

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

Office Of The United States Trustee,  
Successor Trustee,

Plaintiff,

v.

BOBBY N. HARMON,

Defendant.

CIVIL NO. CV05-00030 DAE/KSC

DECLARATION OF COUNSEL

DECLARATION OF COUNSEL

I, STEVEN GUTTMAN, do hereby declare the following under penalty of perjury:

1. I am an attorney licensed to practice law before all courts of the State of Hawaii and, together with the law firm of Kessner Duca Umebayashi Bain & Matsunaga, am counsel for record for Plaintiff-Trustee Mary Lou Woo. On March 1, 2006, the Court issued an Order Granting Plaintiff-Trustee's Ex Parte Motion For Order Amending Case Caption changing the caption in this case to Office of the United States Trustee, Successor Trustee v. Booby N. Harmon. I have personal knowledge of the facts in this case and could and would competently testify to them if called as a witness.

2. On or about October 13, 1999, Bobby N. Harmon (“Harmon”) and Theresa Harmon filed for bankruptcy with the United States Bankruptcy Court for the District of Hawaii entitled In re Bobby Norris Harmon and [REDACTED] [REDACTED] dba Orbits Hawaii, Case No. 99-04339.

3. On March 13, 2003, the Trustee of the Harmons’ bankruptcy estate, Mary Loo Woo (the “Trustee”), filed a Demand for Arbitration against Harmon with the American Arbitration Association (“AAA”) for his violations of the Settlement, Release and Indemnification Agreement dated April 24, 2000 (“Settlement Agreement”), which resolved numerous lawsuits or legal proceedings involving Harmon against various entities and individuals.

4. On or about October 6, 2004, the Arbitrator Judith Neustadter, Esq. issued her Findings of Fact, Conclusions of Law and Award dated October 6, 2004 (“Arbitration Award”) in favor of the Trustee. Attached hereto as Exhibit “A” is a true and correct copy of the Findings of Fact, Conclusions of Law and Award dated October 6, 2004.

5. On June 20, 2005, this Court issued its Order Granting Plaintiff’s Motion for Summary Judgment On Plaintiff’s Application For Confirmation Of Arbitration Award and For Entry Of Judgment Against Bobby N. Harmon filed June 20, 2005. Attached hereto as Exhibit “B” is a true and correct copy of the Order Granting Plaintiff’s Motion for Summary Judgment On Plaintiff’s

Application For Confirmation Of Arbitration Award and For Entry Of Judgment  
Against Bobby N. Harmon filed June 20, 2005.

6. Since the entry of the Arbitration Award, Harmon has repeatedly and willfully violated the Arbitration Award by publishing and disseminating letters via facsimile and through the internet containing statements related to Protected Subject Matters. Some letters contain extensive disclosures of Protected Subject Matters while others simply make general demands for settlement or identify witnesses who would allegedly support Harmon's various allegations and theories of conspiracies.

7. Those letters which contain extensive disclosures of Protected Subject Matters repeat Harmon's claims, theories, and allegations which were the subject of the arbitration brought against him by the Trustee. These letters were transmitted via facsimile and/or e-mail to various individuals who are not parties to any of the legal actions involving Harmon. Five (5) of the letters fall under this classification and are identified in the log summary attached hereto as Exhibit "C". The log identifies to whom the letter was sent, to whom the letter was copied, and the specific Protected Subject Matter referenced in the letter which is in violation of the Arbitration Award.

8. As for those letters containing general comments regarding a Protected Subject Matter, the letters may be too conclusory or innocuous to

warrant the imposition of sanctions. They are, nonetheless, troubling in another aspect.

9. On October 8, 2004, two days after the entry of the Arbitration Award, Harmon issued a letter to Mr. Terry Mullen via facsimile and e-mail which made general references to the settlement agreement, the tax treatment issue, the conflict of interest allegations, arbitration and his claims and defenses, all of which are Protected Subject Matters as determined by the Arbitrator. Attached hereto as Exhibit "D" is a log of various letters written by Harmon. Exhibit "D(1)" is a letter that was copied via facsimile or e-mail to 9 individuals who are not parties to these actions involving Harmon. Id. What is particularly troubling about this letter is the fact that if it was received via email, it contains a web-site reference which permits the recipient to immediately click into Harmon's web-site "[www.the-catbird-seat.net](http://www.the-catbird-seat.net)". Id.

10. On November 3, 2004, Harmon issued a letter to Mr. Mike Coultier which made reference to his allegations concerning his claims that he is entitled to a defense and indemnification from KS, which is a Protected Subject Matter as determined by the Arbitrator. See Exhibit "D(3)." This letter was copied via facsimile and/or e-mail to 7 individuals who are not parties to these actions involving Harmon. Id. Again, if the letter had been received via email, it

contained a web-site reference which permitted the recipient to immediately click into Harmon's web-site "[www.the-catbird-seat.net](http://www.the-catbird-seat.net)". *Id.*

11. Similar letters are submitted as Exhibits "D(1)" through "D(25)". Exhibit "D" is a log of all the attached letters.

12. Between May 19, 2005 and February 20, 2006, Harmon issued no less than 112 letters, all of which were addressed to me. Attached hereto as Exhibit "E" is a log of these letters. The letters themselves are attached hereto as Exhibits "E(1)" through "E(112)". Each of the 112 letters was copied to the addressees identified in the log via e-mail and contained references to Harmon's web-site which allowed for immediate accessible to the web-site.

13. The letters in Exhibits "D" and "E" reference a number of different web-sites. One of these web-sites is [www.the-catbird-seat.net](http://www.the-catbird-seat.net) which is owned, operated, and maintained by Harmon. When you click and open [www.the-catbird-seat.net](http://www.the-catbird-seat.net), it takes you to a sub-directory entitled "RICO IN PARADISE." Attached hereto as Exhibit "F" is a true and correct copy of the web-page entitled "RICO IN PARADISE."

14. This "RICO IN PARADISE" web-page essentially recites the federal court complaint filed by Harmon in Civil No. 99-00304 DAE, which was dismissed by the U.S. District Court. The web-page also contains numerous sub-directories that open to other web-pages. When you click and open the sub-

directory entitled "P & C Insurance Company, Inc.", you are taken to a web-page entitled "CLAIMS BY HARMON." Attached hereto as Exhibit "G" is a true and correct copy of the web-page entitled "CLAIMS BY HARMON."

15. This web-page entitled CLAIMS BY HARMON contains various newspaper articles and a section entitled "More Claims by Harmon." This section lists additional web-pages. When you click and open the web-page entitled [www.the-catbird-seat.net/Claims-Branch-P-C.htm](http://www.the-catbird-seat.net/Claims-Branch-P-C.htm) in the sub-directory named P & C Insurance Company, Inc., it takes you to a web-page which has attached to it various documents under the name "P & C INSURANCE COMPANY, INC." Attached hereto as Exhibit "H" is a true and correct copy of the web-page entitled "P & C INSURANCE COMPANY, INC."

16. Attached to the "P & C INSURANCE COMPANY, INC." web-page is a copy of an August 9, 1994 letter from Price Waterhouse to Myron Mitsuyasu, a true and correct copy of which is attached hereto as Exhibit "I".

17. Similarly, there is an unsigned letter from Harmon, as President of P & C Insurance, to Coopers & Lybrand dated November 20, 1996, a true and correct copy of which is attached hereto as Exhibit "M". The fact that there is an unsigned version of this November 20, 1996 letter on Harmon's web-site means that Harmon has these letters on his computer. These letters and/or drafts of

letters contain information or documents that are protected under the State Court injunction orders and the Arbitration Award.

18. The existence of these letters on Harmon's computer would explain how Harmon is able to cite extremely specific details such as those found in "The Harmon Chronicles – 1988 – 1996," which contain such details and allegations, including direct quotes from documents, which could only have been written if the underlying information and documents were still in Harmon's possession.

Attached hereto as Exhibit "N" is a true and correct copy of a document entitled "The Harmon Chronicles – 1988 – 1996" attached to the web-page entitled "P & C INSURANCE COMPANY, INC."

19. Plaintiff seeks recovery as to the five letters identified in Exhibit "C" which were issued by Harmon after October 6, 2004, the date of the Arbitration Award, and which contain an extensive discussion of Protected Subject Matters. Harmon transmitted these five letters to 124 individuals who have no involvement whatsoever in this case.

20. Based upon the foregoing, the Court should enter judgment in the amount of \$62,000 in favor of Plaintiff and against Harmon as provided under Paragraph 4 and 10 of the Award Section of the Final Award.

21. Exhibits "D" and "E" are letters written by Harmon. Plaintiff does not seek to recover damages related to these letters. These letters simply restated

Harmon's demand for some settlement or list individuals Harmon supposedly intends to call as witnesses in some proceeding.

22. As of the date of this motion, Harmon's web-site is still operational, as it has been since June 30, 2004. The violations surrounding the information and documents found on Harmon's web-site date back to February 21, 1997, when the State Court Injunction Order was issued protecting the very information that Harmon has published on his web-site. The fact that these letters are readily accessible on Harmon's web-site is also in violation of the April 18, 1998 Enforcement Order. Accordingly, the fact that Harmon's violations have been intentional cannot be disputed, and Plaintiff seeks enforcement of the Arbitration Award from the June 24, 2004 deadline for compliance established by the Arbitrator.

23. Based on the foregoing, the Court should enter judgment in the amount of \$312,000 in favor of Plaintiff and against Harmon as provided under Paragraphs 5, 6, 7, 8 and 9 of the Award Section of the Final Award from June 24, 2004 through March 17, 2006 (624 days X \$500).

24. Harmon should also be ordered to stop sending letters, copies of letters, and/or e-mails directly to any person or entity who was a party to a prior proceeding involving Harmon and instructed to direct any such communications to

the individual's or entity's attorney, unless the letter violates the Arbitration Award, in which case it should not be sent at all.

I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawaii, April 10, 2006.

  
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STEVEN GUTTMAN