

**NAME SEARCHED: Jeepers, Inc**

PWM BIS-RESEARCH performed due diligence research in accordance with the standards set by AML Compliance for your business. We completed thorough searches on your subject name(s) in the required databases and have attached the search results under the correct heading below. Significant negative media results may require escalation to senior business, Legal and Compliance management. Also, all accounts involving PEPs must be escalated.

Search:	Result:	Click here for results:	Reviewer Comments (as necessary):
RDC	<input checked="" type="checkbox"/> No Hit <input type="checkbox"/> Not Required <input type="checkbox"/> Hit	I. <a href="#">RDC Results</a>	No RDC alert (Please see attached)
PCR	<input checked="" type="checkbox"/> No Hit <input type="checkbox"/> Not Required <input type="checkbox"/> Hit	II. <a href="#">PCR Results</a>	No PCR alert (Please see attached)
BIS	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <input type="checkbox"/> Not Required	III. <a href="#">Negative Media</a>	There was no information found
		IV. <a href="#">Non-Negative Media</a>	There was no information found
		V. <a href="#">Other Language Media</a>	There was no information found
D&B	Results? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required	VI. <a href="#">D&amp;B</a>	Result Found(please see attached)
Smartlinx	Results? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required	VII. <a href="#">Smartlinx</a>	Result Found(please see attached)
Court Cases	<input checked="" type="checkbox"/> Review by Legal May be Required <input type="checkbox"/> No Results <input type="checkbox"/> Search not required	VIII. <a href="#">Court Cases</a>	Result Found(please see attached)

Prepared by: Urvashi Lavania Date:09/03/2013  
Research Analyst

**Instructions:**

1. Review and confirm that all results are returned for your client.
2. Please note that you are still required to perform any Martindale-Hubbell search (if applicable) on each search subject. We have attached the web link below for your convenience: [Martindale-Hubbellhttp://www.martindale.com/xp/Martindale/home.xml](http://www.martindale.com/xp/Martindale/home.xml)
3. As needed, provide comment for any negative results.
4. If applicable, please obtain clearance from Compliance for all alerts.
5. Save any changes you make to this document and attach file to your KYC.

Please note: Submission of a signed KYC is your confirmation that you have fully reviewed the research documents.

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SDNY\_GM\_00054620

**OFAC RESULTS**

**RDC:**

**11526390 No Match Found 6716633 Jeepers, Inc Country:Virgin Islands, U.s.**

**PCR:**

C20130918689934 Jeepers, Inc 6716633 NCA customised Auto-Closed No-Hit 04/09/2013

**BIS RESULTS**

**Negative Media:**

There was no information found

**Non-Negative Media:**

There was no information found

**Other Language Media:**

There was no information found

**Public Records:**

**1 OF 3 RECORD(S)**

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**Subject Summary**

Name	Address	Phone	County/FIPS
JEEPERS, INC.	60 HICKORY DR WALTHAM, MA 02451-1013	[REDACTED]	[REDACTED]

**Name Variations/DBAs**

#	Name Variations	-
1.	JEEPERAL, INC.	
2.	JEEPERS FRANCHISE INC.	
3.	JEEPERS HOLDING CORP.	
4.	JEEPERS INCORPORATED	
5.	JEEPERSI, INC.	
6.	JEEPERSL, INC.	

**Phone Summary - 20 records found**

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**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017445  
EFTA\_00165191

EFTA01295414

## # Telephone Number

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## Addresses - 17 records found

#	Address	Dates	County	MSA
1.	60 HICKORY DR WALTHAM, MA 02451	12/15/1998 -	MIDDLESEX	Boston, MA-NH - 1120
2.	60 HICKORY DR 5 WALTHAM, MA 02451	3/1996 -	MIDDLESEX	Boston, MA-NH - 1120
3.	5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228	9/1992 -	BALTIMORE	Baltimore, MD - 0720
4.	800 SOUTH ST 355 WALTHAM, MA 02453	2/19/1991 -	MIDDLESEX	Boston, MA-NH - 1120
5.	800 SOUTH ST WALTHAM, MA 02453	6/10/2004 -	MIDDLESEX	Boston, MA-NH - 1120
6.	800 SOUTH ST 480 WALTHAM, MA 02453	11/28/2005 -	MIDDLESEX	Boston, MA-NH - 1120
7.	800 SOUTH ST 35 WALTHAM, MA 02453	2002 -	MIDDLESEX	Boston, MA-NH - 1120
8.	63 SOUTH AVE BURLINGTON, MA 01803	2/26/1998 -	MIDDLESEX	Boston, MA-NH - 1120
9.	8321 CONCORD MILLS BLVD CONCORD, NC 28027	1/17/1999 -	CABARRUS	Charlotte- Gastonia-Rock Hill, NC-SC - 1520
10.	2525 CLEANLEIGH DR PARKVILLE, MD 21234	9/1992 -	BALTIMORE	Baltimore, MD - 0720

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DB-SDNY-0017446

EFTA\_00165192

EFTA01295415

#	Address	Dates	County	MSA
11.	166 LAFAYETTE RD SALISBURY, MA 01952	2/26/2010 11/25/1998 -	ESSEX	Boston, MA-NH - 1120
12.	6711 RITCHIE HWY GLEN BURNIE, MD 21061	7/2013 9/1992 -	ANNE ARUNDEL	Baltimore, MD - 0720
13.	WALTHAM, MA 02451	1/22/2013 3/12/2004 -	MIDDLESEX	Boston, MA-NH - 1120
14.	20070 W 151ST ST OLATHE, KS 66061	6/7/2006 5/1997 -	JOHNSON	Kansas City, MO- KS - 3760
15.	17677 TORRENCE AVE LANSING, IL 60438	10/24/2011 11/1998 -	COOK	Chicago, IL - 1600
16.	PO BOX 8238 CORPUS CHRISTI, TX 78468	1/2008 6/2006 -	NUECES	Corpus Christi, TX - 1880
17.	SOUTH ST WALTHAM, MA 02453	10/17/2006 2/18/2011 -	MIDDLESEX	-
		8/22/2012		

### Profile Information - 9 records found

#### 1: JEEPERS FRANCHISE INC.

Company Name: JEEPERS FRANCHISE INC.  
Date Of Incorporation: 6/10/2004  
State Of Incorporation: MA  
Charter Number: 000869922  
Status Of Incorporation: INACTIVE

#### 2: JEEPERS FRANCHISE INC.

Company Name: JEEPERS FRANCHISE INC.  
Date Of Incorporation: 6/10/2004  
State Of Incorporation: MA  
Charter Number: 000869922  
Status Of Incorporation: INACTIVE

#### 3: JEEPERS FRANCHISE INC.

Company Name: JEEPERS FRANCHISE INC.  
Date Of Incorporation: 6/10/2004  
State Of Incorporation: MA  
Charter Number: 000869922  
Status Of Incorporation: INACTIVE

#### 4: JEEPERS: INC.

Company Name: JEEPERS: INC.  
Date Of Incorporation: 3/23/2000  
Charter Number: 000698836  
Status Of Incorporation: INACTIVE

#### 5: JEEPERS: INC.

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**5: JEEPERS: INC.**

Company Name: JEEPERS: INC.  
 Date Of Incorporation: 3/23/2000  
 Charter Number: 000698836  
 Status Of Incorporation: INACTIVE

**6: JEEPERS: INC.**

Company Name: JEEPERS: INC.  
 Date Of Incorporation: 3/23/2000  
 Charter Number: 000698836  
 Status Of Incorporation: INACTIVE

**7: JEEPERS HOLDING CORP.**

Company Name: JEEPERS HOLDING CORP.  
 Date Of Incorporation: 12/15/1998  
 State Of Incorporation: MA  
 Charter Number: 000639586  
 Status Of Incorporation: INACTIVE

**8: JEEPERS HOLDING CORP.**

Company Name: JEEPERS HOLDING CORP.  
 Date Of Incorporation: 12/15/1998  
 State Of Incorporation: MA  
 Charter Number: 000639586  
 Status Of Incorporation: INACTIVE

**9: JEEPERS HOLDING CORP.**

Company Name: JEEPERS HOLDING CORP.  
 Date Of Incorporation: 12/15/1998  
 State Of Incorporation: MA  
 Charter Number: 000639586  
 Status Of Incorporation: INACTIVE

**Executives - 15 records found**

#	Name	Titles
1.	ALMARAZ, JENNIE	TREASURER, CONTROLLER, CONTROLLER
2.	ALMARAZ, JENNIE	TREASURER
3.	BARDURY, NADINE	CEO, CEO, PRESIDENT, PRESIDENT
4.	CONNOLLY, MARY-ELISE	PRESIDENT, PRESIDENT, SECRETARY
5.	CONNOLLY, MARY-ELISE	SECRETARY
6.	DAVIS, JOMATHAN	OWNER, OWNER
7.	DEVINE, JOHN	PRESIDENT
8.	EAGAN, PAT	MANAGER
9.	EL, HAGE	CHAIRMAN O
10.	ELHAGE, NABIL	PRESIDENT, TREASURER
11.	EL-HAGE, NABIL	OWNER, PRESIDENT, PRESIDENT, PRESIDENT, TREASURER
12.	HAGE, EL	CHAIRMAN O
13.	HAGE, NABIL E	PRESIDENT
14.	MARSH, NORMAN	HUMAN RESOURCES EXECUTIVE, SALES EXECUTIVE, MANAGER
15.	SANGINARIO, KENNETH J	TREASURER

**Registered Agents - 3 records found**

#	Name	Address
1.	C T CORPORATION SYSTEM	155 FEDERAL ST STE 700 BOSTON, MA 02110-1727
2.	MARYELISE CONNOLLY	800 SOUTH ST STE 355 WALTHAM, MA 02453-1457
3.	NADINE BARDURY	800 SOUTH ST STE 355 WALTHAM, MA 02453-

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# Name Address  
1457

**Industry Information - 9 records found**

**Industry Numbers**

SIC Codes: 5511 Car & Truck Dealers, New & Used  
5621 WOMENS READY-TO-WEAR STORES  
5812 Restaurants  
5900 MISCELLANEOUS RETAIL STORES  
7929 ENTERTAINERS & ENTERTAINMENT GRPS  
7993 Amusement Devices, Coin-Operated  
7996 Amusement Parks  
7999 Amusement & Recreation Services, N  
8351 Child Day Care Services

**Company ID Numbers - 6 records found**

**Company ID Numbers**

FEINs: [REDACTED]

Sec. of State Charter No(s): MA, 000639586  
MA, 000698836  
MA, 000869922

**Judgments and Liens - 25 records found**

**1: MD Judgments and Liens Filings**

**Debtor Information**

Original Name: JEEPERS  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS  
Tax Id: [REDACTED]

**Debtor Information**

Original Name: JEEPERS OF MD INC  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS OF MD INC

**Creditor Information**

Name: STATE OF MARYLAND

**Filing Information**

Jurisdiction: MD  
Amount: \$15,425  
Original Filing Date: 5/8/2008

**Filing 1**

Number: 24L08003730  
Type: STATE TAX LIEN  
Book: 32  
Page: 73  
Agency: BALTIMORE CITY CIRCUIT COURT  
Agency State: MD  
Agency County: BALTIMORE (CITY)

**2: OH Judgments and Liens Filings**

**Debtor Information**

Original Name: HERD, JOEY  
Address: 800 SOUTH ST STE WALTHAM, MA 02453-1478

**Debtor**

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**2: OH Judgments and Liens Filings**

Name: HERD, JOEY

**Debtor Information**

Original Name: JEEPERS

Address: 800 SOUTH ST STE WALTHAM, MA 02453-1478

**Debtor**

Company Name: JEEPERS

Tax Id: [REDACTED]

**Creditor Information**

Name: VALPAK OF CLEVELAND

**Filing Information**

Jurisdiction: OH

Amount: \$846

Original Filing Date: 12/28/2006

**Filing 1**

Number: 06CVI03370

Type: SMALL CLAIMS JUDGMENT

Agency: EUCLID MUNICIPAL

Agency State: OH

Agency County: CUYAHOGA

**3: MA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC

Address: 800 SOUTH ST STE 480 WALTHAM, MA 02453-1491

**Debtor**

Company Name: JEEPERS INC

Tax Id: [REDACTED]

**Creditor Information**

Name: FERRARO FOODS INC

**Filing Information**

Jurisdiction: MA

Amount: \$82,793

Original Filing Date: 9/26/2006

**Filing 1**

Number: 200651CV000271

Type: CIVIL JUDGMENT

Agency: WALTHAM DIVISION DISTRICT COURT #51

Agency State: MA

Agency County: MIDDLESEX

**4: MD Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS

Address: 800 SOUTH ST WALTHAM, MA 02453-1478

**Debtor**

Company Name: JEEPERS

Tax Id: [REDACTED]

**Debtor Information**

Original Name: JEEPERS OF MD INC

Address: 800 SOUTH ST WALTHAM, MA 02453-1478

**Debtor**

Company Name: JEEPERS OF MD INC

**Creditor Information**

Name: STATE OF MARYLAND

**Filing Information**

Jurisdiction: MD

Amount: \$158,266.01

Original Filing Date: 8/31/2006

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DB-SDNY-0017450

EFTA\_00165196

EFTA01295419

**4: MD Judgments and Liens Filings**

Case Number: SL-06005615-2006-  
 Status: UPDATES MAY BE PRESENT ELSEWHERE IN THIS REPORT; CHECK  
 THE COURT FOR THE CURRENT STATUS

**Filing 1**

Number: 06-5615  
 Type: STATE TAX LIEN  
 Agency: MARYLAND CIRCUIT COURT  
 Agency State: MD  
 Agency County: BALT CITY

**5: MA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 800 SOUTH ST WALTHAM, MA 02453-1478

**Debtor**

Company Name: JEEPERS INC

Tax Id: [REDACTED]

**Creditor Information**

Name: TUDOR INSURANCE CO

**Filing Information**

Jurisdiction: MA  
 Amount: \$19,924  
 Original Filing Date: 6/12/2006

**Filing 1**

Number: 200651CV000008  
 Type: CIVIL JUDGMENT  
 Agency: WALTHAM DIVISION DISTRICT COURT #51  
 Agency State: MA  
 Agency County: MIDDLESEX

**6: MA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 800 SOUTH ST STE 480 WALTHAM, MA 02453-1491

**Debtor**

Company Name: JEEPERS INC

Tax Id: [REDACTED]

**Creditor Information**

Name: UNIQUE INDUSTRIES INC

**Filing Information**

Jurisdiction: MA  
 Amount: \$9,369  
 Original Filing Date: 6/6/2006

**Filing 1**

Number: 200651CV000267  
 Type: CIVIL JUDGMENT  
 Agency: WALTHAM DIVISION DISTRICT COURT #51  
 Agency State: MA  
 Agency County: MIDDLESEX

**7: PA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS  
 Address: 8321 CONCORD MILLS BLVD CONCORD, NC 28027-6460

**Debtor**

Company Name: JEEPERS

**Creditor Information**

Name: SLUSH PUPPIE TRI STATE, INC.

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DB-SDNY-0017451

EFTA\_00165197

EFTA01295420

**7: PA Judgments and Liens Filings****Filing Information**

Jurisdiction: PA  
 Amount: \$650  
 Original Filing Date: 2/22/2006

**Filing 1**

Number: CV000006906  
 Type: CIVIL NEW FILING  
 Agency: BEAVER CTY DIST JUSTICE-36-3-03  
 Agency State: PA  
 Agency County: BEAVER

**8: PA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS  
 Address: 8321 CONCORD MILLS BLVD CONCORD, NC 28027-6460

**Debtor**

Company Name: JEEPERS

**Creditor Information**

Name: SLUSH PUPPIE TRI STATE INC

**Filing Information**

Jurisdiction: PA  
 Original Filing Date: 2/22/2006

Release Date: 5/23/2006

**Filing 1**

Number: CV000006906  
 Type: CIVIL DISMISSAL  
 Agency: BEAVER CTY DIST JUSTICE-36-3-03  
 Agency State: PA  
 Agency County: BEAVER

**9: PA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS  
 Address: 8321 CONCORD MILLS BLVD CONCORD, NC 28027-6460

**Debtor**

Company Name: JEEPERS

**Creditor Information**

Name: SLUSH PUPPIE TRI STA , TE , INC.

**Filing Information**

Jurisdiction: PA  
 Amount: \$650.67  
 Original Filing Date: 2/22/2006

Case Number: CV-00000069-2006-VG

Status: UPDATES MAY BE PRESENT ELSEWHERE IN THIS REPORT; CHECK THE COURT FOR THE CURRENT STATUS

**Filing 1**

Number: CV-0000069-06  
 Agency State: PA  
 Agency County: BEAVER

**10: MD Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS OF INC  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS OF INC

Tax Id: [REDACTED]

**Debtor Information**

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DB-SDNY-0017452

EFTA\_00165198

EFTA01295421

**10: MD Judgments and Liens Filings**

**Original Name:** JUNGLE JIMS PLAYLANDS SVCORP TRU  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

**Company Name:** JUNGLE JIMS PLAYLANDS SVCORP TRU

**Creditor Information**

**Name:** PR GEORGES CO MD

**Filing Information**

**Jurisdiction:** MD  
**Amount:** \$17,947  
**Original Filing Date:** 12/14/2005

**Release Date:** 11/14/2011

**Filing 1**

**Number:** 050200276982005  
**Type:** SMALL CLAIMS JUDGMENT RELEASE  
**Agency:** PRINCE GEORGES DISTRICT COURT  
**Agency State:** MD  
**Agency County:** PRINCE GEORGES

**11: NC Judgments and Liens Filings****Debtor Information**

**Original Name:** JEEPERS  
**Address:** 800 SOUTH ST STE 480 WALTHAM, MA 02453-1491

**Debtor**

**Company Name:** JEEPERS

**Tax Id:** [REDACTED]

**Debtor Information**

**Original Name:** JEEPERS OF GASTONIA INC  
**Address:** 800 SOUTH ST STE 480 WALTHAM, MA 02453-1491

**Debtor**

**Company Name:** JEEPERS OF GASTONIA INC

**Tax Id:** [REDACTED]

**Creditor Information**

**Name:** STATE OF NORTH CAROLINA

**Filing Information**

**Jurisdiction:** NC  
**Amount:** \$569  
**Original Filing Number:** 2005M001005  
**Original Filing Date:** 11/28/2005  
**Release Date:** 3/2/2006

**Filing 1**

**Number:** 2005M001005  
**Type:** STATE TAX LIEN RELEASE  
**Agency:** GASTON COUNTY SUPERIOR COURT  
**Agency State:** NC  
**Agency County:** GASTON

**12: MD Judgments and Liens Filings****Debtor Information**

**Original Name:** JEEPERS OF INC  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

**Company Name:** JEEPERS OF INC

**Tax Id:** [REDACTED]

**Creditor Information**

**Name:** PR GEORGES CO MD

**Filing Information**

**Jurisdiction:** MD  
**Amount:** \$16,265  
**Original Filing Date:** 9/7/2005

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**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017453

EFTA\_00165199

EFTA01295422

**12: MD Judgments and Liens Filings****Filing 1**

Number: 050200276982005  
 Type: CIVIL NEW FILING  
 Agency: PRINCE GEORGES DISTRICT COURT  
 Agency State: MD  
 Agency County: PRINCE GEORGES

**13: OH Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS INC

Tax Id: [REDACTED]

**Creditor Information**

Name: CDC RANDALL PARK MALL TRUST

**Filing Information**

Jurisdiction: OH  
 Amount: \$250,000  
 Original Filing Date: 10/17/2003

**Filing 1**

Number: CV03501132  
 Type: CIVIL JUDGMENT  
 Agency: CUYAHOGA COUNTY COMMON PLEAS  
 Agency State: OH  
 Agency County: CUYAHOGA

**14: FL Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS INC

Tax Id: [REDACTED]

**Creditor Information**

Name: PLAY TIME TOYS INC

**Filing Information**

Jurisdiction: FL  
 Amount: \$7,249  
 Original Filing Date: 2/20/2003

**Filing 1**

Number: CCO035273  
 Type: CIVIL JUDGMENT  
 Book: 6805  
 Page: 4455  
 Agency: ORANGE COUNTY CIRCUIT COURT  
 Agency State: FL  
 Agency County: ORANGE

**15: FL Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS INC

Tax Id: [REDACTED]

**Creditor Information**

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**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017454

EFTA\_00165200

EFTA01295423

**15: FL Judgments and Liens Filings**

Name: PLAY TIME TOYS INC  
**Filing Information**

Jurisdiction: FL  
 Original Filing Date: 1/3/2003

**Filing 1**

Number: 48CC2003000052  
 Type: CIVIL NEW FILING  
 Agency: ORANGE COUNTY CIRCUIT COURT  
 Agency State: FL  
 Agency County: ORANGE

**16: SANGAMON COUNTY, ILLINOIS Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS 800 SOUTH ST STE 355 WALTHAM, MA 02453 FEIN:04-3331674  
 JEEPERS OF ILLINOIS INC 800 SOUTH ST STE 355 WALTHAM, MA  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS  
 Tax Id: [REDACTED]

**Debtor Information**

Original Name: JEEPERS 800 SOUTH ST STE 355 WALTHAM, MA 02453 FEIN:04-3331674  
 JEEPERS OF ILLINOIS INC 800 SOUTH ST STE 355 WALTHAM, MA  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS OF ILLINOIS INC  
 Tax Id: [REDACTED]

**Filing Information**

Jurisdiction: SANGAMON COUNTY, ILLINOIS  
 Amount: \$208,826.79  
 Original Filing Date: 5/2/2002  
 Filing State: IL  
 Case Number: 2004R13499

**Filing 1**

Number: 2002R23728  
 Date: 3/22/2004  
 Type: ILLINOIS TAX RELEASE  
 Agency State: IL

**17: IL Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS  
 Tax Id: [REDACTED]

**Debtor Information**

Original Name: JEEPERS OF IL INC  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS OF IL INC  
 Tax Id: [REDACTED]

**Debtor Information**

Original Name: JEEPERS OF ILLINOIS INC  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor**

Company Name: JEEPERS OF ILLINOIS INC  
 Tax Id: [REDACTED]

**Creditor Information**

Name: STATE OF ILLINOIS

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SDNY\_GM\_00054631

**17: IL Judgments and Liens Filings****Filing Information**

Jurisdiction: IL  
 Amount: \$208,826  
 Original Filing Number: 2002R23728  
 Original Filing Date: 5/2/2002  
 Release Date: 3/22/2004

**Filing 1**

Number: 2004R13499  
 Type: STATE TAX LIEN RELEASE  
 Page: 231  
 Agency: SANGAMON RECORDER OF DEEDS  
 Agency State: IL  
 Agency County: SANGAMON

**Filing 2**

Number: 2002R23728  
 Type: STATE TAX LIEN  
 Page: 523  
 Agency: SANGAMON RECORDER OF DEEDS  
 Agency State: IL  
 Agency County: SANGAMON

**18: Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

Company Name: JEEPERS  
 Tax Id: [REDACTED]

**Debtor Information**

Original Name: JEEPERS OF NYACK INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

Company Name: JEEPERS OF NYACK INC

**Creditor Information**

Name: WORKERS COMPENSATION BOARD OF NYS

**Filing Information**

Amount: \$1,250  
 Original Filing Date: 1/30/2002  
 Case Number: 81502

**Filing 1**

Type: JUDGMENT  
 Agency State: NY

**19: PA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS, INC.  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

Company Name: JEEPERS, INC.  
 Tax Id: [REDACTED]

**Creditor Information**

Name: KANE BUILDERS, INC.

**Filing Information**

Jurisdiction: PA  
 Amount: \$23,989.54  
 Original Filing Date: 3/27/2001  
 Case Number: SC-00050702-2001-  
 Status: UPDATES MAY BE PRESENT ELSEWHERE IN THIS REPORT; CHECK  
 THE COURT FOR THE CURRENT STATUS

**Filing 1**

For internal use only

SDNY\_GM\_00054632

**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017456

EFTA\_00165202

EFTA01295425

**19: PA Judgments and Liens Filings**

Number: 01 50702  
 Type: CIVIL SUIT  
 Agency: COURT OF COMMON PLEAS  
 Agency State: PA  
 Agency County: DELAWARE

**20: TX Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

Company Name: JEEPERS INC  
 Tax Id: [REDACTED]

**Creditor Information**

Name: DELL MARKETING L P

**Filing Information**

Jurisdiction: TX  
 Amount: \$88,194  
 Original Filing Date: 10/24/2000

**Filing 1**

Number: 253065  
 Type: CIVIL JUDGMENT  
 Book: 371  
 Page: 746  
 Agency: TRAVIS COUNTY COURT-AUSTIN  
 Agency State: TX  
 Agency County: TRAVIS

**21: Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

Company Name: JEEPERS INC  
 Tax Id: [REDACTED]

**Creditor Information**

Name: TROY PILTZ

**Filing Information**

Amount: \$2,019  
 Original Filing Date: 8/14/2000  
 Case Number: 0051SC0685

**Filing 1**

Type: JUDGMENT  
 Agency State: MA

**22: PA Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

Company Name: JEEPERS INC  
 Tax Id: [REDACTED]

**Creditor Information**

Name: DELTRONIC LABS INC  
 Address: 120 LIBERTY LN CHALFONT, PA 18914-1820

**Filing Information**

Jurisdiction: PA  
 Original Filing Date: 2/28/2000  
 Case Number: SC-00001203-2000-

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SDNY\_GM\_00054633

**22: PA Judgments and Liens Filings**

**Status:** UPDATES MAY BE PRESENT ELSEWHERE IN THIS REPORT; CHECK THE COURT FOR THE CURRENT STATUS

**Filing 1**

**Number:** 00-01203  
**Type:** CIVIL SUIT  
**Agency:** COURT OF COMMON PLEAS  
**Agency State:** PA  
**Agency County:** BUCKS

**23: NJ Judgments and Liens Filings**

**Debtor Information**

**Original Name:** JEEPERS INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

**Company Name:** JEEPERS INC  
**Tax Id** [REDACTED]

**Debtor Information**

**Original Name:** JEEPERS OF JERSEY GARDENS INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

**Company Name:** JEEPERS OF JERSEY GARDENS INC

**Debtor Information**

**Original Name:** JEEPERS OF NJ INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

**Company Name:** JEEPERS OF NJ INC

**Debtor Information**

**Original Name:** JOHN DOE

**Debtor**

**Name:** DOE, JOHN

**Debtor Information**

**Original Name:** KENNETH J SANGINARIO  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

**Name:** SANGINARIO, KENNETH J

**SSN:** [REDACTED]

**Debtor Information**

**Original Name:** NABIL EL-HAGE  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

**Name:** ELHAGE, NABIL

**Debtor Information**

**Original Name:** NJ METROMALL URBAN RENEWAL INC  
**Address:** 20 S 3RD ST COLUMBUS, OH 43215-4206

**Debtor**

**Company Name:** NJ METROMALL URBAN RENEWAL INC

**Debtor Information**

**Original Name:** RICHARD ROE

**Debtor**

**Name:** ROE, RICHARD

**Creditor Information**

**Name:** C RAIMONDO & SONS CONSTRUCTION

**Filing Information**

**Jurisdiction:** NJ  
**Amount:** \$1,105,000  
**Original Filing Date:** 1/13/2000  
**Case Number:** SL-00000201-2000-  
**Status:** UPDATES MAY BE PRESENT ELSEWHERE IN THIS REPORT; CHECK THE COURT FOR THE CURRENT STATUS

**Filing 1**

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SDNY\_GM\_00054634

**CONFIDENTIAL**

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DB-SDNY-0017458

EFTA\_00165204

EFTA01295427

**23: NJ Judgments and Liens Filings**

Number: L 000201 00  
 Type: CIVIL SUIT  
 Agency: NEW JERSEY SUPERIOR COURT LAW DIVISION  
 Agency State: NJ  
 Agency County: UNION

**24: Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor**

Company Name: JEEPERS INC  
 Tax Id: [REDACTED]

**Creditor Information**

Name: DETROIT NEWSPAPER

**Filing Information**

Amount: \$7,993  
 Original Filing Date: 9/14/1999  
 Case Number: 9951CV0595

**Filing 1**

Type: JUDGMENT  
 Agency State: MA

**25: COOK COUNTY, ILLINOIS - 6TH MUNICIPAL DISTRICT Judgments and Liens Filings****Debtor Information**

Original Name: JEEPERS 17677 TORRENCE LANSING, IL 60438-4839 SWENTO; STEVE  
 17677 TORRENCE LANSING, IL 60438-4839  
 Address: 17677 TORRENCE AVE LANSING, IL 60438-4839

**Debtor**

Company Name: JEEPERS

**Debtor Information**

Original Name: JEEPERS 17677 TORRENCE LANSING, IL 60438-4839 SWENTO; STEVE  
 17677 TORRENCE LANSING, IL 60438-4839  
 Address: 17677 TORRENCE AVE LANSING, IL 60438-4839

**Debtor**

Name: SWENTO, STEVE

**Creditor Information**

Name: ADLER, HERBERT

**Filing Information**

Jurisdiction: COOK COUNTY, ILLINOIS - 6TH MUNICIPAL DISTRICT  
 Amount: \$130  
 Original Filing Date: 8/30/1999  
 Filing State: IL  
 Case Number: 99M6 0004170

**Filing 1**

Date: 2/3/2000  
 Type: DISMISSED JUDGMENT  
 Agency State: IL

**UCC Liens - 100 records found****1:AZ UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

Name: JEEPERS INC  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

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DB-SDNY-0017459

EFTA\_00165205

EFTA01295428

**1:AZ UCC LIEN FILING****Debtor 3**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information****Secured 1**

**Name:** FLEET NATIONAL BANK  
**Address:** 1 FEDERAL ST BOSTON, MA 02211-0001

**Secured 2**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL INC  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Secured 3**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** FLEET NATIONAL BANK  
**Address:** 1 FEDERAL ST MC MAOFD07A BOSTON, MA 02211-0001

**Filing Information**

**Original Filing Number:** 1051281  
**Original Filing Date:** 1/29/1999

**Filing 1**

**Filing Type:** AMENDMENT  
**Pages:** 100  
**Filing Number:** 1051281  
**Filing Date:** 9/5/2000  
**Expiration Date:** 1/29/2005

**Filing 2**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 6/1/1999  
**Filing Number:** 1051281

**Filing 3**

**Filing Type:** INITIAL FILING  
**Filing Date:** 1/29/1999  
**Filing Number:** 1051281

**Filing Offices**

**Address:** 1700 W WASHINGTON AVE PHOENIX, AZ 85007  
**Filing Agency:** SECRETARY OF STATE UCC DIVISION

**Collateral Information**

**Description:** 01/29/1999 1051281 - EQUIPMENT

**2:AZ UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS INC  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 3**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information****Secured 1**

**Name:** FLEET NATIONAL BANK  
**Address:** 1 FEDERAL ST BOSTON, MA 02211-0001

**Secured 2**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL INC  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Secured 3**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

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SDNY\_GM\_00054636

**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017460

EFTA\_00165206

EFTA01295429

**2:AZ UCC LIEN FILING****Assignee Information**

**Name:** FLEET NATIONAL BANK  
**Address:** 1 FEDERAL ST MC MAOFD07A BOSTON, MA 02211-0001

**Filing Information**

**Original Filing Number:** 1051282  
**Original Filing Date:** 1/29/1999

**Filing 1**

**Filing Type:** AMENDMENT  
**Pages:** 100  
**Filing Number:** 1051282  
**Filing Date:** 9/5/2000  
**Expiration Date:** 1/29/2005

**Filing 2**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 6/1/1999  
**Filing Number:** 1051282

**Filing 3**

**Filing Type:** INITIAL FILING  
**Filing Date:** 1/29/1999  
**Filing Number:** 1051282

**Filing Offices**

**Address:** 1700 W WASHINGTON AVE PHOENIX, AZ 85007  
**Filing Agency:** SECRETARY OF STATE UCC DIVISION

**Collateral Information**

**Description:** 01/29/1999 1051282 - EQUIPMENT

**3:AZ UCC LIEN FILING****Debtor Information**

**Name:** JEEPERSL INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK  
**Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

**Original Filing Number:** 01021809  
**Original Filing Date:** 6/23/1998  
**Filing Type:** INITIAL FILING  
**Filing Date:** 6/23/1998  
**Filing Number:** 01021809

**Filing Offices**

**Address:** 1700 W WASHINGTON AVE PHOENIX, AZ 85007  
**Filing Agency:** SECRETARY OF STATE UCC DIVISION

**Collateral Information**

**Description:** 06/23/1998 01021809 - ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;CHattel PAPER INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;INVENTORY INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS;PARTNERSHIP INTERESTS

**4:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERSL INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.

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**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017461

EFTA\_00165207

EFTA01295430

**4:DE UCC LIEN FILING**

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 4295798 5  
 Original Filing Date: 10/15/2004  
 Filing Type: INITIAL FILING  
 Filing Date: 10/15/2004  
 Filing Number: 4295798 5

**Filing Offices**

Address: FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 10/15/2004 4295798 5 - EQUIPMENT LEASED;COMPUTER EQUIPMENT LEASED

**5:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
 Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 4296262 1  
 Original Filing Date: 10/15/2004  
 Filing Type: INITIAL FILING  
 Filing Number: 4296262 1  
 Filing Date: 10/15/2004  
 Contract Type: LEASE

**Filing Offices**

Address: FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 10/15/2004 4296262 1 - EQUIPMENT LEASED;COMPUTER EQUIPMENT LEASED;FIXTURES LEASED

**6:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
 Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 4296266 2  
 Original Filing Date: 10/15/2004  
 Filing Type: INITIAL FILING  
 Filing Date: 10/15/2004  
 Filing Number: 4296266 2

**Filing Offices**

Address: FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 10/15/2004 4296266 2 - COMPUTER EQUIPMENT LEASED,EQUIPMENT LEASED

**7:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.  
 Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

For internal use only

SDNY\_GM\_00054638

**7:DE UCC LIEN FILING**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 4296270 4  
**Original Filing Date:** 10/15/2004  
**Filing Type:** INITIAL FILING  
**Filing Date:** 10/15/2004  
**Filing Number:** 4296270 4

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/15/2004 4296270 4 - EQUIPMENT LEASED

**8:DE UCC LIEN FILING**

**Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 4296274 6  
**Original Filing Date:** 10/15/2004  
**Filing Type:** INITIAL FILING  
**Filing Date:** 10/15/2004  
**Filing Number:** 4296274 6

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/15/2004 4296274 6 - COMPUTER EQUIPMENT LEASED;EQUIPMENT LEASED;FIXTURES LEASED

**9:DE UCC LIEN FILING**

**Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 4296278 7  
**Original Filing Date:** 10/15/2004  
**Filing Type:** INITIAL FILING  
**Filing Date:** 10/15/2004  
**Filing Number:** 4296278 7

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/15/2004 4296278 7 - EQUIPMENT LEASED

**10:DE UCC LIEN FILING**

**Debtor Information**

**Debtor 1**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor 2**

**Name:** JEEPERS! INC.,

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SDNY\_GM\_00054639

**CONFIDENTIAL**

**10:DE UCC LIEN FILING**

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.

**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 4296280 3

**Original Filing Date:** 10/15/2004

**Filing 1**

**Filing Type:** AMENDMENT

**Filing Date:** 1/11/2005

**Filing Number:** 5014385 0

**Filing 2**

**Filing Type:** INITIAL FILING

**Filing Date:** 10/15/2004

**Filing Number:** 4296280 3

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information****Collateral 1**

**Description:** 01/11/2005 5014385 0 - EQUIPMENT

**Collateral 2**

**Description:** 10/15/2004 4296280 3 - EQUIPMENT LEASED

**11:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.

**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 4296285 2

**Original Filing Date:** 10/15/2004

**Filing Type:** INITIAL FILING

**Filing Date:** 10/15/2004

**Filing Number:** 4296285 2

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/15/2004 4296285 2 - EQUIPMENT LEASED

**12:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.

**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 4296290 2

**Original Filing Date:** 10/15/2004

**Filing Type:** INITIAL FILING

**Filing Date:** 10/15/2004

**Filing Number:** 4296290 2

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

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SDNY\_GM\_00054640

**CONFIDENTIAL**

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DB-SDNY-0017464

EFTA\_00165210

EFTA01295433

**12:DE UCC LIEN FILING**

Description: 10/15/2004 4296290 2 - EQUIPMENT LEASED

**13:DE UCC LIEN FILING**

**Debtor Information**

Name: JEEPERS! INC.  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 4296295 1  
Original Filing Date: 10/15/2004  
Filing Type: INITIAL FILING  
Filing Date: 10/15/2004  
Filing Number: 4296295 1

**Filing Offices**

Address: FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 10/15/2004 4296295 1 - EQUIPMENT LEASED

**14:DE UCC LIEN FILING**

**Debtor Information**

Name: JEEPERS! INC.  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 4296304 1  
Original Filing Date: 10/15/2004  
Filing Type: INITIAL FILING  
Filing Date: 10/15/2004  
Filing Number: 4296304 1

**Filing Offices**

Address: FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 10/15/2004 4296304 1 - EQUIPMENT LEASED

**15:DE UCC LIEN FILING**

**Debtor Information**

Name: JEEPERS! INC.  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 4296307 4  
Original Filing Date: 10/15/2004  
Filing Type: INITIAL FILING  
Filing Date: 10/15/2004  
Filing Number: 4296307 4

**Filing Offices**

Address: FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 10/15/2004 4296307 4 - EQUIPMENT LEASED

**16:DE UCC LIEN FILING**

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**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017465

EFTA\_00165211

EFTA01295434

**16:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 4296308 2  
**Original Filing Date:** 10/15/2004  
**Filing Type:** INITIAL FILING  
**Filing Date:** 10/15/2004  
**Filing Number:** 4296308 2

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/15/2004 4296308 2 - EQUIPMENT LEASED

**17:DE UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor 2**

**Name:** JEEPERS] INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** GLOBAL ENTERTAINMENT VENTURES, LLC  
**Address:** 153 N MAIN WESTON, MA 02493

**Filing Information**

**Original Filing Number:** 4296398 3  
**Original Filing Date:** 10/15/2004

**Filing 1**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 9/19/2006  
**Filing Number:** 6323725 2

**Filing 2**

**Filing Type:** AMENDMENT  
**Filing Date:** 9/14/2006  
**Filing Number:** 6317973 6

**Filing 3**

**Filing Type:** AMENDMENT  
**Filing Date:** 9/13/2006  
**Filing Number:** 6317068 5

**Filing 4**

**Filing Type:** INITIAL FILING  
**Filing Date:** 10/15/2004  
**Filing Number:** 4296398 3

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information****Collateral 1**

**Description:** 09/14/2006 6317973 6 - VEHICLES;EQUIPMENT

**Collateral 2**

**Description:** 09/13/2006 6317068 5 - EQUIPMENT;VEHICLES

**Collateral 3**

For internal use only

SDNY\_GM\_00054642

**17:DE UCC LIEN FILING**

Description: 10/15/2004 4296398 3 - EQUIPMENT

**18:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 3306601 9

Original Filing Date: 11/20/2003

Filing Type: INITIAL FILING

Filing Date: 11/20/2003

Filing Number: 3306601 9

**Filing Offices**

Address: FEDERAL &amp; DUKE OF YORK STS DOVER, DE 19901

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 11/20/2003 3306601 9 - UNSPECIFIED

**19:DE UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS! INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Debtor 2**

Name: JEEPERS] INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: FLEET NATIONAL BANK

Address: 1 FEDERAL STREET MC MAOFD07A BOSTON, MA 02211-0001

**Filing Information**

Original Filing Number: 3306605 0

Original Filing Date: 11/20/2003

Filing Type: INITIAL FILING

Filing Date: 11/20/2003

Filing Number: 3306605 0

**Filing Offices**

Address: FEDERAL &amp; DUKE OF YORK STS DOVER, DE 19901

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 11/20/2003 3306605 0 - UNSPECIFIED

**20:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: FIRST UNION NATIONAL BANK, AS AGENT

Address: 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

Original Filing Number: 3306610 0

Original Filing Date: 11/20/2003

Filing Type: INITIAL FILING

Filing Date: 11/20/2003

Filing Number: 3306610 0

**Filing Offices**

Address: FEDERAL &amp; DUKE OF YORK STS DOVER, DE 19901

Filing Agency: SECRETARY OF STATE/UCC DIVISION

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SDNY\_GM\_00054643

**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017467

EFTA\_00165213

EFTA01295436

**20:DE UCC LIEN FILING****Collateral Information**

Description: 11/20/2003 3306610 0 - UNSPECIFIED

**21:DE UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS! INC.

**Debtor 2**

Name: JEEPERS! INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information****Secured 1**

Name: GLOBAL ENTERTAINMENT VENTURES, LLC

**Secured 2**

Name: IMPERIAL BANK

Address: 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Assignee Information**

Name: GLOBAL ENTERTAINMENT VENTURES, LLC

Address: 153 NORTH AVE WESTON, MA 02493-2032

**Filing Information**

Original Filing Number: 1168287 6

Original Filing Date: 12/12/2001

**Filing 1**

Filing Type: CONTINUATION

Filing Date: 12/5/2006

Filing Number: 6423089 2

**Filing 2**

Filing Type: INITIAL FILING

Filing Date: 12/12/2001

Filing Number: 1168287 6

**Filing Offices**

Address: FEDERAL &amp; DUKE OF YORK STS DOVER, DE 19901

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 12/12/2001 1168287 6 - ALL ASSETS

**22:DE UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS! FRANCHISE, INC.

**Debtor 2**

Name: JEEPERS! FRANCHISE, INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information****Secured 1**

Name: GLOBAL ENTERTAINMENT VENTURES, LLC

**Secured 2**

Name: IMPERIAL BANK

Address: 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Assignee Information**

Name: GLOBAL ENTERTAINMENT VENTURES, LLC

Address: 153 NORTH AVE WESTON, MA 02493-2032

**Filing Information**

Original Filing Number: 1168369 2

Original Filing Date: 12/12/2001

**Filing 1**

Filing Type: CONTINUATION

Filing Date: 12/5/2006

Filing Number: 6423208 8

**Filing 2**

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SDNY\_GM\_00054644

**22:DE UCC LIEN FILING**

**Filing Type:** INITIAL FILING  
**Filing Date:** 12/12/2001  
**Filing Number:** 1168369 2

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 12/12/2001 1168369 2 - ALL ASSETS

**23:DE UCC LIEN FILING**

**Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** MOSS DISTRIBUTING, INC.  
**Address:** 1801 GUTHRIE AVE DES MOINES, IA 50316-2735

**Filing Information**

**Original Filing Number:** 1166348 8  
**Original Filing Date:** 11/13/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/13/2001  
**Filing Number:** 1166348 8

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/13/2001 1166348 8 - EQUIPMENT

**24:DE UCC LIEN FILING**

**Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159066 5  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159066 5

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159066 5 - EQUIPMENT LEASED

**25:DE UCC LIEN FILING**

**Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159067 3  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159067 3

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SDNY\_GM\_00054645

**25:DE UCC LIEN FILING****Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159067 3 - EQUIPMENT LEASED

**26:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159069 9  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159069 9

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159069 9 - EQUIPMENT LEASED

**27:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159074 9  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159074 9

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159074 9 - EQUIPMENT LEASED

**28:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159079 8  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159079 8

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

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**28:DE UCC LIEN FILING****Collateral Information**

Description: 11/05/2001 1159079 8 - EQUIPMENT LEASED

**29:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 1159080 6

Original Filing Date: 11/5/2001

Filing Type: INITIAL FILING

Filing Date: 11/5/2001

Filing Number: 1159080 6

**Filing Offices**

Address: FEDERAL &amp; DUKE OF YORK STS DOVER, DE 19901

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 11/05/2001 1159080 6 - EQUIPMENT LEASED

**30:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 1159082 2

Original Filing Date: 11/5/2001

Filing Type: INITIAL FILING

Filing Date: 11/5/2001

Filing Number: 1159082 2

**Filing Offices**

Address: FEDERAL &amp; DUKE OF YORK STS DOVER, DE 19901

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 11/05/2001 1159082 2 - EQUIPMENT LEASED

**31:DE UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.

Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 1159083 0

Original Filing Date: 11/5/2001

Filing Type: INITIAL FILING

Filing Date: 11/5/2001

Filing Number: 1159083 0

**Filing Offices**

Address: FEDERAL &amp; DUKE OF YORK STS DOVER, DE 19901

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 11/05/2001 1159083 0 - EQUIPMENT LEASED

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**32:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159091 3  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159091 3

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159091 3 - COMPUTER EQUIPMENT LEASED;EQUIPMENT LEASED

**33:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159095 4  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159095 4

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159095 4 - EQUIPMENT LEASED

**34:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159099 6  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Number:** 1159099 6  
**Filing Date:** 11/5/2001  
**Contract Type:** LEASE

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Count:** 00001  
**Description:** 11/05/2001 1159099 6 - COMPUTER EQUIPMENT LEASED;FIXTURES LEASED;EQUIPMENT LEASED

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SDNY\_GM\_00054648

**35:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159102 8  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159102 8

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159102 8 - COMPUTER EQUIPMENT LEASED,EQUIPMENT LEASED

**36:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159108 5  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159108 5

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159108 5 - EQUIPMENT LEASED

**37:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159113 5  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159113 5

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159113 5 - EQUIPMENT LEASED

**38:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.

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SDNY\_GM\_00054649

**38:DE UCC LIEN FILING**

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.

**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159116 8

**Original Filing Date:** 11/5/2001

**Filing Type:** INITIAL FILING

**Filing Number:** 1159116 8

**Filing Date:** 11/5/2001

**Contract Type:** LEASE

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159116 8 - COMPUTER EQUIPMENT LEASED;EQUIPMENT LEASED

**39:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.

**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159125 9

**Original Filing Date:** 11/5/2001

**Filing Type:** INITIAL FILING

**Filing Number:** 1159125 9

**Filing Date:** 11/5/2001

**Contract Type:** LEASE

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159125 9 - COMPUTER EQUIPMENT LEASED;EQUIPMENT LEASED

**40:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.

**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159131 7

**Original Filing Date:** 11/5/2001

**Filing Type:** INITIAL FILING

**Filing Number:** 1159131 7

**Filing Date:** 11/5/2001

**Contract Type:** LEASE

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159131 7 - COMPUTER EQUIPMENT LEASED;EQUIPMENT LEASED

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SDNY\_GM\_00054650

**41:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 1159138 2  
**Original Filing Date:** 11/5/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 11/5/2001  
**Filing Number:** 1159138 2

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/05/2001 1159138 2 - COMPUTER EQUIPMENT LEASED,EQUIPMENT LEASED

**42:DE UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**Secured Party Information****Secured 1**

**Name:** BANKERS TRUST CO., N.A.  
**Address:** 453 7TH ST DES MOINES, IA 50309-4110

**Secured 2**

**Name:** MOSS DISTRIBUTING, INC.  
**Address:** 1801 GUTHRIE AVE DES MOINES, IA 50316-2735

**Filing Information**

**Original Filing Number:** 1136495 4  
**Original Filing Date:** 10/10/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 10/10/2001  
**Filing Number:** 1136495 4

**Filing Offices**

**Address:** FEDERAL & DUKE OF YORK STS DOVER, DE 19901  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/10/2001 1136495 4 - EQUIPMENT

**43:IL UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** CONCORDE GREEN SHOPPING CENTER  
**Address:** 91 NORTH AVE GLENDALE HEIGHTS, IL 60139-3496

**Debtor 2**

**Name:** JEEPERS INC  
**Address:** 17677 TORRENCE AVE LANSING, IL 60438-4839

**Debtor 3**

**Name:** LANSING SQUARE  
**Address:** 4516 N HARLEM AVE CHICAGO, IL 60706-4712

**Secured Party Information**

**Name:** INNOVATIVE CONCEPTS IN ENTERTAINMENT INC  
**Address:** 10123 MAIN ST CLARENCE, NY 14031-2164

**Filing Information**

**Original Filing Number:** 004367052  
**Original Filing Type:** UCC-1 FINANCING STATEMENT  
**Original Filing Date:** 4/6/2001

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SDNY\_GM\_00054651

**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017475

EFTA\_00165221

EFTA01295444

**43:IL UCC LIEN FILING**

Pages: 1  
 Expiration Date: 4/6/2006  
**Collateral Information**  
 Description: 04/06/2001 004367052 - EQUIPMENT

**44:IL UCC LIEN FILING**

**Debtor Information**  
 Name: JEEPERS INC  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903  
**Secured Party Information**  
 Name: LEASING TECHNOLOGIES INTERNATIONAL INC  
 Address: 221 DANBURY RD WILTON, CT 06897-4007  
**Filing Information**  
 Original Filing Number: 004147617  
 Original Filing Type: UCC-1 FINANCING STATEMENT  
 Original Filing Date: 1/25/2000  
 Filing Type: AMENDMENT TO A SECURED PARTY  
 Pages: 1  
 Filing Number: 004279352  
 Filing Date: 10/6/2000  
 Expiration Date: 1/25/2005  
**Collateral Information**  
 Description: 10/06/2000 004279352 - EQUIPMENT

**45:IL UCC LIEN FILING**

**Debtor Information**  
 Name: JEEPER INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013  
**Secured Party Information**  
**Secured 1**  
 Name: CENTRE CAPITAL INVESTORS II LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015  
**Secured 2**  
 Name: CENTRE CAPITAL OFFSHORE INVESTORS II LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015  
**Secured 3**  
 Name: CENTRE CAPITAL TAX EXEMPT INVESTORS II LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015  
**Secured 4**  
 Name: CENTRE CAPITAL TAX EXEMPT INVESTORS II LTD PARTNERSHIP  
 Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106  
**Secured 5**  
 Name: CENTRE COINVESTMENT LTD PARTNERSHIP  
 Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106  
**Secured 6**  
 Name: CENTRE PARALLEL MANAGEMENT PARTNERS LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015  
**Secured 7**  
 Name: CENTRE PARALLEL MANAGEMENT PARTNERS LTD PARTNERSHIP  
 Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106  
**Secured 8**  
 Name: CENTRE PARTNERS COINVESTMENT LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015  
**Secured 9**  
 Name: NAMCO CYBERTAINMENT INC  
 Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106  
**Secured 10**  
 Name: STATE BOARD OF ADMIN OF FLORIDA % CENTRE PARALLEL MGMNT  
 PRTS LP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

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SDNY\_GM\_00054652

**45:IL UCC LIEN FILING****Filing Information**

Original Filing Number: 004010683  
 Original Filing Type: UCC-1 FINANCING STATEMENT  
 Original Filing Date: 3/26/1999  
 Filing Type: ASSIGNMENT TO A SECURED PARTY  
 Pages: 3  
 Filing Number: 004169429  
 Filing Date: 2/22/2000  
 Expiration Date: 3/26/2004

**Collateral Information**

Description: 02/22/2000 004169429 - CONTRACT RIGHTS

**46:IL UCC LIEN FILING****Debtor Information**

Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information****Secured 1**

Name: CENTRE CAPITAL INVESTORS II LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 2**

Name: CENTRE CAPITAL OFFSHORE INVESTORS II LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 3**

Name: CENTRE CAPITAL TAX EXEMPT INVESTORS II LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 4**

Name: CENTRE PARALLEL MANAGEMENT PARTNERS LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 5**

Name: CENTRE PARTNERS COINVESTMENT LTD PARTNERSHIP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 6**

Name: NAMCO CYBERTAINMENT INC  
 Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Secured 7**

Name: STATE BOARD OF ADMIN OF FLORIDA %CENTRE PARALLEL MGMNT  
 PRTN LP  
 Address: 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Filing Information**

Original Filing Number: 003955789  
 Original Filing Type: UCC-1 FINANCING STATEMENT  
 Original Filing Date: 12/10/1998  
 Filing Type: ASSIGNMENT TO A SECURED PARTY  
 Pages: 5  
 Filing Number: 004169430  
 Filing Date: 2/22/2000  
 Expiration Date: 12/10/2003

**Collateral Information**

Description: 02/22/2000 004169430 - INVENTORY  
 ,WITH PRODUCTS

**47:IL UCC LIEN FILING****Debtor Information**

Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: GLOBAL ENTERTAINMENT VENTURES LLC  
 Address: 153 NORTH AVE WESTON, MA 02493-2032

**Filing Information**

For internal use only

SDNY\_GM\_00054653

**47:IL UCC LIEN FILING**

Original Filing Number: 003869897  
 Original Filing Type: UCC-1 FINANCING STATEMENT  
 Original Filing Date: 6/23/1998

**Filing 1**

Filing Type: PARTIAL RELEASE  
 Pages: 2  
 Filing Number: 004384981  
 Filing Date: 5/14/2001  
 Expiration Date: 6/23/2003

**Filing 2**

Filing Type: ASSIGNMENT TO A SECURED PARTY  
 Pages: 2  
 Filing Number: 004384980  
 Filing Date: 5/14/2001  
 Expiration Date: 6/23/2003

**Collateral Information****Collateral 1**

Description: 05/14/2001 004384981 - ACCOUNTS RECEIVABLE, INVENTORY,  
 CONTRACT RIGHTS CHATTEL PAPER, GENERAL INTANGIBLE  
 ,WITH PROCEEDS,WITH PRODUCTS

**Collateral 2**

Description: 05/14/2001 004384980 - ACCOUNTS RECEIVABLE, INVENTORY,  
 CONTRACT RIGHTS CHATTEL PAPER, GENERAL INTANGIBLE  
 ,WITH PROCEEDS,WITH PRODUCTS

**48:IL UCC LIEN FILING****Debtor Information**

Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: NAMCO CYBERTAINMENT INC  
 Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

Original Filing Number: 003745189  
 Original Filing Type: UCC-1 FINANCING STATEMENT  
 Original Filing Date: 9/29/1997  
 Pages: 1  
 Expiration Date: 9/29/2002

**Collateral Information**

Description: 09/29/1997 003745189 - EQUIPMENT

**49:IN UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: IMPERIAL BANK  
 Address: 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

Original Filing Number: 2279516  
 Original Filing Date: 9/13/1999  
 Filing Type: INITIAL FILING  
 Filing Date: 9/13/1999  
 Filing Number: 2279516

**Filing Offices**

Address: 302 W WASHINGTON ST RM E-018 INDIANAPOLIS, IN 46204  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 09/13/1999 2279516 - CHATTEL PAPER;PRODUCTS AND  
 PROCEEDS;GENERAL

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SDNY\_GM\_00054654

**49:IN UCC LIEN FILING**

INTANGIBLE(S);INVENTORY;FIXTURES;EQUIPMENT;ALL ASSETS;REAL  
PROPERTY;CONTRACT RIGHTS;ACCOUNTS RECEIVABLE

**50:IN UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK  
**Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

**Original Filing Number:** 2279517  
**Original Filing Date:** 9/13/1999  
**Filing Type:** INITIAL FILING  
**Filing Date:** 9/13/1999  
**Filing Number:** 2279517

**Filing Offices**

**Address:** 302 W WASHINGTON ST RM E-018 INDIANAPOLIS, IN 46204  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 09/13/1999 2279517 - ACCOUNTS RECEIVABLE;CONTRACT  
RIGHTS;PRODUCTS AND PROCEEDS;INVENTORY;REAL  
PROPERTY;GENERAL INTANGIBLE(S);ALL ASSETS;FIXTURES;CHATTEL  
PAPER;EQUIPMENT

**51:KS UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC  
**Address:** 20070 W 151ST ST OLATHE, KS 66061-7229

**Secured Party Information**

**Name:** INNOVATIVE CONCEPTS IN ENTERTAINMENT INC  
**Address:** 10123 MAIN ST CLARENCE, NY 14031-2164

**Filing Information**

**Original Filing Number:** 5080940  
**Original Filing Date:** 12/6/2001  
**Filing Type:** INITIAL FILING  
**Pages:** 2  
**Filing Number:** 5080940  
**Filing Date:** 12/6/2001  
**Expiration Date:** 12/6/2006

**Filing Offices**

**Address:** 120 SW 10TH AVE TOPEKA, KS 66612  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 12/06/2001 5080940 - EQUIPMENT

**52:KS UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS! INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 2**

**Name:** JEEPERS! INC.  
**Address:** 20070 W 151ST ST OLATHE, KS 66061-7229

**Secured Party Information**

**Name:** INNOVATIVE CONCEPTS IN ENTERTAINMENT, INC.  
**Address:** 10123 MAIN ST CLARENCE, NY 14031-2164

**Filing Information**

**Original Filing Number:** 4604690  
**Original Filing Date:** 4/6/2001

For internal use only

SDNY\_GM\_00054655

**52:KS UCC LIEN FILING**

**Filing Type:** INITIAL FILING  
**Filing Date:** 4/6/2001  
**Filing Number:** 4604690

**Filing Offices**

**Address:** 301 SW 10TH AVE TOPEKA, KS 66612  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 04/06/2001 4604690 - EQUIPMENT

**53:KS UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** NAMCO CYBERTAINMENT INC  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

**Original Filing Number:** 2520509  
**Original Filing Date:** 1/8/1999  
**Filing Type:** INITIAL FILING  
**Pages:** 4  
**Filing Number:** 2520509  
**Filing Date:** 1/8/1999  
**Expiration Date:** 1/8/2004

**Filing Offices**

**Address:** 301 SW 10TH AVE TOPEKA, KS 66612  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 01/08/1999 2520509 - EQUIPMENT AND PRODUCTS

**54:KS UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS!, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information****Secured 1**

**Name:** FIRST UNION NATIONAL BANK, AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Secured 2**

**Name:** LEASING TECH INTL INC  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** FIRST UNION NATIONAL BANK  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

**Original Filing Number:** 2488565  
**Original Filing Date:** 9/9/1998

**Filing 1**

**Filing Type:** AMENDMENT  
**Filing Date:** 9/7/2000  
**Filing Number:** 3962230

**Filing 2**

**Filing Type:** ASSIGNMENT  
**Pages:** 2  
**Filing Number:** 2578421  
**Filing Date:** 8/3/1999

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SDNY\_GM\_00054656

**54:KS UCC LIEN FILING**

Expiration Date: 9/9/2003

**Filing 3**

Filing Type: INITIAL FILING

Pages: 2

Filing Number: 2488565

Filing Date: 9/9/1998

Expiration Date: 9/9/2003

**Filing Offices**

Address: 301 SW 10TH AVE TOPEKA, KS 66612

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information****Collateral 1**

Description: 08/03/1999 2578421 - EQUIPMENT

**Collateral 2**

Description: 09/09/1998 2488565 - COMPUTER EQUIPMENT;EQUIPMENT

**55:KS UCC LIEN FILING****Debtor Information**

Name: JEEPERS INC

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: IMPERIAL BK

Address: 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

Original Filing Number: 2466610

Original Filing Date: 6/23/1998

Filing Type: INITIAL FILING

Pages: 3

Filing Number: 2466610

Filing Date: 6/23/1998

Expiration Date: 6/23/2003

**Filing Offices**

Address: 301 SW 10TH AVE TOPEKA, KS 66612

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 06/23/1998 2466610 - EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;INVENTORY INCLUDING PROCEEDS AND PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS;PARTNERSHIP INTERESTS

**56:KS UCC LIEN FILING****Debtor Information**

Name: JEEPERS INC

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: NAMCO CYBERTAINMENT INC

Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

Original Filing Number: 2391056

Original Filing Date: 9/29/1997

Filing Type: INITIAL FILING

Pages: 2

Filing Number: 2391056

Filing Date: 9/29/1997

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SDNY\_GM\_00054657

**CONFIDENTIAL**

CONFIDENTIAL - PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017481

EFTA\_00165227

EFTA01295450

**56:KS UCC LIEN FILING**

Expiration Date: 9/29/2002

**Filing Offices**

Address: 301 SW 10TH AVE TOPEKA, KS 66612  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 09/29/1997 2391056 - EQUIPMENT

**57:MA UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS!, INC.  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 2**

Name: JEEPERS, INC.  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
 Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Status**

Description: ACTIVE

**Filing Information**

Original Filing Number: 00686727  
 Original Filing Type: UCC-1 ORIGINAL  
 Original Filing Date: 1/5/2000

**Filing 1**

Filing Type: AMENDMENT  
 Description: ACTIVE  
 Filing Number: 00741589  
 Filing Date: 9/5/2000

**Filing 2**

Description: ACTIVE  
 Filing Number: 00686727

**58:MD UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC  
 Address: 5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228-1308

**Secured Party Information**

Name: INNOVATIVE CONCEPTS IN ENTERTAINMENT, INC.  
 Address: 10123 MAIN ST CLARENCE, NY 14031-2164

**Filing Information**

Original Filing Number: 00000181103347  
 Original Filing Date: 12/6/2001  
 Filing Type: INITIAL FILING  
 Filing Number: 00000181103347  
 Filing Date: 12/6/2001  
 Expiration Date: 12/6/2006

**Filing Offices**

Address: 301 W PRESTON ST BALTIMORE, MD 21201  
 Filing Agency: UCC DIVISION

**Collateral Information**

Description: 12/06/2001 00000181103347 - EQUIPMENT

**59:MD UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.  
 Address: 5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228-1308

**Secured Party Information**

Name: INNOVATIVE CONCEPTS IN ENTERTAINMENT, INC.  
 Address: 10123 MAIN ST CLARENCE, NY 14031-2164

For internal use only

SDNY\_GM\_00054658

**59:MD UCC LIEN FILING****Filing Information**

Original Filing Number: 00000181079551  
 Original Filing Date: 4/6/2001  
 Filing Type: INITIAL FILING  
 Filing Number: 00000181079551  
 Filing Date: 4/6/2001  
 Expiration Date: 4/6/2013

**Filing Offices**

Address: 301 W PRESTON ST BALTIMORE, MD 21201  
 Filing Agency: UCC DIVISION

**Collateral Information**

Description: 04/06/2001 00000181079551 - EQUIPMENT

**60:MD UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
 Address: 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

Name: FIRST UNION NATIONAL BANK, AS AGENT  
 Address: 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

Original Filing Number: 39100000032933  
 Original Filing Date: 1/4/2001  
 Filing Type: AMENDMENT  
 Filing Number: 39100000032933  
 Filing Date: 9/6/2000  
 Expiration Date: 10/29/2010

**Filing Offices**

Address: 301 W PRESTON ST BALTIMORE, MD 21201  
 Filing Agency: UCC DIVISION

**61:MD UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS! INC.  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 2**

Name: JEEPERS] INC.  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.  
 Address: 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

Name: FEET NATIONAL BANK  
 Address: 1 FEDERAL ST BOSTON, MA 02110-2012

**Filing Information**

Original Filing Number: 39100000038112  
 Original Filing Date: 1/4/2001  
 Filing Type: AMENDMENT  
 Filing Number: 39100000038112  
 Filing Date: 9/6/2000  
 Expiration Date: 12/4/2010

**Filing Offices**

Address: 301 W PRESTON ST BALTIMORE, MD 21201  
 Filing Agency: UCC DIVISION

**62:MD UCC LIEN FILING**

For internal use only

SDNY\_GM\_00054659

**62:MD UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS' INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK  
**Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

**Original Filing Number:** 39100000054082  
**Original Filing Date:** 3/18/1999  
**Filing Type:** INITIAL FILING  
**Filing Date:** 3/18/1999  
**Filing Number:** 39100000054082

**Filing Offices**

**Address:** 301 W PRESTON ST BALTIMORE, MD 21201  
**Filing Agency:** SECRETARY OF STATE/DEPARTMENT OF ASSESSMENT AND TAXATION/UCC DIVISION

**Collateral Information**

**Description:** 03/18/1999 39100000054082 - CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS

**63:MD UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information****Secured 1**

**Name:** CENTRE CAPITAL INVESTORS II, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 2**

**Name:** CENTRE CAPITAL TAX-EXEMPT INVESTORS II, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 3**

**Name:** CENTRE PARTNERS COINVESTMENT, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Secured 4**

**Name:** NAMCO CYBERTAINMENT INC  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Secured 5**

**Name:** NAMCO CYBERTAINMENT INC.  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Assignee Information**

**Name:** CENTRE PARALLEL MANAGEMENT PARTNERS, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Filing Information**

**Original Filing Number:** 39100000039057  
**Original Filing Date:** 12/10/1998

**Filing 1**

**Filing Type:** ASSIGNMENT  
**Filing Number:** 39100000039057  
**Filing Date:** 2/22/2000  
**Expiration Date:** 6/30/2006

**Filing 2**

**Filing Type:** INITIAL FILING  
**Filing Date:** 12/10/1998

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SDNY\_GM\_00054660

**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017484

EFTA\_00165230

EFTA01295453

**63:MD UCC LIEN FILING**

Filing Number: 39100000039057

**Filing Offices****Office 1**

Address: 301 W PRESTON ST BALTIMORE, MD 21201

Filing Agency: SECRETARY OF STATE/DEPARTMENT OF ASSESSMENT AND TAXATION/UCC DIVISION

**Office 2**

Address: 301 W PRESTON ST BALTIMORE, MD 21201

Filing Agency: UCC DIVISION

**Collateral Information**

Description: 12/10/1998 39100000039057 - EQUIPMENT AND PROCEEDS

**64:MD UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

Name: FLEET NATIONAL BANK

Address: 1 FEDERAL STREET MC MAOFD07A BOSTON, MA 02211-0001

**Filing Information**

Original Filing Number: 39100000038112

Original Filing Date: 12/4/1998

Filing Type: INITIAL FILING

Filing Date: 12/4/1998

Filing Number: 39100000038112

**Filing Offices**

Address: 301 W PRESTON ST BALTIMORE, MD 21201

Filing Agency: SECRETARY OF STATE/DEPARTMENT OF ASSESSMENT AND TAXATION/UCC DIVISION

**Collateral Information**

Description: 12/04/1998 39100000038112 - EQUIPMENT

**65:MD UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS! INC

Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 2**

Name: JEEPERS! INC.

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information****Secured 1**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Secured 2**

Name: LEASING TECHNOLOGIES, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information****Assignee 1**

Name: FLEET NATIONAL BANK

Address: 1 FEDERAL ST BOSTON, MA 02211-0001

**Assignee 2**

Name: FLEET NATIONAL BANK

Address: ONEFEDERAL STREET MC MAOFD07 BOSTON, MA

**Filing Information**

Original Filing Number: 39100000038635

Original Filing Date: 12/4/1998

For internal use only

SDNY\_GM\_00054661

**65:MD UCC LIEN FILING****Filing 1**

**Filing Type:** AMENDMENT  
**Filing Number:** 3910000038635  
**Filing Date:** 10/6/2000  
**Expiration Date:** 12/4/2010

**Filing 2**

**Filing Type:** INITIAL FILING  
**Filing Date:** 12/4/1998  
**Filing Number:** 3910000038635

**Filing Offices**

**Address:** 301 W PRESTON ST BALTIMORE, MD 21201  
**Filing Agency:** SECRETARY OF STATE/DEPARTMENT OF ASSESSMENT AND TAXATION/UCC DIVISION

**Collateral Information**

**Description:** 12/04/1998 3910000038635 - COMPUTER EQUIPMENT;FIXTURES

**66:MD UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** FIRST UNION NATIONAL BANK, AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

**Original Filing Number:** 3910000032933  
**Original Filing Date:** 10/29/1998  
**Filing Type:** INITIAL FILING  
**Filing Date:** 10/29/1998  
**Filing Number:** 3910000032933

**Filing Offices**

**Address:** 301 W PRESTON ST BALTIMORE, MD 21201  
**Filing Agency:** SECRETARY OF STATE/DEPARTMENT OF ASSESSMENT AND TAXATION/UCC DIVISION

**Collateral Information**

**Description:** 10/29/1998 3910000032933 - COMPUTER EQUIPMENT;VEHICLES

**67:MI UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS!, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 2**

**Name:** JEEPERSI INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** D472927  
**Original Filing Date:** 1/29/1999

**Filing 1**

**Filing Type:** AMENDMENT  
**Filing Date:** 6/29/2001  
**Filing Number:** D792430

**Filing 2**

**Filing Type:** INITIAL FILING  
**Filing Date:** 1/29/1999

For internal use only

SDNY\_GM\_00054662

**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017486

EFTA\_00165232

EFTA01295455

**67:MI UCC LIEN FILING**

Filing Number: D472927

**Filing Offices**

Address: 430 W ALLEGAN LANSING, MI 48918  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 01/29/1999 D472927 - EQUIPMENT

**68:MI UCC LIEN FILING****Debtor Information**

Name: JEEPERS INC  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: NAMCO CYBERTAINMENT INC  
 Address: 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

Original Filing Number: D454766  
 Original Filing Date: 12/14/1998  
 Filing Type: INITIAL FILING  
 Filing Date: 12/14/1998  
 Filing Number: D454766

**Filing Offices**

Address: 430 W ALLEGAN LANSING, MI 48918  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 12/14/1998 D454766 - EQUIPMENT

**69:MI UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS! INC.  
 Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

Name: JEEPERS!, INC.  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 3**

Name: JEEPERS], INC.  
 Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information****Secured 1**

Name: FLEET NATIONAL BANK  
 Address: 1 FEDERAL ST BOSTON, MA 02211-0001

**Secured 2**

Name: FLEET NATIONAL BANK  
 Address: 1 FEDERAL ST BOSTON, MA 02211-0001

**Filing Information**

Original Filing Number: 99239B  
 Original Filing Date: 11/30/1998

**Filing 1**

Filing Type: CONTINUATION  
 Filing Date: 9/7/2000  
 Filing Number: D692295

**Filing 2**

Filing Type: INITIAL FILING  
 Filing Date: 11/30/1998  
 Filing Number: 99239B

**Filing Offices**

Address: 430 W ALLEGAN LANSING, MI 48918  
 Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

Description: 11/30/1998 99239B - EQUIPMENT

For internal use only

SDNY\_GM\_00054663

**70:MI UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS ! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** COMERICA BANK

**Assignee Information**

**Name:** GOOD CONSULTING LLC  
**Address:** O-21 FENNESSEY ST SW GRAND RAPIDS, MI 49534-6707

**Filing Information**

**Original Filing Number:** D148831  
**Original Filing Date:** 9/9/1998

**Filing 1**

**Filing Type:** CONTINUATION  
**Filing Date:** 5/26/2011  
**Filing Number:** 2011076402-7

**Filing 2**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 9/23/2008  
**Filing Number:** 2008147829-0

**Filing Offices****Office 1**

**Address:** 7064 CROWNER DR LANSING, MI 48909  
**Filing Agency:** UNIFORM COMMERCIAL CODE SECTION

**Office 2**

**Address:** PHYSICAL ADDRESS UNKNOWN LANSING, MI 48909  
**Filing Agency:** UNIFORM COMMERCIAL CODE SECTION

**71:MI UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERSI, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information****Secured 1**

**Name:** FIRST UNION NATIONAL BANK, AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Secured 2**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** FIRST UNION NATIONAL BANK, AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

**Original Filing Number:** D418830  
**Original Filing Date:** 9/9/1998

**Filing 1**

**Filing Type:** AMENDMENT  
**Filing Date:** 9/5/2000  
**Filing Number:** D691285

**Filing 2**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 8/5/1999

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SDNY\_GM\_00054664

**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017488

EFTA\_00165234

EFTA01295457

**71:MI UCC LIEN FILING**

Filing Number: D551043

**Filing 3**

Filing Type: INITIAL FILING

Filing Date: 9/9/1998

Filing Number: D418830

**Filing Offices**

Address: 430 W ALLEGAN LANSING, MI 48918

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information****Collateral 1**

Description: 08/05/1999 D551043 - COMPUTER EQUIPMENT;EQUIPMENT

**Collateral 2**

Description: 09/09/1998 D418830 - COMPUTER EQUIPMENT;EQUIPMENT

**72:MI UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS ! INC.

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

Name: JEEPERS! INC.

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 3**

Name: JEEPERS!, INC.

Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information****Secured 1**

Name: FIRST UNION NATIONAL BANK, AS AGENT

Address: 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Secured 2**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

Name: FIRST UNION NATIONAL BANK, AS AGENT

Address: 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

Original Filing Number: D418831

Original Filing Date: 9/9/1998

**Filing 1**

Filing Type: AMENDMENT

Filing Date: 9/5/2000

Filing Number: D691284

**Filing 2**

Filing Type: ASSIGNMENT

Filing Date: 8/3/1999

Filing Number: D549899

**Filing 3**

Filing Type: INITIAL FILING

Filing Date: 9/9/1998

Filing Number: D418831

**Filing Offices**

Address: 430 W ALLEGAN LANSING, MI 48918

Filing Agency: SECRETARY OF STATE/UCC DIVISION

**Collateral Information****Collateral 1**

Description: 08/03/1999 D549899 - COMPUTER EQUIPMENT;EQUIPMENT

**Collateral 2**

Description: 09/09/1998 D418831 - COMPUTER EQUIPMENT;EQUIPMENT

**73:MI UCC LIEN FILING**

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SDNY\_GM\_00054665

**73:MI UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK  
**Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

**Original Filing Number:** 95318B  
**Original Filing Date:** 6/23/1998  
**Filing Type:** INITIAL FILING  
**Filing Date:** 6/23/1998  
**Filing Number:** 95318B

**Filing Offices**

**Address:** 430 W ALLEGAN LANSING, MI 48918  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 06/23/1998 95318B - CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;PARTNERSHIP INTEREST INCLUDING PROCEEDS AND PRODUCTS;NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS;CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;INVENTORY

**74:MI UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** NAMCO CYBERTAINMENT INC.  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

**Original Filing Number:** D316406  
**Original Filing Date:** 12/16/1997  
**Filing Type:** INITIAL FILING  
**Filing Date:** 12/16/1997  
**Filing Number:** D316406

**Filing Offices**

**Address:** 430 W ALLEGAN LANSING, MI 48918  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 12/16/1997 D316406 - EQUIPMENT

**75:MI UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** NAMCO CYBERTAINMENT INC.  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

**Original Filing Number:** D285496  
**Original Filing Date:** 9/30/1997  
**Filing Type:** INITIAL FILING  
**Filing Date:** 9/30/1997  
**Filing Number:** D285496

**Filing Offices**

**Address:** 430 W ALLEGAN LANSING, MI 48918  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 09/30/1997 D285496 - EQUIPMENT

For internal use only

SDNY\_GM\_00054666

**76:MI UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** NAMCO CYBERTAINMENT INC.  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Assignee Information****Assignee 1**

**Name:** CENTRE CAPITAL INVESTORS II, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Assignee 2**

**Name:** CENTRE CAPITAL OFFSHORE INVESTORS II, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Assignee 3**

**Name:** CENTRE CAPITAL TAX-EXEMPT INVESTORS II, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Assignee 4**

**Name:** CENTRE PARALLEL MANAGEMENT PARTNERS, L.P. C/O CENTRE  
 PARALLEL MANAGEMENT PARTNERS, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Assignee 5**

**Name:** CENTRE PARTNERS COINVESTMENT, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Assignee 6**

**Name:** STATE BOARD OF ADMINISTRATION OF FLORIDA, C/O CENTRE  
 PARALLEL MANAGEMENT PARTNERS, L.P.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Filing Information**

**Original Filing Number:** D454766  
**Filing Type:** ASSIGNMENT  
**Filing Date:** 2/22/2000  
**Filing Number:** 11290C

**Filing Offices**

**Address:** 430 W ALLEGAN LANSING, MI 48918  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 02/22/2000 11290C - EQUIPMENT

**77:NC UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC.  
**Address:** 8321 CONCORD MILLS BLVD CONCORD, NC 28027-6460

**Secured Party Information**

**Name:** INNOVATIVE CONCEPTS IN ENTERTAINMENT, INC.  
**Address:** 10123 MAIN ST CLARENCE, NY 14031-2164

**Filing Information**

**Original Filing Number:** 20010553844F  
**Original Filing Date:** 12/6/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 12/6/2001  
**Filing Number:** 20010553844F

**Filing Offices**

**Address:** 300 N SALISBURY ST, LEGIS OFF BLDG RALEIGH, NC 27603  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 12/06/2001 20010553844F - EQUIPMENT

**78:NC UCC LIEN FILING****Debtor Information**

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**78:NC UCC LIEN FILING**

**Name:** JEEPERS! INC.  
**Address:** 8321 CONCORD MILLS BLVD CONCORD, NC 28027-6460  
**Secured Party Information**  
**Name:** INNOVATIVE CONCEPTS IN ENTERTAINMENT, INC.  
**Address:** 10123 MAIN ST CLARENCE, NY 14031-2164  
**Filing Information**  
**Original Filing Number:** 20010033898  
**Original Filing Date:** 4/6/2001  
**Filing Type:** INITIAL FILING  
**Filing Date:** 4/6/2001  
**Filing Number:** 20010033898  
**Filing Offices**  
**Address:** 300 N SALISBURY ST, LEGIS OFF BLDG RALEIGH, NC 27603  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION  
**Collateral Information**  
**Description:** 04/06/2001 20010033898 - EQUIPMENT

**79:NC UCC LIEN FILING**

**Debtor Information**  
**Name:** JEEPERSI, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903  
**Secured Party Information**  
**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007  
**Filing Information**  
**Original Filing Number:** 20000085482  
**Original Filing Date:** 8/22/2000  
**Filing Type:** INITIAL FILING  
**Filing Date:** 8/22/2000  
**Filing Number:** 20000085482  
**Filing Offices**  
**Address:** 300 N SALISBURY ST, LEGIS OFF BLDG RALEIGH, NC 27603  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION  
**Collateral Information**  
**Description:** 08/22/2000 20000085482 - EQUIPMENT

**80:NC UCC LIEN FILING**

**Debtor Information**  
**Name:** JEEPERS, INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013  
**Secured Party Information**  
**Name:** IMPERIAL BANK  
**Address:** 220 AIRPORT PKWY SAN JOSE, CA 95110-1003  
**Filing Information**  
**Original Filing Number:** 199990295  
**Original Filing Date:** 9/15/1999  
**Filing Type:** INITIAL FILING  
**Filing Date:** 9/15/1999  
**Filing Number:** 199990295  
**Filing Offices**  
**Address:** 300 N SALISBURY ST, LEGIS OFF BLDG RALEIGH, NC 27603  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION  
**Collateral Information**  
**Description:** 09/15/1999 199990295 - ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND

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**80:NC UCC LIEN FILING**

PRODUCTS;FIXTURES INCLUDING PROCEEDS AND  
PRODUCTS;INVENTORY INCLUDING PROCEEDS AND PRODUCTS

**81:NJ UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS, INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK  
**Address:** 223 AIRPORT PKWY SAN JOSE, CA 95110

**Filing Information**

**Original Filing Number:** 1845413  
**Original Filing Date:** 6/23/1998  
**Filing Type:** INITIAL FILING  
**Filing Date:** 6/23/1998  
**Filing Number:** 1845413

**Filing Offices**

**Address:** STATE CAPITOL TRENTON, NJ 08608  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 06/23/1998 1845413 - CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;INVENTORY INCLUDING PROCEEDS AND PRODUCTS;NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS

**82:NY UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERSI, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

**Original Filing Number:** 00004125  
**Original Filing Date:** 1/6/2000

**Filing 1**

**Filing Type:** AMENDMENT  
**Filing Date:** 8/22/2000  
**Filing Number:** 00164047

**Filing 2**

**Filing Type:** INITIAL FILING  
**Filing Date:** 1/6/2000  
**Filing Number:** 00004125

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 01/06/2000 00004125 - EQUIPMENT

**83:NY UCC LIEN FILING**

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**83:NY UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information****Secured 1**

**Name:** NAMCO CYBERTAINMENT INC  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Secured 2**

**Name:** NAMCO CYBERTAINMENT INC.  
**Address:** 872 SUPREME DR BENSENVILLE, IL 60106-1107

**Assignee Information**

**Name:** CENTRE CAPITAL INVESTORS II, L.O.  
**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Filing Information**

**Original Filing Number:** 98265949  
**Original Filing Date:** 12/18/1998

**Filing 1**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 2/22/2000  
**Filing Number:** 00034822

**Filing 2**

**Filing Type:** INITIAL FILING  
**Filing Date:** 12/18/1998  
**Filing Number:** 98265949

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 12/18/1998 98265949 - EQUIPMENT ALL AND PRODUCTS

**84:NY UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Debtor 2**

**Name:** JEEPERSI, INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information****Secured 1**

**Name:** FLEET NATIONAL BANK  
**Address:** 1 FEDERAL ST BOSTON, MA 02211-0001

**Secured 2**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** FLEET NATIONAL BANK  
**Address:** 1 FEDERAL ST BOSTON, MA 02211-0001

**Filing Information**

**Original Filing Number:** 98252226  
**Original Filing Date:** 11/30/1998

**Filing 1**

**Filing Type:** AMENDMENT  
**Filing Date:** 9/5/2000  
**Filing Number:** 00171794

**Filing 2**

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**84:NY UCC LIEN FILING**

**Filing Type:** INITIAL FILING  
**Filing Date:** 11/30/1998  
**Filing Number:** 98252226

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 11/30/1998 98252226 - EQUIPMENT ALL

**85:NY UCC LIEN FILING**

**Debtor Information**

**Debtor 1**

**Name:** JEEPARSI INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 3**

**Name:** JEEPERSL, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information**

**Secured 1**

**Name:** FIRST UNION NATIONAL BANK, AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Secured 2**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** FIRST UNION NATIONAL BANK AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

**Original Filing Number:** 98229695  
**Original Filing Date:** 10/29/1998

**Filing 1**

**Filing Type:** AMENDMENT  
**Filing Date:** 9/5/2000  
**Filing Number:** 00171799

**Filing 2**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 3/24/1999  
**Filing Number:** 99058349

**Filing 3**

**Filing Type:** INITIAL FILING  
**Filing Date:** 10/29/1998  
**Filing Number:** 98229695

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/29/1998 98229695 - EQUIPMENT;COMPUTER EQUIPMENT

**86:NY UCC LIEN FILING**

**Debtor Information**

**Debtor 1**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS, INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 3**

For internal use only

SDNY\_GM\_00054671

**86:NY UCC LIEN FILING**

**Name:** JEEPERS, INC.  
**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information****Secured 1**

**Name:** FIRST UNION NATIONAL BANK, AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Secured 2**

**Name:** LEASING TECHNOLOGIES INTERNATIONAL, INC.  
**Address:** 221 DANBURY RD WILTON, CT 06897-4007

**Assignee Information**

**Name:** FIRST UNION NATIONAL BANK AS AGENT  
**Address:** 1339 CHESTNUT ST PHILADELPHIA, PA 19107-3519

**Filing Information**

**Original Filing Number:** 98229697  
**Original Filing Date:** 10/29/1998

**Filing 1**

**Filing Type:** AMENDMENT  
**Filing Date:** 9/5/2000  
**Filing Number:** 00171802

**Filing 2**

**Filing Type:** ASSIGNMENT  
**Filing Date:** 3/24/1999  
**Filing Number:** 99058348

**Filing 3**

**Filing Type:** INITIAL FILING  
**Filing Date:** 10/29/1998  
**Filing Number:** 98229697

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 10/29/1998 98229697 - COMPUTER EQUIPMENT;EQUIPMENT

**87:NY UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK  
**Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

**Original Filing Number:** 98134898  
**Original Filing Date:** 6/24/1998  
**Filing Type:** INITIAL FILING  
**Filing Date:** 6/24/1998  
**Filing Number:** 98134898

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 06/24/1998 98134898 - CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;INVENTORY INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS

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**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017496

EFTA\_00165242

EFTA01295465

**88:NY UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** NAMCO CYBERTAINMENT  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

**Original Filing Number:** 98104404  
**Original Filing Date:** 5/15/1998  
**Filing Type:** INITIAL FILING  
**Filing Date:** 5/15/1998  
**Filing Number:** 98104404

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 05/15/1998 98104404 - EQUIPMENT

**89:NY UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** NAMCO CYBERTAINMENT INC  
**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Filing Information**

**Original Filing Number:** 98037631  
**Original Filing Date:** 2/23/1998  
**Filing Type:** INITIAL FILING  
**Filing Date:** 2/23/1998  
**Filing Number:** 98037631

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 02/23/1998 98037631 - EQUIPMENT

**90:NY UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERSI  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERSI OF NYACK, INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** EKLECCO  
**Address:** 4 CLINTON SQ SYRACUSE, NY 13202

**Filing Information**

**Original Filing Number:** 97180716  
**Original Filing Date:** 8/29/1997  
**Filing Type:** INITIAL FILING  
**Filing Date:** 8/29/1997  
**Filing Number:** 97180716

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 08/29/1997 97180716 - INVENTORY INCLUDING PROCEEDS AND

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**CONFIDENTIAL**

CONFIDENTIAL – PURSUANT TO FED. R. CRIM. P. 6(e)

DB-SDNY-0017497

EFTA\_00165243

EFTA01295466

**90:NY UCC LIEN FILING**

PRODUCTS;FIXTURES INCLUDING PROCEEDS AND  
 PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND  
 PRODUCTS;EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS

**91:NY UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS OF WALDEN, INC.  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** PYRAMID COMPANY OF BUFFALO  
**Address:** 4 CLINTON SQ SYRACUSE, NY 13202

**Filing Information**

**Original Filing Number:** 97169658  
**Original Filing Date:** 8/14/1997  
**Filing Type:** INITIAL FILING  
**Filing Date:** 8/14/1997  
**Filing Number:** 97169658

**Filing Offices**

**Address:** 162 WASHINGTON AVE ALBANY, NY 12210  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 08/14/1997 97169658 - EQUIPMENT INCLUDING PROCEEDS AND  
 PRODUCTS;INVENTORY INCLUDING PROCEEDS AND  
 PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND  
 PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS

**92:OH UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS! INC  
**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK  
**Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Assignee Information**

**Name:** GLOBAL ENTERTAINMENT VENTURES, LLC  
**Address:** 153 NORTH AVE WESTON, MA 02493-2032

**Filing Information**

**Original Filing Number:** AP0242826  
**Original Filing Date:** 5/24/2000

**Filing 1**

**Filing Type:** ASSIGNMENT  
**Filing Number:** 20011720640  
**Filing Date:** 6/18/2001  
**Expiration Date:** 5/24/2005

**Filing 2**

**Filing Type:** INITIAL FILING  
**Filing Number:** AP0242826  
**Filing Date:** 5/24/2000  
**Expiration Date:** 5/24/2005

**Filing Offices**

**Address:** 30 E BROAD ST COLUMBUS, OH 43215  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**93:OH UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC

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SDNY\_GM\_00054674

**93:OH UCC LIEN FILING**

**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** NAMCO CYBERTAINMENT INC

**Address:** 877 SUPREME DR BENSENVILLE, IL 60106-1106

**Assignee Information**

**Name:** CENTRE CAPITAL INVESTORS II LP

**Address:** 30 ROCKEFELLER PLZ STE 5050 NEW YORK, NY 10112-0015

**Filing Information**

**Original Filing Number:** AP0106680

**Original Filing Date:** 12/10/1998

**Filing 1**

**Filing Type:** ASSIGNMENT

**Filing Number:** 20000540163

**Filing Date:** 2/22/2000

**Expiration Date:** 12/10/2003

**Filing 2**

**Filing Type:** INITIAL FILING

**Filing Number:** AP0106680

**Filing Date:** 12/10/1998

**Expiration Date:** 12/10/2003

**Filing Offices**

**Address:** 30 E BROAD ST COLUMBUS, OH 43215

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**94:OH UCC LIEN FILING****Debtor Information****Debtor 1**

**Name:** JEEPERS! INC

**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

**Name:** JEEPERS! INC

**Address:** 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information**

**Name:** FLEET NATIONAL BANK

**Address:** 1 FEDERAL ST BOSTON, MA 02211-0001

**Filing Information**

**Original Filing Number:** AP0101092

**Original Filing Date:** 11/30/1998

**Filing 1**

**Filing Type:** AMENDMENT

**Filing Number:** 20002520019

**Filing Date:** 9/5/2000

**Expiration Date:** 11/30/2003

**Filing 2**

**Filing Type:** INITIAL FILING

**Filing Number:** AP0101092

**Filing Date:** 11/30/1998

**Expiration Date:** 11/30/2003

**Filing Offices**

**Address:** 30 E BROAD ST COLUMBUS, OH 43215

**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**95:UT UCC LIEN FILING****Debtor Information**

**Name:** JEEPER! INC.

**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

**Name:** IMPERIAL BANK

**Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004

**Filing Information**

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DB-SDNY-0017499

EFTA\_00165245

EFTA01295468

**95:UT UCC LIEN FILING**

Original Filing Number: 98609167  
 Original Filing Date: 6/23/1998  
 Filing Type: INITIAL FILING  
 Filing Date: 6/23/1998  
 Filing Number: 98609167

**Filing Offices**

Address: 160 EAST 300 SOUTH SALT LAKE CITY, UT 84111  
 Filing Agency: DEPARTMENT OF COMMERCE/UCC DIVISION

**Collateral Information**

Description: 06/23/1998 98609167 - EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;INVENTORY INCLUDING PROCEEDS AND PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS;PARTNERSHIP INTEREST

**96:UT UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS, INC.  
 Address: 60 HICKORY DR FL 5 WALTHAM, MA 02451-1013

**Debtor 2**

Name: JUNGLE JIMS PLAYLAND OF UTAH

**Secured Party Information**

Name: MOUNTAIN COIN MACHINE DIST  
 Address: 3753 S STATE ST SALT LAKE CITY, UT 84115-4812

**Filing Information**

Original Filing Number: 97-582650  
 Original Filing Date: 10/22/1997  
 Filing Type: TERMINATION  
 Filing Date: 6/15/2000  
 Filing Number: 97-582650

**Filing Offices**

Address: 160 EAST 300 SOUTH SALT LAKE CITY, UT 84111  
 Filing Agency: UCC DIV

**97:UT UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS, INC.  
 Address: 60 HICKORY DR FL 5 WALTHAM, MA 02451-1013

**Debtor 2**

Name: JUNGLE JIMS PLAYLAND OF UTAH  
 Address: 60 HICKORY DR FL 5 WALTHAM, MA 02451-1013

**Secured Party Information**

Name: MOUNTAIN COIN MACHINE DIST  
 Address: 3753 S STATE ST SALT LAKE CITY, UT 84115-4812

**Filing Information**

Original Filing Number: 97582650  
 Original Filing Date: 10/22/1997  
 Filing Type: INITIAL FILING  
 Filing Date: 10/22/1997  
 Filing Number: 97582650

**Filing Offices**

Address: 160 EAST 300 SOUTH SALT LAKE CITY, UT 84111  
 Filing Agency: DEPARTMENT OF COMMERCE/UCC DIVISION

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DB-SDNY-0017500

EFTA\_00165246

EFTA01295469

**97:UT UCC LIEN FILING****Collateral Information**

Description: 10/22/1997 97582650 - EQUIPMENT

**98:UT UCC LIEN FILING****Debtor Information**

Name: JEEPERS, INC

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: MOUTAIN COIN MACHINE DIST

Address: 3753 S STATE ST SALT LAKE CITY, UT 84115-4812

**Filing Information**

Original Filing Number: 97575024

Original Filing Date: 8/12/1997

Filing Type: INITIAL FILING

Filing Date: 8/12/1997

Filing Number: 97575024

**Filing Offices**

Address: 160 EAST 300 SOUTH SALT LAKE CITY, UT 84111

Filing Agency: DEPARTMENT OF COMMERCE/UCC DIVISION

**Collateral Information**

Description: 08/12/1997 97575024 - EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS

**99:VA UCC LIEN FILING****Debtor Information****Debtor 1**

Name: JEEPERS! INC.

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Debtor 2**

Name: JEEPERS!, INC.

Address: 63 SOUTH AVE BURLINGTON, MA 01803-4903

**Secured Party Information****Secured 1**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

**Secured 2**

Name: LEASING TECHNOLOGIES INTERNATIONAL, INC.

Address: 221 DANBURY RD WILTON, CT 06897-4007

**Filing Information**

Original Filing Number: 000106 7187

Original Filing Date: 1/6/2000

**Filing 1**

Filing Type: AMENDMENT

Filing Date: 8/22/2000

Filing Number: 000822 7167

**Filing 2**

Filing Type: INITIAL FILING

Filing Date: 1/6/2000

Filing Number: 000106 7187

**Filing Offices**

Address: OLD FINANCE BLDG CAPITOL SQUARE RICHMOND, VA 23219

Filing Agency: SECRETARY OF THE COMMONWEALTH/UCC DIVISION

**Collateral Information**

Description: 01/06/2000 000106 7187 - EQUIPMENT

**100:VA UCC LIEN FILING****Debtor Information**

Name: JEEPERS! INC.

Address: 60 HICKORY DR WALTHAM, MA 02451-1013

**Secured Party Information**

Name: IMPERIAL BANK

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**100:VA UCC LIEN FILING****Address:** 226 AIRPORT PKWY SAN JOSE, CA 95110-1004**Filing Information****Original Filing Number:** 980624 7868**Original Filing Date:** 6/24/1998**Filing Type:** INITIAL FILING**Filing Date:** 6/24/1998**Filing Number:** 980624 7868**Filing Offices****Address:** OLD FINANCE BLDG CAPITOL SQUARE RICHMOND, VA 23219**Filing Agency:** SECRETARY OF THE COMMONWEALTH/UCC DIVISION**Collateral Information**

**Description:** 06/24/1998 980624 7868 - NEGOTIABLE INSTRUMENTS INCLUDING PROCEEDS AND PRODUCTS;ACCOUNTS RECEIVABLE INCLUDING PROCEEDS AND PRODUCTS;ACCOUNT(S) INCLUDING PROCEEDS AND PRODUCTS;FIXTURES INCLUDING PROCEEDS AND PRODUCTS;CONTRACT RIGHTS INCLUDING PROCEEDS AND PRODUCTS;EQUIPMENT INCLUDING PROCEEDS AND PRODUCTS;GENERAL INTANGIBLE(S) INCLUDING PROCEEDS AND PRODUCTS;CHATTEL PAPER INCLUDING PROCEEDS AND PRODUCTS;PARTNERSHIP INTEREST;INVENTORY INCLUDING PROCEEDS AND PRODUCTS

**Real Property - 26 records found****1: Assessment Record for ANDERSON County, TX****Owner Information****Name:** WEINBERG & SANDOLOSKI**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457**County/FIPS:** MIDDLESEX**Property Information****Address:** W LACY ST PALESTINE, TX 75801**County/FIPS:** ANDERSON**Data Source:** B**Legal Information****Assessor's Parcel** R29119**Number:****Assessment Information****Assessed Value:** \$3325**Market Land Value:** \$3325**Total Market Value:** \$3325**2: Assessment Record for ANDERSON County, TX****Owner Information****Name:** WEINBERG & SANDOLOSKI**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457**County/FIPS:** MIDDLESEX**Property Information****Address:** W LACY ST PALESTINE, TX**Data Source:** B**Legal Information****Assessor's Parcel** R29119

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DB-SDNY-0017502

EFTA\_00165248

EFTA01295471

Number:

**Assessment Information**

Assessed Value: \$3325  
Market Land Value: \$3325  
Total Market Value: \$3325

**3: Assessment Record for ANDERSON County, TX**

**Owner Information**

Name: WEINBERG & SANDOLOSKI  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
County/FIPS: MIDDLESEX

**Property Information**

Address: W LACY ST PALESTINE, TX  
Data Source: B

**Legal Information**

Assessor's Parcel Number: R29119

**Assessment Information**

Assessed Value: \$3325  
Market Land Value: \$3325  
Total Market Value: \$3325

**4: Assessment Record for ANDERSON County, TX**

**Owner Information**

Name: WEINBERG & SANDOLOSKI  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
County/FIPS: MIDDLESEX

**Property Information**

Address: W LACY ST PALESTINE, TX  
Data Source: B

**Legal Information**

Assessor's Parcel Number: R29119

**Assessment Information**

Assessed Value: \$3325  
Market Land Value: \$3325  
Total Market Value: \$3325

**5: Assessment Record for ANDERSON County, TX**

**Owner Information**

Name: [REDACTED]  
Address: [REDACTED]  
County/FIPS: [REDACTED]

**Property Information**

Address: W LACY ST  
Data Source: B

**Legal Information**

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DB-SDNY-0017503  
EFTA\_00165249

EFTA01295472

**Assessor's Parcel Number:** R29119

**Assessment Information**

**Assessed Value:** \$3320  
**Market Land Value:** \$3320  
**Total Market Value:** \$3320

**6: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 04-00144650

**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$4946166  
**Market Land Value:** \$1905300  
**Market Improvement Value:** \$3552900  
**Total Market Value:** \$5458200

**7: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 04-00144661

**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$1080066  
**Market Land Value:** \$1140800  
**Market Improvement Value:** \$100

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DB-SDNY-0017504  
 EFTA\_00165250

EFTA01295473

Total Market Value: \$1140900

8: Assessment Record for ANDERSON County, TX

Owner Information

Name: WEINBERG & SANDOLOSKI  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
County/FIPS: MIDDLESEX

Property Information

Address: W LACY ST  
Data Source: B

Legal Information

Assessor's Parcel Number: R29119

Assessment Information

Assessed Value: \$3320  
Market Land Value: \$3320  
Total Market Value: \$3320

9: Assessment Record for MARICOPA County, AZ

Owner Information

Name: JUNGLE JIMS PLAYLANDS OF AZ INC  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
County/FIPS: MIDDLESEX

Property Information

Address: 4961 W BELL RD PHOENIX, AZ 85053  
County/FIPS: MARICOPA  
Data Source: B

Legal Information

Assessor's Parcel Number: 3169489

Assessment Information

Assessed Value: \$5165  
Total Market Value: \$20665

10: Assessment Record for MARICOPA County, AZ

Owner Information

Name: JUNGLE JIMS PLAYLANDS OF AZ INC  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
County/FIPS: MIDDLESEX

Property Information

Address: 4961 W BELL RD PHOENIX, AZ 85053  
County/FIPS: MARICOPA  
Data Source: B

Legal Information

Assessor's Parcel Number: 3169489

Assessment Information

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SDNY\_GM\_00054681

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DB-SDNY-0017505  
EFTA\_00165251

EFTA01295474

**Assessed Value:** \$5165  
**Total Market Value:** \$20665

**11: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 04-00144650  
**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$4434133  
**Market Land Value:** \$1905300  
**Market Improvement Value:** \$3552900  
**Total Market Value:** \$5458200

**12: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 04-00144661  
**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$1019233  
**Market Land Value:** \$1140800  
**Market Improvement Value:** \$100  
**Total Market Value:** \$1140900

**13: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M

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SDNY\_GM\_00054682

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 04-00144650  
**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$3922100  
**Market Land Value:** \$1587700  
**Market Improvement Value:** \$2334400  
**Total Market Value:** \$3922100

**14: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 04-00144661  
**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$958400  
**Market Land Value:** \$958300  
**Market Improvement Value:** \$100  
**Total Market Value:** \$958400

**15: Assessment Record for MARICOPA County, AZ**

**Owner Information**

**Name:** JUNGLE JIMS PLAYLANDS OF AZ INC  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 4961 W BELL RD PHOENIX, AZ 85053  
**County/FIPS:** MARICOPA

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SDNY\_GM\_00054683

Data Source: B

**Legal Information**

Assessor's Parcel Number: 3169489

**Assessment Information**Assessed Value: \$5280  
Total Market Value: \$21122**16: Assessment Record for MONTGOMERY County, MD****Owner Information**Name: CONROY, JOHN M  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
County/FIPS: MIDDLESEX**Property Information**Address: 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
County/FIPS: MONTGOMERY  
Data Source: B**Legal Information**

Assessor's Parcel Number: 04-00144650

Recording Date: 12/30/1988  
Book/Page: 8636/92**Assessment Information**Assessed Value: \$3750066  
Market Land Value: \$1587700  
Market Improvement Value: \$2334400  
Total Market Value: \$3922100**17: Assessment Record for MONTGOMERY County, MD****Owner Information**Name: CONROY, JOHN M  
Address: 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
County/FIPS: MIDDLESEX**Property Information**Address: 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
County/FIPS: MONTGOMERY  
Data Source: B**Legal Information**

Assessor's Parcel Number: 04-00144661

Recording Date: 12/30/1988  
Book/Page: 8636/92**Assessment Information**Assessed Value: \$943166  
Market Land Value: \$958300  
Market Improvement Value: \$100

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DB-SDNY-0017508

EFTA\_00165254

EFTA01295477

**Value:**  
**Total Market Value:** \$958400

**18: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel** 04-00144650  
**Number:**  
**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$3750066  
**Market Land Value:** \$1587700  
**Market Improvement** \$2334400  
**Value:**  
**Total Market Value:** \$3922100

**19: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724  
**County/FIPS:** MONTGOMERY  
**Data Source:** B

**Legal Information**

**Assessor's Parcel** 04-00144661  
**Number:**  
**Recording Date:** 12/30/1988  
**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$943166  
**Market Land Value:** \$958300  
**Market Improvement** \$100  
**Value:**  
**Total Market Value:** \$958400

**20: Assessment Record for OAKLAND County, MI**

**Owner Information**

**Name:** JEEPERS

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SDNY\_GM\_00054685

**Name:** JEEPERS OF AUBURN HILLS  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 4240 BALDWIN RD AUBURN HILLS, MI 48326-1267  
**County/FIPS:** OAKLAND  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 99-00-099-175

**Assessment Information**

**Assessed Value:** \$532390

**21: Assessment Record for OAKLAND County, MI**

**Owner Information**

**Name:** JEEPERS!  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 4240 BALDWIN RD AUBURN HILLS, MI 48326-1267  
**County/FIPS:** OAKLAND  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 99-00-099-175

**Assessment Information**

**Assessed Value:** \$750000

**22: Assessment Record for OAKLAND County, MI**

**Owner Information**

**Name:** JEEPERS, INC  
**Address:** 800 SOUTH ST STE 35 WALTHAM, MA 02453-1478  
**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 21500 NORTHWESTERN HWY SOUTHFIELD, MI 48075-5018  
**County/FIPS:** OAKLAND  
**Data Source:** B

**Legal Information**

**Assessor's Parcel Number:** 99-62-076-490

**Assessment Information**

**Assessed Value:** \$515540

**23: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M  
**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

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DB-SDNY-0017510  
EFTA\_00165256

EFTA01295479

**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724

**County/FIPS:** MONTGOMERY

**Data Source:** B

**Legal Information**

**Assessor's Parcel** 04-00144650

**Number:**

**Recording Date:** 12/30/1988

**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$3406000

**Market Land Value:** \$1587700

**Market Improvement** \$1818300

**Value:**

**Total Market Value:** \$3406000

**24: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M

**Address:** 800 SOUTH ST STE 355 WALTHAM, MA 02453-1457

**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724

**County/FIPS:** MONTGOMERY

**Data Source:** B

**Legal Information**

**Assessor's Parcel** 04-00144661

**Number:**

**Recording Date:** 12/30/1988

**Book/Page:** 8636/92

**Assessment Information**

**Assessed Value:** \$912700

**Market Land Value:** \$912600

**Market Improvement** \$100

**Value:**

**Total Market Value:** \$912700

**25: Assessment Record for MONTGOMERY County, MD**

**Owner Information**

**Name:** CONROY, JOHN M

**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013

**County/FIPS:** MIDDLESEX

**Property Information**

**Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724

**County/FIPS:** MONTGOMERY

**Data Source:** B

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**Legal Information****Assessor's Parcel** 04-00144650**Number:****Recording Date:** 12/30/1988**Book/Page:** 8636/92**Assessment Information****Assessed Value:** \$3406000**Market Land Value:** \$1587700**Market Improvement** \$1818300**Value:****Total Market Value:** \$3406000**26: Assessment Record for MONTGOMERY County, MD****Owner Information****Name:** CONROY, JOHN M**Address:** 60 HICKORY DR WALTHAM, MA 02451-1013**County/FIPS:** MIDDLESEX**Property Information****Address:** 700 HUNGERFORD DR ROCKVILLE, MD 20850-1724**County/FIPS:** MONTGOMERY**Data Source:** B**Legal Information****Assessor's Parcel** 04-00144661**Number:****Recording Date:** 12/30/1988**Book/Page:** 8636/92**Assessment Information****Assessed Value:** \$912700**Market Land Value:** \$912600**Market Improvement** \$100**Value:****Total Market Value:** \$912700**Professional Licenses - 3 records found****1: Professional License****Licensee Information****Company Name:** JEEPERS**Address:** ,**License Information****Profession or Board:** CARNIVAL/AMUSEMENT SAFETY**License Type:** COMPANY**License Number:** 2001000228**2: Professional License****Licensee Information****Company Name:** JEEPERS**Address:** ,**License Information****Profession or Board:** CARNIVAL/AMUSEMENT**License Type:** COMPANY**License Number:** 2001000228

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**3: Professional License****Licensee Information**

Company Name: JEEPERS! INC.

Address: ,

Name:

**License Information**

Profession or Board: ATTORNEYS

License Type: ATTORNEY

License Number: 561189

**Business Associates - 50 records found**

#	Name	Address
1.	1THE JEEPERS OF OLATHE	20070 W 151ST ST OLATHE, KS 66061-7229
2.	AAFFORDABLE FUNITURE CTR	166 LAFAYETTE RD SALISBURY, MA 01952-1507
3.	AAFFORDABLE FURNITUR	166 LAFAYETTE RD SALISBURY, MA 01952-1507
4.	AAFORDABLE FURNITURE & TRADE CENTER	166 LAFAYETTE RD SALISBURY, MA 01952-1507
5.	ADAMS-RUSSELL, INC.	63 SOUTH AVE MS 228 BURLINGTON, MA 01803-4903
6.	AFFORD A MOVE	166 LAFAYETTE RD SALISBURY, MA 01952-1507
7.	AFFORDABLE MOVING SYSTEMS INC	166 LAFAYETTE RD SALISBURY, MA 01952-1507
8.	ARUNDEL COOLING AND HEATING	5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228-1308
9.	BIG LOTS	2525 CLEANLEIGH DR PARKVILLE, MD 21234-6809
10.	BRENTWOOD GLASS COMPANY, INC.	166 LAFAYETTE RD SALISBURY, MA 01952-1507
11.	CHILDREN'S PLACE OUTLET THE	8321 CONCORD MILLS BLVD CONCORD, NC 28027-6460
12.	CITY LIFE CARDS & GIFTS	5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228-1308
13.	CLINSOFT, INC.	BURLINGTON, MA
14.	CONCENTRIC VISIONS	BURLINGTON, MA
15.	CONCORDE GREEN SHOPPING CENTER	91 NORTH AVE GLENDALE HEIGHTS, IL 60139-3496
16.	CURRIER-SMITH CORPORATION	63 SOUTH AVE BURLINGTON, MA 01803-4903
17.	D. I. C. O. LEASING, INC.	166 LAFAYETTE RD SALISBURY, MA 01952-1507
18.	DANIEL A. GRAF AND JANET E. GRAF, TRUSTEES OF PLUM BUSH REAL	166 LAFAYETTE RD SALISBURY, MA 01952-1507
19.	DAVID J. HARDY CONSTRUCTION CO	5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228-1308
20.	DICO CONTAINERS	166 LAFAYETTE RD SALISBURY, MA 01952-1507
21.	DICO LEASING, INC.	166 LAFAYETTE RD SALISBURY, MA 01952-1507
22.	DOMAIN MANUFACTURING, CORP.	63 SOUTH AVE BURLINGTON, MA 01803-4903
23.	DOWNEAST SERVICES INCORPORATED	166 LAFAYETTE RD SALISBURY, MA 01952-1507
24.	EAT, LLC	166 LAFAYETTE RD SALISBURY, MA 01952-1507
25.	EFORCE	63 SOUTH AVE BURLINGTON, MA 01803-4903
26.	FELLOWS PLUMBING & HEATING, IN	5800 BALTIMORE NATIONAL PIKE

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#	Name	Address
27.	GRAF BROS. LEASING, INC.	CATONSVILLE, MD 21228-1308 166 LAFAYETTE RD
28.	I-KINETICS, INC.	SALISBURY, MA 01952-1507 63 SOUTH AVE
29.	IROBOT CORP.	BURLINGTON, MA 01803-4903 63 SOUTH AVE
30.	J & C TRUCKING & DEMO	BURLINGTON, MA 01803-4903 166 LAFAYETTE RD
31.	JEEPERS CHILDRES ENTERTAINMENT CENTER	SALISBURY, MA 01952-1507 8321 CONCORD MILLS BLVD
32.	JEEPERS INC	CONCORD, NC 28027-6460 91 NORTH AVE
33.	JEEPERS OF ILLINOIS INC	GLENDALE HEIGHTS, IL 60139-3496 60 HICKORY DR
34.	JEEPERS OF KANSAS INC	WALTHAM, MA 02451-1013 20070 W 151ST ST
35.	JEEPERS OF WALDEN, INC.	OLATHE, KS 66061-7229 60 HICKORY DR
36.	JEEPERS! OF NORRIDGE II, INC.	WALTHAM, MA 02451-1013 63 SOUTH AVE
37.	JEEPERS! OF NORTH CAROLINA, INC.	BURLINGTON, MA 01803-4903 8321 CONCORD MILLS BLVD
38.	JEEPERS, INC.	CONCORD, NC 28027-6460 60 HICKORY DR
39.	JEEPERS] OF BALTIMORE PARKWAY INC.	WALTHAM, MA 02451-1013 2525 CLEANLEIGH DR
40.	JEEPERS] OF GLEN BURNIE, INC.	PARKVILLE, MD 21234-6809 63 SOUTH AVE
41.	JEEPERS]INC.	BURLINGTON, MA 01803-4903 17677 TORRENCE AVE
42.	JUNGLE JIM'S PLAYLAND	LANSING, IL 60438-4839 739 FORT UNION BLVD
43.	JUNGLE JIM'S PLAYLANDS OF ARIZONA, INC.	MIDVALE, UT 84047-2348 60 HICKORY DR
44.	JUNGLE JIM'S PLAYLANDS OF KANSAS, INC	WALTHAM, MA 02451-1013 OLATHE, KS
45.	KEURIG INCORPORATED	63 SOUTH AVE BURLINGTON, MA 01803-4903
46.	KORN FERRY INTERNATIONAL	63 SOUTH AVE BURLINGTON, MA 01803-4903
47.	LAHEY CLINIC	BURLINGTON, MA 4516 N HARLEM AVE
48.	LANSING SQUARE	HARWOOD HEIGHTS, IL 60706-4712 63 SOUTH AVE
49.	M. A. C. O. M., INC.	BURLINGTON, MA 01803-4903 20070 W 151ST ST
50.	MERIDEL INCORPORATED	OLATHE, KS 66061-7229

#### Person Associates - 22 records found

#	Name	Address
1.	ALMARA, JENNIE	800 SOUTH ST STE 355 WALTHAM, MA 02453-1457
2.	ALMARA, JENNY	800 SOUTH ST WALTHAM, MA 02453-1478
3.	BARDURY, NADINE	800 SOUTH ST WALTHAM, MA 02453-1478
4.	CONNOLLY, MARY-ELISE	50 WHITTEMORE RD NEWTON, MA 02458-2106
5.	CONNOLLY, MARY-ELISE	800 SOUTH ST WALTHAM, MA 02453-1478

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#	Name	Address
6.	DAVIS, JOMATHAN	5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228-1308
7.	DEVINE, JOHN	20070 W 151ST ST OLATHE, KS 66061-7229
8.	DUFTEN, MARK	800 SOUTH ST WALTHAM, MA 02453-1478
9.	EAGAN, PAT	
10.	EAGAN, PATRICK	20070 W 151ST ST OLATHE, KS 66061-7229
11.	EL, HAGE	20070 W 151ST ST OLATHE, KS 66061-7229
12.	ELHAGE, NABIL	60 HICKORY DR WALTHAM, MA 02451-1013
13.	EL-HAGE, NABIL	153 NORTH AVE WESTON, MA 02493-2032
14.	EVANCHO, CLIFTON	60 HICKORY DR FL 5 WALTHAM, MA 02451-1013
15.	EVEANCHO, CLIFTON	60 HICKORY DR FL 5 WALTHAM, MA 02451-1013
16.	HAGE, EL	20070 W 151ST ST OLATHE, KS 66061-7229
17.	HAGE, NABIL E	60 HICKORY DR FL 5 WALTHAM, MA 02451-1013
18.	MARSH, NORMAN	5800 BALTIMORE NATIONAL PIKE CATONSVILLE, MD 21228-1308
19.	MEDIN, STEVE	267 MOODY ST STE 209 WALTHAM, MA 02453-5234
20.	PURNELL, FASON	6711 RITCHIE HWY GLEN BURNIE, MD 21061-2315
21.	SANGINARIO, KENNETH J	21 LYNBROOK RD SOUTHBOROUGH, MA 01772-1427
22.	STEVE, MEDIN	267 MOODY ST WALTHAM, MA 02453-5234

### Sources - 360 records found

All Sources	360 Source Document(s)
Business Contacts	89 Source Document(s)
Business Finder	116 Source Document(s)
Corporate Filings	3 Source Document(s)
Experian Business Reports	15 Source Document(s)
IRS Form 5500	2 Source Document(s)
Liens and Judgments	25 Source Document(s)
Professional Licenses	3 Source Document(s)
Property	26 Source Document(s)
UCC Lien Filings	81 Source Document(s)

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**Subject Summary**

Name	Address	Phone	County/FIPS
JEEPERS, INC.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728	[REDACTED]	

**Name Variations/DBAs****# Name Variations**

- JEEPERS, INC.

**Phone Summary - 1 records found****# Telephone Number**

- (480) 446-7700

**Addresses - 2 records found**

#	Address	Dates	County	MSA
1.	1127 N SCOTTSDALE RD TEMPE, AZ 85281	1/1996 - 8/6/2009	MARICOPA	Phoenix-Mesa, AZ - 6200
2.	621 WINDSPIRIT CIR PRESCOTT, AZ 86303	2/21/2007 - 6/4/2007	YAVAPAI	-

**Profile Information - 5 records found****1: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
 Date Of Incorporation: 2/21/2007  
 State Of Incorporation: AZ  
 Charter Number: 13464693  
 Duration: PERPETUAL  
 Status Of Incorporation: AD-DISSOLVED-FILE ANNUAL REPORT  
 Corporation Structure: BUSINESS

**2: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
 Date Of Incorporation: 2/21/2007  
 State Of Incorporation: AZ  
 Charter Number: 13464693  
 Duration: PERPETUAL  
 Status Of Incorporation: DELINQUENT ANNUAL REPORT  
 Corporation Structure: BUSINESS

**3: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
 Date Of Incorporation: 2/21/2007  
 State Of Incorporation: AZ  
 Charter Number: 13464693  
 Duration: PERPETUAL  
 Status Of Incorporation: ACTIVE  
 Corporation Structure: BUSINESS

**4: JEEPERS, INC.**

Company Name: JEEPERS, INC.

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**4: JEEPERS, INC.**

Date Of Incorporation: 2/21/2007  
 State Of Incorporation: AZ  
 Charter Number: 13464693  
 Duration: PERPETUAL  
 Status Of Incorporation: ACTIVE

**5: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
 Date Of Incorporation: 2/21/2007  
 State Of Incorporation: AZ  
 Charter Number: 13464693  
 Duration: PERPETUAL  
 Status Of Incorporation: ACTIVE  
 Corporation Structure: BUSINESS

**Executives - 2 records found**

#	Name	Titles
1.	ALLARD, BOB	DIRECTOR, CONTACT
2.	SPAULDING, ANDREW	MANAGER

**Registered Agents - 2 records found**

#	Name	Address
1.	BOB ALLARD	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
2.	BOB ALLARD	621 WINDSPIRIT CIR PRESCOTT, AZ 86303-6711

**Industry Information - 2 records found****Industry Numbers**

SIC Codes: 7993 Amusement Devices, Coin-Operated  
 7996 Amusement Parks

**Company ID Numbers - 1 records found****Company ID Numbers**

Sec. of State Charter No(s): AZ, 13464693

**Business Associates - 25 records found**

#	Name	Address
1.	AUTO JUNCTION BENZ & BEEMERS	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
2.	BAMCIS INC	621 WINDSPIRIT CIR PRESCOTT, AZ 86303-6711
3.	CAFE LA SERRE	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
4.	CATHERINE A CONTADINO	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
5.	CATHERINE A HICKEY	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
6.	CONTADINO, CATHERINE A.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
7.	CREDIT UNION LEASING & SALES, INC.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
8.	DIANE SIMONIS	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
9.	GDM HOLDINGS LLC	621 WINDSPIRIT CIR PRESCOTT, AZ 86303-6711
10.	GEORGE S HICKEY	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728

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EFTA01295486

#	Name	Address
11.	GREGORY SCOTT HICKEY	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
12.	HICKEY AUTO WHOLESALE	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
13.	HICKEY, CATHERINE A.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
14.	HICKEY, GEORGE S.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
15.	HICKEY, GREGORY SCOTT	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
16.	JAMES EVELD	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
17.	JEEPERS, INC.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
18.	KEN SIMONIS	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
19.	LEASING RENTAL CAR INC	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
20.	PRO-MOTOR SALES, LEASING, RENTAL CAR, INC.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
21.	PROMOTORS SALES CO	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
22.	PRO-MOTORS SALES CO	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
23.	TEMPE CAR CO.	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
24.	TOPLESS CUSTOM 4X4	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
25.	U-HAUL CO	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728

#### Person Associates - 2 records found

#	Name	Address
1.	ALLARD, BOB	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728
2.	SPAULDING, ANDREW	1127 N SCOTTSDALE RD TEMPE, AZ 85281-1728

#### Sources - 15 records found

All Sources	15 Source Document(s)
Business Contacts	5 Source Document(s)
Business Finder	7 Source Document(s)
Corporate Filings	1 Source Document(s)
Experian Business Reports	2 Source Document(s)

**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

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**Subject Summary**

Name	Address	Phone	County/FIPS
JEEPERS, INC.	709 1/2 SOUTHWEST BLVD CLINTON, NC 28328-4636	None Listed	

**Name Variations/DBAs****# Name Variations**

1. JEEPERS, INC.

**Addresses - 1 records found**

#	Address	Dates	County	MSA
1.	709 1/2 SOUTHWEST BLVD CLINTON, NC 28328	10/15/2001 -	SAMPSON	-

11/13/2007

**Profile Information - 6 records found****1: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
Date Of Incorporation: 11/3/1989  
State Of Incorporation: NC  
Charter Number: 0258208  
Duration: PERPETUAL  
Status Of Incorporation: MULTIPLE  
Corporation Structure: BUSINESS CORPORATION

**2: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
Date Of Incorporation: 11/3/1989  
State Of Incorporation: NC  
Charter Number: 0258208  
Duration: PERPETUAL  
Status Of Incorporation: MULTIPLE  
Corporation Structure: BUSINESS CORPORATION

**3: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
Date Of Incorporation: 11/3/1989  
State Of Incorporation: NC  
Charter Number: 0258208  
Duration: PERPETUAL  
Status Of Incorporation: MULTIPLE  
Corporation Structure: BUSINESS CORPORATION

**4: JEEPERS, INC.**

Company Name: JEEPERS, INC.  
Date Of Incorporation: 11/3/1989  
State Of Incorporation: NC  
Charter Number: 0258208  
Duration: PERPETUAL  
Status Of Incorporation: MULTIPLE  
Corporation Structure: BUSINESS CORPORATION

**5: JEEPERS, INC.**

Company Name: JEEPERS, INC.

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**5: JEEPERS, INC.**

**Date Of Incorporation:** 11/3/1989  
**State Of Incorporation:** NC  
**Charter Number:** 0258208  
**Duration:** PERPETUAL  
**Status Of Incorporation:** MULTIPLE  
**Corporation Structure:** BUSINESS CORPORATION

**6: JEEPERS, INC.**

**Company Name:** JEEPERS, INC.  
**Date Of Incorporation:** 11/3/1989  
**State Of Incorporation:** NC  
**Charter Number:** 0258208  
**Duration:** PERPETUAL  
**Status Of Incorporation:** MULTIPLE  
**Corporation Structure:** BUSINESS CORPORATION

**Registered Agents - 1 records found**

#	Name	Address
1.	ROSEMAN, C E	709 1/2 SOUTHWEST BLVD CLINTON, NC 28328-4636

**Company ID Numbers - 1 records found****Company ID Numbers**

**Sec. of State Charter No(s):** NC, 0258208

**UCC Liens - 1 records found****1:NC UCC LIEN FILING****Debtor Information**

**Name:** JEEPERS INC  
**Address:** 709 1/2 SOUTHWEST BLVD CLINTON, NC 28328-4636

**Secured Party Information**

**Name:** GAYLE FASHIONS INC  
**Address:** RR 6 CLINTON, NC 28328

**Filing Information**

**Original Filing Number:** 0700478  
**Original Filing Date:** 7/25/1990  
**Filing Type:** INITIAL FILING  
**Pages:** 4  
**Filing Number:** 0700478  
**Filing Date:** 7/25/1990  
**Expiration Date:** 7/25/1995

**Filing Offices**

**Address:** 300 N SALISBURY ST, LEGIS OFF BLDG RALEIGH, NC 27603  
**Filing Agency:** SECRETARY OF STATE/UCC DIVISION

**Collateral Information**

**Description:** 07/25/1990 0700478 - FIXTURES SPECIFIED;EQUIPMENT SPECIFIED

**Business Associates - 4 records found**

#	Name	Address
1.	CARDINAL CHEMICALS	709 1/2 SOUTHWEST BLVD CLINTON, NC 28328-4636
2.	COASTAL AGRO BUSINESS	709 1/2 SOUTHWEST BLVD CLINTON, NC 28328-4636
3.	DODGER INDUSTRIES INC	CLINTON, NC
4.	JEEPERS, INC.	709 1/2 SOUTHWEST BLVD CLINTON, NC 28328-4636

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**Sources - 5 records found**

All Sources  
Business Finder  
Corporate Filings  
UCC Lien Filings

**5 Source Document(s)**  
3 Source Document(s)  
1 Source Document(s)  
1 Source Document(s)

**Important:** The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

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**JEEPERS INC**

800 SOUTH ST STE 480  
WALTHAM, MA 02453-1491  
USA

**LENGTH:** 22 words

**DUNS NUMBER:** 78-106-8291

**EXECUTIVE:** MARY E CONNOLLY, PRESIDENT - EXECUTIVE

**LANGUAGE:** ENGLISH

**LOAD-DATE:** August 26, 2013

**LEGAL RESULTS:**

**Court Cases:**

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EFTA01295490

2013 U.S. Dist. LEXIS 40263, \*

**LOADMAN GROUP, L.L.C., et al., PLAINTIFFS, vs. BANCO POPULAR NORTH AMERICA, DEFENDANT.**

**CASE NO. 4:10cv1759**

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION**

**2013 U.S. Dist. LEXIS 40263**

**March 19, 2013, Decided  
March 19, 2013, Filed**

**PRIOR HISTORY:** Loadman Group, L.L.C. v. Banco Popular N. Am., 2013 U.S. Dist. LEXIS 40267 (N.D. Ohio, Mar. 19, 2013)

**CORE TERMS:** summary judgment, environmental, site, remediation, metal, lender, loan agreement, promissory estoppel, oral contract, citation omitted, statute of frauds, checklist, contract claims, genuine, satisfactory, escrow, oral promise, quotation marks, misrepresentation, speculative, non-moving, mortgage, real estate, authorization, completion, closure, lease, breach of contract, written contracts, superseded

**COUNSEL:** [\*1] For Loadman Group, L.L.C., A limited liability company organized under the laws of Delaware, Tamara Miles Ogier, Trustee, other, Eric J. Loadman, Plaintiffs: Vincent J. Restauri, Jr., LEAD ATTORNEY, Baden, PA; David K. Schaffner, New Philadelphia, OH.

For Banco Popular North America, A subsidiary of Popular International Bank, Inc., a corporation organized under the laws of Puerto Rico, Defendant: James S. Wertheim, Kimberly Y. Smith-Rivera, McGlinchey Stafford - Cleveland, Cleveland, OH.

**JUDGES:** HONORABLE SARA LIOI, UNITED STATES DISTRICT JUDGE.

**OPINION BY:** SARA LIOI

**OPINION**

**MEMORANDUM OPINION AND ORDER**

**(Resolving Doc. No. 35)**

Before the Court is defendant's motion for summary judgment (Doc. No. 35), plaintiffs' opposition (Doc. No. 45), and defendant's reply (Doc. No. 51). For the reasons discussed below, the Court **GRANTS** defendant's motion for summary judgment.

**I. BACKGROUND**

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### A. Procedural History

On August 10, 2010, Loadman Group, L.L.C. ("Loadman Group") and Eric J. Loadman ("Loadman") filed a complaint based on diversity jurisdiction against defendant Banco Popular North America ("defendant" or "Banco"). (Doc. No. 1.) The complaint alleged various state law claims stemming from Banco's decision not to close on a **[\*2]** Small Business Administration ("SBA") insured loan to Loadman and Loadman Group. (*Id.* at 1.) Loadman and Loadman Group filed an amended complaint on May 3, 2011, alleging claims for breach of oral and written contracts (Count 1),<sup>1</sup> breach of the duty of good faith and fair dealing (Count 2), willful misconduct and intentional misrepresentation (Count 3), intentional infliction of emotional distress (Count 4), and negligent misrepresentation (Count 5). (Doc. No. 19.) Plaintiffs seek compensatory and punitive damages, interest, costs, and attorney's fees.

<sup>1</sup> Count 1 of the amended complaint is divided into three subparts (A, B, and C). Count 1(A) alleges breach of an oral contract promising no undue delay in closing. (Doc. No. 19 at 155.) Count 1(B) alleges breach of an oral promise with regard to satisfaction of certain environmental conditions. (*Id.* at 156.) Count 1(C) alleges breach of a written contract arising from a loan commitment letter. (*Id.* at 157.)

On July 26, 2011, Loadman filed a Voluntary Petition for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Northern District of Georgia.<sup>2</sup> On April 2, 2012, Banco moved for summary judgment, arguing, in part, that in **[\*3]** light of the bankruptcy filing, plaintiffs lacked standing to pursue their claims in this Court. In their opposition to summary judgment, plaintiffs conceded Loadman no longer had standing to pursue this action, but argued substitution of the bankruptcy trustee would remedy the defect.

<sup>2</sup> In his bankruptcy, Loadman listed his co-plaintiff in this action, Loadman Group, as a corporation in which he had ownership, but indicated it had no assets. On Schedule B, he listed this lawsuit as an asset or potential asset of his estate.

On June 13, 2012, the bankruptcy court granted a motion by the bankruptcy trustee to employ plaintiffs' counsel in this action as special counsel to the trustee to pursue Loadman's claims pending before this Court. (Doc. No. 48-1 at 1561.) On July 3, 2012, this Court granted plaintiffs' unopposed motion to substitute Tamara Miles Ogier, Trustee ("Trustee"), as a party plaintiff in place of plaintiff Loadman and deemed the previously filed opposition brief to summary judgment as filed by the Trustee and Loadman Group (collectively "plaintiffs").<sup>3</sup> The parties thereafter completed briefing on the summary judgment motion, which included two additional motions by defendant: **[\*4]** one (Doc. No. 52) to strike the affidavit of Loadman that plaintiffs attached to their opposition, and another (Doc. No. 53) to strike the affidavit of Frank Coco ("Coco") that plaintiffs attached to their opposition and the supplemental affidavit from Coco that plaintiffs sought leave to file. In a Memorandum Opinion and Order filed contemporaneously with this Memorandum Opinion and Order (Doc. No. 64), the Court granted plaintiff leave to file Coco's supplemental affidavit, construed defendant's motions to strike as objections pursuant to Rule 56, and sustained defendant's objections in part. Defendant's motion for summary judgment is now ripe for disposition.

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<sup>3</sup> In light of the substitution of the Trustee, to the extent the present motion seeks summary judgment on the grounds that Loadman lacks standing to pursue this action, that portion of the motion is **DENIED as MOOT**. See *Doughtie v. Ashland, Inc.*, No. 03-2073 M1/A, 2005 U.S. Dist. LEXIS 43549, 2005 WL 1140736 (W.D. Tenn. May 12, 2005) (substitution of bankruptcy trustee for named plaintiff mooted standing issue).

## B. Factual Background

In 2007, Loadman became interested in purchasing Allred Metal Stamping Works, Inc. ("Allred Metal"), a metal stamping business **[\*5]** located in North Carolina. (Doc. No. 37 [Loadman Dep. April 1, 2011] at 715.) He retained Frank Coco ("Coco") as his financial advisor and, in late 2007, they approached Joe Wojtowicz ("Wojtowicz") of Banco about obtaining the SBA loans for the purchase. (*Id.* at 694, 710, 713, 745.) The loans were conditioned upon the environmental status of two adjacent parcels of real estate on which Allred Metal was located: 1305 Old Thomasville Road ("Old Thomasville Road property") and 1990 Bethel Drive ("Bethel Drive property"). As early as January 3, 2008, an environmental risk assessment, or Phase I inspection, had indicated there could be environmental problems on both properties, requiring a follow-up Phase II assessment. (*Id.* at 723-24, 734, 736.)

On February 7, 2008, Banco issued a loan prequalification letter to Loadman for an SBA real estate acquisition loan. (*Id.* at 745-46; Doc. No. 35-1 [Loadman Dep. Ex. F] at 331.) The letter explained that Loadman's request for financing had been pre-qualified for the SBA "504 program." (Doc. No. 37 at 748; Doc. No. 35-1 at 331.) The letter further explained that the SBA "504 program" is a co-lending program wherein a lender makes a first mortgage, **[\*6]** and the SBA provides a second mortgage, via the services of a Certified Development Company ("CDC"). (Doc. No. 37 at 748-49; Doc. No. 35-1 at 331.) The purpose for the CDC's involvement was to work with the lender and the SBA to handle the SBA loan application approval and documentation process for the second mortgage to the lender. (Doc. No. 37 at 749-50, 755.) Loadman testified he understood the letter was a nonbinding proposal, not a commitment to lend, and that it did not contain all of the terms and conditions of the loan. (Doc. No. 37 at 755.)<sup>4</sup> He accepted the proposal on February 27, 2008. (*Id.*; Doc. No. 35-1 at 333.)

<sup>4</sup> The letter states as follows:

This proposal is for discussion purposes only. It does not represent a commitment to lend on the part of the Lender. If the proposal meets with your approval, it is then subject to credit approval by the Lender and the SBA, and the execution and delivery of all documents and information required by the Lender and the SBA in form and substance satisfactory to the Lender and the SBA.

(Doc. No. 35-1 at 332.)

In March 2008, Loadman sought alternative financing from another bank because he felt Banco was taking too long. (Doc. No. 37 at 717.) **[\*7]** He returned to Banco, however, after a conversation with Wojtowicz and Banco's Matthew Putnam ("Putnam"), in which he asserts they promised lower interest rates and fees and that the loan would close within 20 to 30 days. (*Id.* at 728-30, 764.) Coco, Loadman's financial advisor, participated in that

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conversation as well, but he testified Putnam did not promise anything with regard to how fast or slow the loan would close, promising only his "best effort." (Doc. No. 39 [Coco Dep.] at 1224-25.) Coco testified Wojtowicz had no authority to decide if a loan would close at all and that he explained this to Loadman. (*Id.* at 1215.)

On April 9, 2008, Banco sent Loadman a commitment letter. (Doc. No. 37 at 756; Doc. No. 35-1 [Loadman Dep. Ex. G] at 336.) In it, Banco offered Loadman and his "Corporation to be Formed," "at the Bank's sole discretion, the following credit facility which is subject to, but not limited to, the terms and conditions set forth herein." (Doc. No. 35-1 at 336.) The letter proposed two first mortgage "504" loans, two second "504" "bridge" loans to be repaid by the SBA, and one SBA 7(a) loan. (*Id.* at 336-46.) The letter referenced "[a]dditional loan requirements" attached **[\*8]** as a "Closing Needs Checklist" ("checklist"),<sup>5</sup> which included certain conditions that would need to be satisfied prior to loan closing.<sup>6</sup> (*Id.*)

<sup>5</sup> The commitment letter stated, in relevant part:

9. . . . Additional loan requirements are attached to this commitment letter as "Closing Needs Checklist." These requirements are based on initial documentation received with your loan application. Additional conditions may be required as the loan closing process proceeds.

10. **This loan is further subject to Bank receipt and approval, in its sole discretion, of a fully executed SBA Authorization for Debenture Guaranty. The Borrower(s) and Guarantor(s) agree to provide any additional information as required pursuant to the program and have full knowledge that the proposed loans cannot close without receipt of a fully executed SBA Authorization for Debenture Guaranty.**

(Doc. No. 35-1 at 347) (bold in original).

<sup>6</sup> The checklist included the following pertinent conditions:

13. Satisfactory Environmental site assessment starting with a Phase II located at 1305 Old Thomasville Road, High Point, North Carolina 27260. (DONE)

14. Satisfactory Environmental site assessment starting with a Phase II located **[\*9]** at 1990 Bethel Drive, High Point, North Carolina 27260

18. Closing, [sic] of the loan is conditioned upon prior receipt and review of fully executed SBA Authorization for Debenture Guarantee from an acceptable CDC.

19. SBA Loan Authorization

(Doc. No. 35-1 at 356-57.)

On April 11, 2008, a nearly identical commitment letter superseded the April 9 commitment letter. (Doc. No. 37 at 761; Doc. No. 35-1 [Loadman Dep. Ex. H] at 358.) A July 31, 2008 commitment letter eventually superseded the April 11 letter; it identified the "Corporation to be Formed" as Loadman Group, but was otherwise essentially identical to the prior letter. (Doc. No. 37 at 772-73; Doc. No. 35-1 [Loadman Dep. Ex. I] at 375.) Loadman accepted the terms of each of those letters. (Doc. No. 37 at 757, 761-62.)

As described in the February 7, 2008 prequalification letter, throughout this process, it was the role of the CDC to obtain SBA approval of the 504 loans. (Doc. No. 37 at 751.) The CDC representative working on Loadman's loans was Ralph Ansell ("Ansell") of the CDC Self-Help Ventures Fund. (*Id.* at 752, 833; Doc. No. 38 at [Ansell Dep.] 980.) Ansell testified that the SBA's 504 loan program required use of an **[\*10]** intermediary CDC, but CDCs do not have the authority to speak for the SBA, which has the "final say" on approving loans and could impose additional conditions. (Doc. No. 38 at 980-81, 987-88,

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992.)<sup>7</sup> He further stated that a 504 loan needed approval from the CDC's credit committee before submission to the SBA. (*Id.* at 1005.)<sup>8</sup>

<sup>7</sup> Loadman testified, however, that he believed Ansell spoke for the SBA and that Ansell had told him the SBA had approved the 504 loans. (Doc. No. 37 at 800, 833, 916.)

<sup>8</sup> In contrast, Ansell stated that an SBA 7(a) loan allowed a bank with a Preferred Lender Program ("PLP") status to bind the SBA directly rather than going through a CDC. (Doc. No. 38 at 987-88, 991.) In a transaction involving both types of loans, however, he indicated that a lender would typically process them together to avoid situations in which one was approved while the other was denied. (*Id.* at 990.)

In or around May or June 2008, a Phase II environmental assessment was performed on the real estate. (Loadman Dep. Feb. 21, 2012, Doc. No. 40 at 1356, 1377; Burkart Aff., Doc. No. 45-3 at 1468.) During the course of the Phase II investigation, petroleum was found in the soil of the Old Thomasville [\*11] Road property. (Doc. No. 37 at 813-14.) That contamination required specific steps toward remediation. (*Id.* at 902; Doc. No. 39 at 1248; Doc. No. 40 at 1358.)<sup>9</sup>

<sup>9</sup> John Burkart ("Burkart"), an environmental expert from LandAmerica who worked with Allred Metal on a remediation plan, summarized those steps in an email to Allred Metal, as follows:

1. Completion of the LSA [Limited Site Assessment] report maybe near August 2008 since we must get all the certified mail to all the property owners within 1500 feet of the site. We are working on getting all this info right now.
2. The site will be listed with NCDENR [North Carolina Department of Environmental and Natural Resources] as a high risk site due to water supply wells adjacent to the site.
3. Therefore a Comprehensive Site Assessment (CSA) or Phase II LSA must be completed next[.] this [sic] involves more monitoring wells and sampling to verify the plume configuration at the site.
4. Completion of a remedial action plan to reduce the petroleum impact to below NCDENR action level.
5. Monitor the site and eventually obtain closure with NCDENR (could be two years or five years before closure can be granted by NCDENR)[.]

(Doc. No. 37 at 839-40; [\*12] Doc. No. 35-1 at 426.) Burkart suggested reserving \$100,000 to complete the tasks, but qualified that his estimate "may change following completion of the LSA and CSA." (Doc. No. 35-1 at 426.)

Beginning July 4, 2008 through August 4, 2008, Banco provided Loadman with four updated checklists of documents that still needed to be obtained prior to the loan closing, including completion of a satisfactory environmental Phase II assessment for both properties.<sup>10</sup> (Doc. No. 37 at 780-81, 797-801, 808; Doc. No. 35-1 at 390, 399, 408, 417.)

<sup>10</sup> Although petroleum was initially found only on the Old Thomasville Road property, Ansell indicated that the CDC and SBA required confirmation that the plume had not migrated to the Bethel Road site. (Doc. No. 38 at 1079-80.) The updated checklists provided, in relevant part, that the following conditions needed to be met prior to loan closing:

13. Satisfactory Environmental site assessment starting with a Phase II located at 1305 Old Thomasville Road, High Point, North Carolina 27260. Received -- (*Environment issues pending -- Escrow for remediation required -- Site Closure from NCDENR pending -- SBA Approval required*)
14. Satisfactory Environmental site [\*13] assessment starting with a Phase II located at 1990 Bethel Drive, High Point, North Carolina 27260 Received -- (*Environment issues pending -- Escrow for remediation required -- Site Closure from NCDENR pending -- SBA Approval required*)

(Doc. No. 35 at 397-98, 406-07, 415-16, 424-25) (emphasis retained).

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As of August 4, 2008, the date of the last checklist, there still was no site closure letter from the state environmental agency, no SBA approval, and Banco had not waived either condition. (Doc. No. 37 at 809.) In an August 5, 2008 email, Ansell explained to Banco what was needed before the loans could be presented to the CDC's own credit committee. The necessary items included a state approved remediation plan and escrow by Allred Metal sufficient to cover the costs of that remediation, the amount of which would need to be approved by the state. (Doc. No. 38 at 1040-43; Doc. No. 35-3 at 478.)<sup>11</sup> Ansell further stated that, "Completion of the CAP [Corrective Action Plan] could take an extended period of time." (Doc. No. 35-3 at 478.) Coco testified that "the burden of remediation is on the borrower[.]" but that, in this case, the seller, Allred Metal, had accepted that burden, among others. [\*14] (Doc. No. 39 at 1250.) Loadman testified that no one ever asked *him* for any of the additional documents that Ansell identified in his email to Banco and that, instead, Banco told him all he needed to do to obtain CDC and SBA approval was to have an indemnity agreement in place and funds in escrow sufficient to cover the costs of remediation. (Doc. No. 37 at 794.)

<sup>11</sup> Ansell stated that the CDC would not even consider funding the 504 loans until: 1) the LSA was completed and submitted to the NCDENR; 2) the NCDENR issued its official risk classification; 3) the CSA was completed and submitted to the NCDENR and a follow up risk classification determined by the NCDENR; 4) assuming the risk classification remained "high or intermediate," preparation of a Corrective Action Plan ("CAP") officially quantifying the projected remediation costs and schedule, which must then be submitted to, and approved by, the NCDENR; 5) escrow by the sellers of 150% of the remediation cost as "quantified in the CAP" and "approved by the NCDENR"; and 6) execution of an SBA indemnification agreement by the sellers. (Doc. No. 35-3 at 478.)

On or about August 11, 2008, Banco's Diane Gallion ("Gallion") issued a letter [\*15] to Loadman denying the loans due to his "inability to meet the conditions" of the original commitment letter, which included the requirement that the property be free of environmental contamination and acceptable to Banco and the SBA. (Doc. No. 37 at 856-57; Doc. No. 35-1 at 427.) She noted that, according to the environmental expert retained by Allred Metal, remediation could take years and, due to that timeframe and the associated risk, Banco could not close the loan. (*Id.*) She stated, "These decisions are based on both the Bank and the regulations for the SBA 504 program." (*Id.*)<sup>12</sup>

<sup>12</sup> Gallion testified that, based on her experience, she knew any letter issued by the SBA would provide a caveat that any adverse change affecting the business could cause the SBA not to pay off the bridge loans. (Doc. No. 36 [Gallion Dep.] at 671.) She testified that an adverse change was not limited to environmental concerns, but could be potentially anything, including changes in "personal, business, or affiliated industries, the companies they own, their financial condition, their structure, change in the market value of the property, anything that was germane to the original credit decision." (*Id.* at 629-30.) [\*16] If the SBA determined that there was such a change, it could "choose not to participate," leaving Banco "at risk until the SBA wires money." (*Id.*) In this case, she indicated that the remediation was "a big concern" because of all the unknowns associated with it, and because the lengthy time required increased the prospect that an adverse change would occur, potentially leaving Banco fully at risk. (*Id.* at 631, 659.) She explained that she and Banco operated in "minimizing, reducing, or eliminating anything that's a risk," and, for that reason, they would not close loans where there was an unquantifiable risk that could prevent the SBA's participation. (*Id.* at 669.)

Ansell agreed with Gallion's assessment, testifying that, in most instances, the SBA would want to have the remediation completed and a "no further action letter" from the state. (Doc. No. 38 at 1087-88.) In the "very unlikely" event that the loan was approved prior to remediation, there was "no way" the funds would be dispersed. (*Id.* at 1051-52.) He stated that was "a real risk for a lender" because it could "end[] up with the entire deal" if something happened to make the SBA decide not to pay off the bank. (*Id.* at 1051-52, 1085-86.)

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On [¶17] or about August 13, 2008, Gallion proposed a possible alternative method whereby Loadman could lease the real estate until the remediation was completed, at which time a new loan could be pursued for the real estate. (Doc. No. 35-1 at 428-29; Doc. No. 37 at 860-61.)<sup>13</sup> Loadman testified it was his understanding that the lease alternative was intended "to expediate [sic] [the process] rather than waiting for all the other things to happen." (Doc. No. 37 at 860.)

<sup>13</sup> Regarding that suggestion, Ansell testified that both "the bank and the CDC were looking for ways to do the deal in the light of the environmental consideration." (Doc. No. 38 at 1048.)

Loadman testified that, as late as August 14, 2008, however, Banco's in-house attorney, Kristina Rozek ("Rozek"), Banco's Wojtowicz, and the CDC's Ansell each assured him the original deal could still go forward, so long as he obtained a remediation plan, indemnity agreement, and escrow. (*Id.* at 869.) According to Loadman, Ansell purportedly further assured him that the SBA would not have a problem lending to him even without a "no further action letter" from the state. (*Id.* at 919.) Additionally, according to Loadman, Rozek told him she was in [¶18] charge of the closing, the closing was happening, and Gallion had no right to cancel the loan. (*Id.*)

On August 19, 2008, Loadman emailed to Ansell and Banco a draft Limited Site Assessment ("LSA") report prepared by Allred Metal's environmental expert. Loadman stated that he wanted to purchase the Bethel Drive property because the draft LSA said it was clean. (Doc. No. 38 at 1052-53; Doc. No. 35-3 at 482.)<sup>14</sup>

<sup>14</sup> Both Banco and Ansell noted that the draft LSA did not, in fact, declare Bethel Drive clean. (Doc. No. 38 at 1049-50; Doc. No. 35-3 at 483.) Ansell added: "I don't believe SBA will approve anything until the Comprehensive Site Assessment (CSA) is performed and the extent of the contamination is known to include a determination about whether the Bethel property has been impacted and what the likely cost of remediation might be." (Doc. No. 35-3 at 483.)

On August 25, 2008, Banco again explained to Loadman that it would not proceed with any real estate loan because of the environmental issues, but if he wanted to lease the property, he should provide the lease terms. (Doc. No. 37 at 863; Doc. No. 35-1 at 430-31.) A few days later, Gallion explained the "current loan is withdrawn. If [¶19] you put a new deal together we will respectfully consider." (Doc. No. 37 at 876; Doc. No. 35-1 at 432.) Loadman never submitted anything to Banco showing he had obtained lease agreements or alternative financing for the real estate. (Doc. No. 37 at 877.) Furthermore, through the end of August 2008, the state had not approved a comprehensive site assessment, a corrective action plan, or the length of time, extent, and cost of remediation. (Doc. No. 35-5 at 499.)

According to Ansell, plaintiffs also failed to meet other loan conditions, including a fully executed authorization for debenture guarantee from the CDC and SBA approval. Ansell testified that because of the failure to meet these conditions, the loans were never submitted to the SBA for approval and were never submitted to the CDC's credit committee. (Doc. No. 38 at 977-79, 1005, 1007.)<sup>15</sup> Subsequently, Loadman bought into

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another company but was unsuccessful, leaving him with personal debts. (Doc. No. 40 [Loadman Dep. II] at 1348-51.) He then filed this action in August 2010 against Banco.

15 Ansell testified, "We never were able to get full information about the environmental condition of the property. . . . [W]e never could get [\*20] a full accounting of just how serious that problem was." (Doc. No. 38 at 978-79.) "You know, the thing I would not want to do as a CDC would be to submit a case to the SBA which has unresolved issues." (*Id.* at 1006.)

## II. LAW AND ANALYSIS

### A. Summary Judgment Standard of Review

Under Fed. R. Civ. P. 56(a), when a motion for summary judgment is properly made and supported, it shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A fact is "material" only if its resolution will affect the outcome of the lawsuit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Determination of whether a factual issue is "genuine" requires consideration of the applicable evidentiary standards. Thus, in most civil cases the Court must decide "whether reasonable jurors could find by a preponderance of the evidence that the [non-moving party] is entitled to a verdict." *Id.* at 252.

The party opposing the motion may not rely merely on allegations or denials in its own pleading; rather, by affidavits or materials in the record, they must set out specific facts showing a genuine issue for trial. Fed. R. Civ. P. 56(c)(1). [\*21] A movant is not required to file affidavits or other similar materials negating a claim on which its opponent bears the burden of proof, so long as the movant relies upon the absence of an essential element in the pleadings, depositions, answers to interrogatories, and admissions on file. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

Rule 56(c)(4) requires "[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Mere conclusory allegations "are not evidence and are not adequate to support a motion for summary judgment." *Miller v. Aladdin Temp--Rite, LLC*, 72 Fed. Appx. 378, 380 (6th Cir. 2003) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990)).

Summary judgment is appropriate whenever the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322. Moreover, "the trial court no longer has a duty to search the entire record to establish that [\*22] it is bereft of a genuine issue of material fact." *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989) (citing *Frito--Lay, Inc. v. Willoughby*, 863 F.2d 1029, 1034, 274 U.S. App. D.C. 340 (D.C. Cir. 1988)). The non-moving party is under an affirmative duty to point out specific facts in the record as it has been established which create a genuine issue of material fact. *Fulson v. City of Columbus*, 801 F. Supp. 1, 4 (S.D. Ohio 1992). The non-movant must show more than a scintilla of evidence to overcome summary judgment;

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it is not enough for the non-moving party to show there is some metaphysical doubt as to material facts. *Id.*

In ruling on a motion for summary judgment, the court may not take into account credibility, the weight of the evidence, or the drawing of inferences from the facts. *Anderson*, 477 U.S. at 255. "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* "[I]f the evidence is such that a reasonable jury could return a verdict for the nonmoving party," summary judgment is improper. *Id.* at 248. Accordingly, for the purposes of deciding this motion, and where communicated properly under Rule 56, plaintiffs' account of [\*23] the facts must be accepted as true.

### B. Consent to Summary Judgment

In the first amended complaint, plaintiffs assert nine claims against defendant. In response to defendant's motion for summary judgment, plaintiffs consent to summary judgment on six of the nine claims, as follows: Count 1(B) alleging an oral contract created by Rozak's representations, Count 2 alleging breach of the duty of good faith and fair dealing, Count 3 alleging willful misconduct and intentional misrepresentation, Count 4 alleging intentional infliction of emotional distress, and Count 5 alleging negligent misrepresentation. By failing to dispute (and actually consenting to) Banco's motion for summary judgment as to these claims and the materials offered in support thereof, plaintiffs have not carried their burden under Rule 56(c) and, therefore, defendant is entitled to summary judgment on these claims. *Travelers Cas. & Sur. Co. of Am. v. J.O.A. Const. Co., Inc.*, 479 Fed. Appx. 684, 692 (6th Cir. 2012) (citing Fed. R. Civ. P. 56(e)(2)-(3)). Accordingly, defendant's motion for summary judgment as to these claims is **GRANTED**.<sup>16</sup> All that remains therefore for the Court's analysis are defendant's arguments respecting [\*24] plaintiffs' remaining claims for breach of contract (Counts 1(A) and 1(C)) and for promissory estoppel, alleged in paragraph 58 of plaintiffs' first amended complaint.

<sup>16</sup> At page 1427 of their opposition brief, plaintiffs also purport to consent to summary judgment as to their "alternative" promissory estoppel claim; however, at page 1453, plaintiffs argue against summary judgment on this claim. Accordingly, given plaintiffs' equivocation, the Court will address this claim *infra*.

### C. Plaintiffs Have Not Carried Their Burden as to Damages

Defendant moves for summary judgment as to plaintiffs' breach of contract claims (Counts 1(A) and 1(C)) on the grounds that, without expert testimony (which plaintiffs have failed to offer) (Doc. No. 35 at 260), plaintiffs cannot establish with reasonable certainty their claimed "equity/profit" damages resulting from their inability to purchase Allred Metal. Plaintiffs respond that since Banco was ready to lend Loadman "\$6 million based on its own due diligence reports, [which] were in turn based on independent appraisals of Allred Metal Stamping's assets[.]" Banco cannot now claim those estimates are speculative or that a jury could not reasonably find [\*25] that Loadman's "lost equity" on the day of closing fell between \$4 million and \$10 million. (Doc. No. 45 at 1454.) Further, plaintiffs assert they will prove damages by calling Kozak at trial. (*Id.*)

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"In this diversity case, Ohio law determines the elements of damages [that] plaintiffs must prove, and the quantum and type of evidence necessary to prove them." *Anchor v. O'Toole*, 94 F.3d 1014, 1020 (6th Cir. 1996) (citation omitted). To establish a breach of contract claim in Ohio, a plaintiff must prove the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *Savedoff v. Access Grp.*, 524 F.3d 754, 762 (6th Cir. 2008). "Damages are an essential element of a breach of contract claim." *Oak Rubber Co. v. Bank One, N.A.*, 214 F. Supp. 2d 820, 831 (N.D. Ohio 2002) (granting summary judgment on breach of contract claim where there was no evidence of damages) (citing *Doner v. Snapp*, 98 Ohio App. 3d 597, 600-01, 649 N.E.2d 42 (Ohio Ct. App. 1994); *Anchor*, 94 F.3d at 1020 (6th Cir. 1996)). Once challenged on summary judgment, a plaintiff must come forward with competent, credible evidence to create a question of fact as to the existence of damages. [\*26] *Bemmes v. Public Emps. Ret. Sys.*, 102 Ohio App. 3d 782, 789-90, 658 N.E.2d 31 (Ohio Ct. App. 1995).

As a general rule, an injured party cannot recover damages for breach of contract beyond the amount that is established by the evidence with reasonable certainty, and generally, courts have required greater certainty in the proof of damages for breach of contract than in tort. . . . The damages awarded for a breach of contract should place the injured party in as good a position as it would have been in but for the breach. Such compensatory damages, often termed expectation damages, are limited to actual loss, which loss must be established with reasonable certainty.

*Textron Fin. Corp. v. Nationwide Mut. Ins. Co.*, 115 Ohio App. 3d 137, 144, 684 N.E.2d 1261 (Ohio Ct. App. 1996) (internal quotation marks and citations omitted). See also *Moriarty v. Equisearch Servs., Inc.*, 443 F. App'x 64, 66-67 (6th Cir. 2011) (citing *Textron*, 115 Ohio App. 3d at 137, and affirming district court's grant of summary judgment where plaintiff failed to prove damages).

To successfully assert a claim for lost profits, a plaintiff must demonstrate that the profits were within the contemplation of the parties at the time of execution, that the [\*27] loss of profits is the reasonable result of the breach, and that the profits are not remote and speculative. . . . There must be more than a conclusory statement as to the amount of lost profits. An explanation of how that sum was determined is required. Lost profits must be substantiated by calculations based on facts available or in evidence[;] otherwise they are speculative and uncertain.

*Textron*, 115 Ohio App. 3d at 146 (internal quotation marks and citations omitted).

Here, plaintiffs' proof of damages rests entirely on the affidavits of Loadman and Coco, which, as discussed in the Court's ruling on defendant's objections thereto (see Memorandum Opinion and Order at Doc. No. 64), must, in relevant part, be disregarded on summary judgment as speculative, not based on personal knowledge, not based on evidence in the record, inadmissible hearsay, and improper lay opinion testimony. Moreover, the memo presented as an exhibit to Coco's affidavit--prepared in large part by Kozak--contains various charts, graphs, and figures, but does not state the equity value of Allred Metal, nor do plaintiffs offer deposition or affidavit testimony from Kozak, or any other admissible evidence, to explain [\*28] the purpose of the memo or otherwise explain the calculations contained therein. Further, the memo is admittedly a summary of information obtained from third party source documents not in the record. Consequently, any calculations derived therefrom are merely speculative. See *JGR, Inc. v. Thomasville Furniture Indus., Inc.*, 370 F.3d 519, 525 (6th Cir. 2004). Accordingly, because plaintiff has failed to offer sufficient admissible evidence showing damages resulting from the alleged breaches of contract, such as the value of Allred Metal to Loadman or the amount of profit he expected to earn at closing, Banco is entitled to summary judgment as to plaintiffs'

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breach of contract claims. *Bemmes*, 102 Ohio App. 3d at 789-90; Fed. R. Civ. P. 56(c)(1)(B) and (e).

#### D. Plaintiffs' Oral Contract Claim is Barred by Ohio's Statute of Frauds

Even if plaintiffs had presented sufficient admissible evidence to create a genuine issue of material fact regarding expectation or lost profit damages, their claim for breach of an oral contract fails for the additional reason that it is barred by Ohio's statute of frauds. Ohio Rev. Code § 1335.02(B) states that "[n]o party to a loan agreement may bring an action [\*29] on a loan agreement unless the agreement is in *writing* and is signed by the party against whom the action is brought or by the authorized representative of the party against whom the action is brought." Ohio Rev. Code § 1335.02(B) (emphasis added). Ohio Rev. Code § 1335.02(C) further states:

[t]he terms of a loan agreement subject to this section, including the rights and obligations of the parties to the loan agreement, shall be determined solely from the written loan agreement, and shall not be varied by any oral agreements that are made or discussions that occur before or contemporaneously with the execution of the loan agreement. Any prior oral agreements between the parties are superseded by the loan agreement.

Ohio Rev. Code § 1335.02(C).

Count 1(A) of the first amended complaint alleges that Banco entered into an enforceable oral contract to loan Loadman the money to purchase Allred Metal without "undue delay," except if "something extraordinary were uncovered in due diligence." (Doc. No. 19 at 155-56.) In exchange for this oral promise, Loadman ostensibly agreed to forgo seeking financing from Community South or any other lender, purportedly losing the \$15,000.00 he paid in fees [\*30] to Community South. Plaintiffs allege Banco assured Loadman that the environmental issues were routine and not extraordinary and, therefore, Banco was contractually obligated to make a loan agreement with Loadman and its refusal to do so was a breach of the parties' oral contract.<sup>17</sup>

<sup>17</sup> Count 1(B) alleges the existence of an additional oral contract created by representations made by Banco's outside counsel. Plaintiffs have consented to summary judgment on this claim. However, even if they had not consented to summary judgment on this claim, it would also be barred by the statute of frauds for the reasons discussed *infra*.

Plaintiffs argue without citation that the statute of frauds does not apply to loan "commitment letters," which they contend are not "loan agreements," and that the foregoing oral promise is thus enforceable. However, the definition of "loan agreement" contained in § 1335.02(A)(3) expressly includes "commitments":

"Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, mortgages, or other documents or *commitments*, or any combination of these documents or *commitments*, pursuant to which a financial institution loans or [\*31] delays, or agrees to loan or delay, repayment of money, goods, or anything of value, or otherwise extends credit or makes a financial accommodation.

Ohio Rev. Code § 1335.02 (emphasis added). Here, the alleged oral promise predates the commitment letter and seeks to vary its terms by adding a provision that Banco would expedite the loan process in exchange for the exclusive right to lend the money and,

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therefore, the alleged oral agreement is superseded by the commitment letter. Accordingly, pursuant to § 1335.02(C), plaintiffs' claim is statutorily barred.

Even if this claim were not barred by the statute of frauds, it fails for the additional reasons raised by defendant. First, plaintiffs have failed to present any evidence that the purported oral contract was ever even formed. In fact, Coco testified at his deposition that "everybody knew" that Wojtowicz had no authority to make lending decisions for Banco (Doc. No. 39 at 1215, 1224), and Loadman testified that he had "no idea" who was ultimately responsible for approving the SBA loans (Doc. No. 37 at 743-44). Further, any evidence of this alleged oral promise is barred by the parol evidence rule, which "prohibits the consideration [¶ 32] of evidence as to anything which happened prior to or simultaneously with the making of a contract which would vary the terms of the agreement." *Hanlin-Rainaldi Const. Corp. v. Jeepers, Inc.*, 2004 Ohio 6250, 2004 WL 2674628, at \*5 (2004) (internal quotation marks and citations omitted). Plaintiffs' argument that the commitment letter did not address the terms of the alleged oral contract is unavailing. "Intentions not expressed in the writing are deemed to have no existence and may not be shown by parol evidence." *Aultman Hosp. Ass'n v. Cmty. Mut. Ins. Co.*, 46 Ohio St. 3d 51, 53, 544 N.E.2d 920 (1989) (citation omitted).

#### **E. Plaintiffs' Promissory Estoppel Claim is Barred by the Existence of a Written Contract**

In the alternative, plaintiffs seek to enforce the same oral exclusivity agreement alleged in Count 1(A) under a promissory estoppel theory. Additionally, in their brief in opposition to summary judgment, plaintiffs now assert Loadman relied on promises relative to "Banco's expectations about acceptable old-gas station Phase II problems." (Doc. No. 45 at 1453.)

To establish a claim for promissory estoppel under Ohio law, a plaintiff must establish the existence of a clear and [¶ 33] unambiguous promise upon which it would be reasonable and foreseeable to rely and actual reliance on the promise to the detriment of one who relied. *Cox v. True N. Energy*, 524 F. Supp. 2d 927, 946 (N.D. Ohio 2007); *Patrick v. Painesville Commer. Props.*, 123 Ohio App. 3d 575, 583, 704 N.E.2d 1249 (Ohio Ct. App. 1997). However, "Ohio law bars a promissory estoppel claim when there is an express contract between the parties." *Keating v. Am.'s Wholesale Lender*, No. 1:11 CV 593, 2011 U.S. Dist. LEXIS 65532, 2011 WL 2471732, at \*4 (N.D. Ohio June 21, 2011) (citing *Hughes v. Oberholtzer*, 162 Ohio St. 330, 335, 123 N.E.2d 393 (1954)). "Promisory [sic] estoppel is not available as a remedy where the legal relationship between the parties is governed by a valid and enforceable contract." *Id.* (citations omitted). Here, the existence of a written contract (the loan commitment letter) bars plaintiffs' promissory estoppel claim.

Moreover, plaintiffs cannot circumvent the statute of frauds by recharacterizing their claim as one for promissory estoppel:

[Ohio] [c]ourts generally apply the promissory-estoppel exception to the statute of frauds defense only in narrow circumstances. In addition to asserting the claim as a separate cause of action, in order for promissory [¶ 34] estoppel to apply, there must be either a misrepresentation that the statute of fraud's requirements have been complied with or a promise to make a memorandum of the agreement.

*HAD Enters. v. Galloway*, 192 Ohio App. 3d 133, 145, 2011 Ohio 57, 948 N.E.2d 473 (Ohio Ct. App. 2011) (internal quotation marks and citations omitted). Plaintiffs have

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neither alleged nor put forth sufficient, competent evidence that either occurred in this case. Accordingly, defendant is entitled to summary judgment on plaintiffs' promissory estoppel claim.

#### F. Breach of Fiduciary Duty

Plaintiffs' opposition brief to summary judgment argues their breach of fiduciary duty claim should also survive summary judgment. A review of the first amended complaint, however, reveals plaintiffs alleged no such claim; further, there is nothing in their complaint to put defendant on notice of such a claim. Plaintiffs cannot expand their claims at the summary judgment stage to assert new theories of recovery. *Bridgeport Music, Inc. v. WB Music Corp.*, 508 F.3d 394, 400 (6th Cir. 2007). "A non-moving party plaintiff may not raise a new legal claim for the first time in response to the opposing party's summary judgment motion. At the summary judgment stage, the [\*35] proper procedure for plaintiffs to assert a new claim is to amend the complaint in accordance with Rule 15(a)." *Tucker v. Union of Needletrades, Indus. & Textile Emps.*, 407 F.3d 784, 788 (6th Cir. 2005) (internal quotation marks and citation omitted). Plaintiffs "had the information on which to base these claims in [their] initial Complaint, or [they] could have amended [their] complaint early on in this litigation," and, therefore, the Court may properly refuse to consider plaintiffs' breach of fiduciary duty claim. *Id.* (citations omitted); see also *Stemler v. City of Florence*, 126 F.3d 856, 872 (6th Cir. 1997) (affirming the district court's refusal to consider a new claim raised for the first time on summary judgment because the plaintiff had been "free to seek leave to amend her complaint").

#### III. CONCLUSION

For all of the foregoing reasons, defendant's motion for summary judgment (Doc. No. 35) is **GRANTED**, and this case is **DISMISSED**.<sup>18</sup>

<sup>18</sup> Defendant's motion for judgment on the pleadings (Doc. No. 61) is therefore **DENIED** as **MOOT**.

**IT IS SO ORDERED.**

Dated: March 19, 2013

/s/ Sara Lioi

**HONORABLE SARA LIOI**

**UNITED STATES DISTRICT JUDGE**

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376 Ill. App. 3d 599, \*; 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

**CHICAGO EXHIBITORS CORPORATION, Plaintiff-Appellee, v.  
JEEPERS! OF ILLINOIS, INC, JEEPERS! INC., HARVEY  
SWENTO and CHERRY SWENTO, Defendants-Appellants.  
(Harvey Swento and Cherry Swento, Cross-Plaintiffs; Jeepers!  
of Illinois, Inc., and Jeepers! Inc., Cross-Defendants).**

**No. 1-06-3313**

**APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, FOURTH  
DIVISION**

**376 Ill. App. 3d 599; 876 N.E.2d 129; 2007 Ill. App. LEXIS 962;  
315 Ill. Dec. 129**

**August 30, 2007, Decided  
August 30, 2007, Opinion Filed**

**SUBSEQUENT HISTORY:** Released for Publication November 9, 2007.

**PRIOR HISTORY: [\*\*\*1]**

Appeal from the Circuit Court Of Cook County. Honorable Ronald F. Bartkowicz Judge Presiding.

**DISPOSITION:** Affirmed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Defendant guarantors appealed orders by the Circuit Court Of Cook County (Illinois) that granted plaintiff owner's motion in limine to bar them from presenting evidence relating to an alleged increase in the risk they had assumed under the personal guaranty and awarding the owner attorney fees and costs.

**OVERVIEW:** The owner's predecessor leased a space in a shopping center to the guarantor's company, and the guarantors agreed to guaranty the payment of rent and other obligations. Thereafter, the guarantors twice transferred all interest in the business to other entities. The second entity's parent company agreed to indemnify the guarantors for any losses that they might incur as a result of their personal guaranty. The owner entered into a new agreement with the second entity that modified and added certain provisions to the lease. That agreement was not executed by the guarantors. Thereafter, the owners sued the second entity, the parent company, and the guarantors to recover payment for unpaid rent and repair to the leased premises. The appellate court found that none of the

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376 Ill. App. 3d 599, \*; 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

changes in the agreement constituted a material change in terms so as to release them from their personal guaranty. The personal guaranty specifically provided that it would remain intact regardless of changes and modifications to the lease. The guarantors waived their purported defenses by failing to raise them before the trial court. There was nothing unconscionable about the enforcement of the personal guaranty.

**OUTCOME:** The orders were affirmed.

**CORE TERMS:** lease, tenant, landlord, personal guaranty, guarantor's, guaranty, rent, modification, limine, fun, leased, discharged, estoppel, space, extensions of time, covenant, material changes, materially, Amendment to Lease, evidence relating, unpaid rent, affirmative defenses, executory accord, satisfaction, successor, reaffirm, eviction, entity, pool, rent payment

### LexisNexis(R) Headnotes

***Civil Procedure > Pretrial Matters > Motions in Limine > Appeals***

***Civil Procedure > Pretrial Matters > Motions in Limine > Exclusion of Evidence***

[HN1] A motion in limine is addressed to a trial court's inherent power to admit or exclude evidence, and, generally, appellate courts will not disturb the trial court's ruling on a motion in limine absent a clear abuse of discretion. However, the trial court must exercise its discretion within the bounds of the law.

***Civil Procedure > Appeals > Standards of Review > De Novo Review***

***Civil Procedure > Appeals > Standards of Review > Fact & Law Issues***

[HN2] Where a trial court's exercise of discretion relies on an erroneous conclusion of law, review is de novo.

***Contracts Law > Types of Contracts > Guaranty Contracts***

[HN3] In Illinois, the general principle applies that a guarantor is not released unless the essentials of the original contract have been changed and the performance required of the principal is materially different from that first contemplated. Unless there is some material change in the business dealings between the debtor and the creditor-guarantee and some increase in the risk undertaken by the guarantor, the obligation of the guarantor is not discharged.

***Contracts Law > Types of Contracts > Guaranty Contracts***

[HN4] Whether a guarantor is exposed to an increase in the risk it originally undertook is a key variable in determining whether there has been a material change in a guaranty agreement.

***Contracts Law > Types of Contracts > Guaranty Contracts***

[HN5] A guarantor takes a risk in exchange for a benefit; when events beyond the guarantor's control dramatically increase the risk, the assumptions upon which the contract was founded are undercut. The principle that a substantial increase in risk discharges the

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376 Ill. App. 3d 599, \*; 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

guaranty rests on the assumption that guarantors would not ordinarily tolerate a substituted increase in risk without seeking something in return.

**Contracts Law > Performance > Accord & Satisfaction**

[HN6] An executory accord is an agreement to accept at some future time a stipulated performance as satisfaction of an obligation.

**Contracts Law > Performance > Accord & Satisfaction**

[HN7] An executory accord is unenforceable and will not bar enforcement of the original obligation unless: (1) the creditor has clearly accepted the new promise of future performance, itself, and not the ultimate performance of it, as satisfaction, and (2) the new promise is based upon new consideration.

**COUNSEL:** For Appellants: Law Offices of Mark D. Belongia, LLC, of Chicago (Mark D. Belongia, of counsel).

For Appellee: Wildman, Harrold, Allen & Dixon, LLP, of Chicago (Thomas J. Matyas and Matthew M. Garrett, of counsel).

**JUDGES:** PRESIDING JUSTICE QUINN delivered the opinion of the court. NEVILLE and MURPHY, JJ., concur.

**OPINION BY: QUINN**

**OPINION**

[\*\*132] [\*\*601] PRESIDING JUSTICE QUINN delivered the opinion of the court:

This case arises out of a personal guaranty executed by defendants Harvey and Cherry Swento (the Swentos) in favor of plaintiff Chicago Exhibitors Corporation (CEC). Pursuant to the personal guaranty, the Swentos agreed to guaranty the payment of rent and other obligations owed to CEC by a certain tenant. After the tenant failed to pay rent and make other payments, CEC filed a complaint against the tenant and the Swentos as guarantors. The circuit court granted plaintiff's motion *in limine* to exclude the Swentos from presenting evidence relating to an alleged increase in the risk assumed by the Swentos. The court subsequently granted a directed verdict on liability against the Swentos and the matter proceeded to trial on [\*\*\*2] the issue of damages. The jury found CEC's damages to be \$ 246,588.33 and a verdict in that amount was entered against the Swentos. The court subsequently awarded CEC attorney fees and costs.

The Swentos appeal from the circuit court's order granting plaintiff's motion *in limine* to bar the Swentos from presenting evidence relating to an alleged increase in the risk they had assumed under the personal guaranty and from the circuit court's order awarding CEC attorney fees and costs. On appeal, the Swentos contend that: (1) the circuit court erred in granting plaintiff's motion *in limine* where the subsequent agreement between plaintiff and the tenant presented material changes under the lease which should have discharged the Swentos from their obligations as guarantors; (2) the circuit court erred in granting a directed verdict, which denied the Swentos their opportunity to present their affirmative

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376 Ill. App. 3d 599, \*, 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*, 315 Ill. Dec. 129

defense of estoppel by waiver; and (3) the circuit court should have found it unconscionable to hold the Swentos liable under an agreement to which they were not a party. For the following reasons, we affirm.

## I. Background

CEC is the owner of a shopping center in Des Plaines, Illinois, and leases [\*\*\*3] spaces in the shopping center to commercial tenants. On July 8, 1991, CEC's predecessor, Rubloff, Inc. (Rubloff), as agent for the beneficiary of American National Bank and Trust Company of Chicago Trust No. 14834 (Land Trust), entered into a lease agreement (the lease) as landlord with Swento & Company, Inc., as tenant of "Space 13" at the shopping center. Swento & Company, Inc., which was owned [\*\*602] and operated by the Swentos, was in the business of family fun entertainment as a franchise business that included an indoor amusement park which specialized in holding birthday parties with rides, games and a restaurant. The lease term was for 129 months from the date of the lease and the lease contained a financing contingency period that expired on August 8, 1991.

Contemporaneous to the execution of the lease, to induce the landlord to enter into the lease with Swento & Company, Inc., the Swentos executed a personal guaranty that provided for their joint and several liability for all of the tenant's obligations under the lease. The personal guaranty provided that the Swentos guaranteed "the payment of all Rent and other charges to be paid by Tenant and the performance by Tenant of all the [\*\*\*4] terms, conditions, covenants and agreements of the said Lease and the [Swentos] promis[e] to pay all the Landlord's expenses, including reasonable attorneys' fees and costs, incurred by the Landlord in enforcing all obligations of Tenant under the Lease or incurred by Landlord in enforcing this guaranty."

The personal guaranty also provided:

[\*\*133] "This guaranty is irrevocable, absolute, present, continuing and unconditional, and the obligation of [the Swentos] shall not be released or affected by (a) any extensions of time, indulgences or modifications which Landlord may extend with Tenant in the performance of said Lease; (b) any failure of Landlord to enforce any of the conditions of said Lease; (c) any assignment of the Lease by Tenant; or (d) any consent which Landlord may give to such assignment."

In addition, the personal guaranty provided that the "guaranty shall also inure to the benefit of Landlord's successors, assigns, and legal representatives."

On August 7, 1991, the parties executed a "First Amendment to Lease," in which the financing contingency period was extended to October 1, 1991. Pursuant to the amendment, all other terms of the lease remained the same. The amendment also [\*\*\*5] provided:

"Harvey Swento and Cherry L. Swento have executed this First Amendment to Lease to reaffirm their obligations under that certain Personal Guaranty dated as of July 8, 1991, in favor of Landlord."

On January 24, 1992, the parties executed a "Second Amendment to Lease," which changed the total square footage of the leased space by reducing the size of the rented area. The amendment also reduced the fixed minimum rent, annualized gross sales base, initial monthly estimated "CAM" payments, initial monthly estimated tax payment, and

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376 Ill. App. 3d 599, \*; 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

tenant's proportionate share, as defined in the lease. Pursuant to **[\*603]** the amendment, all other terms of the lease remained the same. The second amendment also contained the same paragraph as the first amendment, in which the Swentos "reaffirmed their obligation under that certain Personal Guaranty dated as of July 8, 1991, in favor of Landlord."

Also on January 24, 1992, the Swentos transferred all interest in their business, Swento & Company, Inc., to a new entity also operated by them, Family Fun Enterprises, Ltd. (Family Fun). Family Fun, as assignee, assumed all obligations under the lease of Swento & Company, Inc., as assignor. Harvey Swento executed **[\*\*\*6]** the assignment on behalf of both Swento & Company, Inc., and Family Fun. Under the assignment, all terms of the lease remained the same.

On February 24, 1992, the parties executed a "Third Amendment to Lease," which extended the dates for the commencement and completion of tenant's work and provided for tenant's electrical service modification. Under the amendment, the new opening date for Family Fun was extended to April 7, 1992, and all other terms of the lease remained the same. The amendment also provided:

"Harvey Swento and Cherry L. Swento have executed this Third Amendment to Lease solely as guarantors of the Lease and not as parties to the Lease to reaffirm their obligations under that certain Personal Guaranty dated as of July 8, 1991 in favor of Landlord."

In 1996, title to the property in which the leased space was located was conveyed from the Land Trust to plaintiff CEC, together with all rights, title, and interest of the Land Trust under the lease.

On February 18, 1997, the Swentos assigned and transferred all of their rights, title and interest as the limited partners in Family Fun to another company, Jeepers! of Illinois, Inc. (Jeepers Illinois). Also, on February 18, **[\*\*\*7]** 1997, Jeepers! Inc. (Jeepers), as parent company to Jeepers Illinois, entered into an indemnification agreement. Under the indemnification agreement, Jeepers agreed to indemnify the Swentos **[\*\*134]** for any and all losses they may incur as a result of their personal guaranty.

On December 26, 1997, the Swentos assigned all of their rights, title and interest as the sole general partner of Family Fun to Jeepers and Jeepers Illinois, pursuant to a general partner interest assignment. On March 25, 1998, Family Fun was dissolved by its new owners, and Jeepers and Jeepers Illinois succeeded to the interest of and assumed all obligations under the lease.

On February 17, 2000, CEC, Jeepers, and Jeepers Illinois executed a "Fourth Amendment to Lease." In the amendment, the parties acknowledged that Jeepers and Jeepers Illinois, as the tenant, had defaulted in its obligations under the lease by failing to pay CEC, as **[\*604]** the landlord, rental amounts totaling \$ 126,561.73. The parties also stated in the amendment that CEC was not willing to consent to the transfer of interests in Family Fun to Jeepers Illinois unless the unpaid rent was paid in full and Jeepers, as parent company, executed a personal guaranty. **[\*\*\*8]** The amendment also included the following provision with regard to the Swentos' personal guaranty of the lease:

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376 Ill. App. 3d 599, \*, 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*, 315 Ill. Dec. 129

"Each of the guarantors of the lease, being Harvey Swento and Cherry L. Swento (the 'Original Guarantors'), has executed this Agreement to acknowledge and agree to the terms set forth herein and the guaranty obligations imposed upon each of them hereby, and to ratify, reaffirm and confirm their joint and several obligations under and pursuant to that certain Personal Guaranty of Lease dated as of July 8, 1991, in favor of the Landlord."

Subsequently, Jeepers Illinois again failed to meet its rent payment obligations and on November 8, 2000, CEC filed a forcible eviction and detainer action. On December 15, 2000, CEC obtained an agreed order of possession for the premises against Jeepers Illinois. The order terminated Jeepers Illinois' right of possession of the premises under the lease and granted a money judgment to CEC for amounts due and owing under the lease. The order also provided that CEC would cancel the eviction proceedings with respect to the premises if Jeepers Illinois complied with certain conditions contained in the possession order, including, without limitation, **\*\*\*9** paying those sums due and owing to CEC as rent under the lease for the month of January 2001, by January 15, 2001.

Jeepers Illinois failed to pay the rental amounts due CEC by January 15, 2001. On January 26, 2001, CEC and Jeepers Illinois entered into an "Agreement to Reinstate Right of Possession" (the Agreement). Pursuant to the Agreement, CEC agreed to extend the deadline for Jeepers Illinois to pay the overdue rent under the lease and permitted Jeepers Illinois to maintain possession of the leased premises so long as it met the extended deadline. The Agreement provided that Jeepers Illinois would receive an extension of time for the payment of the January rent until January 26, 2001, and an extension of time for the payment of the February 2001 rent until February 9, 2001. The Agreement stated:

"Landlord is not willing to grant Tenant's requests unless Tenant enters into this Agreement (and timely and fully satisfies and performs each of Tenant's covenants and obligations herein), and unless Tenant causes all of the Guarantors to ratify and confirm this Agreement."

The Agreement also provided the following: (1) a modification of section 19.01 of the lease, dealing with notice requirements; **\*\*\*10** (2) an addition **[\*605]** of section 19.23 to the lease, which required the tenant to **\*\*135** execute an estoppel certificate upon request to acknowledge the parties' respective rights under the lease; (3) an addition of section 19.24 to the lease, which required the delivery of current financial statements to the landlord; (4) an addition of section 19.25 to the lease, which waived the parties' rights to a jury trial and objections to venue in the event of litigation arising out of the lease; and (5) an addition of a covenant by the tenant that the lease is valid, in full force and effect, and that the tenant does not have any defense, claim or offset right against the landlord as of the date the Agreement was executed. The Agreement was not signed by the Swentos.

Following the Agreement, Jeepers Illinois again became delinquent in its rent payment obligations under the lease. After the lease expired in June 2002 and Jeepers Illinois vacated the leased space at the shopping center, Jeepers Illinois failed to return the leased space in the condition required by the lease. On September 20, 2002, CEC filed a complaint seeking to recover payment for unpaid rent and repair to the leased premises. The complaint **\*\*\*11** named Jeepers Illinois as the tenant, and Jeepers and the Swentos as guarantors under the lease.

On June 28, 2006, after counsel for Jeepers Illinois and Jeepers had withdrawn its representation of those entities, the circuit court granted CEC's motion for summary judgment against Jeepers Illinois and Jeepers for unpaid rent obligations. The court also

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376 Ill. App. 3d 599, \*; 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

granted new counsel leave to appear on behalf of the Swentos and denied the Swentos' motion to continue the trial, which was scheduled for August 7, 2006.

On July 19, 2006, the Swentos filed their fourth amended affirmative defenses, which included an additional third affirmative defense that the Swentos were discharged of their obligations under the personal guaranty when CEC entered into the Agreement on January 26, 2001, because the Agreement included changes to the lease that materially increased the risk that the Swentos had previously agreed to guaranty.

On August 7, 2006, prior to trial, CEC presented a motion *in limine* to exclude the Swentos from presenting evidence relating to an alleged increase in risk that released them from their personal guaranty under the lease. In its motion, CEC argued that, as a matter of law, none of [\*\*\*12] the June 26, 2001, Agreement provisions could have materially increased the risk assumed by the Swentos so as to discharge their obligations under the personal guaranty. CEC asserted that none of the essential terms of the original lease, such as the amount of rent, were changed by the Agreement and the performance required of the tenant remained the same. Rather, CEC asserted that by providing the [\*606] tenant with the opportunity to cure its default and enter a repossession agreement, CEC substantially mitigated the damages that otherwise would have been caused by the tenant's breach.

On August 8, 2001, the circuit court granted CEC's motion *in limine* to exclude evidence relating to an alleged increase in risk incurred by the Swentos. The parties then agreed that the only remaining issue to be determined by the jury was the extent of CEC's damages. The circuit court therefore granted a directed verdict on liability against the Swentos and the matter proceeded to trial on the issue of damages. The jury found CEC's damages for unpaid rent and property damage to be \$ 246,588.38, and a verdict in that amount was entered against the Swentos. A corresponding judgment for property damages was [\*\*\*13] also entered against Jeepers Illinois and Jeepers, in addition to the [\*\*136] previous judgment entered against those entities for unpaid rent. The circuit court also entered judgment in the Swentos' favor and against their co-guarantor Jeepers, under the separate indemnification agreement that the Swentos had entered into with Jeepers. Subsequently, on October 23, 2006, the circuit court granted CEC's request for attorney fees. The Swentos filed a notice of appeal challenging the circuit court's August 8, 2006, order granting CEC's motion *in limine* and the court's October 23, 2006, order granting CEC's request for attorney fees.

## II. Analysis

### A. Motion *In Limine*

On appeal, the Swentos first contend that the circuit court erred by granting CEC's motion *in limine* to exclude evidence relating to an alleged increase in risk where the Swentos argue that they were unaware of the Agreement and the Agreement constituted a material change under the lease which should have discharged the Swentos' obligations as guarantors.

#### 1. Standard of Review

[HN1] "A motion *in limine* is addressed to the trial court's inherent power to admit or exclude evidence," and, generally, this "court will not disturb the trial court's [\*\*\*14] ruling

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2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

on a motion *in limine* absent a clear abuse of discretion." *Beehn v. Eppard*, 321 Ill. App. 3d 677, 680, 747 N.E.2d 1010, 254 Ill. Dec. 598 (2001), citing *People v. Williams*, 188 Ill. 2d 365, 369, 721 N.E.2d 539, 242 Ill. Dec. 260 (1999). "However, a trial court must exercise its discretion within the bounds of the law." *Beehn*, 321 Ill. App. 3d at 680. [HN2] Where a trial court's exercise of discretion relies on an erroneous conclusion of law, as the Swentos claim, our review is *de novo*. *Beehn*, 321 Ill. App. 3d at 680-01.

## 2. Modifications to the Lease

The Swentos argue that the circuit court erred by granting the [\*607] motion *in limine* and finding as a matter of law that the Agreement was not material enough to discharge the Swentos' obligations as guarantors of the lease.

[HN3] In Illinois, the general principle applies that "a guarantor is not released unless the essentials of the original contract have been changed and the performance required of the principal is materially different from that first contemplated." *Roels v. Drew Industries, Inc.*, 240 Ill. App. 3d 578, 581, 608 N.E.2d 411, 181 Ill. Dec. 338 (1992). "Unless there is some material change in the business dealings between the debtor and the creditor-guarantee and some increase in the risk undertaken by the guarantor, the obligation of the [\*\*\*15] guarantor is not discharged." *Roels*, 240 Ill. App. 3d at 582, quoting *Essex International, Inc. v. Clamage*, 440 F.2d 547, 550 (7th Cir. 1971).

[HN4] "Whether a guarantor is exposed to an increase in the risk it originally undertook is a key variable in determining whether there has been a material change in the guaranty agreement." *Roels*, 240 Ill. App. 3d at 582; *Zirp-Burnham, LLC v. E. Terrell Associates, Inc.*, 356 Ill. App. 3d 590, 606, 826 N.E.2d 430, 292 Ill. Dec. 289 (2005). [HN5] "A guarantor takes a risk in exchange for a benefit; when events beyond the guarantor's control dramatically increase the risk, the assumptions upon which the contract was founded are undercut." *Roels*, 240 Ill. App. 3d at 582. "The principle that a substantial increase in risk discharges the guaranty rests on the assumption that guarantors would not ordinarily [\*\*137] tolerate a substituted increase in risk without seeking something in return." *Roels*, 240 Ill. App. 3d at 582.

Here, the Swentos assert that several clauses in the Agreement exposed them to an increase in the risk that they originally undertook under the lease. These clauses include: (1) section 19.01, which was amended to provide that notices to the tenant would be sent to its office in Massachusetts [\*\*\*16] rather than the office of its predecessor in Houston; (2) section 19.23, which required the tenant to provide, upon request, an estoppel certificate stating that the lease is still in effect, that rent is paid to a certain date or describing any defaults, that the tenant occupies the leased space, and that the tenant has no claims against the landlord; (3) section 19.24, which required tenant and its parent company to provide financial statements to the landlord upon the landlord's written request; (4) section 19.25, which provided that the parties agreed that all actions arising in connection with the lease shall be determined in the state and federal courts of Illinois and the parties also agreed to waive their right to a jury trial; (5) paragraph 8, in which the tenant agreed that "the Lease is valid, and in full force and effect without default by Landlord, and that Tenant does not have any defense, claim or offset right against Landlord as of the date hereof. [\*608] Except as otherwise modified by this Agreement,

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376 Ill. App. 3d 599, \*, 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*, 315 Ill. Dec. 129

the terms and provisions of the Lease are hereby ratified, reaffirmed and confirmed." (Emphasis added.)

We find that, contrary to the Swentos' argument, none of these changes [\*\*\*17] in the Agreement constituted a material change in terms so as to release the Swentos from their personal guaranty. None of these clauses altered the performance required by the tenant, such as the amount of rent owed under the lease, the terms of lease, or the basic relationship between the tenant and landlord. In addition, the waiver of any defenses against the landlord was only as of the date of the Agreement.

The Swentos, nonetheless, argue that their obligation under the personal guaranty was discharged by the assignment of the tenant's obligations under the lease to successor tenants and ultimately Jeepers Illinois. The Swentos assert that when they transferred the Jeepers franchise back to Jeepers Illinois and assigned all assets and liabilities to Jeepers Illinois, the asset pool available to the business creditors of the tenant significantly changed. The Swentos maintain that on March 25, 1998, when Jeepers and Jeepers Illinois dissolved Family Fun, which was the Swentos' family business operating the franchise, the Swentos' amount of risk changed because the Swentos were no longer guarantying that the entity they exercised direct control over would satisfy the lease agreement. [\*\*\*18] The Swentos rely on *Bernardi Bros., Inc. v. Great Lakes Distributing, Inc.*, 712 F.2d 1205 (7th Cir. 1983), in support of their argument.

In *Bernardi Bros.*, the owner of a car wash took out a bank loan and had it guaranteed. The borrower later incorporated his business and changed its name, but the pool of assets that secured the loan remained the same. The guarantor later sought to escape liability due to the incorporation and name change. The court applied Illinois law and held that because the economic relationship between the parties had not changed, the incorporation and name change did not materially alter the contract and did not discharge the loan. *Bernardi Bros.*, 712 F.2d at 1207-08. Here, the Swentos argue that following the reasoning *Bernardi Bros.*, where a change in corporate form does diminish the pool of assets available to its creditors, the risk [\*\*138] posed to the guarantors is necessarily increased and justified the discharge of the guarantors' obligations. The Swentos maintain that when the debtor changed from being the Swentos themselves, to their franchisor, Jeepers, the pool of assets changed and the risk to the Swentos as guarantors substantially increased. However, the [\*\*\*19] Swentos agreed to the assignment of the tenant's interests to Jeepers Illinois. This assignment was expressly recognized by the "Fourth Amendment to [609] Lease." The fourth amendment, which was signed by both Harvey and Cherry Swento, also contained a statement that the Swentos: "ratify, reaffirm and confirm their joint and several obligations under and pursuant to that certain Personal Guaranty of Lease dates as of July 8, 1991, in favor of the Landlord." The record therefore indicates that the Swentos agreed to guaranty the obligations of Jeepers Illinois as assignee of the lease. Where guarantors assent to such changes in the contract, the guarantors will not be released. See *Roels*, 240 Ill. App. 3d at 583.

We further find that the Swentos' arguments ignore the fact that the language of the personal guaranty specifically provided that the guaranty would remain intact regardless of changes and modifications to the lease, including extensions of the lease. The personal guaranty provided:

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376 Ill. App. 3d 599, \*, 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

"This guaranty is irrevocable, absolute, present, continuing and unconditional, and the obligation of [the Swentos] shall not be released or affected by (a) any extensions of time, indulgences or modifications [\*\*\*20] which Landlord may extend with Tenant in the performance of said Lease; (b) any failure of Landlord to enforce any of the conditions of said Lease; (c) any assignment of the Lease by Tenant; or (d) any consent which Landlord may give to such assignment."

The personal guaranty further provided that the "guaranty shall also inure to the benefit of Landlord's successors, assigns, and legal representatives." In light of the express provisions of the guaranty, we find that by agreeing that their obligation would continue even if the landlord granted extensions of time to the tenant or otherwise modified the lease, the Swentos granted the landlord the right to make such extensions or modifications without impairing the validity of the guaranty. See Zirp-Burnham, 356 Ill. App. 3d at 605 (where language of original guaranty provided that the guarantor "'guarantee[d] the landlords, its successors and assigns, the prompt and full payment of all Rent,' 'notwithstanding any amendment, addition, assignment, sublease, transfer, renewal, extension or other modification of the Lease,'" (emphasis omitted) the guarantor was not relieved from personal liability due to an allegedly erroneous listing of [\*\*\*21] the trustee and landlord on a second reaffirmation of the guaranty because the landlord did not require the guarantor's reaffirmation to receive the benefit of the original guaranty under the language of that original guaranty). We therefore conclude that the Swentos were not discharged from the guaranty due to the modifications contained in the Agreement.

#### **B. Affirmative Defense of Estoppel by Waiver**

The Swentos next contend that the circuit court erred in granting [\*610] CEC's motion for a directed verdict where it denied the Swentos the opportunity to present their affirmative defense of estoppel by waiver. The Swentos argue that CEC is estopped from seeking a judgment against the Swentos where CEC entered into the Agreement solely with Jeepers and Jeepers [\*\*139] Illinois that superceded the lease. The Swentos maintain that neither CEC's forcible eviction and detainer action nor the Agreement contemplated the Swentos as guarantors to the lease and CEC should be prevented from reverting to the 1991 personal guaranty. In the alternative, the Swentos argue that CEC and Jeepers Illinois entered into an executory accord that prevents CEC from attempting to collect the same debt from the Swentos as a [\*\*\*22] nonparty to that accord.

CEC argues that the Swentos waived these purported defenses by failing to raise them before the trial court. We agree. The record shows that the Swentos' counterclaim and affirmative defenses included promissory estoppel, in which the Swentos alleged that CEC was estopped from asserting its rights under the lease because it broke off negotiations to extend the lease for an additional time period after Jeepers Illinois failed to pay overdue rent. However, the Swentos did not present to the circuit court the estoppel by waiver arguments that they advance on appeal and these arguments are therefore waived. See Robidoux v. Oliphant, 201 Ill. 2d 324, 344, 775 N.E.2d 987, 266 Ill. Dec. 915 (2002).

Waiver aside, we find that the Swentos arguments are without merit. The Swentos first assert that CEC is estopped from seeking a judgment against the Swentos, where CEC entered into the Agreement solely with Jeepers and Jeepers Illinois and where CEC did not name the Swentos in the forcible eviction and detainer action, ignores the fact that, as already discussed, the personal guaranty's language provided that the guaranty would

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376 Ill. App. 3d 599, \*, 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*, 315 Ill. Dec. 129

remain intact regardless of changes and modifications to the lease. In light of [\*\*\*23] the express provisions of the guaranty, the Swentos were not discharged by the subsequent Agreement and CEC was not required to receive a reaffirmation by the Swentos in the Agreement to receive the benefit of the original guaranty. See Zirp-Burnham, 356 Ill. App. 3d at 605-06.

The Swentos' second claim, that the Agreement constituted an executory accord that satisfied the tenant's obligation under the lease, is also without merit. [HN6] "An 'executory accord' is an agreement to accept at some future time a stipulated performance as satisfaction of an obligation." Collection Professionals, Inc. v. Logan, 296 Ill. App. 3d 959, 964, 695 N.E.2d 1344, 231 Ill. Dec. 225 (1998). [HN7] "[A]n executory accord is unenforceable and will not bar enforcement of the original obligation unless: (1) the creditor has clearly accepted the new promise of future performance, itself, and not the ultimate performance of it, as satisfaction, and (2) the new promise [\*\*611] is based upon new consideration." Collection Professionals, Inc., 296 Ill. App. 3d at 964.

Here, the Agreement specifically provided in paragraph 8 that "Tenant covenants and agrees that the Lease is valid, and in full force and effect" and that "the terms and provisions of the Lease are hereby [\*\*\*24] ratified, reaffirmed and confirmed." The Agreement further provided, in paragraph 2,:

"Tenant covenants and agrees that the time extensions described in this Paragraph 2 do not and shall not constitute a waiver, modification or abrogation of Tenant's obligations under the Lease to timely and fully pay to Landlord all other Rent amounts when due during the Term and to otherwise timely and fully perform all covenants and obligations described in the Lease during the Term."

[\*\*140] The Agreement therefore did not provide that CEC accepted a new promise of future performance as satisfaction for the tenant's obligations under the lease, but, rather, the Agreement consisted of an extension of time and modifications of the lease. The parties also agreed in the Agreement that the lease remained in full force and effect. In addition, any promise to provide a release of the original lease would not have been based upon new consideration because Jeepers Illinois already owed the overdue rent payments to CEC pursuant to the lease and did not provide new consideration. We therefore conclude that there is nothing in the record demonstrating that CEC intended to accept the Agreement as satisfaction for the [\*\*\*25] tenant's obligations under the lease.

### C. Unconscionability

The Swentos lastly contend that it is unconscionable to hold them liable under the Agreement because they were not parties to the Agreement and had no knowledge of the Agreement. Contrary to the Swentos' assertion, the circuit court found them liable pursuant to the terms of the personal guaranty, in which they expressly agreed to be jointly and severally liable for the tenant's obligations under the lease. CEC's claims in this case were based on Jeepers Illinois' failure to make rent payments as obligated under the lease and its failure to return the leased premises to the condition required by the lease. As previously discussed, the Agreement did not materially alter the obligations of the tenant so as to discharge the Swentos from their obligations under the personal guaranty. In addition, the personal guaranty granted the landlord the right to make extensions or modifications, such as those provided in the Agreement, without impairing the validity of

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376 Ill. App. 3d 599, \*; 876 N.E.2d 129, \*\*;  
2007 Ill. App. LEXIS 962, \*\*\*; 315 Ill. Dec. 129

the personal guaranty. Therefore, we find nothing unconscionable about the enforcement of the personal guaranty in this case.

### III. Conclusion

[\*612] For the above reasons, we affirm the [\*\*\*26] judgment of the circuit court.

Affirmed.

NEVILLE and MURPHY, JJ., concur.

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2004 Ohio 6250, \*; 2004 Ohio App. LEXIS 5682, \*\*

**Hanlin-Rainaldi Construction Corp., Plaintiff-Appellant, v.  
Jeepers!, Inc., Defendant-Appellee.**

**No. 03AP-851**

**COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT,  
FRANKLIN COUNTY**

**2004 Ohio 6250; 2004 Ohio App. LEXIS 5682**

**November 23, 2004, Rendered**

**PRIOR HISTORY:** **[\*\*1]** C.P.C. No. 02CVH-5622

**DISPOSITION:** Judgment affirmed.

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Appellant construction company sought review of a judgment of the Franklin County Court of Common Pleas (Ohio), which granted partial summary judgment in favor of appellee indoor animated theme park operator in the company's action, which alleged wrongful withholding of payments, breach of contract, and unjust enrichment. Summary judgment was granted to the company on several of the withholding payment claims and the breach of contract claim.

**OVERVIEW:** The park operator entered into a lease agreement to operate a park. The operator also entered into agreements with the construction company for work on the specific leasehold, and with a general contractor. However, the company filed a lien against the leasehold for unpaid fees. Thereafter, the parties entered into a settlement agreement. Upon the operator's failure to pay under the settlement, the company filed suit against the operator and others, and another settlement was entered into. The company again sued the operator. The trial court granted summary judgment for the company on two unpaid notes and for breach of contract, and for the operator on one note and for unjust enrichment. On appeal, the court found that North Carolina substantive law applied. The company's claim that there was a modification or waiver of the release language in the settlement agreement was not properly reviewable, as it was not raised in the trial court. The language of the settlement agreement plainly and unambiguously discharged the operator from its obligation under one note, and accordingly, the court was not free to entertain the company's claim that a release was not the parties' intent.

**OUTCOME:** The court affirmed the judgment of the trial court.

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**CORE TERMS:** summary judgment, settlement agreement, assignment of error, reply brief, parol evidence rule, matter of law, construction projects, upfit, leasehold, plainly, movant, reply, choice of law, reasonable basis, novo, subsequent conduct, wrongfully withheld, contractor, discharged, assign, procedural law, applicable law, substantial relationship, fundamental policy, material interest, leave to file, genuine issues, initial burden, citations omitted, unambiguous

### LexisNexis(R) Headnotes

#### ***Contracts Law > Contract Conditions & Provisions > Forum Selection Clauses***

[HN1] The Supreme Court of Ohio has held that the law of the state chosen by the parties to govern their contractual rights and duties will be applied unless either the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or application of the law of the chosen state would be contrary to the fundamental policy of a state having a greater material interest in the issue than the chosen state and such state would be the state of the applicable law in the absence of a choice by the parties.

#### ***Civil Procedure > Federal & State Interrelationships > Choice of Law > General Overview***

[HN2] Traditional choice of law principles provide that the law of the forum state governs on procedural matters.

#### ***Civil Procedure > Appeals > Briefs***

[HN3] A reply brief is merely an opportunity to reply to the brief of appellee. A reply brief may not raise new assignments, which were omitted from an appellant's original brief, especially where leave to file a new assignment was not sought from the appellate court.

#### ***Civil Procedure > Appeals > Reviewability > Preservation for Review***

[HN4] Issues not raised in a lower court and not there tried and which are completely inconsistent with and contrary to the theory upon which appellants proceeded below cannot be raised for the first time on review.

#### ***Civil Procedure > Summary Judgment > Appellate Review > Standards of Review Civil Procedure > Appeals > Standards of Review > De Novo Review***

[HN5] Appellate review of a lower court's granting of summary judgment is de novo. De novo review means that an appellate court uses the same standard that a trial court should have used, and the appellate court examines the evidence to determine whether as a matter of law no genuine issues exist for trial.

#### ***Civil Procedure > Summary Judgment > Standards > Appropriateness Civil Procedure > Summary Judgment > Standards > Genuine Disputes Civil Procedure > Summary Judgment > Standards > Materiality***

[HN6] Summary judgment is proper when a movant for summary judgment demonstrates: (1) no genuine issue of material fact exists; (2) the movant is entitled to judgment as a

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matter of law; and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Ohio R. Civ. P. 56.

***Civil Procedure > Summary Judgment > Burdens of Production & Proof > Movants  
Civil Procedure > Summary Judgment > Standards > Appropriateness  
Civil Procedure > Summary Judgment > Standards > Genuine Disputes***

[HN7] Under Ohio R. Civ. P. 56(C), a movant bears the initial burden of informing a trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. Once a movant discharges its initial burden, summary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Rule 56, with specific facts showing that a genuine issue exists for trial.

***Contracts Law > Contract Interpretation > Parol Evidence > General Overview  
Evidence > Documentary Evidence > Parol Evidence***

[HN8] The parol evidence rule is not a rule of evidence but of substantive law. It prohibits the consideration of evidence as to anything which happened prior to or simultaneously with the making of a contract which would vary the terms of the agreement. Generally, the parol evidence rule prohibits the admission of evidence to contradict or add to the terms of a clear and unambiguous contract.

***Contracts Law > Contract Interpretation > Parol Evidence > General Overview***

[HN9] Under North Carolina law, when the language of a contract is clear and unambiguous, construction of the agreement is a matter of law for a court, and the court cannot look beyond the terms of the contract to determine the intentions of the parties. Therefore, it must be presumed the parties intended what the language used clearly expresses, and the contract must be construed to mean what on its face it purports to mean.

***Contracts Law > Contract Interpretation > General Overview***

[HN10] Under North Carolina law, where the provisions of a contract are plainly set out, a court is not free to disregard them and a party may not contend for a different interpretation on the ground that it does not truly express the intent of the parties.

**COUNSEL:** Bricker & Eckler, LLP, and James J. Hughes, III, for appellant.

Porter, Wright, Morris & Arthur, LLP, Jack R. Pigman, Jay A. Yurkiw and Bryan R. Faller, for appellee.

**JUDGES:** PETREE, J. KLATT and WRIGHT, JJ., concur.

**OPINION BY:** PETREE

**OPINION**

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(REGULAR CALENDAR)

APPEAL From the Franklin County Court of Common Pleas.

PETREE, J.

**[\*P1]** Plaintiff-appellant, Hanlin-Rainaldi Construction Corporation ("Hanlin-Rainaldi"), appeals from a judgment of the Franklin County Court of Common Pleas that granted partial summary judgment in favor of defendant-appellee, Jeepers!, Inc. ("Jeepers"). For the following reasons, we affirm.

**[\*P2]** Jeepers owns and operates indoor animated theme parks that are designed to serve families with children who are 12 years old or younger. Within these indoor animated theme parks are amusement park rides, soft play areas, skill games, and family dining.

**[\*P3]** In August 1999, Jeepers and Concord Mills Limited Partnership ("Concord Mills") entered into a ten-year lease agreement with the intention that Jeepers would operate a business establishment at a leasehold in Concord Mills Mall in Concord, North Carolina.

**[\*\*2]** Under this agreement, after Jeepers satisfied conditions precedent, Concord Mills apparently agreed to pay Jeepers an allowance for construction improvements.

**[\*P4]** In August 1999, Jeepers also entered into an agreement with Hanlin-Rainaldi, an Ohio corporation that Jeepers apparently had retained on several previous occasions for other construction projects. According to this agreement, Jeepers agreed to pay \$ 1,100,000 to Hanlin-Rainaldi for upfitting the leasehold at Concord Mills Mall.

**[\*P5]** Effective August 1999, Jeepers also contracted with Win & Associates, Inc. ("Win & Associates"), a general contractor in North Carolina. According to this agreement, Jeepers appointed Win & Associates to be the general contractor for the Concord Mills Mall project and directed them to use Hanlin-Rainaldi as the major prime contractor for the Concord Mills Mall project. The project agreement between Jeepers and Win & Associates also required, among other things, that Jeepers: (1) assign its agreement with Hanlin-Rainaldi to Win & Associates for the purpose of satisfying North Carolina licensing and permit requirements; (2) pay the contract sum as provided in its agreement with Hanlin-Rainaldi **[\*\*3]** directly to Hanlin-Rainaldi; and (3) pay a management fee to Win & Associates.

**[\*P6]** Jeepers, however, failed to pay Hanlin-Rainaldi for services rendered, thereby breaching its agreement with Hanlin-Rainaldi. To perfect its interest, Hanlin-Rainaldi filed a lien in North Carolina against the leasehold.

**[\*P7]** In May 2000, desiring to settle any and all claims resulting from the construction project that the parties had against each other, Jeepers and Hanlin-Rainaldi entered into a settlement agreement,<sup>1</sup> wherein Jeepers acknowledged it owed \$ 708,084 to Hanlin-Rainaldi. Pursuant to this agreement, Jeepers promised to pay \$ 440,000 upon execution of the agreement, with the remaining balance to be paid by: (1) a promissory note in the amount of \$ 160,000 ("Note 1"); and (2) a cognovit note in the amount of \$ 108,084. In exchange, Hanlin-Rainaldi agreed to release the lien against the leasehold at Concord Mills Mall.<sup>2</sup>

<sup>1</sup> Jeepers has correctly observed that the copy of the May 2000 agreement in the record was not signed or dated by Hanlin-Rainaldi and lacked some exhibits that were referenced in the settlement agreement. (Jeepers' Reply Memorandum in Support

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2004 Ohio 6250, \*; 2004 Ohio App. LEXIS 5682, \*\*

of Its Motion for Summary Judgment, at 4.) Nevertheless, before the trial court, Jeepers did not affirmatively deny that it was a party to this settlement agreement, nor did it move to strike this copy of the purported settlement agreement. See, generally, *Churchwell v. Red Roof Inns, Inc.* (Mar. 24, 1998), Franklin App. No. 97APE08-1125, at fn. 1, 1998 Ohio App. LEXIS 1122.

**[\*\*4]**

2 According to Jeepers, Hanlin-Rainaldi did not remove its lien until after Hanlin-Rainaldi filed suit in North Carolina and another settlement agreement in August 2001 was executed. (Jeepers' Reply Memorandum in Support of Its Motion for Summary Judgment, at 4, fn. 3.)

**[\*P8]** Jeepers failed to pay the \$ 440,000 that it promised to pay upon execution of the May 2000 settlement agreement. Thereafter, Hanlin-Rainaldi sued Jeepers, Concord Mills, and Win & Associates in a North Carolina court.

**[\*P9]** Additionally, although Jeepers made payments towards satisfying its obligation under Note 1, which continued until 2002, <sup>3</sup> Jeepers ultimately failed to totally satisfy its obligation under Note 1. Jeepers did, however, satisfy the cognovit note.

3 According to Hanlin-Rainaldi, Jeepers failed to make a monthly payment on April 15, 2002, and then failed to make any subsequent payments. (Affidavit of Kristy Krull, Comptroller of Hanlin-Rainaldi, dated October 30, 2002, at P7.) Jeepers admits it made payments in January and February 2002. (Reply Memorandum of Defendant Jeepers!, Inc. in Support of its Motion For Summary Judgment, at 7, fn. 8.)

**[\*\*5] [\*P10]** In August 2001, Hanlin-Rainaldi, Jeepers, and Concord Mills entered into a settlement agreement to resolve disputed claims. Concurrent with the execution of this settlement agreement, Jeepers executed two promissory notes to Hanlin-Rainaldi in the amount of \$ 165,000 ("Note 2") and \$ 75,000 ("Note 3"), respectively. Additionally, concurrent with the execution of the second agreement, Concord Mills agreed to put \$ 75,000 in escrow for the benefit of Jeepers to be disbursed to Hanlin-Rainaldi after it released its lien and dismissed its lawsuit. Hanlin-Rainaldi acknowledges that it received the \$ 75,000 that was held in escrow; however, according to Hanlin-Rainaldi, Jeepers defaulted on Notes 2 and 3.

**[\*P11]** On May 20, 2002, Hanlin-Rainaldi sued Jeepers in the Franklin County Court of Common Pleas, asserting five causes of action, that Jeepers: (1) wrongfully withheld payment under Note 1 and was liable for all amounts due under this note; (2) wrongfully withheld payment under Note 2 and was liable for all amounts due under this note; (3) wrongfully withheld payment under Note 3 and was liable for all amounts due under this note; (4) materially breached the agreement **[\*\*6]** of August 2001 and was liable for the balances due under Notes 2 and 3; and (5) had been unjustly enriched and was liable in an amount equal to the outstanding balances that were due under Notes 1, 2, and 3. Jeepers answered the complaint, wherein it admitted to executing the notes but generally denied other allegations in the complaint.

**[\*P12]** Hanlin-Rainaldi later moved for summary judgment as to all claims. Jeepers opposed this motion.

**[\*P13]** Later, Jeepers moved for summary judgment concerning Hanlin-Rainaldi's claims that arose under the August 2001 agreement and Notes 2 and 3, claiming that the agreement and Notes 2 and 3 were executed under economic duress. In the alternative,

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Jeepers sought judgment relating to Note 1, claiming that the agreement discharged Jeepers of this debt. Hanlin-Rainaldi opposed Jeepers' motion for summary judgment.

**[\*P14]** On April 1, 2003, the trial court rendered a decision, wherein it granted in part and denied in part Hanlin-Rainaldi's motion for summary judgment and granted Jeepers' motion for summary judgment; however, this decision was later vacated. Pursuant to Civ.R. 53 and local rule, the trial court **[\*\*7]** later referred the matter to a magistrate for a mediation conference. After reaching an impasse, the matter was referred for further motion practice and trial preparation.

**[\*P15]** On July 24, 2003, the trial court rendered judgment wherein it granted in part and denied in part both Hanlin-Rainaldi's and Jeepers' motions for summary judgment. In its judgment, the trial court found in favor of Hanlin-Rainaldi concerning its claims that Jeepers breached the August 2001 agreement and was liable to Hanlin-Rainaldi under Notes 2 and 3. However, the trial court found in favor of Jeepers as to Hanlin-Rainaldi's claims that Jeepers failed to satisfy its obligation under Note 1 and Jeepers was unjustly enriched. From this judgment, Hanlin-Rainaldi appeals and asserts a single assignment of error:

The trial court erred as a matter of law in applying the parol evidence rule to bar evidence of Appellee's subsequent conduct.

**[\*P16]** In its reply brief, Hanlin-Rainaldi alternatively asserts:

The trial court erred as a matter of law by failing to consider evidence of Appellee's subsequent payments on the note to show intent and meaning, including whether such conduct constituted **[\*\*8]** a modification or waiver of the terms of the release language in the settlement agreement.

**[\*P17]** We will first address which substantive law and procedural law apply to this cause.

**[\*P18]** [HN1] The Supreme Court of Ohio has held:

The law of the state chosen by the parties to govern their contractual rights and duties will be applied unless either the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or application of the law of the chosen state would be contrary to the fundamental policy of a state having a greater material interest in the issue than the chosen state and such state would be the state of the applicable law in the absence of a choice by the parties.

*Schulke Radio Productions, Ltd. v. Midwestern Broadcasting Co.* (1983), 6 Ohio St.3d 436, 6 Ohio B. 480, 453 N.E.2d 683, syllabus; see, also, *Jarvis v. Ashland Oil, Inc.* (1985), 17 Ohio St.3d 189, 17 Ohio B. 427, 478 N.E.2d 786, syllabus; Restatement of the Law 2d, Conflict of Laws (1971) 561, Section 187. Accord *Torres v. McClain* (2000), 140 N.C. App. 238, 241, 535 S.E.2d 623, quoting *Behr v. Behr* (1980), 46 N.C.App. 694, 696, 266 S.E.2d 393, **[\*\*9]** citing Restatement of the Law 2d, Conflict of Laws (1971) 561, Section 187 (stating that "the parties' choice of law is generally binding on the interpreting court as long as they had a reasonable basis for their choice and the law of the chosen State does not violate a fundamental policy of the state of otherwise applicable law.").

**[\*P19]** Section 9f. of Hanlin-Rainaldi, Jeepers, and Concord Mills' August 2001 agreement provides that: "This Agreement shall be governed by the laws of the State of North Carolina." In this case, North Carolina is the locus of Jeepers' leasehold and the

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construction project, and we find it is the forum with the most significant contacts to the case. Accordingly, we conclude North Carolina has a substantial relationship to the settlement agreement, and there exists a reasonable basis for the parties' choice of law provision in their contract. Furthermore, based upon our review of the record, we cannot conclude that Ohio would have a greater material interest than North Carolina in the outcome of this case. Accordingly, we conclude North Carolina substantive law applies to the August 2001 agreement.

**[\*P20]** Furthermore, because [HN2] traditional choice **[\*\*10]** of law principles provide that the law of the forum state governs on procedural matters, *Keeton v. Hustler Magazine, Inc.* (1984), 465 U.S. 770, 778, fn. 10, 104 S. Ct. 1473, 79 L. Ed. 2d 790; *Lawson v. Valve-Trol Co.* (1991), 81 Ohio App.3d 1, 4, 610 N.E.2d 425, jurisdictional motion overruled, 61 Ohio St. 3d 1422, 574 N.E.2d 1092; Restatement of the Law 2d, Conflict of Laws (1971) 350, Section 122, we conclude Ohio procedural law applies to this cause.

**[\*P21]** In its reply brief, Hanlin-Rainaldi has asserted an alternative assignment of error, namely, that the August 2001 agreement was modified or, alternatively, that release language in this agreement was waived.

**[\*P22]** [HN3] "[A] reply brief is merely an opportunity to reply to the brief of appellee. \* \* \* A reply brief may not raise new assignments, which were omitted from appellant's original brief, especially where leave to file a new assignment was not sought from this court." *Calex Corp. v. United Steelworkers of America* (2000), 137 Ohio App.3d 74, 80, 738 N.E.2d 51, dismissed, appeal not allowed, 89 Ohio St. 3d 1465, 732 N.E.2d 998; see, also, *Trout v. Ohio Dept. [\*\*11] of Edn.*, Franklin App. No. 02AP-783, 2003 Ohio 987, at P26; *Belcher v. Ohio State Racing Comm.*, Franklin App. No. 03AP-786, 2004 Ohio 1278, at P18, appeal not allowed, 103 Ohio St. 3d 1405, 2004 Ohio 3980, 812 N.E.2d 1288; *Julian v. Creekside Health Ctr.*, Mahoning App. No. 03MA21, 2004 Ohio 3197, at P81; *Tipp City v. Watson*, Miami App. No. 02CA43, 2003 Ohio 4836, at P28; *Brouse v. Old Phoenix Natl. Bank of Medina* (1985), 25 Ohio App. 3d 9, 10, fn. 1, 25 Ohio B. 38, 495 N.E.2d 42; *Sheppard v. Mack* (1980), 68 Ohio App.2d 95, 97, fn. 1, 427 N.E.2d 522. See, also, App.R. 16(A)(3) and (C).

**[\*P23]** Additionally, [HN4] "issues not raised in the lower court and not there tried and which are completely inconsistent with and contrary to the theory upon which appellants proceeded below cannot be raised for the first time on review." *Republic Steel Corp. v. Cuyahoga Cty. Bd. of Revision* (1963), 175 Ohio St. 179, 192 N.E.2d 47, syllabus; see, also, *State ex rel. Gutierrez v. Trumbull Cty. Bd. of Elections* (1992), 65 Ohio St.3d 175, 177, 602 N.E.2d 622 (observing that "appellant cannot change the theory of his case and present these new arguments **[\*\*12]** for the first time on appeal"); *Shaffer v. OhioHealth Corp.*, Franklin App. No. 03AP-102, 2004 Ohio 63, at P13; *State ex rel. Phillips v. Capots* (Sept. 22, 1994), Franklin App. No. 94APE04-499, 1994 Ohio App. LEXIS 4142, citing *Miller v. Wikel Mfg. Co., Inc.* (1989), 46 Ohio St.3d 76, 78, 545 N.E.2d 76.

**[\*P24]** In the instant case, although this court granted Hanlin-Rainaldi's motion for leave to file a reply brief, Hanlin-Rainaldi did not seek leave to assert an alternative assignment of error in its reply brief. Additionally, before the trial court, Hanlin-Rainaldi did not raise whether Jeepers' payments on Note 1 following the August 2001 agreement constituted a modification or waiver of the release language in the settlement agreement. Accordingly,

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we conclude that Hanlin-Rainaldi's alternative assignment of error as asserted in its reply brief is improperly raised. Therefore, finding that Hanlin-Rainaldi's alternative assignment of error is improperly raised, we decline to address it.

**[\*P25]** [HN5] Appellate review of a lower court's granting of summary judgment is de novo. *Mitnaul v. Fairmount Presbyterian Church*, 149 Ohio App.3d 769, 2002 Ohio 5833, at P27, 778 N.E.2d 1093. " **[\*\*13]** 'De novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine whether as a matter of law no genuine issues exist for trial.' " Id., quoting *Brewer v. Cleveland Bd. of Edn.* (1997), 122 Ohio App.3d 378, 701 N.E.2d 1023, citing *Dupler v. Mansfield Journal Co., Inc.* (1980), 64 Ohio St.2d 116, 119-120, 413 N.E.2d 1187, certiorari denied (1981), 452 U.S. 962, 101 S. Ct. 3111, 69 L. Ed. 2d 973.

**[\*P26]** [HN6] Summary judgment is proper when a movant for summary judgment demonstrates: (1) no genuine issue of material fact exists; (2) the movant is entitled to judgment as a matter of law; and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St. 3d 181, 183, 1997 Ohio 221, 677 N.E.2d 343.

**[\*P27]** [HN7] Under Civ.R. 56(C), a movant bears the initial burden of informing the trial court of the basis for the motion **[\*\*14]** and identifying those portions of the record demonstrating the absence of a material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, 1996 Ohio 107, 662 N.E.2d 264. Once a movant discharges its initial burden, summary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. Id.; *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 430, 1997 Ohio 259, 674 N.E.2d 1164; Civ.R. 56(E).

**[\*P28]** In its assignment of error, Hanlin-Rainaldi asserts the trial court erred when it applied the parol evidence rule to bar Jeepers' subsequent conduct when determining that the August 2001 agreement released Jeepers of its obligations under Note 1.

**[\*P29]** [HN8] "The parol evidence rule is not a rule of evidence but of substantive law.... It prohibits the consideration of evidence as to anything which happened prior to or simultaneously with the making of a contract which would vary the terms of the agreement." *Thompson v. First Citizens Bank & Trust Co.* (2002), 151 N.C.App. 704, 708-709, 567 S.E.2d 184, quoting *Harrell v. First Union Natl. Bank* (1985), 76 N.C.App. 666, 667, 334 S.E.2d 109, 110, **[\*\*15]** affirmed (1986), 316 N.C. 191, 340 S.E.2d 111. Accord *Ed Schory & Sons, Inc. v. Society Natl. Bank* (1996), 75 Ohio St. 3d 433, 440, 1996 Ohio 194, 662 N.E.2d 1074; *Natl. City Bank, Akron v. Donaldson* (1994), 95 Ohio App.3d 241, 244-245, 642 N.E.2d 58. "Generally, the parol evidence rule prohibits the admission of evidence to contradict or add to the terms of a clear and unambiguous contract." *Thompson, supra*, at 709, quoting *Hansen v. DHL Laboratories* (1994), 316 S.C. 505, 508, 450 S.E.2d 624, affirmed (1995), 319 S.C. 79, 459 S.E.2d 850. Accord *Citicasters Co. v. Bricker & Eckler, L.L.P.*, 149 Ohio App.3d 705, 2002 Ohio 5814, at P7, 778 N.E.2d 663.

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**[\*P30]** Based upon our review, we find that the trial court did not expressly apply the parol evidence rule when it construed the August 2001 agreement. Therefore, we find Hanlin-Rainaldi's contention that the trial court improperly applied the parol evidence rule is misplaced.

**[\*P31]** However, to the extent that Hanlin-Rainaldi asserts that the trial court misconstrued or misapplied, or both, the agreement, as between Hanlin-Rainaldi and Jeepers, we review de novo the trial court's **[\*\*16]** determination.

**[\*P32]** [HN9] "Under North Carolina law, 'when the language of the contract is clear and unambiguous, construction of the agreement is a matter of law for the court[,] and the court cannot look beyond the terms of the contract to determine the intentions of the parties.' " *Financial Services of Raleigh, Inc. v. Barefoot* (2004), 163 N.C.App. 387, 594 S.E.2d 37, 42, quoting *Piedmont Bank & Trust Co. v. Stevenson* (1986), 79 N.C.App. 236, 240, 339 S.E.2d 49, (internal citations omitted), affirmed per curiam, 317 N.C. 330, 344 S.E.2d 788; see, also, *Helms v. Schultze* (2003), 161 N.C.App. 404, 409, 588 S.E.2d 524. Therefore, "it must be presumed the parties intended what the language used clearly expresses, and the contract must be construed to mean what on its face it purports to mean." *Barefoot*, at 43, quoting *Hartford Acc. & Indem. Co. v. Hood* (1946), 226 N.C. 706, 710, 40 S.E.2d 198 (internal citations omitted).

**[\*P33]** According to section 5a. of the August 2001 agreement:

Hanlin, and its parent, subsidiary, and affiliate corporations, and their respective shareholders, **[\*\*17]** partners, directors, officers, employees, insurers, representatives, and agents, and their respective heirs, successors, and assigns, hereby release and discharge Jeepers and Concord Mills, and each of their parent, subsidiary, and affiliate corporations, and their respective shareholders, partners, directors, officers, employees, insurers, representatives, subcontractors, suppliers, and agents, and their respective heirs, successors, and assigns, and from any and all obligations, liabilities, damages, claims, costs, expenses, and attorneys' fees (whether known or unknown) arising out of or relating in any manner to the upfit of the Jeepers' facilities in the Concord Mills Mall and in Southfield, Michigan.

**[\*P34]** Furthermore, pursuant to section 9c. of the agreement: "This Agreement represents the entire agreement between the Parties with respect to the settlement of the dispute between them, and it supersedes all prior discussions, representations, and/or negotiations. This Agreement shall not be amended except in a writing signed by both of the Parties."

**[\*P35]** Thus, applying the plain language of the agreement, we must determine whether Jeepers' obligation under Note **[\*\*18]** 1 is an obligation, liability, claim, or cost that arises out of or relates in any manner to the upfit of Jeepers' facility in the Concord Mills Mall.

**[\*P36]** Jeepers' obligation under Note 1 arose pursuant to a May 2000 agreement. Under this agreement, Hanlin-Rainaldi and Jeepers expressly desired to settle any and all claims against each other that resulted from the construction project in Concord, North Carolina. Pursuant to this agreement, Jeepers executed Note 1.

**[\*P37]** Accordingly, we conclude that Jeepers' obligation under Note 1 relates to the upfit of Jeepers' facility in the Concord Mills Mall, and it is an obligation that arises out of or relates to the upfit of the construction project in the Concord Mills Mall.

**[\*P38]** Because Jeepers' obligation under Note 1 arises out of or relates to the upfit of the construction project in the Concord Mills Mall, we further conclude, as a matter of law, that

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section 5a. of the August 2001 agreement applies and releases Jeepers from its obligation under Note 1. See, generally, *Barefoot*, supra, at 42, citing *Chemimetals Processing, Inc. v. Schrimsher* (2000), 140 N.C.App. 135, 138, 535 S.E.2d 594 **[\*\*19]** (applying principles governing interpretation of contracts when construing a release); *Adder v. Holman & Moody, Inc.* (1975), 288 N.C. 484, 492, 219 S.E.2d 190.

**[\*P39]** Nevertheless, Hanlin-Rainaldi asserts that it was not the parties' intention that Jeepers' obligation under Note 1 would be discharged by the August 2001 agreement.

**[\*P40]** [HN10] Under North Carolina law, "where the provisions of a contract are plainly set out, the court is not free to disregard them and a party may not contend for a different interpretation on the ground that it does not truly express the intent of the parties." *Dixon, Odom & Co. v. Sledge* (1982), 59 N.C.App. 280, 284, 296 S.E.2d 512, citing *Taylor v. Gibbs* (1966), 268 N.C. 363, 150 S.E.2d 506.

**[\*P41]** Here, section 5a. of the August 2001 agreement plainly and unambiguously discharges Jeepers' obligation under Note 1. Finding that this provision of the contract is plainly set out, we are not free to disregard it on the grounds that it does not truly express the parties' intent.

**[\*P42]** Accordingly, Hanlin-Rainaldi's argument that it was not the parties' intention that Jeepers' obligation **[\*\*20]** under Note 1 would be discharged by the August 2001 agreement is unpersuasive.

**[\*P43]** Therefore, having concluded that Hanlin-Rainaldi's contention that the trial court erred when it applied the parole evidence rule to bar Jeepers' subsequent conduct is misplaced and having concluded that section 5a. of the August 2001 agreement plainly and unambiguously applies to discharge Jeepers' obligation under Note 1, we therefore overrule Hanlin-Rainaldi's sole assignment of error.

**[\*P44]** Accordingly, having overruled Hanlin-Rainaldi's sole assignment of error, and having found that Hanlin-Rainaldi's alternative assignment of error in its reply brief was improperly raised, we therefore affirm the judgment of the Franklin County Court of Common Pleas.

***Judgment affirmed.***

KLATT and WRIGHT, JJ., concur.

WRIGHT, J., retired of the Supreme Court of Ohio, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

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**SUPREME COURT CIVIL SUITS FOR NEW YORK COUNTY,  
NEW YORK**

**CASE-NAME: D.B. ZWIRN & CO., L.P. , DBZ GP, LLC, ZWIRN HOLDINGS, LLC AND  
DANIEL ZWIRN  
v.**

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D.B. ZWIRN & CO., L.P. v. FINANCIAL TRUST COMPANY, INC.

FINANCIAL TRUST COMPANY, INC. AND JEEPERS, INC.

**STATUS:** DISPOSED ON 07/23/2010; OTHER FINAL DISP. (PRE-NOTE)

**ACTION:** E-FILED OTHER COMMERCIAL

**REQUEST FOR JUDICIAL INTERVENTION:** 07/02/2010

**INDEX-NUMBER:** 6505822010

**JUDGE:** LOWE, RICHARD B. III

**PLAINTIFF ATTORNEY:** LANKLER SIFFERT & WOHL LLP  
500 FIFTH AVENUE - 33RD FLR.  
NEW YORK, NEW YORK 10110  
1-212 921-8399

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GACHITORENA, BRIAN, INFANT v. JEEPERS & JEEPERS, INC.

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**SUPREME COURT CIVIL SUITS FOR ROCKLAND COUNTY,  
NEW YORK**

**CASE-NAME:** GACHITORENA, BRIAN, INFANT GUARDIAN EILEEN O'ROURKE  
v.  
JEEPERS & JEEPERS, INC.

**STATUS:** DISPOSED ON 04/25/2005; OTHER SETTLEMENT PRE-NOTE

**ACTION:** OTHER TORTS NEGLIGENCE

**REQUEST FOR JUDICIAL INTERVENTION:** 11/07/2003

**INDEX-NUMBER:** 0075722002

**JUDGE:** GEORGE M. BERGERMAN

**PLAINTIFF ATTORNEY:** DONALDSON, CHILLIEST ETAL  
103 E. 125TH ST. STE 1102  
NEW YORK, NEW YORK 10035

**DEFENDANT ATTORNEY:** GORDON & SILBER  
355 LEXINGTON AVE. 7TH FL.  
NEW YORK, N.Y. 10017

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ROMAN, RUBEN N., BY HIS v. JEEPERS, INC., PYRAMID

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**SUPREME COURT CIVIL SUITS FOR ROCKLAND COUNTY,  
NEW YORK**

**CASE-NAME:** ROMAN, RUBEN N., BY HIS FATHER AND LEGAL GUARDIAN, RUBEN ROMAN.

v.  
JEEPERS, INC., PYRAMID MANAGEMENT GROUP, INC., AND EKLECCO, INC.

**STATUS:** DISPOSED ON 06/01/2006; SETTLED BEFORE TRIAL

**ACTION:** OTHER TORTS NEGLIGENCE

**REQUEST FOR JUDICIAL INTERVENTION:** 08/20/2003

**NOTE OF ISSUE FILED:** 05/03/2004

**INDEX-NUMBER:** 0086462002

**JURY REQUESTED BY:** PLAINTIFF

**JUDGE:** ALFRED J. WEINER

**PLAINTIFF ATTORNEY:** JAN H. RILEY  
501 WEST 145 STREET  
NEW YORK, NY 10031  
[REDACTED]

**DEFENDANT ATTORNEY:** MARC D. ORLOFF, P.C.,  
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GOSHEN, N.Y. 10924  
[REDACTED]

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CIVIL SUITS FROM MARYLANDMARYLAND DISTRICT COURT

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CIVIL SUITS FROM MARYLAND  
MARYLAND DISTRICT COURT

**Defendant:** JEEPERS, INC.

**Plaintiff:** CINTAS, CORPORATION

**Plaintiff Address:** CINTAS, CORPORATION  
3951 DARTMOUTH COURT  
FREDERICK, MD 21703

**Plaintiff Attorney:** LIPPMAN, JEFFREY M  
WEINSTOCK, FRIEDMAN, ETAL  
4 RESERVOIR CIRC, 2ND FLR  
BALTIMORE, MD 21208

**Number:** 0702-001450-2007

**Vendor Number:** DS-00001450-2007

**Date:** 1/17/2007

**Filing Type:** CIVIL SUIT

**Case Type:** CONTRACT

**Amount:** \$ 6,832

**Status:** OPEN

**County Filed:** MONTGOMERY

**Place Filed:** MARYLAND DISTRICT COURT

**Description:** CIVIL SUITS

**ADDITIONAL SUBJUDGMENTS EXIST; SEARCH THE VENDOR NUMBER**

MICHAEL CARDIERI, Claimant  
v.  
JEEPERS, INC., Employer;

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2006 VA Wrk. Comp. LEXIS 1044, \*

HANOVER INSURANCE COMPANY, Insurer

VWC FILE NO. 218-93-35

Virginia's Workers' Compensation Commission

2006 VA Wrk. Comp. LEXIS 1044

November 16, 2006

**CORE TERMS:** claimant, doctor, pain, cervical, symptom, pre-injury, sedentary, specialist, ongoing, lumbar, syndrome, treating, medical evidence, recommended, subjective, evaluated, part-time, diagnosed, temporary total disability, industrial accident, physical therapy, return to work, exaggeration, work-related, dysfunction, diagnostic, capability, depression, myofascial, traumatic

**COUNSEL:**

Keith L. Kimball, Esquire, Colgan, Kimball and Carnes, 4456 Corporation Lane, Suite 330, Virginia Beach, VA 23462, for the Claimant.

Jimese P. Sherrill, Esquire, Jordan, Coyne and Savits, L.L.P., 10509 Judicial Drive, Suite 200, Fairfax, VA 22030, for the Defendants.

**JUDGES:** COMMISSIONER TARR, COMMISSIONER DIAMOND, AND COMMISSIONER DUDLEY

**OPINIONBY:** DUDLEY

**OPINION:**

**[\*1]** The employer has requested Review of the Deputy Commissioner's April 19, 2006, Opinion resuming temporary total disability benefits. n1 It assigns error to the finding that it failed to prove that the claimant was capable of returning to his pre-injury employment. Finding no error, we affirm.

-----Begin Footnote-----

n1 The claimant did not appeal the denial of his claim requesting payment for an MRI scan; therefore, we will omit facts pertaining to this issue.

-----End Footnote-----

On May 13, 2004, the claimant sustained a compensable injury by accident to his head, neck, shoulder, back, and hip. The employer paid ongoing temporary total disability benefits and medical benefits.

On March 17, 2005, the employer filed an Application for Hearing seeking termination of the temporary total disability award. It alleged that Dr. David G. Goss, orthopedic surgeon, released the claimant to pre-injury employment effective March 15, 2005.

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At the Hearing, the claimant testified that on the day of his accident, he fell from a ladder and struck his head, neck, and left side of his body on the floor. He stated that [\*2] his pre-injury duties involved maintaining equipment, motors, plumbing, and electrical components at an indoor amusement park, which required him to lift items weighing 75 to 100 pounds. The claimant denied that he had returned to work since the accident. He did not recall being released to perform light duty in the fall of 2004. The claimant acknowledged that he attempted for a half day to perform a job offered by the employer, but said that he could not perform the job due to his "agony." He remembered that Dr. Goss informed him in March 2005 that he could return to full duty. The claimant explained that he did not return to work for the employer, because he felt that he could not perform his pre-injury job. Lucille Cardieri, his wife, testified that since the accident, he could not perform his typical, heavy household chores.

The claimant testified that he looked for employment that did not involve much physical labor, even before his release, and that he found a part-time job working as a manager in May 2005. He ceased this job, because his condition worsened, and he could not lift, bend, or fulfill other required physical activities. The claimant stated that he tried to locate [\*3] other appropriate work thereafter, and that he registered with the Virginia Employment Commission in May 2005. He said that he looked for any employment within his limitations.

The pertinent medical record reflects that Dr. Kirsten A. Santianni, family practitioner, began treating the claimant shortly after his injury by accident. Dr. Santianni assessed that as a result of the fall, he suffered: (1) cervical, trapezius, thoracic, and lumbar muscle spasms and pain; (2) left leg weakness and paresthesias; (3) tinnitus; and (4) left arm paresthesias. Dr. Santianni referred the claimant to various specialists.

Dr. James D. Dillon, neurosurgeon, consulted with the claimant in July 2004 and concluded that he suffered a closed head injury with a cerebral concussion, possibly a skull injury, and a traumatic cervical strain. Dr. Dillon did not recommend surgery.

Dr. Donald E. LaMarche, Jr., neurologist, monitored the claimant's ongoing complaints and diagnosed a cervical strain. Dr. LaMarche advised against surgery.

A functional capacity evaluation (FCE) performed in August 2004 found that the claimant functioned at a sedentary/light physical demand level. The evaluator concluded that he did [\*4] not demonstrate the capability to perform his pre-injury employment, "relative to high degree of self-limiting performance based on subjective pain patterns."

Dr. Goss began treating the claimant in November 2004, and diagnosed multi-level cervical disc protrusions and congenital lumbar stenosis. The doctor prescribed physical therapy, and periodically removed him from work or returned him with modifications.

In December 2004, Dr. LaMarche agreed with Dr. Goss' return of the claimant to sedentary, part-time work. The claimant reported to Dr. LaMarche on January 11, 2005, that his return to work was unsuccessful and caused much pain. As a result, the doctor excused him from employment.

On January 12, 2005, Dr. Santianni issued a prescription note stating that the claimant should not perform any work. She wrote that employment aggravated his condition and increased his pain.

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On February 10, 2005, Dr. Goss prescribed four additional weeks of physical therapy, and stated that, "I have placed the claimant back to full duty as of March 14, 2005," after the completion of therapy. The doctor indicated that: "The claimant will return to full duty and we will see how things go."

Dr. LaMarche [\*5] evaluated the claimant on February 15, 2005, and noted that: "I wrote him a note to release him to work for 3/14/2005, as Dr. Goss did. The claimant says he will try it for a day, but he knows that it will not work for him." Dr. LaMarche commented that he found no clear etiology for the claimant's discomfort, but that he had no reason to doubt his sincerity.

The claimant saw Dr. Goss on March 15, 2005, and reported a multitude of ongoing orthopedic complaints. The doctor reported that he was released to full duty, but that the employer no longer had a job for him. Dr. Goss proposed another FCE, and stated that: "I will still keep the claimant at full duty but the FCE will help guide future decisions."

The claimant underwent another FCE on April 14, 2005, and Dr. Goss reviewed the results on April 19, 2005. The doctor noted that: "As expected the claimant's FCE shows a lack of ability to perform full duty." The FCE reported that he showed significant symptom exaggeration and not a full effort. Dr. Goss agreed to keep the claimant at "sedentary duty per his FCE," and predicted that he would progress his work-related capabilities after four more weeks of physical therapy.

On May 17, [\*6] 2005, Dr. Goss concluded that he had nothing further to offer the claimant and referred him to a pain management specialist. The doctor recommended continued sedentary duty, and considered this restriction to be permanent until he saw a pain management physician and perhaps had another FCE. Dr. Goss commented that he "would not mind a full duty release at this point," based on the claimant's lack of full effort at the FCE. Regardless, the doctor left the decision to the pain management specialist. Dr. Goss issued a disability slip indicating that the sedentary-duty restrictions were temporary until the claimant reached maximum medical improvement on June 1, 2005.

Pursuant to Dr. Goss' referral, Dr. Donald Holzer, neurologist, evaluated the claimant on June 18, 2005. Dr. Holzer concluded that he suffered cervical myofascial pain dysfunction syndrome with underlying disc herniations, cervical and lumbar radiculopathy, lumbar myofascial pain dysfunction syndrome with underlying lumbar spondylosis, post-traumatic syndrome secondary to his head trauma, and depression over his chronic pain and inability to function. The doctor stated that these problems were directly and causally related [\*7] to the claimant's industrial accident. Dr. Holzer proposed a TENS unit, consultation with a pain psychologist, cervical epidural steroid injections, and medications. The doctor recommended that: "The claimant cease working entirely at the present time, as he clearly is having extreme difficulties functioning, even in a part-time capacity and this will allow us an opportunity to assess fully the therapies proposed above."

On July 5, 2005, the claimant returned to Dr. Goss, who repeated that he had no treatment to offer, and that he had deferred treatment and work restrictions to the physiatrist. The doctor expressed doubt that the symptoms were as severe as he conveyed during his clinic visits. Dr. Holzer monitored the claimant's ongoing symptoms throughout the summer of 2005.

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On August 23, 2005, the claimant underwent an independent medical examination by Dr. Mark A. Ross, psychiatrist. He informed Dr. Ross about the accident, his treatment, and that he had not improved since the injury. The claimant complained of suffering constant pain, ranging from a level six to ten, humming in his head, dizziness, imbalance, and difficulty walking, standing, lifting, bending, and concentrating. [\*8] He advised Dr. Ross that he could not work, because he frequently had to lie down. The doctor interviewed the claimant, reviewed his diagnostic studies, and read his medical records.

Dr. Ross concluded that the claimant had no diagnoses resulting from the work-related accident, and that: "There are continued pain complaints but there is no supportable medical basis for the diagnosis of a physical injury." Dr. Ross dismissed the claimant's subjective complaints as unreliable and not supported by objective findings. He similarly opined that much medical treatment had been excessive and unnecessary as responsive to the unsubstantiated subjective complaints. Dr. Ross stated that ongoing treatment was not required, since the claimant's complaints and physical examination findings were not credible. The doctor concluded that he could return to full, unrestricted duty and that no medical evidence supported restrictions. Dr. Ross suggested that the claimant likely had a psychological/behavioral component to explain his ongoing alleged symptoms. The doctor recommended evaluation for a mild traumatic brain injury, since this might be "the only alternate explanation" for his "relentless pursuit [\*9] of physical remedy" for his "nonexistent physical problems." Dr. Ross immediately issued a revision to clarify that his report of August 23, 2005, contained a typographical error, and should convey that he "did not see" the claimant's subjective complaints.

By letter dated October 14, 2005, Dr. Holzer restated the claimant's history and his original treatment of him. He noted that he had reviewed Dr. Ross' evaluation and some reports from other treating physicians, such as Dr. Goss. Dr. Holzer maintained his opinion that as a result of the industrial accident, the claimant suffered cervical and lumbar myofascial pain dysfunction syndrome, post-traumatic syndrome secondary to his head trauma, and depression. The doctor assessed, with a reasonable degree of medical certainty, that the work-related injuries were causally related to his current problems and total disability. Dr. Holzer emphasized that the claimant had demonstrated objective findings on examination and diagnostic studies. The doctor acknowledged that he had preexisting degenerative disease in his cervical area. However, Dr. Holzer stressed that before the accident, the claimant was asymptomatic and capable of working. [\*10] The doctor maintained, with a reasonable degree of medical certainty, that: "The claimant remains disabled totally from his work, as a direct result of the injury in question and due to the above diagnoses, which are clearly related to his injury."

Dr. Scott W. Sautter, neuropsychologist, evaluated the claimant on December 7, 2005, to assess whether he suffered a mild traumatic brain injury or psychogenic component to his report of symptoms. Dr. Sautter concluded that the test data revealed poor testing, and that "his performance of slightly better than chance is atypical," which suggested poor effort or exaggeration of symptoms. The doctor opined that the evaluation was invalid, and not a representation of the claimant's true abilities, and that his personality assessment suggested somatization. Dr. Sautter diagnosed: (1) a probable cognitive disorder, most likely secondary to his mood disorder and complaints of chronic pain; (2) major depression; (3) tendency to somatize symptoms; and (4) complaints of

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chronic pain. Dr. Sautter recommended that the claimant "consider evaluation for return to work" and begin working part-time.

On January 5, 2005, Dr. Ross wrote an addendum to his [\*11] initial report, upon reviewing Dr. Sautter's conclusions of December 7, 2005. He retained his opinion that no medical basis existed to prevent the claimant from resuming gainful employment. Dr. Ross issued a Second Addendum on January 11, 2006, and addressed the recent reports from Dr. Sautter and Dr. Holzer. He maintained his previous opinions.

The Deputy Commissioner was persuaded by the opinions of Dr. Goss and Dr. Holzer, and found that the employer failed to prove that the claimant was released to his pre-injury employment. The Deputy Commissioner emphasized that Dr. Goss' release was invalid, and at most, "fleeting," and he afforded little weight to Dr. Ross' conclusion that the claimant was completely recovered from his injuries. On Review, we find no reversible error in this weighing of the medical evidence.

"Any medical opinion offered into evidence 'is not necessarily conclusive, but is subject to the commission's consideration and weighing.'" *Farmington Country Club v. Marshall*, 47 Va. App. 15, 26, 622 S.E.2d 233, 239 (2005), quoting *Hungerford Mech. Corp. v. Hobson*, 11 Va. App. 675, 677, 401 S.E.2d 213, 215 (1991). [\*12]

"The probative weight to be accorded medical evidence is for the Commission to decide; and if it is in conflict with other medical evidence, the Commission is free to adopt that view 'which is most consistent with reason and justice.'" *Georgia-Pacific Corp. v. Robinson*, 32 Va. App. 1, 5, 526 S.E.2d 267, 269 (2000), quoting *CDS Const. Services v. Petrock*, 218 Va. 1064, 1070, 243 S.E.2d 236, 240 (1978).

The extensive medical record reflects that numerous specialists have evaluated and treated the claimant. In the fall of 2004 and into the spring of 2005, Dr. Goss rendered opinions about his ability to work. The doctor periodically limited the claimant's work capabilities and removed him completely from all work. In January 2005, Dr. Goss began predicting that he would return to regular duty in March 2005. After evaluation on March 15, 2005, he released the claimant to full duty and advised that he awaited the result of the FCE to "guide future decisions." Within one month, he participated in the FCE, and the evaluator concluded that he had the capacity to perform sedentary work. Dr. Goss acknowledged [\*13] that the report indicated the claimant's significant symptom exaggeration and failure to give full effort. Regardless, the doctor restricted him to sedentary duty. Dr. Goss maintained this restriction until the claimant began treating with a pain management specialist. At this point, he deferred work restrictions to the decision of the pain management specialist, Dr. Holzer.

Dr. Holzer completely removed the claimant from employment, diagnosed multiple complaints, and causally related his disability and symptoms to the industrial accident. He emphasized that the examinations and diagnostic studies evinced objective problems.

Given this evidence, the Deputy Commissioner reasonably afforded more weight to the opinions of the treating physicians over the contrary conclusions of Dr. Ross. We agree with the employer's arguments that some physicians have released the claimant to work at least some form of employment, and that the FCE reported his sub-maximal effort. However, he presented evidence of other physicians who treated and monitored his

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condition, reviewed his records, and excused him from work. Further, any release from Dr. Goss or other treating physician has been to sedentary [\*14] duty, as reflected by the FCE, not his pre-injury employment.

For the reasons stated, the Opinion below is AFFIRMED.

The attorney's fee to be deducted from accrued compensation and paid to Keith L. Kimball, Esquire, is hereby increased to a total of \$3,200.

This matter is hereby removed from the Review docket.

#### APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within 30 days of receipt.

#### Legal Topics:

For related research and practice materials, see the following legal topics:  
Labor & Employment Law Disability & Unemployment Insurance Disability Benefits General  
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