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BEFORE THE ARIZONA CORPORATIO

IN THE MATTER OF:	)	
	)	
YUCATAN RESORTS, INC., dba	)	DOCKET NO.
YUCATAN RESORTS, S.A.; et al.,	)	S-03539A-03-0000
	)	
Respondents	)	PREHEARING CONFERENCE

At: Phoenix, Arizona

Date: May 27, 2004

Filed: JUN - 8 2004

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 1 of said  
4 Commission, 1200 West Washington Street, Phoenix, Arizona,  
5 commencing at 10:00 a.m. on the 27th day of May, 2004.

6 BEFORE: MARC E. STERN, Administrative Law Judge  
7

8 APPEARANCES:  
9

10 for the Arizona Corporation Commission:

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12 Senior Counsel, Securities Division  
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15 Resort Holdings International dba Resort Holdings  
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20 BAKER & MCKENZIE  
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For World Phantasy Tours, Inc.:

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1 ALJ STERN: This prehearing in the matter of  
2 Yucatan Resorts, Incorporated, et al., in Docket  
3 No. S-03539A-03-0000 is now open. My name is Marc Stern.  
4 I'll preside over this matter this morning.

5 And at this time we'll take appearances,  
6 starting with the division.

7 MR. PALFAI: Jamie Palfai on behalf of the  
8 Securities Division.

9 ALJ STERN: And Yucatan.

10 MR. HELD: Joel Held for Yucatan Resorts,  
11 Inc., Yucatan Resorts, S.A., Resort Holdings  
12 International, Inc., and Resort Holdings International,  
13 S.A.

14 MR. GALBUT: Martin Galbut, co-counsel for the  
15 same parties.

16 MR. ROSHKA: Good morning. Paul Roshka for  
17 Mr. Kelly.

18 MR. GALBRAITH: Your Honor, Tom Galbraith, the  
19 personification of his client, World Phantasy. And I have  
20 with me also today Kirsten Copeland from our office, and  
21 visiting, and I was tempted to pass her off as the client,  
22 our summer clerk, Nicole Cassett.

23 ALJ STERN: Thank you.

24 Well, I scheduled this after making the most  
25 recent procedural order denying the respondent's request

1 for discovery. Primarily the reason for this prehearing  
2 today is try and work out some sort of a scheduling for  
3 the hearing; and secondly, in the interim time, I noticed  
4 the respondents have filed a request for an expedited  
5 order, essentially, if I understood things correctly,  
6 requesting me to order the Executive Secretary to issue  
7 some subpoenas to certain individuals employed by the  
8 Securities Division and to subpoena duces tecum certain  
9 documents.

10 Now, do you want to address your request,  
11 Mr. Held?

12 MR. HELD: Yes, thank you.

13 As you will recall from the documents we  
14 filed, the request is for the testimony of Alan Walker,  
15 and I'll get to that in a minute, the testimony of the  
16 custodian of records to verify the records, and then for  
17 the duces tecum for the records themselves.

18 In your sixth procedural order you denied, as  
19 you recall, we sent the division request for production of  
20 documents, and they objected. In your order you ruled  
21 that, and denied our discovery under the Arizona Rules of  
22 Civil Procedure, and in your order you said that the --  
23 our discovery must take place pursuant to A.R.S.  
24 41-1062(A)(4), and since that controlled, which requires  
25 us to come to you and ask for you to issue an order

1 directing the Commission to issue a subpoena. So that's  
2 what we did.

3           The requests are pursuant to that section of  
4 A.R.S. Essentially, it's pretty much the same things we  
5 had asked for in our request for production, on the theory  
6 that the denial of our request for production or the  
7 granting of the Staff's objections to our request for  
8 production was a procedural aspect that couldn't be done  
9 under the Rules of Civil Procedure, and had to be done  
10 under the A.R.S. 1062.

11           The Staff responded in its objections to now  
12 this new request for you to issue an order, saying we  
13 haven't shown any need for the discovery requests. We  
14 have requested privilege records. Our requests are  
15 premature and they were vague, ambiguous, and overbroad.

16           In essence, the Staff says that they will  
17 provide us -- very, very nice of them -- they're going to  
18 provide us at some time, God knows when, with the names of  
19 the witnesses and copies of all of the documents we will  
20 need, the respondents will need, to defend themselves.  
21 They're going to make the decision, according to their  
22 response, that they will tell us what we're going to need  
23 and that's what they're going to give us, and nothing  
24 more. And we to date, this case was brought a year ago, a  
25 year ago. We have not received one piece of paper or one

1 bit of information from the Staff, not a single one.

2 We've been told over and over and over again  
3 they're going to give us names of witnesses and records.  
4 We've got zero, nada, nothing, zip. We have not got one  
5 request for production. And why is that? Because, with  
6 all due respect, your blessing, they have been continuing  
7 to do discovery through this guise of an investigation.

8 Today they gave me, the Staff gave me a notice  
9 to respondents to a person by the name of Tyson Highland,  
10 which is scheduled now for June 8th. Who is Tyson  
11 Highland? He's an agent who sold the universal lease.  
12 There have been several EUOs under this guise of a  
13 continuing investigation.

14 In those EUOs, there have been hundreds and  
15 hundreds and hundreds of pages of testimony dealing with  
16 the Yucatan universal lease, and the Resort Holding  
17 universal lease. Now, you have allowed us to be there,  
18 but you haven't allowed us to cross-examine. You've  
19 allowed us to renotice those people for second deposition,  
20 should we want one. We tried that with Mr. Higgs, we  
21 can't even find him now. They got him here. We couldn't  
22 even get him here. We can't find him. So that's a little  
23 hard to conduct.

24 You may shrug, but the bottom line is they had  
25 the opportunity and we couldn't cross-examine. And

1 they've been doing it -- not, this is no independent  
2 investigation they're conducting, this is discovery in  
3 this case, and that's all it is. Because every time one  
4 of these EUOs takes place, they end up asking hours of  
5 questions, and hundreds of pages of questions dealing with  
6 our clients, with the respondents in this case, and then  
7 at the very end, they take up some time and make up some  
8 questions about some other stuff they've been doing. And  
9 we get the transcripts of what relates to this case.

10 So the issues are in the ASCs, in the Staff's  
11 objections to our request for you to issue an order. They  
12 have provided you, as they have in the past, with many,  
13 many evidence, with half-truths and mischaracterization of  
14 the cases and the facts. First, they say we don't need  
15 the discovery. They say the reason we don't need it is we  
16 haven't shown a need for it. The need for it, I present  
17 to you, is that they have had unfettered discovery rights,  
18 and we have had none. That is a denial of due process.  
19 Absolute denial of due process.

20 They have not asked us for any documents. And  
21 why is that? Because they don't need to, they're getting  
22 them by subpoenaing banks, and getting them from other  
23 agencies, and getting them from agents in this  
24 investigation they're conducting, but we're getting  
25 nothing. We can't produce a piece of paper from them. We

1 have no idea what the allegations are based on. We have  
2 the C&D, in existence for a year, and it tells us nothing.  
3 We have no way of knowing whether we can even test the  
4 allegations of the Commission. We can't do it. We have  
5 nothing from them.

6           The duces tecum, in its four corners, provides  
7 the basis for our need. What does the duces tecum ask  
8 for? The Staff says well, we haven't shown a need. All  
9 we do is refer to the duces tecum to the documents  
10 requested. What does it ask for it? It asks for things  
11 like in Item 3 -- let's talk Item 2. Any and all  
12 documents evidencing, relating, or concerning the  
13 allegations of the Securities Division by any or all of  
14 the respondents in this proceeding, as alleged in  
15 Paragraphs 9, 53 and 59 of the amended order, which refers  
16 to the C&D.

17           What are we asking for? We're asking for the  
18 documents that the Staff has, from wherever they got them,  
19 that support the allegations in the order.

20           Request No. 3, any and all documents, evidence  
21 relating or concerning the allegations regarding Avalon  
22 Resorts. That's contained in Paragraph 7 of the amended  
23 order. How vague is that? They made the allegation,  
24 we're simply asking for the documents that support those  
25 allegations so that we can defend ourselves, because right

1 now, we're not walking -- we've been in an ambush for  
2 almost a year. We're going to be asked to try a case and  
3 what's going to happen? 20 days before the case is to be  
4 tried, Mr. Palfai is going to all of a sudden give us the  
5 names of witnesses, and maybe a handful of documents, and  
6 say this is all you need, go defend yourselves.

7           Then what's going to happen? We're going to  
8 come in and say we can't try this case, or if you want to  
9 try this case, fine, you know what this case is going to  
10 turn into at trial, it's not going to be a trial, it's  
11 going to be a series of depositions, since we've never had  
12 the names of these witnesses. We're going to be sitting  
13 here and taking depositions of people because we've never  
14 asked them a question. We didn't even know who they were.  
15 We're going to have documents, we're going to say what's  
16 the justification, what's the foundation, where did this  
17 document come from, and we're going to waste weeks and  
18 weeks of your time, and weeks and weeks of our time, and  
19 the state's money, and my client's money, doing a trial by  
20 deposition.

21           That's not what a trial is all about. A trial  
22 is where you take all the discovery beforehand, not during  
23 trial. What Mr. Palfai is saying to us is you'll get it  
24 all at trial, conduct your discovery at that point. I'll  
25 give you, I, the Staff, will give you what you need to

1 defend yourself. Well, I'm sorry, that's not his  
2 prerogative and that's not what this system is all about.

3 No. 4 says give us all the documents relating  
4 to the allegations in Paragraph 18. No. 5, give us all  
5 the documents relating to the universal lease. No. 6,  
6 documents referred to in Paragraph 20 of the order. And  
7 on and on and on. That's what we're asking for. We're  
8 asking for the documents that they claim that they used to  
9 support or will use to support the allegations in the C&D.  
10 Now, if that's not need, I don't know how else to show  
11 need.

12 Now, they say we're asking for privileged  
13 documents, and Mr. Palfai cited a bunch of cases which do  
14 not stand for the propositions he says. In the first  
15 instance, they're not Arizona cases. They're federal  
16 cases, Supreme Court, some, and they do stand for the  
17 proposition that there is an investigative privilege. But  
18 what is the privilege? The privilege is, according to  
19 these cases, that we cannot discover the sources of their  
20 information, their mode of investigation. Which decisions  
21 and documents related to which defendants they decided to  
22 sue, and internal non public guidelines and memos, that's  
23 what's covered by investigatory privilege.

24 Now, having said all of that, we haven't asked  
25 for privileged documents. What have we asked for? We've

1 asked for all documents, and in Instruction No. 11, in our  
2 request, we said in the event that you seek to withhold  
3 any documents, things, or information on the basis that it  
4 is properly subject to some limitation on discovery, you  
5 shall supply us with a list of the documents and things  
6 for which limitation of discovery is claimed, and give us  
7 the following information, just like the rules say they're  
8 supposed to give us in a privileged log. That's what a  
9 privileged log is. You're supposed to give us the name of  
10 the author, who received it so we can test, and you can  
11 test because you're the ultimate person who's got to make  
12 this decision. You can test whether it really is  
13 privileged.

14 I'm here to tell you that documents they  
15 receive pursuant to a subpoena are not privileged  
16 documents. Those are not investigatory privilege. If  
17 they receive a document from someone, a bank, a salesman,  
18 somebody else that's a piece of paper and it's four  
19 corners of the document, they purportedly got from us, or  
20 was not made up by the Staff, and I don't mean that  
21 pejoratively, I mean not made up by the Staff, then that's  
22 not a privileged document. How they got it may be  
23 privileged. What method they used to get it may be  
24 privileged. The source of the information may be  
25 privileged. What their internal things and mechanisms and

1 how they got about may be privileged, but the document  
2 isn't. Same thing as the attorney-client privilege, when  
3 you deal with it. Facts are not privileged. Opinions,  
4 thought processes, those things may be privileged.

5 But having said all of that, we didn't ask for  
6 the privileged. They're putting the shoe on our foot  
7 saying we should have asked for only nonprivileged  
8 documents. How do we know what's privileged? They're the  
9 ones who have got to tell us what's privileged. They've  
10 got to tell us what they've got, give us what's not  
11 privileged, and then tell us in a log so we can test what  
12 is privileged.

13 So between all of this, we have -- then they  
14 say in their response that we've asked for bank records,  
15 our own bank records. One of our requests does say any  
16 bank records you have relating to the respondents. And he  
17 says they're your bank records, how can you ask for your  
18 bank records? And the answer is I don't know what they've  
19 got.

20 They've alleged, although they haven't done it  
21 in the cease and desist order, they allege the last time  
22 we were here, totally fallaciously, but they alleged and  
23 you refused to sanction them for it, that we were  
24 conducting a Ponzi scheme. Well, the bank records, I'm  
25 here to tell you, will prove we're not conducting a Ponzi

1 scheme. And they knew it, and they know it, and as a  
2 result we're entitled to whatever records they have. Even  
3 though they may be our records, they didn't get them from  
4 us, I want to know who they got them from, I want to see  
5 whether they were altered. I want to see what they have.  
6 That helps us defend this case.

7           If Mr. Palfai is going to make a  
8 representation to this court and stipulate that he will  
9 not use any witnesses that we don't -- we have not known  
10 about yet, which we've known of none, any of the documents  
11 which he has gotten from any of those witnesses about  
12 which we know nothing, that he will not use the bank  
13 records, that he will not use any records relating to our  
14 clients in this trial, then I suppose we don't have  
15 anything to discover.

16           Then if we asked for the deposition of Alan  
17 Walker, the response to that is you're premature. We  
18 haven't even named him as a witness yet, so how can you  
19 take his deposition. Please, we know he's going to be a  
20 witness. If Mr. Palfai is willing to stipulate to you  
21 Mr. Walker is not going to be a witness, and anything he  
22 discovered is not going to be introduced, then perhaps we  
23 don't need his deposition, but we know, and I don't know  
24 if you remember who Mr. Walker is in this case.  
25 Mr. Walker attended a conference conducted by Roy Higgs,

1 or even subject to an EUO, and about which we, by the way,  
2 could not cross-examine him and have yet to be able to  
3 find him to serve with a cross notice of deposition, but  
4 he attended and surreptitiously recorded the conversation.

5 We believe that he is going to be their prime  
6 witness. Now, it's a little --

7 ALJ STERN: Mr. Walker or Mr. Higgs?

8 MR. HELD: Mr. Walker, because he recorded it,  
9 and we believe the recordings are probably going to be  
10 introduced.

11 Now, it seems to me to be a little  
12 disingenuous, a lot disingenuous, if all of a sudden  
13 they're fighting our ability to take Mr. Walker's  
14 deposition now, and he appears on the witness list in nine  
15 months from now, four months from now, or five years from  
16 now the way this case is going.

17 The other thing is if we get the names of  
18 witnesses and documents 20 days before trial or a month  
19 before trial, at that point now we have to make a decision  
20 who are our experts are going to be. How do we defend  
21 ourselves with nothing from them? We can't even choose  
22 our experts at this point. We don't know what we have  
23 expert testimony about. We don't even know how to choose  
24 our witnesses, because we don't know who theirs are. We  
25 don't know what their documents are. We don't know how to

1 refute the allegations they have. We're being asked to  
2 defend against a piece of paper, the cease and desist  
3 order, and nothing else.

4 So we've already been through -- then they say  
5 they're vague. Of course they're not vague. All we do is  
6 ask for the documents that support their allegations.

7 Then we ask for the custodian of records. Why  
8 do we ask for the custodian of records? So we can verify  
9 and authenticate the records that we know they have to  
10 give us. If we don't do it now, we're going to do it  
11 either a month before trial, we'll ask for a continuance,  
12 and this thing is going to go until the time when my  
13 grandchildren are practicing, or we're going to take the  
14 time and do it right here in front of you, and that will  
15 take weeks. And I really, really like Phoenix, but I  
16 don't want to be here for weeks.

17 ALJ STERN: What if you're here in the  
18 summertime?

19 MR. HELD: I don't want to be here in the  
20 summertime, but I don't want to be here for weeks during  
21 the wintertime.

22 So in conclusion, I think what we're dealing  
23 here with is a situation where I don't understand and I  
24 don't understand how to tell my client how we can defend  
25 ourselves, why are we spending all this time and money and

1 paper and everything else to try and develop defenses when  
2 we don't know what we're defending except what's in this  
3 piece of paper, and we can't get jack from them. They've  
4 given us nothing. And every time we turn around, they say  
5 you can't get it because you can't get it under the  
6 Arizona Rules of Civil Procedure, you have to go under the  
7 provisions of 1062. Well, and you agreed with them, you  
8 said go under 1062. We'll, we're here on the 1062 and now  
9 they're saying you can't get it anyhow, we'll tell you  
10 what you need. I think we know what we need, and we  
11 haven't gotten it. Thank you.

12 ALJ STERN: Mr. Galbut, do you have anything  
13 to add?

14 MR. GALBUT: Nothing to add, Your Honor.

15 ALJ STERN: Mr. Roshka.

16 MR. ROSHKA: Nothing, Mr. Stern.

17 ALJ STERN: Mr. Galbraith.

18 MR. GALBRAITH: Yes. The situation of World  
19 Phantasy is somewhat different. Unlike Mr. Held's  
20 clients, we don't want the documents that the Division  
21 intends to use to prove the allegations in its complaint  
22 against us, the reason being that there are no allegations  
23 in the complaint saying we did anything wrong. You have  
24 that motion I believe under advisement.

25 And in keeping with the World Phantasy theme,

1 I do find myself, for the first time in my 35 year career,  
2 in a case nearly a year later, where the moving papers by  
3 the opposition don't allege a claim against the client,  
4 don't say we did anything wrong. So our preference,  
5 rather than to participate in this discovery battle, would  
6 be to simply walk out the door and leave this to those who  
7 are engaged in cross allegations concerning wrongdoing.

8 ALJ STERN: Thank you.

9 Mr. Palfai, do you have any comments you want  
10 to make at this time?

11 MR. PALFAI: Well, I do. In fact, quite a  
12 few. I'll try to address some of the things that were  
13 brought up.

14 Mr. Held seems to believe he's dealing with  
15 civil litigants here. This is a governmental agency. We  
16 do investigations to protect the public, and this isn't a  
17 "we give you everything and you give us everything" type  
18 of situation. There's a certain amount of activities that  
19 we're responsible for that are confidential, and we can't  
20 give those types of activities and the documents we get,  
21 and undercover types of operation. We can't give those  
22 out. That would be undermining our ability to pursue  
23 further investigations in other cases. Obviously this  
24 isn't a civil context, and yet even after you rule that  
25 they can't pursue the civil discovery rules, the

1 respondents came back with a discovery request and  
2 included everything they wanted in the civil discovery  
3 rules, so they haven't changed their tactic here. They're  
4 still pursuing the discovery. They're still in the  
5 discovery mode of a civil case. And this is not a civil  
6 case, it's an administrative case brought by a  
7 governmental agency.

8           Mr. Held said that we, the Division, will tell  
9 us what we need. There have been numerous cases, and the  
10 Division has pointed this out, and several of it is  
11 responses and objections that state in administrative  
12 proceedings all that's required for administrative due  
13 process is the exchange of witnesses, exhibits, the right  
14 of cross-examination and impartial tryer of fact. That's  
15 what's required for due process. Mr. Held believes that  
16 due process requires us to open up our entire  
17 investigative file. That's just not the case in  
18 administrative proceedings. He needs to recognize that  
19 there's a difference between the two.

20           With respect to the EUOs being unfair, the  
21 EUOs we're conducting now are against salesman that we're  
22 having inquiries against their individual capacities.  
23 Those EUOs should not have been open to Yucatan. We made  
24 a concession to let them in. These are separate  
25 investigations, and there may be some overlap between the

1 facts.

2 But to say that these EUOs are just discovery  
3 in this case is nonsense, and there's separate inquiries  
4 going on with each sales agent who may have their own  
5 violations against Arizona citizens, and we have every  
6 right to pursue those investigations.

7 Mr. Held said we have no chance to  
8 cross-examine these people like Mr. Higgs, because he  
9 left. We afforded the opportunity for him to cross notice  
10 these people and do depositions after we finished our  
11 EUOs. They elected not to. They asked us that we allow  
12 them to serve a notice for deposition at a later date. We  
13 said no problem; if you don't want to do it at the same  
14 time, that's your prerogative. So that's what happened.  
15 And now they can't find him. It's not our fault.

16 With respect to their discovery demands,  
17 specifically saying that our objection is unfair, our  
18 objection is based on the rules and the statutes governing  
19 administrative discovery. One that is explicitly outlined  
20 in 1062 is the person requesting discovery shall  
21 demonstrate reasonable need. That's explicitly provided,  
22 1062(A)(4). There was no showing of reasonable need for  
23 anything. They basically said in their request for  
24 expedited order for discovery, we want everything.

25 Where is the showing of need? There has to be

1 a showing of need, and there's a reason for that. Because  
2 in an administrative proceeding, this is not a full blown  
3 civil case, it's supposed to be a quasi-judicial  
4 proceeding that can move with a limited amount of  
5 resources and in an expedited fashion. Obviously an  
6 expedited fashion is not quite what we're achieving here.

7 But reasonable need is something that they can  
8 never justify when they're requesting their own documents.  
9 They're requesting their own bank records, their own  
10 promotional materials. Where's the reasonable need for  
11 that? Why don't they just open their file cabinet and  
12 they have that. What they're doing is looking on a  
13 fishing expedition to see what we have, what we don't  
14 have, so they can make their case that way.

15 Two other things on the request for expedited  
16 order. Mr. Held talks about the investigative privilege,  
17 touched on a few things, but they didn't ask for those  
18 investigative materials. The investigative file is  
19 controlled by the confidentiality statute in the  
20 Securities Act. That confidentiality statute applies to  
21 all our investigative files. Mr. Held completely ignored  
22 the fact that this confidentiality provision exists. It's  
23 a law. We would be in violation of the law if we opened  
24 up our investigative files under the statute. The statute  
25 prohibits it unless -- there's four conditions upon which

1 we can release information, and I address that in my  
2 objection to their motion. This confidentiality statute  
3 has just been ignored by the respondents in this case, and  
4 I would urge them to review that statute, perhaps look  
5 into it a little bit, because if something is not in the  
6 public interest and they request it, they can't get it,  
7 under Arizona law.

8           With respect to the vague and ambiguous  
9 arguments, you just need to look at their request. If you  
10 add up everything they're asking for, it is our entire  
11 investigative file in this case, and probably would run  
12 into other investigations we have. So they're asking for  
13 more than even what this case entails.

14           If I could just touch on a couple other  
15 things; the deposition of a custodian of records to  
16 authenticate documents. This is not something that  
17 administrative hearings -- administrative hearings are  
18 designed for an expedient resolution of matters. They  
19 want to authenticate documents, they could do it during  
20 cross-examination of hearing. They don't need to do it  
21 months in advance. I don't understand why the deposition  
22 of custodian of records would serve any purpose other than  
23 to delay matters further.

24           ALJ STERN: With respect to documents, usually  
25 we provide for an exchange of exhibits. Now, if there's

1 going to be a question on the documents, I think generally  
2 speaking, we're usually able, in most of the proceedings  
3 we've done, and involving securities matters, to stipulate  
4 to certain of those documents.

5           Some of them there may be some question as to,  
6 I guess Mr. Held raised the question of alteration or  
7 something like that. I don't know what your documents  
8 are, I guess he doesn't know what your documents are, and  
9 I think because of the nature of their particular problem  
10 and their wanting something more than the usual time of  
11 exchanging documents and witness lists, I think we'll  
12 allow for that in this instance. But what else do you  
13 have?

14           MR. PALFAI: Mr. Stern, just touching on that,  
15 we said in our objection we'll be more than happy to  
16 provide them with all exhibits and witness lists at a time  
17 that you direct, which is the standard procedure in  
18 administrative proceedings. So whenever you direct us to  
19 produce those documents and lists, we'll be happy to do  
20 so.

21           ALJ STERN: Okay. You're ready to provide  
22 those documents to them?

23           MR. PALFAI: Well, I would hope that we could  
24 establish a hearing date, and then...

25           ALJ STERN: I'm going to do that after we know

1 that you're ready to turn over your planned exhibits and  
2 your planned witness list. Are you ready?

3 MR. PALFAI: At this time we'd have to prepare  
4 a final version so we'd need some time. The normal, I  
5 think the normal time frame, two weeks -- if you want to  
6 give them more time in this instance, since it's a big  
7 case, that's fine.

8 ALJ STERN: I'm going to give them a fair  
9 amount of time so that he'll have time to analyze these  
10 documents. I don't know whether you're coming with boxes  
11 and boxes or 50 exhibits and they're not extensive. As I  
12 say, I don't have a clue, and I just sit through the  
13 hearings and wait till you put it in front of me.

14 MR. PALFAI: If you want to set a hearing date  
15 we can give them 60 days or something like that.

16 ALJ STERN: We're going to work on that.

17 MR. PALFAI: Of course, when you order the  
18 exchange of witnesses and exhibits, of course we'll comply  
19 with that. We're not trying to hide anything. All we're  
20 doing is playing by the rules of administrative  
21 proceedings, which the respondents apparently don't  
22 necessarily want to follow.

23 If I can just address the World Phantasy  
24 matter briefly.

25 ALJ STERN: Okay.

1                   MR. PALFAI: The counsel for World Phantasy  
2 said there's no allegation against World Phantasy. That's  
3 simply not the case. If you look at the amended temporary  
4 order, you will see that World Phantasy is playing an  
5 integral role in the exchange of funds and the running of  
6 the operation, at least purported running of the  
7 operation.

8                   Under the Arizona Securities Act, there's  
9 direct and indirect fraud, and under the registration  
10 provisions, there's participant liability. Now, if  
11 they're not directly related to the sale of securities,  
12 they still could fall under those participant registration  
13 violations and indirect fraud. And you can look at the  
14 amended temporary order and you could see that they're  
15 playing an integral role in the transfer of moneys, and  
16 they played an integral role in the entire program. So to  
17 say there's no allegations implicating them in this matter  
18 is simply not the case.

19                   If I could just end with this. We're not  
20 trying to hide any documents from the respondents. We'll  
21 give them all exhibits and all the witness lists at a time  
22 you direct. Under the rules, they're eligible to request  
23 depositions of witnesses if you deem it appropriate and  
24 they could show reasonable need, and if they can do that,  
25 that's fine. But all we're doing is playing by the rules

1 outlined in the Administrative Procedures Act and under  
2 the Commission rules, and nothing more and nothing less.  
3 That's it.

4 ALJ STERN: Okay. We had had discussions  
5 previously about trying to schedule this.

6 Before we do anything in that regard,  
7 Mr. Roshka, I just want to ask you a question. You have a  
8 client that I know you filed something not too long ago, I  
9 haven't seen anything come back from the Division, and we  
10 haven't had any prehearings or anything for a long time,  
11 Mutual Benefit Corporation. They seem to be in some sort  
12 of a federal receivership brought about by the SEC.

13 MR. ROSHKA: Yes, that is unfortunate for a  
14 couple of reasons, one of which is that's the case in  
15 which we actually got a list of witnesses and exhibits and  
16 plenty of documents from the Division last fall, so it's  
17 unfortunate that we actually have discovery, but no  
18 client.

19 There was an SEC receivership put in place.  
20 I've spoken with Pam Johnson of the Division. I don't  
21 know whether the receiver is going to want to continue to  
22 contest this proceeding. My gut is probably not, but I  
23 don't have any confirmation of that. I don't know what  
24 their position would be on the matter.

25 It does appear from the pleadings that I've

1 read that the receiver's position is consistent with the  
2 Division's position. I don't think there will be a  
3 hearing, but I certainly can't represent to you that that  
4 will be the final outcome.

5 ALJ STERN: Because you have a nice time slot  
6 in October there.

7 MR. ROSHKA: I have a great time slot.

8 ALJ STERN: Okay. That's one question I had.

9 We might have to have a teleconference with  
10 you and the Division on that and see where we're going to  
11 go with that since it's their action.

12 Mr. Palfai, I know at one point you indicated  
13 you're ready to go like tomorrow, but realistically, when  
14 is the Division going to be prepared with its case to go  
15 forward?

16 MR. PALFAI: We were considering dates and we  
17 thought late July would be workable.

18 ALJ STERN: I thought someone on the  
19 respondent's side said they are gone out of the country,  
20 and I think that was Mr. Galbraith.

21 MR. GALBRAITH: I'm only gone out of the  
22 country the first three weeks of June, but I'm gone out of  
23 Phoenix until October 1.

24 ALJ STERN: I guess that sort of is going to  
25 affect -- anybody else at your firm want to represent your

1 client?

2 MR. HELD: I'm going to be gone also the whole  
3 of August.

4 ALJ STERN: We're having a hard time with the  
5 summer.

6 MR. PALFAI: They're objecting to how long  
7 this thing is dragging on, but we can't schedule a date.

8 ALJ STERN: We're going to have to have a date  
9 or I'll just pick one. There's a lot of attorneys in  
10 Mr. Held's firm and a few attorneys in Mr. Galbraith's  
11 firm. Mr. Galbraith has a couple of reinforcements, and I  
12 hope somebody will show up.

13 MR. HELD: If I can, I'd like to suggest if we  
14 get the witness lists, documents, witness list with names,  
15 telephone numbers, who they are, I think we'll be in a  
16 better position to guesstimate what kind of time frame  
17 we're going to need to get prepared. Right now we have  
18 nothing to prepare with.

19 ALJ STERN: Let's do this. If this is -- it  
20 is going to be hard to guesstimate, I think, based on the  
21 nature of the pleadings at this point --

22 Mr. Palfai, yes, sir.

23 MR. PALFAI: I'm sorry to interrupt. One  
24 other matter. I don't know if it will come to your  
25 calculation on scheduling a date, but we have received

1 information Avalon has been served, so they will be party  
2 to this proceeding.

3 ALJ STERN: Which party is Avalon? That's the  
4 other, that's sort of tied in to Yucatan and Resort  
5 Holdings?

6 MR. PALFAI: Right, they're one of the  
7 companies.

8 MR. HELD: If I can ask, it's called Avalon  
9 Resorts, is the name of the respondent.

10 ALJ STERN: Right.

11 MR. HELD: But we already know because we've  
12 shown you there is no entity called Avalon Resorts, it  
13 doesn't exist. It's a trade name so I'd like to know who  
14 they served.

15 MR. PALFAI: We served Avalon Resorts'  
16 corporate office.

17 MR. HELD: Who is that? Can I find out who?  
18 I mean, this goes right to the heart of it. How hard can  
19 it be for him to tell me who was served?

20 MR. PALFAI: This has only recently come to  
21 light.

22 MR. HELD: Who was it?

23 MR. PALFAI: I will look into that for you.

24 ALJ STERN: Wait a minute.

25 MR. PALFAI: The address served is on the

1 amended pleading, so that was where the service was  
2 effected.

3 ALJ STERN: Was that done through the  
4 international whatever it is, when you do that service  
5 through the treaty of something? I forget.

6 MR. HELD: Hague convention.

7 MR. PALFAI: It was actually effected through  
8 registered mail, which is acceptable service for...

9 ALJ STERN: You were able to effect it in  
10 Mexico; is that correct?

11 MR. PALFAI: The information I have is yes,  
12 that is correct. I will be asking for certain  
13 documentation to confirm it, but at this point, we've  
14 received confirmation from the United States Postal  
15 Service that service has been effected.

16 MR. HELD: Since that time -- we had this  
17 problem with World Phantasy Tours originally when they  
18 were purportedly served. I'm going to, with all due  
19 respect, demand that we be told the date they were served  
20 in plenty of time so that we can at least get together  
21 with whoever the purported client is supposed to be, since  
22 there is no entity, and find out whether or not they  
23 intend to defend themselves as part of my group of  
24 defendants so that we have it in time enough to put in an  
25 answer.

1 ALJ STERN: All right. When was service made,  
2 if you know, Mr. Palfai?

3 MR. PALFAI: According to United States Postal  
4 Service...

5 ALJ STERN: We know how that works.

6 MR. PALFAI: Mr. Roshka, had a problem with  
7 them not too long ago.

8 MR. ROSHKA: I did, Mr. Stern.

9 MR. PALFAI: The article was served October  
10 3rd, 2003.

11 ALJ STERN: And you just found out about this?

12 MR. PALFAI: Yes, found out today.

13 ALJ STERN: I wonder who they served it on.

14 MR. PALFAI: Mexico has its own postal.

15 MR. HELD: Does your note say what individual  
16 signed for it, if somebody did sign for it?

17 MR. PALFAI: No, it does not.

18 ALJ STERN: Well, I don't know whether that's  
19 good service or not.

20 MR. PALFAI: I'm assuming the United States  
21 Postal Service isn't lying to us. We'll try to inquire  
22 for more documentation and we'll docket it.

23 ALJ STERN: There must be something beyond  
24 just a letter, a certificate coming back from the postal  
25 authorities saying this was delivered. I mean, I don't

1 know how the mail service works in a lot of places, but  
2 I'm sort of curious.

3 MR. PALFAI: I believe there's other  
4 documentation that can -- it will take a little time.

5 ALJ STERN: And you just got notice, though,  
6 of the October delivery?

7 MR. PALFAI: This was faxed today.

8 ALJ STERN: Okay.

9 MR. PALFAI: Obviously, the Division wouldn't  
10 hold Avalon as being late to answer. That will be a bit  
11 unfair.

12 ALJ STERN: Let me go back to where I'm  
13 thinking. I can understand Mr. Held's consternation, and  
14 here's another, you know, little rock in the storm or  
15 something, that's going to mess things up. He doesn't  
16 believe Avalon is an entity that exists, and you're saying  
17 well, we were able to serve this entity according to a  
18 document we got in a fax machine today from the United  
19 States postal authorities, based on something that they  
20 got back from the Mexican postal authorities, which I  
21 guess is the way service is made.

22 It could affect this case, it may not affect  
23 this case directly but -- yes, sir.

24 MR. PALFAI: If I could just jump in really  
25 quick, the respondents haven't proven that it's a

1 trademark. They've asserted it's a trademark, we have  
2 asserted it's not a trademark, we asserted it's a  
3 corporate entity and has corporate offices.

4 MR. HELD: Just like everything else in this  
5 case, it turns it upside down. He's saying it's an entity  
6 and we haven't proved it is an entity. He's got the  
7 burden to show it is an entity. He can't come in, you  
8 just served it on John Smith, we don't know there is a  
9 John Smith in the United States, they're saying it's our  
10 burden to prove.

11 MR. PALFAI: You've proven it's a trademark.

12 MR. HELD: I said a trade name, not a  
13 trademark.

14 ALJ STERN: Gentlemen, excuse me. Look,  
15 neither one of you is presenting evidence per se, you're  
16 just -- it's your position, okay? Somebody is going to  
17 have to prove it. That's the Division, they're saying  
18 hey, we served as an entity at a foreign address under the  
19 required international rules. Okay. It's their duty to  
20 prove that. Assuming they in fact even did serve that  
21 entity. And I'm not saying they did, because I don't know  
22 what the evidence is.

23 Mr. Held, it's your client and/or your  
24 position you don't believe this is a legitimate entity.  
25 Let him argue about it, really.

1 MR. GALBUT: Mr. Chairman, as a practical  
2 suggestion on this.

3 ALJ STERN: Yes, Mr. Galbut.

4 MR. GALBUT: Your Honor, it would be helpful  
5 if you set a date where Mr. Palfai had to specify exactly  
6 how this supposed service was done, the basis for the  
7 supposed service, the legal basis for it, and the evidence  
8 that this is a separate legal entity.

9 Now, once he does that, we then have a  
10 benchmark upon which we can then address the issue of  
11 whether it's an entity, whether it's been properly served,  
12 and whether it should be part of this proceeding. If we  
13 don't have that benchmark, then it's another one of those  
14 items that's going to be hanging out there in limbo.

15 ALJ STERN: Here's my situation. I've sat  
16 through a number of securities proceedings at the Division  
17 in these cases. They name a bunch of individual  
18 respondents, husbands and wives now because of the  
19 statute, corporate entities, which you think are  
20 corporations, that really may be trade names, mainly  
21 because of materials they may have seen promoting certain  
22 offerings. Whatever the case may be, we've gone through  
23 hearings where parties have been served and we know  
24 they're served because they're represented and they  
25 participate in a proceeding.

1           Then there's the ones that the Division may  
2 allege we served this one, but there's no one there to  
3 file a response, in which case, if it's a nonentity, it's  
4 a nonentity, and I don't know anyone would care.

5           Or in this case we didn't get service, and  
6 we'll just let that person sit out there, and if we ever  
7 find him we'll serve him and bring it to the attention of  
8 the Hearing Division, and we want a hearing on that person  
9 we were never able to serve. The case is perhaps four  
10 years old. It happens in these cases.

11           MR. GALBUT: Your Honor, there is a situation  
12 where it could be a problem for a business that has in its  
13 name Avalon Resorts to have by default some order against  
14 it that's been made by Your Honor or a judge, and there's  
15 every reason to address this issue now, so that we can  
16 decide it one way or another so that we know that the  
17 outcome is not, that there's a default, and some type of  
18 confusion that's generated by an order downstream.

19           What I'm asking for is about a page and a half  
20 of pleading paper. It's very simple, and it's based on  
21 that that we can then decide whether they are to be  
22 represented by counsel, if they are an entity, come in and  
23 challenge this. Maybe it's Mr. Held, maybe it's not.  
24 Maybe it's me, maybe it's not. There's no way to  
25 determine that at this point. So the simplest way to get

1 it resolved is to force them to do that.

2 ALJ STERN: Mr. Palfai, do you have any  
3 comment?

4 MR. PALFAI: Very quick.

5 ALJ STERN: I don't have a problem with what  
6 they're requesting, but I'm a little bit hesitant because  
7 of the fact that under the terms of this international  
8 service situation and the fact that the postal authorities  
9 seem to be somewhat remiss on notifying the Division that  
10 service was made five months later, I'm not sure you can  
11 get anything out of them.

12 MR. PALFAI: What they're basically requesting  
13 is a mini hearing before the hearing as to whether a party  
14 is an entity. If they don't think it's an entity, we  
15 won't be able to prove it's an entity here. If it is an  
16 entity, maybe they want representation; if it isn't an  
17 entity, they have nothing to worry about.

18 ALJ STERN: Mr. Palfai, I'll make it real  
19 simple. Today, before a holiday, I don't know what your  
20 plans are, but by the end of next week file whatever  
21 documentation you received back from the United States  
22 postal authorities in the docket, serve it upon the  
23 respondents, show them what proof of service you have  
24 under the appropriate treaty, and what is required if it's  
25 appropriate. If that's good service, so be it.

1 I'm not going to get too involved with it.  
2 I'm not going to worry. You've got the burden of proof  
3 going forward to show that this so-called Avalon, Inc.,  
4 whatever it is --

5 MR. HELD: Avalon Resorts.

6 ALJ STERN: Avalon Resorts, S.A. is related to  
7 the respondents in this proceeding. You do or you don't.

8 MR. PALFAI: Precisely. That's why I don't  
9 see it's such an issue before hearing. We either prove it  
10 at hearing or we don't.

11 ALJ STERN: You have, I guess, going to the  
12 new calendar, get something filed by June 4th to support  
13 your position that you believe they've been served. If in  
14 fact they have been served, I assume, I guess that  
15 document that's served on them tells them they have a  
16 right to request a hearing.

17 MR. PALFAI: Mr. Stern, could I request a bit  
18 of an extension on that? Because obviously we don't have  
19 full control over getting these documents. We're going to  
20 have to get them through New Orleans Postal Service, so  
21 I'll file them as soon as we get them.

22 ALJ STERN: What do you have in your  
23 possession right now? You said you have some faxed  
24 document.

25 MR. PALFAI: Right. We have a letter from the

1 United States Postal Service with a registration number,  
2 and traced, and it says that it was delivered on October  
3 3rd, 2003. The Postal Service of Mexico has advised us  
4 the article was delivered on October 3rd, 2003. We've  
5 also been advised there's other documentation we can get  
6 to further substantiate this, which is what we're  
7 pursuing. How many days --

8 ALJ STERN: How long is that going to take?

9 MR. PALFAI: I have no idea. As soon as I get  
10 it we will docket it.

11 ALJ STERN: I don't want to give you that  
12 long. I know there's a certain minimum requirement to  
13 show international service. I'm not sure exactly what it  
14 is, I don't know whether it's the official letter from the  
15 post office that said it's been served or if there's  
16 additional documentation you can get. I would say no  
17 longer than 21 days. I mean, it seems like if someone can  
18 lift up a phone to somehow contact the Louisiana  
19 Securities Division and say hey, look, we're in a bind  
20 here, we need to get this information, could you go to the  
21 postal authorities and see if you can secure this related  
22 to this document, then you've done as much as you can, I  
23 think.

24 MR. PALFAI: Okay, I guess.

25 ALJ STERN: You're saying you need more time

1 beyond next week, you anticipate, to get complete  
2 documentation?

3 MR. PALFAI: What we need to get is the New  
4 Orleans U.S. Postal Service to contact Mexican postal  
5 authorities, have them send it to New Orleans, then  
6 New Orleans will send it to us. So I don't know how long  
7 the process takes. Obviously, it's taken a while.

8 ALJ STERN: Yes, it has.

9 MR. PALFAI: As soon as we get it, if we get  
10 it next week. We'll docket it as soon as we get it and  
11 we'll serve it on the parties.

12 ALJ STERN: Look, let's say 30 days. I mean,  
13 this is ridiculous. Look, we're having a problem  
14 scheduling this matter as it is through the summer. We  
15 can't schedule it in the summer.

16 Yes, sir.

17 MR. PALFAI: Sorry, just one thing more on  
18 Avalon. Although respondents seem to object to bringing  
19 Avalon in, the truth of the matter is all these  
20 respondents are related.

21 ALJ STERN: You have to prove that. So we'll  
22 wait and see.

23 Here's the situation. I'm going to try and  
24 get something filed in 30 days. If you file notice to the  
25 file that you've been unable to secure the documentation,

1 whatever, that will meet my requirements, but you stay on  
2 this.

3 MR. PALFAI: Okay.

4 ALJ STERN: Secondly, where are we on a  
5 hearing date? I know Mr. Roshka's prior, I don't know if  
6 it's still your client or not, Mutual Benefit Corporation  
7 has, I think we scheduled that for about three weeks.

8 MR. ROSHKA: Mr. Stern, I have my calendar  
9 here. You scheduled it for 12 days, October 25th to 28th,  
10 November 1st through 4th, and then November 15th through  
11 18th.

12 ALJ STERN: 11-1 through 11-4.

13 MR. ROSHKA: 11-15 there 11-18, then October  
14 25 through 28.

15 ALJ STERN: That sort of -- if that date opens  
16 up, which maybe next week we can contact you and  
17 Ms. Johnson in a teleconference and see what the status of  
18 that proceeding is.

19 Mr. Palfai, you can sort of let her know.

20 MR. PALFAI: Sure.

21 MR. HELD: At the risk of Mr. Galbraith being  
22 out of the country during that period of time as well, and  
23 myself, we have a similar situation with Mutual Benefits  
24 in Dallas, so we just got notice also from the trustee,  
25 and every indication we have is that we're not going to

1 defend.

2           So the bottom line to it is it appears this is  
3 going to go away. So if I can make a suggestion that we  
4 take those dates now and shoot for those dates, that's  
5 fine with me. Those dates are fine. If we could scrunch  
6 them together so that I don't have to be -- we've got a  
7 lot of people out of country and out of town, depending on  
8 who the witnesses are going to be.

9           ALJ STERN: I think there's a reason we had to  
10 take a break between the 4th of November through the 15th.  
11 There was something that falls in there.

12           MR. HELD: Those dates are fine as far as I'm  
13 concerned. If it's okay with you.

14           ALJ STERN: I think it will be okay with me.  
15 And I think Mr. Palfai won't have a problem with those,  
16 will you, Mr. Palfai?

17           MR. PALFAI: The only problem we have is the  
18 first week of November. Our forensic accountant will be  
19 out of town.

20           ALJ STERN: He won't be here.

21           MR. PALFAI: She will not be here the first  
22 week of November. That's the only week we have a problem.

23           ALJ STERN: I guess you'll have to put her in  
24 evidence the next week.

25           MR. PALFAI: We're open the 8th through the

1 30th of November or any time in October.

2 ALJ STERN: Your forensic accountant doesn't  
3 have to sit here for the first week of the hearing. You  
4 can call her, you know, whenever. I don't care. You can  
5 call her the second week.

6 MR. PALFAI: What dates?

7 ALJ STERN: October 25th through 28th. You're  
8 up first so you can put your forensic accountant on the  
9 first week.

10 MR. HELD: What Mr. Palfai just said, aside  
11 from just getting me angry, points out what I've been  
12 trying to say today. All of a sudden, we now, for the  
13 first time, have heard that there's going to be a forensic  
14 accountant, which obviously is an expert of something  
15 about something, but we don't know what that person is  
16 going to be testifying to or about. It's got to be  
17 records.

18 ALJ STERN: You're going to get them, okay?  
19 Because once we agree on these tentative dates, everybody  
20 doesn't seem to have a problem with them, and --

21 MR. HELD: But I do suggest them on the  
22 caveat, if we get the records too late and we don't have  
23 the time to do the discovery, those dates may not work.

24 ALJ STERN: No, no, this is the 1st of June,  
25 you're going to have them in a fairly short period of

1 time, because you should know your witness list by now,  
2 Mr. Palfai, because I know the last prehearing you said  
3 you had about, you thought the thing would be done in  
4 either 10 days or a total, no more than 10 witnesses, and  
5 we were trying to figure out the length of the proceeding,  
6 and I think one of the things that you thought the hearing  
7 would be no more than two weeks.

8 MR. PALFAI: True, it won't take long to  
9 prepare a final witness list, but all I'd urge is that if  
10 we set a hearing date for October, they don't need 171  
11 days to mull over our witnesses, and witness list.

12 MR. HELD: They've had two years. We're not  
13 going to get 171 days.

14 ALJ STERN: I had more in mind that probably  
15 the latter part of June that you turn over your list of  
16 witnesses and exhibits. It's no big secret. You know,  
17 I'm going to give them a little more time because they've  
18 requested a little more time.

19 MR. PALFAI: I don't have a problem with that,  
20 considering the size of this matter, but it's generally  
21 two weeks to a month is the standard.

22 ALJ STERN: Usually it's about a month. Three  
23 weeks, nobody seems to have that much of a problem  
24 normally. Mr. Held is having problems with it, and I  
25 don't know why it would be any big secret, and what

1 miracle defenses are going to arise from the list of your  
2 witnesses and/or your copies of exhibits.

3 MR. PALFAI: The only reason I'm saying this  
4 is that as we proceed towards the hearing date, things may  
5 change a little bit. And if you're asking for us to  
6 produce the witness and exhibit list so far out, that they  
7 may not be exact, so I don't know.

8 ALJ STERN: You may have to amend it and  
9 provide them with what additional -- not him, all the  
10 respondents, myself, because I get a courtesy copy, and  
11 since, in fact, you know, I would allow, I guess in order  
12 for them to prepare, usually we require both sides to file  
13 simultaneously. You know, in response to what you file, I  
14 guess I'll give them a little bit extra time to respond  
15 because of the size of this case and maybe its complexity.  
16 I don't know.

17 But what I want to do, though, is before  
18 anything, we have those dates now, those dates look pretty  
19 good. Next week, Mr. Roshka, are you going to be in town?

20 MR. ROSHKA: I am.

21 ALJ STERN: Or even this afternoon, if I can  
22 get hold of Ms. Johnson. I don't know whether she'll have  
23 a position on this thing one way or another, but I assume  
24 she saw what you filed.

25 MR. ROSHKA: Yes, we've spoken. This

1 afternoon is very bad for me. Tomorrow is wide open, and  
2 next week is pretty open. Perhaps I can attempt to reach  
3 the lawyer for the receiver and kind of get a sense of  
4 where they're at in this proceeding.

5 ALJ STERN: Okay, maybe, you mean between now  
6 and tomorrow?

7 MR. ROSHKA: I'll call them either today or  
8 tomorrow and perhaps report back to you and Ms. Johnson  
9 early next week.

10 ALJ STERN: That sounds good. Once I know  
11 that those dates are cleared, then I can set forth a  
12 procedural order for the exchange of witness lists, copies  
13 of exhibits, and then provide the respondents with time to  
14 prepare whatever it is they're going to prepare in  
15 response.

16 Mr. Galbut.

17 MR. GALBUT: Yes, Your Honor we'd like at a  
18 minimum, 30 days from the time that they file the witness  
19 and exhibit list to develop ours because --

20 ALJ STERN: Not a problem, you got it.

21 MR. GALBUT: Thank you very much. It's fine  
22 with us if you move that date back in time to the middle  
23 of June, where they have to provide theirs, because that  
24 way we know that we're going to have more opportunity to  
25 go through the documents, hire our experts, identify, hire

1 our experts. As you know, that's not always an easy job  
2 to get that done, and you have to, you have other people's  
3 schedules, you've got to deal with it on the expert side  
4 of it, you've got to go through the materials, so on, so  
5 forth. It's then going to be a question are depositions  
6 going to be taken of the people that are identified on the  
7 list. We'll have to come back to you to address that.

8 So the whole expert issue is one which is  
9 going to add complication to this and is going to require  
10 the things get moving sooner rather than later.

11 ALJ STERN: We can work it out.

12 MR. GALBUT: We do need to -- the names of the  
13 witnesses, their addresses, phone numbers if it would be  
14 helpful we'll do the same thing, to provide a description  
15 of what it is that they're expected to testify about.

16 Thank you, Your Honor.

17 ALJ STERN: I'm not so sure that we will have  
18 a summary of the witness statements required. We usually  
19 don't, and it puts an additional burden on the Division to  
20 put all this together in a reasonable period of time.

21 Mr. Palfai.

22 MR. PALFAI: Yes, Mr. Stern. His request  
23 basically demands the witnesses and exhibits about 150  
24 days prior to the hearing. That's ridiculous. We're  
25 going to have so many amendments that it's going to be a

1 mess. 60 days is plenty of time. That's very out of the  
2 ordinary.

3 ALJ STERN: No, I'm going to give them more  
4 time. I've made up my mind.

5 MR. PALFAI: As far as addresses and contact  
6 information, they're not getting that.

7 MR. HELD: How do we know who it is? How do  
8 we cross-examine them? How do we ask for a deposition?

9 MR. PALFAI: You're not entitled to  
10 cross-examine everyone we get.

11 MR. HELD: They're going to show up with hoods  
12 on their heads. Just as an aside, I went through a  
13 hearing where there was a, the undercover agents and the  
14 state, not Arizona, refused to give the person's real  
15 name. Now, here we are sitting with the undercover agent,  
16 we didn't know his real name and he was thrown out, and  
17 the case was thrown out. To me, that is so basic, it is  
18 incredible that he would even think of saying something  
19 like that.

20 MR. PALFAI: I misspoke when I said  
21 cross-examine; I meant depose. Generally, these  
22 depositions of witnesses, often these witnesses are  
23 elderly and frail and easily subject to intimidation.  
24 It's unnecessary. They'll have their chance of  
25 cross-examination so we're not going to give them carte

1 blanche to contact all our witnesses and witness list and  
2 harass them.

3 ALJ STERN: I'll take their request under  
4 advisement.

5 Anything else?

6 MR. GALBUT: Your Honor, let me just -- I know  
7 you're taking it under advisement, but look, in the Rules  
8 of Civil Procedure we get exactly what I've just asked  
9 for, and the person's name, their address, their phone  
10 number, a brief description of what the person is going to  
11 testify about. There's no other way that we can figure  
12 out who this person is. And we do have the right to  
13 interview every witness on their list that is not an  
14 employee of the department. It's true of the people that  
15 we identify in our list, if they're not corporate  
16 representatives.

17 So as a lawyer, the prudent thing to do is to  
18 try and interview such a person and they can refuse to do  
19 it. Civil case, criminal case, administrative  
20 proceedings, it's all the same. So we are entitled to the  
21 opportunity to confront the witnesses, which include the  
22 right to endeavor to informally meet and talk with them in  
23 advance of the proceeding, failing which, or in addition  
24 to, we can come to you and say we want to take the  
25 depositions.

1           So simply identifying a person's name without  
2 giving us any information, and a description of what  
3 they're going to do is a pretty useless task, and we're  
4 just going to be back here asking you for it.

5           ALJ STERN: Here's the way -- like I say, I'll  
6 take it under advisement. I'll take a good look at what  
7 we've done in the past, how far this will extend to  
8 individuals. I know sometimes, you know, you get some of  
9 these names today, you can just go to the Internet and  
10 talk to Mr. Google and all of a sudden you know all about  
11 people.

12           MR. GALBUT: There's no court in Arizona that  
13 puts a lawyer to that burden. They put the burden and the  
14 responsibility, the idea is a useful witness list. And so  
15 useful means that somebody can contact that witness and  
16 see if they can interview them or they can come to Your  
17 Honor and say Your Honor, we want to take the person's  
18 deposition, here's the reasons why.

19           ALJ STERN: Okay. I'll take it under  
20 advisement.

21           As I say, once we firm up the dates for the  
22 hearing, if those dates work, I'll put out a procedural  
23 order with those dates, I'll put out a date for  
24 exhibits -- copies of exhibits and a witness list to be  
25 provided to the respondents, a date for which the

1 respondents then have a responsibility or a duty to  
2 provide their witness list and copies of their exhibits to  
3 the Division. And at that time I think we'll be okay.

4 I'll tell you how much in the way of  
5 information about a particular witness you have to  
6 provide, whether the Division has to do it. If the  
7 Division has to do it, it works, I guess, both ways.

8 MR. GALBUT: Absolutely.

9 MR. HELD: Absolutely.

10 ALJ STERN: The Division may want to chase  
11 your witnesses, so...

12 MR. PALFAI: Mr. Stern.

13 ALJ STERN: Yes, sir.

14 MR. PALFAI: If I could just jump in quickly.  
15 The Division is not going to provide investor names to the  
16 respondents so they can contact them.

17 ALJ STERN: You're not going to if you're  
18 going to call --

19 MR. PALFAI: No, no, so that they can contact  
20 them, intimidate them and harass them prior to the  
21 hearing. Mr. Galbut mentioned under the civil rules,  
22 which obviously we talked about plenty in this proceeding.  
23 Under the criminal rules they're not allowed to talk to  
24 the witnesses without the presence of the state, and this  
25 is far more analogous to a criminal proceeding than a

1 civil proceeding because it's a governmental agency  
2 against a private litigant.

3 ALJ STERN: That's one of the reasons why I  
4 sometimes wonder that we want to do administrative  
5 proceedings in this forum, but that's the way the law is.

6 MR. PALFAI: To use a civil model is flat  
7 wrong, it's inapplicable to this circumstance.

8 MR. GALBUT: Your Honor, a slightly different  
9 subject, experts and expert reports. This is going to be  
10 very important. First time today they said they have a  
11 forensic expert. We need a date set as far as the  
12 scheduling, where they deliver the report and all of the  
13 documents that support the report, because that is the  
14 document we're going to take to our forensic expert. And  
15 by analogy, the federal court rules and the state court  
16 rules provide a very clear procedure on this, and that  
17 witness can only testify about what's contained in that  
18 person's report and the documents associated with it.

19 The question whether we take a deposition of  
20 that person and they're entitled to a deposition of ours,  
21 which would be logical and sensible, we can address later.  
22 But there clearly has to be a report. We can't have a  
23 situation where they identify a forensic expert and say  
24 we'll hear what that person has to say and what the basis  
25 of their opinions are at the time of trial. Presumably,

1 this person is capable of producing a report and providing  
2 the documents associated with it. We'll do the same.  
3 There will have to be a time for that built into the  
4 schedule as well.

5 Thank you, Your Honor.

6 MR. PALFAI: Mr. Stern, if I might.

7 ALJ STERN: Yes, sir.

8 MR. PALFAI: It seems like we started with  
9 witness lists and exhibits, and now they're trying to  
10 drive a wedge in and starting to request everything  
11 associated with witnesses and exhibits. I think it's  
12 important to recognize that under the Commission rules,  
13 witnesses and exhibits are exchanged at a date set, and  
14 now all this associated materials they're now starting to  
15 request, and it's starting to expand to who knows where.

16 ALJ STERN: We'll keep the matter as brief as  
17 we can.

18 With that, I think at this point we'll recess.

19 Mr. Roshka, you let me know as soon as you  
20 can, you talk to the Florida attorney for Mutual Benefit,  
21 then we'll get on the phone, either with him or without  
22 him, and/or Ms. Johnson so we can see what the Division  
23 wants to do on this thing. Okay? Because that's going to  
24 predicate what happens. Otherwise, we're going to be  
25 looking for dates again.

1 So anything else, Mr. Palfai?

2 MR. PALFAI: Just on the issue of investors on  
3 the witness list, what information we're going to provide.  
4 Can you, until we resolve this issue, can you make sure  
5 they're not going to be contacting, harassing or otherwise  
6 intimidating?

7 ALJ STERN: They don't know who you're calling  
8 anyhow.

9 MR. PALFAI: No. When we provide the witness  
10 list, is there going to be some ruling on that?

11 ALJ STERN: It's like I have a bunch of  
12 whining kids in first grade. Don't do this, don't do  
13 this. Look, you're in a hearing, you're involved in  
14 litigation; whatever is going to happen, is going to  
15 happen. I didn't institute your temporary order in your  
16 notice, they didn't want to be respondents, necessarily,  
17 but they are, so we'll have to have a hearing whatever way  
18 it works out, and that's the way it's going to be.

19 They may want more civil rights and due  
20 process than some other respondents that have been here.  
21 Maybe they're entitled at this point. Some respondents  
22 haven't asked for this much in the past. Well, whether  
23 they're entitled to it or not, we try and play by the  
24 Commission's rules and the statutes in Arizona, and we'll  
25 try and provide due process for the respondents either

1 way. And if subsequently there's a decision going one way  
2 or the other, I know the Division wouldn't appeal a  
3 decision against them, I don't believe, but if the  
4 respondents have a decision go against them, they have the  
5 right to go to court over it.

6 So in any event, we'll try and do the best we  
7 can. So that concludes today's prehearing unless you have  
8 something else to whine about.

9 MR. PALFAI: I'm not trying to whine, I'm just  
10 trying to set some ground rules for the witness list.  
11 You're not going to establish at this point the date for  
12 the exchange.

13 ALJ STERN: No, I haven't, and I will do that.

14 MR. PALFAI: One last very minor point I'll  
15 try not to sound whiny about.

16 ALJ STERN: I'm not going to give you the day  
17 of the Super Bowl off.

18 MR. PALFAI: The captions filed by respondents  
19 have been consistently incorrect. They're using dba's, I  
20 guess the caption from the initial, not the amended  
21 temporary order, and I just urge the court to have them  
22 file the proper captions.

23 ALJ STERN: You know, if I did that with them,  
24 I have to do that with everybody that comes in here.  
25 People all make up their own captions. The caption will

1 be the one that is on the amended notice. That's the  
2 caption I go by.

3 MR. PALFAI: Right, and that's all I ask.

4 ALJ STERN: If they want to put Yucatan, et  
5 al., that's fine, too. Captions aren't going to dictate  
6 the outcome of the proceeding.

7 MR. PALFAI: They're still using dba's.

8 ALJ STERN: That's fine. If that makes them  
9 happy, let them file it that way. We know what the  
10 answer, it will be determined by the evidence in the  
11 proceedings, and the findings and the conclusions and the  
12 order of the Commission. That's what's going to happen.

13 MR. PALFAI: I just don't think using that  
14 incorrect caption is that burdensome.

15 ALJ STERN: I understand. Like I say, we get  
16 different captions all the time. I guess you've got to be  
17 here to see it. That concludes the proceeding.

18 (The prehearing conference concluded at  
19 11:16 a.m.)

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1 STATE OF ARIZONA )  
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I, CECELIA BROOKMAN, Certified Court Reporter  
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