

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NBD INTERNATIONAL, INC.	)	CASE NO.
241 Myrtle Street)	
Ravenna, Ohio 44266	)	JUDGE:
)	
Plaintiff,)	
)	
v.	)	<u>COMPLAINT</u>
)	
ROBERT CARHART)	
dba A.C.C.O.N.)	
1002 West Mission Ave.)	
Bellevue, NE 68005-3944)	
)	
Defendant.)	

Now comes Plaintiff, NBD International, Inc. (hereinafter "NBD" or "Plaintiff"), by and through its counsel, and for its Complaint against Defendant, Robert Carhart dba A.C.C.O.N. ("Defendant"), states as follows:

COUNT ONE

1. That Plaintiff NBD is an Ohio corporation.
2. That Defendant is doing business in Nebraska.
3. That on February 3, 2009, Plaintiff NBD entered into an Agreement with Defendant (the "Agreement").
4. That a true and accurate copy of the Agreement is attached hereto as Exhibit A.
5. That the Agreement provides that jurisdiction and venue for this dispute exist in the State of Ohio and the courts of Summit County, respectively. Exhibit A, par. 10.
6. That Plaintiff NBD has fully performed according to the terms of the Agreement despite significant difficulty locating subcontractors.
7. That as a result of Plaintiff NBD's efforts, Defendant has already been paid in excess of

\$100,000, (possibly \$200,000) by Pharmacist Mutual Insurance Co. and State Farm Mutual Insurance Company for business personal property.

8. That Defendant has failed to pay Plaintiff NBD for the services and materials provided.
9. That Defendant has breached the Agreement.
10. That Defendant is liable for the debts.
11. That Plaintiff NBD is entitled to recover from Defendant the amount of Five Hundred Six Thousand Four Hundred Forty Dollars and 85/100 (\$506,440.85) pursuant to the terms of the Agreement.
12. That Plaintiff NBD is also entitled to its reasonable attorney fees and other related costs and expenses from Defendant.

COUNT TWO

13. That Plaintiff NBD realleges and reavers the allegations in the foregoing paragraphs.
14. That Plaintiff NBD conferred a benefit upon Defendant.
15. That Defendant had knowledge of the benefit provided by Plaintiff NBD.
16. That Defendant has retained and/or transferred the benefit, and therefore it would be unjust to permit Defendant to not pay for this benefit.
17. That Plaintiff NBD stayed on the project due to repeated assurance and promises that payment would be made directly to Plaintiff NBD from Pharmacists Mutual Insurance Co. and State Farm Mutual Insurance Company.
18. That Defendant by actual or constructive fraud, duress, abuse of confidence, unconscionable conduct, artifice, concealment and/or questionable means obtained property and benefit which he ought not hold and enjoy.
19. That, upon information and belief, Pharmacists Mutual Insurance Co. and State Farm Mutual Insurance Company stand ready, willing and able to pay all sums claimed due herein, however, Defendant refuses to approve payment due to malicious intent.
20. That equity requires that a constructive trust be invoked over all proceeds and/or

payment from Pharmacists Mutual Insurance Co. to and/or for the benefit of Defendant.

COUNT THREE

21. That Plaintiff NBD realleges and reavers the allegations in the foregoing paragraphs.
22. That a dispute exist between the parties to this action as to whether Defendant is liable to Plaintiff NBD for payments required by the Agreement and/or the value of the service rendered pursuant to the Agreement.
23. That this Court has jurisdiction to enter a declaratory judgment as to the liability of Defendant to Plaintiff NBD.

Wherefore, Plaintiff NBD International, Inc. respectfully requests judgment against Defendant as follows:

1. For compensatory damages in the amount of Five Hundred Six Thousand Four Hundred Forty Dollars and 85/100 (\$506,440.85);
2. For prejudgment and post-judgment interest;
3. For the imposition of a constructive trust over the proceeds and/or payments as required above;
4. For reasonable attorney fees, cost and expenses;
5. For a declaratory judgment as to the liability of Defendant to Plaintiff; and
6. For all other relief which this Court deems equitable and just.

Respectfully submitted,



Donald W. Davis, Jr. (#0030559)
Brennan, Manna & Diamond, LLC
75 E. Market Street
Akron, Ohio 44308
(330) 253-5060
(330) 253-1977 (fax)
dwdavis@bmdllc.com
siyeargin@bmdllc.com

Counsel for Plaintiff NBD International, Inc.

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

NBD INTERNATIONAL, INC.)	
Plaintiff)	
v.	)	Civil Action No. 5:09-cv-00921-JRA
ROBERT CARHART dba A.C.C.O.N.	)	Judge John R. Adams
Defendant	)	Magistrate Judge Limbert

Summons in a Civil Action

To: (Defendant's name and address)

LEROY CARHART aka ROBERT CARHART dba
A.C.C.O.N.
1002 West Mission Avenue
Bellevue, NE 68005

A lawsuit has been filed against you.

AMENDED

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Donald W. Davis
BRENNAN, MANNA & DIAMOND, LLC
75 E. Market Street
Akron, Ohio 44308

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.



Date: 07/23/09

GERI M. SMITH
Name of clerk of court

s/ Heather R. Sherer
Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on _____,
by:

- (1) personally delivering a copy of each to the individual at this place, _____
_____ ; or
- (2) leaving a copy of each at the individual's dwelling or usual place of abode with _____
who resides there and is of suitable age and discretion; or
- (3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is
_____ ; or
- (4) returning the summons unexecuted to the court clerk on _____ ; or
- (5) other (*specify*) _____

_____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

Date: _____

Server's signature

Printed name and title

Server's address



Phone: 800.929.3398

Fax: 800.783.3802

241 Myrtle St., Ravenna, Ohio 44266

Service Contract

This contract is made this 3rd day of February, 2009, by and between NBD International Inc., of 241 Myrtle Street Ravenna, Ohio. (NBD); and Dr. Robert Carhart and assigns/agents of 1002 West Mission Avenue (Customer).

1. **Terms** - NBD hereby agrees to perform the service identified in the Work Authorization to Proceed and Subcontractor Scope of Work (hereinafter "Scope of Work") (attached). This contract shall commence on the date hereof and shall continue until the services set forth on the Scope of Work Term Sheet have been completed. This estimate, pursuant to the Scope of Work, is based upon NBD having full access to the affected equipment. Any delays due to Customer's schedule or work stoppages will constitute a change order and may result in additional charges.

Restoration services will be provided on a "Best Efforts" basis, understanding that the customer's equipment and/or facilities are utilized in a medical facility, and the evaluation performed to assess restorability of these items may or may not include required functional repairs when the machines are powered up and functionally tested. Such potential additional repairs will be submitted as a part of the Supplemental Scope of Work and will be approved on case by case basis by facility manager or designated agent.

NBD hereby agrees to furnish all labor, equipment and materials reasonably necessary to complete the work described in the Scope of Work. NBD and Customer may make changes in the work to be performed hereunder in written Supplemental Scope of Work or a Change Order, signed by both parties.

2. **Price** - Work performed hereunder shall be charged on a time and material basis (plus any applicable taxes) as indicated in the Rate Schedule (see attached):

3. **Payment:** Customer agrees to make payment or authorize direct payment to NBD for services rendered hereunder in the amounts and on the terms specified below, regardless of whether customer is entitled to reimbursement for such costs from any Insurance Company, Financial Institution or from any other source.

INITIAL:

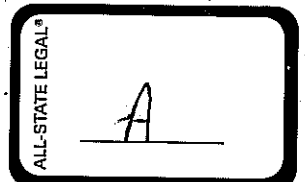
Billing Addresses:

Dr. Robert Carhart
A.C.C.O.N.
1002 West Mission Ave
Bellevue, NE 68005-3947

Justin Davis
Pharmacists Mutual Insurance Co.
808 HWY 18 West
Algona, IA 50511

4. **Payment schedule:** NBD shall submit to Customer an itemized invoice setting forth the total amount due in accordance with the rate schedule for labor plus materials, equipment and subcontract services utilized in the performance of the Scope of Work Authorization upon completion of the project. Following is the schedule for payment:

- 1. Emergency Services for Content and Structure, 100% Complete. Amount Due \$66,177.39



Dr. Robert Carhart

Service Contract

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2. Work Authorization to Proceed is signed, work has commenced and 70% of estimate for structure \$244,696.07 and 50% of estimate for contents \$82,875.78 will be due and is to be paid upon receipt of invoice..
 3. Upon completion of services, the final detailed invoice will be prepared, reconciled with payments, and submitted for payment under the agreed scope of work.
 4. Failure to maintain this schedule may result in work stoppage at the sole discretion of NBD.
5. **Best Efforts:** NBD and Customer acknowledge that the property, which is the subject of this work, may have been involved in a flood, fire or other catastrophe. NBD will perform the work on a "Best Efforts" basis, and, therefore, will work in conjunction with local service providers for normal preventative maintenance service agreements following the completion of the work and functional testing.
6. **Causes Beyond Control:** If any circumstance or event which is beyond the reasonable control of NBD delays the performance of any of NBD's obligations under this agreement or makes any of those obligations impossible to perform, NBD will not have any liability for that delay or non-performance
7. **Consents And Permits:** Any Federal, State or Local permits required for the performance of the work are the responsibility of Customer. If identified in the Scope of Work, NBD may obtain such permits and consents on Customer's behalf at Customer's expense. Both NBD and Customer will comply with all applicable governmental regulations, statutes, laws and ordinances.
8. **Hazardous Disposal:** NBD's disposal, under the Scope of Work, of any Hazardous Material (including specimens or samples) or any property that contains Hazardous Material will be made in the name of Customer and under any applicable generator number or other identification assigned by Customer.
9. **Indemnity:** Each party agrees to indemnify, hold harmless and defend the other party hereto and the party's shareholders, directors, officers, employees and agents, from and against any and all claims, demands, causes of action and liabilities of any nature, whether for damages to property, and/ or the conditions to which this contract pertains, to the extent that any such claim, demand, cause of action and/ or liability is attributable to the breach of the contract, negligence or other fault of the indemnifying party.
10. **Jurisdictions, Venue And Governing Law:** The parties hereby irrevocably consent to the jurisdiction of the Courts of the State of Ohio and any Federal court located in such State in connection with any dispute between the parties hereto including any action or proceeding arising out of or relating to this contract, or any document or instrument delivered pursuant to, in connection with, or simultaneously with this contract or any such document or instrument. The parties also hereto consent that venue of any action brought under this agreement shall be exclusively in Summit County, Ohio. This contract shall be construed in accordance with the laws of the State of Ohio, without giving effect of conflict to laws.
11. **No Consequential Damages:** No party shall in any action or proceeding or otherwise assert any claim for consequential damages against any other party to this contract on account of any loss, cost, damage or expense which such party may suffer or incur because of any act or omission of any other party to this contract or its agents or employees in the performance of a party's obligations under this contract, or any other cause of action (including negligence) arising out of or related to transactions in connection with this contract, or otherwise, and each party expressly waives any such claims.
12. **Cancellation:** In the event that the customer cancels this project after executing a Scope of Work Authorization, the customer will be held responsible for payment of all costs, charges and expenses (to include travel, lodging and per diem), equipment fees, labor fees and administration fees incurred to the point of cancellation. Furthermore a restocking fee for parts or supplies specifically purchased for this project will be charged at a rate of 15% of the purchase price or fifty dollars (\$50.00 US), whichever is greater.
13. **Entire Agreement:** This contract and the exhibits hereto comprise the complete agreement of the parties. No engagements, promises, representations, or warranties have been made by either party except as expressly stated in this contract and its exhibits, and the parties hereby expressly disclaim all implied warranties. All modifications to this contract shall be in writing, signed by both parties, hereto. This contract and exhibits supersede and replace all prior oral and written agreements between the parties.

Dr. Robert Carhart

Service Contract

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I have read and understand the items contained in this document:

For Customer:

LeRoy H. Casper
Print

[Signature]
Sign

2/3/09
Date

For NBD International Inc.:

Mark Sant S
Print

[Signature]
Sign

2/3/09
Date

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NBD INTERNATIONAL, INC.	)	CASE NO. 5:09 CV 921
)	
Plaintiff,	)	JUDGE JOHN R. ADAMS
)	
v.)	
)	
ROBERT CARHART	)	<u>MOTION FOR LEAVE TO AMEND</u>
dba A.C.C.O.N.	)	<u>COMPLAINT</u>
)	
Defendant.)	

Now comes Plaintiff, by and through his counsel, and hereby moves this Court for leave to file an Amended Complaint. Leave to amend is sought in order to attach an agreement between the parties, add "Robert Carhart also known as LeRoy Carhart" to the caption and claims of the Complaint and/or add "LeRoy Carhart also known as Robert Carhart: as a party.

Attached hereto as Exhibit A is a Service Contract which refers to "Robert Carhart" on the first page and yet was signed by "LeRoy Carhart" on the third page. This agreement governs the dispute between the parties.

The address on the Service Agreement filed with this Court for "Robert Carhart" is:

1002 West Mission Avenue
Bellevue, NE 68005

The address on the Answer filed with this Court by "LeRoy Carhart" is:

1002 West Mission Avenue
Bellevue, NE 68005

Also the signature on the Service Contract appears to be very similar if not the same as the signature on the Answer filed herein. See Exhibit "B".

Plaintiff seeks to Amend its Complaint to add LeRoy Carhart as an also known for

Robert Carhart and/or add Robert Carhart also known as LeRoy Carhart. Plaintiff also would submit the Service Agreement as an Exhibit to the Amended Complaint.

In light of the foregoing, Plaintiff respectfully moves this Court for leave to Amend the Complaint.

Respectfully submitted,

/s/ Donald W. Davis, Jr.

Donald W. Davis, Jr. (#0030559)
Brennan, Manna & Diamond, LLC
75 E. Market Street
Akron, Ohio 44308
(330) 253-5060
(330) 253-1977 (fax)
dwdavis@bmdllc.com
sjyeargin@bmdllc.com

Counsel for Plaintiff NBD International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically this 1st day of July 2009. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Also a copy of the foregoing was sent vial telecopier to LeRoy Carhart at 402-291-4643

/s/ Donald W. Davis, Jr.



WORK AUTHORIZATION TO PROCEED

THIS AGREEMENT made as of this date, Jan 17, 2009, by and between Dr. Leroy Cochran (customer) and N B D International Inc. (service provider), to perform work as described on the following PROJECT:

Project
Fire & Water Damage results of Fire at 1002 West Mission Ave. Bellevue, NE 68005 - Jan 16, 2009

Authorizing Party (Please Print)	Service Provider
Name: <u>Dr. Leroy Cochran</u>	N B D International Inc.
Company: <u>Abortion & Conception Clinic of Nebraska</u>	241 Myrtle Street
Address: <u>1002 West Mission Ave</u>	Ravenna, OH 44266
City/State/Zip: <u>Bellevue, NE 68005</u>	

Section 1: Documents / References

Included with the AUTHORIZATION are the following documents:

- | | |
|---------------------------------------|----|
| 1. NBD International Inc. rate sheets | 3. |
| 2. Company information and contact | 4. |

Section 2: Preliminary Scope of Work

The initial focus is to ascertain the logical recovery process to return customer to operation in as quickly a manner as is reasonably possible. Therefore, NBD International Inc. is authorized to proceed and agrees to perform the services including but not limited to the following:

- | | | |
|-----------------------|-----------------------|------------------------------------|
| 1. Emergency Services | 3. Structure Drying | 6. Odor Removal |
| 2. Mitigating Drying | 4. Structure Cleaning | 7. Inventory of Contents |
| | 5. Trash Removal | 8. Contents Cleaning & Restoration |

Section 3: Direct Authorization

The owner and/or authorized representatives authorize NBD International Inc. to proceed with mobilization and setup for disaster recovery services pertaining to the above mentioned property. It is understood that the customer is responsible for charges incurred as per this authorization and any change orders that may be instituted and that NBD may exercise lien right to secure payment. All costs and charges are due in accordance with the attached rates. A detailed scope, if needed, and an estimate will be prepared upon completion of a full site assessment and survey.

The liability of NBD International Inc. is expressly limited to the total amount of services performed, in no event shall NBD International Inc., its agents or affiliations, be responsible for consequential damages of any kind. In the event that any legal proceedings are necessary, they will be brought in the courts of Summit County, Ohio and NBD International Inc. shall be entitled to recover the cost of collection to include reasonable attorney fees. Should this authorization be terminated for any reason, the customer is responsible for payment of charges and/or fees incurred by NBD International Inc. to the date of termination, beginning on Invoices will be sent to the above noted address unless otherwise directed by customer.

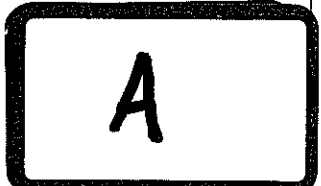
Section 4: Payment Authorization

The owner and/or authorized representatives authorize their insurance carrier to make direct payment to NBD International Inc. (service provider) according to agreed terms for work completed and invoiced.

[Signature]
Signed for and on behalf of customer

[Signature]
Signed for and on behalf of
NBD International Inc.

Date: Jan 17, 2009



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NBD INTERNATIONAL, INC.	)	CASE NO. 5:09-CV-00921
)	
Plaintiff,)	
	)	JUDGE JOHN R. ADAMS
v.)	
)	
ROBERT CARHART	)	<u>STIPULATION OF DISMISSAL</u>
dba A.C.C.O.N., et al.)	
)	
Defendants.)	

Now come Plaintiff, NBD International, Inc. by and through its counsel, and Defendants and pursuant to Fed. R. Civ. Proc. 41(A)(1)(ii), hereby stipulates to the dismissal of this action without prejudice

Respectfully submitted,

/s/ Donald W. Davis, Jr.
Donald W. Davis, Jr. (#0030559)
BRENNAN, MANNA & DIAMOND, LLC
75 East Market Street
Akron, OH 44308
PH: (330) 253-5060
FX: (330) 253-1977
EMAIL: dwdavis@bmdllc.com
Counsel for Plaintiff NBD International, Inc.

/s/ Robert Carhart/LeRoy Carhart
Robert Carhart/LeRoy Carhart
1002 West Mission Avenue
Bellevue, NE 68005
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically this 3rd day of August 2009. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. A copy of the foregoing has also been sent via regular U.S. mail to the following:

Robert Carhart aka Leroy Carhart
dba A.C.C.O.N.
1002 West Mission Avenue
Bellevue, NE 68005-3944

Leroy Carhart aka Robert Carhart
dba A.C.C.O.N.
1002 West Mission Avenue
Bellevue, NE 68005-3944

/s/ Donald W. Davis, Jr.
Counsel for Plaintiff, NBD International, Inc.