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7 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
8 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

10 Brody Chemical Company, Inc.

11 Opposer,

12 v.

13 Goldthorpe, Tammy L. fka Tammy Price,

14 Applicant.
15

OPPOSITION NO. 91/204,070

Mark: Slippery Wizard
Serial No. 85/099,334

17 **NOTICE OF SERVING TRIAL TRANSCRIPTS**

18
19 Opposer Brody Chemical Company, Inc. hereby gives notice that it served the trial transcripts and
20 their attached exhibits for Jon Liddiard and Buzz Butler on the Trademark Trial and Appeal Board on
21 this date.
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26 **CERTIFICATE OF DEPOSIT**

27 I hereby certify that this correspondence is being deposited with the Trademark Trial and Appeal Board via ESTTA on the
date indicated below:

28 Date of Deposit 7/3/2013

/David G. Bray/



07-03-2013

DATED this 3rd day of July, 2013.

DICKINSON WRIGHT/MARISCAL WEEKS

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE OF
3 SERVING TRIAL TRANSCRIPTS was served on Applicant by depositing said true and correct copy
4 with the United States Postal Service, First Class Mail, postage prepaid, this 3rd day of July, 2013, in
an envelope addressed to Applicant's attorney of record as follows:

5 Nathan S. Winesett
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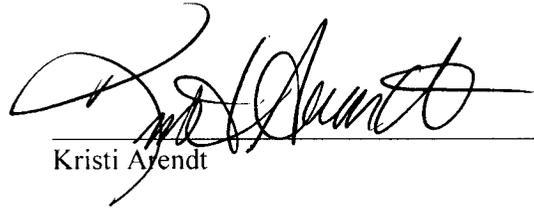
8 A courtesy copy of the foregoing was also e-mailed to Mr. Winesett
9 at nwinesett@awwlegal.com on this date.

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11 /David G. Bray/
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ORIGINAL TRANSCRIPT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Brody Chemical Company, Inc.,	)	Deposition of:
)	
Opposer,	)	<u>JON LIDDIARD</u>
)	
vs.	)	Opposition No.
	)	91/204,070
Goldthorpe, Tammy L. aka Tammy Price,	)	Mark: Slippery
	)	Wizard
)	
Applicant.	)	Serial Number:
	)	85/009,334

January 30, 2013 * 10:00 a.m.

Location: Brody Chemical Company
6125 West Double Eagle Circle
Salt Lake City, Utah

Reporter: Ashley Money, RPR
Notary Public in and for the State of Utah



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I N D E X

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1 Q. Okay. Can you describe your educational
2 background?

3 A. I was a -- I was going to be a doctor,
4 ended up with a degree in qualitative analysis
5 chemistry, which led me into starting a chemical
6 company.

7 Q. Okay. And did the -- well, describe how
8 your education and chemistry helps you at Brody.

9 A. Well, I got my master's in qualitative
10 analysis chemistry, which basically is designing
11 products. It's exactly what I went into. So I'm
12 probably one of my few friends or people that I know
13 that actually use their degree in their business.

14 So I -- you know, I got out of college,
15 didn't go to med school, and decided, "What do I do?"
16 So I took a job selling chemicals for a company, and
17 then later on decided I could do it myself, quit, and
18 started a company.

19 Q. And can you just give the Board a brief
20 overview of the history of the growth of Brody
21 Chemical from 1991 until 2013?

22 A. Yeah. We started in '91, and it was
23 actually my -- well, I gotta go back a little bit. I
24 started a company when I was 22 years old, called
25 Creed Laboratories. Got it going for about seven

1 years and then sold it and started a suntan lotion
2 company and did that for about three years.

3 And then Ron Rice of Hawaiian Tropics
4 bought me out of that, so I actually retired twice by
5 the age of 32 and then decided I needed to go back
6 again. So I started Brody Chemical in 1991, and
7 we've grown to -- we've got about 60 salesmen in
8 probably ten, eleven states, mostly western states.

9 And we've got four full-time sales
10 managers and several part-time trainers/sales
11 managers that are over our 50 salesmen. And we do
12 about a million dollars a month in fairly profitable
13 chemicals.

14 Q. What was your role at Brody Chemical when
15 it hired Tammy Goldthorpe in early October --

16 A. I was wearing about 12 hats. I was the
17 sales manager, the accountant, the president, all of
18 the above.

19 (Telephone beep.)

20 THE WITNESS: Are you there? Did we lose
21 him? Hello?

22 MR. WINESETT: Are you talking to me?

23 THE WITNESS: Yeah. Are you there?

24 MR. WINESETT: I'm here.

25 THE WITNESS: It beeped, so we thought we

1 lost you.

2 Anyway, so what was that question again,
3 the --

4 Q. (BY MR. BRAY) The 12 hats you were
5 wearing when you hired Tammy.

6 A. Oh, yeah. So I was a sales manager at the
7 time, and Tammy was referred to me by another one of
8 our salesmen, Gini Carli. And it was a friend of
9 hers that needed a job, getting divorced, so I hired
10 her and trained her here in Salt Lake to sell
11 chemicals.

12 Q. Okay. We'll get back to the employment of
13 Tammy and the history of her employment in a little
14 bit.

15 What about your role in the company today?

16 A. I'm a little bit semi-retired, but still
17 working in sales management. I'm the CEO. My son,
18 Brody, who this was named after, is the President of
19 the company now.

20 Q. Okay. Let's talk about the hiring of
21 Tammy Goldthorpe.

22 A. Okay.

23 Q. Did Brody Chemical hire Tammy Goldthorpe
24 as an employee in October of 2004?

25 A. Yes.

1 Q. Okay.

2 MR. WINESETT: I object. I object. It's
3 a conclusion of law.

4 Q. (BY MR. BRAY) And I'm going to hand you
5 what the court reporter is going to mark as
6 Exhibit 1.

7 (EXHIBIT 1 WAS MARKED.)

8 Q. (BY MR. BRAY) Mr. Liddiard, do you
9 recognize Exhibit 1?

10 A. Yes, I do.

11 Q. And what is it?

12 A. It's a sales agreement that we have all
13 new salesmen sign, which basically defines their
14 agreement to sell chemicals and ours of how to pay
15 them, and there's also an equipment and material
16 inventory list which we require them to turn back in
17 at the -- if they terminate their employment with us.

18 Q. Is this the Sales Representative Agreement
19 that Tammy Goldthorpe signed with Brody Chemical?

20 A. Yes, it is.

21 Q. In October of 2004?

22 A. Yes.

23 Q. Okay.

24 MR. WINESETT: I object to foundation.

25 Q. (BY MR. BRAY) Are you familiar with the

1 process by which Brody hires sales representatives,
2 Mr. Liddiard?

3 A. Yes.

4 Q. In 2004, were you involved in the process
5 of hiring Ms. Goldthorpe?

6 A. Yes.

7 Q. Were you involved in the process of
8 providing Ms. Goldthorpe Exhibit 1, the Sales
9 Representative Agreement?

10 A. Yes.

11 Q. Did she sign it in your presence?

12 A. Yes.

13 Q. Was this a business record of Brody
14 Chemical that it kept in the normal course of its
15 business?

16 A. Yes, on all salesmen.

17 MR. BRAY: Offer Exhibit 1.

18 MR. WINESETT: I object. This document is
19 not properly authenticated.

20 Q. (BY MR. BRAY) During the time that
21 Ms. Goldthorpe worked for Brody Chemical, was she
22 always compensated as a W-2 employee?

23 A. Yes.

24 Q. Was she ever compensated as an independent
25 contractor?

1 A. No.

2 Q. Did Brody Chemical mail Ms. Goldthorpe a
3 W-2 tax form for each year that she was employed?

4 A. Yes.

5 Q. Does ADP manage Brody's payroll?

6 A. Yes.

7 Q. And are you familiar with the ADP
8 employment records that Brody Chemical keeps?

9 A. Yes.

10 MR. WINESETT: I object. I didn't -- I
11 don't know what ADP is.

12 MR. BRAY: It's a payroll company, ADP.

13 MR. WINESETT: Okay.

14 Q. (BY MR. BRAY) And does Brody Chemical
15 have access on its computer network to employee
16 reports through ADP Pay eXpert?

17 A. Yes.

18 Q. I ask the court reporter to mark a
19 document as Exhibit 2.

20 (EXHIBIT 2 WAS MARKED.)

21 Q. (BY MR. BRAY) Before I ask you about
22 Exhibit 2, Mr. Liddiard, going back to Exhibit 1, the
23 agreement was signed "Tammy Price." Was that
24 Ms. Goldthorpe's name at the time?

25 A. Yes.

1 Q. Do you recognize Exhibit 2?

2 A. Yes, sir.

3 Q. What is it?

4 A. It's an employment -- it's an ADP payment
5 form, which was probably -- I believe Tammy's first
6 paycheck with us -- or her first information to
7 become an employee.

8 Q. Okay. Is the ADP Pay eXpert report that's
9 reflected in Exhibit 2 a document that Brody keeps as
10 a regular practice of its business?

11 A. Yes.

12 Q. And does the document that's been marked
13 as Exhibit 2 reflect the hire date for Tammy
14 Goldthorpe?

15 A. Yes.

16 Q. And what is the hire date?

17 A. 10/1/2004.

18 Q. And what position does it indicate that
19 she was hired for, if you look on page 2?

20 A. Salesperson. Just straight salesperson.

21 Q. Okay. Does Exhibit 2 also show a
22 termination date on page 3?

23 A. Termination date, yes, it does.

24 Q. And what was the termination date
25 reflected --

1 A. January 3, 2011.

2 MR. BRAY: Offer Exhibit 2.

3 MR. WINESETT: I object to foundation. We
4 don't know that -- who it's -- who generally inputs
5 this data.

6 THE WITNESS: It's ADP.

7 MR. WINESETT: Okay. And also to the
8 reliability of -- as an exception for a business
9 document to hearsay.

10 Q. (BY MR. BRAY) Was it your decision to
11 hire Ms. Goldthorpe on or about October 1, 2004?

12 A. Yes.

13 Q. And could you describe for the Board the
14 circumstances of how Brody Chemical came to hire
15 Ms. Goldthorpe?

16 A. Gini Carli, one of our top reps who worked
17 here in Salt Lake, came into my office one day and
18 told me she had a friend that she'd worked with in
19 some -- oh, it was something about an Elk's Club deal
20 or something. I can't remember. It's been too long.

21 But she had a friend that was looking for
22 a job, going through a divorce. And so I said,
23 "Yeah, have her call us," and she did. And we set up
24 an -- I set up an appointment with her. And I
25 believe that Buzz Butler was also there that day that

1 we talked with Tammy.

2 And she seemed very eager and very ready
3 to work hard and make money, so we hired her. And
4 Buzz became her sales manager and started to train
5 her.

6 Q. Okay.

7 MR. WINESETT: I object to that
8 speculation within that answer to the extent it was
9 speculative.

10 Q. (BY MR. BRAY) Mr. Liddiard, I want to
11 switch gears and talk about the adoption of the
12 Slippery Wizard mark. Prior to its hiring of
13 Ms. Goldthorpe in 2004, had Brody Chemical used the
14 name or mark Slippery Wizard before?

15 A. No.

16 Q. Had Brody Chemical sold an asphalt release
17 product before?

18 A. Yes.

19 Q. Under what name?

20 A. Asphalt Release.

21 Q. And are you familiar with Brody Chemical's
22 thinking at the time regarding the naming or
23 designation of its products?

24 A. I made up 99.9 percent of the names.

25 Q. Okay. And was it intentional or a

1 coincidence that Asphalt Release product was a
2 generic name for the product?

3 A. It was -- it was totally by our doing,
4 because what we -- my first company in this business,
5 I used to have all these weird names, Big Bertha, all
6 this, and the salesmen just couldn't relate. They
7 couldn't find 800 names. So this time when I started
8 Brody Chemical, I did all generic names.

9 Q. Okay.

10 A. Everything was generic. Truck wash soap
11 was Truck Wash Soap, car wash soap was Car Wash Soap,
12 asphalt release was Asphalt Release.

13 Q. Were you involved in the selection of the
14 Slippery Wizard name and mark at Brody Chemical?

15 A. Yes.

16 Q. And do you have first-hand knowledge of
17 how Brody Chemical created the Slippery Wizard name
18 and mark?

19 A. Yes.

20 Q. And can you describe the process of how
21 Brody Chemical adopted the Slippery Wizard name and
22 mark?

23 A. Once we decided to add a new product other
24 than our current Asphalt Release, we were going to
25 come up with a new name. Well, Asphalt Release,

1 that's the generic name for it, so we had to come up
2 with something different. And so in a manager's
3 meeting, as I recall, there was myself, Buzz Butler,
4 and I think that's it. Just the two of us were in a
5 management meeting, and we were trying to think of a
6 name.

7 And I think it was Buzz that came up with
8 the name. He just said Slippery Wizard, and we went,
9 "Okay. That will work as a secondary name for a
10 second product for Asphalt Release."

11 Q. Okay. Was Tammy Goldthorpe involved in
12 the selection of the Slippery Wizard name and mark?

13 A. No.

14 Q. Did --

15 MR. WINESETT: Objection, calls for
16 speculation.

17 Q. (BY MR. BRAY) Did Ms. Goldthorpe raise a
18 concern with you that -- or express an opinion that
19 the new product, the product that would be sold as
20 Slippery Wizard, needed to have a name that shouldn't
21 be generic?

22 A. No.

23 Q. Okay.

24 A. She -- I didn't even have a conversation
25 with Tammy about the name of the product. We just

1 decided to add a secondary product. It needed a name
2 to go on the price list, and so we came up with -- I
3 came up with a formula, we costed it.

4 I needed a name to put it on the
5 formula -- on the price list, so Buzz and I thought
6 of a name by -- I still look back, and I think it was
7 Buzz that said Slippery Wizard. And I went, "Yeah,
8 that sounds okay. Let's go with that." And we did
9 it.

10 Q. Okay. Do you know approximately what the
11 date that Brody Chemical started marking products or
12 listing products as named Slippery Wizard?

13 A. Gosh, I can't -- I don't know the exact
14 date after that, but it was right after Tammy came
15 back. She left our -- she left Brody Chemical and
16 then came back. We talked about the addition of an
17 additional product, and it was right after that; but
18 I can't remember the exact date, no.

19 Q. Okay. From whatever the date of first use
20 was, has Brody Chemical used the name and mark
21 Slippery Wizard continuously?

22 A. Yes.

23 Q. To your knowledge, has any competitor of
24 Brody Chemical offered a product under the name or
25 mark Slippery Wizard?

1 A. Ask that again, please.

2 Q. I'm sorry, Jon. To your knowledge, has
3 any competitor offered a product under the name or
4 mark Slippery Wizard?

5 A. No.

6 Q. To your knowledge, has Ms. Goldthorpe ever
7 offered for sale a product under the name and mark
8 Slippery Wizard that was not a Brody Chemical
9 product?

10 A. No.

11 Q. Mr. Liddiard, I'm going to hand to the
12 court reporter what's going to be marked as
13 Exhibit 3.

14 (EXHIBIT 3 WAS MARKED.)

15 MR. BRAY: Nathan, for your record, it's
16 Brody 0041.

17 MR. WINESETT: Just a second while I
18 locate it. 41 or 42?

19 MR. BRAY: 41.

20 MR. WINESETT: I've got it. Thank you.

21 MR. BRAY: Okay.

22 Q. (BY MR. BRAY) Mr. Liddiard, in the trial
23 of this matter, we're going to be submitting a notice
24 of reliance of several things, one of which is the
25 file wrap or the trademark application that

1 Ms. Goldthorpe submitted for Slippery Wizard.

2 I'll represent to you that Exhibit 3 is
3 the specimen that Ms. Goldthorpe submitted with her
4 federal trademark application for the Slippery Wizard
5 mark. And I know that you've not looked at the file
6 wrap or you don't -- you're going to have to take my
7 word for that.

8 My question to you is do you recognize
9 what's reflected in Exhibit 3?

10 A. Yes. I wrote it.

11 Q. And what's reflected in Exhibit 3?

12 A. Well, this is -- we do -- we've got 800
13 products. We have a -- we call this a technical data
14 sheet. We have one on each and every one of our
15 products in a big tech book that we give to our
16 salesmen, And this is the tech sheet of the product
17 that we added called Slippery Wizard.

18 And under it, it says, "Asphalt Release,"
19 and then there was all this information, which means
20 it's -- you know, that I put in here that it's
21 biodegradable, no VOCs, which is volatile organic
22 compounds, it's a hundred percent biodegradable,
23 nonhazardous.

24 I put all of this in there to make up a
25 sales presentation for all of our salesmen to go sell

1 the product.

2 Q. And Exhibit 3 in the middle, it refers to
3 the product as what?

4 A. Brody's Slippery Wizard Asphalt Release.

5 Q. Okay. Is Ms. Goldthorpe's name mentioned
6 anywhere on Exhibit 3?

7 A. No.

8 Q. Is there any indication that the Slippery
9 Wizard product referred to in Exhibit 3 is offered by
10 Ms. Goldthorpe and not Brody Chemical?

11 A. No.

12 Q. Is this an example of marketing materials
13 that Brody Chemical would --

14 A. Yes.

15 Q. -- use to sell customers on its Slippery
16 Wizard product?

17 A. Yes.

18 MR. BRAY: I'll offer Exhibit 3.

19 MR. WINESETT: No objection.

20 Q. (BY MR. BRAY) I want to switch gears
21 again, Mr. Liddiard, and talk about the Slippery
22 Wizard formula. Are you aware of how the formula of
23 Brody Chemical Slippery Wizard product was developed?

24 A. Yes. I did it.

25 Q. Did Ms. Goldthorpe provide the formula to

1 you?

2 A. No.

3 Q. Did Ms. Goldthorpe ever give you a trade
4 secret formula?

5 A. No.

6 Q. How did you get the idea for this Slippery
7 Wizard formula?

8 A. Steve Madsen, who's a friend of mine -- I
9 played softball with him for ten years -- worked for
10 us at the time. He was a water treatment specialist
11 with us, helping train other people to sell water
12 treatment. And he left our employment somewhere
13 around -- and I'm going to guess somewhere around
14 2002 -- to follow up on a deal called RCAI, which I
15 did the investment of about a million dollars and
16 then ended up selling that company to a company
17 called RCAI.

18 And they took -- it was a water
19 treatment -- water filtration system. Steve went
20 with that and left Brody Chemical and the water
21 treatment industry and went with that. Well, when
22 they were underfunded and didn't sell what they
23 thought they did, they closed that down.

24 And at the time, that company -- basically
25 the story Steve tells me is they asked him, "Is there

1 any product that you can think of that would be a
2 good market for us to sell?" And he said, "Yeah,
3 I've always thought that an Asphalt Release would
4 be."

5 So Steve -- in working with them, they
6 came up with this product that was basically used
7 chicken -- I mean chicken grease. It was the oils
8 that you'd use in a Kentucky Fried Chicken that gets
9 dirty. And then if you think about Pam that you
10 spray on your fryer and then cook your eggs, it
11 slides right off.

12 Well, this was the same theory, is that
13 this grease would make the asphalt -- or the asphalt
14 just slide out of the truck. And so somewhere they
15 came up with that with this company RCAI, and it
16 was -- and Steve may have been involved, I don't
17 know, but Steve is a water treatment guy. He is not
18 a chemist.

19 So in 2004, he left that company. And we
20 were playing softball, and he said to me, "Hey, let's
21 go have lunch tomorrow. I've got an idea for you."
22 So Steve Madsen and I met for lunch the next day, and
23 Steve told me -- he says, "Hey, have you ever heard
24 of an asphalt release using this used cooking
25 grease?" And I said, "No, but it makes sense to do

1 that."

2 So he's the one that got me directed in
3 that way. Now, I had -- being a chemist, I had
4 worked on several other formulas from our other
5 asphalt release products that used different raw
6 materials other than the oil. So when we did that,
7 we tried just the oil; didn't work.

8 Then we tried oil with a 9 mole
9 surfactant. Worked better, but still didn't work
10 great. And then I used another raw ingredient, which
11 is a proprietary ingredient that was used from our
12 other asphalt release in the formula, and it worked
13 great.

14 And that's how the formula was developed,
15 and it's changed minutely since then.

16 Q. Did Ms. Goldthorpe provide the formula to
17 you?

18 A. No.

19 MR. WINESETT: I have an objection to the
20 last answer. I'm sorry. I object to the hearsay
21 and --

22 THE WITNESS: It's not hearsay. That's
23 what happened.

24 MR. WINESETT: I object to the hearsay
25 and -- contained in that answer. I also object and

1 would like the discussion of the formula to be kept
2 confidential from public records. Just a note.

3 Q. (BY MR. BRAY) Bottom line, Mr. Liddiard,
4 did you create the formula?

5 A. Absolutely.

6 Q. That became Slippery Wizard?

7 A. Absolutely.

8 Q. Has that formula changed somewhat over
9 time?

10 A. The only thing that's changed on it is
11 where we've gotten our grease. It's gotten harder
12 and harder to get because of the introduction of bio
13 diesel.

14 Q. Did you use your educational background
15 with a master's degree in chemistry to create the
16 formula for Slippery Wizard?

17 A. Yes, I did.

18 Q. Are you aware of Ms. Goldthorpe's
19 education and work experience?

20 A. I think she graduated from high school,
21 but I'm not sure.

22 Q. To your knowledge, does Ms. Goldthorpe
23 have a degree or background experience in chemistry?

24 A. None.

25 MR. WINESETT: Objection, speculation.

1 Q. (BY MR. BRAY) To your knowledge, does
2 Ms. Goldthorpe have any background or experience in
3 formulating industrial cleansers or degreasers?

4 A. Absolutely none.

5 MR. WINESETT: Speculation. I also object
6 to the conclusory elements of the last few questions.
7 The witness is not an expert.

8 Q. (BY MR. BRAY) Mr. Liddiard, was there
9 ever a "license agreement" between Brody Chemical and
10 Ms. Goldthorpe to -- whereby Brody Chemical licensed
11 the formula of Slippery Wizard from Ms. Goldthorpe?

12 A. No.

13 Q. Did Ms. Goldthorpe have anything to do
14 with the formula or the formulation of Brody's
15 Slippery Wizard product?

16 A. The only thing Tammy Price knew about that
17 product is it had grease in it. That's all she knew.

18 Q. She knew that, but is she the one that
19 told you to use --

20 MR. WINESETT: Objection, leading.

21 A. No. Steve Madsen did. But I had
22 conversations later on with Tammy about she knew that
23 it was grease. That's all Tammy knew.

24 Q. (BY MR. BRAY) Okay.

25 MR. WINESETT: Speculation objection.

1 Q. (BY MR. BRAY) For a period of time did
2 Brody Chemical also use the name and mark Clear
3 Wizard?

4 A. Yes.

5 Q. For what kind of product?

6 A. It was a polyacrylamide product that was
7 a -- worked fine, but the problem is the hotter the
8 asphalt, the less effective it was. But we had a
9 product called Clear Wizard.

10 Q. Okay.

11 A. Polyacrylamide.

12 Q. Who created the name and mark Clear
13 Wizard?

14 A. I did.

15 Q. Did Ms. Goldthorpe have anything to do
16 with the creation of the mark Clear Wizard?

17 A. No.

18 Q. For a period of time did Brody Chemical
19 also use the name and mark White Wizard?

20 A. Yes.

21 Q. For what kind of product?

22 A. That was a silicone -- that was another
23 product that had polyacrylamide as a base, and also
24 it had a silicone in it which aided in the
25 slipperiness of the product to get the asphalt out of

1 the truck. And I created that formula and I created
2 that name.

3 Q. Did Ms. Goldthorpe have anything to do
4 with creating the name and mark Clear Wizard?

5 A. No.

6 Q. Or White Wizard? I'm sorry.

7 A. No.

8 MR. WINESETT: I object to those as
9 speculation.

10 Q. (BY MR. BRAY) To your knowledge -- well,
11 you created the name and mark Clear Wizard, correct?

12 A. Yes, I did.

13 Q. You created the name and mark White
14 Wizard?

15 A. Yes, I did.

16 Q. You created the name and mark -- or
17 Buzz --

18 A. Buzz and I.

19 Q. -- created the name and mark Slippery
20 Wizard, right?

21 A. Yes.

22 Q. Did Ms. Goldthorpe have anything to do
23 with naming any of those products --

24 A. No.

25 Q. -- to your knowledge?

1 A. No.

2 Q. All right. Let's switch gears again.

3 MR. WINESETT: To the extent of the
4 framing of that, I will object to the foundation
5 leading up to those conclusions.

6 Q. (BY MR. BRAY) Let's switch gears and talk
7 about the terms of Ms. Goldthorpe's employment and
8 how she was compensated. If you look again at
9 Exhibit 1, which is the Sales Representative
10 Agreement, paragraph 2 says that Ms. Goldthorpe would
11 be paid commissions, "In accordance with the
12 commission schedules and commission rules and
13 regulations of the company."

14 Is that how Ms. Goldthorpe -- is that how
15 Ms. Goldthorpe was paid --

16 A. Yes.

17 Q. -- after she signed the Sales
18 Representative Agreement?

19 A. Yes.

20 Q. And was the Sales Representative
21 Agreement --

22 MR. WINESETT: Objection, lacks personal
23 knowledge.

24 Q. (BY MR. BRAY) Are you aware of how
25 Ms. Goldthorpe was compensated in 2004?

1 A. Yes.

2 Q. Was she paid in accordance with the
3 commission schedules and commission rules and
4 regulations of the company?

5 A. Yes.

6 Q. Is there anybody at Brody Chemical that's
7 more familiar with how employees were compensated in
8 2004 than you, Mr. Liddiard?

9 A. No. I wrote this agreement.

10 Q. Was Ms. Goldthorpe, in 2004 after she
11 signed this agreement, compensated any differently
12 than any other sales representative of Brody
13 Chemical?

14 A. Not at first.

15 MR. WINESETT: Objection, foundation, with
16 respect to the other employees -- other people at
17 Brody Chemical.

18 Q. (BY MR. BRAY) Are you aware -- are you
19 aware of how other Brody Chemical sales
20 representatives were compensated in 2004?

21 A. Yes.

22 Q. Were they all compensated in accordance
23 with the commission schedules and commission rules
24 and regulations of the company?

25 A. Yes.

1 Q. Were certain managers paid override
2 commissions on other sales?

3 A. Yes.

4 Q. Okay. In 2004, was Ms. Goldthorpe --

5 MR. WINESETT: Objection, vague as to
6 other managers.

7 Q. (BY MR. BRAY) Was Ms. Goldthorpe a
8 manager in 2004?

9 A. Not at first; but then after a while, she
10 became an -- she became a sales trainer for asphalt
11 release products.

12 Q. Okay. We'll get to that. Before she
13 became a trainer, was she -- do you have knowledge of
14 whether she was compensated identically, according to
15 the same formulas, as all other sales representatives
16 at Brody Chemical?

17 A. Yes.

18 Q. And was she?

19 A. Yes.

20 Q. Nothing special about her?

21 A. Nothing special about her.

22 Q. All right.

23 MR. WINESETT: Objection, speculation.

24 (EXHIBIT 4 WAS MARKED.)

25 MR. BRAY: Nathan, I'm handing

1 Mr. Liddiard Brody 0012, which is a payment terms
2 agreement.

3 Q. (BY MR. BRAY) Mr. Liddiard, I'm handing
4 you what's been marked as Exhibit 4, which is a
5 document Bates numbered Brody 0012 that I'll refer to
6 as the payment terms agreement. Are you familiar
7 with this exhibit?

8 A. Yes.

9 Q. Did you negotiate this agreement with
10 Ms. Goldthorpe?

11 A. Yes.

12 Q. First of all, describe what Exhibit 4 is.

13 A. What we do is we have -- there's probably
14 six or eight of them now in our company that are what
15 we call territory managers. They have their own
16 territory that they sell, but they also get an
17 override for a specialty line.

18 For example, we've got a guy here in Salt
19 Lake that's a water treatment guy that took Steve
20 Madsen's place, and he gets a five percent override
21 on all sales of water treatment. We've got a sales
22 rep down in Phoenix that gets an override on laundry
23 and wear wash down there because he's a specialist.

24 We have a salesman here in Salt Lake
25 that's got a territory that also gets an override on

1 wear wash and laundry here because he's an expert we
2 brought in. So we have these people that get an
3 override on helping train other people in what they
4 call their favorite area or whatever that they're
5 good at.

6 And Tammy started selling a lot of our
7 Slippery Wizard and became good at it, so we -- I
8 talked to Tammy about going into training and helping
9 train other people. And at first, she didn't want to
10 because she didn't want to travel; but then after
11 talking to her, I offered her a dollar a gallon if
12 she could -- because it was a product that mainly she
13 was selling, and so I offered her a dollar a gallon
14 to go out and train other people and teach them how
15 to sell that product.

16 Q. Okay. I want to go into the -- well, let
17 me ask you this question: Was there anybody else --

18 MR. WINESETT: Objection, speculation, and
19 also vague as to these other overrides.

20 THE WITNESS: It's not vague. It's what
21 we do. It's exactly how we pay them. It's not
22 vague.

23 Q. (BY MR. BRAY) Jon, was there anybody else
24 at Brody that was involved in the negotiation with
25 Tammy Goldthorpe of Exhibit 4 other than you?

1 A. No. I was the one that negotiated this
2 with Tammy. I'm sure Buzz Butler, as her sales
3 manager, knew about it, but I was the one that
4 negotiated it.

5 Q. Okay. We're going to go back to the terms
6 of Exhibit 4 in a minute.

7 MR. WINESETT: Objection.

8 Q. (BY MR. BRAY) Let me ask you this
9 question: This agreement, as signed by Tammy on
10 May 16, '06 -- it's dated April 1, '06 -- I'm going
11 to choose the April 1, 2006 date. Prior to that
12 date, are you aware as to whether Ms. Goldthorpe was
13 paid any more commission on the sales of Brody Wizard
14 Slippery Wizard -- Brody Chemical Slippery Wizard
15 product than any other Brody Chemical product?

16 A. No.

17 Q. So in other words, prior to April 1, 2006,
18 she was paid the same commissions on Slippery Wizard
19 as she would have been on any other Brody product?

20 A. Yes.

21 Q. Prior to April 1, 2006, was Ms. Goldthorpe
22 earning commissions -- override commissions on any
23 other Brody salesperson sales of the Slippery Wizard
24 product?

25 A. No, not until this agreement.

1 Q. Okay. Prior to April 1, 2006, at any time
2 did Ms. Goldthorpe ever claim to you that she owned
3 the Slippery Wizard trademark and name?

4 A. No.

5 Q. Prior to April 1, 2006, at any time did
6 Ms. Goldthorpe ever claim to you that she owned the
7 Slippery Wizard formula?

8 A. No.

9 Q. Okay. Describe for me the negotiations
10 that led up to the execution --

11 MR. WINESETT: The last two questions, I
12 object to hearsay.

13 Q. (BY MR. BRAY) Describe for me the
14 negotiations that led up to the execution of
15 Exhibit 4.

16 A. I called Tammy and I said, "I'd like to
17 meet with you," because she was selling more of the
18 Slippery Wizard than anyone else, and I called her
19 into the office. She came in and I offered her -- I
20 says, "Would you like to be a sales trainer and help
21 train other people to sell this product?" Because it
22 was a product that needed to be demonstrated to sell
23 it.

24 And she at first said, "Well, what would
25 that be?" And I said, "Well, you would have to

1 travel a little bit and go around to other areas and
2 teach them how to do it." And at first she said no.
3 She didn't want to do it because it would require
4 travel, and she didn't want to travel at the time.
5 She had a couple of children and didn't want to do
6 too much traveling.

7 So anyway, so it dropped for a while, and
8 then we talked again. And I said, "Hey, I'll make
9 you a deal on it if you'll go train these people."
10 And she says, "Well, okay. Let's talk again." So
11 she came in, and I said, "Let's negotiate a deal."

12 And I don't remember how we came up with
13 the dollar, but that's -- I know that's what I
14 offered her. And she accepted that as an override on
15 training other people how to sell the Slippery
16 Wizard. Because it was also going to take her out of
17 territory. Our agreement was she'd work in her own
18 territory three weeks and out one week to help train
19 other people.

20 Q. Okay. I'm going go ahead and offer
21 Exhibit 4.

22 MR. WINESETT: I object to the testimony
23 on it as under the best evidence rule. Otherwise, no
24 objection on the document itself.

25 Q. (BY MR. BRAY) Okay. Go ahead and keep

1 Exhibit 4 in front of you, and go ahead and read
2 paragraph 2 of Exhibit 4

3 A. "For each gallon of Slippery Wizard sold,
4 not including her own sales, Tammy will receive an
5 override of \$1 per gallon."

6 Q. From your perspective in the negotiating
7 this agreement with Ms. Goldthorpe, was paragraph 2
8 providing her an override commission on the sales of
9 Slippery Wizard products made by other salespeople?

10 A. Absolutely.

11 Q. Okay. Do you consider Exhibit 2 to be any
12 kind of license by which Ms. Goldthorpe is licensing
13 to Brody Chemical the right to use the Slippery
14 Wizard name and mark?

15 A. No.

16 Q. Is the word "license" used anywhere in
17 Exhibit 4?

18 A. No.

19 Q. During the negotiations that you had with
20 Ms. Goldthorpe regarding the April 1, 2006 payment
21 structure agreement that's been marked as Exhibit 4,
22 did she ever discuss with you any claim that she
23 owned the Slippery Wizard name and mark?

24 A. No.

25 Q. During the negotiations that you had --

1 MR. WINESETT: Objection, hearsay.

2 Q. (BY MR. BRAY) During the negotiations
3 that you had with Ms. Goldthorpe regarding Exhibit 4,
4 did she ever discuss with you any claim that she
5 owned the Slippery Wizard formula?

6 A. No.

7 Q. At any time during the negotiations of
8 Exhibit 4, did she ever discuss with you even the
9 concept of a license?

10 A. No.

11 MR. WINESETT: I continue my hearsay
12 objections to the questions.

13 THE WITNESS: Two of us there. That's
14 what happened.

15 Q. (BY MR. BRAY) Why did you have Brody
16 Chemical enter into the April 1, 2006 structure --
17 payment structure agreement with Ms. Goldthorpe
18 that's been marked as Exhibit 4?

19 A. Because every time we do a -- an agreement
20 with a salesman to help other sales reps besides
21 himself, we offer them a -- an agreement exactly
22 identical to this based on the negotiations of how
23 they would be paid as an override to help other
24 people sell the product.

25 Q. After Brody Chemical entered into

1 Exhibit 4 with Ms. Goldthorpe, did Brody Chemical
2 continue to treat all commission payments, both
3 regular commissions and override commissions, as W-2
4 employee income to Ms. Goldthorpe?

5 A. Yes.

6 Q. Did she ever object to that?

7 A. No.

8 MR. WINESETT: David, I object to two
9 questions ago under the best evidence rule as to
10 other identical agreements to this exhibit as to
11 other managers, and also that assumes evidence that
12 is not in record.

13 Q. (BY MR. BRAY) Did the terms of the
14 payment structure agreement change after April 1,
15 2006?

16 A. Yes.

17 Q. When did that change occur?

18 A. It happened shortly after I called Tammy
19 in, offered her an override on training other people
20 in the -- in the -- it wasn't just Slippery Wizard.
21 It was asphalt release products. But Slippery Wizard
22 was the main product that she was getting an override
23 on.

24 And it changed after that because from
25 that date on when this agreement was signed, she now

1 got a dollar a gallon for every gallon of Slippery
2 Wizard that was sold under her people.

3 Q. Okay. What I'm asking is, later on, was
4 the payment amount -- was the override commission of
5 a dollar per gallon changed?

6 A. Yes.

7 Q. Describe what happened.

8 A. Well, in -- and I'm not sure the date now.
9 It's been a while, but what happened was Slippery
10 Wizard, being the oil-based product -- we were buying
11 the oil very, very cheaply at the time we started
12 this. And then bio diesel started becoming more
13 popular, and they had the same demand on the oil, the
14 bio diesel people, as we did.

15 So the price went from very, very low to
16 quite high, which raised our price on Slippery Wizard
17 to a point where it was almost -- it was just really
18 hard to sell it. So the salesmen, just like many of
19 the other products that we've developed, came to
20 me -- I was the chemist -- and asked me to come up
21 with a product that was more competitive.

22 So we came up with two other products
23 based on what the competition was out there, because
24 one of our competitors had a silicone-based product
25 and another one had a product that was an acrylamide,

1 and so we made two formulas based on those raw
2 materials. One was called Clear Wizard, one was
3 called Slippery Wizard.

4 At the time we did that, Tammy Price came
5 in to me and said, "Jon, that's not fair because now
6 some of the salesmen are switching some of the
7 Slippery Wizard away from what I get an override on
8 to these other two products that you've developed."

9 And I said, "Well, Tammy, we want to be
10 fair with you. What would work for you?" She said,
11 "Well, can I get a dollar a gallon on those as well?"
12 I says, "No. Those have been developed since our
13 agreement, and you don't get a dollar on those. This
14 is all based on the cost of Asphalt Release going up,
15 the oil."

16 So she said, "Well, it's not fair." And I
17 said, "Well, what would be fair?" So we worked out
18 an agreement at that time that she would get \$0.50 a
19 gallon now on all three of those products, Slippery
20 Wizard, White Wizard and Clear Wizard, instead of
21 just a dollar on the Slippery Wizard.

22 Q. During the negotiations --

23 MR. WINESETT: Objection, hearsay.

24 Q. (BY MR. BRAY) During the negotiations
25 with Ms. Goldthorpe regarding the change in the

1 payment structure to include commissions on sales of
2 Clear Wizard and White Wizard, did Ms. Goldthorpe
3 ever make a statement to you or make a claim that
4 these were royalties being paid to her for the right
5 to use trademarks?

6 A. No.

7 Q. Today, does Brody Chemical pay override
8 commissions to sales managers?

9 A. Yes.

10 Q. Who does it pay override commissions to?

11 A. Mark Simmons down in Phoenix gets an
12 override on his people down there that he -- that
13 sell wear wash and laundry. Steven LaFoon down in
14 Phoenix get an override on his people that sell
15 industrial products. Let's see. Wes Fulton here in
16 Salt Lake, he gets an override on all water treatment
17 products with his people.

18 Buzz Butler, as a sales manager, he gets
19 an override on all his people. Brandie Briese gets
20 an override on all her people. And I've probably
21 missed somebody, but I -- oh, and Corrin Liddiard
22 down in California gets an override on her people.

23 Q. At any time did Ms. Goldthorpe ever make a
24 claim that any of her commission income paid on sales
25 of Slippery Wizard should be paid to her as trademark

1 royalties --

2 A. No.

3 Q. -- and should have been 1099'd to her?

4 A. No.

5 Q. Prior to --

6 MR. WINESETT: Objection, hearsay.

7 Q. (BY MR. BRAY) Prior to her separation of
8 employment in January of 2011, did Ms. Goldthorpe
9 ever claim the commissions she was paid on sales of
10 Brody Chemical Slippery Wizard product were actually
11 royalty payments for a license from her to Brody
12 Chemical for Brody to use the Slippery Wizard name
13 and mark?

14 A. No.

15 MR. WINESETT: Objection, speculation.

16 THE WITNESS: Well, she either did or she
17 didn't. She didn't.

18 MR. WINESETT: Objection, hearsay.

19 Q. (BY MR. BRAY) Mr. Liddiard, at any time
20 prior to the separation of her employment did
21 Ms. Goldthorpe assert to you any claim of ownership
22 in the Slippery Wizard name and mark?

23 A. No.

24 Q. At any time prior to --

25 MR. WINESETT: Objection.

1 Q. (BY MR. BRAY) -- the separation of her
2 employment in January 2011 did Ms. Goldthorpe ever
3 refer to any of -- refer to you in your presence --
4 refer to any of the commissions that were being paid
5 to her as an employee as trademark royalties?

6 A. No.

7 Q. At any time did Ms. Goldthorpe ever
8 exercise control over the quality of Brody Chemical
9 Slippery Wizard product?

10 A. She didn't even know what was in it. No.

11 MR. WINESETT: Objection, speculation and
12 hearsay and foundation.

13 Q. (BY MR. BRAY) Who was responsible for
14 quality control -- product quality control for
15 Slippery Wizard during the 2004 to 2011 time frame
16 that Ms. Goldthorpe was employed by Brody Chemical?

17 A. Myself as the chemist and Javier in that
18 back, who's our production manager.

19 Q. Was Ms. Goldthorpe assigned any
20 responsibility for quality control of the product?

21 A. No.

22 Q. Did Ms. Goldthorpe at any time assert
23 any -- on behalf of herself any responsibility for
24 the control -- or the quality --

25 A. No.

1 Q. -- of the Brody Chemical Slippery Wizard
2 product?

3 MR. WINESETT: Hearsay.

4 A. Absolutely not.

5 Q. (BY MR. BRAY) In January of 2011, Brody
6 Chemical and Ms. Goldthorpe parted ways?

7 A. Yes.

8 Q. Are you aware of the circumstances
9 surrounding her departure from Brody Chemical
10 employment?

11 A. Yes.

12 Q. And can you describe those circumstances
13 for the Board?

14 A. Well, I lined her up with one of my very
15 best friends, who she married. His name is Cliff
16 Goldthorpe. And Cliff married her, and Cliff's very
17 successful in his business and so Tammy didn't need
18 to work anymore. So she said that she was quitting
19 to become a life coach and go do a life coach.

20 And I remember asking her, "Are you going
21 to make any money at that?" And she says, "I don't
22 think so, but it's something that I've always wanted
23 to do and Cliff can support me." So she left.

24 MR. WINESETT: Objection, hearsay.

25 (EXHIBIT 5 WAS MARKED.)

1 Q. (BY MR. BRAY) In any discussions that --
2 prior to her leaving Brody Chemical's employment, did
3 Ms. Goldthorpe have any discussions with you where
4 she asserted any rights in the Slippery Wizard name
5 and mark?

6 A. No.

7 MR. WINESETT: Hearsay. Objection.

8 Q. (BY MR. BRAY) All right. Mr. Liddiard,
9 we're almost done. I'm just going to ask a few more
10 questions to wrap things up.

11 Was there ever an agreement between Brody
12 Chemical and Ms. Goldthorpe where Miss -- where Brody
13 Chemical agreed that Ms. Goldthorpe owned the
14 Slippery Wizard name and mark?

15 A. Absolutely not.

16 Q. Was there ever an agreement between Brody
17 Chemical and Ms. Goldthorpe that she would license
18 the Slippery Wizard name and mark for Brody Chemical
19 to use?

20 A. Absolutely not.

21 Q. At any time during the term of
22 Ms. Goldthorpe's employment by Brody Chemical did she
23 claim ownership of the Slippery Wizard name and mark
24 to you?

25 A. Absolutely not.

1 Q. To your knowledge --

2 MR. WINESETT: Objection, hearsay.

3 Q. (BY MR. BRAY) -- at any time during the
4 term of Ms. Goldthorpe's employment by Brody Chemical
5 did she ever sell a product under the name and mark
6 Slippery Wizard that was not a Brody Chemical
7 product?

8 A. No.

9 Q. To your knowledge --

10 MR. WINESETT: Objection, hearsay.

11 Q. (BY MR. BRAY) -- at any time prior to
12 Ms. Goldthorpe joining Brody Chemical did she ever
13 sell an asphalt release product under the name and
14 mark Slippery Wizard?

15 A. No.

16 Q. To your knowledge, at any time following
17 the termination of her employment by Brody Chemical
18 has Ms. Goldthorpe sold an asphalt release product
19 under the name and mark Slippery Wizard?

20 A. No.

21 Q. To your knowledge, has any competitor of
22 Brody Chemical ever sold a competing asphalt release
23 product under the name and mark Slippery Wizard?

24 A. No.

25 Q. Has Brody Chemical used the mark Slippery

1 Wizard for its asphalt release product continually in
2 commerce since the date of first use?

3 A. Yes.

4 Q. And I've handed you what's been marked as
5 Exhibit 5.

6 MR. BRAY: And, Nathan, for yours, it's
7 the -- it's Bates numbered Brody 0027 to Brody 0040.

8 Q. (BY MR. BRAY) Do you recognize Exhibit 5,
9 Mr. Liddiard?

10 A. Yes.

11 Q. What is it?

12 A. This would be our brochure. We have a --
13 the big book with 800 different technical data
14 sheets, and then we have a -- a brochure on probably
15 40 of our groups, like water treatment, pool
16 chemical, laundry chemicals, restaurant chemicals.
17 This is our Asphalt Release brochure.

18 Q. Is it provided to customers and potential
19 customers to market the products?

20 A. Yes.

21 Q. How else does Brody Chemical use the
22 Slippery Wizard trademark?

23 A. Well, we have it on the tech sheet, the
24 technical data. We have it in the brochure. We have
25 it in our line card, which is just a list of our

1 products that we hand out to customers. And it's on
2 the label and it's on the MSDS sheet and it's on
3 the -- it's been approved by the EPA. It's been
4 approved by the Department of Transportation.

5 Q. Is it used on the Brody website?

6 A. Yes.

7 Q. Has Brody Chemical used the Slippery
8 Wizard mark in all those ways since it first began
9 using the mark in commerce?

10 A. Yes, just like our other 800 products.

11 Q. And is Brody Chemical continuing to offer
12 an asphalt release product under the name Slippery
13 Wizard today?

14 A. Yes.

15 Q. And how are sales?

16 A. Great.

17 Q. Is it -- how does it rank in terms of
18 sales of other Brody products?

19 A. It's all -- it's probably a top-ten
20 product.

21 Q. Okay.

22 A. I can't say exactly, but I think it's
23 still in the top ten. It has gone down a little bit
24 just because of the cost of the grease has gone up
25 considerably. We've had to go off and -- and we have

1 another new product that's not been talked about, but
2 it's called Number 1, which is another new asphalt
3 release that's more of modern product based on
4 today's asphalt.

5 And that's -- those sales are probably
6 overtaking Slippery Wizard at this time.

7 Q. Is Number 1 a product developed by Brody
8 or is it developed by a third party?

9 A. It's a third party. Actually, we buy that
10 product in.

11 Q. Who do you buy it from?

12 A. I don't know the name of the company. I
13 don't know. That came after I retired.

14 Q. Mr. Liddiard, I have no further questions,
15 but Mr. Nathan -- or Mr. Winesett might have some
16 questions on cross-examination.

17 MR. BRAY: Nathan, do you want to take a
18 break now or do you want to keep going?

19 MR. WINESETT: Under the rules, we can
20 reserve our cross-examination during -- for our
21 testimony period, and so we'll reserve that right to
22 do that.

23 MR. BRAY: Sounds good.

24 (Deposition concluded at 11:03 a.m.)

25

1 Case: BRODY CHEMICAL versus GOLDTHORPE
 2 Serial Number: 85/009,334
 3 Reporter: Ashley Money
 4 Date taken: January 30, 2013

WITNESS CERTIFICATE

5 I, JON LIDDIARD, HEREBY DECLARE:
 6 That I am the witness in the foregoing
 7 transcript; that I have read the transcript and know
 8 the contents thereof; that with these corrections I
 9 have noted this transcript truly and accurately
 10 reflects my testimony.

11 PAGE-LINE	CHANGE/CORRECTION	REASON
12 _____	_____	_____
13 _____	_____	_____
14 _____	_____	_____
15 _____	_____	_____
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23 _____	_____	_____
24 _____	_____	_____
25 _____	_____	_____

26 _____ No corrections were made.

27 I, JON LIDDIARD, HEREBY DECLARE UNDER THE
 28 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES
 29 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
 30 FOREGOING IS TRUE AND CORRECT.

31 _____ JON LIDDIARD

32 SUBSCRIBED and SWORN to this _____ day
 33 of _____, 2013, at _____

34 _____ Notary Public

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10:2</p> <p>six ^[1] 29:14</p> <p>slide ^[1] 20:14</p> <p>slides ^[1] 20:11</p> <p>slipperiness ^[1] 24:25</p> <p>Slippery ^[72] 2:22 12:12,14 13:14,17,21 14:8,12,20 15: 7,12,21,25 16:4,8 17:1,4, 17 18:4,8,15,21,23 19:6 22:6,16 23:11,15 25:19 30: 7 31:14,14,18,23 32:3,7, 18 33:15 34:3,9,13,23 35: 5 36:20,21 37:1,9,16 38:3, 7,19,21 39:25 40:10,12,22 41:9,15 42:1 43:4,14,18, 23 44:6,14,19,23,25 45:22 46:7,12 47:6</p> <p>soap ^[5] 3:22 13:10,11,11,11</p> <p>softball ^[2] 19:9 20:20</p> <p>sold ^[7] 5:1 12:16 14:19 34:3 37:2 44:18,22</p> <p>somebody ^[1] 39:21</p> <p>somewhat ^[1] 22:8</p> <p>somewhere ^[3] 19:12,13 20: 14</p> <p>son ^[1] 6:17</p> <p>sorry ^[3] 16:2 21:20 25:6</p> <p>sounds ^[2] 15:8 47:23</p> <p>special ^[2] 28:20,21</p> <p>specialist ^[2] 19:10 29:23</p> <p>specialty ^[1] 29:17</p> <p>specimen ^[1] 17:3</p> <p>speculation ^[10] 12:8 14:16 22:25 23:5,25 25:9 28:23 30:18 40:15 41:11</p>
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#124

EXHIBIT 1
WIT: LIDDIANO
DATE: 1-30-13
CitiCourt, LLC

**BRODY CHEMICAL
SALES REPRESENTATIVE AGREEMENT**

THIS AGREEMENT, made and entered into by and between Brody Chemical, Utah corporation, having its principal place of business in Salt Lake City Utah hereinafter referred to as the "Company" and

Sales Representative: James Price
Address: 3265 W. Bitterroot Pl.
Hearts Utah
Phone: 967-5763 Social Sec #: 529-27-1758

hereinafter referred to as the "Sales Representative".

WITNESSETH:

WHEREAS, the company is engaged in the distribution and sale of acid cleaners, metal working coolants, detergent compounds, heavy duty cleaners paint strippers, degreasers, water treatment chemicals, snow and ice melter insecticides, chemicals for sewage treatment and deodorants, and may from time to time, add other chemical specialties to its line of product (hereinafter referred to as "Company Products") in the United States of America, and

WHEREAS, the company and its associated and affiliated companies, have developed methods and techniques for selling its products which methods are secret and confidential; and will train Sales Representative in such methods techniques and knowhow, and

WHEREAS, it is the desire of the Sales Representative to obtain a sales position with the company and to be trained in the use of the techniques and methods developed by the company,

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the Company and the Sales Representative as follows:

1. RELATIONSHIP OF PARTIES: The Company hereby retains the services of the Sales Representative upon the terms and conditions hereinafter set forth. The Sales Representative is to be considered an employee of the Company.

2. COMPENSATION: The compensation to be received by the Sales Representative for his services in connection with the sale of the Company's product shall be paid solely on a commission basis. The commissions to be paid shall be in accordance with the commission schedules and commission rules and regulations of the Company. The Company may periodically advance to the Sales Representative against commissions earned and commissions to be earned such amounts that may be established by the Company from time to time. All advances against commissions are considered loans to be repaid by the

Sales Representative. If on any date, the aggregate amount of advances (loans) against commissions shall exceed the total compensation earned by the Sales Representative to that date, the Sales Representative, upon written demand made by the company, shall promptly repay the Company the amount by which such advances shall exceed such commissions. If the Sales Representative is unable to pay, the Company will require that a promissory note (provided by the Company) be executed and delivered to the Company immediately.

3. **ASSIGNED AREA:** The Company assigns the following area to the Sales Representative, and said Representative's duty shall be to solicit, attempt to sell and to sell the Company's products in said area. The Company reserves the right to contract other Sales Representatives to solicit and sell in the Assigned Area or any part thereof. Accounts sold by the Sales Representative will be protected in accordance with the rules and regulations of the Company. The Company shall have the right to do business in the Assigned Area under various trade names. The Assigned Area is:

Slc, dlem, bountiful

4. **CONFIDENTIAL INFORMATION:** The Sales Representative shall not at any time, either during the life of this Agreement or after termination thereof, divulge to others or use for his own benefit any confidential information and/or trade secrets obtained during the course of his or her relationship with the company relating to sales, formulas, processes, methods, machines, manufacturers, compositions, ideas, improvements, and inventions belonging to or relating to the affairs of the Company, or its affiliated, associated or successor companies.

5. **DAMAGES AND INJUNCTION:** It is expressly understood that because of the trouble and expenses that the Company and its affiliated and associated companies have gone to in creating, developing, establishing, and maintaining (a) valuable and extensive trade of its products; (b) its business connections and customers; (c) secret and confidential information pertaining to such business, including without limitation, sales volume and strategy, number and locations of Sales Representatives, names and lists of company's customers and clientele which by virtue of Representative's employment he will become personally acquainted within the assigned territory and (d) various formulas, processes confidential information (No. 4 above) of this Agreement will cause irreparable loss to the Company. Representative and Company therefore agree that the Company may, in addition to and not in lieu of any other remedy now or hereafter existing at law or in equity, enforce the covenants and agreements contained in this Agreement by way of injunctive relief in any court of competent jurisdiction.

6. **SEVERABILITY PROVISIONS:** It is understood and agreed that in the event any paragraph provision, or clause of this Agreement, or any combination of the same, shall be found or held to be contrary to or unenforceable at law or in equity or under any presently existing or hereinafter enacted legislation, regulation or order of the United States Government of any municipality, such finding or holding shall not in any way

BRODY0003

affect the other provisions, paragraphs and clauses of this Agreement which shall nonetheless, remain in full force and effect.

7. **TERM OF CONTRACT:** This Agreement shall be effective upon execution and may be terminated by either of the parties hereto upon written notice to the other. It is agreed that if this Agreement is terminated for any reason by either party, all commissions due or payable to the Sales Representative on orders secured by him or her as of the effective date of such termination shall be held for 90 days at which time a final commission balance will be issued. All commissions owed by the Company or any negative balances owed by the Sales Representative will be paid by either party at this time.

8. **AMENDMENT:** This Agreement embodies the full understanding between Company and Sales Representative and may be amended, altered or modified only by an instrument in writing executed by each party hereto.

9. **LIABILITY:** The work to be performed under this agreement will be performed entirely at the Sales Representative's own risk, and said Sales Representative assumes all responsibility for any damages and claims resulting from his or her services under this agreement. He or she further agrees to indemnify the Company for any and all liability or loss arising in any way out of the performance of this agreement.

10. **INSURANCE:** The Sales Representative shall carry automobile liability insurance for injuries to persons and property arising from the use of his or her automobile. The Sales Representative shall further indemnify the Company against any claim for injuries or damages caused by him or her while traveling in his or her automobile during the course of his services under this Agreement. This provision shall survive the termination of the Agreement.

11. **SALES MATERIALS AND EQUIPMENT:** In connection with the Sales Representative's performance of his or her duties and obligations in the Assigned Area, the Company has furnished him with Sales Catalogues and Brochures (copyrighted Material of Brody Chemical, Inc.), Samples, Sample Case, Machinery, Equipment and other sales aids and will from time to time during the term of this Agreement furnish additional Sales aids. In addition to the sales material provided by the Company, it is also understood that other equipment may be sold or provided at "no charge" to the customer or provided to the customer on a "consignment" basis. It is understood and agreed that all such properties so furnished to the Sales Representative is and will remain the property of the Company. The Sales Representative recognizes and agrees that said sales aids and other property furnished to him have been carefully developed by the Company over long periods of time at great cost and expense and that if said sales aids or other property should fall into the hands of unauthorized persons it could cause the Company a great loss of financial profit. Failure to return the items to the Company upon termination will cause great loss and damages to the Company which is difficult to compute. Accordingly, in the event of termination of this Agreement for any reason or for no reason, the Sales Representative agrees that within thirty (30) days of such termination, he or she will return all of the equipment, except that which is in possession of or "installed" with a customer, sales materials, account record book, samples.

etc., that were supplied by the Company to him or her in connection with this Agreement or the Sales Representative shall be charged a franchise fee of \$50,000.00. These are to be sent to the Company, Common Carrier, Freight Collect. The Company will have the right to bring legal action for damages, including attorney's fees, and for recovery of the items referred to herein.

11A. EQUIPMENT & MATERIAL INVENTORY:

<u>Equipment Received</u>	<u>Quantity Received</u>	<u>Quantity Returned</u>
Product Information Text Books	_____	_____
Product Labels	_____	_____
Price Lists	_____	_____
Order Pad	_____	_____
Brody Training Manual	_____	_____
Daytimer/Planner	_____	_____
Brody MSDS Book	_____	_____
Samples (PINTS)	_____	_____
Samples (QUARTS)	_____	_____
Samples (AEROSOLS)	_____	_____
Samples (POUNDS)	_____	_____

Date Received: 10/5/2004

[Signature]
Sales Representative Signature
Brody Chemical, Inc.

By _____

Date Returned: _____

Sales Representative Signature
Brody Chemical, Inc.

By _____

12. ASSIGNMENT: This Agreement shall be binding upon the assignee: personal representatives, heirs, trustee and successors of the parties named herein. This contract is assignable by the Company, but not by the Sales Representative. In the event of an assignment by the Company the Agreement shall be binding upon the assignee.

13. In the event of a breach of this Agreement by the Sales Representative

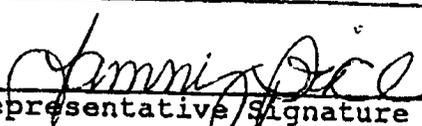
Representative, said Sales Representative agrees to pay to the Company all costs of Court, including a reasonable attorney's fee with or without suit. Costs of court shall include expert witness fees and deposition expenses.

IN WITNESS WHEREOF, the parties have executed the above Agreement this

5th day of October, ~~19~~ 2004.

BRODY CHEMICAL, INC.

By _____


Sales Representative Signature

(Doc: slsagrmnt - 1/94)

BRODY0006

Goldthorpe, Tammy Co/File #: W3S/001126 Status: Terminated SSN: 529-27-1758

Employee List

Personal

Personal Information

Salutation: Tammy

First Name: Tammy

Middle Name:

Last Name: Goldthorpe

Preferred Name:

Payroll Name: Goldthorpe, Tammy

Qualification Suffix:

Tax ID: SSN 529 - 27



Add Delete

EXHIBIT 2
 WIT: 6001450
 DATE: 1-30-13
 ChiCourt, LLC

BRODY0007

Address Line 3 will not display on the employee's paycheck, W-2 form or ADP payroll reports.

Country: US - UNITED STATES

Address Line 1: 2750 E.4215 S.

Address Line 2:

Address Line 3:

City: Salt Lake City

County:

State: UT - Utah

ZIP Code: 84124

Contact Information

Numbers are outside the U.S. and Canada

Goldthorpe, Tammy Co/File #: W3S/001126 Status: Terminated SSN: 529-27-1758

Employee List

Help

Position

Position	Status	Employee Info	Allocations	Time & Attendance	Pay-by-Pay
View/Change Primary Position					
<input type="checkbox"/> This is a supervisor position					
Position Start Date: 10/01/2004					
Job Title: +					
Business Unit: +					
Home Department: 310 - Utah					
Location: +					
Supervisor: +					
Reports To: +					
FTE: +					
Job Class: +					
FLSA: +					
NAICS Worker's Compensation: 8742 - SALESPERSON					
Assigned Shift: +					
Union Code: +					
Union Local: +					

View/Change Primary Position

This is a supervisor position

Position Start Date:

Job Title:

Business Unit:

Home Department:

Location:

Supervisor:

Reports To:

FTE:

Job Class:

FLSA:

NAICS Worker's Compensation:

Assigned Shift:

Union Code:

Union Local:

BRDYY0008

Goldthorpe, Tammy Co/File #: W3S/001126 Status: Terminated SSN: 529-27-1758

Employee List

Position

Help

Position	Status	Employee Info	Allocations	Time & Attendance	Pay-by-Pay
				Terminated	
				01/03/2011	

Status:

Leave of Absence Start Date:

Termination Date:

Rehire Date:

Terminated

01/03/2011



Cancel

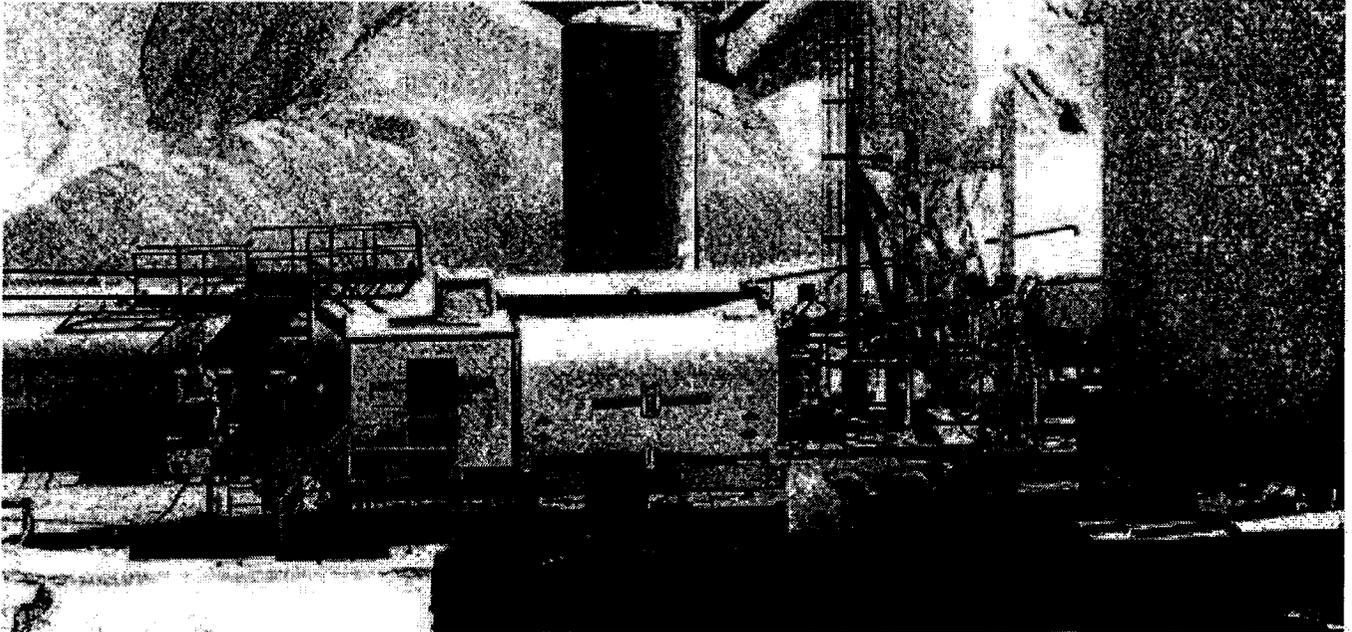
Leave of Absence

Termination

Rehire Status

BRODY0009

SLIPPERY WIZARD (Asphalt Release)



Brody Chemical's Slippery Wizard (Asphalt Release) is a product specifically developed for the asphalt industry. It is a blend of natural, completely biodegradable products that, when combined in a specially designed formula. It works extraordinarily well to prevent asphalt or any tar based product from sticking to metal. Slippery Wizard contains no VOC's (volatile organic compounds).

Brody's Slippery Wizard (Asphalt Release)

- 3 100% Biodegradable
- 3 Contains no VOC's
- 3 Non-Hazardous
- 3 Simple application process
- 3 Heat stable
- 3 Pour point of 35 degrees
- 3 Not a cleaning product, but a barrier
- 3 One application is sufficient for several loads
- 3 Works extremely well with hot, high oil content or polymerized asphalt

Brody's Slippery Wizard (Asphalt Release) makes the need to manually clean the bed of a truck a thing of the past, thus reducing man-hours and safety issues. Using Brody's Slippery Wizard (Asphalt Release) eliminates diesel fuel usage simply because this release agent really works.

Please contact your Brody Chemical representative
for a demonstration.

BRODY CHEMICAL

4825 South 6200 West
Salt Lake City, Utah 84118
OFFICE: (801) 963-2436 FAX: (801) 963-2437

EXHIBIT 4
WIT: LIDDIARD
DATE: 1-30-13
CitiCourt, LLC

April 1, 2006

Brody Chemical agrees to the following terms regarding payment structure for Tammy Price.

1. Commissions will be paid at 50% of Gross Margin.
2. For each gallon of Slippery Wizard sold, not including her own sales, Tammy will receive an override of \$1.00 per gallon.
3. Brody agrees to split all airfare charges incurred by Tammy for travel to and from locations to train and assist other Sales Reps in regards to the Slippery Wizard products.

Tammy Price
Tammy Price

5/16/06
Date

Jon Liddiard
Jon Liddiard

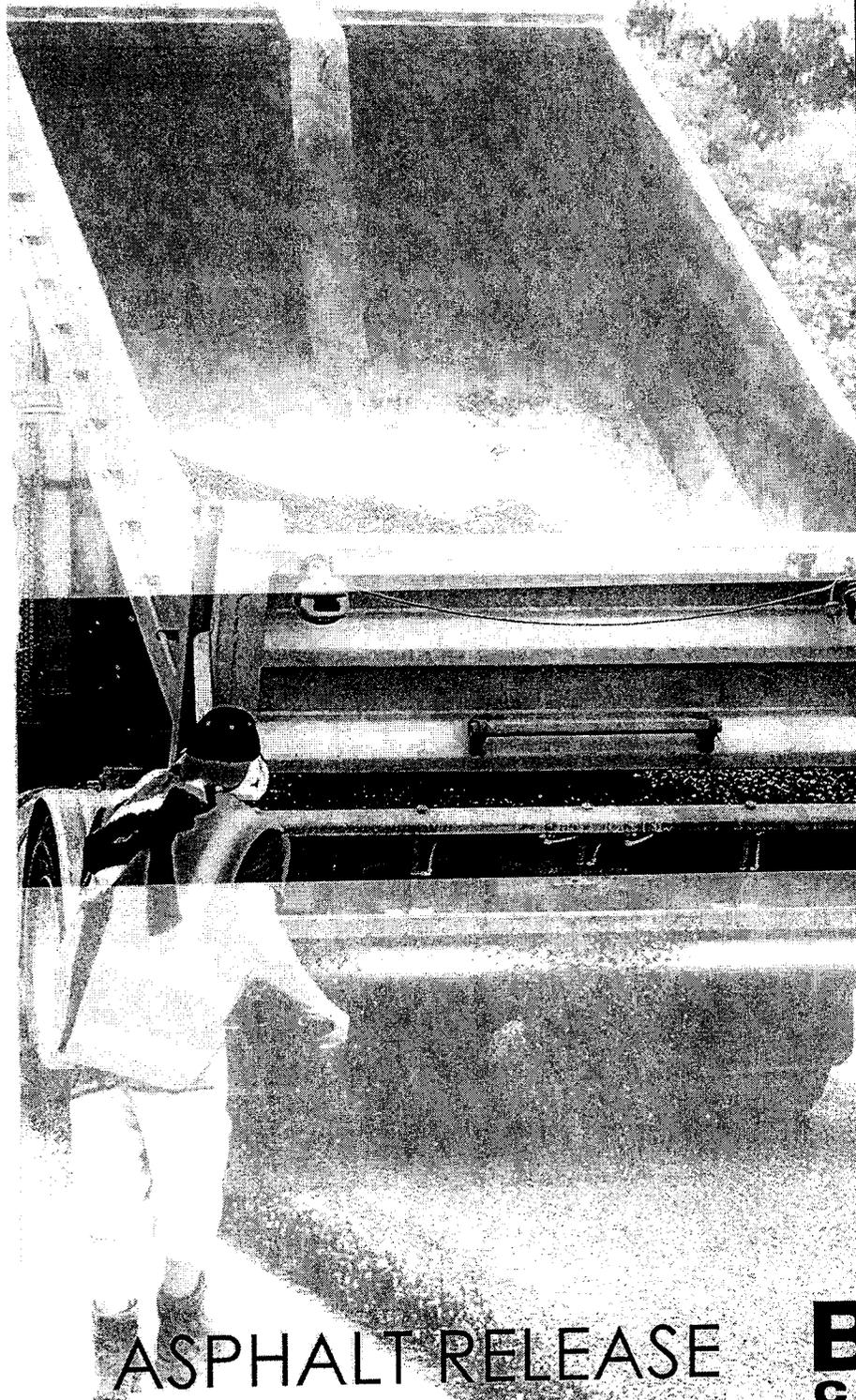
5-12-06
Date

EXHIBIT 5

WIT: LIDD, ACO

DATE: 1-30-13

CitiCourt, LLC



ASPHALT RELEASE

BRODY
CHEMICAL

BRODY0027



WELCOME TO BRODY CHEMICAL

Brody Chemical began in Salt Lake City, Utah in 1975. Since then, it has grown from a small local company to one that provides superior products and service to over half of the United States. Brody's success is attributed to its commitment to create innovative and highly effective products, manufactured under strict quality control standards, a responsive technical support team, and a professional, well-trained, service-driven sales force. Brody Chemical's comprehensive product line boasts over 600 different formulations of sanitation, institutional, industrial and maintenance chemicals for professional use. Reducing the risks associated with chemical usage and disposal, avoiding depletion of the Earth's natural resources, and enhancing the safety and work environment for clients are core values of Brody Chemical.

BRODY
CHEMICAL

800.488.2436 • 801.963.2436

FAX 800.588.2436

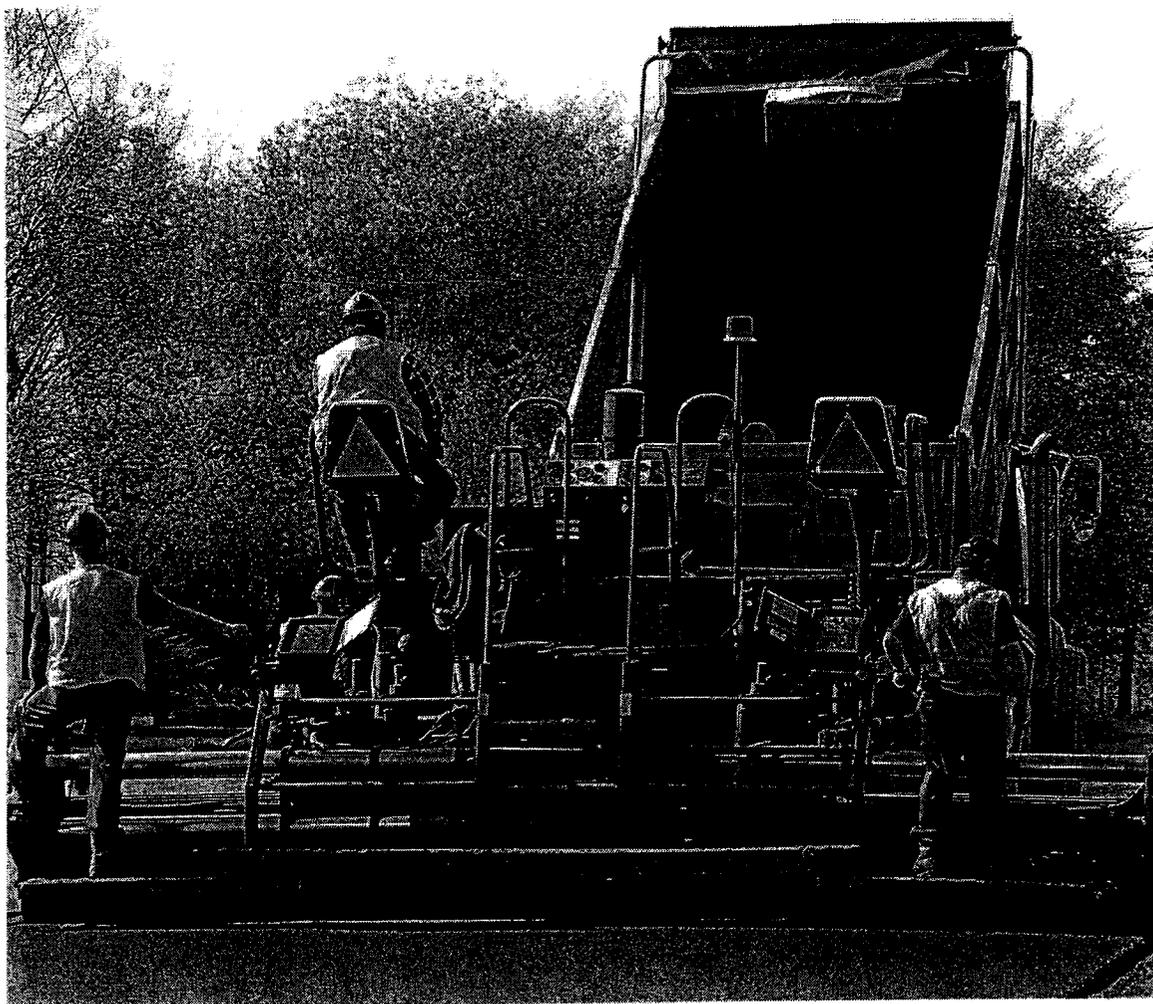
WWW.BRODYCHEMICAL.COM

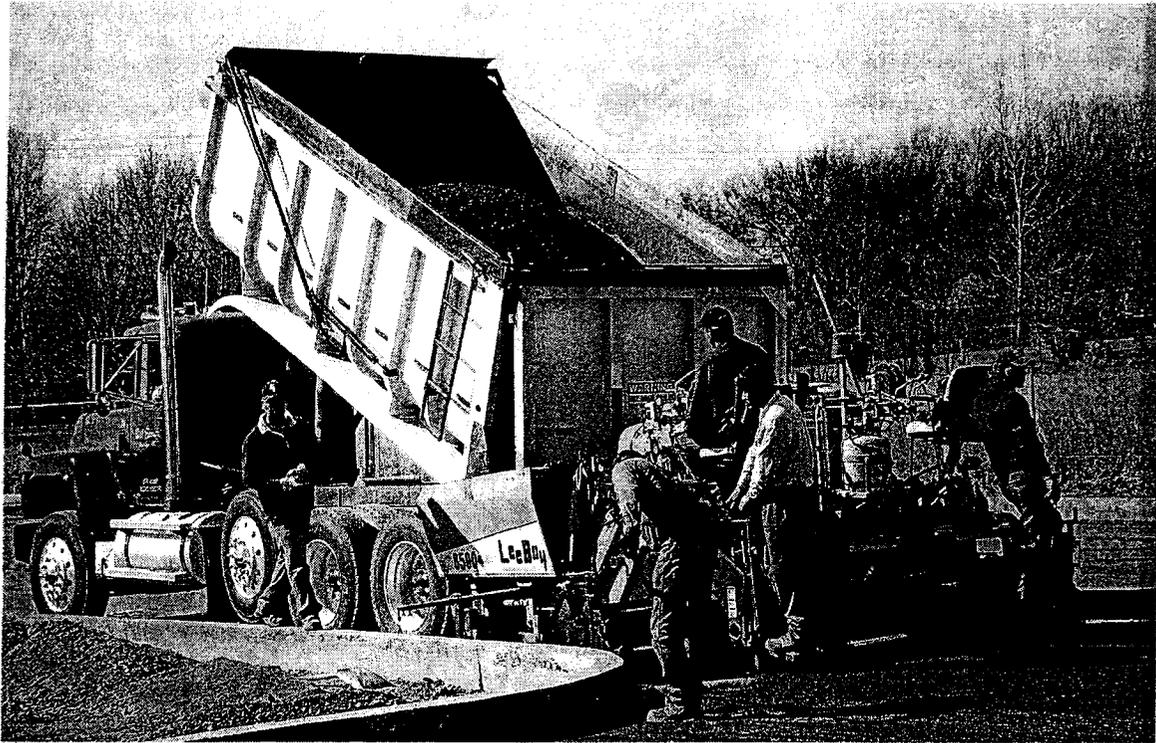
6125 WEST DOUBLE EAGLE CIRCLE, SALT LAKE CITY, UTAH 84118

BRODY0028

PRODUCT CATEGORY INDEX

ASPHALT RELEASE ■ SLIPPERY WIZARD	5-9
ASPHALT RELEASE CLEAR WIZARD ■ POLYMER BLEND	10
ASPHALT RELEASE WHITE WIZARD ■ SILICONE EMULSION	10
DRAG SLAT LUBRICANT ■ REDUCE MAINTENANCE COST	10
JELLED TAR REMOVER ■ DISSOLVES DRIED ASPHALT	10
ORANGE SOLVENT ■ POWERFUL ASPHALT REMOVER	10



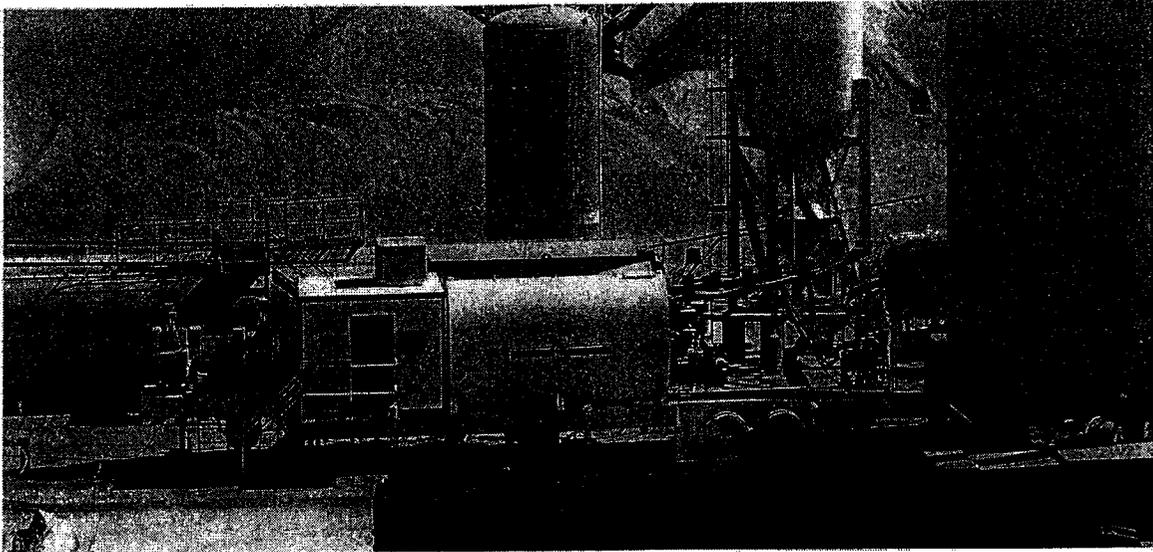


SLIPPERY WIZARD
CLEAR WIZARD
WHITE WIZARD
DRAG SLAT LUBRICANT
ORANGE SOLVENT
JELLED TAR REMOVER



SLIPPERY WIZARD

(Asphalt Release)



Brody Chemical's Slippery Wizard (Asphalt Release) is a product specifically developed for the asphalt industry. It is a blend of natural, completely biodegradable products that, when combined in a specially designed formula. It works extraordinarily well to prevent asphalt or any tar based product from sticking to metal. Slippery Wizard contains no VOC's (volatile organic compounds).

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- ✓ 100% Biodegradable
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- ✓ Not a cleaning product, but a barrier
- ✓ One application is sufficient for several loads
- ✓ Works extremely well with hot, high oil content or polymerized asphalt

Brody's Slippery Wizard (Asphalt Release) makes the need to manually clean the bed of a truck a thing of the past, thus reducing man-hours and safety issues. Using Brody's Slippery Wizard (Asphalt Release) eliminates diesel fuel usage simply because this release agent really works.

Please contact your Brody Chemical representative
for a demonstration.



SLIPPERY WIZARD

(ASPHALT RELEASE)
Application Instructions

ATTENTION DRIVERS:

Experience the most effective release agent on the market today. Slippery Wizard is unique because it is not necessary to use a lot of this product for it to be effective and yield great results.

More is Not Better!!!

Please use product sparingly. Twenty seconds of fine-mist application will deliver approximately 1 pint of product to the bed of a 20-yard dump truck. This film technology will adhere to the metal. Avoid applying too much product, as a thick layer will cause running or pooling and is wasteful. In order for continued availability of Slippery Wizard, minimal waste is necessary. Please keep this in mind. Remember, **more is NOT BETTER!**

Multiple Loads from One Application!

Slippery Wizard does not contain water, therefore when 375° asphalt hits it, the product will not evaporate. It just keeps working. With proper application, Slippery Wizard will release 4 to 6 loads of asphalt without reapplying.

Application Tips

Slippery Wizard works optimally when applied with Brody Chemical's "Timed Application System." Push button for a 20 second, fine-mist application (approximately 1 pint of product) from spray wand. A delay between 3 seconds to 12 minutes can be programmed into the system. Standard delay is 5 seconds. When applied as directed, the ready to use cost of Slippery Wizard is \$0.02 per ton.



Slippery Wizard (Asphalt Release) Demonstration

INFORMATION:

RESULTS/Condition of Truck:

Truck # _____ Load #1 _____

Company Name: _____ Load#2 _____

Driver Name: _____ Load#3 _____

Today's Date: _____ Load#4 _____

Today your truck will be sprayed with Brody Chemical's Slippery Wizard (Asphalt Release), the only true 100% biodegradable, all-natural, release agent. Slippery Wizard is a unique blend of all natural oils that bond to the metal surfaces and creates a barrier between the asphalt and the truck bed. Because Slippery Wizard is 100% natural, there is no negative impact to the asphalt; the paint on trucks, to the environment, or to the drivers... and it really works! Warm, soapy water will remove product from any surface.

After using Slippery Wizard (Asphalt Release), please let us know how you feel the product works by answering these few questions:

- ❶ How well did Slippery Wizard (Asphalt Release) work to keep your truck clean?
 Excellent Good Average

- ❷ Is Slippery Wizard (Asphalt Release) the best product that you have used?
 Yes No If 'NO' what was: _____

- ❸ Would you use Slippery Wizard (Asphalt Release) if it were available?
 Yes No

- ❹ Are you an independent or an employee of the plant?
 Independent Employee

*On behalf of your demonstration team at Brody Chemical,
we want to thank you for the opportunity to perform this
demonstration for you today.*



Slippery Wizard (Asphalt Release) Demonstration Survey Form

Company Name: _____ Date: _____

We will be performing a demonstration of Brody Chemical's Slippery Wizard (Asphalt Release) at your location today. Slippery Wizard (Asphalt Release) is an all-natural, 100% biodegradable, non-hazardous release agent. We are extremely confident in Slippery Wizard (Asphalt Release) as we have seen it prove itself to not only work, but to beat any other release agent currently on the market.

We greatly appreciate the opportunity to provide this demonstration for you and would like to request that you complete this quick survey to let us know what you think about our product. Please answer honestly, as we use these surveys in evaluating not only the product, but the demonstration process as well.

- ❶ What is the most important feature that you look for in a release agent? (check all that apply)
 - Price Keeps truck beds clean Environmental Personal Safety
 - Number of applications required Other: _____
- ❷ How would you rate the effectiveness of Slippery Wizard (Asphalt Release)?
 - Excellent Good Fair Poor
- ❸ Would you consider Slippery Wizard (Asphalt Release) more effective than other release agents you have used?
 - Yes No
- ❹ How many loads per application did you get? _____
- ❺ What type of mix did you haul? _____
- ❻ What release agent do you currently use? _____
- ❼ How often does the release agent you currently use need to be applied? Every _____ load(s).
- ❽ How much of your current release agent is applied per load? (check approximate amount)
No. Approximate Gallons: ½ 1 1 ½ 2 2+
- ❾ How would you rate the effectiveness of your current release agent?
 - Excellent Good Fair Poor

Name: _____ Phone: _____ Truck No.: _____

Comments: _____

Please fax completed form to: 801.963.2437 or 800.588.2436

BRODY CHEMICAL
PRODUCT / MANPOWER COST WORKSHEET

This worksheet is designed to make quick cost comparisons between Slippery Wizard (Asphalt Release) and competitor release agents, including Diesel Fuel

SLIPPERY WIZARD (ASPHALT RELEASE)												
Unit Cost per Gallon	Cost per Application (one pint)	Amount (Gal) per Application	Applications per Gallon	Truck/Load Capacity (in tons)	Loads per Application	Loads per Gallon	Tons per Application	Tons per Gallon	Tons per 55 Gallon	Tons per 275 Gallon	Cost per Load	Cost per Ton
\$12.00	\$1.50	\$0.15	8	20	3	24	60	480	26,400	132,000	\$0.50	\$0.03
COMPETITOR DILUTED RELEASE AGENT												
Unit Cost per Gallon	Cost per Application (one gallon)	Amount (Gal) per Application	Applications per Gallon	Truck/Load Capacity (in tons)	Loads per Application	Loads per Gallon	Tons per Application	Tons per Gallon	Tons per 55 Gallon	Tons per 275 Gallon	Cost per Load	Cost per Ton
\$12.00	\$1.20	1	1	20	1	1	20	20	1,100	5,500	\$1.20	\$0.06
DIESEL FUEL												
Unit Cost per Gallon	Cost per Application (one gallon)	Amount (Gal) per Application	Applications per 1.5 Gallon	Truck/Load Capacity (in tons)	Loads per Application	Loads per Gallon	Tons per Application	Tons per Gallon	Tons per 55 Gallon	Tons per 275 Gallon	Cost per Load	Cost per Ton
\$13.00	\$3.00	1	1	20	1	1	20	20	1,100	5,500	\$3.00	\$0.15
OTHER COMPETITOR RELEASE AGENT (NON-DILUTED)												
Unit Cost per Gallon	Cost per Application (one quart)	Amount (Gal) per Application	Applications per Gallon	Truck/Load Capacity (in tons)	Loads per Application	Loads per Gallon	Tons per Application	Tons per Gallon	Tons per 55 Gallon	Tons per 275 Gallon	Cost per Load	Cost per Ton
\$8.00	\$2.00	0.25	4	20	1	4	20	80	4,400	22,000	\$2.00	\$0.10

MANPOWER COST SAVINGS (BASED ON \$25/HR, INCLUDING BENEFITS)			
Per Hour Rate of Pay	M/H Cost per 5 Min. Application	12 Million Tons, Using Competitor Product (application, every load)	12 Million Tons, Using Slippery Wizard (Asphalt Release) (Application every Third Load)
\$25.00	\$2.08	\$2,075,000.00	\$691,665.98
Difference in Manpower cost savings using Brody Chemical's Slippery Wizard (Asphalt Release)		\$1,383,334.03	

6



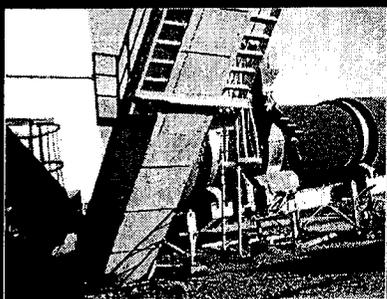
ASPHALT RELEASE CLEAR WIZARD ■ POLYMER BLEND

This product was developed as an economical method to keep asphalt from sticking to the beds of delivery trucks. It is a blend of polymers that provides a very slippery surface on the sides of the truck to prevent asphalt from sticking. Clear Wizard can be diluted up to 10:1 with water. Apply using a pressurized sprayer or by a mechanical sprayer method. Use of this product saves many hours of costly labor. Clear Wizard is 100 % biodegradable.



ASPHALT RELEASE WHITE WIZARD ■ SILICONE EMULSION

White Wizard is a blend of surfactants and silicones. This product was developed as an economical method to reduce asphalt from sticking to the sides of the asphalt trucks. Spray 16 oz. of White Wizard per truck bed to provide a monomolecular film, which reduces the sticking of fresh asphalt. For extra economy, dilute this product 20:1 before application. White Wizard is 100% biodegradable.



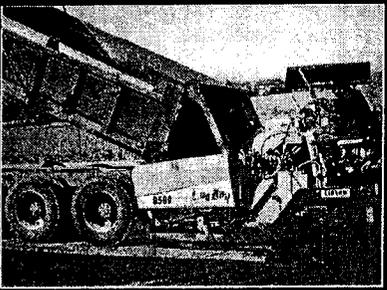
DRAG SLAT LUBRICANT ■ REDUCE MAINTENANCE COST

Asphalt companies have been plagued for years by rust and seizure problems with chains, gates, augers and slats. Drag Slat Lubricant lubricates and seals this equipment, preventing rust and corrosion. This product may be sprayed directly onto drag slats, conveyors, chains and all metal equipment. Drag Slat Lubricant is 100% biodegradable, safe for the environment and does an incredible job lubricating and protecting asphalt plant equipment.



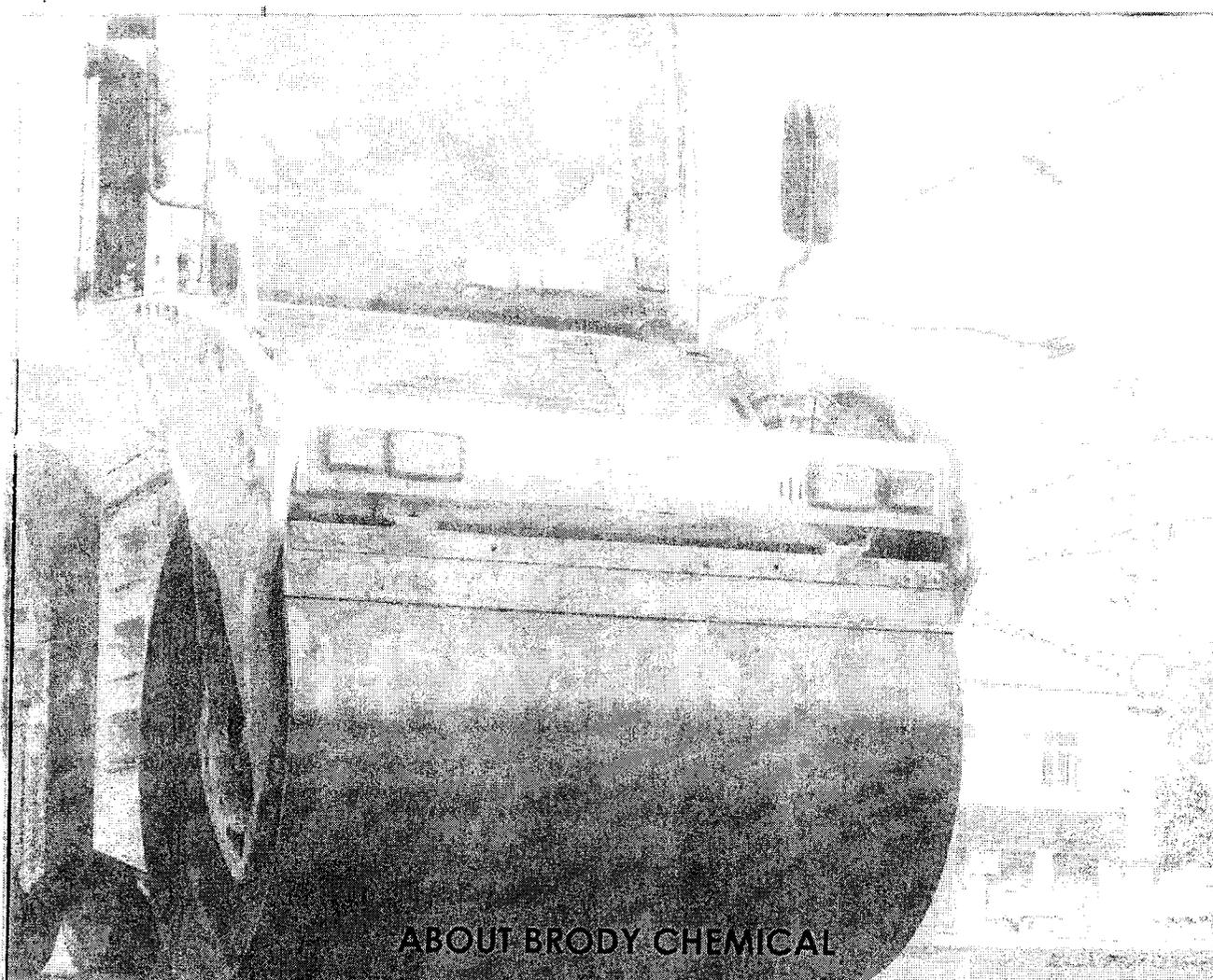
JELLED TAR REMOVER ■ DISSOLVES DRIED ASPHALT

Jelled Tar Remover is formulated with a blend of organic solvents, emulsifiers, penetrants, wetting agents, thickeners and rust inhibitors. This product is jelled so it clings to vertical surfaces and leaves a monomolecular film on contact to remove tar, greases and asphalt. It contains emulsifiers making soils easy to remove by using high pressure and cold water. Simply spray on surface of dirty equipment, allow 5 minutes of contact time and rinse off.



ORANGE SOLVENT ■ POWERFUL ASPHALT REMOVER

This multipurpose concentrate instantly emulsifies grease, oils and fats without the use of harsh acids, alkalis or petroleum solvents. Ideal uses for this product include degreasing equipment, trucks, motors and metal surfaces. This product will remove most resins, adhesives, printing inks, decals, rubber tire marks, tar and asphalt and other tough soils usually requiring solvent-based degreasers.



ABOUT BRODY CHEMICAL

Brody Chemical sells and provides service to over 50,000 customers in a variety of industries including manufacturing, industrial, mining, automotive, institutional, hospitality, trucking, food and beverage, agricultural, and medical. Brody Chemical's sales representatives are trained to offer technical assistance and recommendations in selecting chemical solutions and cleaning processes which best meet the needs of clients.

BRODY
CHEMICAL

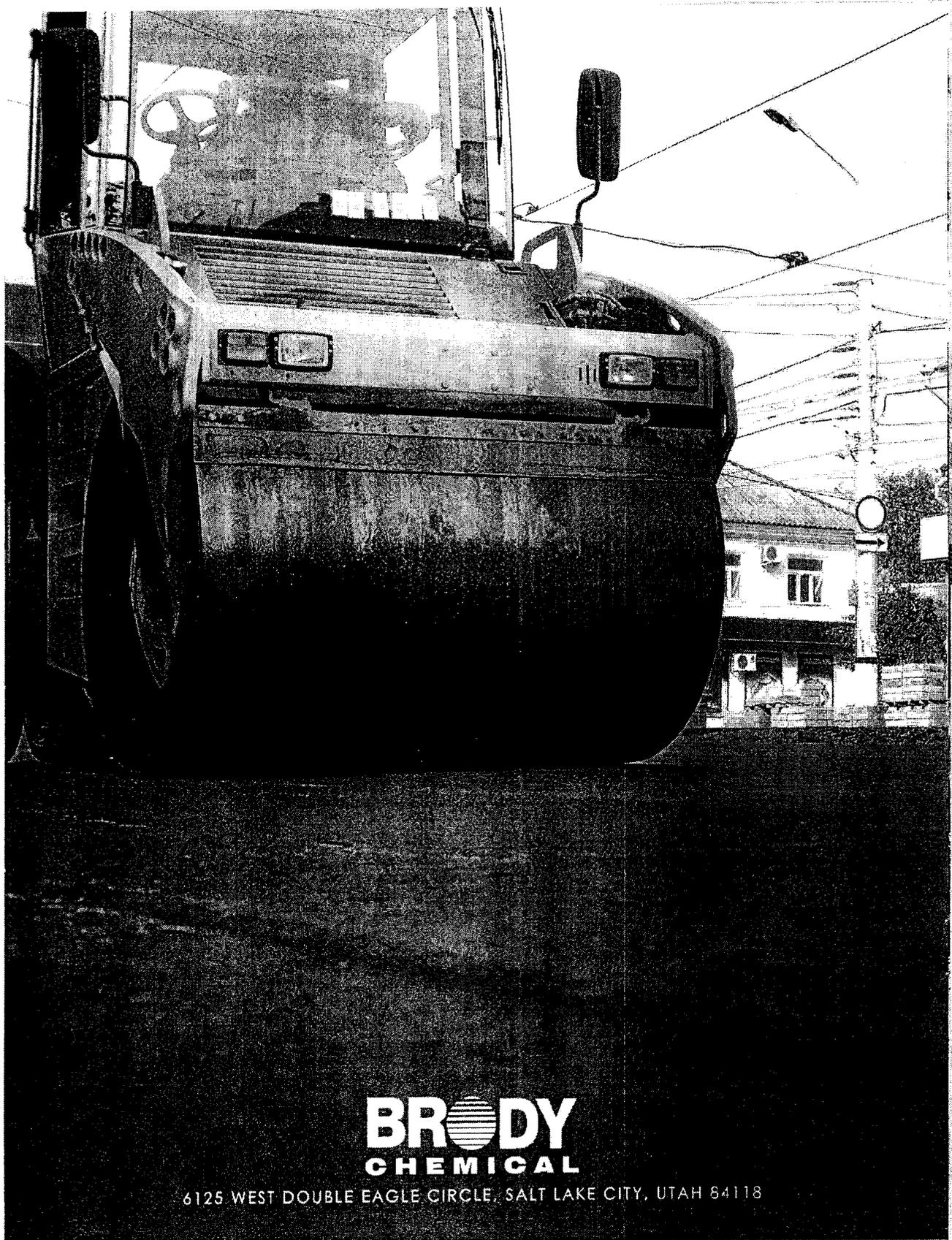
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6125 WEST DOUBLE EAGLE CIRCLE, SALT LAKE CITY, UTAH 84118

BRODY0037



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CHEMICAL

6125 WEST DOUBLE EAGLE CIRCLE, SALT LAKE CITY, UTAH 84118

BRODY0038

SLIPPERY WIZARD

(ASPHALT RELEASE)
Application Instructions

ATTENTION DRIVERS:

Experience the most effective release agent on the market today. Slippery Wizard is unique because it is not necessary to use a lot of this product for it to be effective and yield great results.

More is Not Better!!!

Please use product sparingly. Twenty seconds of fine-mist application will deliver approximately 1 pint of product to the bed of a 20-yard dump truck. This fine technology will adhere to the metal. Avoid applying too much product, as a thick layer will cause running or pooling and is wasteful. In order for continued availability of Slippery Wizard, minimal waste is necessary. Please keep this in mind. Remember, **MORE IS NOT BETTER!**

Multiple Loads from One Application!

Slippery Wizard does not contain water, therefore when 37.5° asphalt hits it, the product will not evaporate. It just keeps working. With proper application, Slippery Wizard will release 4 to 6 loads of asphalt without reapplying.

Application Tips

Slippery Wizard works optimally when applied with Brody Chemical's "Timed Application System." Push button for a 20 second, fine-mist application (approximately 1 pint of product) from spray wand. A delay between 3 seconds to 12 minutes can be programmed into the system. Standard delay is 3 seconds. When applied as directed, the ready to use cost of Slippery Wizard is \$0.02 per ton.

Slippery Wizard (Asphalt Release) Demonstration

INFORMATION: RESULTS/Condition of Truck:

Truck # _____ Load #1 _____
 Company Name: _____ Load #2 _____
 Driver Name: _____ Load #3 _____
 Today's Date: _____ Load #4 _____

Today your truck will be sprayed with Brody Chemical's Slippery Wizard (Asphalt Release), the only true 100% biodegradable, all-natural, release agent. Slippery Wizard is a unique blend of all natural oils that bond to the metal surfaces and creates a barrier between the asphalt and the truck bed. Because Slippery Wizard is 100% natural, there is no negative impact to the asphalt; the paint on trucks, to the environment, or to the drivers... and it really works! Warm, soapy water will remove product from any surface.

After using Slippery Wizard (Asphalt Release), please let us know how you feel the product works by answering these few questions:

- E How well did Slippery Wizard (Asphalt Release) work to keep your truck clean?
 Excellent Good Average
- F Is Slippery Wizard (Asphalt Release) the best product that you have used?
 Yes No If "NO" what was: _____
- G Would you use Slippery Wizard (Asphalt Release) if it were available?
 Yes No
- H Are you an independent or an employee of the plant?
 Independent Employee

On behalf of your demonstration team at Brody Chemical,
 we want to thank you for the opportunity to perform this
 demonstration for you today.

Slippery Wizard (Asphalt Release) Demonstration Survey Form

Company Name: _____

Date: _____

We will be performing a demonstration of Brody Chemical's Slippery Wizard (Asphalt Release) at your location today. Slippery Wizard (Asphalt Release) is an oil-free, 100% biodegradable, non-hazardous release agent. We are extremely confident in Slippery Wizard (Asphalt Release) as we have seen it prove itself to not only work, but to beat any other release agent currently on the market.

We greatly appreciate the opportunity to provide this demonstration for you and would like to request that you complete this quick survey to let us know what you think about our product. Please answer honestly, as we use these surveys in evaluating not only the product, but the demonstration process as well.

- What is the most important feature that you look for in a release agent? (check all that apply)
 - Price Keeps truck beds clean Environmental Personal Safety
 - Number of applications required Other: _____
- How would you rate the effectiveness of Slippery Wizard (Asphalt Release)?
 - Excellent Good Fair Poor
- Would you consider Slippery Wizard (Asphalt Release) more effective than other release agents you have used?
 - Yes No
- How many loads per application did you get? _____
- What type of mix did you haul? _____
- What release agent do you currently use? _____
- How often does the release agent you currently use need to be applied? Every _____ load(s).
- How much of your current release agent is applied per load? (check appropriate amount)
 - No. Approximate Gallons: 1/2 1 1 1/2 2 2+
- How would you rate the effectiveness of your current release agent?
 - Excellent Good Fair Poor

Name: _____ Phone: _____ Truck No.: _____

Comments: _____

Please fax completed form to: 801.963.2437 or 800.588.2436

8

BRODY CHEMICAL PRODUCT / MANPOWER COST WORKSHEET

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SLIPPERY WIZARD (ASPHALT RELEASE)												
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COMPETITOR DILUTED RELEASE AGENT												
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\$12.00	\$1.20	1	1	20	1	1	20	20	1,100	5,500	\$7.20	\$0.06
DIESEL FUEL												
Unit Cost per Gallon	Cost per Application (one gallon)	Amount (Gal) per Application	Applications per 1.5 Gallon	Truck/Load Capacity (in tons)	Loads per Application	Loads per Gallon	Tons per Application	Tons per Gallon	Tons per 55 Gallon	Tons per 275 Gallon	Cost per Load	Cost per Ton
\$13.00	\$3.50	1	1	20	1	1	20	20	1,100	5,500	\$3.00	\$0.15
OTHER COMPETITOR RELEASE AGENT (NON-DILUTED)												
Unit Cost per Gallon	Cost per Application (one quart)	Amount (Gal) per Application	Applications per Gallon	Truck/Load Capacity (in tons)	Loads per Application	Loads per Gallon	Tons per Application	Tons per Gallon	Tons per 55 Gallon	Tons per 275 Gallon	Cost per Load	Cost per Ton
\$8.00	\$2.00	0.25	4	20	1	4	20	80	4,400	22,000	\$2.00	\$0.16

MANPOWER COST SAVINGS (BASED ON \$25/HR, INCLUDING BENEFITS)			
Per Hour Rate of Pay	MH Cost per 5 Min. Application	12 Million Tons, Using Competitor Product (application, every load)	12 Million Tons, Using Slippery Wizard (Asphalt Release) (Application every Third Load)
\$25.00	\$2.08	\$2,075,000.00	\$891,665.98
Difference in Manpower cost savings using Brody Chemical's Slippery Wizard (Asphalt Release)			\$1,383,334.03

9

ORIGINAL TRANSCRIPT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Brody Chemical Company, Inc.,	)	Deposition of:
)	
Opposer,	)	<u>BUZZ BUTLER</u>
)	
vs.	)	Opposition No.
	)	91/204,070
Goldthorpe, Tammy L. aka Tammy Price,	)	Mark: Slippery Wizard
)	
Applicant.	)	Serial Number:
	)	85/009,334

January 30, 2013 * 12:00 p.m.

Location: Brody Chemical Company
6125 West Double Eagle Circle
Salt Lake City, Utah

Reporter: Ashley Money, RPR
Notary Public in and for the State of Utah



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THE REPORTING GROUP

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Salt Lake City, Utah 84111

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A P P E A R A N C E S

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(Via telephone)

ALSO PRESENT:

Jon Liddiard

I N D E X

BUZZ BUTLER:

PAGE

Examination by Mr. Bray 3

1 1992, the second year of Brody Chemical. I actually
2 opened and worked the Salt Lake division with Jon,
3 with the owner, for the first six years. Moved to
4 Montana, opened up a northwestern region for the
5 company for 12 years.

6 Then moved back to Salt Lake six years
7 ago, 2006, and took over as the national sales
8 manager again.

9 Q. Okay. At one period of time were you the
10 direct supervisor of Tammy Goldthorpe?

11 A. Yeah, I was.

12 Q. And what period of time was that?

13 A. That was from when I came back in January
14 of 2006 until the day that she terminated her
15 employment.

16 Q. And what was your working relationship
17 with Ms. Goldthorpe?

18 A. I was her direct supervisor. I was the
19 sales manager over Tammy in the territory and dealt
20 with her on a weekly basis.

21 Q. How often did you talk her?

22 A. It varied, but at least two, three times a
23 week.

24 Q. Did you have a good working relationship
25 with her?

1 A. Excellent working relationship.

2 Q. Do you think that you had a relationship
3 of trust and confidence in each other?

4 A. Yeah. She was open with me, and I was
5 really open with her. We knew -- in fact,
6 we probably knew things -- and I know we knew
7 things -- about each other, about the company, that
8 the owner of the company wasn't aware of.

9 MR. WINESETT: Hearsay and speculation.

10 Q. (BY MR. BRAY) During the time that you
11 were Ms. Goldthorpe's direct supervisor, was she paid
12 override -- do you know whether or not she was paid
13 override commissions on sales of Slippery Wizard
14 products?

15 A. Yes, she was.

16 MR. WINESETT: Objection, foundation.

17 Q. (BY MR. BRAY) Can you describe what the
18 override commissions were?

19 A. Yes. When I first came back, she was paid
20 a dollar a gallon as far as her override on products
21 sold on a product.

22 Q. So that would be products also sold by
23 other sales representatives?

24 A. Yes. That was on that one particular
25 product, because she was going to go out and help

1 other people sell that product.

2 Q. And did she do that?

3 A. Sometimes.

4 MR. WINESETT: Speculation. And I still
5 don't -- I also have objection to foundation. I
6 don't understand his knowledge of the -- how she was
7 paid.

8 Q. (BY MR. BRAY) How did you know that she
9 was paid a dollar a gallon override?

10 A. I was a little bit more than just a
11 national sales manager. That was my title, but I was
12 also involved as far as payroll, company profits, all
13 the decisions made as far as how to pay who, what,
14 where, company wide.

15 Q. Was there any employee at Brody that you
16 didn't know what the payment arrangement was?

17 A. No. I usually set the payments.

18 Q. Did you set the payments with -- well,
19 strike that. Were you aware of the payment
20 arrangements that Brody Chemical had with
21 Ms. Goldthorpe?

22 A. Absolutely.

23 Q. Okay. Have you ever been paid override
24 commissions during the time of your employment at
25 Brody?

1 A. Yes. I was paid straight overrides on all
2 products in the territory for about 12 years.

3 Q. Okay. Is it unusual -- or in your
4 experience, your 23 years at Brody Chemical, was it
5 unusual for Brody Chemical to pay sales manager or
6 product line managers override commissions?

7 A. No. That was our basic practice with most
8 all of our managers as a motivation to help them grow
9 and give them an extra payment for good work
10 performed.

11 Q. Did you have a discussion with --

12 MR. WINESETT: Objection to the last two
13 questions, best evidence rule.

14 Q. (BY MR. BRAY) Did you have a discussion
15 in the last year of employment with Ms. Goldthorpe
16 regarding a change in her compensation arrangement
17 with Brody Chemical?

18 A. I did.

19 Q. And can you describe for me what those
20 discussions were?

21 A. She was concerned when we had another
22 product with the Wizard name -- with the White Wizard
23 and the Clear Wizard, that they were going to be very
24 popular sellers. We were showing a lot of pretty
25 substantial sales the first couple months we came out

1 with them, and she was concerned that her --

2 MR. WINESETT: Objection, hearsay.

3 Q. (BY MR. BRAY) She was concerned that her
4 override was going to be affected on that product of
5 Slippery Wizard. So she came to me and sat in my
6 office and asked me -- told me her concerns, asked me
7 if I was in her shoes, what would I do.

8 And I said, "Well, if you're concerned
9 about losing money on the one, what if we offered you
10 a split and gave you \$0.50 on the one product and
11 \$0.50 on -- and reduced your Slippery Wizard down to
12 \$0.50 on that so you're covered on both ends?" And
13 she agreed to that. She thought that was a good
14 idea.

15 MR. WINESETT: Hearsay objection.

16 A. She was covered on both ends.

17 Q. (BY MR. BRAY) Okay. During those
18 negotiations of the change in the override
19 commissions, did Ms. Goldthorpe ever make a statement
20 to you that the payments she was receiving for
21 commission on Slippery Wizard sales were trademark
22 royalties?

23 A. No.

24 MR. WINESETT: Objection, hearsay.

25 Q. (BY MR. BRAY) During the entire term that

1 you worked together with Ms. Goldthorpe, did she ever
2 claim to you that she owned the Slippery Wizard name
3 and mark?

4 A. No.

5 Q. In August 3rd -- as of August 3, 2010, was
6 Ms. Goldthorpe a full-time employee of Brody
7 Chemical?

8 A. Yes, she was.

9 MR. WINESETT: Objection, foundation.

10 MR. BRAY: Sorry. What was the basis of
11 the objection?

12 MR. WINESETT: It's conclusory -- a
13 conclusion of law.

14 Q. (BY MR. BRAY) Was Ms. Goldthorpe treated
15 any -- well, strike that.

16 Did Ms. Goldthorpe, at any time during the
17 time that you worked together at Brody Chemical,
18 claim to you that she was not employed by Brody
19 Chemical?

20 A. Never.

21 Q. Did she ever claim to you that she was an
22 independent contractor?

23 A. Never.

24 Q. Was she also -- do you know whether or not
25 she was always compensated as a W-2 employee?

1 A. Always.

2 Q. At any time did Ms. Goldthorpe ever
3 discuss with you that she had entered into some kind
4 of license with Brody Chemical to use the Slippery
5 Wizard name and mark?

6 A. Never.

7 Q. At any time during the time that you
8 worked with Ms. Goldthorpe at Brody Chemical did she
9 ever claim that she owned the Slippery Wizard name or
10 mark?

11 A. No.

12 Q. To your knowledge, at any time during the
13 term that you and Ms. Goldthorpe worked together at
14 Brody Chemical did she ever sell a product under the
15 name and mark Slippery Wizard that was not a Brody
16 Chemical product?

17 A. Not that I know of.

18 Q. To your knowledge, at any time following
19 the termination of Ms. Goldthorpe's employment by
20 Brody Chemical, did she actually sell any other
21 products under the name and mark Slippery Wizard?

22 A. Not that I'm aware of.

23 Q. To your knowledge, has a competitor of
24 Brody Chemical ever sold a competing asphalt release
25 product under the name and mark Slippery Wizard?

1 A. Not that I've ever seen.

2 Q. Has Brody Chemical used the mark Slippery
3 Wizard for its asphalt release product continuously
4 in commerce since the date that you returned to Brody
5 Chemical in 2006?

6 A. Yes, we have.

7 Q. Is it a strong seller for Brody Chemical?

8 A. Yes, it is.

9 Q. And I'm going to hand you what's been
10 marked as Exhibit 3. I'll represent to you that this
11 was the specimen that Ms. Goldthorpe submitted with
12 her trademark application to the Patent and Trademark
13 Office. Do you recognize Exhibit 3?

14 A. I do.

15 Q. What is it?

16 A. It's marketing that we paid for for the
17 pictures for our marketing brochures and to promote
18 this product.

19 Q. Does it refer to Brody's Slippery Wizard
20 product?

21 A. Absolutely.

22 Q. Is Ms. Goldthorpe anywhere mentioned in
23 Exhibit 3?

24 A. Not at all.

25 Q. I'm also going to hand you what's been

1 marked as Exhibit 5. Do you recognize this document?

2 A. I do.

3 Q. What is the document?

4 A. That is our standard catalog that we use
5 for promoting this product.

6 Q. Has that been a catalog that you've used
7 continuously since 2006?

8 A. It is.

9 MR. BRAY: Offer Exhibit 5. I think I may
10 have forgot to do that during Jon's testimony.

11 MR. WINESETT: I've got no objection to
12 the admission of Exhibit 5.

13 Q. (BY MR. BRAY) Is Brody Chemical
14 continuing to offer an asphalt release product under
15 the Slippery Wizard name and mark today?

16 A. We are.

17 MR. BRAY: Buzz, I have no further
18 questions.

19 Nathan, are you going to reserve?

20 MR. WINESETT: Yes. I'll reserve to
21 cross-examine under our testimony period so we can do
22 it in person.

23 MR. BRAY: Okay. That's it.

24 (Deposition concluded at 12:21 p.m.)

25

1 Case: BRODY CHEMICAL versus GOLDTHORPE
 2 Serial Number: 85/009,334
 3 Reporter: Ashley Money
 4 Date taken: January 30, 2013

WITNESS CERTIFICATE

5 I, BUZZ BUTLER, HEREBY DECLARE:
 6 That I am the witness in the foregoing
 7 transcript; that I have read the transcript and know
 8 the contents thereof; that with these corrections I
 9 have noted this transcript truly and accurately
 10 reflects my testimony.

11 PAGE-LINE	CHANGE/CORRECTION	REASON
12		
13		
14		
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25 _____ No corrections were made.

16 I, BUZZ BUTLER, HEREBY DECLARE UNDER THE
 17 PENALTIES OF PERJURY OF THE LAWS OF THE UNITED STATES
 18 OF AMERICA AND THE LAWS OF THE STATE OF UTAH THAT THE
 19 FOREGOING IS TRUE AND CORRECT.

19 _____ BUZZ BUTLER

20 SUBSCRIBED and SWORN to this _____ day
 21 of _____, 2013, at _____

23 _____ Notary Public

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