thompson
COBB SUPERIOR COURT CLERK

EDGAR "BO" POUNDS, individually and on)
behalf of the estate of Mary Jean Pounds,)
JOSEPH THOMPSON, FRANKLIN SMITH,)
EAGLE EYE FORENSICS, LLC, DIANNE)
BRACKIN and WILLIAM SHARP,)
Derivatively and On Behalf of COBB ELECTRIC)
MEMBERSHIP CORPORAITON,)

Plaintiffs,)

vs.)

Civil Action No. 07-1-9408-48

DWIGHT BROWN, DON BARNETT,)
DAVID MCGINNIS, KAY ANDERSON, AL)
FORTNEY, JR., FRANK BOONE, SARAH)
BROWN, LARRY CHADWICK, HENRY)
BALKCOM, III, COBB ENERGY)
MANAGEMENT CORPORATION and)
DOES 1-15, inclusive,)

Defendants,)

and)

COBB ELECTRIC MEMBERSHIP)
CORPORATION, a Georgia corporation,)

Nominal Defendant.)

ANSWER OF COBB ENERGY MANAGEMENT CORPORATION

COMES NOW Defendant COBB ENERGY MANAGEMENT CORPORATION ("Cobb Energy"), and as its Answer to the Member Derivative Complaint for Damages and Other Relief served on Cobb Energy Management Corporation on October 25, 2007 in the above styled action (the "Complaint"), states as follows:

Cobb Energy denies that this purported Member Derivative Complaint is properly filed or plead under O.C.G.A. § 46-3-272, denies that this action is properly maintainable

as a member derivative action and objects to proceeding with this action until the Cobb Electric Membership Corporation Board of Directors' Special Litigation Committee has completed its investigation and issued its report in regards to the allegations made by Plaintiffs.

In response to the numbered paragraphs of the Complaint, Cobb Energy states as follows:

RESPONSE TO NATURE OF THE ACTION

1. Cobb Energy denies that Plaintiffs have a recognizable claim, have suffered any harm or are entitled to any damages or other relief on behalf of Cobb EMC against Cobb Energy, or otherwise. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1 of the Complaint.
2. Cobb Energy denies the allegations of Paragraph 2 of the Complaint.

RESPONSE TO JURISDICTION AND VENUE

3. Cobb Energy denies that it has committed any violations of law. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3 of the Complaint, and therefore same is denied.
4. Cobb Energy admits that it conducts business in and maintains its principal office in Cobb County, and that its registered agent for service of process is Dwight T. Brown, 1000 EMC Parkway, Marietta, Georgia, 30060. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4 of the Complaint, and therefore same is denied.

RESPONSE TO THE PARTIES

5. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Complaint, and therefore same is denied.

6. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Complaint, and therefore same is denied.

7. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint, and therefore same is denied.

8. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Complaint, and therefore same is denied.

9. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of the Complaint, and therefore same is denied.

10. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of the Complaint, and therefore same is denied.

11. Cobb Energy is generally aware that Cobb EMC is an electric membership corporation organized and existing under the laws of the State of Georgia with its headquarters at 1000 EMC Parkway, Marietta, Georgia, 30060, but can neither admit nor deny the allegations as drawn being unfamiliar with the intended meaning of the term “nominal defendant.”

12. Cobb Energy admits that it is a corporation organized and existing under the laws of the State of Georgia with its headquarters at 1000 EMC Parkway, Marietta, Georgia, 30060, but can neither admit nor deny the allegations as drawn being unfamiliar with the intended meaning of the term “services corporation.”

13. Cobb Energy admits the allegations of Paragraph 13 of the Complaint.
14. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 of the Complaint, and therefore same is denied.
15. Cobb Energy is generally aware that David McGinnis has been a director of Cobb EMC since 1989. Cobb Energy admits that David McGinnis has been a director of Cobb Energy since 1997 and is a resident of Cobb County, Georgia. Cobb Energy denies that David McGinnis is or was an owner of Cobb Energy.
16. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Complaint, and therefore same is denied.
17. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 of the Complaint, and therefore same is denied.
18. Cobb Energy is generally aware that Frank Boone has been a director of Cobb EMC since 1990. Cobb Energy admits that Frank Boone has been a director of Cobb Energy since 1997. Cobb Energy admits that Frank Boone owned Cobb Energy stock at one time, but denies that he currently owns any Cobb Energy stock.
19. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 of the Complaint, and therefore same is denied.

20. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Complaint, and therefore same is denied.

21. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 of the Complaint, and therefore same is denied, and therefore same is denied.

22. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 of the Complaint, and therefore same is denied.

23. Cobb Energy denies that it has engaged in any unlawful conduct. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23 of the Complaint, and therefore same is denied.

24. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 of the Complaint, and therefore same is denied.

RESPONSE TO FACTUAL BACKGROUND

25. Cobb Energy admits Cobb EMC is an electric membership corporation headquartered in Marietta, Georgia and serves approximately 190,000 consumers in Cobb, Cherokee, Bartow, Fulton, Paulding, Randolph, Clay, Quitman and Calhoun counties. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25 of the Complaint, and therefore same is denied.

26. Cobb Energy admits Cobb EMC does not have any shareholders, is a “member-owned” organization and Cobb EMC is governed by a board of ten directors who are elected from and by the membership at meetings held annually. Cobb Energy denies the remaining allegations of Paragraph 26 of the Complaint.

27. Cobb Energy denies the allegations of Paragraph 27 of the Complaint. By way of further answer, Cobb Energy states that Cobb EMC’s Articles of Incorporation speak for themselves.

28. Cobb Energy is generally aware that Cobb EMC is governed by the Georgia Electric Membership Corporation Act, O.C.G.A. § 46-3-170 *et seq.* By way of further answer, Cobb Energy states that the statutes cited by Plaintiffs speak for themselves.

29. Cobb Energy denies the allegations of Paragraph 29 of the Complaint.

30. Cobb Energy admits it was incorporated in the State of Georgia on September 3, 1997, is an affiliate of Cobb EMC and provides diversified, energy-related and non-energy related products and services. Cobb Energy denies the formation of Cobb Energy was an unlawful transaction. Cobb Energy is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 30 of the Complaint, and therefore same is denied.

31. Cobb Energy admits it has an operating agreement with Cobb EMC, the contents of which speaks for itself. Cobb Energy further states that the contents of Cobb EMC’s 2006 Annual Report speaks for itself. Cobb Energy denies that it has violated any laws or that any transactions it has entered into with Cobb EMC are illegal. Cobb Energy denies the remainder of Paragraph 31 of the Complaint.

32. Cobb Energy admits that it filed a Form 10-D with the Securities and Exchange Commission on or about February 4, 2004 and that the law firm of Vinson & Elkins, LLP appeared on the filing. Cobb Energy denies as drawn the remaining allegations of Paragraph 32 of the Complaint.

33. Cobb Energy denies the allegations of Paragraph 33 of the Complaint.

34. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 34 of the Complaint, and therefore same is denied. By way of further answer, Cobb Energy states that such tax returns speak for themselves.

35. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 35 of the Complaint, and therefore same is denied.

36. Cobb Energy denies the allegations of Paragraph 36 of the Complaint.

37. Cobb Energy admits that it has paid for the naming rights to the Cobb Energy Performing Arts Centre.

38. Cobb Energy admits it purchased certain real property and improvements from Cobb EMC on September 30, 2003 and that Cobb EMC received a deed to secure debt as consideration for the purchase price. Cobb Energy denies the remaining allegations of Paragraph 38 of the Complaint.

39. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 39 of the Complaint, and therefore same is denied.

RESPONSE TO DUTIES OF THE DEFENDANTS

40. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 40 of the Complaint, and therefore same is denied.

41. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 41 of the Complaint, and therefore same is denied.
42. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 42 of the Complaint, and therefore same is denied.
43. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 43 of the Complaint, and therefore same is denied.
44. Cobb Energy denies the allegations of Paragraph 44 of the Complaint.
45. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 45 of the Complaint, and therefore same is denied.
46. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 46 of the Complaint, and therefore same is denied.
47. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 47 of the Complaint, and therefore same is denied.
48. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 48 of the Complaint, and therefore same is denied.
49. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 49 of the Complaint, and therefore same is denied.
50. Cobb Energy denies the allegations of Paragraph 50 of the Complaint.
51. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 51 of the Complaint, and therefore same is denied.
52. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 52 of the Complaint, and therefore same is denied.

53. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 53 of the Complaint, and therefore same is denied.

54. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 54 of the Complaint, and therefore same is denied.

55. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 55 of the Complaint, and therefore same is denied.

RESPONSE TO DAMAGES

56. Cobb Energy denies the allegations of Paragraph 56 of the Complaint.

RESPONSE TO FIRST CAUSE OF ACTION

Declaratory Judgment against All Defendants

57. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 56 of the Complaint as if set forth fully herein.

58. Cobb Energy denies the allegations in Paragraph 58 of the Complaint and denies Plaintiffs are entitled to the relief requested.

RESPONSE TO SECOND CAUSE OF ACTION

Accounting Pursuant to O.C.G.A. § 23-2-70

59. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 58 of the Complaint as if set forth fully herein.

60. Cobb Energy denies the allegations in Paragraph 60 of the Complaint and denies Plaintiffs are entitled to the relief requested.

RESPONSE TO THIRD CAUSE OF ACTION

Injunctive Relief against Defendant Dwight Brown, Nominal

Defendant and the Director Defendants (including John Doe Defendants)

61. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 60 of the Complaint as if set forth fully herein.

62. Cobb Energy denies the allegations in Paragraph 62 of the Complaint and denies Plaintiffs are entitled to the relief requested.

RESPONSE TO FOURTH CAUSE OF ACTION

Breaches of Fiduciary and Other Duties against Defendant Dwight Brown,

Nominal Defendant and the Director Defendants (including John Doe Defendants)

63. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 63 of the Complaint as if set forth fully herein.

64. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 64 of the Complaint, and therefore same is denied.

65. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 65 of the Complaint, and therefore same is denied.

66. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 66 of the Complaint, and therefore same is denied.

67. Cobb Energy denies the allegations in Paragraph 67 of the Complaint and denies Plaintiffs are entitled to the relief requested.

68. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 68 of the Complaint, and therefore same is denied.

RESPONSE TO FIFTH CAUSE OF ACTION

Gross Mismanagement against Defendant Dwight Brown, Nominal

Defendant and the Director Defendants (including John Doe Defendants)

69. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 68 of the Complaint as if set forth fully herein.

70. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 70 of the Complaint, and therefore same is denied.

71. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 71 of the Complaint, and therefore same is denied.

72. Cobb Energy denies the allegations in Paragraph 72 of the Complaint and denies Plaintiffs are entitled to the relief requested.

73. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 73 of the Complaint, and therefore same is denied.

RESPONSE TO SIXTH CAUSE OF ACTION

Abuse of Control against Defendant Dwight Brown, Nominal

Defendant and the Director Defendants (including John Doe Defendants)

74. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 73 of the Complaint as if set forth fully herein.

75. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 75 of the Complaint, and therefore same is denied.

76. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 76 of the Complaint, and therefore same is denied.

77. Cobb Energy denies the allegations in Paragraph 77 of the Complaint and denies Plaintiffs are entitled to the relief requested, and therefore same is denied.

78. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 78 of the Complaint, and therefore same is denied.

RESPONSE TO SEVENTH CAUSE OF ACTION

Waste of Corporate Assets against Defendants Dwight Brown, Nominal

Defendant and the Director Defendants (including John Doe Defendants)

79. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 78 of the Complaint as if set forth fully herein.

80. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 80 of the Complaint, and therefore same is denied.

81. Cobb Energy denies the allegations in Paragraph 81 of the Complaint and denies Plaintiffs are entitled to the relief requested.

82. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 82 of the Complaint, and therefore same is denied.

RESPONSE TO NINTH CAUSE OF ACTION

Unjust Enrichment against Defendant Dwight Brown, Nominal

Defendant and the Director Defendants (including John Doe Defendants)

83. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 82 of the Complaint as if set forth fully herein.

84. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 84 of the Complaint, and therefore same is denied.

85. Cobb Energy denies the allegations in Paragraph 85 of the Complaint and denies Plaintiffs are entitled to the relief requested.

86. Cobb Energy is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 86 of the Complaint, and therefore same is denied.

RESPONSE TO TENTH CAUSE OF ACTION

Equitable Action for Money Had and Received under Georgia

**Law against Defendant Dwight Brown, Cobb Energy, the Nominal
Defendant and the Director Defendants (including John Doe Defendants)**

87. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 86 of the Complaint as if set forth fully herein.

88. Cobb Energy denies it has wrongfully retained any money or other assets of Cobb EMC to which it was not legally entitled to pursuant to legally valid contractual arrangements. By way of further answer, Cobb Energy denies the remaining allegations of Paragraph 88 of the Complaint.

89. Cobb Energy denies the allegations in Paragraph 89 of the Complaint and denies Plaintiffs are entitled to the relief requested.

90. Cobb Energy denies the allegations in Paragraph 90 of the Complaint.

RESPONSE TO ELEVENTH CAUSE OF ACTION

**Punitive Damages against Defendant Dwight Brown
and the Director Defendants (including John Doe Defendants)**

91. Cobb Energy hereby reincorporates its responses to Paragraphs 1 through 90 of the Complaint as if set forth fully herein.

92. Cobb Energy denies the allegations in Paragraph 92 of the Complaint and denies that Plaintiffs are entitled to the relief requested.

RESPONSE TO PRAYER FOR RELIEF

Cobb Energy denies that Plaintiffs are entitled to any of the relief requested.

RESPONSE TO ALL ALLEGATIONS

Any allegation not specifically addressed above is denied.

FIRST DEFENSE

Cobb Energy has the right, license and privilege to undertake all acts it has undertaken, which have benefited Cobb EMC.

SECOND DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

Plaintiffs seek relief which would unreasonably entangle the Court in the internal corporate affairs of Cobb EMC.

FOURTH DEFENSE

Plaintiffs seek relief which is beyond the scope of the demand sent by them to Cobb EMC's Board of Directors.

FIFTH DEFENSE

Plaintiffs have failed to satisfy a necessary condition precedent to any action relating to Cobb EMC and this failure bars the entire action, including any claims against Cobb Energy.

SIXTH DEFENSE

Plaintiffs' claims are barred by applicable statute of limitations.

SEVENTH DEFENSE

Cobb Energy has acted in good faith in the performance of duties which were lawfully made the subject of contracts with Cobb EMC. Thus, Cobb Energy cannot be liable to anyone for such acts.

EIGHTH DEFENSE

Plaintiffs' claims are barred by waiver and estoppel.

NINTH DEFENSE

Plaintiffs' claims are barred by the doctrine of laches.

TENTH DEFENSE

The Court lacks subject matter jurisdiction over the claims asserted in the Complaint, which are not recognized by Georgia law.

ELEVENTH DEFENSE

The Complaint is barred because Plaintiffs have failed to comply with the provisions of O.C.G.A. § 46-3-272.

TWELFTH DEFENSE

There has been an insufficiency of process and/or service of process as to Cobb Energy.

THIRTEENTH DEFENSE

Plaintiffs' claims alleging fraud are barred for failure to satisfy O.C.G.A. § 9-11-9(b) and do not plead with the requisite particularity of circumstances.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by their failure to exhaust corporate remedies.

FIFTEENTH DEFENSE

To the extent that injunctive relief is alleged, Plaintiffs' request for such relief is not properly verified or plead.

SIXTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by O.C.G.A. § 46-3-201, which expressly authorizes the actions by Cobb Energy about which Plaintiffs' complain.

SEVENTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they seek forbidden remedies that exceed the exclusive relief permitted by O.C.G.A. § 46-3-304.

EIGHTEENTH DEFENSE

Plaintiffs lack standing to bring their claims.

NINETEENTH DEFENSE

Cobb EMC's Special Litigation Committee is entitled as a matter of law to investigate Plaintiffs' claims before Plaintiffs can pursue this litigation.

TWENTIETH DEFENSE

Plaintiffs' claims are not ripe for adjudication.

TWENTY FIRST DEFENSE


Any award of punitive damages would violate the United States Constitution and Georgia law.

WHEREFORE, Cobb Energy prays that this case be dismissed, that all of Plaintiffs' prayers for relief be denied, that Plaintiffs take nothing, that Cobb Energy be awarded all reasonable expenses and costs of litigation, including attorneys' fees,

pursuant to O.C.G.A. §§ 46-3-272(e), 9-15-14 and 51-7-80 *et seq.* at the appropriate time, that it be awarded costs and that it be awarded such other and further relief as the Court may deem just and proper.

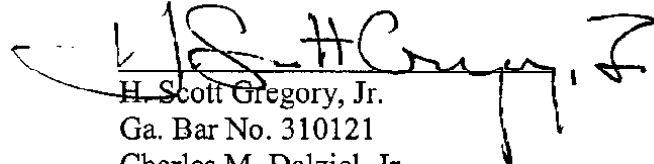
This 10th day of January, 2008.

WEINSTOCK & SCAVO, P.C.


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*Attorneys for Defendant
Cobb Energy Management Corporation*

VERIFICATION

State of Georgia)
)
County of Cobb)

I, David Johnson, being first duly sworn on oath, hereby depose and say that I am a duly authorized representative of the Defendant Cobb Energy Management Corporation, a Defendant in the above-styled civil action; that I have read the **ANSWER OF COBB ENERGY MANAGEMENT CORPORATION** and know the contents thereof; that said **ANSWER** is based on, and therefore necessarily limited by, the records and information still in existence, presently recollected and thus far discovered in the course of the preparation of the Answer; that consequently Cobb Energy Management Corporation reserves the right to make any changes in said Answer if it appears at any time that omissions or errors have been made therein or that more accurate information is available; and that subject to the limitations set forth herein, said Answer is true and correct to the best of Cobb Energy Management Corporation's knowledge, information and belief.

This 10th day of January, 2008.

By: *David B. Johnson*

Title: *Chief Operating Officer*

Sworn to and subscribed
Before me this 10th day
of January, 2008.

Cheryl K. Smiley
Notary Public

My Commission Expires: _____



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EDGAR "BO" POUNDS, individually and on)
behalf of the estate of Mary Jean Pounds,)
JOSEPH THOMPSON, FRANKLIN SMITH,)
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BALKCOM, III, COBB ENERGY)
MANAGEMENT CORPORATION and)
DOES 1-15, inclusive,)

Defendants,)

and)

COBB ELECTRIC MEMBERSHIP)
CORPORATION, a Georgia corporation,)

Nominal Defendant.)

CERTIFICATE OF SERVICE

This is to certify that on this day, I have served a true and exact copy of the Answer of Cobb Energy Management Corporation to the below listed counsel of record in the above-referenced case by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

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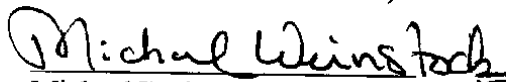
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*Attorneys for David McGinnis and Frank
Boone*

This 10th day of January, 2008.

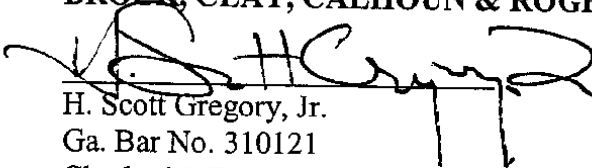
WEINSTOCK & SCAVO, P.C.


Michael Weinstock *by [signature]*

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