

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

ADVANCED MARKETING SERVICES, INC.,  
a Delaware corporation, *et al.*,  
  
Debtors.

Chapter 11

Case No. 06-11480 (CSS)

Jointly Administered

SIMON & SCHUSTER, INC., a New York corporation,  
  
Plaintiff,

- against -

ADVANCED MARKETING SERVICES, INC., a  
Delaware corporation,  
  
Defendant.

Adv. Pro. No. 07-\_\_\_\_\_ (CSS)

**COMPLAINT FOR RECLAMATION OF GOODS  
PURSUANT TO 11 U.S.C. § 546(c) AND RELATED RELIEF**

Simon & Schuster, Inc. ("Plaintiff"), a seller of goods to Advanced Marketing Services, Inc. ("Defendant"), brings this Complaint for Reclamation of Goods Pursuant to 11 U.S.C. § 546(c) and Related Relief (the "Complaint") against Defendant, and alleges as follows:

**JURISDICTIONAL ALLEGATIONS**

1. This adversary proceeding arises out of and is related to the above-captioned chapter 11 cases pending before the United States Bankruptcy Court for the District of Delaware (this "Court"). Therefore, this Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.
2. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

## **GENERAL ALLEGATIONS**

4. Plaintiff, a New York corporation with its principal place of business at 1230 Avenue of the Americas, New York, New York, is a global leader in the field of general interest publishing that provides a range of quality books and multimedia products across a wide variety of genres and formats.

5. Defendant, a Delaware corporation, is a wholesaler and distributor of books and other media.

6. On December 29, 2006 (the "Petition Date"), Defendant filed a petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

7. Within 45 days immediately before the Petition Date, Defendant received certain goods (the "Goods") that Plaintiff sold to Defendant. A summary of the Plaintiff's invoices for the Goods, which have an aggregate value of \$5,105,629.65, is attached as **Exhibit A** hereto.

8. Each of the Goods are clearly identified on the invoices attached as **Exhibit B**.

9. On December 29, 2006, Plaintiff sent a written demand for reclamation of goods to Defendant demanding the immediate return of the Goods to Plaintiff (the "Demand"). A copy of the Demand is attached as **Exhibit C**.

### **FIRST CAUSE OF ACTION (Reclamation of Goods – 11 U.S.C. § 546(c))**

10. Plaintiff repeats, realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 9 of the Complaint as though fully set forth in this first cause of action.

11. Defendant was insolvent at the time it received the Goods.

12. The Goods were sold to the Defendant in the ordinary course of Plaintiff's business.

13. By the Demand, Plaintiff demanded reclamation of the Goods from Defendant in writing:

- a. Not later than 45 days after the date of receipt of the Goods by the Defendant; or
- b. Not later than 20 days after the Petition Date, if the 45 day period expired after the Petition Date.

14. Based upon the foregoing, the Plaintiff is entitled to immediate reclamation of the Goods pursuant to section 546(c) of the Bankruptcy Code.

**SECOND CAUSE OF ACTION**  
**(Allowance and Payment - 11 U.S.C. § 503(b)(1))**

15. Plaintiff repeats, realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 14 of the Complaint as though fully set forth in this second cause of action.

16. Plaintiff has not received payment for any of the Goods.

17. Plaintiff is entitled to reclamation of the Goods.

18. To the extent that any of the Goods left the possession of Defendant after the commencement of Defendant's chapter 11 case (the "Distributed Goods"), Plaintiff is entitled to immediate payment for the Distributed Goods.

19. Based upon the foregoing, Plaintiff is entitled to allowance and immediate payment of an administrative claim pursuant section 503(b)(1) of the Bankruptcy Code equal to the value of the Distributed Goods.

**THIRD CAUSE OF ACTION**  
**(Allowance and Payment of Administrative Claim - 11 U.S.C. § 503(b)(9))**

20. Plaintiff repeats, realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 19 of the Complaint as though fully set forth in this third cause of action.

21. The Goods received by Defendant within the 20 days before the Petition Date (the “503(b)(9) Goods”), which have an aggregate value of \$2,146,126.50, are summarized on **Exhibit D** hereto, and are identified on the corresponding invoices attached as Exhibit B hereto.

22. The 503(b)(9) Goods were sold by the Plaintiff to the Defendant in the ordinary course of Plaintiff’s business.

23. Plaintiff has not received payment for any of the 503(b)(9) Goods.

24. Based upon the foregoing, Plaintiff is entitled to allowance and immediate payment of an administrative claim pursuant to section 503(b)(9) of the Bankruptcy Code in the aggregate amount of \$2,146,126.50.

**FOURTH CAUSE OF ACTION**  
**(Accounting)**

25. Plaintiff repeats, realleges and incorporates by reference herein the allegations contained in paragraphs 1 through 24 of the Complaint as though fully set forth in this fourth cause of action.

26. On information and belief, the Defendant remains in possession of a portion of the Goods (the “Unsold Goods”).

27. Plaintiff is entitled to reclamation of the Unsold Goods and allowance and immediate payment of an administrative claim for the value of the Distributed Goods.

28. Plaintiff has not received payment for any of the Goods and, despite requesting an accounting of the Goods, has not received such accounting from Defendant.

29. Based on the foregoing, an accounting is necessary to determine the extent of Plaintiff's administrative claim for the Distributed Goods and the extent of the Unsold Goods that are subject to reclamation.

**WHEREFORE**, Plaintiff requests that the Bankruptcy Court:

- a. Allow the Plaintiff to reclaim the Goods pursuant to section 546(c) of the Bankruptcy Code;
- b. Allow and compel immediate payment to the Plaintiff of an administrative claim for the value of the Distributed Goods pursuant to section 503(b)(1) of the Bankruptcy Code;
- c. Allow and compel immediate payment to the Plaintiff of an administrative claim for the amount of the 503(b)(9) Goods pursuant to section 503(b)(9) of the Bankruptcy Code to the extent not reclaimed;
- d. Compel Defendant to provide the Plaintiff with a comprehensive written accounting of the status and disposition of all of the Goods;
- e. Award Plaintiff its attorneys' fees, costs and other expenses incurred in this action to the extent permitted by law and contract; and

- f. Grant the Plaintiff such other and further relief as the Court deems just and appropriate.

Dated: January 5, 2007

SAUL EWING LLP

By:  \_\_\_\_\_

Mark Minuti (No. 2659)

Jeremy W. Ryan (No. 4057)

222 Delaware Avenue, Suite 1200

P.O. Box 1266

Wilmington, DE 19899

Tel.: (302) 421-6840

Fax: (302) 421-5873

- and-

KELLEY DRYE & WARREN LLP

Craig A. Wolfe

Robert L. LeHane

101 Park Avenue

New York, NY 10178

Tel: (212) 808-7800

Fax: (212) 808-7897

Co-Counsel to Plaintiff

Simon & Schuster, Inc.

## EXHIBIT A

**Simon Schuster  
AMS Reclamation Claim**

Invoice #	SHIP DATE	Invoice Amount
3939981	111506	\$136,935.00
3939977	111506	\$1,275.00
3961173	111506	\$62,670.38
3985273	111606	\$19,706.40
3985272	111706	\$1,407.60
3993410	111706	\$1,069.20
3992804	111706	\$56,185.68
3992803	111706	\$5,177.52
3992802	111706	\$18,600.72
3909890	112006	\$169,666.29
3909889	112006	\$20,645.82
3918593	112006	\$51,000.00
3940685	112006	\$41,310.00
3940156	112006	\$27,030.00
3940155	112006	\$14,790.00
3993822	112006	\$3,060.00
4003715	112006	\$141,671.40
4003714	112006	\$11,672.70
4003713	112006	\$38,535.90
4000456	112006	\$10,608.00
4000452	112006	\$4,488.00
3939980	112106	\$13,005.00
3961171	112106	\$14,555.70
3909888	112206	\$107,728.83
3933882	112206	\$209,916.00
3944857	112206	\$63,750.00
3940154	112206	\$11,220.00
3961172	112206	\$3,638.93
3998587	112206	\$63,750.00
4012497	112806	\$31,875.00
4029626	112806	\$2,392.00
3933500	113006	\$36,250.50
3933499	113006	\$31,971.42
3933481	113006	\$4,867.20
4038813	113006	\$598.00
3779614	120106	\$13,135.56
3779425	120106	\$141,806.52
4043374	120106	\$12,199.20
4046865	120106	\$44,880.00
4060024	120406	\$13,747.05
3451037	120506	\$25,779.60
4059738	120506	\$95,625.00
4066701	120506	\$110,529.36
4066700	120506	\$10,789.20
4066699	120506	\$28,531.44
3992647	120606	\$28,502.88
4083414	120606	\$1,439.10
3779273	120706	\$137,329.08
3960654	120706	\$142,147.20
3960575	120706	\$132,600.00
3960656	120806	\$462,508.80
3960655	120806	\$58,344.00
3960623	120806	\$3,447.60
4083413	120806	\$959.40
4072695	120806	\$26,250.00
4072695	120806	\$3,053.88



**Simon Schuster  
AMS Reclamation Claim**

Invoice #	SHIP DATE	Invoice Amount
4065593	120806	\$254.49
4090550	120806	\$3,978.00
4090537	120806	\$28,641.60
4090533	120806	\$100,776.00
4116606	121206	\$86,313.60
4109660	121206	\$14,366.70
4109659	121206	\$22,979.14
4108178	121206	\$230,349.42
4108177	121206	\$28,591.38
3451034	121306	\$7,700.40
3451036	121306	\$3,013.20
4119013	121306	\$95,370.00
4118989	121306	\$125,460.00
4118987	121306	\$34,170.00
4047181	121406	\$94,825.08
4047180	121406	\$11,748.24
4047179	121406	\$42,317.64
4046214	121406	\$138,341.52
4046213	121406	\$14,505.48
4046212	121406	\$45,434.52
4120032	121406	\$750.00
4126362	121506	\$6,099.60
4124882	121506	\$13,700.64
4124882	121506	\$8,568.00
4124882	121506	\$3,825.00
4124882	121506	\$2,240.00
4132488	121506	\$259,344.00
4132487	121506	\$26,352.00
4132061	121506	\$72,720.00
4161492	121906	\$132,844.80
4161491	121906	\$17,727.60
4161490	121906	\$51,387.60
4161480	121906	\$13,234.50
4161479	121906	\$7,940.70
4161478	121906	\$25,145.55
4173443	122006	\$800.00
4157202	122006	\$14,555.70
4151559	122006	\$3,598.49
4174428	122206	\$53,233.20
4163285	122206	\$3,060.00
4184102	122206	\$4,039.20
4184101	122206	\$49,592.40
4184100	122206	\$13,688.40
4046119	122606	\$7,940.70
4173216	122606	\$900.00
4162881	122606	\$15,300.00
4162880	122606	\$41,850.00
4183286	122606	\$1,584.00
4053050	122806	\$132,345.00
4204720	122806	\$537.26
3991017	122906	\$24,935.04
3991017	122906	\$20,134.80
4064024	122906	\$19,890.00
	<b>Total</b>	<b>\$5,105,629.65</b>

**EXHIBIT B**

**Copies of Invoices - filed under seal**

# **EXHIBIT C**



**Simon & Schuster**  
A CBS COMPANY

100 Front Street  
Riverside, NJ 08075  
Phone : (856)481-6500

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**DEMAND FOR RECLAMATION OF GOODS**

December 29, 2006

**To: Curt Smith/Deb Riden**

Fax: 858-452-2167  
Advanced Marketing Services, Inc.  
5880 Oberlin Drive  
San Diego, California 92121  
Attention: Both the Legal and Accounts Payable Departments

Dear Curt:

Advanced Marketing Services, Inc. (the "Debtor") has received books and related goods (collectively, the "Goods") from Simon & Schuster and/or certain of the entities for which Simon & Schuster serves as a billing and distribution agent, which include, without limitation, the entities on the attached list. Simon & Schuster and such entities are collectively referred to herein as the "Sellers."

The Debtor received the Goods during the period of November 14, 2006, 2006 through and including December 28, 2006 (the "Reclamation Period"). Copies of the invoices for the Goods will be provided subsequently. No part of the purchase price of the Goods has been paid to Sellers.

Sellers have learned that the Debtor received the Goods on credit while the Debtor was insolvent, and that on December 29, 2006, the Debtor filed a petition for relief under the Bankruptcy Code.

Reclamation demand is hereby made pursuant to section 546(c) of the Bankruptcy Code (and applicable state law), for the immediate return of the above-referenced Goods, as well as any other goods received by the Debtor from Sellers during the Reclamation Period. Further, the Debtor is admonished to segregate and refrain from using, commingling or otherwise converting the Goods in the course of the Debtor's business or otherwise.

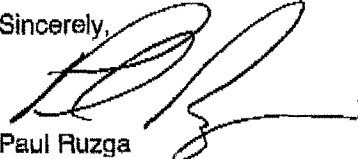
Nothing contained in this letter shall be a waiver of any rights, remedies and interests of Sellers.

Please confirm promptly that the Debtor will honor this demand, and advise the undersigned when and where Sellers may arrange for the immediate return of the Goods.

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Please forward all future communications to Paul Ruzga, Simon & Schuster, Inc., 100 Front Street, Riverside, New Jersey 08075, (856) 824-2003 (tel), (856) 324-2199 (fax), paul.ruzga@simonandschuster.com (e-mail) with a copy to Craig A. Wolfe, Esq. of Kelley Drye & Warren LLP, counsel to Simon & Schuster, Inc., at 101 Park Avenue, New York, New York 10178, (212) 808-5073 (tel), (212) 808-7897 (fax), [cwolfe@kelleydrye.com](mailto:cwolfe@kelleydrye.com) (e-mail).

Sincerely,



Paul Ruzga  
Director of Customer Financial Services

cc:

**COUNSEL FOR THE DEBTOR**

Mark D. Collins  
Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Fax: (302) 651-7701

Confirmation Report - Memory Send

Page : 001  
Date & Time: 12-29-06 03:39pm  
Line 1 : 8568242290  
Line 2 :  
Machine ID : Simon & Schuster CFS

Job number : 906  
Date : 12-29 03:39pm  
To : 918584522167  
Number of pages : 002  
Start time : 12-29 03:39pm  
End time : 12-29 03:39pm  
Pages sent : 002  
Status : OK  
Job number : 906

\*\*\* SEND SUCCESSFUL \*\*\*



100 Front Street  
Riverside, NJ 08075  
Phone: (856)481-8000

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Nothing contained in this letter shall be a waiver of any rights, remedies and interests of Sellers.

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## EXHIBIT D

**Simon Schuster AMS  
20 Day 503(b)(9) Claim**

Invoice #	SHIP DATE	Invoice Amount
4116606	121206	\$86,313.60
4109660	121206	\$14,366.70
4109659	121206	\$22,979.14
4108178	121206	\$230,349.42
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4046119	122606	\$7,940.70
4173216	122606	\$900.00
4162881	122606	\$15,300.00
4162880	122606	\$41,850.00
4183286	122606	\$1,584.00
4053050	122806	\$132,345.00
4204720	122806	\$537.26
3991017	122906	\$24,935.04
3991017	122906	\$20,134.80
4064024	122906	\$19,890.00
<b>Total</b>		<b>\$2,045,350.50</b>



UNITED STATES BANKRUPTCY COURT  
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In re:

ADVANCED MARKETING SERVICES, INC., *et al.*,

Debtors.

SIMON & SCHUSTER, INC.,

Plaintiff,

v.

ADVANCED MARKETING SERVICES, INC.,

Defendant.

Chapter 11

Case No. 06-11480 (CSS)

Jointly Administered

Adversary Proceeding No. 07-\_\_\_\_ (CS)

**NOTICE OF DISPUTE RESOLUTION ALTERNATIVES**

As party to litigation you have a right to adjudication of your matter by a judge of this Court. Settlement of your case, however, can often produce a resolution more quickly than appearing before a judge. Additionally, settlement can also reduce the expense, inconvenience, and uncertainty of litigation.

There are dispute resolution structures, other than litigation, that can lead to resolving your case. Alternative Dispute Resolution (ADR) is offered through a program established by this Court. The use of these services are often productive and effective in settling disputes. **The purpose of this Notice is to furnish general information about ADR.**

The ADR structures used most often are mediation, early-neutral evaluation, mediation/arbitration and arbitration. In each, the process is presided over by an impartial third party, called the "neutral".

In mediation and early neutral evaluation, an experienced neutral has no power to impose a settlement on you. It fosters an environment where offers can be discussed and exchanged. In the process, together, you and your attorney will be involved in weighing settlement proposals and crafting a settlement. The Court in its Local Rules requires all ADR processes, except threat of a potential criminal action, to be confidential. You will not be prejudiced in the event a settlement is not achieved because the presiding judge will not be advised of the content of any of your settlement discussions.

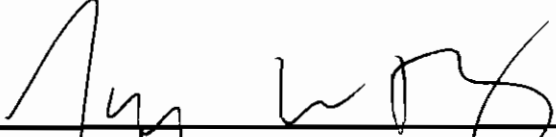
Mediation/arbitration is a process where you submit to mediation and, if it is unsuccessful, agree that the mediator will act as an arbitrator. At that point, the process is the same as arbitration. You, through your counsel, will present evidence to a neutral, who issues a decision. If the matter in controversy arises in the main bankruptcy case or arises from a subsidiary issue in an adversary proceeding, the arbitration, though voluntary, may be binding. If a party requests *de novo* review of an arbitration award, the judge will rehear the case.

**Your attorney can provide you with additional information about ADR and advise you as to whether and when ADR might be helpful in your case.**

Dated: January 5, 2007

/s/ David D. Bird  
Clerk of Court

<b>ADVERSARY PROCEEDING COVER SHEET</b> <small>(Instructions on Reverse)</small>		<b>ADVERSARY PROCEEDING NUMBER</b> <small>(Court Use Only)</small>
<b>PLAINTIFFS</b> SIMON & SCHUSTER, INC.		<b>DEFENDANTS</b> ADVANCED MARKETING SERVICES, INC.
ATTORNEYS (Firm Name, Address, and Telephone No.) <b>Mark Minuti, Esq.</b> <b>Craig A. Wolfe, Esq.</b> <b>Jeremy W. Ryan, Esq.</b> <b>Robert L. LeHane, Esq.</b> <b>Saul Ewing LLP</b> <b>Kelley Drye &amp; Warren</b> <b>222 Delaware Ave., Ste. 1200</b> <b>101 Park Avenue</b> <b>P.O. Box 1266</b> <b>New York, NY 10178</b> <b>Wilmington, DE 19899</b> <b>(212) 808-7800</b> <b>(302) 421-6840</b>		ATTORNEYS (If Known) <b>Mark D. Collins, Esq.</b> <b>Sussanne S. Uhland, Esq.</b> <b>Paul N. Heath, Esq.</b> <b>Austin K. Barron, Esq.</b> <b>Chun I. Jang, Esq.</b> <b>Alexandra B. Feldman, Esq.</b> <b>Richards, Layton &amp; Finger</b> <b>O'Melveny &amp; Myers LLP</b> <b>One Rodney Square</b> <b>275 Battery Street</b> <b>P.O. Box 551</b> <b>San Francisco, CA 94111</b> <b>Wilmington, DE 19899</b> <b>(415) 984-8700</b> <b>(302) 651-7700</b>
<b>PARTY</b> (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		<b>PARTY</b> (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) By the complaint, plaintiff seeks reclamation pursuant to 11 U.S.C. Section 546(c) and related relief.		
<b>NATURE OF SUIT</b> <small>(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)</small>		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11 – Reovery of money/property - §542 turnover of property <input type="checkbox"/> 12 – Reovery of money/property - §547 preference <input type="checkbox"/> 13 – Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14 – Recovery of money/property – other <b>FRBP 7001(2) – Validity, Priority of Extent of Lien</b> <input type="checkbox"/> 21 – Validity, priority or extent of lien or other interest in property <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31 – Approval of sale of property of estate and of a co-owner - §363(h) <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41 – Objection / rcvocation of discharge - §727(c), (d), (e) <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51 – Revocation of confirmation <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66 – Dischargeability - §523(a)(1), (14), (14A), priority tax claims <input type="checkbox"/> 62 – Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67 – Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61 – Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68 – Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63 – Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64 – Dischargeability - §523(a)(15), divorce/sep property settlement/decree <input type="checkbox"/> 65 – Dischargeability - other <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71 – Injunctive relief – reinstatement of stay <input checked="" type="checkbox"/> 72 – Injunctive relief - other <b>FRBP 7001(8) – Subordination of Claim or Interest</b> <input type="checkbox"/> 81 – Subordination of claim or interest <b>FRBP 7001(9) – Declaratory Judgment</b> <input type="checkbox"/> 91 – Declaratory judgment <b>FRBP 7001(10) –Determination of Removed Action</b> <input type="checkbox"/> 01 – Determination of removed claim or cause <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa. <i>et seq.</i> <input checked="" type="checkbox"/> 02 – Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ At least \$2,146,125.50	
Other Relief Sought <b>Reclamation under 11 U.S.C. § 546(c) and an Accounting.</b>		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR <b>Advanced Marketing Services, Inc.</b>		BANKRUPTCY CASE NO. <b>06-11480</b>
DISTRICT IN WHICH CASE IS PENDING <b>Delaware</b>	DIVISIONAL OFFICE <b>N/A</b>	NAME OF JUDGE <b>Hon. Christopher S. Sontchi</b>
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE <b>January 5, 2007</b>	PRINT NAME OF ATTORNEY (OR PLAINTIFF) <b>Jeremy W. Ryan (No. 4057)</b>	