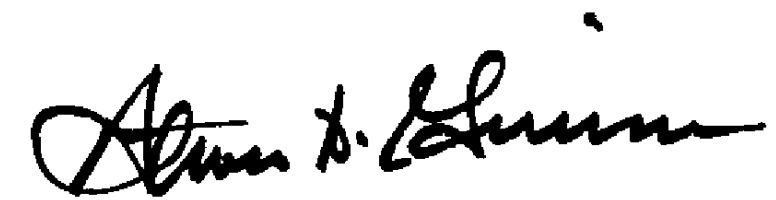


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EXHIBIT V


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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

v.

PRICEWATERHOUSE COOPERS, LLP,
COÖPERATIEVE RABOBANK U.A.,
UTRECHT-AMERICA FINANCE CO.,
SEYFARTH SHAW LLP and GRAHAM R.
TAYLOR,

Defendants.

) CASE NO. A-16-735910-B
) DEPT NO. XV
)

) **PLAINTIFF'S OPPOSITION**
) **TO DEFENDANT**
) **PRICEWATERHOUSE**
) **COOPERS, LLP'S MOTION**
) **TO DISMISS**

) JURY TRIAL DEMANDED
)
)

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POINTS AND AUTHORITIES

I. INTRODUCTION

Confronted with the allegations of the Complaint showing its gross negligence and misrepresentations in advising Plaintiff Michael Tricarichi, Defendant Pricewaterhouse Coopers (“PwC”) points the finger at Plaintiff, saying that he waited too long to bring his claims and that another case in which PwC was not a party absolves PwC. Neither accusation is true. Plaintiff brought his claims about six months after he incurred injury and thus well within the statute of limitations. And the prior case to which PwC refers – while noting PwC’s failings in advising Mr. Tricarichi – did not decide the question of PwC’s liability, because it did not have to. That question is for this Court or a jury empaneled by this Court to decide.

PwC tries to get around the Complaint’s allegations by asking this Court to take judicial notice of certain documents. One of these is the engagement letter between Plaintiff and PwC, which PwC cites to argue that a New York statute of limitations applies. Though the letter is not properly considered on a motion to dismiss, it does not help PwC’s statute of limitations argument in all events. This is because the law of the forum – Nevada – applies to procedural matters such as the statute of limitations, Plaintiff’s claims are timely under Nevada law, and Plaintiff’s claims are also timely under New York law, assuming for the sake of argument that such law applies.

PwC also asks this Court to take judicial notice of the Tax Court opinion finding Plaintiff liable for taxes, penalties and interest in connection with the transaction whereby Plaintiff sold all his stock in a company called Westside Cellular to another company, Fortrend. PwC advised Plaintiff regarding the tax aspects of this transaction, telling him that the stock sale was proper under the tax laws and advising Plaintiff that he could not be held liable for Westside’s taxes. PwC’s advice proved to be wrong. According to PwC, though, the Tax Court opinion says Plaintiff is nonetheless to blame. Not so. The Tax Court did not make the

1 “findings” PwC says it did, and in any case, it is not appropriate for this Court to take judicial
2 notice, on a motion to dismiss, of the factual or legal findings of another court, and thereby
3 deprive Plaintiff the right to proceed with his case before it has even started.

4 In short, Plaintiff’s claims are timely, and Plaintiff is not precluded from bringing them
5 by the doctrine of collateral estoppel or otherwise. PwC’s motion should be denied.

6 **II. FACTUAL BACKGROUND**

7 **A. Plaintiff Tricarichi and Defendant PwC**

8 Plaintiff, Michael Tricarichi, built a cellular telephone business from the ground up and
9 preserved that business through years of litigation necessitated by the illegal trade practices of
10 several larger, competing cellular providers. (Cmplt. ¶ 1) After those competitors were found
11 liable for their anticompetitive actions, Mr. Tricarichi and his company, Westside Cellular,
12 resolved the damages owed for those actions via a substantial settlement. (Id. ¶¶ 27-28) As part
13 of the settlement, Mr. Tricarichi’s company exited the cellular phone business. (Id.)

14 Faced with the question of what to do next, Mr. Tricarichi considered a number of
15 options, including investing in other ventures via Westside, of which he was the sole
16 shareholder. (Cmplt. ¶ 2) During this process, Mr. Tricarichi met with representatives of another
17 company, Fortrend International, LLC (“Fortrend”), which offered to buy all his shares in
18 Westside and employ Westside in Fortrend’s debt-collection business. (Id.) Fortrend represented
19 that Westside’s remaining assets would facilitate this business, that it would legitimately offset
20 Westside’s contingent tax liabilities, and that in all events it would ensure that those tax
21 liabilities were satisfied fully. (Id.) As a result, Fortrend said, Mr. Tricarichi would realize a
22 greater net return on his investment in Westside than would otherwise be the case if
23 Westside were liquidated. (Id.) Fortrend assured Mr. Tricarichi that the proposed transaction,
24 including its tax aspect, was legitimate and in accordance with the tax laws. (Id.) Unbeknownst
25 to Plaintiff, Fortrend’s representations and assurances were knowingly false. (Id.)

1 Mr. Tricarichi retained a nationally recognized accounting firm with expertise in tax
2 matters – Defendant PwC – to review the proposed transaction. (Compl. ¶ 3) PwC did so,
3 ultimately advising Mr. Tricarichi that the proposed stock sale transaction was legitimate for tax
4 purposes, and that Mr. Tricarichi had no ongoing exposure related to Westside once the
5 transaction with Fortrend was completed. (Id.) Unbeknownst to Mr. Tricarichi at the time,
6 PwC’s advice in this regard was, at minimum, grossly negligent. (Id.)

8 **B. Midco Transactions Generally**

9 The transaction proposed by Fortrend and reviewed by PwC was what became known as
10 a “Midco” or “intermediary” transaction. Such transactions were widely promoted during the
11 late 1990s and early 2000s by Fortrend and others, but actually constituted abusive tax shelters.
12 (Cmplt. ¶ 24) The IRS has listed Midco transactions as “reportable transactions” for federal
13 income tax purposes, meaning that the IRS considers them, and substantially similar
14 transactions, to be improper tax-avoidance mechanisms. (Id.)

16 Midco-type transactions were generally promoted to shareholders – like Mr.
17 Tricarichi – of closely held C corporations with potentially large taxable gains. (Cmplt. ¶
18 25) Promoters of Midco transactions targeted such shareholders and offered a purported
19 solution to “double taxation,” that is, the taxation of gains at both the corporate and
20 individual shareholder levels. (Id.) Generally speaking, Midco transactions proceeded as
21 follows: First, an “intermediary company,” or “midco,” affiliated with the promoter –
22 typically a shell company, often organized offshore – would purchase the shares of the target
23 company, and thus its tax liability. (Id.) After acquiring the shares and this tax liability, the
24 intermediary company would engage in a second step that was supposed to offset the
25 target’s realized gains and eliminate the corporate-level tax. (Id.)

27 To draw Mr. Tricarichi and others like him into such transactions, Midco promoters
28 like Fortrend (which is now defunct) represented to the target company’s shareholders that

1 they would legitimately net more for their shares than would otherwise be the case absent
2 the intermediary transaction. (Cmplt. ¶¶ 15, 25) As happened with Plaintiff's transaction,
3 however, such representations often proved, years later, to be false, resulting in substantial
4 tax liabilities and penalties for Plaintiff and others. (Id. ¶ 26)

5
6 **C. Plaintiff Becomes Ensnared in the Midco Transaction.**

7 As noted above, prior to 2003, Plaintiff was the president and sole shareholder of
8 Westside, which purchased network access from major cellular service providers and resold that
9 access to its cell-phone customers. (Cmplt. ¶ 27) Over time, Plaintiff learned that certain of
10 these providers were engaging in anticompetitive trade practices. (Id.) Westside therefore sued
11 those providers; prevailed on liability; and reached a settlement regarding damages, pursuant to
12 which Westside ultimately netted (after attorney fees and employee payments) proceeds of
13 about \$40 million. (Id. ¶¶ 27-28) In exchange, Westside was required to terminate its business
14 as a retail provider of cell phone service in June 2003 – effectively relinquishing its assets in
15 return for the settlement proceeds. (Id. ¶ 28)

17 Plaintiff asked the Hahn Loeser law firm to look into tax matters related to the
18 settlement. (Cmplt. ¶ 29) Because Westside was a C Corporation, there was a concern the
19 settlement proceeds could be subject to double taxation. (Id.) Plaintiff was introduced to
20 both Fortrend and another Midco promoter; each said it was in the distressed debt
21 receivables business and wanted to purchase Westside for this business. (Id. ¶¶ 29-31)

23 Fortrend and the other promoter, Midcoast Credit Corp. ("Midcoast"), each made an
24 offer proposing essentially the same transaction: An intermediary company would borrow
25 money to purchase the stock of Westside. (Cmplt. ¶ 32) After the sale closed, the
26 intermediary company would merge into Westside, and the purchaser would employ
27 Westside in its distressed-debt collection business. (Id.) The purchaser would fund its
28 operations with Westside's remaining cash (Fortrend represented that financing for its

1 distressed-debt recovery business was otherwise difficult to obtain), and legitimately offset
2 Westside's contingent tax liabilities, which in all events, would be satisfied fully. (Id.)

3 Fortrend and Midcoast represented to Plaintiff that the stock purchase they were
4 each proposing would result in legitimate tax benefits and thus a greater net return to
5 Plaintiff than he would otherwise realize. (Cmplt. ¶ 33) They assured Plaintiff that
6 they had successfully undertaken numerous other transactions like the one being
7 proposed to Plaintiff and that such transactions were proper under the tax laws. (Id.)
8 Unbeknownst to Plaintiff, Fortrend paid Midcoast to step away, and Plaintiff thus chose to
9 proceed further with Fortrend. (Id. ¶¶ 34-35)

11 **D. Plaintiff Retains PwC to Vet the Proposed Transaction.**

12 In April 2003, Plaintiff retained PwC to review the proposed transaction. (Cmplt. ¶ 37)
13 Plaintiff is unsophisticated in tax matters and was relying on PwC's expertise in deciding
14 whether to proceed with the transaction. (Id.)

16 Unbeknownst to Plaintiff, however, PwC had on at least one prior occasion brought
17 Fortrend to the table to facilitate a Midco transaction that PwC itself had advocated. (Cmplt. ¶
18 38) In particular, in late 1999, PwC advocated that a Midco transaction be used in the
19 purchase of the Bishop Group Ltd. ("Bishop") by PwC's client Midcoast Energy Resources,
20 Inc.; PwC approached Fortrend to serve as an intermediary; and a Fortrend affiliate in fact
21 served as an intermediary, purchasing the Bishop stock in a Midco transaction that PwC
22 helped negotiate. (Id.) PwC disclosed none of this to Plaintiff. (Id.) The Bishop Midco
23 transaction was audited by the IRS starting in late 2003 (but before Plaintiff had reported the
24 Westside stock sale on any tax returns), found deficient by the IRS in 2004, and confirmed by
25 the courts in 2008 and 2009 to be an illegal tax shelter. (Id.)

27 During the period April-August 2003, a team of PwC tax professionals set out to
28 examine and advise Plaintiff regarding the stock sale transaction proposed by Fortrend.

1 (Cmplt. ¶ 39) While Plaintiff and Fortrend proceeded to discuss and negotiate a proposed
2 stock purchase agreement, PwC reviewed the terms, and considered the tax implications,
3 thereof as part of its engagement. (Id.) PwC personnel put between 150 and 200 hours
4 into this effort, for which PwC charged approximately \$48,000 in fees. (Id.) PwC
5 participated in various calls with the parties and/or their representatives, reviewed
6 transaction documentation, and undertook research. (Id.) PwC understood, among other
7 things, that Fortrend intended to offset Westside's contingent tax liability with deductions
8 associated with high basis / low value assets, and that Plaintiff was relying on Fortrend to
9 satisfy Westside's tax obligations. (Id.)

11 PwC further understood but failed to properly advise Plaintiff regarding IRS Notice
12 2001-16 and its significance for the Fortrend transaction. (Cmplt. ¶¶ 40, 56) Notice 2001-16,
13 which had been issued in January 2001, describes transactions where a corporation disposes
14 of substantially all of its assets and then the corporation's shareholders sell their stock to
15 another party who seeks favorable tax treatment. (Id. ¶ 56) The notice states that any
16 transactions that are the same as, or substantially similar to, those described in the Notice
17 are "listed transactions." (Id.) Listed transactions are deemed by the IRS to be abusive tax
18 shelters. (Id.) Persons failing to report these tax shelters may be subject to penalties. (Id.)
19 PwC failed to properly advise Plaintiff that Notice 2001-16 applied to Midco transactions
20 described therein and to "substantially similar" transactions; that the term "substantially
21 similar" was broadly construed in this context; and that the proposed transaction and its tax
22 implications posed risk for Plaintiff. (Id. ¶¶ 56-58)

25 Notwithstanding the problematic nature of the transaction proposed by Fortrend, which
26 should have been apparent to PwC given its expertise in tax matters, PwC came to the
27 conclusion that the transaction did not fit the IRS definition of a Midco (or substantially
28 similar) transaction and that it was not a reportable transaction as defined by the IRS. (Cmplt.

1 ¶ 53) PwC also came to the conclusion that Plaintiff would not be subject to transferee liability
2 for Westside's taxes as a result of the Fortrend transaction. (Id.) PwC's examination of the
3 proposed transaction concluded with a determination that there was no reason not to go
4 forward with Fortrend's offer to purchase Plaintiff's Westside stock. (Id.) PwC advised
5 Plaintiff of its conclusions in or about August 2003. (Id.)

6
7 Relying upon PwC's advice, Plaintiff proceeded with the Fortrend transaction.
8 (Cmplt. ¶ 53) Had PwC advised Plaintiff otherwise, Plaintiff would not have proceeded with
9 the transaction. (Id.) Plaintiff and Fortrend executed the stock purchase agreement, and the
10 transaction closed, on September 9, 2003. (Id. ¶ 54) Thereafter, Westside's remaining funds,
11 rather than being used to facilitate Fortrend's debt-collection business, were drained by
12 Fortrend. (Id. ¶ 55) Westside did not engage in the debt-collection business as Fortrend had
13 represented to Plaintiff it would. (Id.) In an attempt to offset Westside's tax liability on the \$40
14 million in settlement proceeds from the network-access litigation, Fortrend had Westside claim
15 a correspondingly large bad-debt deduction. Westside did not pay any taxes. (Id. ¶¶ 59-69)

16
17 **E. Plaintiff is Left Holding the Bag.**

18 The IRS audited Westside's 2003 tax return. (Cmplt. ¶ 75) At the conclusion of the
19 audit, the IRS disallowed the \$40 million-plus bad-debt deduction that Fortrend / Westside had
20 claimed. (Id.) The IRS sent a notice of deficiency to Westside determining a tax deficiency of
21 \$15,186,570 and penalties totaling \$6,012,777 under the tax code, but Westside – which had no
22 assets or resources by that point as a result of Fortrend's actions – did not pay any of these
23 amounts and did not petition the U.S Tax Court for relief. (Id. ¶¶ 75-76)

24
25 The IRS then proceeded with a transferee liability examination concerning Westside's
26 2003 tax liabilities. (Cmplt. ¶ 77) Transferee liability is a method of imposing tax liability on
27 a person (here, Plaintiff) other than the taxpayer (here, Westside) that is directly liable for the
28 tax. (Id.) The IRS determined that Plaintiff had transferee liability for Westside's tax

1 deficiency and penalties. (Id. ¶ 78) (Years before, Plaintiff had timely paid the taxes on the
2 long-term gain incurred as a result of selling his Westside stock.) (Id.)

3 Plaintiff petitioned the U.S. Tax Court for review of the IRS notice of transferee
4 liability. (Cmplt. ¶ 79) The matter was litigated and proceeded to trial. (Id.) The Tax Court
5 found in October 2015 that – contrary to what PwC had told Plaintiff – the Fortrend transaction
6 was an improper Midco transaction, and Plaintiff was liable under transferee liability principles
7 for Westside’s tax deficiency and penalties totaling about \$21.2 million, plus interest. (Id.)

9 **III. ARGUMENT**

10 **A. Plaintiff’s Claims Are Timely Under Both Applicable Nevada Law and the** 11 **New York Law that PwC Incorrectly Applies.**

12 PwC labors to avoid Nevada law—the majority of its statute-of-limitations argument is
13 spent arguing that Nevada law does not apply, and its entire analysis of the applicable Nevada
14 statute is relegated to a footnote. But the Nevada Supreme Court has long held that statutes of
15 limitations are procedural rules and therefore the law of the forum—Nevada—applies.
16 Moreover, the New York choice-of-law clause in the engagement letter between Plaintiff and
17 PwC does not cover procedural rules like the statute of limitations, nor did it require New York
18 choice of forum.

19 Plaintiff’s claims are timely under Nevada law because Plaintiff suffered no injury until
20 October 2015. The statute of limitations cannot have expired because: (a) the statute applies
21 only to actions “to recover damages,” (b) there were no damages (and thus no possible suit “to
22 recover damages”) until the adverse Tax Court decision in October 2015, and (c) as PwC also
23 fails to note in its motion, the parties have had tolling agreements in effect from when Plaintiff
24 first received notice from the IRS until the filing of this lawsuit. As a matter of basic logic, the
25 statute of limitations under Nev. Rev. Stat. § 11.2075 could not have expired before a suit for
26 damages was possible or Plaintiff even received notice of the IRS’ contrary position.
27
28

1 Plaintiff's claims are also timely because the Nevada statute tolls the limitations period
2 "for any period during which the accountant or accounting firm conceals the act, error or
3 omission upon which the action is founded" (Nev. Rev. Stat § 11.2075(2)). Plaintiff expressly
4 alleges such concealment (e.g., Cmplt. ¶¶ 73-74). PwC cites the statute in its motion to dismiss,
5 but omits the tolling provision and makes no attempt to argue that Plaintiff's concealment
6 allegations are insufficient under the statute. (Mot. at 16 n.5.)

7
8 Moreover, regardless of concealment, issues of fact preclude dismissal under the only
9 subsection of the Nevada statute PwC cites in support of its motion—which provides that an
10 action is barred four years "after the completion of performance of the service for which the
11 action is brought." (Id.) Indeed, even if New York law applies, Plaintiff's claims are also timely
12 under New York law pursuant to the "continuous representation" doctrine, because the parties
13 expressly contemplated PwC would provide continuing services in the event of an IRS audit.
14

15 **1. Nevada Law Applies to the Statute of Limitations**
16 **for Plaintiff's Claims.**

17 PwC argues that New York statutes of limitation apply based solely on a substantive
18 choice-of-law provision in the parties' engagement letter. At the outset, the Court should not
19 consider the engagement letter on PwC's motion to dismiss, as the Complaint does not
20 incorporate it by reference and it is not integral to Plaintiff's claims. PwC contends that the
21 engagement letter is "integral to Plaintiff's tort claims because it created the 'duty of Plaintiff to
22 use such skill, prudence and diligence as commonly possessed and exercised by tax and
23 business professionals in the fields of income taxes, tax savings transactions and business tax
24 consulting.'" (Mot. at 11 n.3.) But these duties are not specified in the engagement letter and are
25 not dependent on its specific terms. They arise because PwC undertook to provide professional
26 services to Plaintiff, and the engagement agreement is thus not "integral" to Plaintiffs' tort
27
28

1 claims. Indeed, if the agreement is “central” to Plaintiff’s claims, then the applicable statute of
2 limitations should be six years. See Nev. Rev. Stat § 11.190(1)(b).

3 Regardless, Nevada law applies notwithstanding the choice-of-law provision. Under
4 well-established Nevada law, statutes of limitations are governed by the law of the forum, even
5 where the substance of the dispute is governed by another state’s laws:

6 The rule is, that a personal contract by its terms to be performed in some place
7 other than that where the contract is made, is to be governed by the law of the
8 place of performance; ... but this rule applies only to the rights and obligations
9 resting upon, or arising from, the contract; **the law of the forum always governs**
10 **the remedy** in England and this country; **and the Statute of Limitations applies**
11 **only to a remedy, and not to a right or obligation.**

12 Wilcox v. Williams, 5 Nev. 206, 211 (1869) (emphasis added); see also Asian Am. Entm't Corp.
13 v. Las Vegas Sands, Inc., 324 F. App'x 567, 568 (9th Cir. 2009) (“The relevant choice-of-law
14 rule, as established by the Nevada Supreme Court, is the rule of lex fori: i.e., that ‘the Statute of
15 Limitations of the forum [will] govern the remedy....’”) (quoting Wilcox); Spilsbury v. U.S.
16 Specialty Ins. Co., 2015 WL 476228, at *3 (D. Nev. Feb. 4, 2015) (same); Seely v. Illinois-
17 California Exp., Inc., 541 F. Supp. 1307, 1309 (D. Nev. 1982) (“The defense that a claim is
18 barred by the statute of limitations is a procedural matter governed by the law of the forum, in
19 this case Nevada law.”). Contractual choice-of-law provisions govern only substantive issues,
20 not procedural issues like statutes of limitations. Tipton v. Heeren, 109 Nev. 920, 922, 859 P.2d
21 465, 466 (1993) (Nevada law governed procedural issue despite contractual choice-of-law
22 provision specifying Wyoming law, which applies to substantive issues;) G & H Associates v.
23 Ernest W. Hahn, Inc., 113 Nev. 265, 272, 934 P.2d 229, 233 (1997 (“Statutes of limitation are
24 procedural bars ...”).¹

27 ¹ Other (substantive) issues to which the choice-of-law provision may apply are not yet before
28 the Court, and Plaintiff reserves the right to later contend that the choice-of-law provision does
or does not govern other issues in this matter.

Moreover, the engagement letter’s generic choice-of-law provision states only, in its entirety, that “[t]his Agreement will be governed by the laws of the State of New York.” Under New York law, choice-of-law provisions cannot be read to include statutes of limitation unless they expressly so provide. *Portfolio Recovery Associates, LLC v. King*, 14 N.Y.3d 410, 416, 927 N.E.2d 1059, 1061 (2010) (“Choice of law provisions typically apply to only substantive issues, and statutes of limitations are considered procedural because they are deemed as pertaining to the remedy rather than the right. There being no express intention in the agreement that Delaware’s statute of limitations was to apply to this dispute, the choice of law provision cannot be read to encompass that limitations period.”) (citations omitted). As even New York law provides that choice-of-law provisions do not include statutes of limitation unless they expressly so state, the choice-of-law provision here was not intended to include statutes of limitations, and did not so state.²

² PwC vaguely asserts that the choice-of-law provision governs “Plaintiff’s claims” against it, but makes no attempt to explain why it would govern the applicable statute of limitation. Virtually all of the cases PwC cites to imply that a generic choice-of-law provision covers statute-of-limitation issues have nothing to do with statutes of limitation. See cases cited in Motion at 11-14. The lone exception is a federal district court case in which the party advocating Nevada’s statute of limitations (notwithstanding a Delaware choice-of-law provision) “offered no argument or explanation why Nevada law should apply,” and tried to “improperly raise new arguments [in this regard] in its reconsideration motion.” *Izquierdo v. Easy Loans Corp.*, 2014 WL 2803285, at *2 (D. Nev. June 19, 2014) (emphasis in original). Moreover, *Izquierdo* considered neither *Wilcox* nor other authority cited above supporting the application of Nevada statutes of limitations, and is thus not persuasive. And contrary to PwC’s suggestion otherwise (Mot. at 12 n.4), federal precedent is not persuasive authority in Nevada on every issue of law (such as statutes of limitation) merely because the issue becomes relevant to a motion to dismiss and both Nevada and Federal procedural rules allow motions to dismiss for failure to state a claim—the cases PwC cites to support this absurd proposition merely consider specialized Nevada procedural rules in light of federal precedent regarding their federal analogues. See *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005), as modified (Jan. 25, 2006) (considering the test for “alternate security” in lieu of a supersedeas bond to support a stay pending appeal, and relying on federal precedent because because NRCP 62(d) is “substantially based on its federal counterpart, FRCP 62(d)”); *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53–54, 38 P.3d 872, 876–77 (2002) (considering whether Nevada courts should exercise discretion in determining whether to allow jury trial despite earlier waiver of jury trial right, and looking to federal authority interpreting FRCP 39(b), which has a Nevada analogue in NRCP 39(b)).

1 Unsurprisingly, Judge Denton recently concluded that Nevada statutes of limitation
2 applied regardless of a contractual choice-of-law clause. (See Ex. A, Dec. 3, 2013 Order in
3 Cantor G&W (Nevada) Holdings, L.P. v. Asher, Case No. A-11-646021, Dist. Ct., Clark Cty.
4 Nev. (writ denied)) Judge Denton held that “[t]he defense that a claim is barred by the statute of
5 limitations is a procedural matter governed by the law of the forum.” (Id. ¶¶ 9-10.) Judge
6 Denton similarly noted that “even under Delaware law [the law specified in the choice-of-law
7 clause], a choice of law provision will only include the statute of limitations of the chosen
8 jurisdiction if their inclusion is specifically noted.” (Id. ¶ 11.)

10 **2. Plaintiff’s Claims are Timely under Nevada Law.**

11 As a threshold matter, Plaintiff had no damages prior to the October 2015 Tax Court
12 opinion imposing liability for Westside’s tax deficiency. (See Cmplt. ¶ 79.) Because Nev. Rev.
13 Stat. § 11.2075, by its plain terms, only applies to actions “to recover damages,” the limitations
14 period thus cannot have expired before October 2015. See Siragusa v. Brown, 971 P.2d 801,
15 806 (Nev. 1998) (“[P]laintiffs should not be foreclosed from judicial remedies before they know
16 that they have been injured...”). Moreover, PwC agreed in a series of tolling agreements to
17 waive any defense based on the expiration of the statute of limitations between January 19, 2011
18 and May 1, 2016, and Plaintiff filed his Complaint on April 29, 2016.³ PwC ignores all of this.
19 Plaintiff’s suit is timely, and PwC’s motion to dismiss should be denied.

21 PwC’s sole argument that Plaintiff’s claims are untimely under Nevada law is that: (a)
22 Subsection 1 of Nevada’s statute of limitations for malpractice actions against accountants
23 provides that such actions must be commenced within “[f]our years after the completion of
24 performance of the service for which the action is brought,” and (b) “PwC completed
25

26 ³ Commencing in October 2012, after the IRS sent Plaintiff a notice of transferee liability in
27 June 2012, Plaintiff and PwC entered into a series of retroactive tolling agreements. Copies of
28 the tolling agreements are provided as Exhibit B to this Opposition. Before that time, Plaintiff
had no reason to proceed otherwise.

1 ‘performance of the service for which the action is brought’ no later than August 2003.” (Mot.
2 at 16 n.5, citing Nev. Rev. Stat § 11.2075(1).) Neither assertion is correct. First, PwC neglects
3 to note that subsection 2 of the statute provides: “The time limitation set forth in subsection 1 is
4 tolled for any period during which the accountant or accounting firm conceals the act, error or
5 omission upon which the action is founded and which is known or through the use of reasonable
6 diligence should have been known to the accountant or the firm.” Nev. Rev. Stat § 11.2075(2).
7 Despite this express provision and a section of the Complaint titled “Defendants and Their Co-
8 Conspirators Fraudulently Concealed Their Acts” (Cmplt. ¶¶ 73-74), PwC makes no attempt to
9 argue that subsection 2 of the statute is inapplicable or that the Complaint does not adequately
10 allege concealment.⁴ Nor could PwC so argue, because the Complaint alleges that PwC
11 concealed the acts, errors and omissions upon which the action is founded, including PwC’s
12 previous advocacy of at least one other Midco transaction involving Fortrend and Rabobank
13 (who conspired to defraud Plaintiff). (Cmplt. ¶¶ 38, 73-74, 104 et seq.) As alleged in the
14 Complaint, the concealed facts only came to light during or after the Tax Court trial. (Id. ¶¶ 73,
15 79).

16
17
18 At minimum, PwC’s concealment of its acts, errors and omissions raises issues of fact
19 inappropriate for resolution on a motion to dismiss. It is well-established under Nevada law that
20 motions to dismiss on statute of limitations grounds should be denied where they raise questions
21 of fact to be determined by the jury or trial court after full hearing. See *Millspaugh v.*
22 *Millspaugh*, 611 P.3d 201, 202 (Nev. 1980) (reversing trial court’s dismissal of legal
23
24

25 ⁴ Although the Complaint alleges fraudulent concealment, Plaintiffs need not even meet the
26 standard for fraudulent concealment in order to qualify for tolling under Section 11.2075(2).
27 The Nevada Supreme Court has yet to interpret what constitutes “concealment” for purposes of
28 this tolling provision, but it has held that “concealment” for purposes of a virtually identical
tolling provision (in the statute of limitations for actions against health care providers) requires
only an intentional act to keep another from learning a fact. *Winn v. Sunrise Hosp. & Med. Ctr.*,
128 Nev. Adv. Op. 23, 277 P.3d 458, 464 (2012).

1 malpractice case as untimely because of fact question about when plaintiff should have
2 discovered attorneys' malpractice); Siragusa, 971 P.2d at 806 (holding that "[w]hen the plaintiff
3 knew or in the exercise of proper diligence should have known of the facts constituting the
4 elements of his cause of action is a question of fact for the trier of fact," such that "the time of
5 discovery may be decided as a matter of law only where uncontroverted evidence proves [when]
6 the plaintiff discovered or should have discovered the fraudulent conduct" (internal quotation
7 marks omitted)); Oak Grove Investors v. Bell & Gossett Co., 668 P.2d 1075, 1079 (Nev. 1983)
8 (placing the burden of demonstrating the absence of a genuine issue of material fact as to when
9 a party discovered or should have discovered the facts underlying a claim on the party seeking
10 summary judgment on statute of limitations grounds), disapproved on other grounds by
11 Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000). Plaintiff should thus at least be
12 allowed discovery regarding the full extent of PwC's concealment of the acts, errors and
13 omissions that caused Plaintiff's injuries.

14
15
16 Fact issues regarding when PwC's services were complete likewise preclude dismissal.
17 PwC notes that paragraph 39 of the Complaint alleges that "during the period of April-August
18 2003, a team of PwC tax professionals ... set out to examine and advise Plaintiff regarding the
19 transactions proposed by Fortrend and Midcoast." Construing the Complaint liberally in
20 Plaintiff's favor, this does not establish that PwC ceased providing services in August of 2003.
21 Vacation Vill., Inc. v. Hitachi Am., Ltd., 110 Nev. 481, 484, 874 P.2d 744, 746 (1994). All the
22 more so as the Complaint alleges that PwC agreed to later work with Plaintiff to avoid the
23 imposition of any tax penalty (Cmplt. ¶ 37), and the engagement letter provides that PwC would
24 "be available to assist [Plaintiff] in the event of an audit of any issue for which [it had] provided
25 services under this Agreement." (Eng. Ltr. at p. 94 of PwC appendix)
26
27
28

1 **3. Plaintiff's Claims are Also Timely under New York Law.**

2 Although, as shown above, New York law does not apply, the parties' agreement for
3 PwC to later assist Plaintiff in connection with an IRS audit similarly makes Plaintiff's claims
4 timely by virtue of New York's "continuous representation" doctrine, under which: "where a
5 professional representation of a client continues on an ongoing basis as part of the same matter,
6 the statute of limitations begins to run only when the entire course of the representation has
7 ended." MF Glob. Holdings Ltd. v. PricewaterhouseCoopers LLP, 43 F. Supp. 3d 309, 315
8 (S.D.N.Y. 2014) (fact issues regarding continuous representation precluded dismissal;
9 allegations gave rise "to a reasonable inference that the parties anticipated continuous
10 representation"); see also Stokoe v. Marcum & Kliegman LLP, 24 N.Y.S.3d 267, 268 (N.Y.
11 App. Div. 2016) (affirming order denying motion to dismiss complaint: "Plaintiffs carried their
12 burden of demonstrating evidentiary facts showing that the continuous representation toll
13 applied, based on the 'mutual understanding' set forth in the engagement letters that defendants
14 could be called upon in a government investigation to justify their audit findings.")

17 **B. The Tax Court Decision Does Not Preclude Plaintiff's Claims Against PwC.**

18 **1. Since PwC's Request for Judicial Notice Should Be Denied,**
19 **Its Corresponding Preclusion Arguments Should Also Be Rejected.**

20 None of PwC's preclusion arguments can succeed if the Court denies PwC's Request
21 for Judicial Notice regarding the Tax Court opinion on Plaintiff's transferee liability. This is
22 because all of PwC's preclusion arguments assume that this Court will take judicial notice of
23 certain findings in the Tax Court opinion. As discussed in Plaintiff's Opposition to PwC's
24 request for judicial notice, which Plaintiff incorporates herein by reference, PwC's request is
25 overreaching and should be denied. The Tax Court opinion does not preclude Plaintiff from
26 proceeding against PwC in this Court.
27
28

1 **2. The Tax Court’s Opinion Does Not Collaterally Estop**
2 **Plaintiff’s Claims Against PwC.**

3 PwC starts its discussion of collateral estoppel correctly enough by noting that “[t]he
4 doctrine of collateral estoppel bars a party from re-litigating facts or issues that were
5 conclusively determined by a prior court.” (Mot. at 17, citing Kahn v. Morse & Mowbray, 117
6 P.3d 227, 235 (Nev. 2005)) The discussion goes downhill from there, however, as PwC
7 proceeds to mischaracterize the facts and issue that the Tax Court determined. PwC’s goal
8 here is to give the false impression that the Tax Court found Mr. Tricarichi solely responsible
9 for entering into the Fortrend transaction, and PwC without fault. It’s a classic example of
10 “blame the victim,” and it doesn’t work.

11 According to PwC, the issue decided by the Tax Court was “whether Plaintiff knew that
12 the Fortrend Transaction was illegitimate when he decided to pursue it.” (Mot. at 19) The
13 actual issue decided by the Tax Court was whether Plaintiff “had constructive knowledge that
14 West Side’s Federal and Ohio tax liabilities would not be paid,” an issue that necessarily
15 encompasses what PwC knew in advising Plaintiff. Tax Ct. Op. at p.80 of PwC appendix
16 (emphasis added). After misstating the issue, PwC contends that the Tax Court made various
17 factual findings about what Plaintiff, and Plaintiff alone, supposedly knew or did. (See Mot. at
18 18.) PwC can make this contention, however, only by both misstating the issue and blatantly
19 mischaracterizing the Tax Court opinion, which actually reflects PwC’s “front and center”
20 involvement in matters that it now tries to walk away from. As the Complaint indicates, PwC
21 was a key adviser to Plaintiff when he was considering the Fortrend transaction. Accordingly,
22 PwC took part in the review of and decision to complete this transaction. PwC contends that
23 the Tax Court found Plaintiff solely blameworthy in this decision process, but that is not so.
24 The Tax Court expressly stated that Plaintiff’s advisers, such as PwC, did not act appropriately
25 during this process. As the Tax Court stated, for example:
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1 Neither petitioner nor his advisers performed any due diligence into
2 Fortrend or its track record. Neither petitioner nor his advisers performed any
3 meaningful investigation into the “high basis/low value” scheme that Fortrend
4 suggested for eliminating West Side’s accrued 2003 tax liabilities. Petitioner
5 and his advisers were clearly suspicious about Fortrend’s scheme. But instead
6 of digging deeper, they engaged in willful blindness and actively avoided
7 learning the truth.

8 Petitioner and his advisers knew that the transaction Fortrend was
9 proposing was likely a “reportable” or “listed transaction.”...

10 ***

11 ... [T]o relieve petitioner and his advisers of the duty to inquire, when
12 the surrounding circumstances cried out for such inquiry, would be to bless the
13 willful blindness the constructive knowledge test was designed to root out....

14 Tax Ct. Op. at pp. 81, 82 of PwC appendix (emphasis added, citation omitted). Rather than
15 accurately quote such passages, PwC either avoids them altogether or studiously deletes the
16 Tax Court’s references to Plaintiff’s advisers – i.e., to PwC. So, for example, PwC says the
17 Tax Court found that “Plaintiff was ‘clearly suspicious about Fortrend’s scheme ...’”; that
18 “[he] engaged in willful blindness”; and that “Plaintiff ‘knew that the transaction Fortrend was
19 proposing was likely ... reportable...’” – when, as set forth above, the Tax Court actually
20 wrote that both Plaintiff and PwC thought, did and knew these things. (Compare Mot. at 9:17-
21 19 with Tax Ct. Op. at p. 81 of PwC appendix.)

22 The Tax Court, of course, did not decide, as between Plaintiff and PwC, who was
23 ultimately to blame for Plaintiff’s entry into the Fortrend transaction, because that was not the
24 Tax Court’s job. The Tax Court’s job was to decide whether taxes were owed to the U.S.
25 Treasury in the wake of the transaction. It is, however, the job of this Court, and/or a jury
26 empaneled by this Court, to look at matters as between Plaintiff and PwC and decide whether
27 PwC was grossly negligent in advising Plaintiff to go ahead with the Fortrend transaction, and
28 whether PwC is liable to Plaintiff for the losses he incurred as a result.

The law has long recognized the difference between such points. Indeed, in Kahn v.
Morse & Mowbray, 117 P.3d 227 (Nev. 2005), the lead case that PwC cites regarding collateral

1 estoppel, the Nevada Supreme Court distinguished between the effect of entering into an
2 agreement or transaction, and the propriety of the advice that led a party to enter into that
3 agreement in the first place. In Kahn, the court addressed whether a prior court ruling that
4 plaintiffs were bound by an oral settlement agreement collaterally estopped plaintiffs from
5 proceeding with a claim that their attorneys had given them bad advice in connection with
6 entry into that agreement. The high court reversed the lower court's imposition of collateral
7 estoppel on this point:
8

9 [T]he district court did not address the factual issues underlying [plaintiffs']
10 assertion that [defendant] offered them bad advice.... The fact that [plaintiffs]
11 agreed to the terms [of the agreement] has nothing to do with the factual issues
concerning whether [defendant] properly advised them as to those terms.

12 Kahn, 117 P.3d at 236. Like plaintiffs in Kahn, Plaintiff here received advice from
13 professionals regarding whether he should enter into an agreement. (See, e.g., Cmplt. ¶¶ 37-53,
14 53.) After one court ruled on the consequences of entering into that agreement, plaintiff
15 brought claims in a second case alleging the professionals' advice leading up to the agreement
16 was bad. Collateral estoppel does not apply to such claims in the second case. See Kahn.
17

18 A similar result obtains in tax-related cases. In U.S. v. Boyle, 469 U.S. 241 (1985), the
19 U.S. Supreme Court distinguished between a taxpayer's duties to the government under the tax
20 laws, and the duties owed to the taxpayer by his advisers. The Court there held that a
21 taxpayer's failure to timely file a tax return was not excused by the taxpayer's reliance on his
22 attorney. Citing Boyle, other courts have held that taxpayers may proceed against their
23 attorneys and accountants when the tax authorities find tax liabilities. For example, in Pair v.
24 Queen, 2 A.3d 1063 (D.C. 2010), the court reversed dismissal of the taxpayer plaintiffs'
25 attorney malpractice claim. As the court held:
26

27 Boyle concerned the duties an estate and its representative owed to the IRS. By
28 contrast, the Pairs' claims of malpractice concern the duties a professional owes
to a client.... [Plaintiffs] are seeking "compensatory and consequential
damages" through a malpractice claim.... [N]othing in Boyle suggests that a

1 taxpayer's non-delegable duty to the IRS relieves a professional from liability for
2 negligent failure to perform the duties for which an estate has employed him.

3 Pair, 2 A.3d at 1066. See also *Bick v. Peat Marwick and Main*, 799 P.2d 94, 102 (Kan. App.
4 Ct. 1990) (affirming judgment against accounting firm on taxpayer's negligence claim).

5 Given this distinction between tax liability (which the Tax Court was considering) and
6 professional liability (which it was not), there is no reason for this Court to resolve this case
7 based solely on a few snippets from the Tax Court opinion (which PwC chooses to recite
8 repeatedly) regarding the dealings between Plaintiff and PwC. For example, a statement from
9 PwC to Plaintiff that a proposed transaction is "aggressive" (see Mot. at 2, 6, 9, 18) does not
10 necessarily absolve PwC from advising Plaintiff to proceed notwithstanding its "aggressive"
11 nature. Some "aggressive" tax structures are perfectly legitimate. See, e.g., *In re ClassicStar*
12 *Mare Lease Litig.*, 727 F.3d 473, 489 (6th Cir. 2013) ("Plaintiffs were undoubtedly engaged in
13 an attempt to take advantage of the arcane and often labyrinthine nature of the U.S. Tax Code,
14 but their project was a lawful one."). Others are not. Plaintiff retained PwC to advise him on
15 the subject, and – as Plaintiff has now learned – PwC failed in that task. Similarly, the fact that
16 Plaintiff had been successful in the cell-phone business and had some "familiarity with tax
17 concepts" (see Mot. at 10, 18) does not make him an expert in tax matters and allow PwC to
18 walk away from its gross negligence. See, e.g., *ClassicStar*, 727 F.3d at 479 (investment
19 marketed to wealthy individuals recognized investors' need for professional advice regarding
20 its tax aspects). Again, Plaintiff retained PwC to provide expert advice and, as alleged in the
21 Complaint, PwC failed. The Tax Court did not hold otherwise or even decide the issue. As
22 such, imposing collateral estoppel here would be wrong. See, e.g., *Eureka Fed. Sav. and Loan*
23 *Ass'n v. Am. Cas. Co.*, 873 F.2d 229, 233 (9th Cir. 1989) ("Collateral estoppel is inappropriate
24 if there is any doubt as to whether an issue was actually litigated in a prior proceeding.")
25 (emphasis added); *Lanier v. Clovis Unified School Dist.*, 2012 WL 1355674 at *9 (E.D. Cal.
26
27
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2012) (listing factors for determining whether issues are identical; finding no collateral estoppel) (citing *Resolution Trust Corp. v. Keating*, 186 F.3d 1110, 1116 (9th Cir. 1999)).

While the foregoing is more than sufficient basis to deny PwC's motion, it should also be noted that the tax litigation is not yet over. Plaintiff intends to appeal the Tax Court's decision.⁵ If this Court were to grant PwC's motion and enter judgment, and the Ninth Circuit were to reverse the Tax Court, this Court's judgment would also have to be reversed as a result. See *Butler v. Eaton*, 141 U.S. 240, 243-44 (1891) (reversing judgment based on other judgment that had also been reversed); *In re Hedged-Investments Assocs., Inc.*, 48 F.3d 470, 473 (10th Cir. 1995) (reversal of judgment on which defendant sought to base collateral estoppel made it impossible to grant defendant's request); *Erebia v. Chrysler Plastic Products Corp.*, 891 F.2d 1212, 1251 (6th Cir. 1989) ("Where the prior judgment, or any part thereof, relied upon by the subsequent court has been reversed, the defense of collateral estoppel evaporates.") (citations omitted). This further supports denial of PwC's motion.

3. PwC's In Pari Delicto Argument Misconstrues Both That Legal Doctrine and the Claims Against PwC.

"The equitable defense of in pari delicto, which literally means 'in equal fault,' is rooted in the common-law notion that a plaintiff's recovery may be barred by his own wrongful conduct." *Pinter v. Dahl*, 486 U.S. 622, 632 (1988). PwC argues that this defense applies here because Plaintiff's fault is greater than PwC's. PwC maintains that Plaintiff's claims against it are based on negligent, unintentional conduct, while Plaintiff himself is guilty of fraud. But PwC leaves important descriptive qualifiers off the "fault" at issue on both sides of the equation. As a result, its analysis is exactly backwards: In truth, PwC is alleged to have committed **gross** negligence (which is intentional misconduct), while Plaintiff is accused of **constructive** fraud

⁵ Certain proceedings continued in the Tax Court after its October 2015 opinion issued, with the Tax Court only recently ruling on the amount of interest due on the taxes it previously found Plaintiff liable for. See *Tricarichi v. Commissioner*, T.C. Memo 2016-132 (July 18, 2016).

1 (which is not intentional misconduct). This matters because, as stated recently, “in pari delicto
2 should not be applied where the plaintiff is guilty of simple negligence and the defendant is
3 guilty of either gross negligence or willful and wanton or intentional conduct.” Long, Kaufman,
4 and Wunderlich, 12A Blue Sky Law § 9:138 (June 2016).

5
6 New York law, upon which PwC relies, recognizes the material difference between
7 negligence and “gross negligence.” As New York’s highest court explained, “‘gross negligence’
8 differs in kind, not only degree, from claims of ordinary negligence. It is conduct that evinces a
9 reckless disregard for rights of others or ‘smacks’ of intentional wrongdoing.” Colnaghi, U.S.A.,
10 Ltd. v. Jewelers Protection Services, Ltd., 81 N.Y.2d 821, 823-24 (1993). Likewise, New York
11 recognizes that “there are two varieties of fraud claims, actual and constructive.” Grand Union
12 Mount Kisco Employees Federal Credit Union v. Kanaryk, 848 F. Supp. 446, 455 (S.D.N.Y.
13 1994). “Constructive fraud requires the same showing as actual fraud, except for one crucial
14 aspect – the element of the defendant’s scienter, or knowledge of the falsity of his or her
15 representation, need not be proven.” Id. See also Southern Industries, Inc. v. Jeremias, 66
16 A.D.2d 178, 186 (N.Y. App. Div. 1978) (“[T]he transfer in question was made without an actual
17 intent to defraud and is invalid only under the constructive fraud provisions....”).

18
19 Accordingly, because the parties are not equally at fault, the in pari delicto defense
20 cannot help PwC here. Having committed intentional misconduct, PwC’s culpability outweighs
21 Plaintiff’s supposed unintentional (or “constructive”) misconduct. Moreover, as PwC ignores
22 throughout its motion, the Tax Court’s “constructive fraud” finding against Tricarichi was based
23 on the actions and inactions of “petitioner **and his advisers**,” including PwC. Tax Ct. Op. at p.
24 81 of PwC appendix. Thus, even in comparing PwC’s negligent misrepresentation with
25 “Tricarichi’s” constructive fraud (neither of which requires intentional misconduct), the balance
26 still weighs against PwC because it bears responsibility for the constructive fraud as well.
27
28

1 Finally, even if PwC were correct about the general issue of fault, application of the in
2 pari delicto defense is not automatic. “[T]he courts should not be so enamored with the Latin
3 phrase ‘in pari delicto’ that they blindly extend the rule to every case where illegality appears
4 somewhere in the transaction.” In re Amerco Deriv. Litig., 127 Nev. 196, 217 (2011) (citation
5 omitted). “[W]hether the defense of in pari delicto should apply here is an **issue of fact** for the
6 district court to decide following necessary discovery and briefing that properly evaluates the
7 factors to be considered for the defense.” Id. (emphasis added) Among the factors to be
8 considered that would militate against applying the equitable defense: “[w]here, by applying the
9 rule, [1] the public cannot be protected because the transaction has been completed, [2] where
10 no serious moral turpitude is involved, [3] where the defendant is the one guilty of the greatest
11 moral fault, and [4] where to apply the rule will be to permit the defendant to be unjustly
12 enriched at the expense of the plaintiff, the rule should not be applied.” Id. (citation omitted).
13 Here, even if the Court were inclined to engage in the fault balancing test, no discovery has been
14 taken, and it is too early in the case to engage in the fact-specific endeavor of determining
15 whether to apply the defense – much less to dismiss the case as a matter of law on this basis.

18 **4. PwC’s Reliance Argument Is Premature and Misguided.**

19 PwC’s reliance argument is a rehash of its collateral estoppel argument, and it fails for
20 largely the same reasons. Contrary to PwC’s argument and its misrepresentation of the Tax
21 Court opinion, the Tax Court did not give PwC a free pass or decide who, as between Plaintiff
22 and PwC, was to blame for Plaintiff’s entry into the Fortrend transaction, because it did not
23 have to decide this. The Tax Court was deciding tax liability, not professional liability, and it
24 specifically referred to the actions of Plaintiff “and his advisers” – i.e., PwC – not just to the
25 actions of Plaintiff. Since the pertinent facts and legal standards for the tax claims and the
26 professional liability claims are not identical, a finding in one case does not necessarily transfer
27 over to the other. For example, as noted above in the in pari delicto discussion, there is a
28

1 material difference between the mental states required to show constructive fraud (which was
2 at issue in the Tax Court) and gross negligence (which is at issue here). Accordingly, the Tax
3 Court opinion does not prevent Plaintiff from pleading and proving justifiable reliance in this
4 case. *See, e.g., Corva v. United Svcs. Auto. Ass'n*, 485 N.Y.S.2d 264, 266 (N.Y. App. Div.
5 1985) (reversing dismissal of claims because lower court made “erroneous assumption” that
6 standard for determining justifiable reliance in misrepresentation claim was same as standard
7 of reasonable care in negligence action); *Johnson v. Proskauer Rose LLP*, 9 N.Y.S.3d 201,
8 210-12 (N.Y. App. Div. 2015) (affirming denial of motion to dismiss misrepresentation claim
9 against tax-shelter advisers and finding that justifiable reliance is a fact-intensive question not
10 appropriate for determination on motion to dismiss); *Cohan v. KPMG, LLP*, No. 12 EV 014325
11 at 8 (Fulton Cty. Ga. Ct. Dec. 13, 2013) (holding, in tax-shelter case against accounting firm,
12 that “[i]t is for the jury to determine whether Plaintiff justifiably relied”). (Ex. C hereto)

13
14
15 As the foregoing cases indicate, it would be markedly premature to dismiss Plaintiff’s
16 claims at this stage without at least allowing him to develop a record regarding his reliance. As
17 the court in *Corva* noted, reliance is considered justifiable unless it is “utterly unreasonable.”
18 485 N.Y.S.2d at 266. In other words, if a person is of “normal intelligence, experience and
19 education, he may not put faith in representations which any such normal person would
20 recognize at once as preposterous ... or which are shown by facts within his observation to be
21 ... patently and obviously false....” *Id.* Given the complex nature of the Fortrend transaction,
22 it cannot be said, on a motion to dismiss and in light of the Complaint’s allegations, that it was
23 “utterly unreasonable” for Plaintiff to rely on PwC’s representations, or that “any normal
24 person” would have recognized PwC’s representations “at once as preposterous” or “patently
25 and obviously false.” These are issues of fact better addressed later in the case, and this is true
26 regardless of whether Plaintiff was aware that the proposed transaction was “aggressive” from
27 a tax standpoint. *See Cohan*, *supra* at 7 (in a transaction with complicated tax aspect,
28

1 knowledge of alleged fraud “should not be casually imputed” to the taxpayer, even if he
2 “[c]learly ... understood this transaction conceptually as a strategy to minimize his taxes”);
3 Johnson, *supra*.

4 In the face of this common-sense approach, PwC cites a hodgepodge of cases that can
5 be readily distinguished, or that actually demonstrate Plaintiff’s point. Consider the following
6 examples, which PwC cites to support its argument that Plaintiff “knew” or “should have
7 known” that PwC’s representations were false:
8

- 9 • Baraliu v. Vinya Capital, L.P., 2009 WL 959578 (S.D.N.Y. 2009): The court held
10 that plaintiff “should have known” about a certain regulation harmful to his case
11 because he admitted in the complaint that he was, just like defendant, a
12 “sophisticated trader.” *Id.* at *7. By contrast, Mr. Tricarichi is not, of course, a
13 premier accounting firm with sophisticated tax expertise.
- 14 • Stolow v. Greg Manning Auctions Inc., 258 F.Supp. 2d 236, 249 (S.D.N.Y. 2003):
15 Plaintiff admitted in his complaint he was aware of the bid-rigging scheme that he
16 was complaining about. Mr. Tricarichi makes no such admission in his pleading.
- 17 • Arfa v. Zamir, 905 N.Y.S.2d 77, 78, 80 (N.Y. App. Div. 2010): Here, by the time
18 the parties entered into the agreement at issue, “they had already developed an
19 adversarial, even hostile, relationship” via which plaintiff had “clear notice of
20 [defendant’s] dishonesty” giving rise to a need for heightened due diligence and
21 inquiry. PwC does not suggest that the same was the case between itself and Mr.
22 Tricarichi, and the Complaint does not so allege.
- 23 • Rodas v. Manitaras, 552 N.Y.S.2d 618 (N.Y. App. Div. 1990): Before buying a
24 restaurant business, plaintiffs asked to review its books and records, but the request
25 was refused. There is no suggestion that Mr. Tricarichi was denied such due
26 diligence with respect to the Fortrend transaction.
- 27 • Brakke v. Economic Concepts, Inc., 213 Cal. App. 4th 761 (Cal. Ct. App. 2013):
28 PwC cites this case and two others⁶ for the proposition that “it is entirely
unreasonable for any person to rely on a prediction of future IRS enactment,
enforcement, or non-enforcement of the law by someone unaffiliated with the
federal government,” such as PwC. (Mot. at 24 n.9) In these cases, the defendant
advisers opined to the taxpayer plaintiffs that a certain tax structure would pass
muster under the tax laws. See, e.g., Brakke, 213 Cal. App. 4th at 768. Then, years
after the advice had been given, the IRS issued revenue rulings or regulations
indicating that the structure was actually invalid. *Id.* (advice given in 2002/2003;

⁶ Patel v. Pacific Life Ins. Co., 2009 WL 1456526 (N.D.Tex. 2009); Chau v. Aviva Life and Annuity Co., 2011 WL 1990446 (N.D.Tex. 2011).

1 IRS revenue ruling in 2004); *Patel*, 2009 WL 1456526 at *4 (advice in 2003;
2 regulations issued in 2005). In Mr. Tricarichi's case, by contrast, the IRS had
3 already issued Notice 2001-16 – which indicated that the Fortrend transaction was
4 improper for tax purposes – more than two years before PwC told Tricarichi to go
5 ahead with the transaction. In other words, PwC was not “predicting the future.” It
6 was advising Mr. Tricarichi about an IRS pronouncement that had been around for
7 more than two years. Mr. Tricarichi was thus entitled to rely on PwC's advice.

8
9
10 **IV. CONCLUSION**

11 Now that PwC's advice has proven to be wrong, Mr. Tricarichi is entitled to seek redress
12 from PwC in this Court, rather than have his case cut short, before it even starts, on an
13 overreaching motion to dismiss.

14 WHEREFORE, for all the foregoing reasons, Plaintiff Michael A. Tricarichi respectfully
15 requests that the Court DENY Defendant Pricewaterhouse Coopers' motion to dismiss.

16 SPERLING & SLATER, P.C.

17 

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19 Thomas D. Brooks
20 (*Pro Hac Vice*)
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22 Chicago, IL 60603

23 HUTCHISON & STEFFEN, LLC
24 Mark A. Hutchison
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27 10080 West Alta Drive, Suite 200
28 Las Vegas, NV 89145

Attorneys for Plaintiff Michael A. Tricarichi

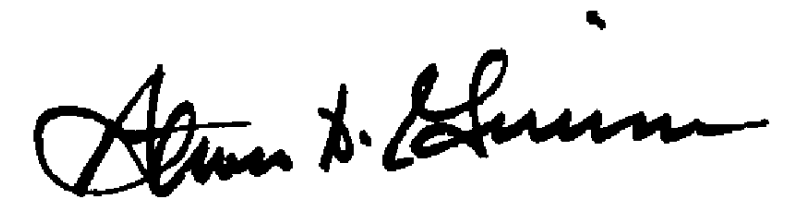
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, LLC
and that on this 26th day of August, 2016, I caused the document entitled **PLAINTIFF'S
OPPOSITION TO DEFENDANT PRICEWATERHOUSE COOPERS, LLP'S MOTION
TO DISMISS** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/ Madelyn B. Carnate-Peralta
An employee of Hutchison & Steffen, LLC


CLERK OF THE COURT

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5 Ryan M. Lower, Bar No. 9108
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10 Telephone: (702) 474-9400
11 Facsimile: (702) 474-9422
12
13 Attorneys for Defendant
14 Seyfarth Shaw LLP

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 MICHAEL A. TRICARICHI,) Case No. A-16-735910-B
14) Dept.: XV
15 Plaintiff,)
16 v.)
17) **ORDER GRANTING MOTION**
18 PRICEWATERHOUSECOOPERS,) **TO DISMISS THE COMPLAINT**
19 LLP, COÖPERATIEVE) **AGAINST SEYFARTH SHAW**
20 RABOBANK U.A., UTRECHT-) **LLP FOR LACK OF**
21 AMERICA FINANCE CO.,) **JURISDICTION**
22 SEYFARTH SHAW, LLP and)
23 GRAHAM R. TAYLOR,)
24 Defendants.)
25
26
27
28

DEC 16 2016

1 Defendant Seyfarth Shaw (Seyfarth) LLP's motion to dismiss for lack
2 of personal jurisdiction came on for hearing on November 16, 2016. Steve
3 Morris of Morris Law Group appeared and argued for Seyfarth; Mark A.
4 Hutchison of Hutchison & Steffen, LLC, in association with Scott F. Hessel
5 and Thomas D. Brooks of Sperling & Slater, P.C., appeared for Plaintiff,
6 Michael A. Tricarichi, to oppose the motion. Mr. Hutchison argued for
7 Mr. Tricarichi.

8 The Court, having read and considered the motion papers submitted
9 by the parties and heard and considered the arguments of their counsel, and
10 good cause appearing, grants Seyfarth's motion based on the following
11 reasons and summary of the allegations in the complaint and in the
12 uncontested information tendered by the parties to the Court in the exhibits
13 and affidavits submitted in support of and in opposition to the motion.

14 Seyfarth is an international law firm headquartered in Chicago,
15 Illinois. It is organized under Illinois law as a limited liability partnership.
16 The firm has offices in 10 locations in the United States, none of which is in
17 (or was in) Nevada. Seyfarth does not employ staff, attorneys, or agents
18 who are domiciled in Nevada, nor does the firm own or hold security in real
19 property in Nevada. It is not registered with Nevada's Secretary of State to
20 do business in Nevada.

21 Although Seyfarth attorneys have from time to time appeared in
22 Nevada federal district court on behalf of clients unrelated to this case, or
23 have acted as counsel in transactions involving Nevada real property not
24 related to this case, and one of Seyfarth's lawyers (since 2015) is a non-
25 resident member of the Nevada Bar, none of Seyfarth's 850 attorneys has
26 been in Nevada in connection with any matter involving Plaintiff Tricarichi,
27 who has never been a client of Seyfarth.

28

1 Against this background, Plaintiff contends that Seyfarth "facilitated" a
2 transaction to minimize federal income taxes that had its origins in Ohio in
3 2003, when Plaintiff sold a cellular telephone business he operated in Ohio
4 and moved to Nevada. Seyfarth played no part in the transaction by which
5 Plaintiff's business, West Side Cellular, Inc. (West Side) was sold to another
6 entity. The "transaction" and the steps which followed it were later found
7 by the Internal Revenue Service to be a fraudulent tax avoidance scheme, of
8 which the Tax Court held Plaintiff had constructive knowledge sufficient to
9 impose liability on Plaintiff for the taxes owed by West Side. The
10 transaction began in Ohio and Seyfarth is alleged to have "facilitated" the
11 transaction by a former Seyfarth California partner, Graham Taylor,
12 rendering an opinion in 2003 to Millennium Recovery Fund in Ireland,
13 which involved a specific transaction which took place outside of Nevada in
14 2001 and was unrelated both to this case and to Plaintiff Tricarichi.
15 Although the opinion expressly states it could only be relied on by
16 Millennium, Plaintiff alleges the opinion somehow "facilitated" the
17 transaction with him that the IRS later found was an abusive tax shelter.
18 None of the transactional activity Plaintiff alleges to have injured him took
19 place in Nevada or was directed to the state by Seyfarth.

20 The Court finds that the Plaintiff has not alleged facts that would
21 establish personal jurisdiction over Seyfarth in Nevada. **First**, Seyfarth, an
22 Illinois limited liability partnership with no offices in Nevada, is not subject
23 to general jurisdiction in Nevada because it is not "at home" here. *Viega*
24 *GmbH. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1158 (2014); *Daimler AG v. Bauman*,
25 134 S. Ct. 746, 751 (2014).

26 **Second**, Seyfarth is not subject to specific jurisdiction in Nevada.
27 Plaintiff has not shown that Seyfarth purposefully established contacts with
28 Nevada that resulted in injury to him, as *Walden v. Fiore*, 135 S. Ct. 1115,

1 1121-23 (2014), requires. *Accord, Baker v. Eighth Jud. Dist. Ct.*, 116 Nev. 527,
2 533, 999 P.2d 1020, 1024 (2000) (same). The "'minimum contacts' analysis
3 looks to the defendant's contacts with the forum State itself, not the
4 defendant's contacts with persons who reside there." *Id.* at 1122 (citing *Int'l*
5 *Shoe*, 326 U.S. 310, 319, 66 S. Ct. 154, 159-60 (1945).) Plaintiff cannot be the
6 only link between Seyfarth and Nevada. *Id.* Rather, due process requires
7 that jurisdiction must be founded on the defendant's contacts with Nevada,
8 "not based on the 'random, fortuitous, or attenuated' contacts he makes by
9 interacting with other persons affiliated with the State." *Id.* citing *Burger*
10 *King*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985). "Put simply, however
11 significant the plaintiff's contacts with the forum may be, those contacts
12 cannot be 'decisive in determining whether the defendant's due process
13 rights are violated.'" *Id.* (quoting *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S. Ct.
14 571, 579 (1980)). In this case, Plaintiff has not shown any conduct by
15 Seyfarth in Nevada, or directed by Seyfarth to Nevada, that injured him
16 here.

17 **Third**, the same analysis applies to the intentional torts alleged against
18 Seyfarth (conspiracy, racketeering). Jurisdiction over Seyfarth as an
19 intentional tortfeasor must be based on intentional conduct that is alleged or
20 has been shown to have been directed to Nevada. *Id.* at 1123 (holding that
21 "it is likewise insufficient to rely on a defendant's 'random, fortuitous, or
22 attenuated contacts' or on the 'unilateral activity' of a plaintiff" with respect
23 to intentional tort claims). Plaintiff has not shown that Seyfarth
24 "purposefully enter[ed] the forum's market or establish[ed] contacts in the
25 forum and affirmatively direct[ed] conduct there, and [that his] claims arise
26 from that purposeful contact or conduct," as *Viega* requires to support
27 specific jurisdiction over an alleged tortfeasor. 328 P.3d at 1157. Plaintiff
28 has not made a prima facie showing that the opinion delivered to

1 Millennium in Ireland by defendant Graham Taylor was intended to have
2 an effect in Nevada or that Plaintiff was aware of the opinion when he
3 entered into the tax avoidance transaction with others in 2003 that the IRS
4 later found was fraudulent. Seyfarth's out-of-state activity "did not create
5 sufficient contacts with Nevada simply because [Seyfarth may have]
6 directed [its] conduct at [Plaintiff] whom [Seyfarth allegedly] knew had
7 Nevada connections." *Walden*, 134 S. Ct. at 1125. "Such reasoning
8 improperly attributes a plaintiff's forum connections to the defendant and
9 makes those connections 'decisive' in the jurisdictional analysis . . . [and]
10 obscures the reality that none of [Seyfarth]'s conduct had anything to do
11 with Nevada itself." *Id.* (internal citation omitted).

12 Absent alleging a prima facie case that Seyfarth is "at home" in Nevada
13 or "affirmatively directed contact" with the state to deal with Plaintiff
14 Tricarichi, such as he fails to do by his conspiracy and racketeering claims,
15 he is not entitled to jurisdictional discovery before the Court rules on
16 Seyfarth's motion to dismiss for lack of jurisdiction. *Viega*, 328 P.3d at 1157,
17 1160-61; *Daimler*, 134 S. Ct. at 751, 760 (insufficient facts alleged to support
18 either general or specific jurisdiction; absent such facts, no basis to allow
19 jurisdictional discovery); *see also*, *Western States Wholesale Nat. Gas Litig.*, 605
20 F. Supp. 2d 1118, 1140 (D. Nev. 2009) and *Menalco, FZE v. Buchan*, 602 F.
21 Supp. 2d 1186, 1194 n. 1 (D. Nev. 2009) (personal jurisdiction cannot be
22 based on the actions of co-conspirators).

23 In light of these recent cases from our Supreme Court, the U.S.
24 Supreme Court, and the Nevada U.S. District Court, Plaintiff's reliance on
25 *Davis v. Eighth Jud. Dist. Ct.*, 97 Nev. 332, 629 P.2d 1209 (1981) is misplaced,
26 as *Walden* clearly confirms. *Davis* held that defendants who conspired out-
27 of-state could be subject to jurisdiction for injuries alleged to have occurred
28 in Nevada as a consequence of their acts elsewhere. *Walden*, however,

1 appears to overrule *Davis* because, as the U.S. Supreme Court declared,
2 "mere injury to a forum resident is not a sufficient connection to the forum. .
3 . . The proper question is not where the plaintiff experienced a particular
4 injury or effect but whether the defendant's conduct connects him to the
5 forum in a meaningful way." 134 S. Ct. at 1125. *See also id.* at 1122 (quoting
6 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984)
7 ("[The] unilateral activity of another party or a third party is not an
8 appropriate consideration when determining whether a defendant has
9 sufficient contacts with a forum State to justify an assertion of
10 jurisdiction.")).

11 Thus, the opinion rendered by defendant Graham Taylor to
12 Millennium in Ireland that allegedly "facilitated" a transaction between
13 Plaintiff and others in an out-of-state conspiracy that Plaintiff says injured
14 him in Nevada does not appear to be consistent with *Walden's* holding that
15 "jurisdiction over an out-of-state intentional tortfeasor must be based on
16 intentional conduct by the defendant that creates the necessary contacts with
17 the forum." 134 S. Ct. at 1125. Moreover, even if *Davis* has survived *Walden*,
18 which is highly questionable to the Court, the circumstances alleged by
19 Plaintiff are distinguishable from the limited facts recited in the *Davis*
20 opinion, and still do not make out a prima facie case for jurisdiction under
21 *Viega, Daimler*, or *Walden*. The facts of this case are also distinguishable from
22 the post-*Walden* authority Plaintiff cites. *See Best Chairs Inc. v. Factory Direct*
23 *Wholesale, LLC*, 121 F. Supp. 3d 828 (S.D. Inc. 2015); *First Cmty. Bank, N.A. v.*
24 *First Tennessee Bank, N.A.*, 489 S.W.2d 369 (Tenn. 2015); *Khan v. Gramercy*
25 *Advisors, LLC*, 2016 Ill. App. (4th) 150435, 2016 Ill. App. LEXIS 425 Ill. App.
26 Ct. 2016).

MORRIS LAW GROUP

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1 Now, for the foregoing reasons, the Court grants Seyfarth's motion to
2 dismiss and by this order dismisses the complaint against Seyfarth Shaw,
3 LLP, for lack of personal jurisdiction.

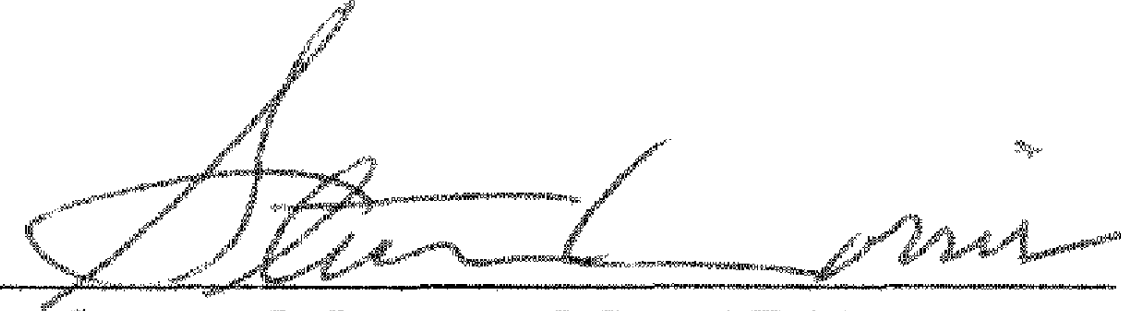
4 IT IS SO ORDERED.

5 Dated: December 16, 2016


JOE HARDY, DISTRICT COURT JUDGE

8
9 Submitted by:

10 MORRIS LAW GROUP

11
12 By: 
13 Steve Morris, No. 1543
14 Ryan M. Lower, No. 9108
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16 300 South Fourth Street
Las Vegas, Nevada 89101

17 Attorneys for Defendant
18 Seyfarth Shaw LLP

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1 Reviewed & Approved/Disapproved:

2 Dated: _____

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4 By: _____

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11 Thomas D. Brooks (*Pro Hac Vice*)
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14 Chicago, IL 60603

15 *Attorneys for Plaintiff*

16 Dated: _____

17 LEWIS ROCA ROTHGERBER
18 CHRISTIE LLP

19 By: _____

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23 Las Vegas, Nevada 89169

24 *Attorneys for Defendant*
25 *Coöperatieve Rabobank U.A. and*
26 *Utrecht-America Finance Co.*

Dated: 12/12/16

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By:  _____

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Attorneys for Defendant
PricewaterhouseCoopers LLP

1 Reviewed & ~~Approved~~ Disapproved:

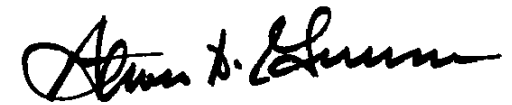
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4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CLERK OF THE COURT

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Attorneys for Defendant

Seyfarth Shaw LLP

DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

v.

PRICEWATERHOUSECOOPERS,

LLP, COÖPERATIEVE

RABOBANK U.A., UTRECHT-

AMERICA FINANCE CO.,

SEYFARTH SHAW, LLP and

GRAHAM R. TAYLOR,

Defendants.

) Case No. A-16-735910-B

) Dept.: XV

)

)

) **NOTICE OF ENTRY OF ORDER**

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PLEASE TAKE NOTICE that an Order Granting Motion to
Dismiss the Complaint Against Seyfarth Shaw LLP for Lack of Jurisdiction
was entered in this action on the 23rd day of December, 2016. A copy of the
Order is attached hereto as Exhibit A.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS

Steve Morris, Bar No. 1543
Ryan M. Lower, Bar No. 9108
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Seyfarth Shaw LLP

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of MORRIS LAW GROUP, and that the following documents were served via electronic service: **NOTICE OF ENTRY OF ORDER**

TO:

Mark A. Hutchison
Todd L. Moody
Todd W. Prall
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Scott F. Hessell (*Pro Hac Vice*)
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Attorneys for Defendant
PricewaterhouseCoopers LLP

DATED this 28th day of December, 2016.

By: /s/ PATRICIA FERRUGIA

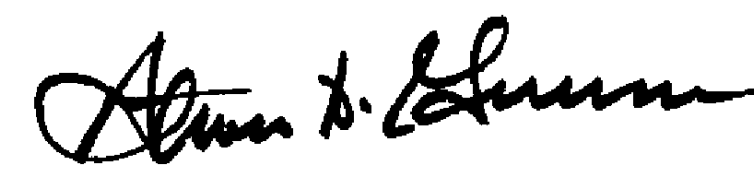
EXHIBIT A

EXHIBIT A

MORRIS LAW GROUP

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) ORDER GRANTING MOTION

) TO DISMISS THE COMPLAINT

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DEC 16 2016

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2 533, 999 P.2d 1020, 1024 (2000) (same). The "'minimum contacts' analysis
3 looks to the defendant's contacts with the forum State itself, not the
4 defendant's contacts with persons who reside there." *Id.* at 1122 (citing *Int'l*
5 *Shoe*, 326 U.S. 310, 319, 66 S. Ct. 154, 159-60 (1945).) Plaintiff cannot be the
6 only link between Seyfarth and Nevada. *Id.* Rather, due process requires
7 that jurisdiction must be founded on the defendant's contacts with Nevada,
8 "not based on the 'random, fortuitous, or attenuated' contacts he makes by
9 interacting with other persons affiliated with the State." *Id.* citing *Burger*
10 *King*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985). "Put simply, however
11 significant the plaintiff's contacts with the forum may be, those contacts
12 cannot be 'decisive in determining whether the defendant's due process
13 rights are violated.'" *Id.* (quoting *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S. Ct.
14 571, 579 (1980)). In this case, Plaintiff has not shown any conduct by
15 Seyfarth in Nevada, or directed by Seyfarth to Nevada, that injured him
16 here.

17 **Third**, the same analysis applies to the intentional torts alleged against
18 Seyfarth (conspiracy, racketeering). Jurisdiction over Seyfarth as an
19 intentional tortfeasor must be based on intentional conduct that is alleged or
20 has been shown to have been directed to Nevada. *Id.* at 1123 (holding that
21 "it is likewise insufficient to rely on a defendant's 'random, fortuitous, or
22 attenuated contacts' or on the 'unilateral activity' of a plaintiff" with respect
23 to intentional tort claims). Plaintiff has not shown that Seyfarth
24 "purposefully enter[ed] the forum's market or establish[ed] contacts in the
25 forum and affirmatively direct[ed] conduct there, and [that his] claims arise
26 from that purposeful contact or conduct," as *Viega* requires to support
27 specific jurisdiction over an alleged tortfeasor. 328 P.3d at 1157. Plaintiff
28 has not made a prima facie showing that the opinion delivered to

1 Millennium in Ireland by defendant Graham Taylor was intended to have
2 an effect in Nevada or that Plaintiff was aware of the opinion when he
3 entered into the tax avoidance transaction with others in 2003 that the IRS
4 later found was fraudulent. Seyfarth's out-of-state activity "did not create
5 sufficient contacts with Nevada simply because [Seyfarth may have]
6 directed [its] conduct at [Plaintiff] whom [Seyfarth allegedly] knew had
7 Nevada connections." *Walden*, 134 S. Ct. at 1125. "Such reasoning
8 improperly attributes a plaintiff's forum connections to the defendant and
9 makes those connections 'decisive' in the jurisdictional analysis . . . [and]
10 obscures the reality that none of [Seyfarth]'s conduct had anything to do
11 with Nevada itself." *Id.* (internal citation omitted).

12 Absent alleging a prima facie case that Seyfarth is "at home" in Nevada
13 or "affirmatively directed contact" with the state to deal with Plaintiff
14 Tricarichi, such as he fails to do by his conspiracy and racketeering claims,
15 he is not entitled to jurisdictional discovery before the Court rules on
16 Seyfarth's motion to dismiss for lack of jurisdiction. *Viega*, 328 P.3d at 1157,
17 1160-61; *Daimler*, 134 S. Ct. at 751, 760 (insufficient facts alleged to support
18 either general or specific jurisdiction; absent such facts, no basis to allow
19 jurisdictional discovery); *see also*, *Western States Wholesale Nat. Gas Litig.*, 605
20 F. Supp. 2d 1118, 1140 (D. Nev. 2009) and *Menalco, FZE v. Buchan*, 602 F.
21 Supp. 2d 1186, 1194 n. 1 (D. Nev. 2009) (personal jurisdiction cannot be
22 based on the actions of co-conspirators).

23 In light of these recent cases from our Supreme Court, the U.S.
24 Supreme Court, and the Nevada U.S. District Court, Plaintiff's reliance on
25 *Davis v. Eighth Jud. Dist. Ct.*, 97 Nev. 332, 629 P.2d 1209 (1981) is misplaced,
26 as *Walden* clearly confirms. *Davis* held that defendants who conspired out-
27 of-state could be subject to jurisdiction for injuries alleged to have occurred
28 in Nevada as a consequence of their acts elsewhere. *Walden*, however,

1 appears to overrule *Davis* because, as the U.S. Supreme Court declared,
2 "mere injury to a forum resident is not a sufficient connection to the forum. .
3 . . The proper question is not where the plaintiff experienced a particular
4 injury or effect but whether the defendant's conduct connects him to the
5 forum in a meaningful way." 134 S. Ct. at 1125. *See also id.* at 1122 (quoting
6 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984)
7 ("[The] unilateral activity of another party or a third party is not an
8 appropriate consideration when determining whether a defendant has
9 sufficient contacts with a forum State to justify an assertion of
10 jurisdiction.")).

11 Thus, the opinion rendered by defendant Graham Taylor to
12 Millennium in Ireland that allegedly "facilitated" a transaction between
13 Plaintiff and others in an out-of-state conspiracy that Plaintiff says injured
14 him in Nevada does not appear to be consistent with *Walden's* holding that
15 "jurisdiction over an out-of-state intentional tortfeasor must be based on
16 intentional conduct by the defendant that creates the necessary contacts with
17 the forum." 134 S. Ct. at 1125. Moreover, even if *Davis* has survived *Walden*,
18 which is highly questionable to the Court, the circumstances alleged by
19 Plaintiff are distinguishable from the limited facts recited in the *Davis*
20 opinion, and still do not make out a prima facie case for jurisdiction under
21 *Viega, Daimler*, or *Walden*. The facts of this case are also distinguishable from
22 the post-*Walden* authority Plaintiff cites. *See Best Chairs Inc. v. Factory Direct*
23 *Wholesale, LLC*, 121 F. Supp. 3d 828 (S.D. Inc. 2015); *First Cmty. Bank, N.A. v.*
24 *First Tennessee Bank, N.A.*, 489 S.W.2d 369 (Tenn. 2015); *Khan v. Gramercy*
25 *Advisors, LLC*, 2016 Ill. App. (4th) 150435, 2016 Ill. App. LEXIS 425 Ill. App.
26 Ct. 2016).

MORRIS LAW GROUP

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1 Now, for the foregoing reasons, the Court grants Seyfarth's motion to
2 dismiss and by this order dismisses the complaint against Seyfarth Shaw,
3 LLP, for lack of personal jurisdiction.


4 IT IS SO ORDERED.

5 Dated: December 16, 2016


JOE HARDY, DISTRICT COURT JUDGE

8
9 Submitted by:

10 MORRIS LAW GROUP

11
12 By: 
13 Steve Morris, No. 1543
14 Ryan M. Lower, No. 9108
15 900 Bank of America Plaza
16 300 South Fourth Street
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17 Attorneys for Defendant
18 Seyfarth Shaw LLP

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Reviewed & Approved/Disapproved:

Dated: _____

HUTCHISON & STEFFEN, LLC

By: _____

Mark A. Hutchison
Todd L. Moody
Todd W. Prall
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Scott F. Hessell (*Pro Hac Vice*)
Thomas D. Brooks (*Pro Hac Vice*)
SPERLING & SLATER, P.C.
55 West Monroe, Suite 3200
Chicago, IL 60603

Attorneys for Plaintiff

Dated: _____

LEWIS ROCA ROTHGERBER
CHRISTIE LLP

By: _____

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Las Vegas, Nevada 89169

Attorneys for Defendant
Coöperatieve Rabobank U.A. and
Utrecht-America Finance Co.

Dated: 12/12/16

SNELL & WILMER L.L.P.

By:  _____

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Attorneys for Defendant
PricewaterhouseCoopers LLP

1 Reviewed & ~~Approved~~ Disapproved:

2 Dated: 12/13/16

3
4 LEWIS ROCA ROTHGERBER CHRISTIE LLP

5
6 By:  NV Bar #4078

7 Dan R. Waite
8 3993 Howard Hughes Parkway
9 Suite 600
10 Las Vegas, Nevada 89169

11 *Attorneys for Defendant*
12 *Coöperatieve Rabobank U.A. and*
13 *Utrecht-America Finance Co.*
14
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to be held, or be given personally or by telegram or telephone, at least two days before the day on which the meeting is to be held.

Section 6. Quorum. A majority of the members of the Board of Directors then in office shall constitute a quorum at all meetings thereof. In the absence of a quorum of the Board of Directors a majority of the members present may adjourn the meeting from time to time until a quorum is present and no notice of any such adjournment need be given.

Section 7. Action by Written Consent. Any action which may be authorized or taken at a meeting of the directors, may be taken or authorized without a meeting by writing or writings signed by all of the directors who would be entitled to notice of a meeting of the directors held for the purpose of such action, which writing or writings shall be filed with or entered upon the records of the Corporation.

ARTICLE III.

COMMITTEES

Section 1. Standing Committees. The Board of Directors may by resolution provide for such standing or special committees to consist of such number of Directors as it deems desirable, and discontinue the same at its pleasure. Each Committee shall have such powers and perform such duties as may be assigned to it by the Board of Directors, except that the Board of Directors may not delegate any of the authority of the Directors to any committee unless it consists of three or more Directors.

Section 2. Executive Committee. An Executive Committee may be appointed only by the vote of a majority of the entire Board, and shall consist of three or more Directors who each shall serve at the pleasure of the Board of Directors. Except as otherwise provided by law, by these regulations or by resolution adopted by a majority of the entire Board of Directors, the Executive Committee shall possess and may exercise during the intervals between the meetings of the Board, all of the powers of the Board of Directors in the management of the business, affairs and property of the Corporation. The Committee shall keep a record of its acts and proceedings and report the same to the Board of Directors. A majority of the Executive Committee shall constitute a quorum for the transaction of business.

ARTICLE IV.

OFFICERS AND OFFICERS

Section 1. Officers - Number. The officers of the Corporation shall be a President, a Secretary and a Treasurer who may or may not be Directors. The Board of Directors may from time to time, in its discretion, appoint any or all of the following: a Chairman of the Board, who must be a member of the Board of Directors, one or more Vice-Presidents one of whom may be designated Executive Vice-President, one or more Assistant Secretaries, and one or more Assistant Treasurers. Any two or more offices may be held by the same person.

WSC0094

Section 2. Election and Term of Office, Vacancies. All officers of the Corporation shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after the annual meeting of shareholders, and each officer shall hold office until his successor shall have been duly elected or until he shall resign or shall have been removed. At said meeting, the Board of Directors shall also designate and appoint such subordinate officers and employees as it shall determine. If any vacancy shall occur in any office of the Corporation, such vacancy may be filled by the Board of Directors in its discretion.

Section 3. Removal. Officers and employees elected or appointed by the Board of Directors may be removed, with or without cause, at any time by action of the Board of Directors.

ARTICLE V.

DUTIES AND POWERS OF OFFICERS

The officers of the Corporation shall have such powers and duties as may be prescribed by the Board of Directors and in the absence of such prescription, such powers and duties as are customarily exercised by such corporate officers. The Chairman of the Board, if one is appointed, shall be the chief executive officer of the corporation unless the Board of Directors prescribes otherwise.

ARTICLE VI.

INDEMNIFICATION

The Corporation shall indemnify each Director and Officer, each former Director and Officer, and each person who is serving or has served at its request as a Director, trustee or Officer of another enterprise (and the heirs and personal representatives of each such Director, trustee and Officer) and may indemnify any employee or agent, any former employee or agent, and any person who is serving or has served at its request as an employee or agent of any other enterprise (and the heirs and personal representatives of each such employee and agent) to the fullest extent from time to time permitted by the laws of the State of Ohio in the event any of such persons shall be made, or be threatened to be made, a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative.

ARTICLE VII.

CERTIFICATE FOR SHARES

Section 1. Issuance of Certificates. The Board of Directors shall provide for the issuance and transfer of the certificates of capital shares of the Corporation, and prescribe the form of such certificates.

Section 2. Transfer of Shares. The shares of the Corporation shall be transferable only upon its books and by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer the old certificates

WSC0095

shall be surrendered to the Corporation by the delivery thereof to the person in charge of the share transfer books and ledgers or to such other person as the Board of Directors may designate for such purpose, and new certificates shall thereupon be issued.

Section 3. Addresses of Shareholders. Every shareholder shall furnish the Secretary with an address at or to which notices of meetings and all other notices may be served upon or mailed to him and in default thereof, notices may be addressed to him at the office of the Corporation.

Section 4. Closing of Transfer Books; Record Date. The Board of Directors shall have power to close the share transfer books of the Corporation for a period not exceeding sixty (60) days and not less than seven (7) days prior to the date of any meeting of shareholders; provided, however, that in lieu of closing the share transfer books as aforesaid the Board of Directors may fix a date not exceeding sixty (60) days and not less than seven (7) days prior to the date of any such meeting as the time as of which shareholders entitled to notice of and to vote at such meeting shall be determined, and all persons who were holders of record of one or more voting shares at such time and no others shall be entitled to notice of and to vote at such meeting.

The Board of Directors shall also have the power to close the share transfer books of the Corporation for a period not exceeding sixty (60) days preceding the date fixed for the payment of any dividend or the making of any distribution or for the delivery of any evidence of right or evidence of interest; provided, however, that in lieu of closing the share transfer books as aforesaid the Board of Directors may fix a date not exceeding sixty (60) days preceding the date fixed for the payment of any such dividend or the making of any such distribution or for the delivery of any such evidence of right or interest as a record date for the determination of the shareholders entitled to receive any such dividend, distribution or evidence of right or interest, and in such case only shareholders of record at the date so fixed shall be entitled to receive such dividend, distribution or evidence of right or interest.

The Board of Directors shall fix no record date which is prior in time to the date upon which such record date is fixed.

Section 5. Lost, Stolen and Destroyed Certificates. The Board of Directors may cause a new certificate of shares to be issued in the place of any lost, stolen or destroyed certificate but the person seeking to have such new certificate issued shall furnish proof, by affidavit or otherwise, as the Board may require, of ownership of the shares represented by such lost, stolen or destroyed certificate and the facts which tend to prove such loss, theft or destruction. The Board of Directors may also require such person to execute and deliver to the Corporation a bond, with or without sureties, in such sum as the Board of Directors may direct, indemnifying the Corporation against any claim that may be made against it by reason of the issue of such new certificate. The Board of Directors may also, in its discretion, refuse to issue such new certificate, except pursuant to a court order.

WSC0096

ARTICLE VIII

AMENDMENTS

These Regulations may be altered or amended by the affirmative vote of the holders of record of the shares entitling them to exercise a majority of the voting power of the Corporation on such proposal at any regular or special meeting of the shareholders if notice of such proposed alteration or amendment be contained in a notice of the meeting, or without meeting by the written consent and authorization of the holders of record of shares entitling them to exercise a majority of the voting power of the Corporation on such proposal. If these Regulations are altered or amended without a meeting, the Secretary of the Corporation shall mail a copy of such change to each holder of shares who would have been entitled to vote thereon and did not participate in adoption thereof.

WSC0097

TAB 4

ACTION BY DIRECTORS
WITHOUT MEETING OF

WESTSIDE CELLULAR, INC.

The undersigned, being the Directors of Westside Cellular, Inc., an Ohio corporation (the "Corporation"), do hereby in writing and without a meeting, pursuant to Section 1701.34 of the Ohio Revised Code, consent to and adopt the following resolutions:

RESOLVED, that the officers of the Corporation shall be as follows, and the person whose name is set opposite each such office is elected to such office to serve until the first meeting of the Board of Directors following the next annual shareholder's meeting:

President	-	Michael Tricarichi
Vice President	-	Barbara Tricarichi
Treasurer	-	Barbara Tricarichi
Secretary	-	Michael Tricarichi

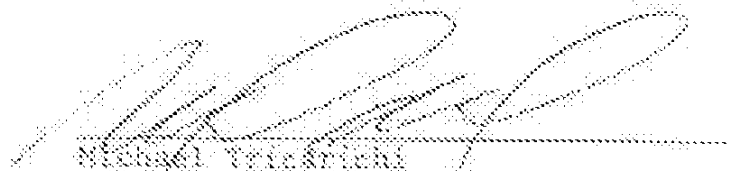
RESOLVED, that the form of certificate for shares attached hereto as Exhibit A is adopted as the definitive form of such certificate to be used by this Corporation.


RESOLVED, that this Corporation shall not have any seal.

RESOLVED, that the Fiscal year of the Corporation shall end on December 31 of each year.

RESOLVED, that the Corporation is hereby authorized and directed to open a corporate banking account on behalf of the Corporation in the form attached hereto as Exhibit B, the resolutions of which are hereby incorporated by reference.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures as of the 13th day of March, 1988.


Michael Tricarichi


Barbara Tricarichi

WSC0098

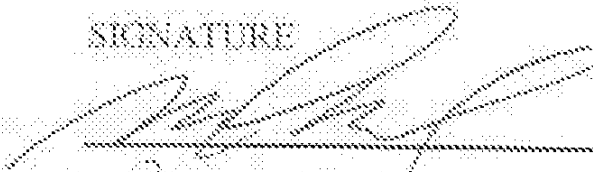

TAB 5

WEST SIDE CELLULAR, INC.

SECRETARY'S AND INCUMBENCY CERTIFICATE

I, Michael Tricarichi, hereby certify that:

1. I am the duly elected, qualified and acting President and Secretary of West Side Cellular, Inc., an Ohio corporation (the "Corporation");
2. Attached to this Certificate as Exhibit 1 is a true, complete and correct copy of the Articles of Incorporation of the Corporation, which Articles have not been repealed or amended and remains in full force and effect as of the date hereof;
3. Attached to this Certificate as Exhibit 2 is a true, complete and correct copy of the Code of Regulations of the Corporation, which Code of Regulations has not been repealed or amended and remain in full force and effect as of the date hereof;
4. Attached to this Certificate as Exhibit 3 is a true, complete and correct copy of a resolution adopted by the Board of Directors of the Corporation dated September 8, 2003, which resolution was duly adopted in accordance with the Articles of Incorporation and Code of Regulations of the Corporation, has not been repealed or amended, and remains in full force and effect as of the date hereof;
5. The corporate record book of the Corporation reflects all actions taken by and minutes of meetings of the Board of Directors and Shareholders of the Corporation and is otherwise complete;
6. The following persons are, as of the date hereof, duly elected, qualified and acting officers of the Corporation holding the offices of the Corporation set forth below opposite their names, and the signature of each such officer (where set forth hereon) is such officer's true and genuine signature.

NAME	OFFICE	SIGNATURE
Michael Tricarichi	President and Secretary	
Barbara Tricarichi	Vice President and Treasurer	


CLP - 882693.9

WSC0099

IN WITNESS WHEREOF, I have hereunto set my hand on behalf of the Corporation this
____ day of September, 2003.

Michael Tricarichi
President and Secretary

I, Barbara Tricarichi, Vice President and Treasurer of the Corporation, do hereby certify
that Michael Tricarichi is the duly qualified, acting and elected President and Secretary of the
Corporation and the signature set forth in the foregoing Certificate is his genuine signature.



Barbara Tricarichi
Vice President and Treasurer

012-8126078

WSC0100

Index to Exhibits

Exhibit 1. Certificate of Incorporation

Exhibit 2. Code of Regulations

Exhibit 3. Resolution of Board of Directors of West Side Cellular, Inc. regarding Stock Purchase Agreement

CLB-6026515

WSC0101

TAB 6

United States of America
State of Ohio
Office of the Secretary of State

I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show WEST SIDE CELLULAR, INC., an Ohio corporation, Charter No. 720734, having its principal location in Cleveland, County of Cuyahoga, was incorporated on March 14, 1988 and is currently in GOOD STANDING upon the records of this office.



*Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 2nd day of September, A.D. 2003*

J. Kenneth Blackwell

Ohio Secretary of State

Validation Number: V20032458301DA

COPY

WSC0102

TAB 7

Sent directly to John P. McNabola post-closing.

WSC0103

TAB 8

Sent directly to John P. McNabola post-closing.

WSC0104

TAB 9

RESIGNATION

I, Barbara Tricarichi, do hereby resign my positions as Director, Vice President and Treasurer and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003.

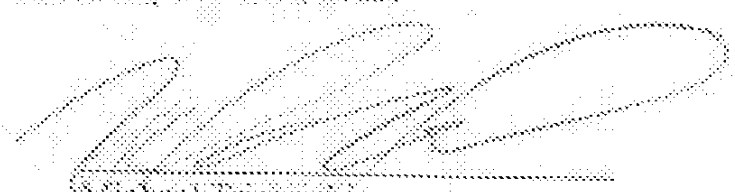

Barbara Tricarichi

CLE-802875-1

WSC0105

RESIGNATION

I, Michael Tricarichi, do hereby resign my positions as Director, President and Secretary and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003.



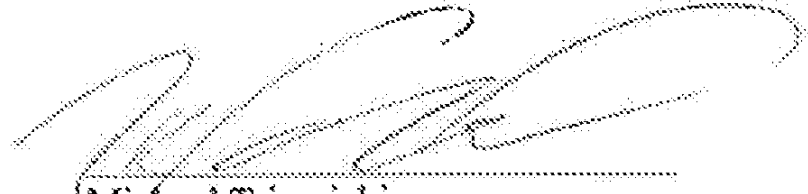
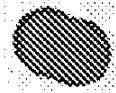
Michael Tricarichi

WSC0106

TAB 10

RESIGNATION

I, Michael Tricarichi, do hereby resign my positions as Director, President and Secretary and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003.


Michael Tricarichi

CLE - 802695.1

WSC0107

RESIGNATION

I, Barbara Tricarichi, do hereby resign my positions as Director, Vice President and Treasurer and from any other office of West Side Cellular, Inc., an Ohio corporation, to which I may have been elected, such resignation to be effective as of September 9, 2003


Barbara Tricarichi

CLE - 802695.1

WSC0108

TAB 11

WEST SIDE CELLULAR
Balance Sheet
August 31, 2003

ASSETS

Current Assets

DLJ PERSHING MONEY MARKET	39,949,373.12
NOTES RECEIVABLE	577,777.77
RECEIVABLE FROM BROCKW AGENT	50,000.00

Total Current Assets 40,577,150.89

Property and Equipment

Total Property and Equipment 0.00

Other Assets

Total Other Assets 0.00

Total Assets 40,577,150.89

LIABILITIES AND CAPITAL

Current Liabilities

ACCRUED WORKERS' COMP	2,133.94
ACCRUED PERSONAL PROP. TAXES	1,645.81

Total Current Liabilities 3,779.75

Long-Term Liabilities

Total Long-Term Liabilities 0.00

Total Liabilities 3,779.75

Capital

CAPITAL STOCK	3,000.00
RETAINED EARNINGS CURRENT	<1,342,691.42>
Net Income	41,909,062.56

Total Capital 40,571,371.14

Total Liabilities & Capital 40,577,150.89

WSC0109

WEST SIDE CELLULAR
Income Statement
For the Eight Months Ending August 31, 2003

	Year to Date	
Revenues		
SALES-AIRTIME, RECHARGING & PHONES	1,347,216.74	2.08%
SALES-OTHER	63,853,140.68	97.78%
INTEREST INCOME	163,261.51	0.14%
Total Revenues	65,363,618.93	100.00%
Cost of Sales		
COS-AIRTIME	289,030.98	0.43%
COS-CELLULAR PHONE	135,617.42	0.20%
COS-OTHER	1,173,361.43	1.79%
COS-DEALER COMMISSIONS	4,445,839.53	6.68%
Total Cost of Sales	5,043,849.36	7.68%
Gross Profit	60,319,769.57	90.92%
Expenses		
SALARIES	8,315,603.48	12.50%
PAYROLL TAXES	180,864.89	0.27%
EMPLOYEE BENEFITS	74,342.60	0.11%
EMPLOYEE WELFARE	2,947.48	0.00%
ADVERTISING	122,739.86	0.18%
INSURANCE	5,479.12	0.01%
SALES PROMOTIONS	739.00	0.00%
RECRUITING	833.14	0.00%
VEHICLE MAINTENANCE	11,819.94	0.02%
LEASED VEHICLES	24,368.21	0.04%
ENTERTAINMENT	631.04	0.00%
TRAVEL	8,353.89	0.01%
TRAVEL - ORIGINET MICH	301.03	0.00%
UTILITIES	11,159.36	0.02%
TELEPHONE	33,813.91	0.05%
POSTAGE	12,389.62	0.02%
CHUR & SUBSCRIPTIONS	139.06	0.00%
SUPPLIES	3,386.32	0.01%
MISCELLANEOUS	5,672.98	0.01%
RENT	47,346.28	0.07%
BUILDING MAINTENANCE	5,579.44	0.01%
DEPRECIATION	4,261.05	0.01%
BAD DEBT	24,014.06	0.04%
PRINT & COLLECTIONS	4,239.67	0.01%
BANK CHARGES	16,173.06	0.02%
PROFESSIONAL FEES	1,484,386.92	2.24%
THIRD PARTY BILLING FEES	25,732.13	0.04%
EQUIPMENT MAINTENANCE	5,549.00	0.01%
SYSTEM MAINTENANCE	937.89	0.00%
EQUIPMENT LEASE	1,746.31	0.00%
CONTRIBUTORS	15.00	0.00%
PERSONAL PROPERTY TAX	6,946.87	0.01%
CASE EXPENSES	8,056,878.41	12.15%
SALES TAX DISCOUNTS	<500.32>	0.00%
(GAIN)/LOSS ON SALE P/A	55,603.69	0.08%
STATE INCOME TAX	50.00	0.00%
Total Expenses	18,590,217.92	27.94%
Net Income	41,729,551.65	62.98%

WSC0110

	Net Income per Books		41,909,062.55
Add	50% Entertainment Expense		318.83
Add	Depreciation		4,204.85
Deduct	Bad Debt		(76,000.00)
	Total adjustments to income (M1)		(15,479.83)
	Taxable Income Before NOL		41,893,582.84
	NOL Carry Forward		(1,257,558.99)
	Net Taxable Income		40,636,023.85
	Federal Tax	35.00%	14,222,589.82
	State Tax		
	First \$50,000	0.51%	255.00
	Over \$50,000	8.50%	3,449,305.29
	Local		537,321.25
	State & Local Tax reduction		(1,416,563.54)
	Net taxes		16,853,375.83
	Fortrend premium		5,372,014.44
	Cash balance as of 09/03/03		40,571,371.14
	Net cash payout to Mike Trimarchi		25,198,356.70

WSC0111

TAB 12

NON-CONFIDENTIALITY CERTIFICATE

September 9, 2003

Reference is hereby made to acquisition by Nob Hill Holdings LLC, a corporation, of the capital stock of West Side Cellular, Inc., an Ohio corporation and the transactions relating thereto (collectively, the "Transactions").

Each of the undersigned hereby agrees, confirms, represents and certifies that (i) their disclosure of the structure or tax aspects of the Transactions has not been limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding, (ii) they do not know or have any reason to know that the details regarding the Transactions are protected from disclosure or use in any other manner, (iii) they have not requested from or imposed on any of the parties involved in the Transactions or any other third party any express or implied understanding or agreement of confidentiality whether or not such understanding or agreement is legally binding, (iv) they have not taken and will not take any action that would (a) cause the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner, (v) they have not failed to take and will not, in the future, fail to take any action if such failure would (a) cause the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner and (vi) neither Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, Lincoln-America Finance Co. or any of their affiliates has made or provided any statement, oral or written, to such party (or to such party's knowledge, any third party) as to the potential tax consequences of the Transactions.

Notwithstanding the foregoing, the agreements, confirmations, representations and certifications set forth above shall not apply to limitations on disclosure (i) created by statute or common law, including, without limitation, (A) attorney-client privilege (including work product), (B) confidentiality requirements applicable to banks in general or (C) federal or state securities laws or (ii) applying to the financial performance or condition of any of the undersigned or any of their assets.

STP\CHINS\BIB\11\NON-CONFIDENTIALITY CERTIFICATE

WSC0112

By: [Signature]
Name: John P. McNabola
Title: President

WEST SIDE CELLULAR, INC.

By: _____
Name: _____
Title: _____

MICHAEL TRICARICHI

By: _____
Name: Michael Tricarichi

COÖPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK B.A.,
"RABOBANK NEDERLAND", NEW
YORK BRANCH

By: _____
Title: _____

By: _____
Title: _____

UTRECHT-AMERICA FINANCE CO.

By: _____
Title: _____


By: _____
Title: _____

WSC0113

NOB HILL HOLDINGS, INC.

By _____
Title:

WEST SIDE CELLULAR, INC.

By  _____
Title:

COOPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK B.A.,
"RABOBANK NEDERLAND", NEW
YORK BRANCH

By _____
Title:

By _____
Title:

UTRECHT-AMERICA FINANCE CO.

By _____
Title:

By _____
Title:

STIPULATIONS RELATIVE TO THE CERTIFICATE

WSC0114

3.

FORTREND INTERNATIONAL LLC

By: _____
Title: _____

KLINK & ASSOCIATES, INC.

By: Charles J. Klink
Title: President & Director

HAHN LOESER & PARES

By: Jeffrey M. Folkm
Title: PARTNER

Michael Treanetti
Michael Treanetti

STANDARD & POOR'S CREDIT RATING SERVICE

WSC0115

112

1998

10
 11
 12

SYSTEMS OF INFORMATION CONFIDENTIALITY CERTIFICATE

[illegible]

400 399 392

TAB 13

CROSS-RECEIPT

Reference is made to the Stock Purchase Agreement, dated as of September 9, 2003 (the "Agreement"), by and among Rob Hill Holdings, Inc., a Delaware corporation ("Buyer"), and Michael Triunichi, an individual ("Seller"), as sole shareholder of West Side Cellular, Inc., an Ohio corporation ("Company"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

1. Buyer hereby acknowledges that the documents to be delivered by Seller to Buyer pursuant to Section 7.2 of the Agreement, including but not limited to the corporate minute book for West Side Cellular, Inc., are in form and substance satisfactory to Buyer and have been delivered to, and/or the delivery of such has been waived by, Buyer and further acknowledges the receipt from Seller of a certificate representing the Shares.
2. Seller hereby acknowledges that documents to be delivered by Buyer to Seller pursuant to Section 7.4 of the Agreement are in form and substance satisfactory to Seller and have been delivered to, and/or the delivery of such has been waived by, Seller and further acknowledges the receipt from Buyer of a wire transfer of immediately available funds in the aggregate amount of US\$34,621,594.06, and a check made payable to Michael Triunichi in the amount of US\$577,777.77, representing payment in full for the Shares.
3. Buyer and Seller, each acknowledges that the other party has performed and complied with all agreements, obligations and conditions contained in the Agreement that are required to be performed or complied with by it on or before the Closing Date.

This cross-receipt may be executed in one or more counterparts, each which shall be deemed an original and all of which together shall be considered one and the same cross-receipt.

[Remainder of page intentionally left blank; signature page follows.]

WSC0117

IN WITNESS WHEREOF, the parties hereto have caused this cross-receipt to be executed by their respective duly authorized officers as of the date first written above.

SELLER: MICHAEL TRICARICHI

By: 

BUYER: NOB HILL HOLDINGS, INC.

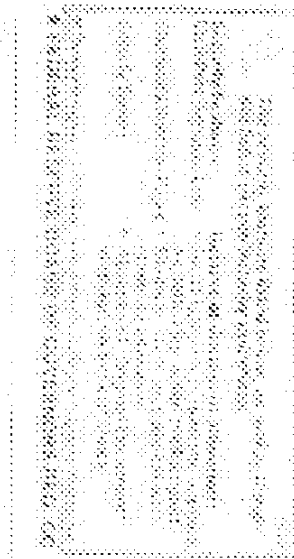
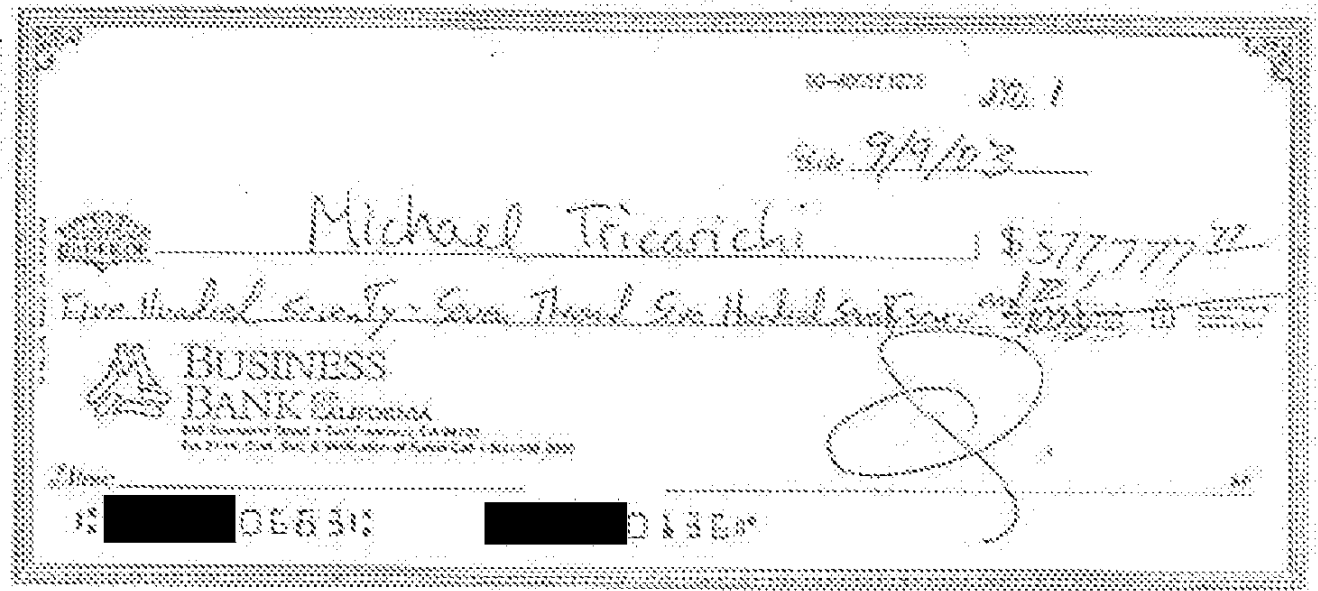
By: 

Name: John P. McNabola

Title: President

WSC0118

TAB 14



Pay to the order of
WEST SAGE COUNCIL, INC.
Michael Tricarichi
(Signature)

WSC0119

TAB 15

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE is dated this 14th day of August, 2003, by and between WESTSIDE CELLULAR, INC. D/B/A CELLNET OF OHIO, an Ohio corporation, having an address at 23632 Mercantile Road, Beachwood, Ohio 44122 ("Assignor") and LXV GROUP LLC, an Ohio limited liability corporation, having an address at 23632 Mercantile Road, Beachwood, Ohio 44122 ("Assignee").

1. LEASE. Robert I. Broida, Trustee d/b/a Mercantile Associates ("Landlord"), as landlord, and Assignor, as tenant, entered into that certain Lease dated February 1, 1993 as extended and/or amended (the "Lease") for certain premises located at 23632 Mercantile Road, Beachwood, Ohio 44122, as more particularly described in the Lease (the "Premises").
2. ASSIGNMENT OF LEASEHOLD INTEREST. For good and valuable consideration received, the Assignor hereby transfers, grants and assigns the Lease as of the Effective Date (as hereinafter defined), together with all of Assignor's right, title and interest therein and thereunder, as tenant, as well as all appurtenances thereto and all related documents pertinent thereto, to the Assignee, its successors and assigns.
3. EFFECTIVE DATE. This Agreement shall be effective as August 1, 2003 (the "Effective Date").
4. ASSUMPTION OF LIABILITY. The Assignee hereby assumes from and after the Effective Date the timely and true performance of all the rents, terms, covenants, conditions and provisions of the Lease hereby assigned and accruing or to be performed on or after said Effective Date, all with the full force and effect as if the Assignee had executed the Lease originally as tenant named therein and shall render performance of the same directly to the Landlord.
5. ADJUSTMENTS IN RENT. The parties shall adjust the rent and any additional rent due for the month in which the Effective Date occurs, on a per diem basis, as of the Effective Date. This paragraph shall survive the Effective Date.
6. REPRESENTATIONS. Assignor certifies that as of the date hereof the Lease is in full force and effect; Assignor is not in default or breach of any of the provisions of the Lease; no event has occurred which with the passage of time or the giving of notice or both, would constitute an event of default by Assignor under the Lease; and the Lease constitutes the entire rental agreement between Landlord and Assignor for the Premises and has not been amended, modified, supplemented or superseded except as expressly set forth in this Assignment and Assumption of Lease.
7. SUCCESSORS AND ASSIGNS. The covenants, conditions and provisions contained in this Agreement shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

06-2088.0

WSC0120

[illegible]

1990 1991 1992

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption of Lease to be properly executed as of the day and year first above written.

ASSIGNOR:

WESTSIDE CELLULAR, INC.

By: 

Name: Scott M. Glick

Title: Treasurer

ASSIGNEE:

LXV GROUP, LLC

By: 

Name: Scott M. Glick

Title: Treasurer

ACCEPTED AND APPROVED:

MERCANTILE ASSOCIATES

By: 

Name: Karen G. Patton

Title: President

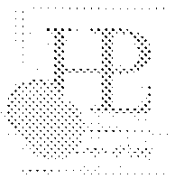
CLE-403441

RECORDED & INDEXED
FBI MOBILE COUNTY

WSC0121

AND UNITED STATES

TAB 16



September 9, 2003

Nob Hill Holdings, Inc.
59 Francisco Street
San Francisco, California 94133
Attn: John P. McNabola

Re: Sale of All of the Issued and Outstanding
Shares of West Side Cellular, Inc.

Ladies and Gentlemen:

We have acted as special counsel to West Side Cellular, Inc., an Ohio corporation ("West Side Cellular"), and Michael Tricarichi, as the sole shareholder of West Side Cellular ("Seller"), in connection with the transactions that are the subject of that certain Stock Purchase Agreement dated as of September 9, 2003 (the "Stock Purchase Agreement"), by and between Seller and Nob Hill Holdings, Inc., a Delaware corporation ("Nob Hill"). All capitalized terms used in this opinion without definition have the respective meanings given to them in the Stock Purchase Agreement. This opinion is rendered to you at the request of Seller.

In rendering the opinions contained herein, we have been furnished with and examined only the following documents, together with the certificates of officers and governmental authorities referred to below:

The Stock Purchase Agreement;

Articles of Incorporation of West Side Cellular;

The Code of Regulations of West Side Cellular;

Such other records, certificates, documents and instruments, as we have deemed necessary or appropriate to review in order to review the opinions expressed herein.

In rendering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

- A. All documents submitted to us as originals are complete and authentic; all copies of documents submitted to us conform in all respects to the originals thereof, including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft form conform in all respects to the drafts reviewed by us; all originals or copies submitted to us have not been amended or modified since the date they were submitted to us by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and certificates as to factual

CLF-305496.1

Hahn Loeser & Parks

3300 17 Tower	300 Public Square	Cleveland, OH	44114-2001
Phone 216.421.0100	Fax 216.241.2824	www.hlp.com	

WSC0122

matters dated prior to or on the date hereof upon which we have relied are and remain accurate, adequate and complete on and as of the date hereof, and each natural person signing a document is a competent adult person of sound mind not operating under any legal disability, duress or fraud.

- B. All parties (except Seller) to the Stock Purchase Agreement (i) have duly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purchase Agreement and to perform their respective obligations thereunder, and such agreements are valid, binding and enforceable obligations of such parties. All parties (except Seller) to the Stock Purchase Agreement have complied with all legal requirements applicable to them in entering into and performing the Stock Purchase Agreement (and all applicable exhibits thereto) in order to carry out the transactions contemplated thereby.
- C. The conduct of the parties to the Stock Purchase Agreement has conformed to all requirements of good faith, fair dealing and conscionability. Each party to the Stock Purchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security interest transferred or created as part of, the Stock Purchase Agreement.
- D. The conduct of all parties pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statutes, laws, rules, regulations and ordinances, unless such notice requirements have been validly and legally waived.
- E. Nob Hill has full power, authority and legal right to enter into and perform all agreements to which it is a party, and the Stock Purchase Agreement has been duly authorized, executed and delivered by Nob Hill, and constitutes the legal, valid and binding obligation of Nob Hill.
- F. Except for the Stock Purchase Agreement and all exhibits and schedules attached thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) between Nob Hill and Seller or Seller and third parties, and there is no usage of trade or course of dealings among the parties, that would (i) expand, define, supplement, diminish, qualify or otherwise modify the respective rights and obligations of Seller hereunder, or (ii) have any effect on any of the opinions set forth in this letter.
- G. The representations and warranties of each party to the Stock Purchase Agreement (including Seller) are true and complete.
- H. All parties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto.

CLF-302463.1

WSC0123

- I. We have not undertaken any special or independent investigation to determine the existence or absence of any facts in connection with the transactions contemplated by the Stock Purchase Agreement (including, without limitation, any examination of documents in our files or otherwise made available to us by West Side Cellular in connection with matters unrelated to the Stock Purchase Agreement), and no inference as to our knowledge of the existence or absence of such facts should be drawn from our representation of West Side Cellular in connection with the Stock Purchase Agreement or otherwise. In basing the opinions set forth herein on "our knowledge," the words "our knowledge" are intended to be limited to the actual knowledge of the attorneys within our firm who have been directly involved in the transaction contemplated under the Stock Purchase Agreement.
- J. In rendering the opinions expressed below, we have relied, with your consent, as to factual matters solely upon the statements, representations and warranties of the various parties contained in the above-listed documents and upon a certificate executed by Seller and the President of West Side Cellular (the "Certificate"). We did not independently verify such matters. We also have obtained and relied, with your consent, on certificates and other communications from governmental authorities as to matters concerning the due incorporation, valid existence and good standing of West Side Cellular.
- K. In addition, notwithstanding anything contained in this letter to the contrary, with your consent, we expressly disclaim any opinion as to the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto. We understand that all parties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto.

Based upon and subject to the foregoing, as of the date and time one minute prior to actual consummation of the transaction contemplated by the Stock Purchase Agreement (the "Opinion Date"), we are of the opinion that:

- A. West Side Cellular is a corporation incorporated, validly existing, and in good standing under the laws of the State of Ohio.
- B. Seller has the requisite power and authority to execute and deliver the Stock Purchase Agreement and to perform all of his obligations under the Stock Purchase Agreement.
- C. The Stock Purchase Agreement has been duly authorized, executed and delivered on behalf of Seller.
- D. No notice to, action of, or filing with any governmental agency or regulatory body is required to authorize the execution and delivery of the Stock Purchase

CLE-892460.1

WSC0124

Agreement by Seller:

- E. The authorized capital stock of West Side Cellular consists of seven hundred and fifty (750) shares of voting common stock, no par value, of which one hundred (100) shares are outstanding as of the date of this opinion. To our knowledge and based on the Certificate, all such outstanding shares were validly issued and outstanding, fully paid and nonassessable, and there are no other securities of West Side Cellular of any class issued, reserved for issuance or otherwise outstanding. To our knowledge and based on the Certificate, there are no options, offers, warrants, conversion rights, subscriptions or agreements or rights of any kind to subscribe for or to purchase, or commitments to issue (either formal or informal, firm or contingent) shares of capital stock or other securities of West Side Cellular (whether debt, equity or a combination thereof) or obligating West Side Cellular to grant, extend or enter into any such agreement or commitment. To our knowledge and based on the Certificate, there are no commitments, agreements or other arrangements relating to the shares of common stock of West Side Cellular currently issued and outstanding and such shares are not subject to any pledges, security interests, liens, encumbrances, claims or equitable interests.

We have not been requested to opine, and we have not opined, as to any issues other than those expressly set forth herein, and no opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the laws of the State of Ohio without reference to conflict of laws principles, to present judicial interpretations thereof, and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise or supplement it upon a change occurring in applicable law by legislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this letter and are rendered exclusively for your benefit in connection with the consummation of the transactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state directly or indirectly any general proposition or for any other purpose. We hereby disclaim any obligation to notify any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opinions contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no counsel for the addressee has expressed in writing opinions which are contrary to the opinions set forth in this letter, in which event these opinions are not to be relied upon until we have had an opportunity to consider the matters further.

CLP-805466.1

WSC0125

Hahn Loeser & Parks

Web Hill Holdings, Inc.
September 9, 2013
Page 5

This opinion has been rendered to you at the request of West Side Cellular and Seller, and may be relied upon by you only. No other use or distribution of this opinion may be made, and no other person or party may rely on this opinion, without our express prior written consent in each instance.

Very truly yours,

Hahn Loeser & Parks LLP

CLP-2013-09-01

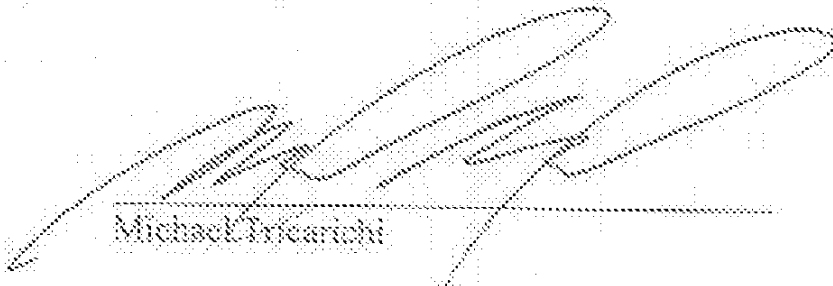
WSC0126

TAB 17

IRREVOCABLE STOCK POWER

That, I, Michael Tricarichi, for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto Nob Hill Holdings, Inc., One Hundred (100) shares of non-voting common stock of West Side Cellular, Inc., an Ohio corporation, standing in my name on the books of the company as evidenced by stock certificate number 1 and do hereby constitute and appoint _____ my true and lawful attorney, irrevocable for me and in my name and stead, to assign, transfer and set over, all or any part of the said stock, and for that purpose, to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that its said attorney, or his substitute or substitutes shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand as of this 9th day of September, 2003.



Michael Tricarichi

CLE - 10/20/03

WSC0127

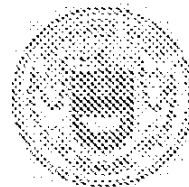
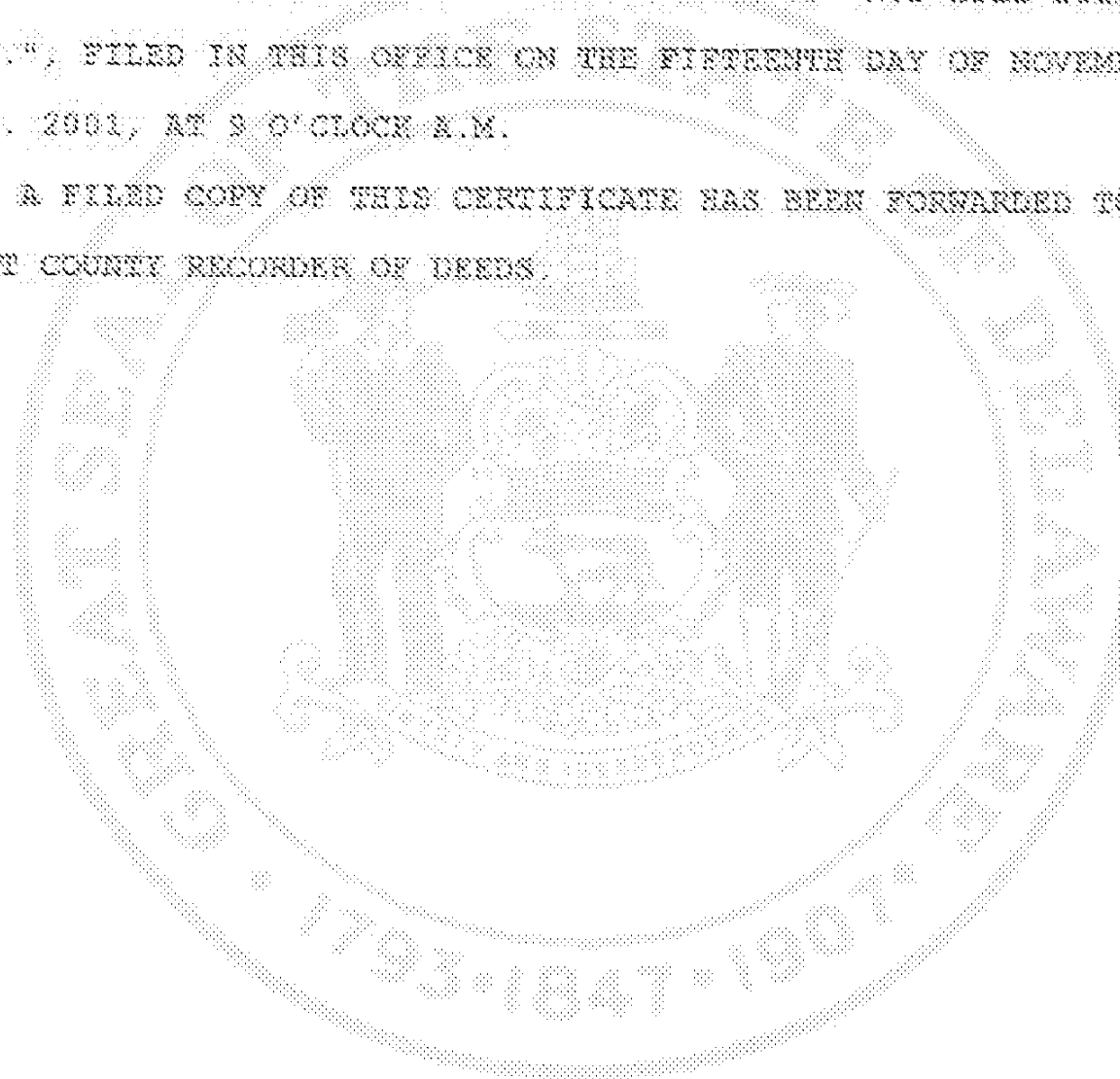
TAB 18

State of Delaware
Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "NOB BILL HOLDINGS, INC.", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF NOVEMBER, A.D. 2001, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3457384 8100

AUTHENTICATION: 3449630

010579231

DATE: 11-15-01

WSC0128

STATE OF DELAWARE
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
FILED 20:00 PM 11/15/2001
910372231 - 3897388

STATE of DELAWARE
CERTIFICATE of INCORPORATION
A STOCK CORPORATION

- * First: The name of this Corporation is Nab Hill Holdings, Inc.
- * Second: Its registered office in the State of Delaware is to be located at 9 East
Lockerman Street Street, in the City of Dever
County of Kent Zip Code 8901. The registered agent in
charge thereof is National Registered Agents, Inc.
- * Third: The purpose of the corporation is to engage in any lawful act or activity for
which corporations may be organized under the General Corporation Law of
Delaware.
- * Fourth: The amount of the total authorized capital stock of this corporation is
One Thousand Dollars (\$1,000.00) divided into 1,000 shares of
ONE Dollars (\$ 1.00) each.
- * Fifth: The name and mailing address of the incorporator are as follows:
Name Patrick Mullins
Mailing Address 220 Jackson Street, 3rd Fl
San Francisco, CA Zip Code 94111
- * I, The Undersigned, for the purpose of forming a corporation under the laws of the
State of Delaware, do make, file and record this Certificate, and do certify that the
facts herein stated are true, and I have accordingly hereunto set my hand this
14th day of November, A.D. 2001.

BY

(Incorporator)

NAME

(Type or Print)

WSC0129

TAB 19

BYLAWS
OF
NOB HILL HOLDINGS, INC.
(hereinafter called the "Corporation")

ARTICLE I
OFFICES

Section 1. **Registered Office.** The registered office of the Corporation shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. **Other Offices.** The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 1. **Place of Meetings.** Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. **Annual Meetings.** The Annual Meetings of Stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the stockholders shall elect by a plurality vote a Board of Directors, and transact such other business as may properly be brought before the meeting. Written notice of the Annual Meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. **Special Meetings.** Unless otherwise prescribed by law or by the Certificate of Incorporation, Special Meetings of Stockholders, for any purpose or purposes, may be called by either (i) the Chairman, if there be one, or (ii) the President, (iii) any Vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of a majority of the Board of Directors or at the request in writing of stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Written notice of a Special Meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 4. **Quorum.** Except as otherwise provided by law or by the Certificate of Incorporation, the holders of a majority of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all

meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

Section 5. Voting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, any question brought before any meeting of stockholders shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote thereat. Each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 6. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 7. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present.

Section 8. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 7 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

ARTICLE III DIRECTORS

Section 1. Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than five members, the exact number of which shall initially be fixed by the incorporator and thereafter from time to time by the Board of Directors. Except as provided in Section 2 of this Article, directors shall be elected by a plurality of the votes cast at Annual Meetings of Stockholders, and each director so elected shall hold office until the next Annual Meeting and until his successor is duly elected and qualified, or until his earlier resignation or removal. Any director may resign at any time upon notice to the Corporation. Directors need not be stockholders.

Section 2. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 3. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 4. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, or any one director. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6. Actions of Board. Unless otherwise provided by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing.

and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 7. Meetings by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these Bylaws, members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

Section 8. Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 9. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 10. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose if (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract

or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, may also choose a Chairman of the Board of Directors (who must be a director) and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors at its first meeting held after each Annual Meeting of Stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman of the Board of Directors. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. He shall be the Chief Executive Officer of the Corporation, and except where by law the signature of the President is required, the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also

perform such other duties and may exercise such other powers as from time to time may be assigned to him by these Bylaws or by the Board of Directors.

Section 5. President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these Bylaws, the Board of Directors or the President. In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and the Board of Directors. If there be no Chairman of the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these Bylaws or by the Board of Directors.

Section 6. Vice Presidents. At the request of the President or in his absence or in the event of his inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President or the Vice Presidents if there is more than one (in the order designated by the Board of Directors) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 7. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereof in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President, under whose supervision he shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 8. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so require, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 9. Assistant Secretaries. Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 10. Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of his disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 11. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V STOCK

Section 1. Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed, in the name of the Corporation (i) by the Chairman of the Board of Directors, the President or a Vice President and (ii) by the Treasurer or an Assistant

Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation.

Section 2. Signatures. Where a certificate is countersigned by (i) a transfer agent other than the Corporation or its employee, or (ii) a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be canceled before a new certificate shall be issued.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

ARTICLE VI NOTICES

Section 1. **Notices.** Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable.

Section 2. **Waivers of Notice.** Whenever any notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE VII GENERAL PROVISIONS

Section 1. **Dividends.** Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. **Disbursements.** All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. **Fiscal Year.** The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. **Corporate Seal.** The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the word "Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII INDEMNIFICATION

Section 1. **Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation.** Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is

or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a

manner he reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe his conduct was unlawful, if his action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to him by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 4 shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 1 or 2 of this Article VIII, as the case may be.

Section 5. Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director, officer, employee or agent may apply to any court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Sections 1 and 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standards of conduct set forth in Sections 1 or 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director, officer, employee or agent seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director, officer, employee or agent seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance. Expenses incurred in defending or investigating a threatened or pending action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VIII.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 1 and 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not

be deemed to preclude the indemnification of any person who is not specified in Sections 1 or 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law of the State of Delaware, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power or the obligation to indemnify him against such liability under the provisions of this Article VIII.

Section 9. Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was a director or officer of the Corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE IX AMENDMENTS

Section 1. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the stockholders or by the Board of Directors, provided, however, that notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such meeting of stockholders or Board of Directors as the case may be. All such amendments must be approved by either the holders of a majority of the outstanding

capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 2. Entire Board of Directors. As used in this Article IX and in these Bylaws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

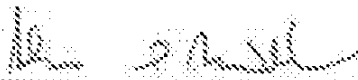
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CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of NOB HILL HOLDINGS, INC., a Delaware corporation; and
2. That the foregoing bylaws, comprising 13 pages, constitute the bylaws of said corporation as duly adopted and ratified by action of the sole director taken on August 1, 2003.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said corporation this 1st day of August, 2003.


John P. McNabola

WSC0143

TAB 20

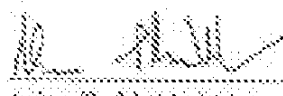
Certificate of Incumbency
of
Not Hill Holdings, Inc.

The undersigned, the Secretary of Not Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby certifies as follows:

1. Attached hereto as Exhibit A is a true, correct and complete copy of the Company's Certificate of Incorporation (the "Articles") as in effect on the date hereof. There has been no amendment to the Articles since the Articles were filed with the Secretary of State of the State of Delaware nor has any action been taken, or, to the best of my knowledge, contemplated by the Board of Directors (the "Board") or the shareholders of the Company for the purpose of effecting any further amendment or modification thereof.
2. Attached hereto as Exhibit B is a true, correct and complete copy of the Company's Bylaws as in effect on the date hereof.
3. Attached hereto as Exhibit C is a true, correct and complete copy of a resolution adopted by the Board of Directors of the Company dated August 22, 2003, which resolution was adopted in accordance with the Certificate of Incorporation and Bylaws of the Company, has not been amended or amended, and remains in full force and effect as of the date hereof.
4. The persons named below are the duly elected, qualified and acting officers of the Company, holding the office or offices set forth opposite their respective names below, and the signatures set forth opposite their names below are such persons' genuine signatures:

Name	Office	Signature
John P. McNabola	President/Treasurer/Secretary	

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of September, 2003.


John P. McNabola
Secretary

WSC0144

TAB 21

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NOB HILL HOLDINGS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FOURTH DAY OF SEPTEMBER, A.D. 2003.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "NOB HILL HOLDINGS, INC." WAS INCORPORATED ON THE FIFTEENTH DAY OF NOVEMBER, A.D. 2001.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

3487384 0000

000572736

Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State
AUTHENTICATION: 2016504

DATE: 09-04-03

WSC0145

TAB 22

WRITTEN CONSENT
OF THE SOLE DIRECTOR OF
NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director of Nob Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date set forth above:

Stock Purchase

WHEREAS, the Company wishes to purchase all of the issued and outstanding shares of stock of West Side Cellular, Inc., an Ohio corporation (the "Stock Purchase");

WHEREAS, there has been presented to the director for his review a draft of the Stock Purchase Agreement (the "Stock Purchase Agreement") between the Company and the Sellers;

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the Stock Purchase is in the best interest of the Company; and it is further

RESOLVED, that the Stock Purchase be and hereby is, authorized and approved; and it is further

RESOLVED, that any officer of the Company be and it hereby is, authorized, for and on behalf of the Company, to negotiate such terms and conditions of the Stock Purchase Agreement as they may deem appropriate, and to execute and deliver (i) the Stock Purchase Agreement, with such changes from the text of the draft agreement referred to above as may appear to them, in their sole discretion, necessary or appropriate and (ii) all other documents, instruments, certificates, agreements or written obligations of the Company as may be desired or required in connection with the Stock Purchase; and it is further

:

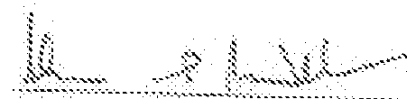
WSC0146

RESOLVED, that the execution by an officer of the Company of any document authorized by the foregoing resolutions or any document executed in the accomplishment of any action or actions so authorized shall be the enforceable and binding act and obligation of the Company; and it is further

RESOLVED, that all acts, transactions, or agreements undertaken prior to the adoption of these resolutions by any of the officers or representatives of the Company, in the name of the Company, and for the account of the Company, in connection with the foregoing matters, are hereby ratified, confirmed, adopted and approved by the Company as acts of the Company.

[remainder of page left intentionally blank]

This Written Consent shall be filed with the minutes of the proceedings of the Board of Directors. This Written Consent shall be effective as of the date first set forth above.


John P. Molabola

[Signature page to Director Consent - SPA - Net HBI Holdings, Inc.]

WSC0148

TAB 23

WRITTEN CONSENT
OF THE SOLE DIRECTOR OF
NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director (the "Director") of Nob Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date set forth above:

Consent to Borrow

WHEREAS, the Company is contemplating entering into the Stock Purchase Agreement between the Company and the Seller (as defined in the Stock Purchase Agreement) dated as of September 9, 2003 (the "Stock Purchase Agreement"); and

WHEREAS, there has been presented to the Director for his review a Promissory Note in favor of Utrecht-America Finance Co. ("U AFC") in an amount sufficient to satisfy the obligations under the Stock Purchase Agreement (the "Note"), along with a Security and Assignment Agreement, pursuant to which the Company pledges certain collateral to U AFC as security for the Note (the "Security Agreement");

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that any officer of the Company be and hereby is, authorized, for and on behalf of the Company, to negotiate such additional terms and conditions of the Note and Security Agreement as he or she may deem appropriate, and to execute and deliver (i) the Note and Security Agreement with such changes from the text of the drafts referred to above as may appear to him or her, in their sole discretion, necessary or appropriate and (ii) all other documents, instruments, certificates, agreements or written obligations of the Company as may be desired or required in connection with the Stock Purchase Agreement, Note and Security Agreement, and it is further

WSC0149

RESOLVED, that the execution by an officer of the Company of any document authorized by the foregoing resolutions or any document executed in the accomplishment of any action or actions so authorized shall be the enforceable and binding act and obligation of the Company; and it is further


RESOLVED, that all acts, transactions, or agreements undertaken prior to the adoption of these resolutions by any of the officers or representatives of the Company, in the name of the Company, and for the account of the Company, in connection with the foregoing matters, are hereby ratified, confirmed, adopted and approved by the Company as acts of the Company.

[The remainder of this page is intentionally left blank.]

WSC0150

This Written Consent shall be filed with the minutes of the proceedings of the Company. This Written Consent shall be effective as of the date first set forth above.

DIRECTOR



John P. McNabola

[Signature page to Consent -- Nab III -- Ratio loan]

WSC0151

TAB 24

WRITTEN CONSENT
OF THE SOLE DIRECTOR OF
NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director (the "Director") of Nob Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date set forth above:

Rabo Account

WHEREAS, the Company wishes to open a bank account at Rabobank in New York (the "Bank"), and to designate the Bank as a depository of funds of the Company; and

WHEREAS, the Company wishes to appoint authorized representatives with respect to such account;

NOW, THEREFORE, IT IS HEREBY

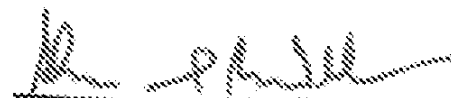
RESOLVED, that the Company open an account at the Bank, which is hereby designated as the depository of the funds of the Company; that the usual and customary printed forms of resolutions prepared and currently being used by the Bank, a copy of which is ordered annexed to this Written Consent, be, and the same hereby is, adopted as the resolutions of the director as though set forth at length, and such form shall be prepared as to provide for the making and endorsing of all checks and other commercial papers of, and the making of any loans by, and the transaction of all business for, the Company with said depository by the following representatives of the Company:

John P. McNabola
Alice Dill Wendland

WSC0152

This Written Consent shall be filed with the minutes of the proceedings of the Company.
This Written Consent shall be effective as of the date set forth above.

DIRECTOR



John P. McNabola

[Signature page to Consent -- Nob Hill -- Rabo account]

WSC0153

TAB 25

WRITTEN CONSENT
OF THE SOLE DIRECTOR OF
NOB HILL HOLDINGS, INC.

August 22, 2003

Pursuant to the Delaware General Corporation Law, the undersigned, being the sole director of Nob Hill Holdings, Inc., a Delaware corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date set forth above:

Business Bank Account

WHEREAS, the Company wishes to open a bank account at Business Bank of California in San Francisco (the "Bank"), and to designate the Bank as the depository of certain and specific securities and/or funds of the Company; and

WHEREAS, the Company wishes to appoint authorized representatives with respect to such account.

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that the Company open an account at the Bank, which is hereby designated as the depository of the funds of the Company; that the usual and customary printed forms of resolutions prepared and currently being used by the Bank, a copy of which is ordered annexed to this Written Consent, be, and the same hereby is, adopted as the resolutions of the director as though set forth at length, and such form shall be prepared as to provide for the making and endorsing of all checks and other commercial papers of, and the making of any loans by, and the transaction of all business for, the Company with said depository by the following representatives of the Company:

Sean McNabola
Alice Dill Wendland

RESOLVED FURTHER, that the Company hereby states that there shall be a main address (the "Main Address") for the Company, and that the Bank is directed to send original statements to the Main Address, as shown below:

Main Address
C/O John P. McNabola
Powell & McNabola
50 Francisco Street
San Francisco, CA 94133
(415) 591-0100 x 594
(415) 399-9212 -- fax

WSC0154

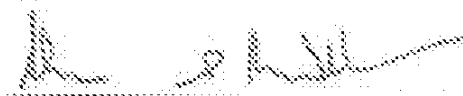
RESOLVED FURTHER, that all acts, transactions, or agreements undertaken prior to the adoption of these resolutions by any of the officers or representatives of the Company, in the name of the Company, and for the account of the Company, in connection with the foregoing matters, are hereby ratified, confirmed, adopted and approved by the Company as acts of the Company.

[Remained of page left intentionally blank]

WSC0155

This Written Consent shall be filed with the minutes of the proceedings of the Company.
This Written Consent shall be effective as of the date set forth above.

DIRECTOR



John P. McNabola

[Signature page to Consent -- Nab Hill -- Business Bank account]

WSC0156

TAB 26

WRITTEN CONSENT
OF THE SOLE DIRECTOR OF
WEST SIDE CELLULAR, INC.

an Ohio corporation

September 9, 2003

The undersigned, being the sole director (the "Director") of West Side Cellular, Inc., an Ohio corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by unanimous written consent, effective as of the date set forth above:

Election of Officers and Authorization

WHEREAS, the Director of the Company deems it to be in the best interests of the Company to replace all incumbent officers and to appoint new officers in their place; and

WHEREAS, the Director of the Company has received and reviewed a draft copy of a Company Joinder (the "Joinder"), to be executed by an officer of the Company; and

WHEREAS, THE Director has authorized the president of the Company, John P. McNabola, to execute the Joinder on behalf of the Company and to deliver the executed Joinder to the former shareholders of the Company;

NOW, THEREFORE, BE IT

RESOLVED, that all incumbent officers of the Company are hereby removed from office, effective immediately; and be it

RESOLVED FURTHER, that the following persons are hereby appointed to the positions set forth opposite their names to serve until their successors shall be duly qualified and elected:

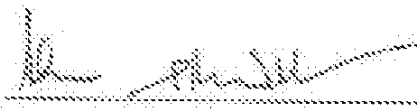
President	John P. McNabola
Treasurer	John P. McNabola
Secretary	John P. McNabola

[The remainder of this page is intentionally left blank.]

WSC0157

This Written Consent shall be filed with the minutes of the proceedings of the Board of Directors. This Written Consent shall be effective as of the date set forth above.

SOLE DIRECTOR


John P. McNabola

[Signature page to Director Consent -- New Officers -- West Side Cellular, Inc.]

TAB 27

WRITTEN CONSENT OF
THE SOLE SHAREHOLDER
OF WEST SIDE CELLULAR, INC.,
An Ohio corporation

September 9, 2003

The undersigned, being the sole shareholder of West Side Cellular, Inc., an Ohio corporation (the "Company"), hereby takes the following actions and adopts the following resolutions by written consent, effective as of the date set forth above:

ELECTION OF DIRECTOR

WHEREAS, the sole shareholder of the Corporation deems it to be in the best interests of the Corporation to replace all incumbent directors of the Corporation;

NOW, THEREFORE, IT IS HEREBY

RESOLVED, that all incumbent directors are hereby removed from their current positions effective immediately, and be it


RESOLVED FURTHER, that John P. McNabola is hereby appointed as the director of the Corporation to serve until his replacement is duly qualified and elected.

[The remainder of this page is intentionally left blank.]

WSC0159

This Written Consent shall be filed with the minutes of the proceedings of the shareholders of the Corporation. This Written Consent shall be effective as of the date first above written.

MILLENNIUM RECOVERY FUND


John P. McNabola, Director

[Signature page to Shareholder Consent -- New Director -- West Side Cellular, Inc.]

WSC0160

TAB 28

NON-CONFIDENTIALITY CERTIFICATE

September 9, 2003

Reference is hereby made to acquisition by Nob Hill Holdings LLC, a corporation, of the capital stock of West Side Cellular, Inc., an Ohio corporation and the transactions relating thereto (collectively, the "Transactions").

Each of the undersigned hereby agrees, confirms, represents and certifies that (i) their disclosure of the structure or tax aspects of the Transactions has not been limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding, (ii) they do not know or have any reason to know that the details regarding the Transactions are protected from disclosure or use in any other manner, (iii) they have not requested from or imposed on any of the parties involved in the Transactions or any other third party any express or implied understanding or agreement of confidentiality whether or not such understanding or agreement is legally binding, (iv) they have not taken and will not take any action that would (a) cause the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner, (v) they have not failed to take and will not, in the future, fail to take any action if such failure would (a) cause the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner and (vi) neither Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, Utrecht-America Finance Co. or any of their affiliates has made or provided any statement, oral or written, to such party (or to such party's knowledge, any third party) as to the potential tax consequences of the Transactions.

Notwithstanding the foregoing, the agreements, confirmations, representations and certifications set forth above shall not apply to limitations on disclosure (i) created by statute or common law, including, without limitation, (A) attorney-client privilege (including work product), (B) confidentiality requirements applicable to banks in general or (C) federal or state securities laws or (ii) applying to the financial performance or condition of any of the undersigned or any of their assets.

STANDARD NON-CONFIDENTIALITY CERTIFICATE

WSC0161

By: [Signature]
Name: John P. McElabola
Title: President

WEST SIDE CELLULAR, INC.

By: _____
Name: _____
Title: _____

MICHAEL TRICARICHI

By: _____
Name: Michael Tricarichi

COÖPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK B.A.
"RABOBANK NEDERLAND", NEW
YORK BRANCH

By: _____
Title: _____

By: _____
Title: _____

UTRECHT-AMERICA FINANCE CO.

By: _____
Title: _____

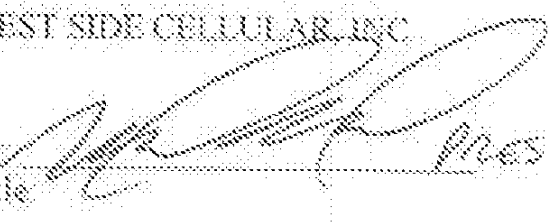
By: _____
Title: _____

WSC0162

NOB HILL HOLDINGS, INC.

By: _____
Title: _____

WEST SIDE CELLULAR, INC.

By:  _____
Title: _____

COOPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK B.A.,
"RABOBANK NEDERLAND", NEW
YORK BRANCH

By: _____
Title: _____

By: _____
Title: _____

UTRECHT-AMERICA FINANCE CO.

By: _____
Title: _____

By: _____
Title: _____

KNOWINGLY AND VOLUNTARILY CERTIFY

WSC0163

3.

FORTREND INTERNATIONAL LLC

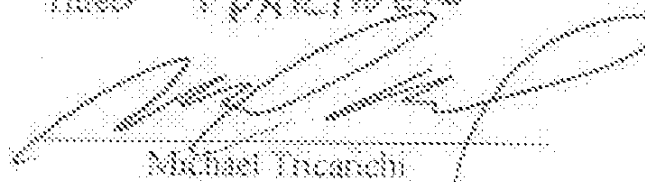
By _____
Title _____

KLINE & ASSOCIATES, INC.

By Charles J. Kline
Title President & Director

HAGN LOESER & PARKS

By Jeffrey M. Folman
Title Partner


Michael Incandini

MINNESOTA PRISON CONFINEMENT CERTIFICATE

WSC0164

FORTREND INTERNATIONAL LLC

By: [Signature]
Title: CO-CHAIRMAN

KLINK & ASSOCIATES, INC.

By: Charles J. Klink
Title: President & Director

HAHN LOESER & PARKS

By: _____
Title: _____

Michael Trevisetti

INSTRUCTIONS FOR RELIGION-CONFIDENTIALITY CERTIFICATE

WSC0165

2007-12-13 10:00:00

2007-12-13 10:00:00

TAB 29

Nob Hill Holdings, Inc.

September 9, 2003

Chris Kortlandt
Rabobank International
New York Branch
245 Park Avenue
New York, NY 10167-0062

Dear Mr. Kortlandt:

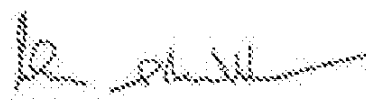
We hereby instruct you to execute the following transfer:

Amount:	\$ 34,621,594.06
To:	Bank of New York ABA #021-0003-18
Credit to:	Rabobank Nederland, New York Branch Acct. # [REDACTED] 1-533
Further Credit to:	Michael Tricarichi Escrow Account Acct. # [REDACTED] 1-595
Reference:	Stock purchase price

Please debit our account at your Bank [REDACTED] 1-568).

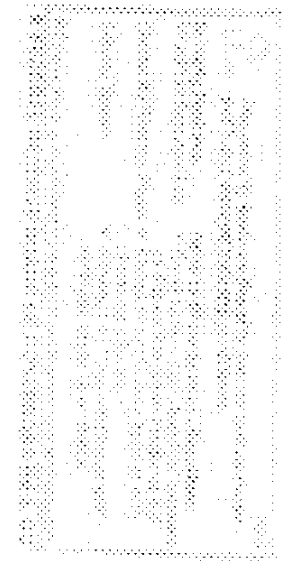
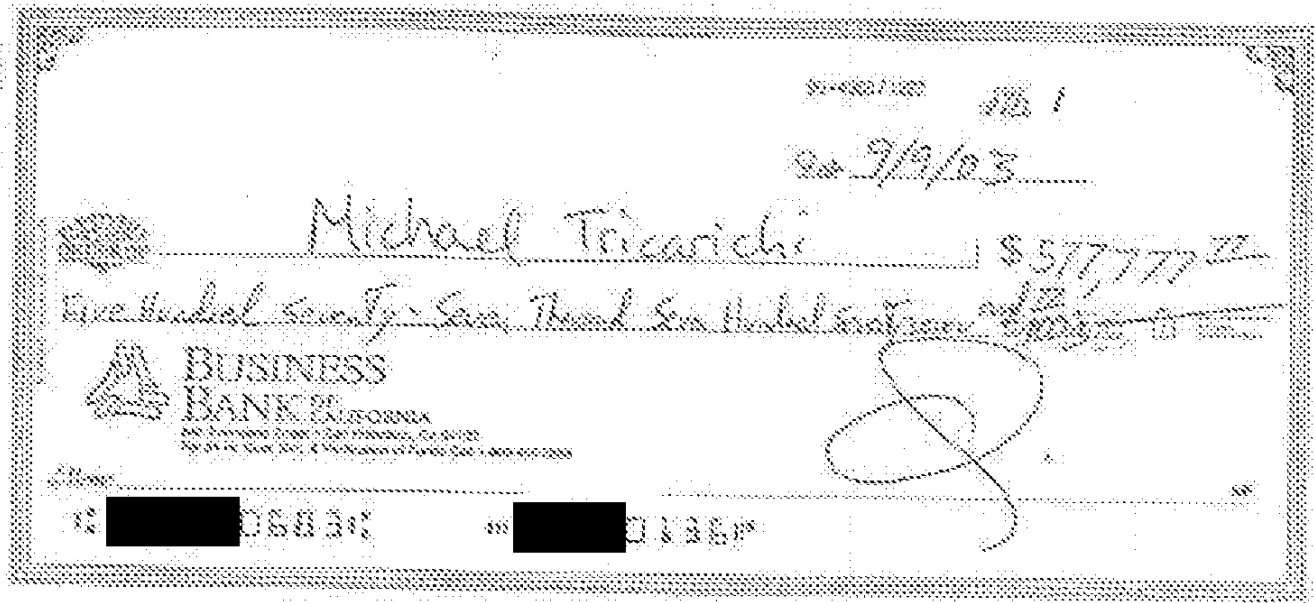
Thank you for your attention to this matter.

Very truly yours,


John P. McNabola
President

WSC0166

TAB 30



Pay to the order of
WEST SAGE ACCOUNTS, INC.
(Signature)
(Print Name)

WSC0167

TAB 31

CROSS-RECEIPT

Reference is made to the Stock Purchase Agreement, dated as of September 9, 2003 (the "Agreement"), by and among Nob Hill Holdings, Inc., a Delaware corporation ("Buyer"), and Michael Tricarichi, an individual ("Seller"), as sole shareholder of West Side Cellular, Inc., an Ohio corporation ("Company"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

1. Buyer hereby acknowledges that the documents to be delivered by Seller to Buyer pursuant to Section 7.2 of the Agreement, including but not limited to the corporate minute book for West Side Cellular, Inc., are in form and substance satisfactory to Buyer and have been delivered to, and/or the delivery of such has been waived by, Buyer and further acknowledges the receipt from Seller of a certificate representing the Shares.
2. Seller hereby acknowledges that documents to be delivered by Buyer to Seller pursuant to Section 7.4 of the Agreement are in form and substance satisfactory to Seller and have been delivered to, and/or the delivery of such has been waived by, Seller and further acknowledges the receipt from Buyer of a wire transfer of immediately available funds in the aggregate amount of US\$34,621,594.06, and a check made payable to Michael Tricarichi in the amount of US\$377,777.77, representing payment in full for the Shares.
3. Buyer and Seller, each acknowledges that the other party has performed and complied with all agreements, obligations and conditions contained in the Agreement that are required to be performed or complied with by it on or before the Closing Date.

This cross-receipt may be executed in one or more counterparts, each which shall be deemed an original and all of which together shall be considered one and the same cross-receipt.

[Remainder of page intentionally left blank; signature page follows.]

WSC0168

IN WITNESS WHEREOF, the parties hereto have caused this cross-receipt to be executed by their respective duly authorized officers as of the date first written above.

SELLER: MICHAEL TRICARICHI

By: 

BUYER: NOR HILL HOLDINGS, INC.

By: 

Name: John P. McNabola


Title: President

WSC0169

TAB 32

ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the Settlement Agreement and Release ("Agreement") entered into by and between Westside Cellular, Inc. d/b/a Cellnet and Cincinnati SMSA Limited Partnership, Ameritech Mobile Communications, Inc., and Ameritech Mobile Communications LLC in the case of *Westside Cellular, Inc. d/b/a Cellnet of Ohio v. New Par, et al.* The undersigned agrees to abide by the "Confidentiality" provisions contained in the Agreement.


John P. McNabula
on behalf of Nob Hill Holdings, Inc.

WSC0170

TAB 33

ACKNOWLEDGMENT

The undersigned hereby acknowledges receipt of the Settlement Agreement and Release ("Agreement") entered into by and between Westside Cellular, Inc. d/b/a Cellnet and New Pat. Cellco Partnership and Vodafone Americas, Inc. in the case of *Westside Cellular, Inc. d/b/a Cellnet of Ohio v. New Pat. et al.* The undersigned agrees to abide by the "Confidentiality" provisions contained in the Agreement.



John P. McNabola
on behalf of Nob Hill Holdings, Inc.

WSC0171

CLP-755286.1

TAB 34

Klink & Associates, Inc.
1734 Granville Avenue, Unit 6
Los Angeles, CA 90023

September 9, 2003

Michael Tricarichi, as the sole
shareholder of West Side Cellular, Inc.
341 Arbour Gardens
Las Vegas, Nevada 89148:

Re: Nob Hill Holdings, Inc. - Purchase of All of the Issued and
Outstanding Shares of West Side Cellular, Inc.

Ladies and Gentlemen:

We have acted as special counsel to Nob Hill Holdings, Inc., a Delaware corporation ("Nob Hill"), in connection with the transactions which are the subject of that certain Stock Purchase Agreement, dated as of September 9, 2003 (the "Stock Purchase Agreement"), by and between Nob Hill and you, in your capacity as seller (in such capacity, "Seller") of the Shares (as such term is defined in the Stock Purchase Agreement). This opinion is rendered to you at your request.

In rendering the opinions contained herein, we have been furnished with and examined only the following documents, together with the certificates of officers and governmental authorities referred to on page 3:

1. The Stock Purchase Agreement;
2. Certificate of Incorporation of Nob Hill, as filed with the Secretary of State of the State of Delaware on November 15, 2001;
3. The Bylaws of Nob Hill certified by the Secretary of Nob Hill, Inc. as of September 9, 2003;
4. Written Consent of the Sole Director of Nob Hill dated as of August 22, 2003;
5. Any and all other documentation we deem necessary to review in order to review the opinions set forth herein.

The documents referred to in clauses 2, 3 and 4 are collectively referred to herein as the "Authorization Documents." In rendering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

1. All documents submitted to us as originals are complete and authentic; all copies of documents submitted to us conform in all respects to the originals thereof, including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft form conform in all respects to the drafts reviewed by us; all originals or copies submitted to us have not

WSC0172

September 9, 2003

Page 2

been amended or modified since the date they were submitted to us by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and certificates as to factual matters dated prior to or on the date hereof upon which we have relied are and remain accurate, adequate and complete on and as of the date hereof, and each natural person signing a document is a competent adult person of sound mind not operating under any legal disability, duress or fraud.

2. All parties (except Nob Hill) to the Stock Purchase Agreement: (i) have duly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purchase Agreement and to perform their respective obligations thereunder, and such agreements are valid, binding and enforceable obligations of such parties. All parties (except Nob Hill) to the Stock Purchase Agreement have complied with all legal requirements applicable to them in entering into and performing the Stock Purchase Agreement (and all applicable exhibits thereto) in order to carry out the transactions contemplated thereby.

3. The conduct of the parties to the Stock Purchase Agreement has conformed to any requirement of good faith, fair dealing and conscionability. Each party to the Stock Purchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claims to any property or security interest transferred or created as part of, the Stock Purchase Agreement.

4. The conduct of all parties pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statutes, laws, rules, regulations and ordinances, unless such notice requirements have been validly and legally waived.

5. Seller has full power, authority and legal right to enter into and perform all agreements in which it is a party, and the Stock Purchase Agreement has been duly authorized, executed and delivered by Seller, and constitutes the legal, valid and binding obligation of Seller.

6. Except for the Stock Purchase Agreement and all exhibits and schedules attached thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) among Nob Hill and Seller or Seller and third parties, and there is no usage of trade or course of dealings among the parties, that would (i) expand, define, supplement, diminish, qualify or otherwise modify the respective rights and obligations of Nob Hill hereunder, or (ii) have any effect on any of the opinions set forth in this letter.

7. The representations and warranties of each party to the Stock Purchase Agreement (including Nob Hill) are true and complete.

8. All parties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto and have not requested tax advice from Klink & Associates, Inc., nor relied upon Klink & Associates, Inc., to analyze such transactions from a tax perspective or to advise any of them regarding such tax consequences.

Except where expressly stated otherwise, we have not undertaken any special or independent investigation to determine the existence or absence of any facts in connection with the transactions contemplated by the Stock Purchase Agreement.

WSC0173

September 9, 2003

Page 3

(including, without limitation, any examination of documents in our files or otherwise made available to us by Nob Hill in connection with matters unrelated to the Stock Purchase Agreement), and no inference as to our knowledge of the existence or absence of such facts should be drawn from our representation of Nob Hill in connection with the Stock Purchase Agreement or otherwise.

In rendering the opinions expressed below, we have relied, with your consent, as to factual matters solely upon the statements, representations and warranties of the various parties contained in the above-listed documents and upon a certificate executed by the President of Nob Hill. We did not independently verify such matters. We also have obtained and relied, with your consent, on certificates and other communications from governmental authorities as to matters concerning the due incorporation, valid existence and good standing of Nob Hill.

In addition, notwithstanding anything contained in this letter to the contrary, with your consent, we expressly disclaim any opinion as to:

1. The effect of any ordinances, statutes, administrative decisions, orders, rules and regulations of any municipality, county or other political subdivision of any state;
2. The truth, accuracy and completeness of any of the representations, warranties or statements as to factual matters given by Nob Hill or required of Nob Hill under the Stock Purchase Agreement or any other documents or instruments executed in connection therewith, and we have undertaken no independent investigation with respect to the same;
3. The enforceability of provisions to the effect that rights or remedies are not exclusive, that every right or remedy is cumulative and may be exercised in addition to or with any other right or remedy, that the election of a particular remedy or remedies does not preclude recourse to one or more other remedies and that the delay or failure to exercise rights or remedies will not operate as a waiver of such right or remedy;
4. The effect of any state or federal laws or foreign laws or regulations applicable to transactions because of the nature of the business by any party (other than Nob Hill) or because of the method by which business is conducted by any party (other than Nob Hill) to the Stock Purchase Agreement;
5. The enforceability of any provision for liquidated damages or restricting the right of any person to engage in any business or other activity; or
6. The federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto.

Based upon and subject to the foregoing, we are of the opinion that:

1. Nob Hill is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware;
2. Nob Hill has the corporate power and corporate authority to execute and deliver the Stock Purchase Agreement and to perform all of its obligations under the Stock Purchase Agreement.

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September 9, 2003

Page 4

3. The Stock Purchase Agreement has been duly authorized, executed and delivered on behalf of Nob Hill.

4. The execution and delivery by Nob Hill of the Stock Purchase Agreement does not result in any violation of the Authorization Documents.

We have not been requested to opine, and we have not opined, as to any issues other than those expressly set forth herein, and no opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the Delaware General Corporation Law and the current laws of the State of California without reference to conflict of laws principles, to present judicial interpretations thereof and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise or supplement it upon a change occurring in applicable law by legislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this letter and are rendered exclusively for your benefit solely in connection with the consummation of the transactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state directly or indirectly any general proposition or for any other purpose. We hereby disclaim any obligation to notify any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opinions contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no counsel for the addressee has expressed in writing opinions which are contrary to the opinions set forth in this letter, in which event these opinions are not to be relied upon until we have had an opportunity to consider the matters further.

This opinion has been rendered to you at the request of Nob Hill, and may be relied upon by you only in connection with the transactions contemplated by the Stock Purchase Agreement. No other use or distribution of this opinion may be made, and no other person or party may rely on this opinion, without our express prior written consent in each instance.

Very truly yours,



KLINE & ASSOCIATES, INC.

WSC0175

TAB 35

POWER OF ATTORNEY

I, JOHN P. MCNABOLA, having a place of business at 50 Francisco Street, San Francisco, CA 94133, hereby appoint Patrick Mullins, an individual having a place of business at 744 Montgomery Street, San Francisco, CA, as my Attorney-in-Fact ("Agent") to execute such documents as may be reasonably required to be executed, and in the best interests of each of Nob Hill Holdings, Inc., and West Side Cellular, Inc., in that certain transaction between these two corporations (the "Transaction").

I hereby revoke any and all general powers of attorney that previously have been signed by me. However, the preceding sentence shall not have the effect of revoking any powers of attorney that are directly related to the Transaction that previously have been signed by me.

My Agent shall have full power and authority to act on my behalf in this Transaction. This power and authority shall authorize my Agent to manage and conduct any and all of the affairs of either of the above-named corporations and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future as President of each of the above-named corporations. My Agent's powers shall include, but not be limited to, the power to:

1. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.
 - a. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to either of the above-named corporations by any person, firm, corporation or political entity.
 - b. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.
 - c. Have access to any safe deposit box that either of the above-named corporations might own, including its contents.
2. Sell, exchange, buy, invest, or reinvest any assets or property owned by either of the above-named corporations. Such assets or property may include income producing or non-income producing assets and property.
3. Purchase and/or maintain insurance as would be ordinary and customary in the industry for by most other companies or corporations engaged in business similar to or substantially similar to that of either of the above-named corporations.

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4. Take any and all legal steps necessary to collect any amount or debt owed to me, or to settle any claim, whether made against either of the above-named corporations or asserted on my behalf against any other person or entity.

5. Enter into binding contracts on behalf of either of the corporations named above.

6. Exercise all stock rights on behalf of either of the corporations named above as my proxy, including all rights with respect to stocks, bonds, debentures, or other investments.

7. Maintain and/or operate any business that may be owned by either of the above-named corporations.

8. Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents for either of the above-named corporations.

9. Sell, convey, lease, mortgage, mortgage, insure, improve, repair, or perform any other act with respect to any of the property of either of the above-named corporations (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This includes the right to sell or encumber any buildings or other real property now owned by either of the above-named corporations now owned or hereafter acquired in the future.

10. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:

a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.

b. Obtain information or documents from any government or its agencies, and negotiate, compromise, or settle any matter with such government or agency (including tax matters).

c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

This Power of Attorney shall be construed broadly as a General Power of Attorney for the general purpose of having SWRR, Inc. acquire Sixty Five Bedford Street, Inc., (and any related subsidiaries and/or other interests thereof). The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power or authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing: (i) my income to be taxable to my Agent, (ii) my assets to be subject to a general power of appointment by

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my Agent, and (ii) my Agent to have any incidents of ownership with respect to my life insurance policies that I may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

My Agent shall be entitled to reasonable compensation for any services provided as my Agent. My Agent shall be entitled to reimbursement of all reasonable expenses incurred in connection with this Power of Attorney.

My Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such a request is made by any authorized personal representative or fiduciary acting on my behalf.

This Power of Attorney shall become effective immediately, and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an applicable state statute. This is a Durable Power of Attorney. This Power of Attorney shall continue effective until my death. This Power of Attorney may be revoked by me at any time by providing written notice to my Agent.

Dated August 22, 2003 at Dublin, Ireland.


JOHN P. MCNABOLA

WSC0178

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. TRICARICHI,

Appellant,

v.

COÖPERATIEVE RABOBANK U.A.,
UTRECHT-AMERICA FINANCE CO.
and SEYFARTH SHAW LLP,

Respondents.

Electronically Filed
Sep 19 2017 01:45 p.m.
Elizabeth A. Brown
Supreme Court Clerk of Supreme Court
Case No. 73175

District Court Case No.
A-16-735910-B

APPEAL

From the Eighth Judicial District Court, Department XV
Clark County, Nevada
Hon. Joe Hardy, District Court Judge

JOINT APPENDIX
Volume VIII

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Michael K. Wall (2098)
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Attorneys for the Appellant, Michael A. Tricarichi

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, LLC and that on this 19th day of September, 2017, I caused the document entitled JOINT APPENDIX VOLUME VIII to be served on the following by Electronic Service to:

Dan Waite
Ryan Lower
Steve Morris

Service by regular U.S. Mail as follows:

Chris Paparella
(*Pro Hac Vice*)
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004-1482
Telephone: (212) 837-6644
Facsimile: (212) 299-6644
chris.paparella@hugheshubbard.com

*Attorneys for Respondents Coöperatieve Rabobank U.A.
and Utrecht-America Finance Co.*


An employee of HUTCHISON & STEFFEN, LLC

(b) as to all other representations and warranties and breaches of any other covenant or undertaking, for the lesser of the applicable statute of limitations or four (4) years following the Closing Date.

Any claim or demand against any of Seller, Company or Buyer, of which notice has been given pursuant to Section 10.6 on or prior to the expiration of the related period, shall continue to be subject to indemnification hereunder, the expiration of such period notwithstanding.

Section 10.6 Notice and Defense. Buyer, Company and Seller, shall promptly notify all other parties of any claim, suit or demand of which the notifying party has actual knowledge that entitles it to indemnification under this Article 10 (the date that the notifying party receives actual knowledge of the claim, suit or demand, shall be the "Actual Knowledge Date"); *provided, however*, that, in any event, the notifying party shall so notify the other on or before the expiration of thirty (30) days from the Actual Knowledge Date. The failure of the notifying party to give such notice on or before the expiration of thirty (30) days from the Actual Knowledge Date shall affect the liability of the indemnifying party only if and to the extent that such failure prejudiced the indemnifying party.

(a) The indemnifying party shall have fifteen (15) days from the date notice of the indemnification claim is received to notify the party seeking indemnification if the indemnifying party disputes its liability with respect to such claim or demand. If the indemnifying party disputes its liability with respect to such claim or demand, such dispute shall be settled by arbitration in accordance with Section 11.8. Arbitration may be commenced at any time by the indemnifying party or the person seeking indemnification by giving written notice to the other party to the dispute that such dispute has been referred to arbitration pursuant to the terms of this Section 10.6.

(b) If the liability or damage for which indemnification is sought is asserted by a third party, the indemnifying party shall have, at its election, the right to defend any such matter at its sole cost and expense through counsel chosen by it and reasonably acceptable to the other party (provided that the indemnifying party shall have no such right if it is contesting liability under Section 10.6(a)). If the indemnifying party so undertakes to defend, the indemnifying party shall notify the indemnified party hereto of its intention to do so. The indemnifying party must defend such matter diligently or the indemnified party may assume control of the defense of such matter. The indemnifying party shall not, without the indemnified party's written consent (such consent not to be unreasonably withheld), settle or compromise any claim or consent to an entry of judgment that does not include, as an unconditional term thereof, a release of the indemnified party or parties. Each party agrees in all cases to cooperate with the defending party and its counsel in the defense of any such liabilities or claims. The defending party and the non-defending party or parties may be represented by the same counsel unless such representation would be inappropriate due to conflicts of interests between them. In addition, the non-defending party or parties shall at all times be entitled to monitor and participate in such defense through the appointment of counsel of its or their own choosing, at its or their own cost and expense. In defending a third party claim, an indemnifying party may not take any position that is adverse to the interests of the indemnified party with respect to such claim.

ARTICLE 11

MISCELLANEOUS

Section 11.1 Severability. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any applicable law or regulation in any state or country, such provision shall be inoperative in each such state or country and the remainder of this Agreement shall remain binding upon the parties hereto in each such state or country with the Agreement as a whole unaffected elsewhere to the extent permitted by law, and to the extent that enforcement of the remainder of this Agreement without the illegal, unenforceable or void provision would not be inconsistent with the intent of the parties as evidenced in this Agreement.

Section 11.2 Notices and Other Communications. Every notice or other communication required or contemplated by this Agreement by either party shall be in writing and shall be delivered either by (a) personal delivery, (b) postage prepaid return receipt requested certified mail or the equivalent of certified mail under the laws of the country where mailed, (c) facsimile transmission, or (d) Federal Express or other reputable overnight courier service with proof of receipt to the party for whom intended at the address set forth on Schedule 11.2 to this Agreement or at such other address as the intended recipient previously shall have designated by written notice delivered in accordance with this Section 11.2 to the other parties. Any notice or other communication sent by certified mail or the equivalent shall be deemed to have been delivered to and received by the intended recipient on the date it is officially recorded as delivered by return receipt or equivalent. Any notice or other communication delivered in person or sent by overnight courier service shall be deemed to have been delivered to and received by the intended recipient on the date of delivery. Any notice or other communication delivered by facsimile transmission, with proof of such transmission evidencing date, time and destination facsimile number, shall be deemed to have been delivered and received by the intended recipient on the day immediately following the date of the successful and confirmed transmission of such facsimile. A copy of any notice or other communication sent to Buyer or Seller shall be sent to Buyer's counsel or Seller's counsel, as the case may be, as set forth on Schedule 11.2.

Section 11.3 Counterparts. This Agreement may be executed in any number of counterparts, and each counterpart shall constitute an original instrument, even where such executed counterpart was delivered via facsimile transmission, but all such separate counterparts shall constitute only one and the same instrument.

Section 11.4 Governing Law; Jurisdiction. The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of the State of Ohio without regard to its conflicts of laws rules. In respect of any actions for injunctive or other equitable relief hereunder, any action or proceeding may be brought against any party in the federal courts located in the city of San Francisco, California and each of the parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein. Process in any such action or proceeding may be served on any party anywhere in the world.

Section 11.5 Written Agreement to Govern. This Agreement sets forth the entire understanding and supersedes all prior and contemporaneous agreements among the parties relating to the subject matter contained herein and merges all prior and contemporaneous discussions among them, and no party shall be bound by any condition, representation, warranty, covenant or provision other than as expressly stated in or contemplated by this Agreement or as subsequently shall be set forth in writing and executed by duly authorized representatives of the parties hereto.

Section 11.6 Assignability. Neither this Agreement nor any right hereunder is assignable in whole or in part, by any party without the express written consent of the other party and any such attempted assignment shall be void and unenforceable. Notwithstanding the foregoing, this Agreement and the rights hereunder may be assigned by Buyer (i) as collateral security to any lender providing financial assistance with respect to the transactions contemplated under this Agreement, and (ii) to any subsequent purchaser or a holder of the Shares; provided, however, that in no such event shall Buyer be relieved from its obligations under this Agreement by any such assignment.

Section 11.7 No Waiver of Rights. All waivers hereunder must be made in writing, and failure of any party at any time to require another party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation. Any waiver of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision or a waiver or modification of the provision.

Section 11.8 Expenses. Each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all attorneys' fees, except as set forth in Section 9.2 of this Agreement.

Section 11.9 Mandatory Binding Arbitration. Any dispute, disagreement, claim or controversy between Buyer and Seller arising out of or relating to this Agreement or the breach, termination or validity hereof (such, a "Disputed Matter") that is not resolved within 10 (ten) days after notice has been received in accordance with Section 11.2 of this Agreement regarding a Disputed Matter shall be referred to and settled by arbitration administered by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association (collectively, the "AAA Rules") by three (3) arbitrators who are mutually agreeable to Buyer and Seller. If Buyer and Seller are unable to agree upon three (3) arbitrators, then the relevant number of additional arbitrators shall be selected in accordance with the AAA Rules so that a total of three (3) arbitrators shall be selected. All proceedings in any such arbitration shall be conducted in San Francisco, California. Each party to such arbitration proceeding shall bear its respective costs, fees and expenses in connection with such arbitration. Upon a final determination by the arbitrator with respect to a Disputed Matter, the arbitrator shall notify Buyer and Seller of such final determination (such notice being an "Arbitration Order"). Jurisdiction of such arbitrator shall be exclusive as to any Disputed Matter, and Buyer and Seller agree that this agreement to arbitrate shall be specifically enforceable under the laws of the respective domiciliary jurisdictions of Buyer and Seller. An Arbitration Order may be entered in any court having jurisdiction over the parties or the subject matter of such Arbitration Order.

Section 11.10 Further Assurances. At any time before or after the Closing, each of the parties hereto shall, at the request of any other party hereto, perform such acts, execute and deliver such instruments (including without limitation powers of attorney necessary to control an audit), and documents and do all such other things consistent with the terms of this Agreement as may be reasonably necessary to accomplish the transactions contemplated in this Agreement or to otherwise carry out the purpose of this Agreement.

Section 11.11 Schedules and Exhibits. All Schedules and Exhibits referred to in and attached to this Agreement are incorporated herein by reference as if fully set forth in the text of this Agreement.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.


SELLER:

MICHAEL TRICARICI



BUYER:

NOE HILL HOLDINGS, INC.

By: 

John P. McNabola
President

[SIGNATURE PAGE TO STOCK PURCHASE AGREEMENT]

WSC0037

SPOUSAL CONSENT

I, Barbara A. Tricarichi, the wife of Michael Tricarichi, the sole shareholder of West Side Cellular, Inc., an Ohio corporation ("Company"), hereby acknowledge and confirm the following:

I have approved and consented to the sale and transfer by Michael Tricarichi to Neb Hill Holdings, Inc., a Delaware corporation ("Buyer"), of one hundred (100) shares of common stock of Company, pursuant to that certain Stock Purchase Agreement (the "Stock Purchase Agreement"), dated as of September 9, 2003, by between Buyer, as purchaser, and Michael Tricarichi, as seller, of all of the issued and outstanding stock of Company. I have reviewed, approved and consented to the execution of the Stock Purchase Agreement and all documents arising from or relating thereto.

DATED: September 9, 2003


SPOUSE

CLE 000000

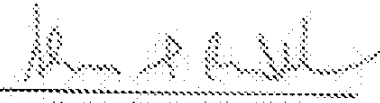
29

WSC0038

COMPANY JOINDER

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, West Side Cellular, Inc., an Ohio corporation ("Company"), hereby joins in the Stock Purchase Agreement, dated as of September 9, 2003, to which this Company Joinder is attached for the sole purpose of being bound under Sections 5.2(b) and 10.3 thereof and in connection therewith, Company hereby assumes all obligations imposed on Company under such sections.

WEST SIDE CELLULAR, INC.

By: 
John P. McNabola
President

WSC0039

EXHIBIT A

WIRE INSTRUCTIONS

See Document Attached Hereto.

WSC0040

Nob Hill Holdings, Inc.

September 9, 2003

Chris Kordandt
Rabobank International
New York Branch
245 Park Avenue
New York, NY 10167-0062

Dear Mr. Kordandt:

We hereby instruct you to execute the following transfers:

Amount: \$ 34,621,594.05

To: Bank of New York
ABA #021-0880-18

Credit to: Rabobank Nederland, New York Branch
Acct. # [REDACTED] 3-533

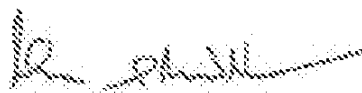
Further Credit to: Michael Tricarichi Escrow Account
Acct. # [REDACTED] 1-595

Reference: Stock purchase price

Please debit our account at your Bank [REDACTED] 3-568.

Thank you for your attention to this matter.

Very truly yours,



John P. McNabola
President

WSC0041

EXHIBIT B

PRO-FORMA FINANCIALS

See Documents Attached Hereto.

WSC0042

WEST SIDE CELLULAR

Balance Sheet

August 31, 2003

ASSETS

Current Assets

DU PERSHING MONEY MARKET

39,949,373.12

NOTES RECEIVABLE

577,777.77

RECEIVABLE FROM ESCROW AGENT

50,000.00

Total Current Assets

40,577,150.89

Property and Equipment

Total Property and Equipment

0.00

Other Assets

Total Other Assets

0.00

Total Assets

40,577,150.89

LIABILITIES AND CAPITAL

Current Liabilities

ACCRUED WORKERS COMP

2,133.98

ACCRUED PERSONAL PROP TAXES

3,645.81

Total Current Liabilities

5,779.79

Long-Term Liabilities

Total Long-Term Liabilities

0.00

Total Liabilities

5,779.79

Capital

CAPITAL STOCK

5,000.00

RETAINED EARNINGS CURRENT

<1,342,691.42>

Net Income

41,009,062.56

Total Capital

40,571,371.14

Total Liabilities & Capital

40,577,150.89

WSC0043

WEST SIDE CELLULAR
Income Statement
For the Eight Months Ending August 31, 2008

	Year to Date	
Revenues		
SALES-AIRTIME, RECURRING & PHONES	1,357,216.74	2.08%
SALES-OTHER	63,826,140.68	97.92%
INTEREST INCOME	183,961.51	0.16%
Total Revenues	65,367,318.93	100.00%
Cost of Sales		
COS-AIRTIME	229,020.58	0.43%
COS-CELLULAR PHONE	134,617.42	0.20%
COS-OTHER	1,472,561.42	1.79%
COS-DEALER COMMISSIONS	4,445,379.53	6.80%
Total Cost of Sales	6,042,016.43	9.08%
Gross Profit	60,499,220.48	90.92%
Expenses		
SALARIES	8,315,605.38	12.89%
PAYROLL TAXES	189,254.99	0.27%
EMPLOYEE BENEFITS	74,343.60	0.11%
EMPLOYEE WELFARE	2,947.48	0.00%
ADVERTISING	122,739.66	0.12%
INSURANCE	5,479.12	0.01%
SALES PROMOTIONS	789.08	0.00%
DEPUTING	823.14	0.00%
VEHICLE MAINTENANCE	11,819.94	0.02%
LEASED VEHICLES	33,308.31	0.04%
ENTERTAINMENT	672.07	0.00%
TRAVEL	8,333.80	0.01%
TRAVEL - CELLNET-MGM	961.55	0.00%
LITELITE	11,439.36	0.02%
TELEPHONE	33,613.91	0.05%
POSTAGE	12,783.62	0.02%
DUES & SUBSCRIPTIONS	130.00	0.00%
SUPPLIES	3,385.32	0.01%
MISCELLANEOUS	5,272.95	0.01%
RENT	47,346.28	0.07%
BUILDING MAINTENANCE	5,070.04	0.01%
DEPRECIATION	4,284.05	0.01%
BAD DEBT	24,814.96	0.04%
CREDIT & COLLECTIONS	4,190.07	0.01%
BANK CHARGES	16,573.90	0.02%
PROFESSIONAL FEES	1,488,386.92	2.24%
THIRD PARTY BILLING FEES	26,372.82	0.04%
EQUIPMENT MAINTENANCE	5,491.40	0.01%
SYSTEM MAINTENANCE	597.00	0.00%
EQUIPMENT LEASE	1,732.31	0.00%
CONTRIBUTIONS	25.00	0.00%
PERSONAL PROPERTY TAX	6,040.07	0.01%
CASE EXPENSES	2,546,876.41	12.15%
SALES TAX DISCOUNTS	<0.00%	0.00%
GRAND TOTAL ON SALE P/A	26,689.65	0.04%
STATE INCOME TAX	68.00	0.00%
Total Expenses	18,590,217.92	27.94%
Net Income	41,909,002.56	62.98%

WSC0044

	Net Income per Books		41,909,062.50
Add	50% Entertainment Expense		318.03
Add	Depreciation		4,204.05
Deduct	Bad Debt		(20,000.00)
	Total adjustments to income (\$1)		(15,479.93)
	Taxable Income Before NOL		41,893,892.64
	NOL Carry Forward		(1,257,638.00)
	Net Taxable Income		40,636,254.64
	Federal Tax	35.00%	14,222,685.62
	State Tax		
	First \$50,000	0.51%	255.00
	Over \$50,000	8.50%	3,449,895.29
	Local		597,321.20
	State & Local Tax reduction		(1,416,583.54)
	Net taxes		16,853,378.63
	Fortrand premium		5,372,014.44
	Cash balance as of 09/30/83		40,571,571.14
	Net cash payout to Mike Tricarichi		35,189,356.70

WSC0045

EXHIBIT C

FINAL RETURN

See Documents Attached Hereto.

WSC0046

OHIO Franchise Tax Report		For Department Use Only																															
Based upon calendar year 2002 or other taxable year beginning _____ and ending _____ 2002.																																	
Ohio franchise tax I.D. number 00915811 (1)	Federal employer ID number 34 1885050	Check box below if: <input type="checkbox"/> This is an amended report (if the amended report reflects a refund, attach Form FT-REF). <input type="checkbox"/> This taxpayer is a member of an Ohio combined report. Attach FT-1120C and FT-OTAS to the Ohio franchise tax report of the "lead" taxpayer shown in column (2) of Form FT-1120C whose Ohio franchise tax identification number is _____. <input type="checkbox"/> This is an income-based exit tax report (see instructions). <input type="checkbox"/> This taxpayer is a qualifying holding company (attach FT-OMC). <input type="checkbox"/> This taxpayer is an O.R.C. section 5733.06(C) high-tech, start-up company (that is, an "eligible corporation"). <input type="checkbox"/> This taxpayer is an electric company or a combined (electric) company. See O.R.C. 5733.04(P). Attach supplemental schedules B, C and A-1.																															
Ohio charter or license number 00720734	North American Industry Classification System (NAICS code) 000000																																
C115387P100107**ECRLOT**C-017 WEST SIDE CELLULAR, INC. 20032 MERCANTILE RD BEACHWOOD OH 44122-5818 USA		<div style="text-align: center; font-size: 2em; opacity: 0.5;">COPY</div>																															
<input type="checkbox"/> Check the box if both the below-reported statutory agent and address are the same as were reported on the 2002 franchise tax report. Name _____ Address _____ City _____ State _____ ZIP code _____																																	
<input type="checkbox"/> Check the box if all the below-reported corporate officers are the same as were reported on the 2002 franchise tax report. President (first name, middle initial, last name) <u>Michael A. Tuccillo</u> Secretary <u>S.A.M.C.</u> Treasurer <u>S.A.M.C.</u>																																	
Schedule A -- Net Worth Basis																																	
1. Federal taxable income from (R.S. Item 1120, line 28 or 1120A, line 24). Consolidated federal item, see instructions. 2. Ohio Schedule B adjustments (from Schedule B, line 3). Combined franchise item, skip to line 6. 3. Base income (line 1 plus line 2). 4. Allocable income everywhere (from Schedule C, line 7). 5. Apportionable income (line 3 minus line 4). 6. Ohio separate company apportionment ratio from Schedule D, line 4 (even if a member of a combined report). 7. Apportioned income (line 5 multiplied by line 6 or from FT-1120C, Schedule B (combined), line 7). 8. Allocable income within Ohio (from Schedule C, line 8). 9. Income (loss) from transferor corporation, O.R.C. section 5733.063. 10. Related entity and related member adjustments (from Schedule B-3 or Schedule B-3 (combined)). 11. Ohio taxable income before net operating loss deduction (add lines 7, 8, 9 and 10). 12. Ohio net operating loss deduction (attach schedule showing computation). O.R.C. section 5733.04(h)(1). 13. Ohio taxable income (line 11 minus line 12). 14. Tax on net income basis (from Schedule K, line (c)).		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: right;">Whole Dollars Only</th> </tr> </thead> <tbody> <tr><td>1.</td><td style="text-align: right;">1,726,940 00</td></tr> <tr><td>2.</td><td style="text-align: right;">00 00</td></tr> <tr><td>3.</td><td style="text-align: right;">1,726,940 00</td></tr> <tr><td>4.</td><td style="text-align: right;">1,726,940 00</td></tr> <tr><td>5.</td><td style="text-align: right;">00 00</td></tr> <tr><td>6.</td><td style="text-align: right;">1.00 00</td></tr> <tr><td>7.</td><td style="text-align: right;">00 00</td></tr> <tr><td>8.</td><td style="text-align: right;">00 00</td></tr> <tr><td>9.</td><td style="text-align: right;">00 00</td></tr> <tr><td>10.</td><td style="text-align: right;">00 00</td></tr> <tr><td>11.</td><td style="text-align: right;">1,726,940 00</td></tr> <tr><td>12.</td><td style="text-align: right;">1,726,940 00</td></tr> <tr><td>13.</td><td style="text-align: right;">00 00</td></tr> <tr><td>14.</td><td style="text-align: right;">00 00</td></tr> </tbody> </table>		Whole Dollars Only		1.	1,726,940 00	2.	00 00	3.	1,726,940 00	4.	1,726,940 00	5.	00 00	6.	1.00 00	7.	00 00	8.	00 00	9.	00 00	10.	00 00	11.	1,726,940 00	12.	1,726,940 00	13.	00 00	14.	00 00
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Schedule A -- Net Worth Basis																																	
15. Net value of stock (from Schedule F, line 5). 16. Tax on net worth basis (from Schedule K, line (d)) -- not to exceed \$150,000.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>15.</td><td style="text-align: right;">00 00</td></tr> <tr><td>16.</td><td style="text-align: right;">00 00</td></tr> </tbody> </table>		15.	00 00	16.	00 00																										
15.	00 00																																
16.	00 00																																
Schedule A -- Computation of Total Tax																																	
17. Tax due (greater of lines 14 or 16, but not less than the minimum fee of \$50). 18. Tier one and tier two litter tax (from Schedule K, line (n)). 19. Total nonrefundable credits (from Schedule A-1, line 18). 20. Amount due after nonrefundable credits (total of lines 17 and 18 minus line 19, but not less than \$50). 21. Overpayment carryforward from 2002. 22. Estimated payments made in 2003: E _____, ER <u>50</u> , EX _____. 23. Refundable credits. 24. Total payments and refundable credits (add lines 21, 22 and 23). 25. Tax due (line 20 minus line 24). 26. Interest _____. Penalty _____. Total interest and penalty _____. 27. Balance due (make payable to Treasurer of State of Ohio). Check box if payment made by EFT <input type="checkbox"/> . 28. Overpayment _____. 29. Amount of line 26 to be credited to year 2004 estimated tax (if an amended report, enter -). 30. Amount of line 26 to be refunded (if an amended report, attach form FT-REF).		<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr><td>17.</td><td style="text-align: right;">50 00</td></tr> <tr><td>18.</td><td style="text-align: right;">00 00</td></tr> <tr><td>19.</td><td style="text-align: right;">00 00</td></tr> <tr><td>20.</td><td style="text-align: right;">50 00</td></tr> <tr><td>21.</td><td style="text-align: right;">00 00</td></tr> <tr><td>22.</td><td style="text-align: right;">50 00</td></tr> <tr><td>23.</td><td style="text-align: right;">00 00</td></tr> <tr><td>24.</td><td style="text-align: right;">50 00</td></tr> <tr><td>25.</td><td style="text-align: right;">00 00</td></tr> <tr><td>26.</td><td style="text-align: right;">00 00</td></tr> <tr><td>27.</td><td style="text-align: right;">00 00</td></tr> <tr><td>28.</td><td style="text-align: right;">00 00</td></tr> <tr><td>29.</td><td style="text-align: right;">00 00</td></tr> <tr><td>30.</td><td style="text-align: right;">00 00</td></tr> </tbody> </table>		17.	50 00	18.	00 00	19.	00 00	20.	50 00	21.	00 00	22.	50 00	23.	00 00	24.	50 00	25.	00 00	26.	00 00	27.	00 00	28.	00 00	29.	00 00	30.	00 00		
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WSC0047

Name	Franchise tax I.D. number
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Schedule C - Adjustments to Federal Taxable Income - O.R.C. Section 5733.04(j)

1. Additions:

(a) Valuation limitation on losses from capital or 1231 assets (Form FT-1120VL)	1a
(b) Losses from sale of Ohio public obligations	1b
(c) Amount claimed as a credit for taxes paid by a qualifying pass-through entity	1c
(d) Net loss from an "exempted investment" in a public utility	1d
(e) Depreciation expense adjustment for I.R.C. section 168(k) bonus depreciation	1e
(f) Total additions (add lines 1a through 1e)	1f

2. Deductions:

(a) Net income from foreign sources (Schedule B-2, line 5)	2a
(b) Valuation limitation on gains from capital or 1231 assets (Form FT-1120VL)	2b
(c) Dividends received (I.R.C. section 243 and O.R.C. 5733.04(l)(7) and (l)(8))	2c
(d) Adjustment for targeted job tax credit or work opportunity tax credit	2d
(e) Net interest income from exempt U.S. obligations	2e
(f) Interest on Ohio public and purchase obligations and gain from the sale of Ohio public obligations	2f
(g) Contributions to an individual development account program	2g
(h) Net income from an "exempted investment" in a public utility	2h
(i) Depreciation expense adjustment for I.R.C. section 168(k) bonus depreciation	2i
(j) Total deductions (add lines 2a through 2i)	2j

3. Net adjustments:

Line 1f minus line 2j. If negative, put in parentheses. Enter here and on Schedule A, line 2.	3
---	---

Schedule D - Apportionment - O.R.C. Section 5733.05

	Ohio	Other States	Total
1. Net rents	1	1	1
2. Net royalties	2	2	2
3. Capital gains and losses and depreciation recapture	3	3	3
4. Dividends (not otherwise deducted and not apportionable)	4	4	4
5. Net patent and copyright royalties and technical assistance fees	5	5	5
6. State lottery income	6	6	6
7. Total everywhere (if negative, put in parentheses. Enter here and on Sch. A, line 4)	7	7	7
8. Total Ohio (if negative, put in parentheses. Enter here and on Schedule A, line 5)	8	8	8

Schedule D - Apportionment - O.R.C. Section 5733.05

Complete schedule D on a separate company basis even if the taxpayer is a member of a combined report.

	Weight	Value	Weighted Factor
1. Property			
(a) Owned (average cost)			
(b) Rented (Annual rental x 5)			
(c) Total property			
2. Payroll			
3. Sales			
4. Total apportionment ratio (Add weighted factor column lines 1c, 2 and 3. Enter here and on Schedule F, line 5 and Schedule A, line 5 even if the taxpayer is a member of a combined report.)			

Note: Any request for deviation from the statutory allocation and apportionment provisions must be in writing. If the denominator of any factor is zero, the weight given to the other factors must be proportionately increased so that the total weight given to the combined number of factors used is 100%.

Schedule E - Balance Sheet

Attach to this franchise tax report a balance sheet (e.g., I.R.S. form 1126, Schedule I) that reflects the books of the taxpayer on a separate company basis as of the beginning and the end of the taxable year.

1. Net worth (assets minus liabilities)	1	(1,337,691)
2. Qualifying amount (if the taxpayer is a related member to a qualifying holding company) C.R.C. 5733.06(C)(2)	2	
3. Adjusted net worth (add lines 1 and 2)	3	(1,337,691)
4. Exempted assets (net book value):		
(a) Air, water and noise pollution control facilities for which the taxpayer holds Ohio exemption certificates	4a	
(b) Energy conversion facilities for which the taxpayer holds conversion certificates under C.R.C. 5709.31	4b	
(c) Civil defense shelters	4c	
(d) Land in Ohio devoted exclusively to agriculture	4d	
(e) Total exempted assets		
5. Net value of stock (line 3 minus line 4e) (Enter here and on Schedule A, line 15)	5	(1,337,691)
6. Ohio apportionment ratio (from Schedule D, line 4 -- see note at right)	6	
7. Taxable value (Multiply line 5 by line 6. Enter here and on Schedule K, lines (d), (i) and (j))	7	(1,337,691)

Note: Taxable value is determined on a separate company basis even if the taxpayer is a member of a combined report. Multiply the taxpayer's separate company net value of stock by the taxpayer's separate company apportionment ratio (Schedule D, line 4).

1. State or country where incorporated Ohio

2. Corporation tax records are in care of (name) Lex Business
Telephone number 216-765-8930 E-mail address LexBusiness@alltelnet.com

3. In this corporation a member of a consolidated U.S. 1120? ☐ Yes ☒ No. If "yes," enter the name and FEIN of the common parent: (Name) _____ (FEIN) _____
and the number of corporations that are included in the consolidated U.S. group _____

Is this corporation currently under audit by the I.R.S.? ☐ Yes ☒ No. If yes, what years? _____

Does the corporation currently have I.R.S. audits under appeal? ☐ Yes ☒ No. If yes, what years? _____

What was the last year the I.R.S. redetermined the corporation's federal taxable income? 4/9

Were the adjustments reported to Ohio? ☐ Yes ☒ No

5. During the taxable year, did this corporation make payments to or receive payments from a "related member" as defined in O.R.C. section 5733.042? ☐ Yes ☒ No

6. If the corporation is currently an S corporation but was a C corporation during any portion of a taxable year ending in 2002, check the box: ☐. An S corporation is subject to the franchise tax for tax year 2003 based upon the corporation's taxable year ending in 2002 for which the federal S election was not in effect.

7. During 2001 or 2002 was this corporation the survivor of a merger with another corporation that was subject to the Ohio franchise tax? ☐ Yes ☒ No

STATE OF OHIO - Antitrust and Consumer Protection Division	
<p>I declare under penalties of perjury that this report (including any accompanying schedule or statement) has been examined by me and to the best of my knowledge and belief is a true, correct and complete return and report and that this corporation has not, during the preceding year, except as permitted by sections 3517.032, 3517.033 and 3517.034 of the Ohio Revised Code, directly or indirectly paid, used or offered, consented, or agreed to pay or use any state money or property for or in aid</p>	<p>of or apposition to a political party, a candidate for election or nomination to public office, or a political action committee, legislative campaign fund, or organization that supports or opposes any such candidate or in any manner used any of its money for any partisan political purpose whatever, or for reimbursement or indemnification of any person for money or property so used.</p>
<p>Date: <u>12-22-11</u></p> <p>Signature of officer or managing agent: <u>[Signature]</u></p>	<p>Title: _____</p>
<p>Signature of preparer other than taxpayer based on all information of which preparer has knowledge: _____</p>	
<p>Title: _____</p>	

WSC0049

Name	Franchise tax I.D. number	2003
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Schedule K - Tax Computation Worksheet

There are no franchise report schedules H, I, or J.

Section 1: Franchise Tax Computation

Net Income Basis

Note: All related Ohio taxpayer corporations (that as of January 1 of the report year meet the ownership or control requirements to file as members of a combined report) must share one \$0 to \$50,000 net income basis tax bracket in which the 5.1% rate applies. Such related taxpayers must share one \$0 to \$50,000 tax bracket regardless of whether those related taxpayer corporations actually file a combined report (see Ohio Revised Code

section 5733.06(F)). Each taxpayer's Ohio taxable income that exceeds the prorated amount is taxable at the higher franchise tax and litter tax rates. Related taxpayers must provide the \$0 to \$50,000 bracket on Form FT-OTAS, Ohio Taxpayer Affiliation Schedule. The proration, however made, applies to both the franchise tax and the litter tax.

(a) First \$50,000 of Ohio taxable income (see note above)	0	x .051 =	a.	0
(b) Ohio taxable income greater than \$50,000 (see note above)		x .085 =	b.	
(c) Tax on net income basis. Add lines (a) and (b) (enter here and on Schedule A, line 14)			c.	0

Net Worth Basis (The tax on net worth basis is not to exceed \$150,000.)

(d) Taxable value (from Schedule F, line 7) (enter product here and on Schedule A, line 16)	(1537,41)	x .004 =	d.	0
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Tax Due

(e) Greater of lines (c) or (d), but not less than \$50 (enter here and on Schedule A, line 17)		e.	\$0
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Section 2: Litter Tax Computation

Tier One Litter Tax (Complete tier one if the amount on line (e) is greater than \$50.)

Net Income Basis

(f) First \$50,000 of Ohio taxable income (see note above)		x .0011 =	f.	
(g) Ohio taxable income greater than \$50,000 (see note above)		x .0022 =	g.	
(h) Add lines (f) and (g)			h.	

Net Worth Basis

(i) Taxable value (from Schedule F, line 7)		x .00014 =	i.	
---	--	------------	----	--

Tier One Litter Tax

(j) Greater of lines (h) or (i) but not greater than \$5,000. If the taxpayer is a member of a combined report, see FT-1120C for limitation		j.	
---	--	----	--

Tier Two Litter Tax (Complete tier two only if the taxpayer manufactures or sells litter stream products. See instructions.)

Net Income Basis

(k) Ohio taxable income greater than \$50,000 (see note above)		x .0022 =	k.	
--	--	-----------	----	--

Net Worth Basis

(l) Taxable value (from Schedule F, line 7)		x .00014 =	l.	
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Tier Two Litter Tax

(m) Greater of lines (k) or (l) but not more than \$5,000. If the taxpayer is a member of a combined report, see FT-1120C for limitation		m.	
--	--	----	--

(n) Total Litter Tax - Add lines (j) and (m). Enter here and on Schedule A, line 18		n.	
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WSC0050

Name	Franchise tax I.D. number
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Credits must be claimed in the order listed, O.R.C. section 5733.98

	Ohio Revised Code Section	
1. Credit for taxes paid by a qualifying pass-through entity	5733.0611	1.
2. Credit for qualifying affiliated groups (due to related entity and related member adjustments)	5733.068	2.
3. Credit for recycling and litter prevention donations	5733.064	3.
4. Credit for employers that enter into agreements with child daycare centers	5733.38	4.
5. Credit for employers that reimburse employees' child daycare expenses	5733.38	5.
6. Credit for maintaining railroad crossing warning devices	5733.43	6.
7. Credit for purchases of lights and reflectors for tractors	5733.44	7.
8. Job retention credit	5733.0810(B)	8.
9. Second credit for purchases of new manufacturing machinery and equipment (7.5%-11.5% credit)	5733.33	9.
10. Credit for eligible new employees in an enterprise zone	5709.68	10.
11. Credit for eligible costs associated with voluntary action (brownfield site clean-up) (attach certificate from Department of Development)	5733.34	11.
12. Credit for employers that establish an on-site child daycare center	5733.37	12.
13. Ethanol plant investment credit	5733.46	13.
14. Credit for grape production property	5733.32	14.
15. Export sales credit (carryforward amount only)	5733.069	15.
16. Edison Center credit for research and development investors (attach credit certificate from Technology and Enterprise Advisory Board)	5733.35	16.
17. Enterprise zone daycare and training credits	5709.68	17.
18. Total nonrefundable credits (enter here and on Schedule A, line 19)		18.

1. I.R.C. section 78 and 961 income	1.
2. Foreign dividends x 100% =	2.
3. Foreign royalties x 90% =	3.
4. (a) Income from technical and other services	
(b) Reimbursed expenses for personal services performed for subsidiaries	
(c) Line 4a minus line 4b	
5. Foreign source income deduction. (Add lines 1, 2, 3 and 4c. Enter here and on Schedule E, line 2a)	4c.
	5.

Schedule E-3 - Related Entity and Related Member Adjustments

Note: If the taxpayer is a member of a combined franchise group, complete Schedule E-3 (Combined) on Form FT-1120C.

1. Related entity gains (losses) from sale of investments in stock or debt, O.R.C. section 5733.04(i)(12)(a)	1.
2. Related entity gains (losses) from sale of other intangible property, O.R.C. section 5733.04(i)(12)(b)	2.
3. Total related entity gains (losses) (add lines 1 and 2)	3.
4. Allocable portion of line 3	4.
5. Apportionable related entity gains (losses) (subtract line 4 from line 3)	5.
6. Interest expense and intangible expense paid to related members, O.R.C. section 5733.04(i)(13) and 5733.042	6.
7. Add lines 5 and 6	7.
8. Ohio apportionment ratio (Schedule D, line 4)	8.
9. Apportioned income (multiply line 7 by line 8)	9.
10. Related entity gains (losses) allocable to Ohio	10.
11. Add excess related entity loss (if loss deducted in all states exceeds total loss), O.R.C. section 5733.054(B)	11.
12. Excess related entity gain (if gain taxed by all states exceeds total gain), O.R.C. section 5733.054(A)	12.
13. Related members' net interest income and net intangible income taxed by other states, O.R.C. section 5733.055 (Enter the letter of (i) each income taxed by other states or (ii) the product of line 6 times line 8)	13.
14. Related entity and related member adjustment (add lines 3, 10, 11, 12 and 13. Enter here and on Sched. A, line 19)	14.

Notes: The corporation is not required to complete Schedules L, M-1, and M-2 if Question 13 on Schedule K is answered "Yes."

Balance Sheets per Books		Beginning of tax year		End of tax year	
		(a)	(b)	(c)	(d)
Assets					
1	Cash		182,877		42,874
2a	Trade notes and accounts receivable			537,242	
b	Less allowance for bad debts		647,808		877,242
3	Inventories		88,888		48,888
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)				
7	Loans to shareholders				
8	Mortgages and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets				
b	Less accumulated depreciation	218,888			
11a	Depletable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (attach schedule)				
15	Total assets		1,252,881		1,728,845
Liabilities and Shareholders' Equity					
16	Accounts payable		4,888		2,881,877
17	Mortgages, notes, bonds payable (more than 1 year)				
18	Other current liabilities (attach schedule)				48,888
19	Loans from shareholders				
20	Mortgages, notes, bonds payable (1 year or more)				
21	Other liabilities (attach schedule)				
22	Capital stock: a Preferred stock				
b Common stock			8,888		8,888
23	Additional paid-in capital				
24	Retained earnings—appropriated (attach schedule)				
25	Retained earnings—unappropriated		-3,887,888		-1,342,881
26	Adjustments to shareholders' equity (attach schedule)				
27	Less cost of treasury stock				
28	Total liabilities and shareholders' equity		1,252,881		1,728,845
Reconciliation of Income					
1	Net income (loss) per books		1,728,845	7	Income recorded on books this year not included on this return (Itemize):
2	Federal income tax per books				Tax-exempt interest \$
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (Itemize):				
5	Expenses recorded on books this year not deducted on this return (Itemize):			8	Deductions on this return not claimed against book income this year (Itemize):
a	Depreciation \$ 8,888			a	Depreciation \$
b	Charitable contributions \$			b	Charitable contributions \$
c	Travel and entertainment \$ 1,124				
d	Bad Debt 2,887			9	Add lines 7 and 8
6	Add lines 1 through 5		12,283	10	Income (loss) per books (line 1) less line 9
Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)					
1	Balance at beginning of year		-3,887,888	5	Distributions: a Cash
2	Net income (loss) per books		1,714,877	b Stock	
3	Other increases (decreases)			c Property	
4	Add lines 1, 2, and 3		-1,342,881	6	Other decreases (Itemize):
				7	Add lines 5 and 6
				8	Balance at end of year (line 4 less line 7)

Form 1120		U.S. Corporation Income Tax Return		OMB No. 1545-0047	
Department of the Treasury Internal Revenue Service		For calendar year 2002 or tax year beginning _____, 2002, ending _____, 2002		2002	
* Instructions are separate. See page 20 for Paperwork Reduction Act Notice.					
A Check if a: <input type="checkbox"/> Consolidated return (attach Form 991) <input type="checkbox"/> Business totaling no. return Sch. M-1 <input type="checkbox"/> Personal service corp. (as defined in Regulations 301.1361-2(c) - see instructions)		B Name Use IRS label. Other: Westside Cellular DBA Cellnet of Ohio Number, street, and room or suite no., or P.O. box (see page 7 of instructions): 23632 Mercantile Road City or town, state, and ZIP code: Beechwood, Ohio 44122		C Employer identification number <div style="background-color: black; width: 100px; height: 1.2em; margin: 5px 0;"></div> D Date incorporated 03/14/88 E First year (see page 8 of instructions)	
F Check appropriate boxes: <input type="checkbox"/> Sole return <input type="checkbox"/> Joint return <input type="checkbox"/> Home change <input type="checkbox"/> Address change					
1a Gross receipts or sales 8,451,812 2 Cost of goods sold (Schedule A, line 3) 3 Gross profit. Subtract line 2 from line 1a 4 Dividends (Schedule C, line 10) 5 Interest 6 Other income 7 Gross royalties 8 Capital gain net income (attach Schedule D (Form 1120)) 9 Net gain or loss from Form 4797, Part 8, line 18 (attach Form 4797) 10 Other income (see page 9 of instructions - attach schedule) 11 Total income. Add lines 3 through 10		1c 8,451,812 2 1,544,308 3 6,907,504 4 5 6 7 8 9 10 11 6,907,504			
12 Compensation of officers (Schedule E, line 4) 13 Salaries and wages (less employment credits) 14 Repairs and maintenance 15 Bad debts 16 Rents 17 Taxes and licenses 18 Interest 19 Charitable contributions (see page 11 of instructions for 30% limitation) 20 Depreciation (attach Form 4562) 21 Less depreciation claimed on Schedule A and elsewhere on return 22 Depreciation 23 Advertising 24 Pension, profit sharing, etc., plans 25 Employee benefit programs 26 Other deductions (attach schedule) 27 Total deductions. Add lines 12 through 26 28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11 29 Less: a Net operating loss (NOL) deduction (see page 13 of instructions) 29a 1,728,940 b Special deductions (Schedule C, line 23) 29b		12 180,000 13 1,232,864 14 45,435 15 3,353 16 100,159 17 118,605 18 19 35 20 3,455 21 3,455 22 23 210,325 24 25 112,193 26 1,247,758 27 3,180,383 28 1,728,940 29a 1,728,940 29b			
30 Taxable income. Subtract line 29b from line 28 31 Total tax (Schedule J, line 11) 32 Payments & 2001 overpayment carried to 2002 32a 2002 estimated tax payments 32b Less 2002 refund applied for on Form 4136 32c Tax deposited with Form 7064 32d Credit for tax paid on undistributed capital gains (attach Form 2439) 32e Credit for Federal tax on fuels (attach Form 4136). See instructions. 32f 32g 32h 33 Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached 34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed 35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid 36 Enter amount of line 32 you were: Credited to 2003 estimated tax Refunded		30 31 32a 32b 32c 32d 32e 32f 32g 32h 33 34 35 36			
Sign Here: Under penalty of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true and correct. I am not aware of any information that would require me to prepare this return differently.					
Preparer's Use Only Preparer's signature: _____ Firm's name (or print name if self-employed), address, and ZIP code: _____ Date: _____ Check if self-employed <input type="checkbox"/> Preparer's EIN or P.E.N.: _____ Phone no.: _____		May the IRS discuss this return with the preparer shown below (see instructions) <input type="checkbox"/> Yes <input type="checkbox"/> No			

Part 3 Cost of Goods Sold (see page 14 of instructions)			
1	Inventory at beginning of year	1	36,880
2	Purchases	2	362,878
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	1,132,899
6	Total. Add lines 1 through 5	6	1,898,854
7	Inventory at end of year	7	46,656
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on line 2, page 1	8	1,844,308
9a Check all methods used for valuing closing inventory:			
<input type="checkbox"/> Cost as described in Regulations section 1.471-3 <input type="checkbox"/> Lower of cost or market as described in Regulations section 1.471-3 <input type="checkbox"/> Other (Specify method used and attach explanation)			
b Check if there was a writedown of substantial goods as described in Regulations section 1.471-3(c) <input type="checkbox"/>			
c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 377) <input type="checkbox"/>			
d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO: <input type="checkbox"/> 24			
e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

Part 4 Dividends and Special Deductions (see instructions beginning on page 13)		(a) Dividends received	(b) %	(c) Special deductions (d) - (b)
1	Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)		70	
2	Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations (section 245A)		Investment	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		92	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		43	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction		80	
8	Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (section 245(b))		100	
9	Total. Add lines 1 through 8. See page 16 of instructions for limitation			
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from certain FSCs that are subject to the 100% deduction (section 245(c)(1))		100	
12	Dividends from affiliated group members subject to the 100% deduction (section 245(b)(3))		100	
13	Other dividends from foreign corporations not included on lines 1, 6, 7, 8, or 11			
14	Income from controlled foreign corporations under subpart F (attach Form 95471)			
15	Foreign dividend gross-up (section 78)			
16	EC-OFSC and former OFSC dividends not included on lines 1, 2, or 3 (section 245(b))			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1			
20	Total special deductions. Add lines 2, 10, 11, 12, and 18. Enter here and on line 23b, page 1			

Part 5 Compensation of Officers (see instructions for line 12, page 1, on page 10 of instructions)					
Note: Complete Schedule F only if total salaries (line 1a plus lines 8 through 10 on page 1) are \$500,000 or more.					
(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	(d) Percent of compensation		(e) Amount of compensation
			for Common	for Preferred	
1 Michael A. Tricarichi		100 %	100 %	%	100,000
		%	%	%	
		%	%	%	
		%	%	%	
		%	%	%	
2 Total compensation of officers					100,000
3 Compensation of officers claimed on Schedule A and elsewhere on return					100,000
4 Subtract line 3 from line 2. Enter the result here and on line 12, page 1					

Tax Computation (see page 17 of instructions)	
1	Check if the corporation is a member of a controlled group (see sections 1361 and 1362) <input type="checkbox"/> Important: Members of a controlled group see instructions on page 17.
2a	If the box on line 1 is checked, enter the corporation's share of the \$50,000, \$25,000, and \$18,225,000 taxable income brackets (in that order): (i) \$ <input type="text"/> (ii) \$ <input type="text"/> (iii) \$ <input type="text"/>
b	Enter the corporation's share of: (1) Additional 5% tax (not more than \$11,750) \$ <input type="text"/> (2) Additional 3% tax (not more than \$100,000) \$ <input type="text"/>
3	Income tax. Check if a qualified personal service corporation under section 448(c)(2) (see page 17) <input type="checkbox"/>
4	Minimum tax (attach Form 4626) \$ <input type="text"/>
5	Add lines 3 and 4 \$ <input type="text"/>
6a	Foreign tax credit (attach Form 1118) \$ <input type="text"/>
b	Possessions tax credit (attach Form 5739) \$ <input type="text"/>
c	Check: <input type="checkbox"/> Nonconventional source fuel credit <input type="checkbox"/> GDT credit (attach Form 8834) \$ <input type="text"/>
d	General business credit. Check box(es) and indicate which forms are attached: <input type="checkbox"/> Form 3800 <input type="checkbox"/> Form(s) (specify) \$ <input type="text"/>
e	Credit for prior year minimum tax (attach Form 8827) \$ <input type="text"/>
f	Qualified zone academy bond credit (attach Form 8890) \$ <input type="text"/>
7	Total credits. Add lines 6a through 6f \$ <input type="text"/>
8	Subtract line 7 from line 5 \$ <input type="text"/>
9	Personal holding company tax (attach Schedule PH (Form 1120)) \$ <input type="text"/>
10	Other taxes. Check if from: <input type="checkbox"/> Form 4255 <input type="checkbox"/> Form 9811 <input type="checkbox"/> Form 9907 <input type="checkbox"/> Form 9906 <input type="checkbox"/> Other (attach schedule) \$ <input type="text"/>
11	Total tax. Add lines 8 through 10. Enter here and on line 31, page 1 \$ <input type="text"/>

Other Information (see page 19 of instructions)	
1	Check method of accounting: <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other (specify) \$ <input type="text"/>
2	See page 21 of the instructions and enter the: Business activity code no. <input type="text"/> 4825 Business activity <input checked="" type="checkbox"/> Cellular Sales & Service Product or service <input checked="" type="checkbox"/> Services & Equipment
3	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income (or loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year. <input checked="" type="checkbox"/>
4	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation \$ <input type="text"/>
5	At the end of the tax year, did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) If "Yes," attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.) Enter percentage owned \$ <input type="text"/>
6	During this tax year, did the corporation pay dividends (after stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) <input checked="" type="checkbox"/> If "Yes," file Form 9432, Corporate Report of Dividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 991, Affiliated Schedules, for each subsidiary.
7	At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote or (b) the total value of all classes of stock of the corporation? If "Yes," enter (a) Percentage owned \$ <input type="text"/> and (b) Owner's country \$ <input type="text"/>
8	The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter number of Forms 5472 attached \$ <input type="text"/>
9	Check this box if the corporation issued publicly offered debt instruments with original issue discount <input type="checkbox"/> If checked, the corporation may have to file Form 8881, Information Return for Publicly Offered Original Issue Discount Instruments.
10	Enter the amount of tax-exempt interest received or accrued during the tax year \$ <input type="text"/>
11	Enter the number of shareholders at the end of the tax year 5173 or fewer <input checked="" type="checkbox"/>
12	If the corporation has an NOL for the tax year and is electing to forgo the carryback period, check here <input type="checkbox"/> If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-27(d)(3)(ii) or (d) must be attached if the election will not be valid.
13	Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 12a) \$ <input type="text"/> 2,894,578
14	Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its first seven months of the next tax year less than \$250,000? <input checked="" type="checkbox"/> If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 4. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year \$ <input type="text"/>

Note: If the corporation, at any time during the tax year, had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule M (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule M for details.

Form 1120 (2009)

WSC0055

Notes: The corporation is not required to complete Schedules L, M-1, and M-2 if Question 13 on Schedule K is answered "Yes."

Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		142,855		42,874
2a	Trade notes and accounts receivable	555,383		597,392	
b	Less allowance for bad debts	17,443	547,928	25,699	577,202
3	Inventories		95,933		45,656
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	287,021		333,663	
b	Less accumulated depreciation	219,921	68,160	222,383	75,698
11a	Depreciable assets				
b	Less accumulated depreciation				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (attach schedule)		278,939		258
15	Total assets		1,252,891		742,881
Liabilities and Shareholders' Equity					
16	Accounts payable		4,221,888		2,551,277
17	Mortgages, notes, bonds payable in less than 1 year		12,365		
18	Other current liabilities (attach schedule)		75,515		48,235
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule)				
22	Capital stock: a Preferred stock				
	b Common stock		5,000		5,000
23	Additional paid-in capital				
24	Retained earnings—Appropriated (attach schedule)				
25	Retained earnings—Unappropriated		-3,557,358		-1,342,691
26	Adjustments to shareholders' equity (attach schedule)				
27	Less cost of treasury stock				
28	Total liabilities and shareholders' equity		1,252,891		742,881
Reconciliation of Income (Loss) per Books With Income per Return (see page 20 of instructions)					
1	Net income (loss) per books	1,714,677		7	Income recorded on books this year not included on this return (summarize):
2	Federal income tax per books				Tax-exempt interest
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (summarize)				
5	Expenses recorded on books this year and deducted on this return (summarize):			8	Deductions on this return not charged against book income this year (summarize):
a	Depreciation \$ 8,582			a	Depreciation \$
b	Charitable contributions \$			b	Charitable contributions \$
c	Travel and entertainment \$ 1,124				
d	Bad debt 2,537				
6	Add lines 1 through 5	12,283		9	Add lines 7 and 8
				10	Income line 28, page 11—line 6 less line 9
					1,736,940
Analysis of Unappropriated Retained Earnings per Books (line 25, Schedule L)					
1	Balance at beginning of year	-3,557,358		5	Distributions: a Cash
2	Net income (loss) per books	1,714,677			b Stock
3	Other increases (summarize)				c Property
				6	Other decreases (summarize)
				7	Add lines 5 and 6
4	Add lines 1, 2, and 3	-1,342,691		8	Balance at end of year (line 4 less line 7)
					-1,342,691

Notes: The corporation is not required to complete Schedules L, M-1, and M-2 if Question 1.1 on Schedule K is answered "Yes."

Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1	Cash		142,655		42,674
2a	Trade notes and accounts receivable	865,389		597,202	
b	Less allowance for bad debts	17,463	647,826	20,000	577,202
3	Inventories		86,888		46,656
4	U.S. government obligations				
5	Tax-exempt securities (see instructions)				
6	Other current assets (attach schedule)				
7	Loans to shareholders				
8	Mortgages and real estate loans				
9	Other investments (attach schedule)				
10a	Buildings and other depreciable assets	237,921		288,682	
b	Less accumulated depreciation	219,821	66,100	232,863	76,699
11a	Depreciable assets				
b	Less accumulated depletion				
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization				
14	Other assets (attach schedule)		279,939		259
15	Total assets		1,252,601		742,691
Liabilities and Shareholders' Equity					
16	Accounts payable		4,221,669		2,631,277
17	Mortgages, notes, bonds payable in less than 1 year		12,366		
18	Other current liabilities (attach schedule)		70,615		49,298
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				
21	Other liabilities (attach schedule)				
22	Capital stock: a Preferred stock				
b Common stock			5,000		5,000
23	Additional paid-in capital				
24	Retained earnings—Appropriated (attach schedule)				
25	Retained earnings—Unappropriated		-3,057,366		-1,342,691
26	Adjustments to shareholders' equity (attach schedule)				
27	Less cost of treasury stock				
28	Total liabilities and shareholders' equity		1,252,601		742,691

Reconciliation of Income (Loss) per Books With Income per Return (see page 20 of instructions)

1	Net income (loss) per books	1,714,677	7	Income recorded on books this year not included on this return (explain):	
2	Federal income tax per books			Tax-exempt interest	
3	Excess of capital losses over capital gains				
4	Income subject to tax not recorded on books this year (explain):				
5	Expenses recorded on books this year not deducted on this return (explain):		8	Deductions on this return not charged against book income this year (explain):	
a	Depreciation \$ 8,802		a	Depreciation \$	
b	Charitable contributions \$		b	Charitable contributions \$	
c	Travel and entertainment \$ 1,124				
d	Bad debts 2,637				
6	Add lines 1 through 5	12,263	9	Add lines 7 and 8	
			10	Income line 28, page 11—line 5 less line 9	1,726,940

Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1	Balance at beginning of year	-3,057,366	5	Distributions: a Cash	
2	Net income (loss) per books	1,714,677	b Stock		
3	Other increases (explain):		c Property		
4	Add lines 1, 2, and 3	-1,342,691	6	Other decreases (explain):	
			7	Add lines 4 and 6	
			8	Balance at end of year (line 4 less line 7)	-1,342,691

Form **4562**

Depreciation and Amortization (including information on Listed Property)

OMB No. 1545-0047

2002Department of the Treasury
Internal Revenue Service

▶ See separate instructions.

▶ Attach to your tax return.

Attachment
Sequence No. 87

Name shown on return

Business or activity in which this form relates

Identifying number

Westside Cellular

Election To Expense Certain Tangible Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See page 3 of the instructions for a higher limit for certain businesses.	1	\$24,000
2	Total cost of section 179 property placed in service (see page 2 of the instructions).	2	
3	Threshold cost of section 179 property before reduction in limitation.	3	\$200,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see page 2 of the instructions.	5	
6	(a) Description of property	(b) Cost (business use only)	(c) Listed cost
7	Listed property. Enter the amount from line 23	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2001 Form 4562.	10	
11	Business income limitation. Enter the smaller of business income (net loss than zero) or line 9 (see instructions)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2003. Add lines 9 and 10, less line 12 ▶	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Special Depreciation Allowances and Other Depreciation (Do not include listed property.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see page 3 of the instructions)	14	
15	Property subject to section 168(j)(1) election (see page 4 of the instructions)	15	
16	Other depreciation (including ACRS) (see page 4 of the instructions)	16	

MACRS Depreciation (Do not include listed property.) (See page 4 of the instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2002	17	2,553
18	If you are electing under section 168(j)(4) to group any assets placed in service during the tax year into one or more general asset accounts, check here: <input type="checkbox"/>		

Section B—Assets Placed in Service During 2002 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only—see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
18a 3-year property						
b 5-year property		1,875	5 yrs.	Half	MACRS	300
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs.	MM	S/L	

Section C—Assets Placed in Service During 2002 Tax Year Using the Alternative Depreciation System

19a Class life				S/L	
b 12-year		12 yrs.		S/L	
c 40-year		40 yrs.	MM	S/L	

Summary (see page 6 of the instructions)

21	Listed property. Enter amount from line 23.	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions.	22	3,453
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 163A costs	23	

For Paperwork Reduction Act Notice, see separate instructions.

Circ. 01-10500N

Form 4562 (2002)

WSC0058

Listed Property (include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note. For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete only 24a, 24b, column (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See page 8 of the instructions for limits for passenger automobiles.)

24a. Do you have evidence to support the business investment use claimed? ☐ Yes ☐ No 24b. If "Yes," is the evidence written? ☐ Yes ☐ No

24	25	26	27	28	29	30	31	32	33
Type of property (for vehicles first)	Date placed in service	Business investment use percentage	Cost or other basis	Basis for depreciation (business investment use only)	Recovery period	Method/Convention	Depreciation deduction	Section 179 cost	
25	Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see page 7 of the instructions)								
26	Property used more than 50% in a qualified business use (see page 7 of the instructions)								
		%							
		%							
		%							
27	Property used 50% or less in a qualified business use (see page 7 of the instructions)								
		%				S/L -			
		%				S/L -			
		%				S/L -			
28	Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1.						28		
29	Add amounts in column (h), line 28. Enter here and on line 7, page 1.							29	

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 50% owner," or related person. If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

30	31	32	33	34	35	36	37	38	39	40	41	42
Total business investment miles driven during the year (do not include commuting miles—see page 7 of the instructions)	Vehicle 1	Vehicle 2	Vehicle 3	Vehicle 4	Vehicle 5	Vehicle 6	Vehicle 7	Vehicle 8	Vehicle 9	Vehicle 10	Vehicle 11	Vehicle 12
31	Total commuting miles driven during the year											
32	Total other personal (noncommuting) miles driven											
33	Total miles driven during the year. Add lines 30 through 32.											
34	Was the vehicle available for personal use during off-duty hours?	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
35	Was the vehicle used primarily by a more than 50% owner or related person?											
36	Is another vehicle available for personal use?											

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 50% owners or related persons (see page 8 of the instructions).

37	38	39	40	41	42
Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?	Yes	No			
Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See page 8 of the instructions for vehicles used by corporate officers, directors, or 1% or more owners.					
Do you treat all use of vehicles by employees as personal use?					
Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?					
Do you meet the requirements concerning qualified automobile demonstration use? (See page 8 of the instructions.)					

Note. If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Amortization

42	43	44
Description of asset	Date amortization begins	Amortization period or percentage
42	Amortization of assets that begins during your 2002 tax year (see page 8 of the instructions)	
43	Amortization of assets that began before your 2002 tax year	43
44	Total. Add amounts in column (f). See page 8 of the instructions for where to report.	44

Westside Cellular
 DBA: Cellnet of Ohio
 Supplemental schedules for Form 1120
 For tax year ending 12/31/2002

Line 28

Third Party Billing Fees	51,273
Insurance	12,855
Sales Promotion	3,438
Training	2,468
Equipment & Truck Leases	32,380
Entertainment @ 50%	1,125
Travel	7,422
Utilities	31,612
Telephones	62,258
Postage	23,625
Dues & Subscriptions	405
Office Supplies	9,513
Miscellaneous	3,868
Credit & Collections	8,927
Bank Charges	34,860
Professional Fees	963,324
Total Deductions	1,247,758

Schedule A, line 8

Airtime, recurring & roaming charges	726,525
Dealer commissions	139,638
Activation Cost	265,936
Total other cost	1,132,099

Schedule L, line 14

	<u>December-01</u>	<u>December-02</u>
Prepaid activation cost	265,936	
Security deposits	13,744	
Investment-Mutual Fund	250	250
Total other assets	279,930	250

Schedule L, line 18

	<u>December-01</u>	<u>December-02</u>
Accrued Interest		
Accrued taxes other than income	48,194	25,009
Employee withholdings	24,421	23,286
Total other current liabilities	70,615	48,295

WSC0060

EXHIBIT D

FORM OF NON-CONFIDENTIALITY CERTIFICATE

See Document Attached Hereto.

WSC0061

NON-CONFIDENTIALITY CERTIFICATE

September 9, 2013

Reference is hereby made to acquisition by Mob Hill Holdings LLC, a corporation, of the capital stock of West Side Cellular, Inc., an Ohio corporation and the transactions relating thereto (collectively, the "Transactions").

Each of the undersigned hereby agrees, confirms, represents and certifies that (i) their disclosure of the structure or tax aspects of the Transactions has not been limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding, (ii) they do not know or have any reason to know that the details regarding the Transactions are protected from disclosure or use in any other manner, (iii) they have not requested from or imposed on any of the parties involved in the Transactions or any other third party any express or implied understanding or agreement of confidentiality whether or not such understanding or agreement is legally binding, (iv) have not taken and will not take any action that would (a) cause the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner, (v) have not failed to take and will not, in the future, fail to take any action if such failure would (a) cause the disclosure of the structure or tax aspects of the Transactions to be limited in any way by an express or implied understanding or agreement with or for the benefit of any third party, whether or not such understanding or agreement is legally binding or (b) cause the details regarding the Transactions to be protected from disclosure or use in any other manner, neither Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., "Rabobank Nederland", New York Branch, Utrecht-America Finance Co. or any of their affiliates has made or provided any statement, oral or written, to such party (or to such party's knowledge, any third party) as to the potential tax consequences of the Transactions.

Notwithstanding the foregoing, the agreements, confirmations, representations and certifications set forth above shall not apply to limitations on disclosure (i) created by statute or common law, including, without limitation, (A) attorney-client privilege (including work product), (B) confidentiality requirements applicable to banks in general or (C) federal or state securities laws or (ii) applying to the financial performance or condition of any of the undersigned or any of their assets.

STRUCTURE DOES NOT HAVE NON-CONFIDENTIALITY CERTIFICATE

WSC0062

NOB HILL HOLDINGS, INC.

By: _____
Title: _____

WEST SIDE CELLULAR, INC.

By: _____
Title: _____

COÖPERATIEVE CENTRALE
RAIFFEISEN-BOERENLEENBANK B.A.,
"RABOBANK NEDERLAND", NEW
YORK BRANCH

By: _____
Title: _____

By: _____
Title: _____

UTRECHT-AMERICA FINANCE CO.

By: _____
Title: _____

By: _____
Title: _____

STANDARD NOB HILL NON-CONFIDENTIALITY CERTIFICATE

WSC0063

FORTREND INTERNATIONAL LLC

By: _____
Title: _____

KLINK & ASSOCIATES, INC.

By: _____
Title: _____

HAHN LOESER & PARKS

By: _____
Title: _____

Michael Tricarichi

SEALING AND INDEXING OF THIS DOCUMENT IS REQUIRED.

WSC0064

EXHIBIT E
FORM OF LEGAL OPINION OF COUNSEL TO SELLER
See Document Attached Hereto

WSC0065

[HLP LETTERHEAD]

August __, 2003

Nob Hill Holdings, Inc.
50 Francisco Street
San Francisco, California 94133
Attn: John P. McNabola

Re: Sale of All of the Issued and Outstanding
Shares of West Side Cellular, Inc.

Ladies and Gentlemen:

We have acted as special counsel to West Side Cellular, Inc., an Ohio corporation ("West Side Cellular"), and Michael Incarichi, as the sole shareholder of West Side Cellular ("Seller"), in connection with the transactions that are the subject of that certain Stock Purchase Agreement dated as of August __, 2003 (the "Stock Purchase Agreement"), by and between Seller and Nob Hill Holdings, Inc., a Delaware corporation ("Nob Hill"). All capitalized terms used in this opinion without definition have the respective meanings given to them in the Stock Purchase Agreement. This opinion is rendered to you at the request of Seller.

In rendering the opinions contained herein, we have been furnished with and examined only the following documents, together with the certificates of officers and governmental authorities referred to below:

The Stock Purchase Agreement;

Articles of Incorporation of West Side Cellular;

The Code of Regulations of West Side Cellular;

Such other records, certificates, documents and instruments, as we have deemed necessary or appropriate to review in order to review the opinions expressed herein.

In rendering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

- A. All documents submitted to us as originals are complete and authentic, all copies of documents submitted to us conform in all respects to the originals thereof.

WSC0066

WSP 00000000

including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft form conform in all respects to the drafts reviewed by us; all originals or copies submitted to us have not been amended or modified since the date they were submitted to us by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and certificates as to factual matters dated prior to or on the date hereof upon which we have relied are and remain accurate, adequate and complete on and as of the date hereof, and each natural person signing a document is a competent adult person of sound mind not operating under any legal disability, duress or fraud

- B. All parties (except Seller) to the Stock Purchase Agreement (i) have duly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purchase Agreement and to perform their respective obligations thereunder, and such agreements are valid, binding and enforceable obligations of such parties. All parties (except Seller) to the Stock Purchase Agreement have complied with all legal requirements applicable to them in entering into and performing the Stock Purchase Agreement (and all applicable exhibits thereto) in order to carry out the transactions contemplated thereby.
- C. The conduct of the parties to the Stock Purchase Agreement has conformed to all requirements of good faith, fair dealing and conscionability. Each party to the Stock Purchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security interest transferred or created as part of, the Stock Purchase Agreement.
- D. The conduct of all parties pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statutes, laws, rules, regulations and ordinances, unless such notice requirements have been validly and legally waived.
- E. Nob Hill has full power, authority and legal right to enter into and perform all agreements to which it is a party, and the Stock Purchase Agreement has been duly authorized, executed and delivered by Nob Hill, and constitutes the legal, valid and binding obligation of Nob Hill.
- F. Except for the Stock Purchase Agreement and all exhibits and schedules attached thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) between Nob Hill and Seller or Seller and third parties, and there is no usage of trade or course of dealings among

WSC0067

2011-08-01

- WSC0068

Based upon and subject to the foregoing, as of the date and time one minute prior to actual consummation of the transaction contemplated by the Stock Purchase Agreement (the "Opinion Date"), we are of the opinion that:

- A. West Side Cellular is a corporation incorporated, validly existing, and in good standing under the laws of the State of Ohio.
- B. Seller has the requisite power and authority to execute and deliver the Stock Purchase Agreement and to perform all of his obligations under the Stock Purchase Agreement.
- C. The Stock Purchase Agreement has been duly authorized, executed and delivered on behalf of Seller.
- D. No notice to, action of, or filing with any governmental agency or regulatory body is required to authorize the execution and delivery of the Stock Purchase Agreement by Seller.
- E. The authorized capital stock of West Side Cellular consists of seven hundred and fifty (750) shares of voting common stock, no par value, of which one hundred (100) shares are outstanding as of the date of this opinion. To our knowledge and based on the Certificate, all such outstanding shares were validly issued and outstanding, fully paid and nonassessable, and there are no other securities of West Side Cellular of any class issued, reserved for issuance or otherwise outstanding. To our knowledge and based on the Certificate, there are no options, offers, warrants, conversion rights, subscriptions or agreements or rights of any kind to subscribe for or to purchase, or commitments to issue (either formal or informal, firm or contingent) shares of capital stock or other securities of West Side Cellular (whether debt, equity or a combination thereof) or obligating West Side Cellular to grant, extend or enter into any such agreement or commitment. To our knowledge and based on the Certificate, there are no commitments, agreements or other arrangements relating to the shares of common stock of West Side Cellular currently issued and outstanding and such shares are not subject to any pledges, security interests, liens, encumbrances, claims or equitable interests.

We have not been requested to opine, and we have not opined, as to any issues other than those expressly set forth herein, and no opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the laws of the State of Ohio without reference to conflict of laws principles, to present judicial interpretations thereof, and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise or

WSC0069

CFP, INC.

Nob Hill Holdings, Inc.

August 1, 2003

Page 5

supplement it upon a change occurring in applicable law by legislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this letter and are rendered exclusively for your benefit in connection with the consummation of the transactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state directly or indirectly any general proposition or for any other purpose. We hereby disclaim any obligation to notify any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opinions contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no counsel for the addressee has expressed in writing opinions which are contrary to the opinions set forth in this letter, in which event these opinions are not to be relied upon until we have had an opportunity to consider the matters further.

This opinion has been rendered to you at the request of West Side Cellular and Seller, and may be relied upon by you only. No other use or distribution of this opinion may be made, and no other person or party may rely on this opinion, without our express prior written consent in each instance.

Very truly yours,

WSC0070

WSC0070

SCHEDULE 3.2(b)

CAPITAL STOCK OF COMPANY

Authorized:	Seven Hundred and Fifty (750) Shares of Common Stock, no par value
Issued and Outstanding:	One Hundred (100) Shares of Common Stock, no par value
Owner:	Michael Tricacchi - One Hundred (100) Shares of Common Stock, no par value

WSC0071

SCHEDULE 3.2(g)

CLOSING ASSETS

(1) Cash in the amount of \$39,949,373; and

(2) Seller Loan in the principal amount of \$575,000 plus accrued interest of \$2,777.77

WSC0072

SCHEDULE 3.2(j)
MATERIAL CONTRACTS

1. Settlement Agreement with Verizon Wireless.
2. Settlement Agreement with Cingular Wireless.

WSC0073

SCHEDULE 3.2(a)

BANK ACCOUNTS AND POWERS OF ATTORNEY

Bank: Rabobank Nederland, New York Branch
245 Park Avenue
New York, New York 10167

Account Number: [REDACTED] 577

Signatories on Account: Michael Tricarichi

Bank: Chase NYC, DLJ Pershing Division
One Pershing Plaza
Jersey City, New Jersey 07399

Account Number: [REDACTED] 1908

Signatories on Account: Michael Tricarichi

Bank: Key Bank, N.A.
24600 Chagrin Blvd
Beachwood, Ohio 44122

Account Number: [REDACTED] 9753

Signatories on Account: Scott Ginsberg & Michael Tricarichi

WSC0074

SCHEDULE 3.2(p)

SUBSIDIARIES

None.

WSC0075

SCHEDULE 11.2

NOTICES

Seller:

Michael Tricarietti
341 Arbour Gardens
Las Vegas, Nevada 89148
Facsimile: (702) 597-2108

Copy to:

Hahn Loeser & Parks
3300 BP Tower
Cleveland, Ohio 44114-2031
Attn: Randy Hart, Esq.
Facsimile: (216) 274-2511

Buyer:

Nob Hill Holdings, Inc.
50 Francisco Street
San Francisco, CA 94133
Attn: John P. McNabola, President
Facsimile: (415) 399-9212

Copy to:

Klink & Associates, Inc.
1734 Granville Avenue, Suite 6
Los Angeles, California 90025
Attn: Charles G. Klink, Esq.
Facsimile: (310) 979-0922

WSC0076

EXHIBIT F

FORM OF LEGAL OPINION OF COUNSEL TO BUYER

See Document Attached Hereto.

WSC0077

Klink & Associates, Inc.
1734 Granville Avenue, Unit 6
Los Angeles, CA 90025

September 9, 2003

Michael Tricarichi, as the sole
shareholder of West Side Cellular, Inc.
341 Arthur Gardens
Las Vegas, Nevada 89148

Re: Nob Hill Holdings, Inc. - Purchase of All of the Issued and
Outstanding Shares of West Side Cellular, Inc.

Ladies and Gentlemen:

We have acted as special counsel to Nob Hill Holdings, Inc., a Delaware corporation ("Nob Hill"), in connection with the transactions which are the subject of that certain Stock Purchase Agreement, dated as of September 9, 2003 (the "Stock Purchase Agreement"), by and between Nob Hill and you, in your capacity as seller (in such capacity, "Seller") of the Shares (as such term is defined in the Stock Purchase Agreement). This opinion is rendered to you at your request.

In rendering the opinions contained herein, we have been furnished with and examined only the following documents, together with the certificates of officers and governmental authorities referred to on page 3:

1. The Stock Purchase Agreement;
2. Certificate of Incorporation of Nob Hill, as filed with the Secretary of State of the State of Delaware on November 15, 2001;
3. The Bylaws of Nob Hill certified by the Secretary of Nob Hill, Inc. as of September 9, 2003;
4. Written Consent of the Sole Director of Nob Hill dated as of August 22, 2003;
5. Any and all other documentation we deem necessary to review in order to review the opinions set forth herein.

The documents referred to in clauses 2, 3 and 4 are collectively referred to herein as the "Authorization Documents." In rendering the opinions contained herein, and with your consent, we have assumed, without independent investigation, that:

1. All documents submitted to us as originals are complete and authentic, all copies of documents submitted to us conform in all respects to the originals thereof, including all amendments or modifications thereto; all signatures to documents are genuine; the executed originals of all documents submitted to us in draft form conform in all respects to the drafts reviewed by us; all originals or copies submitted to us have not

WSC0078

September 9, 2003

Page 3

been amended or modified since the date they were submitted to us by written or oral agreement of the parties thereto, by the conduct of the parties thereto or otherwise; all representations and certificates as to factual matters dated prior to or on the date hereof upon which we have relied are and remain accurate, adequate and complete on and as of the date hereof, and each natural person signing a document is a competent adult person of sound mind not operating under any legal disability, duress or fraud.

2. All parties (except Nob Hill) to the Stock Purchase Agreement (i) have duly authorized the transactions contemplated thereby and (ii) have the power and authority (corporate or otherwise) to execute and deliver the Stock Purchase Agreement and to perform their respective obligations thereunder, and such agreements are valid, binding and enforceable obligations of such parties. All parties (except Nob Hill) to the Stock Purchase Agreement have complied with all legal requirements applicable to them in entering into and performing the Stock Purchase Agreement (and all applicable exhibits thereto) in order to carry out the transactions contemplated thereby.

3. The conduct of the parties to the Stock Purchase Agreement has conformed to any requirement of good faith, fair dealing and conscionability. Each party to the Stock Purchase Agreement has acted in good faith without notice of any defense against the enforcement of any rights created by, or adverse claim to any property or security interest transferred or created as part of, the Stock Purchase Agreement.

4. The conduct of all parties pursuant to the Stock Purchase Agreement has conformed with all notice requirements in statutes, laws, rules, regulations and ordinances, unless such notice requirements have been validly and legally waived.

5. Seller has full power, authority and legal right to enter into and perform all agreements to which it is a party, and the Stock Purchase Agreement has been duly authorized, executed and delivered by Seller, and constitutes the legal, valid and binding obligation of Seller.

6. Except for the Stock Purchase Agreement and all exhibits and schedules attached thereto, including, but not limited to, the executed originals of the forms of such exhibits, there are no agreements (written or oral) among Nob Hill and Seller or Seller and third parties, and there is no usage of trade or course of dealings among the parties, that would (i) expand, define, supplement, diminish, qualify or otherwise modify the respective rights and obligations of Nob Hill hereunder, or (ii) have any effect on any of the opinions set forth in this letter.

7. The representations and warranties of each party to the Stock Purchase Agreement (including Nob Hill) are true and complete.

8. All parties to the Stock Purchase Agreement and their respective related parties have sought and obtained independent advice regarding the federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto and have not requested tax advice from Klink & Associates, Inc., nor relied upon Klink & Associates, Inc., to analyze such transactions from a tax perspective or to advise any of them regarding such tax consequences.

Except where expressly stated otherwise, we have not undertaken any special or independent investigation to determine the existence or absence of any facts in connection with the transactions contemplated by the Stock Purchase Agreement.

WSC0079

September 9, 2003

Page 3

(including, without limitation, any examination of documents in our files or otherwise made available to us by Nob Hill in connection with matters unrelated to the Stock Purchase Agreement), and no inference as to our knowledge of the existence or absence of such facts should be drawn from our representation of Nob Hill in connection with the Stock Purchase Agreement or otherwise.

In rendering the opinions expressed below, we have relied, with your consent, as to factual matters solely upon the statements, representations and warranties of the various parties contained in the above-listed documents and upon a certificate executed by the President of Nob Hill. We did not independently verify such matters. We also have obtained and relied, with your consent, on certificates and other communications from governmental authorities as to matters concerning the due incorporation, valid existence and good standing of Nob Hill.

In addition, notwithstanding anything contained in this letter to the contrary, with your consent, we expressly disclaim any opinion as to:

1. The effect of any ordinances, statutes, administrative decisions, orders, rules and regulations of any municipality, county or other political subdivision of any state;

2. The truth, accuracy and completeness of any of the representations, warranties or statements as to factual matters given by Nob Hill or required of Nob Hill under the Stock Purchase Agreement or any other documents or instruments executed in connection therewith, and we have undertaken no independent investigation with respect to the same;

3. The enforceability of provisions to the effect that rights or remedies are not exclusive, that every right or remedy is cumulative and may be exercised in addition to or with any other right or remedy, that the election of a particular remedy or remedies does not preclude recourse to one or more other remedies and that the delay or failure to exercise rights or remedies will not operate as a waiver of such right or remedy;

4. The effect of any state or federal laws or foreign laws or regulations applicable to transactions because of the nature of the business by any party (other than Nob Hill) or because of the method by which business is conducted by any party (other than Nob Hill) to the Stock Purchase Agreement;

5. The enforceability of any provision for liquidated damages or restricting the right of any person to engage in any business or other activity; or

6. The federal, state, local or foreign tax consequences of the transactions provided for in the Stock Purchase Agreement and related documents or related thereto.

Based upon and subject to the foregoing, we are of the opinion that:

1. Nob Hill is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware;

2. Nob Hill has the corporate power and corporate authority to execute and deliver the Stock Purchase Agreement and to perform all of its obligations under the Stock Purchase Agreement.

WSC0080

September 9, 2003

Page 4

3. The Stock Purchase Agreement has been duly authorized, executed and delivered on behalf of Nob Hill.

4. The execution and delivery by Nob Hill of the Stock Purchase Agreement does not result in any violation of the Authorization Documents.

We have not been requested to opine, and we have not opined, as to any issues other than those expressly set forth herein, and no opinion may be implied or inferred beyond the matters expressly stated herein. This opinion is limited to matters governed by the Delaware General Corporation Law and the current laws of the State of California without reference to conflict of laws principles, to present judicial interpretations thereof and to facts as they presently exist, and we express no opinion with respect to any other laws or the law of any other jurisdiction. In rendering this opinion, we have no obligation to revise or supplement it upon a change occurring in applicable law by legislative action, judicial decision or otherwise.

Further, the opinions contained in this letter are given as of the date of this letter and are rendered exclusively for your benefit solely in connection with the consummation of the transactions contemplated by the Stock Purchase Agreement, and may not be relied upon to state directly or indirectly any general proposition or for any other purpose. We hereby disclaim any obligation to notify any person or entity after the date hereof if any change in fact or law should change our opinions with respect to any matter set forth in this letter.

The opinions contained in this letter are qualified to the extent, and are rendered and delivered on the express condition and assumption, that no counsel for the addressee has expressed in writing opinions which are contrary to the opinions set forth in this letter, in which event these opinions are not to be relied upon until we have had an opportunity to consider the matters further.

This opinion has been rendered to you at the request of Nob Hill, and may be relied upon by you only in connection with the transactions contemplated by the Stock Purchase Agreement. No other use or distribution of this opinion may be made, and no other person or party may rely on this opinion, without our express prior written consent in each instance.

Very truly yours,

KLINK & ASSOCIATES, INC.

WSC0081

TAB 2

Form ARF, August 1983
Presented by Sherrod Brown
Secretary of State

60346-1038

APPROVED
2-14-88
75.00

Articles Of Incorporation

(Under Chapter 179, 41 et seq.)
Profit Corporation

The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, for profit, under Sections 1701.01 et seq. of the Revised Code of Ohio, do hereby certify:

FIRST. The name of said corporation shall be West Side Cellular, Inc.

SECOND. The place in Ohio where its principal office is to be located is
Cleveland Cuyahoga County
(City, Village or Township)

THIRD. The purposes for which it is formed are:

- (a) To engage in the business of selling retail and/or wholesale television equipment, audio and visual equipment, radio equipment, training tapes, and security systems.
- (b) To engage in the business of the production, rental and sale of movies, video tapes and other forms of audio visual reproduction (e.g. laser discs, etc.)
- (c) To engage in any business, related to or unrelated to those described in Clauses (a) and (b) of this Article III, from time to time authorized or approved by the Board of Directors of this corporation, or carry on any other trade or business which can, in the opinion of the Board of Directors of the Corporation, be advantageously carried on in connection with or auxiliary to Clauses (a) and (b) of this Article III, and to do all such other things as are incidental or conducive to the attainment of the above objects or any of these.
- (d) To engage in any other lawful act or activity for which corporations may be formed under Section 1701.01 et seq.

WSC0082

Q0346-1039

to Section 1701.98 inclusive of the Ohio Revised Code.

- (e) To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, transfer or in any manner dispose of or deal in or with intangible or personal property of any and every kind and description.
- (f) To purchase, own, hold, mortgage, or otherwise encumber and to lease either as lessor or lessee, sell, exchange, transfer, convey or in any manner whatsoever to acquire or dispose of or deal in or with real property, or chattels, real, tangible or intangible.
- (g) To enter into, make, perform, and carry out contracts of any and every kind, for any lawful purpose, without limit as to amount, with any persons, firms, associations, corporations, or governmental bodies, agencies or subdivisions.

WSC0083

00346-1040

FOURTH. The number of shares which the corporation is authorized to have outstanding is
(Please state whether shares are common or preferred and their
par value, if any.)

750 shares of Common Voting Stock all of which shall
be without par value.

FIFTH. The corporation, through its Board of Directors, shall
have the right and power to repurchase any of its
outstanding shares at such price and upon such terms
as may be agreed upon by the corporation and the
selling shareholder(s).

IN WITNESS WHEREOF, We have subscribed our names
this 10th day of March, 1968.

West Side Cellular, Inc.

(Name of Corporation)

By: Charles S. Tricarichi, Incorporator

By: Charles S. Tricarichi, Incorporator

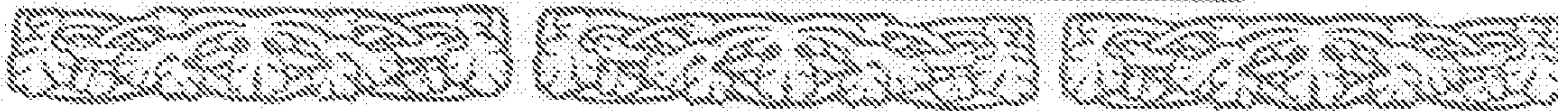
By: Incorporator

Print or type Incorporator's Names beneath their signatures.

Articles will be returned unless accompanied by form designating statutory agent.
Sec. 1791.97, Revised Code of Ohio.

WSC0084

60346-1037



Department of State

The State of Ohio

Sherrod Brown

Secretary of State

770736

Certificate

It is hereby certified that the Secretary of State of Ohio has caused to be recorded in the Records of Incorporation and Miscellaneous Filings, this and
month day the filing and recording of _____

WEST STAR CELLULOSE, INC.

United States of America
State of Ohio
Office of the Secretary of State

Recorded on Roll 6046 at Front 1037 of
the Record of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State, at the
City of Columbus, Ohio, this 14TH day of MARCH,
A.D. 1938.



Sherrod Brown
Sherrod Brown
Secretary of State

WSC0085

E9046-1037

Department of State

The State of Ohio

Sherrod Brown
Secretary of State

720734

Certificate

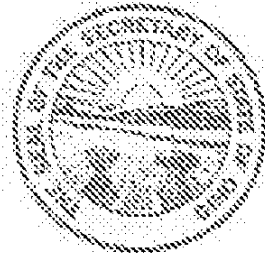
It is hereby certified that the Secretary of State of Ohio has custody of the records of Immigration and Naturalization Service; that said records show the filing and recording of _____

_____ of
 WITTENBERG, COLUMBIA, INC.

United States of America
 State of Ohio
 Office of the Secretary of State

Recorded on _____ at _____ of _____
 the Bureau of Immigration and Naturalization Service

Witness my hand and the seal of the Secretary of State, at the
 City of Columbus, Ohio, this _____ day of _____,
 A.D. 19____



Sherrod Brown
 Sherrod Brown
 Secretary of State

WSC0086

Page 2

Form A&P, August 1983
 Prescribed by Sherrod Brown,
 Secretary of State

00346-1038

APPROVED

 2/14/88

 78.00

Articles Of Incorporation

(Under Chapter 1701.01 et seq.)
 Profit Corporation

The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, for profit under Sections 1701.01 et seq. of the Revised Code of Ohio, do hereby certify:

FIRST. The name of said corporation shall be Wear Side Cellular, Inc.

SECOND. The place in Ohio where its principal office is to be located is
Cleveland Cuyahoga County.
 (City, Village or Township)

THIRD. The purposes for which it is formed are:

- (a) To engage in the business of selling retail and/or wholesale telecommunication equipment, audio and visual equipment, radio equipment, training tapes, and security systems.
- (b) To engage in the business of the production, rental and sale of movies, video tapes and other forms of audio visual reproduction (e.g. laser discs, etc.)
- (c) To engage in any business, related to or unrelated to those described in Clauses (a) and (b) of this Article III, from time to time authorized or approved by the Board of Directors of this corporation, or carry on any other trade or business which can, in the opinion of the Board of Directors of the Corporation, be advantageously carried on in connection with or auxiliary to Clauses (a) and (b) of this Article III, and to do all such other things as are incidental or conducive to the attainment of the above objects or any of them.
- (d) To engage in any other lawful act or activity for which corporations may be formed under Section 1701.01 et seq.

WSC0087

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G0346-1038

to Section 1701.93 inclusive of the Ohio Revised Code.

- (e) To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, transfer or in any manner dispose of or deal in or with intangible or personal property of any and every kind and description.
- (f) To purchase, own, hold, mortgage, or otherwise encumber and to lease either as lessor or lessee, sell, exchange, transfer, convey or in any manner whatsoever to acquire or dispose of or deal in or with real property, or chattels, real, tangible or intangible.
- (g) To enter into, make, perform, and carry out contracts of any and every kind, for any lawful purpose, without limit as to amount, with any persons, firms, associations, corporations, or governmental bodies, agencies or individuals.

WSC0088

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60346-1040

FOURTH. The number of shares which the corporation is authorized to have outstanding is
 (Please state whether shares are common or preferred and their
 par value, if any.) 750 shares of Common Voting Stock all of which shall
 be without par value.

FIFTH. The corporation, through its Board of Directors, shall
 have the right and power to repurchase any of its
 outstanding shares at such price and upon such terms
 as may be agreed upon by the corporation and the
 selling shareholder(s).

IN WITNESS WHEREOF, We have subscribed our names,
 this 10th day of March, 1988

West Side Cellular, Inc.

Name of Corporation

By: Charles S. Parrish, Incorporated

By: Charles S. Parrish, Incorporated

By: Incorporated

Print or type Incorporator's Names beneath their signatures.

Articles will be returned unless accompanied by form designating statutory agent.
 See 133.03, Revised Code of Ohio.

WSC0089

Page 5

Form 500 August, 1983
Prescribed by Sherrell Brown
Secretary of State

G0346-1041



Original Appointment of Statutory Agent

The undersigned, being at least a majority of the incorporation of West Side Cellular, Inc.
(Name of Corporation)

do hereby appoint Barbara Tricarichi to be statutory agent
(Name of Agent)

upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served.

The complete address of the agent is: 13901 Redwood Boulevard
(Street)

Shaker Heights Cleveland County, Ohio 44119
(City or Village) (Post Office)

Date: March 19, 1988

Charles S. Tricarichi
(Signature)

Celia M. Tricarichi
(Signature)

(Incorporator)

Instructions

- 1) Profit and non-profit articles of incorporation must be accompanied by an original appointment of agent. R.C. 1701.04(C), 1702.04(C).
- 2) The statutory agent for a corporation may be (a) a natural person who is a resident of Ohio, or (b) an Ohio corporation or a foreign profit corporation licensed to do business in Ohio which has a business address in this state and is explicitly authorized by its articles of incorporation to act as a statutory agent. R.C. 1701.07(A), 1702.06(A).
- 3) The agent's complete street address must be given; a post office box number is not acceptable. R.C. 1701.07(C), 1702.06(C).
- 4) An original appointment of agent form must be signed by at least a majority of the incorporation of the corporation. R.C. 1701.07(B), 1702.06(B).

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720734

UNITED STATES OF AMERICA,
STATE OF OHIO,
OFFICE OF THE SECRETARY OF STATE

I, Kenneth J. Blackwell, Secretary of State of the State of Ohio, do hereby certify that the foregoing is a true and correct copy of the original record now in my custody and control.

WITNESS my hand and official seal at
Columbus, Ohio, on July 17 day of
2003 A.D.

[Signature]
K. J. BLACKWELL
Secretary of State

NOTICE: This is an official certified copy of the original record and is not to be used for any other purpose.

WSC0091

TAB 3

CODE OF REGULATIONS

OF

WESTSIDE CHEMICAL, INC.

ARTICLE I.

MEETINGS OF SHAREHOLDERS

Section 1. Annual Meeting. The annual meeting of shareholders shall be held on the second Monday of January of each year commencing with the year 1989 (or, if that be a legal holiday, on the next succeeding business day) at ten o'clock a.m., or at such other date and/or hour as may from time to time be designated by the Board of Directors and specified in the Notice of Annual Meeting.

Section 2. Special Meetings. Special meetings of the shareholders for any purpose or purposes may be called by the Chairman of the Board or President or by order of the Board of Directors and it shall be the duty of the Secretary to call such a meeting upon a request in writing therefore stating the purpose or purposes thereof delivered to the Secretary signed by the holders of record of not less than twenty-five percent (25%) of the shares outstanding and entitled to vote.

Section 3. Place of Meetings. Meetings of the shareholders may be held at the Corporation's principal office or at such other place within or without the State of Ohio as the Board of Directors may from time to time determine.

Section 4. Notice of Meetings. Notice of the annual or of any special meeting of shareholders shall be in accordance with Ohio Revised Code Sections 1701.01 to 1701.05, inclusive, provided, however, that no failure or irregularity of notice of any annual meeting shall invalidate the same or any proceeding thereat. All notices with respect to any shares which are jointly held may be given to such joint shareholders as are named first upon such records and notice so given shall be sufficient notice to all the holders of such shares.

Section 5. Quorum. At all meetings of shareholders the holders of record of a majority of the issued and outstanding voting shares of the Corporation, present in person or by proxy, shall constitute a quorum for the transaction of business. In the absence of a quorum, the holders of a majority of the voting shares present in person or by proxy may adjourn the meeting by resolution to a date fixed therein, and no further notice thereof shall be required. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at the meeting as originally called.

WSC0092

Section 6. Proxies. Any shareholder entitled to vote at a meeting of shareholders may be represented and vote thereat by proxy appointed by an instrument in writing, subscribed by such shareholder, or by his duly authorized attorney, and submitted to the Secretary at or before such meeting. A telegram or cablegram appearing to have been transmitted by such person, or a photographic, photostatic, or equivalent reproduction of a writing, appointing a proxy is a sufficient writing.

Section 7. Action by Written Consent. Any action which may be authorized or taken at a meeting of the shareholders, may be taken or authorized without a meeting by writing or writings signed by all of the shareholders who would be entitled to notice of a meeting of the shareholders held for the purpose of such action, which writing or writings shall be filed with or entered upon the records of the Corporation.

ARTICLE II.

BOARD OF DIRECTORS

Section 1. Number. The number of Directors shall be not less than the lesser of the number of shareholders of the Corporation or three as may be fixed from time to time by resolution of the shareholders; provided, however, that no reduction in the number of directors shall have the effect of removing any director prior to the expiration of his term of office.

Section 2. Election and Term of Office. The Directors shall be elected at the annual shareholders meeting or at a special meeting called for that purpose. Directors shall be elected to serve until the next annual election of Directors and until their respective successors shall have been duly elected.

Section 3. Vacancies. A resignation from the Board of Directors shall be deemed to take effect upon its receipt by the Secretary, unless some other time is specified therein. In case of any vacancy in the Board of Directors, through death, resignation, disqualification or other cause deemed sufficient by the Board, the remaining Directors, though less than a majority of the whole board, by affirmative vote of a majority of those present at any duly convened meeting, may elect a successor to hold office for the unexpired portion of the term of the Director whose place shall be vacant; and until the election of a successor.

Section 4. Regular Meetings. The Board of Directors by resolution may establish regular periodic meetings and notice of such meetings need not be given.

Section 5. Special Meetings. Special Meetings of the Board of Directors shall be called by the Secretary or an Assistant Secretary whenever ordered by the Board of Directors or requested in writing by any two Directors, the Chairman of the Board, if any, or the President, if he is a Director. Notice of a Special Meeting shall be sent to each Director by mail at least five days before the meeting is

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