

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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CLERK OF COURT  
SOUTHERN DISTRICT OF FLORIDA

FIRST INTERNATIONAL BANK  
OF GRENADA, LTD., a Grenadian  
International Business Corporation;  
INTERNATIONAL DEPOSITORS'  
REINSURANCE CORPORATION,  
LTD. d/b/a IDIC, a Nevisian  
International Business Corporation; and  
WORLD INVESTORS' STOCK  
EXCHANGE, LTD., a Grenadian  
International Business Corporation,

CASE NO. 99-568-CIV-MORENO

Magistrate Judge Brown

Plaintiffs,

v.

DAVID MARCHANT; and  
OFFSHORE BUSINESS NEWS &  
RESEARCH, INC., a Florida  
corporation,

**PLAINTIFFS' AMENDED EMERGENCY  
MOTION FOR PRELIMINARY INJUNCTION  
TO INCLUDE CERTIFICATE OF SERVICE**

**(Emergency Hearing Requested)**

Defendants.

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Plaintiffs, the First International Bank of Grenada, Ltd. ("First Bank"), the World Investors' Stock Exchange, Ltd. ("WISE"), and the International Depositors' Reinsurance Corporation, Ltd. ("IDIC") (collectively, the "Plaintiffs"), by and through their undersigned counsel and pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Rule 7.1(E) of the Local Rules of the United States District Court for the Southern District of Florida, move this Court for entry of a preliminary injunction enjoining the defendants David Marchant ("Marchant") and Offshore Business News &

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Research, Inc. ("Offshore," and collectively with Marchant, the "Defendants"), together with any other publications and companies under the Defendants' control, from (1) interfering with Plaintiffs' business relationships with their clients and prospective clients, whether through the publication of untrue or misleading declarations or otherwise, and (2) disseminating false, misleading, unfair, and deceptive statements regarding the Plaintiffs, whether through the *Offshore Alert* newsletter or otherwise.

Plaintiffs respectfully requests a hearing on an expedited basis in order to prevent the imminent and continuous irreparable harm to Plaintiffs as a result of Defendants wrongful conduct. In support of this motion, Plaintiffs incorporate by reference the original affidavit of David Ulis attached as Exhibit "1" to *Plaintiffs' Emergency Motion for Preliminary Injunction* filed on March 3, 1999. Plaintiffs further incorporate by reference *Plaintiffs' Amended Memorandum of Law in Support of Amended Emergency Motion for Preliminary Injunction to Include Certificate of Service*, and the allegations set forth in Plaintiffs' *Complaint*, including all exhibits thereto, and state as follows:

**PROCEDURAL BACKGROUND**

1. On February 25, 1999, Plaintiffs initiated this action against Defendants by filing their *Complaint* for damages and injunctive relief alleging violations of Florida's Deceptive and Unfair Trade Practices Act (Fla. Stat. § 501.201 *et seq.*), libel, slander, and tortious interference with business relationships. The *Complaint* and *Summons* were subsequently served on Defendants on March 3, 1999.

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2. On March 3, 1999, Plaintiffs filed their initial *Emergency Motion for Preliminary Injunction* and *Memorandum of Law in Support of Emergency Motion for Preliminary Injunction*. Defendants were personally served these documents on March 3, 1999. Please find attached as composite Exhibit "1," revised Verified Return of Service regarding these documents. Additionally, please find the Certificate of Service regarding this document contained herein.

### **FACTUAL BACKGROUND**

#### **A. The Parties**

3. Defendants distribute, via the Internet, *Offshore Alert*, a monthly newsletter on offshore finance and investing which purports to provide American investors with information on companies and individuals operating throughout the Caribbean and elsewhere, including Nevis and Grenada. Upon information and belief, Marchant is also involved in the preparation and distribution of other newsletters dealing with offshore finance and investing. An annual subscription to *Offshore Alert* costs \$595 and subscribers are given unrestricted access to Defendants' web site, which includes current and past issues of *Offshore Alert*. In addition, complimentary issues of *Offshore Alert* are available from the web site for promotional purposes.

4. The defamatory statements regarding Plaintiffs, which are the subject of this lawsuit (the "Defamatory Statements"), were published by Defendants, either for general distribution via the Internet or directly by Marchant to specific third parties. Prior to the publication of the Defamatory Statements, Plaintiffs enjoyed a reputation for honesty, integrity, and trustworthiness within their

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respective business communities and with international investors transacting business in jurisdictions such as Grenada and Nevis.

5. Plaintiff WISE operates a stock exchange which lists qualified companies utilizing the Internet and other communication technologies to assist them in raising capital through the sale of their stock. Each of these companies provides WISE with a web site complete with an executive summary of its business, a profile of its management, and financial information needed by potential investors. Affidavit of Robert Osborne, Executive Vice President of Wise ("Osborne Affidavit") ¶ 4, attached to Plaintiffs' *Complaint* (the "*Complaint*") as Exhibit "A" and incorporated herein by reference.

6. WISE provides a unique benefit to the investors who transact business on its stock exchange: a percentage of the price of every share of stock sold on WISE is used to purchase a guarantee which ensures that, on or anytime after the maturity date of such a guarantee, the investor can redeem his or her shares for 100% of his or her investment plus a reasonable rate of return (5% to 7% *per annum*, depending on the term of the guarantee) on that investment. This share-protection feature is known as a Stock Value Bank Guarantee ("SVBG") and is issued through First Bank. *Id.*; Affidavit of Van A. Brink, Chief Executive Officer and Chairman of the Board for First Bank ("Brink Affidavit") ¶ 21, attached to the *Complaint* as Exhibit "B" and incorporated herein by reference. The SVBG ensures that the investors' investment is fully guaranteed for the life of the shares. Osborne Affidavit ¶ 5.

7. Neither WISE nor any officer, director, or employee of WISE has any personal financial interest in IDIC. *Id.* ¶ 7. No officer, shareholder, director, or employee of WISE is a

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member of IDIC's board of directors. *Id.* Grenada has enacted no laws, regulations, or licensing requirements specifically regulating stock exchanges. *Id.* ¶ 8. WISE operates in full compliance with all applicable laws and regulations. *Id.*

8. Plaintiff IDIC contracts with its customers, offshore banks, to provide third party administration and monitoring services for the self-insurance programs for their deposit accounts. Affidavit of Douglas Ferguson, Executive Director of IDIC ("Ferguson Affidavit") ¶ 11, attached to the *Complaint* as Exhibit "C" and incorporated herein by reference. Participating banks grant general durable powers of attorney in favor of IDIC providing IDIC with the power to exercise sole control over all assets of such banks in the event that the banks become unable or unwilling to honor their commitments to their respective depositors. *Id.*

9. Each participating bank must demonstrate to IDIC a minimum of three dollars in assets for every one dollar in deposits, an amount considered reasonably safe by industry standards. *Id.* In return for this pledge of assets, IDIC issues such participating banks an "A" rating. *Id.* If a participating bank can demonstrate five dollars of assets for every one dollar in deposits, IDIC rates it as an "AA" bank. *Id.* Similarly, if a participating bank demonstrates ten dollars of assets for every one dollar in deposits, it would be issued an "AAA" rating, IDIC's highest rating. *Id.*

10. Plaintiff First Bank operates as a depository institution located in, and governed by the applicable laws of, Grenada. Brink Affidavit ¶ 4; Affidavit of Michael Creft, Grenadian Registrar of Offshore Financial Services ("Creft Affidavit") ¶ 4, a correct copy of which is attached to the *Complaint* as Exhibit "D" and is incorporated herein by reference.

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11. First Bank was licensed as a Class I Offshore Bank on October 9, 1997, by the government of Grenada, having complied with all of the requirements of applicable Grenadian law including, but not limited to, a showing of sufficient capitalization. Brink Affidavit ¶ 5; Creft Affidavit ¶ 4. The authorities of Grenada, pursuant to applicable regulations and the Offshore Banking Act, 1996, also conducted a thorough background investigation on First Bank's shareholders, officers, and directors prior to issuing an offshore banking license to First Bank. Brink Affidavit ¶ 5; Creft Affidavit ¶ 4. First Bank possesses all of the required licenses and government approvals to conduct its business. Brink Affidavit ¶ 12.

12. As a result of arms-length negotiations, First Bank voluntarily entered into contractual relationships with both IDIC and WISE. *Id.* ¶ 6. Pursuant to its agreement with IDIC, First Bank granted IDIC a general power of attorney to liquidate any and all of First Bank's assets in the event that First Bank ever failed to meet its obligations to any of its depositors. *Id.* First Bank has never failed to meet those obligations.

13. First Bank presently has over two hundred dollars of assets for every one dollar in deposits, thereby easily qualifying it for IDIC's highest rating, "AAA." *Id.* ¶ 7. These assets include, or have included, but are not limited to, cash, cash equivalent instruments, and gold on deposit at various international banks. *Id.* First Bank has previously filed supporting documentation relating to its cash instruments and gold bullion deposits with Grenada's Offshore Financial Services Division. *Id.*

14. No depositor or other entity with a financial interest in First Bank has ever filed a complaint or grievance with First Bank or the Grenadian Ministry of Finance, although the Ministry

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of Finance has received complaints regarding other offshore banks licensed in Grenada. Brink Affidavit ¶ 10; Creft Affidavit, ¶ 5. First Bank has broken no Grenadian laws. Creft Affidavit ¶ 6.

15. Grenadian law provides the Registrar of Offshore Financial Services and the Minister of Finance with significant powers to investigate offshore banks as to which complaints have been received or which Grenadian governments appear to be engaged in suspicious activities. No such investigations or other administrative actions have ever been undertaken as to First Bank and the Government of Grenada has publicly stated that it does not believe that First Bank has engaged in any wrong-doing or suspicious activities. *Id.* ¶ 7. Neither First Bank nor any of its shareholders, officers, or directors has a personal financial interest in IDIC. *Id.* ¶ 8. No officer, shareholder, or director of First Bank is a member of IDIC's board of directors or holds any office with IDIC. *Id.* ¶ 8.

**B. Actions Giving Rise to *Complaint***

16. On January 20, 1999, Marchant contacted, via telephone, John Hogan ("Hogan"), a director of EcoMed, Inc. ("EcoMed") and EcoMed International, Inc. ("EcoMed International" and, collectively with EcoMed, the "EcoMed Companies"). Affidavit of David Ulis ("Ulis"), Chief Executive Officer of the EcoMed Companies ("Ulis Affidavit") ¶ 4, a true and correct copy of which is attached hereto as Exhibit "2" and incorporated herein by reference; Affidavit of John Hogan, former director of the EcoMed Companies ("Hogan Affidavit") ¶ 4, attached to the *Complaint* as Exhibit "F" and incorporated herein by reference. The EcoMed Companies hold patents on medical devices and are in the business of marketing and selling these devices. Ulis Affidavit ¶ 3. EcoMed International is listed on the stock exchange operated by WISE. *Id.*

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17. During the conversation between Marchant and Hogan, Marchant accused Hogan and the EcoMed Companies of doing business with several fraudulent enterprises, including Plaintiffs, and of actively participating in one or more schemes to defraud investors. Hogan Affidavit ¶ 4. Later that day, Hogan informed Ulis of his conversation with Marchant. Ulis Affidavit ¶ 5; Hogan Affidavit ¶ 6. Thereafter, Ulis contacted Marchant, via telephone, to discuss Marchant's assertion that Plaintiffs, companies with which the EcoMed Companies associate, were involved in a fraudulent scheme. Ulis Affidavit ¶ 5. During this conversation, Marchant unequivocally asserted that WISE, IDIC, First Bank, and the EcoMed Companies were "fraudulent" enterprises involved in a "crooked scheme" to defraud investors of millions of dollars. *Id.* ¶¶ 5, 8.

18. In Ulis' telephone conversation with Marchant on January 20, 1999, Marchant indicated that Ms. Agatha Jeffers-Gooden ("Jeffers-Gooden") of the Nevis Ministry of Finance would confirm his contention that Plaintiffs were indeed "fraudsters." *Id.* ¶ 9. However, when Ulis subsequently telephoned Jeffers-Gooden to confirm Marchant's account, she unambiguously denied the accuracy of Marchant's statements. *Id.* She further stated that she was offended by Marchant's reference to her as a "source" for this information. *Id.*

19. In 1998, prior to listing EcoMed International on WISE, Ulis conducted an in-depth due diligence examination into the standing and reputation of WISE, First Bank, and IDIC. *Id.* ¶ 10. Pursuant to this investigation, Ulis contacted, in person, by telephone, or in writing, various government officials in Grenada and Nevis, including Jeffers-Gooden at the Nevis Ministry of Finance. *Id.* Ulis was assured by these government representatives and others that, to the best of their knowledge, the principals of these organizations were reputable individuals, that each of the

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companies was reputable and in good standing, and that the respective governments had received no complaints about these companies or their principals. *Id.*

20. As a consequence of Marchant's false and malicious statements regarding the EcoMed Companies, in particular their participation in a "fraudulent" scheme, several businesses have ended, or threatened to end, their relationship with the EcoMed Companies, including their principal bank, for fear of being linked to an offshore conspiracy to defraud investors, despite the unfounded nature of that assertion. *Id.* ¶ 11. Additionally, two directors of the EcoMed Companies, including Hogan, have resigned as a result of Marchant's unsubstantiated assertions. Finally, in their effort to combat Marchant's fabricated declarations, WISE and First Bank have been less than attentive to the needs of the EcoMed Companies. *Id.*; Hogan Affidavit at ¶ 8.

21. Upon information and belief, sometime in late 1998 or January 1999, Marchant personally contacted officials of various governments, including those of Nevis and Grenada, in order to disclose the existence of this purported "fraudulent" scheme. Ullis Affidavit ¶¶ 4-9; Ferguson Affidavit ¶ 8; Letter written by Michael Creft of the Grenada Ministry of Finance, Offshore Financial Services Division ("Creft Letter"), attached to the *Complaint* as Exhibit "G" and incorporated herein by reference.

22. On February 12, 1999, the Grenadian Ministry of Finance responded to Marchant's contention that Plaintiffs were fraudulent companies involved in unlawful activities. Creft Letter. In this letter, the Grenadian Ministry of Finance categorically rejected, in its entirety, Marchant's contention that Plaintiffs are engaged in any illegal activities. Creft Letter. The Grenadian Ministry specifically criticized Marchant for providing "no substantiation of the allegations" regarding

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Plaintiffs despite Marchant's claims of having provided proof of his allegations to the relevant governments. Creft Letter. In particular, the Grenadian Ministry of Finance made the following conclusions when it declined to take any disciplinary action against First Bank and WISE, as provided for in the Offshore Banking Act of 1996 (Grenada), Part IV, Sections 18-21:

a. "With respect to First Bank, it was legally established in Grenada and so far as we can determine operates wholly within the law in its banking activities. We do not operate the administration of Grenada's offshore sector by hearsay, innuendo and unsubstantiated allegations. First Bank did not receive its license on that basis, nor will it lose its license on that basis."

b. "As to the particulars of First Bank's standing with Grenada, it well exceeded the capital requirements at its formation and it does so to this date. This office has not received one substantiated complaint concerning its banking activities."

c. "In your published article you alleged that World Investors' Stock Exchange (WISE) was a fraud and a threat to the unsuspecting public in the United States and Canada. Yet (as also with First Bank) you have shared with us no basis for your allegations."

d. "The business plan of WISE is to assist in the selling of shares in various listed international business companies, only insofar as those shares are backed by a bank guarantee issued by First Bank. First Bank has demonstrated to us that it does have the financial substance to write such guarantees. There is no law in Grenada that WISE violates by insisting that share sales it coordinates be backed by a guarantee by a financially-capable, licensed banking institution. How you have concluded this to be [a] fraud remains a mystery to us."

e. "WISE is legally formed and constituted in Grenada. We can find no evidence of there being any wrong-doing according to the laws of Grenada by WISE and, therefore, have no basis upon which we would move to revoke their standing in Grenada's offshore community."

f. "While this may be a moot point, given the action you were able to convince the Nevis Island Administration to take, we do not see any evidence of wrong-doing on the part of IDIC, nor on the part of those financial institutions which contracted with IDIC for its third-party administration of those institutions' self-insurance programs."

g. "In closing, Mr. Marchant, it is in Grenada's best interest to protect itself from scandal. We will always gladly review any evidence of fraud or other misconduct which is presented to us concerning a business or financial institution licensed by this jurisdiction. We have treated your materials with utmost care, but can find no substantiation for any of the allegations you have made concerning Grenada's offshore institutions."

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h. "Reckless smear campaigns hurt not only offshore companies but also the Government and people of Grenada and casts aspersions on the integrity of our jurisdiction."

The foregoing statements still accurately describe the position of the Offshore Financial Services Division of the Government of Grenada. Creft Affidavit.

23. Marchant responded to the Creft Letter in the same reckless fashion in which he apparently prepared the Offending Articles and responded to correspondence from the undersigned counsel calling the Registrar of the Offshore Financial Services Division of the Government of Grenada "irresponsible," "incompetent," and clueless. Transcript of e-mail message from Marchant to Michael Creft dated February 15, 1999, attached to the *Complaint* as Exhibit "H" and incorporated herein by reference.

24. Upon information and belief, sometime in 1998 and January 1999, Defendants disseminated false statements regarding the Plaintiffs via the Internet and through personal interactions with various third parties including directors of the EcoMed Companies, business associates of the EcoMed Companies, government officials (including those referenced above), and others.

25. In response to Defendants' dissemination of the false and malicious statements outlined herein, Plaintiffs apprised the Defendants by letter ("Letter 1"), dated January 26, 1999, of the inaccuracies of these statements. A correct copy of this letter is attached to the *Complaint* as Exhibit "I" and is incorporated herein by reference.

26. In Letter 1, Plaintiffs demanded that Marchant desist from further dissemination of these unsubstantiated, false, misleading, and incomplete declarations and provide a complete retraction addressed to each individual to whom he had expressed such assertions. Letter 1 indicated

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that Marchant's actions have resulted in substantial injury to Plaintiffs. In addition, Letter 1 demanded that Marchant refrain from publishing any articles in his newsletter, *Offshore Alert*, expressing his conclusion that Plaintiffs are fraudulent companies engaging in illegal activities until he produce some evidence to support these spurious and unsupported conclusions.

27. On January 27, 1999, Marchant responded to Letter 1 by stating in writing that "your clients are also a bunch of crooks . . . and tell them that a major story exposing their fraudulent practices will be published tomorrow night in *Offshore Alert*." A correct copy of this letter is attached to the *Complaint* as Exhibit "J" and is incorporated herein by reference. On January 28, 1999, Defendants published several articles in its monthly newsletter, *Offshore Alert*, entitled "We expose massive banking/insurance fraud," "Attorneys threaten us with lawsuit over IDIC scandal," and "Advertisement asks investors to sign away all of their assets" (collectively, the "Offending Articles"), attached to the *Complaint* as Exhibit "K" and incorporated herein by reference.

28. The Offending Articles are a collection of false and malicious conclusions supported, if at all, solely by incorrect, incomplete, misleading, or irrelevant factual assertions. The Offending Articles contain language rich in innuendo from which a disinterested reader could only conclude that the Plaintiffs actually are "crooks" engaged in fraudulent practices. However, Defendants have refused to provide any support for these allegations either to Plaintiffs or their undersigned counsel and, upon information and belief, have also failed to provide any such support to the government representatives which the Defendants contacted, including officials in Nevis, Grenada, Dominica, and St. Vincent.

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29. The Offending Articles falsely depict the Plaintiffs as offering fraudulent "investment" schemes to the public. However, the Offending Articles include no evidentiary support for Defendants' conclusions and mislead readers by depicting perfectly legal activities as illegal. The Offending Articles also strategically place fraudulent "buzz" words around incorrect or irrelevant statements which cast Plaintiffs in an extremely negative light and intentionally create the pervasive and inescapable inference of impropriety and dishonesty in impartial readers.

30. The publication of the Offending Articles has resulted in some loss of depositor confidence in First Bank and a heightened level of review of First Bank's affairs by the Government of Grenada. However, the Grenadian Government has publicly confirmed that even this heightened level of review has uncovered no wrong-doing or suspicious activities on the part of First Bank. Creft Affidavit ¶ 7.

31. First Bank has attempted to refute the rumors regarding its financial condition and its participation in a "Ponzi" scheme created by the Offending Articles by posting a irrevocable and unconditional bank guarantee for \$50,000,000.00 which is fully secured (the "Bond"). A correct copy of the Bond is attached to the *Complaint* as Exhibit L and is incorporated herein by reference. The Bond allows the Offshore Financial Services Division of the Government of Nevis to draw up to the full amount of the Bond to repay any and all depositors on whose account First Bank defaults. First Bank posted the Bond voluntarily, without a request or demand by the Government of Grenada or any other entity, solely to bolster investor confidence in the bank.

32. As explained more thoroughly in the *Complaint*, including the affidavits attached thereto, the Offending Articles must be read in their entirety to fully appreciate the cumulative effect

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of their unfair, deceptive and misleading nature; however, the following excerpts are particularly objected to by Plaintiffs because they either contain untrue or inaccurate facts or because they state conclusions which are incorrect and which cannot be, and have not been, supported by any evidence or corroboration whatsoever:

- a. "We expose massive banking/insurance fraud"
- b. "*Offshore Alert* can today expose a massive fraud involving at least three banks, an insurance company and a stock exchange into which investors are believed to have invested tens of millions of dollars."
- c. "Participants in the scam are the World Investors Stock Exchange in Grenada, the International Deposit Insurance Corporation in Nevis, the First International Bank of Grenada, the International Exchange Bank, which is registered in either Nauru or Grenada but operated out of Bermuda and Texas; and Fidelity International Bank, which is registered in Nauru but operated from St. Vincent."
- d. "The main part of the fraud involves International Exchange Bank, First International Bank of Grenada and Fidelity International Bank attracting deposits by offering high rates of return and telling investors their funds are fully insured by the International Deposit Insurance Corporation, which is being passed off to the public as one of the world's biggest insurance companies."
- e. "Investors are also being asked to sign over all of their assets to the banks for little or no down-payment but with the promise of payment over three years and are invited to invest in shares listed on the World Investors Stock Exchange with both schemes promoted on the grounds that all investments are ultimately insured by IDIC."
- f. "What investors are not told, however, is that IDIC, which was formed in 1996, has never been licensed as an insurer in Nevis, which does not even license offshore insurers; has no assets to speak of and appears to be run by the same people running the banks."
- g. "Within days of us providing proof to the Nevis regulators that IDIC was a fraud, they closed down the company, sending a message that the island will not tolerate crooks."
- h. "Ridiculous though the scam may appear to the more sensible investors, it has nevertheless attracted funds believed to be in the tens of millions of dollars."

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i. "Most of the investors who have been duped into these schemes are believed to live in Canada, the United States and Germany, while the perpetrators mostly come from North America, particularly Canada, but operate in the islands."

j. "Many investors are still being paid interest on their capital, indicating that it is a Ponzi scheme ..."

k. "However, not only is IDIC an unlicensed insurer (now closed down) but there is no representative of Coopers & Lybrand - or PricewaterhouseCoopers as it is now known - based in St. Kitts and Nevis."

l. "Another lie is IEB's claim on its web-site that it is a subsidiary of Northstar Funds, a publicly-traded company on the Cayman Stock Exchange." [Internal quotations omitted]

m. "It is common for fraudsters to use a name that is similar to a legitimate company in an attempt to lend credibility to their scams and to deliberately create confusion among the public."

n. "Likewise, another participant in the fraud, Fidelity International Bank, is in no way connected with Bermuda-based fund group Fidelity International Limited or Bahamas-based Fidelity Bank & Trust International Limited."

o. "As for First International Bank of Grenada, one source told us recently that [First Bank] had tried to attract a client's money by claiming that IDIC 'was one of the world's top 20 insurance companies and that it was rated investment grade by Standard & Poor's', neither of which is true."

p. "[First Bank] is also part of the fraud being committed through the Grenada-registered World Investors Stock Exchange, which until last month was known as the West Indies Stock Exchange."

q. "David Ullis, a director and CEO of EcoMed, called us after being contacted by a worried Hogan and threatened to sue us and contact the FBI, although he declined to take down the FBI's number in Miami when we offered it to him."

r. "The IDIC scam is a carbon copy of a fraud perpetrated by the European Union Bank of Antigua that collapsed in 1997."

s. "That bank, which was run by Russian criminals led by Alexandre P. Konanykhine, also promised investors their deposits were insured by an insurance company registered in Antigua called International Deposit Insurance Corporation, which subsequently turned out to be run by Konanykhine."

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- t. "Attorneys threaten us with lawsuit over IDIC scandal."
- u. "Within an hour of receiving this fax, we received another fax from the Nevis regulators announcing they had closed down IDIC."
- v. "Advertisement asks investors to sign away all of their assets."
- w. "The following advertisement has been posted on several Internet message forums by someone based in Saskatchewan, Canada, who goes by the names of Vincent Lachmi and Dr. Vincent Kumar . . .The ad is part of the banking scam involving the Nevis registered International Deposit Corporation."

33. There are no applicable regulatory requirements in Nevis which govern the operations of IDIC other than the Nevis International Business Corporations Ordinance 1984, as amended. Ferguson Affidavit ¶ 4. IDIC has never been in violation of any laws of Nevis or the Federation of St. Christopher and Nevis. *Id.* In the course of applying for its registration with the Government of Nevis and in its two years of operation on Nevis, IDIC has never been directed, either by any of its counsel or by any representative of the Nevisian Government, to any regulatory requirements governing its business other than the those contained in the Nevis International Business Corporation Ordinance, 1984, as amended. Similarly, during that period, IDIC has never been notified of any violation of the laws of Nevis of the laws of the Federation of St. Christopher and Nevis. *Id.*

34. After establishing IDIC as an international business corporation under the Ordinance, Ferguson met representatives of the Nevis Island Administration, in April, 1998, to explain the business of IDIC and to assure them that IDIC was not transacting any business in contravention of the Nevis International Business Corporation Ordinance, 1984, as amended, within the jurisdiction of Nevis or with any Nevisian companies. Upon review by the government of its business plan and objectives, IDIC received approval to continue with its normal operations. *Id.* IDIC received similar

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approval on the only other occasion that its representatives met with representatives of the Nevis Island Administration. Both of these meetings ended with the Nevisian Government satisfied that the business operations of IDIC were both lawful and proper. To date, IDIC has never received notice of non-compliance with any laws of Nevis or any applicable laws of the Federation of St. Christopher and Nevis. *Id.* ¶ 6.

35. Without warning or notice, on January 27, 1999, IDIC's operations were suspended under the authority of Laurie Lawrence, the Permanent Secretary of the Nevis Ministry of Finance. *Id.* ¶ 8. The Ministry of Finance did not provide any specific basis for its action, such as a violation of a specific law or regulation. *Id.* Upon information and belief, the Nevis Ministry of Finance relied exclusively on Defendants' unsubstantiated declarations of fraud regarding Plaintiffs to support its decision to suspend the business operations of IDIC. *Id.*

36. Upon information and belief, in addition to publishing false statements regarding IDIC in his newsletters, including *Offshore Alert*, Marchant has disseminated these inaccurate statements to several individuals and businesses with whom Plaintiffs associate including, but not limited to, current and prospective investors, service providers, and government officials in several jurisdictions including Nevis, Grenada, St. Vincent, and Dominica. *Id.* ¶ 9.

37. IDIC is not, and has never claimed to be, an insurance company licensed by the Government of Nevis or by any other jurisdiction. *Id.* ¶ 12. As a properly licensed international business corporation insuring deposits at various financial institutions, all located outside of the jurisdiction of Nevis, IDIC requires no separate or additional licenses or governmental approval to transact its business. *Id.*

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38. The principals and managers of IDIC are distinct and separate from the management of the participating financial institutions. *Id.* ¶ 13. This independence ensures that the contracts executed between IDIC and the participating financial institutions, including First Bank, are the result of arms-length negotiations. *Id.* Although Ferguson acts as a non-voting member of the Board of Directors of each participating banks to ensure their compliance with the IDIC contracts, no bank officers are employed by IDIC. *Id.* There are also no bank employees or officers who are members of IDIC's board of directors. *Id.*

39. No evidence of any wrongdoing has been presented to IDIC and no complaints have been filed with IDIC or any governmental office or agency with respect to IDIC. *Id.* ¶ 14. There are no substantiated, unresolved complaints against IDIC from its clients or their depositors to date and IDIC is unaware of any such complaints having been filed with any government or other body with respect to IDIC. *Id.*

40. IDIC is not affiliated in any way with the European Union Bank of Antigua. *Id.* ¶ 15. IDIC is not affiliated in any way with any company which had a relationship with the European Union Bank. *Id.* IDIC is not affiliated with any criminal enterprises or conspiracies. *Id.* Contrary to Defendants' insinuations in the Offending Articles, Ferguson does not know any individual named Alexandre P. Konanykhine or any other alleged member of the Russian mafia, or, indeed, of any other group associated with organized crime. *Id.*

41. IDIC's operations have been suspended by the government of Nevis as a result of Defendants' malicious and false statements. *Id.* ¶ 16. However, IDIC has never been notified by any

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representative of the Nevisian government that it has been struck from the corporate rolls of Nevis.  
*Id.*

42. IDIC is not involved in a "scam," "fraud," or "Ponzi"scheme. *Id.* ¶ 17. IDIC is a legally registered business which has operated since its inception in complete compliance with all applicable regulations and laws. *Id.*

43. No director, officer, employee or agent of IDIC has ever been contacted by the Defendants to verify any of the false or misleading statements disseminated by Marchant. *Id.* ¶ 18.

44. None of the Plaintiffs have ever expressed to a prospective or current customer that IDIC is one of the largest insurance companies in the world or that they are rated in the Standard & Poor's 500 Stock Index. Brink Affidavit ¶ 9.

45. First Bank has assisted customers in the purchase of property through various protocols including the exchange of certificates of deposits for clear title to the property being purchased. *Id.* ¶ 13.

46. First Bank has no affiliation with and has had no contact with either of the advertisers mentioned in the *Offshore Alert* article entitled "Advertisement asks investors to sign away all of their assets," and First Bank has never asked anyone to "sign away all of their assets" for any reason whatsoever. *Id.* ¶¶ 16, 17.

47. No officer, director, employee, or agent of First Bank has never been contacted personally, in writing, by telephone, by facsimile, by e-mail, or otherwise by Marchant or any other employee of Offshore to verify any of the Defamatory Statements. *Id.* ¶ 18.

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48. Ferguson has never been contacted personally, in writing, by telephone, by facsimile, by e-mail, or otherwise by Marchant or any other employee of Offshore to verify any of the Defamatory Statements. Ferguson Affidavit ¶ 9.

49. Robert Osborne ("Osborne"), Executive Vice President of WISE, was contacted by Marchant, who initially identified himself as "Michael Weir" under the ruse of obtaining information about WISE for interested third parties. Osborne Affidavit ¶ 9. Noticing that "Michael Weir's" facsimile number was identical to Offshore's, Osborne called Offshore in order to ascertain the true identity of "Michael Weir." *Id.* When confronted, Marchant admitted to fabricating the identity and posing as "Michael Weir." *Id.*

50. When Osborne asked Marchant to provide evidentiary support for his numerous false and misleading statements, Marchant accused Osborne of being, *inter alia*, "stupid," a "crook", and an "idiot." *Id.* ¶ 10. No other employee or agent of WISE has spoken with Marchant. *Id.* Defendants made no attempt to verify any of the Defamatory Statements with any officer, director, employee, or agent of WISE. *Id.*

51. WISE has never promoted itself on the grounds that all investments with the WISE are ultimately insured by IDIC, as asserted by Marchant. *Id.* ¶ 11. On the contrary, all shares sold through WISE are insured through the SVBGs, described above, issued through First Bank. *Id.* WISE has no relationship or agreement, implied or otherwise, with IDIC. *Id.*

52. The actions of the Defendants have irreparably injured each of the Plaintiffs. IDIC has been particularly damaged by these actions. The resulting negative repercussions for IDIC, include, but are not limited to, (1) the suspension of IDIC's operations by the Nevisian Government;

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(2) the loss of several depository institutions as clients of IDIC; (3) the forced relocation of IDIC's Nevis office to another jurisdiction; (4) substantial legal and other professional fees; and (5) the damage to IDIC's good reputation and goodwill. *Id.* ¶ 7.

53. In addition to their business relationships with the EcoMed Companies, Plaintiffs, which are all in the business of providing financial services to the general public, have many similar relationships with other companies and individuals. Brink Affidavit ¶ 25. In addition to the specific harm to the business relationships between Plaintiffs and the EcoMed Companies, the conduct of the Defendants have caused, and can reasonably be expected to continue to cause, substantial and irreparable harm to Plaintiffs through their tortious and unjustified interference with all of Plaintiffs' business relationships as described herein. The unfounded allegations of the Defendants have also injured Plaintiffs by damaging their professional reputations and goodwill and preventing Plaintiffs from attracting new business. Osborne Affidavit ¶ 14.

54. As a direct and proximate result of Defendants' intentional, tortious interference with the business relationships between the EcoMed Companies and Plaintiffs and between Plaintiffs' numerous other clients and Plaintiffs, Plaintiffs have been, and continue to be, substantially harmed. Plaintiffs' injury is irreparable and there is no adequate remedy at law. Brink Affidavit ¶ 27; Osborne Affidavit ¶ 14; Ferguson Affidavit ¶ 21.

55. The continuing harm to Plaintiffs' reputation and goodwill is imminent as evidenced by Defendants course of conduct which is wrought with the continued dissemination of false, deceptive, and misleading statements which originate either via the Internet and Defendants' web site, or directly from Marchant to specific third parties.

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56. Moreover, as alleged in the *Complaint*, Defendants' publication of the Offending Articles, which contained unsubstantiated, false, misleading, and incomplete declarations regarding Plaintiffs, are unfair and deceptive acts or practices which are violative of Florida's Deceptive and Unfair Trade Practices Act (the "Act"). Fla. Stat. § 501.204.

57. Based on Defendants course of conduct, and the accessibility of their Internet web site and newsletters, future dissemination of false information is imminent, as is the irreparable harm to Plaintiffs caused thereby. Additionally, as set forth more comprehensively in Plaintiffs' memorandum of law in support of this motion, Plaintiffs have established a strong likelihood of success on the merits of both its tortious interference with business relationships' claim and their claim under the Act.

58. The Government of Grenada has recognized that its public policy is best served by refusing to lend credence to the unsupported allegations of the Defendants. Creft Letter; Creft Affidavit. Similarly, it is in the public interest of this country to preserve and protect business relationships, including those between U.S. residents and foreign corporations, and to enjoin the type of malicious interference with such relationships as has been described herein.

59. Plaintiffs have been aggrieved by Defendants' wrongful conduct which has resulted in substantial damages, including without limitation, a disparaged reputation in the international business community, the suspension of IDIC's operations by the Nevisian Government, the loss of several depository institutions as clients of IDIC, the forced relocation of IDIC's Nevis office to another jurisdiction, and substantial legal and other professional fees. Ferguson Affidavit. Defendants' wrongful conduct has resulted and will continue to result in incalculable losses to

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Plaintiffs' financial well-being, reputation, and goodwill; such injuries outweigh any harm Defendants potentially might suffer if a preliminary injunction is ordered.

WHEREFORE, Plaintiffs respectfully requests that this Court grant a preliminary injunction enjoining Defendants, together with any other publications and companies under the Defendants' control, from (1) interfering with Plaintiffs' business relationships with their clients and prospective clients, whether through the publication of untrue or misleading allegations or otherwise, and (2) disseminating false, misleading, unfair, and deceptive statements regarding the Plaintiffs, whether through the *Offshore Alert* newsletter or otherwise, and for such further relief as this Court deems just and proper.

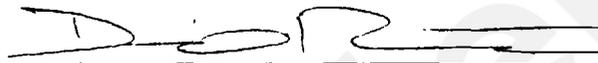
STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
HANS CHRISTIAN BEYER  
Florida Bar No. 894087  
STEPHEN R. CALKINS  
Florida Bar No. 143741  
401 E. Jackson Street, Suite 2200  
Post Office Box 3299  
Tampa, Florida 33601  
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- and -

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STEARNS WEAVER MILLER WEISSLER  
ALHADEFF & SITTERSON, P.A.  
DAVID ROTHSTEIN  
Florida Bar No. 0056881  
150 West Flagler, Suite 2200  
Miami, Florida 33130  
Telephone: (305) 789-3200  
Facsimile: (305) 789-3395

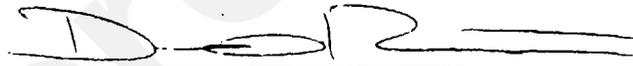
Attorneys for Plaintiffs



DAVID A. ROTHSTEIN

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was furnished by personal service and first class U.S. Mail to the defendants as listed below, this 8<sup>th</sup> day of March, 1999.



DAVID A. ROTHSTEIN

David Marchant  
Offshore Business News & Research  
123 S.E. 3<sup>rd</sup> Avenue, #173  
Miami, FL 33131  
and  
1200 Brickell Avenue, 20<sup>th</sup> Floor  
Miami, FL 33131

Offshore Business News & Research  
c/o David Marchant  
123 S.E. 3<sup>rd</sup> Avenue, #173  
Miami, FL 33131  
and  
1200 Brickell Avenue, 20<sup>th</sup> Floor  
Miami, FL 33131

G:\W-LIT\11568\001\MEM-INJ

**AMENDED  
VERIFIED RETURN OF SERVICE  
DAVID MARCHANT**

UNITED STATES DISTRICT COURT  
DADE COUNTY, FLORIDA

CASE: 99-568  
CIVIL DIVISION

FIRST INTERNATIONAL BANK OF GRENADA,  
INTERNATIONAL INS, WORLD STOCK EXCHANGE

SUMMONS AND COMPLAINT, MOTION FOR ADMISSION PRO HAC  
VICE, PLAINTIFFS EMERGENCY MOTION FOR PRELIMINARY  
INJUNCTION, PLAINTIFFS MEMORANDUM OF LAW IN SUPPORT  
OF EMERGENCY MOTION FOR PRLIMINARY INJUNCTION.

vs.

DAVID MARCHANT

Pursuant to the request of DAVID A. ROTHSTEIN, ESQ., 150 WEST FLAGLER STREET, Miami, FL.  
TRACERS PROCESS SERVING, INC., received this process on March 3, 1999 at 02:00 P.M.

I, PETER MUNOZ served same on DAVID MARCHANT, at 1200 BRICKELL AVE 20TH FLOOR,  
MIAMI, FL 33131 on MARCH 3, 1999 at 04:00 P.M.

**INDIVIDUAL SERVICE**

By serving the within named person a copy of the above named document(s). FS 48.031(1)

**COMMENTS**

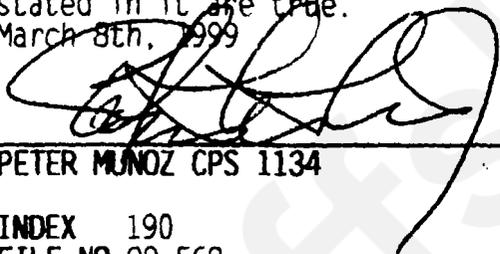
CORRECT ADDRESS IS: 1200 BRICKELL AVE 20TH FLOOR

I **ACKNOWLEDGE** that I am authorized to serve process, in good standing in the  
jurisdiction wherein this process was served and I have no interest in the above action.

Under penalties of perjury, I  
declare that I have read the  
forgoing document and that the facts  
stated in it are true.

TRACERS PROCESS SERVING, INC.  
P.O. BOX 557966  
MIAMI, FL 33255-7699  
OFFICE (305) 667-9628

March 8th, 1999



PETER MUNOZ CPS 1134

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FILE NO 99-568



**ORIGINAL FILED**

**COPY**

**AMENDED**  
**VERIFIED RETURN OF SERVICE**  
**OFFSHORE BUSINESS NEWS & RESEARCH, INCC/O DAVID MARCHANT**

UNITED STATES DISTRICT COURT  
DADE COUNTY, FLORIDA

CASE: 99-568  
CIVIL DIVISION

FIRST INTERNATIONAL BANK OF GRENADA,  
INTERNATIONAL INS. WORLD STOCK EXCHANGE

SUMMONS AND COMPLAINT, MOTION FOR ADMISSION PRO HAC  
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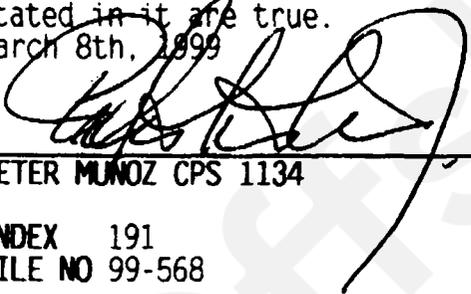
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March 8th, 1999

TRACERS PROCESS SERVING, INC.  
P.O. BOX 557966  
MIAMI, FL 33255-7699  
OFFICE (305) 667-9628



PETER MUNOZ CPS 1134

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FILE NO 99-568

**ORIGINAL FILED**

**COPY**

**AFFIDAVIT OF DAVID ULIS**

**STATE OF WASHINGTON**

**COUNTY OF WHATCOM**

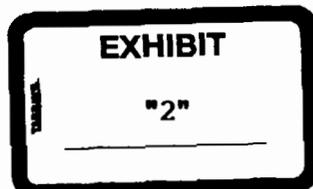
I declare under penalty of perjury that the following is true and correct:

1. My name is David Ulis and I am over the age of eighteen (18) years.

2. I make this affidavit based upon my personal knowledge and based upon the business records of EcoMed International, a Grenada international business corporation (EcoMed International) and EcoMed, Inc., a Washington corporation (EcoMed) (collectively, the EcoMed Companies). Those records were made in the ordinary course of the EcoMed Companies regularly conducted business activities, by or from information transmitted by persons with knowledge of the events described therein, at or near the time of the events described, under my personal supervision and control.

3. I am currently the Chief Executive Officer of both of the EcoMed Companies. The EcoMed Companies hold patents on numerous medical devices and are in the business of marketing and selling these instruments. EcoMed International's stock is listed on a stock exchange operated by the World Investors Stock Exchange, Ltd. (WISE).

4. On January 20, 1999, I received a telephone call from John Hogan (Hogan), a director of the EcoMed Companies. Hogan advised me that he had received a very disturbing telephone call from David Marchant (Marchant), in which Marchant accused Hogan and the EcoMed Companies of doing business with several fraudulent enterprises, including WISE, the International Depositors Reinsurance Corporation, Ltd. (IDIC), and the First International Bank of Grenada, Ltd. (First Bank), and of actively participating in one or more schemes to defraud investors.



5. Subsequent to my conversation with Hogan on January 20, 1999, I telephoned Marchant. During this conversation, Marchant, who claimed to be an investigative journalist, told me that WISE, IDIC, and First Bank, companies with which Marchant knew we enjoyed a business relationship, were all fraudulent companies involved in an elaborate scheme to defraud investors out of millions of dollars. Marchant further stated that EcoMed International was also a fraud because its stock offering statement did not include an audited financial statement and because certain professional organizations were purportedly held out as EcoMed International's advisors when they in fact denied being retained by EcoMed International.

6. WISE does not require an audited financial statement; therefore, EcoMed International elected not to incur the expense or delay associated with providing one for its listing. Additionally, the professional advisors Marchant told me he contacted, and the advisers he referenced in his January 28, 1999 newsletter, the *Offshore Alert*, did in fact provide services for the EcoMed Companies; however, these advisors have never been retained by EcoMed International. Any references made to these professional advisors which implied that they worked for EcoMed International rather than for EcoMed was inadvertent, not fraudulent, and this error was immediately corrected.

7. During my telephone conversation with Marchant, he indicated that his specialty was investigating and exposing major financial frauds. Since it appeared likely that someone who legitimately pursued such investigations would be well known to law enforcement agencies, I requested that he provide me with a reference at such an agency as proof of his bona fide status as a legitimate investigative reporter specializing in large-scale financial frauds. He did not provide me with either a name or a telephone number of any such officials, but instead accused me of attempting to threaten him.

8. Marchant unequivocally asserted that WISE, IDIC, First Bank, and the EcoMed Companies were fraudulent companies involved in a crooked scheme.

9. In my phone conversation with Marchant on January 20, 1999, he indicated that Ms. Agatha Jeffers-Gooden (Jeffers-Gooden) of the Nevis Ministry of Finance would confirm his assertions. However, when I telephoned Jeffers-Gooden, she unequivocally denied the accuracy of Marchant's statements. She further stated that she was offended by Marchant's reference to her as a source for this information.

10. In 1998, prior to listing EcoMed International on WISE, I conducted an in-depth due diligence investigation into the propriety of WISE, First Bank, and IDIC. Pursuant to this investigation, I contacted, in person and by telephone, various government officials in Grenada and Nevis, including Jeffers-Gooden at the Nevis Ministry of Finance. I was assured by these government representatives and others that, to the best of their knowledge, the principals of these organizations were reputable individuals, that each of the companies was reputable and in good standing, and that the respective governments had received no complaints about these companies or their principals. I was fully confident then, as I am now, that none of the aforementioned companies, whom I have enjoyed a business relationship with, are in anyway fraudulent or linked to any criminal enterprises.

11. As a consequence of Marchant's false and malicious statements regarding the EcoMed Companies, in particular their connection to a fraudulent scheme, several businesses have ended, or threatened to end, their relationship with the EcoMed Companies for fear of being linked to a fraudulent enterprise, despite the unfounded nature of Marchant's assertions. Honesty and stability are cornerstones in the financial marketplace in which we conduct our daily activities and most companies, including the EcoMed Companies, cannot afford even the appearance of impropriety. In addition, two directors of the EcoMed Companies, including Hogan, have resigned as a result of

Marchant's unfounded assertions. Moreover, Marchant's comments have generated unwarranted questions from shareholders of EcoMed into the propriety of its operations, and of the operations of businesses with which the EcoMed Companies associate.

12. Our relationship with WISE and First Bank has, at the very least, been strained since Marchant communicated his assertions to Hogan and myself. In their effort to combat Marchant's fabricated declarations, WISE and First Bank have been less than attentive to the needs of the EcoMed Companies. In addition, as a result of being linked to alleged fraudulent companies, the EcoMed Companies' principal bank has refused to provide future services. As a further consequence of Marchant's statements, and despite my personal belief in their inaccuracy, the EcoMed Companies have contemplated dissociating itself from WISE, IDIC, and First Bank.

13. The EcoMed Companies have never participated in any fraudulent or illegal activity and, to the best of my knowledge after engaging in due diligence of each of the relevant companies, neither have First Bank, WISE or IDIC.

Executed on this 25 day of February 1999

David Ullis  
David Ullis

Subscribed and sworn to before me on this 25<sup>th</sup> day of February, 1999, by David Ullis, who being first duly sworn, deposes and says that he has read the foregoing Affidavit and the statements contained therein are true and correct to the best of his knowledge, information and belief. Mr. Ullis is personally known to me or who has produced BE DL# 5652071 as identification and has taken an oath.

Rhonda S. Kollar  
Notary Public



LAW-LIT 11567001 2/23/99

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

FIRST INTERNATIONAL BANK  
OF GRENADA, LTD., a Grenadian  
International Business Corporation;  
INTERNATIONAL DEPOSITORS'  
REINSURANCE CORPORATION,  
LTD. d/b/a IDIC, a Nevisian  
International Business Corporation; and  
WORLD INVESTORS' STOCK  
EXCHANGE, LTD., a Grenadian  
International Business Corporation,

Plaintiffs,

v.

DAVID MARCHANT; and  
OFFSHORE BUSINESS NEWS &  
RESEARCH, INC., a Florida  
corporation,

Defendants.

CASE NO. 99-568-CIV-MORENO

Magistrate Judge Brown

FILED  
MAR 10 1999  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI  
29

**PLAINTIFFS' AMENDED MEMORANDUM  
OF LAW IN SUPPORT OF AMENDED  
EMERGENCY MOTION FOR PRELIMINARY  
INJUNCTION TO INCLUDE CERTIFICATE  
OF SERVICE**

Plaintiffs, the First International Bank of Grenada, Ltd. ("First Bank"), the World Investors' Stock Exchange, Ltd. ("WISE"), and the International Depositors' Reinsurance Corporation, Ltd. ("IDIC") (collectively, the "Plaintiffs"), by and through their undersigned counsel submit this memorandum of law in support of its *Amended Emergency Motion for Preliminary Injunction to Include Certificate of Service* filed pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Rule 7.1(E) of the Local Rules of the United States District Court for the Southern District of Florida in the above-styled action.

For the following reasons, Plaintiffs' *Amended Emergency Motion for Preliminary Injunction to Include Certificate of Service* (the "*Motion*") should be granted, and defendants David Marchant

CASE NO. 99-568-CIV-MORENO

("Marchant") and Offshore Business News & Research, Inc. ("Offshore," and collectively with Marchant, the "Defendants"), together with any other agents, publications and companies under the Defendants' control, should be enjoined from (1) interfering with Plaintiffs' business relationships with their clients and prospective clients, whether through the publication of untrue or misleading allegations or otherwise, and (2) disseminating false, misleading, unfair, and deceptive statements regarding the Plaintiffs, whether through the *Offshore Alert* newsletter or otherwise. In conjunction with this memorandum of law, Plaintiffs incorporate by reference Plaintiffs' complaint (the "*Complaint*") and *Motion*, including any exhibits thereto.

### LEGAL ARGUMENT

Plaintiffs seek a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure and Rule 7.1(E) of the Local Rules of the United States District Court for the Southern District of Florida. A preliminary injunction has four requirements:

(1) a substantial likelihood that the movants will ultimately prevail on the merits; (2) that they will suffer irreparable injury if the injunction is not issued; (3) that the threatened injury to the movants outweighs the potential harm to the opposing party; and (4) that the injunction, if issued, would not be adverse to the public interest.

*Haitian Refugee Center, Inc. v. Nelson*, 872 F.2d 1555, 1561-62 (11<sup>th</sup> Cir.), *aff'd*, 111 S. Ct. 888 (1991). As set forth in the *Complaint* and *Motion*, including the affidavits attached thereto, a preliminary injunction is required to protect Plaintiffs from the impending irreparable harm caused by Defendants' intentional misconduct.

Plaintiffs seek a preliminary injunction on two counts: (1) violation of Florida's Deceptive and Unfair Trade Practices Act, and (2) tortious interference with business relationships. Absent a preliminary injunction, Defendants will, as threatened, continue to disseminate unsubstantiated,

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false, misleading, deceptive, and unfair statements regarding Plaintiffs which originate either via the Internet and Defendants' web site, or directly from Marchant to specific third parties, including without limitation, Plaintiffs' current and prospective business associates and investors. As a result, Plaintiffs' reputation and goodwill in the international business community will continue to be irreparably harmed, and Plaintiffs' relationships with other companies will either be scarred or totally severed.<sup>1/</sup>

**1. Likelihood of Success on the Merits**

**a. Florida's Deceptive and Unfair Trade Practices Act**

Florida's Deceptive and Unfair Trade Practices Act (the "Act"), section 501.201 *et seq.*, Florida Statutes, proscribes, *inter alia*, "unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Fla. Stat. § 501.204(1). To enforce this proscription, the Act has created, *inter alia*, a private cause of action for declaratory or injunctive relief. Fla. Stat. § 501.211(1). Section 501.211(1), Florida Statutes, provides:

Without regard to any other remedy or relief to which a person is entitled, *anyone aggrieved* by a violation of this part may bring an action to obtain a declaratory judgment that an act or practice violates

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<sup>1/</sup> No doubt Defendants will argue that libel and slander afford a remedy at law; however, this motion is based on Plaintiffs' claims for (1) violation of Florida's Deceptive and Unfair Trade Practices Act, and (2) tortious interference with business relationships. Regardless, an injunction may be issued to enjoin defamation, such as disparagement of one's business, where an action at law would not be a complete, prompt and efficient remedy. *Wynn Oil Co. v. Purolator Chemical Corp.*, 536 F.2d 84, 86 (5<sup>th</sup> Cir. 1976) (applying Florida law). Clearly, damages would not afford an adequate remedy for Plaintiffs whose businesses are suffering almost daily negative consequences from Defendants' continuing dissemination of false information, including without limitation, the loss and threatened loss of several business relationships and potential investors.

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this part and to enjoin a person who has violated, is violating, or is otherwise likely to violate this part. (Emphasis added).<sup>2/</sup>

Under Count One of the *Complaint*, Plaintiffs are seeking only injunctive relief. Specifically, Plaintiffs are attempting to enjoin Defendants from engaging in deceptive conduct, like those described above, which violate the Act.

To establish a claim under the Act, Plaintiffs must prove they were (1) aggrieved by, (2) Defendants' unfair or deceptive acts, (3) which were committed while the Defendants engaged in trade or commerce. Fla. Stat. §§ 501.204(1) and 501.211(1); *Klinger v. Weekly World News, Inc.*, 747 F. Supp. 1477, 1480 (S.D. Fla. 1990). To establish that an act or practice is deceptive, a plaintiff must show that the defendants made a material representation or omission that is likely to mislead another person. *Federal Trade Commission v. Wilcox*, 926 F. Supp. 1091, 1098 (S.D. Fla. 1993).<sup>3/</sup>

On January 28, 1999, Defendants published several articles in its monthly newsletter, *Offshore Alert*, entitled "We expose massive banking/insurance fraud," "Attorneys threaten us with lawsuit over IDIC scandal," and "Advertisement asks investors to sign away all of their assets" (collectively, the "Offending Articles"), attached to the *Complaint* as Exhibit "K" and incorporated herein by reference. The Offending Articles are indeed deceptive because they contain unsubstantiated, false, misleading, and incomplete declarations regarding Plaintiffs' commercial

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<sup>2/</sup> "Unlike § 501.211(2) which only entitles 'consumers' to pursue damage actions for violations of the Act, § 501.211(1) extends itself to 'anyone aggrieved.' Without any modifying language, the plain language of the statute includes a broader class of complainants than merely 'consumers.'" *Klinger v. Weekly World News, Inc.*, 747 F. Supp. 1477, 1480 (S.D. Fla. 1990).

<sup>3/</sup> Interpretations of the Federal Trade Commission and the federal courts are made applicable in section 501.204(2), Florida Statutes.

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activities from which a disinterested reader could only conclude that the Plaintiffs actually are "crooks" engaged in fraudulent practices. *Wilcox*, 926 F. Supp. at 1098.

The Offending Articles falsely depict the Plaintiffs as offering fraudulent "investment" schemes to the public. However, the Offending Articles include no evidentiary support for Defendants' conclusions, thereby misleading readers by depicting perfectly legal activities as illegal. The Offending Articles also strategically place fraudulent "buzz" words around incorrect or irrelevant statements which cast Plaintiffs in an extremely negative light and intentionally create the pervasive and inescapable inference of impropriety and dishonesty in impartial readers.

As a result of the dissemination of the Offending Articles, Plaintiffs have been seriously aggrieved, incurring substantial damages. IDIC has been particularly damaged by these actions. The resulting negative repercussions for IDIC, include, but are not limited to, (1) the suspension of IDIC's operations by the Nevisian Government; (2) the loss of several depository institutions as clients of IDIC; (3) the forced relocation of IDIC's Nevis office to another jurisdiction; (4) substantial legal and other professional fees; and (5) the damage to IDIC's good name. Affidavit of Douglas Ferguson, Executive Director of IDIC ("Ferguson Affidavit") ¶ 7, attached to the *Complaint* as Exhibit "C" and incorporated herein by reference.

The final prong of this cause of action is satisfied because Defendants distributed the Offending Articles via their Internet newsletter, *Offshore Alert*, the sale of which constituted engaging in trade or commerce. Fla. Stat. § 501.203(8); *Klinger*, 747 F. Supp. at 1480. Thus, Defendants have violated the Act because Plaintiffs have been aggrieved by Defendants' unfair or deceptive acts, which were committed while Defendants engaged in trade or commerce.

CASE NO. 99-568-CIV-MORENO

**b. Tortious Interference with Business Relationship**

The elements of tortious interference with a business relationship are: (1) the existence of a business relationship under which plaintiff has legal rights, (2) knowledge of the relationship on the part of the defendant, (3) an intentional and unjustified interference with the relationship by the defendant, and (4) damage to the plaintiff as a result of the breach of the relationship. *Tamiami Trail Tours, Inc. v. Cotton*, 463 So. 2d 1126, 1127 (1985); *see also Zimmerman v. D.C.A. At Welleby, Inc.*, 505 So. 2d 1371, 1373 (Fla. 4<sup>th</sup> DCA 1987); *Azar v. Lehigh Corp.*, 364 So. 2d 860, 862 (Fla. 2d DCA 1978).

This claim arose as a result of Marchant's publication of false statements (the "Offending Statements") addressed to John Hogan ("Hogan"), former director of EcoMed, Inc. ("EcoMed") and EcoMed International, Inc. ("EcoMed International" and, collectively with EcoMed, the "EcoMed Companies"), and David Ulis ("Ulis"), Chief Executive Officer of the EcoMed Companies, via the telephone, on January 20, 1999. Marchant called Hogan and Ulis while Plaintiffs enjoyed an existing business relationship with the EcoMed Companies, under which Plaintiff had substantial legal rights. Affidavit of Robert Osborne, Executive Vice President of Wise ("Osborne Affidavit") ¶ 11, attached to Plaintiffs' *Complaint* as Exhibit "A" and incorporated herein by reference; affidavit of Van A. Brink, Chief Executive Officer and Chairman of the Board for First Bank ("Brink Affidavit") ¶ 23, attached to the *Complaint* as Exhibit "B" and incorporated herein by reference; affidavit of David Ulis ("Ulis Affidavit") ¶¶ 5, 10, a true and correct copy of which is attached to the *Motion* as Exhibit "2" and incorporated herein by reference.

The Offending Statements unequivocally assert that Hogan, Ulis, and the EcoMed Companies were doing business with Plaintiffs. Ulis Affidavit ¶ 5; affidavit of John Hogan ("Hogan

CASE NO. 99-568-CIV-MORENO

Affidavit") ¶ 5, attached to the *Complaint* as Exhibit "F" and incorporated herein by reference. Marchant intentionally and unjustifiably interfered with the existing business relationships between the EcoMed Companies and Plaintiffs when he contacted Hogan and Ullis by telephone on January 20, 1999, to disclose his contention that Plaintiffs were involved in a "crooked scheme" and that Plaintiffs were all "frauds." Ullis Affidavit ¶¶ 3-9; Hogan Affidavit ¶ 5.

Although the Offending Statements are indeed defamatory, as alleged in Plaintiffs' *Complaint*, they also constitute "verbal acts" which can be restrained without infringing on Defendants' constitutional rights. *Zimmerman*, 505 So. 2d at 1375; *see also DeRitis v. AHZ Corp.*, 444 So. 2d 93, 94 (Fla. 4<sup>th</sup> DCA 1984) (injunction appropriate to enjoin "interference, via speech, with a present and prospective business relationship"); *Azar*, 364 So. 2d at 860-63 (Fla. 2d DCA 1978) (defendant enjoined from contacting actual and potential customers of plaintiff). Defamatory words uttered in aid of another tort constitute "verbal acts." *Zimmerman*, 505 So. 2d at 1375.

In *Zimmerman*, the court enjoined conduct, albeit speech, which was incident to conduct which constituted intentional interference with potential business relationships. *Id.* at 1376. There, the activities, defamatory in nature, included picketing, displaying signs, and talking to potential customers of the complainants, the effect of which was a loss of sales. *Id.* at 1372-73. The *Zimmerman* Court held:

[where] statements which are libelous or slanderous with respect to a person, his property or business, are published or made as a part and parcel of course of conduct deliberately carried on to further a fraudulent or other unlawful purpose, a court may grant injunctive relief to prevent *irreparable* injury.

\* \* \*

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*Defamatory words uttered in aid of another tort are verbal acts, which, with the aided tort, are subject to restraint, if equitable grounds therefor are present.*

*Id.* (emphasis added) (citations omitted).<sup>4/</sup>

Similarly, the Offending Statements were verbal acts which aided Defendants' tortious interference with Plaintiffs' business relationship with the EcoMed Companies. Defendants should not be able to shield their tortious interference behind the First Amendment. "It is a fundamental principle, long established, that the freedom of speech . . . secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose." *Gitlow v. People of State of New York*, 268 U.S. 652, 666 (1925). "[P]rior restraint of speech is permissible when the right of free speech is used as a shield for tortious harm, as to a business interest." *DeRitis*, 444 So. 2d at 94-95 (citations omitted).

In this case, Defendants overstepped the boundaries of protected speech when Marchant contacted Hogan, a director of the EcoMed Companies, a business which associates with Plaintiffs, and communicated unsubstantiated, false, and defamatory assertions to him. Defendants further interfered with Plaintiffs' relationship with the EcoMed Companies when Marchant again made these false declarations to Ullis, the Chief Executive Officer of the EcoMed Companies.

As a result of Defendants' tortious interference, and the damage to the EcoMed Companies and Plaintiffs thereby, Plaintiffs' relationship with the EcoMed Companies has been severely and

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<sup>4/</sup>The *Zimmerman* Court also distinguished tortious interference communication from traditionally protected speech, in that, the motive of the former is to reap economic benefits rather than to express educational, altruistic, or philanthropic ideas. 505 So. 2d at 1375. Similarly, Marchant is a commissioned, self-proclaimed "investigative journalist," who limits his audience to subscribers who are willing to pay \$595 to access his newsletters. Internet broadcast distributed by an agent of Offshore dated February 10, 1999, attached as Exhibit "1" and incorporated herein by reference.

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irrevocably damaged. Osborne Affidavit ¶ 14; Ulis Affidavit ¶ 12. The EcoMed Companies have experienced a series of negative repercussions resulting from the Offending Statements, including the resignation of two directors. *Id.* ¶¶ 11-12. Hogan resigned as director of the EcoMed Companies for fear of damage to his reputation, as well as the reputation of other institutions with which he is associated, which could occur if he is linked to companies accused of being fraudulent, even if the accusations are unwarranted - as Hogan believes Marchant's allegations to be. Hogan Affidavit ¶ 8. Marchant's comments have also generated unwarranted questions from shareholders of the EcoMed Companies into the propriety of its operations, and of the operations of businesses with which the EcoMed Companies associate. Ulis Affidavit ¶ 11. In addition, as a result of being linked to alleged fraudulent companies, the EcoMed Companies' principal bank has refused to provide future services. *Id.* ¶ 12.

Consequently, the EcoMed Companies' relationship with WISE and First Bank has, at the very least, been strained since Marchant communicated his assertions to Hogan and Ulis. *Id.* In their effort to combat Marchant's fabricated declarations, WISE and First Bank have been less than attentive to the needs of the EcoMed Companies. *Id.* Due to Marchant's statements, and despite Ulis' personal belief in their inaccuracy, the EcoMed Companies have contemplated dissociating itself from WISE, IDIC, and First Bank, a repercussion which would undoubtedly cause damage and irreparable harm to Plaintiffs. *Id.*

Plaintiffs, which are all in the business of providing financial services to the general public, have many business relationships with other companies and individuals. Brink Affidavit ¶ 25. In addition to the specific harm to the business relationships between Plaintiffs and the EcoMed Companies, the conduct of the Defendants have caused, and can reasonably be expected to continue

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to cause, substantial and irreparable harm to Plaintiffs through their tortious and unjustified interference with all of Plaintiffs' business relationships as described herein. Osborne Affidavit ¶ 14.

## 2. Irreparable Harm

Irreparable injury is presumed in cases involving wrongful interference with business relationships; therefore, irreparable injury need not be alleged or proven. *Dotolo v. Shouten*, 426 So. 2d 1013, 1015 (Fla. 2d DCA 1983) (citing *Unistar Corp. v. Child*, 415 So. 2d 733 (Fla. 3d DCA 1982)). However, Plaintiffs need not rely solely on this presumption because they will in fact suffer irreparable harm absent injunctive relief.

Marchant has proven his tenacity and dedication to disrupting Plaintiffs' operations and their relationships with several third parties, including without limitation, the EcoMed Companies, and the governments of Grenada and Nevis. His frequent and consistent dissemination of false information regarding Plaintiffs' businesses make it imperative that this court enjoin Defendants from further distribution of such declarations, which comprise both a violation of the Act and tortious interference with business relationships.

Defendants' declarations, both via the Internet and directly from Marchant to specific third parties, contain false, deceptive, and misleading information regarding Plaintiffs. The continuing dissemination of this false information will severely damage Plaintiffs' reputation and goodwill among current and prospective customers. Defendants' consistent course of conduct, namely the publication of unsubstantiated, false, deceptive, and misleading declarations regarding Plaintiffs, create the inescapable conclusion that potential injury to Plaintiffs is both imminent and incapable of being fully remedied by monetary damages. See *Jacobson & Co. v. Armstrong Cork Co.*, 548 F.2d 438, 445 (2d Cir. 1977) (damage to reputation and goodwill constitutes irreparable harm);

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*Towers Financial Corp. v. Dun & Bradstreet, Inc.*, 803 F. Supp. 820, 822-23 (S.D.N.Y. 1992) (defendant enjoined from distribution of business information report which contained disparaging, false, and misleading information regarding complainant - injury to reputation is both "imminent and incapable of being fully remedied by monetary damages, [plaintiff has therefore] made a sufficient showing of irreparable harm"); *Wojnarowicz v. American Family Ass'n*, 745 F. Supp. 130, 148-49 (S.D.N.Y. 1990) (injury to personal reputation is irreparable harm warranting injunctive relief).

The probable result of Defendants' actions will be to further damage the reputation and goodwill of Plaintiffs, and to injure Plaintiffs' relations with present and prospective investors. It is likely Defendants will permanently sever the relationships Plaintiffs enjoy with several companies and individuals. Thus, Plaintiffs will be irreparably harmed.

### **3. Balance of Harms**

Any harm defendants potentially might suffer if a preliminary injunction is entered does not justify denial of Plaintiffs' *Motion*. Plaintiffs stand to permanently lose current and prospective investors if Defendants are permitted to continue the dissemination of false statements regarding Plaintiffs. Moreover, Plaintiffs' business relationships will be severely and irreparably damaged if Defendants are allowed to continue their unjustifiable interference with current and prospective relationships Plaintiffs enjoy with other companies, individuals, and applicable governmental authorities. The amount of loss that will be suffered absent an injunction is nearly impossible to quantify.

The balance of harms clearly weighs in Plaintiffs' favor. Defendants ability to profit from the publication of unsubstantiated, false, misleading, and deceptive information, and their freedom to communicate such assertions to governments and third parties, do not outweigh the harm caused

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to Plaintiffs thereby. More specifically, enjoinder of the above described wrongful conduct would not constitute a violation of Defendants' first amendment rights because, *inter alia*, the actions taken are, at the very most, "verbal acts" committed contemporaneously with other tortious conduct. *Zimmerman*, 505 So. 2d at 1375-76. Additionally, the wrongful conduct Plaintiffs seek to enjoin is motivated solely by financial considerations, rather the fostering of idealistic or political ideas. *Id.*<sup>2/</sup>

**4. Public Interest**

It is in the public interest of this country to preserve and protect business relationships, including those between U.S. residents and foreign corporations, and to enjoin the type of malicious interference with such relationships as has been described herein. *See generally Zimmerman*, 505 So. 2d at 1374. In analogizing interference with business relationships with market competition, the *Zimmerman* Court<sup>6/</sup> stated:

There is a narrow line between what constitutes vigorous competition in a free enterprise society and malicious interference with a favorable business relationship.

\* \* \*

[C]ourts have generally prohibited such activities as defamation of the competitor, disparagement of his goods and his business methods, and intimidation, harassment and annoyance of his customers.

\* \* \*

*While petitioner and respondent are not business rivals, there is a parallel to be drawn from the fact that both have economic benefit at stake. It is not insignificant that petitioners' primary motive is to gain economic benefit for themselves . . . rather than communication for any educational or altruistic or philanthropic purpose.*

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<sup>2/</sup> See the section entitled Likelihood of Success on the Merits, *supra*, for a more comprehensive discussion regarding the constitutional ramifications of a preliminary injunction.

<sup>6/</sup>Citing W. Prosser, *Law of Torts* (4<sup>th</sup> ed. 1971) at 956.

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*Id.* at 1375 (emphasis added). Thus, public interests demand that intentional and unjustifiable interference, such as Defendants' conduct described in the *Complaint, Motion* and herein, be enjoined.

Additionally, no public interest is served where unfair and deceptive trade practices are utilized, regardless of the relationship between the parties. The primary purpose of laws, such as enumerated under the Act, is to protect the public from false, deceptive, and misleading information, as evidenced in the case at bar. *Suris v. Gilmore Liquidating, Inc.*, 651 So. 2d 1282, 1283 (Fla. 3d DCA 1995) (central aim of the Act is to protect, *inter alia*, legitimate business enterprises from those who engage in deceptive or unfair acts or practices). Clearly, public interests are best served by prevention of deceptive and unfair practices as proscribed by the Act.

Similarly, the Government of Grenada has recognized that its public policy is best served by refusing to lend credence to the unsupported allegations of the Defendants. Letter written by Michael Creft of the Grenada Ministry of Finance, Offshore Financial Services Division ("Creft Letter"), attached to the *Complaint* as Exhibit "G" and incorporated herein by reference; affidavit of Michael Creft, Grenadian Registrar of Offshore Financial Services ("Creft Affidavit"), a correct copy of which is attached to the *Complaint* as Exhibit "D" and is incorporated herein by reference. Therefore, issuing an injunction would further public interest, not be adverse thereto.

### CONCLUSION

Plaintiffs have satisfied the preliminary injunction requirements. Plaintiffs have established a prima facie case for (1) violation of Florida's Deceptive and Unfair Trade Practices Act, and (2) tortious interference with business relationships; therefore, a likelihood of success on the merits. Plaintiffs have also shown that absent injunctive relief, it will suffer irreparable harm, and that the

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threatened injury to Plaintiffs outweighs the potential harm to Defendants. Further, the preliminary injunction would not be adverse to the public interest. For these reasons, Plaintiffs' motion for a preliminary injunction should be granted.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument was furnished by personal service and first class U.S. Mail to the defendants as listed below, this 8<sup>th</sup> day of March, 1999.



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The most recent Offshore Alert newsletter has exposed a massive offshore banking/insurance scam that is being run largely by Canadians. The fraud is believed to involve tens of millions of dollars. Companies committing the fraud are the World Investors Stock Exchange (Grenada), the International Deposit Insurance Corporation/IDIC (Nevis), the First International Bank of Grenada (Grenada), the International Exchange Bank (Grenada/Bermuda), Fidelity International Bank (Nauru/St. Vincent) and EcoMed International Inc. (Grenada/Washington State).

The Nevis regulators immediately shut down IDIC following our investigation.

Full details of the fraud with names of many people linked with these companies are included in the January 1999 edition of Offshore Alert. Offshore Alert as you may know is a Miami-based investigative newsletter covering the Bermuda-Caribbean region.

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