

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

SENDMYGIFT.COM, Inc.,
Debtor.

Bky. No. 00-35021 (GFK)
Chapter 11

SENDMYGIFT.COM, Inc.,
Plaintiff,

Adv. No. 04-3035

v.

Daryl A. Shiber, Kimberly G. Shiber,
DHS Corporation, and K.G.S., LLC
Defendants.

**PLAINTIFF'S MEMORANDUM
OPPOSING SHIBER'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Defendant Shiber argues that plaintiff's libel claim fails because plaintiff has not identified any libelous statement made by Mr. Shiber. Defendant alleges that all statements provided to the police or the insurance company were privileged communications, and may not be cited as libel.

SHIBER'S DEFAMATION

On 06-25-03 Mr. Shiber reported approximately \$1,000,000 worth of business property was taken from his office building. [Hoiland Aff. Ex. E Officer Oerlich report and Ex.] On 7-22-03, Mr. Shiber met with the insurance adjuster at the building and valued the stolen property at \$1.5 million. ["At our meeting He did indicate that the value was presented to him to be in the range of \$1.5 mil." Hoiland Aff. Ex F Adjuster First Report, p 2 fifth par.] Mr. Shiber falsely claimed that the equipment belonged to him. [*Id.* Ex G p 2, lines 1-3.]

Mr. Shiber appointed Mr. Moline as the representative who would coordinate and report all of the missing property to the Police Department. [*Id.* Ex. H, p 2 par 3 of Police Application for Search Warrant] As Mr. Shiber's agent, [*Id.* Ex. I, Shiber Depo. p. 48 lines 14-18] Mr. Moline gave the police a statement, that included the following

statements:

The building and contents had been purchased from Joe Burnett via the Bankruptcy Court. . . .

According to Daryl Schiber, John Cameron, and Jim Louks the equipment was owned by them and was to be configured for use by FiberPOP. [Mr. Shiber's tenant at the Burnsville Property.] A number of times Joe Burnett and Jason Roth came to the building and indicated that they owned the equipment. According to Daryl Schiber, John Cameron, Jim Louks this was not the case. . . .

On June 25, 2003 Daryl Schiber called and told me that the building had been burglarized and needed inventory information to provide police. I printed out copies of information that I had and met with Daryl Schiber, Doug Bell, Jim Louks at the building with Burnsville police around 3:00 pm. . . .

The amount and types of items taken from the building seem to indicate that Joe Burnett may be the culprit. . . . The selective removal of items from the building appears to have only been items that Joe Burnett would require for his business. . . .

I contacted Daryl Shiber and asked if for any information regarding Joe Burnett. He said that Joe has a building near 1400 West Broadway (Minneapolis I think). . . .

The volume of items taken – Cases of SendMyGift.com items, Furniture, Computers, etc would easily fill a large semi trailer.

[Hoiland Aff. Ex. J Mr. Moline's statement to police]

In his deposition, Mr. Shiber was asked about the details of his claim to the insurance company. He admitted knowing that Mr. Burnett claimed the computer equipment belonged to SENDMYGIFT.COM, Inc.

Q. You knew that Mr. Burnett claimed that SENDMYGIFT still owned all that computer equipment?

A. Yes

Hoiland Aff. Ex I Shiber Depo. p 50, lines 16-18.

In fact, the previous summer, Mr. Burnett asked Mr. Shiber to sign a statement, that confirmed Mr. Shiber was storing and safeguarding SENDMYGIFT.COM, Inc.'s computers at the Burnsville property. Mr. Shiber signed the statement. [*Id.* Ex. K] Less than one year later, he claimed he told his insurer that he owned the computer equipment, and tried to collect hundreds of thousands of dollars for their theft.

Mr. Shiber's defamation consisted of a combination of statements, made by him and his agent, Mr. Moline, that caused the police to raid SENDMYGIFT.COM, Inc.'s building with numerous officers, a moving van and a moving crew [*Id.* Ex. I, p. 2 par 2].

When Mr. Shiber discovered that the computer equipment and other property was missing, he did not contact Mr. Burnett. Rather, he called the police and made an insurance claim for the value of SENDMYGIFT.COM, Inc.'s computers and equipment. He told the insurance man that the stolen property might be worth \$1.5 million. He appointed an employee of his tenant, Mr. Moline, as his representative to make official statements to the police. He had told Mr. Moline that he had purchased the computer equipment and personal property from Mr. Burnett. That was completely false. By doing so, he assured himself that Mr. Moline would point to Mr. Burnett and SENDMYGIFT.COM, Inc. as the thieves. Mr. Shiber told Mr. Moline the location of the building for SENDMYGIFT.COM, Inc. Police then used this information to get a search warrant and raid the building.

By claiming that SENDMYGIFT.COM, Inc.'s equipment was his, and by claiming that his building was burglarized, and by his agent's pointing to Joe Burnett and his company as the "culprit," resulting in the police raid against SENDMYGIFT.COM, Inc., Mr. Shiber has defamed SENDMYGIFT.COM, Inc. and is liable for libel per se.

QUALIFIED PRIVILEGE REGARDING REPORTING CRIMES

Defendant correctly cites *Smits v. Wal-Mart Stores, Inc.*, 525 N.W.2d, 554, 557 (Minn. App. 1994) as a leading case interpreting when stolen property reports are privileged.

Thus, we conclude that a qualified privilege may exist when an individual makes a good faith report of such criminal activity to law enforcement officials. Such a privilege applies, however, when communication is made within probable cause and for a proper purpose and occasion. *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 256-7 (Minn. 1980)

Id. at p. 559

In that case, the Court of Appeals determined that the qualified privilege did not apply because Wal-Mart could not satisfy the necessary qualifications. The test is fact intensive. In our case, the Court must review the testimony of the witnesses and the record of written reports to determine whether or not Mr. Shiber made his report in good faith, for a proper purpose and occasion.

The facts referenced above show that Mr. Shiber did not make his police report in good faith. The insurance adjuster agrees.

Daryl Shiber has not responded to my letter providing any of the information requested in my letter dated July 29, 2003 other than delivering the Non-Waiver to you. He has relied on the inventory prepared by Tom Moline. No documentation has been provided to support the insured's ownership of the property. To the contrary the only documentation would indicate the insured does not own the property.

[Hoiland Aff. Ex. G Adjuster Second Report p. 2 2nd last paragraph]

The final report of the police detective Heatherton shows Mr. Shiber did not file the theft report in good faith, as it states:

On 12-11-03 at approximately 1200 hours, above officer received information from Paul D. DeAtely (DA) who indicated he was an employee of Zurich North America. DA stated that Zurich North America had denied an insurance claim submitted by Daryl Harry Shiber DOB 06-15-43, and that his organization does not want to pursue (at the moment) and insurance fraud investigation regarding his claim. . . .

It should also be noted that Shiber will be considered as a suspect in an insurance fraud until he can legally document the property he submitted in his insurance claim to Zurich North America belonged to him.

[Hoiland Aff. Ex. L]

CONCLUSION

The facts and the law stated above show that partial summary judgment is not appropriate in favor of the defendants.

Dated: September 22, 2004

Respectfully submitted,

-e- David Hoiland
David Jon Hoiland #46085
Attorney for Debtor
120 S. 6th St. #1100
Minneapolis, Minnesota 55402
(612) 573-3686

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

SENDMYGIFT.COM, Inc.,
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Daryl A. Shiber, Kimberly G. Shiber,
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Defendants.

AFFIDAVIT OF
DAVID HOILAND
OPPOSING SHIBER'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

David J. Hoiland, being on oath duly sworn, deposes and says:

1. I am the attorney for the above-named Plaintiff in the above-captioned matter, and I am familiar with the matters herein stated.

2. Attached hereto as Exhibit E is Officer Oerlich's report from the Police Report file of the Burnsville Police Department.

3. Attached hereto as Exhibit F is the first report of Monte Franz, the insurance adjuster in this matter.

4. Attached hereto as Exhibit G is the second report of Monte Franz, the insurance adjuster in this matter.

5. Attached hereto as Exhibit H is the Application of Dectective Heatherton for a Search Warrant in this matter.

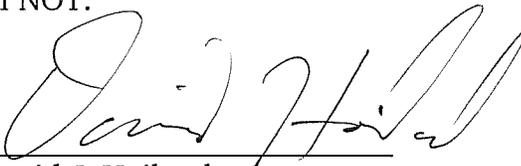
6. Attached hereto as Exhibit I are portions of Daryl Shiber's deposition taken in this case on July 1, 2004.

7. Attached hereto as Exhibit J is the statement Tom Moline gave to the Burnsville Police Department on July 23, 2003 in this matter.

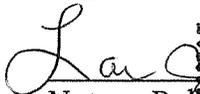
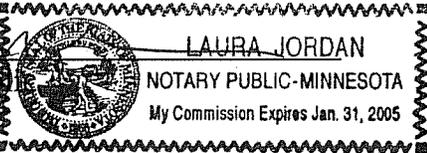
8. Attached hereto as Exhibit K is the agreement signed by Daryl Shiber regarding protection and safekeeping of the computer equipment belonging to SENDMYGIFT.COM, Inc. dated August 20, 2004. Page 2 is the document referred to by Exhibit K.

9. Attached hereto as Exhibit L is a supplemental report filed in the Burnsville Police Report file by Detective Heatherton.

FURTHER YOUR AFFIANT SAYETH NOT.


David J. Hoiland

Subscribed and sworn to before me
this 22nd day of September, 2004


Notary Public  LAURA JORDAN
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

BURNSVILLE POLICE DEPARTMENT

INCIDENT FORM

UOC TITLE Burglary from Business / No Forced Entry	OFFICER NAME/BADGE # OELRICH # 102	CASE FILE # 03004642
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LOCATION OF OFFENSE 12345 Portland AV S Burnsville, MN 55337	TICKET # NA	DATE/TIME REPORTED 06/25/03 1355 hrs	DATE/TIME OCCURRED approximately 2 weeks ago
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INCIDENT / CODE: V = VICTIM W = WITNESS R = REPORTING PERSON M = MENTIONED B = BUSINESS NAME

CODE R	FULL NAME (LAST, FIRST, MIDDLE) Shiber, Daryl Harry	DOB 06/15/43	HOME PH 612-869-7912	WORK PH 612-817-3222
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STREET ADDRESS 6629 Lynwood Blvd	CITY/STATE/ZIP Richfield, MN 55423
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CODE V	FULL NAME (LAST, FIRST, MIDDLE) Shiber, Kimberly Grace	DOB 05/01/72	HOME PH 612-869-7912	WORK PH 612-865-8698
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STREET ADDRESS 6629 Lynwood Blvd	CITY/STATE/ZIP Richfield, MN 55423
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CODE M	FULL NAME (LAST, FIRST, MIDDLE) McGowen, Robert	DOB unk	HOME PH 515-288-3279	WORK PH NA
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STREET ADDRESS unk	CITY/STATE/ZIP unk
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PERPETRATOR INFORMATION / CODE: A = ARREST J = JUVENILE REFERRED S = SUSPECT T = TICKETED C = EXC CLEARED
RACE CODES: A = ASIAN PACIFIC ISLANDER/HISPANIC B = BLACK/NEGRO/HISPANIC H = WHITE/HISPANIC I = NATIVE AMERICAN/ALASKAN NATIVE
 M = NATIVE AMERICAN HISPANIC N = AFRICAN AMERICAN/BLACK W = WHITE O = ASIAN PACIFIC ISLANDER

CODE	FULL NAME (LAST, FIRST, MIDDLE)	DOB	SEX	RACE	HGT	WGT	HOME PH
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STREET ADDRESS	CITY/STATE/ZIP	WORK PH
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CODE	FULL NAME (LAST, FIRST, MIDDLE)	DOB	SEX	RACE	HGT	WGT	HOME PH
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STREET ADDRESS	CITY/STATE/ZIP	WORK PH
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CODE	FULL NAME (LAST, FIRST, MIDDLE)	DOB	SEX	RACE	HGT	WGT	HOME PH
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STREET ADDRESS	CITY/STATE/ZIP	WORK PH
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S = STOLEN / D = DAMAGED PROPERTY

MAKE	MODEL	STYLE	YEAR	COLOR	LICENSE	STATE	VIN
------	-------	-------	------	-------	---------	-------	-----

"I GAVE NO ONE PERMISSION TO TAKE OR DRIVE THE ABOVE-DESCRIBED VEHICLE, AND I HEREBY CERTIFY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT AND I WILL PROSECUTE."	SIGNATURE	VEHICLE VALUE
--	-----------	---------------

S/D	QTY	BRAND NAME	SERIAL # AND/OR P.I.N.	ARTICLE TYPE & DESCRIPTION	VALUE
SYNOPSIS					TOTAL

On 06/25/03 at approximetly 1403 hrs, I responded to 12345 Portland AV S to take a Theft from Building Report. Upon arrival I learned it was a Burglary from Business Report. (R)Daryl advised me he has not been to the building in approximately two weeks, and at that time everything seemed in place. He walked me through the Business, explaining that several items were missing, probably amounting to over \$1,000,000 in value, but not sure. In the next day or two someone is going to go through the business and document everything that was stolen, along with the serial numbers and forward the information to me. Daryl stated due to Health and tax reasons, he put the business in his wife's name, (M)Kimberly, and Co-Owner (M)Robert, his accountant. There was no forced entry into the business. On the South side of the building there was a sliding down door that was closed, but not locked. I was unable to contact any of the surrounding businesses at this time.

SGT GM	DATE 6-24	TRANS. TO: <input checked="" type="checkbox"/> INV <input type="checkbox"/> OFFICER <input type="checkbox"/> CO ATTY <input type="checkbox"/> CITY ATTY <input type="checkbox"/> CHILD PROT <input type="checkbox"/> OTHER AGENCY	STATUS: <input type="checkbox"/> INACTIVE <input type="checkbox"/> PENDING <input type="checkbox"/> EXC CLEARED <input type="checkbox"/> ADU ARREST/TICKETED <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> JUV ARREST/TICKETED <input type="checkbox"/> ASSIST/ADVISE	FORMAL COMPLAINT <input checked="" type="checkbox"/> NO <input type="checkbox"/> MS <input type="checkbox"/> GM <input type="checkbox"/> EE	TAPED STATEMENT? <input type="checkbox"/> V <input type="checkbox"/> W <input type="checkbox"/> S	TAPED NARRATIVE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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EXHIBIT E

CRAWFORD & COMPANY

P. O. BOX 8008
ST PAUL, MN 55108
651 582-0304
651 631-9246 fax

07/28/2003

ZURICH U.S.
Po Box 512000
Indianapolis, IN 46251-2000
Attn: Jay Marx

RE: Policy:
Claim: 5700092358
Insured: KGS,. LLC
Loss: 6/16/2003 - FIRE
Our File: 209-53077,

'FIRST REPORT'

ESTIMATED LOSS:

Item	Insurance	Estimated Loss	Amount Paid
Business Personal Property	\$500,000.00	\$500,000.00	\$0.00
Building	\$4,100,000.00	\$1,000.00	\$0.00
Total	\$4,600,000.00	\$501,000.00	\$0.00

COVERAGE

The following coverage information was provided at the time of the assignment. The policy number is PPS 39667226. The location of the insured property is 12345 Portland Ave., Burnsville, MN 55337. The limits of coverage on the Building is \$4,100,000.00 and on Business Personal Property at \$500,000.00 The policy is written with a \$1,000.00 deductible. No other policy information has been provided.

INSURED

The insured is listed as KGS, LLC. My contact for the insured was indicated to be Daryl Shiber. Mr. Shiber informed me that the list principle owner of this limited liability corporation is his wife Kimberly Shiber. Other information that has been developed is that the firms accountant, Bob McGowan (sp) and the firms attorney, John Cameron may also have ownership interests in the building.

Shiber DEPOSITION
EXHIBIT 11 M.J.A.

I have learned that the insured sustained a previous theft or burglary loss last year. I was informed that a police report

EXHIBIT **F**

00115

was filed and involved a commercial projector located in the conference room. The original cost of the projector was speculated to be approximately \$12,000.00. You may wish to check your records to confirm whether the insured ever submitted this loss as a claim to insurance.

RISK

The risk is a commercial building that is masonry two story structure. The building is reported to have 28,000 sf of office space, 2000 sf of tech space and 3000 sf of warehouse space. The last business to operate in the building was a business known as FiberPop. This business operated in the fiber optics field and was describe to design, construct and manage open-access municipal area networks. The insured is reported to have purchased the business on a bankruptcy sale in May of 2001. Though the indication is that the business owner, KGS is owned by Kimberly Shiber, her husband Daryl Shiber is referred to as the contact and seems to have all the decision making authority. The building was reported to have been leased shortly after the purchase to a business known as C&L Communications, parent company of FiberPop. The building was to be the corporate headquarters and Burnsville Data Center. The parent company is located in Owatonna, MN which is located approximately 50 miles south of the Burnsville location.

The building did become vacant the beginning of April 2003. The exact time period is vague at this point. What is known is that the electrical power was shut off in what is believed to be April 2003 for non payment. The phone service for FiberPop was disconnect many months before this and the heat was turned off about a year earlier all for non payment of services.

INSURABLE INTEREST

As previously indicated the building and its contents were acquired in a bankruptcy sale in May 2001. I have no other official notice of financial interests in the property at this time. The ownership issue does need to be thoroughly researched.

ORIGIN

The loss is report to have occurred sometime between the dates of June 6, 2003 and June 25, 2003. The loss is a reported burglary of furniture, computers, racks containing communications and electronic data equipment. On June 6, 2003 Mr. Tom Moline was called to the building by Daryl Shiber to walk through the building to determine if any property was missing. Mr. Moline along with Steven Luecken both employees at the time of FiberPop met with Mr. Shiber and Doug Bell an associate of Daryl Shiber. The walk through confirmed that nothing was missing. Then on June 25, 2003 he was informed by Daryl Shiber that a burglary took place at the building and he met with Mr. Shiber and the Burnsville Police Department.

ADJUSTMENT AND GENERAL REMARKS

The loss was assigned to me on July 18, 2003. I attempted to reach the insured by phone on that date but was unable to have a conversation with Daryl Shiber until July 22, 2003. At that time an appointment was scheduled for Friday, July 25, 2003. I met with Daryl Shiber and Doug Bell at the property. A walk through was made at that time. Mr. Shiber had not put together any list of the missing property and was somewhat vague the actual count of the missing property. He was familiar enough to point out certain items of property but not familiar enough to describe all the property or its value. At our meeting He did indicate that the value was presented to him to be in the range of \$1.5 mil.

After my meeting at the property I called and spoke to the detective on this case. The Burnsville office is Detective Mark Hetherington (952 895-4600). Their case number is 03004642. Det. Hetherington did not have any suspects on this burglary. He was concerned with many aspects of the circumstances of the burglary. There were no signs of forced entry. He described the efforts need to remove the reported property and involving a lot of man hours to accomplish the removal of the reported missing property. He did indicate that their investigation to this point has not led them to a conclusion.

Both Mr. Shiber and Det. Hetherington indicated that Tom Moline was the individual that appeared to have the majority of the knowledge of the property in the building. I was able to arrange an appointment to meet with Tom Moline for Monday, August 4, 2003. I did meet with Tom and obtained a recorded statement. Also present was Steve Luecken. Tom provided me with a typed statement he prepared for the Burnsville Police Department along with descriptions of the racks containing the communications equipment and a list of all this equipment. He also provided a list of all the

furniture located in the building. The list labeled FiberPop Burnsville COC inventory is a list of missing communications equipment. The furniture list is a list of all furniture and he estimates half or so of the items are missing. Mr. Moline is no longer an employee of FiberPop or C&L Communications. He is however the individual that appears to be the VIP to get the information presented on the claim. The following is the recap of my recorded statement of Mr. Moline.

Recorded Statement Recap

Tom held the position as project manager beginning sometime in July 2001 for the setup of the company FiberPop at 12345 Portland Ave in Burnsville, MN. About a half dozen FiberPop employees worked at the Portland Ave location. Tom did not believe that the location ever got the point where it generated income. He was unsure when or if there was a formal lease of the building. They physically moved in around the third week of July of 2001. The last employee, Steve Luecken left the building in April of 2003. He believes the electric was turned off in May of 2003. The last business transacted on behalf of FiberPop was in April. He believes that the account was in the name of FiberPop. In September or October of 2001 a portion of the building was to be leased to a Mortgage Company and used as a call center. They had built a 22 work stations area for the call center. The set up of the proposed lease had something to do with John Cameron, Daryl Shiber's attorney and a friend or acquaintance of John Cameron. FiberPop incurred the expense to set up the call center. Other affiliated businesses and investors left the building. Daryl Shiber then began to move merchandise and other property into the building some of which was suppose to be sold on line such as Ebay. This was to generate income to operate the business. The building was heated with natural gas. The gas was shut off in the spring of 2002. During the winter 2002/2003 Steve Luecken would bring in LP gas tanks to heat the building. Tom had heard that Jim Louckes and Daryl Shiber owned FiberPop. Tom also believed that there were other investors that eventually pulled out leaving the two as owners. Equipment and furniture in the building was not owned by FiberPop. Tom classified the merchandise brought in by Daryl Shiber as junk. The description of the business was one of being under funded, poorly managed and lead by less than honorable individuals. The on-line merchandise business was sold under the name OverloadRoad.com. This is a company established by Tom Moline. Sales of the merchandise was handled by Tom and other employees of FiberPop. The income from any of these sales would be used to pay bills on the building expenses. Tom knew of three keys to the building. Keys were held by Daryl Shiber, Jim Loukes and Dan Laller (sp). Tom did not believe the building was ever listed for sale but did confirm that realtors had looked at the building. There was an alarm system to the building which was an ADT product. The system was described as being in the building when they moved in. Tom also indicated that the system never worked. When the power was shut off Tom was able to disconnect the system. A key pass card swipe system was installed for employees to get in the building as well as other people who leased space in the building. Tom believed the account was in the name of Daryl Shiber. When the balance on the account was not paid Tom believes ADT dismantled the card swipe system. Tom was aware of a previous theft. A conference room projector was stolen back in the spring of 2002. The value of the projector was estimated at \$12,000.00. The police were notified and a report was filed. Tom was suspect of the circumstances of the theft. Daryl Shiber was informed of the theft. Tom first became aware of the June burglary when he received a call from Daryl Shiber on June 25, 2003. He went to the building and found the police department on site doing their investigation. Tom stated when asked who owned the property he was told by Daryl Shiber and John Cameron that they owned the property including the contents. The property was purchased by Shiber, John Cameron and Bob McGowan. Tom prepared the inventory. FiberPop was granted authority to use all the equipment and furniture in the building. The previous owner of the building and its contents was Joe Burnett. He operated a business called Sendmygift.com. Tom did recall seeing the previous building owner, Joe Burnett in the building to meet with Daryl Shiber. Tom also received an email from Jason Roth an employee or associate of Joe Burnett. The email was dated June 5, 2003 and was a simple attempt to locate someone of the business. There was a response from Tom and an acknowledgement from Jason Roth. Tom did indicate that he was aware that Joe Burnett had on several occasions mentioned that the property inside the building was his. Mr. Burnett also indicated that he was leasing the equipment to Daryl Shiber. Tom did not observe any damage to the building that would indicate a point of entry into the building. Tom indicated that it would take technically knowledgeable people to move the communications equipment. The use of a forklift would have been required. There is no fork lift at the building. Something like a semi would be needed to haul the property. There would have been a large number of man hours required to move out all the property that was taken. He speculated that it could have taken days. The U-haul boxes were not brought in by FiberPop. Daryl Shiber did ask Tom on June 6, to meet him at the location to determine if any property was missing. Nothing was missing at that time. Daryl had previously expressed a concern that either Joe Burnett or Jim Louckes might remove property from the building. (The recorded tapes were not of good quality. Motor sound of the recorded makes the listening of the tapes difficult.)

After my conversation with Tom Moline I received from him a CD with photographs of the electronic communications equipment that had been in the building. I also received a copy of the typed statement he prepared for the police department and a copy of the email correspondence with Jason Roth. Tom also provided drawing of the racks and the

equipment and he provided lists of the communications inventory and the furniture inventory. The communications inventory is totals \$556,641.00. All of these items are reported missing. The furniture inventory totals \$166,705.00 but was indicated to include items that are not missing. The furniture list is of all furniture in the building prior to the burglary.

You had requested that I present and have a Non-waiver signed at the time of our meeting. Since Mr. Shiber presented himself to have no financial interest in the property I did request that he have his wife sign and return the Non-waiver agreement. I followed this request up with a certified letter to Mr. & Mrs. Shiber also making this request. To date the Non-waiver has not been returned.

SUBROGATION

It is too early to tell if subrogation will be an issue.

SALVAGE

No property has been recovered at this time to my knowledge. The remaining property was not vandalized.

RECOMMENDATIONS

I do recommend consideration of retaining the services of an attorney in the event that coverage is afforded on this loss. It would appear appropriate for statements under oath to be administered to several principles of the claim.

FUTURE ACTIVITY

The insured has been provided a Non-waiver and a request made for the insured's signature on that document and the return of the Non-waiver. At present that has not taken place. I have requested all documents on the purchase of the property, a list of all individuals with a financial interest in the property, a list of any property for the business after the purchase of the building list of persons who have keys to the building, a copy of the lease between KGS and the tenant. The history on the utilities shutoff and any contracts with a realtor to sell the building. After my discussion with Tom Moline believe further investigation into the relationship Daryl Shiber has with FiberPop is warranted.

Very Truly Yours,

Monte R. Franz

Property General Adjuster

cc: Jim Perry
900 E. Washington St.
Suite 350
Colton, CA 92324

Enclosures:

1. Photographs
2. List of Missing Equipment
3. Complete Furniture Inventory
4. Diagrams of racks with equip.
5. Typed Statement of T. Moline
7. Realty Listing
8. Floor Diagram
9. Letter to Insured &-29-03

CRAWFORD & COMPANY

P. O. BOX 8008
ST PAUL, MN 55108
651 582-0304
651 631-9246 fax

08/13/2003

ZURICH U.S.
P O Box 287
Brownsburg, IN 46112
Attn: Paul DeAtley

RE: Policy:
Claim: 5700092358
Insured: KGS,. LLC
Loss: 6/16/2003 - FIRE
Our File: 209-53077

'SECOND REPORT'

ESTIMATED LOSS:

Item	Insurance	Estimated Loss	Amount Paid
Business Personal Property	\$500,000.00	\$500,000.00	\$0.00
Building	\$4,100,000.00	\$1,000.00	\$0.00
Total	\$4,600,000.00	\$501,000.00	\$0.00

ORIGIN

The loss is report to have occurred sometime between the dates of June 6, 2003 and June 25, 2003. The loss is a reported burglary of furniture, computers, racks containing communications and electronic data equipment. On June 6, 2003 Mr. Tom Moline was called to the building by Daryl Shiber to walk through the building to determine if any property was missing. Mr. Moline along with Steven Luecken both employees at the time of FiberPop met with Mr. Shiber and Doug Bell an associate of Daryl Shiber. The walk through confirmed that nothing was missing. Then on June 25, 2003 he was informed by Daryl Shiber that a burglary took place at the building and he met with Mr. Shiber and the Burnsville Police Department.

ADJUSTMENT AND GENERAL REMARKS

On August 11, 2003 we (Paul DeAtley & myself) met with the Daryl Shiber and Doug Bell at the insured premises. At that time we made a walk through the building to attempt to confirm the personal property that remained at the building.

EXHIBIT 5

00110

which appeared on the inventory list of furniture and personal property other than the computer equipment. Mr. Shiber restated at that time that the property reported missing from the building belonged to the entity KGS LLC which is the insured. Mr. Shiber was informed that he must provide the signed Non-Waiver agreement. It is my understanding that the signed Non-Waiver was delivered to you. After this inspection we discussed the activity I was to be involved in which would be to meet with Tom Moline and Doug Bell to make a final walk through and re confirm the inventory.

I was contacted the following day by the Burnsville Police Detective, Mark Hetherington. He informed me that they had information which would lead them to an address where the reported stolen property was located and that on Wednesday, August 12, 2003 they would ascend upon the address with a warrant to access the address and remove any property listed in the reported burglary. He asked for my presents at the address to coordinate the removal and storage of the property. Mr. Tom Moline would be present to identify the property. With your authorization I did arrange for the moving personnel and trucks. The raid did take place and the owner of the address, Joe Burnett was called to come to the address. The building address is located at 1400 W. Broadway, Minneapolis, MN. Joe Burnett was also the previous owner of the insured building. Mr. Burnett did come to the building with his attorney, David Hoiland. The property was identified by Tom Moline and removal of the property was started.

Detective Mark Hetherington did requested Joe Burnett to provided a recorded statement. The detective requested I attend this statement which was also attended by Mr. Burnett's attorney. This statement took place on the second floor of the Broadway address. Mr. Burnett denied the claims that the property belonged to KGS or Daryl Shiber. He admitted that he arranged to have the property removed over three days. Detective Hetherington informed Mr. Burnett that their complaint included information that Mr. Burnett had approached an employee of Daryl Shiber and offered the employee \$3,000.00 to leave the door unlocked. This employee was identified as Dan (last name unknown). Mr. Burnett acknowledged approaching Dan to leave the building unlocked but denied offering any money to do this. The building was left open when on the initial date the people hired by Mr. Burnett came to the building to remove the property. He does not know if the doors were left unlocked by Dan. The removal process took three days. Mr. Burnett did state that if the building was damaged in the removal process he would accept the cost to repair the damage.

The attorney for Mr. Burnett did have a file brought to the address regarding the sale of the building. I obtained from the attorney and Mr. Burnett a copy of the financing addendum on the sale, Amendment to Purchase Agreement and a conditional term. The Amendment does not indicate personal property is included in the sale. The conditional term does stipulate the Buyer will allow the Seller to holdover the room that houses the Seller's main computers for 60 days after the closing. The Bankruptcy settlement statement indicates the contract sales price at \$2,400,000.00. The line for personal property is blank. A letter dated February 25, 2003 from David Hoiland was sent to Daryl Shiber with a copy to Daryl's Attorney which outlined the attorney's understanding of agreements concerning the property at 12345 Portland Ave. This letter indicates Daryl could continue using the furniture and computers, Joe Burnett would pay rent of \$2,000.00 per month to let the furniture stay at the building, and the Daryl would keep the server room secure. Mr. Shiber sent a hand written response to this letter indicating when his attorney was available they would respond. Mr. Burnett states no other response was received. The last document presented was a letter dated August 20, 2003 indicated to be signed by Daryl Shiber and witnessed by Doug Bell. The letter was a statement that was to confirm the conditional term of the sale that the 12'x36' room was to continue to be used to house the seller's main computers. This information led the Police to re identify this incident as a civil dispute with the only crime being one of trespass. This information was discussed with you and we agreed that the removal of the property from the address would be ceased and the property returned. David Hoiland would provide us with a letter stating the property located at the address would not be moved for 30 days and that they would inform us of the location of the server main frame computers.

Daryl Shiber has not responded to my letter providing any of the information requested in my letter dated July 29, 2003 other than delivering the Non-Waiver to you. He has relied on the inventory prepared by Tom Moline. No documentation has been provided to support the insured's ownership of the property. To the contrary the only documentation would indicated the insured does not own the property.

SALVAGE

RECOMMENDATIONS

I do recommend the insured be placed on notice that he must immediately provide support and documentation of his allegation of ownership of the property. Mr. Brett has agreed to secure the property for 30 days.

FUTURE ACTIVITY

I will at this time hold my file open for your instructions.

Very Truly Yours,

Monte R. Franz
Property General Adjuster

cc: Jim Perry
900 E. Washington St.
Suite 350
Colton, CA 92324

Enclosures:

1. Financing Addendum
2. Purchase Agreement
3. Amendment to Purchase Agree.
4. Conditional Term
5. Report on Sale
6. US Bankrupcy document
7. Assumption Agreement
8. Checks written to Shibers
9. Hoiland 2/25/03 letter
10. Handwritten response (Daryl)
11. 8/20/02 letter
12. Attorney Letter 8/13/03

SUPPLEMENTAL:

On 08-13-03 at approximately 0900 hours, above officer initiated and conducted a search warrant at 1400 West Broadway Avenue in Minneapolis, MN. The Minneapolis Police Department assisted at the location, and SGT. Greg Freeman (#2105) was present during the execution of the warrant. The search warrant was obtained in Hennepin County on 08-12-03, Judge Jennifer Roe signed the warrant on 08-12-03, and it was filed in the county clerk's office on 08-18-03.

Upon arrival, several unsuccessful attempts were made to contact the business owner **Joseph Anthony Burnett DOB 03-24-55** to respond to the location. Therefore, a forced entry was made through the front door to gain access into the building. The front door was removed and the building was secured at the location without incident. There was no one present in the building, and **Thomas Paul Moline DOB 06-15-43** was brought inside afterwards to assist in the identification of stolen items. Moline verbally advised that there was a significant amount of items in the building that were removed from the 12345 Portland Avenue building in Burnsville, MN.

Monty Franz (Crawford Insurance Investigator) was also present at the location, because Shiber had submitted an insurance claim regarding his missing property taken from the 12345 Portland Avenue building. Franz had also orchestrated a moving crew, and was prepared to move any property located at 1400 West Broadway that was submitted in Shiber's insurance claim.

Above officer was then able to contact Burnett, and he arrived at the location shortly after the moving crew began taking the property Moline had indicated belonged to Shiber. Burnett was escorted by his attorney **David Jon Hoiland DOB 05-16-52**, and he stated all of the property from Shiber's building was moved under his direction, because he was the rightful owner. Burnett later provided a verbal statement (taped) regarding the matter, and he indicated Shiber had purchased the 12345 Portland Avenue building from him through bankruptcy. Burnett also stated Shiber did not purchase any of the office computer/equipment that he had reported stolen through Moline. Burnett believed Shiber was actively engaged in an insurance fraud regarding the property he had removed from the 12345 Portland Avenue building.

Burnett also indicated a moving crew under his direction responded to Shiber's office building in June, and moved his equipment out of the building for several days. Burnett stated he did not know who was responsible opening the door at the location, and he indicated he wanted his property out of the building before Shiber's employees had an opportunity to abuse his sensitive computer equipment. Refer to Burnett's taped statement for more details regarding the events he indicated had occurred while he obtained his property from the 12345 Portland Avenue building.

Burnett, provided several documentations verifying his position regarding the property, and he negotiated with Franz to secure the items at the location until proper ownership could be established. Burnett indicated he would be working with Crawford Insurance to establish his ownership, and that Shiber never legally owned the items he reported missing (through Moline).

The case will be inactive until the proper ownership of all the items can be demonstrated by either party.

Case status: inactive

STATE OF MINNESOTA, COUNTY OF HENNEPIN

DISTRICT COURT

STATE OF MINNESOTA)

APPLICATION FOR SEARCH WARRANT AND
SUPPORTING AFFIDAVIT.

) SS.

COUNTY OF HENNEPIN

Mark Hetherington , being duly sworn upon oath, hereby makes application to this Court for a warrant to search the Premises, hereinafter described, for the property and things hereinafter described.

Affiant knows the contents of this application and supporting affidavit, and the statements herein are true of his/her own knowledge, save as to such as are herein stated on information and belief, and as to those, he/she believes them to be true.

Affiant has good reason to believe, and does believe, that the following described property and things, to wit:

Refer to attached property document sheets (six pages) and all other properties established to have been stolen from 12345 Portland Avenue South Burnsville, MN.

Indicators of occupancy/control/use/ of the premises to be searched.

are at the premises, described as:

1400 West Broadway Avenue Minneapolis, MN.

located in the City of Minneapolis, County of Hennepin, and State of Minnesota.

This affiant applies for issuance of a search warrant upon the following grounds:

1. The property above-described was stolen or embezzled.
3. The possession of the property above-described constitutes a crime.
5. The property above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.

EXHIBIT H

The facts tending to establish the foregoing grounds for issuance of a search warrant are as follows:

Your affiant, Mark G. Hetherington, is a licensed police officer for the past six years. Your affiant has been a police officer with the City of Burnsville for approximately six years, and is currently assigned to the investigation division (property crimes). While acting in that capacity your affiant has examined documents, read reports of other officers, investigated the matter, and believed the following information to be true.

On 06-25-03 at approximately 1355 hours, Officer Oelrich of the Burnsville Police Department responded to a commercial burglary reports at 12345 Portland Avenue South Burnsville, MN. Upon arrival, Officer Oelrich spoke with business owner Daryl Harry Shiber, and he reported approximately \$1,000,000 worth of business property was taken from his office building. Officer Oelrich was informed by Shiber he was going to appoint Thomas Paul Moline as the representative who would coordinate and report all of the missing property from 12345 Portland Avenue South Burnsville, MN to the Burnsville Police Department.

Continuing the investigation, above officer spoke with Moline who indicated he was authorized by Shiber to conduct and itemize all of the missing property from the building. Moline submitted an inventory list of the stolen/missing property, and according to his records approximately \$977,886.00 worth of merchandise was removed.

Moline was contacted and requested to respond to the BPD on 07-23-03 at approximately 1330 hours for an interview, and he provided the following information:

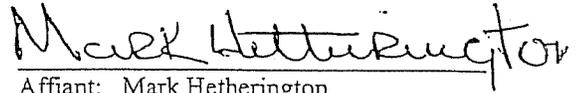
- Moline indicated he was approached in June of 2001 by Mark Dolan and Jim Louks to participate in a new company called Fiber POP. Moline indicated Fiber POP was a company to design, construct, and manage as an open access computer municipal area network. Moline stated the owners of the company were Jim Louks, Daryl Shiber, John Cameron, and Tom Dunsmore. Moline believed the building was owned by Shiber, and that Shiber had purchased the facilities and equipment from Joseph Anthony Burnett during a bankruptcy court ruling.
- Moline indicated when he started working at the facilities he was responsible for cleaning, and organizing the building for the specific use by Fiber POP. Moline stated he was informed by Shiber, Louks, and Lueken the equipment in the building was owned by them and was to be use for the Fiber POP business. Moline then informed above officer that on occasion Joe Burnett and Jason Roth came to the facilities, and informed him the computer equipment in the building belonged to them. Shiber informed Moline that was not the case regarding the property at the location.
- It was also reported to the BPD that Burnett had attempted to pay another employee of Shiber's \$3000.00 in cash if he left the building unlocked so he could get inside.
- Moline stated he had conducted an inventory of the building with a flashlight, and his inventory list consisted of approximately \$977,866.00 worth of missing property. Moline advised the individual(s) responsible for removing the property would have been required to have extensive man power, the technical ability to disassemble computer equipment, and possess the adequate moving equipment to remove all of the property from the location.

On 08-12-03 at approximately 1000 hours, Detective Behnken, Hetherington, and Thomas Moline responded to 1400 West Broadway Minneapolis, MN to investigate the possibility of Burnett's involvement in the matter. It was speculated that Burnett may have removed Shiber's property from 12345 Portland Avenue Burnsville, MN to start another similar computer business. Upon arriving at the location, officers along with Moline discovered the building facilities were secured, and no one was present at the location. The front door to the building facilities (1400 West Broadway) was made out of glass, and Moline looked though the glass door (plain view) and immediately started to identify several specific items that were removed from Shiber's office building in the City of Burnsville.

The first item Moline identified that was removed from Shiber's office building was a wooden dresser with two missing handles. Moline then recognized a blue CPU (sitting on the floor) with a tan three dial lock box on top of it. Moline informed officers those items were taken from the office building. Moline also identified a copy machine, and a large wooded table top to a conference table was sitting to the rear of the door. Moline advised officers without a doubt that property in plain view from the front door was taken from the office building at 12345 Portland Avenue South Burnsville, MN. Investigating officer also observed a piece of paper displayed in the front window "in case of an emergency call 763-232-6960 Joe Burnett", and photographs were taken of all the items in plain view from the front door.

Your affiant requests the courts permission to search the above listed premises for the property relating to this burglary, and your affiant believes the results of this search will assist in bringing criminal charges.

WHEREFORE, Affiant requests a search warrant be issued, commanding Mark Hetherington , (a) peace officer(s), of the State of Minnesota, and all other personnel under your direction and control between the hours of 7:00 a.m. and 8:00 p.m. only to search the hereinbefore described Premises, for the described property and things and to seize said property and things and keep said property and things in custody until the same be dealt with according to law.



Affiant: Mark Hetherington

Subscribed and sworn to before me this 

day of August 2003



Judge of District Court

CN: 05-4042 U

COPY

FiberPOP Burnsville COC Inventory

<i>DBID</i>	<i>Manufacturer</i>	<i>Model</i>	<i>Serial Number</i>	<i>R_Value</i>
1	Cisco	AS5300	SCA04060012	\$47,000.00
2	Cisco	MICA	CNI87J0AAA	\$6,500.00
3	Cisco	8PRI	CN2125JAAA	\$6,500.00
4	Cisco	7200 Series VXR	72667450	\$20,000.00
5	Cisco	7200 Series VXR	72667319	\$20,000.00
6	Cisco	Gigabit Ethernet	CN21R0AAA	\$6,500.00
7	Cisco	Enhanced ATM	CNI6230DAA	\$14,482.00
8	Cisco	Fast Ethernet Input/Output Controller		\$5,500.00
9	Cisco	Serial - V.35		\$5,500.00
10	Cisco	Gigabit Ethernet	800-03839-03 C0	\$12,000.00
11	Cisco	Enhanced ATM		\$14,482.00
12	Cisco	Enhanced ATM		\$14,482.00
13	Cisco	Fast Ethernet Input/Output Controller		\$5,500.00
14	ADC Kentrox	Satellite 651 DSU	0218481272	\$650.00
15	ADC	(Patch Bay)		\$1,200.00
16	ADC	48Volt Battery Unit		\$495.00
17	ADC	48Volt Battery Unit		\$495.00
18	APC	Smart UPS 3000	WS9938002981	\$2,000.00
19	Cisco	PIX 520	1801657	\$2,500.00
20	Cisco	Catalyst 6500 Series	CNMYADYGAA	\$84,000.00
21	Cisco	WS-X6K-SUPIA-ZGE	CNSTTGFAAA	\$6,500.00
22	Cisco	WS-X6K-SUPIA-ZGE		\$6,500.00
23	Cisco	WS-X6248-RJ-45	CN11EKCAAA	\$5,500.00
24	Cisco	WS-X6416-ge-mt	CNZIK7CAAA	\$14,500.00
25	APC	Smart UPS 3000	WS9938002969	\$2,000.00
26	Dell Monitor	M770	1780R-DJ2ZK-89	\$400.00
27	Keytronic	Keyboard	H903006216	\$25.00
28	Dell	Mouse	LZE92916580	\$12.00
29	Belkin	OmniView Pro 8-Port	F1D108-05D	\$1,264.00
30	Dlink	Dss-16+	9904078453	\$895.00
31	Axiom	Rack Mount Computer	9040501	\$2,295.00
32	NoName	Brain Box		\$1,200.00
33	Macintosh	G3		\$1,000.00
34	HP	LaserJet 2100TN	VSGQ006264	\$1,495.00
35	Axiom	Rack Mount Computer	9040502	\$2,295.00
36	Dell	Dimension XPS T500	71TX8	\$1,692.00
37	Compaq	DASD	D714HMQ10045	\$24,000.00
38	Compaq	Power Supply	E00181290	\$495.00
39	Dell	RACK 00		\$1,200.00
40	Outlook	APEX KVM		\$895.00
41	Dell	PowerEdge 6360	5C28U	\$38,248.00
42	Raid Tec	RAIDserver@V12		\$42,000.00

<i>DBID</i>	<i>Manufacturer</i>	<i>Model</i>	<i>Serial Number</i>	<i>R Value</i>
43	Dlink	DSS-24		\$1,295.00
44	Dell	Control Tray		\$2,400.00
45	Dell	PowerEdge 6300	567AX	\$10,000.00
46	Dell	PowerEdge 6300	8ZMQC	\$10,000.00
47	APC	Smart UPS 3000	WS9938002976	\$2,000.00
48	APC	Smart UPS 3000	WS9938002982	\$2,000.00
49	Dell	RACK 02		\$1,500.00
50	Dell	PowerEdge 2300	5CE91	\$2,957.00
51	Dell	PowerEdge 2300	5CE8H	\$2,957.00
52	Dell	PowerEdge 2300	5CE85	\$2,957.00
53	Dell	PowerEdge 2300	5CE8U	\$2,957.00
54	Dell	PowerEdge 6300	5C7A6	\$10,000.00
55	APC	Smart UPS 3000	WS9938002979	\$2,000.00
56	Dell	RACK 01		\$1,500.00
57	Dell	PowerEdge 6350	5CE24	\$10,000.00
58	Dell	PowerEdge 6350	5C28K	\$10,000.00
59	Dell	PowerVault 650F	SF29993800257	\$24,000.00
60	Dell	Standby Power Source		\$2,400.00
61	Dell	Standby Power Source		\$2,400.00
62	Dell	PowerVault 630F		\$7,951.00
63	APC	Smart UPS 3000	WS9938002974	\$2,000.00
64	Liebert	RACK		\$1,500.00
65	Generic	RACK		\$1,500.00
66	IBM	RACK		\$1,500.00
67	Dlink	10/100 Fast Ethernet Switch - Switch II		\$895.00
68	AMP	Patch Bay (48 Port)		\$595.00
69	AMP	Netconnect Enhanced System (24 Port)		\$1,295.00
70	Digital Link	Ensemble Encore	DO89630	\$1,895.00
71	Digital Link	DL2170		\$1,400.00
72	Digital Link	DL2131		\$1,200.00
73	Raid Tec	V-12	310441	\$495.00
74	IBM	Rack		\$1,200.00
75	ALR	Rembrandt Quad6	0747920	\$4,500.00
76	Team Internet	300 Series Model T13406	3000742-C2AF	\$1,200.00

FiberPOP Burnsville Data Center - IT Storage Inventory

<i>ID</i>	<i>Item Name</i>	<i>Item Description</i>	<i>Serial Number</i>	<i>Model Number</i>	<i>Location</i>
121	CD-ROM	40x		640A	<i>IT Storage</i>
128	CD-ROM			CRMC-FX3210S	<i>IT Storage</i>
127	CD-ROM			CRD-8480C	<i>IT Storage</i>
126	CD-ROM	32x		CD-532E	<i>IT Storage</i>
125	CD-ROM	40X		CD-540E	<i>IT Storage</i>
124	CD-ROM	40X		CD-540E	<i>IT Storage</i>
123	CD-ROM	40X		CD-540E	<i>IT Storage</i>
122	CD-ROM	40x		640A	<i>IT Storage</i>
14	Computer	PIII 500 MHz Mid Tower	90CQE	Dimension XPS T500	<i>IT Storage</i>
10	Computer	Dual PIII 733 Raid Server Tower	CIVX6	Precision 420 Model WCP	<i>IT Storage</i>
13	Computer	Dual Xeon 500 Raid Server Tower	32I6W	Precision 610 Model MMP	<i>IT Storage</i>
27	Computer	K6/2 350 MHz Mid Tower PC	98-000800811		<i>IT Storage</i>
12	Computer	Dual Pentium II Server Tower	US92301710	D7141-60200 /D7141T	<i>IT Storage</i>
11	Computer	Dual PIII 733 Raid Server Tower	CIVXA	Precision 420 Model WCP	<i>IT Storage</i>
9	Computer	Dual PIII 733 Raid Server Tower	CIVX4	Precision 420 Model WCP	<i>IT Storage</i>
7	Computer	Pentium II 450 Mid Tower			<i>IT Storage</i>
6	Computer	NLX Desktop Celeron 433	0013928928	E1200-433C	<i>IT Storage</i>
2	Computer	6x86MX PR300 Mini Tower			<i>IT Storage</i>
134	Computer	ATX Desktop w 150 watt PS			<i>IT Storage</i>
15	Computer	Pentium 166 MMX Desktop PC	US75112709	VL5/166 Series 5DT	<i>IT Storage</i>
8	Computer	Dual Xeon 500 Raid Server Tower	32I6U	Precision 610 Model MMP	<i>IT Storage</i>
47	Computer Case	ATX Desktop Case W/PS			<i>IT Storage</i>
4	Computer Case	ATX Mid Tower No P/S			<i>IT Storage</i>
5	Computer Case	ATX Desktop Case W/PS			<i>IT Storage</i>
48	Computer Case	ATX Mid Tower W/PS			<i>IT Storage</i>
46	Copier	PC795	ZTF45026	F131835	<i>IT Storage</i>
33	Fax	IntelliFax	K87315994	1270	<i>IT Storage</i>
34	Fax	Inkjet Fax Machine	MY990E10B5	Model 920	<i>IT Storage</i>
32	Fax		9ECFBO68018	KX-FP105	<i>IT Storage</i>
115	FD	Floppy Drive		FD-235HF	<i>IT Storage</i>
120	FD	Floppy Drive		FD-235HF	<i>IT Storage</i>
119	FD	Floppy Drive		FD-235HF	<i>IT Storage</i>
118	FD	Floppy Drive		FD-235HF	<i>IT Storage</i>
116	FD	Floppy Drive		FD-235HF	<i>IT Storage</i>
114	FD	Floppy Drive		FD-235HF	<i>IT Storage</i>
117	FD	Floppy Drive		FD-235HF	<i>IT Storage</i>
49	Film Cartridge	For KX-FA65 Fax Machine		PFPK1537ZA	<i>IT Storage</i>
75	Hardware Card	Single Channel RAID Controller	4661910967		<i>IT Storage</i>
76	Hardware Card	Single Channel RAID Controller	4661914171		<i>IT Storage</i>

<i>ID</i>	<i>Item Name</i>	<i>Item Description</i>	<i>Serial_Number</i>	<i>Model_Number</i>	<i>Location</i>
70	Hardware Card	16MB RAID Controller	12601-96S-3LMJ	ARO-1130C	IT Storage
69	Hardware Card	16MB RAID Controller	12601-971-3MQ2	ARO-1130C	IT Storage
81	Hardware Card		12690-989-KD43	HFBR5305EC	IT Storage
71	Hardware Card	16MB RAID Controller	12601-96T-3MJ1	ARO-1130C	IT Storage
72	Hardware Card	SCSI Ultra 2 LVD/SE	BD0B92106V8	AAA-131U2	IT Storage
74	Hardware Card	Dual Channel RAID Controller	66-043053;69-010167	SX4030/1UW;PM333 4UW	IT Storage
90	Hardware Card	PCI 10/100 NIC	HBB168ABF5	3C905C-TXM	IT Storage
82	Hardware Card	Fibre Channel Adapter	13550-98V-8091		IT Storage
83	Hardware Card	Fibre Channel Adapter	13550-98V-8094		IT Storage
84	Hardware Card	Fibre Channel Adapter	13550-98V-8090		IT Storage
85	Hardware Card	PCI 10/100 NIC	00D0B72C3305 51913 721383-008		IT Storage
86	Hardware Card	PCI 10/100 NIC	00D0B71C0146 45913 721383-008		IT Storage
87	Hardware Card	PCI 10/100 NIC	009027B0A124 32913 735190-002		IT Storage
73	Hardware Card	3 Channel RAID Controller	76-000265;74-000192	SX4030/2UDW;PM333 34UW	IT Storage
89	Hardware Card	PCI 10/100 NIC	HBB168B9AC	3C905C-TXM	IT Storage
77	Hardware Card	Single Channel RAID Controller	4661914560		IT Storage
91	Hardware Card	PCI ATA-66 Controller	50721-9B3-4694	Ultra66	IT Storage
92	Hardware Card	PCI ATA-66 Controller	50721-9B3-4675	Ultra66	IT Storage
93	Hardware Card	PCI ATA-66 Controller	50721-9B3-4692	Ultra66	IT Storage
94	Hardware Card	Rage Pro AGP Video Card	(01)00727419498020(21)	1024980210 016617	IT Storage
95	Hardware Card	6326 AGP Video Card	1918003624	VL01-AVHD/8MB	IT Storage
80	Hardware Card		12690-989-KCO8	HFBR5305EC	IT Storage
79	Hardware Card		12690-989-KCNZ	HFBR5305EC	IT Storage
78	Hardware Card	Single Channel RAID Controller	4661913505		IT Storage
88	Hardware Card	PCI 10/100 NIC	009027B0A4CD 32913 735190-002		IT Storage
129	Hub	8 port	845000127	EWHUB	IT Storage
68	Keyboard	PS/2 Ergonomic			IT Storage
64	Keyboard	104 PS/2		NBK-2104-5/S	IT Storage
67	Keyboard	104 PS/2		MK-105	IT Storage
66	Keyboard	104 PS/2		SK-720	IT Storage
65	Keyboard	104 AT		E03600QL-C	IT Storage
60	Keyboard	QuietKey 104 PS/2		SK-8000	IT Storage
63	Keyboard	104 PS/2		E06350US001-C	IT Storage
57	Keyboard	QuietKey 104 PS/2		RT7D5JTW	IT Storage
62	Keyboard	104 PS/2		G9900	IT Storage
56	Keyboard	104 AT		E03600QL-C	IT Storage
55	Keyboard	K280W 104 PS/2		E05305US205-C	IT Storage
61	Keyboard	Black 104 PS/2 W/Teackball		SK-3200	IT Storage
59	Keyboard	QuietKey 104 PS/2		AT101W	IT Storage
58	Keyboard	QuietKey 104 PS/2		SK-1000REW	IT Storage
17	Monitor	Q51-3	CDS2701860	VCDTS21487-3M	IT Storage

LN: 034642 (5)

<i>ID</i>	<i>Item Name</i>	<i>Item Description</i>	<i>Serial_Number</i>	<i>Model_Number</i>	<i>Location</i>
18	Monitor	Q51	BD83200373	VCDTS21456	IT Storage
20	Monitor	LV556	97MLB0012504	L503BGD	IT Storage
38	Monitor	Trinitron	1448035	D1025TM	IT Storage
21	Monitor	LV556	97MLB0012266	L503BGD	IT Storage
22	Monitor		22794FB7KB89	828FI	IT Storage
23	Monitor		22794FB7K989	828FI	IT Storage
24	Monitor		22794FB7L889	828FI	IT Storage
25	Monitor	E641	AE84901652	VCDTS21454-3M	IT Storage
19	Monitor	LV556	97MLB0012479	L503BGD	IT Storage
43	Monitor	EV700-7000965	MI54IA620099	YE0711-01	IT Storage
45	Monitor	Multi-Scan	1282028655	KD-7310	IT Storage
1	Monitor	Ultra Scan Trinitron	9171RB12ZT99	P1110	IT Storage
36	Monitor	E771	DH91906067	VCDTS21445-3M	IT Storage
44	Monitor	EV700-7000965	MI54IA612535	YE0711-01	IT Storage
42	Monitor	EV700-7000828	MIA8J1012143	E7006	IT Storage
41	Monitor	EV700-7000828	HDA8J6028846	E7006	IT Storage
40	Monitor	Trinitron	1780R-DJZYM-89	M770	IT Storage
39	Monitor	Trinitron	1449141	D1025TM	IT Storage
37	Monitor	EA771	JM84359108	VCDTS21349-1M	IT Storage
29	Multifunction	OfficeJet 520	US81KA41PF	C3801A	IT Storage
28	Multifunction	OfficeJet 520	US74PA60HG	C3801A	IT Storage
31	Multifunction	OfficeJet Color 630	MY93GC11J9	C3801A	IT Storage
30	Multifunction	OfficeJet 520	MX83QB1CM9	C3801A	IT Storage
26	Paper Shredder	Powershred	060 990205 A 151 00132957	PS 60CC	IT Storage
16	Printer	6 PPM LaserJet 1100	USLD040128	C4224A	IT Storage
35	Printer	Stylus Photo EX Inkjet	ASD0042917	P953A	IT Storage
111	Speaker	Generic			IT Storage
108	Speaker			HK 195	IT Storage
113	Speaker				IT Storage
112	Speaker			SP-691	IT Storage
109	Speaker			HK 195	IT Storage
110	Speaker	Generic			IT Storage
96	Speaker			GCS100	IT Storage
107	Speaker			HK 195	IT Storage
106	Speaker			HK 195	IT Storage
105	Speaker			HK 195	IT Storage
103	Speaker			HK 195	IT Storage
102	Speaker	Sub Woofer			IT Storage
101	Speaker	SubWoofer		Model 25	IT Storage
100	Speaker			AC5340	IT Storage
99	Speaker			SBS52	IT Storage

CN: 034642 (D)

<i>ID</i>	<i>Item Name</i>	<i>Item Description</i>	<i>Serial_Number</i>	<i>Model_Number</i>	<i>Location</i>
97	Speaker			SBS52	IT Storage
98	Speaker			SBS52	IT Storage
104	Speaker			HK 195	IT Storage
50	Toner Cartridge	For Color LaserJet		C4150A	IT Storage
52	Toner Cartridge	For Color LaserJet		C4151A	IT Storage
54	Toner Cartridge	For LaserJet 8100 Series		C4182X	IT Storage
51	Toner Cartridge	For Color LaserJet		C4152A	IT Storage
53	Toner Cartridge	For Color LaserJet		C4149A	IT Storage
3	Tower PC	K6/2 350MHz Mid Tower	98-000800815		IT Storage
130	UPS	UPS Pro 650	NB9919220675	BP6506	IT Storage
131	USB Card	Acceleport USB8			IT Storage
132	USB Card	Acceleport USB8			IT Storage
133	USB Card	Acceleport USB8			IT Storage

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SEARCH WARRANT

STATE OF MINNESOTA, COUNTY OF HENNEPIN DISTRICT COURT
TO: MARK HETHERINGTON, (A) PEACE OFFICER(S) OF THE STATE OF MINNESOTA.

WHEREAS, MARK HETHERINGTON has this day on oath, made application to the said Court applying for issuance of a search warrant to search the following described Premises, :

1400 West Broadway Avenue Minneapolis, MN.

located in the City of Minneapolis, County of Hennepin STATE OF MINNESOTA for the following described property and things:

Refer to attached property document sheets (six pages) and all other properties established to have been stolen from 12345 Portland Avenue South Burnsville, MN.

Indicators of occupancy/control/use/ of the premises to be searched.

WHEREAS, the application and supporting affidavit of Mark Hetherington was/were duly presented and read by the Court, and being fully advised in the premises.

NOW, THEREFORE, the Court finds that probable cause exists for the issuance of a search warrant upon the following grounds:

1. The property above-described was stolen or embezzled.
3. The possession of the property above-described constitutes a crime.
5. The property above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.

The Court further finds that probable cause exists to believe that the above-described property and things are at the above-described premises,

NOW, THEREFORE, YOU MARK HETHERINGTON THE PEACE OFFICER(S) AFORESAID, AND ALL OTHER PERSONNEL UNDER YOUR DIRECTION AND CONTROL ARE HEREBY COMMANDED BETWEEN THE HOURS OF 7:00 A.M. AND 8:00 P.M. ONLY TO SEARCH THE DESCRIBED PREMISES, FOR THE ABOVE-DESCRIBED PROPERTY AND THINGS, AND TO SEIZE SAID PROPERTY AND THINGS AND TO DELIVER CUSTODY OF SAID PROPERTY AND THINGS TO PROPERTY WILL BE TAGGED/PHOTOGRAPHED/AND RELEASED TO THE PROPER INSURANCE REPRESENTIVES FOR STORAGE.

BY THE COURT:



JUDGE OF DISTRICT COURT

Dated: August 12, 2003

(Roe)

1 let's put it that way.

2 Q. Did you ever meet with Mr. Burnett to talk about
3 him taking those computers back?

4 A. We have talked at different times.

5 Q. How many times do you think you met with him and
6 talked about that subject?

7 A. Two, three times.

8 Q. Were you ever in a meeting with Mr. Burnett and
9 Jason when you talked about that subject?

10 A. I have been with -- yep.

11 Q. Did Mr. Burnett claim that SENDMYGIFT still owned
12 those computers?

13 A. I don't think so.

14 I always have -- a guy that works for me, Doug
15 Bell, I have him come with me.

16 Q. What's his name?

17 A. Doug Bell.

18 Q. Doug Bell?

19 A. Yeah, I have him come with me at meetings like
20 that, so he can remember things that I don't
21 remember.

22 Not that my memory's not good. I do that
23 because I might miss something that he'll be able
24 to catch onto, and vice versa.

25 Q. So are you telling me that Mr. Burnett never made a

1 claim that those computers belonged to him after
2 the closing?

3 A. Oh, I think he had made certain claims at different
4 times that that was -- you know, that those bigger
5 computer things, you know, were his, and, you know,
6 and he wanted them, you know.

7 And I said, "Well, you know, I think I own
8 them," you know. "One thing for sure, rent ain't
9 cheap. And, you know, why would I want your stuff
10 in my building?"

11 Q. Did you ever talk to him about what he should pay
12 for rent for those computers?

13 A. No, I don't think we ever had that discussion.

14 Q. Did you ever meet with Mr. Louks and Mr. Burnett
15 talking about who owned those computers?

16 A. All three of us together, you mean?

17 Q. Yeah.

18 A. I don't believe so.

19 Q. Do you remember a meeting at Richmond's with
20 Mr. Louks and Jason and Mr. Burnett?

21 A. I go there a lot, and I see a lot of people. I'm
22 not saying that maybe we weren't there together. I
23 just don't recall that, you know, conversation.

24 Q. Do you remember getting a letter from me saying
25 that --

- 1 A. Yeah. Well, he's in Brooklyn Center, or somewhere.
- 2 Q. What agency is he with?
- 3 A. He's with Brouillette Agency.
- 4 Q. How do you spell that?
- 5 A. I think it's B-r-o-u-i-l-l-e-t-e, (sic.) or
- 6 something like that. Brouillette.
- 7 Q. Do you remember talking to Monte Franz?
- 8 A. Yes.
- 9 Q. He was an insurance adjuster?
- 10 A. He was the adjuster they had hired. I think Zurich
- 11 hired him to --
- 12 Q. Do you remember what value you told him you thought
- 13 was probably missing?
- 14 A. I think, again, Tom Moline talked to him probably
- 15 more than I did. I actually let the -- I think I
- 16 had let -- I had talked to him, but I think I had
- 17 let Doug Bell and Tom Moline talk to him more than
- 18 I did.
- 19 Q. What did Doug Bell know about the equipment values?
- 20 A. He didn't know anything about it. I was just too
- 21 busy to talk to the guy too long.
- 22 Q. So Tom Moline would have been the one that would
- 23 have --
- 24 A. Tom Moline would have been the one that -- he works
- 25 for my tenant, who is C & L Communications. He

1 A. Four to six hundred thousand, I think I told -- not
2 this guy. I think I told -- oh, what's his name.
3 The guy at Zurich.

4 Q. Paul DeAtley?

5 A. Yes, Paul DeAtley.

6 Q. Okay.

7 A. And there was another gentleman that came down.
8 And I met him. And I can't recall his name. But
9 he was the one that we visited with also.

10 Most of the time, when it got down to numbers
11 and things, you know, maybe Tom Moline said -- I
12 mean I have no clue what that stuff -- I have
13 absolutely no clue what it's worth. To me, I don't
14 use it, so it ain't worth -- you know, it's worth
15 what it's worth.

16 Q. You knew that Mr. Burnett claimed that SENDMYGIFT
17 still owned all that computer equipment?

18 A. Yes.

19 MR. HOILAND: Mark those, please.

20 (Shiber Deposition Exhibit Nos. 12 and
21 13 marked for identification.)

22 BY MR. HOILAND:

23 Q. This is a statement by Tom Moline that he gave. I
24 don't know if he gave it to the police or the
25 insurance company.

I was approached in June of 2001 by Mark Doan and Jim Louks to participate in the formation of a new company - FiberPOP -. FiberPOP is a company to design, construct and manage open-access municipal area networks.

At that time the owners of the company were Jim Louks, Daryl Schiber, John Cameron, Tom Dunsmore. The building at 12345 Portland Ave South, Burnsville MN 55337 was to be the Corporate Headquarters and Burnsville Data Center. I understood that the building was owned by Daryl Schiber, Bob McGowan and John Cameron. The building and contents had been purchased from Joe Burnett via the Bankruptcy Court (- Case Number 0-35021 - www.mnb.uscourts.gov/ers-bin/mnb-651-main.pl).

In late July 2003 I began work at the building with a group of people - Mark Doan, Kurt Krueger, Jeff Jacobson, Steve Luecken, Jim Louks to clean and organize the building for use by FiberPOP. I initiated an inventory of the building contents and began work on the computer equipment in the building preparing it for use by FiberPOP. According to Daryl Schiber, John Cameron, and Jim Louks the equipment was owned by them and was to be configured for use by FiberPOP. A number of times Joe Burnett and Jason Roth came to the building and indicated that they owned the equipment. According to Daryl Schiber, John Cameron, Jim Louks this was not the case.

The equipment was utilized until March 2003(approx) when the power to the building was shut off for non-payment. Efforts to get the primary owners to pay the bill were not successful.

On June 25, 2003 Daryl Schiber called and told me that the building had been burglarized and needed inventory information to provide police. I printed out copies of information that I had and met with Daryl Schiber, Doug Bell, Jim Louks at the building with Burnsville Police around 3:00pm. I was allowed to walk through part of the building to view what was missing with Jim Louks and the original investigating officer.

On June 29, 2003 I called Daryl and requested entry to the building to do inventory and make complete list of missing items.

On July 10, 2003 I called Daryl to get number for Burnsville Police.

On July 14, 2003 I met with Doug Bell at the building and did a complete walkthrough - up until my flashlight batteries died and made notes of apparently missing items. Noticed that the glass tops to the end tables from the entry foyer were laying on top of a glass display case at the rear entrance. The pedestal and chairs from a patio set that originally was in the executive office was now in the FiberPOP office (North Second Floor). The trash compactor control unit in shipping/receiving area had be moved - appears to have been struck by forklift.

The amount and types of items taken from the building seem to indicate that Joe Burnett may be the culprit. There are any number of difficult to remove items - cases of clocks from the center warehouse, harley-davidson bicycle from rear warehouse, cases of "Clown Bingo" etc. - that would be worthless to anyone but Joe. The selective removal of items from the building appears to have only been items that Joe Burnett would require for his business.

The computer equipment removed from the Computer Operations Center would require extensive time in the building to tear down. In addition a fork-lift would be required to move the items from the second floor to the loading dock. There are a number of light fixtures - lamps - that have been moved from original locations to places that a generator would be used to provide light.

The engineering office on the second floor ceiling appears to have been damage and I believe that someone went through the ceiling to the equipment room. There is a wall vent that has been removed above the ceiling leading into the Computer Operations Center and it would appear that entry was made through these areas to circumvent the door locks. The amount of equipment removed from the building would require a large crew and a enormous amount of time to accomplish. From the items that have been moved from original locations in the building and are now near the loading dock area one could see that either the "truck was full" or that the movement of materials from the building had been interrupted for some reason.

The interesting items missing from the building are the file cabinets that contained information vital to FiberPOP. The cabinet taken from my office contained detailed information on the computer equipment in the building - maintenance, configuration, location, pictures etc. The desks, chairs and file cabinets from the North 2nd Floor FiberPOP office have been taken. In addition a number of antiques have been taken.

I have informed Daryl Schiber that it would be necessary to do a complete inventory of the building and that this would require that the electricity be turned on.

As of this writing the electricity is still off at the building and no one has offered to pay for any of the necessary work required to develop complete lists of missing item.

I contacted Daryl Schiber and asked if for any information regarding Joe Burnett. He said that Joe has a building near 1400 West Broadway (Minneapolis I think). My thoughts are that Joe needs to

CN: 03-4642

impress some of the investors who are involved in his bankruptcy and showing them some operational computer assets would help considerably.

From the meetings that I had at the building the items removed were taken some time between June 6, 2003 (I met with Bob McGowan and Daryl Schiber at the building) and June 25, 2003. The volume of items taken - Cases of SendMyGift.com items, Furniture, Computers, etc would easily fill a large semi trailer. The number of people required to remove these items would be large in either bodies or man-hours.

Tom Moline
852 9th Ave SW
Faribault, MN 55021
(507)331-7330

03
03
03

August 20th 2002

Sendmygifts.com, Inc.
1400 West Broadway
Minneapolis, MN. 55411

To whom it may concern;

I, Daryl Shiber represent to the best of my knowledge. That the conditional term contained in the purchase agreement between Sendmygifts.com and KGS LLC.. Which was for Sendmygifts.com to reserve a room at the building described as (12' x 36' that was for housing the seller's main computers) was maintained for the 60 days that was called for in agreement and is still reserved for that to this date.

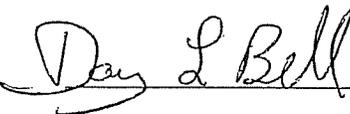
I would also like to express that this is prohibiting KGS LLC to configuring this space for use at the building in Burnsville MN.

Sincerely,

Daryl Shiber



Witness



EXHIBIT

K

00113

To Cal Ladd 952-844-60⁹⁹~~5E~~

From David Hoiland phone: 573-3686

Buyer shall allow Seller to hold over, for 60 days following the closing date, that room in the property that houses Seller's main computers. The "Computer Room" is a space about 12 feet by 36 feet. Buyer shall provide Seller with full access and utility services, as are currently in place, throughout the 60 day holdover period.

SUSPECTS:

- DARYL HARRY SHIBER DOB:06-15-43
6629 LYNWOOD BLVD RICHFIELD, MN 55423
- JOSEPH ANTHONY BURNETT DOB:03-24-55
2117 87TH TRAIL NORTH BROOKLYN PARK, MN 55443

SUPPLEMENTAL:

On 12-11-03 at approximately 1200 hours, above officer received information from **Paul D. De Atley** (DA) who indicated he was an employee of Zurich North America. DA stated that Zurich North America had denied an insurance claim submitted by **Daryl Harry Shiber DOB 06-15-43**, and that his organization does not want to pursue (at the moment) an insurance fraud investigation regarding his claim. Shiber initially reported a burglary to the BPD on 06-25-03, and he stated it occurred at 12345 Portland Avenue South. Refer to the BPD reports for more details. DA also submitted information from Zurich North America regarding Shiber's insurance claim, and refer to their attached memo for more details.

It should also be noted that Shiber has never provided/demonstrated any proof to the BPD that the property removed from his building belonged to him, and he reported that loss to his insurance company (Zurich North America). It was later discovered that **Joseph Anthony Burnett DOB 03-24-55** had removed the property from Shiber's building without his permission, however, Burnett indicated the property reported stolen to the BPD by Shiber belonged to him. Both parties indicated a purchase agreement for this property was arranged in civil court. Neither party had properly demonstrated to above officer who rightfully owned the property.

It should also be noted that Shiber will be considered as a suspect in an insurance fraud until he can legally document the property he submitted in his insurance claim to Zurich North America belonged to him. Burnett will also be considered a burglary suspect, because he had admitted to going to the location and hiring a moving crew to remove the property from Shiber's building. Burnett stated he left money (cash) with one of Shiber's employees to leave the door open at 12345 Portland Avenue South so he could get his property out of Shiber's building. No other action will be taken by above officer at the current moment.

Case status: inactive

#92 Hetherington

12/11/03 DA

