

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

John O'Bannon, et al.,

Plaintiffs,

v.

Friedman's, Inc.

Defendant.

Case No. AW-03-623

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT DENYING DEFENDANTS'  
AFFIRMATIVE DEFENSES  
REGARDING INTERRELATED  
WRONGFUL ACTS**

TO EACH PARTY AND ATTORNEY OF RECORD IN THIS ACTION:

YOU ARE HEREBY NOTIFIED THAT Plaintiffs will move the Court for an order granting summary judgment denying Defendants Federal Insurance Company's ("Federal") Fifth Affirmative Defense and St. Paul Mercury Insurance Company's ("St. Paul") (collectively "Defendants" or "Insurers") Affirmative Defense Number Three, as described below.

Plaintiffs seek an order, applicable to all Plaintiffs, granting summary judgment against Defendants and rejecting their affirmative defenses that deny insurance coverage to Friedman's, which are based on the theory that the underlying claims to the present class action are interrelated. The basis for this motion is that Defendants, as a matter of law, cannot carry their burden of proof for their affirmative defense and establish that the named Plaintiffs' (O'Bannon, Mitchell, Moore, and Hampton) claims are interrelated because these claims do not allege causally connected wrongful acts. Both the plain meaning of the policy definition and available case law require that wrongful acts have a cause and effect relationship on each other or a mutual interdependence in order to be considered causally connected. This mutuality cannot be proven here because these claims involve different types and acts of discrimination, carried out by different employees of Friedman's, in different cities and states, during different time periods, and directed towards different victims. Viewed as separate claims alleging distinct wrongful acts, these claims therefore trigger coverage under the policies during which they were first made. As a result, Defendants must provide further coverage for these claims under Federal's Second Policy (2001-2002) and St. Paul's First and Second Policies (2001-2001 and 2001-2002).

This motion is supported by Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Summary Judgment Denying Defendants' Affirmative Defenses Regarding Interrelated Wrongful Acts, the Declaration of Morris J. Baller in Support of Motion for Summary Judgment Denying Defendants' Affirmative Defenses Regarding Interrelated Wrongful Acts, the Stipulation of Undisputed Facts, Plaintiffs' Proposed Order Granting Summary Judgment Denying Defendants' Affirmative Defenses Regarding Interrelated Wrongful Acts, Plaintiffs' Request for Hearing and Oral Argument in Connection With Their Motion for Summary Judgment Denying Defendants' Affirmative Defenses Relating to Interrelated Wrongful Acts, and Notice of Filing of Lengthy Exhibits all filed herewith.

Dated: August 16, 2007

/s/ Morris J. Baller

BARRY GOLDSTEIN (admitted pro hac vice)

bgoldstein@gdblegal.com

MORRIS J. BALLER (admitted pro hac vice)

mballer@gdblegal.com

LAURA L. HO (admitted pro hac vice)

lho@gdblegal.com

JAMES KAN (pro hac vice application pending)

jkan@gdblegal.com

GOLDSTEIN, DEMCHAK, BALLER, BORGAN & DARDARIAN

300 Lakeside Drive, Suite 1000

Oakland, CA 94612-3534

(510) 763-9800

(510) 835-1417 (facsimile)

DANIEL B. EDELMAN (U.S. Dist. Ct. Bar No. 2906)

edelman@kmblegal.com

KATZ, MARSHALL & BANKS, LLP

1718 Connecticut Ave., N.W., Sixth Floor

Washington, DC 20009

(202) 299-1140; (202) 299-1148 (facsimile)

(Local Counsel)

THOMAS A. WARREN (admitted pro hac vice)

tw@nettally.com

LAW OFFICES OF THOMAS A WARREN

P.O. Box 1657

Tallahassee, FL 32302

(850) 385-1551

(850) 385-6008 (facsimile)

KEENAN NIX (admitted pro hac vice)  
krsn@nixgraddock.com  
NIX & GRADDOCK  
124 Church Street  
Decatur, GA 30030-3325  
(404) 377-7600  
(404) 377-8700 (facsimile)

ATTORNEYS FOR PLAINTIFFS AND THE PUTATIVE CLASS