

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

VICKIE PEEBLES on behalf of herself and on)	
behalf of a Class comprised of the other similarly)	Civil Action No. 2:09 CV 53
situated former employees of Defendants,)	
)	Judge Sargus
Plaintiffs,)	
)	Magistrate Judge King
vs.)	
)	
INOVERIS, LLC d/b/a ZOMAX, et al.,)	
)	
Defendants.)	

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement”) is entered into as of February 22, 2010, by and among Plaintiff Vickie Peebles, on behalf of herself and the Settlement Class, as defined herein (“Plaintiff”), and Defendants Inoveris, LLC d/b/a Zomax (“Inoveris”), and ComVest Investment Partners II, LLC (“ComVest”) (collectively Inoveris and ComVest are referred to as the “Defendants”).

RECITALS

A. On January 20, 2009, former plaintiff Christy Hiles filed a Complaint alleging violations of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2101 et seq. (the “WARN Act”). Plaintiff and another former plaintiff, Faye Emmond, were substituted as the plaintiffs for original plaintiff Christy Hiles and filed an Amended Complaint on May 19, 2009. Plaintiff Vickie Peebles filed a Second Amended Complaint on November 18, 2009 pursuing WARN Act claims on behalf of herself and the Settlement Class (the “Action”) and former plaintiff Faye Emmond was dropped as a named plaintiff.

B. The Action alleges that the Plaintiff and the Settlement Class were employees of the Defendants and were improperly terminated as part of a mass layoff ordered by the Defendants which violated the WARN Act. Plaintiff seeks damages for herself and the Settlement Class in the amount of sixty (60) days pay, ERISA benefits for sixty (60) days, attorney's fees, interest, costs, and other amounts.

C. Inoveris denies violating the WARN Act. ComVest denies violating the WARN Act and also denies that ComVest was a single employer and thus liable if Inoveris is found to have violated the WARN Act. Defendants deny the allegations of the Action, deny any wrongdoing of any kind, and further believe that the requirements for a class action are not met in the Action (other than for purposes of settlement as provided in this Agreement), and are vigorously contesting the claims against them. Defendants are not familiar with ComVest Investment Partners, LLC, which is also named as a defendant in the Action.

D. There are contested issues of both law and fact concerning the allegations and claims made in the Action.

E. The Parties are thoroughly familiar with the factual and legal issues presented by their respective claims and defenses raised in the Action and recognize the uncertainties as to the ultimate outcome in the Action and the likelihood that any final result would require years of further complex litigation and substantial expense.

F. Plaintiff, through her counsel, has conducted an investigation of the facts and analyzed the relevant legal issues relating to the Action. Although Plaintiff and her counsel believe that the claims asserted in the Action have substantial merit, they have also examined the benefits to be obtained under the proposed settlement and have considered the risks, costs, and

delays associated with continued prosecution of this litigation and the likely appeals of any ruling in favor of either the Plaintiff or the Defendants.

G. Defendants have conducted an investigation of the facts and analyzed the relevant legal issues relating to the Action. Defendants deny all liability with respect to any and all facts and claims alleged in the Action, and believe that their defenses both to any motion for class certification and to the claims asserted in the Action have substantial merit. Defendants have also weighed the potential risks, costs, and delays associated with continued litigation of the Action and the likely appeals of any rulings in favor of either the Plaintiff or Defendants.

H. The Parties desire to compromise and settle all claims and issues that have, or could have, been brought against the Defendants by Plaintiff or any Settlement Class Member. By agreeing to this Settlement, Defendants do not retract or surrender any of the factual or legal positions they asserted in the Action, or concede the invalidity of any of those positions.

I. The Parties desire and intend to seek court approval of the settlement as set forth in this Agreement and, upon judicial approval, the Parties intend to also seek a final order and judgment from the Court dismissing the claims of the Plaintiff and the Settlement Class Members with prejudice and providing for full releases of claims under the WARN Act against the Defendants as provided for in this Agreement.

J. Each of the Parties and their counsel believe, in consideration of all the circumstances and after substantial arm lengths settlement negotiations between the Parties and counsel, that their interests are best served by entering into the proposed Settlement set forth in this Agreement, and that this proposed Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class.

NOW, THEREFORE, it is hereby agreed between the Parties, intending to be bound, as follows:

I. Definitions

When capitalized terms are used in this Agreement, and in any attached exhibits (in addition to any definitions elsewhere in this Agreement and its exhibits) they shall have the following meanings:

1. “Action” means the putative class action lawsuit pending before the United States District Court, Southern District of Ohio, Eastern Division captioned Vickie Peebles vs. Inoveris, LLC, et al; Case No. 2:09-CV-00053, Judge Sargus.

2. “Agreement” means this Class Action Settlement Agreement and Release, including any exhibits thereto. The term shall also include all amendments to the Class Action Settlement Agreement and Release, so long as they are in writing and in accordance with the formalities required herein.

3. “Class Notice” means the notice to the settlement class members of the pendency of the Action and this Settlement, in a manner described in this Agreement.

4. “Class Period” means December 6, 2008 through April 3, 2009.

5. “Court” means the United States District Court for the Southern District of Ohio, Eastern Division and/or the Judge to whom the Action is or hereafter is assigned.

6. “Effective Date” of the Settlement is the date on which the Judgment resolving the Action becomes final. “Final” when used in connection with any court order or judgment, means (a) when no appeal is taken from a court order or judgment, the date ten (10) calendar days after the time to appeal therefrom (including any potential extensions of time) has expired; or (b) if any appeal is taken from a court order or judgment, the date ten (10) calendar days after

all appeals therefrom, including petitions for reargument, petitions for rehearing *en banc* and petitions for *certiorari* or any other form of review, have been finally disposed of, such that the time to appeal therefrom (including any potential extension of time), has expired, in a manner resulting in a affirmance of the relevant judgment or order.

7. “Parties” means the Plaintiff, Inoveris, ComVest, and the Settlement Class Members, as each of those terms is defined herein.

8. “Preliminary Approval” means the order or orders of the Court approving preliminarily the terms and conditions of this Agreement, as contemplated by this Agreement.

9. “Released Claims” means any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claiming to exist, including Unknown Claims of any and all Plaintiffs and/or the Settlement Class Members arising under the WARN Act, which relate to any allegation that was or could have been asserted in the Action based on the operative facts as alleged in the Action, and/or relate in any way, directly or indirectly, to any acts, facts, transactions, occurrences, conduct, representations, or omissions alleged in the Action.

10. “Released Parties” means each and all of the Defendants and each and all of the Defendants’ direct and indirect subsidiaries, affiliates, partners, joint ventures, predecessors and successor business entities, each and all of the past and present officers, directors, servants, licensees, joint ventures, sureties, attorneys, agents, consultants, advisors, contractors, employees, members, controllers or principal shareholders, general or limited partners or

partnerships, divisions, insurers, designated management companies, and each and all of their successor or predecessors in interest, assigned and/or legal representatives.

11. “Settlement” means the resolution of all the matters within the scope of this Agreement.

12. “Settlement Class” means the named Plaintiff and all other employees, representatives, agents of either or both of the Defendants who were laid off or otherwise terminated from employment or their association with the Defendants at the facility located in Dublin, Ohio during the Class Period who have not previously executed a release relating to said layoff, termination, or ending of said employment or association.

13. “Settlement Class Member” means any person who falls within the definition of the Settlement Class and who does not validly and timely elect exclusion from the Settlement Class under the conditions and procedures for exclusions as determined by the Court.

14. “Settlement Claims” means the settling of all claims alleged in the Action, including class certification, and all Released Claims that are being resolved for purposes of settlement pursuant to this Agreement.

15. “Unknown Claims” means all claims arising out of facts relating to any matter covered by the Released Claims which all persons or entities providing releases under this Agreement, including all Settlement Class Members, do not know or suspect to exist in their favor at the time of the Released Claims and which, if known by them, might have affected their decision to settle with Defendants and release the Defendants or take any other action including, but not limited to, objecting or not objecting to this Settlement. All persons providing releases under this Agreement may hereafter discover facts other than or different from those which such persons now know or believe to be true with respect to the subject matter of the Released Claims.

II. Action Settlement

The Action is settled and compromised as between the Plaintiff, on behalf of herself and all Settlement Class Members, and the Defendants, subject to the approval of the Court as provided for in this Agreement. Upon Court approval of the settlement and compromise of the Action, a Final Order and Judgment, substantially in a form attached hereto as Exhibit A (the “Judgment”) shall be filed dismissing the Action, with prejudice.

III. Settlement Notice and Hearing Order

Promptly upon the execution of this Agreement, the Plaintiff shall apply to the Court for an Entry and Order providing for the following:

1. Dismissing from the Action, with prejudice, defendant ComVest Investment Partners, LLC.
2. Conditionally certifying the Action as a class action for settlement purposes only as to the Settlement Claims.
3. Finding that the requirements for conditional certification of the Settlement Class have been satisfied, appointing Vickie Peebles as class representative to the Settlement Class, appointing The Gardner Firm, P.C, and Lankenau & Miller, LLP as Plaintiff’s Class Counsel (“Plaintiff’s Class Counsel”), and preliminarily approving the Settlement as being within the range of reasonableness such that notice thereof should be given to the members of Settlement Class;
4. Approving the Notice of Pendency and Settlement Class Action (the “Settlement Notice”), substantially in the form of Exhibit B attached hereto, which will advise the Settlement Class Members of the settlement and anticipated benefits thereunder, procedures relating to opting out of the settlement and approval hearing, and other information deemed appropriate by

the Court. The Court shall order that the Settlement Notice be disseminated by first class U.S. Mail by Plaintiff's Class Counsel to each Settlement Class Member at that persons last known address according to Inoveris' books and records.

5. Providing that all members of the Settlement Class who do not, in accordance with the terms of the notice provided to the Settlement Class, file valid and timely requests for exclusion from the Settlement Class be bound by the Judgment dismissing the Action on the merits, with prejudice.

6. Finding that the form and method of the notice to be given in accordance with this Agreement constitutes the best notice practical under the circumstances and constitutes valid, due and sufficient notice to the members of the Settlement Class, satisfying the requirements of the Federal Rules of Civil Procedure, the Constitution of the United States, and any other applicable law.

7. Providing that pending final determination of whether the Settlement shall be approved, the Plaintiffs nor any member of the Settlement Class, either directly, or representatively, or in any other capacity, shall not commence or prosecute any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants or against any of the Released Parties.

8. Scheduling a hearing (the "Final Fairness Hearing") to be held by the Court to consider and determine whether the requirements for certification of the Settlement Claims have been met and whether the proposed settlement of the Action in accordance with the terms set forth in this Agreement, shall be approved as fair, reasonable, and adequate, and whether the Judgment approving the Settlement and dismissing the Action on the merits with prejudice should be entered.

9. Providing that the Final Fairness Hearing may, from time to time, and without further notice to the Settlement Class (except those Settlement Class Members who file timely and valid objections), be continued or adjourned by the Court.

10. Providing a procedure for members of the Settlement Class to request exclusion from the Settlement Class and to file papers in support of the Settlement with the Court.

11. Providing that any objections by any Settlement Class Member shall be heard and any papers submitted in support of said objection shall be considered by the Court at the Final Fairness Hearing only if, on or before a date to be specified by the Court, such objector files with the Court a notice of the objector's intention to appear, submits documents to prove that the objector is a Settlement Class Member, states in writing the basis for such objections, and serves copies of the foregoing and all papers in support of such objections upon counsel for the Parties so that such papers are actually received by the date set by the Court.

12. The Settlement Class shall be given the Settlement Notice as set forth herein within ten (10) days after the date on which the Court grants preliminary approval to this Agreement or on or before the date provided by the Court. The Settlement Notice shall be disseminated by first class U.S. Mail by Plaintiff's Class Counsel to each Settlement Class Member at that persons last known address according to Inoveris' books and records.

13. The Parties agree that if, for any reason, the notices to the Class Members are not or cannot be provided within the dates specified in this Agreement or the Court orders, the Parties will confer in good faith and recommend to the Court that the deadlines be extended correspondingly.

14. If the Court does not enter an order conditionally approving this Agreement, this Agreement shall terminate and be of no force or effect, unless the Parties voluntarily agree to

modify this Agreement in the manner necessary to obtain Court approval. This Agreement is subject to final approval of the Settlement by the Court and the Court issuing the Judgment granting final approval and dismissing the Action, with prejudice. If the Court does not give final approval and enter the Judgment, this Agreement shall terminate and be of no force or effect, unless the Parties volunteer to agree to modify this Agreement in a manner necessary to obtain Court approval.

IV. Plaintiffs' Class Counsel to Serve as Claims Administrator; Cost of the Notices

Pursuant to this Agreement, Plaintiffs' Class Counsel shall serve as the claims administrator ("Claims Administrator"). All funds held by the Claims Administrator shall be deemed and considered to be in custody of the Court in accordance with this Agreement, and shall remain in the jurisdiction of the Court until such time as such funds shall be distributed pursuant to this Agreement and/or order of the Court. The Class Administrator shall provide to the Defendants a written report within ten (10) days of the initial settlement checks being sent to the Settlement Class Members (the "Report") indicating the following: to whom the check was made payable, the address to which the check was sent and the amount of the check. The Claims Administrator shall also send updated reports (the "Updated Reports") every forty-five (45) days thereafter indicating for each uncashed check the following: to whom the check was made payable, the address to which the check was sent, the date the check was sent and the amount of the check. Plaintiff and/or Plaintiffs' Class Counsel shall be solely responsible for all costs, fees, and any other amounts associated with or relating in any way to any and all notices to be provided to the Class Members. Plaintiff and/or Plaintiffs' Class Counsel may request reimbursement from the Settlement Payment for costs relating to notices to the Class Members.

The Claims Administrator agrees to assist Defendants and their counsel by providing necessary information should Defendants have any questions concerning the Reports or Updated Reports..

V. Relief to the Plaintiff and Class Members

1. Defendants shall pay no more than One Hundred Thirty Thousand Dollars (\$130,000.00) as settlement in full for resolving the Action (the “Settlement Payment”). The Settlement Payment is Defendants’ sole settlement payment or monetary obligation provided by this Agreement. Defendants are not responsible for paying any other amounts including, not limited to, any costs related to the administration of the Settlement, notifying the Class Members, Plaintiff’s Class Counsels’ and/or the Class Member’s attorney’s fees, any Plaintiff’s Class representative incentive payment, costs and expenses relating to the Action, and any third party administrator costs. Additionally, Defendants are not responsible for any and all federal, state, or local tax obligations which may arise from the payment of any Settlement Claims, including, but not limited to, income taxes, FICA (Social Security and Medicare contributions), FUTA, and state unemployment taxes. The Settlement Payment shall be paid by Defendants upon the Effective Date of this Agreement.

2. The Settlement Class Members listed on Exhibit C hereto shall have their respective claims to the Settlement Payment in the amounts shown on Exhibit C, which amounts are before the payment for, if any, Class Counsel Attorney’s Fees, Costs, including Class Member notice costs, and Plaintiff’s Incentive Payment are deducted from the Settlement Payment. The amounts set forth on Exhibit C were calculated by dividing the Settlement Payment minus the proposed \$5,000 Plaintiff Incentive Payment evenly among the Settlement

Class. Plaintiff's Class Counsel shall cause to be issued IRS 1099 forms to each Settlement Class Member who is sent a payment from the Settlement Payment.

3. If any Settlement Class Member's settlement payments are not negotiated within ninety (90) days after Defendants' payment of the Settlement Payment, then said non-negotiated amounts are property of ComVest and said Class Member is no longer entitled to receive a payment from the Settlement Payment.

VI. Plaintiff's Incentive Payment

Plaintiff shall receive an incentive payment of \$5,000 ("Plaintiff's Incentive Payment"), upon the Effective Date. Defendants do not object to an incentive payment for the Plaintiff in the amount of \$5,000.

VII. Release to the Defendants

Upon the Court's approval of the Settlement and issuance of the Judgment, Plaintiff and the Settlement Class Members release the Defendants and the Released Parties from any and all claims, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, liens, contracts, liabilities, agreements, costs, or expenses, of any nature whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claiming to exist, including Unknown Claims, of any and all Plaintiffs and/or the Settlement Class Members arising under the WARN Act, which relate to any allegation that was or could have been asserted in the Action based on the operative facts as alleged in the Action, and/or relate in any way, directly or indirectly, to any acts, facts, transactions, occurrences, conduct, representations, or admissions alleged in the Action.

VIII. No Admission of Liability

The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses hereto made or an acknowledgment or admission by any Party of any fault, liability or wrongdoing of any kind whatsoever to any other Party. The Defendants specifically deny any liability for any of the claims alleged in the Action. Neither this Agreement, nor any act performed or documents executed pursuant to or in furtherance of this Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim made by the Settlement Class Members or any wrongdoing or liability of any of the persons or entities released under this Agreement (i.e. the Released Parties), or is or may be deemed to be or used as an admission of, or evidence of, any fault or admission of any of the persons or entities released under this Agreement, in any proceedings in any court, administrative agency, or other tribunal.

IX. Plaintiff's Class Counsel Attorney's Fees

Plaintiff's Class Counsel agrees that their attorney's fees and costs are to be paid out of the One Hundred Thirty Thousand Dollars (\$130,000.00) Settlement Payment made by the Defendants. Plaintiff's attorneys and Plaintiff's Class Counsel shall receive an attorney's fee award of 1/3 of the Settlement Payment minus the Plaintiff's Incentive Payment, upon the Effective Date. Such amount equals Forty-One Thousand Six Hundred Sixty-Two Dollars (\$41,662.00) and their costs shall not exceed \$10,000.00. Defendants do not object to Plaintiff's counsel and Plaintiffs' Class Counsel's requests for attorney's fees and reimbursement of costs so long as those amounts are equal to or less than the attorney fees and costs detailed above in this paragraph.

X. Defendants' Right to Set Aside Settlement

Either Defendant shall have the right to set aside or rescind this Agreement if any of the following events occur:

- A. Five percent (5%) or more of the Settlement Class opt out of the Settlement;
- B. An objection to the proposed Settlement is sustained; or
- C. There are any modifications to this Agreement by the Court.

In the event a Defendant exercises its discretion to set aside the Settlement, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, shall not be deemed or construed to be an admission or confession by the Parties of any fact, matter or proposition of law, and all Parties to the Action shall stand in the same position as existed on December 16, 2009 as if this Agreement had not been negotiated, made, or filed with the Court. In such event, the Parties to the Action shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement.

XI. Notices to the Parties

All notices to the Parties and their counsel shall be as follows:

- 1. All notices to the Plaintiff and Plaintiffs' Class Counsel shall be sent by overnight mail, facsimile and e-mail to:

M. Vance McCrary, Esq.
The Gardner Firm, P.C.
210 South Washington Avenue
Mobile, AL 36602
Facsimile: (251) 433-8181
E-mail: vmccrary@thegardnerfirm.com

- 2. All notices to Inoveris shall be sent by overnight mail, facsimile and e-mail to:

John J. Krimm, Jr., Esq.
Schottenstein Zox & Dunn Co., LPA
250 West Street
Columbus, OH 43215
Facsimile: (614) 462-5135
E-mail: jkrimm@szd.com

3.. All notices to ComVest and its counsel shall be sent by overnight mail, facsimile and e-mail to:

Todd H. Neuman, Esq.
Allen Kuehnle Stovall & Neuman LLP
17 South High Street, Suite 1220
Columbus, OH 43215
Facsimile: (614) 221-5899
E-mail: neuman@aksnlaw.com

XII. Other Provisions

A. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties related to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as provided for herein.

B. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.

C. The Parties agree to fully cooperate with each other to accomplish the terms of the Agreement, including but not limited to, execution of such documents and to take such other actions as may be reasonably necessary to implement the terms of this Agreement. The Parties to this Agreement agree to exchange information as reasonably requested to demonstrate the fairness, adequacy, and reasonableness of the Agreement.

D. Plaintiff represents, covenants, and warrants she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any claim, demand, action, liability, cause of action, or rights herein released or discharged.

E. This Agreement may not be changed, altered, or modified except in writing and signed by the Parties hereto, and approved by the Court.

F. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

G. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf of, any of them. The Parties represent and warrant to each other that they have fully read and understand the provisions of this Agreement and have relied on the advice and representations of the counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and have been advised by counsel regarding the terms and consequences of this Agreement. Accordingly, if any construction or interpretation needs to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the parties, but was drafted jointly by the Parties.

H. The Court shall retain jurisdiction to resolve any future disputes arising out of the terms and conditions of this Agreement.

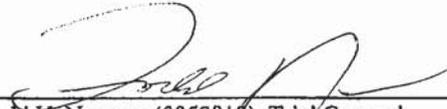
I. Within ten (10) days after the deadline established by the Court for opting out of the Class, Plaintiff's Class Counsel shall furnish the Defendants' counsel a complete list of all timely and valid requests for exclusion from the Class that they have received.

J. The terms and conditions of the Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Ohio, without regard to any applicable choice of law or conflict rules. Any dispute relating to this Agreement must be brought in the United States District Court, Southern District of Ohio, Eastern Division.

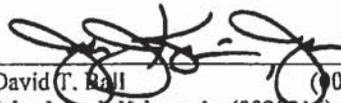
K. This Agreement is not intended to, and shall not, affect the terms of any prior settlement or release relating to individuals excluded from the Settlement Class.

The undersigned Parties have executed this Agreement as of the date first written above.

AGREED AND APPROVED:



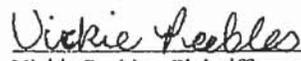
Todd H. Neuman (0059819), Trial Counsel
Rick L. Ashton (0077768)
ALLEN KUEHNLE STOVALL & NEUMAN LLP
17 South High Street, Suite 1220
Columbus, Ohio 43215
Telephone: (614) 221-8500
Facsimile: (614) 221-5988
E-mail: neuman@aksnlaw.com
ashton@aksnlaw.com
*Trial Counsel for Defendants ComVest Investment Partners,
LLC and ComVest Investment Partners II, LLC*



David T. Ball (0078885)
John Joseph Krimm, Jr. (0038915)
SCHOTTENSTEIN ZOX & DUNN LPA
250 West Street
Columbus, Ohio 43215
Telephone: (614) 462-2700
Facsimile: (614) 462-5135
E-mail: dball@szd.com
jkrimm@szd.com
Attorneys for Defendant Inoveris, LLC d/b/a Zomax



Mary E. Olsen (OLSEM4818)
M. Vance McCrary (MICCRM4402)
J. Cecil Gardner (GARDJ3461)
David C. Tufts (TUFT7673)
THE GARDNER FIRM, P.C.
210 South Washington Avenue
Post Office Drawer 3103
Mobile, AL 36652
Telephone: (251) 433-8100
Facsimile: (251) 433-8181
E-mail: molsen@thegardnerfirm.com
Attorneys for Plaintiff



Vickie Peebles, Plaintiff