

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re:

Case No.: 03-46205

*James L. Shockency, and  
Monica A. Shockency,*

Chapter 13 Case

Debtor(s).  
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**NOTICE OF HEARING AND MOTION OBJECTING TO CLAIM NOS. 4 AND 6**

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:30 a.m. on October 27, 2004, in Courtroom No. 7 West, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Because this motion is being served by mail more than 24 days before the hearing date, any response to this motion must be filed and delivered not later than October 20, 2004, which is seven days before the time set for the hearing, or filed and served by mail not later than October 15, 2004, which is ten days before the time set for the hearing, pursuant to Local Bankruptcy Rule 9006-1(b). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 13 case was filed on September 2, 2003. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 502 and Bankruptcy Rule 3007. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3007-1, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may pertain. Movant requests relief with respect to the disallowance of Claim Nos. 4 and 6 (the "Claims").

6. Credit Acceptance Corporation ("CAC") filed the Claims on or about December 18, 2003 and September 7, 2004, respectively, as secured claims in the amount of \$6,541.58, secured by a 2000 Chevrolet Malibu. Although the claims are otherwise identical, nothing on the claim filed on September 7, 2004 indicates that it replaces or amends the December 18, 2003 proof of claim. Copies of the Claims are attached hereto and incorporated by reference herein.

7. The Claims relate to a retail installment purchase contract entered into by James Louis Shockency II and Dunlo Motors, Inc., on or about May 9, 2002, for the purchase of a 2000 Chevrolet Malibu.

8. The debtors' Schedules B and D list no such vehicle and no such debt, although there is a secured claim in favor of CAC listed in Schedule D and in ¶ 7 of the debtors' confirmed Chapter 13 plan dated August 28, 2003, which relates to a 2001 Ford Taurus.

9. The Trustee has inquired of the debtors and CAC regarding the apparent omission of this additional CAC secured debt from the debtors' schedules and plan. The Trustee is informed and believes and states and alleges thereon that James L. Shockency II is the debtors' son, and that he alone is liable to CAC on the secured debt to which the Claims relate.

10. Debtors' counsel has written to CAC, with a copy to the Trustee, asking CAC to "amend" its December 18, 2003 proof of claim. Instead, CAC has simply filed an apparent duplicate copy of its proof of claim on September 7, 2004.

11. Pursuant to 11 U.S.C. § 502(a), a claim is deemed allowed upon the filing of proof of claim, unless a party in interest objects.

12. The Trustee requests disallowance of the Claims on the grounds that the debtors have no liability on the Claims.

13. If testimony is required as to any of these matters, the Trustee reserves the right to call the debtors, their son, a principal of CAC, and/or an employee of her staff to testify as to the matters set forth herein.

WHEREFORE, the Trustee moves the court for an order disallowing Claim Nos. 4 and 6, and such other relief as may be just and equitable.

Dated: September 13, 2004

Signed: /e/ Thomas E. Johnson  
Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis, MN 55402-1521  
(612) 338-7591

#### **VERIFICATION**

I, Thomas E. Johnson, employed by the Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: September 13, 2004

Signed: /e/ Thomas E. Johnson





#1702562

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class  
US Postage  
**PAID**  
Permit No. 171  
St. Paul, MN

SHOCKENCY JAMES LOUIS II  
6107 ALDRICH AVE N  
BROOKLYN CENTER- MN 55430

DNW215

00 Year	CHEV Make	4DMAL Model	H1690P905 Title NR.
1G1ND52J2Y6126360 VIN		05/09/02 Security Date	NO Rebuilt

1ST SECURED PARTY

**LIEN HOLDER**

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

CREDIT ACCEPTANCE CORP  
PO BOX 513  
SOUTHFIELD MI 48037-0513



**RETAIL INSTALLMENT CONTRACT**

BUYER(S) NAME: <u>JAMES LOUIS SHOCKENCY II</u>		SELLER NAME: <u>DUNLO MOTORS INC.</u>	
ADDRESS: <u>6107 ALDRICH AVE NORTH</u>		ADDRESS: <u>5241 WEST BROADWAY</u>	
CITY: <u>BROOKLYN CENTER MN</u> ZIP: <u>55430</u>		CITY: <u>CRYSTAL</u> STATE: <u>MN</u> ZIP: <u>55429</u>	
		ACCOUNT NO. <u>1702562</u>	

All references to "You" and "Your" means each Buyer above, jointly and severally. The terms "Creditor," "Us" and "We" refer to Seller and Seller's assignee. You may buy the vehicle described below for cash or on credit. The cash price is shown below as the "Cash Price." The credit price is shown below as "Total Sale Price." You have elected to purchase from Us on a Total Sale Price basis, upon the conditions set forth below and on the reverse side of this Retail Installment Contract ("Contract"), the following property ("Property"), delivery and acceptance of which in good condition and repair is hereby acknowledged by You:

New or Used <b>USED</b>	Year <b>2000</b>	Make <b>CHEVROLET</b>	Model <b>MALIBU</b>	Body Style	Vehicle Identification Number <b>1G1ND52J2Y6126360</b>	Odometer Reading <b>79236</b>
COLOR: <b>BRONZE</b>		EXTRA EQUIPMENT: (Describe) <b>PL PW TILT CRUISE</b>				

**TRUTH IN LENDING DISCLOSURES**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of Your credit as a yearly rate. <b>23.0%</b>	The dollar amount the credit will cost You. <b>\$ 4633.19</b>	The amount of credit provided to You or on Your behalf. <b>\$ 9964.75</b>	The amount You will have paid after You have made all payments as scheduled. <b>\$ 14597.94</b>	The total cost of Your purchase on credit, including Your downpayment of <b>\$ 2200.00</b> <b>\$ 16797.94</b>

Your payment schedule will be:

No. of Payments	Amount of Payments	When Payments Are Due
42	\$ 347.57	06/08/2002 and same date of each following month.

**Insurance**  
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless You sign and agree to pay the additional cost. The term of the insurance shall be the same as the term of Your contract.

Type	Premium	Signature
Credit Life	\$ N/A	Signature of Buyer Requesting Only Life Insurance Age
Credit Disability	\$ N/A	Signature of Buyer Requesting Life and Disability Insurance Age

**Security:** You are giving a security interest in the goods or property being purchased.  
**Late Charge:** If a payment is more than 10 days late, You will be charged 5% of the payment or \$5, whichever is less.  
**Prepayment:** If You pay off early, You may be entitled to a refund of part of the Finance Charge.  
**Additional Information:** See below and the other side of this contract for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

**ITEMIZATION OF AMOUNT FINANCED**

1. Cash Price (including accessories and improvements to the Property)	\$ 10474.00 (1)
2. Sales Tax	\$ 672.75 (2)
3. Down Payment Calculation:	
Cash Down Payment	\$ 2200.00 (A)
Trade-In Description:	
Gross Trade-In	\$ N/A (B)
Make:	
Payoff Made by Seller	\$ N/A (C)
Model:	
To:	\$ N/A (D)
Net Trade-In (If negative number, insert "0" in line 3(D) and itemize difference in 5(D) below) (B-C)	\$ N/A (D)
Total Down Payment	\$ 2200.00 (A + D)
4. Unpaid Balance of Cash Price (1 + 2 less 3)	\$ 8946.75 (4)
5. Other Charges Including Amounts Paid to Others on Your Behalf:	
*(NOTICE: A portion of these charges may be paid to or retained by Seller.)	
A. Cost of Required Physical Damage Insurance Paid to Insurance Company*	\$ N/A (A)
B. Cost of Optional Extended Warranty or Service Contract*	\$ 995.00 (B)
C. Cost of Optional Credit Life Insurance Paid to Insurance Company*	\$ N/A (C)
D. Cost of Optional Credit Disability, Accident and Health Insurance Paid to Insurance Company*	\$ N/A (D)
E. Cost of Filing Fees Paid to Public Officials	\$ N/A (E)
F. License, Title and Registration Fees Paid to Public Officials	\$ 23.00 (F)
Other Charges (Seller must identify who will receive payment and describe purpose)*	
(G) to _____ for lien or lease payoff	\$ N/A (G)
(H) to _____ for _____	\$ N/A (H)
Total of Other Charges and Amounts Paid to Others on Your Behalf	\$ 1018.00 (5)
6. Less Prepaid Finance Charge	\$ N/A (6)
7. Amount Financed - Unpaid Balance (4 + 5 less 6)	\$ 9964.75 (7)

**PROPERTY INSURANCE:** You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to Us. The collision coverage deductible may not exceed \$500. If You get insurance from or through Us, You will pay \$ N/A for N/A of coverage. The premium is calculated as follows:

<input type="checkbox"/> \$ N/A Deductible, Collision Coverage	\$ N/A
<input type="checkbox"/> \$ N/A Deductible, Comprehensive Coverage	\$ N/A
<input type="checkbox"/> Fire-Theft and Combined Additional Coverage	\$ N/A
<input type="checkbox"/> N/A	\$ N/A

**YOU HAVE THE RIGHT TO CHOOSE THE PERSON THROUGH WHOM THE MOTOR VEHICLE PHYSICAL DAMAGE INSURANCE REQUIRED UNDER THIS CONTRACT IS TO BE OBTAINED. THE INSURANCE CONTRACTED FOR IN CONNECTION WITH THIS SECURITY AGREEMENT DOES NOT PROVIDE FOR LIABILITY INSURANCE FOR BODILY INJURY AND PROPERTY DAMAGES CAUSED TO OTHERS OR COMPLY WITH ANY STATE LIABILITY LAWS.**

**OPTIONAL EXTENDED WARRANTY OR SERVICE CONTRACT:** Although You are not required to do so, by initialing below You are indicating You wish to buy an optional warranty or service contract covering the repair of certain major mechanical breakdowns of the vehicle and related expenses. Refer to the optional extended warranty or service contract for details about coverage and duration.  
Optional Extended Warranty or Service Contract Price \$ \_\_\_\_\_ Your initials JS Term: 12 MOS OR 12000 MI Company: \_\_\_\_\_

**ARBITRATION NOTICE:** PLEASE SEE THE REVERSE SIDE OF THIS CONTRACT FOR INFORMATION REGARDING THE ARBITRATION NOTICE CONTAINED IN THIS CONTRACT.  
**ADDITIONAL TERMS AND CONDITIONS:** THE ADDITIONAL TERMS AND CONDITIONS, INCLUDING THE DISCLOSURE NOTICE AND ARBITRATION NOTICE SET FORTH ON THE REVERSE SIDE HEREOF ARE A PART OF THIS CONTRACT AND ARE INCORPORATED HEREIN BY REFERENCE.

**CREDIT ACCEPTANCE CORPORATION**  
P.O. BOX 513  
SOUTHFIELD, MICHIGAN 48037-0513  
(800) 634-1506

- NOTICE TO BUYER**
- Do not sign this contract before You read it or if it contains any blank spaces.
  - You are entitled to an exact copy of the contract You sign.
  - Under the law, You have the right, among others, to pay in advance the full amount due and to obtain under certain conditions a partial refund of the Finance Charge. **IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.**

This Retail Installment Contract is hereby accepted by the Seller named below and is hereby assigned to Credit Acceptance Corporation in accordance with the terms of the assignment set forth on the reverse side of this document. This assignment is without recourse.

Signed by the parties hereto this 5th day of MAY 02  
Seller: DUNLO MOTORS INC.

By: \_\_\_\_\_ Title: Buyer  
MINNESOTA CREDIT ACCEPTANCE CORPORATION (11-89)

Buyer hereby acknowledges receipt of an exact and completely filled in copy of this contract at the time of its execution.

<b>United States Bankruptcy Court</b>	<b>PROOF OF CLAIM</b>
MINNESOTA District of MN	
In re (Name of Debtor) <b>JAMES SHOCKENCY</b>	Case Number: <b>03-46205</b>

NOTE: This claim should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. \* 503

Name of Creditor (The person or entity to whom the debtor owes money or property) <b>Credit Acceptance Corporation</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach Copy of statement giving particulars.
Name and Addresses Where Notices Should be Sent <b>25505 W. 12 Mile Road Suite 3000 Southfield, MI 48034 Telephone No. (248) 353-2700</b>	<input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check here if the address differs from the address on the envelope sent to you by the court

Account or other number by which creditor identifies debtor: <b>1702562</b>	Check here if this claim <input type="checkbox"/> replaces a previously filed claim dated _____ <input type="checkbox"/> amends
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<b>1. BASIS FOR CLAIM</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other (Describe Briefly) <b>2000 CHEVROLET MALIBU</b>	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C * 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) Your social security No. _____ Unpaid compensation for services performed from _____ to _____ (date) (date)
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<b>2. DATE DEBT WAS INCURRED:</b> <b>05/09/2002</b>	<b>3. IF COURT JUDGEMENT, DATE OBTAINED:</b>
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<b>4. CLASSIFICATION OF CLAIM.</b> Under the Bankruptcy Code all claims are classified as on or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM. <input checked="" type="checkbox"/> SECURED CLAIM \$ <b>6541.58</b> Attach evidence of perfection of security interest Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe briefly) <b>FMV \$ _____</b> Amount of arrearage and other charges included in secured claim above, if any \$ <b>554.50</b> <input type="checkbox"/> UNSECURED NONPRIORITY CLAIM \$ _____ A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.	<input type="checkbox"/> UNSECURED PRIORITY CLAIM \$ _____ Specify the priority of the claim. <input type="checkbox"/> Wages, salaries, or commissions (up to \$2000), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtors whichever is earlier - 11 U.S.C. * 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. * 507(a)(6) <input type="checkbox"/> Up to \$900 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. * 507(a)(6) <input type="checkbox"/> Taxes or penalties of governmental units - 11 U.S.C. * 507(a)(7) <input type="checkbox"/> Other - 11 U.S.C. ** 507(a)(2),(a)(5)-(Describe briefly)
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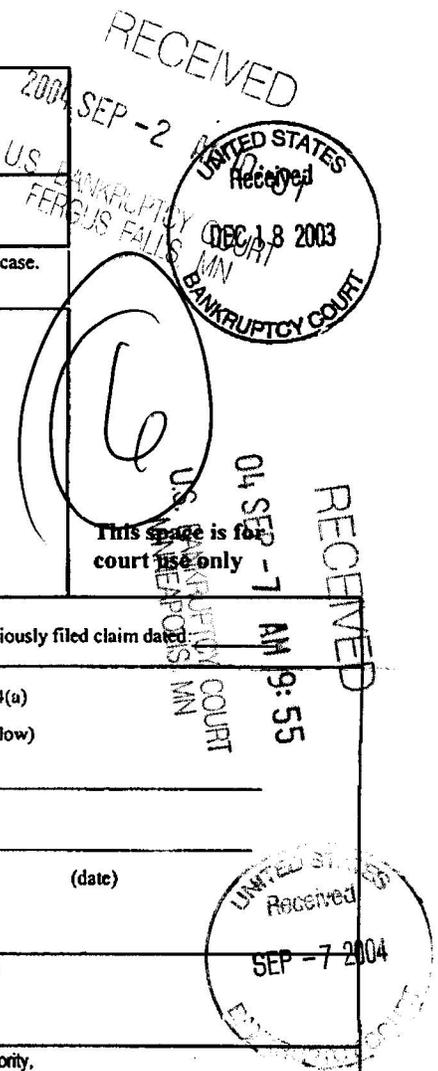
<b>5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED:</b>	\$ _____ (Unsecured)	\$ <b>6541.58</b> (Secured)	\$ _____ (Priority)	\$ <b>6541.58</b> (Total)
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Check this box if claim includes prepetition charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

<b>6. CREDITS AND SETOFFS:</b> The amount of all payments on this claim has credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor. <b>7. SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgements, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>8. TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclosed a stamped, self-addressed envelope and copy of this proof of claim	<b>This space is for court use only</b>
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Date <b>12/12/03</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)  <b>La'Vonne Compton, Bankruptcy Coordinator</b>
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Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. \*\* 152 and 3571.



## Claims Data for Case 3-46205

An 'underlined blue or purple' entry in the 'Creditor' column indicates that there is an image for the entry. The image can be accessed using either the Paperport viewer for MAX documents or the Adobe Acrobat Reader for PDF documents. These viewers may be downloaded free of charge by clicking on the [Image Viewer Download](#) hyperlink. Install help is available by clicking on the [Viewer Install Help](#) hyperlink. The buttons in the 'Link' column display text associated with the entry.

[Return to Previous Page](#)

Claim Date	Amount	Claim Number	Descriptive Text	Creditor	
09/16/03	1085.36	1		DMJ CORP 2392 PIONEER TR HAMEL MN 55340	Claim image exists
09/24/03	12431.76	2		LITTON LOAN 4828 LOOP CENTRAL DR HOUSTON TX 77081	Claim image exists
12/01/03	29596.62	3	80214296001	US BANK 204 W 4TH ST CNOHX5FI CINCINNATI OH 45252	Claim image exists
12/18/03	6541.58	4	1702562	CREDIT ACCEPTANCE CORP 25505 W 12 MILE RD 3000 SOUTHFIELD MI 48034	Claim image exists
12/24/03	9214.97	5	1967639	CREDIT ACCEPTANCE CORP 25505 W 12 MILE RD 3000 SOUTHFIELD MI 48034	Claim image exists

U S Bankruptcy Court - District of Minnesota  
Last revised: October 24, 2000

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

-----  
In re:

Case No.: 03-46205

*James L. Shockency, and  
Monica A. Shockency,*

Chapter 13 Case

Debtor(s).  
-----

**MEMORANDUM OF FACTS AND LAW**

FACTS

The Trustee incorporates by reference the facts recited in the verified motion, which, for the sake of brevity, will not be repeated here.

LEGAL DISCUSSION

This case illustrates the frustration the Trustee encounters in attempting to administer a Chapter 13 plan where a creditor files a proof of claim for an allegedly secured claim that is referred to nowhere in the schedules. Does the Trustee pay the claim as an unsecured claim? Does the Trustee assume that the claim is being paid directly? Should the plan be modified to provide for the purported secured claim in some fashion?

Because 11 U.S.C. § 502(a) expressly provides that claims are allowed as filed, unless objected to, the Trustee is obliged to file the present objection. In the present case, it appears as though the Claims arise from “a case of mistaken identity,” due to the near identity between the names of debtor James L. Shockency and his son. Nevertheless, the original claim filed by CAC was not withdrawn, once this was brought to the creditor’s attention, but instead a second identical claim for the same loan was filed by the creditor, thereby compounding the problem. An order of the court disallowing both Claims is therefore necessary.

CONCLUSION

For the reasons stated herein, the Court should disallow the Claims.

Respectfully submitted:

Dated: September 13, 2004

Signed: /e/ Thomas E. Johnson  
Thomas E. Johnson, ID # 52000  
Margaret H. Culp, ID # 180609  
Counsel for Chapter 13 Trustee  
310 Plymouth Building  
12 South 6th Street  
Minneapolis, MN 55402-1521  
(612) 338-7591

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re:

Case No.: 03-46205

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on September 13, 2004, I served Notice of Hearing and Motion Objecting to Claim Nos. 4 and 6, Memorandum of Facts and Law and proposed Order on the individual(s) listed below, in the manner described:

**By electronic means:**

United States Trustee  
1015 United States Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

**By first class U.S. mail, postage prepaid:**

Credit Acceptance Corporation  
Attn.: LaVonne Compton, Bankruptcy Coordinator  
Authorized Agent  
25505 W. 12 Mile Road, Suite 3000  
Southfield, MI 48034

James L. Shockency  
Monica A. Shockency  
6107 Aldrich Ave. N.  
Brooklyn Center, MN 55430

Robert J. Hogle, Esq.  
Attorney at Law  
P.O. Box 130938  
Roseville, MN 55113

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 13, 2004

/e/ Thomas E. Johnson

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

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In re:

Case No.: 03-46205

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Chapter 13 Case

Debtor(s).  
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**ORDER**

At Minneapolis, MN, \_\_\_\_\_, 2004.

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the motion of the Chapter 13 Trustee for an order disallowing Claim Nos. 4 and 6.

Appearances, if any, were noted in the minutes.

Upon the verified motion, arguments of counsel and all of the files, records and proceedings herein,

IT IS ORDERED:

1. Claim No. 4 in favor of Credit Acceptance Corporation, filed on December 18, 2003, in the amount of \$6,541.58, is DISALLOWED.
2. Claim No. 6 in favor of Credit Acceptance Corporation, filed on September 7, 2004, in the amount of \$6,541.58, is DISALLOWED.

\_\_\_\_\_  
Nancy C. Dreher  
United States Bankruptcy Judge