

No. _____

IN THE SUPREME COURT OF THE STATE OF NEVADA

PRICEWATERHOUSECOOPERS LLP,
Petitioner,

Electronically Filed
Jan 25 2021 10:34 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

THE EIGHTH JUDICIAL DISTRICT COURT, IN AND FOR THE COUNTY OF CLARK,
STATE OF NEVADA, AND THE HONORABLE ELIZABETH GONZALEZ,

Respondents,

and

MICHAEL A. TRICARICHI,

Real party in interest.

From the Eighth Judicial District Court, County of Clark, Dept. XI
Dist. Court Case No. A-16-735910-B

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

VOLUME VI

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DATED: January 22, 2021

SNELL & WILMER L.L.P.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On January 22, 2021, I caused to be served a true and correct copy of the foregoing **APPENDIX TO PETITION FOR WRIT OF MANDAMUS VOLUME VI** by the method indicated:

- ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

Honorable Elizabeth Gonzalez
Regional Justice Center
200 Lewis Ave.
Las Vegas, Nevada 89101

- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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/s/Maricris Williams

An Employee of Snell & Wilmer L.L.P.

(1) Lowndes Is Distinguishable

FACTOR	LOWNDES	TRICARICH
Corporation's Assets	Corporations' only asset was cash	West Side's assets consisted of cash and excise tax causes of action
Corporation's Liabilities	Corporation had no liabilities	West Side had a potential excise tax penalty liability
Corporation's Business Activity at Time of Sale	Corporation carried on no business activity and had been a lifeless shell for a number of years	West Side had recently ceased its business of reselling cellular telecommunications services but continued to pursue excise tax causes of action
Business Purpose After Sale?	Corporation invested in interest-bearing time deposit certificates	West Side continued to actively pursue excise tax causes of action
Post-Acquisition Liquidation?	Yes, after six months	No
Form of Transaction Respected?	No	YES

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(1) Step Transaction Doctrine Does Not Apply

•The Transferee Report, on page 13, argues that the step transaction doctrine applies because “[t]he tax effect desired by the parties (*i.e.* a purported stock sale followed by the avoidance of tax by West Side) could not be obtained unless all of the steps were completed...Through the guise of a stock sale, the cash in West Side was disbursed among the participants, leaving West Side with no business assets and no cash to pay its liabilities.” In effect, the Transferee Report is saying that West Side liquidated in connection with the stock sale.

•This argument fails, just like the “conduit” argument, because there was **no liquidation (in substance or form)** of West Side as part of the stock sale.

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(1) There Was No Liquidation of West Side

- The Transferee Report is premised on various assertions that in substance the stock sale was a liquidation.
- In fact, West Side never liquidated in form or substance, and West Side remains in existence to this day and actively pursues claims in litigation.
- The IRS has itself recognized in Revenue Ruling 74-462 and Treasury Regulations Section 1.6012-2(a)(2) that a corporation that “actively defend[s]” legal actions and “prosecuted actions brought by it” has not liquidated even though the corporation’s only assets are those the corporation retained in connection with the litigation.

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(2) Without a Transfer, There Is No Transferee Liability

- There was no liquidation of West Side hence no “transfer of property” to Tricarichi in a liquidation of West Side. Moreover, the purchase price was paid by the buyer (using the buyer’s own funds and funds the buyer itself borrowed), not from West Side.

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ADMIN_TRI00916

Conclusion

•The West Side stock sale was not a "Midco" transaction and the Transferee Report misapplies arguments developed for "Midco" transactions to this case.

•Neither the "conduit" theory nor the "step transaction" doctrine applies to the West Side stock sale because West Side **did not liquidate** as part of the stock sale (or, indeed, ever).

•Tricarichi was not the recipient of a "transfer of property" in a liquidation of West Side because there was no liquidation of West Side in form or in substance.

•Therefore, Tricarichi is not liable for West Side's taxes as a transferee of West Side.

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Exhibit 27

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October 8, 2009

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

MEMORANDUM TO: Michael Tricarichi
Randy J. Hart

FROM: Donald L. Korb
Richard M. Corn
James R. Gadwood

RE: West Side Cellular, Inc.

The following outline summarizes the arguments we believe the Internal Revenue Service (“IRS”) may rely upon to assert transferee liability against Michael Tricarichi (“Tricarichi”) for taxes allegedly due and owing from West Side Cellular, Inc. (“West Side”), the merits of those arguments and the likelihood of establishing transferee liability under those arguments. The outline also discusses our general recommendations as to how to proceed.

I. Introduction

A. Intermediary Transaction

1. The IRS asserts that West Side’s receipt of settlement proceeds and Tricarichi’s sale of the West Side stock to Nob Hill (the “Sale,” and together with West Side’s receipt of the settlement proceeds, the “Transaction”) is “substantially similar” to the intermediary transaction described in Notice 2001-16.

B. Three Potential Characterizations are Possible for the Sale

1. Respect the form of the Sale.
2. Recast the Sale as a liquidation of West Side while West Side was owned by Tricarichi (this argument is made in the Revenue Agent’s Report (the “RAR”).

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TRICAR-NV0135479
APP0967

3. Recast the Sale as a distribution from West Side to Tricarichi (this argument is not actually made in the RAR).

C. Transferee Liability Generally

1. Transferee liability can be imposed on a person by the IRS only if some non-tax law would allow a creditor to pursue the transferee generally (*i.e.*, the Internal Revenue Code does not create transferee liability but, rather, the IRS is treated the same as any other creditor in its pursuit of delinquent taxes).
2. There are some arguments that Tricarichi is not a transferee under relevant fraudulent conveyance provisions and common-law trust fund doctrines. If that can be established, then the IRS would lose.

II. Intermediary Transaction

A. IRS Argument

1. The RAR claims the Transaction is “substantially similar” to the intermediary transaction described in Notice 2001-16.
2. Notice 2001-16 designates intermediary transactions, and transactions that are “substantially similar” to intermediary transactions, as “listed transactions.”

B. Merits of Argument

1. Notice 2008-111 clarifies Notice 2001-16 and provides four objective components that are “indicative” of intermediary transactions:
 - a. Target owns built-in gain assets (would result in taxable gain upon sale)
 - b. At least 80% of the Target stock is disposed of by Seller
 - c. At least 65% of Target's built-in gain assets are sold to Buyer
 - d. At least half of Target’s built-in gain is offset or avoided
2. Notice 2008-111 says a transaction must have all 4 components to be the same as or substantially similar to the listed transaction described in Notice 2001-16 but the Transaction does not involve component (a) or (c).
3. Further, the “intermediary transactions” that Notice 2008-111 and Notice 2001-16 target are specific transactions whereby a buyer obtains a step-up in asset basis, while the target corporation does not end up paying the tax, due to an intermediary with certain tax attributes that interposes itself between the seller and the buyer. It does not address the (much more mundane and acceptable)

situation where a buyer might have favorable tax attributes or other features that make a straight purchase of target stock (such as the Sale) beneficial. Thus, the type of transaction involved in the Transaction is quite different from the type of transaction targeted by Notice 2008-111 and Notice 2001-16.

4. Therefore, it is unlikely that the Transaction constitutes an intermediary transaction or a transaction that is substantially similar thereto.

5. However, the IRS does not need to rely on this characterization to win. Indeed, this argument is a bit of a red herring and it is unclear why the revenue agent mentions it.

a. One possible explanation is that the IRS realized its liquidation recharacterization argument was weak and thus was trying to extend the statute of limitations for assessment against West Side and/or Tricarichi under Section 6501(c)(10) of the Code.

b. However, that does not appear necessary since West Side has entered an agreement to extend the statute of limitations and transferee liability for Tricarichi would last until one year after the expiration of such extension.

III. Characterization #1: Respect Form of Sale

A. If the form of the Sale is respected, the IRS will almost certainly lose any argument that attempts to impose transferee liability on Tricarichi.

B. A prerequisite of transferee liability is a transfer of property from the party against whom tax is being assessed (West Side) to a third party (Tricarichi).

C. If the form of the Sale is respected, the IRS cannot argue that West Side transferred any property to Tricarichi. He only received cash from Nob Hill, not West Side.

IV. Characterization #2: Liquidation

A. IRS Argument

1. In the RAR, the IRS argues that the Sale should be recast to be treated as a liquidation of West Side with liquidating distributions to Tricarichi which passed through Nob Hill as an agent.

2. The IRS is relying on the doctrines of “substance-over-form” and “step transaction” (a variant of the “substance-over-form” doctrine).

B. Merits of Argument

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1. In our opinion this recharacterization is unlikely to be accepted by a court.
2. The RAR does not address the treatment of (1) the receivables that remained in West Side or (2) the excise tax claims/disputes that remained in West Side.
 - a. In this regard, the Sale is different from *Owens v. Commissioner* (which the RAR cites in support of the liquidation recharacterization argument), and *Lowndes v. United States* (upon which the *Owens* court relied).
 - b. The *Owens* court focused on four circumstances in holding that a purported sale of corporate stock was actually a liquidating distribution:
 - (1) Corporation's only asset was cash.
 - (a) In contrast, West Side's assets consisted of receivables and excise tax claims and disputes.
 - (b) Risk: these non-cash assets were minor compared to the cash in West side.
 - (2) Corporation had no business activity at the time of stock sale.
 - (a) In contrast, West Side continued to actively manage its excise tax claims and disputes.
 - (b) Risk: the excise tax claims and disputes were managed, practically speaking, by Tricarichi and his legal team.
 - (3) Taxpayer was sole shareholder of corporation (same as Sale).
 - (4) Buyer financed stock purchase with an uncollateralized bank loan, withdrew corporation's cash on same day as stock sale and used corporation's cash to pay off loan (similar to Sale).
 - c. Similarly, the *Lowndes* court focused on the sold corporations' lack of any business activity (other than holding interest-bearing deposits) as a reason to recharacterize the purported stock sale.
3. Therefore, the IRS's proposed recast would have to create several new, fictional steps in order to fully account for the substance of the Sale. In particular, the IRS would have to argue that the following steps occurred:
 - a. West Side liquidated and Tricarichi received all of its assets.
 - b. Tricarichi sold West Side's receivables and excise tax claims, and assigned any excise tax liability, to Nob Hill.

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- c. Nob Hill formed a new corporation and contributed the purchased West Side assets and liabilities to this new corporation.
- 4. Courts have been hesitant to use the step transaction doctrine to create fictional events that never actually occurred.
 - a. Step-transaction doctrine “cannot generate events which never took place just so an additional tax liability might be asserted.”
 - b. But, courts may be more willing to do so if all of the parties necessary to achieve the ultimate result are privy to a mutual understanding.
- 5. The IRS will also have to explain how West Side could be deemed to have liquidated if it continued to pursue refund litigation and still exists today.

C. Transferee Liability

- 1. If the IRS wins on this recharacterization, however, then it would have a reasonably strong argument for imposing transferee liability on Tricarichi.
- 2. Courts are very likely to hold (and have held in the past) that shareholders who receive assets of a liquidating corporation are liable for the taxes of such corporation, with very few exceptions. Courts have even done this where the tax in question didn’t exist until after the corporation liquidated.
- 3. However, there is still the possibility that transferee liability can be defeated by showing that Tricarichi was not a “transferee” for purposes of fraudulent conveyance law, as noted below.

V. Characterization #3: Distribution

A. Potential Argument

- 1. The IRS may argue that the Sale should be recast as follows:
 - a. West Side distributed most of its cash (but not the remaining assets or the excise tax claim/liability) to Tricarichi through Nob Hill as an agent.
 - b. Nob Hill then purchased the West Side stock (now at a much lower value given the deemed distribution of cash to Tricarichi) from Tricarichi.
- 2. The IRS would rely on “substance-over-form” or “step transaction” doctrine.
- 3. NOTE: Although the IRS has not yet raised this argument, it is not barred from raising it at a later point in time.

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4. We should assume the IRS would raise this argument if we were to initiate litigation as it is a fairly obvious argument that the Revenue Agent missed.

B. Merits of Argument

1. This argument has a moderate likelihood of IRS success.
2. In order to succeed, the IRS must convince a court to recast the Sale.
3. Courts have generally been very receptive to IRS recharacterization of transactions that are similar to the Sale as distributions.
4. The facts of the Sale are not particularly different than other similar transactions that have been recast.
5. One fact that is somewhat better for the Sale than for other transactions addressed by the courts is that West Side continued some activity after the Sale.
6. But, this fact is probably not strong enough to defeat an IRS recharacterization.

C. Transferee Liability

1. It is unclear whether, but certainly possible that, the IRS would succeed in asserting transferee liability here.
2. For a transfer to be subject to the fraudulent conveyance statutes (or similar doctrines), generally the transferor must be insolvent at the time of the transfer or be rendered insolvent as a result of the transfer.
3. West Side was not insolvent at the time of the deemed liquidation.
4. West Side was rendered insolvent as a result of the deemed distribution only if its tax liability for 2003 must be included on the date of the Sale.
 - a. The case law has been very inconsistent on this question.
 - b. Some case law says tax liability accrues when the taxable period ends.
 - c. Other case law says tax liability accrues when the tax return is due.
 - d. Several cases, however, state that to test a corporation's solvency, any tax liability from that year is retroactively included as a liability, even if the tax liability was not fixed and was not known until a later year.
 - (1) In other words, the approximately \$16 million of tax liability that West Side was determined to have would have to be factored into its balance sheet in 2003 to determine whether it was insolvent at the time of the Sale.

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(2) If this was the case, then West Side would be insolvent (and Tricarichi would be the recipient of a constructive fraudulent conveyance) on the date of the Sale.

(3) This seems to be the most common approach for courts to take.

(4) This approach is irrational, however, because federal tax liability is unknowable until the end of the tax year at the earliest.

e. Although the trend in the case law is not helpful, the unfavorable cases can be distinguished from the Sale.

(1) In most cases, the corporation in question either (i) liquidated immediately or (ii) ceased most significant operations and liquidated a short time later. Therefore, the tax liability really was knowable at the time of the distribution.

(2) In other cases, the transferee was the owner of the corporation for the entire tax year in question and, therefore, had full control over the corporation, its assets and its tax liability.

(3) It also makes more sense to use an end-of-year accrual method. Other approaches would be inequitable to those who sell or lose control of a corporation in the middle of a tax year (such as Tricarichi) and would be inconsistent with the usual rule applicable in other contexts (*i.e.*, taxes accrue at the end of the tax year at the earliest).

5. Thus, there are good arguments that transferee liability should not apply under this recast. However, given outstanding case law, there are also substantial risks.

VI. Transferee Liability Generally

A. Requirements

1. Generally, to be liable as a transferee under state or federal law, a person must actually receive a transfer of property from a debtor.
2. A receipt of property can be indirect and can be found if a third party benefits from a transfer (*e.g.*, if a debtor pays off a third party's loan to a bank, this could be treated as a transfer from the debtor to the third party).

B. Possible Defenses

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1. Tricarichi might be able to argue he was not a transferee under the relevant fraudulent conveyance law.
 - a. Tricarichi did not receive property directly or indirectly from West Side.
 - b. All cash came from Nob Hill, whether through Nob Hill's own equity or through proceeds of a loan from Rabobank.
2. Courts have generally not ruled in favor of this argument but do not analyze the question in much depth and these cases could be distinguished on the grounds that they were not applying the relevant substantive law applicable to the Sale (*e.g.*, Ohio fraudulent conveyance law).
3. However, no court has specifically endorsed a defense such as this so there is a risk that a court would not accept it.

VII. Additional Considerations

A. Other Negative Facts

1. Circular cash flow generally attracts IRS scrutiny.
2. PricewaterhouseCoopers issued the tax opinion to West Side and was also responsible for putting together the intermediary transaction in *Enbridge Energy*.
3. A related party (Jim Tricarichi) brought Fortrend into the Sale.

B. Post-Sale Events

1. One possible defense is to argue that Tricarichi cannot control, and is not responsible for, the actions of Nob Hill and Fortrend after the Sale.
 - a. Fortrend's actions are independent and distinct from the Sale.
2. As such, Tricarichi should not be held liable for unpaid taxes as a result of the IRS denial of West Side's bad debt deductions.
3. This is more of an equitable argument that becomes weaker to the extent Tricarichi knew of or suspected that Fortrend would use what the IRS considered to be aggressive and improper tax-motivated transactions to limit tax liability.

VIII. Recommendations

A. Next Steps

1. Taking this case to IRS Appeals is highly recommended (and would be the immediate next step once a Protest to the RAR is filed).

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- a. IRS Appeals could possibly be convinced to accept a settlement, especially given the better facts here than in most of the prior cases addressing similar issues and transactions.
2. Including a more thorough discussion of the transferee liability issue in the Protest to the RAR is also recommended.
3. Consider preparing “stand alone” memoranda on the transferee liability issue and the potential distribution recharacterization argument which could be given to the Appeals officer if/when those issues develop during the Appeals process.
4. Consider introducing Don Korb at some point during the Appeals process to act as a “mediator” between Tricarichi and the IRS (*i.e.*, he could be asked to provide an independent view of the case).

B. Settlement

1. Seeking a settlement is recommended.
2. Litigation risks are significant.
 - a. Most cases have ruled against the taxpayer in analogous fact patterns.
 - b. These cases can generally be distinguished and involve worse facts, but few cases have expressly ruled in favor of the taxpayer in a similar situation.
 - c. Without express favorable authority, there is substantial concern that a court would rule against you.
3. If a settlement is pursued, it is important to consider potential sources of settlement proceeds and whether any tax will be incurred as a result of converting investment assets into cash.

C. Litigation Venue

1. If litigation is sought, we highly recommend that the case not be brought in the Tax Court because the Tax Court is most likely to rule against the taxpayer on issues similar to those involved in the Sale.
2. Tradeoff: to bring a case in a federal district court, the disputed amount would need to be paid to the IRS first, while bringing an action in the Tax Court does not require pre-payment of the disputed amount.

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D.L.K.
R.M.C.
J.R.G.

Exhibit 28

Internal Revenue Service

Department of the Treasury

Date: September 22, 2005

Randall G. Dick, Esq.
744 Montgomery St., 3rd Floor
San Francisco, CA 94111

Certified Mail
7002 2410 0004 3632 7300

Taxpayer Name:
Westside Cellular
Taxpayer Identification Number:
36-1685059
Form Number:
1120
Year(s):
December 31, 2003
Person to Contact/ID Number:
N. James Putnam / 75-16490
Contact Telephone Number:
972.308.7716
Contact Fax Number:
972.308.1208

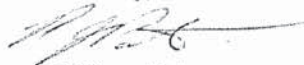
Dear Mr. Dick:

We are sending the enclosed material under the provisions of your power of attorney or other authorization we have on file. For your convenience, we have listed the name of the taxpayer to whom this material relates in the heading above.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter.

Thank you for your cooperation.

Sincerely,



N. James Putnam
Revenue Agent

Enclosures:

- ☐ Letter(s)
☐ Report(s)
☒ Other

Letter 937 (Rev. 11-2004)
Catalog Number 30760X

A-61

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EXHIBIT
PwC Dep Ex. No.

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TRICAR-NV0008109

APP0978

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 1
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 36-1683039		Subject General Information
		SAIN number 701
		Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests 8/24/05

Please return Part 2 with listed documents to requester identified below
Description of documents requested

Please provide the following items:

- 1) A copy of the financial statements, audited or otherwise, for 2002, 2003, and 2004.
- 2) Preliminary trial balance, year end adjusting journal entries and closing entries, and the final trial balance for the year ended 2003.
- 3) 2003 general ledger in electronic format.
- 3) Tax preparer's workpapers reconciling taxpayer's records to the tax return.
- 4) Any workpapers prepared by the taxpayer and provided to the tax preparer used to facilitate preparation of the 2003 tax return.
- 5) Schedule of account groupings from the trail balance to the tax return.
- 2) Chart of Accounts and Accounting Manual.
- 3) Corporate Minute Book including all committee reports for 2002 through 2004.
- 4) To assist with the timely completion of the examination, please provide copies of Forms 1120 for the 2002 and 2004 tax years.
- 5) Copies of the most recent Federal or state examination reports.
- 6) Copies of Forms 1099 filed for 2002, 2003, and 2004.
- 7) A listing of all corporate officers as of 12/31/2002, and 12/31/2003 including any ownership percentage held by each officer.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000119

TRICAR-NV0008110

APP0979

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service		Request number
	Information Document Request		2
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 36-1685059		Subject Listed transactions	
		SAN number	Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests 8/24/05	
Please return Part 2 with listed documents to requester identified below			
Description of documents requested			

Please see the following six pages.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05 <i>SLU</i>		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244		972-308-7716		

Catalog No. 23145K Form **4564** (Rev. 6-1988)

WSC_ADM-000120

TRICAR-NV0008111

APP0980

**Department of the Treasury - Internal Revenue Service
Form 4564 – Information Document Request (Attachment)
Mandatory Tax Shelter IDR**

To: Westside Cellular

Request Number: 2

Subject: Listed Transactions

Date of Request: September 22, 2005

Response Date: October 14, 2005

Description of Documents Requested:-

The Internal Revenue Service has identified certain transactions as "listed transactions" for purposes of §1.6011-4(b) (2) of the Income Tax Regulations. The IRS considers transactions that are the same as or substantially similar to listed transactions to be tax avoidance transactions. Provided below is a summary of the listed transactions as of the date of this IDR.

The purpose of this IDR is to determine whether Westside Cellular has directly or indirectly participated in transactions that are the same as or substantially similar to any listed transaction. Please list each transaction that is the same as or is substantially similar to a listed transaction in which Westside Cellular directly or indirectly participated, and that affects Westside Cellular's Federal income tax liability for any year under examination. The rules of §1.6011-4 of the Regulations apply to determine whether a taxpayer has directly or indirectly participated in a transaction, and whether a transaction is the same as or substantially similar to a listed transaction.

A taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under §1.6011-4(b)(2). A taxpayer also has participated in a listed transaction if the taxpayer knows or has reason to know that the taxpayer's tax benefits are derived directly or indirectly from tax consequences or a tax strategy, described in published guidance that lists a transaction under §1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. §1.6011-4(c) (3) (i) (A).

The term substantially similar includes any transaction that is expected to obtain the same or similar tax consequences and that is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. §1.6011-4(c) (4).

For each transaction identified, please provide the following items:

1. A description of the transaction, including all material facts.
2. A description of Westside Cellular's tax treatment of the transaction, including tax benefits claimed on the return. In describing the tax treatment, please include all tax rules or mechanics that affect, give rise to, or result in the claimed tax benefit.

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Mandatory Tax Shelter IDR

3. Information identifying the amounts involved and the General Ledger accounts affected by any part of the transaction. Please also trace all identified items and amounts as line items on the tax returns.
4. All contracts and other transactional documents, including agreements, instruments, and schedules. If such information is too voluminous, then, in the alternative, provide an index that lists and describes all such contracts and transactional documents.
5. Complete copies of all documents and other materials, including legal opinions and memoranda, provided by any party that promoted, solicited, or recommended Westside Cellular's participation in the transaction.
6. All internal documents used by Westside Cellular in its decision making process, including, if applicable, information presented to Westside Cellular's Board of Directors, Audit and Finance Committee, and any other committee.
7. Complete and un-redacted minutes of the Board of Directors, Audit and Finance Committees, and any other committee(s) that related, directly or indirectly, to the transaction.
8. All legal, accounting, financial, and economic opinions and memoranda secured by or on behalf of Westside Cellular in connection with the transaction.
9. A list of all participants and their roles in the transaction.
10. The names and addresses of all parties who promoted, solicited, or recommended Westside Cellular's participation in the transaction and to whom Westside Cellular paid fees or other compensation in connection with Westside Cellular's decision to participate in the transaction.
11. The name(s) and job titles of officers and other employees of Westside Cellular familiar with the transaction and who are available to meet with the audit team within two weeks of the date of this IDR.
12. For each document withheld because of a claim of privilege, please provide the following:
 - a. The name and title of the author;
 - b. The date of the document;
 - c. The names, titles, and addresses of all recipients of the documents;
 - d. The subject matter of the document;
 - e. The privilege claimed;
 - f. The portions of the document for which there is no claim of privilege; and
 - g. For any opinion or memoranda described in item 8 above, the conclusions reached in the opinion or memorandum.

Definitions and other instructions:

- a. Westside Cellular means all (1) entities that form a part of the consolidated group, and (2) entities over which Westside Cellular exercises legal or effective control.
- b. Provide full and complete documents. Also, provide non-identical copies of all items requested in this IDR. Please note and explain any deviation or difference between the original and the copy.
- c. This request applies to the year 2003.

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Mandatory Tax Shelter IDR

Summary of listed transactions (See Notice 2004-67):

- (1) Rev. Rul. 90-105, 1990-2 C.B. 69 (transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of the taxable year (identified as "listed transactions" on February 28, 2000)). See also Rev. Rul. 2002-46, 2002-29 I.R.B. 117 (result is the same, and transactions are substantially similar, even though the contributions are designated as satisfying a liability established before the end of the taxable year), modified by Rev. Rul. 2002-73, 2002-45 I.R.B. 805;
- (2) Notice 95-34, 1995-1 C.B. 309 (certain trust arrangements purported to qualify as multiple employer welfare benefit funds exempt from the limits of §§ 419 and 419A of the Internal Revenue Code (identified as "listed transactions" on February 28, 2000)). See also § 1.419A(f)(6)-1 of the Income Tax Regulations (10 or more employer plans);
- (3) Transactions substantially similar to those at issue in ASA Investorings Partnership v. Commissioner, 201 F.3d 505 (D.C. Cir. 2000), and ACM Partnership v. Commissioner, 157 F.3d 231 (3d Cir. 1998) (transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner (identified as "listed transactions" on February 28, 2000));
- (4) Treas. Reg. § 1.643(a)-8 (transactions involving distributions described in § 1.643(a)-8 from charitable remainder trusts (identified as "listed transactions" on February 28, 2000));
- (5) Notice 99-59, 1999-2 C.B. 761 (transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered (identified as "listed transactions" on February 28, 2000)). See also Treas. Reg. § 1.301-1(g);
- (6) Treas. Reg. § 1.7701(l)-3 (transactions involving fast-pay arrangements as defined in § 1.7701(l)-3(b) (identified as "listed transactions" on February 28, 2000));
- (7) Rev. Rul. 2000-12, 2000-1 C.B. 744 (certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions (identified as "listed transactions" on February 28, 2000));
- (8) Notice 2000-44, 2000-2 C.B. 255 (transactions generating losses resulting from artificially inflating the basis of partnership interests (identified as "listed transactions" on August 11, 2000)). See also § 1.752-6T of the temporary Income Tax Regulations and §§ 1.752-1(a) and 1.752-7 of the proposed Income Tax Regulations;
- (9) Notice 2000-60, 2000-2 C.B. 568 (transactions involving the purchase of a parent corporation's stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent's employees, and the eventual liquidation or sale of the subsidiary (identified as "listed transactions" on November 16, 2000));
- (10) Notice 2000-61, 2000-2 C.B. 569 (transactions purporting to apply § 935 to Guamanian trusts (identified as "listed transactions" on November 21, 2000));

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(11) Notice 2001-16, 2001-1 C.B. 730 (transactions involving the use of an intermediary to sell the assets of a corporation (identified as "listed transactions" on January 18, 2001));

(12) Notice 2001-17, 2001-1 C.B. 730 (transactions involving a loss on the sale of stock acquired in a purported § 351 transfer of a high basis asset to a corporation and the corporation's assumption of a liability that the transferor has not yet taken into account for federal income tax purposes (identified as "listed transactions" on January 18, 2001));

(13) Notice 2001-45, 2001-2 C.B. 129 (certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer (identified as "listed transactions" on July 26, 2001));

(14) Notice 2002-21, 2002-1 C.B. 730 (transactions involving the use of a loan assumption agreement to inflate basis in assets acquired from another party to claim losses (identified as "listed transactions" on March 18, 2002));

(15) Notice 2002-35, 2002-1 C.B. 992 (transactions involving the use of a notional principal contract to claim current deductions for periodic payments made by a taxpayer while disregarding the accrual of a right to receive offsetting payments in the future (identified as "listed transactions" on May 6, 2002));

(16) Notice 2002-50, 2002-2 C.B. 98 (transactions involving the use of a straddle, a tiered partnership structure, a transitory partner, and the absence of a § 754 election to claim a permanent non-economic loss (identified as "listed transactions" on June 25, 2002)); Notice 2002-65, 2002-2 C.B. 690 (transactions involving the use of a straddle, an S corporation or a partnership, and one or more transitory shareholders or partners to claim a loss while deferring an offsetting gain are substantially similar to transactions described in Notice 2002-50); and Notice 2003-54, 2003-33 I.R.B. 363 (transactions involving the use of economically offsetting positions, one or more tax indifferent parties, and the common trust fund accounting rules of § 584 to allow a taxpayer to claim a non-economic loss are substantially similar to transactions described in Notice 2002-50 and Notice 2002-65);

(17) Rev. Rul. 2002-69, 2002-2 C.B. 760, modifying and superseding Rev. Rul. 99-14, 1999-1 C.B. 835 (transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor (that is, lease-in/lease-out or LILO transactions) (identified as "listed transactions" on February 28, 2000));

(18) Rev. Rul. 2003-6, 2003-3 I.R.B. 286 (certain arrangements involving the transfer of employee stock ownership plans (ESOPs) that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of § 409(p) (identified as "listed transactions" on December 17, 2002));

(19) Notice 2003-22, 2003-18 I.R.B. 851 (certain arrangements involving leasing companies that have been used to avoid or evade federal income and employment taxes (identified as "listed transactions" on April 4, 2003));

(20) Notice 2003-24, 2003-18 I.R.B. 853 (certain arrangements that purportedly qualify as collectively-bargained welfare benefit funds excepted from the account limits of §§ 419 and 419A (identified as "listed transactions" on April 11, 2003));

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- (21) Notice 2003-47, 2003-30 I.R.B. 132 (transactions involving compensatory stock options and related persons to avoid or evade federal income and employment taxes (identified as "listed transactions" on July 1, 2003));
- (22) Notice 2003-55, 2003-34 I.R.B. 395 (transactions in which one participant claims to realize rental or other income from property or service contracts and another participant claims the deductions related to that income (often referred to as "lease strips"), modifying and superseding Notice 95-53, 1995-2 C.B. 334 (identified as "listed transactions" on February 28, 2000));
- (23) Notice 2003-77, 2003-49 I.R.B. 1182 (certain transactions that use contested liability trusts improperly to accelerate deductions for contested liabilities under section 461(f) (identified as "listed transactions" on November 19, 2003)). See also §1.461-2 of the Income Tax Regulations. See Rev. Proc. 2004-31, 2004-22 I.R.B. 986, for procedures which taxpayers must use to change their methods of accounting for deducting under section 461(f) amounts transferred to trusts in transactions described in Notice 2003-77;
- (24) Notice 2003-81, 2003-51 I.R.B. 1223 (certain transactions in which a taxpayer claims a loss upon the assignment of a §1256 contract to a charity but fails to report the recognition of gain when the taxpayer's obligation under an offsetting non-section 1256 contract terminates (identified as "listed transactions" on December 4, 2003));
- (25) Notice 2004-8, 2004-4 I.R.B. 333 (certain transactions designed to avoid the limitations on contributions to Roth IRAs described in §408A (identified as "listed transactions" on December 31, 2003));
- (26) Rev. Rul. 2004-4, 2004-6 I.R.B. 414 (transactions that involve segregating the business profits of an ESOP-owned S corporation in a qualified subchapter S subsidiary, so that rank-and-file employees do not benefit from participation in the ESOP (identified as "listed transactions" on January 23, 2004));
- (27) Rev. Rul. 2004-20, 2004-10 I.R.B. 546 (transactions that are the same as, or substantially similar to, those described in Situation 2 of Rev. Rul. 2004-20, 2004-10 I.R.B. 546, modifying and superseding Rev. Rul. 55-748, 1955-2 C.B. 234 (certain arrangements in which an employer deducts contributions to a qualified pension plan for premiums on life insurance contracts that provide for death benefits in excess of the participant's death benefit, where under the terms of the plan, the balance of the death benefit proceeds revert to the plan as a return on investment) (identified as "listed transactions" on February 13, 2004)). See also Rev. Rul. 2004-21, 2004-10 I.R.B. 544, sections 1.79-1(d)(3), 1.83-3(e) and 1.402(a)-1(a)(1) and (2) of the proposed Income Tax Regulations, and Rev. Proc. 2004-16, 2004-10 I.R.B. 559;
- (28) Notice 2004-20, 2004-11 I.R.B. 608 (Foreign Tax Credit Intermediary) (transactions in which, pursuant to a prearranged plan, a domestic corporation purports to acquire stock in a foreign target corporation and to make an election under section 338 before selling all or substantially all of the target corporation's assets in a preplanned transaction that generates a taxable gain for foreign tax purposes (but not for U.S. tax purposes) (identified as "listed transactions" on February 17, 2004));
- (29) Notice 2004-30, 2004-17 I.R.B. (transactions in which S corporation shareholders attempt to transfer the incidence of taxation on S corporation income by purportedly donating S corporation nonvoting stock to an exempt organization while retaining the economic benefits associated with that stock (identified as "listed transactions" on April 1, 2004));

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(30) Notice 2004-31, 2004-17 I.R.B (Inter-company Financing Using Guaranteed Payments) (transactions in which corporations claim inappropriate deductions for payments made through a partnership (identified as "listed transactions" on April 1, 2004)); and

(31) Notice 2005-13; 2005-9 IRB 1 (transactions in which a taxpayer enters into a purported sale-leaseback arrangement with a tax-indifferent person in which substantially all of the tax-indifferent person's payment obligations are economically defeased and the taxpayer's risk of loss from a decline, and opportunity for profit from an increase, in the value of the leased property are limited (identified as "listed transactions" on February 11, 2005)).

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service		Request number
	Information Document Request		3 p.1
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt	
		SAIN number 515	Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests	

Please return Part 2 with listed documents to requester identified below

Description of documents requested

INSTRUCTIONS

Unless otherwise specified, the requests pertain to the taxable year ending December 31, 2003 and/or any portion thereof and cover events, transactions, and occurrences during the period beginning January 1, 2003 through the present time.

Unless otherwise specified, provide original, signed, and dated documents. If originals cannot be obtained, provide signed and dated copies, along with a statement showing the name, address, and current telephone number of the custodian of the original documents requested. If any of the responsive documents have been disposed of or destroyed, state when such document was disposed of or destroyed, state the reason the document was disposed of or destroyed, the identity of the person disposing of or destroying the documents, and identify all persons that may have possession of such documents. If you are unable to locate documents, state with specificity the efforts made to locate the documents and the reasons such documents are unavailable. If the requested documents do not exist, please state so. If the requested documents exist but are not available to you, state where such documents are located and provide the identity of the custodian.

Each document provided in response to this IDR should be an original document in the language in which the document was originally created and, if the language of creation was not English, an English translation.

If the documents are not in your possession, indicate the name, address, and telephone number of the person in whose possession the documents were in when you last saw them.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by		October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester		Employee ID number		Date	
	N. J. Putnam, Internal Revenue Agent		75-16490		9/22/05	
	Office location				Telephone number	
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244				972-308-7716	

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000127

TRICAR-NV0008118

APP0987

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.2
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt
		SAIN number 515
		Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests

Please return Part 2 with listed documents to requester identified below
Description of documents requested

If a privilege is being claimed with respect to any requested document or information, state with specificity the nature of the privilege and the extent of all allegedly privileged matters. If you object to producing only part of a document, provide a redacted copy and retain the original for review by a court. With respect to each allegedly privileged document, or portion of a document, provide the following:

1. General nature and description of the document withheld and the number of the request to which the production of the documents would otherwise be responsive;
2. Date appearing on the document, or if it has no date, the date or approximate date that the document was created;
3. Name and title of the document's author, and if different, the person who signed the document;
4. Name, title and address of the addressee of the document;
5. Names, titles and addresses of all recipients other than the addressee who received or were otherwise shown the document or a copy thereof at any time;
6. The identity of the person having or who may have present knowledge, possession, custody, or control of such document or a copy thereof;
7. Whether or not any draft, copy, or reproduction of such document contains any postscripts, notation, change, or addendum not appearing on the document itself, and if so, a description of each such draft, copy or reproduction;
8. The identity, control number, file number, title, or label used by the custodian of the document to identify it for retrieval or production.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000128

TRICAR-NV0008119

APP0988

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.3
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt
		SAIN number 515
		Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests

Please return Part 2 with listed documents to requester identified below

Description of documents requested

DEFINITIONS

The term "you" and "your" refers to Westside Cellular (EIN 34-1685059) and/or any entity owned and/or controlled, directly or indirectly, by Westside Cellular (EIN 34-1685059).

The term "distressed asset transaction" refers to all distressed asset or distressed debt transactions engaged in by or on behalf of you and/or any entity owned and/or controlled, directly or indirectly, by you during or prior to December 31, 2003. The terms "distressed asset" and "distressed debt" are interchangeable. These terms include, but are not limited to, devalued/distressed stocks or securities, non performing loans, accounts or notes receivable or a pool of accounts or notes receivable considered delinquent, slow, or partially or fully worthless.

The term "the Transaction" refers to the distressed asset transaction and/or any combination of steps, elements or portions thereof engaged in by or on behalf of you and/or any entity owned and/or controlled, directly or indirectly, by you during or prior to December 31, 2003.

The term "document" is any writing under Rule 1001(1) of the Federal Rules of Evidence, including, without limitation memoranda, agreements, papers, correspondence, notes, studies, graphs, diagrams, photographs, charts, projections, tabulations, analyses, questionnaires and responses, work papers, summaries, data sheets, reports, statistical or informational accumulations, data processing cards or worksheets, computer stored and generated documents, computer databases, computer disks and formats, machine readable electronic files or records maintained on a computer, telexes, telegrams, electronic mail (commonly referred to as "e-mail"), and similar or related documents and materials.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-303-7716			

Catalog No. 23145K Form **4564** (Rev. 6-1988)

WSC_ADM-000129

TRICAR-NV0008120

APP0989

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.4
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt
		SAIN number 515
		Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests

Please return Part 2 with listed documents to requester identified below
Description of documents requested

INFORMATION REQUESTED

Please provide the information requested in the following sections:

A. Tax Returns and Disclosure Statements

1. Complete copies of your Federal income tax returns and all amended returns for the tax years ended, December 31, 2002, December 31, 2003, and December 31, 2004.
2. All disclosure statements made, with a Form 8275, Form 8886, or by any other means, on your federal tax returns and the tax returns of entities controlled by you.
3. All documents relating to any disclosure made by you or on your behalf under Internal Revenue Service Announcement 2002-02 of all transactions, whether listed or unlisted.
4. If you have participated in any settlement initiatives or amnesty programs with any State taxing authority in regard to this transaction, please provide all information provided to the State authority.

B. Introduction to the Transaction

1. The names and addresses of all parties who promoted, solicited, endorsed, recommended and/or provided any advice concerning your participation in the Transaction.
2. To the extent not covered by the previous request, the names and addresses of all parties to whom you paid fees or other compensation at any time in connection with your decision to participate in the Transaction.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000130

TRICAR-NV0008121

APP0990

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.5
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt
		SAIN number 515
		Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests

Please return Part 2 with listed documents to requester identified below
Description of documents requested

3. All prospectuses, offering memoranda, brochures, briefing memoranda, diagrams, pitch books, presentations, financial projections, correspondence, videos, tapes, emails and all promotional and marketing documents relating to or describing the Transaction. This request is intended to cover all materials provided by the individuals identified in response to B.1 and B.2 (above) and anyone else.
4. All projections, flowcharts, financial analyses, models, and other documents pertaining to the Transaction, as a whole, and each separate component, transaction, or incremental step of the Transaction.
5. All documents upon which you relied in deciding whether to participate in the Transaction.
6. All minutes, notes, correspondence, emails, calendar entries, and other recordings relating to or reflecting meetings, conferences and telephone conversations in which the Transaction was described to you and during which the Transaction was otherwise discussed. This request is intended to cover all meetings, conferences, and conversations with the individuals identified in response to B.1 and B.2 (above) and anyone else.
7. All documents discussing or purporting to describe the anticipated tax benefits of the Transaction or the lack thereof.
8. All documents discussing or purporting to describe the anticipated non-tax profit or non-tax loss and anticipated economic consequences to all parties to the Transaction.
9. All analyses of your potential economic risks relating to your participation in the Transaction.
10. All documents that show the maximum potential costs or loss of funds that you could realize as a consequence of participating in the Transaction.
11. All accounting, financial, and economic opinions, reports, emails and memoranda presented to you or anyone on your behalf regarding the Transaction prior to your participation in the program.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000131

TRICAR-NV0008122

APP0991

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.6
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt
		SAIN number 515 Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests

Please return Part 2 with listed documents to requester identified below

Description of documents requested

C. The Distressed Asset Transaction

1. All documents, of whatever kind or description, evidencing the existence of each distressed asset, including but not limited to each non-performing loan or account receivable contributed to Westside Cellular by Millenium Recovery Fund or any other entity during the tax year ended December 31, 2003, including any note or other agreement to pay the amount in question, the relevant portion of the original books of entry recording the creation of the obligation in question, any credit application and agreement signed by the person(s) owing the receivable, any credit report(s) obtained for the purpose of determining the buyer's creditworthiness, and any document evidencing the creation of a security interest in any collateral to secure payment of the receivable.
2. All documents reflecting any entry made to any account with respect to each distressed asset, including but not limited to any contributed non-performing loan or accounts receivable; and without limiting the generality of the foregoing, the date and amount of any debits made at the time of and subsequent to the creation of the account and credits to the account from any source, including partial payment, credits for returns, and credits reflecting the charge-off of each distressed asset or account receivable.
3. All documents with respect to each distressed asset, including but not limited to any contributed non-performing loan or accounts receivable, sufficient to establish and describe the method of accounting employed by the original creditor in sufficient detail to establish whether the creditor maintained its books and accounted for sales and accounts receivable on a cash, accrual or hybrid method of accounting and whether the method employed by the creditor to account for income, accounts receivable, and bad debts differed in any material respect from the generally accepted accounting principles in use in the country where the contributor of the distressed asset had its principal place of business at the time of contribution.
4. All documents with respect to each distressed asset, including but not limited to any non-performing loan or contributed accounts receivable, sufficient to describe the procedures generally employed by the original creditor with respect to the extension of credit on the sales of merchandise or services, including documents to be executed by each buyer, and the procedures to follow to determine the creditworthiness of each potential buyer.
5. All documents with respect to each distressed asset, including but not limited to any contributed non-performing loan or accounts receivable, sufficient to describe the original creditor's efforts to assure timely payment of outstanding obligations, including the criteria to be taken into account to determine that an account is delinquent, slow, or partially or fully worthless.
6. All documents with respect to each distressed asset, including but not limited to any contributed non-performing loan or accounts receivable, generated by the original creditor in an attempt to enforce the collection of each contributed asset, or received by the original creditor from the customer or any other person acting on the customer's behalf in connection with that effort.

See pg 5

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000132

TRICAR-NV0008123

APP0992

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.7
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt SAIN number Submitted to: 515 Randall G. Dick, Esq. - POA Dates of previous requests

Please return Part 2 with listed documents to requester identified below
Description of documents requested

7. All documents beginning with the original creditor/owner of the distressed asset and continuing through Westside Cellular evidencing notification to the original debtor that the original debtor's account was transferred, assigned, or sold to Westside Cellular.
 8. All documents furnished to or by Westside Cellular in connection with any proposal that Millenium Recovery Fund contribute the distressed assets to Westside Cellular, in return for an interest in Westside Cellular, specifically including any documents purporting to value the distressed assets.
 9. All documents discussing or purporting to arrive at any valuation of each distressed asset upon contribution to Westside Cellular, including but not limited to valuation methods and formulas, computations, spreadsheets, assumptions, summaries and other documents related to the calculation of the valuation of the distressed asset.
 10. All documents evidencing or memorializing the assignment, cancellation, termination and/or exchange of any distressed asset with any party after initial contribution to Westside Cellular.
- D. The Overall Transaction
1. The name(s), address(es), and tax identifying numbers (TINs) of all participants in the Transaction, including, without limitation, the individuals and entities whose basis in assets was purportedly determined by reference to the Transaction. Indicate the respective role in the Transaction of each person identified.
 2. All minutes, notes, correspondence, e-mails, calendar entries, and other recordings relating to or reflecting meetings, conferences and telephone conversations relating to the implementation and execution of the Transaction. This request is intended to cover discussions of each separate component, transaction, or incremental step of the Transaction as well as the Transaction as a whole.
 3. All records, certificates of incorporation, articles of incorporation, by-laws, minutes, certificates of filing, and any other documents or records concerning the formation, creation, operation and/or dissolution of Westside Cellular, and all related entities and other entities with a transactional connection with the Transaction.
 4. All agreements and transactional documents, including all amendments thereto, relating to the Transaction as a whole and each separate component, transaction, or incremental step of the transaction, including without limitation:
 - a. Partnership Agreements;
 - b. Limited Liability Company (LLC) Operating Agreements;
 - c. LLC Member Agreements;
 - d. Management Agreements;

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000133

TRICAR-NV0008124

APP0993

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.8
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt
		SAIN number Submitted to: 515 Randall G. Dick, Esq. - POA
		Dates of previous requests

Please return Part 2 with listed documents to requester identified below

Description of documents requested

- e. Option Agreements;
- f. Trust Agreements;
- g. Articles of Incorporation or Organization;
- h. Asset Allocation Agreements;
- i. Profit and Loss Agreements;
- j. Fee Agreements;
- k. Trading Advisory Agreements;
- l. Loan Agreements;
- m. Deposit Agreements;
- n. Collateral Agreements;
- o. Master Foreign Exchange Agreements;
- p. Master Swap Agreements;
- q. Assignment Agreements;
- r. Liability Sharing Agreements;
- s. Guarantees;
- t. Authorizations;
- u. Withdrawal, Termination, or Distribution instructions or requests; and
- v. Applications, Subscription Agreements, Agreements as to Capital Contribution, Investor Questionnaires and Supplemental Investor Questionnaires.

- 5. All documents relating to instructions provided to you or to someone on your behalf with respect to any action to be taken by you in connection with the Transaction.
- 6. All documents relating to instructions provided by you or by someone on your behalf with respect to any action to be taken by someone else in connection with the Transaction.
- 7. All cancelled checks, wire transfers and/or other documents substantiating any transactional costs, out of pocket investment costs, and/or other amounts paid by you in connection with the Transaction.
- 8. All financial statements and reports, including without limitation income statements, balance sheets, statements of net capital appreciation or depreciation and changes in each shareholder's capital account for Westside Cellular and statements of each shareholder's certified capital account balance.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000134

TRICAR-NV0008125

APP0994

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.9
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt SAIN number 515 Submitted to: Randall G. Dick, Esq. - POA Dates of previous requests

Please return Part 2 with listed documents to requester identified below
Description of documents requested

9. All documents relating to stock transactions, foreign currency contracts, other invested funds, partnership interests or any other property for the tax year(s) ended December 31, 2003 that were acquired or whose bases were purportedly determined in any way in connection with the Transaction.

10. All documents relating to all transfers of cash, assets or other property by any person directly or indirectly to Westside Cellular. These documents should include, without limitation, cancelled checks, electronic transfers, instructions, authorizations, confirmations, correspondence, and agreements.

11. All documents relating to distributions by Westside Cellular, to its shareholders or to entities controlled directly or indirectly by its shareholders. These documents should identify the date of each distribution, the property distributed, and the fair market value of the property on the date of distribution.

12. All documents relating to all assumptions of any liabilities, duties under contract, option contract liabilities, short sale obligations, or other obligations by Westside Cellular.

E. Tax Consequences and Treatment of the Transaction

1. All documents showing how you treated the Transaction for federal income tax purposes, including documents revealing all tax benefits claimed on tax returns in connection with the transaction. In describing the tax treatment, include all tax rules or mechanics that affect, give rise to, or result in the claimed tax benefits.

2. All accounting books and records for Westside Cellular, including, without limitation, all charts of accounts, general ledgers, journals, working trial balance, adjusting and closing journal entries, and workpapers used to reconcile books to the tax return.

3. All documents relating to the Transaction provided by you or by someone on your behalf for the preparation of your federal and state income tax returns for the year ended December 31, 2003.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 8-1988)

WSC_ADM-000135

TRICAR-NV0008126

APP0995

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.10
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt
		SAIN number 515
		Submitted to: Randall G. Dick, Esq. - POA
		Dates of previous requests

Please return Part 2 with listed documents to requester identified below
Description of documents requested

4. All documents relating to the Transaction provided by you or someone on your behalf for the preparation of the federal and state income tax returns of all entities with a transactional relationship to the Transaction for the year ended December 31, 2003.
5. All documents, correspondence, reports, e-mails, memoranda, and opinions discussing or otherwise providing notification and advice with respect to the Transaction.
6. All documents, correspondence, reports, e-mails, memoranda, and opinions discussing or otherwise providing notification and advice with respect to IRS Announcement 2002-2.
7. All documents, correspondence, complaints, memoranda, e-mail and notes issued by or to you, or for your benefit, concerning the disclosure of your name, identity, social security number and/or tax information to the Internal Revenue Service regarding your investment in the Transaction.
8. All documents, correspondence, memoranda, e-mail and notes issued by you or to you concerning IRS tax shelter promoter investigations.
9. The names and addresses of all parties to whom you paid fees or other compensation at any time in connection with your decision to participate in the Transaction.
10. All cancelled checks, wire transfers, invoices, and/or other documents reflecting any fees and/or other compensation paid by you to any parties in connection with the Transaction.
11. All notes, memoranda, correspondence and other documents prepared by or on behalf of you regarding the Transaction and any representations made by any party regarding this transaction.
12. To the extent not covered by prior requests, all transactional documents relating to the Transaction, including agreements, contracts, public filings, bank and brokerage firm statements, accounting records, correspondence, notes, memoranda, instruments, workpapers, and schedules.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000136

TRICAR-NV0008127

APP0996

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 3 p.11
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 34-1685059		Subject Distressed Debt SAIN number 515 Submitted to: Randall G. Dick, Esq. - POA Dates of previous requests

Please return Part 2 with listed documents to requester identified below
Description of documents requested

F. Legal and Tax Advice and Opinions

1. All documents relating or referring to written or oral legal advice or tax advice in connection with your participation in the Transaction, the legal and tax consequences of the transaction, and the tax return position to be taken with respect to items relating to the Transaction.
2. All written legal opinions and tax opinions, including all drafts thereof and amendments or supplements of addenda thereto, relating to your participation in the Transaction, the legal and tax consequences of the transaction, and the tax return position to be taken with respect to items relating to the Transaction.
3. All documents relating to advice that recommended that you should not participate in the Transaction or claim any tax benefits with respect thereto.
4. All engagement letters, representation letters, agreements, and correspondence relating to legal, professional, management, accounting or tax advice relating to the Transaction.
5. All documents relating to the determination of the amount of all fees for legal, professional, management, accounting and tax advice and assistance incurred by you and/or any entity controlled by you in connection with the Transaction.
6. All invoices, billing records, cancelled checks relating to fees for legal, professional, management, accounting and tax advice and assistance with respect to the Transaction. Provide any/all allocations if fees were split amongst parties.

G. Miscellaneous

1. All mortgage applications, loan or credit applications, credit reports, and financial statements that show or refer to your assets, including interests in entities, and liabilities or other obligations, including tax obligation, that in any way relate to the Transaction.
2. All documents reflecting or relating to any claims for damages or reimbursement of costs, whether filed or unfilled, made upon any party by you or on your behalf in connection with your participation in the Transaction. This request is intended to cover documents in all civil actions filed by you against promoters, legal advisors, tax advisors, or financial institutions.
3. To the extent not covered by other requests, all other documents evidencing or memorializing the Transaction, including, without limitation, all agreements, instruments, notes, diagrams, memoranda, correspondence, e-mails, confirmations, reports, opinions and descriptions.

NOTE: The Internal Revenue Service intends to make third party contacts and inquiries as necessary to obtain the information requested in this Information Document Request if Westside Cellular does not provide the requested information.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000137

TRICAR-NV0008128

APP0997

Form 4564 (Rev. June 1988)	Department of the Treasury — Internal Revenue Service Information Document Request	Request number 4
To: (Name of Taxpayer and Company Division or Branch) Westside Cellular EIN: 36-1685059		Subject: Various SAIN number: 526 Submitted to: Randall G. Dick, Esq. - POA Dates of previous requests: None

Please return Part 2 with listed documents to requester identified below
Description of documents requested

A. Commissions

1. Please provide a detailed list (to include the date, amount, name of payee, and nature of services rendered) that comprise the following deduction on the 2003 return for Westside Cellular:

Commissions \$5,618,401.

2. Please provide copies of invoices, cancelled checks, engagement letters, and other supporting documentation for the amounts listed in item #1.

B. Legal and Professional Fees

1. Please provide a detailed list (to include the date, amount, name of payee, and nature of services rendered) that comprise the following deduction on the 2003 return for Westside Cellular:

Legal and Professional \$2,633,387.

2. Please provide copies of invoices, cancelled checks, engagement letters, and other supporting documentation for the amounts listed in item #1.

C. Litigation Costs

1. Please provide a detailed list (to include the date, amount, name of payee, and nature of services rendered) that comprise the following deduction on the 2003 return for Westside Cellular:

Litigation Costs \$8,086,878.

2. Please provide copies of invoices, cancelled checks, engagement letters and other supporting documentation for the amounts listed in item #1.

Information due by	October 14, 2005	At next appointment	<input type="checkbox"/>	Mail in	<input checked="" type="checkbox"/>
From:	Name and title of requester	Employee ID number	Date		
	N. J. Putnam, Internal Revenue Agent	75-16490	9/22/05		
	Office location	Telephone number			
	4050 Alpha Road, MC: 4312 NWSAT, Farmers Branch, TX 75244	972-308-7716			

Catalog No. 23145K

Form **4564** (Rev. 6-1988)

WSC_ADM-000138

TRICAR-NV0008129

APP0998

Exhibit 29

1
2
3 **Certified Copy**
4
5
6
7
8
9
10
11

12 TAXPAYER INTERVIEW OF MICHAEL TRICARICHI

13 Taken on Friday, November 30, 2007

14 At 8:50 a.m.

15 At 110 City Parkway

16 Las Vegas, Nevada
17
18
19
20
21
22
23
24

25 Reported By: Lori M. Unruh, R.D.R., C.C.R. #389

WESTERN REPORTING SERVICES, INC.
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EXHIBIT
PwC Dep Ex. No.

223

A-16-735910-B

TRICAR-NV0073774
APP1000

1 APPEARANCES:

2 For the Internal DENISE McCASKILL
 Revenue Service: REVENUE AGENT
 3 INTERNAL REVENUE SERVICE
 5450 Stratum Drive, Suite 150
 4 MC 4302 NFW
 Ft. Worth, Texas 76137

5 For Mr. Tricarichi: RANDY J. HART
 6 ATTORNEY AT LAW
 HAHN LOESER & PARKS
 7 220 Public Square,
 3300 BP Tower
 8 Cleveland, Ohio 44114-2301

9 Also Present: CANDACE M. WILLIAMS
 SENIOR ATTORNEY
 10 INTERNAL REVENUE SERVICE
 4050 Alpha Road
 11 MC 2000 NWSAT
 Dallas, Texas 75244

13 I N D E X

14 MICHAEL TRICARICHI Page
 15 Examination by Ms. McCaskill 4

17 EXHIBITS ENTERED

18 No.	Description	Page
19 1	Invoice dated 10-31-03	29
20 2	Email dated 8-7-03	38
21 3	Email dated 8-13-03	38
22 4	Letter dated 2-24-03 from Mr. Steven Block to James M. Tricarichi	40
23 5	Fortrend International	44
24 6	Letter dated 2-28-03 from Louis B. Bernstein to Mr. Mike Tricarichi	46
25		

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TRICAR-NV0073775

APP1001

I N D E X

EXHIBITS ENTERED

No.	Description	Page
7	Letter dated 7-22-03 from Nob Hill Holdings, Inc. to Michael Tricarichi	48
8	Articles of Organization of LXV Group, Inc.	52
9	Release and Covenant Not to Sue	53
10	Trade Name/Assignment for Cellnet	53
11	Asset Purchase Agreement	53
12	Handwritten notes	63
13	Email dated 8-21-03	63
14	Email dated 9-2-03	67
15	Email dated 8-21-03	68
16	Income statement	70
17	Secretary's and Incumbency Certificate	75
18	Written Action of the Directors Without a Meeting	75
19	Resignations	75
20	Stock Purchase Agreement	78
21	Rabobank documents	90
22	Email dated 9-8-03	92
23	Description of transactions	93

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TRICAR-NV0073776

APP1002

1 MS. McCASKILL: Today is Friday, November 30th,
2 2007, and I am Denise McCaskill, Revenue Agent for the
3 IRS. Also present with me is Candace Williams, an IRS
4 counsel attorney.

5 We are here today for the testimony of
6 Michael Tricarichi given at the IRS office located at
7 110 City Parkway in Las Vegas, Nevada.

8 And Randy Hart is present at the request of
9 Mr. Tricarichi.

10 EXAMINATION

11 BY MS. McCASKILL:

12 Q Mr. Tricarichi; you are here in response to a
13 summons to provide information about the sale of your
14 stock in West Side Cellular to Nob Hill Holdings, Inc. and
15 the sale of the assets of West Side Cellular to LXV Group,
16 LLC.

17 And when referring to West Side Cellular, I may
18 just say West Side or LXV Group, LLC. I may just say
19 LXV Group.

20 Before we start on the questions, are you taking
21 any medication or do you have any medical condition that
22 may impair your ability to understand and respond to our
23 questions here today?

24 A No.

25 Q What did you do to prepare for this interview

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TRICAR-NV0073777

APP1003

1 today?

2 A Nothing.

3 (Discussion off the record.)

4 (The witness was sworn in by the reporter.)

5 Q (BY MS. McCASKILL) Do you have an agreement with
6 anyone about the testimony that you will be giving today?

7 A No.

8 Q Okay. And are you being paid for your appearance
9 here today?

10 A Not that I know of, unless you want to offer
11 something.

12 Q Can you tell me where you currently reside.

13 A I reside in Las Vegas, Nevada. My current
14 address is 341 Arbour Garden Avenue.

15 Q And how long have you resided there?

16 A About four years.

17 Q Okay. And where did you reside previously?

18 A In Cleve- -- well, Chesterland, Ohio, 12830 Kings
19 Way Drive.

20 Q And how long did you reside there?

21 MR. HART: At that particular location?

22 MS. McCASKILL: Yes.

23 THE WITNESS: About 15 years.

24 Q (BY MS. McCASKILL) About 15 years. Do you still
25 own a home in the Cleveland area?

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TRICAR-NV0073778

APP1004

1 A Yes.

2 Q And what is the address?

3 A That's the address.

4 Q That's the address. Okay. And how often do you

5 go back to the Cleveland area?

6 A More now than before. I'm doing a riverfront

7 development project in Cleveland, so probably every three

8 weeks maybe, three, four weeks.

9 Q Okay. What is your educational background?

10 A I have a bachelor's degree from Case Western

11 Reserve University in communications.

12 Q Do you have any graduate degrees?

13 A No.

14 Q Okay. Have you ever taken any classes or

15 seminars in tax law or tax planning?

16 A No.

17 Q And where have you worked since the time that you

18 graduated from college?

19 A I worked for a company called J & E Management,

20 they were an apartment management company, for about --

21 well, I worked there while I was going to college, and

22 then I worked there for about two years after I graduated.

23 And then I started up a company called Video

24 Centers, Incorporated. I had that company -- that company

25 became VCI Communications, which was -- which became an

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TRICAR-NV0073779

APP1005

1 agent of Cellular One in 1985.

2 And I sold that company to -- well, the assets of
3 that company, not the company, the company still exists,
4 to Cellular One in 1987.

5 I went to work for Cellular One as general
6 manager for retail in 1987. I worked for them till 1989.

7 And then I started up a -- another cellular
8 company in 1990 called West Side Cellular.

9 Actually West Side Cellular was actually
10 incorporated I think in '87, because it was originally --
11 when I was an agent for Cellular One, it was going to --
12 we were going to break our offices apart. We had several
13 offices, so the ones on the west side were going to be a
14 separate corp than the ones on the east side, but they
15 bought us out before we ever got to that point.

16 So West Side Cellular's actually a dormant corp,
17 was never used before 1991, and that's where we put the
18 Cellnet company. The Cellnet was a trade name for
19 West Side Cellular.

20 And I was operating Cellnet until 199- -- I'm
21 sorry -- 2003.

22 Q Now Cell One, was that company the same as
23 Cellnet or...

24 A No, no. Cellular One was a facilities-based
25 cellular carrier. Back in those days there were two

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TRICAR-NV0073780

APP1006

1 carriers in each market; now there's six. Cellular One
2 was the nonwire line carrier. And the other one was
3 GTE Mobilenet; they were the wire line carrier.

4 Q And you worked for both companies at the same
5 time?

6 A No. I only worked for Cellular One.

7 Q And is VCI still in existence?

8 A No.

9 Q Okay. So how did you get involved in the
10 cellular business?

11 A How did I get involved? I wanted a -- I heard
12 about this new concept called cellular phones in the
13 mid-'80s, and I wanted one. And VCI was doing telephone
14 system work at that time.

15 VCI evolved from a video production company to a
16 closed-circuit video installer to a telephone installer,
17 and so we were installing business phones.

18 And I wanted a cellular phone in like 1984, and a
19 friend of mine owned this company called Cleveland Mobile
20 Telephone, who ultimately was a partner in the
21 Cellular One company.

22 So I called him up and I said I wanted a cellular
23 phone, and he said oh, talk to this girl, I think her name
24 was Ava, at Cellular One.

25 So I called her up and I talked to her, and she

1 said what do you do? And I said I install telephone
2 systems. And she says well, maybe you want to be an agent
3 for us cause we're looking for agents to sell our
4 products. I said okay.

5 So I went to a meeting, and that's how I became
6 associated with them.

7 Q Okay. Now prior to the West Side stock sale
8 transaction which we are going to talk about in a little
9 while, you were the 100 percent shareholder of West Side;
10 is that correct?

11 A Correct.

12 Q Okay. And at the time that you owned West Side,
13 how many other businesses did you own and operate?

14 A Probably two or three.

15 Q And what were their names?

16 A Well, one of them was Great Lakes Pay Phone.
17 That was during the time I owned West Side. One of them
18 was the VCI Communications, or Video Centers, Inc.

19 And I don't think -- there might not have been
20 any other ones. It might have been just those two.

21 Q Okay. What businesses do you currently own and
22 operate?

23 A Oh, I own a whole lot of them.

24 Let's see. Well, the main one is -- is Telecom
25 Acquisition Corp, which is a Nevada corporation. It

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1 primarily owns and develops real estate.

2 I have a -- this is going to be difficult.

3 I another corporation -- actually an Ohio limited
4 partnership called Commercial Real Estate Financing. They
5 own an office building in Independence, Ohio. I got it at
6 a foreclosure. We originally financed an office building
7 for somebody, then we foreclosed on it, so that company
8 owns that building.

9 I have another company called Commercial Real
10 Estate Financing II, which owns a piece of property in
11 Ohio that we're developing into office condos.

12 Let's see. What else is out there?

13 I own a company called M & R Investment
14 Properties, which I'm partners with this guy on the left
15 over here, and we own some real estate. That company buys
16 and sells real estate.

17 Let's see. I have a couple of other corps,
18 1330 Old River Road, and that company -- well, doesn't do
19 anything yet.

20 There's another company called East Bank South
21 Development. That's the company that's developing the
22 riverfront property in Cleveland.

23 Let's see. Those are the main ones.

24 Q Do you still work in any of the cellular
25 businesses?

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TRICAR-NV0073783

APP1009

1 A No. I'm contractually prohibited from doing
2 that.

3 Q Okay. Are you currently an employee anywhere?

4 A You mean do I get a --

5 Q Do you work for another company?

6 A -- W-2?

7 No.

8 Q Okay. Do you currently work as an independent
9 contractor for someone or a consultant for someone?

10 A I did for a while.

11 I don't think I'm doing that anymore, am I?

12 MR. HART: Only testify what you know, Mike.

13 THE WITNESS: Okay. I was consulting in a
14 lawsuit that was brought by others, but I think that
15 lawsuit's over with, so I don't think I'm consulting in it
16 anymore.

17 MR. HART: If you want me to explain, he was an
18 expert witness.

19 MS. MCCASKILL: Okay.

20 Q You were paid for those services?

21 A Yes.

22 Q Okay. The transaction we are speaking to you
23 about today is on the 2003 tax return of West Side
24 Cellular, and the return reflects a transaction in
25 which West Side Cellular sold all of its operating assets

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APP1010

1 to LXV Group and ceased business operations.

2 Once this occurred, then the stock in West Side
3 was sold to Nob Hill Holdings. Shortly after acquiring
4 the stock of West Side, Nob Hill Holdings merged into
5 West Side, with West Side Cellular being the survivor.

6 Are you familiar with this transaction?

7 A You've listed a number of transactions. Which
8 transaction are we talking about? The --

9 Q Well, there's probably two transactions, the
10 first one being where West Side Cellular sold all of its
11 assets to the LXV Group.

12 A Right. Well, what happened wasn't that.

13 I mean what happened was we were in con- -- we
14 were contracting with Nob Hill Holdings, and there were
15 certain assets that they didn't want to buy. One of them
16 was the cellular customer base of Cellnet, or West Side.
17 So we needed to park that customer base someplace, so we
18 formed LXV Group to park the customer base there.

19 And originally Nob Hill was going to buy the
20 receivables of West Side, but at the last minute they
21 decided not to do that. So we put the receivables into
22 LXV Group as well.

23 Q Okay.

24 A Then the second part of your question I -- you
25 want to ask the -- the rest of it I don't...

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APP1011

1 Q Are you familiar with the sale of the stock in
2 West Side Cellular to Nob Hill Holdings?

3 A Yes, I'm familiar with that.

4 Q Okay. Who first suggested this transaction to
5 you, a sale of the assets that Nob Hill did not want to --

6 A LXV Group?

7 Q LXV Group.

8 A I think counsel did.

9 Q When you say counsel, you're referring to --

10 A Hahn Loeser & Parks.

11 Q Okay. Did you ever consider liquidating
12 West Side rather than selling the stock of West Side?

13 A Liquidate? I don't understand your question.

14 Q Just shut down the business. I mean what was
15 your intent, I guess, of selling the stock to West Side?
16 What were you trying to do when you wanted to get out of
17 the West Side business?

18 A Well, I didn't want to get out of the business.
19 The settlement with the -- in the lawsuit that we were
20 involved with required me to get out of the business.

21 So we looked at various different options, and
22 then we were -- one of the options was to sell the
23 company, West Side Cellular.

24 So we looked at a couple -- a couple of people
25 were interested in buying it, so we explored that. And

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1 that's how it came about.

2 Q So they were interested in buying the stock of --

3 A The stock of West Side.

4 Q -- of West Side?

5 THE WITNESS: Let me turn this off.

6 (Brief interruption.)

7 THE WITNESS: Okay. Go ahead.

8 Q (BY MS. McCASKILL) Okay. Describe again just

9 the part of the West Side transaction in which the assets

10 were sold and the business operations of West Side ceased.

11 You said that only the customer base was sold?

12 A The customer base and the accounts receivable.

13 It wasn't sold. There was no money received for the

14 customer base and the accounts receivable. They were

15 parked in a new entity. They were eventually sold to --

16 well, they were sold once, and then that company folded,

17 and they were sold a second time.

18 Q Okay. Who were they sold to the first time?

19 A Well, they weren't really -- let me go back a

20 second.

21 They weren't really sold. We had cellular

22 customers, okay? And the cellular customers -- we had an

23 ongoing business that we were prohibited from being

24 involved with.

25 So what we did was we -- we formed LXV Group.

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APP1013

1 LXV Group sold that customer base to a company in
2 Michigan, which was also called Cellnet, okay? That
3 company folded a few months after we sold it to them, and
4 we got the assets back.

5 And then we wound up selling it to a company out
6 of Florida called Discount Cellular.

7 And when I say sell, that's a dubious word
8 because we never really got any cash for it. We got an
9 ongoing revenue stream for a fixed period of time.

10 Q So the customer base was moved to the LXV Group.

11 A Correct.

12 Q And then the LXV Group sold the customer base to
13 Cellnet?

14 A In Michigan.

15 Q In Michigan.

16 A Correct.

17 Q And how much did they sell the customer base
18 to --

19 A It was -- it was not a sale. It was a on- --
20 they gave us an ongoing revenue stream from the customer
21 base.

22 Q Okay.

23 A Cause the customer base was producing monthly
24 revenues. So they gave us a percentage of that, and I
25 don't remember what it was.

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APP1014

1 Q Okay. Who received the revenue stream?

2 A LXV.

3 Q LXV?

4 A Yeah.

5 Q And were you involved in the LXV Group?

6 A I was a 25 percent partner in LXV Group.

7 Q Who were the remaining?

8 A Scott Ginsburg, Larry Dubin and Pat Scaravilli.

9 Q And did this LXV Group operate as a business?

10 Were they a --

11 A It was pretty much a holding company for the --

12 to get the revenue stream back. It didn't do anything

13 else.

14 Q Okay. So you personally -- were you personally

15 involved in the Cellnet in Michigan?

16 A No. I had nothing to do with Cellnet in

17 Michigan.

18 Q And then Cellnet in Michigan went bankrupt, and

19 so the customer base came back to LXV Group?

20 A Correct.

21 Q And what year was that?

22 A 2003.

23 Q So how long did Cellnet Michigan --

24 A A few months.

25 Q A few months?

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1 Okay. And then once the customer base came back
2 to LXV Group, then it was --

3 A LXV -- yeah. LXV --

4 MR. HART: Let her finish her questions.

5 THE WITNESS: I'm sorry. Go ahead.

6 Q (BY MS. McCASKILL) Then LXV Group sold the
7 customer base to Discount Cellular?

8 A Correct.

9 Q Okay. And that was for a revenue stream also?

10 A Correct.

11 Q Were you involved in Discount Cellular at all?

12 A No.

13 Q Now why did Nob Hill Holdings -- why were they
14 not interested in buying the customer base of West Side?

15 A I don't know.

16 Q Okay. So can you explain a little bit again why
17 West Side was required to terminate its business
18 activities as part of the lawsuit agreement?

19 A That was what the other side wanted us to do,
20 so -- I mean the lawsuit was a long and arduous thing. It
21 started in '93 and it ended in 2003. And it went through
22 every possible court, including the United States Supreme
23 Court.

24 So they didn't want us -- they didn't want me
25 particularly to ever darken their door again, so they

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1 offered us a large sum of money and said go away, boy, you
2 bother me. And that was what I did.

3 Q Okay.

4 A So we were prohibited from operating any type of
5 cellular enterprise or anything like that.

6 Q How was the buyer of the customer base group
7 found, the Cellnet and then the Discount Cellular, how
8 were they found?

9 A Well, we had -- we were -- even though there was
10 no affiliation between the two companies, they both used
11 the same operating name, Cellnet.

12 Cellnet in Michigan operated in Toledo and
13 Michigan. Cellnet -- my Cellnet operated in Cleveland,
14 Akron, Canton, Mansfield, Columbus, Dayton and Cincinnati,
15 Ohio.

16 So we would exchange customers periodically if
17 somebody was moving or, you know, stuff like that. So we
18 had sort of a -- an association between the two companies,
19 if you will. And it was a positive association.

20 So when it -- when it came time for us to get
21 out, it was a natural thing, because the customers -- it
22 would be totally transparent to the customers, cause the
23 company was the same, they would answer the phone the same
24 way, you know, so there was -- it was a no-brainer, until
25 they went out of business.

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APP1017

1 Q Is LXV Group still an active limited liability
2 corporation?

3 A I don't know the answer to that. I don't get any
4 revenue off of it, so -- you know, I don't know whether
5 they ever shut it down or not.

6 Q So you do not get any revenue from the revenue
7 stream -- you're a -- you were a 25 percent partner in
8 LXV Group?

9 A Right. There was a limited time that that
10 revenue stream was coming. I think it was two years.

11 Q Okay.

12 A So that was the -- the terms of the sale to
13 Discount Cellular was they would give us a percentage of
14 the revenue for a limited period of time. I think it was
15 about two years.

16 So after the two years was up, they stopped
17 sending the revenue, and LXV had no -- had no source of
18 revenue anymore.

19 Q So if it is in existence, it's just a dormant
20 corporation.

21 A Correct.

22 Q Okay.

23 A And I didn't control that company, so I don't --
24 like I said, I don't know what it did.

25 Q And who was the -- who controlled that company?

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APP1018

1 A Well, the four partners were, you know, sort of.
2 Q So it was equal partnership --
3 A Yeah, four equal partners.
4 Q -- with four equal partners.
5 A Correct.
6 Q Who was president of the corporation at the time?
7 A It wasn't a corporation. It was a limited
8 partnership.
9 Q Okay.
10 A And it didn't have -- I -- it didn't have a
11 president or anything like that. It was just a -- four
12 guys.
13 Q Okay. Who owned the building at 23632 Mercantile
14 Road in Cleveland, Ohio?
15 A Coven-Goldman & Associates.
16 Q Did West Side ever own that building?
17 A Never.
18 Q Are you related to the former owner of that
19 building?
20 A The current owner?
21 Q Or the current owner?
22 A No.
23 Q Former or -- what about the former owner?
24 A That's the only owner I've ever known of that
25 building, and I have no relationship with them other than

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1 I was a tenant of theirs for about 20 years.

2 Q So these real estate companies that you're in
3 right now, they don't -- they do not own the 23632 --

4 A No, they don't.

5 Q -- Mercantile Road.

6 Okay. You said earlier that the litigation with
7 West Side Cellular lasted for about 10 years, or it began
8 like in 1993.

9 Approximately when did you first realize that
10 West Side would be receiving a substantial payment from
11 the settlement of the litigation?

12 A In April of 2003.

13 Q Okay. What law firm represented you during the
14 litigation?

15 A Hahn Loeser Parks.

16 Q Okay. Are there any legal disputes in which
17 West Side or Cellnet are currently involved in?

18 A Well, I can only speak up to the time I sold it,
19 and there weren't any other than that.

20 MR. HART: Can I take a quick break with Mike?

21 MS. McCASKILL: Sure.

22 (Witness conferring with counsel.)

23 THE WITNESS: I'm sorry. I misspoke.

24 MR. HART: I didn't want him to be -- I wanted to
25 keep the record clean.

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TRICAR-NV0073794

APP1020

1 THE WITNESS: We do have a lawsuit against the
2 IRS. West Side Cellular has a lawsuit against the IRS
3 over excise tax.

4 Q (BY MS. McCASKILL) Okay. And can you elaborate
5 a little bit on that, what that involves exactly.

6 A We paid about \$3 million to the IRS right before
7 we closed the business for excise tax. And excise tax was
8 always a dispute for us because we didn't believe we had
9 to pay it. But because we wanted the transaction to be
10 clean with Nob Hill, we decided to pay it.

11 So we paid about \$3 million in excise tax. And
12 then right after we paid it, there were all these lawsuits
13 against the IRS over excise tax being illegally collected
14 by the IRS.

15 So on advice of different counsel -- we had
16 another counsel who was handling that for us, because
17 after we paid the tax to the IRS, the IRS came after us
18 for another million dollars over and above that, which --
19 nothing personal.

20 And so we had another -- we had a company -- or a
21 law firm in Washington called Swidler Berlin, which I
22 think they go by a different name now, but I can't tell
23 you what it is, and they basically convinced the IRS not
24 to charge us the penalty.

25 And then shortly after that, there were a bunch

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APP1021

1 of lawsuits in almost every federal district against the
2 IRS saying that the excise tax that was being levied on
3 cellular service was illegal, and every single one of
4 those districts ruled in favor of the taxpayer.

5 So we -- after seeing those cases go by, we
6 decided to try to get our \$3 million back. So we filed
7 suit against the IRS. Or actually we asked for a refund,
8 the IRS denied it, and then we filed suit.

9 So that suit is pending in federal court in
10 Cleveland, Northern District.

11 Q Okay. Now you were involved in a lawsuit earlier
12 this week here in Las Vegas?

13 A Yeah. That's Telecom Acquisition.

14 Q Okay.

15 A Telecom Acquisition had some property that it
16 bought in Panama City, Florida, and we -- the other side
17 was supposed to buy the property from Telecom Acquisition
18 within a certain period of time. They didn't. They
19 didn't pay us what they were supposed to pay us. They
20 didn't pay us anything. And we sued them probably about
21 two and a half years ago, I'm guessing.

22 And ironically, the -- one of the principals that
23 we were -- one of the defendant principals had a heart
24 attack or something last week, so the lawsuit didn't go
25 forward.

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TRICAR-NV0073796

APP1022

1 Q Okay. How was the decision made to sell the
2 stock of West Side?

3 A How was the decision made. Well, we
4 originally -- counsel approached us and said, you know, it
5 might be a good idea to sell the stock, and they
6 brought in another company who was interested. They
7 actually had a company who was interested in buying the
8 stock. I think the name of that company was Mid- --
9 MidCoast?

10 They came in, and they basically said we want to
11 buy your stock and here's an offer. So they made us an
12 offer, and then we looked at it.

13 And we said well, you know, maybe we can get
14 another offer that's better. So -- you know, I like to
15 negotiate with people, so...

16 So I think my brother Jim brought in another
17 person who had something to do with this company called
18 Fortrend, and we had a couple of meetings with them, and
19 they made us an offer. And I think their offer was a
20 little bit higher than the MidCoast offer, so that's the
21 one we went with.

22 MS. WILLIAMS: You said counsel -- counsel
23 brought in MidCoast?

24 THE WITNESS: Yeah. I guess counsel -- not
25 Randy, but another guy in Hahn Loeser by the name of

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APP1023

1 Jeff Folkman, he was working with MidCoast on a couple of
2 other deals, so he said he wanted to have a meeting --
3 wanted us to have a meeting with them, so we met with
4 MidCoast.

5 MS. WILLIAMS: So prior to this stock sale, were
6 you involved at all with Jeff Folkman, or did you become
7 involved with him because of this sale?

8 THE WITNESS: We pretty much became involved with
9 him. I mean we had a peripheral relationship with him,
10 but we -- you know, he was a partner in Hahn Loeser, so...

11 But he -- like I said, he represented MidCoast,
12 so -- in another transaction. I don't know if he
13 represented them or if he knew about them or if a
14 client he had dealt with them. I think that's what it
15 was. I think it was a client that he had that dealt with
16 them. But I don't really know. So -- but it was his
17 suggestion that we talk to MidCoast.

18 Q (BY MS. McCASKILL) When did you first hear about
19 Nob Hill Holdings?

20 A I think when we went to San Francisco was the
21 first time I heard about it, cause we closed the deal with
22 Fortrend, and the papers that were signed said Nob Hill
23 Holdings. So I didn't -- I didn't hear about Nob Hill
24 Holdings until right before we signed the deal. That was
25 the name that was on the paper.

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APP1024

1 Q Okay. So Fortrend was the party then that you
2 were selling the stock to in your mind.

3 A Yeah. The party we were dealing with was
4 Fortrend.

5 Q Okay. What was your understanding of Fortrend's
6 business activities, principal business activities?

7 A My understanding of them? They were buying
8 companies that had a lot of cash.

9 Q Did you have any contact with John Magnabola?

10 A I don't even know who that is.

11 Q Okay.

12 A The only person at Fortrend that I ever had
13 contact with was a guy named Klink.

14 Q Chuck Klink?

15 A Chuck Klink, yeah, that was him.

16 Q Okay. I'm kind of skipping some questions
17 because you've covered them.

18 Tell me then a little bit about what you know
19 about Fortrend. Tell me, you know, how you became
20 familiar with Fortrend and when the first time you became
21 familiar with Fortrend was.

22 A Well, I don't know anything about Fortrend other
23 than they were interested in buying the company.

24 Q Okay.

25 A Other than the fact that they came to us and they

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APP1025

1 made a proposal probably -- I'm guessing probably in late
2 April or early May of 2003. They made the proposal to us
3 after we had the MidCoast proposal. So they were -- you
4 know, they were kind of giving us a counterproposal to
5 MidCoast.

6 MS. WILLIAMS: And you said your brother
7 introduced you to --

8 THE WITNESS: My brother Jim had another guy that
9 he did business with. My brother Jim is an accountant, as
10 is my other brother. He had a guy that he knew that had
11 some association with Fortrend. So he was aware that we
12 were considering the MidCoast deal, okay? And so he said
13 I know this guy, and he -- I don't remember the name, who
14 the guy was, but it was some guy who was representing --
15 not representing. I think he was an attorney. He was
16 either an attorney or an accountant. But he had some
17 association with Fortrend. He didn't work for Fortrend,
18 but he knew of Fortrend.

19 So he brought Fortrend -- not my brother, but
20 this middle guy brought Fortrend in.

21 Does that make sense to you?

22 MS. WILLIAMS: Yes.

23 And when that happened, did he give you materials
24 or any kind of documentation regarding Fortrend?

25 THE WITNESS: Well, he wouldn't have done it. It

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APP1026

1 would have been Fortrend -- the guys from Fortrend that
2 did it. But I don't remember getting any kind of
3 documentation from them other than the proposal that they
4 gave us.

5 MS. WILLIAMS: So you didn't have any information
6 about -- they didn't give you any information about the
7 company.

8 THE WITNESS: I had no idea what the company did.

9 MS. WILLIAMS: Okay.

10 THE WITNESS: Other than they bought companies.

11 Q (BY MS. McCASKILL) When did West Side receive
12 the cash payment from the settlement?

13 A Sometime in April of 2003.

14 Q Did West Side make estimated tax payments upon
15 receiving the settlement from the lawsuit?

16 A I don't remember.

17 MS. WILLIAMS: You mentioned that you knew that
18 Fortrend bought companies.

19 Did anyone explain to you how this transaction
20 would benefit Fortrend?

21 THE WITNESS: No. I have -- again, I have no
22 idea. I mean I actually brought in Pricewaterhouse to
23 look at this deal, to see if it was, you know, a legit
24 deal. And they looked at it, and they said it was a -- it
25 was a legit deal, and so did Hahn Loeser.

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1 So not only did I have Hahn Loeser telling me
2 that it was a good -- it was a legitimate deal, but
3 Pricewaterhouse also did the same thing. Pricewaterhouse
4 was -- the guy from Pricewaterhouse was familiar with
5 whatever was going on over there.

6 Q (BY MS. McCASKILL) Did you or your attorneys
7 perform any due diligence on Fortrend?

8 A I don't recall doing that, no.

9 Q What about for MidCoast?

10 A Well, Jeff was familiar with MidCoast. But
11 again, he made the recommendation, so I assume since he
12 was familiar with them that they were straight up.

13 Q Okay. So you basically chose Fortrend versus
14 MidCoast because Fortrend gave you a better offer for the
15 purchase price of your stock.

16 A That's correct.

17 Q Okay. Were there any other companies that were
18 pursuing the purchase of your stock?

19 A No.

20 MS. McCASKILL: I think we're going to go ahead
21 and go to the exhibits, and this may clear up some of the
22 other questions I have.

23 Enter document Bates numbered HL 1856 through
24 HL 1858 into the record as Exhibit 1, and this is a
25 billing statement from Hahn Loeser & Parks, Attorneys at

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1 Law, dated October 31st of '03.
2 (Discussion off the record.)
3 THE WITNESS: Okay. You misspoke. I think you
4 said '03. These are all dated '02.
5 MR. HART: No.
6 THE WITNESS: Oh, I'm sorry. The beginning of
7 them are dated '02.
8 MR. HART: The invoice date's up here on the top.
9 THE WITNESS: I see it. Okay. I got it.
10 Q (BY MS. McCASKILL) Do you recall receiving this
11 billing statement?
12 A Well, I'm sure I did. I received a lot of
13 billing statements over the years from them.
14 Q Okay. And the invoice is addressed to you at
15 VCI Communications.
16 Is this the VCI that you were talking about
17 earlier that you own and operate?
18 A Yeah. Originally when we first contracted with
19 Hahn Loeser & Parks, we -- it was VCI that did it, so
20 that's -- probably in their matter number, that name
21 appears. But it wasn't -- this wasn't on behalf of VCI,
22 this billing. It was on behalf of West Side.
23 Q Okay. If you'll look at the entry by
24 September 12th of 2002, it says research issues relating
25 to the taxation of settlements and judgments.

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1 Were you concerned about the tax resulting from
2 the settlement proceeds?

3 A Well, on 9-12 of 2002 there were no settlement
4 proceeds, so we -- like I told you, this case went through
5 10 years of litigation. So I don't know exactly what was
6 happening during this period of time, but I -- I'm
7 guessing that the court was going our direction, the
8 particular court that we were in was going our direction.

9 So somebody suggested that we do some research
10 for settlement purposes to see what the tax implications
11 of whatever the settlement were going to be so that we
12 could make the settlement high enough that it would cover
13 the -- whatever the tax implications were. That's my
14 recollection.

15 Q Okay. As of September 2002 then you were -- were
16 you aware that West Side would likely be receiving a large
17 litigation settlement?

18 A No. I mean back during that period of time we
19 were in court, so we had a significant amount of damages.
20 We had a Nobel Prize winning economist compute our
21 damages, and we were looking at tripling them under the
22 statute that we were operating under.

23 So I don't know that this was for settlement. I
24 think primarily it was for the amount of money that we
25 expected to get in in a judgment. So that's kind of where

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1 we were at with them. We weren't even contemplating a
2 settlement until March or April of '03.

3 Q On entries dated September 23rd and
4 September 30th there's mention of a termination of a
5 partnership.

6 A I'm sorry, where are you at?

7 Q September 23rd and September 30th.

8 A Yeah. I don't know what that is.

9 Q Do you know what partnership's being referred to?

10 A I have no idea.

11 Q Okay. Were you involved in any partnerships
12 during this time period?

13 A I don't think so.

14 Q Okay. On page HL 1857 there's an entry dated
15 February 3rd, and it says meet with JM Folkman regarding
16 tax issues relating to Cellnet.

17 A Right.

18 Q Do you know what the tax issues relating to
19 Cellnet were?

20 A I suspect that it was -- we were looking at the
21 possibility of settling the case during that period of
22 time.

23 Q So what tax issues would have been of concern?

24 A Well, whatever money we got and what kind of tax
25 we had to pay on it.

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1 Q Okay. Look at the entry dated February 8th of
2 2003. It says research and analyze law relating to
3 reportable transactions, sham transactions and substance
4 over form.

5 Did anyone ever discuss reportable transactions
6 with you?

7 A No. I have no idea what that is.

8 Q Okay. What about sham transactions?

9 A I can -- I can imagine what it would be, but I
10 don't have any specific knowledge of that.

11 Q Do you know why research was done on reportable
12 transactions and sham transactions?

13 A I don't know. We told Jeff to basically give us
14 some insight into what we were likely to see if we had
15 settled for a large sum of money, and that's what he did.
16 He wasn't under any specific direction.

17 Q Okay. So in February of 2003 you still did not
18 know if you would be receiving a large settlement proceeds
19 or not --

20 A That's correct.

21 Q -- is that correct?

22 But he was researching sham transactions and
23 reportable transactions during that time period?

24 A On his -- on his own. I don't know why he was --
25 I don't know why that language was used. I don't know

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1 anything about it.

2 Q Okay.

3 A We just said do some research so that if we get a
4 settlement we know how much tax we have to pay.

5 Q Okay. Look at the entry dated February 10th of
6 2003, and this is actually on HL 1858.

7 MR. HART: 1858, you said?

8 MS. McCASKILL: Correct.

9 THE WITNESS: Next page.

10 Q (BY MS. McCASKILL) And it says review certain
11 listed transactions.

12 Do you know what a listed transaction is?

13 A I think I just answered that.

14 No. Oh, you said reportable transactions.

15 No, I don't know what a listed transaction is.

16 Q These are terms that are all defined in the code,
17 and they're talking reportable transactions, sham
18 transactions and then listed transactions.

19 A Okay. I have no clue.

20 Q Okay. So do you know what listed transactions
21 would have been reviewed?

22 A I have no idea.

23 Q Okay. Look at the entry dated February 11th,
24 2003. It says review and analyze Notice 2001-16 relating
25 to a transaction involving a shareholder who wants to sell

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1 stock of a target, an intermediary corporation, and a
2 buyer who wants to buy the assets of the corporation. And
3 then it goes on to say telephone call to V. Papallo,
4 technical advisor, regarding the same.

5 Did anyone ever discuss Notice 2001-16 with you?

6 A I have no idea what that is.

7 Q Did anyone ever discuss the phone conversation
8 with V. Papallo with you?

9 A I don't know who that is either.

10 Q Okay. Do you have any idea how Notice 2001-16
11 would have been applicable to the resolution of the
12 lawsuits?

13 A Since I don't know what Notice 2001-16 is, I can
14 say no, I don't.

15 Q Okay. Look at the third entry dated
16 February 19th, 2003. It refers to a meeting with Cellnet
17 personnel, MidCoast personnel, JM Folkman, regarding tax
18 structuring issues relating to the resolution of the
19 Cellnet lawsuits.

20 MR. HART: You're at -- that's the last one.

21 THE WITNESS: The last entry on the page.

22 Q (BY MS. McCASKILL) Yes.

23 A Yeah. Okay.

24 Q Do you recall this meeting?

25 A I recall that we had a meeting with MidCoast,

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1 yes. This was probably the meeting I was talking about
2 earlier.

3 Q And who from Cellnet would have been present?

4 A Well, I was there. Our controller probably --
5 Scott Ginsburg was probably there. And I don't know if
6 Larry Dubin was there or not. I know Scott and I were
7 there.

8 Q Okay. Do you recall who the representatives from
9 MidCoast were?

10 A I have no idea.

11 Q Was this the first time that you had ever met
12 MidCoast representatives?

13 A Yes.

14 Q Do you recall the name of a person from MidCoast
15 that you talked to ever regarding the sale of your stock?

16 A Other than Klink, no.

17 MR. HART: No. Klink -- MidCoast.

18 THE WITNESS: Oh, Klink wasn't MidCoast. Klink
19 was Fortrend.

20 No, I don't -- I don't remember anybody at
21 MidCoast. I have no idea.

22 MS. McCASKILL: Okay.

23 MR. HART: Sorry about that. I just didn't want
24 the record to be confusing.

25 THE WITNESS: There were two guys from MidCoast,

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TRICAR-NV0073809

APP1035

1 but I don't remember their names.

2 Q (BY MS. McCASKILL) Okay. Do you remember what
3 was discussed at that meeting?

4 A Just that if, you know, they would buy the
5 company, and we would sell it to them, and it would be
6 handled as a capital gains transaction.

7 Q So they wanted to buy the stock. What assets did
8 they want to purchase?

9 A Well, there were no assets at the time cause on
10 9- -- on 2-19 this was all -- what's the word I'm looking
11 for? Theoretical. Because there were no assets until
12 after April 1st of 2003. The settlement didn't occur
13 until April 1st of 2003.

14 Q So Cellnet had no assets prior to the settlement?

15 A It had assets, yeah. But it was in a negative
16 equity position I think at that point.

17 Q What were the business assets that Cellnet had?

18 A Well, the primary asset that Cellnet had was the
19 customer base at that time. And it also had, you know,
20 desks, tables, chairs. It owned a billing system,
21 computers, things like that.

22 Q Was MidCoast interested in acquiring the customer
23 base from Cellnet?

24 A I don't recall whether we had a discussion about
25 the customer base or not.

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1 MS. McCASKILL: Okay. Enter document Bates
2 numbered HL 286 into the record as Exhibit 2, which is an
3 email dated August 7th, 2003 from Debra Catalano of
4 PricewaterhouseCoopers to Jim Tricarichi and Jeffrey
5 Folkman.

6 MR. HART: Thank you.

7 MS. McCASKILL: And also the document Bates
8 numbered HL 328 as Exhibit 3, which is an email dated
9 August 13th from Jim Tricarichi to Mike Tricarichi.

10 Exhibit 2 relates to a conference call being
11 scheduled with PricewaterhouseCoopers personnel,
12 Rich Stovsky, Ray Turk and Tim Lohnes.

13 Q Did PricewaterhouseCoopers advise you regarding
14 the sale of your stock in West Side?

15 A Yes.

16 Q Okay. Did PricewaterhouseCoopers provide any
17 written advice regarding the sale of stock?

18 A I -- I'm sure there was, but I don't recall
19 receiving it. I think it was just they said it was okay
20 to do the deal. I don't know that -- I don't know whether
21 they gave us a written opinion or not.

22 Q Okay. Which of the three PWC personnel mentioned
23 in the email, Rick Stovsky, Ray Turk or Tim Lohnes, was
24 the most involved in providing advice to you regarding the
25 stock sale transaction?

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TRICAR-NV0073811

APP1037

1 A Rich Stovsky was the partner that we talked to.
2 I don't know who the other two guys are.

3 Q Okay. Exhibit 3 states that Rich Stovsky of PWC
4 has reviewed the stock purchase agreement and would like
5 to discuss tax issues.

6 Did you participate in the conference call
7 indicated in this email?

8 A To be honest with you, I don't remember if I did
9 or not.

10 Q Okay.

11 A Usually I did, but I don't remember this
12 particular one.

13 Q Do you recall what type of tax issues would have
14 been discussed?

15 A As I told you before, we wanted to make sure that
16 this was a straight-up deal, which is why we hired PWC to
17 look at it.

18 So I'm -- you know, I don't know specific tax
19 issues, I don't know the tax code, I'm not an accountant,
20 I don't know any of that kind of stuff. All I know is
21 when I want an answer to a question that I don't know, I
22 hire somebody that does. In this case I hired PWC.

23 Q So you hired PWC to look at specifically which
24 deal?

25 A The Fortrend deal.

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TRICAR-NV0073812

APP1038

1 Q Okay. The sale of stock to Fortrend?

2 A Yeah, the sale of stock -- based on this email,
3 we had a stock purchase agreement, which I don't think we
4 ever got to that point with MidCoast. So the only people
5 that we would have had a stock purchase agreement with
6 would have been Fortrend.

7 Q Okay. Besides Hahn Loeser & Parks and PWC, did
8 you have any other advisors for either the stock sale
9 transaction or the movement of the customer base?

10 A No.

11 MS. McCASKILL: Okay. Enter document Bates
12 numbered WSC-SB-13 through WSC-SB-14 into the record as
13 Exhibit 4.

14 MR. HART: Are you going to need these other
15 ones? Do I need to keep these out with that?

16 MS. McCASKILL: No. I'm completed with those.

17 MR. HART: Okay.

18 Q (BY MS. McCASKILL) This is a letter dated
19 February 24th, 2003 addressed to James Tricarichi.

20 A Okay.

21 Q Have you ever seen this letter?

22 A I don't think I did. I think Jim got this
23 letter. I don't remember it.

24 Q Okay. Is James Tricarichi your brother?

25 A Yes.

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TRICAR-NV0073813

APP1039

1 Q Okay. Did you see the two copies of Fortrend
2 company brochures that was referenced in this letter?

3 A I may have. I don't recall receiving -- or I
4 don't recall seeing them or receiving them. But I may
5 have -- he may have showed them to me. I don't know.

6 Q Did you ever have any contact with Steven Block?

7 A I don't recall that. It may have -- he may have
8 been the guy from Fortrend that was at the meeting. I
9 know Gary Zwick was the guy who brought Fortrend in. That
10 was the friend of Jim's. And Don Jesko is my accountant.
11 I don't know who Jeff Furman is.

12 Q Okay. Did you or your brother call any of the
13 professional references that were listed in this letter?

14 A I didn't. I don't know whether he did or not.

15 Q So Gary Zwick is the friend of your brother that
16 introduced him to Fortrend?

17 A I'm pretty sure, yeah.

18 Q Okay.

19 A I think he was the middle guy.

20 Q Okay. How did they know about Fortrend?

21 A I have no idea.

22 Q Had you ever heard of Fortrend prior to this
23 letter going out?

24 A No. I've never heard of Fortrend until they came
25 in to meet with us.

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TRICAR-NV0073814

APP1040

1 Q Okay. Look at the paragraph where it says stock
2 versus asset transactions.

3 Did you ever discuss doing a stock sale with the
4 LXV Group?

5 A No.

6 Q Okay. Was there ever an impasse with LXV or any
7 other entity over the stock versus asset sale issue as
8 described in this paragraph?

9 A I'm sorry, you used a term I'm not familiar with.
10 Did you say impasse?

11 Q Well, just a --

12 MS. WILLIAMS: Impasse.

13 THE WITNESS: Ask your question again.

14 Q (BY MS. McCASKILL) Was there ever an impasse
15 with LXV over the stock versus asset sale issue as
16 described in this paragraph?

17 A LXV came after Fortrend, so I --

18 Q Okay. Did you have -- did you ever discuss doing
19 a stock sale with Fortrend versus an asset sale?

20 A We discussed both, an asset sale -- well, it was
21 never -- it was never contemplated that Fortrend would buy
22 only assets. It was contemplated that Fortrend would buy
23 everything or Fortrend would buy the stock. I don't think
24 it was ever contemplated that Fortrend would buy only the
25 assets.

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1 I think what happened was certain assets they
2 wanted and certain assets they didn't. And whatever
3 assets they didn't want, we put them somewhere else.

4 Q This paragraph on the stock versus asset, it
5 talks about how shareholders would prefer to sell their
6 stock in the corporation rather than assets to avoid
7 double taxation. However, buyers usually prefer to
8 purchase assets rather than the stock. And as such, many
9 transactions come to an impasse and neither party is
10 willing to consummate the transaction.

11 So you don't recall any kind of --

12 A I see where you're going.

13 No, I don't recall that. There was never --

14 Q -- dispute between the parties, whether, you
15 know, one party wanted to buy stock versus assets? You
16 all were always on the same page? Both parties -- you
17 wanted to sell stock to Fortrend and Fortrend wanted to
18 purchase the stock.

19 A That's correct.

20 Q Okay. What benefits did you seek to derive from
21 selling your stock to Fortrend?

22 A Well, the major benefit would be that the -- if I
23 sold the stock, it would be treated as capital gain.

24 Q Capital gain to?

25 A Me.

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1 Q You. Okay.

2 Okay. Enter document Bates numbered WSC-SB-1
3 through WSC-SB-12 into the record as Exhibit 5. This is a
4 brochure on Fortrend International.

5 Have you ever seen this brochure?

6 A I don't recall ever seeing it. I may have. It's
7 not jumping out in my head. I don't recall.

8 Q What was your understanding of Fortrend's
9 business activities?

10 A I stated earlier they buy companies.

11 Q Okay. So your business -- then you desired for
12 Fortrend to buy your company; that was what your intention
13 was with Fortrend.

14 A Correct.

15 Q Okay. Did you ever enter into an agreement with
16 Fortrend pertaining to the services that they would
17 render?

18 A Before the stock purchase agreement?

19 Q Correct.

20 A I don't recall we did. We may have. I don't
21 recall.

22 Q Did you ever enter into any confidentiality
23 agreements with Fortrend?

24 A I don't think we did.

25 Q Okay.

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TRICAR-NV0073817

APP1043

1 A I don't think we entered into any confidentiality
2 agreements. I think that was a term that we had, that we
3 didn't want anything to be confidential.

4 MS. McCASKILL: Okay. Enter --

5 MS. WILLIAMS: I wanted to go back one second to
6 something you said a few questions ago when you talked
7 about you would receive capital gain from the sale of your
8 stock.

9 So that was your main concern, having a capital
10 gain versus an ordinary gain?

11 THE WITNESS: Yeah. That was the -- I mean that
12 was the reason why we were trying to -- you know, that was
13 one of the reasons why we were interested in selling the
14 stock.

15 MS. WILLIAMS: Was there ever a discussion about
16 avoiding corporate level tax?

17 THE WITNESS: There may have been. I don't know.
18 I mean like I said, if -- if we were able to sell the
19 stock of the company to someone, then I would be able to
20 realize the income as capital gain. That was the
21 discussion.

22 As far as any other ancillary discussions, I
23 don't remember.

24 MS. WILLIAMS: Okay. Thanks.

25 Q (BY MS. McCASKILL) Did you ever discuss

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1 liquidating the company and getting the proceeds out of
2 the company by liquidating the company?

3 A I don't think we ever discussed liquidating the
4 company, no. We discussed doing other things with the
5 company.

6 Q Okay. Would you receive capital gains if the
7 company was liquidated from the proceeds that came out of
8 the company?

9 A I have -- I don't know.

10 Q Okay. I believe that you would -- upon a
11 liquidation of a company action you would also receive
12 capital gain treatment.

13 A It's possible. I don't know. It was not -- it
14 was never presented to me as an option, keeping in mind
15 that I'm hiring people to give me options, and that option
16 was never presented to me.

17 Q Okay.

18 A So while it may be possible, it was never part of
19 my analysis.

20 MS. McCASKILL: Enter document Bates numbered
21 WSC/MDC-16 into the record as Exhibit 6.

22 THE WITNESS: Okay.

23 Q (BY MS. McCASKILL) Do you recall seeing this
24 letter?

25 A It's addressed to me. Again, specifically no,

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TRICAR-NV0073819

APP1045

1 but the content of it I remember.

2 Q Did you meet with Louis Bernstein on
3 February 18th, 2003 as referenced in this letter?

4 A I don't remember whether we did or not. The
5 problem -- we couldn't retain KPMG because my brother Tony
6 is a senior partner at KPMG, so there was no way for us to
7 retain KPMG. So I don't know whether this meeting ever
8 took place or not, cause it may have been a moot point.

9 Q I think we kind of discussed this before, but
10 from your perspective was MidCoast competing against or
11 working with Fortrend on this transaction?

12 A As far as I knew they were competitors.

13 Q Okay. And you decided to use Fortrend because
14 they offered a better price.

15 Did you have to tell MidCoast that you were not
16 going to sell the stock to them?

17 A I think Jeff communicated that to them at some
18 point.

19 Q Okay. Did MidCoast ever end up making an offer
20 to acquire the stock? Did they give you a purchase price
21 offer?

22 A I think they gave us an offer initially, and then
23 we went to Fortrend through the means that we just talked
24 about. I don't remember whether that Fortrend offer was
25 presented back to MidCoast for counteroffer. I don't

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APP1046

1 think it was, but I don't -- I can't tell you for sure.

2 MS. McCASKILL: Okay. Enter document Bates
3 numbered HL 280 through HL 285 into the record as
4 Exhibit 7. This is a letter of intent dated July 22nd,
5 2003 addressed to Michael Tricarichi.

6 THE WITNESS: Okay.

7 Q (BY MS. McCASKILL) Do you recall seeing this
8 letter?

9 A Well, this looks like it's a draft cause it's got
10 changes in it. I'm sure I saw it in some form.

11 Q Okay. All right. On the first page it says the
12 stock purchase price prior to adjustments would be
13 34,900,000.

14 How was this amount determined?

15 A They did it. It was their determination.

16 Q When you say "they" --

17 A Fortrend.

18 Q Fortrend? Okay.

19 A This was the amount that they presented to us as
20 what they were willing to pay for the stock.

21 Q Okay. Look at the sentence on page two where it
22 says the company's assets shall consist of cash held by
23 the company, after all liabilities, other than local,
24 state and federal income tax liabilities for the current
25 fiscal year, have been paid, or otherwise provided for, in

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TRICAR-NV0073821

APP1047

1 the sum of 40 million.

2 A I see that.

3 Q Did you pay off all of your liabilities?

4 A Yes.

5 Q Why did West Side not have to pay their tax
6 liabilities?

7 A You lost me.

8 Q It says that the company's assets shall consist
9 of cash held by the company after all liabilities except
10 for --

11 A Oh, I see what you're saying.

12 Okay. Well again, my understanding of this
13 transaction was that Fortrend was going to assume the tax
14 liability. That was the reason for doing it.

15 Q Okay. So it was your understanding then that
16 Fortrend would assume the tax liability of West Side
17 Cellular.

18 A For that year, for the year 2003 and future
19 years.

20 Q Okay. And why were they going to assume the tax
21 liability?

22 A That was their offer to us, three point
23 nine million and we'll assume the tax liability.

24 Q Did Fortrend ever do a -- perform a due diligence
25 on West Side?

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TRICAR-NV0073822

APP1048

1 A I don't know.

2 Q Item six under the conditions precedent, and
3 we're on page four now --

4 MR. HART: Four, you said?

5 MS. McCASKILL: Yes.

6 Q It states that as of the closing date, seller
7 shall draft and submit a pro forma federal tax return of
8 the company for the period from January 1st, 2003 through
9 the closing date.

10 Who prepared the pro forma tax return?

11 A I don't know that I ever -- that was ever done.

12 Q Okay.

13 A I don't recall seeing it. It would have been
14 Scott Ginsburg who would have done it. He was the
15 controller for the company. But I don't recall ever
16 seeing it.

17 Q Do you recall ever hearing about what the tax
18 liability would have been on that pro forma return or what
19 tax liability West Side would have owed at the point of
20 the stock purchase closing?

21 A Not that I remember, no.

22 I know that Scott wanted to give them as much
23 information as possible on what the company had done
24 through the -- through the closing date.

25 Q Do you think the amount of the tax liability

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1 affected what the stock purchase price was?

2 A I'm sure it did. I don't -- I don't -- I didn't
3 do that analysis, so I can't tell you. But I'm sure it
4 did.

5 Since -- since -- based on this letter, we're --
6 we have 40 million in assets and they're paying us about
7 \$5.1 million less, I'm guessing that part of that was to
8 deal with the tax liability.

9 Q On page -- on this same page, in the last
10 paragraph, it states that the seller has simultaneously
11 deposited herewith the sum of 50,000 with the purchaser's
12 attorney's escrow account.

13 Did the buyer also have to put a deposit up?

14 A I don't recall.

15 Q So why did the seller have to put a deposit up
16 for the purchaser to acquire its stock?

17 A I don't know that we ever did that. I don't
18 recall doing this, so I can't tell you.

19 Q Okay.

20 A That does seem a little weird.

21 Q On page HL 285, Tim Conn is listed as the manager
22 of Nob Hill Holdings.

23 A Okay.

24 Q Did you ever have any contact with Tim Conn?

25 A I may have, but that name doesn't ring a bell.

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TRICAR-NV0073824

APP1050

1 MS. McCASKILL: Enter document Bates numbered
2 HL 363 through HL 366 into the record as Exhibit 8. This
3 is articles of organization for the LXV Group dated
4 May 1st, 2003.

5 Q Okay. These are articles of organization for the
6 LXV Group. Is this the same LXV Group that acquired the
7 customer base of West Side?

8 A Yes.

9 Q And was this entity formed specifically for the
10 purpose of acquiring the customer base of West Side?

11 A At that time I believe so.

12 Q Okay. And why was it necessary to form another
13 entity to acquire the customer base as opposed to just
14 selling or transferring the customer base directly to the
15 third parties?

16 A Well, who would it have been transferred to?

17 Q It could have been transferred from West Side
18 directly to the ultimate receiver of the customer base.

19 I'm sorry, I don't recall the names. You gave
20 them to me earlier.

21 A Cellnet in Michigan and...

22 Q Yes, that's correct.

23 A Well, because one of the things that we wanted to
24 do was make sure that we got paid. So we didn't allow
25 the -- we didn't allow the title to transfer, if you will,

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1 until we were fully paid off.

2 So the title to the customer base didn't transfer
3 until the two years that they were supposed to make the
4 payments elapsed.

5 Does that make sense to you?

6 Q Yes.

7 A So we needed a company to hold the customer base.
8 Since it couldn't be held in West Side anymore, we needed
9 it to be parked somewhere so that we could collect the
10 payments and at some point -- and it was lucky that we
11 did, because if we had transferred the customers to
12 Cellnet in Michigan, the customers would have been in the
13 bankruptcy and we would have been SOL. So ultimately --

14 MR. HART: It's a legal term.

15 THE WITNESS: Yeah.

16 Ultimately it worked out doing it this way.

17 MS. McCASKILL: Okay. Enter document Bates
18 numbered HL 253 through HL 254 as Exhibit 9; HL 245
19 through HL 247 as Exhibit 10; and HL 27 through HL 31 plus
20 HL 3 as Exhibit 11.

21 MR. HART: Just these three, or are there more?

22 MS. McCASKILL: Yes, there's three. They should
23 be 9, 10 and 11.

24 MR. HART: Okay.

25 Q (BY MS. McCASKILL) Okay. Let's look at document

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1 HL 253, which is Exhibit 9. This is a release that was
2 signed by Lawrence Dubin.

3 A Got you.

4 Q Okay. And what was the reason for having
5 Lawrence Dubin sign the release?

6 A Well, there were a lot of these. I don't know if
7 you have more than just this one, but there were -- there
8 was one for every employee.

9 Q Okay. So every employee of Cellnet had to sign a
10 release?

11 A As far as I recall, yes.

12 Q Did you have to also sign a release?

13 A I signed one as well.

14 Q And what was the purpose of the release?

15 A Just to make sure that the company was clean,
16 that there weren't going to be any suits against the
17 company by any of the employees.

18 Q And then what did the employees have to agree to?

19 A To not sue the company.

20 Q Okay.

21 A They were compensated significantly for these, by
22 the way, so we -- we bonused out all the employees when we
23 closed the company down. All the employees got
24 significant severance packages, I guess you would call it.

25 Q And so the employees did -- this was a release

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APP1053

1 and covenant not to sue the company.

2 Was there concern of something that the -- I mean
3 what type of suit could the employees bring against the
4 company?

5 A Anything. I mean anything's possible. Sexual
6 harassment, workmen's comp. You know, anything's
7 possible. I mean use your imagination.

8 One of the things that we wanted to do was make
9 sure that, you know, there was no problems when we sold
10 the company, that there were no problems going backward,
11 cause we were -- "we" being West Side, me, was responsible
12 for anything that happened prior to the transfer of the
13 assets -- or the transfer of the stock. So since we were
14 giving large bonuses, large severance packages, to the
15 employees anyway, we felt that it was prudent for us to
16 get releases from them so that they wouldn't come back
17 against the company at some point in the future.

18 Q Okay. So then the amounts on the releases, how
19 were the amounts determined? For instance --

20 A Well, that's what the severance package was for a
21 particular employee. So Larry got 725 -- I don't know
22 what the change was over there, but -- you know, why it's
23 that particular number, but I know what he got, so...

24 Q So the releases were like severance payments.

25 A Correct.

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TRICAR-NV0073828

APP1054

1 Q Okay.

2 A Well, the payments were severance payments, and
3 in exchange for the payments we got releases.

4 Q Why was the payment not made until September 5th?

5 A I can't answer that question. I don't know.

6 Q Now let's look at document HL 245, which is
7 Exhibit 10, and this is a State of Ohio certificate
8 showing the trade name/assignment of Cellnet to LXV Group.

9 So did the LXV Group acquire the Cellnet trade
10 name?

11 A Yeah. Well, when West Side -- again, it was one
12 of those assets that West Side -- West Side Cellular
13 didn't want, so -- and we needed the name Cellnet to
14 transfer so that -- since Cellnet in Michigan was going to
15 be billing these customers, they needed to have rights to
16 the trade name cause that's the name that appears on the
17 customers' bills.

18 So basically LXV, as part of the acquisition of
19 the customer base, acquired the trade name as well, and
20 then they licensed it to Cellnet in Michigan for use in
21 Ohio is my recollection.

22 MR. HART: I don't want to interrupt your train.
23 When you get a chance, if you could take a break, just get
24 to a -- whatever point you want to break, that would be
25 great with me.

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TRICAR-NV0073829

APP1055

1 MS. McCASKILL: We can do that.

2 Q Now go to document HL 27, which is Exhibit 11,
3 and this is the asset purchase agreement between West Side
4 and LXV Group. The last page is marked HL 3.

5 Is that your signature that's on HL 3?

6 A That's correct.

7 Q And this page also shows that Lawrence Dubin
8 signed as vice-president of the LXV Group; is that
9 correct?

10 A Yeah. That's weird, because LXV Group wouldn't
11 have a vice-president. It's an LLC. I don't know --
12 Larry probably drafted this. Larry's an attorney. So
13 that would -- I don't know why he did it this way.

14 Q Okay. Did Lawrence Dubin continue an employment
15 relationship with LXV Group or Cellnet?

16 A Yeah.

17 Q Okay. So he worked for LXV Group then. He was
18 an employee of LXV Group after the --

19 A He was one of the four partners of LXV Group.
20 He had a 25 percent interest in LXV Group, as did
21 Scott Ginsburg, Pat Scaravilli and me.

22 Q Did he receive employment wages?

23 A I don't think so. I don't think anybody ever
24 got -- you mean like W-2 wages?

25 Q Correct.

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1 A I don't think anybody ever got W-2 wages on that
2 from LXV.

3 Q Okay.

4 A They got distributions.

5 Q Did LXV Group pay out any W-2 wages?

6 A I don't think so.

7 Q Okay.

8 A I don't think there was anybody in LXV Group
9 other than the four partners.

10 MS. McCASKILL: Okay. If we want to stop here,
11 we can do that.

12 MR. HART: Just need a couple minutes.

13 MS. McCASKILL: Sure.

14 THE WITNESS: Thanks.

15 (Recess.)

16 Q (BY MS. McCASKILL) Let's go back to the first
17 page of the asset purchase agreement.

18 In the first paragraph it states that this
19 agreement has to do with the sale of the wireless business
20 assets of the seller, including the revenue producing
21 wireless customer base, accounts receivable, collection
22 assets, trade names and trademarks. This agreement
23 specifically excludes any cash or cash equivalents in the
24 possession of the seller, as well as the past, current and
25 future liabilities of the seller.

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1 On the second page it states that the purchase
2 price for the assets is \$100,044.

3 Do you recall how this purchase price was
4 determined?

5 A Off the top of my head, no. I know everybody put
6 in 25,000 apiece. I don't know where the \$44 came from.

7 Q Okay. So the 100,000 then would have been the
8 25,000 that each partner put in?

9 A Each partner put in 25,000, right.

10 Q And that was for the purchase of the assets?

11 A Correct.

12 Q Did anyone ever value these assets?

13 A I don't think so.

14 You mean independently?

15 Q Yes.

16 A I don't think so.

17 Q Did this amount include any goodwill?

18 A Well, goodwill and trade name is usually together
19 since the trade name is listed. I don't know why goodwill
20 wouldn't be listed. But normally goodwill and trade name
21 are part and parcel.

22 Q What was the income stream -- what was the amount
23 of the income stream that was received from the sale of
24 the customer base?

25 MR. HART: During what period of time? Overall

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1 or at any given --

2 Q (BY MS. McCASKILL) Well, for the two years.

3 A I can't tell you off the top of my head.

4 Q Can you approximate the amount?

5 A 10-, 15,000 a month probably.

6 Q Per --

7 A Total.

8 Q Total. Okay. So then each partner would --

9 (Reporter interrupted; multiple speakers.)

10 Q (BY MS. McCASKILL) Then each partner would

11 receive a fourth of that amount?

12 A Correct.

13 Q Okay. Were all of the business assets then,

14 except for the cash of West Side Cellular, sold to the

15 LXV Group?

16 A Well, there was an auction, so I don't remember

17 whether this thing was done before the auction or after

18 the auction. I suspect it was done after the auction

19 because the -- but I don't really -- I don't really know.

20 I mean there was like desks and computers and chairs and

21 tables and physical assets like that, and we had an

22 auction company come in and auction everything off.

23 So I don't -- I think this was after the auction.

24 I think the auction proceeds went to -- I don't know where

25 they went. They must have gone to me. I don't know

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1 exactly where the auction -- but I know we had an auction,
2 and I know that the auction proceeds went somewhere, but I
3 don't remember where they went. It wasn't a lot.

4 Q Okay. And then the remaining -- whatever was
5 left then was sold to --

6 A LXV.

7 Q LXV.

8 A Right.

9 Q Okay. The assets of the company were sold for
10 100,000, roughly. And then the stock of the company,
11 after the disposal of the assets, was sold for around
12 34 million.

13 Why was the stock sale worth so much more than
14 the asset sale?

15 A Cause there was 40 million in cash in the company
16 at the time.

17 Q So the stock sale then was to acquire the cash?

18 A Pretty much. And -- like I said, again, we
19 originally contemplated they would buy the receivables as
20 well, and at the last minute they decided they didn't want
21 the receivables, which is why the receivables went in
22 here.

23 Q Where did the receivables go?

24 A They went -- they went into LXV.

25 Q Okay. So the LXV Group did acquire the

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1 receivables --

2 A Yeah. I think --

3 Q -- in -- June 11th of 2003, at the time of this
4 asset purchase agreement.

5 A Yeah. Accounts receivable, collection accounts,
6 trade names, trademarks.

7 Q Okay. Did West Side ever own any real estate?

8 A No.

9 Q Okay. We have seen records, and I did not bring
10 them with me here today, but it was showing that the new
11 owner of West Side paid a county treasurer \$2,620 on
12 February 2nd, 2004, and another payment was made to a
13 Franklin County treasurer in the amount of \$1,038.66.

14 Do you have any idea what those -- it sounded
15 like they were property taxes being paid.

16 A Uh-huh.

17 Q Do you have any idea what they could have been
18 on?

19 A That was after -- that would have been after we
20 sold the assets. We never -- or sold the stock. We never
21 owned -- West Side never owned any real estate. They may
22 have bought real estate after they acquired the stock. I
23 don't -- I don't have any idea what they did after they
24 got the stock.

25 Q Okay.

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1 A You have a time frame on those?

2 Q The payments were made in 2004, so they did occur
3 after the stock sale.

4 A All right.

5 MS. McCASKILL: Enter document Bates numbered
6 HL 267 into the record as Exhibit 12. This is handwritten
7 notes from someone at Hahn Loeser.

8 Also enter document Bates numbered HL 386 and
9 HL 387 as Exhibit 13. This is an email dated August 21st,
10 2003 from Jeffrey Folkman to Mike Tricarichi.

11 Q On Exhibit 12 do you see where the notes say Mike
12 sold customer list for income stream, must get it out of
13 Cellnet?

14 A Yes.

15 MR. HART: Which number?

16 THE WITNESS: Right here.

17 MR. HART: Oh, on that document.

18 THE WITNESS: On the handwritten document.

19 MR. HART: Okay.

20 THE WITNESS: Yes, I see that.

21 Q (BY MS. McCASKILL) Okay. This is the customer
22 base that you were talking about that the Cellnet in
23 Michigan purchased; is that correct?

24 A Yes.

25 Q Okay. And your -- the best of your recollection,

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1 what was the sale price on this customer list?

2 A There was no sale price. It was an ongoing
3 percentage of the revenue stream. There was no cash
4 received for this list.

5 Like I said before, the reason why we
6 incorporated LXV was -- if they would have bought the
7 customer list for cash, we would have just sold it to
8 them, but they wouldn't give us any cash. They would only
9 give us an ongoing revenue stream.

10 So because it was an ongoing revenue stream, we
11 weren't going to title the customers to them immediately,
12 because if something happened, we were out of luck. So
13 that's the reason why we did it this way.

14 Q And the time period that the purchase price was
15 being paid was two years; is that correct?

16 A I think it was two years. It was either two or
17 three. But I'm pretty sure it was two.

18 Q Okay. On Exhibit 13, item number two, it states
19 in connection with the sale of the Cellnet customer list,
20 it seems to me that Cellnet should have sold it first to a
21 related entity and then the related entity sold it to the
22 third party. What is the lowest price that can be
23 supported for the sale to the related party, and so that
24 we can document the sale, who is the related party?

25 Did West Side first sell the customer list to a

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1 related party?

2 A No. That never happened. I don't think Jeff
3 really understood anything about the way the company was
4 being handled as far as customer lists go. This -- this
5 sentence tells me that he really didn't understand what
6 was going on.

7 In that period of time -- all right. I don't
8 know how much background you want on this. But there was
9 a real -- a lot of -- Cellnet was a cellular service
10 reseller, okay? Which meant it bought service from the
11 carriers and sold it to end users, okay? In competition
12 with the companies who were supplying the service, like
13 Verizon or Ameritech or whoever.

14 There was a lot of animosity nationally between
15 carriers and resellers. You would think that it would be
16 a win/win relationship, but carriers were afraid of
17 resellers because of -- they had been screwing resellers
18 for a long period of time, and resellers were filing suits
19 against them.

20 So customer bases that were owned by resellers
21 were not the asset that they should have been because you
22 really couldn't do anything with them. You couldn't sell
23 them to a third party because the third party would then
24 have to go back to the carrier who was supplying the
25 service and make a deal with the carrier, and the carriers

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1 weren't in a position to do that, okay?

2 And it was before number portability, so -- for
3 example, I couldn't take a cellular -- well, I couldn't
4 take a Verizon customer base and sell it to AT&T, because
5 if I did that, all the customers who were on the Verizon
6 customer base would have to change their phone numbers,
7 which would be a very bad thing at that point. Now I
8 could have done it based on phone number portability, but
9 that didn't happen till 2004, 2005, which was after the
10 fact.

11 So even though on paper a cellular customer base
12 would have been worth a lot of money, as Jeff assumes, or
13 whatever, I don't know from this sentence, you really
14 couldn't do anything with them. I mean you couldn't -- I
15 couldn't sell to you, because you would then have to go
16 back to Verizon and make a separate deal with them to
17 supply you air time at a rate, and that was the whole
18 reason why we were suing them is because they were giving
19 us a really bad rate.

20 So it's not like, you know, if I got a lot of
21 tables in my office, I could go out and sell them to
22 somebody, cause it's -- it requires the carrier to provide
23 service to those customers.

24 So there were really a limited -- Cellnet in
25 Michigan had a relationship with Verizon, where these

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1 customers were located, so -- and we could only sell them
2 to people who had relationships with Verizon. And I think
3 one of the reasons why Cellnet in Michigan went out of
4 business was because they lost their suit against Verizon.

5 So anyway, I don't know if that background helps
6 you at all, but that's -- that was what was going on with
7 this customer base. The customer base was basically --
8 had a potential revenue stream coming in, but it was
9 dubious as to how long that would continue, as case in
10 point being what happened with Cellnet in Michigan, okay?

11 Does that make sense to you?

12 Q Yes --

13 A Okay.

14 Q -- it does. Thank you.

15 A Go ahead.

16 Q Do you see the letters LXV I that's handwritten
17 beside item two to the left?

18 A Oh, LXV -- I think that's a comma, and then
19 there's a roman numeral I after that.

20 Q LXV I, I guess.

21 A Yeah.

22 Q Is there an entity that's named LXV I?

23 A Not that I know of.

24 MS. McCASKILL: Okay. Enter document Bates
25 numbered HL 2111 into the record as Exhibit 14. This is

1 an email dated September 2nd, 2003 sent to Jim Tricarichi
2 and Mike Tricarichi.

3 THE WITNESS: Okay.

4 Q (BY MS. McCASKILL) In the email from Jeffrey
5 Folkman it states there is only one issue of any
6 significance that is open and I believe that it will be
7 resolved within a day or two. The issue relates to the
8 minimum net worth of the buyer for five years after the
9 closing. The buyer has offered \$1 million and stated that
10 it offered this during the negotiations.

11 Why was the buyer's net worth after closing of
12 significance to you and/or your representatives?

13 A Well, it was significant to Jeff mainly because
14 he wanted to make sure that the company remained in
15 business. And I don't know what the reason was why he
16 wanted that to happen, but Jeff was insistent on the
17 company remaining in business for at least five years.

18 Q Okay.

19 A Having a minimum net worth, I don't recall that
20 negotiation as far as what the minimum net worth of the
21 company would have been. I suspect it was in case there
22 was issues later on, but I -- again, why he wanted that I
23 can't tell you.

24 MS. McCASKILL: Okay. Enter document Bates
25 numbered HL 347 into the record as Exhibit 15. This is an

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1 email dated August 21st, 2003 from Charles Klink regarding
2 the revised draft of the stock purchase agreement.

3 Q Was this your email address, tricarichi@aol.com?

4 A Yes.

5 Q Do you recall getting this email?

6 A I don't recall getting it.

7 Am I listed on there? I don't see my email
8 address.

9 MR. HART: There it is.

10 THE WITNESS: Okay. There it is. Okay. I see
11 it.

12 I mean they were -- they were cc'ing me on most
13 things that were going by, so I was seeing a lot of
14 documents.

15 Q (BY MS. McCASKILL) I understand.

16 In the paragraph numbered ii, Mr. Klink suggests
17 that you could obtain a legal opinion as to whether the
18 buyer and company were engaging in transactions subject to
19 the IRS disclosure regulations under 1.6011-4.

20 A I see it.

21 Q Did you ever obtain such a legal opinion?

22 A I never did. I never -- there were no other --
23 if it -- if there was a legal opinion, it had to come from
24 Hahn Loeser, or they had to pay for it, because we
25 didn't -- we didn't have any other law firms involved at

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1 that time.

2 So I -- I suspect that this was an option that --
3 let's see. This is coming from Klink. So I don't think
4 this ever happened unless -- like I said, unless they did
5 it internally, Hahn Loeser.

6 Q Okay. In the paragraph with -- numbered iii,
7 Mr. Klink states that a specific tax indemnification is
8 not acceptable to the buyer for reasons that Mr. Klink has
9 already discussed with Jeff Folkman.

10 What was your understanding of the reasons why
11 the buyer was unwilling to accept the tax indemnification
12 clause?

13 A I don't know.

14 Q Why were you or your representative interested in
15 getting a tax indemnification?

16 A Well, because we didn't want somebody coming back
17 on us. I mean I -- you know, this -- again, this was
18 Jeff's issue, so...

19 Q Was anyone ever concerned that West Side's taxes
20 would not be paid by its new owners?

21 A I don't think that was ever a concern, no.

22 MS. McCASKILL: Enter document Bates numbered
23 HL 2882 into the record as Exhibit 16. This is a schedule
24 reflecting a net cash payout.

25 THE WITNESS: Okay.

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1 Q (BY MS. McCASKILL) Can you explain what this
2 schedule represents.

3 A Looks like how we got to the \$35 million number.

4 Q Do you see the line where it states the net
5 taxable income is 40,635,000?

6 A Right, I see that.

7 Q Does this represent the income of West Side
8 Cellular from the period of January 1st, 2003 until the
9 closing of the stock purchase?

10 A I suspect that's what it is. I didn't prepare
11 this, so I don't know what it is. Scott probably did
12 this. Looks like a spreadsheet.

13 Q And you're not sure if the pro forma tax return
14 was ever prepared or not.

15 A I know that Scott gave a lot of information to
16 Fortrend and gave them enough information to prepare the
17 tax return through the date of the stock purchase. I
18 don't know if it was actually a tax return or not. I
19 suspect it probably wasn't because -- again, I don't
20 really know cause we don't know what the ultimate tax
21 liability that they would have had from the time we
22 transferred the stock to the end of the year. I have no
23 idea what they did after that.

24 So I don't know how we would have prepared that,
25 but I know he gave them all the information they needed,

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1 cause they came back to him a couple times and asked him
2 for more information, which he gave them.

3 Q Okay. See the line where it states net taxes are
4 16,853,000?

5 A Right.

6 Q Is this the amount of taxes owed at the time of
7 the closing of the stock purchase agreement?

8 A That's what it says here.

9 Q So this would have been the amount of taxes that
10 Fortrend would have assumed at the stock closing purchase?

11 A That would -- that makes sense.

12 Q Okay. What does the Fortrend premium of
13 \$5,372,014 represent? What is this?

14 A You want me to tell you what I think it is?

15 Q Yes.

16 A I think it's the difference between what we had
17 and what we got.

18 Q Explain.

19 A Well, if we had 40 million and Fortrend gave us
20 35 million, the difference would be five million.

21 Q And so that was the premium to Fortrend.

22 A That's the net difference between what we had in
23 the bank and what they were giving us for the company.

24 Q Do you recall what the 31.88 percent represents?

25 A Where is -- oh, I see it.

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1 I don't know. I suspect -- it looks like it's
2 a -- looks like it's the percentage of 16 million versus
3 5.1 million right above it. It's the percentage of
4 5.1 million versus 16 million.

5 Q Was this an amount that was ever negotiated
6 between you or your representatives and Fortrend?

7 A I don't think -- if it was, I don't think it was
8 negotiated that way. I think somebody stuck this on here
9 so that they could for some reason have that percentage.
10 I don't know.

11 Q Okay. We --

12 A We weren't negotiating based on percentages that
13 I was recalling.

14 Q Okay. Did you understand that you would receive
15 more from selling your stock to Fortrend than you would
16 have received if West Side had simply been liquidated?

17 A Do I understand that?

18 Q Did you ever understand that?

19 A No.

20 I mean based on what you told me a few minutes
21 ago, if I could have liquidated the company and gotten
22 capital gains treatment on the liquidation of the company,
23 that might have been a consideration. But I don't know
24 that that was ever presented to me as an option.

25 Q Okay. Did you ever ask how Fortrend could pay

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1 the taxes that were due, this 16.8 million, and still make
2 a profit on its investment in West Side?

3 A No.

4 MS. WILLIAMS: Did you ever question why a
5 company would pay you 35 million for assets in essence
6 worth 24 million, if you would subtract the 40 million --
7 the \$16 million tax liability from the 40 million?

8 THE WITNESS: Did I ever question it? No. Did I
9 understand what they were doing? No. Did I really, you
10 know, ultimately -- they -- they presented to me that they
11 were in the business of buying companies that had a lot of
12 cash. That was their business, okay? And they made me an
13 offer which seemed like a legitimate offer to me. And
14 like I said, I had a couple of people review it.

15 What they did with the -- with the company after
16 I sold it, other than it staying in business for five
17 years with a minimum amount of assets, it really didn't
18 matter to me what they did with it. I mean, you know, it
19 was an arm's-length transaction between a buyer and a
20 seller, a willing buyer and a willing seller. And if
21 somebody's willing to pay me whatever they're willing to
22 pay me, how they got there, you know, I -- I had -- like
23 I said, I had Pricewaterhouse look at it and I had
24 Hahn Loeser look at it.

25 So if I would have looked at it myself, I don't

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1 know that I would have been able to make heads or tails of
2 it anyway. I don't know the tax code. I don't know --
3 you know, I don't know anything else about what's going on
4 over there.

5 If they would have presented to me in detail how
6 they were going to get there, I wouldn't have had any
7 idea, you know, how they got there, other than -- other
8 than to say well, let me analyze every aspect of what
9 you're doing, okay? It's not my position to analyze every
10 aspect of the business of a purchaser. It's only my
11 position to analyze the purchase price.

12 And based on this, if they're willing to pay me
13 whatever they were willing to pay me, \$35 million, you
14 know, I didn't have any problem with that.

15 And like I said, I didn't -- I had two people
16 look at it, one of which was a Big 6 accounting firm. So,
17 you know, that wasn't my place to do that analysis.

18 MS. McCASKILL: Enter document Bates numbered
19 HL 1111 through HL 1113 as Exhibit 17, which is the
20 secretary's and incumbency certificate for West Side, and
21 the document Bates numbered HL 0014 as Exhibit 18, which
22 is a document entitled written action of the directors
23 without a meeting.

24 Also enter document Bates numbered HL 250 through
25 HL 252 as Exhibit 19 consisting of resignation letters

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1 dated September 5th, 2003 for Lawrence Dubin,
2 Scott Ginsburg and Patrick Scaravilli.

3 THE WITNESS: Okay.

4 Q (BY MS. McCASKILL) The incumbency certificate
5 marked Exhibit 17 indicates that you and Barbara
6 Tricarichi were the only officers of West Side as of the
7 date of the stock sale; is that correct?

8 A That's correct.

9 Q And who is Barbara Tricarichi?

10 A My wife.

11 Q Is this your signature that's on Exhibit 17?

12 A Yes.

13 Q Exhibit 18 reflects that Lawrence Dubin,
14 Patrick Scaravilli and Scott Ginsburg had been appointed
15 officers as of July 1st, 2003, but Exhibit 19 shows that
16 these three officers resigned on September 5th, 2003, just
17 prior to the stock sale; is that correct?

18 A Well, this document -- the first document is
19 dated some day in September --

20 MR. HART: I don't mean to interrupt, but don't
21 use "this document" cause it's going to mess up the
22 exhibit.

23 THE WITNESS: All right. Exhibit 17 is dated
24 some blank day of 2003.

25 This document is the -- Exhibit 18 refers to

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1 July 1st, 2003.

2 So it's -- it's possible that -- I don't know.
3 When did they resign? They resigned on September 5th of
4 2003. And Exhibit 18 -- I'm sorry -- Exhibit 17 has an
5 unnamed day of September 2003.

6 So I don't see that they're necessarily in
7 conflict, do you?

8 Q (BY MS. McCASKILL) I'm not saying they're in
9 conflict.

10 A Okay.

11 Q I'm just trying to get the dates nailed down.

12 A All right. I don't know what the date was of
13 Exhibit 17. It's not listed on the document. It's
14 sometime in September of 2003. But there's no -- no day.

15 Q It looks like this document may have come after
16 the resignation.

17 A Just looking at this --

18 MR. HART: Which document when you say "this
19 document"?

20 MS. McCASKILL: I'm sorry.

21 Q Exhibit 17 would have been completed after the --
22 document 19 was executed?

23 A That's what it looks like to me. Otherwise it
24 wouldn't make sense.

25 So as far as why they were prepared this way, I

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1 have no idea. These have Hahn Loeser document numbers on
2 them, so I'm imagining they were prepared by Hahn Loeser.
3 But why they were prepared this way, I can't tell you.

4 Q Okay. Were Lawrence Dubin, Patrick Scaravilli
5 and Scott Ginsburg involved in the decision to sell the
6 assets and stock of West Side?

7 A Well, Larry Dubin was in-house counsel, so I'm
8 sure he was involved. And Pat Scaravilli and
9 Scott Ginsburg were major players at the company, so
10 Scott -- Scott being the controller, so he -- I'm sure he
11 was involved. I don't remember Pat being involved
12 necessarily.

13 Q But at the time of the stock sale, the only
14 officers were you and Barbara Tricarichi?

15 A I believe that's the case, yeah.

16 MS. McCASKILL: Okay. Enter document Bates
17 numbered WC 69 through WC 96 into the record as
18 Exhibit 20. This is a stock purchase agreement dated
19 September 9th, 2003.

20 Q On September 9th, 2003 a stock purchase
21 agreement was entered into between Nob Hill Holdings and
22 Michael Tricarichi.

23 Are you familiar with this document?

24 A Yeah. This looks like the stock purchase
25 agreement.

1 Q Okay. Is this your signature on the last page of
2 the document, which has Bates number WC 96?

3 A Yes.

4 Q And how involved were you in the negotiations in
5 preparing this document?

6 A How involved was I? I'm sure I read it. I'm
7 sure there were several versions of it till we got to this
8 point.

9 The only thing specifically that I was involved
10 in was the amount of the purchase price.

11 As far as everything else goes, I mean I may have
12 had some comment on some of the language in here, but I
13 don't -- I don't have a draft copy of this, so I can't
14 really tell you who made what changes. I know there was
15 an ongoing negotiation back and forth several times, so I
16 imagine there were several versions of this. But I mean
17 all the -- all of the corporate stuff in here came out of
18 Hahn Loeser.

19 Q Okay.

20 A Which looks like this is most of it.

21 Q Under section 2.1 of the stock purchase
22 agreement, which is on WC 75, it states that the purchase
23 price of the stock was \$35,199,371. It states this will
24 be paid to the seller with cash of \$34,621,594 by wire
25 transfer and a check in the amount of 577,777 --

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1 A Right.

2 Q -- made payable to seller as an advance to repay

3 the seller loan.

4 A Correct.

5 Q Did you receive cash in the amount of

6 \$34,621,594?

7 A I believe so, yes.

8 Q Did you receive the check made out to you in the

9 amount of \$577,777?

10 A Well, I think what that was was I had borrowed

11 money to buy the house in Las Vegas from the company. So

12 I think what they did was -- I don't know if they issued a

13 check or what they did, but the house was already

14 purchased by this point, so the money was already there.

15 So I don't know why they did it this way, but the

16 577- was the house in -- was the house in Vegas.

17 Q Okay. So you borrowed 577- from West Side?

18 A West Side Cellular to buy the house in Vegas,

19 that's correct.

20 Q But you purchased the house, not West Side

21 Cellular.

22 A That's correct.

23 So the 577- -- I think that's the difference

24 between the two numbers, the 35,199- and the 34,621-. But

25 that's what that -- that's what that was.

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1 Q So where did that check go then?

2 A Well, I imagine it went to them. I don't know
3 why it's written this way. But I never -- if I would have
4 borrowed the money, I wouldn't have gotten another check
5 back for it.

6 So I don't know if this is a mistake or what they
7 did, but I never got a check for \$577,000. That was
8 already money that was out of the company.

9 Q Okay.

10 A So they wanted to do it that way cause they
11 wanted to recognize the loan repayment.

12 Q Okay.

13 A I suspect that I wrote them a check for \$577,000.
14 But like I said, I don't know why it's written this way.

15 Q Well, I think they deducted the stock purchase
16 price -- they deducted that amount from the --

17 (Reporter interrupted; multiple speakers.)

18 Q (BY MS. McCASKILL) -- they deducted the amount of
19 the check from the stock purchase price.

20 A That's correct.

21 But I don't know that a check was ever written to
22 me for that money. It would have made no sense to do
23 that, so -- cause I already had the money.

24 Q So you don't recall receiving the check and then
25 giving it right back?

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TRICAR-NV0073854

APP1080

1 A I might have received it and given it back to
2 them. That's very possible.

3 Q Okay. Look at section 3.2(g) on page 10, where
4 it states the sole assets of the company is cash in the
5 amount of \$39,949,373.

6 Who wanted the assets of the company to consist
7 only of cash?

8 A That would have been them, Fortrend.

9 Q Fortrend? And do you know why they only wanted
10 cash?

11 A Like I said, they originally wanted the
12 receivables as well, and then at the last minute they
13 decided they didn't want them, so I have no idea why
14 that's all they wanted.

15 Q And let me just clarify one thing.

16 You said at the last minute they decided they did
17 not want the receivables.

18 A Uh-huh.

19 Q And as we saw earlier in the asset purchase
20 agreement, the receivables were sold to --

21 A LXV.

22 Q -- LXV.

23 So at the time of the asset purchase agreement,
24 you knew that Fortrend did not want the receivables.

25 A That's correct.

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1 Q Okay. Look at section 3.2(y) on page 13, where
2 it states that during the period commencing on
3 January 1st, 2003 through the closing date, the company
4 has not directly or indirectly participated in any listed
5 transaction.

6 A Right.

7 Q What does this statement mean to you?

8 A I don't know. I don't know what this is. I
9 don't know any of these terms.

10 Q Okay. Look at paragraph 4.1(n) on page 15.

11 MR. HART: (n), you said?

12 MS. McCASKILL: (n).

13 THE WITNESS: Right here, no intention to cause
14 company to engage in certain transactions.

15 Q (BY MS. McCASKILL) Buyer has no intention to
16 cause company to directly or indirectly engage in or be a
17 party to any listed transaction.

18 Do you know the purpose of adding this statement
19 to this stock purchase agreement?

20 A No.

21 Q Were you or your representatives concerned that
22 this transaction could be considered a listed transaction?

23 A Well, obviously Jeff was. I -- since I have no
24 idea what a listed transaction is, I wasn't concerned
25 about it.

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1 Q Okay. I think we've talked previously about
2 Code Section 6111 where it talks about direct or indirect
3 participation by them in a listed transaction.

4 Do you know what Section 6111 of the code refers
5 to?

6 A No clue.

7 Q Do you know the purpose of including a statement
8 about Section 6111 in the stock purchase agreement?

9 A Again, that's what my lawyer decided he wanted in
10 this contract or -- that may have been what Fortrend
11 wanted in the contract. I don't know.

12 All I know is I -- like I said, I had other
13 people look at this to define terms that I have no clue of
14 as to what their deal was.

15 Q Look at section 5.2(a) on WC 85. It states buyer
16 shall cause company to prepare and timely file all returns
17 and to satisfy fully all federal, state and local taxes
18 attributable to income earned during the tax year
19 commencing on January 1st, 2003 and for all years
20 thereafter.

21 A Got it.

22 Q Why did the buyer have to satisfy the taxes
23 beginning January 1st rather than for the period beginning
24 after the closing?

25 A That was the deal.

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1 Q Because that's what the buyer had agreed to.

2 A Uh-huh.

3 Q Who negotiated that term? Did you ask the buyer
4 to pay the taxes for that period?

5 A Well, that was the deal. The deal was they were
6 going to pay all of the taxes for calendar year 2003.
7 That's why we took less money than we had in the bank.
8 That was the deal.

9 Q Look at section 5.2(b), buyer shall maintain the
10 existence of company for a period of at least five years
11 following closing, and during such time company shall at
12 all times be engaged in an active trade or business.

13 Do you know what the purpose of including this
14 requirement in the stock purchase agreement was?

15 A No. But Jeff wanted it in there, so that's why
16 it's in there.

17 Q It also states that buyer shall maintain a net
18 worth of no less than one million during such time period.

19 Do you know why this was required?

20 A Again, that's something Jeff wanted.

21 Q Did anyone ever confirm that these requirements
22 were met?

23 A I didn't.

24 Q Okay. Do you know if West Side engaged in an
25 active trade or business for at least five years following

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1 closing?

2 A Well, what year is this? 2007? I know they're
3 still in business.

4 Q They are still in an active trade or business?

5 A As far as I know.

6 Q Do you know what that business is?

7 A I don't know. We had cause to contact them -- I
8 told you about the -- the lawsuit against the IRS for the
9 excise tax?

10 Q Yes.

11 A We had cause to contact them prior to filing the
12 lawsuit, and we got a -- a document from them saying that
13 it was okay with them for us to do that.

14 So -- and they were still -- it was signed by
15 West Side Cellular, so we're sure they were still in
16 business as of about a year ago, or a little less.

17 Q Okay. But you don't know what that business is?

18 A I don't know.

19 Q Okay. Look at section 6.1(h) on WC 86, seller
20 shall deliver to buyer proof that it has established an
21 account with Rabobank and that all of the ending cash
22 balance has been transferred to such company bank account
23 at Rabobank. Upon confirmation of the wire transfer of
24 the purchase price from buyer to seller, seller shall
25 transfer possession and control of such bank account to

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APP1085

1 buyer as owner of the company.

2 Why was the seller, you, required to open an
3 account at Rabobank?

4 A That was their term. That was what they wanted,
5 what Fortrend wanted.

6 Q Okay. Were there any other accounts that were
7 required to be opened at Rabobank?

8 A No. The only account we opened -- we opened one
9 account at Rabobank, and we wired the money from our
10 brokerage account into the account that we opened at
11 Rabobank. That was their term.

12 Q And the name of that account was West Side
13 Cellular?

14 A I'm guessing it was, yeah.

15 Q Did you think it was unusual that you were
16 required to open new bank accounts to consummate the stock
17 purchase closing?

18 A No.

19 Q Were you explained the purpose of opening the
20 account at that bank?

21 A No.

22 Q And what account did you have the buyers wire the
23 purchase price to?

24 A I think they wired it into a -- into our
25 brokerage account. We had a brokerage account with -- I

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1 don't remember the name of -- who the brokerage company
2 was. But we had a brokerage account, and I think they
3 wired it into the brokerage account.

4 Q Okay. Upon confirmation of the wire transfer of
5 the purchase price from the buyer to the seller, seller
6 shall transfer possession and control of such bank account
7 to buyer as owner of the company.

8 Does this mean that the buyer received control
9 over all the cash that was in West Side?

10 A West Side wired the cash into Rabobank and owned
11 the account at Rabobank.

12 At some point we transferred the account at
13 Rabobank to them.

14 Q Okay.

15 A Does that answer your question?

16 Q Yes.

17 A Okay.

18 Q At what point was that account transferred to
19 them?

20 A I don't -- what triggered that? I don't -- I
21 can't tell you.

22 MR. HART: She asked what time.

23 You're asking for time frame, right?

24 Q (BY MS. McCASKILL) Well, if you could describe
25 just in detail how you recall the stock purchase cash flow

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1 working.

2 A We wired all the money that was in our brokerage
3 account into this account that we set up at Rabobank, and
4 then they wired us back the three point -- or the
5 \$35 million back.

6 So we wired them about 40 million out into the
7 account at Rabobank, and then they wired \$35 million.
8 Then we gave them possession of that account. And then
9 once we gave them possession of that account, they wired
10 \$35 million back to us.

11 Q Okay.

12 A That's my recollection of how that worked.

13 Q So you wired money out of your account, and then
14 they wired money back to your account.

15 Was this the same account that you're talking
16 about, the same brokerage account?

17 A I don't know if it was the same one or not. It
18 might have been a different one, but I can't really tell
19 you.

20 They may have wired it into our regular bank
21 account, into our -- we had a KeyBank account. They may
22 have wired it into our KeyBank account, and then we put it
23 back into the brokerage account. I don't really recall.

24 I know that the money started in a brokerage
25 account and went to Rabobank. How it came back, it may

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1 have gone into our Key account first, and then we may have
2 put it back into the brokerage account. I -- I can't tell
3 you what that transaction was.

4 Q Okay. So ultimately it came out of the brokerage
5 account and ended up back in the brokerage account.

6 A Yeah, pretty much.

7 Q Okay. Look at section 10.4 on WC 91. It says
8 the maximum amount of liability of buyer and seller shall
9 not exceed 5,300,000.

10 MR. HART: Which one?

11 THE WITNESS: 10.4, right here.

12 MR. HART: Okay.

13 THE WITNESS: Indemnification ceiling?

14 Q (BY MS. McCASKILL) Correct.

15 Do you recall how this amount was determined?

16 A No. I mean it looks like it's the difference
17 between the 40 million and the 35 million, but that would
18 be -- that would make sense.

19 MS. McCASKILL: Okay. Enter document Bates
20 numbered RABO-F-5386 through RABO-F-5394 into the record
21 as Exhibit 21. These are account opening forms and
22 signature cards for West Side Cellular.

23 THE WITNESS: Okay.

24 Q (BY MS. McCASKILL) These documents are new
25 account opening forms at Rabobank for West Side dated

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1 August 19th, 2003, with a signature card showing your
2 signature.

3 Do you recall these documents?

4 A Yes.

5 Q And are these your signatures that are on pages
6 with the Bates numbers RABO-F-5389, 5391, 5392 and 5394?

7 A Let's go through them one at a time.

8 5389, yes; 5391, yes; 5392, yes; and 5394, yes.

9 Q Is this the new account at Rabobank that was
10 opened to consummate the West Side stock purchase closing?

11 A Yes.

12 Q Is this the same account that was transferred to
13 the buyer's control after the receipt by the seller of the
14 West Side stock purchase price?

15 A As far as I know, yes.

16 Q This account -- did this account remain in your
17 control?

18 A Well, we transferred an account to them, okay?
19 This was done on August 19th, so it was done a few weeks
20 before the transaction occurred. The transaction occurred
21 in September.

22 So I'm assuming this is the account that we wired
23 the money into. And I would also make the assumption that
24 it's the account that we -- that they wired the money out
25 of. But there may have been another account in the

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APP1090

1 middle. I don't know. You know what I mean? I have no
2 idea.

3 Q Okay.

4 A I don't -- you know, you tell me. You got the
5 documents.

6 Q This is the West Side Cellular account --

7 A Right.

8 Q -- and so I'm assuming that this would be the
9 account that was transferred to the buyer Fortrend at the
10 time that you received the stock purchase price, but I...

11 A I would make that assumption as well.

12 MS. McCASKILL: Okay. Enter document Bates
13 numbered RABO-F-5475 through RABO-F-5485 into the record
14 as Exhibit 22. These are account opening forms and
15 signature card for M. Tricarichi, escrow account number
16 21595.

17 THE WITNESS: This looks like a different
18 account.

19 Q (BY MS. McCASKILL) All right. This is account
20 M. Tricarichi, escrow account number 21595.

21 A Okay.

22 Q Do you recall these documents?

23 A Well, I thought there might have been another
24 Rabobank account. I think this is it.

25 Q Okay. And are these your signatures on the pages

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1 with Bates numbered RABO-F-5480 --

2 A Yes.

3 Q 5482?

4 A Yes.

5 Q 5484?

6 A Yes.

7 Q And 5485?

8 A Yes.

9 Q Okay. Was this account at Rabobank also opened

10 to consummate the West Side stock purchase closing?

11 A I would assume that, since we didn't normally do

12 business at Rabobank; that was their bank.

13 Q Okay. Do you recall what the purpose of having

14 this account opened for?

15 A No.

16 Q Do you recall why this account was opened the day

17 before the stock purchase closing?

18 A No. All of this was at their behest.

19 Q This was the way Fortrend --

20 A This is the way they wanted to do the closing.

21 MS. McCASKILL: Okay. Enter document Bates

22 numbered HL 2874 into the record as Exhibit 23. This is a

23 description of the transactions.

24 THE WITNESS: Oh, okay. I see what happened.

25 Okay.

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1 Q (BY MS. McCASKILL) Have you ever seen this
2 document before?

3 A Well, it looks like it's part of something else,
4 but I don't know what else it's part of. It's just out in
5 the open here.

6 Q Yes. I don't know what it was a part of either.
7 That's how I received it.

8 A Okay.

9 MR. HART: Must have come from us, right?

10 THE WITNESS: Yeah, it's got your Bate stamp on
11 it, yeah.

12 I don't know what the purpose of this document
13 was, but I think it's self-explanatory.

14 It looks like the second Rabobank account --
15 let's go back and look at that real quick.

16 Looks like the second Rabobank account was in my
17 name. Yeah, that's what it was.

18 So the first Rabobank account was the West Side
19 Cellular account, which we gave them control over.

20 Q (BY MS. McCASKILL) Okay.

21 A And then they -- looks like they wired us --
22 wired me the money from one Rabobank account into another
23 Rabobank account. That's I think the way the transaction
24 went.

25 Q Okay. And then you wired the money from this --

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APP1093

1 A And then I wired this -- go ahead.

2 Q And then you wired the money from this account to
3 your brokerage account?

4 A Correct.

5 Q Okay.

6 A Yeah. I had a -- I had a Schwab account. So
7 that money went from -- the Pershing account that's listed
8 on here was the -- was the West Side Pershing account,
9 okay? The brokerage account -- it says Pershing account
10 3lv?

11 Q Yes.

12 A That account belonged to West Side Cellular --

13 Q Okay.

14 A -- okay?

15 All the assets that were in that account were
16 wired to the first Rabobank account, which was West Side
17 Cellular's Rabobank account --

18 Q Okay.

19 A -- okay?

20 After the -- and then we gave them control of the
21 account at some point, either before or after, probably
22 after, they wired the three point five million into the
23 second Rabobank account, which would have been in my name.
24 And then I wired the money out of the second Rabobank
25 account into my personal Schwab account.

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1 Q Okay.

2 A Okay? Does that make sense?

3 Q Yes.

4 So in your opinion this is an accurate
5 description.

6 A I think so.

7 Q Okay.

8 A I think that's the way it works.

9 This must have been written by Harvey Sulkin.

10 Q And who is Harvey?

11 A He's the guy that manages the account at Schwab.

12 Q Okay.

13 A He's my investment manager. I'm assuming that's
14 where this...

15 Q Okay. He did mention in the paragraph that after
16 these funds were received, per Mr. Tricarichi's
17 instructions I initiated a transfer of some of those funds
18 to a second account.

19 A Right. I had two accounts. I had a Pershing
20 account -- I personally had two accounts. I had a
21 Pershing account, and then I had a Schwab account, okay?

22 So he must have taken some of those funds and
23 sent them to the Pershing account and some of them to the
24 Schwab account.

25 Q Okay.

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APP1095

1 A I had a different Pershing account than this one.

2 Q Separate from West Side's?

3 A Yeah. I had a personal Pershing account, cause
4 he managed -- if this letter was written by Harvey, Harvey
5 originally was at -- was associated with Pershing, and
6 then he switched to Schwab at some point.

7 So he had accounts that he managed both at
8 Pershing and at Schwab. Harvey's the one that set up the
9 Pershing account for West Side originally, the 31v1900.

10 Q Was the Pershing account their business operating
11 account?

12 A No. It was a brokerage account. It was where we
13 parked the settlement money.

14 Q Okay. Did any of your advisors recommend against
15 proceeding in the stock sale transaction with Fortrend?

16 A No.

17 Q Are you familiar with the term transferee
18 liability?

19 A No.

20 Q Okay. Transferee liability is where in certain
21 circumstances a person that receives property from an
22 insolvent corporation has to pay the corporation's debts.

23 Did any of your advisors ever mention to you the
24 risk that you might be pursued for the unpaid taxes of
25 West Side Cellular under the statutes of transferee

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1 liability?

2 A No. I mean there's a section in there about
3 that, but -- I think there was a section in the contract,
4 wasn't there?

5 Q I don't recall a specific --

6 A There was never an issue with either Hahn Loeser
7 or with Pricewaterhouse about that. That was never an
8 issue.

9 Q Okay.

10 A If there would have been, we wouldn't have done
11 the transaction.

12 Q I think you mentioned before that you have had
13 recent contact with Fortrend -- or West Side -- I
14 apologize --

15 A West Side.

16 Q -- regarding the excise tax issue.

17 Have you had any other contact with Fortrend or
18 West Side -- or the new owners of West Side within the
19 past 12 months?

20 A There was a question about -- we had -- we had
21 the receivables, okay? We owned the receivables --

22 Q When you say "we"...

23 A Well, "we" in this case would have been LXV.

24 Q Okay.

25 A There was an issue about somebody we sued as

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APP1097

1 West Side, an individual customer that we sued, that the
2 judgment went on their credit, and they were trying to get
3 refinanced or something, and they had -- they wound up
4 paying the -- paying the amount that they owed, but they
5 wrote it to West Side. And since we were no longer
6 West Side, we couldn't cash the check. So we contacted
7 them and got authorization from them to cash the check.

8 I think that was the -- that was the only other
9 contact. And that was right around the time of the excise
10 tax thing. So I don't know if it was simultaneous or if
11 it was -- but there were two separate issues, one was
12 the -- I think it was a \$1,200 check.

13 So one of them was the cashing of this check, and
14 the other one was the ability to go after the excise tax.

15 Q Who did you contact when you contacted them on
16 these issues?

17 A I don't remember who it was. Randy was the one
18 who initiated the contact.

19 MR. HART: I can tell you.

20 MS. McCASKILL: Who did you --

21 MR. HART: Tim Conton.

22 MS. McCASKILL: Tim Conton. Okay.

23 Okay. That's all the questions I have.

24 Candace, do you have any more?

25 MS. WILLIAMS: When you contacted West Side on

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1 behalf of -- because of the excise tax lawsuit, what was
2 the nature of the contact?

3 THE WITNESS: Well, we were concerned that if we
4 won the lawsuit that the IRS would write a check to West
5 Side Cellular, and we wanted -- it's the same issue as the
6 \$1,200 was, is the -- if the money came back and it came
7 back to West Side Cellular, we were entitled to it based
8 on the contract because it was a pre- -- it was a
9 pre-closing issue.

10 So we just wanted to verify with them that we had
11 the ability to negotiate whatever the check was going to
12 be coming back from the IRS. This is before we sued the
13 IRS. It was when we asked for the refund. So we were
14 expecting to get a refund back, and we figured the refund
15 would be in the name of West Side Cellular and again we
16 would have problems with negotiating the check to
17 West Side Cellular cause we weren't West Side Cellular.

18 Does that make sense to you?

19 MS. WILLIAMS: Right.

20 THE WITNESS: That was the nature of the contact.

21 MS. WILLIAMS: That's all I have.

22 Q (BY MS. McCASKILL) Mr. Tricarichi, you'll have
23 the opportunity to review the transcript and let us know
24 about any corrections that need to be made to it.

25 The corrections will be listed on an error sheet,

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APP1099

1 and you will be asked to sign that transcript with the
2 attached error sheet.

3 A Yes.

4 Q Is that okay with you?

5 A That's -- yeah, that's fine. I don't waive
6 signature.

7 Q And if you want an official copy of the
8 transcript, you will need to purchase one from the court
9 reporter directly.

10 And does anyone have any additional comments or
11 clarifications?

12 THE WITNESS: I'm assuming that you're going to
13 give me a copy to review someplace, the court reporter.

14 MR. HART: She's going to order it.

15 You're going to order it, right?

16 MS. McCASKILL: We will have a copy of the
17 transcript, yes.

18 Off the record?

19 MR. HART: Yes, off the record.

20 (Discussion off the record.)

21 MS. McCASKILL: This concludes the interview.

22 Thank you.

23 (The taking of the interview was
24 adjourned at 11:00 a.m.)

25 * * * * *

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COPY

CERTIFICATE OF DEPONENT

I, MICHAEL TRICARICHI, deponent herein, do hereby certify and declare the within and foregoing transcription to be my interview, subject to any corrections I have heretofore submitted; and that I have read, corrected, and do hereby affix my signature to said interview.

COPY

MICHAEL TRICARICHI, Deponent

Subscribed and sworn to before me this

_____ day of _____, _____

COPY

Notary Public

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TRICAR-NV0073875
APP1101

CERTIFICATE OF REPORTER

STATE OF NEVADA)
 ss:
COUNTY OF CLARK)

I, Lori M. Unruh, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That I reported the taking of the interview of the witness, MICHAEL TRICARICHI, commencing on Friday, November 30, 2007, at 8:50 a.m. That prior to being examined the witness was by me duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said interview is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand in my office in the County of Clark, State of Nevada, this 13th day of December, 2007.


Lori M. Unruh, RDR, CCR No. 389

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TRICAR-NV0073876
APP1102

Exhibit 30

JRS Appeals

Facsimile Transmission

***One Cleveland Center • Suite 815
1375 East Ninth Street
Cleveland, Ohio 44114***

Tel: (216) 623-2008

Fax: (216) 522-7910

Date: August 29, 2011

**To: Donald L. Korb
Sullivan & Cromwell, LLP**

**From: Peter R. Szpalik
Appeals Team Case Leader
Cleveland Appeals**

Fax: (202) 956-6961

Total pages including cover page: 7

Pursuant to our telephone discussion this past Thursday, 8/25, attached is a proposed settlement computation.

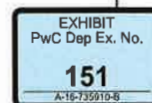
The attached spreadsheet sets forth the estimated proposed figures discussed 12/20/10 and the revised figures dated 8/26/11.

Please review the attached settlement proposal this week. If you have any question, please call me at 216-623-2008.

Please send me an email confirmation at peter.r.szpalik@irs.gov once you receive this fax and the attached settlement computation.

Regards,
Pete Szpalik

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ADMIN_TRI01034

Settlement Computation for Tricarichi

12/20/2010

Bad Debt Adjustment per Corporate RAR	42,480,622
10% concession per IT ASG	10%
	4,248,062
Corporate tax rate	34%
tax effect of IT ASG concession	1,444,341

Tax Deficiency per RAR	15,186,569
less tax effect of IT ASG concession	1,444,341
Revised Deficiency	13,742,227
TP concedes 80%	80%
Settlement Deficiency	10,993,781
10% penalty	10%
	1,099,278

Settlement Deficiency	10,993,781
penalty	1,099,378
tax and penalty	12,093,159
interest to 12/31/2010	6,893,018
Transferee Liability	18,986,177

IRC 1341 credit

Estimated:	
18,986,177 x 15% =	2,847,926
Net Transferee Liability	16,138,251
vs.	

Current Proposed	
Total Transferee Liability	33,282,828

Settlement Computation for Tricarichi

8/26/2011

Bad Debt Adjustment per Corporate RAR	42,480,622
10% concession per IT ASG	10%
	4,248,062
Corporate tax rate	34%
tax effect of IT ASG concession	1,444,341

Tax Deficiency per RAR	15,186,569
less tax effect of IT ASG concession	1,444,341
Revised Deficiency	13,742,227
TP concedes 80%	65%
Settlement Deficiency	8,938,947

Settlement Deficiency	8,938,947
penalty	0
tax and penalty	8,938,947
interest to 8/31/2011	5,668,628
Transferee Liability	14,607,575

interest to 8/31/2011

IRC 1341 credit

Estimated:	
14,607,575 x 15%	2,191,136
Net Transferee Liability	12,416,438
vs.	

Current Proposed	34,642,900
Total transferee Liability	

effective 66% govt concession

Exhibit 31

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MICHAEL A. TRICARICHI,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: A-16-735910-B
)	
PRICEWATERHOUSECOOPERS LLP,)	DEPT. NO.: XI
COÖPERATIVE RABOBANK U.A.,)	
UTRECT-AMERICA FINANCE CO.,)	
SEYFARTH SHAW LLP, and GRAHAM)	
R. TAYLOR,)	
)	
Defendants.)	

REBUTTAL REPORT

Arthur J. “Kip” Dellinger

June 25, 2020

Rebuttal Report of Kip Dellinger

This report is to supplement my initial report in this matter dated May 18, 2020 based on additional analysis and to dispute certain conclusions set forth in the EXPERT REPORT OF CRIAG L. GREENE dated May 26, 2020, filed on behalf of the Plaintiff in this matter.

Professional Background and Qualifications

My professional background and qualifications are set forth in my initial report in this matter.

Materials I Have Reviewed

In addition to the materials I reviewed for the initial report, I have reviewed Mr. Greene's report and the material on which he relied in formulating his opinions with respect to this matter including the various "professional standards" he cites in his report.

I have also performed additional analysis (including the professional standards applicable to the issue) and considered the import of and other aspects of the materials I initially reviewed.

Rebuttal Issue Comments

Mr. Greene is not correct with respect to his assertion that under AICPA Professional Standards PricewaterhouseCoopers ("PwC") "should have notified the Plaintiff that the transaction he entered into was a reportable transaction by no later than late 2008."

I reaffirm my expert opinion in my report that PwC did not breach any professional standards of care set forth in the American Institute of Certified Public Accountants Statement on Standards for Tax Services No. 6, Knowledge of Error: Return Preparation because Mr. Tricarichi was not a client of PwC when Notice 2008-111 was issued. In fact, he had not been a client for several years. PwC also did not breach any standard of care imposed by Treasury Department Circular 230, Sec. 10.21 for the same reasons. Mr. Tricarichi was not a client for PwC at the time the Notice was issued and had not been for several years.

It is noted that the Statement on Standards for Tax Service No. 6 clearly predicates its applicability on "while performing services for a taxpayer...the member becomes aware of an error." Again, PwC was not performing any services for Mr. Tricarichi when Notice 2008-111 was issued. Mr. Greene is incorrect in asserting that the Statement applies in this matter. Mr. Greene also refers to Circular 230, Sec. 10.21; but as stated in my Expert Report, that provision only applies when a client relationship exists and, as well, when a practitioner subject to the Circular is representing a client in an administrative proceeding before the Internal Revenue Service. That was not the case here. It is to be noted that the "while performing services..." language was retained when the Statements on Standards for Tax Services were revised (effective January 1, 2010).

I served on the Task Force that revised and updated the 2000 Statements on Standards for Tax Services (which were applicable to CPAs in 2008); we specifically retained the language "while

performing services for a taxpayer” to ensure that a CPA did not have an indefinite obligation to inform a former client of errors in their returns, let alone provide such advice where a potential error might occur as a result of a retroactive administrative pronouncement of a tax authority. I also served on the Tax Practice Responsibilities Committee when we issued comments to Treasury with regard to proposed 2005 changes to Circular 230 (finally promulgated in 2007); those comments specifically did not include any comment on Section 10.21 of Circular 230 because that Section was consistent with the AICPA Statements on Standards for Tax Services – that is, the Circular and Standards apply only when the CPA is currently engaged by a client, not in situations where a CPA was previously engaged and that engagement has ceased to exist.

Note, as well, that I was Chair of the Tax Practice Responsibilities Committee when the revised Statement on Standards for Tax Services was issued and the Committee reviewed in depth the language of the Standards – including the client “relationship” predicate discussed. Similar client relationship issues and duties to inform existed with respect to proposed “reportable transaction” Treasury regulations in late 2006. I was a member of the Task Force that issued comments on those proposals along with members of each of the Big 4 CPA firms. While we did not specifically address duties to a former client with regard to a reportable transaction, the Task Force noted that the proposed regulation contained no requirement with respect to a former client for a subsequent reporting event; that Circular 230 did not require reporting where a client engagement did not exist; and that each of the firms that Task Force members were employed by or partners of, followed the Statement on Standards for Tax Services provisions that client notice duties applied when a client engagement relationship existed, but there was no duty to inform former clients of such developments unless specifically agreed upon with the client.

Contrary to Mr. Greene’s opinion, the Paolo Clemente 2007 Tax Source Technical Memorandum makes it clear that PwC followed the professional standard set forth in SSTS No. 6: Knowledge of Error: Return Preparation. It makes no reference to a duty to a former client as SSTS No. 6 does not impose such a duty.

The memorandum does define the term error as: “includes a position taken on a prior year’s return that no longer meets the standards due to legislation, judicial decision, or administrative purposes.” However, the purpose of defining error as including an error on a prior return is specifically to impose the duties to inform under SSTS Nos. 6 or 7 on a CPA that succeeds another tax preparer of the prior return – that is, impose it on the preparer or representative in an administrative proceeding that is engaged by the client at the time of discovery. It is not an open ended or indefinite obligation of the CPA to advise a former client. In fact, Mr. Greene, in his report, fails to see or ignores that the January 14, 2010 “Fowler/Hodes” Memorandum he references specifically describes a “client engagement,” which did not exist between Mr. Tricarichi and PwC in 2008 (the only engagement concluded in 2003). Also, the memorandum is clearly limited to matters related to information returns involving amounts “reported out to payees,” that is Forms 1099 or similar form; it does not in any manner address a response to an IRS Notice of any type.

Moreover, during our discussions on the SSTS Task Force that reviewed and revised the 2000-2009 version of the SSTSs, it was noted that imposing a duty to advise a former client of an error – particularly where the issue whether an error actually exists is a matter of professional

judgment or interpretation of tax law or an administrator's interpretation – could result in a CPA actually harming a client in a current or future dispute with a tax authority concerning the matter. Section 10.21 of Circular 230 operates in the same manner as SSTS No. 7 and, consequently, imposes on the Circular 230 practitioner (a CPA, Enrolled Agent or attorney) the duty to inform; thus, in this case, the duty would have been on the law firms representing Mr. Tricarichi. The law firm(s) representing Mr. Tricarichi in Tax Court proceedings asserted that Notice 2008-111 if anything showed how the transaction was *not* reportable.

It is noted that members of the law firms involved in representing Mr. Tricarichi included a former and a future Chief Counsel of the Internal Revenue Service. If Mr. Tricarichi's tax legal counsel concluded that Notice 2008-111 rendered Mr. Tricarichi's 2003 stock sale transaction reportable, they should have informed him of his duty to comply with requirements of the Notice pursuant to their "representation" of him in accordance with Section 10.21 of Circular 230. At no time was PwC engaged to, or otherwise did it, represent Mr. Tricarichi in his dispute with the Internal Revenue Service pertaining to the Service's examination of his 2003 federal income tax return.

Other comments and observations

Mr. Greene asserts that the PwC files were, in his opinion not "organized;" that PwC's advice should have been more formally or completely documented in the file; that the advice should have been in writing; and that the PwC Tax Quality and Risk Management group should have been consulted. I disagree.

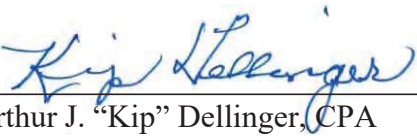
In this regard, Mr. Greene does not appear to have reviewed in depth any PwC internal processes and he cites as authority for providing advice a non-authoritative treatise, which does not rise to an authoritative source merely because it is published by the AICPA.

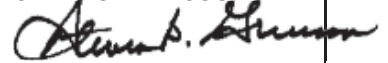
Mr. Strovky did, in fact, provide documentation for the files of the engagement in the form of a memo that met reasonable professional standards; he created the file memorandum that identified significant federal tax issues and updated the file over the period in which the advice was formulated and provided. That file memorandum describes the transaction, identifies the significant federal tax issues to be resolved and provided the basis and conclusions for those issues. (PWC-WS 0600-0604; 0700-0703; 0714-0716)

SSTS No. 8 Form and Content of Advice to Taxpayers specifically states that advice may be provided to a taxpayer, and it does not require a standard format for communicating that advice.

Finally, Mr. Greene has provided no support for his apparent assertion that it was required of the PwC engagement team that they consult with the firm's National Office Tax Quality and Risk Management group. That group is a firmwide resource to tax personnel, but its use is not mandatory. There is no AICPA professional conduct tax standard that requires referrals to a QRM group. And with respect to the interpretation of Notice 2001-16, once the engagement team concluded that it did not apply because Mr. Tricarichi's proposed transaction was distinguishable from that described in the Notice. Mr. Greene has not provided any evidence that the National Office Tax Quality and Risk Management group would have arrived at a

different conclusion, which is the same conclusion Mr. Tricarichi's tax litigation team asserted throughout his litigation with the Internal Revenue Service.


Arthur J. "Kip" Dellinger, CPA



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DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

vs.

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. NO.: XI

**APPENDIX OF EXHIBITS IN SUPPORT OF
PRICEWATERHOUSECOOPERS LLP'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION TO STRIKE JURY
DEMAND**

VOLUME 4 OF 4

Exhibit No.	Description	Bates
1	Hearing Transcript on Defendant PwC's Motion to Dismiss Amended Complaint, dated July 8, 2019	001 – 019
2	February 2, 2011 Tolling Agreement between PwC and Michael Tricarichi	020 – 031
3	T.C. Memo. 2015-201, Michael A. Tricarichi v. Commissioner of Internal Revenue, No. 23630-12, dated October 14, 2015	032 – 059
4	Excerpts of the deposition of James Tricarichi, taken August 3, 2020	060 – 070
5	Engagement Agreement, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0117243 – 117250	071 – 078
6	Richard P. Stovsky Memo to Westside Cellular, Inc./Michael Tricarichi files/Cleveland BP Tower regarding potential transaction, dated April 13, 2003, produced in this action by PwC with Bates-stamp PwC-049330 – 49334	079 – 083
7	Excerpts of the deposition of Richard P. Stovsky, taken September 1, 2020	084 – 111
8	PwC's Invoices to Michael A. Tricarichi, dated May 20, 2003, June 27, 2003, July 31, 2003, August 27, 2003, September 29, 2003, and October 29, 2003, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0007532 – 7537	112 – 117
9	Excerpts of the deposition of Michael A. Tricarichi, taken October 1, 2020	118 – 144
10	IRS Letter to Michael A. Tricarichi ("IDR"), dated January 22, 2008, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0121454 – 121458	145 – 149
11	IRS Letter to Michael A. Tricarichi, dated February 3, 2009, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0067021 – 67070	150 – 199
12	Excerpts of the deposition of Glenn Miller, taken August 18, 2020	200 – 217
13	Excerpts of the deposition of Donald L. Korb, taken August 11, 2020	218 – 234
14	Excerpts of the deposition of Michael Desmond, taken August 19, 2020	235 – 247
15	Glenn S. Miller Letter to IRS, dated April 29, 2009, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0093731 – 93752	248 – 261
16	Glenn S. Miller Letter to IRS, dated October 9, 2009, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0009424 – 9557	262 – 395
17	Don Korb Email to Michael Tricarichi, et al., dated June 9, 2010, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0123530 – 123589	396 – 455
18	IRS Notice 2008-111, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0026636 – 26644	456 – 464
19	IRS Letter to Michael Tricarichi, dated June 25, 2012, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0027037 – 27046	465 – 474

Exhibit No.	Description	Bates
20	Order Granting Summary Judgment, dated October 22, 2018	475 – 478
21	Expert Report of Craig L. Greene, CPA/CFF, CFE, MAFF, dated May 26, 2020	479 – 499
22	Excerpts of the deposition of Craig L. Greene, taken September 25, 2020	500 – 510
23	Richard Corn Email to Michael Desmond, et al., dated October 22, 2010, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0122486 – 122561	511 – 586
24	IRS Transferee Report to Michael Tricarichi, dated August 11, 2009, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0093619 – 93643	587 – 598
25	Timothy Lohnes Email to Richard P. Stovsky regarding Notice 2002-111, dated December 2, 2008 produced in this action by PwC with Bates-stamp PwC-001371 – 1382	599 – 610
26	Richard Corn Email to Peter Szpalik, et al., dated October 26, 2010, Bates-stamp ADMIN_TRI00910 – 930	611 – 618
27	Donald L. Korb, et al. Memo to Michael Tricarichi, et al., dated October 8, 2009, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0135479 – 135488	619 – 628
28	IRS Letter to Randall G. Dick, dated September 22, 2005, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0008109 – 8129	620 – 649
29	Taxpayer Interview Transcript of Michael Tricarichi, taken November 30, 2007, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0073774 – 73876	650 – 752
30	Peter Szpalik Email to Donald L. Korb, dated August 29, 2011, Bates-stamp ADMIN_TRI01034 – 1035	753 – 754
31	Rebuttal Report of Arthur J. “Kip” Dellinger, dated June 25, 2020	755 – 759
32	ABA Formal Opinion 481, dated April 17, 2018	760 – 768
33	Statements on Standards for Tax Services, dated August, 2000, Nos. 1-8, produced in this action by PwC with Bates-stamp PwC-028404 – 28439	769 – 804
34	Excerpts of the 30(b)(6) deposition of Brian Meighan, taken October 9, 2020	805 – 814
35	Excerpts of the deposition of Kenneth Harris, taken October 1, 2020	815 – 823
36	Expert Report of Kenneth L. Harris, dated May 23, 2020	824 – 877
37	Cross-Motion <i>In Limine</i> to Exclude From Trial Any Evidence or Arument [sic] That the Stock Purchase Transaction at Issue Is an “Intermediary Transaction Tax Shelter” Within the Meaning of IRS Notice 2001-16 and IRS Notice 2008-20, dated May 19, 2014, produced in this action by Tricarichi with Bates-stamp TRICAR-NV0077953 – 77959	878 – 884
38	Affidavit of Michael A. Tricarichi in Support of Plaintiff’s Opposition to Defendant PricewaterhouseCoopers LLP’s Motion for Summary Judgment, dated April 7, 2017	885 – 889

Exhibit No.	Description	Bates
39	Affidavit of Katharine A. Roin in Support of Defendant PricewaterhouseCoopers LLP's Motion for Summary Judgment and Motion to Strike Jury Demand, dated November 13, 2020	890 – 894
40	Affidavit of Richard P. Stovsky in Support of Defendant PricewaterhouseCoopers LLP's Motion for Summary Judgment and Motion to Strike Jury Demand, dated November 11, 2020	895 – 897

DATED this 13th day of November, 2020.

SNELL & WILMER L.L.P.

By: /s/ Bradley Austin

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On November 13, 2020, I caused to be served a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF PRICEWATERHOUSECOOPERS LLP'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO STRIKE JURY DEMAND (VOLUME 4 OF 4)** upon the following by the method indicated:

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).
- ☒ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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Attorneys for Plaintiff

DATED this 13th day of November, 2020.

4851-4781-9474

/s/ Lyndsey Luxford
An Employee of Snell & Wilmer L.L.P.

Exhibit 32

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 481

April 17, 2018

A Lawyer's Duty to Inform a Current or Former Client of the Lawyer's Material Error

Model Rule of Professional Conduct 1.4 requires a lawyer to inform a current client if the lawyer believes that he or she may have materially erred in the client's representation. Recognizing that errors occur along a continuum, an error is material if a disinterested lawyer would conclude that it is (a) reasonably likely to harm or prejudice a client; or (b) of such a nature that it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice. No similar obligation exists under the Model Rules to a former client where the lawyer discovers after the attorney-client relationship has ended that the lawyer made a material error in the former client's representation.

Introduction

Even the best lawyers may err in the course of clients' representations. If a lawyer errs and the error is material, the lawyer must inform a current client of the error.¹ Recognizing that errors

¹ A lawyer's duty to inform a current client of a material error has been variously explained or grounded. For malpractice and breach of fiduciary decisions, *see, e.g.*, *Leonard v. Dorsey & Whitney LLP*, 553 F.3d 609, 629 (8th Cir. 2009) (predicting Minnesota law and concluding that "the lawyer must know that there is a non-frivolous malpractice claim against him such that there is a substantial risk that [his] representation of the client would be materially and adversely affected by his own interest in avoiding malpractice liability" (internal quotation marks omitted)); *Beal Bank, SSB v. Arter & Hadden, LLP*, 167 P.3d 666, 673 (Cal. 2007) (stating that "attorneys have a fiduciary obligation to disclose material facts to their clients, an obligation that includes disclosure of acts of malpractice"); *RFF Family P'ship, LP v. Burns & Levinson, LP*, 991 N.E.2d 1066, 1076 (Mass. 2013) (discussing the fiduciary exception to the attorney-client privilege and stating that "a client is entitled to full and fair disclosure of facts that are relevant to the representation, including any bad news"); *In re Tallon*, 447 N.Y.S.2d 50, 51 (App. Div. 1982) ("An attorney has a professional duty to promptly notify his client of his failure to act and of the possible claim his client may thus have against him.").

For disciplinary decisions, *see, e.g.*, *Fla. Bar v. Morse*, 587 So. 2d 1120, 1120–21 (Fla. 1991) (suspending a lawyer who conspired with his partner to conceal the partner's malpractice from the client); *In re Hoffman*, 700 N.E.2d 1138, 1139 (Ind. 1998) (applying Rule 1.4(b)). *See also* *Ill. State Bar Ass'n Mut. Ins. Co. v. Frank M. Greenfield & Assocs., P.C.*, 980 N.E.2d 1120, 1129 (Ill. App. Ct. 2012) (finding that a voluntary payments provision in a professional liability insurance policy was "against public policy, since it may operate to limit an attorney's disclosure [of his potential malpractice] to his clients").

For ethics opinions, *see, e.g.*, *Cal. State Bar Comm. on Prof'l Responsibility & Conduct Op. 2009-178*, 2009 WL 3270875, at *4 (2009) [hereinafter *Cal. Eth. Op. 2009-178*] ("A lawyer has an ethical obligation to keep a client informed of significant developments relating to the representation. . . . Where the lawyer believes that he or she has committed legal malpractice, the lawyer must promptly communicate the factual information pertaining to the client's potential malpractice claim against the lawyer to the client, because it is a 'significant development.'" (citation omitted)); *Colo. Bar Ass'n, Ethics Comm., Formal Op. 113*, at 3 (2005) [hereinafter *Colo. Op. 113*] ("Whether a particular error gives rise to an ethical duty to disclose [under Rule 1.4] depends on whether a disinterested lawyer would conclude that the error will likely result in prejudice to the client's right or claim and that the lawyer, therefore, has an ethical responsibility to disclose the error."); *Minn. Lawyers Prof'l Responsibility Bd. Op. 21*, 2009 WL 8396588, at *1 (2009) (imposing a duty to disclose under Rule 1.4 where "the lawyer knows the lawyer's conduct may reasonably be the basis for a non-frivolous malpractice claim by a current client that materially affects the client's

occur along a continuum, an error is material if a disinterested lawyer would conclude that it is (a) reasonably likely to harm or prejudice a client; or (b) of such a nature that it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice.

If a material error relates to a former client's representation and the lawyer does not discover the error until after the representation has been terminated, the lawyer has no obligation under the Model Rules to inform the former client of the error. To illustrate, assume that a lawyer prepared a contract for a client in 2015. The matter is concluded, the representation has ended, and the person for whom the contract was prepared is not a client of the lawyer or law firm in any other matter. In 2018, while using that agreement as a template to prepare an agreement for a different client, the lawyer discovers a material error in the agreement. On those facts, the Model Rules do not require the lawyer to inform the former client of the error. Good business and risk management reasons may exist for lawyers to inform former clients of their material errors when they can do so in time to avoid or mitigate any potential harm or prejudice to the former client. Indeed, many lawyers would likely choose to do so for those or other individual reasons. Those are, however, personal decisions for lawyers rather than obligations imposed under the Model Rules.

The Duty to Inform a Current Client of a Material Error

A lawyer's responsibility to communicate with a client is governed by Model Rule 1.4.² Several parts of Model Rule 1.4(a) potentially apply where a lawyer may have erred in the course of a current client's representation. For example, Model Rule 1.4(a)(1) requires a lawyer to promptly inform a client of any decision or circumstance with respect to which the client's informed consent may be required. Model Rule 1.4(a)(2) requires a lawyer to "reasonably consult with the client about the means by which the client's objectives are to be accomplished." Model Rule 1.4(a)(3) obligates a lawyer to "keep a client reasonably informed about the status of a matter." Model Rule 1.4(a)(4), which obliges a lawyer to promptly comply with reasonable requests for information, may be implicated if the client asks about the lawyer's conduct or performance of the representation. In addition, Model Rule 1.4(b) requires a lawyer to "explain a

interests"); 2015 N.C. State Bar Formal Op. 4, 2015 WL 5927498, at *2 (2015) [hereinafter 2015 N.C. Eth. Op. 4] (applying Rule 1.4 to "material errors that prejudice the client's rights or interests as well as errors that clearly give rise to a malpractice claim"; N.J. Sup. Ct. Advisory Comm. on Prof'l Ethics Op. 684, 1998 WL 35985928, at *1 (1998) [hereinafter N.J. Eth. Op. 684] (discussing Rules 1.4 and 1.7(b) and requiring disclosure "when the attorney ascertains malpractice may have occurred, even though no damage may yet have resulted"); N.Y. State Bar Ass'n Comm. on Prof'l Ethics Eth. Op. 734, 2000 WL 33347720, at *3 (2000) [hereinafter N.Y. Eth. Op. 734] (discussing the prior Code of Professional Responsibility and concluding that the inquirer had a duty to tell the client that it made "a significant error or omission that may give rise to a possible malpractice claim"); Sup. Ct. of Prof'l Ethics Comm. Op. 593, 2010 WL 1026287, at *1 (2010) [Tex. Eth. Op. 593] (opining that the lawyer must also terminate the representation and applying Texas Rules 1.15(d), 2.01, and 8.04(a)(3)). *See also* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 20 cmt. c (2000) (requiring disclosure where the conduct "gives the client a substantial malpractice claim against the lawyer").

² MODEL RULES OF PROF'L CONDUCT R. 1.4 (2018) ("Communication") [hereinafter MODEL RULES].

matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” More broadly, the “guiding principle” undergirding Model Rule 1.4 is that “the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation.”³ A lawyer may not withhold information from a client to serve the lawyer’s own interests or convenience.⁴

Determining whether and when a lawyer must inform a client of an error can sometimes be difficult because errors exist along a continuum. An error may be sufficiently serious that it creates a conflict of interest between the lawyer and the client. Model Rule 1.7(a)(2) provides that a concurrent conflict of interest exists if “there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.” Where a lawyer’s error creates a Rule 1.7(a)(2) conflict, the client needs to know this fact to make informed decisions regarding the representation, including whether to discharge the lawyer or to consent to the conflict of interest. At the other extreme, an error may be minor or easily correctable with no risk of harm or prejudice to the client.

Several state bars have addressed lawyers’ duty to disclose errors to clients.⁵ For example, in discussing the spectrum of errors that may arise in clients’ representations, the North Carolina State Bar observed that “material errors that prejudice the client’s rights or claims are at one end. These include errors that effectively undermine the achievement of the client’s primary objective for the representation, such as failing to file the complaint before the statute of limitations runs.”⁶ At the other end of the spectrum are “nonsubstantive typographical errors” or “missing a deadline that causes nothing more than delay.”⁷ “Between the two ends of the spectrum are a range of errors that may or may not materially prejudice the client’s interests.”⁸ With respect to the middle ground:

Errors that fall between the two extremes of the spectrum must be analyzed under the duty to keep the client reasonably informed about his legal matter. If the error will result in financial loss to the client, substantial delay in achieving the client’s objectives for the representation, or material disadvantage to the client’s legal position, the error must be disclosed to the client. Similarly, if disclosure of the error is necessary for the client to make an informed decision about the representation or for the lawyer to advise the client of significant changes in strategy, timing, or direction of the representation, the lawyer may not withhold information about the error.⁹

³ *Id.* cmt. 5.

⁴ *Id.* cmt. 7.

⁵ See *supra* note 1 (listing authorities).

⁶ 2015 N.C. Eth. Op. 4, *supra* note 1, 2015 WL 5927498, at *2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Another example is contained in the Colorado Bar Association's Ethics Committee in Formal Opinion 113, which discusses the spectrum of errors that may implicate a lawyers' duty of disclosure. In doing so, it identified errors ranging from those plainly requiring disclosure (a missed statute of limitations or a failure to file a timely appeal) to those "that may never cause harm to the client, either because any resulting harm is not reasonably foreseeable, there is no prejudice to a client's right or claim, or the lawyer takes corrective measures that are reasonably likely to avoid any such prejudice."¹⁰ Errors by lawyers between these two extremes must be analyzed individually. For example, disclosure is not required where the law on an issue is unsettled and a lawyer makes a tactical decision among "equally viable alternatives."¹¹ On the other hand, "potential errors that may give rise to an ethical duty to disclose include the failure to request a jury in a pleading (or pay the jury fee), the failure to include an acceleration provision in a promissory note, and the failure to give timely notice under a contract or statute."¹² Ultimately, the Colorado Bar concluded that whether a particular error gives rise to an ethical obligation to disclose depends on whether the error is "material," which further "depends on whether a disinterested lawyer would conclude that the error will likely result in prejudice to the client's right or claim."¹³

These opinions provide helpful guidance to lawyers, but they do not—just as we do not—purport to precisely define the scope of a lawyer's disclosure obligations. Still, the Committee believes that lawyers deserve more specific guidance in evaluating their duty to disclose errors to current clients than has previously been available.

In attempting to define the boundaries of this obligation under Model Rule 1.4, it is unreasonable to conclude that a lawyer must inform a current client of an error only if that error may support a colorable legal malpractice claim, because a lawyer's error may impair a client's representation even if the client will never be able to prove all of the elements of malpractice. At the same time, a lawyer should not necessarily be able to avoid disclosure of an error absent apparent harm to the client because the lawyer's error may be of such a nature that it would cause a reasonable client to lose confidence in the lawyer's ability to perform the representation competently, diligently, or loyally despite the absence of clear harm. Finally, client protection and the purposes of legal representation dictate that the standard for imposing an obligation to disclose must be objective.

With these considerations in mind, the Committee concludes that a lawyer must inform a current client of a material error committed by the lawyer in the representation. An error is material if a disinterested lawyer would conclude that it is (a) reasonably likely to harm or prejudice a client; or (b) of such a nature that it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice.

¹⁰ Colo. Op. 113, *supra* note 1, at 3.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1, 3.

A lawyer must notify a current client of a material error promptly under the circumstances.¹⁴ Whether notification is prompt will be a case- and fact-specific inquiry. Greater urgency is required where the client could be harmed by any delay in notification. The lawyer may consult with his or her law firm's general counsel, another lawyer, or the lawyer's professional liability insurer before informing the client of the material error.¹⁵ Such consultation should also be prompt. When it is reasonable to do so, the lawyer may attempt to correct the error before informing the client. Whether it is reasonable for the lawyer to attempt to correct the error before informing the client will depend on the facts and should take into account the time needed to correct the error and the lawyer's obligation to keep the client reasonably informed about the status of the matter.

When a Current Client Becomes a Former Client

As indicated earlier, whether a lawyer must reveal a material error depends on whether the affected person or entity is a current or former client. Substantive law, rather than rules of professional conduct, controls whether an attorney-client relationship exists, or once established, whether it is ongoing or has been concluded.¹⁶ Generally speaking, a current client becomes a former client (a) at the time specified by the lawyer for the conclusion of the representation, and acknowledged by the client, such as where the lawyer's engagement letter states that the representation will conclude upon the lawyer sending a final invoice, or the lawyer sends a disengagement letter upon the completion of the matter (and thereafter acts consistently with the letter);¹⁷ (b) when the lawyer withdraws from the representation pursuant to Model Rule of Professional Conduct 1.16; (c) when the client terminates the representation;¹⁸ or (d) when overt acts inconsistent with the continuation of the attorney-client relationship indicate that the

¹⁴ See N.J. Eth. Op. 684, *supra* note 1, 1998 WL 35985928, at *1 ("Clearly, RPC 1.4 requires prompt disclosure in the interest of allowing the client to make informed decisions. Disclosure should therefore occur when the attorney ascertains malpractice may have occurred, even though no damage may yet have resulted."); 2015 N.C. Eth. Op. 4, *supra* note 1, 2015 WL 5927498, at *4 ("The error should be disclosed to the client as soon as possible after the lawyer determines that disclosure of the error to the client is required."); Tex. Eth. Op. 593, *supra* note 1, 2010 WL 1026287, at *1 (requiring disclosure "as promptly as reasonably possible").

¹⁵ See MODEL RULES R. 1.6(b)(4) (2018) (permitting a lawyer to reveal information related to a client's representation "to secure legal advice about the lawyer's compliance with these Rules").

¹⁶ *United States v. Williams*, 720 F.3d 674, 686 (8th Cir. 2013); *Rozmus v. West*, 13 Vet. App. 386, 387 (U.S. App. Vet. Cl. 2000); see also MODEL RULES Scope cmt. 17 (2018) (explaining that "for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists").

¹⁷ See *Artromick Int'l, Inc. v. Drustar Inc.*, 134 F.R.D. 226, 229 (S.D. Ohio 1991) (observing that "the simplest way for either the attorney or client to end the relationship is by expressly saying so"); see also, e.g., *Rusk v. Harstad*, 393 P.3d 341, 344 (Utah Ct. App. 2017) (concluding that a would-be client could not have reasonably believed that the law firm represented him where the lawyer had clearly stated in multiple e-mails that the law firm would not represent him).

¹⁸ A client may discharge a lawyer at any time for any reason, or for no reason. *White Pearl Inversiones S.A. (Uruguay) v. Cemusa, Inc.*, 647 F.3d 684, 689 (7th Cir. 2011); *Nabi v. Sells*, 892 N.Y.S.2d 41, 43 (App. Div. 2009); MODEL RULES R. 1.16 cmt. 4; see also STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS 77 (11th ed. 2018) ("Clients, it is said, may fire their lawyers for any reason or no reason.") (citations omitted).

relationship has ended.¹⁹ If a lawyer represents a client in more than one matter, the client is a current client if any of those matters is active or open; in other words, the termination of representation in one or more matters does not transform a client into a former client if the lawyer still represents the client in other matters.

Absent express statements or overt acts by either party, an attorney-client relationship also may be terminated when it would be objectively unreasonable to continue to bind the parties to each other.²⁰ In such cases, the parties' reasonable expectations often hinge on the scope of the lawyer's representation.²¹ In that regard, the court in *National Medical Care, Inc. v. Home Medical of America, Inc.*,²² suggested that the scope of a lawyer's representation loosely falls into one of three categories: (1) the lawyer is retained as general counsel to handle all of the client's legal matters; (2) the lawyer is retained for all matters in a specific practice area; or (3) the lawyer is retained to represent the client in a discrete matter.²³

For all three categories identified by the *National Medical Care* court, unless the client or lawyer terminates the representation, the attorney-client relationship continues as long as the lawyer is responsible for a pending matter.²⁴ With respect to categories one and two above, an attorney-client relationship continues even when the lawyer has no pending matter for the client because the parties reasonably expect that the lawyer will handle all matters for the client in the future as they arise.²⁵ In the third category, where a lawyer agrees to undertake a specific matter, the attorney-client relationship ends once the matter is concluded.²⁶

Although not identified by the *National Medical Care* court, another type of client is what might be called an episodic client, meaning a client who engages the lawyer whenever the client requires legal representation, but whose legal needs are not constant or continuous. In many such

¹⁹ See, e.g., *Artromick Int'l, Inc.*, 134 F.R.D. at 230–31 (determining that a man was a former client because he refused to pay the lawyer's bill and then retained other lawyers to replace the first lawyer); *Waterbury Garment Corp. v. Strata Prods.*, 554 F. Supp. 63, 66 (S.D.N.Y. 1982) (concluding that a person was a former client because the law firm represented him only in discrete transactions that had concluded and the person had subsequently retained different counsel).

²⁰ *Artromick Int'l, Inc.*, 134 F.R.D. at 229.

²¹ *Id.* at 229–30.

²² No. 00-1225, 2002 WL 31068413 (Mass. Super. Ct. Sept. 12, 2002).

²³ *Id.* at *4.

²⁴ *Id.*; see also MODEL RULES R. 1.3 cmt. 4 (2018) (stating that unless the relationship is terminated under Model Rule 1.16, the lawyer “should carry through to conclusion all matters undertaken for a client”).

²⁵ See *Berry v. McFarland*, 278 P.3d 407, 411 (Idaho 2012) (explaining that “[i]f the attorney agrees to handle any matters the client may have, the relationship continues until the attorney or client terminates the relationship”); see also MODEL RULES R. 1.3 cmt. 4 (2018) (advising that “[i]f a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal”).

²⁶ *Simpson v. James*, 903 F.2d 372, 376 (5th Cir. 1990); *Berry*, 278 P.3d at 411; see also *Revise Clothing, Inc. v. Joe's Jeans Subsidiary, Inc.*, 687 F. Supp. 2d 381, 389–90 (S.D.N.Y. 2010) (noting that an attorney-client relationship is ordinarily terminated by the accomplishment of the purpose for which it was formed); *Thayer v. Fuller & Henry Ltd.*, 503 F. Supp. 2d 887, 892 (N.D. Ohio 2007) (observing that an attorney-client relationship may terminate when the underlying action has concluded or when the attorney has exhausted all remedies and declined to provide additional legal services); MODEL RULES R. 1.16 cmt. 1 (“Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded.”).

instances, the client reasonably expects that the professional relationship will span any intervals and that the lawyer will be available when the client next needs representation.²⁷ If so, the client should be considered a current client. In other instances, it is possible that the attorney-client relationship ended when the most recent matter concluded.²⁸ Whether an episodic client is a current or former client will thus depend on the facts of the case.

The Former Client Analysis Under the Model Rules

As explained above, a lawyer must inform a current client of a material error under Model Rule 1.4. Rule 1.4 imposes no similar duty to former clients.

Four of the five subparts in Model Rule 1.4(a) expressly refer to “the client” and the one that does not—Model Rule 1.4(a), governing lawyers’ duty to respond to reasonable requests for information—is aimed at responding to requests from a current client. Model Rule 1.4(b) refers to “the client” when describing a lawyer’s obligations. Nowhere does Model Rule 1.4 impose on lawyers a duty to communicate with former clients. The comments to Model Rule 1.4 are likewise focused on current clients and are silent with respect to communications with former clients. There is nothing in the legislative history of Model Rule 1.4 to suggest that the drafters meant the duties expressed there to apply to former clients.²⁹ Had the drafters of the Model Rules intended Rule 1.4 to apply to former clients, they presumably would have referred to former clients in the language of the rule or in the comments to the rule. They did neither despite knowing how to distinguish duties owed to current clients from duties owed to former clients when appropriate, as reflected in the Model Rules regulating conflicts of interest.³⁰

²⁷ See, e.g., *Parallel Iron, LLC v. Adobe Sys. Inc.*, C.A. No. 12-874-RGA, 2013 WL 789207, at *2–3 (D. Del. Mar. 4, 2013) (concluding that Adobe was a current client in July 2012 when the law firm was doing no work for it; the firm had served as patent counsel to Adobe intermittently between 2006 and February 2012, and had not made clear to Adobe that its representation was terminated); *Jones v. Rabanco, Ltd.*, No. C03-3195P, 2006 WL 2237708, at *3 (W.D. Wash. Aug. 3, 2006) (reasoning that the law firm’s inclusion as a contact under a contract, the law firm’s work for the client after the contract was finalized, and the fact that the client matter was still open in the law firm’s files all indicated an existing attorney-client relationship); STEPHEN GILLERS, *REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS* 78-79 (11th ed. 2018) (“Lawyers might believe that a client is no longer a client if they are doing no work for it at the moment and haven’t for a while. . . . [A] firm may have done work for a client two or three times a year for the past five years, creating a reasonable client expectation that the professional relationship continues during the intervals and that the lawyer will be available the next time the client needs her.”).

²⁸ See, e.g., *Calamar Enters., Inc. v. Blue Forest Land Grp., Inc.*, 222 F. Supp. 3d 257, 264–65 (W.D.N.Y. 2016) (rejecting the client’s claim of an attorney-client relationship where the relationship between the law firm and the client had been dormant for three years; despite the fact that the attorney-client relationship had not been formally terminated, it ended when the purpose of the parties’ retainer agreement had been completed).

²⁹ AM. BAR ASS’N CTR. FOR PROF’L RESPONSIBILITY, *A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982–2013*, 71–78 (Arthur H. Garwin ed., 2013).

³⁰ Compare MODEL RULES R. 1.7 (2018) (addressing current client conflicts of interest), with MODEL RULES R. 1.9 (2018) (governing former client conflicts of interest).

Because Model Rule 1.4 does not impose on lawyers a duty to communicate with former clients,³¹ it is no basis for requiring lawyers to disclose material errors to former clients.

The California State Bar's Committee on Professional Responsibility and Conduct reached a similar conclusion with respect to California Rule of Professional Conduct 3-500, which states that "[a] member [of the State Bar of California] shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed." In concluding that a lawyer had no duty to keep a former client informed of significant developments in the representation, and specifically the former client's possible malpractice claim against the lawyer, the Committee focused on the fact that the lawyer and the former client had "terminated their attorney-client relationship" and on Rule 3-500's reference to a "client," meaning a current client.³²

Finally, in terms of possible sources of an obligation to disclose material errors to former clients, Model Rule 1.16(d) provides in pertinent part that, upon termination of a representation, "a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee[s] or expense[s] that has not been earned or incurred." This provision does not create a duty to inform former clients of material errors for at least two reasons. First, the wording of the rule demonstrates that the error would have to be discovered while the client was a current client, thereby pushing any duty to disclose back into the current client communication regime. Second, Model Rule 1.16(d) is by its terms limited to actions that may be taken upon termination of the representation or soon thereafter; it cannot reasonably be construed to apply to material errors discovered months or years after termination of the representation.

Conclusion

The Model Rules require a lawyer to inform a current client if the lawyer believes that he or she may have materially erred in the client's representation. Recognizing that errors occur along a continuum, an error is material if a disinterested lawyer would conclude that it is (a) reasonably likely to harm or prejudice a client; or (b) of such a nature that it would reasonably cause a client to consider terminating the representation even in the absence of harm or prejudice. The lawyer

³¹ See Sup. Ct. of Ohio, Bd. of Comm'rs on Grievances & Discipline Adv. Op. 2010-2, 2010 WL 1541844, at *2 (2010) (explaining that Rule 1.4 "applies to ethical duties regarding communication *during a representation*" (emphasis added)); Va. State Bar Comm. on Legal Ethics Eth. Op. 1789, 2004 WL 436386, at *1 (2004) (stating that "[d]uring the course of the representation, an attorney's duty to provide information to his client is governed by Rule 1.4(a)" (emphasis added)).

³² Cal. Eth. Op. 2009-178, *supra* note 1, 2009 WL 3270875, at *6.

must so inform the client promptly under the circumstances. Whether notification is prompt is a case- and fact-specific inquiry.

No similar duty of disclosure exists under the Model Rules where the lawyer discovers after the termination of the attorney-client relationship that the lawyer made a material error in the former client's representation.

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

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Exhibit 33

August 2000

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Statements on Standards for Tax Services

Issued by the Tax Executive Committee

AICPA

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

**Statement on Standards for Tax Services No. 1,
*Tax Return Positions***

Interpretation No. 1-1, "Realistic Possibility Standard"

**Statement on Standards for Tax Services No. 2,
*Answers to Questions on Returns***

**Statement on Standards for Tax Services No. 3,
*Certain Procedural Aspects of Preparing Returns***

**Statement on Standards for Tax Services No. 4,
*Use of Estimates***

**Statement on Standards for Tax Services No. 5,
*Departure From a Position Previously Concluded in
an Administrative Proceeding or Court Decision***

**Statement on Standards for Tax Services No. 6,
*Knowledge of Error: Return Preparation***

**Statement on Standards for Tax Services No. 7,
*Knowledge of Error: Administrative Proceedings***

**Statement on Standards for Tax Services No. 8,
*Form and Content of Advice to Taxpayers***

EXHIBIT
PwC Dep Ex. No.

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Preface

1. Practice standards are the hallmark of calling one's self a professional. Members should fulfill their responsibilities as professionals by instituting and maintaining standards against which their professional performance can be measured. Compliance with professional standards of tax practice also confirms the public's awareness of the professionalism that is associated with CPAs as well as the AICPA.

2. This publication sets forth ethical tax practice standards for members of the AICPA: Statements on Standards for Tax Services (SSTs or Statements). Although other standards of tax practice exist, most notably Treasury Department Circular No. 230 and penalty provisions of the Internal Revenue Code (IRC), those standards are limited in that (1) Circular No. 230 does not provide the depth of guidance contained in these Statements, (2) the IRC penalty provisions apply only to income-tax return preparation, and (3) both Circular No. 230 and the penalty provisions apply only to federal tax practice.

3. The SSTs have been written in as simple and objective a manner as possible. However, by their nature, ethical standards provide for an appropriate range of behavior that recognizes the need for interpretations to meet a broad range of personal and professional situations. The SSTs recognize this need by, in some sections, providing relatively subjective rules and by leaving certain terms undefined. These terms and concepts are generally rooted in tax concepts, and therefore should be readily understood by tax practitioners. It is, therefore, recognized that the enforcement of these rules, as part of the AICPA's Code of Professional Conduct Rule 201, General Standards, and Rule 202, Compliance With Standards, will be undertaken with flexibility in mind and handled on a case-by-case basis. Members are expected to comply with them.

History

4. The SSTs have their origin in the Statements on Responsibilities in Tax Practice (SRTPs), which provided a body of advisory opinions on good tax practice. The guidelines as originally set forth in the SRTPs had come to play a much more important role than most members realized. The courts, Internal Revenue Service,

state accountancy boards, and other professional organizations recognized and relied on the SRTPs as the appropriate articulation of professional conduct in a CPA's tax practice. The SRTPs, in and of themselves, had become de facto enforceable standards of professional practice, because state disciplinary organizations and malpractice cases in effect regularly held CPAs accountable for failure to follow the SRTPs when their professional practice conduct failed to meet the prescribed guidelines of conduct.

5. The AICPA's Tax Executive Committee concluded that appropriate action entailed issuance of tax practice standards that would become a part of the Institute's Code of Professional Conduct. At its July 1999 meeting, the AICPA Board of Directors approved support of the executive committee's initiative and placed the matter on the agenda of the October 1999 meeting of the Institute's governing Council. On October 19, 1999, Council approved designating the Tax Executive Committee as a standard-setting body, thus authorizing that committee to promulgate standards of tax practice. These SSTs, largely mirroring the SRTPs, are the result.

6. The SRTPs were originally issued between 1964 and 1977. The first nine SRTPs and the Introduction were codified in 1976; the tenth SRTP was issued in 1977. The original SRTPs concerning the CPA's responsibility to sign the return (SRTPs No. 1, *Signature of Preparers*, and No. 2, *Signature of Reviewer: Assumption of Preparer's Responsibility*) were withdrawn in 1982 after Treasury Department regulations were issued adopting substantially the same standards for all tax return preparers. The sixth and seventh SRTPs, concerning the responsibility of a CPA who becomes aware of an error, were revised in 1991. The first Interpretation of the SRTPs, Interpretation 1-1, "Realistic Possibility Standard," was approved in December 1990. The SSTs and Interpretation supersede and replace the SRTPs and their Interpretation 1-1 effective October 31, 2000. Although the number and names of the SSTs, and the substance of the rules contained in each of them, remain the same as in the SRTPs, the language has been edited to both clarify and reflect the enforceable nature of the SSTs. In addition, because the applicability of these standards is not limited to federal income-tax practice, the language has been changed to mirror the broader scope.

Ongoing Process

7. The following Statements on Standards for Tax Services and Interpretation 1-1 to Statement No. 1, "Realistic Possibility Standard," reflect the AICPA's standards of tax practice and delineate members' responsibilities to taxpayers, the public, the government, and the profession. The Statements are intended to be part of an ongoing process that may require changes to and interpretations of current SSTs in recognition of the accelerating rate of change in tax laws and the continued importance of tax practice to members.

8. The Tax Executive Committee promulgates SSTs. Even though the 1999-2000 Tax Executive Committee approved this version, acknowledgment is also due to the many members whose efforts over the years went into the development of the original statements.

Statement on Standards for Tax Services No. 1, Tax Return Positions

Introduction

1. This Statement sets forth the applicable standards for members when recommending tax return positions and preparing or signing tax returns (including amended returns, claims for refund, and information returns) filed with any taxing authority. For purposes of these standards, a *tax return position* is (a) a position reflected on the tax return as to which the taxpayer has been specifically advised by a member or (b) a position about which a member has knowledge of all material facts and, on the basis of those facts, has concluded whether the position is appropriate. For purposes of these standards, a *taxpayer* is a client, a member's employer, or any other third-party recipient of tax services.

Statement

2. The following standards apply to a member when providing professional services that involve tax return positions:

- a. A member should not recommend that a tax return position be taken with respect to any item unless the member has a good-faith belief that the position has a realistic possibility of being sustained administratively or judicially on its merits if challenged.
- b. A member should not prepare or sign a return that the member is aware takes a position that the member may not recommend under the standard expressed in paragraph 2a.
- c. Notwithstanding paragraph 2a, a member may recommend a tax return position that the member concludes is not frivolous as long as the member advises the taxpayer to appropriately disclose. Notwithstanding paragraph 2b, the member may prepare or sign a return that reflects a position that the member concludes is not frivolous as long as the position is appropriately disclosed.
- d. When recommending tax return positions and when preparing or signing a return on which a tax return position is taken, a member should, when relevant, advise the taxpayer regarding potential

penalty consequences of such tax return position and the opportunity, if any, to avoid such penalties through disclosure.

3. A member should not recommend a tax return position or prepare or sign a return reflecting a position that the member knows—

- a. Exploits the audit selection process of a taxing authority.
- b. Serves as a mere arguing position advanced solely to obtain leverage in the bargaining process of settlement negotiation with a taxing authority.

4. When recommending a tax return position, a member has both the right and responsibility to be an advocate for the taxpayer with respect to any position satisfying the aforementioned standards.

Explanation

5. Our self-assessment tax system can function effectively only if taxpayers file tax returns that are true, correct, and complete. A tax return is primarily a taxpayer's representation of facts, and the taxpayer has the final responsibility for positions taken on the return.

6. In addition to a duty to the taxpayer, a member has a duty to the tax system. However, it is well established that the taxpayer has no obligation to pay more taxes than are legally owed, and a member has a duty to the taxpayer to assist in achieving that result. The standards contained in paragraphs 2, 3, and 4 recognize the members' responsibilities to both taxpayers and to the tax system.

7. In order to meet the standards contained in paragraph 2, a member should in good faith believe that the tax return position is warranted in existing law or can be supported by a good-faith argument for an extension, modification, or reversal of existing law. For example, in reaching such a conclusion, a member may consider a well-reasoned construction of the applicable statute, well-reasoned articles or treatises, or pronouncements issued by the applicable taxing authority, regardless of whether such sources would be treated as *authority* under Internal Revenue Code section 6662 and the regulations thereunder. A position would not fail to meet these standards merely because it is later abandoned for practical or procedural considerations during an administrative hearing or in the litigation process.

8. If a member has a good-faith belief that more than one tax return position meets the standards set forth in paragraph 2, a member's advice concerning alternative acceptable positions may include a discussion of the likelihood that each such position might or might not cause the taxpayer's tax return to be examined and whether the position would be challenged in an examination. In such circumstances, such advice is not a violation of paragraph 3a.

9. In some cases, a member may conclude that a tax return position is not warranted under the standard set forth in paragraph 2a. A taxpayer may, however, still wish to take such a position. Under such circumstances, the taxpayer should have the opportunity to take such a position, and the member may prepare and sign the return provided the position is appropriately disclosed on the return or claim for refund and the position is not frivolous. A frivolous position is one that is knowingly advanced in bad faith and is patently improper.

10. A member's determination of whether information is appropriately disclosed by the taxpayer should be based on the facts and circumstances of the particular case and the authorities regarding disclosure in the applicable taxing jurisdiction. If a member recommending a position, but not engaged to prepare or sign the related tax return, advises the taxpayer concerning appropriate disclosure of the position, then the member shall be deemed to meet these standards.

11. If particular facts and circumstances lead a member to believe that a taxpayer penalty might be asserted, the member should so advise the taxpayer and should discuss with the taxpayer the opportunity to avoid such penalty by disclosing the position on the tax return. Although a member should advise the taxpayer with respect to disclosure, it is the taxpayer's responsibility to decide whether and how to disclose.

12. For purposes of this Statement, preparation of a tax return includes giving advice on events that have occurred at the time the advice is given if the advice is directly relevant to determining the existence, character, or amount of a schedule, entry, or other portion of a tax return.

Interpretation No. 1-1, "Realistic Possibility Standard" of Statement on Standards for Tax Services No. 1, Tax Return Positions

Background

1. Statement on Standards for Tax Services (SSTS) No. 1, *Tax Return Positions*, contains the standards a member should follow in recommending tax return positions and in preparing or signing tax returns. In general, a member should have a good-faith belief that the tax return position being recommended has a realistic possibility of being sustained administratively or judicially on its merits, if challenged. The standard contained in SSTS No. 1, paragraph 2a, is referred to here as the realistic possibility standard. If a member concludes that a tax return position does not meet the realistic possibility standard:

- a. The member may still recommend the position to the taxpayer if the position is not frivolous, and the member recommends appropriate disclosure of the position; or
- b. The member may still prepare or sign a tax return containing the position, if the position is not frivolous, and the position is appropriately disclosed.

2. A *frivolous position* is one that is knowingly advanced in bad faith and is patently improper (see SSTS No. 1, paragraph 9). A member's determination of whether information is appropriately disclosed on a tax return or claim for refund is based on the facts and circumstances of the particular case and the authorities regarding disclosure in the applicable jurisdiction (see SSTS No. 1, paragraph 10).

3. If a member believes there is a possibility that a tax return position might result in penalties being asserted against a taxpayer, the member should so advise the taxpayer and should discuss with the taxpayer the opportunity, if any, of avoiding such penalties through disclosure (see SSTS No. 1, paragraph 11). Such advice may be given orally.

General Interpretation

4. To meet the realistic possibility standard, a member should have a good-faith belief that the position is warranted by existing law or can be supported by a good-faith argument for an extension, modification, or reversal of the existing law through the administrative or judicial process. Such a belief should be based on reasonable interpretations of the tax law. A member should not take into account the likelihood of audit or detection when determining whether this standard has been met (see SSTS No. 1, paragraphs 3a and 8).

5. The realistic possibility standard is less stringent than the substantial authority standard and the more likely than not standard that apply under the Internal Revenue Code (IRC) to substantial understatements of liability by taxpayers. The realistic possibility standard is stricter than the reasonable basis standard that is in the IRC.

6. In determining whether a tax return position meets the realistic possibility standard, a member may rely on authorities in addition to those evaluated when determining whether substantial authority exists under IRC section 6662. Accordingly, a member may rely on well-reasoned treatises, articles in recognized professional tax publications, and other reference tools and sources of tax analyses commonly used by tax advisers and preparers of returns.

7. In determining whether a realistic possibility exists, a member should do all of the following:

- Establish relevant background facts
- Distill the appropriate questions from those facts
- Search for authoritative answers to those questions
- Resolve the questions by weighing the authorities uncovered by that search
- Arrive at a conclusion supported by the authorities

8. A member should consider the weight of each authority to conclude whether a position meets the realistic possibility standard. In determining the weight of an authority, a member should consider its persuasiveness, relevance, and source. Thus, the type of authority is a significant factor. Other important factors include whether the facts stated by the authority are distinguishable from those of the tax-

payer and whether the authority contains an analysis of the issue or merely states a conclusion.

9. The realistic possibility standard may be met despite the absence of certain types of authority. For example, a member may conclude that the realistic possibility standard has been met when the position is supported only by a well-reasoned construction of the applicable statutory provision.

10. In determining whether the realistic possibility standard has been met, the extent of research required is left to the professional judgment of the member with respect to all the facts and circumstances known to the member. A member may conclude that more than one position meets the realistic possibility standard.

Specific Illustrations

11. The following illustrations deal with general fact patterns. Accordingly, the application of the guidance discussed in the General Interpretation section to variations in such general facts or to particular facts or circumstances may lead to different conclusions. In each illustration there is no authority other than that indicated.

12. *Illustration 1.* A taxpayer has engaged in a transaction that is adversely affected by a new statutory provision. Prior law supports a position favorable to the taxpayer. The taxpayer believes, and the member concurs, that the new statute is inequitable as applied to the taxpayer's situation. The statute is constitutional, clearly drafted, and unambiguous. The legislative history discussing the new statute contains general comments that do not specifically address the taxpayer's situation.

13. *Conclusion.* The member should recommend the return position supported by the new statute. A position contrary to a constitutional, clear, and unambiguous statute would ordinarily be considered a frivolous position.

14. *Illustration 2.* The facts are the same as in illustration 1 except that the legislative history discussing the new statute specifically addresses the taxpayer's situation and supports a position favorable to the taxpayer.

15. *Conclusion.* In a case where the statute is clearly and unambiguously against the taxpayer's position but a contrary position exists based on legislative history specifically addressing the taxpayer's situation, a return position based either on the statutory language or on the legislative history satisfies the realistic possibility standard.

16. *Illustration 3.* The facts are the same as in illustration 1 except that the legislative history can be interpreted to provide some evidence or authority in support of the taxpayer's position; however, the legislative history does not specifically address the situation.

17. *Conclusion.* In a case where the statute is clear and unambiguous, a contrary position based on an interpretation of the legislative history that does not explicitly address the taxpayer's situation does not meet the realistic possibility standard. However, because the legislative history provides some support or evidence for the taxpayer's position, such a return position is not frivolous. A member may recommend the position to the taxpayer if the member also recommends appropriate disclosure.

18. *Illustration 4.* A taxpayer is faced with an issue involving the interpretation of a new statute. Following its passage, the statute was widely recognized to contain a drafting error, and a technical correction proposal has been introduced. The taxing authority issues a pronouncement indicating how it will administer the provision. The pronouncement interprets the statute in accordance with the proposed technical correction.

19. *Conclusion.* Return positions based on either the existing statutory language or the taxing authority pronouncement satisfy the realistic possibility standard.

20. *Illustration 5.* The facts are the same as in illustration 4 except that no taxing authority pronouncement has been issued.

21. *Conclusion.* In the absence of a taxing authority pronouncement interpreting the statute in accordance with the technical correction, only a return position based on the existing statutory language will meet the realistic possibility standard. A return position based on the proposed technical correction may be recommended if it is appropriately disclosed, since it is not frivolous.

22. *Illustration 6.* A taxpayer is seeking advice from a member regarding a recently amended statute. The member has reviewed the

statute, the legislative history that specifically addresses the issue, and a recently published notice issued by the taxing authority. The member has concluded in good faith that, based on the statute and the legislative history, the taxing authority's position as stated in the notice does not reflect legislative intent.

23. *Conclusion.* The member may recommend the position supported by the statute and the legislative history because it meets the realistic possibility standard.

24. *Illustration 7.* The facts are the same as in illustration 6 except that the taxing authority pronouncement is a temporary regulation.

25. *Conclusion.* In determining whether the position meets the realistic possibility standard, a member should determine the weight to be given the regulation by analyzing factors such as whether the regulation is legislative or interpretative, or if it is inconsistent with the statute. If a member concludes that the position does not meet the realistic possibility standard, because it is not frivolous, the position may nevertheless be recommended if the member also recommends appropriate disclosure.

26. *Illustration 8.* A tax form published by a taxing authority is incorrect, but completion of the form as published provides a benefit to the taxpayer. The member knows that the taxing authority has published an announcement acknowledging the error.

27. *Conclusion.* In these circumstances, a return position in accordance with the published form is a frivolous position.

28. *Illustration 9.* A taxpayer wants to take a position that a member has concluded is frivolous. The taxpayer maintains that even if the taxing authority examines the return, the issue will not be raised.

29. *Conclusion.* The member should not consider the likelihood of audit or detection when determining whether the realistic possibility standard has been met. The member should not prepare or sign a return that contains a frivolous position even if it is disclosed.

30. *Illustration 10.* A statute is passed requiring the capitalization of certain expenditures. The taxpayer believes, and the member concurs, that to comply fully, the taxpayer will need to acquire new computer hardware and software and implement a number of new accounting procedures. The taxpayer and member agree that the costs of full compliance will be significantly greater than the result-

ing increase in tax due under the new provision. Because of these cost considerations, the taxpayer makes no effort to comply. The taxpayer wants the member to prepare and sign a return on which the new requirement is simply ignored.

31. *Conclusion.* The return position desired by the taxpayer is frivolous, and the member should neither prepare nor sign the return.

32. *Illustration 11.* The facts are the same as in illustration 10 except that a taxpayer has made a good-faith effort to comply with the law by calculating an estimate of expenditures to be capitalized under the new provision.

33. *Conclusion.* In this situation, the realistic possibility standard has been met. When using estimates in the preparation of a return, a member should refer to SSTS No. 4, *Use of Estimates*.

34. *Illustration 12.* On a given issue, a member has located and weighed two authorities concerning the treatment of a particular expenditure. A taxing authority has issued an administrative ruling that required the expenditure to be capitalized and amortized over several years. On the other hand, a court opinion permitted the current deduction of the expenditure. The member has concluded that these are the relevant authorities, considered the source of both authorities, and concluded that both are persuasive and relevant.

35. *Conclusion.* The realistic possibility standard is met by either position.

36. *Illustration 13.* A tax statute is silent on the treatment of an item under the statute. However, the legislative history explaining the statute directs the taxing authority to issue regulations that will require a specific treatment of the item. No regulations have been issued at the time the member must recommend a position on the tax treatment of the item.

37. *Conclusion.* The member may recommend the position supported by the legislative history because it meets the realistic possibility standard.

38. *Illustration 14.* A taxpayer wants to take a position that a member concludes meets the realistic possibility standard based on an assumption regarding an underlying nontax legal issue. The member recommends that the taxpayer seek advice from its legal counsel, and the taxpayer's attorney gives an opinion on the nontax legal issue.

39. *Conclusion.* A member may in general rely on a legal opinion on a nontax legal issue. A member should, however, use professional judgment when relying on a legal opinion. If, on its face, the opinion of the taxpayer's attorney appears to be unreasonable, unsubstantiated, or unwarranted, a member should consult his or her attorney before relying on the opinion.

40. *Illustration 15.* A taxpayer has obtained from its attorney an opinion on the tax treatment of an item and requests that a member rely on the opinion.

41. *Conclusion.* The authorities on which a member may rely include well-reasoned sources of tax analysis. If a member is satisfied about the source, relevance, and persuasiveness of the legal opinion, a member may rely on that opinion when determining whether the realistic possibility standard has been met.

Statement on Standards for Tax Services No. 2, Answers to Questions on Returns

Introduction

1. This Statement sets forth the applicable standards for members when signing the preparer's declaration on a tax return if one or more questions on the return have not been answered. The term *questions* includes requests for information on the return, in the instructions, or in the regulations, whether or not stated in the form of a question.

Statement

2. A member should make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return before signing as preparer.

Explanation

3. It is recognized that the questions on tax returns are not of uniform importance, and often they are not applicable to the particular taxpayer. Nevertheless, there are at least two reasons why a member should be satisfied that a reasonable effort has been made to obtain information to provide appropriate answers to the questions on the return that are applicable to a taxpayer.

- a. A question may be of importance in determining taxable income or loss, or the tax liability shown on the return, in which circumstance an omission may detract from the quality of the return.
- b. A member often must sign a preparer's declaration stating that the return is true, correct, and complete.

4. Reasonable grounds may exist for omitting an answer to a question applicable to a taxpayer. For example, reasonable grounds may include the following:

- a.* The information is not readily available and the answer is not significant in terms of taxable income or loss, or the tax liability shown on the return.
- b.* Genuine uncertainty exists regarding the meaning of the question in relation to the particular return.
- c.* The answer to the question is voluminous; in such cases, a statement should be made on the return that the data will be supplied upon examination.

5. A member should not omit an answer merely because it might prove disadvantageous to a taxpayer.

6. If reasonable grounds exist for omission of an answer to an applicable question, a taxpayer is not required to provide on the return an explanation of the reason for the omission. In this connection, a member should consider whether the omission of an answer to a question may cause the return to be deemed incomplete.

Statement on Standards for Tax Services No. 3, Certain Procedural Aspects of Preparing Returns

Introduction

1. This Statement sets forth the applicable standards for members concerning the obligation to examine or verify certain supporting data or to consider information related to another taxpayer when preparing a taxpayer's tax return.

Statement

2. In preparing or signing a return, a member may in good faith rely, without verification, on information furnished by the taxpayer or by third parties. However, a member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to a member. Further, a member should refer to the taxpayer's returns for one or more prior years whenever feasible.

3. If the tax law or regulations impose a condition with respect to deductibility or other tax treatment of an item, such as taxpayer maintenance of books and records or substantiating documentation to support the reported deduction or tax treatment, a member should make appropriate inquiries to determine to the member's satisfaction whether such condition has been met.

4. When preparing a tax return, a member should consider information actually known to that member from the tax return of another taxpayer if the information is relevant to that tax return and its consideration is necessary to properly prepare that tax return. In using such information, a member should consider any limitations imposed by any law or rule relating to confidentiality.

Explanation

5. The preparer's declaration on a tax return often states that the information contained therein is true, correct, and complete to the best of the preparer's knowledge and belief based on all information known by the preparer. This type of reference should be understood to include information furnished by the taxpayer or by third parties to a member in connection with the preparation of the return.

6. The preparer's declaration does not require a member to examine or verify supporting data. However, a distinction should be made between (a) the need either to determine by inquiry that a specifically required condition, such as maintaining books and records or substantiating documentation, has been satisfied or to obtain information when the material furnished appears to be incorrect or incomplete and (b) the need for a member to examine underlying information. In fulfilling his or her obligation to exercise due diligence in preparing a return, a member may rely on information furnished by the taxpayer unless it appears to be incorrect, incomplete, or inconsistent. Although a member has certain responsibilities in exercising due diligence in preparing a return, the taxpayer has the ultimate responsibility for the contents of the return. Thus, if the taxpayer presents unsupported data in the form of lists of tax information, such as dividends and interest received, charitable contributions, and medical expenses, such information may be used in the preparation of a tax return without verification unless it appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to a member.

7. Even though there is no requirement to examine underlying documentation, a member should encourage the taxpayer to provide supporting data where appropriate. For example, a member should encourage the taxpayer to submit underlying documents for use in tax return preparation to permit full consideration of income and deductions arising from security transactions and from pass-through entities, such as estates, trusts, partnerships, and S corporations.

8. The source of information provided to a member by a taxpayer for use in preparing the return is often a pass-through entity, such as a limited partnership, in which the taxpayer has an interest but is not involved in management. A member may accept the infor-

mation provided by the pass-through entity without further inquiry, unless there is reason to believe it is incorrect, incomplete, or inconsistent, either on its face or on the basis of other facts known to the member. In some instances, it may be appropriate for a member to advise the taxpayer to ascertain the nature and amount of possible exposure to tax deficiencies, interest, and penalties, by contact with management of the pass-through entity.

9. A member should make use of a taxpayer's returns for one or more prior years in preparing the current return whenever feasible. Reference to prior returns and discussion of prior-year tax determinations with the taxpayer should provide information to determine the taxpayer's general tax status, avoid the omission or duplication of items, and afford a basis for the treatment of similar or related transactions. As with the examination of information supplied for the current year's return, the extent of comparison of the details of income and deduction between years depends on the particular circumstances.

Statement on Standards for Tax Services No. 4, Use of Estimates

Introduction

1. This Statement sets forth the applicable standards for members when using the taxpayer's estimates in the preparation of a tax return. A member may advise on estimates used in the preparation of a tax return, but the taxpayer has the responsibility to provide the estimated data. Appraisals or valuations are not considered estimates for purposes of this Statement.

Statement

2. Unless prohibited by statute or by rule, a member may use the taxpayer's estimates in the preparation of a tax return if it is not practical to obtain exact data and if the member determines that the estimates are reasonable based on the facts and circumstances known to the member. If the taxpayer's estimates are used, they should be presented in a manner that does not imply greater accuracy than exists.

Explanation

3. Accounting requires the exercise of professional judgment and, in many instances, the use of approximations based on judgment. The application of such accounting judgments, as long as not in conflict with methods set forth by a taxing authority, is acceptable. These judgments are not estimates within the purview of this Statement. For example, a federal income tax regulation provides that if all other conditions for accrual are met, the exact amount of income or expense need not be known or ascertained at year end if the amount can be determined with reasonable accuracy.

4. When the taxpayer's records do not accurately reflect information related to small expenditures, accuracy in recording some data may be difficult to achieve. Therefore, the use of estimates by a taxpayer in determining the amount to be deducted for such items may be appropriate.

5. When records are missing or precise information about a transaction is not available at the time the return must be filed, a member may prepare a tax return using a taxpayer's estimates of the missing data.

6. Estimated amounts should not be presented in a manner that provides a misleading impression about the degree of factual accuracy.

7. Specific disclosure that an estimate is used for an item in the return is not generally required; however, such disclosure should be made in unusual circumstances where nondisclosure might mislead the taxing authority regarding the degree of accuracy of the return as a whole. Some examples of unusual circumstances include the following:

- a.* A taxpayer has died or is ill at the time the return must be filed.
- b.* A taxpayer has not received a Schedule K-1 for a pass-through entity at the time the tax return is to be filed.
- c.* There is litigation pending (for example, a bankruptcy proceeding) that bears on the return.
- d.* Fire or computer failure has destroyed the relevant records.

Statement on Standards for Tax Services No. 5, Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision

Introduction

1. This Statement sets forth the applicable standards for members in recommending a tax return position that departs from the position determined in an administrative proceeding or in a court decision with respect to the taxpayer's prior return.
2. For purposes of this Statement, *administrative proceeding* also includes an examination by a taxing authority or an appeals conference relating to a return or a claim for refund.
3. For purposes of this Statement, *court decision* means a decision by any court having jurisdiction over tax matters.

Statement

4. The tax return position with respect to an item as determined in an administrative proceeding or court decision does not restrict a member from recommending a different tax position in a later year's return, unless the taxpayer is bound to a specified treatment in the later year, such as by a formal closing agreement. Therefore, as provided in Statement on Standards for Tax Services (SSTS) No. 1, *Tax Return Positions*, the member may recommend a tax return position or prepare or sign a tax return that departs from the treatment of an item as concluded in an administrative proceeding or court decision with respect to a prior return of the taxpayer.

Explanation

5. If an administrative proceeding or court decision has resulted in a determination concerning a specific tax treatment of an

item in a prior year's return, a member will usually recommend this same tax treatment in subsequent years. However, departures from consistent treatment may be justified under such circumstances as the following:

- a.* Taxing authorities tend to act consistently in the disposition of an item that was the subject of a prior administrative proceeding but generally are not bound to do so. Similarly, a taxpayer is not bound to follow the tax treatment of an item as consented to in an earlier administrative proceeding.
- b.* The determination in the administrative proceeding or the court's decision may have been caused by a lack of documentation. Supporting data for the later year may be appropriate.
- c.* A taxpayer may have yielded in the administrative proceeding for settlement purposes or not appealed the court decision, even though the position met the standards in SSTS No. 1.
- d.* Court decisions, rulings, or other authorities that are more favorable to a taxpayer's current position may have developed since the prior administrative proceeding was concluded or the prior court decision was rendered.

6. The consent in an earlier administrative proceeding and the existence of an unfavorable court decision are factors that the member should consider in evaluating whether the standards in SSTS No. 1 are met.