Statement of W. Joel Blass

1. My name is William Joel Blass. I have been asked by the United States Department of Justice to respond to the statements submitted by Judges Charles Clark and Armis Hawkins in this proceeding, as well as to comment more generally on some of the claims asserted by The Loewen Group, Inc.[1]

2. I was admitted to the Bar in Louisiana in 1940 and to the Mississippi Bar in 1947. My Curriculum Vitae is attached to this statement. Except for a total of six years of active military service in the United States Army in World War II and the Korean Conflict, I have been engaged in the practice or teaching of law since 1940. I served for six years as a professor at the University of Mississippi Law Center, two years as a Justice of the Mississippi Supreme Court (in 1989 - 1991), and the remainder of the time in the practice of law. I have had a general practice, primarily business oriented. In my youth I handled a substantial number of criminal cases, but, as I matured, my practice tended more to land law, business and corporate matters, and to the representation of newspapers in First Amendment cases. I have represented a number of plaintiffs in tort actions but more frequently

[1] I have not been provided any payment for this statement or for my time in preparing it.

represented the defendant. I have been a Fellow in the American College of Trial Lawyers since 1965, and I am a Fellow in the Mississippi Bar Foundation.

3. I am personally very familiar with the case of Jeremiah J. O'Keefe, Sr., et al. v. The Loewen Group, Inc., et al., Civil Action No. 91-67-423 (1st Dist., Hinds County, Miss.) (the "O'Keefe" case). I did not participate in the trial stage of the case nor was I consulted about it at that time. After Loewen filed an appeal, however, Mr. O'Keefe asked me to serve as lead counsel for the O'Keefe parties on the appeal. I read the trial transcript as soon as it was available to me. When Loewen sought to have the supersedeas bond requirement lowered in the trial court, I made the argument for O'Keefe before Judge Graves in Jackson, Mississippi.

4. I have known Judge Clark and Judge Hawkins for many years; I know them well and have great respect for each of them. However, neither is infallible. With all due respect to these gentlemen, both my friends, I must say that the conclusions they reach are not supported by the record or by the alleged facts they say they find.

5. Both of these able lawyers have given statements to the effect that the judgment in the O'Keefe matter was based on reversible errors and would certainly have been reversed on appeal. Mr. O'Keefe was well aware that reversal was a possibility. In fact, I advised him that the case appeared firm and strong on the

question of Loewen's liability, but that there was a substantial possibility the case would be reversed and remanded for further proceedings relating to the calculation of damages.[2] If this advice was good, or if either Judge Clark or Judge Hawkins is correct in his view that reversal was a certainty, then it is very clear, patent, and obvious that Loewen should have perfected its appeal, even without supersedeas, without any real fear of execution. Mr. O'Keefe would certainly not have wanted to incur the potential liability for executing on Loewen's assets based on a judgment believed likely to be reversed. Equally clearly, Loewen might have stopped any execution by the stroke of a pen by the simple act of invoking the protection of the Bankruptcy Code's automatic stay provision. Both of these avenues were available from the outset and were, indeed, both pointed out to Loewen in the argument before Judge Graves on Loewen's motion to reduce the supersedeas bond. I fully expected Loewen to use either or both of these remedies and was surprised greatly when it did not.

6. I cannot recall any time at which Loewen's counsel, including my former colleague James Robertson, told either Judge Graves or the Mississippi Supreme Court that these alternatives we were suggesting were impractical. Nor,

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[2] Mr. O'Keefe has authorized me to disclose the contents of this advice in this statement.

for example, did anyone ever say that Chapter 11 bankruptcy proceedings would be unreasonably expensive. Both had elements of inconvenience, but both would have worked. Loewen deliberately chose to abandon the legal process and make a settlement outside. Judge Hawkins says that if Loewen had pursued its legal remedies it would have certainly found relief under Mississippi law. That seems to me to support the position that Loewen was not "forced" to settle, and therefore that there is no basis for the claim filed here.

The Trial

7. Before I return to the question of Loewen's options on appeal, permit me a few words on the subject of the O'Keefe trial. I agree with Judge Hawkins wholeheartedly in his plea that the Tribunal read the whole record. Neither participating in the case nor in reading the record did I see any suggestion of the type of anti-Canadian, race and class bias that is now alleged. I have had a long and fortunate legal career, am substantially retired and have neither the need nor the desire to take on cases just for the work or the fees. My lifestyle is modest and my needs are few. I would not have associated myself with the case if that kind of prejudice had been the theme of it.

8. I had the privilege of serving with Jimmy Robertson, one of Loewen's lawyers, on the Mississippi Supreme Court. I spoke with him in the courtroom

immediately after the bond hearing before Judge Graves and he said nothing to me about Canada or any anti-Canadian sentiment. A large part of what Loewen is complaining about now is just normal speech. When talking about geographic locations people commonly say "down on the coast," "up in Memphis," "came down from New York," or the like. I have lived a long time, know many individuals, laborers and artists, multi-millionaires and paupers, priests and one or two criminals, university professors and illiterates, but I do not know anyone who hates Canadians or Canada. I do not hesitate to say that the norm is quite the contrary.

9. It is simply not true to say Loewen was treated differently as a result of its Canadian ownership, or the class or race of its owners. One side was financially stronger than the other, but neither was impoverished. The parties on both sides of the case were all white, so far as I know. Certainly no one was at a disadvantage because of being either white or black. Any Mississippi corporation in Loewen's shoes, owning what it owned, trying to dominate the market, to control the business of death, would have faced the same or a similar outcome.

10. I had the privilege to serve, briefly, on the Mississippi Supreme Court with Judge Hawkins. While I have great respect and considerable fraternal affection for Judge Hawkins, I am in no way shocked at his opinion because it is

filled with typical Hawkinsian Fury: "it is difficult to believe it really happened." It is "the worst trial record I have ever encountered." "The description either I, these gentlemen, or anyone else attempts to make of this record, however, can never suffice." "I see no set of circumstances under which a responsible Supreme Court would have affirmed this judgment." "I also see no antitrust violation, and certainly no case for any punitive damages, let alone the $400 million awarded." Judge Hawkins has always tended towards hyperbole, and his statement here is no exception.

11. Judge Hawkins' statement commences in typical fashion. It is apparent from the first page and a half which side he is on. If I did not know him well, I would be surprised by his assessments because I read the same record and at the end had quite a different impression. While on the bench, and while a practicing lawyer, I have seen many trial records similar to this one, although admittedly few this long or complex. Every extended trial will occasion some mistakes – especially trials lasting two months – but on balance Judge Graves handled this one remarkably well, firmly, and with dignity and skill.

12. I knew Judge Graves by his reputation, which is excellent. After reading the trial record in its entirety, one cannot possibly conclude that Judge Graves neglected any judicial duty. A fair reading of the actual record, without the

characterizations adopted in the Loewen brief that Judge Hawkins and Judge Clark rely on, will show that the trial judge handled both sides' usual posturing and maneuvering skillfully and fairly. I believe that no one will challenge the fact that Judge Graves enjoys an excellent reputation and was re-elected without opposition after his first term in office. While Judge Hawkins was almost violent in his attack on the record, it is noteworthy that his statement contains no reference to the reputation or standing of Judge Graves.

13. It is easy, as an appellate judge, to forget what life is like in the trenches of a trial. It is also easy in hindsight to say that a certain question or answer was improper. But in the scope of a two-month trial, that will happen. A trial judge's duty to conduct a fair trial is not a single-edged sword. As part of that duty, trial courts have an obligation to allow the parties to make their cases to a jury.

The Bond Proceedings

14. That Judge Graves was even-handed in the O'Keefe matter was also borne out in the parts of the case in which I personally participated – the bond hearing and some of the settlement negotiations. The Judge handled the bond proceedings fairly, listening to both sides, weighing the arguments. It is not fair to say he ruled summarily, or that he was confused. In particular, Judge Clark

suggests that the trial judge did not properly understand the interaction between rules 8(a) and 8(b) of the Mississippi Rules of Appellate Procedure, but rest assured that Judge Graves had a very clear understanding of that issue during the hearing. Indeed, he rejected my argument that Rule 8(b) was not applicable to Loewen's motion.

15. From my knowledge of the Mississippi Supreme Court, I would not be as quick as my former colleague Judge Hawkins to cast aspersions at the Court's motives and decisions. As I noted earlier, nothing in the record suggests that the Mississippi Supreme Court was ever told that denying Loewen's request for a reduction of the bond would force Loewen to settle the case or face financial ruin. Nor is there any remotely plausible reason to believe that Loewen's nationality played any part in the Court's decision on the bond issue.

16. Judge Clark's statement is more restrained than that of Judge Hawkins. Judge Clark simply accepts as established fact everything that Loewen says and concludes that the Mississippi courts exercised their discretion erroneously. His statement indicated that he did not read the transcript of the trial or the appellate record, but only the orders of the courts. By relying so heavily on Loewen's allegations, he misses the issue really before the Mississippi courts. For example, he takes at face value the claim that Loewen had no other remedies that did not do

violence to normal procedures under the statutes and rules. But I argued at the time that the company could still pursue an unbonded appeal or appeal through protection of Chapter 11 of the Bankruptcy Code, and Loewen never disputed these points. Because there were these other avenues for appeal that Loewen did not want to pursue, Loewen was really arguing that it had a right to special treatment not afforded to other litigants – an automatic exception to the bond requirement for large corporations. The courts rejected that.

17. It is worth noting that there was considerable doubt as to the veracity of Loewen's statements that $125 million was the largest bond it could make. We had what we believed to be good evidence that it could have done much more – perhaps not the full $625 million (although there was some indication it could do even that) – but certainly more than $125 million. We pointed this out to the courts, especially noting that the affidavits submitted were very carefully written to avoid absolute terms. I cannot help but believe that, if as my friend Judge Hawkins says, the Court is not "removed from human affairs," this evidence would have had a profound impact on the views of the justices, especially in a case where large-scale fraud and misrepresentation by the defendants were the major jury findings.

18. Another fact missing from Loewen's account of the bond decisions is that the owner of the judgment, Mr. O'Keefe, was entitled by law to that judgment,

at least until reversed. At the time, Loewen simply refused to acknowledge a possibility of the validity of the judgment, especially the portion denominated as punitive damages. It seems as if that is still Loewen's position today. But Mr. O'Keefe's interests in protecting his judgment were presented before the Mississippi courts, trial and appellate. We pointed out that Loewen's assertions about its precarious financial condition actually cut against Loewen and for O'Keefe. The more precarious Loewen's position appeared, the more needed to be done to protect the judgment. For example, we pointed out that the pending litigation against Loewen in Pennsylvania posed a real threat that Mr. O'Keefe would never be able to collect at all.

19. Loewen's position seems to reduce to this: if discretion was not exercised in the way it sought, then it was not exercised at all. That is not what discretion is. Discretion means that the court has within its lawful scope the ability to balance both sides, to weigh all interests, and to make a decision within a range of appropriate and just options. That is what the Court did, despite Loewen's dislike of the outcome. The Courts knew that there were other remedies, clear, open and immediately available, other than settlement. The Loewen Group was not forced to settle. It elected to do so.

Loewen's Options On Appeal

20. The central point of this matter is whether Loewen had practical alternatives to settlement after the bond reduction was denied. It strikes me as wrong to argue it did not. Certainly at the time we had no indication from Loewen, either formally (in court filings) or informally that this was the case. In fact, I spoke with Jimmy Robertson after the bond hearing, and he told me that there were plenty of avenues open to them, and that I had mentioned two of them to Judge Graves. Those two are appeal without supersedeas, and a bankruptcy stay.

21. Loewen could have appealed without supersedeas. The idea that Loewen could not have done so because of the threat of execution on its assets makes no sense at all. There was no real likelihood of a large-scale (or even small-scale) execution on Loewen's assets. Mr. O'Keefe would have been liable for restitution of any property executed on if the judgment were reversed. What lawyer would advise a client to execute on property in the enforcement of a judgment as clearly reversible as Judge Hawkins says this one was?

22. I was of the opinion, and so informed Mr. O'Keefe, that while the case on the issue of liability was so strongly made that I felt very confident that it would stand, a remand on the damages issue was a definite possibility. In such circumstances, the chances of Mr. O'Keefe or anyone else risking their own

personal liability to execute on unbonded assets during the appeal are simply negligible. I know that Jimmy Robertson understood this.

23. Also, even if we had wanted to start execution immediately, the process to obtain execution on assets is not easy, and takes a good bit of time. We were not ready to execute on Loewen's assets at the time, and I am aware of no specific plans to go forward. Based on my conversations with Loewen's counsel, Loewen either knew or should have known that.

24. Loewen could also have, of course, obtained a stay under Chapter 11 in the bankruptcy court without any bond for protection. Many major companies have done so and now prosper. Neither Judge Hawkins nor Judge Clark disputes this plain and common practice in litigation in the United States. Judge Graves knew it and the Mississippi Supreme Court knew it. It is an indisputable fact. Every litigating lawyer in the United States knows it.

25. The bankruptcy course would have worked instantly and I believe that Loewen was advised to follow it by very able counsel. In many disputes between business entities, the bankruptcy sword hanging over the negotiations is constantly on the minds of both parties. It is no longer the tool of only the poor. It is a tool frequently used by some of the major corporations of the nation. In my experience, defendants have frequently used Chapter 11 proceedings as a highly effective tool

to avoid execution of a judgment or to force an instant halt. Loewen gave us no reason to believe it could not and would not do the same. I fully expected that Loewen would do it.

26. Indeed, all the evidence we had was that Loewen was planning these very steps. I can recall one settlement negotiation during the bond proceedings at which Loewen brought in a new attorney that none of us knew. When we later did research and found out who he was, we learned he was one of the preeminent Chapter 11 experts in the nation. We knew then that they were sending us a message that Loewen was prepared to use Chapter 11 to prevent Mr. O'Keefe from collecting any of the judgment during an appeal.

27. Loewen says now that without a supersedeas bond, it could not appeal and could not continue to operate its business. It is worth noting that Loewen's condition was not the fault of Mr. O'Keefe, or of Judge Graves, or of the Supreme Court of Mississippi. Rather, it was Loewen's own fault. Loewen entered the case in a financial straight-jacket because of past decisions. The company was badly over-leveraged because of the acquisitions it had made, and still chose to stake its survival on further acquisitions. The Mississippi courts had nothing to do with Loewen's past management nor any responsibility to protect it from the consequences of past folly and arrogance. I believe Loewen was already the

second largest entity in the world in the death and burial business, and, as this record shows, abusive of the power of its position.

Conclusion

28. Why did Loewen forego its available options and seek relief from this international tribunal instead of pursuing the normal domestic appeal? In part it is because Loewen was unwilling to simply operate as any normal business does. At the time of the O'Keefe verdict, Loewen had a vast empire of funeral homes and cemeteries. It claimed that business was the best it had ever been – that it was operating at a profit. Loewen could have appealed the verdict and continued for a short period just operating those homes and cemeteries at a profit. I agree with all who say that the Mississippi Supreme Court would have expedited this appeal. In my view, it would have been over within a few months. But instead Loewen insisted on the need to continue to buy other properties at what all objective observers agree was a reckless pace.

29. It seems to me that Loewen's position here is this: that, faced with a large verdict it wanted to appeal, it was entitled to a remedy without any inconvenience, and this despite the fact it had lost at trial, had created its own financial straight-jacket, and had been found by the jury to have attempted to defraud O'Keefe. There is not, nor should there be, any such entitlement in the

Mississippi court system; not for Mississippi companies nor for litigants from elsewhere. In my judgment, if Loewen had been a Jackson, Mississippi, company, the result would have been the same.

Witness my hand on this the 7th day of August, 2001.

W. Joel Blass

Sworn to and subscribed before me this the 7 day of August, 2001.

Notary Public Vikki A. Goff

My Commission Expires:

My Commission Expires April 7 2004

Curriculum Vitae

William Joel Blass

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E-mail:	joelblass@worldnet.att.net
Born:	Clinton, Mississippi, October 19, 1917

Education

Louisiana State University – AB (1937), JD (1940)

Professional and Related Activities

1940-41:	Special Agent, Louisiana State Police, Assigned to Louisiana Crime Commission
1941-46:	United States Army, Infantry; additional duties included trial of approximately 165 cases
1946-65:	General Law Practice, Wiggins, Mississippi
1965-71:	Professor of Law, Director of Research, Associate Dean, Lamar Law Center, University of Mississippi, Oxford, Mississippi
1971-89:	General Law Practice, Mize, Thompson, and Blass, Gulfport, Mississippi
1989-91:	Associate Justice, Mississippi Supreme Court
1991:	Whitten Chair of Law and Government, Lamar Law Center
1991-94:	General Law Practice, Mize, Blass, Lenoir, and Laird, Gulfport, Mississippi
1994-present:	Of Counsel, Gerald Blessey & Associates, Biloxi, Mississippi

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1953-60	Member, Mississippi House of Representatives
1979-85	Member, Mississippi Board of Bar Admissions
1981-88	Commissioner, National Conference of Commissioners on Uniform State Laws

Military Service

Army, Infantry, 1941-46. Honorably discharged at rank of Major. Received Bronze Star for action in Germany. Graduated from Field Officer's Course, The Artillery School, Fort Sill. One year active duty during Korean Conflict.

Awards and Honors

Fellow, American College of Trial Lawyers, 1965
The Outstanding Teacher Award, University of Mississippi, 1969
Listed in Best Lawyers in America, first and subsequent editions
Fellow, Mississippi Bar Foundation
Fellow, Young Lawyers Division of the Mississippi Bar Association
Professionalism Award, 1999, Mississippi Bar Foundation
Lifetime Achievement Award, 2000, Mississippi Bar
Knight of St. Gregory
Past President, Diocesan Pastoral Council, Natchez-Jackson Diocese, Catholic Church