IN THE COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO

PREFERRED CAPITAL, INC.,	)	
	)	
Appellant,	)	C.A. Nos. 22475, 22476, 22477,
	)	22478, 22485, 22486, 22487,
v.	)	22488, 22489, 22497, 22499,
	)	22506, 22513
POWER ENGINEERING GROUP,	)	
INC., et al.,	)	
	)	
Appellees.	)	

BRIEF ON APPEAL OF *AMICI CURIAE,* ATTORNEYS GENERAL OF THE STATES OF ARIZONA, CALIFORNIA, CONNECTICUT, FLORIDA, ILLINOIS, LOUISIANA, MARYLAND, MASSACHUSETTS, MICHIGAN, NEW YORK, OHIO, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA AND TEXAS IN SUPPORT OF APPELLEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Other Authorities

SUMMARY OF ARGUMENT

The Attorneys General for the states of Arizona, California, Connecticut, Florida, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, and Texas ("Amici"), as *amici curiae*, submit this brief in support of Appellees together with the attached Motion for Leave To File Amicus Brief. Amici urge this Court to affirm the lower courts' dismissals for lack of jurisdiction and to bar enforcement of the floating forum selection clause contained in Appellees' NorVergence contracts.

The 8th Appellate District Court of Appeals and the United States District Court, Northern District of Ohio, Eastern Division, have previously held that a floating forum selection clause is invalid since it fails to put customers on notice of where they would be required to defend an action. This Court should affirm that precedent in this appeal.[1]

This Court's decision will directly affect the Appellees and may affect more than 500 similarly situated Preferred Capital[2] customers whose cases are pending in Cuyahoga and Summit County Courts of Pleas, as well as thousands of other small businesses across the nation whose livelihoods are jeopardized by NorVergence-related collection actions that could be or have been instituted by over twenty (20) different finance companies, including Preferred Capital.

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[1] *See Copelco Capital, Inc. v. St. Mark's Presbyterian Church*, 2001 WL 106328 *3 (Ohio App. 8th Dist., Feb. 1. 2001) (unpublished) *(*Appendix 1); *see also Preferred Capital, Inc. v. Aegis Risk Management Insurance Services, Inc., et al.,* USDC Case No. 5:04-cv-02312-JRA, Order and Decision, Mar. 28, 2005 (N.D. Ohio); pending on appeal sub nom., *Preferred Capital v. Aegis Risk Management Insurance Services, Inc.,* USCA No. 05-3329 (6th Cir.) (Appendix 2).

[2] Beginning in March 2005, Preferred Capital began notifying its NorVergence customers that Preferred Capital had assigned some or all of its interests under the NorVergence contracts to The Huntington National Bank of Cleveland, Ohio. For simplicity in this brief, the Amici will use "Preferred Capital."

This Court should affirm the lower courts' decisions in favor of giving small businesses and non-profits fair notice in forum selection clauses and prevent Preferred Capital from using Ohio's courts as a default mill.

STATEMENT OF THE ATTORNEYS GENERAL'S INTERESTS ON APPEAL

The Amici, acting under their respective consumer protection statutes, are seeking to protect customers of Preferred Capital, NorVergence and/or other leasing companies against unfair and deceptive trade practices by these companies in their financing activities. A number of the state Attorneys General have issued subpoenas or requests for information, sent cease and desist requests, filed bankruptcy proofs of claim for damages, and/or filed suit against Preferred Capital, NorVergence, and/or the other leasing companies.[3] The decision this Court enters in this consolidated appeal will affect more than just the thirteen Appellees; this Ohio appellate court is a focal point of litigation for 500 plus Preferred Capital cases pending in Cuyahoga and Summit Counties involving the NorVergence contracts assigned to a special master in the Cuyahoga County Court of Common Pleas.[4] Furthermore, this Court's decision may be cited as legal precedent on the issue of the validity of the NorVergence floating forum selection clause as the Amici pursue their own NorVergence state investigations and litigation. Over 11,000 small businesses nationwide, including some Ohio businesses,[5] likewise may find themselves subject

[3] Those states include, but are not limited to, California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Pennsylvania, and Texas.

[4] The customers in these cases reside in the Amici States and elsewhere throughout the nation.

[5] The Ohio Attorney General's Office is aware of a number of Ohio small businesses that executed leases with NorVergence and, similar to Appellees, may find themselves haled into court in distant forums based on NorVergence contracts that contain the floating forum selection clause.

to collection actions in foreign jurisdictions due to the NorVergence floating forum selection clause.

STATEMENT OF FACTS

Amici adopt and incorporate by reference the Statement of Facts contained in Appellees' Brief on Appeal filed with this Court.

ARGUMENT

I. THE TRIAL COURTS PROPERLY DISMISSED THE ACTIONS BECAUSE THE NORVERGENCE FLOATING FORUM SELECTION CLAUSE IS UNFAIR AND UNREASONABLE.

Preferred Capital argues that the NorVergence floating forum selection clause was proper (Preferred Capital 7).[6] Forum selection clauses are enforceable unless they are unfair or unreasonable. To be reasonable and fair a forum selection clause must eliminate uncertainty by permitting the parties to agree in advance on a specific forum acceptable to both of them and be clear and conspicuous. Because the NorVergence floating forum selection clause fails these tests, it is unfair and unreasonable and was properly held to be unenforceable.

A. The Floating Forum Selection Clause Fails to Provide Appellees with Adequate Notice of Where They May be Sued.

The purpose of a forum selection clause is to permit the parties to eliminate uncertainty by agreeing in advance on a mutually agreeable forum. *See M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 13 (1972). Contracts containing floating forum selection causes (i.e., forum selection clauses that fail to specify a particular jurisdiction) do not create this certainty because those clauses fail to provide a party with notice of the location of the forum where it could be sued.

[6] Preferred Capital's Brief on Appeal will be referred to as (Preferred Capital [page]).

For example, in *Copelco Capital, Inc. v. St. Mark's Presbyterian Church*, 2001 WL 106328 at *3 (Ohio App. 8th Dist., Feb. 1, 2001) (unpublished) (Appendix 1), the appellate court held that the floating forum selection clause was unreasonable because the lessees could not reasonably anticipate being sued in the foreign jurisdiction since the contract did not specify a jurisdiction and neither of the original contracting parties were based in the jurisdiction where suit was initiated. Similarly, in *Preferred Capital, Inc. v. Aegis Risk Management Insurance Services, Inc.,* USDC Case No. 5:04-cv-02312-JRA, Order and Decision at 5, Mar. 28, 2005 (N.D. Ohio) *pending on appeal sub nom. Preferred Capital, Inc. v. Aegis Risk Management Insurance Services, Inc.,* USCA No. 05-3329 (6th Cir.) (Appendix 2), the court held that the NorVergence floating forum selection clause was unreasonable because a defendant could not reasonably foresee the jurisdiction where he or she could be hauled off to by an assignee.[7]

In determining whether floating forum selection clauses are unfair or unreasonable, this Court should consider: (1) whether the lessees could reasonably anticipate being called into the distant forum; and (2) whether the contract named a specific jurisdiction. *See Copelco Capital, Inc., supra,* 2001 WL 106328 at *4; *Aegis Risk Management Insurance Services, Inc*. at 4-6, 9.

The NorVergence floating forum selection clause is unfair and unreasonable because the clause, printed on the back of the agreement, does not tell Appellees that they could be sued in Ohio.[8] NorVergence, in its contract, did not clearly or conspicuously name the specific

[7] The U.S. District Court in *Aegis* also found the NorVergence floating forum selection was unreasonable because the clause was the product of overreaching by NorVergence to accommodate future assignees. *Aegis*, at 5-6. This is also a valid basis for affirming the lower courts' decisions.

[8] The issue of whether the NorVergence contracts are leases as opposed to rental or service contract financing agreements, or any other legal issue except personal jurisdiction, is not presently before this Court. The Amici reserve their rights to argue those issues if and when they arise in the future.

jurisdiction where the customer could be sued. *See* NorVergence Equipment Rental Agreement of Custom Data Solutions (Appendix 3). Instead, the NorVergence contract provides that:

> This agreement shall be governed by, construed and enforced in accordance with the laws of the State in which Rentor's principal offices are located or, if this Lease is assigned by Rentor, the State in which the assignee's principal offices are located, without regard to such State's choice of law considerations and all legal actions relating to this lease shall be venued exclusively in a state or federal court located within that State, such court to be chosen at Rentor or Rentor's assignees' sole option.

(See Appendix 3). Such a provision, with no clear indication where a party might face suit, provides no certainty to the parties. Rather than setting forth a specific jurisdiction, or one reasonably likely, the forum for resolution of future disputes is left to ***any place in the country*** depending solely upon the unilateral conduct of NorVergence and its assignee **after** the parties executed the contract.

Consequently, when they entered into the agreements, Appellees had no basis to believe that they would be sued in Ohio. Ohio was not specified in the agreement and Appellees could not anticipate that NorVergence would assign the contracts to Preferred Capital. *See*, *e.g.*, Affidavit of David W. Orlando, dated December 10, 2004 (Appendix 4 at ¶¶ 22, 26); Affidavit of Michael L. Nudi, dated October 28, 2004 (Appendix 5 at ¶¶ 12, 18, 20). Only after Appellees executed the agreements did NorVergence, a New Jersey corporation, assign Appellees' contracts to Preferred Capital, an Ohio corporation headquartered in Cuyahoga County. *See, e.g.,* Appendix 4 at ¶¶ 25-27; Appendix 5 at ¶ 21. At the time of execution of the agreements, NorVergence did not tell Appellees that they would assign Appellees' contracts to Preferred Capital and that Appellees would be consenting to jurisdiction in Ohio. Id. NorVergence was located in New Jersey while the thirteen Appellees were located in Florida, Georgia, Michigan,

New Jersey, New York, Pennsylvania, Texas and Washington. Since neither NorVergence nor Appellees was based in Ohio, Appellees had no reasonable expectation that they would be sued in Ohio.

The Ohio appellate courts have approved the use of forum selection clauses ***only*** where the contract explicitly specifies the jurisdiction. *See Information Leasing Corp. v. Jaskot*, 151 Ohio App. 3d 546, 549, (2003) ("You consent to the jurisdiction and venue of any court located in the State of Ohio"); *D. Wallace Nicholson v. Log Systems, Inc.,* 127 Ohio App. 3d 597, 599 (1998) ("The parties hereto voluntarily consent and allow the courts of the State of North Carolina to assume jurisdiction over any disputes and controversies between the parties, arising out of or concerning this Agreement"); *Automotive Illusions, LLC v. Reflex Enterprises*, 2002 WL 1821676 (Ohio App. 10th Dist., Aug. 6, 2002) (unpublished) (Appendix 6) ("venue in the state or federal courts of San Antonio, Bexar County, Texas"); *Four Seasons Enterprises v. Tommel Finance Services, Inc.*, 2000 WL 1679456 (Ohio App. 8th Dist., Nov. 9, 2002) (unpublished) (Appendix 7) ("In the event of any litigation related to the lease or the guarantee, venue and jurisdiction shall be proper in any state or federal court in the State of Colorado"); *Kennecorp Mortgage Brokers, Inc.,* 66 Ohio St. 3d 173, 176 (1993) (forum selection clause selecting Ohio as forum was valid).

Ohio appellate courts, notably the Ohio 8th Appellate District, the United States District Court (N.D. Ohio), and others have held that "floating" (or unspecified) forum selection clauses are invalid because they lack certainty and notice. *Copelco Capital, Inc.* involved a 60-month lease for a copier where the lease provided "Lessee hereby consents to personal jurisdiction in the . . . appropriate State court in the state of assignee's corporate headquarters." The lease was assigned to a New Jersey leasing company, which sued the lessee there. When the New Jersey

judgment was brought to Ohio for enforcement, the court distinguished the floating forum selection clause from *Kennecorp* and other cases upholding the validity of forum selection clauses. While part of the basis for the distinction was that the lessee was not a business engaged in business for profit, the court also held that:

> Unlike the contract in *Kennecorp*, and other cases where Ohio courts have upheld the validity of forum selection clauses, the forum selection clause contained in appellants' contract failed to specify the jurisdiction of a particular court. . . . Consequently appellants could not reasonably anticipate being called into the courts of New Jersey to defend their contractual agreement. . . .

See Copelco, 2001 WL 106328 at *4. Thus, the court concluded that "enforcement of the forum selection clause contained in the contract would be unreasonable." *Id.* Here, the same result should follow.

Courts in other states have also refused to enforce floating forum selection clauses on the ground that their enforcement would be unreasonable. An Illinois federal court rejected the NorVergence floating forum selection clause on the ground that "the failure to specify a particular jurisdiction renders the lessee incapable of knowing where an assignee might file suit. . . . As such, the contract lacks an essential element regarding forum selection. . . . Put simply, no selected forum is identified in the agreement." *See IFC Credit Corporation* v. *Eastcom, Inc.*, 2005 WL 43159 (N.D. Ill. Jan. 7, 2005) (unpublished) (Appendix 8). *See also IFC Credit Corporation v. Century Realty Funds, Inc.*, No. 04-C-5908, (N.D. Ill. Mar. 4, 2005) (unpublished) (Appendix 9).

In an Appellate Division case of the New Jersey Superior Court, a leasing contract required that the lessee "consent to the jurisdiction of any local, state or federal court located within our or our assignee's state . . ." *Copelco Capital, Inc. v. Shapiro,* 331 N.J. Super 1, 4

(2000). The *Shapiro* court held that the floating forum selection clause was unfair and unreasonable because the lessee could not identify the jurisdiction in which an action will be brought and the assignee's identity was not known prior to signing the contract. *Id.* The court found the provision ineffective and in conflict with the very purpose of forum selection clauses:

> Enforcing a clause such as the one at issue here is also inconsistent with the doctrinal underpinnings of the majority rule that forum selection clauses should be given effect. The rule rests, at least in part, on the idea that in a realm of free contract the parties should be allowed to agree in advance to a mutually satisfactory forum, thus insuring a predictable and neutral locus for the resolution of any dispute. . . . We fail to see how the instant clause furthers these objectives. The fact that the forum selection clause before us **could easily have resulted in a "proper forum" anywhere in the entire country** - - a forum that would not be identifiable until sometimes after the agreement was entered into - - violates the notice requirement . . . and militates in favor of a finding that the clause is both unfair and unreasonable . . . .

Shapiro, 331 N. J. Super. at 6-7 (citations omitted, emphasis added). *See also Hunt* v. *Superior Court (Commercial Money Center),* 81 Cal. App. 4th 901, 908 (2000) (provision that party "Freely Consent to Personal Jurisdiction of the Applicable Jurisdiction" does not give adequate notice to the party agreeing to the jurisdiction and thus no valid contract with respect to such clause exists); *Whirlpool Corp.* v. *Certain Underwriters at Lloyd's London*, 278 Ill. App. 3d 175, 180 (1996) (contract provided party will submit to the jurisdiction of any court of competent jurisdiction within the United States was held not to create a binding forum selection clause. "Good policy dictates that a true forum selection clause should be clear and specific. This clause is not"); *Sterling National Bank, assignee of NorVergence, Inc., v. Kenneth E. Chang P.S. and Kenneth H. Chang*, NY Civil Court, NY County, No. 54751/04, Decision/Order, p. 5 (Mar. 22, 2005) ("the Court has questions as to whether a forum selection clause that does not identify a specific jurisdiction is enforceable.") (unpublished) (Appendix 10).

The NorVergence floating forum selection clause does not provide appropriate notice of

where an enforcement action could be brought and consequently it is unfair and unreasonable. This Court should uphold the lower court's ruling that it is unenforceable.

B. Enforcing the Floating Forum Selection Clause is Fundamentally Unfair Because it is Not Clear and Conspicuous.

A key provision in a contract must be clear and conspicuous in order to be fair and reasonable. When a clause that purportedly establishes the jurisdiction in which an action may be brought is buried in a contract, it does not give adequate notice to a party. Such an unclear and inconspicuous provision is not fair or reasonable.

The NorVergence contract contains two pages of small, densely packed print. The floating forum selection clause is a mere three lines in the midst of a 20 plus paragraph agreement; is on the reverse of the agreement; is in 6 point typeface. The clause is not in heavy bold type, nor is it either underlined or capitalized (Appendix 3). Enforcing such concealed language would be fundamentally unfair. *See First Federal Financial Service, Inc. v. Derrington's Chevron, Inc.*, 230 Wis. 2d 553, 561 (1999) (determining that forum selection was unconscionable where the clause was in small type on the backside of the agreement); *Leasefirst v. Hartford Rexall Drugs, Inc.*, 168 Wis. 2d 83, 90 (1992) (determining that forum selection clause was unconscionable where the clause was in small type and the lessee did not read the clause).

C. The NorVergence Floating Forum Selection Clause Imposes Undue Hardship on the Appellees.

The floating forum selection clause is unreasonable and unfair because its enforcement would also result in undue hardship to Appellees by requiring Appellees to travel or transport witnesses to Ohio, a distance that would render access to the courts economically impractical. If the clause is enforced, Appellees as a practical matter will have no meaningful access to the

courts because the likely cost of trying to defend this suit remote from Appellees' places of business quickly will equal or exceed the amount in dispute. *See, e.g.*, Affidavit of Custom Data Solutions (Appendix 3). For the other 500 plus similarly situated small business customers with cases pending in Cuyahoga and Summit County Courts of Pleas, some may not be able to afford to defend out-of-state lawsuits and, consequently, Preferred Capital will file default judgments against these customers and domesticate the judgments in Appellees' home jurisdiction. This practice is not a legitimate collection effort. This Court should affirm the lower courts' decisions and not allow Preferred Capital to use the floating forum selection clause to prevail by attrition.

II. BY AFFIRMING THE LOWER COURTS' DECISIONS, THIS COURT WILL NOT DENY PREFERRED CAPITAL DUE PROCESS.

Preferred Capital contends that disapproval of the NorVergence floating forum selection clauses will put into question all forum selection clauses and therefore disrupt the economies of the leasing industry. Preferred Capital 14. This appeal is not about valid forum selection clauses but, rather, only about the NorVergence *floating* forum selection clause, and the equipment leasing industry has prospered without utilizing such an unreasonable tool for many years.

The leasing industry has flourished for many years without the need for the one-sided, floating forum selection clause used in the NorVergence agreements. In fact, courts and governmental agencies have previously invalidated distant forum selection clauses without hindering the growth of the leasing industry. As early as 1974, the Federal Trade Commission ("FTC") challenged venue waiver contract provisions and distant forum lawsuits. *See West Coast Credit Corp.*, 84 F.T.C. 1328, 1329-30 (1974) (Appendix 11) (FTC prohibited venue provisions allowing suit in a distant county that was still in customer's state); *Spiegel, Inc. v.*

F.T.C., 540 F.2d 287, 294 (7th Cir. 1976) (FTC properly determined that Spiegel's practice of suing out-of-state consumers in its home jurisdiction of Illinois was an unfair business practice within the meaning of the F.T.C. Act). While the focus of those suits was injury to individuals as consumers, the order in *Spiegel* also addressed small businesses as consumers. *See Spiegel, Inc.*, 86 F.T.C. 425, 439 (1975) (Appendix 12). The administrative law judge and Commission opinions both expressly considered the injury caused to "small businesses" by distant forum actions and prohibited distant suits against them. *Id.* at 439 (FTC found Spiegel's practice of suing out-of-state consumers in Spiegel's home jurisdiction of Illinois to be an unfair business practice).

Courts have since applied the legal limitations on the use of distant forum selection clauses to the leasing industry. *See Central Ohio Graphics, Inc.*, *v. Alco Capital Resource, Inc.,* 221 Ga. App. 434, 435 (1996) (holding that floating jurisdictional clause was unreasonable and therefore invalid); *Shapiro*, 331 N. J. Super. at 6-7 (same); *Derrington's Chevron, Inc.*, 230 Wis. 2d at 563-65 (holding that leasing company's forum selection clause was unconscionable); *Leasefirst*, 168 Wis. 2d at 89-90 (holding that leasing company's floating forum selection clause was unconscionable).

The significance of this legal history is twofold. First, it shows a longstanding awareness of the problem of distant forum lawsuits and the need to remedy abuses. Second, it shows that the finance and leasing industry has survived, and even thrived, in the face of limitations on distant forum lawsuits. Preferred Capital overstates its position when it suggests that a decision to invalidate the floating forum selection clauses will devastate the leasing industry. Preferred Capital 14. Despite the *Spiegel* rulings in the mid-1970s limiting the use of distant forum selection clauses and the emergence of similar case law in the leasing context, the leasing

industry continues to thrive some thirty years later and generates billions of dollars each year in leases.

Furthermore, Preferred Capital also fails to show any appreciation for the enormous costs NorVergence customers have incurred as a whole. Several state Attorneys General and the Federal Trade Commission recently filed proofs of claim in the NorVergence bankruptcy case that attempt to quantify the exposure of these customers. For example, the Massachusetts Attorney General filed a claim for more than $8 million on behalf of Massachusetts NorVergence customers (Appendix 13), the Florida Attorney General filed a claim for approximately $20 million on behalf of Florida NorVergence customers (Appendix 14), and the Federal Trade Commission has filed a claim for more than $200 million for all NorVergence customers nationwide (Appendix 15). These proofs of claim indicate the significant amount of money NorVergence customers have at stake. Thus, this Court should recognize the financial harm that may be exacted against the NorVergence customers.

Any financial harm that Preferred Capital may experience if this Court affirms the lower courts' decisions is outweighed by the harm that small businesses will face by having to choose between being defaulted or bearing the unreasonable and disproportionate costs of litigating thousands of miles from where they operate. Even if Preferred Capital cannot sue Appellees in Ohio, Preferred Capital will not be denied its day in court. Instead of allowing Preferred Capital to turn the Ohio courts into a default mill that would be a mockery of due process for small businesses located hundreds and thousands of miles away, Appellant should be afforded an opportunity to re-file its actions in the jurisdictions where Appellees reside and the agreements were executed. *See Derrington's Chevron, Inc.*, 230 Wis. 2d at 564 (noting that leasing company could litigate case in lessee's home jurisdiction without undue expense).

Thus, this Court should uphold the lower courts' decisions because they will not prevent Preferred Capital from seeking relief.

CONCLUSION

A floating forum selection clause buried in a contract is neither fair nor reasonable. Upholding the trial courts' decisions that the NorVergence floating forum selection clauses are unenforceable will not deny Preferred Capital its day in court, but instead will insure that small businesses, which lack the resources to defend themselves in a distant forum, will have their day in court. For these reasons, this Court should affirm the lower courts' decisions.

Respectfully submitted,

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APPENDIX

1. *Copelco Capital, Inc. v. St. Mark's Presbyterian Church*, 2001 WL 106328 *3 (Ohio App. 8th Dist., Feb. 1. 2001)

2. *Preferred Capital v. Aegis Risk Management Insurance Services, Inc.,* USDC Case No. 5:04-cv-02312-JRA, Order and Decision, Mar. 28, 2005 (N.D. Ohio), *pending on appeal sub nom. Preferred Capital v. Aegis Risk Management Insurance Services*, USCA No. 05-3329 (6th Cir.)

3. NorVergence Equipment Rental Agreement of Custom Data Solutions (from record)

4. Affidavit of David W. Orlando, d/b/a Home Furnishings of Clarkston, Inc., dated December 10, 2004 (from record)

5. Affidavit of Michael L. Nudi, d/b/a Custom Data Solutions, Inc., dated October 28, 2004 (from record).

6. *Automotive Illusions, LLC v. Reflex Enterprises*, 2002 WL 1821676 (Ohio App. 10th Dist., Aug. 6, 2002)

7. *Four Seasons Enterprises v. Tommel Finance Services, Inc.*, 2000 WL 1679456 (Ohio App. 8th Dist., Nov. 9, 2002)

8. *IFC Credit Corporation* v. *Eastcom, Inc.*, 2005 WL 43159 (N.D. Ill. Jan. 7, 2005)

9. *IFC Credit Corporation v. Century Realty Funds, Inc.*, No. 04-C-5908, (N.D. Ill. Mar. 4, 2005)

10. *Sterling National Bank, assignee of NorVergence, Inc., v. Kenneth E. Chang P.S. and Kenneth H. Chang*, NY Civil Court, No. 54751/04, Decision/Order, p. 5 (Mar. 22, 2005)

11. *West Coast Credit Corp.*, 84 F.T.C. 1328, 1329-30 (1974)

12. *Spiegel, Inc.*, 86 F.T.C. 425, 439 (1975)

13. Commonwealth of Massachusetts Proof of Claim, filed February 25, 2005, in NorVergence, Inc. bankruptcy, No. 04-32709, U.S. Bankruptcy Court, District of New Jersey

14. State of Florida Department of Legal Affairs and Florida Consumers Proof of Claim, filed February 26, 2005, in NorVergence, Inc. bankruptcy, No. 04-32709, U.S. Bankruptcy Court, District of New Jersey

15. Federal Trade Commission Proof of Claim, filed February 22, 2005, in NorVergence,

Inc., bankruptcy proceeding, No. 04-32709, U.S. Bankruptcy Court, District of New Jersey