

GLOBAL DIRECT SALES, LLC, PENOBSCOT	)	
INDIAN NATION, CHRISTOPHER RUSSELL,	)	
and RYAN HILL,	)	Case No.: 8:08-cv-02468
	)	
Plaintiffs,	)	
	)	
-v-	)	
	)	
AARON KROWNE, individually, and d/b/a THE	)	
MORTGAGE LENDER IMplode-O-METER	)	
and ML-IMplode.COM, KROWNE	)	
CONCEPTS, INC., IMplode-EXPLODE	)	Assigned:
HEAVY INDUSTRIES, INC. JUSTIN	)	Hon. Deborah K. Chasanow
OWINGS, KRISTA RILEY, STREAMLINE	)	
MARKETING, INC. and LORENA LEGGETT,	)	
	)	
Defendants.	)	
	)	

1

3. While some DAP programs are operated through legitimate charities, on May 4, 2006, the IRS released a statement calling those seller-funded DAPs that masquerade as “charities” to funnel down-payment assistance indirectly from sellers to buyers, “scams.” Attached hereto as Exhibits B is a true and correct copies of the IRS statement.

4. Plaintiffs’ webpage for the Grant America Program, located at <http://www.downpaymentalliance.org/>, announces that:

Effective October 1, 2008, FHA has enacted new guidelines regarding the use of down payment assistance. The Grant America Program will not accept new applications after December 10, 2008 and all gift transactions must close by December 31, 2008.

Attached hereto as Exhibit C is a true and accurate copy of the Plaintiffs’ Grant America Program webpage.

5. Attached hereto as Exhibit D is a true and accurate copy of the Declaration of Krista Railey, formerly submitted in support of Defendant’s Memorandum of Law in Opposition to Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction.

6. On September 10, an individual purporting to be Plaintiff Christopher Russell submitted a comment in reply to Ms. Railey’s Article. Attached hereto as Exhibit F is a true and accurate copy of the comment submitted for moderated review.

7. On September 19, 2008, Plaintiffs filed suit in the United States District Court of Maryland, alleging defamation, libel, and unfair business practices. A true and accurate copy of Plaintiffs’ complaint is attached as Exhibit G.

8. Plaintiffs’ complaint asserts that beginning in or about June 2008, Defendant Lorena Leggett repeatedly solicited Plaintiffs to advertise on Defendants’ website, and that in August 2008, Plaintiff refused to advertise on Defendants’ website. *See* Exhibit G at ¶ 3.

9. Plaintiffs did not serve Defendants with a copy of the complaint as required under the Federal Rules of Civil Procedure. In lieu of service, Plaintiffs' counsel Michael Braunstein forwarded a "courtesy copy of the electronic receipt" of filing to Defendants via electronic mail. Attached hereto as Exhibit H is a true and accurate copy of Michael Braunstein's email, dated September 22, 2008.

10. At no time before Defendants received a copy of the complaint did Plaintiffs inform Defendants as to which statements were potentially inaccurate or defamatory.

11. Plaintiffs filed a motion for preliminary injunction on September 26, 2008. This motion was denied by the court on November 3, 2008. Attached hereto as Exhibits I and J are true and accurate copies of Plaintiffs' memorandum in support of preliminary injunction and the relevant excerpt of a transcript of this Court's November 3, 2008, proceedings denying the motion, respectively.

12. Attached hereto as Exhibit K is a true and accurate copy of the Fiscal and Policy Note for House Bill 930, entitled "Qualified Immunity from Civil Liability - SLAPP Suits."

13. Attached hereto as Exhibit L is a true and accurate copy of "Financial Rescue Nears GDP as Pledges Top \$12.8 Trillion," by Mark Pittman and Bob Ivry, accessed at <http://www.bloomberg.com>.

14. Attached hereto as Exhibit M is a true and accurate copy of "Unemployment Figures Cloud Recovery Hopes," by Kimberly Dozier, accessed at <http://www.cbsnews.com>.

15. Attached hereto as Exhibit N is a true and accurate copy of a letter sent by Plaintiffs' counsel Michael Braunstein to Defendants' counsel Julie Turner on September 25, 2008.

16. Attached hereto as Exhibit O is a true and accurate copy of a letter sent by Plaintiffs' counsel Michael Braunstein to Defendants' counsel Julie Turner, also sent on September 25, 2008.

I declare under penalty of perjury under the laws of the State of Maryland and the United States that the foregoing is true and correct, and that this declaration was executed on November 10, 2009 in Palo Alto, California.

/s/ Julie S. Turner /s/  
Julie S. Turner

## **EXHIBITS**

Exhibit A	
GAO Report to the Chairman, Subcommittee on Housing and Community Opportunity .....	1
Exhibit B	
Article: IRS Targets Down-Payment-Assistance Scams: Seller-Funded Programs Do Not Qualify as Tax Exempt .....	8
Exhibit C	
Grant America Program Homepage .....	10
Exhibit D	
Declaration of Krista Railey .....	12
Exhibit E	
Article: What the SFDPA Administrators Don't Want You to Know: Part 1, The Penobscot Tribe Down Payment Grant Program .....	19
Exhibit F	
Comment by Plaintiff Russell .....	24
Exhibit G	
Complaint.....	26
Exhibit H	
Email from Michael Braunstein, Sept. 22, 2008.....	32
Exhibit I	
Plaintiffs' Memorandum in Support of Preliminary Injunction .....	35
Exhibit J	
Hearing Transcript, Nov. 11, 2008 .....	39
Exhibit K	
Fiscal and Policy Note: Qualified Immunity from Civil Liability – SLAPP Suits .....	45
Exhibit L	
Article: Bloomberg.com – Financial Rescue Nears GDP as Pledges Top \$12.8 Trillion .....	48
Exhibit M	
Article: CBSNews.com – Unemployment Figures Cloud Recovery Hopes .....	51
Exhibit N	
Letter from Michael Braunstein, Sept. 25, 2008.....	53
Exhibit O	
Letter from Michael Braunstein, Sept. 25, 2008.....	55

# Exhibit A

GAO

Report to the Chairman, Subcommittee  
on Housing and Community Opportunity,  
Committee on Financial Services, House  
of Representatives

---

November 2005

# MORTGAGE FINANCING

## Additional Action Needed to Manage Risks of FHA-Insured Loans with Down Payment Assistance



G A O

Accountability ★ Integrity ★ Reliability

GAO  
Accountability-Integrity-Reliability

# Highlights

Highlights of [GAO-06-24](#), a report to the Chairman, Subcommittee on Housing and Community Opportunity, Committee on Financial Services, House of Representatives

## Why GAO Did This Study

The Federal Housing Administration (FHA) permits borrowers to obtain down payment assistance from third parties; but, research has raised concerns about the performance of loans with such assistance. Due to these concerns, GAO examined the (1) trends in the use of down payment assistance with FHA-insured loans, (2) the impact that the presence of such assistance has on purchase transactions and house prices, (3) how such assistance influences the performance of these loans, and (4) FHA's standards and controls for these loans.

## What GAO Recommends

The Secretary of Housing and Urban Development should direct the FHA Commissioner to implement additional controls to manage the risks associated with loans that involve down payment assistance. Such controls could involve considering the presence and source of down payment assistance when underwriting loans. Further, the FHA Commissioner should consider additional controls for loans with down payment assistance from seller-funded nonprofits. In written comments, HUD generally agreed with the report's findings. HUD also commented on certain aspects of selected recommendations.

[www.gao.gov/cgi-bin/getrpt?GAO-06-24](http://www.gao.gov/cgi-bin/getrpt?GAO-06-24).

To view the full product, including the scope and methodology, click on the link above. For more information, contact William B. Shear at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov).

## MORTGAGE FINANCING

### Additional Action Needed to Manage Risks of FHA-Insured Loans with Down Payment Assistance

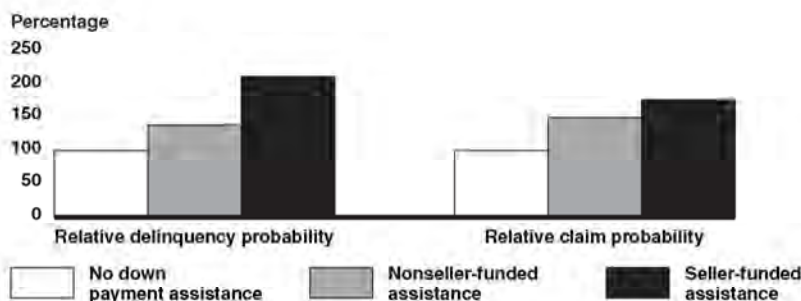
#### What GAO Found

Almost half of all single-family home purchase mortgages that FHA insured in fiscal year 2004 had down payment assistance. Nonprofit organizations that received at least part of their funding from sellers provided assistance for about 30 percent of these loans and represent a growing source of down payment assistance. However, assistance from seller-funded nonprofits alters the structure of the purchase transaction. First, because many seller-funded nonprofits require property sellers to make a payment to their organization, assistance from these nonprofits creates an indirect funding stream from property sellers to homebuyers. Second, GAO analysis indicated that FHA-insured homes bought with seller-funded nonprofit assistance were appraised at and sold for about 2 to 3 percent more than comparable homes bought without such assistance.

Regardless of the source of assistance and holding other variables constant, GAO analysis indicated that FHA-insured loans with down payment assistance have higher delinquency and claim rates than do similar loans without such assistance. Furthermore, loans with assistance from seller-funded nonprofits do not perform as well as loans with assistance from other sources. This difference may be explained, in part, by the higher sales prices of comparable homes bought with seller-funded assistance.

Although FHA has implemented some standards and controls on loans with down payment assistance, stricter standards and additional controls could help in managing the risks these loans pose. FHA standards permit assistance from seller-funded nonprofits; in contrast, mortgage industry participants restrict such assistance. Further, government guidelines call for routine identification of risks that could impede meeting program objectives; however, FHA has not conducted routine analysis of the performance of loans with down payment assistance.

Effect of Down Payment Assistance on the Probability of Delinquency and Claim



Note: Loans without assistance are set at 100 percent. Data are from a national sample of FHA-insured loans from 2000, 2001, and 2002; and the analysis controlled for selected variables.





United States Government Accountability Office  
Washington, D.C. 20548

November 9, 2005

The Honorable Bob Ney  
Chairman  
Subcommittee on Housing and Community Opportunity  
Committee on Financial Services  
House of Representatives

Dear Mr. Chairman:

Mortgage insurance provided by the Federal Housing Administration (FHA) of the U.S. Department of Housing and Urban Development (HUD) insures billions of dollars in private home loans each year. One of FHA's primary goals is to expand homeownership opportunities for first-time homebuyers and other borrowers who would not otherwise qualify for conventional mortgages on affordable terms. Homebuyers who receive FHA-insured mortgages often have limited funds and, to meet the 3 percent borrower investment FHA requires, may obtain down payment assistance from a third party, including not only a relative but also a charitable organization (nonprofit) that is funded by the property seller. A purpose of a down payment is to create "instant equity" for the new homeowner, and our work and others have shown that loans with greater owner investment generally perform better.<sup>1</sup> HUD's Office of Inspector General (OIG) has raised concerns about the performance of FHA-insured loans with down payment assistance from seller-funded nonprofits.<sup>2</sup> In light of these concerns, you asked us to evaluate how FHA-insured home loans with down payment assistance perform compared with loans that are originated without such assistance. The insurance program is supported in part through insurance premiums that FHA charges its borrowers, and FHA estimates that the mortgage insurance fund operates at a profit. In

<sup>1</sup>GAO, *Mortgage Financing: FHA's Fund Has Grown, but Options for Drawing on the Fund Have Uncertain Outcomes*, GAO-01-460 (Washington, D.C.: Feb. 28, 2001). GAO, *Mortgage Financing: FHA Has Achieved Its Home Mortgage Capital Reserve Target*, GAO/RCED-96-50 (Washington, D.C.: Apr. 12, 1996). Dennis R. Capozza, Dick Kazarian, and Thomas A. Thomson. "Mortgage Default in Local Markets," *Real Estate Economics*, vol. 25 no. 4 (Winter 1997).

<sup>2</sup>HUD Office of Inspector General, *Final Report of National Audit; Down Payment Assistance Programs; Office of Insured Single Family Housing*, 2000-SE-121-0001 (Seattle, Wash.: Mar. 31, 2000); HUD Office of Inspector General, *Follow Up of Down Payment Assistance Programs Operated by Private Nonprofit Entities*, 2002-SE-0001 (Seattle, Wash.: Sept. 25, 2002).

---

response to your request, this report examines (1) trends in the use of down payment assistance in FHA-insured loans (e.g., volume and source), (2) the impact that the presence of down payment assistance has on the structure of the purchase transaction and the house price of FHA-insured loans, (3) the effect of down payment assistance on the performance of FHA-insured loans, and (4) the extent to which FHA standards and controls for loans with down payment assistance are consistent with government internal control guidelines and mortgage industry practices.

To describe trends in the use of down payment assistance with FHA-insured loans, we obtained loan-level data from HUD on single-family purchase money mortgage loans.<sup>3</sup> We analyzed the data by source of assistance to determine trends in loan volume and the proportion of loans with down payment assistance (including geographic variations). To examine the structure of the purchase transaction for loans with and without down payment assistance, we reviewed HUD policy guidebooks and reports and interviewed real estate agents, lenders, appraisers, and other key players involved in transactions with down payment assistance. To examine how down payment assistance impacted the house price of FHA-insured loans, we examined the sales prices of homes by the use and source of down payment assistance using property value estimates derived from an Automated Valuation Model (AVM).<sup>4</sup> To examine how down payment assistance influences the performance of FHA-insured loans, we obtained from HUD a sample of single-family purchase money loans endorsed in fiscal years 2000, 2001, and 2002 and performance data on those loans (current as of June 30, 2005).<sup>5</sup> To examine the extent to which FHA standards and controls for loans with down payment assistance were consistent with government internal control guidelines, we reviewed FHA regulations and guidelines for loans with down payment assistance and

---

<sup>3</sup>Purchase money mortgage loans are used for the purchase of a home rather than to refinance an existing mortgage. In this report, we analyze purchase money mortgage loans.

<sup>4</sup>Automated Valuation Model (AVM) is a broad term used to describe a range of computerized econometric models that are designed to provide estimates of residential real estate property values. AVMs may use regression, adaptive estimation, neural networking, expert reasoning, and artificial intelligence to estimate the market value of a residence. We assessed the reliability of the HUD and AVM data by discussing the data with knowledgeable HUD officials and staff from the contractor that provided the AVM data and, when possible, comparing the data with similar publicly available data. We determined that the data were sufficiently reliable for our analyses.

<sup>5</sup>All years are fiscal years unless otherwise indicated.

---

compared these with certain internal control standards.<sup>6</sup> We also interviewed mortgage industry participants about the controls they used to manage the risks associated with affordable loan products that permit down payment assistance and, as appropriate, compared their practices with FHA's. We did not verify that these institutions did in fact use these controls. We selected these entities because they offered products intended to expand affordable homeownership opportunities in part by permitting down payment assistance. Appendix I provides a full description of our scope and methodology. We performed our audit work in Boston, Massachusetts, and Washington, D.C., from January 2005 to September 2005 in accordance with generally accepted government auditing standards.

---

## Results in Brief

The proportion of FHA-insured loans that are financed in part by down payment assistance from various sources has increased substantially in the last few years, while the overall number of loans that FHA insures has fallen dramatically. Assistance from nonprofit organizations funded by sellers has accounted for a growing percentage of that assistance.<sup>7</sup> From 2000 to 2004, the total proportion of FHA-insured loans with down payment assistance grew from 35 to nearly 50 percent. Approximately 6 percent of FHA-insured loans in 2000 received down payment assistance from seller-funded nonprofits, but by 2004 nonprofit assistance had grown to about 30 percent. Our analysis showed that those states where the use of nonprofit down payment assistance, primarily from seller-funded nonprofits, was higher than average tended to have lower-than-average house price appreciation rates.

---

<sup>6</sup>GAO, *Internal Control Management and Evaluation Tool*, GAO-01-1008G (Washington, D.C.: August 2001).

<sup>7</sup>Seller-funded down payment assistance programs are supported, in part, by financial contributions and service fees collected by nonprofit organizations from participating property sellers.

# Exhibit B



## **IRS Targets Down-Payment-Assistance Scams; Seller-Funded Programs Do Not Qualify As Tax Exempt**

Describing the  
seller-financed  
programs as  
"Scams"

IR-2006-74, May 4, 2006

WASHINGTON — Organizations that provide seller-funded down-payment assistance to home buyers do not qualify as tax-exempt charities, the Internal Revenue Service said in a ruling released today.

Down-payment-assistance programs provide cash assistance to homebuyers who cannot afford to make the minimum down payment or pay the closing costs involved in obtaining a mortgage. Such programs can qualify as tax-exempt charitable and educational organizations under Internal Revenue Code section 501(c)(3) when properly structured and operated. In Revenue Ruling 2006-27, released today, the IRS provides a detailed discussion of the guidelines – including two examples that meet – and one that fails to meet – the tests for exemption.

The ruling makes it clear that seller-funded programs are not charities because they do not meet the requirements of section 501(c)(3). Increasingly, the IRS has found that organizations claiming to be charities are being used to funnel down-payment assistance from sellers to buyers through self-serving, circular-financing arrangements. In a typical scheme, there is a direct correlation between the amount of the down-payment assistance provided to the buyer and the payment received from the seller. Moreover, the seller pays the organization only if the sale closes, and the organization usually charges an additional fee for its services.

A March 2005 report entitled, "An Examination of Downpayment Gift Programs Administered By Non-Profit Organizations," commissioned by the U.S. Department of Housing and Urban Development (HUD), found that seller-funded down-payment assistance has led to underwriting problems and resulted in an increase in the effective cost of homeownership. A report from November 2005 entitled, "Mortgage Financing: Additional Action Needed to Manage Risks of FHA-Insured Loans with Down Payment Assistance," conducted by the U.S. Government Accountability Office (GAO) found similar results.

"The IRS is increasingly concerned with organizations that are taking advantage of homebuyers who need assistance for a down payment to realize the American dream of homeownership," said IRS Commissioner Mark W. Everson. "So-called charities that manipulate the system do more than mislead honest homebuyers and ultimately jack up the cost of the home. They also damage the image of honest, legitimate charities."

The IRS is examining 185 organizations that operate down-payment-assistance programs. A particular organization's tax-exempt status can be verified using the on-line database at [irs.gov](http://irs.gov) (click on "Charities & Non-Profits" and then click on "Search for Charities"). In addition, the agency has denied applications for tax exemption from over 20 organizations that seek to provide this service and is considering applications from a number of other down-payment assistance organizations.

Revenue Ruling 2006-27 will be published in Internal Revenue Bulletin 2006-21, dated May 22, 2006.

### **Links:**

- [Rev. Rul. 2006-27](#)

[Subscribe to IRS Newswire](#)

# Exhibit C



Effective October 1, 2008, FHA has enacted new guidelines regarding the use of downpayment assistance. The Grant America Program will not accept new applications after December 10, 2008 and all gift transactions must close by December 31, 2008. We regret any inconvenience that this causes.

[Click here to continue...](#)

# Exhibit D



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

GLOBAL DIRECT SALES, LLC, PENOBSCOT )  
INDIAN NATION, CHRISTOPHER RUSSELL )  
and RYAN HILL, )

Case No.: 8:08-cv-02468

Plaintiffs, )

-v- )

AARON KROWNE, individually and d/b/a THE )  
MORTGAGE LENDER IMPLD-O-METER and )  
ML-IMPLODE.COM, KROWNE CONCEPTS, )  
INC., IMplode-EXPLODE HEAVY )  
INDUSTRIES, INC., JUSTIN OWINGS, KRISTA )  
RAILEY, STREAMLINE MARKETING, INC. and )  
LORENA LEGGETT, )

Assigned:  
Hon. Deborah K. Chasanow

Defendants. )

**DECLARATION OF KRISTA RAILEY IN SUPPORT OF DEFENDANTS'**  
**OPPOSITION TO PLAINTIFFS' MOTIONS FOR A TEMPORARY**  
**RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Krista Railey, declare as follows:

1. I am over 18 years of age and competent to testify to the matters below.
2. I make the following statements based on my personal knowledge. If called to testify under oath in a court of law as to the matters set out herein, I could and would do so truthfully.

My background

3. I am a licensed California real estate broker (California Real Estate broker license number 00978970) and mortgage professional, with 20 years in the mortgage and real

estate industry, including loan processing, underwriting, quality control, and agency representation.

4. I am an independent analyst and journalist, whose column, the “FHA Mortgage Whistle Blower,” is hosted on the Mortgage Implode-O-Meter Website. I am not an employee of Aaron Krowne, Justin Owings, or the Mortgage Implode-O-Meter and do not receive story assignments or requests for the Mortgage Implode-O-Meter either in this case or generally.

5. I have been employed by Streamline Marketing Inc. since June 2000, but the Whistle Blower Blog is not owned, operated, or sponsored by Streamline Marketing Inc. I write my articles on my own time from my home in Vista, California. To protect the privacy of my residence, however, I use the Streamline Marketing business address for correspondence.

#### Plaintiffs’ Involvement In Seller-Funded Down-Payment Assistance Programs

6. Plaintiffs Russell and Hill are part of the seller-funded “down-payment assistance program” (DAP) industry, first with The AmeriDream, Inc. company and now with Global Direct Sales, Ltd. and the Penobscot Indian Nation.

7. DAPs are programs that provide money to buyers so they can make down-payments on homes. Many DAPs are seller-funded. In their “purest” form, a seller-funded DAP means that the seller of a home either directly or indirectly “gives” the buyer the 3% down-payments that is required for a loan to be insured by the FHA.

8. HUD guidelines to mortgage lenders prohibit those lenders from counting toward the buyer’s 3% down-payment any monies that the seller gives to the buyer. According to HUD guidelines, the only down-payment grants that may count toward the 3% down-payment are those coming from either tax-exempt charities, governmental agencies, public entities, or

employers. Attached hereto as Exhibit A is the HUD manual "Mortgage Credit Analysis for Mortgage Insurance on One-to Four Family Properties," Chapter 2, Section 2-10 (c) [4155.1 Rev 5], which shows what entities may provide gifts to buyers that can count toward the 3% down-payment requirement.

9. Many seller-funded DAPs are established as non-profit charities in order to circumvent this HUD guideline. Such "charities" act as a third-party intermediary between a seller who is funding the down-payment and his buyer. Sellers typically raise the selling price to make up for the funding they have indirectly provided to the buyers.

10. According to reports by HUD and the U.S. Government Accountability Office, seller-funded DAPs have led to a substantial risk to FHA insurance funds due to increased delinquency rates, and have resulted in an increase in the effective cost of homeownership. Attached hereto as Exhibit B is a true and correct copy of the relevant excerpts of the March 2005 HUD report entitled, "An Examination of Downpayment Gift Programs Administered By Non-Profit Organizations," that I caused to be downloaded from <http://www.hud.gov/offices/hsg/comp/rpts/DAPssist/dpa2.pdf>. Attached hereto as Exhibit C is a true and correct copy of the relevant excerpts of the U.S. GAO report, "Mortgage Financing: Additional Action Needed to Manage Risks of FHA-Insured Loans with Down-payments Assistance," that I caused to be downloaded from <http://www.gao.gov/new.items/d0624.pdf>.

11. While some DAP programs are operated through legitimate charities, on May 4, 2006, the IRS released a statement calling those seller-funded DAPs that masquerade as "charities" to funnel down-payment assistance indirectly from sellers to buyers, "scams," and issued a Revenue Ruling (2006-27) that detailed the guidelines for when DAP organizations can

qualify as “charities.” Attached hereto as Exhibits D and E are true and correct copies of the IRS statement and the Revenue Ruling, respectively.

12. Based on the Revenue Ruling, organizations established for the purpose of providing seller-funded DAPs lost their tax-exempt status, and seller “donations” to such organizations could no longer be deducted as charitable giving. If such organizations were to lose their non-profit status, then any funding they provided to buyers could no longer count toward the buyer’s 3% down-payment requirement for FHA insurance purposes.

13. Shortly after the Revenue Ruling, Russell and Hill, through their company Global Direct Sales, LLC, allied themselves with the Penobscot Indian Nation (“PIN”) in order to establish a government agency-based (rather than charitable) DAP. On January 24, 2007, the PIN tribal counsel passed a resolution establishing the PIN Fair Housing Agency (the “PIN-FHA”). The PIN-FHA established the Grant America Program, a seller-funded DAP venture between PIN and Global Direct Sales.

14. Because PIN is a government and the PIN-FHA is its agency, then monies that sellers funnel to buyers through the Grant America Program could be counted toward the 3% down-payment requirement for U.S. FHA insurance.

15. After the Grant America Program was established, more Indian Nation Agency DAPs sprung up. To address this new vehicle under which sellers were indirectly funding buyers, HUD promulgated new regulations that prohibited all seller-funded down-payment assistance programs, as of October 1, 2007. PIN, on behalf of itself and the Grant America Program, sued HUD, claiming that HUD had not provided sufficient time for public comment. The court vacated the HUD final rule and remanded the matter back to HUD. This led to a

settlement agreement between PIN and HUD, and a Stipulation resolving the case was entered in March 2008. Attached hereto as Exhibit F is a true and correct copy of that Stipulation.

16. To finally address the issue of seller-funded DAPs, Congress passed, and, on July 30, 2008, the President signed into law the Housing and Economic Relief Act of 2008, H.R. 3221. Section 2113 of that Act prohibits, as of October 1, 2008, attribution of any funds a buyer received from any seller-funded DAPs—including ones established with the Indian Nations—toward the minimum buyer down-payment (raised to 3.5% by the same Act) required for FHA-insured mortgages.

17. The battle concerning seller-funded DAPs continues, however. The House of Representatives is currently considering the FHA Seller-Financed Downpayment Reform and Risk-Based Pricing Authorization Act of 2008, H.R. 6694. That Act would allow seller-funded down-payment assistance for FHA loans subject to certain requirements concerning buyer credit scores and risk-based mortgage premiums. Attached hereto as Exhibit G is a true and correct copy of the text of H.R. 6694 that I caused to be downloaded from <http://www.govtrack.us/congress/billtext.xpd?bill=h110-6694>.

The Notoriety of Plaintiffs Hill, Russell and Global Direct Sales, LLC, In The DAP Industry

18. Plaintiffs Russell and Hill, and their companies, Global Direct Sales and AmeriDream, have often been the subject of media interest. They have curried some of that interest through their own press releases.

19. One such article was a feature by Forbes Magazine on Plaintiff Russell and Global Direct Sales. The article summarizes the involvement of Russell and Hill in the seller-funded DAP industry—starting with AmeriDream (which Forbes describes as a “racket”)—and

describes the current venture amongst all the Plaintiffs. Attached hereto as Exhibit H is a true and correct copy of the Forbes article that I caused to be downloaded from [http://www.forbes.com/forbes/2008/0901/042\\_print.html](http://www.forbes.com/forbes/2008/0901/042_print.html).

20. Hill's and Russell's companies, including AmeriDream and the Grant America Program, maintain scores of press releases and commentaries regarding DAPs on their websites.

21. Also publicly available is a letter that Russell wrote to HUD, in his capacity as the "Interim Chairman" of the Homeownership Alliance of Nonprofit Downpayment Providers, urging HUD not to shut down the DAP industry based on an Inspector General's report recommending that HUD do so. This letter can be found on AmeriDream's website at <http://www.ameridream.org/Documents/Letters/HAND-Letter.pdf>.

22. Russell also issued a press release on November 5, 2007, under his own byline, entitled "HUD Defeated by Penobscot Indian Nation over Nationwide Down Payment Program." This press release was published by MortgageMag News, and is available at <http://www.mortgagemag.com/news/2007/1101/1000008597070.htm>.

23. Other publicly available articles and press releases concerning the Plaintiffs can be found at:

- <http://www.reuters.com/article/pressRelease/idUS222720+15-Apr-2008+PRN20080415> and <http://www.mortgagedaily.com/PressReleaseDpfunding032607.asp> (publication of Grant America Program's press release, "Grant America Program Approved By HUD")
- <http://www.marketwatch.com/news/story/new-down-payment-funding-idea-draws/story.aspx?guid=%7BAA2879A8-4495-4C1D-A8CC-E679599DD3DB%7D> ("Home buyer's club: New down-payment funding idea draws regulators' attention"—article about Global Direct Sales);
- <http://www.mortgageloanplace.com/blog/2007/05/14/down-payment-assistance-may-go/> (blog entry titled "Down Payment Assistance May Go" to which Russell published a public response about Grant America Program).

- <http://www.penobscotnation.org/Tribal%20Business%20Links/PINFHA.html> Tribal Business Announcement Creation of Penobscot Indian Nation Fair Housing Administration (PIN-FHA)
- <http://209.85.173.104/search?q=cache:JHrAKRpMuTYJ:rismedia.com/wp/2007-04-14/new-grant-america-program-offers-safe-option-for-low-to-moderate-income-home-buyers/+grant+america+program&hl=en&ct=clnk&cd=5&gl=us&client=safari>

My Article on the Penobscot Indian Nation/Global Direct DAP Program

24. In June of this year, I began developing a series of stories and information resources on DAPs. My interest arose from HUD's attempts to shut down seller-funded DAPs and the DAP providers' attempts to protect them. I have posted these stories on the Mortgage Lender Implode-O-Meter, as well as on an unrelated website called Ticker Forum.

25. I started speaking out about seller-funded DAPs in my June 17, 2008 column, when I wrote a story supporting HUD Commissioner Montgomery's decision to publish a revised rule and to reopen the comment period. I also wrote an entry on July 13, 2008 entitled: "The FHA Delinquency Crisis: 1 in 6 Borrowers in Default," which correlated the increase in seller-funded DAPs to the FHA's rising delinquency rate. On September 17, 2008, I also reported on the House mark-up hearing for H.R. 6694.

26. Normally, when I post my column, I first post the entries for internal review by the Mortgage Implode-O-Meter website. After an entry has been reviewed, and I have had the opportunity to edit the posting, I receive a notice to publish the entry on the site and then publish the entry for public viewing. When a member of the public views an entry, that person can post a comment or response to the entry. I receive these comments, and review and approve them before they are posted on the website.

27. On September 9, 2008, I posted for internal review an article I had been drafting about the Penobscot Indian Nation DAP. A copy of this draft article was attached as Exhibit E to the Russell Certification filed in support of Plaintiffs' Motions ("Russell Certification").

28. On September 10, 2008, I had not yet provided a request to publish the article as I was continuing to edit the piece. I was surprised, therefore, to receive comments on the article, because I believed that the article was not yet available to the public for viewing. The comment was from Christopher Russell, who threatened to sue me. Attached hereto as Exhibit I is a true and correct copy of that comment.

29. I immediately forwarded Russell's comment to administrators for the Mortgage Implode-O-Meter website. Within 45 minutes of receiving Mr. Russell's comment, the draft article had been permanently removed from the website.

30. Following additional verifications and revisions, I posted the final version of the article on September 15, 2008. The final version included a link to Mr. Russell's comments on the initial draft article. Attached hereto as Exhibit J is a true and correct copy of the article posted on September 15, 2008.

31. I fully researched everything that appeared in both the September 9 draft version and September 15 final version of the article, and both versions included links to supporting materials on which my article was based.

32. My research included, among other things, reading transcripts from Congressional hearings about Plaintiffs. I also read articles published in reputable papers such as the New York Times and Forbes Magazine. I also researched website registrations of various websites connected to Global Direct Sales, LLC, Russell, and Hill, and stored information and documents posted to those websites. I read numerous reports about DAPs, FHA insurance, the tax treatment



of DAPs, and other related topics, issued by such agencies as HUD, the U.S. GAO and the IRS. My research also included interviewing Plaintiff Christopher Russell. I also located and analyzed corporate formation documents, AmeriDream non-profit tax returns, public and court records, and an arbitration settlement related to the Plaintiffs.

33. I provided links to over 20 of the documents on which I relied in the article itself, so that readers could confirm for themselves what was said in my article.

34. I have reviewed the statements about which the plaintiffs complain in their defamation complaint. Without getting into the original underlying support for the following statements, I note that the following statements were present only in the September 9 draft article, and not in the final September 15 article:

- a. "The Penobscot Indian Tribe's Grant America Program is a scam."
- b. "Russell and Hill treated AmeriDream like their own personal piggy bank."
- c. "The Dp funder is another type of seller-funded down-payments scam."

35. I stand behind all of the statements I have made in my article about the Plaintiffs, and I believe each and every one of them to be based in truth and supported by my research.

36. Following is a table of statements that Plaintiffs have identified as "defamatory," coupled with documents supporting those statements:

STATEMENT	SUPPORT
Russell had a copycat website of AmeriDream.	See Ex. K (showing an arbitration decision noting that the Russell site is confusingly similar).
Russell and Hill created a new venture known as the Dp Funder Program and the Owner's Alliance.	See Exhibits L, M, N and O, true and correct copies of which are attached hereto (showing that the DpFunder Website is copyrighted to Global Sales LLC; that Global Direct Sales, LLC was registered by Ryan Hill; that a buyer signs up as an independent contractor with Global Direct Sales; that funds for the Owner's Alliance Funding are remitted

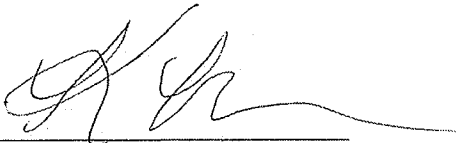
STATEMENT	SUPPORT
	to Rycho; and that Rycho is also registered and affiliated with Russell and Hill).
On April 3, 2008, HUD and the Penobscot Indian Tribe executed a Stipulation to Resolve Remaining Claims and Dismiss Action which the Grant America Program website <i>erroneously</i> asserts as a "HUD approval".	See the Stipulation (Exhibit F); and <i>compare</i> Grant America Program website ("G.A.P. is HUD Approved!!!") with the HUD website ("FHA does not 'approve' down payment assistance programs in the form of gifts administered by charitable organizations."). True and correct copies of the website pages are attached as Exhibits P and Q.
Not only is the Stipulation and Dismissal <i>not</i> an approval letter, it doesn't provide specific approval of seller-funded grants as the Sovereign Grant provider claims.	See Exhibit F (PIN-HUD Stipulation) (showing only that HUD will insure the Penobscot Indian Nation's seller-funded grants under the rules then in existence because of the sovereign status of PIN, and not because HUD approves of seller-funded grants).
The Stipulation and Dismissal is merely a temporary settlement which gave HUD the opportunity to publish a revised proposed rule and re-open the comment period.	See Exhibit F (PIN-HUD Stipulation) (was based on court's finding that HUD had not allowed a sufficient public comment period before promulgating the rule concerning seller down payment programs)
The seller contributions to the Grant America Program is clearly a concession that is confirmed by IRS ruling 2006-27.	See Exhibit E at 41-45. (showing that concessions are payments made by sellers instead of buyers that need to be accounted for so as to not inflate sales value)
The PIN-FHA gift letter also confirms that it is a concession.	See Exhibit R (showing that Plaintiffs tell sellers that their contributions are not charitable contributions)
Russell and Hill are already working on an alternative scheme through the Down Payment Grant Alliance. They intend to replace one scam with another even more complicated scam. Kind of like a convoluted down payment shell game.	See Exhibit H (Forbes article discussing Russell's and Hill's new scheme)

37. At no time during the research and drafting of my article on the Penobscot Indian Nation, Global Direct Sales, Christopher Russell or Ryan Hill was I aware that any of the Plaintiffs or their related organizations had refused to advertise on the Mortgage Lender

Implode-O-Meter website, as Russell alleges. If any such discussions about advertising did in fact occur, they had no impact on my decision to write and publish my article.

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

Executed on: 10/7/08

  
\_\_\_\_\_  
Krista Railey

# Exhibit E



[Expand Your FHA Footprint](#)

FHA/HUD and Mortgage Broker/Banker Licensing Nationwide (800) 948-0970  
[www.lenderlicense.com](http://www.lenderlicense.com)

Ads by Google

The wake up call for the mortgage industry

- [Home](#)
- [About Do the Math](#)
- [The Truth About DPAs](#)
- [About Do the Math](#)
- [The FHA Seller-Funded Down Payment Grants Information Page](#)
  - [The Seller-Funded DPA Organizations](#)
    - [The Penobscot Indian Tribe Down Payment Grant Program](#)
- [House Financial Services Committee Approves Markup of H.R. 6694 -->](#)
- [ML's FHA Forum](#)
- 
- [ML Implode Home](#)

## What the SFDPA Administrators Don't Want You To Know: Part 1, The Penobscot Indian Tribe Down Payment Grant Program

September 15, 2008 – 11:28 pm

In researching sovereign nation down payment payment grants, I was expecting nothing more than a bunch of boring stuff on down payment grants. Surprisingly, what I found was a trail of intrigue which had nothing to do with the Penobscot Indian Tribe, and everything thing to do with the business history of the program administrators, and nature of the down payment grant business itself.

The content of the article is so explosive as to yield a scathing comment from Penobscot Indian Nation Grant America Program administrator, Christopher Russell which included this statement: ([Click here to read entire comment](#))

**“So, you need to remove your libelous article here. For your information, I will seek damages, as I have now collected nearly a quarter million from Mr. Brandon so far. (We allow him to make monthly payments. I won't be so generous with your "scam" blog.)”**

After seriously considering Mr. Russell's statement, I decided to comply with one request, and that is to remove the word “scam”. I will not, however, back down from publishing this article or the content therein which is all a matter of public record. I have, however, added more links and additional information.

This article is crucial for the public and the media because it involves the history of the individuals who created the sovereign grant program, administer the program, and who have sued the Department of Housing and Urban Development to prevent the program from being terminated.

So pull up a chair, sit down, and prepare for enlightenment.

### **First, a bit of background the Penobscot's Grant America Program founders Russell & Hill:**

The Penobscot Indian Nation Grant America program is the brain child of Ameridream founders, Christopher Russell and Ryan Hill who according to an [article in Forbes](#) netted a combined \$14,000,000 from their business interests involving Ameridream.

You may recall the 2004 scandal involving Russell and Hill's purported misallocation of Ameridream assets as revealed by the [testimony of Mr. House](#) during the June 22, 2004 Congressional Hearing on Charity Oversight and Reform. Click [here](#) to view the entire transcript of the Congressional Hearing that is posted on the Senate Finance Committee website and is a matter of public record.

Among other things, Mr. House provided testimony that the founders of Ameridream, referred to as Mr. Red and Mr. White, used their position and control over the charity to divert millions to their private business interests. According to Mr. House, Mr.'s Red and White (Russell and Hill), participated with a third party (Mr. Blue) to create Synergistic Marketing, LLC which funneled millions from the charity.

Mr. House's statements appear to correlate with information shown on Ameridream's IRS Return of Organization Exempt from Income Tax (form 990) for years 2000 to 2004. The returns for this period show \$26,483,916 in payments from Ameridream to Synergistic Marketing, LLC. The returns also contain disclosures that two officers in Ameridream were members of Synergistic Marketing, LLC. After Russell and Hill left the company, the disclosure was changed to state that two *former* officers were members of Synergistic Marketing. Additionally, Ameridream's 990 returns for 2002 and 2003 include the following disclosure:

**In 2003, AmeriDream's current Board of Directors and Management became aware of certain transactions and arrangement from prior years that present potential for “excess benefit” within the meaning of section 4958 of the Internal Revenue Code. At that time, AmeriDream voluntarily sought guidance from the IRS. As of this filing, the specific nature and scope of those transactions is under review. Once the review is completed and if any excess benefit transactions are identified, AmeriDream will make the required disclosure on either an amended return for 2003 or a return for a subsequent year as appropriate.**

Hence, this portion of Mr. House's testimony appears to be substantiated, at least in regard to Russell and Hill's participation in Synergistic Marketing, LLC. Please note that payments to Synergistic Marketing from 2000 to 2003 ranged between 36% to 40% of Ameridream's gross income less actual funded grants. Click [here](#) for a link to Ameridream's IRS returns (990's) from 1999 to 2006.

The testimony also accused the founders of Ameridream of creating an investment company, Valao Mortgage, and funding the company with a \$4,000,000 loan from Ameridream. Mr. House stated that Avalar Properties, another LLC of Russell's, borrowed \$1,000,000 through Valao. This, too, was supported by information on Ameridream's 2002 IRS return (990) which shows a \$4,000,000 loan to Valao Mortgage. While an affiliation between Russell and Hill and Valao was not confirmed, the Maryland Secretary of State filing for [Valao](#) shows the same business address at the time of filing as Ameridream. The Maryland Secretary of State filings, however, confirm Christopher Russell as the [Agent for Service for Avalar Properties](#), and the address listed for Avalar Properties is the same address shown for Valao in [various business listings](#).

Mr. House's testimony also included an allegation that Russell and Hill (aka Mr.'s Red and White) purchased a jet using Ameridream as loan guarantor. The jet was purportedly used for Russell and Hill's personal enjoyment including golf trips to Mexico. While it is difficult to trace the liability on the Ameridream returns (form 990), the 2002 return notes a loan guaranty in exchange for a 10% interest in [Rycho, LLC which was organized by Russell and Hill](#). Both Russell and Hill are showing current affiliation with Rycho Funding and Rycho Aviation which are one in the same. There is also a [settled lawsuit](#) involving Ameridream, Russell, Hill, and Rycho Aviation LLC as defendants against plaintiff American Flight Group.

In addition to the purported misallocation of Ameridream funds and inappropriate loans and guaranties, Mr. House also speaks of Mr. Red's (Russell's) sheltering of approximately \$3,000,000 in income by establishing residency in the US Virgin Islands and becoming a shareholder in a U.S. Virgin Islands company. According to Mr. House, the company acquired an economic development certificate from the U.S. Virgin Island government which provided a tax credit of over 95% of the taxable income. While this statement is unconfirmed, Russell is open regarding his [investments](#) in St. Croix and prior partnership with International Asset Management.

Aside from minor lawsuits, there has been no verifiable recourse against Russell and Hill except for a [Federal Tax Lien of \\$1,104,575 against Hill in 2006 for the 2001 tax year](#).

It is interesting to note that in 2006, Ameridream won an [arbitration decision](#) against Christopher Russell regarding Russell's registration of the domain name: ameridreamprogram.com. According to the National Arbitration Decision, Russell registered the domain name one day prior to the expiration of a binding non-compete agreement. In addition to the copy cat web site, the decision states Russell registered additional web sites utilizing the "F" word along with the name Ameridream as a "protest" site which accused Ameridream of fiscally irresponsible policies and squandering of public benefit funds. This is especially ironic coming from Russell who has been accused of the exact same thing with Ameridream. In addition to allegations that Russell acted in bad faith by registering copycat and defamatory domain names, Ameridream claimed Russell attempted to [extort](#) \$5,000 per domain from Ameridream by requesting that Ameridream purchase the domains rather than incur thousands in legal expenses. The actions of Russell were ultimately found to be made in bad faith, and the decision rendered was in favor of Ameridream.

Following this [fiasco](#), Russell and Hill created a new venture known as the [Dp Funder Program and the Owner's Alliance](#). The Dp Funder is another type of seller-funded down payment program which involves payment of "earned" commission to the buyer instead of "gift" or "grant". The program is simple. The buyer signs with [Global Direct Sales, LLC](#) and becomes a dealer. As a dealer, the buyer's job is to convince the seller to purchase a membership in the Owner's Alliance which offers various discounts and costs between 3% to 22% of the sales price plus processing fee. Once the seller "enrolls" in the Owner's Alliance program, Global Direct Sales, LLC transfers the "commission" to a savings account which Global opens in the borrower's name at Sandy Springs Bank of Maryland. Of course, Global is the primary account signor, and maintains absolute control of the account. In the event that the transaction does not close, funds revert back to Global unless the seller pays a \$295 fee to extend the contract. Click [here](#) to see documents.

At closing, funds for the "membership fee" is remitted to [Rycho Funding, LLC](#) and is shown as a payoff on the HUD-1. Global Direct Sales' Dp Funder web site gives [explicit instructions](#) to show the source of buyers down payment as "cash" on the loan application, and to show Global Direct Sales, LLC as secondary employment on the application using the position title of Independent Dealer. Revenue for Global Direct Sales, LLC ranges between 1% to 2% of the sales price plus \$300 processing fee.

#### **The latest version by Russell & Hill:**

Russell and Hill's current venture involves the administration of Sovereign Nation grants. According to Russell in a 2008-09-08 phone conversation, he came up with the idea in 2006 when the IRS began cracking down on the non-profit seller-funded grant providers. It occurred to Russell that the Sovereign Nation status of tribes exempted the Tribes from the recent IRS ruling revoking the non-profit status of agencies that participated in seller-funded down payment grants. Shortly thereafter, according to Russell "he and Hill approached the Penobscot Indian Tribe and launched the Grant America Program" which he states "is ran exclusively by Global Direct Sales, LLC." Russell also stated "the Penobscot Indian Tribe declined the option of processing grants for a \$100 transaction fee, and instead only receives 20% of the proceeds."

In 2007, after HUD published their Final Rule in the Federal Register eliminating seller funded grants, Global Direct Sales and the Penobscot Indian Tribe filed suit in Federal Court for an injunction against HUD in implementing the rule. The Penobscot suit was in addition to suits filed by Nehemiah and Ameridream costing the Federal Government and taxpayers time and money.

Finally in March 2008, HUD's Final Rule was vacated and the matter was remanded back to HUD to address the deficiencies in the rule-making process in accordance with the Administrative Procedures Act. On April 3, 2008, HUD and the Penobscot Indian Tribe executed a Stipulation to Resolve Remaining Claims and Dismiss Action which the Grant America Program website posts as a HUD approval letter. Click [here](#) to view the Stipulation of Dismissal.

Not only is the Stipulation and Dismissal **not** an approval letter, it doesn't provide specific approval of seller-funded grants as Sovereign Grant providers claim. The Stipulation and Dismissal is merely a temporary settlement which gave HUD the opportunity to publish a revised proposed rule and re-open the comment period. Click [here](#) to view the proposed revised rule that HUD published in the Federal Register on June 16th, 2008.

What the stipulation provides is confirmation that the Penobscot Indian Tribe's Sovereign Nation "government entity" status qualifies the tribe to participate in the FHA program as an acceptable downpayment assistance provider as per Chapter 2, Section 2-10(C) of the 4155.1 REV 5. As such,

loans involving PIN grants are insurable under *standing* HUD rules at the time.

Regardless of the [Stipulation and Dismissal](#), the seller contribution to the Grant America Program is clearly a concession that is confirmed by [IRS ruling 2006-27](#), which only allows sellers to deduct the SFDPA contribution as a sale expense and not as a charitable deduction. The PIN program Seller Enrollment form itself solidifies the fact that it is a sales concession by stating that the service fee (which includes down payment contribution) may be deductible as a sale expense and is not a charitable contribution. See final paragraph of Seller Enrollment Form: Click [here](#) to view the form.

Excerpt:

**"Seller understands that the G.A.P service fee may be tax deductible as a selling expense, depending upon Seller's personal circumstances. Seller should consult a tax advisor. Seller further acknowledges that the G.A.P. service fee is a fee for service, and is not a charitable contribution. No changes may be made to the pre-printed text of this Agreement, without the prior written consent from PIN Fair Housing Administration."**

The PIN-FHA gift letter also confirms that it is a concession: [Click here to view gift letter](#).

Excerpt:

The IRS issued Revenue Ruling 2006-27, on May 22, 2006. This ruling implies that for TAX PURPOSES ONLY, **similarly structured transactions are not to be treated as a gift for income tax purposes. Similar down payment funds are to be treated as a rebate against the purchase price of the property, lowering the purchaser's basis in the property.** Please seek competent legal and tax advice before entering into this agreement. This information is not to be construed as tax advice. Each individual's situation may be different and advice should be provided by a competent tax advisor.

By their own admission, the seller contribution is a *sales concession* and not a charitable donation. Hence, the Penobscot Indian Tribe isn't really providing "assistance" and is merely [laundering](#) the down payment for a fee, no different than the other seller-funded down payment assistance (SFDPA) providers.

Nonetheless, the [Stipulation and Dismissal](#) predates H.R. 3221, and **seller-funded** down payment grants will not be allowed for loans approved after October 1, 2008 for FHA loans regardless of provider as per Federal Law. In speaking with Christopher Russell, he confirms that the changes to the National Housing Act which prohibit seller-funded down payments also apply to Sovereign Nation grants. Fortunately, Russell states:

"That the impact to the tribe will be minimal and will not result in job losses due to the program being entirely administered by Global Direct Sales. At most, the Tribe stands to lose approximately \$250,000 a year in revenues. Also, the Penobscot's manned Fair Housing Department will still be able to provide Portable Housing and Indian Block grant opportunities for their Tribal members and other types of legitimate, non seller funded assistance, for Tribe members."

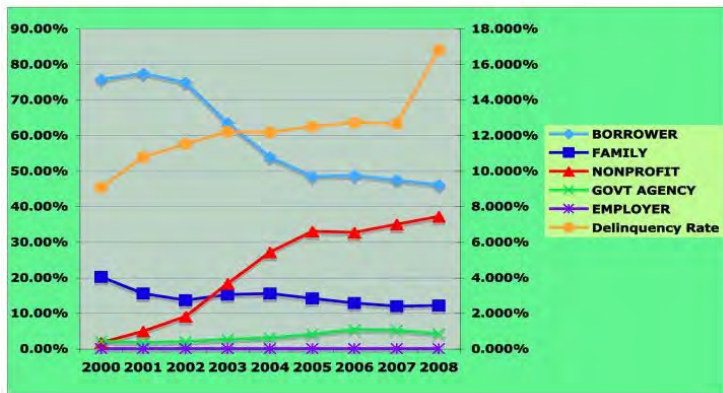
However, not to be dissuaded from the seller-funded down payment assistance business, Russell and Hill are already working on an alternative program through the Down Payment Grant Alliance which is a URL Russell states he founded in 2001. Their idea is to create a network of non profit companies and grant providers and have one party provide the grant while another party receives the donation. According to Russell, the seller contribution would not be tax deductible as a charitable contribution and would be considered a sale expense. This grant alliance sounds more like convoluted down payment shell game than a down payment assistance program due to the stated purpose to [circumvent](#) public law.

When asked about the adverse effects of seller-funded down payment grants and what could be done to mitigate risks to borrowers and the FHA fund, Russell stated that "Some steps that can be taken to mitigate risk include requiring the seller to sign a certification that the sales price was not increased for the grant, implementing strict appraisal controls, and limiting borrower credit scores to a minimum of 580." *When asked whether limiting credit scores might displace low income and ethic groups who traditionally have lower scores as well as multiple borrowers, Russell stated "it required some thought."* Russell did assert that seller-funded down payment assistance loans had a 92-94% success rate, however, I cannot confirm this information.

It is no secret that [FHA's delinquency and default rate](#) are rising dramatically. As I have outlined in a prior entry, [currently, 1 in 6 borrowers are delinquent](#) or in default on their FHA loan and that number is increasing. Furthermore, there is a clear correlation between the expanding FHA delinquency rate and the rise in seller funded down payment grants. As you can see from this chart, the FHA delinquency rate rose in tandem with the increase use of non profit down payment grants as the source of down payment.



FHA Purchase Endorsements by Downpayment Source  
2000-2008 and FHA Historical Delinquency



While many who argue the merits of seller funded down payment grants cite the negative impact on sales prices and values that eliminating the programs will have on the market, the reality is that the economy needs inflation relief. ***Lower sales prices actually benefit homebuyers who have been displaced by astronomical home prices and rents.*** Considering that incomes did not rise in tandem with price increases caused in recent years by irresponsible lending, a little inflation relief is exactly what Americans need to improve their quality of life. The last thing that Americans and the economy need is anything that sustains continued housing inflation. While adding 3-5% to the sales price may not sound like much, the increases gradually add up in areas where these types of grants are prevalent resulting in higher overall prices.

Furthermore, the current proposal, [H.R. 6694](#), which is sponsored by the Representatives Al Green, Gary Miller, Christopher Shays, Maxine Waters along with Ameridream and Nehemiah Corporation, proposes increases in mortgage premiums to offset the risk of SFDPA's to the FHA insurance fund. H.R. 3221 included a provision which placed a moratorium on risk based premiums that are based on borrower credit decision scores. However, credit score based premiums or eligibility create a barrier for racial minorities and socioeconomically disadvantaged borrowers [who typically have lower scores](#). The proposal of risk based credit scores along with higher prices caused by seller funded down payment grants could displace the very borrowers that seller funded down payment grant providers claim to help. The taxpayers and FHA should not be forced to sponsor continued lending abuse via seller funded down payment grant schemes.

Posted in [Uncategorized](#) |

[Short Sale Foreclosures](#)  
Step-by-Step Guide Getting Banks To  
Discount Mortgages up to 40%!  
**V V**

[Down Payment Assistance](#)  
Get \$50,000 DownPayment Grants Never  
Repay - Get Your Free Kit.

Ads by Google

## 1. 8 Responses to "What the SFDPA Administrators Don't Want You To Know: Part 1, The Penobscot Indian Tribe Down Payment Grant Program"

- As an underwriter I had my dealings with this "sovereign nation" grant. I did not allow them as I believe that this is not a municipality of the US Government which is what they were trying to deal under.  
Since they are SOVEREIGN and have their own government this was my "semi-legal" conclusion.

By **Elizabeth** on [Sep 16, 2008](#)

- This came as a surprise to you? You are just now seeing this smoke and mirror scam? Anyone with two weeks in the industry figured that out long ago.

By **Ron Scribner** on [Sep 16, 2008](#)

- Ameridream and these SCAMMERS are a couple of sue-happy criminals. Where the f\*\*k is the FBI when you need them??

By **BlowmeChrisRussell** on [Sep 16, 2008](#)

- Chris is an embarrassment to the human race.

By **SteveP** on [Sep 18, 2008](#)

- good sleuthing.

insiders may say what they like, the idea is this info belongs to the public @ large.

don't rest with a smug comment, spread some knowledge to the ignorant.

explain it to a layman!

By **chuck beef, coo** on [Sep 18, 2008](#)



# Exhibit F

From: WordPress <wordpress@whistleblower.ml-implode.com>  
Subject: **[The Mortgage Whistleblower] Please moderate: "The Penobscot Indian Tribe Down Payment Grants"**  
Date: September 10, 2008 12:21:19 AM PDT  
To: kraileyus2@aol.com

---

A new comment on the post #91 "The Penobscot Indian Tribe Down Payment Grants" is waiting for your approval  
<http://whistleblower.ml-implode.com/?p=91>

Author : Christopher Russell (IP: 69.138.30.42 , c-69-138-30-42.hsd1.md.comcast.net)

E-mail : [jam\\_oy@hotmail.com](mailto:jam_oy@hotmail.com)

URL : <http://www.fhadpa.com>

Whois : <http://ws.arin.net/cgi-bin/whois.pl?queryinput=69.138.30.42>

Comment:

If you are going to throw stones, you shouldn't live in a glass house.

First, you need to immediately remove the word "scam" in connection to the Penobscot Indian Nation. Your bitter diatribe does not need to include them, they have done nothing wrong nor do they deserve this attack.

Now, let's start with the "secret" testimony of "Mr. House". His perjured testimony was completely discredited four years ago!! We were suing Mr Brandon for embezzling over \$660,000 when this joke of a hearing took place. He had attempted to blackmail us for another \$250,000, threatening to turn us into the IRS. Since we did nothing wrong, nor did we do any of the things he accused us of doing, we refused to pay the hush money he was demanding. As a result, James was able to trick the incompetent, grandstanding Senator Shelby into including him as a witness in that sham hearing. You should have watched the video, where he testified behind a screen with a voice modulator and two US Marshalls by his side. The hearing was nothing but political grandstanding and if there was any truth to his accusations, I would have had a visit from the FBI by now. So, you need to remove your libelous article here. For your information, I will seek damages, as I have now collected nearly a quarter million from Mr. Brandon so far. (We allow him to make monthly payments. I won't be so generous with your "scam" blog.)

I don't have the time or patience to go line by line through every factual error and lie in your article. Let's just say, you need to remove it or bear the consequences of your actions because you have made repeated "statements of fact" which are untrue and if you had done a shred of investigation, you would know that. Also, you failed to tell everyone that I readily participated in your joke of an interview. If you actually cared about reporting the truth, you would have simply asked me about the things you wrote about but since you never asked me a single question about AmeriDream and even acted surprised when I told you I was the Founder of AmeriDream, it's obvious that this is a hit piece written by an amateur hack.

Real and credible news organizations like, the Washington Post, Wall Street Journal, Forbes and others have all investigated this to the nth degree and they never reported the bullshit you are reporting because they found most of it to be gossip and innuendo which was completely untrue.

Incompetent and irresponsible armchair sleuths like you are why the internet is full of lies, half truths and down right bullshit. Fortunately, our judicial system offers a way for me to seek recompense for the harmed caused by a fraud, such as you. Spend the money for a good lawyer because I use the best and I am coming after you hard. I would have answered you truthfully on anything you could have asked me about but instead, you thought you were being so slick with me. Now, you have reported a bunch of lies and factually false statements which have harmed me professionally and personally.

Approve it: <http://whistleblower.ml-implode.com/wp-admin/comment.php?action=mac&c=156>

Delete it: <http://whistleblower.ml-implode.com/wp-admin/comment.php?action=cde&c=156>

Spam it: <http://whistleblower.ml-implode.com/wp-admin/comment.php?action=cde&dt=spam&c=156>

Currently 1 comment are waiting for approval. Please visit the moderation panel:

[http://whistleblower.ml-implode.com/wp-admin/edit-comments.php?comment\\_status=moderated](http://whistleblower.ml-implode.com/wp-admin/edit-comments.php?comment_status=moderated)

# Exhibit G

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

GLOBAL DIRECT SALES, LLC, PENOBSCOT )  
INDIAN NATION, CHRISTOPHER RUSSELL )  
and RYAN HILL, )  
7824 Cessna Avenue )  
Gaithersburg, MD 20879 )

Plaintiffs,

-v-

AARON KROWNE, individually and d/b/a THE )  
MORTGAGE LENDER IMPLD-O-METER and )  
ML-IMPLODE.COM, KROWNE CONCEPTS, )  
INC., IMplode-EXPLODE HEAVY )  
INDUSTRIES, INC., JUSTIN OWINGS, KRISTA )  
RAILEY, STREAMLINE MARKETING, INC. and )  
LORENA LEGGETT, )

Defendants.

**COMPLAINT**

Case No.:

Plaintiffs, the Penobscot Indian Nation, Global Direct Sales, LLC, Christopher Russell and Ryan Hill, by their attorneys Kantrowitz, Goldhamer and Graifman, P.C. and The Mason Law Firm, LLP, as and for their complaint against defendants, Aaron Krowne, individually and d/b/a The Mortgage Lender Implod-O-Meter and ML-Implode.com, Krowne Concepts, Inc., Implode-Explode Heavy Industries, Inc., Justin Owings, Krista Railey, Streamline Marketing, Inc. and Lorena Leggett, allege as follows:

**SUMMARY OF THE ACTION**

1. The Penobscot Indian Nation (“PIN”) is a federally recognized Native American Government which created The Grant America Program™, a government grant program that provides low to moderate-income homebuyers with a down payment grant to be used towards the

purchase of a home. Plaintiff Global Direct Sales, LLC (“GDS”) is a Maryland limited liability company. PIN and Global Direct Sales, LLC (“GDS”) are parties to an Agreement to develop, organize and operate a downpayment assistance (“DPA”) program wholly owned by PIN. GAP was established to help low to moderate income homebuyers realize the dream of home ownership by providing down payment assistance grants.

2. Defendants Aaron Krowne, Justin Owings, Krowne Concepts, Inc. and/or Implode-Explode Heavy Industries, Inc., own and operate the Mortgage Lender Implode-O-Meter and the website ml-implode.com (collectively the “website”).

3. Beginning in or about June 2008 and continuing into August 2008, Defendant Lorena Leggett on behalf of Defendants repeatedly solicited Plaintiffs to advertise on Defendants’ website. In August 2008, Plaintiffs advised Defendants that it would not advertise on Defendants’ website.

4. On September 15, 2008, after Plaintiffs declined to advertise on Defendants’ website, Defendants published an article on their website containing untrue and defamatory statements regarding Plaintiffs.

5. Defendant Krista Reily individual and/or through her company Defendant Streamline Marketing, Inc. wrote the untrue and defamatory article, Defendants Krowne and Owings own and control the content on the website and are responsible for the website’s employee’s solicitation of Plaintiffs and the retaliatory, untrue and defamatory article published on the website when Plaintiffs declined to advertise with Defendants.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action under 28 U.S.C. § 1332 (Diversity Jurisdiction) because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

7. Venue is proper in the District Court for the District of Maryland pursuant to 28 U.S.C. 1391(b) and 1391 (c) in that a substantial part of the events giving rise to the claims asserted herein occurred in and are causing injury in Montgomery County, Maryland.

8. Defendants intentionally and/or recklessly published defamatory information about Plaintiff Global Direct Sales, a Maryland company and Maryland resident, Russell and Hill, both Maryland residents and published the same via Internet within the state of Maryland, including Montgomery County and Defendants' publishing of defamatory information resulted in significant injury and harm. Additionally, Defendants solicited Plaintiffs in Maryland and contracted Plaintiffs in Maryland.

### **PARTIES**

9. Plaintiff Penobscot Indian Nation ("PIN") is a federally recognized Native American Government located on the Penobscot River in the State of Maine and as a result of the Maine Indian Claims Settlement Act, enacted by the State of Maine in chapter 732 of the Maine Public Laws of 1979, as amended by chapter 675 of the Maine Public Laws of 1981 and chapter 672 of the Maine Public Laws of 1985, and all subsequent amendments thereto, is a municipality of the State of Maine.

10. Plaintiff Global Direct Sales, LLC ("GDS") is a Maryland limited liability company with its principal place of business located at 7824 Cessna Avenue, Gaithersburg, MD 20879.

11. Defendant Aaron Krowne is an adult individual, who, upon information and belief, resides in Atlanta Georgia, is the principal of Defendant Krowne Concepts, Inc. and a principal of Defendant Implode-Explode Heavy Industries, Inc. Defendants Krowne, Krowne Concepts, Inc. and Implode-Explode Heavy Industries, Inc. own and operate the Mortgage Lender Implode-O-Meter and the website [www.ml-implode.com](http://www.ml-implode.com) (collectively the “website”) and control the content contained thereon.

12. Defendant Justin Owings is an adult individual who, upon information and belief, resides in Atlanta, Georgia, a principal of Defendant Implode-Explode Heavy Industries, Inc. is an owner of the website and controls the content contained thereon.

13. Krista Railey is an adult individual who, upon information and belief, has an address at 1906 Oceanside Blvd #Y, Oceanside, California 92054, is a principal of Defendant Streamline Marketing, Inc. and contacted Plaintiff in the State of Maryland and wrote the untrue and defamatory article posted on the website.

14. Defendant Lorena Leggett is an adult individual and solicited the Plaintiff via telephone calls to the State of Maryland and emails to the State of Maryland.

## **FACTS**

### **A. Plaintiffs and their DPA Program**

15. PIN is a federally recognized Native American Government located on the Penobscot River in the State of Maine.

16. As a result of the Maine Indian Claims Settlement Act, PIN is a municipality of the State of Maine.

17. On January 24, 2007, the PIN Tribal Counsel, passed Resolution 01-24-07-01 creating the PIN Fair Housing Administration and enabling the creation of a national down payment assistance program.

18. PIN and Global Direct Sales, LLC (“GDS”) are parties to an Agreement to develop, organize and operate a DPA program wholly owned by PIN.

19. The DPA program, entitled Grant America Program™ (“GAP”), is a program that provides gift funds to low-to-moderate-income families purchasing a home or first-time homebuyers across America.

20. GAP was established to help low to moderate income homebuyers realize the dream of home ownership by providing down payment assistance grants.

21. PIN wholly owns GAP, all gift funds are provided by PIN and PIN receives the enrollment fees from the sellers.

22. PIN provides a pre-existing pool of funds to be used as grants towards homebuyer’s downpayments.

23. Prior to closing, the homebuyer’s grant is wired to the settlement agent from a PIN bank account using funds solely owned by PIN.

24. At closing, home sellers are charged an enrollment fee for enrolling their homes in the program.

25. The funds generated from that fee go to replenish the grant fund pool and any excess is the property of PIN.

26. GAP requires that the seller certify that the sale price has not been increased to account for the seller’s contribution to GAP.



27. Further, all transactions are accompanied by a real estate appraisal by a FHA certified and licensed appraiser.

28. GAP also makes additional requirements, such as buyer education, limitation on closing cost contributions and a seller certification that the price has not been increased that are more stringent than HUD requires.

29. On April 3, 2008, HUD expressly acknowledged:

that PIN's Grant America Program™ ("GAP") meets HUD's current policies pertaining to the source of gift funds for the borrowers' required cash investment for obtaining FHA insured mortgage financing.

**B. Defendants' Solicitation of Advertising from Plaintiffs**

30. In or about June, 2008, Defendant Lorena Leggett on behalf of Defendants began soliciting Plaintiffs to advertise on their website.

31. Defendants affirmatively represent that they scrutinize companies considered for advertising.

32. Defendants' solicitation consisted of multiple telephone calls to Plaintiffs in the State of Maryland and email solicitations to Plaintiffs in the State of Maryland.

33. Plaintiffs' advised Defendants that they would look at the website and review potential web pages for banner placement.

34. On August 5, 2008, Defendants were still contacting Plaintiffs hoping that they would be "granted the opportunity to advertise Grant America on ml-implode."

35. Thereafter, Plaintiffs advised Defendants that they would not advertise on Defendant's website.

**C. Defendants False and Defamatory Publication**

36. On or about September 15, 2008, shortly after Plaintiffs advised Defendants that they would not be advertising on the Defendants' website, Defendants published an untrue and defamatory article regarding Plaintiffs.

37. The article contained multiple untrue and defamatory statements, including, but not limited to,

- a. That the Penobscot Indian Tribe's Grant America Program is a scam.
- b. That Russell had a copycat website of Ameridream.
- c. Russell and Hill treated Ameridream like their own personal piggy bank.
- d. Russell and Hill created a new venture known as the Dp Funder Program and the Owner's Alliance. The Dp funder is another type of seller-funded down payment scam.
- e. On April 3, 2008, HUD and the Penobscot Indian Tribe executed a Stipulation to Resolve Remaining Claims and Dismiss Action which the Grant America Program website *erroneously* asserts as a "HUD approval".
- f. Not only is the Stipulation and Dismissal *not* an approval letter, it doesn't provide specific approval of seller-funded grants as the Sovereign Grant provider claims.
- g. The Stipulation and Dismissal is merely a temporary settlement which gave HUD the opportunity to publish a revised proposed rule and re-open the comment period.
- h. The seller contributions to the Grant America Program is clearly a concession that is confirmed by IRS ruling 2006-27.
- i. The PIN-FHA gift letter also confirms that it is a concession.

- j. The Penobscot Indian Tribe isn't really providing assistance and is merely laundering the down payment for a fee.
  - k. Russell and Hill are already working on an alternative scheme through the Down Payment Grant Alliance. They intend to replace one scam with another even more complicated scam. Kind of like a convoluted down payment shell game.
  - l. The taxpayers and FHA should not be forced to sponsor continued lending abuse via seller funded down payment grant schemes.
  - m. Whether seller funded down payment grants are administered by non profit companies, for profit companies, or Sovereign Nations, they are still a scam.
38. Defendants' statements are untrue and defamatory *per se* because they are untrue, and they injure Plaintiffs reputation, expose them to ridicule and financial injury.
39. Additionally, Defendants falsely attributing a quote to Mr. Russell, to wit:
- That the impact to the tribe will be minimal and will not result in job losses due to the program being entirely administered by Global Direct Sales. At most, the Tribe stands to lose approximately \$250,000 a year in revenue. Also, the Penobscot's manned Fair Housing Department will still be able to provide Portable Housing and Indian Block grant opportunities for their Tribal members and other types of legitimate, non seller funded assistance, for Tribal members.
40. Defendants made these statements with malice, knowing they were false.

**D. Defendants Roles In the Website and  
Publication of the Untrue and Defamatory Article**

41. Defendant Aaron Krowne is the website founder, publisher, general management, editor-in-chief and owner.

42. Defendant Owings is a general management, in charge of financials, forum moderator, oversees marketing and is an owner of the website and a moderator of Defendant Railey's website.

43. Upon information and belief, in late 2007, the website's ownership passed from ownership by Krowne Concepts, Inc. to Implode-Explode Heavy Industries ("IEHI"). Defendant Krowne and Owings are principals of Defendant IEHI.

44. Upon information and belief, the website was improperly transferred from Krowne Concepts, Inc. to IEHI and Defendants' corporate entities are not following proper corporate protocols and formalities.

45. Defendant Lorena Leggett, on behalf of Defendants, solicited Plaintiff to advertise on the website from June 2008 until August 2008.

46. Defendants Krowne and Owings strive to confirm all information presented on the website and to qualify all doubtful items.

47. The commentary and content in the untrue and defamatory article are attributable to Krowne and Owings as author(s) of the website.

48. The mission of the website is transparency, education and accountability.

49. Defendant Railey has moved her blog from its own location to the website.

50. Defendant Railey contacted Plaintiff in the state of Maryland and represented herself as a reporter for the website.

51. Defendant Railey individually and/or through Defendant Streamline Marketing wrote and published the untrue and defamatory article.

52. Defendant Railey is a moderator of a forum on the website.

53. Plaintiffs previously advertised on the “Niche Report” for which the website employee that contacted them was a sales manager.

54. Defendants seek to preserve indefinitely their lists, discussions and linked article so that they might be impossible to forget.

55. The Defendants control the website editorially and include any factual report or editorial which they feel is credible and/or insightful.

56. The Defendants control the website editorially and require that all leads on companies be supported by multiple independent sources.

57. As of 2007, the website has a core daily audience of about 100,000 visitors.

58. On September 18, 2008, Defendants began to actively soliciting other websites to republish their untrue and defamatory article regarding the Plaintiffs.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Defamation)**

52. Plaintiffs repeat each and every allegation contained in the preceding paragraphs of the complaint as if set forth at length herein.

53. Defendants made false and defamatory statements concerning the Plaintiffs.

59. Defendants’ false and defamatory statements were attacks on Plaintiffs’ professional character and/or standing.

60. Defendants made an unprivileged publication of the statement to third parties.

61. Defendants’ conduct was intentional, reckless and/or negligent.

62. Plaintiffs were damaged by Defendants’ conduct.

**AS AND FOR A SECOND CAUSE OF ACTION**

**(Libel)**

55. Plaintiffs repeat each and every allegation contained in the preceding paragraphs of the complaint as if set forth at length herein.

56. Defendants published an untrue statement of fact.

63. Defendants published untrue statements of fact knowing they were false or with reckless disregard of the truth.

64. Defendants' publication was intentional.

57. As a result of Defendants' wrongful actions, Plaintiffs have been injured including the significant damage to their reputation.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Unfair Business Practice)**

58. Plaintiffs repeat each and every allegation contained in the preceding paragraphs of the complaint as if set forth at length herein.

59. Defendants engaged in an unfair, deceptive and fraudulent business acts by publishing false information regarding Plaintiffs in retaliation for Plaintiffs declining to advertise on Defendants' website.

65. Upon information and belief, Defendants acted with intentional oppression, fraud and/or malice in taking the actions complained of herein so as to justify an award of exemplary and punitive damages.

62. As a result of Defendants' wrongful actions, Plaintiffs have been injured and are entitled to compensatory and punitive damages.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Injunctive Relief)**

63. Plaintiffs repeat each and every allegation contained in the preceding paragraphs of the complaint as if set forth at length herein.

64. Defendants' conduct has improperly interfered with Plaintiffs causing injury to Plaintiffs.

65. Defendants should be permanently enjoined from making false and defamatory statements concerning the Plaintiffs.

66. The grounds for an injunction are present therein, including the fact that Plaintiffs have a likelihood of success on the merits; irreparable harm will be done if the injunction is denied; the balance of the equities is in favor of granting the injunction and Plaintiffs have been injured by Defendants' action and will continue to be injured absent the requested injunctive relief.

**JURY DEMAND**

66. Plaintiffs demand a jury trial on all issues so permitted.

**WHEREFORE**, Plaintiffs demand judgment as follows:

- a) On their first cause of action, awarding Plaintiffs actual and punitive damages and awarding costs, attorneys' fees and other relief;
- b) On their second cause of action, awarding Plaintiffs actual and punitive damages and awarding costs, attorneys' fees and other relief;
- c) On their third cause of action, awarding Plaintiffs actual and treble damages and awarding costs, attorneys' fees and other relief;
- d) On their fourth cause of action, permanently enjoining Defendants from making false and defamatory statements concerning the Plaintiffs; and
- e) For such other, further and different relief as the court deems just and proper.

Dated: September 19, 2008  
Chestnut Ridge, New York

Yours, etc.

**THE MASON LAW FIRM, LLP**

By: /s/ Gary E. Mason  
Gary E. Mason  
Attorneys for Plaintiffs  
D. Md. Bar No. 15033  
1225 19<sup>th</sup> Street Northwest  
Washington, D.C. 20036  
(202) 429-2290

**KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.**

By: \_\_\_\_\_  
Michael L. Braunstein  
Attorneys for Plaintiffs  
747 Chestnut Ridge Road  
Chestnut Ridge, N.Y. 10977  
(845) 356-2570



# Exhibit H

**Michael Braunstein**

**From:** Michael Braunstein [mbraunstein@kgglaw.com]  
**Sent:** Monday, September 22, 2008 8:20 AM  
**To:** 'Aaron Krowne'; 'justinowings@gmail.com'; 'lorena@ml-implode.com'; 'kraileyus2@aol.com'  
**Subject:** Penobscot Indian Nation et al v. Krowne et al

Due to your publishing of untrue and defamatory statements, and failure to cease and desist, suit has been commenced against you. A courtesy copy of the electronic receipt is provided below.

---

**From:** MDD\_CM-ECF\_Filing@mdd.uscourts.gov [mailto:MDD\_CM-ECF\_Filing@mdd.uscourts.gov]  
**Sent:** Friday, September 19, 2008 6:00 PM  
**To:** MDDdb\_ECF@mdd.uscourts.gov  
**Subject:** Activity in Case 8:08-cv-02468-DKC Russell et al v. Russell et al Complaint

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is **unattended**.

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**District of Maryland**

**Notice of Electronic Filing**

The following transaction was entered by Mason, Gary on 9/19/2008 at 6:00 PM EDT and filed on 9/19/2008

**Case Name:** Russell et al v. Russell et al  
**Case Number:** 8:08-cv-2468  
**Filer:** Christopher M. Russell  
Ryan Hill  
Global Direct Sales  
Penobscot Indian Nation

**Document Number:** 1

**Docket Text:**

**COMPLAINT** against Krowne, Justin Owings, Krista Railey, Streamline Marketing Inc, Lorena Leggett, filed by Christopher M. Russell, Ryan Hill, Global Direct Sales, Penobscot Indian Nation. (Attachments: # (1) Civil Cover Sheet)(Mason, Gary)

9/25/2008

**8:08-cv-2468 Notice has been electronically mailed to:**

Gary E Mason gmason@masonlawdc.com, adicocco@masonlawdc.com, dsolen@masonlawdc.com, mdicocco@masonlawdc.com

**8:08-cv-2468 Notice will not be electronically delivered to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1046883720 [Date=9/19/2008] [FileNumber=1967683-0]  
] [35c209203a67a66aab52205dfd0972e5192600a802a24c84d19db509697024d5a5e  
bd04d1d51ad9f1e34029f7875c028e4909022e52d3f034c2bc5dc286f5c91]]

**Document description:**Civil Cover Sheet

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1046883720 [Date=9/19/2008] [FileNumber=1967683-1]  
] [6a94bfee3a2dc6d72d98ec2949d9cc15f204e22d809f807c265c8fcd2ae05eb8d7e  
9ec25f76a65b142cb95dde1ef9de288cfb78fa3bfa1a197d84416206548be]]

---

***Michael L. Braunstein***

KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C.  
747 Chestnut Ridge Road  
Chestnut Ridge, New York 10977  
Tel: (845) 356-2570  
Fax: (845) 356-4335  
www.kgglaw.com

CONFIDENTIALITY: This e-mail transmission and any accompanying or attached documents may contain confidential information which is legally protected by the attorney-client privilege or attorney work product doctrine. The information contained in or accompanying this message is intended only for the use of the person to whom addressed. Any disclosure, copying, distribution, or taking of any action in reliance on or regarding this information is prohibited, unless specifically authorized by the sender. If you have received this e-mail in error, or if you are not the intended recipient of this message, please notify us immediately by telephone at 845-356-2570 and destroy this e-mail and any attached documents.

TAX ADVICE DISCLOSURE: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

9/25/2008

# Exhibit I

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

GLOBAL DIRECT SALES, LLC, PENOBSCOT )  
INDIAN NATION, CHRISTOPHER RUSSELL )  
and RYAN HILL, )

Plaintiffs,

-V-

AARON KROWNE, individually and d/b/a THE MORTGAGE LENDER IMPLD-O-METER and ML-IMPLD.COM, KROWNE CONCEPTS, INC., IMPLD-EXPLOD HEAVY INDUSTRIES, INC., JUSTIN OWINGS, KRISTA RALEY, STREAMLINE MARKETING, INC. and LORENA LEGGETT,

Defendants.

Case No.: 8:08-cv-02468

Assigned:  
Hon. Deborah K. Chasanow

## PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE, that Plaintiffs, the Penobscot Indian Nation (“PIN”), Global Direct Sales, LLC, Christopher Russell and Ryan Hill, by their attorneys, the Mason Law Firm, LLP and Kantrowitz, Goldhamer & Graifman, P.C., hereby move pursuant to Rule 65 of the Federal Rules of Civil Procedure, on October 3, 2008, or as soon thereafter as counsel can be heard, for a preliminary injunction against Defendants Aaron Krowne, individually and d/b/a The Mortgage Lender Implod-O-Meter and ML-Implode.com, Krowne Concepts, Inc., Implode-Explode Heavy Industries, Inc., Justin Owings, Krista Railey, Streamline Marketing, Inc. and Lorena Leggett, restraining and enjoining Defendants from disseminating untrue, false and/or misleading statements regarding Plaintiffs, their business and their business dealings and for such other, further and different injunctive relief as this Court deems just and proper.

In support of this application, the Plaintiffs state that there is a substantial likelihood that the plaintiffs will prevail on the merits, that issuance of a preliminary injunction order is necessary prior to the hearing on the merits of the Plaintiffs' claims in order to prevent irreparable harm to the Plaintiffs, that there is no potential injury to the Defendants that would mitigate against the granting of the preliminary injunction and that the public interest would be served by the requested injunctive relief.

The motion for a preliminary injunction is based upon the annexed Complaint, Affidavit in Support with Exhibits, Affirmation and accompanying Memorandum of Law.

Dated: September 26, 2008

**THE MASON LAW FIRM, LLP**

/s/ Gary E. Mason  
Gary E. Mason  
Md. Bar #15033  
Attorneys for Plaintiffs  
1225 19<sup>th</sup> Street Northwest  
Washington, D.C. 20036  
(202) 429-2290

**KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.**

Attorneys for Plaintiffs  
747 Chestnut Ridge Road  
Chestnut Ridge, N.Y. 10977  
(845) 356-2570

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

---

GLOBAL DIRECT SALES, LLC, PENOBSCOT )  
INDIAN NATION, CHRISTOPHER RUSSELL )  
and RYAN HILL, )

Case No.: 8:08-cv-02468

Plaintiffs, )

-v- )

AARON KROWNE, individually and d/b/a THE )  
MORTGAGE LENDER IMPLD-O-METER and )  
ML-IMPLD.COM, KROWNE CONCEPTS, )  
INC., IMPLD-EXPLODE HEAVY )  
INDUSTRIES, INC., JUSTIN OWINGS, KRISTA )  
RAILEY, STREAMLINE MARKETING, INC. and )  
LORENA LEGGETT, )

Assigned:  
Hon. Deborah K. Chasanow

Defendants. )

---

**MEMORANDUM OF LAW**

The Mason Law Firm  
Attorneys for Plaintiffs  
1225 19<sup>th</sup> Street Northwest  
Washington, D.C. 20036

Kantrowitz, Goldhamer  
& Graifman, P.C.  
Attorneys for Plaintiffs  
747 Chestnut Ridge Road  
Chestnut Ridge, New York 10977

### **INTRODUCTION and PRELIMINARY STATEMENT**

This is a case about Defendants' publishing of untrue, defamatory and unprotected speech in retaliation for Plaintiffs' refusal to advertise on Defendants' website.

The Penobscot Indian Nation ("PIN") is a federally recognized Native American Government which created The Grant America Program™, a government grant program that provides a down payment grant to be used towards the purchase of a home. Plaintiff Global Direct Sales, LLC ("GDS") is a Maryland limited liability company. PIN and GDS are parties to an agreement to develop, organize and operate GAP which is wholly owned by PIN. GAP was established to help low to moderate income homebuyers realize the dream of home ownership by providing down payment assistance grants.

Beginning in July 2008 and continuing into August 2008, Defendant Lorena Leggett, on behalf of Defendants, repeatedly solicited Plaintiffs to advertise on Defendants' website. In August 2008, Plaintiffs advised Defendants that they would not advertise on Defendants' website. On September 15, 2008, Defendants published an article on their website containing untrue and defamatory statements regarding Plaintiffs.

As of 2007, the website has a core daily audience of about 100,000 visitors a day and Defendants "seek to preserve indefinitely their lists, discussions and linked article so that they might be impossible to forget." After Plaintiffs sent a cease and desist letter, Defendants continued publishing the untrue and defamatory statements and began to actively soliciting other websites to republish their untrue and defamatory statements.

Absent preliminary injunctive relief, Plaintiffs will continue to be harmed by Defendants retaliatory publishing of this untrue and defamatory material.



## **STATEMENT OF FACTS**

### **A. Plaintiffs and their DPA Program**

PIN is a federally recognized Native American Government located on the Penobscot River in the State of Maine (Russell Cert. at ¶ 2). As a result of the Maine Indian Claims Settlement Act, PIN is a municipality of the State of Maine (Id.). On January 24, 2007, the PIN Tribal Counsel, passed Resolution 01-24-07-01 creating the PIN Fair Housing Administration and enabling the creation of a national down payment assistance program (Id. at ¶ 3).

PIN and GDS are parties to an Agreement to develop, organize and operate a DPA program wholly owned by PIN (Id. at ¶ 4). The DPA program, entitled Grant America Program™ (“GAP”), is a program that provides gift funds to low-to-moderate-income families purchasing a home or first-time homebuyers across America (Id.). GAP was established to help low to moderate income homebuyers realize the dream of home ownership by providing down payment assistance grants (Id. at ¶ 5).

On April 3, 2008, HUD expressly stipulated:

that PIN’s Grant America Program™ (“GAP”) meets HUD’s current policies pertaining to the source of gift funds for the borrowers’ required cash investment for obtaining FHA insured mortgage financing (Id. at ¶ 6 and Exhibit A).

### **B. Defendants’ Solicitation of Advertising from Plaintiffs**

In or about June 2008, Defendant Lorena Leggett, on behalf of Defendants, began soliciting Plaintiffs to advertise on their website (Russell Cert. at ¶ 8). Defendants affirmatively represent that they scrutinize companies considered for advertising (Exhibit B). Defendants’ solicitation consisted of multiple telephone calls to Plaintiffs in the State of Maryland and email solicitations to Plaintiffs in the State of Maryland (Russell Cert. at ¶ 9).

Plaintiffs' advised Defendants that they would look at the website and review potential web pages for banner placement (*Id.* at ¶ 10). On August 5, 2008, Defendants were still contacting Plaintiffs hoping that they would be "granted the opportunity to advertise Grant America on ml-implode." (*Id.* at ¶ 11 and Exhibit C). Thereafter, Plaintiffs advised Defendants that they would not advertise on Defendants' website. (Russell Cert. at ¶ 12 and Exhibit D).

**C. Defendants' False and Defamatory Publication**

Then, Defendant Railey contacted Plaintiffs in the State of Maryland and represented herself as a reporter for and agent of the Defendants' website (Russell Cert. at ¶ 13). On or about September 15, 2008, shortly after Plaintiffs advised Defendants that they would not be advertising on the Defendants' website, Defendants published an untrue and defamatory article regarding Plaintiffs (Russell Cert. at ¶ 14 and Exhibit E). The article contained multiple untrue and defamatory statements, including, but not limited to:

- a. That the Penobscot Indian Tribe's Grant America Program is a scam.
- b. That Russell had a copycat website of Ameridream.
- c. Russell and Hill treated Ameridream [a charity they founded] like their own personal piggy bank.
- d. Russell and Hill created a new venture known as the Dp Funder Program and the Owner's Alliance. The Dp Funder is another type of seller-funded down payment scam.
- e. On April 3, 2008, HUD and the Penobscot Indian Tribe executed a Stipulation to Resolve Remaining Claims and Dismiss Action which the Grant America Program website *erroneously* asserts as a "HUD approval".
- f. Not only is the Stipulation and Dismissal *not* an approval letter, it doesn't provide specific approval of seller-funded grants as the Sovereign Grant provider claims.

- g. The Stipulation and Dismissal is merely a temporary settlement which gave HUD the opportunity to publish a revised proposed rule and re-open the comment period.
- h. The seller contributions to the Grant America Program is clearly a concession that is confirmed by IRS ruling 2006-27.
- i. The PIN-FHA gift letter also confirms that it is a concession.
- j. The Penobscot Indian Tribe isn't really providing assistance and is merely laundering the down payment for a fee.
- k. Russell and Hill are already working on an alternative scheme through the Down Payment Grant Alliance. They intend to replace one scam with another even more complicated scam. Kind of like a convoluted down payment shell game.
- l. The taxpayers and FHA should not be forced to sponsor continued lending abuse via seller funded down payment grant schemes.
- m. Whether seller funded down payment grants are administered by non profit companies, for profit companies, or Sovereign Nations, they are still a scam. (*Id.*).

These statements are untrue (Russell Cert. at ¶ 17). Defendants' statements are untrue and defamatory, injure Plaintiffs' reputations and expose them to ridicule and financial injury (*Id.*).

Additionally, Defendants' article falsely attributes a quote to Mr. Russell, to wit:

That the impact to the tribe will be minimal and will not result in job losses due to the program being entirely administered by Global Direct Sales. At most, the Tribe stands to lose approximately \$250,000 a year in revenue. Also, the Penobscot's manned Fair Housing Department will still be able to provide Portable Housing and Indian Block grant opportunities for their Tribal members and other types of legitimate, non seller funded assistance, for Tribal members. (Exhibit E).

Mr. Russell did not make this statement (Russell Cert. at ¶ 18). Defendants made these statements with malice, knowing they were false (*Id.* at ¶ 19).

**D. Defendants' Roles in the Website and Defamatory Publication**

Defendant Aaron Krowne is the website founder, publisher, general management, editor-in-chief and owner (Exhibit E). Defendant Owings is a general management, in charge of financials, forum moderator, oversees marketing and is an owner of the website and a moderator of Defendant Railey's website (*Id.*). According to Defendants' website, in late 2007, the website's ownership passed from Defendant Krowne Concepts, Inc. to Defendant Implode-Explode Heavy Industries ("IEHI"). (Exhibit G). Defendants Krowne and Owings are principals of Defendant IEHI (*Id.*).

Defendants Krowne and Owings strive to confirm all information presented on the website and to qualify all doubtful items (Exhibit H). The mission of the website is transparency, education and accountability (Exhibit I). The Defendants admit controlling the website editorially and only including factual reports or editorial which they feel is credible and/or insightful (Exhibit J). Further, Defendants require that all leads on companies be supported by multiple independent sources (Exhibit K).

Defendant Railey authored and published the untrue and defamatory article.

**E. Plaintiffs Will Suffer Irreparable Harm**

As of 2007, the website has a core daily audience of about 100,000 visitors (Exhibit L). Defendants' website concedes that it seeks to preserve indefinitely their lists, discussions and linked article so that they might be impossible to forget (Exhibit M).

After Plaintiffs wrote to Defendants and demanded that they cease and desist from publishing the untrue and defamatory article, Defendants continued publishing the false statements and began actively soliciting other websites to republish their untrue and defamatory article regarding the Plaintiffs. (Russell Cert. at ¶ 28 and Exhibit N).

The article has negatively impacted GAP's operation, as well as the business dealings of Plaintiffs (Russell Cert. at ¶ 30). Plaintiffs have been contacted by multiple individual who have seen the article causing harm and embarrassment, damaging Plaintiffs' reputation and causing others to question their businesses practices (Id.).

### **ARGUMENT**

#### **PLAINTIFFS HAVE MET THE REQUIREMENTS FOR THE ISSUANCE OF TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF**

This Court should grant the requested relief because the applicable criteria for granting injunctive relief are clearly met. In the Fourth Circuit, courts must consider four factors in deciding whether to grant interlocutory injunctive relief: (a) the likelihood of irreparable harm to the movant if the injunction is denied; (b) the likelihood of harm to the non-movant if the injunction is granted; (c) the likelihood that the movant will succeed on the merits; and (d) the public interest. Direx Isr., Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 812 (4th Cir.1991).

As the Plaintiffs' can establish these four factors, preliminary injunctive relief should be granted.

#### **A) PLAINTIFFS HAVE A LIKELIHOOD OF SUCCESS ON THE MERITS**

To obtain injunctive relief, Plaintiffs need not show that they will necessarily prevail on the merits, only that there is a reasonable probability of success. Dogloo, Inc. v. Daskocil Mfg. Co., Inc., 893 F.Supp 911, 917 (C.D.Cal. 1995) citing Gilder v. PGA Tour, Inc., 936 F.2d 417, 422 (9<sup>th</sup> Cir. 1991); see also Wilson v. Watt, 703 F.2d 395 (9<sup>th</sup> Cir. 1983). This standard has been interpreted to mean a "fair chance of success on the merits." Johnson v. California State Bd. Of Accountancy, 72 F.3d 1427, 1430 (9<sup>th</sup> Cir. 1995). As detailed below, Plaintiffs easily pass this hurdle.

Defendants, who admittedly scrutinize companies considered for advertising beforehand, solicited Plaintiffs to advertise on their website for weeks. After Plaintiffs declined to advertise on the website, Defendants published false and untrue statements regarding Plaintiffs on their website. Defendants accuse Plaintiff's Grant America Program of being a scam, Plaintiffs' Russell and Hill of treating a prior charitable organization they founded as "their own personal piggy bank" and accuses the Penobscot Indian Tribe of laundering the down payment for a fee. Additionally, Defendant published clearly false statements regarding a HUD stipulation which acknowledges GAP's compliance with HUD guidelines and the treatment of seller contributions as a concession. These statements are false, misleading and defamatory.

*A prima facie* case of defamation consists of the following elements:

- (1) that the defendant made a defamatory communication-i.e., that he communicated a statement tending to expose the plaintiff to public scorn, hatred, contempt, or ridicule to a third person who reasonably recognized the statement as being defamatory;
- (2) that the statement was false;
- (3) that the defendant was at fault in communicating the statement; and
- (4) that the plaintiff suffered harm.

Peroutka v. Streng, 116 Md.App. 301, 311, 695 A.2d 1287 (1997) (quoting Shapiro v. Massengill, 105 Md.App. 743, 772, 661 A.2d 202, cert. denied, 341 Md. 28, 668 A.2d 36 (1995)). See Gohari v. Darvish, 363 Md. 42, 54, 767 A.2d 321 (2001). "A defamatory statement is one which tends to expose a person to public scorn, hatred, contempt or ridicule, thereby discouraging others in the community from having a good opinion of, or from associating or dealing with, that person." Batson v. Shiflett, 325 Md. 684, 722-23, 602 A.2d 1191 (1992) (quoting Bowie v. Evening News, 148 Md. 569, 574, 129 A. 797 (1925)). The allegation that a

person is a thief constitutes defamation *per se*. See R.J. Gilbert and P.T. Gilbert, MARYLAND TORT LAW HANDBOOK, § 6.4 (3d ed. 2000).

For more than 100 years, it has been recognized that *per se* defamation occurs when:

Words spoken of a person in his office, trade, profession, business or means of getting a livelihood, which tend to expose him to the hazard of losing his office, or which charge him with fraud, indirect dealings or incapacity and thereby tend to injure him in his trade, profession or business, are actionable without proof of special damage, even though such words if spoken or written of an ordinary person, might not be actionable *per se*.

Kilgour v. Evening Star Co., 96 Md. 16, 23-24, 53 A. 716 (1902). When a statement that is defamatory *per se* and made with actual malice, “a presumption of harm to reputation ... arises from the publication ....” Hanlon v. Davis, 76 Md.App. 339, 356 (1988)(citations omitted). In that circumstance, general damages are presumed; actual harm need not be proved.

Plaintiffs easily clear the likelihood of success on the merits hurdle, because Defendants published knowingly false materials regarding Plaintiffs designed to harm their professional reputation and business.

**B. PLAINTIFF WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF AN INJUNCTION**

Plaintiffs will suffer irreparable harm absent the issuance of an injunction.

As of 2007, Defendants’ website has a core daily audience of about 100,000 visitors. Defendants’ website concedes that it seeks to preserve indefinitely their lists, discussions and linked article so that they might be impossible to forget. After Plaintiffs wrote to Defendants and demanded that they cease and desist from publishing the untrue and defamatory article, Defendants continued to publish the article and began actively soliciting other websites to republish their untrue and defamatory article.

The falsehoods published by Defendants were designed to and have negatively impacted GAP's operation, business dealings and are causing harm and embarrassment, damaging Plaintiffs' reputation and causing others to question their businesses practices. Absent preliminary injunctive relief, these harms will continue, if not accelerate.

The purpose of a preliminary injunctive relief is "to protect the status quo and to prevent irreparable harm during the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits." In re Microsoft Antitrust Litigation, 333 F.3d 517, 525 (4<sup>th</sup> Cir. 2003). Irreparability of harm, for purposes of preliminary injunctive relief, includes the impossibility of ascertaining with any accuracy the extent of the loss. Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co., Inc., 550 F.2d 189 (4<sup>th</sup> Cir. 1977). A reason for granting a preliminary injunction is to protect a party against irreparable harm which can take place in the form of injury to such party's good will. Parke, Davis & Co. v. Green Willow, Inc., 205 F.Supp. 346 (S.D.N.Y.1962).

As the Plaintiffs will suffer irreparable injury absent the issuance of an injunction, the requested injunctive relief should be granted.

**C) DEFENDANTS WILL NOT BE HARMED  
BY THE ENTRY OF AN INJUNCTION**

Defendants cannot be harmed by being ordered to cease publishing untrue and defamatory material. An injunction would not prohibit Defendants from operating their website. Only Defendants' false, misleading or defamatory statements will be enjoined. Accordingly, Defendants cannot be harmed by entry of an injunction which prohibits Defendants from engaging in unlawful conduct.



**D) THE PUBLIC INTEREST DEMANDS  
THAT DEFENDANTS BE ENJOINED**

The public interest weighs heavily in favor of entry of a temporary and preliminary injunction to restrain Defendants from further defaming Plaintiffs. The public benefits by enjoying the fruits of legitimate discussion, not the retaliatory publication of false and defamatory statements. To the contrary, Defendants' false statements, are, and will continue, to irreparably harm Plaintiffs.

**CONCLUSION**

Based on the foregoing, the requested injunctive relief should be granted in its entirety.

Dated: September 26, 2008

**THE MASON LAW FIRM, LLP**

/s/ Gary E. Mason  
Gary E. Mason  
Md. Bar #15033  
Attorneys for Plaintiffs  
1225 19<sup>th</sup> Street Northwest  
Washington, D.C. 20036  
(202) 429-2290

**KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.**  
Attorneys for Plaintiffs  
747 Chestnut Ridge Road  
Chestnut Ridge, N.Y. 10977  
(845) 356-2570

# Exhibit J

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

CHRISTOPHER M. RUSSELL, ET AL .

vs. . 08-CV-2468-DKC

ERIN KROWNE, ET AL . GREENBELT, MARYLAND

. NOVEMBER 11, 2008

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE DEBORAH K. CHASANOW  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: GARY E. MASON, ESQ.  
MICHAEL L. BRAUNSTEIN, ESQ.

FOR THE DEFENDANTS: JULIE TURNER, ESQ.

Court Reporter: Sharon O'Neill, RMR  
Official Court Reporter  
United States District Court  
6500 Cherrywood Lane  
Greenbelt, Maryland 20770  
301-344-3227

1 plaintiffs are infusing themselves in.

2           At bottom, I conclude that the plaintiffs have not  
3 established the grounds for the issuance of a preliminary  
4 injunction, even of the lesser nature of requiring the  
5 elimination of the word "laundering," "extortion," "sales  
6 concession," or, frankly, any of the other "not HUD approved",  
7 or any of the other dozen or so purported falsehoods in the  
8 article.

9           The article itself is, I don't know, I didn't count  
10 the number of words, but it's one, two, three, four, five, six  
11 pages in one of the exhibits, another one with smaller type  
12 that may not be quite as long, but it's lengthy. It covers a  
13 lot of material and plaintiffs have chosen to focus on some  
14 phrases, sometimes taken out of context, but more  
15 significantly, from my perspective, at a place where what's  
16 being discussed provides a link to other information as well.

17           I mean, this is a comprehensive article and it is  
18 simply not, I don't think, susceptible at this stage to the  
19 conclusion that plaintiff wants me to draw, that they can have  
20 proven that any of these terms or words are false.

21           The term "laundering" may have a certain definition  
22 in the Criminal Code. It may not necessarily have that same  
23 definition when used in this article.

24           In any event, I think the allegations of plaintiff  
25 are simply not precise, focused enough to make a determination

1 that they can prove that any one or more of them necessarily  
2 are false on the current record, never mind whether they can  
3 make the, or have made sufficient showings of the other  
4 elements of a defamation claim to show likelihood of success on  
5 the merits.

6           Secondly, in terms of irreparable harm to the  
7 plaintiff, all I am told is that some people have taken note  
8 and that there have been some calls. There is no attempt to  
9 quantify any harm and, as I indicated a moment ago, there is no  
10 indication that the requested relief, that is telling them not  
11 in the future to do anything, would prevent the harm, given the  
12 nature of the internet.

13           This article is out there, has been and cannot be  
14 eliminated from the internet. So I don't see the establishment  
15 of irreparable harm.

16           Damages will be available should plaintiffs prevail  
17 later, and I don't see how granting the injunction at this  
18 point in any event would avoid the harm.

19           Damage to the defendant, if it's improperly granted,  
20 here we are dealing with a website that provides an opportunity  
21 for authors to post material -- I'm going to learn, I suppose,  
22 a lot more about how it all works -- but to the extent to which  
23 the plaintiff is asking me to prevent them from disseminating  
24 material, it certainly, if it's an improper injunction, would  
25 affect a First Amendment right of the defendants.

1           Public interest, this is an area where to say the  
2 public has become more involved is an understatement. The  
3 mortgage industry is in the news all the time. The economic  
4 reality of this worldwide, I don't know whether -- well, the  
5 whirlwind of international activity in terms of the financial  
6 markets, many say prompted by a mortgage, subprime mortgage  
7 crisis, there is probably little that's as much in the public  
8 interest today as this.

9           And, to the extent to which this article furthers  
10 discussion, debate, consideration of that situation, it is not  
11 in the public interest for me to broadly order that this  
12 article not be posted. The few sections that the plaintiffs  
13 complain of do not detract from the overall public interest of  
14 the nature of the article, and I think the public interest  
15 would not be served in this case, given the subtlety of some of  
16 the allegations of the plaintiff and the very, very broad  
17 request for relief.

18           As indicated by Ms. Turner, any injunction in this  
19 regard would chill the First Amendment rights of people like  
20 the defendants, never mind just the defendants, and would  
21 stifle rather than foster appropriate debate at this precise  
22 time when it is so important.

23           So I conclude that the plaintiffs have not  
24 established justification for the issuance of a preliminary  
25 injunction and, therefore, I deny the motion which is contained

1 in paper 11 here.

2           We will leave for another day all of those wonderful  
3 legal issues as to the nature of the speech, whether any  
4 injunction under any circumstance can issue, because I find it  
5 unnecessary to resolve those debates in the current context.

6           We have a schedule in terms of when the defendants  
7 will be filing a response to the complaint.

8           MS. TURNER: I believe it's November 18th.

9           MR. BRAUNSTEIN: That's correct, Your Honor, it's  
10 November 18th.

11           THE COURT: I just wanted to put my hands on that.  
12 And we will wait to see -- November 18th, we will wait to see  
13 the nature of that before going forward.

14           MS. TURNER: Yes, Your Honor.

15           MR. BRAUNSTEIN: Your Honor, very briefly, on your  
16 docket entry number 19, it states that "replies are due by  
17 November 4, 2008."

18           THE COURT: That happens automatically when the  
19 computer receives something for filing. If you stipulate -- I  
20 mean, there will be another docket generated when whatever they  
21 file is filed.

22           MR. BRAUNSTEIN: I just wanted to make sure I wasn't  
23 missing anything, Your Honor.

24           THE COURT: No. No. The computer, the CMECF system  
25 automatically generates dates, so you can ignore them.

# Exhibit K



**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 930

(Delegate Rosenberg, *et al.*)

Judiciary

Judicial Proceedings

---

**Qualified Immunity from Civil Liability - SLAPP Suits**

---

This bill establishes that a lawsuit is a “strategic lawsuit against public participation” (SLAPP) suit if it is: (1) brought in bad faith against a party who has exercised specified federal or State constitutional rights of free speech in communicating with a government body or the public at large; (2) materially related to the defendant’s communication; and (3) intended to inhibit the exercise of free speech rights. The bill provides immunity from civil liability to a defendant in a SLAPP suit who acts without constitutional malice in exercising rights protected by the first amendment of the U.S. Constitution, and Articles 10, 13, and 40 of the Maryland Declaration of Rights. A defendant in an alleged SLAPP suit may move to dismiss the suit, or move to stay all court proceedings until the matter about which the defendant communicated to the government body or the public at large is resolved.

The bill applies only to cases filed on or after the October 1, 2004 effective date.

---

**Fiscal Summary**

**State Effect:** None. Any effect on the Judiciary’s caseload is expected to be negligible.

**Local Effect:** None.

**Small Business Effect:** None.

---

## Analysis

**Current Law:** There are no statutory provisions specifically relating to SLAPP suits. The first amendment to the U.S. Constitution guarantees the rights of free speech and free press, the right to peaceably assemble, and the right to petition the government for a redress of grievances. Article 10 of the Maryland Declaration of Rights, which protects the right of legislators to free speech and debate in the legislature, is the State counterpart of Article I, section 6, clause 1 of the U.S. Constitution. Article 13 of the Maryland Declaration of Rights guarantees citizens the right to petition the legislature for redress of grievances, and Article 40 guarantees the rights of free speech and free press.

Maryland Rule 1-341 provides that if a court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court may require the offending party and/or the party's attorney to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

"Constitutional malice," also known as "actual malice," is the standard established by the Supreme Court in the seminal defamation case of *New York Times v. Sullivan*, 376 U.S. 254 (1964). A person acts with constitutional malice if the person makes a statement that the person knows is false, or acts with reckless disregard as to whether the statement is false or not.

**Background:** SLAPP suit laws protect individuals and groups, many with few assets, from defending costly legal challenges to their lawful exercise of such constitutionally protected rights as free speech, assembly, and the right to petition the government. Covered activities may include writing letters to the editor, circulating petitions, organizing and conducting peaceful protests, reporting unlawful activities, speaking at public meetings, and similar actions.

Plaintiffs in these lawsuits, who typically have far greater resources than defendants, may allege a number of legal wrongs. The more common causes of action include defamation, invasion of privacy, intentional infliction of emotional distress, interference with contract or economic advantage, and abuse of process. Their goal is often not to win the case, but rather to cause the defendants to devote such significant resources to defending it that they are unable to continue the challenged activities.

Approximately 20 states have enacted SLAPP suit laws. There are judicial precedents in other states that accomplish this same result.

# Exhibit L

Bloomberg.com

▶ BloombergAnywhere ▶ BloombergProfessional ▶ AboutBloomberg

Updated: New York, Oct 07 18:49 London, Oct 07 23:49 Tokyo, Oct 08 07:49

?

QUOTE

SEARCH NEWS

▶ SYMBOL LOOKUP

Live TV

Live Radio

Mobile

Podcasts

HOME NEWS MARKET DATA PERSONAL FINANCE TV and RADIO

Feedback LOG IN/REGISTER

news

- Exclusive
- Worldwide
- Regions
- Markets
- Industries
- Economy
- Politics
- Law
- Environment
- Science
- Opinion
- Spend
- Sports
- Arts and Culture
- Editors' Video Picks
- Bloomberg Markets
- Magazine
- Special Report

- RESOURCES
- Bloomberg TV
- Bloomberg Radio
- Bloomberg Podcasts
- Bloomberg Press

Politics Exclusive Health Care Technology Currencies Forex Trading Videos ETFs C-Suite

STORY VIDEO

Financial Rescue Nears GDP as Pledges Top \$12.8 Trillion (Update1)

Share | Email | Print | A A A

By Mark Pittman and Bob Ivry

March 31 (Bloomberg) -- The U.S. government and the Federal Reserve have spent, lent or committed \$12.8 trillion, an amount that approaches the value of everything produced in the country last year, to stem the longest recession since the 1930s.

New pledges from the Fed, the Treasury Department and the Federal Deposit Insurance Corp. include \$1 trillion for the [Public-Private Investment Program](#), designed to help investors buy distressed loans and other assets from U.S. banks. The money works out to \$42,105 for every man, woman and child in the U.S. and 14 times the \$899.8 billion of currency in circulation. The nation's gross domestic product was \$14.2 trillion in 2008.

President [Barack Obama](#) and Treasury Secretary [Timothy Geithner](#) met with the chief executives of the nation's 12 biggest banks on March 27 at the White House to enlist their support to thaw a 20-month freeze in bank lending.

"The president and Treasury Secretary Geithner have said they will do what it takes," Goldman Sachs Group Inc. Chief Executive Officer [Lloyd Blankfein](#) said after the meeting. "If it is enough, that will be great. If it is not enough, they will have to do more."

Commitments include a \$500 billion line of credit to the FDIC from the government's coffers that will enable the agency to guarantee as much as \$2 trillion worth of debt for participants in the Term Asset-Backed Lending Facility and the Public-Private Investment Program. FDIC Chairman [Sheila Bair](#) warned that the insurance fund to protect customer deposits at U.S. banks could dry up because of bank failures.

'Within an Eyelash'

The combined commitment has increased by 73 percent since November, when Bloomberg first estimated the funding, loans and guarantees at \$7.4 trillion.

"The comparison to GDP serves the useful purpose of underscoring how extraordinary the efforts have been to stabilize the credit markets," said [Dana Johnson](#), chief economist for Comerica Bank in Dallas.

"Everything the Fed, the FDIC and the Treasury do doesn't always work out right but back in October we came within an eyelash of having a truly horrible collapse of our financial system, said Johnson, a former Fed senior economist. "They used their creativity to help the worst-case scenario from unfolding and I'm awfully glad they did it."

Federal Reserve officials project the economy will keep shrinking until at least mid-year, which would mark the longest U.S. recession since the Great Depression.

The following table details how the Fed and the government have committed the money on behalf of American taxpayers over the past 20 months, according to data compiled by Bloomberg.

=====

---

Amounts (Billions)---

Limit

Current

=====

- More News
- Alcoa Posts an Unanticipated Quarterly Profit on Price Increases, Job Cuts

Stocks in U.S. Gain, Led by Bank of America; Dollar, Treasuries, Gold Rise

Pimco, Baupost Are Said to Quit CIT Bondholder Panel, Leaving Four Members

Total	\$12,798.14	\$4,169.71
-----		
Federal Reserve Total	\$7,765.64	\$1,678.71
Primary Credit Discount	\$110.74	\$61.31
Secondary Credit	\$0.19	\$1.00
Primary dealer and others	\$147.00	\$20.18
ABCP Liquidity	\$152.11	\$6.85
AIG Credit	\$60.00	\$43.19
Net Portfolio CP Funding	\$1,800.00	\$241.31
Maiden Lane (Bear Stearns)	\$29.50	\$28.82
Maiden Lane II (AIG)	\$22.50	\$18.54
Maiden Lane III (AIG)	\$30.00	\$24.04
Term Securities Lending	\$250.00	\$88.55
Term Auction Facility	\$900.00	\$468.59
Securities lending overnight	\$10.00	\$4.41
Term Asset-Backed Loan Facility	\$900.00	\$4.71
Currency Swaps/Other Assets	\$606.00	\$377.87
MMIFF	\$540.00	\$0.00
GSE Debt Purchases	\$600.00	\$50.39
GSE Mortgage-Backed Securities	\$1,000.00	\$236.16
Citigroup Bailout Fed Portion	\$220.40	\$0.00
Bank of America Bailout	\$87.20	\$0.00
Commitment to Buy Treasuries	\$300.00	\$7.50
-----		
FDIC Total	\$2,038.50	\$357.50
Public-Private Investment*	\$500.00	0.00
FDIC Liquidity Guarantees	\$1,400.00	\$316.50
GE	\$126.00	\$41.00
Citigroup Bailout FDIC	\$10.00	\$0.00
Bank of America Bailout FDIC	\$2.50	\$0.00
-----		
Treasury Total	\$2,694.00	\$1,833.50
TARP	\$700.00	\$599.50
Tax Break for Banks	\$29.00	\$29.00
Stimulus Package (Bush)	\$168.00	\$168.00
Stimulus II (Obama)	\$787.00	\$787.00
Treasury Exchange Stabilization	\$50.00	\$50.00
Student Loan Purchases	\$60.00	\$0.00
Support for Fannie/Freddie	\$400.00	\$200.00
Line of Credit for FDIC*	\$500.00	\$0.00
-----		
HUD Total	\$300.00	\$300.00
Hope for Homeowners FHA	\$300.00	\$300.00
-----		
he FDIC's commitment to guarantee lending under the Legacy Loan Program and the Legacy Asset Program includes a \$500 billion line of credit from the U.S. Treasury.		
To contact the reporters on this story:		
Mark Pittman in New York at		
mpittman@bloomberg.net;		
Bob Ivry in New York at		
bivry@bloomberg.net.		
Last Updated: March 31, 2009 14:20 EDT		
-----		
<a href="#">Delicious</a>	<a href="#">Digg</a>	<a href="#">Facebook</a>
<a href="#">LinkedIn</a>	<a href="#">Newsvine</a>	<a href="#">Propeller</a>
<a href="#">Yahoo! Buzz</a>		

### Sponsored Links

# Exhibit M



Oct. 3, 2009

## Unemployment Figures Cloud Recovery Hopes

### As More than 15 Million Are Out of Work, Policy Debate Ensues over How to Help the Economy Rebound

By Kimberly Dozier

[Play CBS Video What Recovery?](#)

A cloud has been cast over the hopes that an economic recovery is underway. As Kimberly Dozier reports, the unemployment rate has increased and so does the pressure on the White House.



(iStockphoto)

isn't working. Republicans are pushing a plan that includes tax cuts for small businesses.

"Our plan is based on the belief that fast-acting tax relief is the most effective way to put our economy back on track," said Rep. Candice Miller, R-Mich.

The president says he's considering other unspecified options to get Americans back to work.

(CBS) More than 15 million Americans are out of work- the highest number in 26 years. It's a sign that while some companies are starting to make money again, they're not hiring.

President Obama told Americans Saturday this will turn around.

"We knew that employment is often the last thing to come back after a recession," Mr. Obama said. "Our task is to do everything we possibly can to accelerate that process."

The White House is considering extending unemployment insurance and health benefits, reports **CBS News correspondent Kimberly Dozier**. It's also considering extending the \$8,000 tax credit for first-time homebuyers that's set to expire at the end of November. Both ideas are also working their way through Congress to keep consumers consuming.

In all, the job market lost 263,000 jobs last month.

Mr. Obama points out it's better than when he took office, when the economy was shedding 700,000-plus jobs a month.

But critics counter the September unemployment rate would have been much higher if half-a-million people hadn't stopped looking for work - so they're no longer counted.

"If all of the people who were working part time and wanted to work fulltime are counted and all of the people who have left the labor force are counted, the unemployment rate is 17 percent," said Peter Morici, with the University of Maryland.

One big problem - people aren't buying American products, here or abroad. So factory orders are down, and supplies are piling up. Until that changes, economists predict employers will keep cutting jobs into the middle of next year.

"The economy is not performing as it should," Morici said.

The GOP calls it proof the stimulus package, meant to get Americans buying and back to work,

# Exhibit N



LAW OFFICES

**KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C.**

747 CHESTNUT RIDGE ROAD - SUITE 200  
CHESTNUT RIDGE, NEW YORK 10977-6216

(845) 366-2570

FAX # (845) 366-4336

www.kgglaw.com

AFFILIATE

KANTROWITZ, GOLDHAMER & GRAIFMAN

NEW JERSEY

210 SUMMIT AVE.

MONTVALE, N.J. 07645

(201) 391-7000

FAX # (201) 307-1085

PAUL B. GOLDHAMER\*  
BARRY S. KANTROWITZ\*  
GARY S. GRAIFMAN\*  
RANDY J. PERLMUTTER\*

WILLIAM T. SCHIFFMAN\*  
REGINALD H. RUTISHAUSER\*  
JOHN M. CHAKAN\*  
RISA K. JAMESON\*  
MICHAEL L. BRAUNSTEIN\*  
DANIEL B. SCHWARTZ\*

OF COUNSEL  
STEVEN B. ROTHCHILD

\*N.Y. & N.J. BAR  
\*FLA. BAR

September 25, 2008

VIA EMAIL

Mr. Aaron Krowne @ akrowne@gmail.com  
Mr. Justin Owings @ justinowings@gmail.com  
Ms. Krista Railey @ lorena@ml-implode.com  
Ms. Lorena Leggett @ kraileyus2@aol.com

Re: Penobscot Indian Nation et al v. Krowne et al  
Case No.: 8:08-cv-02468-DKC

Dear Litigants:

As I have previously provided you with a link to the electronic filing of the action commenced against you in United States District Court for the District of Maryland, you are aware that suit has been commenced against you as a result of the untrue and defamatory article you are publishing regarding my clients, the Penobscot Indian Nation, Global Direct Sales, LLC, Christopher Russell and Ryan Hill.

Please be advised that tomorrow, September 25, 2008, we will be making motions for a temporary and preliminary injunction to prohibit your publishing and dissemination of untrue, false and/or misleading statements regarding plaintiffs, their business and their business dealings. I have attached courtesy copies of plaintiff's Notice of Ex Parte Motion and Motion for a Temporary Restraining Order and Notice of Motion for a Preliminary Injunction, along with the supporting Memorandum of Law. I will provide you with a copy of the supporting certification and attached exhibits under separate cover.

Very truly yours,

**KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.**

By:

Michael L. Braunstein

Attachments

# Exhibit O

LAW OFFICES

**KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C.**

747 CHESTNUT RIDGE ROAD - SUITE 200  
CHESTNUT RIDGE, NEW YORK 10977-0210

(845) 366-2570  
FAX # (845) 366-4335  
www.kgglaw.com

AFFILIATE

KANTROWITZ, GOLDHAMER & GRAIFMAN  
NEW JERSEY  
210 SUMMIT AVE.  
MONTVALE, N.J. 07645  
(201) 391-7000  
FAX # (201) 307-1088

PAUL B. GOLDHAMER\*  
BARRY B. KANTROWITZ\*  
GARY S. GRAIFMAN\*  
RANDY J. PERLMUTTER\*

WILLIAM T. SCHIFFMAN\*  
REGINALD H. RUTISHAUSER\*  
JOHN M. CHAKAN\*  
RISA K. JAMESON\*  
MICHAEL L. BRAUNSTEIN\*  
DANIEL B. SCHWARTZ\*

OF COUNSEL  
STEVEN B. ROTHCHILD

\*N.Y. & N.J. BAR  
\*FLA. BAR

September 25, 2008

**BY FACSIMILE (650)472-8028**

Julie S. Turner, Esq.  
The Turner Law Firm  
344 Tennessee Lane  
Palo Alto, CA 94306

Dear Ms. Turner:

I am in receipt of your September 25, 2008 letter. Be advised that I believe your jurisdictional argument is meritless. Nonetheless, I will be sure to include a copy of your September 25, 2008 letter with the papers submitted in support of plaintiffs' motions for preliminary injunctive relief. In light of your communication, I will refrain from filing our motions until tomorrow, September 26, 2008. Before then, if you would like to attempt to reach an agreement on this matter, please feel free to contact me.

While I trust your representation that you were "in the middle of preparing a letter of cooperation", your clients' actions were inconsistent with the same. As you are certainly now aware, in response to our cease and desist letter, defendant Railey began actively soliciting other websites to republish defendants' false, misleading and defamatory article. As a result of your client's conduct, plaintiffs had no choice but to commence suit and move for preliminary injunctive relief.

If you have any questions, or would like to discuss this matter, please feel free to contact the undersigned.

Very truly yours,

**KANTROWITZ, GOLDHAMER  
& GRAIFMAN, P.C.**

By:

  
Michael L. Braunstein