

## IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 96-153

MISCHELLE SCHELSKE and RICK SCHELSKE, )

Plaintiffs and Appellants, )

v. )

CREATIVE NAIL DESIGN, INC., a foreign )  
 corporation; OPI PRODUCTS, INC., )  
 a foreign corporation; CLAIROL, INC., )  
 a foreign corporation, HELENE CURTIS, )  
 INC., a foreign corporation; NEXXUS )  
 PRODUCTS COMPANY, a foreign corporation; )  
 THE ADU COMPANY, a foreign corporation; )  
 REVLON PROFESSIONAL PRODUCTS, INC., )  
 a foreign corporation; COSMETIC ARTS, )  
 a foreign corporation; AMERICAN )  
 INTERNATIONAL, a foreign corporation; )  
 SEBASTIAN INTERNATIONAL, a foreign )  
 corporation; UNIT CHEMICAL CORPORATION, )  
 a foreign corporation; PAUL MITCHELL )  
 (BOCCHI LABORATORIES); MATRIX ESSENTIALS, )  
 INC., a foreign corporation; MALIBU 2000, )  
 a foreign corporation; HIGHLAND CORPORATION, )  
 a foreign corporation; CAPITAL HILL MALL )  
 PARTNERSHIP, a Utah limited partnership; )  
 JC PENNEY COMPANY, INC., a foreign )  
 corporation; PALMER DUNCAN CONSTRUCTION )  
 COMPANY, a Montana corporation; and DOES )  
 and ROES ONE THROUGH TEN, )

Defendants and Respondents. )

O R D E R

On January 2, 1997, this Court issued its opinion in the above case. The opinion is presently reported at 54 St.Rep. 21. On January 10, 1997, Appellants petitioned for rehearing and Respondents filed their brief in opposition thereto. Appellants

objected to Respondents' brief. Because Justice Charles E. Erdmann, the author of the opinion, was no longer a sitting justice on this Court and because there were, otherwise, insufficient votes from the original 5-member panel to either grant or deny the petition for rehearing, this case was placed back on the classification agenda and was reconsidered by the Court en banc with District Judge John Warner sitting for Justice W. William Leaphart, who had originally recused himself.

Upon careful reconsideration of the record, briefs on appeal, petition for rehearing and the briefs filed in support of and in opposition to the petition for rehearing,

IT IS ORDERED that this Court's opinion as filed January 2, 1997, is reaffirmed and shall continue as the decision of this Court in this case and cause. Appellants' petition for rehearing is DENIED.

IT IS FURTHER ORDERED that the Clerk of this Court give notice of this order by mail to counsel of record and that this order be published with the Court's January 2, 1997 opinion.

Dated this 1st day of April, 1997.

/S/ J. A. TURNAGE

/S/ JAMES C. NELSON

/S/ KARLA M. GRAY

/S/ JOHN WARNER, District Court Judge

Justice Terry N. Triewailer continues to dissent to the Court's January 2, 1997 opinion in this case and cause and Justices William E. Hunt and James M. Regnier join that dissent.

/S/ TERRY N. TRIEWEILER

/S/ JIM REGNIER

/S/ WILLIAM E. HUNT, SR.