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AZ CORP COMMISSION  
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman  
JIM IRVIN  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON

In the matter of:

AMERICAN AUTOMOTIVE GROUP, INC.  
c/o Douglas Warren  
9044 East Los Gatos Drive  
Scottsdale, Arizona 85255

DOUGLAS WARREN and JANE DOE  
WARREN, husband and wife  
9044 East Los Gatos Drive  
Scottsdale, Arizona 85255

MATTHEW W. WARREN and JOAN DOE  
WARREN, husband and wife  
8912 East Pinnacle Peak #446  
Scottsdale, Arizona 85255

ROBERT D. BJERKEN and JANE DOE  
BJERKEN, husband and wife  
5024 North 78<sup>th</sup> Street  
Scottsdale, Arizona 85250,

Respondents.

DOCKET NO. S-03457A-02-0000

**SECURITIES DIVISION'S  
OPPOSITION TO BIFURCATION OF  
HEARING**

Arizona Corporation Commission

**DOCKETED**

JAN 22 2003

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The Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") submits this opposition to the request by Respondent Robert D. Bjerken ("Bjerken") to bifurcate the hearing in this matter. Neither the interests of justice nor judicial economy require bifurcation. The Hearing Officer should deny Bjerken's request for a separate hearing.

FACTS

Bjerken became successor trustee with respect to certain promissory notes issued by

1 American Automotive Group (“AAG”) on or about October 28, 1998. ST000224 (copy attached  
2 as Exhibit “A”). Approximately two years later, after American Automotive Group stopped  
3 making interest payments on the notes, Bjerken wrote a letter to the “creditors” regarding a  
4 proposed sale to a public company (ST001352. copy attached as Exhibit “B”) that was  
5 substantially identical to a letter written by Matthew Warren on the same subject (ST001353,  
6 copy attached as Exhibit “C”).

7 Bjerken’s first act with any effect that might have been “adverse” to other respondents  
8 occurred on February 13, 2001, more than three months after American Automotive Group had  
9 ceased making interest payments and expressed its intention to sell out to another company.  
10 (ST001370-ST001371, copy attached as Exhibit “D”). Bjerken did not come to the Division with  
11 any information until August of 2001, well after all the acts complained of in the Notice of  
12 Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for  
13 Administrative Penalties, and for Other Affirmative Action (“Notice”). See Affidavit of Terry  
14 Nelson, Exhibit “E”.

### 15 LEGAL ARGUMENT

16 The Arizona Rules of Civil Procedure provide the basis for requesting and ordering  
17 separate trials:

18 The court, in furtherance of convenience or to avoid  
19 prejudice, or when separate trials will be conducive to expedition  
20 and economy, may order a separate trial of any claim, cross-claim,  
21 counterclaim, or third-party claim, or of any separate issue or of  
22 any number of claims, cross-claims, counterclaims, third-party  
23 claims, or issues, . . . .

24 Ariz. R. Civ. P. 42(b). Bjerken does not claim a separate hearing with respect to his liability only  
25 will further the objectives of convenience, expedition, or economy. His sole argument is that, as  
26 a purported representative of the Noteholders, his position is sufficiently adverse to the position  
of the Warrens that he will be prejudiced if his case is heard in the same proceeding.

A trial court is given broad discretion in determining whether claims should be tried  
separately to avoid prejudice. *Rutledge v. Arizona Bd. of Regents*, 147 Ariz. 534, 540, 711 P.2d

1 1207, 1213 (App. 1985). In a case where certain testimony might be admissible against only one  
2 of several parties, or on only one of several issues, bifurcation is appropriate. *See id.* at 539-541,  
3 711 P.2d at 1212-1214; *see also Morley v. Superior Ct.*, 131 Ariz. 85, 87, 638 P.2d 1331, 1333  
4 (1981).

5 Neither convenience nor economy dictates bifurcation in this matter. The same or similar  
6 evidence is likely to be presented with respect to the liability of all respondents. Furthermore, the  
7 Division has alleged in the Notice that the Warrens are responsible under principles of control  
8 liability for the actions of Bjerken. As a result, evidence regarding Bjerken's liability will be  
9 directly relevant to the liability of the Warrens.

10 Furthermore, Bjerken will not be prejudiced if the hearing is not bifurcated. Indeed,  
11 because evidence of Bjerken's liability may be directly relevant to the liability of the Warrens,  
12 the Warrens might be prejudiced if the hearings were bifurcated.

### 13 CONCLUSION

14 Bifurcating the hearing as to Bjerken from the hearing regarding the liability of the  
15 remaining Respondents will not achieve any of the goals set out in Rule 42(b). In fact, the  
16 considerations set out in the rule militate against bifurcation. Bifurcation will not further  
17 convenience or be conducive to expedition and economy. The same or similar evidence will tend  
18 to establish the liability of all Respondents, who may be held jointly and severally liable in this  
19 matter. Nor is bifurcation necessary to avoid prejudice to Bjerken. Indeed, bifurcation  
20 conceivably could prejudice the remaining Respondents because of the similarity of the evidence  
21 the Division would be required to present at two separate hearings. For all of the foregoing  
22 reasons, the hearing in this matter should not be bifurcated; Bjerken should not be granted a  
23 separate hearing.

24 . . .

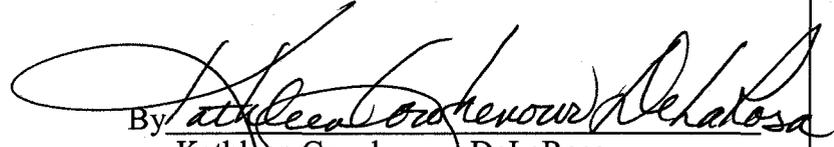
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RESPECTFULLY SUBMITTED this 22 day of January, 2003.

ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION



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COPY of the foregoing  
mailed this 22 day of  
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