

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Court  
Southern District of Texas  
FILED

FEB 09 2006

Michael N. Milby, Clerk of Court

DARRELL W. WILLIAMS and  
DIANA M. WILLIAMS,  
Plaintiffs

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v.

CIVIL ACTION NO. H05-4291

AMERIPRISE FINANCIAL  
SERVICES, INC. f/k/a AMERICAN  
EXPRESS FINANCIAL ADVISORS,  
INC. and STEPHEN HAMILTON,  
Defendants

JURY

PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE COURT:

NOW COME Plaintiffs, Darrell W. Williams and Diana M. Williams, by and through their attorney of record, and hereby complain of Ameriprise Financial Services Inc., formerly known as American Express Financial Advisors Inc. ("Ameriprise"), and Stephen Hamilton ("Hamilton"), Defendants herein, as follows:

FACTS

1. On or about, January 19, 1994, based on the advice, inducements, representations, recommendations and suggestions of Defendants, Plaintiffs made agreements with Defendants to purchase from Ameriprise, and did purchase from Ameriprise, a certain American Express Life Flexible Annuity, Policy No. 0930-

0401-5204-1-004 (the “Ameriprise Annuity”) with their community property funds. On or about January 19, 1994, Plaintiffs made agreements with Defendants to invest, and did invest, the monies used to purchase the Ameriprise Annuity in certain Ameriprise mutual funds, based on Defendants’ advice, inducements, representations, recommendations and suggestions.

2. At the time Plaintiffs made their agreements with Defendants and purchased the Ameriprise Annuity, and thereafter, Defendants stated and represented to Plaintiffs that the Ameriprise Annuity included a term or feature which benefited Plaintiffs, i.e., an annual step-up in the death benefit (the “Stepped-Up Death Benefit”) providing that, in each year of the Ameriprise Annuity, the death benefit would be guaranteed under the Annuity in an amount not less than the highest value, historically, of the underlying investments in the Ameriprise Annuity. The Stepped-Up Death Benefit was important to Plaintiffs, and they would not have purchased the Ameriprise Annuity, nor would they have remained invested in the Ameriprise Annuity, if the Annuity in fact did not contain the Stepped-Up Death Benefit.

3. After Plaintiffs purchased the Ameriprise Annuity, Defendants informed Plaintiffs that the Stepped-Up Death Benefit in the Ameriprise Annuity would last only through the end of 2003.

4. In December, 2001, dissatisfied with the performance of the underlying Ameriprise mutual funds in the Ameriprise Annuity, Plaintiffs decided to effect an exchange of the Ameriprise Annuity to Kemper Investors Life Insurance Company for a new life insurance or annuity contract as permitted under Internal Revenue Code § 1035(a) (the “Section 1035 Annuity Exchange”).

5. In December, 2001, Plaintiffs secured the transfer of documents to Ameriprise to effect the Section 1035 Annuity Exchange. On or about December 12, 2001, having received the Section 1035 Annuity Exchange documents respecting the Ameriprise Annuity, Hamilton contacted Plaintiffs and stated and represented to them that (a) the Ameriprise Annuity included the Stepped-Up Death Benefit; (b) the Stepped-Up Death Benefit provided substantial value to Plaintiffs which they would lose if the Ameriprise Annuity were terminated through the Section 1035 Annuity Exchange; and (c) for the foregoing reasons, Plaintiffs should not perform the Section 1035 Annuity Exchange.

6. Plaintiffs (a) relied on Defendants’ advice, statements, inducements, representations, recommendations and suggestions to them on or about December 12, 2001 that the Ameriprise Annuity contained the Stepped-Up Death Benefit; (b) decided to follow Defendants’ advice, statements, inducements, representations, recommendations and suggestions to retain the Ameriprise Annuity; and (c) cancelled their request to effect the Section 1035 Annuity Exchange.

7. On a number of occasions after December 12, 2001, as they had done before, Defendants advised and informed, and stated and represented to, Plaintiffs that (a) the Ameriprise Annuity contained the Stepped-Up Death Benefit, and (b) the Stepped –Up Death Benefit in the Ameriprise Annuity provided substantial value to Plaintiffs which they would lose if the Ameriprise Annuity were terminated.

8. As an owner, employee and/or agent of Ameriprise, Hamilton solicited business from Plaintiffs. Plaintiffs were interested in investing funds they had saved for their retirement and came to trust and rely upon Defendants' investment advice, which was given at all times to Plaintiffs when Hamilton was an owner, employee and/or agent of Ameriprise.

9. Plaintiffs purchased and remained invested in the Ameriprise Annuity based upon (a) the representations made by Defendants when Hamilton was an owner, employee and/or agent of Ameriprise, and (b) the trust that Plaintiffs placed in Defendants as their financial advisors.

10. Because of the special relationship of investment advisors and clients which existed between, on the one hand, Defendants, and, on the other hand, Plaintiffs, Plaintiffs (a) justifiably relied on Defendants for investment judgment in connection with the purchase and retention of the Ameriprise Annuity; (b)

justifiably relied on Defendants to act in their best interests; and (c) trusted Defendants to make responsible decisions with their investment funds.

11. On or about November 20, 2003, Plaintiffs became aware for the first time that, contrary to Defendants' previous advice, statements, inducements, recommendations and representations, the Ameriprise Annuity did not contain the Stepped-Up Death Benefit. At that time, they learned for the first time that, contrary to Defendants' previous advice, statements, inducements, recommendations and representations, the Annuity contained only a regular death benefit, i.e., a benefit equal only to the current value of the underlying investments in the Annuity, less withdrawals.

12. Due to the fact that the Ameriprise Annuity did not contain the Stepped-Up Death Benefit, the Ameriprise Annuity's death benefit was worth far less to Plaintiffs than had been previously represented to them by Defendants.

13. Defendants advised and induced Plaintiffs to, and stated, recommended and represented that they should, purchase and remain invested in the Ameriprise Annuity. The Ameriprise Annuity was not suitable for Plaintiffs. At the time such purchase was made, and at all times thereafter when Defendants advised and induced Plaintiffs to, and stated and recommended that they should, remain invested in the Ameriprise Annuity, Defendants knew or should have known that the investment by Plaintiffs in the Ameriprise Annuity was speculative

and contrary to Plaintiffs' investment objectives and to the investment instructions given by Plaintiffs to Defendants.

14. Defendants knew or should have known that the purchase of the Ameriprise Annuity by Plaintiffs, and their continued investment in and ownership of the Ameriprise Annuity, were not justified given, among other things, Plaintiffs' other security holdings and their financial situation and needs.

15. Furthermore, Defendants failed to disclose to Plaintiffs that the Ameriprise Annuity did not include the Stepped-Up Death Benefit, and that buying and remaining invested in the Ameriprise Annuity involved levels of risk far beyond those agreed to between Plaintiffs and Defendants for the investment of Plaintiffs' assets.

16. Defendants' improper and reckless advice, inducements, representations and recommendations to Plaintiffs to purchase and remain invested in the Ameriprise Annuity were deceptive and manipulative, resulting in the liquidation at substantial losses of the investments in the Ameriprise Annuity. Defendants knew or should have known that the inducements and recommendations to Plaintiffs to purchase and remain invested in the Ameriprise Annuity was inherently speculative and inconsistent with Plaintiffs' financial situation and investment instructions to Defendants.

17. Allegedly qualified investment advisors such as Defendants possessing allegedly intimate knowledge of the Ameriprise Annuity should have realized that the Ameriprise Annuity was not appropriate for Plaintiffs.

18. Hamilton was an officer, employee or agent acting on behalf of Ameriprise at all times the foregoing misrepresentations and omissions were made and/or the negligent or wrongful acts occurred. Defendants failed to discharge their fiduciary and other responsibilities to Plaintiffs in numerous ways, including, without limitation:

- (a) by failing to follow the investment instructions given to them by Plaintiffs;
- (b) by failing to comply with their agreements to provide investment advisory services, including the investment and reinvestment of Plaintiffs' assets, with care, skill, prudence and diligence;
- (c) by agreeing to provide investment advisory services, including the investment and reinvestment of Plaintiffs' assets, with care, skill, prudence and diligence, when (1) Defendants knew those agreements were false, or (2) those agreements were being made recklessly or negligently, without any knowledge of the truth;
- (d) by failing to communicate, or by not exercising reasonable care or competence in communicating information to Plaintiffs concerning (i) the nature and terms of the Ameriprise Annuity, including the fact that the Ameriprise Annuity did not include the Stepped-Up Death Benefit; and (ii) the risks to Plaintiffs in purchasing and remaining invested in the Ameriprise Annuity;
- (e) by failing to disclose to Plaintiffs material information concerning the Ameriprise Annuity, including the risks of purchasing and remaining invested in the Ameriprise Annuity, (i) prior to the time Plaintiffs purchased the Ameriprise Annuity, and (ii) prior to each instance

when Defendants advised and induced Plaintiffs to, and stated and represented that they should, remain invested in the Ameriprise Annuity;

- (f) by failing to properly investigate the financial status and conditions of the Ameriprise Annuity prior to and after the purchase of the Ameriprise Annuity by Plaintiffs;
- (g) by failing to keep Plaintiffs informed as to the material financial developments taking place with respect to the Ameriprise Annuity;
- (h) by representing that they had certain knowledge regarding the purchase of securities and annuities which they did not have (i) at the time the Plaintiffs purchased the Ameriprise Annuity, and (ii) at all times thereafter when Defendants advised and induced Plaintiffs to, and stated and represented that they should, remain invested in the Ameriprise Annuity;
- (i) by representing that they had certain knowledge concerning the financial terms and benefits of securities and annuities, which they did not have (i) at the time Plaintiffs purchased the Ameriprise Annuity, and (ii) at all times thereafter when Defendants advised and induced Plaintiffs to, and stated and represented that they should, remain invested in the Ameriprise Annuity;
- (j) by making misrepresentations concerning the characteristics, benefits, standard, quality or grade of investment advisory services to be provided Plaintiffs, including the investment and reinvestment of Plaintiffs' assets;
- (k) by abusing or violating the confidential and fiduciary relationships, and special confidences, between Plaintiffs, on the one hand, and Defendants on the other hand;
- (l) by violating their duties to act for, give advice for the benefit of, and/or disclose relevant information to Plaintiffs concerning the Ameriprise Annuity; and

- (m) by violating their duties to Plaintiffs, as set forth above, which had the tendency to deceive Plaintiffs and violate the confidences Plaintiffs had placed in them.

19. Plaintiffs terminated the Ameriprise Annuity in January, 2004 and received the proceeds of the Annuity from Ameriprise. Plaintiffs have suffered substantial damages due to the erroneous and improper advice, representations and recommendations of Defendants as set forth above.

20. As a direct and proximate result of Defendants' misconduct, Plaintiffs suffered damages as set forth below.

### **JOINT AND SEVERAL LIABILITY**

21. On information and belief, each of the Defendants materially aided and abetted, acquiesced in, participated in, conspired in and/or approved of some or all of the conduct and activities of the other Defendant. By reason of such conduct, and except as otherwise alleged, each of the Defendants is liable for the acts and omissions of the other Defendant, jointly and severally.

### **BREACH OF CONTRACT**

22. Paragraphs 1 through 21 of this Complaint are incorporated herein by reference.

23. Plaintiffs have fully performed all conditions, covenants and promises under their agreements with Defendants to be performed on Plaintiffs' part. Defendants have failed to comply with, and have breached, the terms of their

agreements to, among other things, invest and reinvest the Plaintiffs' assets in good faith and with care, skill, prudence and diligence. Plaintiffs have suffered damages as set forth below resulting from Defendants' breaches of their agreements with Plaintiffs. Ameriprise is liable for Hamilton's breaches under applicable law due to the fact he was an owner, employee and/or agent of Ameriprise at all relevant times to this proceeding. Defendants have failed and refused to pay such damages although proper demand for payment has been made by Plaintiffs.

### **NEGLIGENCE**

24. Paragraphs 1 through 23 of this Complaint are incorporated herein by reference.

25. By committing the above-described acts and omissions, Defendants failed to act as reasonably prudent financial advisors and as persons in fiduciary and confidential relationships with Plaintiffs; failed to exercise ordinary care in the services they provided to Plaintiffs; violated the duties they owed to Plaintiffs; and were negligent in connection with the handling of financial matters entrusted to them by Plaintiffs.

26. Defendants breached their duties of care to Plaintiffs in that they could have reasonably foreseen that, by committing the above-described acts and omissions, Plaintiffs would suffer severe financial losses.

**NEGLIGENT MISREPRESENTATION**

28. Paragraphs 1 through 27 of this Complaint are incorporated herein by reference.

29. In connection with the financial affairs of Plaintiffs, for which Defendants were responsible as set forth above, and the fiduciary and confidential relationships between Plaintiffs and Defendants, also as set forth above, Defendants made a number of specific representations, including, but not limited to, representations that they would perform investment advisory services, including the investment and reinvestment of Plaintiffs' assets, in good faith and with care, skill, prudence and diligence. These representations were false, or were made recklessly or, alternatively, negligently, without any knowledge of their truth. These misrepresentations were made with the intent that they should be acted and relied upon by Plaintiffs and Plaintiffs did in fact justifiably rely upon such representations, resulting in the damages alleged below.

30. Defendants further:

- (a) omitted to provide material information to Plaintiffs in the course of Defendants' transactions with Plaintiffs, including, but not limited to, transactions with Plaintiffs in which Defendants had pecuniary interests;

27. As a direct and proximate result of Defendants' negligence as described herein Plaintiff suffered physical, emotional, and financial harm.

- (b) had duties to disclose such material information to Plaintiffs; and
- (c) did not exercise reasonable care or competence in obtaining such material information, or communicating such information to Plaintiffs.

31. Defendants' silence and deliberate failure to disclose such material information to Plaintiffs was equivalent to false representations to Plaintiffs. By justifiably relying on Defendants' representations as set forth above, Plaintiffs suffered pecuniary loss.

### **GROSS NEGLIGENCE**

32. Paragraphs 1 through 31 of this Complaint are incorporated herein by reference.

33. Defendants' conduct was grossly negligent in that their acts and omissions involved an extreme degree of risk, considering the probability and magnitude of potential harm, and in that Defendants had actual, subjective awareness of the risks involved but nevertheless proceeded with conscious indifference to the rights, safety and welfare of Plaintiffs.

### **FRAUD**

34. Paragraphs 1 through 33 of this Complaint are hereby incorporated by reference.

35. With respect to the investment advisory services Defendants agreed to provide to Plaintiffs, as set forth above:

- (a) Defendants made material representations or omissions, also as set forth above. The representations were material in that Plaintiffs relied upon Defendants, in the course of their business transactions with Defendants, and as persons entrusted to handle their financial affairs, to, among other things, competently, honestly, carefully, skillfully, prudently perform investment advisory services for Plaintiffs, including the investment and reinvestment of Plaintiffs' assets;
- (b) such representations were false, or (1) Defendants had duties to speak to Plaintiffs and (2) by deliberately remaining silent, their silence was equivalent to false representations to Plaintiffs, or had the effect of falsifying Defendants' actual statements;
- (c) Defendants knew the representations or omissions were false at the time they made the representations or omissions without knowledge of the truth, or they made the representations, or remained silent, recklessly, without any regard for the truth;
- (d) Defendants intended Plaintiffs to act upon the representations or omissions;
- (e) Plaintiffs believed and relied on the representations or omissions of Defendants as described above, and were thereby induced to invest their assets according to Defendants' representations or omissions; and
- (f) Plaintiffs' reliance on the representations or omissions of Defendants proximately caused injury to them.

36. Plaintiffs reposed special confidences in Defendants who in equity and good conscience were bound to act in good faith and with due regard to the interests of Plaintiffs. In addition, because of the extent and nature of Plaintiffs' relationships with Defendants, Plaintiffs became accustomed to being guided by the judgment or advice of Defendants, or Plaintiffs were justified in placing confidence in the belief that Defendants could act in Plaintiffs' interests.

Consequently, fiduciary and confidential relationships existed between Plaintiffs and Defendants.

37. The influence with and over Plaintiffs acquired by Defendants was abused. Plaintiffs reposed confidences in Defendants which Defendants betrayed. As set forth above, Defendants breached their duties to Plaintiffs (a) of good faith, unselfishness and candor; (b) of full disclosure respecting matters affecting the Plaintiffs' interests; and (c) to refrain from using their relationships with Plaintiffs to benefit their personal interests without the full knowledge and consent of Plaintiffs.

38. Defendants committed fraud by, among other things, breaching the duties to Plaintiffs as set forth above.

39. As a direct and proximate result, Plaintiffs suffered severe financial losses and damages in a sum that exceeds the minimum jurisdictional limits of the Court.

#### **BREACH OF FIDUCIARY AND CONFIDENTIAL DUTIES**

40. Paragraphs 1 through 39 of this Complaint are incorporated herein by reference.

41. Plaintiffs reposed special confidences in Defendants who in equity and good conscience were bound to act in good faith and with due regard to the interests of Plaintiffs. In addition, because of the extent and nature of his

relationships with Defendants, Plaintiffs became accustomed to being guided by the judgment or advice of Defendants, or Plaintiffs were justified in placing confidence in the belief that Defendants would act in Plaintiffs' interests. Consequently, fiduciary and confidential relationships existed between Plaintiffs and Defendants.

42. The influence with and over Plaintiffs acquired by Defendants was abused. Plaintiffs reposed confidences in Defendants which Defendants betrayed. As set forth above, Defendants breached their duties to Plaintiffs (a) of good faith, unselfishness and candor; (b) of full disclosure respecting matters affecting the Plaintiffs' interests; and (c) to refrain from using their relationships with Plaintiffs to benefit their personal interests without the full knowledge and consent of Plaintiffs.

43. As a direct and proximate result, Plaintiffs suffered severe financial losses and damages in a sum that exceeds the minimum jurisdictional limits of the Court.

#### **STATUTORY STOCK FRAUD**

44. Paragraphs 1 through 43 of this Complaint are hereby incorporated herein by reference.

45. With respect to the investment advisory services Defendants agreed to provide to Plaintiffs, as set forth above:

- (a) Defendants made false representations of past or existing material facts, or false promises to perform material facts made with the intention not fulfill them;
- (b) the false representations or false promises were made to induce Plaintiffs to enter into contracts to purchase an annuity; and
- (c) Plaintiffs relied upon Defendants in entering into the contracts to purchase the annuity.

46. The foregoing false representations and false promises constitute violations of Texas Business & Commerce Code § 27.01. As a direct and proximate result, Plaintiffs suffered severe financial losses and damages in a sum that exceeds the minimum jurisdictional limits of the Court.

**THE TEXAS SECURITIES  
ACT AND THE TEXAS INSURANCE CODE**

47. Paragraphs 1 through 46 of this Complaint are hereby incorporated herein by reference.

48. In the course of providing investment advice, Defendants committed fraud or engaged in fraudulent practices. Specifically:

- (a) Defendants made material representations or omissions, as set forth above. The representations were material in that Plaintiffs relied upon Defendants, in the course of their business transactions with Defendants, and as persons entrusted to handle their financial affairs, to, among other things, competently, honestly, carefully, skillfully, prudently perform investment advisory services for Plaintiffs, including the investment and reinvestment of Plaintiffs' assets;
- (b) such representations were false, or (1) Defendants had duties to speak to Plaintiffs and (2) by deliberately remaining silent, their silence was

equivalent to false representations to Plaintiffs, or had the effect of falsifying Defendants' actual statements;

- (c) Defendants knew the representations or omissions were false at the time they made the representations or omissions without knowledge of the truth, or they made the representations, or remained silent, recklessly, without any regard for the truth;
- (d) Defendants intended Plaintiffs to act upon the representations or omissions;
- (e) Plaintiffs believed and relied on the representations or omissions of Defendants as described above, and were thereby induced to invest Plaintiffs' assets according to Defendants' representations or omissions; and
- (f) Plaintiffs' reliance on the representations or omissions of Defendants proximately caused injury to them.

49. Plaintiffs reposed special confidences in Defendants who in equity and good conscience were bound to act in good faith and with due regard to the interests of Plaintiffs. In addition, because of the extent and nature of Plaintiffs' relationships with Defendants, Plaintiffs became accustomed to being guided by the judgment or advice of Defendants, or Plaintiffs were justified in placing confidence in the belief that Defendants could act in Plaintiffs' interests. Consequently, fiduciary and confidential relationships existed between Plaintiff and Defendants.

50. The influence with and over Plaintiffs acquired by Defendants was abused. Plaintiffs reposed confidences in Defendants which Defendants betrayed. As set forth above, Defendants breached their duties to Plaintiffs (a) of good faith,

unselfishness and candor; (b) of full disclosure respecting matters affecting the Plaintiffs' interests; and (c) to refrain from using their relationships with Plaintiffs to benefit their personal interests without the full knowledge and consent of Plaintiffs.

51. Defendants committed fraud or engaged in fraudulent practices by, among other things, breaching the duties to Plaintiffs as set forth above.

52. The foregoing fraud and fraudulent practices constitute violations of the Texas Securities Act, V.T.C.S.A., art. 581 – 33-1 and Chapter 451 of the Texas Insurance Code. As a direct and proximate result, Plaintiffs suffered severe financial losses and damages in a sum that exceeds the minimum jurisdictional limits of the Court.

### **DECEPTIVE TRADE PRACTICES ACT**

53. Paragraphs 1 through 52 of this Complaint are hereby incorporated herein by reference.

54. Plaintiffs are consumers of services within the meaning of Texas Business & Commerce Code §17.45(4) and (10).

55. Defendants engaged in unconscionable actions or courses of action by representing to Plaintiffs that, as persons entrusted to handle Plaintiffs' financial affairs, they would perform investment advisory services for Plaintiffs, including

directing the investment and reinvestment of Plaintiffs' assets, in good faith, and with competence, honesty, efficiency, care, skill, prudence and diligence.

56. By such conduct Defendants took advantage of the lack of knowledge, ability, experience or capacity of Plaintiffs to Plaintiffs' detriment, to a grossly unfair degree. Defendants' conduct violated the Deceptive Trade Practices - Consumer Protection Act.

57. Defendants also violated the Deceptive Trade Practices - Consumer Protection Act by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not; representing that goods or services are of a particular standard, quality or grade, if they are of another; representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law; and failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

58. Defendants' conduct was committed knowingly. They were actually aware at the time of the conduct of the falsity, deception, and unfairness of the conduct about which Plaintiffs complain. Defendants are liable to Plaintiffs for

additional damages of up to three times the economic damages produced by their conduct, as permitted by the Deceptive Trade Practices - Consumer Protection Act.

59. Defendants' conduct was committed intentionally. Defendants had actual awareness of the falsity, deception or unfairness of the acts or practices coupled with the specific intent that Plaintiffs act in detrimental reliance on the falsity or in detrimental ignorance of the unfairness. Defendants are liable to Plaintiffs for additional damages of up to three times the economic damages produced by their conduct, as permitted by the Deceptive Trade Practices - Consumer Protection Act.

60. On October 4, 2004, Plaintiffs gave written notice to Defendants advising them of Plaintiffs' specific complaints and the amounts of Plaintiffs' specific damages, expenses and attorneys' fees reasonably incurred by Plaintiffs in asserting their claims against Defendants. A true and correct copy of the written notice is attached as Exhibit A and incorporated by reference as if fully copied and set forth at length.

### **DAMAGES**

61. As a direct and proximate result of the acts and omissions of Defendants, identified above, Plaintiff has suffered losses and incurred damages exceeding the minimum jurisdictional limits of the Court. This amount is comprised of (a) money improperly invested in Ameriprise securities; (b) lost

investment income; (c) losses on sales of securities; (d) management fees and expenses; and (e) attorney's fees incurred to date in the prosecution of these claims against Defendants.

62. The amounts set forth in the preceding paragraph were directly and proximately caused by Defendants' wrongful conduct as set forth above. Plaintiffs seek recovery of these amounts from Defendants, as well as the damages described below, all of which damages exceed the minimum jurisdictional limits of this Court.

#### **EXEMPLARY DAMAGES**

63. In addition to his actual damages, Plaintiffs also request punitive and exemplary damages for Defendants' fraud and grossly negligent conduct. Defendants' conduct was committed with an extreme degree of risk, and Defendants had actual, subjective awareness of the risk involved but nevertheless proceeded willfully, maliciously and with conscious indifference to Plaintiffs' rights, safety, or welfare. Accordingly, Plaintiffs seek separate awards of exemplary damages against Defendants in an amount equal to three times Plaintiffs' economic damages, plus their noneconomic damages.

#### **ATTORNEY'S FEES AND COURT COSTS**

64. In addition to the above-referenced damages, Plaintiffs are entitled to recover their attorney's fees and court costs from and against Defendants under

and pursuant to state law, including, without limitation, the DTPA, § 27.01 of the Texas Business & Commerce Code, the Texas Securities Act, the Texas Insurance Code and/or Section 38.001 et seq. of the Tex. Civ. Prac. & Rem. Code, plus further and additional awards of attorney's fees and court costs in the event of any appeals.

**JURY DEMAND**

65. Plaintiffs demand trial by jury.

WHEREFORE, Plaintiffs Darrell W. Williams and Diana M. Williams, respectfully request that upon trial of this action, Plaintiffs recover damages as requested above, plus attorneys' fees and costs of court, prejudgment and post judgment interest at the maximum lawful rates, and such additional relief to which they may be entitled.

Dated: February 9, 2006.

Respectfully submitted,



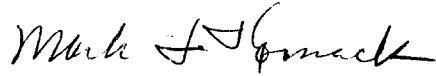
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ATTORNEY FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

On February 9, 2006, a true and correct copy of the foregoing Plaintiffs' First Amended Complaint was served by certified mail, return receipt requested, to Mr. S. David Smith, McGlinchey Stafford, PLLC, 1001 McKinney, Suite 1500, Houston, Texas 77002.



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Mark T. Womack

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