

ORIGINAL

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFF

SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS 03 CV 2661K

DAVID B. HENDERSON, INDEPENDENT FUNDING LTD./NEVADA, INDEPENDENT FUNDING, INC., JESS L. MERCER, TODD D. HENDERSON, SECURED CAPITAL SERVICES, LLC, and SECURUS CAPITALIS LIMITED

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant: Salt Lake County, UT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEY (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) HAROLD R. LOFTIN, JR. U.S. Securities & Exchange Commission, Burnett Plaza, Ste. 1900, 801 Cherry Street, Unit #18, Fort Worth, TX 76102-6882 (817) 978-6450

ATTORNEYS (if known):

RECEIVED OCT 30 2003 CLERK, U.S. DISTRICT COURT

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Section 5(a), 5(c), and 17(a) of the Securities Act of 1933, [15 U.S.C. § 77e(a), 77e(c), and 77q(a)], and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934, [15 U.S.C. § 78j(b) and 78o(a)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

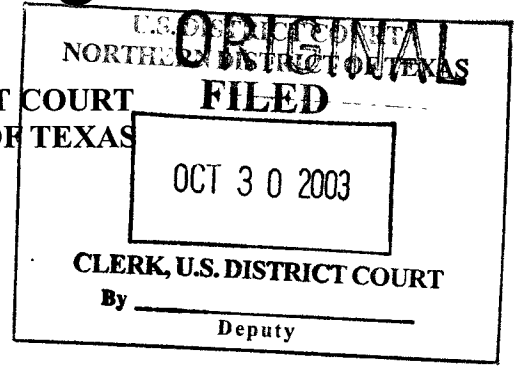
VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND YES NO

VIII. RELATED CASE(S) (See Instructions): IF ANY

DATE October 30, 2003 SIGNATURE OF ATTORNEY OF RECORD Harold Loftin, Jr.

FOR OFFICE USE ONLY Receipt # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**



**SECURITIES AND EXCHANGE COMMISSION,**

Plaintiff,

v.

**DAVID B. HENDERSON, INDEPENDENT  
FUNDING LTD./NEVADA, INDEPENDENT  
FUNDING, INC., AND  
JESS L. MERCER,**

Defendants,

and

**TODD D. HENDERSON, SECURED CAPITAL  
SERVICES, LLC, AND SECURUS CAPITALIS  
LIMITED,**

Relief Defendants.

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Case No.:

**3 - 03 CV 2661K**

**COMPLAINT**

The United States Securities and Exchange Commission (“Commission”) files this complaint against Defendants David B. Henderson, Independent Funding Ltd./Nevada, Independent Funding, Inc. and Jess L. Mercer and Relief Defendants Todd D. Henderson, Secured Capital Services, LLC, and Securus Capitalis Limited and would respectfully show the Court as follows:

**SUMMARY**

1. David B. Henderson (“Henderson”), through his companies Independent Funding Ltd./Nevada and Independent Funding Inc., is engaged in an ongoing fraud involving the unregistered offer and sale of securities referred to variously as “notes,” “Enhanced Automobile Receivables,” and “Commercial Paper Secured Purchaser Agreements” (collectively, the

“Notes”). The Notes are generally twelve-month promissory notes paying interest monthly or quarterly. Henderson and his companies use false, misleading and materially incomplete offering materials representing that Henderson’s companies will use investor proceeds to purchase secured automobile loans from third parties and that these loans will secure the Notes. Jess L. Mercer, Henderson’s most prolific sales agent, has sold over \$1.6 million of these notes to elderly investors in Texas.

2. Despite the significant risk inherent in this investment, Henderson’s offering materials describe the Notes as “safe” and “liquid,” and represent that they are not securities. If anything, the safety and liquidity claims are false. The Notes are not secured by any form of collateral and are non-recourse against Henderson or his companies. The Notes are not liquid and Henderson, in his sole discretion, determines who, if anyone, will receive the return of their invested principal on demand. Beyond this, Henderson uses note proceeds largely for purposes other than purchasing auto loans. To date, Henderson, through sales agents like Mercer, has sold approximately \$2 million of these securities. Of the \$2 million raised from investors, however, only \$190,000 is traceable to purchases of auto loans. Henderson, undisclosed to investors, has used the rest of the proceeds to, among other things, loan money to his son, Todd D. Henderson, loan money to a third party to build a used car lot, repay holders of an earlier series of unregistered promissory notes and make Ponzi payments to investors.

3. The Commission, in the interest of protecting the public from any further unscrupulous and illegal activity, brings this action against the Defendants, seeking temporary, preliminary and permanent injunctive relief, disgorgement of all illicit profits and benefits Defendants have received plus accrued prejudgment interest and a civil monetary penalty. The Commission also seeks an asset freeze against Henderson and his companies, an accounting and

other incidental relief, as well as the appointment of a receiver to take possession and control of Henderson, Independent Funding Ltd./Nevada. and Independent Funding, Inc.'s assets for the protection of Defendants' victims. Finally, the Commission also seeks to recover from the Relief Defendants all assets transferred to them that are traceable to investor monies raised by the Defendants.

### JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to § 22(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §77v(a)] § 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78(aa)]. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business described in this Complaint. Venue is proper because many of the transactions, acts, practices and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

### PARTIES

5. **David B. Henderson**, age 64, resides in Salt Lake City, Utah, and is the purported Chief Executive Officer ("CEO") and joint stockholder of Independent Funding, Inc., and the sole stockholder of Independent Funding Ltd./Nevada. Henderson is a licensed insurance broker in Utah. He was licensed by Utah to sell securities, but that license lapsed in 1999. In August 1999, Henderson consented to an order by the Idaho Department of Finance sanctioning him and his company for offering securities, similar to the ones identified in this Complaint, in violation of the Idaho Securities Act's salesperson and securities registration provisions. This order also concluded that the offering documents Henderson provided to investors omitted material facts, in violation of the Idaho Securities Act.

6. **Independent Funding Ltd./Nevada** (I-Fund Ltd.), is a Nevada corporation headquartered in Salt Lake City. Henderson, in an effort to protect current investor funds from the claims of investors from an earlier offering, incorporated this company through a Nevada-based nominee, who continues to act as sole officer and director. Henderson, however, is the company's sole employee and controls 100% of its stock.

7. **Independent Funding, Inc.** (I-Fund Inc.), is a Utah corporation headquartered in Salt Lake City. Henderson is the company's sole employee, and owns the company with his wife.

8. **Jess L. Mercer**, age 58, of Dallas, Texas, is an insurance agent licensed by the state of Texas. Mercer received in excess of \$80,000 in commissions from the sale of over \$1,250,000 worth of the Notes.

9. **Todd D. Henderson**, age 35, resides in Salt Lake City and is Henderson's son. He or his companies have received at least \$280,000 of Note proceeds.

10. **Secured Capital Services, LLC**, is a Utah limited liability company headquartered in Salt Lake City and owned and operated by Todd Henderson, its sole employee. This company has received at least approximately \$27,000 of Note proceeds, purportedly for maintaining the auto loans allegedly securing the Notes.

11. **Securus Capitalis Limited** is a Nevada corporation headquartered in Salt Lake City and owned and operated by Todd Henderson. This company has received at least \$122,000 of Note proceeds for unknown reasons.

#### **FACTUAL BACKGROUND**

12. From 1998 until approximately December 2000, Henderson, through I-Fund Inc., conducted an unregistered offering of securities that purportedly were backed by auto loans held

by a Salt Lake City used car dealership. Essentially, Henderson and I-Fund Inc. raised money from investors, then loaned money to the car dealership to fund its inventory. In return, the dealership gave I-Fund Inc. promissory notes purportedly secured by the loans resulting from auto sales.

13. In approximately December 2000, the car dealer defaulted on its debts to I-Fund Inc., which at that time totaled more than \$700,000. This left Henderson without a source of funds to pay his original investors. Accordingly, Henderson turned to a new securities offering as a way to pay back original investors and continue to operate.

14. From September 2001 to the present, Henderson and his companies have raised at least \$2 million through Note sales to at least 22 investors located in Texas, Arizona, California and Utah. Most of these investors are elderly.

15. Henderson has solicited thousands of annuity and insurance brokers, principally in Texas and California, to sell the Notes to investors, promising commissions of 5% on the funds raised. As a result of his recruitment efforts, Henderson has assembled a network of at least seven brokers located in Texas and other states through which he offers and sells the Notes. These brokers, who Henderson calls “sales agents,” offer and sell the Notes issued by Henderson and his companies and provide investors with Henderson’s offering documents.

16. Henderson’s offering documents are replete with misleading claims, material omissions and outright falsehoods. Henderson represents to investors, through the offering documents, that 82% of the investor funds will be used to purchase auto loans, which will secure the Notes. The remaining 18% will pay sales commissions (7%), outside services (4%), administrative expenses (4%), and cash reserves (3%). In fact, however, Henderson has spent only \$190,000, or approximately 9% of investor funds, purchasing auto loans, all from the same

used car dealer. Henderson has spent far more for purposes not disclosed to investors. For instance, he paid at least \$208,790 to security holders from his previous offering, and spent at least another \$63,000 on legal bills pursuing the car dealership associated with that offering. He also has paid at least another \$283,000 to Todd Henderson or his companies, either as direct payments or as alleged “loans.” Henderson has drawn down at least \$200,000 for personal uses, and, in classic Ponzi fashion, is using cash from new Note sales to make lulling payments to investors. He also has spent \$137,598 to buy inventory for the used car dealer, and has loaned that dealer an additional \$30,000 to fund a business expansion. The offering materials do not disclose any of these other uses of offering proceeds, nor do they contain legitimate financial information about Henderson or his companies.

17. Henderson’s offering materials also mislead investors about the safety of their investments, describing them as being “safe as an annuity,” purportedly because they are secured by the auto loans (and the autos securing those loans) and “by cash reserve funds which are maintained in Trust and accumulate interest earned.” The offering materials further represent that, until used to buy auto loans, investor funds will be placed in “U.S. Government securities or other investments with comparable safety.” The offering materials assure investors that “the cash reserves, the vehicle titles, the insured retail consumer vehicle loan contracts, U.S. Government Securities, the vehicles and other assets of comparable safety provide sufficient funds to repay the principal should there be a default on” the Notes. Lastly, the offering materials comfort investors by promising that an “independent” third party will service the auto loan portfolios.

18. These claims are false. The Notes plainly are not backed by auto loans, since Henderson has used approximately 9% of offering proceeds to buy such loans. Henderson has

never maintained a “cash reserve” or purchased “U.S. Government securities or other investments with comparable safety,” and, instead, deposits investor monies into a bank account that he uses to pay his own personal expenses. Further, Todd Henderson, not an “independent” third party, purportedly services the auto loans. In short, rather than being “safe as an annuity,” these investments are extremely risky.

19. Henderson’s offering materials contain other critical misrepresentations and omissions. For example, Henderson misleads investors about the liquidity of their investments, comparing the Notes’ liquidity to that of a certificate of deposit (“CD”). There is no truth to this comparison. In contrast to CD holders (who can withdraw their funds at will, albeit often with a penalty), investors in the Notes can withdraw their principal before maturity *only* at Henderson’s discretion.

20. Henderson further causes substantial confusion as to the identity of the obligor of the Notes. The maker, according to the Notes, is an entity called “Independent Funding Limited, Inc.,” of which Henderson, according to the offering documents, is allegedly the President and CEO. This entity does not exist. On the contrary, I-Fund Ltd., the entity Henderson formed after his first failed investment offering, is the entity that, according to Henderson, is the company using investor funds and responsible for returning to the investors their investment returns. Henderson is neither an officer nor a director of this entity. To further confuse the issue, Henderson tells investors to make their checks out merely to “Independent Funding,” which Henderson then deposits into a single I-Fund Inc. account.

21. The offering materials and Henderson’s promotional materials also create the impression that Henderson is operating a large and sophisticated business. The offering documents claim that “the officers, directors and consultants retained by the Company and the



officers, directors and consultants retained by the Affiliates have experience in the business of vehicle financing, insurance, loan underwriting, collections and the sale of portfolios.” These materials also describe a purported “accounting department” that monitors the company’s “sources and uses of cash flow, the collateralization position of the lenders, and the results of operations.” In reality, Henderson’s companies are a one-man operation that Henderson operates from a small rented office with his son’s help, the ostensible purpose of which is to provide financing for a single used car lot also located in Salt Lake City. There is no “accounting department” that monitors what happens to investors’ money and Henderson includes in his list of experienced “Affiliates” vendors from which he buys accounting software and purchase money insurance policies in case consumers buying the used cars default on their loans – which usually charge 28% interest per year.

22. Henderson has not registered his current offering with the Commission or any state. Henderson claims the Notes are not securities and, therefore, may be offered without registration. If a sales agent questions this claim, Henderson provides a letter he compiled from excerpts of attorney opinion letters supposedly given to acquaintances. Notably, however, although Henderson sought an attorney’s endorsement of his homemade opinion letter from multiple law firms, each firm refused to endorse Henderson’s claims. Nevertheless, Henderson has continued to provide the letter to sales agents and intends to continue using the letter in recruiting future sales agents.

23. Mercer is by far Henderson’s most prolific agent, responsible for almost \$1.6 million of the \$2 million raised. Mercer gained access to his elderly victims through his position as a sales agent for a Dallas estate planning and annuity company. Mercer identified company

clients that he viewed as good prospects, then visited them to make his sales pitch for the Notes, which he described as a “new opportunity” that is “perfect” for the client.

24. Mercer represented to investors that the Notes were safe, risk-free and guaranteed. Upon gaining investors’ trust, he caused them to liquidate their current investments (usually annuities and CDs, often at substantial penalties) and invest their funds with Henderson. Mercer takes full credit for convincing clients to invest in the Notes because “he had convinced himself” of the Notes’ legitimacy and safety. Mercer, however, prior to offering the Notes to his victims conducted no meaningful due diligence into Henderson, his background, the safety of the Notes or the representations Henderson made regarding the Notes. Instead, Mercer accepted Henderson’s claims largely because his offering materials appeared professional and his office looked nice.

## **CLAIMS**

### **FIRST CLAIM**

#### **Violation of Section 10(b) of the Exchange Act and Rule 10b-5**

25. Plaintiff Commission repeats and incorporates paragraphs 1 through 24 of this Complaint by reference as if set forth *verbatim*.

26. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

27. As a part of and in furtherance of his scheme, Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those set forth in paragraphs 1 through 24 above.

28. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth.

29. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

**SECOND CLAIM**  
**Violations of Section 17(a) of the Securities Act**

30. Plaintiff Commission repeats and incorporates paragraphs 1 through 24 of this Complaint by reference as if set forth *verbatim*.

31. Defendants, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

32. As part of and in furtherance of this scheme, Defendants directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, those statements and omissions set forth in paragraphs 1 through 24 above.

33. Defendants made the above-referenced misrepresentations and omissions knowingly or with recklessness regarding the truth. Defendants were also negligent in their actions regarding the representations and omissions alleged herein.

34. By reason of the foregoing, Defendants have violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. 77q(a)].

**THIRD CLAIM**  
**Violations of Sections 5(a) and 5(c) of the Securities Act**

35. Plaintiff Commission repeats and incorporates paragraphs 1 through 24 of this Complaint by reference as if set forth *verbatim*.

36. Defendants, directly or indirectly, singly or in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and has been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

37. As described in paragraphs 1 through 24, Defendants' securities were offered and sold to the public through a general solicitation of investors. No registration statements were ever filed with the Commission or otherwise in effect with respect to these transactions.

38. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and 77e(c)].

**FOURTH CLAIM**  
**Violations of Section 15(a)(1) of The Exchange Act**

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 24 of this Complaint by reference as if set forth *verbatim*.

40. At the times alleged in this Complaint, Mercer was in the business of effecting transactions in securities for the accounts of others.

41. Mercer made use of the mails and of the means and instrumentalities of interstate commerce to effect transactions in and to induce or attempt to induce the purchase of securities.

42. At the times alleged in this Complaint Mercer was not registered with the Commission as a broker or dealer, as required by Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

43. By reason of the foregoing, Mercer violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. §78o(a)(1)].

**FIFTH CLAIM**  
**Claim against Relief Defendants as Custodian of Investor Funds**

44. Plaintiff Commission repeats and incorporates paragraphs 1 through 24 of this Complaint by reference as if set forth *verbatim*.

45. Todd D. Henderson, Secured Capital Services, LLC and Securus Capitalis Limited (collectively "Relief Defendants") received funds and property from one or more of the

Defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of Defendants, as alleged in paragraphs 1 through 24, above.

46. Relief Defendants obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 24 and under circumstances in which it is not just, equitable or conscionable for them to retain the funds and property. As a consequence, Relief Defendants have been unjustly enriched.

### **RELIEF REQUESTED**

The Commission seeks the following relief:

47. On an interim basis, the Commission requests that a Receiver be appointed to take control of the assets of David B. Henderson, Independent Funding Ltd./Nevada and Independent Funding, Inc., to marshal and preserve their assets for the benefit of Defendants' defrauded investors.

48. A Temporary Restraining Order restraining all Defendants from continuing violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and additionally restrain Mercer from continuing violations of Section 15(a) of the Exchange Act.

49. A Preliminary Injunction against all Defendants enjoining them from further violations of the federal securities laws and specifically enjoining Defendants from continuing violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and additionally restrain Mercer from continuing violations of Section 15(a) of the Exchange Act.

50. A Permanent Injunction against all Defendants enjoining them from further violations of the federal securities laws and specifically enjoining Defendants from continuing

violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder and additionally restrain Mercer from continuing violations of Section 15(a) of the Exchange Act.

51. An accounting by all Defendants and Relief Defendants of all investor funds received or property traceable to investor funds and an interim asset freeze of all assets of Henderson, Independent Funding Ltd./Nevada and Independent Funding, Inc. and Relief Defendants until a full and accurate accounting can be made of all investor funds raised in this scheme and a determination made as to the disposition of those assets.

52. Disgorgement of all illicit proceeds and benefits plus prejudgment interest realized by Defendants and all investor funds or assets traceable to investor funds obtained by Relief Defendants as a result of participation in or attributable to the scheme alleged herein.

53. A civil monetary penalty against Defendants as provided by statute and determined by the Court to be just and proper.

54. Such other and further relief as the Commission may show itself entitled.

Respectfully submitted,



HAROLD R. LOFTIN, JR.  
Texas Bar No. 12487090

DATED: October 30, 2003

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