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BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS:**

Arizona Corporation Commission

**DOCKETED**

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

APR 21 2005

DOCKETED BY

In the matter of:

DOCKET NO. S-03539A-03-0000

**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

**RESPONDENTS' JOINT MOTION FOR SUMMARY DISPOSITION OF RESPONDENTS' (i) MOTION TO STRIKE AND MEMORANDUM OF LAW IN SUPPORT OF EXCLUSION OF HEARSAY TESTIMONY AND DOCUMENTARY EVIDENCE, (ii) JOINT MOTION AND MEMORANDUM OF LAW IN SUPPORT OF EXCLUSION OF ROY HIGGS' TESTIMONY AND DOCUMENTS, and (iii) JOINT MOTION TO DISMISS AND/OR STAY PROCEEDINGS**

**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.

AZ CORP COMMISSION DOCUMENT CONTROL

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1 NOW COME the Respondents, Resort Holdings International, Inc. ("RHI Inc."),  
2 Resort Holdings International, S.A. ("RHI S.A."), Yucatan Resorts, Inc. ("Yucatan Inc."),  
3 Yucatan Resorts, S.A. ("Yucatan S.A."), and Michael E. Kelly ("Kelly") (collectively, the  
4 "Respondents") and pursuant to Arizona Rule of Civil Procedure 7.1(b), hereby move for  
5 an Order summarily granting (i) Respondents' Motion to Strike and Memorandum of Law  
6 in Support of Exclusion of Hearsay Testimony and Documentary Evidence, (ii)  
7 Respondents' Joint Motion and Memorandum of Law in Support of Exclusion and Roy  
8 Higgs' Testimony and Documents (iii) Respondents' Joint Motion to Dismiss and/or Stay  
9 Proceedings (the "Motions") all filed on April 4, 2005 and, in support thereof, would  
10 respectfully show the Court as follows:  
11

12 **MEMORANDUM OF POINTS AND AUTHORITIES**  
13

14 On April 4, 2005, Respondents served the Motions upon the Division via hand  
15 delivery. Rule 7.1(a) of the Arizona Rules of Civil Procedure provides that the party  
16 opposing a motion "shall within ten days thereafter serve and file any answering  
17 memorandum." Ariz. R. Civ. P. 7.1(a) (emphasis added).  
18

19 Allowing the full time period for response under Rule 6 of the Arizona Rules of  
20 Civil Procedure, the Division had until April 18, 2005, within which to file answering  
21 memoranda (hereinafter, the "Responses"). To date, however, the Division has failed to  
22 serve the Responses upon Respondents.  
23

24 The Divisions' failure to comply with Ariz. R. Civ. P. 7.1 allows this Court to  
25 summarily grant Respondents Motions:  
26  
27

1 [I]f the opposing party does not serve and file the required answering  
2 memorandum, . . . such non-compliance may be deemed a consent to the . . .  
3 granting of the motion, and the court may dispose of the motion summarily.

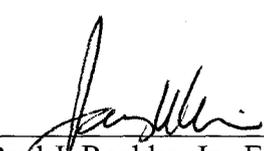
4 Ariz. R. Civ. P. 7.1(b) (emphasis added).

5 Because the Division has failed to timely file Responses to Respondents' Motions,  
6 consent to the granting of the Motions should be deemed given, and this Court should  
7 summarily grant them. See id.

8 For all of the foregoing reasons, Respondents respectfully request that an Order be  
9 entered summarily granting Respondents' Motions.

10 RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of April, 2005.

11 ROSHKA HEYMAN & DeWULF, PLC

12 By 

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16 400 East Van Buren Street, Suite 800  
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21 Michael E. Kelly

22 and

23 GALBUT & HUNTER

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25 A Professional Corporation  
26 2425 East Camelback, Suite 1020  
27 Phoenix, Arizona 85016  
Attorneys for Respondents Yucatan Resorts, Inc.,  
Yucatan Resorts S.A., RHI, Inc., and RHI, S.A.

and

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Attorneys for Respondents Yucatan Resorts, Inc.,

Yucatan Resorts, S.A.; RHI, Inc.; RHI, S.A.

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8 ORIGINAL and thirteen copies of the foregoing  
hand-delivered this 21<sup>st</sup> day of April, 2005 to:

9  
10 Docket Control

Arizona Corporation Commission

1200 West Washington Street

Phoenix, Arizona 85007

11  
12 COPY of the foregoing hand-delivered  
13 this 21<sup>st</sup> day of April, 2005 to:

14 Marc E. Stern

Administrative Law Judge/Hearing Officer

Hearing Division

16 Arizona Corporation Commission

1200 West Washington Street

Phoenix, Arizona 85007

18 Jamie B. Palfai, Esq.

19 Matthew J. Neubert, Esq.

Securities Division

20 Arizona Corporation Commission

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