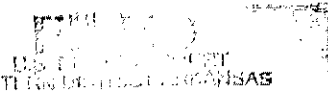


IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
HELENA DIVISION



AUG 11 2005

JAMES W. MCDONNACK, CLERK  
By: *[Signature]*

PLAINTIFF

**DARYAL T. NELSON, individually and  
on behalf of all persons similarly situated**

**VS. CONSOLIDATED CIVIL ACTION NO. 2-04CV0000171 WRW**

**WAL-MART STORES, INC;  
and WAL-MART TRANSPORTATION LLC**

**DEFENDANTS**

**TOMMY ARMSTRONG, Individually  
and on Behalf of All Persons  
Similarly Situated**

**PLAINTIFF**

**VS. NO. 2:05 CV-00134-WRW ✓**

**WAL-MART STORES, INC; and  
WAL-MART TRANSPORTATION LLC**

**DEFENDANTS**

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**CONSOLIDATED AMENDED AND SUPPLEMENTED  
CLASS ACTION COMPLAINT**

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**INTRODUCTION**

1. This is a class action lawsuit asserting claims under the Civil Rights Act of 1866, 42 U.S.C. § 1981, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e that Defendants Wal-Mart Stores, Inc. and Wal-Mart Transportation, LLC (collectively "Wal-Mart") discriminate against African Americans in their hiring practices for over-the-road (OTR) truck driver positions throughout the continental United States. Although African Americans comprise approximately 15% of the OTR truck driver population in the continental United

States, only 2-3% of Wal-Mart's OTR truck drivers are African American. The disparity between the percentage of African Americans in the general OTR truck driver population and the percentage of African Americans in Wal-Mart's OTR truck driver population is the result of nationwide policies, practices and customs that are purposefully discriminatory and that serve no reasonable business purpose, yet have a disproportionate impact on African Americans.

2. Among other relief, this class action seeks a declaration that Wal-Mart's conduct is in violation of the Civil Rights Act of 1866 and Title VII of the Civil Rights Act of 1964, an injunction ending Wal-Mart's discriminatory practices and providing prospective reforms, restitution for the class members and punitive damages.

#### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 1981, 42 U.S.C. §2000e5(f), 28 U.S.C. § 1331, and 28 U.S.C. §§ 2201 and 2202.

4. This Court has personal jurisdiction over the defendants because each of the defendants has its headquarters and principal place of business in the State of Arkansas and engages in business in the State of Arkansas and within this district.

5. This court has determined that venue is proper in this district and division. Additionally, the court has personal jurisdiction over each of the defendants.

6. Plaintiff Armstrong is a resident of Arkansas, and Plaintiff Nelson alleges discrimination against Defendant who operates its principal place of business in Arkansas thus making jurisdiction proper over each of the two Plaintiffs.

## PARTIES

6. Plaintiff Armstrong is an African-American citizen of the United States of America who resides in Woodruff County, Arkansas.

7. Plaintiff Nelson is an African-American citizen of the United States of America who resides in Coldwater, Mississippi.

8. Defendants are Wal-Mart Stores, Inc. and Wal-Mart Transportation LLC (collectively "Wal-Mart"). Wal-Mart Transportation LLC is a wholly-owned subsidiary of Wal-Mart Stores, Inc. Wal-Mart Stores, Inc. is a Delaware Corporation whose principal business location is Bentonville, Arkansas. Its stores and distribution centers are located throughout Arkansas, the United States, and certain other parts of the world.

## CLASS ALLEGATIONS

9. This action is brought by Plaintiffs as a class action, on behalf of themselves and on behalf of all others similarly situated, under the provisions of Federal Rules of Civil

Procedure, Rule 23. Plaintiffs seek certification of this action as a class action on behalf of the following classes of persons:

a. African-American persons who reside in the Continental United States of America, who have applied for employment as OTR truck drivers at Wal-Mart and who have not been hired; and

b. African-American persons who reside in the Continental United States of America who were deterred from applying for or completing applications for OTR truck driver positions at Wal-Mart due to their awareness of Wal-Mart's policy, pattern, practice, and/or custom of not hiring African Americans for such positions.

10. This case is properly brought as a class action under Rule 23 for the reasons set forth in the following paragraphs.

11. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of the Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are certainly hundreds, and likely thousands, of members in the proposed Class.

12. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Wal-Mart's wrongful conduct that is complained of herein.

13. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

a. Whether Wal-Mart's common practices and procedures discriminate against African-American applicants for OTR truck driver positions;

b. Whether Wal-Mart's policies, procedures and actions have an adverse impact on the Class;

c. Whether the adverse impact on the Class can be justified by business necessity;

d. Whether injunctive relief, restitution, and other equitable relief is warranted;

e. Whether punitive damages are warranted.

14. The claims of Plaintiffs, who are representatives of the Class herein, are typical of

the claims of the Class. There is no conflict among Plaintiffs and other members of the Class with respect to this action or with respect to the claims for relief set forth herein.

15. The named Plaintiffs are the representative parties for the Class, and are able to, and will fairly and adequately protect the interests of the Class. The attorneys for Plaintiffs are experienced and capable in civil litigation and class actions.

16. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. There will be no difficulty in the management of this action as a class action. A class action will redress Wal-Mart's wrongful conduct described herein.

### **GENERAL ALLEGATIONS**

17. Wal-Mart employs approximately one million people in the United States. On information and belief, Wal-Mart employs approximately 10,000 full-time persons as OTR truck drivers, as well as several thousand additional OTR truck drivers on a part-time basis. These employees work in, from, and between approximately forty-four (44) distribution centers or terminals located throughout the continental United States. Wal-Mart employs uniform employment, personnel and hiring policies, practices, and procedures throughout the United States. Wal-Mart also employs uniform policies, practices, and procedures in establishing new distribution centers and staffing those centers with employees, including OTR truck drivers.

18. On information and belief, approximately 2-3% of Wal-Mart's OTR truck drivers are African-American. African Americans comprise approximately 14% of the population in the United States. On information and belief, African Americans comprise approximately 15% of the OTR truck driver population in the continental United States. The disparity between the percentage of African Americans in the general OTR truck-driver population and the percentage

of African Americans in Wal-Mart's OTR truck-driver population is the result of purposeful discrimination and of practices that serve no reasonable business purpose yet have a disproportionate impact on African Americans.

19. The written requirements for the position of OTR truck driver at Wal-Mart, which are applicable on a nationwide basis, are set forth as follows:

3 years and 250,000 miles driving experience in the last 5 years;

Minimum of 50,000 miles in the last 12 months with no breaks in service;

No single break in service greater than 6 months in the 3-year qualification period;

No preventable accidents in the last 3 years;

No preventable accidents resulting in a fatality - lifetime;

No preventable D.O.T. reportable accidents in the last 10 years;

No more than 1 non-preventable accident in the last 3 years;

No more than 2 minor moving violations in the last 3 years;

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No serious traffic violations while operating a commercial vehicle in the last 3

years; and

Interstate Commercial Drivers License with Hazmat and Airbrakes endorsements.

In addition to these written requirements, Wal-Mart has unwritten requirements that vary from official to official representing Wal-Mart. Defendants apply their written and unwritten employment criteria in a manner that disfavors African-American applicants and that favors white applicants. This is reflected in Wal-Mart's hiring statistics regarding OTR truck drivers.

20. The adverse, intentional, and racially discriminatory practices, which are the subject of this action, are systemic and ingrained. On information and belief, Wal-Mart has been

aware of the consequences and effects of its policies, practices and customs (including the fact that it employs a significantly lower percentage of African Americans as OTR truck drivers than competitors, national norms and benchmarks) for many years. Wal-Mart has failed to take effective steps to bring its hiring practices for OTR truck driver positions into conformity with the requirements and expectations of law.

### **ALLEGATIONS OF PLAINTIFF ARMSTRONG**

21. While employed as a limited duty truck driver at the Wal-Mart distribution center in Searcy, Arkansas, Armstrong was informed by Wal-Mart officials, and learned by word of mouth, of the written qualifying requirements for the position of OTR truck driver at Wal-Mart.

22. Armstrong met the qualifying employment criteria. His employment history reflects the following: a) approximately 20 years truck driving experience; b) an up-to-date commercial driver's license (CDL); c) the absence of preventable accidents for a million miles; d) no preventable accident resulting in a fatality; e) no serious traffic offenses involving moving violations in the past three years.

23. Armstrong began applying to work as an OTR truck driver at the Searcy distribution center in 1997. At that time, he spoke with Wal-Mart Supervisor Terry Duncan to inform Duncan of his desire to be moved from a "loader" into an OTR truck driver position. Rather than hiring Armstrong as an OTR truck driver, Defendants hired him as a "yard driver." A yard driver at Wal-Mart has the duty to move trucks and other vehicles such as tractors and trailers around within the gates of the distribution centers. The yard driver may drive Wal-Mart vehicles or vehicles from other companies which come onto Wal-Mart's property for purposes of delivery, receiving and distribution. The non-Wal-Mart drivers are generally not authorized to

move their vehicles within the Wal-Mart yard. Armstrong was the first African-American yard driver assigned at the Searcy distribution center. Mr. Duncan, however, informed Armstrong that he would never be an OTR truck driver at Wal-Mart.

24. At the time Armstrong sought an OTR truck driver position in 1997, there were vacancies for the position. Armstrong met the qualifications for those positions but was rejected. Wal-Mart continued to seek other applicants for the vacancies and ultimately filled those vacancies with white persons.



25. During the time that Armstrong worked as a yard driver, he continued to drive commercial vehicles for other trucking companies over the road. This was done on weekends and at other times when he was off from work at Wal-Mart.

26. Armstrong applied for OTR truck driver positions at Wal-Mart in each year between 1998 and 2004. On each occasion, he met the written job requirements as well as the unwritten job requirements communicated to him. Generally, when Armstrong applied, he completed an application form and indicated the various distribution centers where he wished to be considered. Armstrong completed at least eight separate applications in 2001, at least six separate applications in 2002, at least six separate applications in 2003; and at least seven separate applications in 2004.

27. Between January 2001 and November 2004 Armstrong informed Wal-Mart of his interest in at least the following twenty-two (22) locations:

Brookhaven, MS	Midway, TN
Coldwater, MI	Red Bluff, CA
Porterville, CA	Hopkinsville, KY
Sutherland, VA	Cullman, AL
Marcy, NY	Seymour, IN
Greencastle, IN	St. James, MO
Opelousas, LA	Brooksville, FL
Raymond, NH	Loveland, CO
Buckeye, AZ	Ottawa, KS
Spring Valley, IL	Sanger, TX
Searcy, AR	Bentonville, AR

Armstrong physically presented himself to Wal-Mart distribution centers at the following locations: Searcy and Bentonville, Arkansas; Red Bluff, California; Seymour, Indiana; St. James, Missouri; Buckeye, Arizona; Hopkinsville, Kentucky, and Midway, Tennessee.

28. Wal-Mart often informs applicants for OTR truck driver positions in the distribution centers of its receipt of applications by mailing a postcard to them. Armstrong received a number of postcards from various Wal-Mart locations where he specifically applied.

29. Defendants have opened approximately twenty distribution centers throughout the United States within the past ten years. Armstrong worked for Wal-Mart during all this time and continually sought employment as an OTR truck driver, especially when Wal-Mart was establishing and staffing new distribution centers.

30. From at least 1997 to 2004, Dennis May was the personnel manager for the Wal-Mart distribution center located in Searcy, Arkansas, where Armstrong worked. May was the hiring official for the OTR truck driver position vacancies at the Searcy location and, on information and belief, May influenced the hiring of OTR truck drivers in other locations.

31. On information and belief, May also assisted in the opening of new distribution centers, including assisting in the orientation and training of management personnel. May's training and orientation of the new distribution center staff included providing such staff with information regarding Wal-Mart's policy, pattern, practice, and custom of hiring truck drivers.

32. In 1999, Armstrong completed an application in Searcy, Arkansas, for the position of OTR truck driver. He was refused an interview by Dennis May. May gave Armstrong no reason for rejecting his application. In 2001, Armstrong again encountered May during the application process. May interviewed Armstrong. At the time May questioned the accuracy of Armstrong's mileage record but refused to check industry record sources in order to verify Armstrong's driving mileage. May also told Armstrong that he did not consider him "fleet material."

33. Dennis May encountered Armstrong on at least two additional occasions during Armstrong's efforts to be hired by Wal-Mart as an OTR truck driver. One was in 2002, and another was in 2003. In 2002, May again informed Armstrong that May was unable to verify the miles that Armstrong had driven. In 2003, May rejected Armstrong because he had a "gut feeling" that he did not meet the qualifications for the position.

34. During the time that May, acting on behalf of Wal-Mart, was rejecting Armstrong for OTR truck driving positions, May was aware of Armstrong's applications, inquiries, and travels to the other Wal-Mart distribution centers set forth herein.

35. In late September 2004, Armstrong applied to several Wal-Mart distribution centers. He waited for a reply, and when he did not receive a reply by November 2004, Armstrong determined that his latest application had been constructively rejected. He also determined that it would be an exercise in futility for him to continue applying for OTR truck driver positions at Wal-Mart. Realizing that he was locked into a yard driver position, Armstrong resigned. Thereafter, on March 13, 2005, Armstrong filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission. (Copy attached as Exhibit 1). He received his Notice of Right to Sue on July 7, 2005. (Copy attached as Exhibit 2).

36. Between January 2000 and November 2004, Armstrong was aware of large numbers of white persons, who appeared to have less qualifications than Plaintiff, who were hired as OTR truck drivers by Wal-Mart for their distribution centers. A number of these persons were relatives or friends of white truck drivers or other white Wal-Mart employees.

37. It became known at the Searcy Wal-Mart distribution center that an African-American applicant had filed a charge of discrimination against Wal-Mart due to having been

rejected for an OTR truck driver position at the distribution center. It was rumored in Searcy that the charging party was Armstrong. In fact, the charging party was Daryal Nelson of Mississippi. Wal-Mart reacted to the charge by hastily employing one African-American female driver and two African-American male drivers. This increased the number of African-American drivers at the Searcy location from six to nine out of approximately 263 drivers.

38. The reasons articulated by Wal-Mart for not hiring Armstrong to any of the positions for which he applied changed from rejection date to rejection date. The reasons proffered by Wal-Mart in support of their rejection of the multiple applications of Armstrong for the OTR truck driver positions are not legitimate and are discriminatory.

#### **ALLEGATIONS OF PLAINTIFF NELSON**

39. Nelson was informed by Wal-Mart of the qualifying requirements for an OTR truck driver. Wal-Mart's qualifying requirements are set forth supra at ¶ 20. Nelson met these qualifying employment criteria.

41. Nelson was later informed by Defendant that he was required to have a good credit rating as a qualifying condition for the position of OTR truck driver. He met that unwritten job requirement as well.

42. On May 12, 2002, after having applied several times for an OTR position through Wal-Mart's nationwide application process, Nelson was finally offered an interview at the distribution center in Searcy, Arkansas. There, he was given a road test. Upon determination by the terminal manager that Nelson met Wal-Mart's relevant employment conditions and criteria, the interviewing official informed him that he was hired as an OTR truck driver subject to the completion of the formalities required by the Human Relations Director, Dennis May, who was,

at the time, located at the distribution center in Searcy, Arkansas.

43. May disregarded the terminal manager's decision and informed Nelson that he would not be given a job as an OTR truck driver and could accept a position as a laborer. When Nelson rejected May's offer, May extended Nelson an opportunity to persuade May that Nelson should be employed as an OTR truck driver. Nelson did so, but to no avail. May used racial stereotyping in refusing to accept the terminal manager's hiring decision. May's "gut feeling" was that Nelson falsified his good credit and driving record. At the time, Nelson had driven 3,010,000 miles without a preventable accident and more than 700,000 miles without any accident at all.

44. At the time of his application for work at Wal-Mart as an OTR truck driver in May 2002 and at the date of his rejection in June 2002, there were vacancies for the position; Nelson met the qualifications for the vacant positions; Nelson was rejected for the positions; Wal-Mart continued to seek other applicants to fill the vacancies; and Wal-Mart later filled the vacancies with white persons.

45. Upon being rejected by Wal-Mart's employee, May, on October 4, 2002, Nelson filed a Charge of Employment Discrimination with the United States Equal Employment Opportunity Commission (EEOC). (Copy attached as Exhibit 3). That agency issued a Cause Determination (copy attached as Exhibit 4) and then issued a Notice of Right to Sue on June 22, 2004. (Copy attached as Exhibit 5). Upon information and belief, following the EEOC's issuance of Nelson's Cause Determination, Wal-Mart hired as many African-American drivers as it then had in its entire nationwide truck driver work force.

46. Other than Nelson, numerous African Americans have applied for jobs as OTR

truck drivers only to be treated in the same or similar fashion as Nelson was by Wal-Mart, despite having met the written and unwritten qualifications for obtaining such employment.

47. Additionally, numerous other African-American potential applicants have been deterred from applying for these positions because of Wal-Mart's discriminatory hiring policies.

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF CIVIL RIGHTS ACT OF 1866)**

48. Plaintiffs repeat and reallege all paragraphs of this complaint.

49. The Civil Rights Act of 1866, 42 U.S.C. § 1981, provides: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

50. The actions, policies, practices, procedures, and customs of Wal-Mart described [Case 2:05-cv-00134-WRW Document 11 Filed 08/11/2005 Page 14 of 19](#) herein discriminates against Plaintiffs and the class Plaintiffs seek to represent on the basis of their race, and denies Plaintiffs and the class the same right to make and enforce contracts as is enjoyed by white citizens of the United States in violation of the Civil Rights Act of 1866.

51. Because of these violations of the Civil Rights Act of 1866, Plaintiffs and the class are entitled to the relief set forth below.

**SECOND CAUSE OF ACTION**  
**(VIOLATION OF TITLE VII OF CIVIL RIGHTS ACT OF 1964)**

52. Plaintiffs repeat and reallege all paragraphs of this complaint.

53. On or about October 4, 2002, Daryal T. Nelson filed a Charge of Discrimination

against Wal-Mart with the United States Equal Employment Opportunity Commission. *See* Exhibit 3. Mr. Nelson received a Notice of Right to Sue on June 22, 2004 and timely commenced a class action on September 22, 2004, styled as *Nelson v. Wal-Mart Stores, Inc., et al.*, No. 2-04-CV-0171 WRW, which has been consolidated with this action. *See* Exhibit 5.

54. On or about March 18, 2005, Plaintiff and Class Representative Tommy Armstrong filed a Charge of Discrimination against Wal-Mart with the United States Equal Employment Opportunity Commission. *See* Exhibit 1. Armstrong received a Notice of Right to Sue on July 7, 2005. *See* Exhibit 2.

55. The conduct, practices, policies, and procedures described above violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et al, in that Wal-Mart denied and continues to deny African Americans equal opportunity for hiring.

56. Because of these violations of Title VII of the Civil Rights Act of 1964, Plaintiffs and the class are entitled to the relief set forth below.

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57. Plaintiffs and the class they seek to represent have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein; and the injunctive relief, including restitution, sought in this action is the only means of securing complete and adequate relief. Plaintiffs and the class they seek to represent are now suffering and will continue to suffer irreparable harm from Wal-Mart's discriminatory acts and omissions.

58. Because of Wal-Mart's long-standing and well established policy, pattern, practice, and custom of denying qualified African-American persons employment as OTR truck drivers, it is necessary that this Court not only enjoin continuation of such unlawful policy,

pattern, practice, and custom, it is also necessary that this Court require Wal-Mart to devise, subject to Court approval, a plan for remedying present effects of past discrimination which includes a timetable for remedial action. It is also necessary that the Court allow Plaintiffs to monitor implementation of Wal-Mart's plan to ensure plan compliance and that the effects of Wal-Mart's past discrimination upon Plaintiffs and the class will be fully eliminated.

#### **PUNITIVE DAMAGES**

59. Wal-Mart has acted wilfully and/or with reckless indifference with respect to the well-known and well-established rights of Plaintiffs and other members of the class to be free from unlawful employment discrimination due to race, color, and national origin. Plaintiffs and the class members should therefore be allowed to recover punitive damages in an amount to be determined based upon the proof at trial.

#### **JURY DEMAND**

60. Plaintiffs pray that all matters properly amenable to trial by jury be so tried.

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#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the class respectfully pray for relief as follows:

- a. Consolidation of this action with the pending, related action styled *Nelson v. Wal-Mart Stores, Inc. and Wal-Mart Transportation LLC*, No. 2:04-CV-171 WRW;
- b. Certification of this matter as a class action on behalf of the proposed class and designation of Plaintiffs as Class Representative and their counsel of record as Class Counsel;
- c. Declaratory judgment that the practices complained of herein violate the Civil Rights Act of 1866 and Title VII of the Civil Rights Act of 1964;



- d. Permanent injunction against Wal-Mart, its directors, officers, owners, agents, successors, employees and representatives, as well as any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein and proved at trial;
- e. Equitable relief in the form of back pay, front pay, and other monetary compensation related to lost job benefits for Plaintiffs and class members;
- f. Prospective injunctive relief which affords Plaintiffs and the class retroactive seniority and any other benefits of employment which they may have lost due to Wal-Mart's discriminatory employment practices;
- g. Class damages as authorized by the Civil Rights Acts of 1866 and Title VII of the Civil Rights Act of 1964;
- h. Continued jurisdiction of this case for a sufficient period of time, subject to the Court's monitoring, in order to ensure that the Court's orders are complied with;
- i. Costs incurred, including reasonable attorney's fees, to the extent allowed by law;
- j. Pre-judgment and post-judgment interest, as provided by law; and
- k. Such other relief that may be appropriate.


Respectfully submitted,

John W. Walker, #64046  
Shawn Childs, #99058  
JOHN W. WALKER, P.A.  
1723 S. Broadway  
Little Rock, AR. 72206  
(501) 374-3758 - Telephone

Hank Bates, #98063  
Darrin Williams, #94069  
Brooke Augusta Owen, #2004091  
CAULEY BOWMAN CARNEY  
& WILLIAMS, PLLC  
11311 Arcade Drive, Suite 200  
Little Rock, AR 72212  
(501) 312-8500 - Telephone  
(501) 312-8505 - Facsimile

Morgan C. "Chip" Welch, #75136  
Lloyd W. (Tre') Kitchens, #99075  
WELCH & KITCHENS  
One Riverfront Place, Suite 413  
North Little Rock, AR 72114  
(501) 978-3030 - Telephone  
(501) 978-3050 - Facsimile

BY:



HANK BATES, #98063

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion to Amend Complaint has been served via U. S. Mail, postage prepaid, this 11 day of August, 2005, upon:

Philip Kaplan  
KAPLAN BREWER MAXEY & HARALSON  
415 Main Street  
Little Rock, AR 72201

Lawrence C. DiNardo  
Michael J. Gray  
Kathryn A. Stieber  
JONES DAY  
77 West Wacker  
Chicago, IL 60601-1692

Alison B. Marshall  
JONES DAY  
51 Louisiana Avenue NW  
Washington, D.C. 20001

Richard H. Deane, Jr.  
JONES DAY  
1420 Peachtree  
Atlanta, GA 30309

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HANK BATES