

Jeff Oven, Bar No. 6-3371  
CROWLEY FLECK PLLP  
490 North 31<sup>st</sup> Street, Suite 500  
P.O. Box 2529  
Billings, MT 59103-2529  
Telephone: (406) 252-3441  
Facsimile: (406) 252-5292  
joven@crowleyfleck.com

Timothy Stubson, Bar No. 6-3144  
CROWLEY FLECK PLLP  
152 N. Durbin, Suite 220  
Casper, WY 82601  
Telephone: (307) 265-2279  
Facsimile: (307) 265-2307  
tstubson@crowleyfleck.com

Attorneys for Plaintiff

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING  
2013 JUN 3 PM 3 34  
STEPHAN HARRIS, CLERK  
CASPER

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

TIMOTHY MELLON, a Wyoming resident,	)	Cause No.: <u>13CV1185</u>
	)	
Plaintiff,	)	
vs.	)	
	)	
THE INTERNATIONAL GROUP FOR	)	
HISTORIC AIRCRAFT RECOVERY, a	)	<u>COMPLAINT</u>
Delaware non-profit corporation and	)	
RICHARD E. GILLESPIE,	)	
	)	
Defendants.	)	

Plaintiff, Timothy Mellon, a Wyoming resident, by and through his attorneys, Crowley Fleck, PLLP presents the following as his complaint against Defendant, The International Group for Historic Aircraft Recovery, a Delaware non-profit corporation and Defendant Richard E. Gillespie.

PARTIES

1. Plaintiff, Timothy Mellon, (Mellon) is a Wyoming resident.

Receipt # CAS1066  
Summons: 2 issued  
not issued

2. Defendant, The International Group for Historic Aircraft Recovery (TIGHAR) is a Delaware non-profit corporation with its principal offices in Wilmington, Delaware. TIGHAR performs investigations, aviation archeology and historic preservation of rare and historic aircraft.

3. Defendant Richard E. Gillespie, (Gillespie) is a citizen of Delaware and is the Executive Director of TIGHAR.

### JURISDICTION

4. The parties are of diverse citizenship.

5. The amount in controversy exceeds the jurisdictional minimum for this Court.

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(a), § 1331 and 18 U.S.C. § 1964.

### VENUE

7. The claims forming the basis of this complaint, or a significant portion thereof, arose in that geographical area which is contained within the federal judicial district known as the District of Wyoming.

8. Venue is properly in this Court pursuant to 28 U.S.C § 1391 and 18 U.S.C. § 1965(a).

### FACTS COMMON TO ALL CLAIMS

9. TIGHAR conducts investigations around the world into aircraft wreckage and accidents.

10. As part of its efforts TIGHAR engages in extensive fund raising utilizing corporate sponsorships and private dollars to fund its activities.

11. Among the most prominent of its efforts is TIGHAR's ongoing investigation into the disappearance of Amelia Earhart and her navigator Fred Noonan in the South Pacific in 1937.

12. TIGHAR has focused its efforts on the island of Nikumaroro in the Republic of Kiribati. The island was formerly known as Gardner Island.

13. Operating on a hypothesis that Earhart and Noonan landed and perished on Nikumaroro, TIGHAR has launched a number of expeditions to the island and conducted numerous detailed surveys and searches of the island and its surrounding waters.

14. In 2010, TIGHAR undertook an expedition to the island known as NIKU VI.

15. The expedition, which lasted from May 18, 2010 through June 14, 2010, included the use of a remote operated vehicle (hereinafter "ROV") which was equipped with a High-Definition video camera. Significant footage of the waters surrounding Nikumaroro was obtained during the investigation, including footage of the wreckage of the Lockheed Electra flown by Amelia Earhart when she disappeared in 1937.

16. TIGHAR did not disclose the discovery. Instead, TIGHAR began to plan and fund-raise for its next expedition, NIKU VII.

17. As part of its preparations for NIKU VII, the Executive Director of TIGHAR, Ric Gillespie, began meeting with potential benefactors who would support the newly planned expedition.

18. Among those who Mr. Gillespie met with in order to solicit contributions was Plaintiff, Timothy Mellon.

19. On or about March 22, 2012, Mr. Gillespie spoke with Mr. Mellon by phone while Mr. Mellon was at his home in Wyoming. During that conversation the two spoke about

the next planned expedition and the possibility that Mr. Mellon might contribute to funding the expedition.

20. Mr. Gillespie followed up by fax and by mail communicating to Mr. Mellon in Wyoming stating that the Earhart aircraft had not been located.

21. Mr. Mellon and Mr. Gillespie had an additional conversation about the possibility of supporting the latest expedition and noted his interest in being involved in discovering the whereabouts of the Earhart wreckage. At no time did Mr. Gillespie discuss the NIKU VI expedition or the debris field that was discovered as part of that expedition. Instead, Mr. Gillespie represented that the wreckage had not been found and expressed optimism that by utilizing additional tools a discovery was possible during the NIKU VII expedition.

22. Based upon TIGHAR's representations Mr. Mellon contributed stock having a value of \$1,046,843.00 to help fund the NIKU VII expedition.

23. NIKU VII departed Hawaii on July 3, 2012. Mr. Mellon accompanied the expedition as did a documentary crew from the Discovery Channel and other supporters of the expedition.

24. The expedition again included the use of an ROV and a high definition camera.

25. TIGHAR has now announced its plans to fundraise for and launch yet another expedition in search of the Earhart aircraft, NIKU VIII.

**COUNT I**  
**(Fraud)**

26. Mellon incorporates and realleges paragraphs 1 through 25 as though fully set out hereunder.

27. TIGHAR knowingly and intentionally misrepresented the status of its exploration and investigation into the Earhart aircraft to Mellon. Specifically, TIGHAR represented that the

aircraft had not been located and that additional funding and efforts were needed to locate the aircraft.

28. These representations were material and were reasonably relied upon by Mellon in making his decision to contribute to TIGHAR's proposed expedition.

29. Based upon those representations, Mellon pledged and did contribute \$1,046,843.00 to support the NIKU VII expedition.

30. Plaintiff's reasonable reliance on such representations has directly, proximately and foreseeably caused Plaintiff's damages.

31. Plaintiff is entitled to a judgment against TIGHAR in an amount to be proven at trial, for damages sustained by Plaintiff as the direct, proximate and foreseeable result of the Defendant's fraud.

**COUNT II**  
**(Negligent Misrepresentation)**

32. Mellon incorporates and realleges paragraphs 1 through 31 as though fully set out hereunder.

33. Prior to Mellon's donation, TIGHAR represented that its search for the Earhart aircraft was unsuccessful and that additional efforts were needed to discover the aircraft.

34. TIGHAR had, at the time it made the representations, a pecuniary interest in the transaction with Plaintiff.

35. TIGHAR made such representations in the regular course of its business, and made such representations for the purpose of persuading Mellon to make a contribution to its efforts.

36. At the time TIGHAR made such representations, they were false, as Defendant had filmed the wreckage of the aircraft during the course of its prior expedition in 2010.

37. TIGHAR failed to exercise reasonable care and competence in the review of information obtained from its prior expeditions which demonstrated the representations made by TIGHAR to be false.

38. Mellon reasonably and justifiably relied on the representations made by TIGHAR as described herein to his detriment and made a contribution in reliance upon the misrepresentations.

39. Plaintiff is entitled to a judgment against TIGHAR, in an amount to be proven at trial, for damages sustained by Plaintiffs as the direct, proximate and foreseeable result of the Defendants' negligent representation.

**COUNT III**  
**(RICO)**

40. Mellon incorporates and realleges paragraphs 1 through 39 as though fully set out hereunder.

41. Mr. Gillespie is a culpable person and was associated with TIGHAR as its executive director.

42. TIGHAR constitutes an enterprise under the Racketeer Influenced and Corrupt Organizations Act (RICO).

43. In the course of the enterprise, TIGHAR has engaged in a pattern of racketeering activity for the unlawful purpose of intentionally defrauding Plaintiff.

44. Mr. Gillespie knowingly participated in TIGHAR's affairs, specifically the racketeering activity engaged in by TIGHAR.

45. Pursuant to and in furtherance of their fraudulent scheme, Defendants committed multiple acts of wire fraud and mail fraud in violation of 18 U.S.C. §§ 1341 and 1343 and has used both of these methods to solicit contributions for its expeditions.

46. Utilizing the mails and national wire facilities, TIGHAR made false representations to Mellon, to Andrew Sanger, to the Discovery Channel and others that the Earhart aircraft remained undiscovered. These representations were made with the express purpose of soliciting contributions and sponsorships. These solicitations took place in a number of states, including Wyoming, and had a direct impact on interstate commerce.

47. TIGHAR continues this pattern as it solicits ongoing donations for its planned expedition NIKU VIII.

48. TIGHAR'S pattern of racketeering has directly and proximately caused injury to the business and property of the Plaintiff, Mellon.

49. TIGHAR engaged in predicate acts including the solicitation of donations and fraudulent communications regarding its expeditions that were communicated both through the mails and telecommunications. These included faxed transmittals and the transfer of documents through the mail.

50. Following these predicate acts Mellon donated \$1,046,843.00 to support the discovery of the Earhart aircraft. That donation was only made after and in light of fraudulent communications by TIGHAR that it had not yet discovered the aircraft.

**COUNT IV**  
**(Negligence)**

51. Mellon incorporates and realleges paragraph 1 through 50 as though fully set out hereunder.

52. In the alternative to the above Counts, Defendants owed a duty of reasonable care to Mellon who, based on Defendants' own conduct, had an interest in the location of the Earhart aircraft and the NIKU VII expedition.

53. Defendants breached that duty when, based on the information Defendants had

gathered concerning the location of the Earhart aircraft, Defendants acted unreasonably and outside of their duty of care in the manner in which they conducted NIKU VII. This negligence included, but was not limited to, failing to utilize the information they had to conduct a reasonable search for the Earhart aircraft.

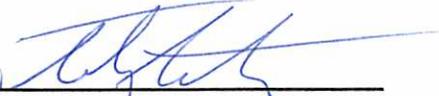
54. This unreasonable conduct, and breach of their duty of ordinary care, caused Mellon damages.

WHEREFORE, Mellon prays that this Court:

1. enter judgment in its favor against the Defendant in an amount to be proven at or prior to trial,
2. enter judgment providing for treble damages as permitted by 18 U.S.C. §1964(c),
3. enter a judgment awarding attorneys' fees and both prejudgment and post judgment interest,
4. award such other and further relief as shall be just and equitable.

DATED this 3<sup>rd</sup> day of June, 2013.

CROWLEY FLECK PLLP

By:   
JEFF OVEN, Bar No. 6-3371  
P. O. Box 2529  
Billings, MT 59103-2529

TIMOTHY STUBSON, Bar No. 6-3144  
152 North Durbin Street, Suite 220  
Casper, WY 82601

13CV118-S

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Timothy Mellon, a Wyoming resident

(b) County of Residence of First Listed Plaintiff Carbon  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeff Oven, Timothy M. Stubson, Crowley Fleck, PLLP, 152 N. Durbin, Suite 220, Casper, WY 82601 (307) 265-2279

**DEFENDANTS**

The International Group for Historic Aircraft Recovery, a Delaware non-profit corporation and Richard E. Gillespie

County of Residence of First Listed Defendant New Castle County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
18 U.S.C. Sections 1961 et. seq.  
 Brief description of cause:  
Money obtained by fraud

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 1,046,843.00

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 6/3/13 SIGNATURE OF ATTORNEY OF RECORD 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \$1000 APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

CASIOG66