

IN THE UNITED STATES DISTRICT COURT **FILED**
 FOR THE DISTRICT OF MARYLAND U.S. DISTRICT COURT
 NORTHERN DIVISION DISTRICT OF MARYLAND

2001 AUG 13 P 3:39

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 COMPUTERS BY US, INC. also d/b/a FENCEWAY)
 COMPUTERS and TWECKABLE COMPUTERS,)
)
 JEFFREY M. WESKO, individually and as an officer of)
 COMPUTERS BY US, INC. and d/b/a FENCEWAY)
 COMPUTERS and TWECKABLE COMPUTERS,)
)
 WANDA M. WESKO, individually and as an officer of)
 COMPUTERS BY US, INC. and d/b/a FENCEWAY)
 COMPUTERS and TWECKABLE COMPUTERS,)
)
 RICHARD A. WESKO, Jr., individually and as an owner of)
 COMPUTERS BY US, INC. and d/b/a FENCEWAY)
 COMPUTERS,)
)
 Defendants.)

BY _____ DEPUTY

Civil Action No. L-00-3232

STIPULATED FINAL
 ORDER FOR
 INJUNCTION AND
 EQUITABLE RELIEF

FILED
 U.S. DISTRICT COURT
 DISTRICT OF MARYLAND
 2001 AUG 16 A 9:55
 JENKINS
 AT BALTIMORE
 DEPUTY

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission") pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), has filed its Complaint for permanent injunction and other relief in this matter pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), charging the defendants Jeffrey M. Wesko, Wanda M. Wesko, Richard A. Wesko, Jr., and Computers by Us, Inc., with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and the

FTC Trade Regulation Rule, entitled the "Mail or Telephone Order Merchandise Rule," 16 C.F.R. Part 435. The parties, appearing pro se or represented by the attorneys whose names appear hereafter, have agreed to the entry by this Court of this Stipulated Final Order for Permanent Injunction and Equitable Relief ("Final Order") to resolve all matters of dispute between them in this action without adjudication and without admission of wrongdoing by defendants. Now, therefore, on the joint motion of the parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the parties to this action;
2. Venue in the United States District Court for the District of Maryland is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b);
3. The activities of all defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44;
4. The Complaint states a claim upon which relief may be granted against defendants Jeffrey M. Wesko, Wanda M. Wesko, and Richard A. Wesko, Jr., under Sections 5(a)(1), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a)(1), 53(b), 56(a) and 57b, and the Commission's Trade Regulation Rule, the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435;
5. Defendants Jeffrey M. Wesko, Wanda M. Wesko, and Richard A.

Wesko, Jr., have entered into this Final Order freely and without coercion, and after having read and understood its provisions, are prepared to abide by its terms and conditions;

6. Defendants Jeffrey M. Wesko, Wanda M. Wesko, and Richard A. Wesko, Jr., waive all rights to seek judicial review or otherwise challenge or contest the validity of this Final Order, and further waive and release any claim they may have against the Plaintiff or the FTC and their employees, agents or representatives, including any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. No. 104-121, 110 Stat. 846, 863-64 (1996);

7. This Final Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law; and

8. Entry of this Final Order is in the public interest.

DEFINITIONS

For the purposes of this Final Order, the following definitions shall apply:

1. "Defendants" means Jeffrey M. Wesko, Wanda M. Wesko, and Richard A. Wesko, Jr.

2. "Internet" means a worldwide system of linked computer networks that use a common protocol (e.g., transmission control protocol/internet protocol ("TCP/IP")) to deliver and receive information. It includes but is not limited to the following forms of electronic communication: electronic mail ("email") and email mailing lists, the World

Wide Web, newsgroups, Internet Relay Chat, instant messaging, and file transfers protocols thereon, and remote computer access from anywhere in the world thereto.

3. "Mail Order Rule" or "Rule" means the Federal Trade Commission's Trade Regulation Rule, the "Mail or Telephone Order Merchandise Rule," codified at 16 C.F.R. Part 435, or as the Rule may hereafter be amended. A copy of the Rule is attached hereto as Appendix A.

4. "Agent" means any representative, employee, dealer, or independent contractor who offers goods or services for or on behalf of any of the named defendants, or who makes sales presentations or offers on their behalf; successors, assigns, or any person in active concert or participation with any of the named defendants, now or in the future.

5. "FTC" or "Commission" means the Federal Trade Commission.

I. PERFORMANCE BOND REQUIRED FOR INTERNET SALES

IT IS THEREFORE ORDERED that the defendants, their successors and assigns, whether acting directly or indirectly through any persons or entities under any of the defendants' control, are hereby permanently restrained from advertising, marketing or offering for sale goods or services via the Internet, or from assisting or facilitating any other person or entity from advertising, marketing or offering for sale goods or services using the Internet, *unless* each defendant desiring to engage in such activities obtains a performance bond in the principal sum of TWO HUNDRED

THOUSAND DOLLARS (\$200,000) prior to engaging in such activities. The terms and conditions of the bond requirement are as follows:

- A. The bond shall be conditioned upon compliance with all of the provisions of this Order by such defendant(s). The bond shall be deemed continuous and remain in full force and effect as long as such defendant(s) engage(s) in or assist(s) others engaging in the advertising, marketing, or offering goods or services via the Internet. Such defendant(s) shall maintain the bond for a period of five (5) years after having ceased, and having provided notice to the Plaintiff and the FTC that such defendant(s) has/have ceased, engaging in or assisting others engaged in the advertising, marketing, or offering goods or services via the Internet. The bond shall cite this Final Order as the subject matter of the bond, and shall provide surety thereunder against financial loss resulting from whole or partial performance due, in whole or in part, to any violation of the Rule or Section 5(a) of the FTC Act related to this Final Order, or any provision of this Order, or any other violation of law;
- B. The bond required pursuant to this subparagraph shall be an insurance agreement providing surety for financial loss issued by a surety company that is admitted to do business in each state in which such defendant(s), or any entity directly or indirectly under such defendant's or defendants' control, is doing business and that holds a Federal Certificate of Authority As Acceptable Surety on Federal Bond and Reinsuring. The bond shall be in favor of both: (1) the United States for the benefit of any consumer injured as a result of any activities that required obtaining the Bond; and (2) any consumer so injured;

- C. The bond required pursuant to this subparagraph is in addition to, and not in lieu of, any other bonds required by federal, state, or local law;
- D. At least ten (10) days before commencing any activity that requires obtaining a bond, such defendant(s) shall provide notice to the Plaintiff and to the FTC describing in reasonable detail said activities, and include in such notice a copy of the bond obtained; and
- E. Such defendant(s) shall not disclose the existence of the bond to any consumer without simultaneously and conspicuously making the following disclosure in the same medium: "THE BOND IS REQUIRED BY ORDER OF THE U.S. DISTRICT COURT AS PART OF A FINAL ORDER AGAINST [name(s) of such defendant(s)] in United States v. Computers by Us, Inc., et al., Civ. Action No. L-00-3232, U.S. District Court for the District of Maryland (Northern Division)."

II. PROHIBITIONS ON MISREPRESENTATIONS

IT IS FURTHER ORDERED that the defendants, their successors and assigns, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, are hereby prohibited from misrepresenting in any manner, expressly or by implication, any fact that is material to any consumer's decision to purchase any goods or services, including but not limited to:

- A. Representing in any manner, expressly or by implication, that any defendant or any agent of any defendants is in possession of goods or able to perform services being offered for sale, if such goods are not in the possession of any defendant(s) or any agent of any defendant(s), or if the defendant(s) or their agent(s) is or are unable to perform such services; or
- B. Representing in any manner, expressly or by implication, that delivery of goods or services offered for sale by any defendant(s) will be made upon receipt of payment by the defendant(s) or any agent of the defendant(s), if such representation is untrue.

III. PROHIBITIONS ON MAIL ORDER RULE VIOLATIONS

IT IS FURTHER ORDERED that the defendants, their successors and assigns, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from violating, directly or through any corporation, subsidiary, division or other device, any provisions of the Mail or Telephone Order Merchandise Rule, 16 C.F.R. Part 435, or from assisting or facilitating any other individual or entity from violating any provisions of the Rule, including but not limited to:

- A. Soliciting mail or telephone sales when defendants do not have a reasonable basis to expect that they will be able to ship the ordered merchandise either: (1)

within the time stated by the defendants, or (2) if no time is stated, within thirty days after receipt of a properly completed order;

- B. Failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to any necessary delay in shipping or to cancel the order and receive a prompt refund; or
- C. Failing to make a prompt refund if the buyer does not consent to a delay in shipping pursuant to Subparagraph B, or if shipment does not take place.

In the event that the Rule is hereafter amended or modified, defendants' compliance with the Rule as so amended or modified shall not be deemed a violation of this Final Order. A copy of this Rule is attached hereto as Appendix A and incorporated herein as if fully set forth verbatim.

IV. PROHIBITION ON CERTAIN DISCLOSURES

IT IS FURTHER ORDERED that the defendants, their successors and assigns, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, social security number, email address, or other identifying information of any person who purchased or offered to purchase from any defendant, directly or through an Internet auction, any good or service at any time prior to entry of this Final Order; *provided*,

however, that the defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation or court order.

V. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Plaintiff's and the FTC's agreement to and the Court's approval of this Final Order is expressly premised upon the truthfulness, accuracy, and completeness of the financial statements and financial information signed by defendants Jeffrey and Wanda Wesko on May 23, 2001 and by defendant Richard A. Wesko, Jr. on June 1, 2001, which contain material information relied upon by the Plaintiff and the FTC in negotiating and agreeing to the terms of this Final Order. If upon motion by the Plaintiff, the Court finds that any defendant(s) failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and financial information, the Court, without further adjudication, shall order such defendant(s) to: (1) pay to the Plaintiff consumer redress in the amount of TWO HUNDRED THOUSAND DOLLARS (\$200,000), less any verified payments for consumer redress made by any of the defendants in this action, and the amount shall become immediately due and payable; and (2) provide, within ten (10) days of the date of service of the order, counsel for the Plaintiff and the FTC with a completed financial disclosure statement, attached hereto as Appendix B, and copies of such defendant's or defendants' federal and state tax returns for the two (2) years preceding the date of the Court's order.

- A. In the event that the Court modifies this Final Order pursuant to this Paragraph, only the defendant(s) who failed to disclose any material asset the value of which exceeds \$1,000, materially misrepresented the value of any asset, or made any other material misrepresentation or omission in the above-referenced financial statements and financial information shall be individually liable, or jointly and severally liable, for the sum for consumer redress specified in this Paragraph.
- B. In the event that upon motion by the Plaintiff, the Court modifies this Final Order pursuant to this Paragraph, the Plaintiff may apply any or all funds received from any of the defendants pursuant to this Final Order, and any interest received thereon, to a consumer redress program to be administered by the FTC, and to related administrative expenses; *provided, however*, that if the Plaintiff determines a consumer redress program is not feasible, the Plaintiff may pay such funds to the United States Treasury as disgorgement. The Plaintiff shall have full and sole discretion to: (1) determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Final Order; (2) determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and (3) delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Final Order.
- C. Defendants expressly waive the rights to litigate the issue of disgorgement. Defendants acknowledge and agree that all money paid pursuant to this Final Order is irrevocably paid for purposes of settlement of this action.

Should this Final Order be modified pursuant to this Paragraph, this Final Order, in all other respects, shall remain in full force and effect unless otherwise ordered by this Court. Any proceedings instituted under this Paragraph shall be in addition to, and not in lieu of, any other civil or criminal remedies available by law. Solely for the purposes of reopening or enforcing this Paragraph, defendants waive any right to contest any of the allegations set forth in the Complaint filed in this matter.

VI. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Final Order may be monitored:

- A. For a period of five (5) years from the date of entry of this Final Order, the defendants shall notify the FTC in writing of the following:
1. Any changes in the individual defendants' residences, mailing addresses, or telephone numbers, including wireless telephone numbers, within ten (10) days of the date of such change;
 2. Any changes in the individual defendants' employment status, including self-employment, within ten (10) days of such change. Such notices shall include the name and address of each business that the defendants are affiliated with, employed by, or participating in, a statement of the nature of the business, and a statement of the defendants' duties, responsibilities or involvement in connection with the business, employment or participation; and

3. Any proposed change in the name or structure of any business entity owned or controlled by the defendants, such as the use of a new business name, the creation, incorporation, dissolution, assignment, sale or merger of any such business entity, the creation or dissolution of subsidiaries, the proposed filing of a bankruptcy petition, a change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Final Order, thirty (30) days prior to the effective date of any proposed change; *provided*, however, that with respect to any proposed change in a corporation about which the defendants learn fewer than thirty (30) days prior to the date such action is to take place, the defendants shall notify the FTC as soon as practicable after learning of such proposed change.

B. One hundred eighty (180) days after the date of entry of this Final Order, the defendants shall provide a written report to the FTC, sworn under penalty of perjury, setting forth in detail the manner and form in which the defendants have complied and are complying with this Final Order. This report shall include, but not be limited to:

1. The defendants' then-current residence address and telephone numbers;
2. The defendants' then-current employment, business address and telephone numbers, a description of the business activities of each such employer, and the defendants' title and responsibilities for each employer;
3. The name of each business entity owned or operated by the defendants, including all names used by that entity;

4. A copy of each acknowledgment of receipt of this Final Order obtained by the defendants pursuant to Paragraph X below; and
 5. A statement describing the manner in which the defendants have complied and are complying with this Final Order.
- C. Upon written request by a representative of the Plaintiff or the FTC, the defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct subject to this Final Order;
- D. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom the defendant performs services as an employee, consultant, or independent contractor; and
- E. For purposes of the compliance reporting required by this Paragraph, the Plaintiff and the FTC are authorized to communicate directly with the defendants.

VII. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that the Plaintiff and the FTC are authorized to monitor the defendants' compliance with this Final Order by all lawful means, including but not limited to the following means:

- A. The Plaintiff and the FTC are authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26 - 37, including the use of compulsory

process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating any one or more of the defendants' compliance with any provision of this Final Order, and copy of such process shall be provided to such defendant or defendants, unless such defendant or defendants has or have advised the Plaintiff and the FTC in writing that such notice shall be transmitted to a designated attorney or attorneys whose name(s) and address(es) have been provided to the Plaintiff and the FTC;

- B. Defendants agree that the Plaintiff and the FTC are authorized to use representatives posing as consumers and suppliers to any of the defendants, their employees, or any other entity managed or controlled in whole or in part by any of the defendants, without the necessity of identification or prior notice to any of the defendants or to a designated attorney; and
- C. Nothing in this Final Order shall limit the Plaintiff's or the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether the defendants have violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. § 45.

VIII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, the defendants shall permit representatives of the Plaintiff or the FTC, within three (3) business days of receipt of written notice from the Plaintiff or the FTC:

- A. Access during normal business hours to any office, or facility storing documents, of any business where (1) any of the defendants is the majority owner of the business or manages or controls its business practices, and (2) the business is engaged in the sale or offering for sale of goods or services via the Internet, or assists others engaged in the sale of goods or services via the Internet. In providing such access, such defendant or defendants shall permit representatives of the Plaintiff or the FTC to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Plaintiff or FTC representatives to remove documents relevant to any matter contained in this Final Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied, or shall promptly make legible copies, at such defendant's or defendants' expense; and
- B. To interview the officers, directors, and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subparagraph A of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

Provided that, upon application of the Plaintiff or the FTC and for good cause shown, the Court may enter an *ex parte* order granting immediate access to any of the defendants' business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Final Order.

IX. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, the defendants, and any officers, agents, servants, employees and representatives, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, in connection with any business where (1) any of the defendants is the majority owner of the business or manages or controls the business or its business practices, and (2) the business engages in the sale of goods or services via the Internet, or assists others engaged in the sale of goods or services via the Internet, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;
- C. Records containing the names, addresses, telephone numbers, dollar amounts paid, quantity of goods or services purchased, and description of goods or services purchased, for all consumers to whom such business has sold, invoiced

or shipped any goods or services, or from whom such business accepted money or other items of value;

- D. Records that reflect, for every consumer complaint or refund request, whether received directly or indirectly or through any third party:
1. the consumer's name, address, telephone number and the dollar amount paid by the consumer;
 2. the written complaint or refund request, if any, and the date of the complaint or refund request;
 3. the basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
 4. each response and the date of the response;
 5. any final resolution and the date of the resolution; and
 6. in the event of a denial of a refund request, the reason for the denial; and
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, or other marketing materials utilized shall be retained for three (3) years after the last date of dissemination of any such materials.

X. DISTRIBUTION OF FINAL ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that the defendants shall:

- A. For a period of five (5) years from the date of entry of this Final Order, provide a copy of this Final Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer or director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, immediately upon employing or retaining any such persons, for any business where: (1) any of the defendants is the majority owner of the business or manages or controls the business or its business practices, and (2) the business is engaged in the sale of goods or services via the Internet, or assisting others engaged in the sale of goods or services via the Internet; and
- B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Plaintiff or the FTC, the original signed and dated acknowledgments of the receipt of copies of this Final Order, as required in Subparagraph A of this Paragraph.

XI. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Final Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents of the defendants, or that may be subject to any provision of this Final Order. Pursuant to

Fed. R. Civ. P. 4 (c)(2), this Final Order may be served by agents of the Plaintiff, and by agents of any process service retained by the Plaintiff.

XII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that, within five (5) business days after receipt by the defendants of this Final Order as entered by the Court, the defendants shall submit to counsel for the Plaintiff and the FTC a truthful sworn statement, in the form shown in Appendix C to this Final Order, that shall acknowledge receipt of this Final Order.

XIII. NOTIFICATIONS TO PLAINTIFF AND FTC

IT IS FURTHER ORDERED that for purposes of this Final Order, all correspondence and notification that the defendants are required by this Final Order to provide to the Plaintiff shall include the name and case number of this matter and be sent to:

Director, Office of Consumer Litigation
1331 Pennsylvania Avenue, NW, Suite 950N
Civil Division
U.S. Department of Justice
Washington, D.C. 20004

and shall refer to United States v. Computers by Us, DJ # 102-3056.

For purposes of this Final Order, all correspondence and notification that the defendants are required by this Final Order to provide to the FTC shall include the name and case number of this matter and be sent to:

Associate Director, Division of Marketing Practices

Federal Trade Commission, H-238
600 Pennsylvania Avenue, NW
Washington, DC 20580.

XIV. RETENTION OF JURISDICTION AND ENTRY OF JUDGMENT

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter
for all purposes.

The parties whose signatures appear below hereby consent to the terms and conditions of this Final Order and to entry thereof without further proceedings.

FOR THE PLAINTIFF

STUART E. SCHIFFER
Acting Assistant Attorney General

STEPHEN M. SCHENNING
United States Attorney

By: Larry D. Adams
Larry D. Adams, Bar No: 03118
Assistant United States Attorney
101 W. Lombard Street
Baltimore, MD 21201
(410) 209-4801
(410) 962-2310 (Fax)

Elizabeth Stein
ELIZABETH STEIN
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
(202) 307-0486
(202) 514-8742 (Fax)

OF COUNSEL:

EILEEN HARRINGTON
Associate Director
DELORES GARDNER
Attorney, Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

FOR DEFENDANTS

Jeffrey M. Wesko
JEFFREY M. WESKO

Wanda M. Wesko
WANDA M. WESKO

Richard A. Wesko, Jr.
RICHARD A. WESKO, JR.

Rudolph De Meo
RUDOLPH DE MEO
Recher & DeMeo
300 Allegheny Ave.
Towson, MD 21204
(410) 825-3100
Counsel for Richard A. Wesko, Jr.

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SO ORDERED, this 15TH day of August, 2001 at Baltimore, Maryland.

The Clerk Shall Close
The Case

Benson Legg
Benson Everett Legg
United States District Judge