

ORIGINAL



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RECEIVED

Martin R. Galbut (#002943)
GALBUT & HUNTER
A Professional Corporation
2425 East Camelback, Suite 1020
Phoenix, Arizona 85016
Telephone: 602-955-1455
Facsimile: 602-955-1585
E-Mail: mgalbut@galbuthunter.com
Attorneys for Respondents Yucatan Resorts, Inc.,
Yucatan Resorts S.A., RHI, Inc., and RHI, S.A.

2005 APR -4 A 8: 02

AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION Arizona Corporation Commission

COMMISSIONERS:

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF MATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of:

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A.,

RESORT HOLDINGS INTERNATIONAL,
INC. d/b/a
RESORT HOLDINGS INTERNATIONAL,
S.A.,

WORLD PHANTASY TOURS, INC.
a/k/a MAJESTY TRAVEL
a/k/a VIAJES MAJESTY

MICHAEL E. KELLY,

Respondents.

DOCKETED

APR 04 2005

DOCKETED BY

DOCKET NO. S-03539A-03-0000

**RESPONDENTS' JOINT MOTION AND
MEMORANDUM OF LAW IN
SUPPORT OF EXCLUSION OF ROY
HIGGS' TESTIMONY AND
DOCUMENTS**

**(ASSIGNED TO THE HONORABLE
MARC STERN, ADMINISTRATIVE
LAW JUDGE)**

NOW COME the Respondents, Resort Holdings International, Inc. ("RHI Inc."), Resort Holdings International, S.A. ("RHI S.A."), Yucatan Resorts, Inc. ("Yucatan Inc."), Yucatan Resorts, S.A. ("Yucatan S.A."), and Michael E. Kelly ("Kelly") (collectively, the "Respondents") and file this, their Memorandum of Law in Support of Exclusion of **RESPONDENTS' JOINT MOTION AND MEMORANDUM OF LAW IN SUPPORT OF EXCLUSION OF ROY HIGGS' TESTIMONY AND DOCUMENTS** - Page 1

Roy Higgs' Testimony and Documents and, in support thereof, would respectfully show the Court as follows:

I.

PRELIMINARY STATEMENT

On September 24, 2003, the Staff of the Arizona Securities Commission ("Staff") conducted an Examination Under Oath ("EUO") of Roy D. Higgs ("Higgs"). Neither the Respondents nor their counsel were present or invited to attend. Accordingly, Respondents were not afforded the right to cross-examine Higgs.

Two months later, on November 21, 2003, Administrative Law Judge Stern ("ALJ") issued his Fourth Procedural Order, stating that the parties were entitled to, among other things, the following: requiring notice of formal interviews of witnesses by the Division with respect to this proceeding; cross-notice to the Division of depositions of these witnesses by the Respondents; and the right of Respondents' counsel to purchase a copy of that portion of any transcript relevant to this proceeding involving the aforementioned witnesses. However, because Higgs' EUO had already been taken, Respondents did not receive the benefit of the Fourth Procedural Order in time to attend said EUO.

Instead, Respondents received a REDACTED Higgs' transcript. In that transcript, the Staff, or someone acting at their behest, redacted, among other things, contact information for Higgs. The Staff refused to provide Respondents with an unredacted transcript.¹ Moreover, the Staff has not produced the documents produced by Higgs in connection with his EUO or the exhibits to the EUO of Higgs. Nevertheless,

¹ See February 13, 2004 correspondence from Jaime Palfai to Galbut & Hunter, P.C., attached hereto as Exhibit 1.

Respondents attempted to obtain Higgs' deposition testimony. Those attempts, as discussed below, proved fruitless, as Respondents were unable to locate Higgs, and the Staff claimed they had no current contact information on Higgs. In addition, at a pre-hearing conference on March 4, 2004, the Staff represented that Higgs would "probably not" be called as a witness at the hearing. Obviously that was not true. While the Staff obviously knew where Higgs was, they refused to divulge that information to Respondents. Thus, the Staffs' offer to allow Respondent the opportunity to notice Higgs for a deposition was illusory.

Accordingly, because the Respondents were unable to cross-examine Higgs, unable to obtain from the Staff an unredacted EUO transcript of Higgs, unable to obtain the documents supplied by Higgs in connection with his EUO or the exhibits to his EUO, Higgs' testimony, and documents allegedly supplied by Higgs in connection therewith or in connection with these proceedings, should be excluded.

II.

RESPONDENTS' ATTEMPTS TO LOCATE HIGGS WERE UNSUCCESSFUL

As stated above, the transcript of the EUO testimony did not contain contact information for Higgs, as that information had been redacted by, or on the direction of, the Staff. Nevertheless, Respondents were able to identify what they believed to be an address for Higgs, namely, 7737 E. Rovey, Scottsdale, AZ 85250. Upon obtaining that information, Respondents issued a Deposition Notice for Higgs on February 25, 2004, scheduling the deposition for March 10, 2004.² Thereafter, on February 27, 2004,

² A true and correct copy of the Deposition Notice is attached hereto as Exhibit 2.

Respondents obtained a Subpoena issued by the Arizona Corporation Commission, directed to Higgs at the foregoing address.³

On that same date, February 27, 2004, a process server retained by Respondents attempted service on Higgs at the Scottsdale, Arizona address. The process server failed in his attempt, and executed an Affidavit of Non-Service on March 1, 2004, stating that Higgs is no longer located at the address. The Affidavit further indicated that a neighbor advised the process server that Higgs had moved to Nevada, which is obviously outside the range of an Arizona Corporation Commission subpoena.⁴

Also on February 25, 2004, Respondents contacted the Staff seeking any contact information the Staff had for Higgs. In particular, by that letter, Respondents, by and through counsel, stated the following:

Thus far, despite numerous attempts, we have been unsuccessful in contacting Mr. Higgs. Nonetheless, we are going to cross-notice his deposition for March 10, 2004, and attempt to serve him, today, at the only address we have for him.

[n] light of our track record in reaching Mr. Higgs we request that you please provide any telephone numbers and/or other contact information that you have for Mr. Higgs. It is our hope that your willingness to provide this information will expedite the process of scheduling and taking Mr. Higg's deposition.⁵

The Staff verbally responded that they did not have any more current contact information for Higgs than the information Respondents had.

³ A true and correct copy of the Higgs' Subpoena is attached hereto as Exhibit 3.

⁴ A true and correct copy of the Affidavit of Non-Service is attached hereto as Exhibit 4.

⁵ A true and correct copy of the February 25, 2004 letter from Baker & McKenzie to the Staff is attached hereto as Exhibit 5.

Respondents were never able to locate and depose Higgs and were denied the right to cross-examine him. As such, any such testimony and documents must be excluded.

III.

RESPONDENTS HAVE BEEN DENIED THE RIGHT TO INFORMATION

IMPROPERLY REDACTED AND EXHIBITS

The transcript of Higgs EUO provided to Respondents by the Staff has numerous sections redacted. Those sections clearly relate to this case and the surreptitious discovery conducted by the Staff. As an example, the EUO transcript of Higgs at pages 50, 52, 54, 56, 60-62, 66, 76, 79, 88, 89, and 98 have portions redacted that relate to information about Respondents in this case.

In the EUO of Higgs, he produced numerous documents, none of which have been provided to Respondents. Instead the Staff in proposed Exhibit S-25 seeks to introduce approximately 197 pages of documents purportedly produced by Higgs during his EUO. The Bates numbers on those documents indicate that Higgs produced over 700 pages of documents to the Staff. Those have not been produced to Respondents in spite of ALJ Stern's order to the Staff to produce them.

As examples,

a) In Higgs' EUO transcript at p. 44 he states that he is producing pay records for 2000, 2001, 2002 and 2003. Yet in proposed Exhibit S-25 the Staff has produced one check for 2000, no documents for 2001, four checks for 2002 and only 2 for 2003. The Bates stamps indicate that the pay records may exceed 300 pages. Only 14 have been produced;

b) In Higgs' EUO at p. 39, he states that he is delivering a business card of John Corwin. It has not been produced;

c) In Higgs' EUO at p. 66 he states that he is delivering a sales agent's agreement, but the name on the agreement has been redacted from the transcript and the document not produced to Respondents;

d) At p. 70 in Higgs' EUO transcript he states that he is providing a VHS video tape to the Staff. That video tape has not been produced to Respondents;

e) At p. 71 in Higgs' transcript he states that he is producing a brochure for Avalon Resorts labeled Cancun, Isla Mujeres, Panama, and Belize. That document has not been produced to Respondents;

f) At p. 71 in the Higgs' transcript he states that he is producing a folder marked "Yucatan Resorts, the Yucatan Plan," with documents regarding Mr. Kelly, NAFTA etc. That document has not been produced to Respondents;

g) At p. 71 in Higgs' transcript he states that he is producing a pamphlet for St. Paul Insurance, et al. That folder has not been produced to Respondents;

h) At p. 77 of Higgs' EUO transcript he states that he is producing a Financial Plan for Yucatan. Those documents have not been produced to Respondents;

i) At p. 85 of Higgs' EUO transcript he states that he is producing checks for refunds to Universal Leaseholders. Those checks have not been produced to Respondents;

j) At p. 88 of Higgs' EUO he states that he is producing a "slick folder" regarding the resorts. That document has not been produced to Respondents.

The Bate stamped numbers on the documents the Staff seeks to introduce on Exhibits 25 range from 836 to 1557. One can only assume that the 700+ documents represented by those numbered pages were produced to the Staff by Higgs. They have not been produced to Respondents.

IV.

CONCLUSION

Respondents have a right to discovery in this administrative proceeding. ALJ Stern ordered the Staff to provide Respondents with documents produced by witnesses, including exhibits to EUO's. The Staff has violated that order with respect to Mr. Higgs. Allowing the Higgs' testimony and documents into evidence in this matter directly and unquestionably violates Respondents' rights. Not only will their rights to cross-examination be violated, Respondents rights to a fair notice and a fair trial, i.e., their Due Process rights, will be violated.

For all of the foregoing reasons, Respondents respectfully request that Higgs' testimony and documents be excluded as evidence in this matter.

Respectfully submitted this 7th day of April, 2005.

By _____

BAKER & McKENZIE, LLP

Joel Held
Elizabeth L. Yingling
Jeffrey D. Gardner
2300 Trammel Crow Center
2001 Ross Avenue – Ste. 2300
Dallas Texas 75201
Attorneys for Respondents
Yucatan Resorts, Inc.; Yucatan Resorts,
S.A.; RHI, Inc.; RHI, S.A.

GALBUT & HUNTER

A Professional Corporation

Martin R. Galbut
Camelback Esplanade, Suite 1020
2425 East Camelback Road
Phoenix, Arizona 85016

and

ROSHKA HEYMAN & DeWULF, PLC

Paul J. Roshka, Esq.
One Arizona Center
400 E. Van Buren St. – Ste. 800
Phoenix, Arizona 85004
Attorneys for Respondent Michael Kelly

ORIGINAL and 13 copies of the foregoing
hand-delivered this ~~15~~ ¹⁶ day of ~~March~~ ^{April}, 2005 to:

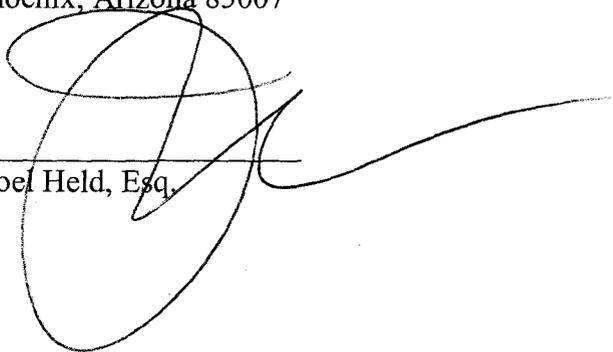
Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 15th day of March, 2005 to:

Honorable Marc Stern
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Jaime Palfai, Esq.
Matthew J. Neubert, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

Joel Held, Esq.



COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

BRIAN C. McNEIL
EXECUTIVE SECRETARY



MATTHEW J. NEUBERT
ACTING DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

ARIZONA CORPORATION COMMISSION

February 13, 2004

By Facsimile & U.S. Mail

Jeana R. Webster, Esq.
GALBUT & HUNTER, P.C.
Camelback Esplanade, Suite 1020
2425 East Camelback Road
Phoenix, Arizona 85016

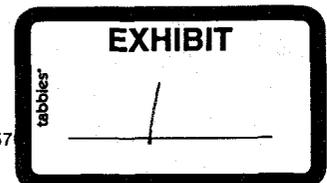
Re: Yucatan Resorts, et al., Docket No. S-03539A-03-0000

Dear Jeana:

I am writing to follow up on our conversation earlier this week whereby I outlined the Division's position on several issues previously raised in a January 28, 2004 correspondence directed to our office by Jeffery Gardner, Esq. In particular, I would like to suggest various dates for the deposition of Mr. Higgs as well as comment on the Division's position with respect to Mr. Higgs's redacted Examination Under Oath ("EUO").

Concerning the cross-depositions of Mr. Higgs and perhaps others, the Division would be able to attend these proceedings throughout the week of February 23 as well as most dates during the period from March 8 through March 26. In connection with the March dates, we would ask that you consult with us at least two weeks in advance so that we can confirm our availability. Please also be advised that an EUO of sales agent John Donovan will likely be conducted by the Division on March 25, 2004. If this is the case, a Notice of EUO will be duly filed and sent to all interested parties.

With respect to Mr. Gardner's request that we provide the unredacted version of the Higgs EUO and the marked exhibits relating thereto, I regret to inform you that the Division is neither compelled nor inclined to provide such materials. As you know, the Administrative Law Judge's fourth procedural order in this matter provided that all future EUO's be conducted in the presence of the Respondents' counsel. This order, of course, did not impact the Division's prior Higgs EUO, and our subsequent release of that EUO transcript was done solely as a courtesy to you.



Jeana R. Webster, Esq.

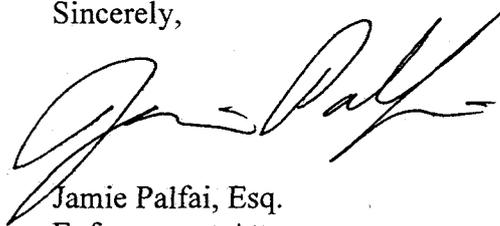
February 13, 2004

Page 2

Moreover, the Administrative Law Judge's rationale for barring EUO redactions in this matter was based on the fact that Respondents' counsel, *by being present* at these EUOs, was already privy to the redacted testimony at issue. This rationale, of course, simply has no application to the Higgs EUO. Finally, the redacted portions of the Higgs EUO are relevant for the purpose of other Division inquiries and, as such, have no bearing on the on the subject case. As such, defense counsel in this matter has no legitimate reason to gain access to this information. Of course, this redacted testimony will not be directly used or cited during the course of the pending administrative hearing in this matter.

If you have any questions concerning this correspondence, please feel free to call me during business hours at (602) 542-0179.

Sincerely,



Jamie Palfai, Esq.
Enforcement Attorney
Arizona Securities Division

cc: Paul Roshka, Esq.
Tom Galbraith, Esq.
Joel Held, Esq.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF MATCH-MILLER
MIKE GLEASON

In the matter of:

YUCATAN RESORTS, INC., d/b/a
YUCATAN RESORTS, S.A.,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

RESORT HOLDINGS INTERNATIONAL,
INC. d/b/a

RESORT HOLDINGS INTERNATIONAL,
S.A.,

3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;
Av. Coba #82 Lote 10, 3er. Piso
Cancun, Q. Roo
Mexico C.P. 77500

WORLD PHANTASY TOURS, INC.

a/k/a MAJESTY TRAVEL

a/k/a VIAJES MAJESTY

Calle Eusebio A. Morales
Edificio Atlantida, P Baja
APDO, 8301 Zona 7 Panama

MICHAEL E. KELLY and LORI KELLY,

husband and wife,
3222 Mishawaka Avenue
South Bend, IN 46615;
P. O. Box 2661
South Bend, IN 46680;

Respondents.

DOCKET NO. S-03539A-03-0000

CROSS NOTICE OF THE DEPOSITION
OF ROY DEAN HIGGS

(ASSIGNED TO THE HONORABLE
MARC STERN, ADMINISTRATIVE
LAW JUDGE)

EXHIBIT

tabbles
2

1 YOU ARE HEREBY NOTIFIED THAT, pursuant to, *inter alia*, R14-3-101 and R14-3-
2 109 (P) of the Arizona Administrative Code, and the Arizona Rules of Civil Procedure, the
3 deposition will be taken by counsel for Respondents by stenographic transcription, upon oral
4 examination of the individual whose name is stated below, at the time and place stated herein, and
5 continuing until completed, before an officer authorized by law to administer oaths. You are
6 hereby given notice that this deposition may also be videotaped.

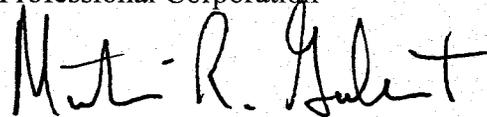
7 **PERSON TO BE EXAMINED:** ROY DEAN HIGGS

8 **DATE AND TIME OF**
9 **DEPOSITION:** March 10, 2004, at 9:00 a.m.

10 **PLACE OF DEPOSITION:** GALBUT & HUNTER,
11 a Professional Corporation
12 2425 E. Camelback Road
13 Suite 1020
14 Phoenix, Arizona 85016

15 **DATED:** February 25, 2004.

16 GALBUT & HUNTER,
17 a Professional Corporation

18 

19 Martin R. Galbut
20 Jeana R. Webster
21 2425 East Camelback Road, Ste. 1020
22 Phoenix, Arizona 85016
23 Attorneys for Respondents
24 Yucatan Resorts, Inc., Yucatan Resorts, S.A.,
25 RHI, Inc., RHI, S.A.,

26 Joel Held, Esq.
Elizabeth L. Yingling, Esq.
Baker & McKenzie
2300 Trammell Crow Center
2001 Ross Avenue
Dallas, Texas 75201
Attorneys for Respondents
Yucatan Resorts, Inc., Yucatan Resorts, S.A.,
RHI, Inc., RHI, S.A.,

1 ORIGINAL and thirteen copies of the foregoing
hand-delivered this 25th day of February, 2004 to:

2 Docket Control
3 Arizona Corporation Commission
1200 West Washington Street
4 Phoenix, Arizona 85007

5 COPY of the foregoing hand-delivered
6 this 25th day of February, 2004 to:

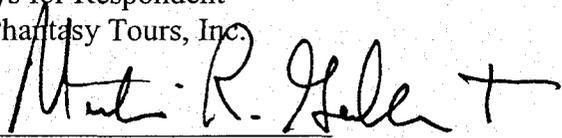
7 Marc Stern, Esq.
Administrative Law Judge
8 Hearing Division
Arizona Corporation Commission
9 1200 West Washington Street
Phoenix, Arizona 85007

10
11 Jaime Palfai, Esq.
W. Mark Sendrow, Esq.
12 Securities Division
Arizona Corporation Commission
13 1300 West Washington Street, 3rd Floor
14 Phoenix, Arizona 85007

15 COPY of the foregoing sent *via* U.S. Mail and
16 E-mail this 25th day of February, 2004 to:

17 Paul J. Roshka, Jr., Esq.
Dax Watson, Esq.
18 One Arizona Center
400 East Van Buren Street, Suite 800
19 Phoenix, Arizona 85004
Attorneys for Respondents
20 Michael and Lori Kelly

21 Tom Galbraith, Esq.
22 Kirsten Copeland, Esq.
Meyer, Hendricks & Bivens, P.A.
23 3003 N. Central Avenue, Suite 1200
Phoenix, Arizona 85012-2915
24 Attorneys for Respondent
25 World Phantasy Tours, Inc.

26 By: 
Martin R. Galbut, Esq.

1 Martin R. Galbut (#002943)
Jeana R. Webster (#021387)
2 GALBUT & HUNTER
3 A Professional Corporation
2425 East Camelback, Suite 1020
4 Phoenix, Arizona 85016
Telephone: 602/955-1455
5 Facsimile: 602/955-1585
6 E-Mail: mgalbut@galbuthunter.com
7 Attorneys for Respondents Yucatan Resorts, Inc.,
Yucatan Resorts S.A., RHI, Inc., and RHI, S.A.

8
9 **BEFORE THE ARIZONA CORPORATION COMMISSION**

10 **COMMISSIONERS:**

11 **MARC SPITZER, Chairman**
12 **WILLIAM A. MUNDELL**
13 **JEFF MATCH-MILLER**
14 **MIKE GLEASON**
15 **KRISTIN K. MAYES**

16 In the matter of:

17 **YUCATAN RESORTS, INC., d/b/a**
18 **YUCATAN RESORTS, S.A.,**

19 **RESORT HOLDINGS INTERNATIONAL,**
20 **INC. d/b/a**
21 **RESORT HOLDINGS INTERNATIONAL,**
22 **S.A.,**

23 **WORLD PHANTASY TOURS, INC.**
24 **a/k/a MAJESTY TRAVEL**
25 **a/k/a VIAJES MAJESTY**

26 **MICHAEL E. KELLY and LORI KELLY,**

Respondents.

DOCKET NO. S-03539A-03-0000

SUBPOENA

**(ASSIGNED TO THE HONORABLE
MARC STERN, ADMINISTRATIVE
LAW JUDGE)**

THE ARIZONA CORPORATION COMMISSION TO: Roy Dean Higgs
7737 E. Rovey
Scottsdale, Arizona 85250

EXHIBIT

tabbles

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YOU ARE COMMANDED, pursuant to Ariz. Rev. Stat. § 44-1823 and A.A.C. 14-3-109,
to appear and give deposition testimony at the time and place specified below:

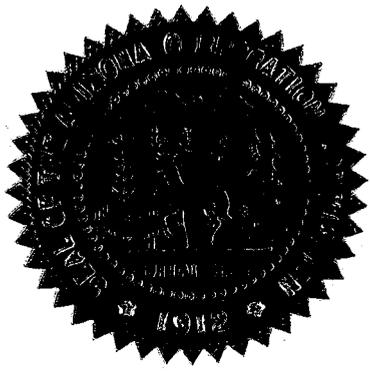
DATE AND TIME OF APPEARANCE: March 10, 2004, at 9:00 a.m.

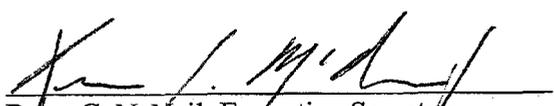
PLACE OF APPEARANCE: GALBUT & HUNTER,
a Professional Corporation
2425 E. Camelback Road
Suite 1020
Phoenix, Arizona 85016

You have been subpoenaed by attorneys for Respondents Yucatan Resorts, Inc.,
Yucatan Resorts, S.A., RHI, Inc., and RHI, S.A.

**YOU ARE HEREBY NOTIFIED THAT DISOBEDIENCE OF THIS SUBPOENA
MAY SUBJECT YOU TO FURTHER PROCEEDINGS AND PENALTIES UNDER
THE LAW.**

Dated this 27th day of February, 2004.




Brian C. McNeil, Executive Secretary
Of the Arizona Corporation Commission

AFFIDAVIT OF NON-SERVICE

IN THE ARIZONA CORPORATION COMMISSION
STATE OF ARIZONA
COUNTY OF MARICOPA

CLIENT FILE NO.
1257

RE: YUCATAN RESORTS, INC
VS

CASE NO. S-03539A-03-0000
JUDGE
HEARING DATE: 03/10/04 @ 9:00 am

STATE OF ARIZONA)
COUNTY OF MARICOPA)

ATTEMPTED SERVICE AFFIDAVIT

THE AFFIANT, being sworn, states: That I am a private process server registered in MARICOPA COUNTY and on Officer of the Court. On 02/27/04 I received the SUBPOENA

from GALBUT & HUNTER, P.C.
by JEANA R. WEBSTER
personally attempted to serve a copy of each document listed above upon:
ROY DEAN HIGGS

and in each instance I

on 02/27/04 at 7:06 pm at 7737 E. ROVEY
SCOTTSDALE, AZ 85250
in the manner shown below:

SUSAN HEYDORN IS THE NEW TENANT AT THE ABOVE. THE NEIGHBOR STATES ROY HIGGS MOVED TO HENDERSON, NEVADA. RETURNING THE DOCUMENTS.

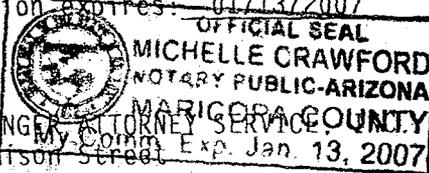
ATTEMPTED SERVICE	\$	15.00
MILES 16	\$	38.40
MILES	\$	
MILES	\$	
FEEES PAID	\$	
E-Z CHECK CHARGE	\$	
SKIPTRACE	\$	
RUSH SERVICE	\$	25.00
	\$	
	\$	
AFFIDAVIT/NOTARY FEE	\$	8.00
TOTAL	\$	86.40

H. J. Bauer
H.J. BAUER, ACPS Affiant

Subscribed and sworn to before me the Mar 1, 2004

Michelle Crawford
Michelle Crawford Notary

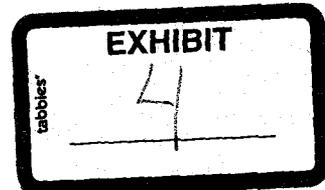
My Commission expires: 01/13/2007



E-Z MESSENGER ATTORNEY SERVICE
10 W. Madison Street
Phoenix, AZ 85003
(602) 258-8081 FAX: (602) 258-8864

INV. # 576394 2559 07

ORIGINAL



AFFIDAVIT OF NON-SERVICE

IN THE ARIZONA CORPORATION COMMISSION
STATE OF ARIZONA
COUNTY OF MARICOPA

CLIENT FILE NO.
1257

RE: YUCATAN RESORTS, INC
VS

CASE NO. S-03539A-03-0000
JUDGE
HEARING DATE: 03/10/04 @ 9:00 am

STATE OF ARIZONA)
COUNTY OF MARICOPA)

ATTEMPTED SERVICE AFFIDAVIT

THE AFFIANT, being sworn, states: That I am a private process server registered in MARICOPA COUNTY and on Officer of the Court. On 02/27/04 I received the SUBPOENA

from GALBUT & HUNTER, P.C.
by JEANA R. WEBSTER
personally attempted to serve a copy of each document listed above upon:
ROY DEAN HIGGS

and in each instance I

on 02/27/04 at 7:06 pm at 7737 E. ROVEY
SCOTTSDALE, AZ 85250
in the manner shown below:

SUSAN HEYDORN IS THE NEW TENANT AT THE ABOVE. THE NEIGHBOR STATES ROY HIGGS
MOVED TO HENDERSON, NEVADA. RETURNING THE DOCUMENTS.

/s/H.J. BAUER, ACPS

Affiant

Subscribed and sworn to before me the Mar 1, 2004

ATTEMPTED SERVICE \$ 15.00
MILES 16 \$ 38.40
MILES \$

/s/Michelle Crawford

Notary

MILES \$

My Commission expires: 01/13/2007

FEE PAID \$
E-Z CHECK CHARGE \$
SKIPTRACE \$
RUSH SERVICE \$ 25.00
AFFIDAVIT/NOTARY FEE \$ 8.00
TOTAL \$ 86.40

E-Z MESSENGER ATTORNEY SERVICE, INC.
10 W. Madison Street
Phoenix, AZ 85003
(602) 258-8081 FAX: (602) 258-8864

INV. # 576394 2559 07

Asia
Pacific
Bangkok
Beijing
Hanoi
Ho Chi Minh City
Hong Kong
Jakarta
Kuala Lumpur
Manila
Melbourne
Shanghai
Singapore
Sydney
Taipei
Tokyo

Europe & Middle East
Almaty
Amsterdam
Antwerp
Bahrain
Baku
Barcelona
Berlin
Bologna
Brussels
Budapest
Cairo
Dusseldorf
Frankfurt / Main
Geneva
Kyiv
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Madrid
Milan
Moscow
Munich
Paris
Prague
Riyadh
Rome
St. Petersburg
Stockholm
Vienna
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February 25, 2004

Via Facsimile and U.S. Mail

Jamie Palfai, Esq.
The Arizona Corporation Commission
Securities Division
1300 West Washington, 3rd Floor
Phoenix, Arizona 85007

Re: *Securities Division vs. Yucatan Resorts S.A., et al.*

Dear Jaime:

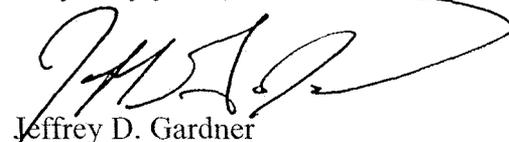
As you are aware, in an effort to continue to push the discovery process along we have been attempting to contact Roy Higgs to schedule his deposition for the above-referenced action. The date that has been discussed by the parties for Mr. Higg's deposition is March 10, 2004, and we would like to stick to this date as it works with everyone's schedules.

Thus far, despite numerous attempts, we have been unsuccessful in contacting Mr. Higgs. Nonetheless, we are going to cross-notice his deposition for March 10, 2004, and attempt to serve him, today, at the only address we have for him. Our co-counsel will be filing the cross-notice this afternoon, and will provide you with a copy of the notice *via* hand-delivery.

In light of our track record in reaching Mr. Higgs we request that you please provide any telephone numbers and/or other contact information that you have for Mr. Higgs. It is our hope that your willingness to provide this information will expedite the process of scheduling and taking Mr. Higg's deposition.

If you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



Jeffrey D. Gardner

*Licensed only in the State of Arizona

JDG

