

EDELSTEINBOSMAN

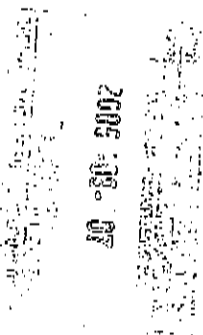
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452-8900

COMBINED

2005-09-07

SUMMONS



CASE NO
30729/05

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

In the matter between :

WRAYPEX (PTY) LIMITED

PLAINTIFF

and

EDWARD MERVYN JOHN GAYLARD

DEFENDANT

TO THE SHERIFF OR HIS DEPUTY :

INFORM

EDWARD MERVYN JOHN GAYLARD, a major male chemical engineer whose full and further particulars are to the Plaintiff unknown, residing at Pn 21 of the farm Vioforlein, Lanseria.

(hereinafter called the Defendant) that

WRAYPEX (PTY) LIMITED, a private company, with limited liability, duly incorporated and registered in accordance with the company laws of the Republic of South Africa, under registration number 2201/011622/07, with principal place of business at 55 Kingfisher Drive, Fourways, Sandton.

(hereby called the Plaintiff), hereby institutes action against him in which action the Plaintiff

claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the Defendant further that if he disputes the claim and wishes to defend the action, he shall

(i) Within 10 (TEN) days of the service upon him of this Summons, file with the Registrar of this Court at the High Court Building, cor Paul Kruger and Vermeulen Streets, Pretoria, notice of his intention to defend and serve a copy thereof on the Plaintiff's attorney, which notice shall give an address (not being a post office or poste restante) as referred to in Rule 19(3) for the service upon the Defendant of all notices and documents in the action.

(ii) Thereafter and within twenty days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff a Plea, Notice to strike out, with our without a counterclaim.

INFORM the Defendant further that if he fails to file and serve notice as aforesaid, judgement as claimed may be given against him without further notice to him, or if having filed and served such notice, fails to plead, except, make application to strike out or counterclaim, judgement may be given against him.

And immediately thereafter serve on the Defendant a copy of this Summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED at PRETORIA on this day of SEPTEMBER 2005.


REGISTRAR OF THE HIGH COURT

(SGD) N VAN DEN HEEVER
EDELSTEIN-BOSMAN INC
ATTORNEYS FOR PLAINTIFF
220/2 LANGE STREET
NEW MUCKLENEUK
PRETORIA
TEL: 012 452 8900
FAX: 012 452 8901/2
MR N VAN DEN HEEVER/RFB/W001116

ANNEXURE

PARTICULARS OF PLAINTIFFS CLAIM

1. The Plaintiff is WRAYPEX (PTY) LIMITED, a private company, with limited liability, duly incorporated and registered in accordance with the company laws of the Republic of South Africa, under registration number 2001/011622/07, with principal place of business at 55 Kingfisher Drive, Fourways, Sandton.
2. The Defendant is EDWARD MERVYN JOHN GAYLARD, a major male chemical engineer whose full and further particulars are to the Plaintiff unknown, residing at Plot 21 of the farm Vlakfontein, Lanseria.
3. The Defendant, wrongfully and with the intention to injure the Plaintiff, published the following false and malicious statements of and concerning the Plaintiff:
 - 3.1 that the Plaintiff did not comply with due process and associated legal requirements in relation to the proposed Blair Atholl township; and

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3.2 that the Plaintiff had not submitted a comprehensive environmental impact assessment to the responsible authorities for approval in accordance with existing legislation concerning applications for changes in land use; and

3.3 that the Plaintiff had not held a public meeting of interested parties, and that it was required by statute,

("the first statements");

4. The Defendant made and published the first statements to the Town Planner, Centurion, City of Tswane, on or about 14 September 2004.

5. The first statements are *per se* defamatory of the Plaintiff.

6. Alternatively to paragraph 5, the Defendant intended the following defamatory innuendo when he made the first statements:

6.1 that the Plaintiff acts or acted illegally; and/or

6.2 that the Plaintiff is dishonest; and/or

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6.3 that the Plaintiff acts or acted deceitfully and/or fraudulently, and, in addition, the persons to whom the first statements were made and published as aforesaid, understood the statements to bear such innuendo.

7. As a result of the publication of the first statements, the Plaintiff has:

- 7.1 been injured in its fair name, and reputation; and
- 7.2 suffered damages.

8. The Defendant wrongfully and with the intention to injure the Plaintiff, published the following false and malicious statements of and concerning the Plaintiff:

8.1 that it was conducting illegal construction related activities on the proposed Blair Atroll development;

(“the second statement”).

the first part

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9. The Defendant made and published the second statement to Tshoko Ratsheko of the Gauteng Department of Agriculture, Conservation and Environment on or about 26 and/or 27 July 2005.

10. The second statement is *per se* defamatory of the Plaintiff.

11. Alternatively to paragraph 10, the Defendant intended the following defamatory innuendo when he made the second statement:

11.1 that the Plaintiff acts or acted illegally; and/or

11.2 that the Plaintiff is dishonest; and/or

11.3 that the Plaintiff acts or acted deceitfully and/or fraudulently,

and, in addition, the person to whom the second statement was made and published as aforesaid, understood the statement to bear such innuendo.

12. As a result of the publication of the second statement, the Plaintiff has:

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12.1 been injured in its fair name, and reputation; and

12.2 suffered damages.

13. The Defendant wrongfully and with the intention to injure the Plaintiff, published the following false and malicious statements of and concerning the Plaintiff:

13.1 *"It is clear from the recent developments on site that the developer is in breach of the conditions set out in the Record of Decision and is not taking heed of the warnings issued by officials of your department.", and*

13.2 *"You are therefore requested to take the necessary measures against the developer to stop the unlawful construction activities as a matter of urgency."*

("the third statements").

14. The Defendant caused the third statements to be made and published to Dr Cornelius of the Gauleng Department of Agriculture, Conservation

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and Environment and to the Member of the Executive Council, Provincial Department of Agriculture, Consultation and Environment, on or about 26 July 2005.

15. The third statements are *per se* defamatory of the Plaintiff.

16. Alternatively to paragraph 15, the Defendant inserted the following defamatory innuendo when he made the third statements:

16.1 that the Plaintiff acts or acted illegally; and/or

16.2 that the Plaintiff is dishonest; and/or

16.3 that the Plaintiff acts or acted deceitfully or fraudulently; and/or

16.4 that the Plaintiff acts or acted in disregard of the lawful instructions of public officials.

and, in addition, the persons to whom the third statements were made and published as aforesaid, understood the statements to bear such innuendo.

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17. As a result of the publication of the third statements, the Plaintiff has:

- 17.1 been injured in its fair name, and reputation; and
- 17.2 suffered damages.

18. The Defendant wrongfully and with the intention to injure the Plaintiff, published the following false and malicious statement of and concerning the Plaintiff:

"The approaches made to individuals are obviously an attempt to stifle opposition by stealth."

("the fourth statement").

19. The Defendant made and published the fourth statement on or about 23 September 2004 to:

- 19.1 Lise Essberger;
- 19.2 Andy Walters;
- 19.3 Corlett Wessels;

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- 19.4 Cynthia Barnes;
- 19.5 Dieter Beyer;
- 19.6 Helen Duigan;
- 19.7 Anthony Duigan;
- 19.8 Jekke Botha;
- 19.9 Marcelo de Feltas;
- 19.10 Mede Andrews;
- 19.11 Olga Williams;
- 19.12 Terry O'Donoghue;
- 19.13 Wayne Nel;
- 19.14 various other persons to the Plaintiff unknown.

20. The fourth statement is *per se* defamatory of the Plaintiff.

21. Alternatively to paragraph 20, the Defendant intended the following defamatory innuendo when he made the fourth statement:

- 21.1 that the Plaintiff is dishonest; and/or
- 21.2 that the Plaintiff acts or acted deceitfully and/or fraudulently,

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and, in addition, the persons to whom the fourth statement was made and published as aforesaid, understood the statement to bear such innuendo.

22. As a result of the publication of the fourth statement, the Plaintiff has:

22.1 been injured in its fair name, and reputation; and

22.2 suffered damages.

23. The damages suffered as a result of the publication of the statements as aforesaid is the amount of R15 000 000,00.

24. The Defendant when making the first and/or the second and/or third and/or fourth statements knew that the Plaintiff:

24.1 was seeking the necessary statutory approvals for a residential property development; and/or

24.2 had expended and would expend money to obtain approval for the proposed development; and/or

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24.3 would suffer damages in the event of the necessary statutory approvals not being obtained; and/or

24.4 would suffer damages in the event of the necessary statutory approvals being delayed.

25. Alternatively to paragraphs 24.3 and 24.4, the Defendant should have foreseen:

25.1 that the Plaintiff would suffer damages in the event of the necessary statutory approvals not being obtained; and

25.2 that the Plaintiff would suffer damages in the event of the necessary statutory approvals being delayed.

26. The Defendant when making the first and/or second and/or third and/or fourth statements intended the delay and/or refusal of the necessary statutory approvals.

27. The necessary statutory approvals were in fact delayed as a result of the Defendant making the first statements.

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28. The Plaintiff has, as a result of the delays, suffered damages in the amount of R20 000 000,00 being *inter alia* costs of finance and contractual penalties.

29. The Defendant when making the first and/or second and/or third statements and publishing it as aforesaid:

29.1 acted unlawfully and wrongfully;

29.2 violated the Plaintiff's fundamental rights to dignity and fair administrative action;

29.3 intended to violate the Plaintiff's fundamental rights to dignity and fair administrative action.

30. By virtue of the facts herein stated, the Plaintiff:

30.1 has suffered a violation of its fundamental rights to dignity and fair administrative action; and

30.2 has suffered damages in the amount of R10 000 000,00.

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31. In the premises the Defendant is liable in damages to the Plaintiff in the sum of R10 000 000,00.

32. Having regard to the egregious nature of the Defendant's violations of the Plaintiff's fundamental rights to dignity and fair administrative action as set out above, appropriate relief in terms of Section 38 of Act 108 of 1996 include, in addition to the compensatory damages contemplated by paragraph 31 above, punitive constitutional damages of R5 000 000,00, alternatively punitive damages of R5 000 000,00 under the common law of delict developed to promote the spirit, purport and objects of the Bill of Rights.

WHEREFORE the Plaintiff prays for judgment against the Defendant for:

1. Payment of the amount of R45 000 000,00;
2. Payment of the amount of R5 000 000,00;
3. Interest on the aforesaid amounts at 15,5% per annum from date of judgment to date of final payment;

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- 4. Costs of suit on the attorney and client scale;
- 5. Further and/or alternative relief.

DATED at SANDTON on this the 31st day of AUGUST 2005

S VAN NIEUWENHUIZEN S.C.

EL THERON

Plaintiff's Counsel

CONNIE MYBURGH & PARTNERS INC
 Plaintiff's Attorneys
 1st Floor, Building B
 Peter Place Park
 54 Peter Place
 BRYANSTON, 2021
 TEL : (011) 463-0055
 FAX : (011) 463-0054
 REF : C MYBURGH

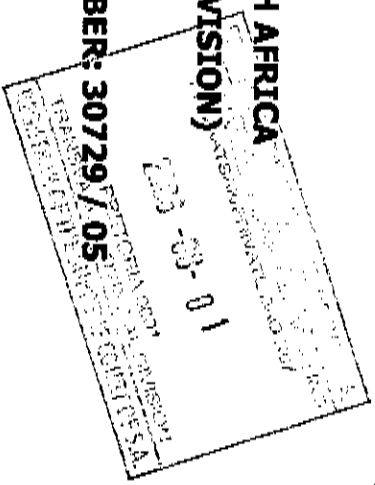
ET2160

c/o ATTORNEYS EDDELSTEIN BOSMAN INC
 220 LANGE STREET
 NEW HICHLANDURK
 FRIENBURG
 TEL: (012) 452 8500
 FAX: (012) 452 8902
 N J H Hever/BM001115

COPY

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NUMBER: 30729 / 05



477

In the matter between:

WRAYPEX (PTY) LTD

PLAINTIFF

and

EDWARD MERVYN JOHN GAYLARD

RESPONDENT

FILING SHEET

PRESENTED FOR SERVICE AND FILING BY:

ADRIAN VORSTER ATTORNEYS

29 Minni Street, Clydesdale, 0002

P. O. Box 11028, Hatfield 0028

Telephone number: (012) 344 - 2040

Facsimile number: (012) 344 - 0819

E-mail: adrian@impactlaw.co.za

DOCUMENTS PRESENTED FOR FILING:

1. Amended pages to Defendant's plea.

Signed at Pretoria on the 31st day of July 2006

A. Vorster

48

ATTORNEYS FOR THE DEFENDANT

ADRIAN VORSTER ATTORNEYS

29 Minni Street, Clydesdale, 0002

P. O. Box 11028, Hatfield 0028

Telephone number: (012) 344 - 2040

Facsimile number: (012) 344 - 0819

E-mail: adrian@impactlaw.co.za

Reference: **ENVIRON/VOR/02/EZ**

TO:

**THE REGISTRAR OF THE HIGH COURT
PRETORIA**

AND TO:

ATTORNEYS FOR THE PLAINTIFF

CONNIE MYBURGH & PARTNERS INCORPORATED

ATTORNEYS FOR THE PLAINTIFF

Care of Edelstein & Bosman Incorporated

220/2 Lange Street, New Muckleneuk, PRETORIA

Telephone: (012) 452-8900

Reference: Mr. N. van den Heever/BM001117

EDELSTEIN — BOSMAN INC
RECEIVED WITHOUT PREJUDICE
ON TWANG SONDER BEMADELING

DATE: 2006-07-21

TIME: 12:19



IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case No. 20729/05

30729/05

In the matter between -

WRAYPEX (PTY

GENERER VAN DIE HOOGGERECHTSHOF VAN SA
TRANSVAAL, SEK. PROKURATORS-ALGEMEEN
ALDERSKRIJG KANTOOR
2005 -10- 2 8

Plaintiff

and

EDWARD MERVYN JOHN GAYLEARD

Defendant

DEFENDANT'S PLEA

The defendant pleads to the plaintiff's particulars of claim as follows -

AD PARAGRAPH 1

1. The defendant has no knowledge of these allegations and denies them.

AD PARAGRAPH 2

2. These allegations are admitted.

AD PARAGRAPHS 3 TO 6

3. These allegations are denied.

Alternatively

4. If it was held that the defendant did publish the statements complained of and that they are defamatory of the plaintiff in the senses alleged, then the defendant denies, on the following grounds, that publication was wrongful and/or made with the intention to injure the plaintiff's reputation –

Truth and Public Interest

4.1. The statements of fact were true, or substantially true, and their publication was in the public interest.

Fair Comment

4.2. The comments made in the statements complained of,

- Were comments made in good faith;
- Were comments on matters of public interest or concern;

- Were based on facts that were generally known or disclosed, alternatively true or substantially true, and
- Were, in circumstances, fair.

Alternatively

Privilege

4.3. The statements complained of were published on a privileged occasion in that:

- (a) The statements complained of were published in the discharge of a duty or exercise of a right;
- (b) The statements complained of were published to the town planner, Centurion, City of Tswane ("the town planner"), and the town planner had a duty or right to receive the statements.

Further alternatively:

Reasonable Publication

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4.4. It was reasonable to publish the statements complained of in that:

- (a) The statements complained of were published in the *bona fide* and reasonable belief that they were true;
- (b) They were not published recklessly;
- (c) Reasonable steps had been taken to ensure that the factual allegations therein were true;
- (d) In the circumstances, the defendant was not negligent;
- (e) The information contained therein was such that it was in the public interest that it be published to the publishee.

Further alternatively

Statutory Protection

4.5. The defendant is excused liability in terms of section 31(4) of the National Environmental Management Act, 107 of 1998 in that

(a) The defendant, in good faith, reasonably believed, at the time of disclosure, that she was disclosing evidence of an environmental risk.

(b) The disclosure alleged by the plaintiff is disclosure to an organ of state in that the town planner is administration in the local sphere of government, alternatively is a functionary exercising public power or performing a public function in terms of section 22 the Environment Conservation Act, 73 of 1989 and section 16 of the National Environmental Management Act, 107 of 1998.

AD PARAGRAPH 7

5. These allegations are denied.

AD PARAGRAPHS 8 TO 12

6. These allegations are denied.

Alternatively

7. If it was held that the defendant did publish the statements complained of and that they are defamatory of the plaintiff in

the senses alleged, then the defendant denies, on the following grounds, that publication was wrongful and/or made with the intention to injure the plaintiff's reputation --

Truth and Public Interest

7.1. The statements of fact were true, or substantially true, and their publication was in the public interest.

Fair Comment

7.2. The comments made in the statements complained of,

- Were comments made in good faith;
- Were comments on matters of public interest or concern;

• Were based on facts that were generally known or disclosed, alternatively true or substantially true, and

- Were, in circumstances, fair.

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Alternatively

Privilege

7.3. The statements complained of were published on a privileged occasion in that:

- (a) The statements complained of were published in the discharge of a duty or exercise of a right;
- (b) The statements complained of were published to an official of the Gauteng Department of Agriculture, Conservation and Environment (the Department), and who had a duty or right to receive the statements.

Further alternatively:

Reasonable Publication

7.4. It was reasonable to publish the statements complained of in that:

- (a) The statements complained of were published in the bona fide and reasonable belief that they were true;

- (b) They were not published recklessly;
- (c) Reasonable steps had been taken to ensure that the factual allegations therein were true;
- (d) In the circumstances, the defendant was not negligent;
- (e) The information published was such that it was in the public interest that it be published to the publishee.

Further alternatively

Statutory Protection

- 7.5. The defendant is excused liability in terms of section 31(4) of the National Environmental Management Act, 107 of 1998 in that
- (a) The defendant, in good faith, reasonably believed, at the time of disclosure, that he was disclosing evidence of an environmental risk;
 - (b) The disclosure alleged by the plaintiff is disclosure to an organ of state in that the

aforesaid official is administration in the provincial sphere of government, alternatively is a functionary exercising public power or performing a public function in terms of section 22 of the Environment Conservation Act, 73 of 1989.

AD PARAGRAPHS 13 TO 17

8. Save to admit that the defendant made the statements complained of, these allegations are denied.

Alternatively

9. If it was held that the statements complained of are defamatory of the plaintiff in the senses alleged, then the defendant denies, on the following grounds, that publication was wrongful and/or made with the intention to injure the plaintiff's reputation –

Truth and Public Interest

9.1. The statements of fact were true, or substantially true, and their publication was in the public interest.

Fair Comment

9.2. The comments made in the statements complained of,

- Were comments made in good faith;
- Were comments on matters of public interest or concern;
- Were based on facts that were generally known or disclosed, alternatively true or substantially true, and
- Were, in circumstances, fair.

Alternatively

Privilege

9.3. The statements complained of were published on a privileged occasion in that

- (a) The statements complained of were published in the discharge of a duty or exercise of a right;
- (b) The statements complained of were published to Dr Cornelius of the Department and the Member

of the Executive Council (the MEC) of the Department, and they had a corresponding duty or right to receive the statements.

Further alternatively:

Reasonable Publication

9.4. It was reasonable to publish the statements complained of in that:

- (a) The statements complained of were published in the *bona fide* and reasonable belief that they were true;
- (b) They were not published recklessly;
- (c) Reasonable steps had been taken to ensure that the factual allegations therein were true;

(d) In the circumstances, the defendant was not negligent;

(e) The information published was such that it was in the public interest that it be published to the publisher.

Further alternatively

Statutory Protection

9.5. The defendant is excused liability in terms of section 31(4) of the National Environmental Management Act, 107 of 1998 in that

(a) The defendant, in good faith, reasonably believed, at the time of disclosure, that he was disclosing evidence of an environmental risk;

(b) The disclosure alleged by the plaintiff is disclosure to an organ of state in that Dr Cornelius and the MEC are administration in the provincial sphere of government, alternatively are functionaries exercising public power or performing a public function in terms of section 22 of the Environment Conservation Act, 73 of 1989.

AD PARAGRAPHS 18 TO 22

10. These allegations are denied.

Alternatively

11. If it was held that the statements complained of were published by the defendant, and are defamatory of the plaintiff in the senses alleged, then the defendant denies, on the following grounds, that publication was wrongful and/or made with the intention to injure the plaintiff's reputation –

Alternatively

Truth and Public Benefit

11.1. The statements of fact were true, or substantially true, and their publication was in the public interest.

Fair Comment

11.2. The comments made in the statements complained of,

- Were comments made in good faith;
- Were comments on matters of public interest or concern;

- Were based on facts that were generally known or disclosed, alternatively true or substantially true, and
- Were, in circumstances, fair.

Further Alternatively

Privilege

11.3. The statements complained of were published on a privilege occasion in that:

- (a) The statements complained of were published in the discharge of a duty or exercise of a right;
- (b) The statements complained of were published to other people concerned with the environmental impact of the plaintiff's development, and they had a right or duty to receive the statement.

Further Alternatively

Reasonable Publication

11.4. It was reasonable to publish the statements complained of in that:

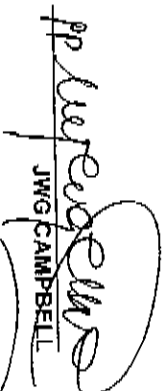
- (a) The statements complained of were published in the *bona fide* and reasonable belief that they were true;
- (b) They were not published recklessly;
- (c) Reasonable steps had been taken to ensure that the factual allegations therein were true;
- (d) In the circumstances, the defendant was not negligent;
- (e) The information contained therein was such that it was in the public interest that it be published to the publishers.

AD PARAGRAPHS 23 TO 32


12. These allegations are denied.

WHEREFORE the defendant prays that the plaintiff's claims be dismissed with costs, including costs of two counsel.

DATED and SIGNED at JOHANNESBURG on this 24th day of OCTOBER 2005.


JWG CAMPBELL


MJ ENGELBRECHT
Defendant's Counsel


DENEYS REITZ INC
Defendant's Attorneys
92 Maude Street
Sandton

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Fax: (011) 883-4000
DX 215 JHB

Ref: Mr RA Scott/cw
c/o CELLIERS ATTORNEYS

c/o Vein & Muller Inc
114 Bronkhorst Street
New Muckleneuk
PRETORIA
0001

Ref: Mr M Celliers/DR0001C
Tel: 082 578 4901

TO:
The Registrar of the above
Honourable Court
PRETORIA

AND TO:
CONNIE MYBURGH & PARTNERS INC
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1st Floor, Building B
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220/2 Lange Street
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Ref: N vd Heever/RFBMC01117

EDELSTEYN - BOSMAN INC
RECEIVED BY COURT REGISTRAR
ONTARIO ST. 15, BENAUDELING
DATE: 28/10/05
TIME: 11:45

Received a copy hereof on this the
28 day of **OCTOBER** 2005.

[Signature]
for Plaintiff's Attorneys