

WILCOXON 2 (2)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRANSMISSION TECHNOLOGY)
CORPORATION, A NEVADA)
CORPORATION,)
Plaintiff,)
vs.)
W. BRANDT GOLDSWORTHY &)
ASSOCIATES, INC., ET AL.,)
Defendants.)

No. CV 01-07118
NM (AJWx)

DEPOSITION OF BENTON WILCOXON

Los Angeles, California

Thursday, November 29, 2001

Volume 2

Reported by:
VIRGINIA PETERAITIS
CSR No. 6205
Job No. 856681B

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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TRANSMISSION TECHNOLOGY CORPORATION, A NEVADA CORPORATION,
Plaintiff,
vs.
W. BRANDT GOLDSWORTHY & ASSOCIATES, INC., ET AL.,
Defendants.

No. CV 01-07118
NM (AJWx)

Deposition of BENTON WILCOXON,
Volume 2, taken on behalf of Defendants,
at 2049 Century Park East, Suite 2050,
Los Angeles, California, beginning at
3:10 p.m. and ending at 8:00 p.m. on
Thursday, November 29, 2001, before
VIRGINIA PETERAITIS, Certified Shorthand
Reporter No. 6205.

♀

1 APPEARANCES:
2 For Transmission Technology Corporation:
3 FAGELBAUM & HELLER LLP
4 BY: PHILIP HELLER
5 AND
WILLIAM JARBLUM
Attorneys at Law
2049 Century Park East, Suite 2050
Page 2

6 WILCOXON 2 (2)
 Los Angeles, California 90067
 (310) 286-7666

7
 8 For W. Brandt Goldsworthy & Associates, Inc. and W. B. G.,
 Inc. and Tom Sawyer:

9 JEFFREY K. PERKINS, ATTORNEY AT LAW
 BY: JEFFREY K. PERKINS
 10 Attorney at Law
 11 1275 Columbus Avenue, Suite 202
 San Francisco, California 94133
 (415) 474-3833.

12 AND

13 JAMES M. DOMBROSKI, ATTORNEY AT LAW
 BY: JAMES M. DOMBROSKI
 Attorney at Law
 14 P. O. Box 751027
 Petaluma, California 94975-1027
 15 (707) 762-7807

16 For Composite Power Corporation:

17 LAW OFFICES OF JOHN H. BOONE
 BY: JOHN H. BOONE
 18 Attorney at Law
 One Embarcadero Center, Suite 3940
 19 San Francisco, California 94111
 (415) 434-1133

20 Also Present:

21 W. BRANDT GOLDSWORTHY
 MICHAEL GOLDEN
 22 BILL ARRINGTON

23
 24
 25

♀

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1 Los Angeles, California, Thursday, November 29, 2001
2 3:10 p.m. - 8:00 p.m.

3

4

BENTON WILCOXON,

5 having been duly sworn, was examined and testified as
6 follows:

7

8

EXAMINATION (Continued)

9

BY MR. PERKINS:

10

11

12

13

14

Q Referring back to the agreement and the payment
consideration, paragraph 2.2, under commercial product
line development, there is a reference there to, and I
quote, "Prior to be mutually agreed upon based upon
costs plus reasonable overhead fees," end quote.

15 Did you contemplate that Mr. Goldsworthy's firm
16 WBG would bill you for profit as part of the overhead?

17 MR. JARBLUM: I want to renew my line of
18 objections to this type of question and it goes beyond
19 the scope of the local rules of deposition.

20 You can answer.

21 MR. HELLER: This is not a general discovery
22 deposition. It's one of preliminary injunction and not
23 a question of arbitrability and certainly not to any
24 questions relating to enforceability of this contract,
25 and you're well beyond the scope of Rule 7.5.4.

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♀

1 MR. PERKINS: You can make the claim, and I
2 understand it, but I disagree. It goes directly to the
3 scope and -- let me finish --

4 MR. HELLER: I didn't mean to interrupt you.

5 MR. PERKINS: It goes to subjects referenced in
6 each of his declarations, not the least of which is the
7 last one and the supplemental, and I think I'm entitled
8 to explore it and it's critical, and you have to prove
9 the contract is in fact -- if you prevail on the
10 contract issue in order to obtain an injunction, and I
11 don't think you can do that, and I could be wrong, and
12 we'll find out, but I'm certainly entitled to
13 cross-examine the witness on that issue.

14 MR. HELLER: You stated your position and we
15 stated ours, and we move to strike any questions and
16 answers relating to this subject matter, since it's a
17 question that is the subject of arbitration and has

18 nothing to do with the preliminary injunction.

19 BY MR. PERKINS:

20 Q Did the phrase that I read to you, which
21 includes the costs plus reasonable overhead, in your
22 understanding at the time of the agreement, include
23 profit?

24 MR. HELLER: Will you accept my objection as a
25 standing objection to this whole line of questioning?

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♀

1 MR. PERKINS: Yes.

2 MR. HELLER: Thank you.

3 THE WITNESS: Yes.

4 BY MR. PERKINS:

5 Q And how much profit was Mr. Goldsworthy's firm
6 WBG entitled to bill you for under this provision?

7 A There is nothing specified because we're
8 waiting to see what comes out on the budget, but it was
9 discussed it was reasonable and he was used to
10 government contracts and used to a reasonable profit.
11 The profit is not really on equipment here and it's on
12 the royalty is how you really make your money.

13 Q Any reference to that representation made by
14 Mr. Goldsworthy in the contract?

15 A I think that in 20 years of business involving
16 technology, I think that the subject of budgets and
17 people making a reasonable profit on something, which is
18 basically an overhead, and you're developing something
19 knowing it tends to get rich developing something,
20 that's the implementation, which is your royalty, which

21 is why one designs an agreement like this.

22 And that is the subject matter we discussed and
23 there's no contemplation of getting into precise detail
24 until we can be supplied with what we're talking about
25 in specific, per equipment line, but we assumed Mr.

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♀

1 Goldsworthy to be a reasonable developer.

2 Q Let me understand, and I'm almost finished with
3 this line of questioning, and I'll delve into Exhibit A
4 a little bit but, before I do, I want to understand how
5 this was to work, as you contemplated it.

6 Mr. Goldsworthy's firm was to build a plant and
7 produce product. Was it your --

8 A No.

9 Q That's incorrect? Who was to do that?

10 A Not to build a plant. Design, build and test
11 and install equipment, product equipment lines for each
12 technology.

13 Q They were to build a product, product lines?

14 A Equipment lines, yes.

15 Q Were you going to purchase those -- by you I
16 mean TTC -- was TTC going to purchase the products from
17 WBG?

18 MR. JARBLUM: Product lines or products?

19 MR. PERKINS: Products -- product lines -- I
20 don't know --

21 MR. HELLER: Objection as to form.

22 MR. JARBLUM: The agreement is specific --

23 BY MR. PERKINS:

24 Q You were going to market these products, is
25 that right, and pay Mr. Goldsworthy a 5 percent royalty;

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♀

1 is that right?

2 MR. HELLER: Objection; compound.

3 THE WITNESS: As specified in here.

4 BY MR. PERKINS:

5 Q I'm not trying to pin you down, but generally a
6 royalty agreement and Mr. Goldsworthy would produce a
7 particular product and you would sell it?

8 A That's incorrect.

9 MR. JARBLUM: Stating facts not in evidence.

10 BY MR. PERKINS:

11 Q Tell me how it was to work.

12 A You're confusing product and an equipment
13 line. The equipment line makes products. Products mean
14 conductors that are composite reinforced, conductors in
15 this case, and so the products are sold and a royalty
16 is, as described here, paid on the gross revenues
17 received by TTC.

18 Q When the product is sold, who sells it?

19 A TTC or a sub-licensee of TTC.

20 Q Does TTC purchase the product before it's sold?

21 A TTC can do anything it wants. It may be
22 engaging in subcontracts with another company to do the
23 work, in which case there may be payments going back and
24 forth on the different parts of the product that is
25 finally sold.

♀

1 Q Well, the price that is paid for the product,
2 referencing that, 5 percent goes to Goldsworthy assuming
3 all the other factors are met, the royalties; correct?

4 A Not the price -- it depends how you define
5 price paid for the product. If you define gross
6 revenues received, then they get a royalty.

7 Q What are gross revenues?

8 A That we receive. What are gross royalties?

9 Q Revenues.

10 A Gross revenues are the revenues derived from
11 the sale of technology products until sales are equal --

12 Q So the sale of technology products will produce
13 revenues; correct?

14 A Yes.

15 Q And 5 percent is calculated under those
16 revenues?

17 A Yes, minus shipping and other types of costs
18 and that's why --

19 Q What happens to the other 95 percent?

20 A These are 5 percent gross revenues received by
21 TTC --

22 MR. HELLER: You're talking over each other.

23 BY MR. PERKINS:

24 Q So TTC is going to retain 95 percent of the
25 sales price and Mr. Goldsworthy's firm gets 5 percent;

200

♀

1 is that the deal?

2 A TTC is doing all of the sales, period. A
3 royalty is going to be paid on the product to WBG under
4 this contract.

5 Q TTC is going to retain 95 percent of the sales
6 price and give 5 percent to Goldsworthy --

7 MR. HELLER: Misstates the testimony.

8 THE WITNESS: That's not how accounting works
9 in the corporation. It states it right here. It's a
10 royalty. Figure it out.

11 BY MR. PERKINS:

12 Q Was Exhibit A attached to the agreement at the
13 time?

14 MR. JARBLUM: You're referring to Exhibit A to
15 Exhibit A in the technology license agreement?

16 MR. PERKINS: I'm sorry. That's confusing.

17 THE WITNESS: Yes.

18 BY MR. PERKINS:

19 Q The document was signed on or about -- not
20 about -- it was signed on May 7; is that right?

21 A Yes.

22 Q By you as a witness and Mr. Arrington as
23 president; correct?

24 A Yes.

25 Q By Mr. Goldsworthy as president and witnessed

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♀

1 by whom?

2 A Lowell Eastman.

3 Q And the document was signed on the 7th, on
4 Monday; right?

5 A Yes.

6 Q And when it was signed, you were all present in
7 the same room, all four of you as signators?

8 A Yes.

9 Q And approximately what time of the day was it
10 signed?

11 A Late afternoon.

12 Q And was Exhibit A attached to the agreement
13 when it was signed?

14 MR. JARBLUM: Asked and answered.

15 THE WITNESS: Yes, I believe so.

16 BY MR. PERKINS:

17 Q The entire Exhibit A?

18 A Yes.

19 Q Exhibit A is contained in pages 16 through 19
20 of Exhibit A through Exhibit A; correct?

21 A No, incorrect.

22 MR. JARBLUM: Pages 16 through --

23 BY MR. PERKINS:

24 Q 29, I misspoke.

25 A 29, yes.

1 Q The first two pages of Exhibit A to the
2 contract are apparently xeroxes from some sort of a
3 magazine article; is that right?

4 A No.

5 Q What is that? What's the first page? What is
6 it, to Exhibit A?

7 A This is the brochure or leaflet made by the
Page 12

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8 Department of Energy and it's available on the web site,
9 as well as provided to us by Mr. Goldsworthy.

10 Q And when did you get it?

11 A That day.

12 Q What day?

13 A On the 7th.

14 Q He brought it with him on the 7th?

15 A He had it with him on the 4th and 5th, as well
16 as on those days. He had it with him also prior to the
17 time in prior meetings.

18 Q What is this two-page document entitled
19 Inventions and Innovations? Does it describe the
20 technology in some way?

21 A Yes.

22 Q Where does it describe the technology?

23 A There is a picture of it, for one.

24 Q Okay. Which technology is that a picture of?

25 A CRAC.

203

♀

1 Q That's CRAC and not Advanced CRAC?

2 A Yes.

3 Q And what is the difference between the two?

4 A Advanced CRAC, as defined by Goldsworthy in the
5 meeting, contains the composite reinforcing around the
6 aluminum conductors rather than inside the aluminum
7 conductors.

8 Q This was public record at the time?

9 A Yes.

10 Q And anybody that wanted to know about CRAC

11 technology could get this document?

12 A I believe so.

13 Q The next page is what, sir -- page 18?

14 A Page 18. Page 18 was provided by Mr.

15 Goldsworthy as evidence of a particular patent

16 application which was continuing data as claimed by

17 applicant, provision application No. 60/108 -- do you

18 want me to read --

19 Q That's not necessary. I can read it. In the

20 right-hand corner there is a handwritten notation. Do

21 you see that?

22 A Right.

23 Q Who wrote that in?

24 MR. HELLER: Where it says CRAC.

25 THE WITNESS: It's not in my handwriting.

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♀

1 Someone from the Goldsworthy side wrote it in because we
2 asked them for copies of their patent applications, and
3 he said he could not find them right away, and he
4 included these papers here to indicate that there were
5 patents filed.

6 And, as you can see in the next one here, he
7 does say on page 19, U. S. Patent Application Serial
8 No. 09602847 on the composite reinforced electrical
9 transmission conductor generic application, dated June
10 22, 2000.

11 BY MR. PERKINS:

12 Q This is a reference to Advanced CRAC?

13 A I don't know.

14 Q I notice there is, again, on the top right-hand
15 corner --

16 A Again, it was not written by me and I don't
17 know.

18 Q You don't know whether this refers to Advanced
19 CRAC or CRAC?

20 A The application, I read you the title, and
21 that's all you can tell by reading this particular title
22 and it tends to imply CRAC. It doesn't say advanced
23 composite reinforced electrical transmission conductor.

24 One has to contact patent attorneys for which
25 we asked many times to get all the specific information,

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♀

1 which was promised to us at the time of signing the
2 contract, so we can determine whether the patent
3 applications were, in fact, filed or filed correctly and
4 in which countries they were filed in, and whether there
5 was any office action on the applications rejecting
6 claims, and to what degree they would hold up which, of
7 course, is only a guess until the patents are finally
8 issued.

9 Q And you never saw the patent applications at
10 the time of the agreement?

11 A That's correct. They were not provided.

12 Q You don't know what they contained?

13 A That's correct. They said they couldn't find
14 them at the time.

15 Q The next page 21, what is that?

16 A Provided by Mr. Goldsworthy, and it describes
Page 15

17 in it a letter from the U.S. Department of Commerce
18 giving an application number, which is referenced by one
19 of the other ones, if you want to get into the details,
20 which states that, if required, a foreign filing license
21 is granted on 08/18/2000, and it says title, Composite
22 Reinforced Electrical Transmission Conductor.

23 Q Is that Advanced CRAC or CRAC?

24 A It presumes to be what it says, CRAC.

25 Q Well, you can't tell from this document?

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♀

1 A That's correct. You have to look with the
2 patent attorney what these things are in relation to by
3 looking at the application number, which was never
4 supplied.

5 Q On page 23 there is a document. What is that?

6 A Well, I can read it. It says --

7 Q I don't want you to read it. How would you
8 describe it to the court, if you would have to tell them
9 what this document sought to represent as part of your
10 contract?

11 A This was provided by Goldsworthy to reference
12 a -- we're asking for a description of the product and
13 we received various pieces of information generally
14 describing CRAC and one picture of Advanced CRAC, one
15 drawing of Advanced CRAC, along with samples of CRAC and
16 a sample of Advanced CRAC, and a sample of the
17 conventional cable used today known as ACSR.

18 This one says it was a briefing to the CEC
19 Commissioner, Dr. David Rohe on lightweight composite

20 reinforced aluminum conductor, abbreviated as CRAC, done
21 on February 19, 1999, and part of that briefing is here
22 following it, from the same report, that describes the
23 advantages of CRAC conductor on page 24.

24 And then on page 25 we have a drawing of the
25 Advanced CRAC conductor configuration, where you can see

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♀

1 the outer portion is where the composite material is and
2 the interior portion is the conductor material.

3 This material -- this one needed further work
4 according to Mr. Goldsworthy because it could not be
5 bent due to cracking -- no pun intended -- or breaking
6 of the jacket, the plastic composite jacket.

7 Q A few documents were provided to you and shown
8 to you throughout the meeting on the 4th, 5th and 6th of
9 May; is that right?

10 MR. JARBLUM: 7th and 8th.

11 THE WITNESS: Not all of them were provided
12 during the meetings. I would say these ones were
13 provided afterwards for purposes to illustrate --
14 BY MR. PERKINS:

15 Q After what, sir? After the meeting?

16 A And on the 7th, after we reached an agreement
17 on the terms of the agreement and were seeking to make
18 the changes in the agreement and gather up the
19 particular materials used as an exhibit.

20 Mr. Goldsworthy was getting tired, and we were
21 rushing to try to finish getting something together, and
22 this next page 26 is an excerpt from a larger document

23 that we can provide, which was the document referenced
24 by Dr. Clem Hiel in yesterday's deposition, second phase
25 of the CEC grant or CEC report, and it's a section from

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♀

1 that report, which describes CRAC and the telepower
2 advance and telepower 121, on page 27, if you see the
3 pictures there.

4 So it has had various names, teleconductors and
5 apparently telepower, and later on there is another
6 reference in another meeting we had subsequent to this
7 meeting, in which it seems to be called infowatt by Mr.
8 Goldsworthy.

9 Q Does the technology exist outside of Mr.
10 Goldsworthy's head, written down or a specific
11 scientific detailed description of CRAC and Advanced
12 CRAC technology?

13 MR. HELLER: Objection as to form.

14 BY MR. PERKINS:

15 Q To the best of your knowledge.

16 A To the best of my knowledge, there is a nice
17 report available on the web site from the CEC, about 30
18 pages long, that provides a lot of detail on the CRAC
19 technology.

20 The CRAC technology is the only one I'm aware
21 of that has any significant information or testing data
22 on it and Advanced CRAC is what it says, advanced and
23 newer, and something that Goldsworthy wanted to produce
24 and believed it to be superior and, if it was superior,
25 it's something that one wants to produce.

♀

1 However, as he stated several times, CRAC was
2 the one ready for the market and his experts in the
3 company, such as Dr. Alonzo Rodriguez, an electrical
4 engineer recruited for this purpose, apparently, stated
5 the utility companies wanted CRAC and not Advanced CRAC
6 because it could be implemented similarly in lines and
7 spliced similarly in lines, due to the fact that the
8 electrical conductors are the same, the part of the
9 conducting part of the aluminum is the same in the
10 standard ACSR, as well as in CRAC.

11 Q I appreciate that. I notice the contract is
12 initialed on each page. Do you see that?

13 A Yes.

14 Q But the exhibit is not initialed, correct,
15 Exhibit A?

16 A That's right.

17 Q It is true, is it not, that it was not
18 initiated because at the time you signed the contract
19 the exhibit had not been prepared?

20 A That's not true.

21 Q Why was it not then initiated?

22 A It was suggested by Lowell Eastman that we
23 initial the contract and he didn't feel it necessary to
24 initial the exhibit.

25 Q Is Lowell Eastman an attorney?

♀

1 A No, not that I know of.

2 Q And the date it was signed, you had access to
3 an attorney by the name of Mr. Sawyer?

4 A I don't know if he was available at the time.

5 Q Did you ask him whether or not you should
6 initial the exhibit?

7 A No.

8 Q The only person you asked about initialing the
9 exhibit or discussed initialing the exhibit was Lowell
10 Eastman; is that right?

11 A Discussion is not the right word. Lowell
12 Eastman suggested it and I said "Sure."

13 Q Do you believe that Mr. Eastman was
14 knowledgeable in this area?

15 A What area?

16 Q The area of whether or not it's appropriate to
17 initial attachments to agreements?

18 A Sometimes people initial contract pages and
19 sometimes they do not initial contract pages. It's
20 merely a matter of preference on the individuals
21 involved.

22 Q That was not the question. You said -- I
23 thought your testimony was clear that Mr. Eastman
24 suggested that you initial the contract but not the
25 exhibit?

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♀

1 A That's correct.

2 Q And you agreed to do that?

3 A Yes.

4 Q And my question is what is it about Mr.
5 Eastman's expertise or qualifications that would lead
6 you to rely on what he told you to do with respect to
7 the execution of a \$70 million contract?

8 MR. JARBLUM: Objection to the characterization
9 of the contract.

10 THE WITNESS: Right. It's not a \$70 million
11 contract.

12 BY MR. PERKINS:

13 Q What is it?

14 A You have to read it. It is clear. It spells
15 it out in its entirety. We can spend an hour or two
16 reading it.

17 Q It certainly involves substantial funds?

18 A No, it doesn't necessarily and it has to be
19 clarified. An equipment line, as we discussed earlier,
20 only costs X amount. If you don't have a market for the
21 product, you don't build more equipment lines.

22 If you're talking about a plant, and that
23 involves overhead, you can lease things and don't have
24 to buy a building. There are many ways to commercialize
25 a product and you can't just come out with a broad

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♀

1 brush, large figure.

2 Q Did Mr. Goldsworthy tell you that as a
3 precondition to this meeting you had to convince him
4 that you had \$70 million available to do this deal?

5 A No.

6 Q Nothing like that ever transpired?

7 MR. HELLER: Asked and answered.

8 BY MR. PERKINS:

9 Q Did any one of your associates indicate that
10 Mr. Goldsworthy wanted to be assured before he met with
11 you with respect to this issue that your company could
12 produced \$70 million of financing?

13 A I don't know what my associates heard from
14 Mr. Goldsworthy. You have to ask them.

15 Q Did they tell you what they heard?

16 A I am -- I don't understand the question.

17 Q Did you talk to any of your associates,
18 Mr. Grob, Mr. Arrington, anybody involved in the
19 transaction about Mr. Goldsworthy's demand or
20 requirement that you, namely TTC, produce \$70 million in
21 finance or ability to produce 70 million?

22 MR. HELLER: Objection; assume facts not in
23 evidence.

24 And will the witness allow the examiner to ask
25 his question and give us an opportunity to object before

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♀

1 answeri ng.

2 THE WITNESS: Yes.

3 MR. HELLER: Thank you.

4 BY MR. PERKINS:

5 Q So you have no knowl edge of Mr. Goldsworthy
6 requesting assurance that TTC had the ability to obtain
7 \$70 million of finance prior to this meeting --

8 MR. HELLER: Asked and answered.

9 BY MR. PERKINS:
10 Q -- from any source?
11 A I'm losing track. I can't understand what is
12 going on.
13 Q Counsel objected before I finished my
14 question.
15 MR. HELLER: I thought you were finished.
16 BY MR. PERKINS:
17 Q From any source did you learn that as a
18 precondition to meeting with you folks about this
19 technology, Mr. Goldsworthy demanded assurance that you
20 could -- you being TTC -- produce \$70 million in
21 financing?
22 A I don't understand the question. You can't
23 pick out a number when you don't have a specific
24 product. So someone can say I want to make sure you can
25 do something, and, if we come up with something big

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♀

1 enough to fit the bill, the answer is, yes, you can do
2 it.
3 You have to decide what's the technology and
4 does it have any value, and how much is the market for?
5 There is nothing in there that we discussed here that
6 requires a specific amount of money.
7 MR. HELLER: Let me state at this time that we
8 have been at this since 9:30, and it's now 3:30, and
9 there is a 7-hour rule with respect to depositions taken
10 in the Central District.
11 MR. PERKINS: I'm almost finished.

12 MR. HELLER: I want to state that if other
13 counsel have questions to ask, I think you perhaps ought
14 to confer how you want to allocate the remainder of your
15 time.

16 MR. DOMBROSKI: We'll not agree to a 7-hour --
17 you're raising the issue now for the first time --

18 MR. HELLER: Read the rules.

19 MR. DOMBROSKI: We have three separate clients
20 and I'll not be deprived of my cross-examination. We'll
21 go straight to the judge.

22 MR. HELLER: Go to the magistrate --

23 MR. DOMBROSKI: If that's the attitude you'll
24 take, we're wasting our time here --

25 MR. HELLER: Why do you think --

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♀

1 MR. DOMBROSKI: We entered into an agreement --

2 MR. HELLER: To have a 3-hour deposition --

3 MR. DOMBROSKI: No, not 3-hour depositions --

4 MR. JARBLUM: I beg to differ --

5 MR. DOMBROSKI: I will take a break and go to
6 the restroom and I'll come back and you guys can go
7 ahead.

8 BY MR. PERKINS:

9 Q Do you have your supplemental declaration in
10 front of you there, Exhibit 509?

11 A Okay.

12 Q I'll refer you to paragraph 8 in your
13 supplemental declaration.

14 MR. HELLER: Sorry?

15 MR. JARBLUM: Paragraph 8, page 3.

16 BY MR. PERKINS:

17 Q Do you see that?

18 A Yes, I see that.

19 Q Is it true that you didn't realize that WBG
20 was, in fact, even in existence until you went into the
21 meeting on approximately May 4, 5 of 2001?

22 A That's correct.

23 Q And have you ever heard of that company, WBG?

24 A No.

25 Q Do you know whether anyone else ever heard of

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1 it -- mentioned it to you before May 5?

2 A No.

3 Q You're sure of that as you sit here today?

4 A Absolutely.

5 MR. HELLER: Asked and answered.

6 BY MR. PERKINS:

7 Q Let me refer you to the minutes of the board of
8 directors meeting of April 12. Do you see an attachment
9 there?

10 MR. HELLER: Do you have a page reference?

11 BY MR. PERKINS:

12 Q In the interest of time, I'm trying to -- let's
13 refer to page 38.

14 MR. HELLER: 38?

15 MR. PERKINS: Yes.

16 Q I'll ask you again, as you sit here today, are
17 you sure the meeting was actually held on April 16, and

18 the minutes were signed on April 17, 2001?

19 MR. JARBLUM: Objection; calls for evidence and
20 not testimony.

21 THE WITNESS: Well, obviously, I guess I do
22 recall we did have discussions that we might use another
23 entity for the license but we knew the technology was
24 developed by WBGAI.

25 BY MR. PERKINS:

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1 Q And, specifically, I'm referring to page 38.

2 A Right.

3 Q Do you see in the second, third paragraph from
4 the bottom --

5 A Right.

6 Q It states that the next order of business was
7 to grant authority to chairman and president to
8 vigorously pursue negotiations with WBG, Inc., quote,
9 WBG unquote, closed parens, for license of its power
10 cable technology.

11 So you didn't even know of the existence, if
12 your testimony is correct, of WBG on April 16 and yet
13 here is a reference to it.

14 MR. HELLER: Argumentative.

15 BY MR. PERKINS:

16 Q Isn't it true that the minutes of this
17 purported April 16 board meeting were, in fact, created
18 after the May 7 contract discussions?

19 A No.

20 Q How do you explain the fact that the reference

21 to WBG was incorporated in these minutes two weeks
22 before you ever even heard of the company?

23 A I guess I'm mistaken. You asked me dates
24 throughout this entire testimony, and I didn't keep a
25 calendar in my head. As I repeated on numerous

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1 occasions, I have to go back and look at the minutes and
2 tell you what it says.

3 The point is that there were other people that
4 were doing primarily a lot of the discussions, namely
5 Mr. Arrington, and he may have been aware of the details
6 of which specific goals are the companies that he had
7 mentioned.

8 For me, I recall visiting WBGA, and that's what
9 is in the documents in the Department of Energy and
10 referenced in the California Energy Commission, and
11 that's the only one that I am aware of as being the
12 active developer of it.

13 If he suggested signing it, then we probably
14 did discuss it but I didn't make a lot of difference
15 between WBG and WBGAI because, apparently, they're the
16 same officers and directors as later told and.

17 Q May we have this memorandum marked as
18 Defendant's 512. I'm showing you an exhibit marked as
19 512. Let the record reflect the witness is reading the
20 document.

21 (Defendant Exhibit 512 marked for
22 identification by the court reporter.)

23 BY MR. PERKINS:

24 Q Do you recall receiving this memorandum from
25 Mr. Sawyer on or about the 16th of May?

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1 A I don't recall it.

2 Q You testified earlier that you sent a copy of
3 the contract to Mr. Sawyer, did you not, by e-mail?

4 MR. HELLER: Asked and answered.

5 THE WITNESS: That's is correct.

6 BY MR. PERKINS:

7 Q And that was done shortly after the agreement
8 was signed?

9 A I stated earlier that I had done it on May 6, I
10 sent a draft.

11 Q I'm asking did you, after the agreement was
12 signed, send a signed copy to Mr. Sawyer?

13 A I don't recall.

14 Q Do you recall a conversation with him by
15 telephone where he was asking the results of the
16 negotiations?

17 A I don't recall.

18 Q And you claim you don't recall receiving this
19 memorandum?

20 A That's correct.

21 MR. HELLER: Asked and answered.

22 BY MR. PERKINS:

23 Q Do you recall attempting to acquire
24 information, quote, needed to verify the technology
25 license agreement?

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1 MR. JARBLUM: Are you saying with respect to
2 this memorandum?

3 BY MR. PERKINS:

4 Q Sometime after May 16, did you undertake to
5 verify the technology agreement -- documentation?

6 MR. HELLER: Independent of this memorandum.

7 MR. PERKINS: I didn't say that.

8 MR. HELLER: He testified he has no
9 recollection.

10 MR. JARBLUM: He's never seen it before.

11 MR. PERKINS: He may not have seen the
12 memorandum and someone else may have seen it and may
13 have discussed requests of Mr. Sawyer to obtain certain
14 additional information.

15 Q Do you recall doing that? I'll represent to
16 you that there is evidence in the record that, in fact,
17 you did.

18 MR. HELLER: What evidence in the record?

19 MR. PERKINS: I'll produce it in good time. I
20 want to know his recollection.

21 MR. HELLER: Then don't represent it, unless
22 you show it to the witness.

23 MR. PERKINS: I will do so in good time, as I
24 said before.

25 MR. HELLER: Move to strike that statement,

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1 unless counsel wants to produce the documentation he's
Page 29

WILCOXON 2 (2)

2 referring to and question the witness about it.

3 BY MR. PERKINS:

4 Q You don't remember anything about this document
5 Exhibit 512, is that your testimony?

6 MR. HELLER: Asked and answered.

7 BY MR. PERKINS:

8 Q You don't recall this document?

9 A I don't recall this document.

10 MR. PERKINS: Let's take a quick break here.

11 (Recess.)

12 BY MR. PERKINS:

13 Q Would you refer to Exhibit 511.

14 MR. JARBLUM: Which is what?

15 MR. PERKINS: The declaration of Benton

16 Wilcoxon --

17 MR. JARBLUM: What page?

18 BY MR. PERKINS:

19 Q I'm referring you specifically to page 37.

20 A Yes.

21 Q That's a document entitled Due Diligence Items
22 for Discussion and Resolution?

23 A Yes.

24 Q Who prepared that?

25 A I did with Bill Arrington.

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1 Q When was this prepared?

2 A It says July 10 here. There were earlier
3 versions of the same document.

4 Q Earlier versions?

5 A Yes.

6 Q Were are they? Are they in the exhibits there?

7 A No.

8 Q So this is a copy of the earlier versions?

9 A They were modifications but principally the
10 same document.

11 Q On page 38, see where it says "Advanced CRAC
12 Cable"?

13 A Yes.

14 Q If you look at item 2 in Mr. Sawyer's
15 memorandum, Exhibit 512, aren't the items reflected in
16 Exhibit 2, paragraph 2 of 512 reflected in the first
17 paragraph under "intellectual property"?

18 A This looks like it's saying similar words, but
19 they're not in precise order. They're logical things
20 you do in any technology and the same exists in
21 intellectual property on page 37.

22 I think it's fair to state that Randy Renken
23 was continuing to try to or represented that he could
24 acquire funds and was continuing to ask for more
25 information.

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1 Q As of July 10?

2 A No, as of after the contract. July 10 he was
3 no where in sight.

4 Q So why are you telling me about Randy Renken?

5 A You referenced back to this document here, and
6 anything that has to do with Tom Sawyer has to do with
7 Randy Renken.

WILCOXON 2 (2)

8 So what I'm saying is you're trying to compare
9 this note to here, and that's why I'm bringing it up. I
10 fail to see any similarity between this document and the
11 other document.

12 Q So you don't think you used any information in
13 the May 6 memo to prepare the due diligence items --

14 A I don't.

15 MR. HELLER: Mr. Wilcoxon, please let him
16 finish the question and not talk over each other. We
17 have to help the court reporter.

18 MR. PERKINS: I don't have any further
19 questions.

20 MR. BOONE: I have a few questions.

21 EXAMINATION

22 BY MR. BOONE:

23 Q I heard you say that Mr. Arrington and you were
24 co-founders of Ashhurst; is that correct?

25 A I believe I said one of three founders.

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1 Q And that was sometime in what year?

2 A 1991.

3 Q Now, how long had you known Mr. Arrington prior
4 to that time?

5 A I don't recall but probably 10 years but I'm
6 not certain.

7 Q So since approximately 1980, 1981, you've known
8 Mr. Arrington?

9 A Probably. I am not certain as to the exact
10 time.

WILCOXON 2 (2)

11 Q It's been about 20 years?

12 A I'm guessing.

13 Q You don't have to guess but I want you to give
14 me your best recollection. You know the difference
15 between a guess and recollection?

16 A No.

17 Q Your best estimate. If I asked you the size of
18 this table, you can give me a good estimate of that,
19 couldn't you?

20 A If I'm standing in front of it.

21 Q You're standing in front of it now.

22 MR. HELLER: He's actually sitting down.

23 BY MR. BOONE:

24 Q You can give a pretty good estimate of the
25 table?

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1 A If you have other things to measure it by.

2 Q If I asked you how far I came to this
3 deposition, how many miles, you'd have no idea, would
4 you?

5 A That's correct.

6 Q That's a guess. Now, based on your honest
7 recollection, give me an estimate of how long you've
8 known Mr. Arrington?

9 A Between 15 to 20 years.

10 Q Other than Ashhurst and this Transmission
11 Technology Corporation, have you been business partners
12 with him on any other ventures?

13 A Yes.

WILCOXON 2 (2)

14 Q Which ones?

15 A I don't recall all the different ventures.

16 Q There have been that many?

17 A Yes.

18 Q Any of them successful?

19 A Yes.

20 Q Which ones?

21 A I'd have to go back and look through my notes
22 and figure out what we define as successful. We've
23 engaged in consulting projects together and they were
24 successful, consulting projects we define as successful.

25 Q Any businesses other than consulting contracts,

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♀

1 any corporations?

2 A Yes, corporations.

3 Q How many?

4 A I don't know.

5 Q More than 10?

6 A I don't know.

7 Q More than 20?

8 A I don't know.

9 Q Can you give me your best estimate?

10 A No.

11 Q You don't know over the last 15, 20 years how
12 many corporations you have been involved in with Mr.
13 Arrington?

14 A That's correct.

15 Q Were any of those corporations public
16 corporations?

17 A Yes.

18 Q Which ones?

19 A Ashhurst was a public corporation, Ashhurst
20 Technology LTD, and its predecessor MTech LTD.

21 Q Any others?

22 A I don't think so.

23 Q Now, did you know that Mr. Arrington had become
24 a consultant with Composite Power Corporation?

25 A Yes.

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♀

1 Q When did you know that?

2 A Sometime during the time he was a consultant.

3 Q Sometime between 1998 and 1999?

4 A I'm not sure what the dates were when he was a
5 consultant.

6 Q More than two years ago, wasn't it?

7 A I don't know.

8 Q How did you learn he was a consultant for
9 Composite Power Corporation?

10 A He told me.

11 Q What did he tell you his job was?

12 A It would have been different jobs at different
13 times, and I don't know the answer.

14 Q What did he tell you that he was doing for
15 Composite Power Corporation?

16 A I don't recall.

17 Q You don't recall anything he said he was doing?

18 A Well, at which time frame?

19 Q Any time he worked for Composite Power

20 Corporation.

21 A He wasn't, I believe, at the corporation at one
22 time. He was also involved in coordinating or creating
23 a green power project in Nevada, which involved
24 coordinating different companies, wind energy companies,
25 solar companies, and I think Composite Power's interest

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1 was to sponsor such or to try to encourage this type of
2 activity and to use its so-called composite pole.

3 Q Did he tell you he was working with
4 Goldsworthy & Associates at that time?

5 A I don't believe so because I was not aware he
6 was really working with Goldsworthy & Associates at the
7 time.

8 Q Let me show you a document we'll mark Exhibit
9 513, and it's a preliminary injunction from the District
10 Court in Clark County, Nevada, dated September 24,
11 1999.

12 (Defendant Exhibit 513 marked for
13 identification by the court reporter.)

14 BY MR. BOONE:

15 Q Did you ever see that document before?

16 A Yes.

17 Q When was the first time you saw it?

18 A I don't recall the exact date.

19 Q A couple of years ago?

20 A I probably glanced at it but I don't recall
21 details of it.

22 Q A couple of years ago you probably glanced at
Page 36

23 it?

24 A Whenever it occurred. I don't know if it's a
25 couple of years or what. To look at the date --

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♀

1 September 1999. I guess that would be a couple of
2 years. It could be a little less.

3 Q Do you recall reading in the document the name
4 of Goldsworthy & Associates?

5 A No.

6 Q Do you want to look at page 2, item 4 E.

7 A Yes, I see it.

8 Q W. Brandt Goldsworthy & Associates, does that
9 refresh your recollection that they were mentioned in
10 this document?

11 A No. There is some confusion and it was not in
12 an original document I had seen and so --

13 Q Do you have any confusion today that this is an
14 original document signed by the judge?

15 A No.

16 Q Do you have any doubt today that Goldsworthy &
17 Associates is mentioned in the document?

18 A I have no doubt it's mentioned in this
19 particular document.

20 Q Do you have any doubt in April of 2001 that
21 Goldsworthy & Associates was mentioned in this document?

22 A I was not clear whether it was in this document
23 or not. As I said, in the first drafting it was not
24 in -- I didn't have this document on hand, and it was
25 discussed with Mr. Goldsworthy, and he said don't worry

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1 about it, and we gave them a cease and desist before,
2 and this has nothing to do with it, and this is a -- it
3 was a composite power pole, and we're not engaged in --
4 we're not engaged in any power pole technology.

5 Q This document is not limited to composite power
6 poles, is it?

7 MR. HELLER: Objection; calls for a legal
8 conclusion.

9 BY MR. BOONE:

10 Q Did you understand this document was limited to
11 composite power poles?

12 A That's the only business they were involved in
13 and that's what I understood.

14 Q That's what you understood?

15 A Yes.

16 Q If you go to paragraph 57 of your supplemental
17 declaration, page 10 --

18 MR. HELLER: 509.

19 BY MR. BOONE:

20 Q Page 10, paragraph 57.

21 A Yes.

22 Q On the April 16, 2001 conference call with
23 Mr. Wilcoxon and Mr. Grob, the injunction was discussed
24 in detail and it was concluded by everyone, including
25 Mr. Grob, that it was irrelevant?

♀

WILCOXON 2 (2)

1 A That's correct.

2 Q Did you discuss the injunction in detail
3 without seeing the document?

4 A Yes.

5 Q So you understood what the document said
6 without seeing it?

7 A I think it says it was concluded.

8 Q By everyone?

9 A Yes. And that's what was done, discussed and
10 concluded.

11 Q And you were one of the everyone?

12 A Yes.

13 Q And you concluded the injunction was
14 irrelevant; right?

15 A The injunction may be relevant but it's
16 irrelevant to what we were doing at TTC.

17 Q It was irrelevant to your contract with
18 Goldsworthy; right?

19 A Yes.

20 Q And upon what basis did you make that
21 conclusion?

22 A This is going to Mr. Arrington and this is not
23 to TTC nor to me.

24 Q This is your declaration; right?

25 A That's correct.

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♀

1 Q And in your declaration you say there was a
2 conference call with Mr. Wilcoxon and Mr. Grob and the

3 injunction was discussed in detail, and it was concluded
4 by everyone -- and that's you too; right?

5 A Yes.

6 Q You concluded that the injunction was
7 irrelevant to your business plans with Goldsworthy;
8 correct?

9 A Yes.

10 Q Upon what basis did you make that conclusion?

11 A Because the other one discussed what it was for
12 and I knew what Composite Power's business was, and I
13 knew there was a cease and desist, and we discussed the
14 issue with Grob, and he said he talked about it to
15 Goldsworthy.

16 And we mentioned it to Goldsworthy when we were
17 there at the meeting with Mr. Kast because Arrington led
18 off in the discussion saying that I want to clear the
19 air in the beginning before we start the meeting on
20 technology here that there is a preliminary injunction
21 which his attorneys have told him applies to Nevada and
22 applies to electrical power poles, these composite power
23 poles.

24 And that Mr. Goldsworthy said, "Don't worry
25 about that. The guy is a nut case and has not really

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1 done anything with the pole at all," and, in fact, went
2 on to allege that he had actually stolen the patents
3 from him, and stated that there was -- it didn't make
4 any difference and he gave him a cease and desist.

5 Q When was this meeting?

6 A We can look it up. In my declarati on with Mr.
7 Kast -- I mean Mr. Kast says the time frame precisely
8 when we flew into Torrance Airport and walked across the
9 fence into the Goldsworthy facility.

10 Q Regardless of the date, you came to the
11 conclusion the injuncti on was irrelevant based on what
12 Mr. Arrington and Mr. Goldsworthy told you, is that
13 correct? Is that what you're telling me?

14 A Not that the injuncti on was irrelevant. The
15 injuncti on may be relevant in its own right. It's
16 irrelevant to what we were discussing at the time.

17 Q You say in paragraph 7 that it was irrelevant.
18 What did you mean by irrelevant?

19 MR. HELLER: Asked and answered.

20 THE WITNESS: Irrelevant to us.

21 BY MR. BOONE:

22 Q So it's irrelevant to you, and you based that
23 on what Mr. Arrington and Goldsworthy told you?

24 A Yes.

25 Q And you never looked at the injuncti on, di d

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♀

1 you?

2 A I believe his attorneys also gave the
3 information to Mr. Arrington, as well.

4 Q You didn't answer my question. Did you look at
5 the injuncti on?

6 A On that particular day, I don't know whether I
7 di d or not.

8 Q About that time did you look at the injuncti on?

9 A At some point I looked at part of the papers.
10 There were many papers, and I don't know which part of
11 the documents that I looked at. There was an original
12 filing and then changes, and in the original filing it
13 is not listed at all.

14 Q Did you look at a piece of paper that had
15 W. Brandt Goldsworthy & Associates named on it?

16 A I don't recall.

17 Q You don't recall seeing that in the injunction?

18 A No, that's not what we're saying. Maybe you
19 better rephrase something.

20 Q Did you ever see Exhibit 513 that had W. Brandt
21 Goldsworthy & Associates Inc. name on it?

22 MR. HELLER: I want to object, since the
23 witness is not a lawyer, to referring him to a court
24 order and a section under Findings and not to paragraph
25 20, which is the injunction prohibiting the activity

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1 that he's questioning the witness about.

2 MR. BOONE: When he answers that question, I'll
3 ask that one, too.

4 Q Did you ever see that piece of paper?

5 A Yes, I've seen the piece of paper.

6 Q And you saw it around at least before April of
7 2001; correct?

8 A I said I don't recall.

9 Q Did you see it before or after April 2001?

10 A I don't recall.

11 Q But in any event, we now know you saw it?

12 A Yes.

13 Q And did you look at paragraph 20, page 4,
14 subparagraph B?

15 A I have seen this before, this wording.

16 Q And you understand what it means to contact,
17 solicit business or otherwise do business with any
18 individuals, entities or financiers connected or related
19 in any way of CPC projects, wherever they may be
20 located?

21 You understand what that means, don't you?

22 A I understand how I define CPC's projects, as I
23 know them, having been there to talk to Mr. McComb
24 before.

25 Q Are you in active concert with Mr. Arrington?

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1 MR. HELLER: Objection as to form.

2 THE WITNESS: I don't know what you're talking
3 about.

4 BY MR. BOONE:

5 Q Do you see the language on page 4, line
6 13, "Defendants, their agents, servants, employees
7 attorneys, and all persons in active concert and
8 participation with any of them are hereby restrained and
9 enjoined."

10 Do you consider yourself subject to this
11 injunction?

12 MR. HELLER: Objection; calls for a legal
13 conclusion.

14 THE WITNESS: I have to discuss legal advice if

15 that's what -- I have to consult with my counsel.

16 BY MR. BOONE:

17 Q You don't know?

18 A I don't know what you're driving at here.

19 That's correct.

20 Q Do you know whether you're in active concert
21 and participation with Mr. Arrington in violating this
22 injunction?

23 MR. HELLER: Objection; assumes facts not in
24 evidence that he's violating anything.

25 THE WITNESS: I decline to comment. I don't

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♀

1 know what you're talking about.

2 BY MR. BOONE:

3 Q You don't know?

4 A I'm not a lawyer and I don't know what you're
5 talking about. I know about CPC's projects and I know
6 they have nothing to do with the cable.

7 Q You knew Mr. Arrington was enjoined from doing
8 business or contacting or soliciting business with
9 Goldsworthy & Associates, didn't you?

10 MR. HELLER: Objection; that's not what the
11 injunction says.

12 THE WITNESS: No.

13 BY MR. BOONE:

14 Q Can you answer the question?

15 A No, I don't.

16 MR. HELLER: Objection; misrepresents what the
17 injunction says.

18 BY MR. BOONE:

19 Q Can you answer the question?

20 A You have to repeat the thing.

21 Q You knew that Mr. Arrington was enjoined from
22 contacting, soliciting or doing business with W. Brandt
23 Goldsworthy & Associates; isn't that true?

24 A No.

25 MR. HELLER: Misstates what the injunction

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♀

1 says.

2 BY MR. BOONE:

3 Q Your answer is?

4 A No.

5 Q Did you know Mr. Arrington has gone in to try
6 to modify the injunction?

7 MR. HELLER: Objection as to time frame.

8 THE WITNESS: Yes. What time frame are you
9 talking about?

10 BY MR. BOONE:

11 Q At any time.

12 A I knew that he was seeking to get the
13 injunction thrown out as being baseless.

14 Q Attempting to get it straightened out?

15 A Thrown out.

16 Q Thrown out?

17 A Yes.

18 Q And you knew he was unsuccessful in that,
19 didn't you know that?

20 MR. HELLER: Objection; misstates the facts.

21 The injunction was dissolved.

22 BY MR. BOONE:

23 Q You knew he went in at least twice to dissolve
24 or modify the injunction and he was denied?

25 MR. HELLER: The injunction was dissolved.

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♀

1 THE WITNESS: I don't keep track of the court
2 hearings and goings on in Nevada.

3 BY MR. BOONE:

4 Q That's not the question. Answer the question.

5 Did you know that he had gone in twice to get
6 the injunction dissolved or modified?

7 A No.

8 Q Did you know that he had argued to the court
9 that the injunction prohibited him from contacting
10 Goldsworthy & Associates?

11 MR. HELLER: Assume facts not in evidence.

12 THE WITNESS: No.

13 BY MR. BOONE:

14 Q But you still concluded it was irrelevant to
15 your contact with Goldsworthy?

16 MR. HELLER: You're asking him about something
17 he has no knowledge of as being relevant to a subsequent
18 action.

19 MR. BOONE: Well, I'm asking what he said in
20 his declaration, that it was irrelevant.

21 MR. HELLER: And is irrelevant.

22 But go ahead, try to answer the question.

23 THE WITNESS: Repeat it again.

24 BY MR. BOONE:

25 Q At the time you signed this contract with Mr.

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♀

1 Goldsworthy, you concluded that the injunction was
2 irrelevant; right?

3 A Yes.

4 Q And you based that on what Mr. Arrington told
5 you and what Mr. Goldsworthy told you; right?

6 MR. HELLER: Objection; asked and answered.

7 THE WITNESS: I don't know if we based it on
8 their statements --

9 BY MR. BOONE:

10 Q What else?

11 A The fact we knew the business CPC was in, and
12 we knew it was not the same technology, and
13 Mr. Goldsworthy stated the same on every occasion we met
14 with him, and we -- and TTC was not party to anything
15 with composite poles.

16 Q How did you know what business CPC was in?

17 A Because CPC asked me to arrange financing for
18 its projects and I went to meet with McComb on more than
19 one occasion.

20 Q And you heard about Goldsworthy & Associates on
21 those occasions; right?

22 A I never heard about Goldsworthy & Associates on
23 those occasions.

24 Q You didn't know he was doing business with
25 Goldsworthy & Associates?

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♀

1 A He wasn't doing any business that I was aware
2 of.

3 Q So your testimony is you didn't know he was
4 doing business with Goldsworthy & Associates?

5 A Right.

6 Q You had no idea he was doing that?

7 MR. HELLER: Asked and answered.

8 THE WITNESS: There was a composite pole which
9 he said belonged to him that was Mr. McComb's at
10 Composite Power. Sometimes he said it was developed by
11 Goldsworthy & Associates but sometimes he said it
12 belonged to him.

13 It was irrelevant to our discussions since it
14 had nothing to do with composite poles. Our discussions
15 were projects -- green power projects, Lake Desmet
16 project in Wyoming, a Montana coal project -- I don't
17 know what else. I know that I didn't get along with
18 Mr. McComb.

19 BY MR. BOONE:

20 Q Let me show you a document dated January 15,
21 1999, a memorandum of understanding between W. Brandt
22 Goldsworthy & Associates and Composite Power
23 Corporation.

24 (Defendant Exhibit 514 marked for
25 identification by the court reporter.)

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♀

1 BY MR. BOONE:

WILCOXON 2 (2)

2 Q Did you ever see that document before?

3 A I don't recall seeing it.

4 MR. BOONE: I have no further questions.

5 MR. DOMBROSKI: Mr. Heller, you mentioned the
6 local rule of seven hours, and I calculated the real
7 time, discounting all the breaks, at about five hours.
8 I will take you by your word and I'll try to complete
9 this in less than two hours.

10 MR. HELLER: Mr. Dombroski, if you act in good
11 faith, we'll work with you. If you need additional
12 time, we'll see where we're at, but do your best. We're
13 not trying to obstruct anyone's deposition and we're
14 trying to move these things along so we can get it done
15 as quickly as possible.

16 (Defendant Exhibit 515 marked for
17 identification by the court reporter.)

18 EXAMINATION

19 BY MR. DOMBROSKI:

20 Q Mr. Wilcoxon, I have showed you Exhibit 515,
21 which is a copy of the minutes of the court proceeding,
22 first on March 2, 2001 and then on April 17, 2001 and,
23 in reference to Mr. Boone's questioning regarding your
24 paragraph 57 in your supplemental declaration, which is
25 marked Exhibit 509, you mentioned that on April 16, 2001

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♀

1 you had a conference call, and your declaration
2 indicates with Mr. Wilcoxon.

3 Did you mean to say Mr. Arrington, because
4 you're basically saying you have a telephone call with

5 yourself; right? Is that a mistake?

6 A It appears to be.

7 Q So you had a telephone conference call with
8 Mr. Arrington and Mr. Grob?

9 A Yes.

10 Q During the telephone call, did Mr. Arrington
11 indicate that the following day, on April 17, the court
12 was going to determine -- hear his motion to dissolve
13 the preliminary injunction?

14 A I don't know about the dates.

15 Q The call you had with Mr. Arrington on April
16 16, 2001, did Mr. Arrington inform you that the
17 following day in Nevada his motion to dissolve the
18 preliminary injunction was going to be heard by the
19 court.

20 Do you recall him telling you that?

21 A I don't recall on that day.

22 Q Did he tell you on that day or thereabouts --
23 do you recall him mentioning it to you at any time
24 within that time frame, April 16, 17, 18?

25 A I can't -- I don't recall the dates.

1 Q Do you recall Mr. Arrington telling you,
2 forgetting the date, he filed a motion to be heard in
3 April to dissolve the injunction in the Nevada court?

4 A I remember him stating there were several times
5 they had attempted to dissolve this injunction and Mr.
6 McComb or Composite Power Corporation had changed
7 attorneys and had not answered things and delayed

8 things, and I'm not aware which time frame we're talking
9 about here.

10 Q On the exhibit that I've marked Exhibit 515, it
11 indicates in bold print at the bottom of the page that
12 the court allowed the injunction to stand.

13 Do you see that?

14 A I see where it is written, yes.

15 Q Did Mr. Arrington inform you at any time on or
16 about April 17 or shortly thereafter that the court had
17 denied his motion to dissolve the preliminary
18 injunction?

19 A He probably stated there was some that had not
20 been completed for whatever reason. It had not been
21 dissolved for whatever reason, and I don't know the
22 answer.

23 Q Isn't it a fact that Mr. Arrington needed, felt
24 and expressed this to you, that he felt compelled to
25 move to dissolve the injunction prior to any meeting

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♀

1 with Mr. Goldsworthy before Mr. Goldsworthy would
2 consider signing the contract?

3 Did he say a word to that effect to you?

4 MR. HELLER: Read the question back.

5 (Record read.)

6 MR. HELLER: Objection as to form. You can
7 answer the question.

8 THE WITNESS: No.

9 BY MR. DOMBROSKI:

10 Q You mention in paragraph 57 of your declaration
Page 51

11 marked 509 that the injunction was discussed in detail
12 and it was concluded by everyone, including Mr. Grob, it
13 was irrelevant.

14 Was that during the conference call where you
15 conducted a board meeting of TTC?

16 A There were so many calls, I can't tell you
17 which one.

18 Q Do you know if the minutes of TTC reflect what
19 you have stated in paragraph 7 regarding the injunction
20 was discussed in detail, and it was concluded by
21 everyone, including Mr. Grob, it was irrelevant.

22 Is that reflected in any board minutes?

23 A I don't recall.

24 Q Let me direct your attention to minutes that
25 are attached to your declaration at page 37. That's

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♀

1 Exhibit 509. This is the minutes, I believe, on page 37
2 to 38, and I'll ask you if you recall whether these --
3 having reviewed these minutes, whether there is any
4 indication that TTC had agreed in the form of a formal
5 resolution that the injunction was irrelevant?

6 A I forgot the question.

7 Q I'll rephrase. To your knowledge was a
8 resolution passed by TTC, on or about April 16, to the
9 effect that the injunction, the subject of paragraph 57
10 of your declaration, was deemed irrelevant by the board
11 of directors of TTC?

12 A There is nothing in the minutes reflecting
13 that.

WILCOXON 2 (2)

14 Q Do you know of any resolution passed by TTC
15 making that determination, that the injunction that the
16 Nevada court issued, that was marked previously by Mr.
17 Boone was deemed irrelevant by TTC?

18 A I guess I'm getting tired.

19 Q Repeat the question. Are you aware of any
20 resolution passed by the board of directors of TTC that
21 the Nevada court injunction that was issued with respect
22 to Mr. Arrington by the court was deemed irrelevant by
23 TTC in a formal board resolution?

24 A I'm aware of no resolution.

25 Q Now, to your knowledge, did TTC obtain a legal

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♀

1 opinion at or about the time that you had this
2 discussion on April 16, 2001 by an attorney representing
3 TTC with respect to the effect of the injunction?

4 A We had -- we had a discussion -- TTC had a
5 discussion at one point or than one point with a Mitch
6 Cobeaga who represented Mr. Arrington.

7 Q But he didn't represent TTC?

8 A Correct.

9 Q Do you recall if the injunction was ever
10 discussed with Mr. Sawyer?

11 A It was certainly discussed with Mr. Renken.

12 Q My question is to Mr. Sawyer.

13 A I mix it up --

14 Q Answer the question and we'll move quicker.

15 A I don't know the answer.

16 Q You have no recollection, as you sit here

17 today, whether it was or not?

18 A No.

19 Q Have you read Mr. Sawyer's declaration in
20 opposition to the preliminary injunction filed by TTC?

21 A Yes, I read it.

22 Q And he states he was never informed of the
23 Nevada state court injunction; correct?

24 A I don't -- I have to read it again.

25 Q Let me go through it real quickly and point it

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♀

1 out to you.

2 MR. JARBLUM: We'll stipulate that he says
3 that.

4 BY MR. DOMBROSKI:

5 Q So does that refresh your recollection whether
6 or not TTC sought his legal opinion regarding the
7 injunction with respect to entering into the contract
8 with Mr. Goldsworthy?

9 A No, because we didn't believe it was relevant.

10 Q You didn't believe it was relevant, as you
11 state in paragraph 57, and let me move to another
12 subject very quick here.

13 Referring to the supplemental declaration that
14 you filed, marked 509, you attached a document that I
15 hope to find here. I'm marking this the next exhibit
16 and while you're looking at it, I'll locate the -- let
17 me mark this next exhibit as 516.

18 (Defendant Exhibit 515 and 516 marked
19 for identification by the court

20 reporter.)

21 BY MR. DOMBROSKI:

22 Q 516 purports to be a certificate of amendment
23 for TTC. Do you recognize that document?

24 A Yes.

25 Q Is that your signature on that document?

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♀

1 A Yes, it is.

2 Q What was the date of that document?

3 A I have to look it up in the minute books. I
4 have to see the file copy.

5 Q Let me direct your attention to Exhibit 509.
6 This is your supplemental declaration and I now found
7 it. It's Exhibit H, page 50.

8 MR. JARBLUM: It's the last page.

9 BY MR. DOMBROSKI:

10 Q And this is a copy of the document we marked as
11 Exhibit 516 --

12 MR. JARBLUM: Excuse me. For the record, what
13 you've given everybody as Exhibit 509 is not complete
14 because your last page is 50, and it goes to page 54.

15 MR. DOMBROSKI: Okay. We're missing four
16 pages.

17 MR. HELLER: So Exhibit 509 is missing the last
18 four pages as marked.

19 MR. JARBLUM: It's the letter from Mr. Rosen.

20 MR. DOMBROSKI: Okay.

21 MR. HELLER: If you want to continue your
22 questioning --

23 BY MR. DOMBROSKI:

24 Q This is the document that was attached to your
25 declaration as Exhibit H; correct?

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1 A It appears to be the one.

2 Q As you sit here today, you don't recall the
3 date?

4 A There is a filing stamp on it somewhere, and I
5 don't know why this is not on here --

6 Q But as you sit here today, right now, you don't
7 recall the date; correct?

8 A That's correct.

9 Q And Exhibit H is referenced I believe in
10 paragraph 53 of your declaration, and it states at the
11 top of page 10, at the last sentence of the paragraph
12 53, it doesn't indicate in your declaration, the date of
13 that document, correct, the date of the filing?

14 A That's correct.

15 MR. HELLER: Before you mark another exhibit,
16 if you're on to another exhibit, I need to take a
17 five-minute break.

18 MR. DOMBROSKI: Sure.

19 (Recess.)

20 BY MR. DOMBROSKI:

21 Q In front of you there is a certificate of
22 amendment showing a filing date of July 17, 2001, Mr.
23 Wilcoxon, and I'll ask if this is a copy of the document
24 marked as the preceding document?

25 MR. HELLER: Objection to form.
Page 56

♀

1 BY MR. DOMBROSKI :

2 Q It appears to be a copy of the document marked
3 Exhibit 516?

4 A Yes, it appears to be such.

5 Q That's your signature on Exhibit 517; correct?

6 A Yes.

7 (Defendant Exhibit 517 marked for
8 identification by the court reporter.)

9 BY MR. DOMBROSKI :

10 Q And the file date is July 17, 2001. Do you see
11 that?

12 A Yes.

13 Q And does that refresh your recollection as to
14 the approximate date that you may have signed this
15 document?

16 A It would have been prior to filing it.

17 Q How many days prior to filing would you
18 estimate signing this document?

19 A I don't recall.

20 Q Did you understand that the effect of this
21 filing of this certificate of amendment allowed
22 Transmission Technology to -- authorized issuance of
23 shares, as indicated in the document, as 50 million of
24 common stock?

25 A Yes, to increase the authorized shares to 50

♀

1 million.

2 Q Did you have any understanding as to the
3 effective date of the authorization for this issuance as
4 reflected in Exhibit 517?

5 A Again, I'd have to go back to the minutes.

6 Q Do you recall the minutes?

7 A Not offhand.

8 Q If I can direct your attention to page 44 of
9 your supplemental declaration, which is marked as
10 Exhibit 509, this purports to be resolutions of the
11 stockholders of Transmission Technology Corporation and
12 that's dated May 15, 2001; correct?

13 A Yes.

14 Q And is this the resolution that you're
15 referring to with respect to the minutes?

16 A Yes.

17 Q And this is the resolution that authorized the
18 issuance of the shares that is reflected in Exhibit 517?

19 A Yes.

20 Q And does this refresh your recollection as to
21 the approximate date of your signature on Exhibit 517?

22 A No, it doesn't.

23 Q Do you recall that Exhibit 517 was signed
24 shortly after this resolution, which is dated May 15,
25 2001?

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1 A I don't recall the date.

2 Q Is there anything in this resolution that

3 refreshes your recollection as to your understanding as
4 to the effective date of the amendment to the articles
5 of incorporation for the purpose of issuing these
6 shares?

7 A I don't understand the question.

8 Q Is there anything in the resolution that we
9 just referenced at page 44 of your supplemental
10 declaration that indicates the effective date for the
11 issuance of the additional shares as reflected in
12 Exhibit 517?

13 A The resolution is dated May 15.

14 Q Is it your understanding that the purpose of
15 this resolution was to have it effective for the
16 issuance of the 50 million shares as reflected on
17 Exhibit 517, effective as of May 15?

18 A Yes.

19 Q And if you look at Exhibit 517, it indicates
20 under the heading -- let me read it -- Certificate of
21 Amendment, pursuant to NRS 78.385 and 78.390 after
22 issuance of stock.

23 Have you read those statutes, the Nevada
24 revised statutes?

25 A No.

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1 Q And did you obtain a legal opinion by an
2 attorney representing TTC with respect to the effect of
3 the certificate of amendment?

4 MR. HELLER: Mr. Dombroski, how is this
5 relevant to any issue before the court on the

6 i n j u n c t i o n ?

7 MR. DOMBROSKI: I'm getting to it.

8 Q The question calls for a yes or no.

9 MR. JARBLUM: Answer the question the best you
10 can.

11 THE WITNESS: I don't recall getting specific
12 legal opinions. I recall consulting with legal maybe
13 about the wording.

14 MR. DOMBROSKI: Let me mark the next exhibit
15 519, and I'll highlight it for counsel that this is a
16 copy of -- I'll represent to you that these are copies
17 of Nevada Revised Statute Sections 78.385 and 78.390 as
18 reflected and referred to in Exhibit 517.

19 (Defendant Exhibit 519 marked for
20 identification by the court reporter.)

21 MR. HELLER: What exhibit is this?

22 MR. DOMBROSKI: This is 519.

23 Q Directing your attention to NRS 78.390, it
24 indicates Amendment of Articles after Issuing Stock:
25 Procedure. And paragraph 2 states, "Upon filing the

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1 certificate of Articles of Incorporation are amended
2 accordingly." Do you see that?

3 A Yes.

4 Q And, based on that, is it your understanding
5 that the effect of the amendment marked as Exhibit 517
6 allowed issuance of the shares as reflected in this
7 amendment effective as of the date of filing, which was
8 July 17, 2001?

9 MR. JARBLUM: Objection, calls for a legal
10 conclusion.

11 MR. DOMBROSKI: I'm asking for his
12 understanding and not a legal conclusion.

13 MR. HELLER: You're asking for a statute and
14 applying the statute.

15 THE WITNESS: I don't have --

16 BY MR. DOMBROSKI:

17 Q You have no opinion?

18 A No. I have not even studied this.

19 Q Fair enough. Are you aware that stock
20 certificates were issued by TTC, prior to July 17, 2001,
21 for shares in excess of 24,000 shares?

22 A Again, I have to go look through to find the
23 dates.

24 Q Let me go to -- this was marked as Exhibit 518,
25 and Exhibit 518 is a copy of the Articles of

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♀

1 Incorporation of TTC, and I'm directing your attention
2 to the fourth paragraph.

3 It states that the total number of voting
4 common stock authorized that may be issued by the
5 corporation is 24,000 shares of stock. Do you see that?

6 A Yes.

7 (Defendant Exhibit 518 marked for
8 identification by the court reporter.)

9 BY MR. DOMBROSKI:

10 Q Are you aware that prior to July 17, 2001,
11 there were shares issued by TTC that exceeded the

12 authorized shares that I've just referred to in Exhibit
13 518?

14 A Again, I have to look at the specifics here.

15 Q Do you recall receiving yourself shares, prior
16 to July 17, 2001, in excess of the 24,000 shares
17 referenced in Exhibit 518?

18 A I have to look at the date. I'm not good with
19 dates. There is so much.

20 Q I'm going to show you Exhibit 520 that purports
21 to be a certificate of shares issued to you, Mr.
22 Wilcoxon.

23 Is that your signature that appears on that
24 document?

25 A Yes.

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1 (Defendant Exhibit 520 marked for
2 identification by the court reporter.)

3 BY MR. DOMBROSKI:

4 Q And the date of that is April 5, 2001; correct?

5 A That's what it says.

6 Q Do you recall whether or not those shares were
7 issued on April 5, 2001?

8 A I recall that -- what do we define as issued?

9 Q Did you receive this certificate on April 5,
10 2001 -- what's marked Exhibit 520?

11 A No.

12 Q When did you receive that certificate?

13 A Later with the minute book.

14 Q And you testified previously that was in May of

15 2000; correct?

16 A Yes.

17 Q And when did you sign this document marked as

18 520?

19 A I signed it when I received it.

20 Q And that was in May?

21 A That's correct.

22 Q And when did Mr. Sawyer to your knowledge sign

23 this document? That is Mr. Sawyer's signature on this

24 document?

25 A Yes.

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♀

1 Q When to your recollection did Mr. Sawyer sign

2 this document?

3 A I don't know when he signed the document.

4 Q Do you know if he signed the document?

5 MR. HELLER: Objection as to the form of the

6 question.

7 THE WITNESS: Well, I don't --

8 MR. HELLER: Other than the fact the signature

9 is in front of him --

10 BY MR. DOMBROSKI:

11 Q Do you know if Mr. Sawyer signed this document?

12 A He signed all the objects which are present in

13 the minute book and sent them on, including specimen

14 copies and this for a certificate.

15 Q And was this document signed in blank by Mr.

16 Sawyer?

17 A Yes.

18 Q Did it have your name on the certificate, the
19 signed copy by Mr. Sawyer?

20 A I don't believe it did.

21 Q And you added your name to this document?

22 A Pursuant to the minutes of the meeting.

23 Q And you added your name to this document on or
24 about the time you received it with the minute book
25 sometime in May; correct?

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♀

1 A Yes.

2 Q And the date of April 5, 2001, did you date it
3 April 5, 2001 at or about the time you received it, the
4 minute book, sometime in May?

5 A I don't recall.

6 Q Do you recall if this document was dated April
7 5, 2001 when you received it in the minute book?

8 A I don't recall.

9 Q So it's absolutely clear on the record, you
10 received with the minute book signed stock certificates
11 in blank from Mr. Sawyer sometime in May; correct?

12 A That is correct.

13 Q And you signed the document as CEO after
14 putting your name down as the recipient and the owner of
15 1,250 shares of stock; correct?

16 A Following the minutes.

17 Q Now, I'll represent to you that your counsel in
18 this case provided us a copy of that document to
19 Mr. Perkins within -- I don't know -- within the last
20 two months, and I will now direct your attention to the

21 supplemental declaration marked as Exhibit 509 and ask
22 you to turn to Exhibit D, which is page 17.

23 Now, this document is a copy of the document
24 that I just marked and you just testified to as Exhibit
25 520; correct?

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1 A You lost me.

2 Q The document that is attached to your
3 supplemental declaration, as Exhibit D, is a copy of the
4 document that I just marked as Exhibit 520?

5 A Not precisely.

6 Q You state not precisely because you say the one
7 attached to your declaration as Exhibit D has something
8 scrawled across it; correct?

9 A That's correct.

10 Q Other than that which is scrawled across it, is
11 the document identical?

12 A Yes.

13 Q What is scrawled across it? What does it say?

14 A It says "Canceled as of" -- it appears to say
15 5-4-01.

16 Q Is that your handwriting?

17 A No.

18 Q Whose handwriting is that?

19 A I don't know.

20 Q You attached this to your declaration in
21 support of TTC's motion for preliminary injunction as an
22 exhibit to your declaration, and it has scrawled across
23 it "Canceled as of May 4, 2001," and you don't know who

24 wrote that?

25 A No.

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‡

1 Q Do you know what it means?

2 A It's turned back in for other issuance of
3 shares.

4 Q When?

5 A I don't know. I don't recall which day. After
6 the shares are issued, obviously.

7 Q Was it after your counsel furnished a copy of
8 what's marked Exhibit 520 to Mr. Perkins?

9 A I don't know what days we're talking about
10 here.

11 Q Was it within the last two months?

12 A That this occurred, no.

13 Q Your shares were turned in sometime prior to
14 the last two months; correct?

15 A Absolutely.

16 Q Do you recall if it was prior to the filing of
17 the lawsuit in this case, August 15?

18 A Yes, it would have been prior to that date.

19 Q Was it prior to July 17, 2001?

20 A I don't know the answer. I have to go back and
21 look at the other share certificates.

22 Q What's the amount of shares issued to you for
23 TTC shares?

24 A I would have to consult the minutes.

25 Q And are there any minutes attached to any

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1 declarati on you filed that would show how many shares
2 have been issued to you?

3 A I don't know the answer. There is a lot of
4 paper.

5 Q Let me direct your attention to -- do you
6 recall signing a stock certificate to Mr. Grob?

7 Mr. Wilcoxon, do you recall signing a stock
8 certificate to Mr. Grob?

9 A Yes.

10 Q And do you recall the approximate date?

11 A There was more than one certificate signed.

12 Q How many certificates were signed to Mr. Grob
13 to your recollection?

14 A I believe there was an earlier one of the first
15 issuance of 1,250.

16 Q I'll show you Exhibit 521 and I'll ask if your
17 signature appears on this document marked as Exhibit
18 521, Mr. Wilcoxon?

19 A Yes, it does.

20 (Defendant Exhibit 521 marked for
21 identification by the court reporter.)

22 BY MR. DOMBROSKI:

23 Q And that is dated May 4, 2001; correct?

24 A Yes, it does, if you say that.

25 Q And this stock certificate states that the

♀

1 authorized capital is 50,000 shares; correct?

WILCOXON 2 (2)

2 A Yes.

3 Q And it states that John Grob is hereby the
4 owner of 1,250,000 shares of the capital stock of
5 Transmission Technology Corporation; correct?

6 A Right.

7 Q And was this stock certificate given to Mr.
8 Grob?

9 A I think this stock certificate was taken by Mr.
10 Grob.

11 Q You say it was taken by Mr. Grob?

12 A Yes.

13 Q And are you saying that he removed it without
14 your authorization?

15 A Yes.

16 Q You signed it before he removed it; correct?

17 A I signed it before he removed it, yes.

18 Q And going back to your previous testimony, you
19 claim Mr. Grob never paid for this; correct?

20 A That's correct.

21 Q And referencing Mr. Grob's declaration
22 request -- incidentally, Mr. Wilcoxon, where was the
23 corporate office as of May of 2001?

24 Where was TTC's corporate office?

25 A At Mr. Arrington's.

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♀

1 Q And, at the time of the contract, the contract
2 indicates that the corporate office was Mr. Sawyer's
3 office; correct?

4 MR. JARBLUM: Objection; states facts not in
Page 68

5 evidence.

6 BY MR. DOMBROSKI:

7 Q With respect to the document we marked as
8 Exhibit 520, which is the stock certificate to you, do
9 you have the original of that document?

10 A The corporation has the original of that
11 document.

12 Q Where is that located today?

13 A I believe it might be here today.

14 Q It might be in your lawyer's office today?

15 A It's possible I can't remember where we last
16 had it.

17 Q If it wasn't with your lawyers, where would it
18 be located? Would it be at the corporate office in
19 Colorado?

20 A Either there or back in Irvine.

21 Q And the corporate office located in Colorado is
22 Mr. Arrington's home; correct?

23 A That's correct.

24 Q And just directing your attention to Exhibit
25 521, I'm going to read briefly for purposes of

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1 expediting this a paragraph out of Mr. Grob's
2 declaration, paragraph 18, lines 18 to 25 --

3 MR. HELLER: I object to your reading someone
4 else's declaration to a witness who you're
5 cross-examining under Rule 7.5.4 and will move to strike
6 any testimony along these lines.

7 MR. DOMBROSKI: Just a brief retort. It's
Page 69

8 permissible cross-examination under the Federal Rules of
9 Evidence and, also, Mr. Grob is -- these are admissions
10 made by Mr. Grob in his declaration on behalf of TTC, as
11 a board of director and a statement beginning at
12 paragraph 18, page 5, lines --

13 MR. JARBLUM: Before you go on, Mr. Grob is not
14 currently a director of the company.

15 MR. DOMBROSKI: I understand. He's talking
16 about the time frame during which time he was the
17 director of the company.

18 MR. HELLER: And the Federal Rules of Evidence
19 have nothing to do with this. You're taking a
20 deposition limited to the local Rule 7.5.4 and it
21 exceeds the scope of permissible examination, and so I
22 object and move to strike.

23 I'll let him answer the question.

24 MR. DOMBROSKI: I'd also refer you to the fact
25 that effective as of October of this year, the rules

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♀

1 have been rewritten. I'm not disputing --

2 MR. HELLER: As I pointed out, when you were
3 citing Local Rule 6 to me. But local rule 7.5.4 is in
4 effect, and that's why you're sitting here asking the
5 questions, and you should follow the rules, sir.

6 MR. DOMBROSKI: All right.

7 Q Mr. Grob states that "On or about June 29,
8 2001, Arrington and Wilcoxon presented to me a TTC stock
9 certificate which bears the signature of Arrington and
10 Wilcoxon, dated May 14, 2001. The stock certificate

11 shows that I'm the owner of 1,250,000 shares of TTC
12 stock and that the authorized capital is 50 million
13 shares. A true and correct copy of the stock
14 certificate is attached here as Exhibit D.

15 "After I resigned as director, as addressed
16 below, I learned that the stock certificate was
17 fraudulent because, according to the Articles of
18 Incorporation of TTC, TTC was authorized to issue only
19 24,000 shares of stock."

20 Do you recall reading that paragraph?

21 A Yes.

22 Q And in your declaration, filed in support of
23 the motion for preliminary injunction, you state --

24 MR. HELLER: Which declaration?

25 MR. DOMBROSKI: Exhibit 509.

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♀

1 MR. HELLER: Supplemental declaration.

2 BY MR. DOMBROSKI:

3 Q You state at page 9, paragraph 52, that Mr.
4 Grob never paid for such shares, even though such
5 payment was duly demanded; correct?

6 Is that in reference to the shares that he
7 referenced in his declaration in paragraph 18 that I
8 just read?

9 MR. HELLER: Objection as to form.

10 THE WITNESS: I don't understand the question.

11 MR. DOMBROSKI: I'll rephrase it.

12 Q I just read to you a portion of Mr. Grob's
13 declaration where he refers to the stock certificate

14 that gives him 1,250,000 shares of TTC stock.

15 I read that to you, and then asked you if your
16 statement in paragraph 52 of your declaration, on page
17 9, where you state that Mr. Grob never paid for such
18 shares, even though such payment was duly demanded, if
19 what you're referring to was those shares that he was
20 referring to in paragraph 18 that I have just read?

21 A You lost me.

22 Q What were you referring to when you said that
23 Mr. Grob never paid for such shares, even though such
24 payment was duly demanded in your declaration?

25 A He never paid for his shares.

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♀

1 Q His shares would be the shares reflected in
2 Exhibit 521?

3 A The shares are a split and, therefore, the
4 shares before, talking about the shares of 1,250 and the
5 shares of 1,250,000 are the same, reflecting the same
6 ownership position in the company.

7 Q When you referred to a split, was there an
8 amendment to the articles of incorporation for the
9 split?

10 A Yes.

11 Q When?

12 A Whatever the date was on here.

13 Q That's what the amendment, Exhibit 517, filed
14 on July 17, 2001 reflects?

15 A That reflects the filing and the minutes
16 reflect the date.

WILCOXON 2 (2)

17 Q We'll just move to. I'm showing you Exhibit
18 522, which purports to be a press release
19 stating "Eldorado Financial Group acquires Transmission
20 Technology Corporation." It's two pages, and it
21 indicates at the end, "For further information, contact
22 Bill Harrison or Bridgestone Capital Group or Benton
23 Wilcoxon CEO," and there's the phone number.

24 Have you seen this before?

25 A Yes.

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1 Q Was this a press release you participated in?

2 A Yes.

3 Q Did you prepare this press release in
4 conjunction with Mr. Harrison?

5 A No.

6 Q Who assisted you in the preparation of this
7 press release?

8 A Our securities attorneys.

9 Q And can you identify your securities attorneys?

10 A Tom Cookson of Holland & Knight.

11 Q Where are they located?

12 A Miami.

13 Q Are they aware of the lawsuit filed by TTC in
14 this case?

15 MR. HELLER: At what point in time?

16 BY MR. DOMBROSKI:

17 Q Were they aware at the time they participated
18 in the preparation of the press release of this lawsuit?

19 A Yes.

WILCOXON 2 (2)

20 Q Directing you to paragraph 3, it states that
21 TTC is a startup company that owns an exclusive license
22 and patent pending composite reinforced conductors that
23 enable delivery of more power than conventional steel
24 reinforced conductors and transmission distribution
25 systems.

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1 Mr. Wilcoxon, is the exclusive license that is
2 referred to in this paragraph the exclusive license that
3 TTC is litigating in this case?

4 A Yes.

5 Q Does TTC own any other exclusive license for
6 patent pending composite reinforced conductors that
7 you're aware of?

8 A No.

9 Q And, Mr. Wilcoxon, is this a complete press
10 release?

11 A It appears to be so. I don't know where you
12 got it from.

13 Q Do you have any understanding why the press
14 release did not contain a reference to the pending
15 litigation involving this matter?

16 MR. HELLER: To the extent that you had any
17 discussions with your securities counsel regarding the
18 preparation of this release, you should not disclose
19 those conversations. They're privileged.

20 THE WITNESS: There were discussions with our
21 securities attorneys.

22 BY MR. DOMBROSKI:

23 Q Concerning whether to make that disclosure
24 about this pending case?

25 MR. HELLER: I instruct you not to answer any

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1 further.

2 BY MR. DOMBROSKI:

3 Q Directing your attention to paragraph 1,
4 paragraph 1 describes an exchange of shares in TTC with
5 respect to this Eldorado Financial Group; correct?

6 A That's correct.

7 Q To your understanding, was any opinion obtained
8 with respect to the question of the effectiveness of the
9 amendment to the Articles of Incorporation that we have
10 marked as Exhibit 520?

11 MR. HELLER: What do you mean by opinion
12 obtained?

13 BY MR. DOMBROSKI:

14 Q Was there any opinion obtained to your
15 understanding by counsel for TTC with regard to the
16 effective date of the issuance of shares based on the
17 amendment that has been marked as Exhibit 517?

18 MR. HELLER: I'm totally confused. Any opinion
19 obtained by counsel?

20 MR. DOMBROSKI: Yes.

21 MR. HELLER: For TTC?

22 MR. JARBLUM: From another lawyer or accounting
23 firm?

24 MR. DOMBROSKI: From anyone.

25 MR. HELLER: You're asking -- I don't
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♀

1 understand the question.

2 MR. DOMBROSKI: I'll rephrase it.

3 Q Prior to this press release which -- by the
4 way, when was this issued to your knowledge?

5 A It says here on November 19. I would have to
6 check with my copy to see if that was the correct date.

7 Q So sometime within the last week, correct,
8 thereabouts?

9 A I don't know what days we're talking about and
10 I'm tired, and I don't know what day it is today.

11 MR. HELLER: Do you need to break?

12 THE WITNESS: How much longer do you have?

13 MR. DOMBROSKI: I'm going real quick.

14 MR. HELLER: Just a second.

15 Mr. Wilcoxon, if you've become tired and if you
16 need to take a break at any time, you should request a
17 break. Do you understand?

18 THE WITNESS: Yes.

19 MR. HELLER: We've been going at this for a
20 number of hours. If you get tired, just stop. We're
21 almost at 6:00 o'clock.

22 MR. DOMBROSKI: This is 523.

23 (Defendant Exhibit 522 and 523 marked
24 for identification by the court
25 reporter.)

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1 BY MR. DOMBROSKI :

2 Q I'll make this real fast and I'm going to
3 direct your attention to one paragraph in this letter.

4 This is marked as Exhibit 523, and it appears
5 to be a letter from you, dated June 5, 2001 to
6 Mr. Renken, and looks like it's copied to someone by the
7 name of John Madden, III, and Tom Sawyer.

8 MR. HELLER: It says sent via fax and
9 registered mail to Mr. Renken and Mr. Sawyer.

10 MR. DOMBROSKI: I stand corrected.

11 Q Is this your letter.

12 A It appears to be.

13 Q As of the date of this letter, Mr. Wilcoxon,
14 Mr. Sawyer had not resigned from TTC; correct?

15 A Say that again --

16 Q As of the date of this letter, June 5, 2001,
17 Mr. Sawyer had not resigned as a director of TTC or
18 secretary/treasurer of TTC; is that correct?

19 MR. HELLER: Asked and answered.

20 THE WITNESS: It's not correct.

21 BY MR. DOMBROSKI :

22 Q Let me refer you to paragraph 2 of page 2. You
23 state, "Mr. Sawyer had refused to send the minute book
24 of the corporation until I made strenuous demands as
25 CEO. He orally promised several times to resign from

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♀

1 the board as corporate secretary, but has since
2 reneged. "

3 What did you mean by reneged?

4 A Refuses to send the signed resignation.

5 Q So, as of the date of this letter, Mr. Sawyer
6 had refused to resign; correct?

7 MR. JARBLUM: Objection; misstates facts not in
8 evidence.

9 THE WITNESS: Not correct.

10 BY MR. DOMBROSKI :

11 Q Let me read on. "Has since reneged and now
12 refuses to execute his resignation which was to have
13 been effective April 6, 2001." And you further state
14 that he was functioning strictly as an
15 attorney/incorporator and his refusal to voluntarily
16 resign is highly inappropriate and represents conflict
17 of interest between TTC and Randy Renken.

18 Do you see that?

19 A Yes.

20 Q Did you have any understanding as to what an
21 attorney/client relationship was at the time you wrote
22 this letter? Did you have any understanding in your
23 mind?

24 MR. HELLER: Objection as to the form. I don't
25 understand the question.

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1 BY MR. DOMBROSKI :

2 Q When you said conflict of interest as an
3 attorney, did you have any understanding what that
4 meant?

5 A Did I have an understanding of what conflict of

6 interest meant?

7 Q Yes.

8 A I have my understanding of what it meant.

9 Q Okay. When you wrote this letter, you had an
10 understanding of a conflict of interest with respect to
11 an attorney; correct?

12 A Right.

13 Q You indicated in your previous testimony that
14 Mr. Sawyer provided legal services to TTC; correct?

15 A Yes.

16 Q And he also was not compensated; correct?

17 A He has never sent any request for
18 compensation.

19 Q So he has not sent any bills for compensation,
20 and you said there was no agreement between TTC and
21 Mr. Sawyer to provide legal services; correct?

22 MR. HELLER: Objection; misstates the
23 testimony.

24 BY MR. DOMBROSKI:

25 Q Let me ask you. Are you aware of any

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1 agreement, as you sit here today, between TTC and
2 Mr. Sawyer to provide legal services?

3 MR. HELLER: Written retainer agreement?

4 BY MR. DOMBROSKI:

5 Q Any written agreement at all.

6 A There is no written agreement.

7 Q No written agreement and no bills submitted.
8 Other than what you've testified to as

9 Mr. Renken volunteering Mr. Sawyer's services to TTC, do
10 you have any other factual support for your assertion
11 that he was acting as an attorney voluntarily for TTC.

12 MR. HELLER: Objection; misstates the
13 testimony. The witness never testified he was acting
14 voluntarily.

15 THE WITNESS: Repeat it.

16 BY MR. DOMBROSKI:

17 Q Is it your position that Mr. Sawyer was acting
18 voluntarily for TTC when he provided legal services?

19 MR. HELLER: What do you mean by voluntarily?

20 MR. DOMBROSKI: He was acting without
21 expectations of compensation.

22 MR. HELLER: That's contrary to the prior
23 testimony. I object.

24 THE WITNESS: Mr. Renken volunteered his
25 services. As he stated, he was going to raise money for

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1 the corporation and would take care of Mr. Sawyer.

2 BY MR. DOMBROSKI:

3 Q Now, you have indicated that you have retained
4 counsel to assist in reference to the press release that
5 we just marked as Exhibit 522; correct?

6 A That's correct.

7 Q And when I asked you about their advice to TTC
8 regarding the press release, your attorney instructed
9 you not to answer based on attorney/client privilege;
10 correct?

11 A I believe that's correct.

12 Q Just so it's clear, you're claiming Mr. Sawyer
13 rendered legal services to TTC. But the record is
14 absolutely clear that there is no objection or
15 instruction to you by your attorneys not to answer on a
16 basis of any attorney/client privilege; correct?

17 MR. HELLER: I don't know what you're getting
18 at.

19 THE WITNESS: I'm lost.

20 BY MR. DOMBROSKI:

21 Q With respect to the representation that you
22 claim Mr. Sawyer rendered to TTC, there is no claim of
23 privilege with respect to questions asked of you
24 pertaining to communications you had with him in your
25 capacity as officer of TTC?

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1 MR. HELLER: I don't know where you're going.
2 We do not assert any privilege with respect to any
3 communications between this witness and Mr. Sawyer.

4 MR. DOMBROSKI: That's good.

5 THE WITNESS: I don't understand the question.

6 BY MR. DOMBROSKI:

7 Q Does that answer -- do you agree with that
8 answer?

9 THE WITNESS: I don't understand the question
10 or the answer.

11 MR. DOMBROSKI: I'll take your counsel's
12 statement as a good enough response to my question.

13 Q Let me go to the document here and we'll mark
14 this as the next one, and this 524.

15 THE WITNESS: I need a short break.

16 (Recess.)

17 BY MR. PERKINS:

18 Q Did you or Mr. Arrington ever demand payment
19 from Mr. Grob for the shares you said he did not pay
20 for?

21 A We certainly did.

22 Q Is that documented in writing anywhere?

23 A Yes, I believe so.

24 Q And is that in a letter or e-mail?

25 A One or the other.

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1 Q And where would the document or documents be
2 located?

3 A I probably have a copy in my records and
4 probably one in Colorado, as well.

5 Q Do you keep the corporate files in both
6 locations, at Mr. Arrington's residence and where you're
7 living currently?

8 A The main corporate files are kept at
9 Arrington's residence.

10 Q Are they located in a file cabinet to your
11 knowledge?

12 A Probably their file cabinets. He has an office
13 there.

14 Q Let me move quickly here. This is the next
15 Exhibit 525 that I'm showing you, which is a copy of a
16 letter from Mr. Grob to Mr. Goldsworthy dated May 3,
17 2001.

18 MR. HELLER: What is 524? I don't think there
19 is 524.

20 MR. DOMBROSKI: We will change that to 524.
21 This is a copy of the letter to Mr. Goldsworthy from
22 Mr. Grob, dated May 3, 2001, and this letter, for the
23 record, was attached to Mr. Grob's declaration filed by
24 the defendants in opposition to the motion for
25 preliminary injunction.

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1 Mr. Wilcoxon. Do you recall seeing this
2 document before?

3 A Before when?

4 Q Before the start of this litigation?

5 A No.

6 (Defendant Exhibit 524 marked for
7 identification by the court reporter.)

8 BY MR. DOMBROSKI:

9 Q So the first time you saw this document was in
10 reference to Mr. Grob's declaration?

11 A Yes.

12 Q And did you review Mr. Grob's declaration?

13 A Yes.

14 Q And, in fact, you reviewed Mr. Grob's
15 declaration because you made reference to it in your
16 supplemental declaration filed in this case and marked
17 as Exhibit 509; correct?

18 MR. HELLER: Object as to form.

19 MR. DOMBROSKI: I'll rephrase it. That's a
20 good solid objection.

21 Q Your supplemental declaration marked 509 makes
22 reference to the declaration of Mr. Grob that attaches a
23 copy of the documents that I've just marked as Exhibit
24 524; correct?

25 MR. HELLER: Objection as to form.

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1 THE WITNESS: I'm still lost.

2 BY MR. DOMBROSKI:

3 Q You read Mr. Grob's declaration?

4 A Yes.

5 Q His declaration had attached a copy of this
6 letter that is marked as Exhibit 524; that's correct?

7 A That's correct.

8 Q In your supplemental declaration filed in this
9 case and now marked Exhibit 509, you make comments
10 responding to Mr. Grob's declaration; correct?

11 A Yes.

12 Q And, in fact, those comments are enumerated, I
13 believe, in numerous paragraphs, and my question is were
14 you upset when you reviewed Mr. Grob's declaration?

15 A I don't recall.

16 Q Did you feel that Mr. Grob was not telling the
17 truth in his declaration?

18 A There are certainly many parts of his
19 declaration where he's not telling the truth, and I
20 don't know which part we're referring to.

21 Q I'm asking general questions referring to what
22 your reaction was, and, if I might be permitted to take
23 that one step further --

24 MR. HELLER: Again, please note my continuing
25 objection to questions under Rule 7.5.4 of this witness

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1 about someone else's declaration as beyond the scope of
2 permissible cross-examination.

3 MR. PERKINS: He filed a declaration commenting
4 on the declaration, Counsel.

5 MR. HELLER: It doesn't matter.

6 BY MR. DOMBROSKI:

7 Q Mr. Wilcoxon, when you reviewed Mr. Grob's
8 declaration, was it your opinion that Mr. Grob breached
9 any kind of fiduciary duty that he owed to TTC, since he
10 was the director of TTC?

11 MR. HELLER: Objection. There's no time
12 reference when he was a director and also calls for a
13 legal conclusion regarding fiduciary duty obligations.

14 THE WITNESS: I don't understand the question
15 BY MR. DOMBROSKI:

16 Q When you read Mr. Grob's declaration, you
17 understood that Mr. Grob was a director of TTC for some
18 period of time and resigned from TTC; correct?

19 A That's correct.

20 Q And because he was a past director of TTC, did
21 you have any position with respect to whether Mr. Grob
22 was somehow interfering with TTC's business?

23 MR. HELLER: Objection as to form. By filing
24 his declaration?

25 MR. DOMBROSKI: Yes.

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1 MR. HELLER: Or by doing other things?

2 MR. DOMBROSKI: By filing his declaration.

3 MR. HELLER: Calls for a legal conclusion.

4 THE WITNESS: I don't understand the question.

5 BY MR. DOMBROSKI:

6 Q Let me ask you this. This is Exhibit 525, and
7 this is a copy of what appears to be a letter from
8 Mr. Jarblum to Mr. Grob, dated October 21, 2001, and
9 it's two pages.

10 Mr. Wilcoxon, do you recall seeing this
11 document prior to today?

12 A Yes.

13 Q Did TTC authorize Mr. Jarblum to send this
14 letter to Mr. Grob?

15 A Yes.

16 (Defendant Exhibit 525 marked for
17 identification by the court reporter.)

18 BY MR. DOMBROSKI:

19 Q And, in reading this letter, it states that it
20 has come to our attention that you have violated your
21 duties to TTC as enumerated in Mr. Rosen's letter to you
22 in a number of ways, including but not limited to, one,
23 you apparently have been assisting WBG, Inc. in the
24 defense of an action commenced by TTC against WBG, Inc.,
25 and W. Brandt Goldsworthy, Inc.

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1 Do you see that?

2 A Yes, I do.

3 Q This letter is dated October 21, 2001, and
4 Mr. Grob's declarati on was filed on October 30, 2001,
5 and is it your opinion, Mr. Wilcoxon, that Mr. Grob's
6 declarati on violated what is stated in his letter as his
7 duties owed to TTC?

8 MR. HELLER: Objection as to form.

9 You can try to answer the question.

10 MR. JARBLUM: And also object as to facts not
11 in evidence. There is no evidence he received this
12 declarati on prior to the writing of this letter.

13 MR. DOMBROSKI: That who received this letter?

14 MR. JARBLUM: We as counsel or Mr. Wilcoxon had
15 seen it. As I recollect, you mailed this and not faxed
16 it, and it's dated the 30th and my letter is dated the
17 31st, I think.

18 MR. HELLER: So that makes it highly unlikely
19 that we would have seen the declarati on at the time --

20 MR. DOMBROSKI: I'll rephrase the question.

21 Q Based on your review of Mr. Grob's declarati on,
22 is it your opinion he violated his duties to TTC as
23 referenced in Mr. Jarblum's letter attached as Exhibit
24 525?

25 MR. HELLER: Objection to form.

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1 THE WITNESS: I don't know how to conclude the
2 declarati on and its merits as to violating the duties.

3 BY MR. DOMBROSKI:

4 Q Now, just moving on to another subject, you
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5 have maintained in your testimony that the contract with
6 WBG included CRAC technology and Advanced CRAC; correct?

7 A All conductor technology.

8 Q And let me show you Exhibit 526, a document
9 that is also attached to Mr. Grob's declaration, and
10 this is a document that is from Mr. C. Giannetto,
11 General Counsel, Trans Atlantic Finance Limited, dated
12 May 2, 2001, addressed to Mr. Wilcoxon, Chairman of
13 Transmissi on Technology Corporati on.

14 Do you call receiving this letter from
15 Mr. Giannetto?

16 A No, not from Mr. Giannetto.

17 Q Who did you receive it from?

18 A It appears either from Mr. Renken or Mr. Grob.
19 I don't know.

20 (Defendant Exhibit 526 marked for
21 identification by the court reporter.)

22 BY MR. DOMBROSKI:

23 Q It also indicates a cc to Mr. Sawyer. Do you
24 recall if you received it from Mr. Sawyer?

25 A I didn't receive it from Mr. Sawyer.

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1 Q And the information contained in this letter
2 makes reference to the placement of the \$70 million.

3 Do you see that?

4 A I see that.

5 Q This information that is contained in this
6 letter was provided to Mr. Goldsworthy. Are you aware
7 of that?

8 A No.
9 Q Mr. Grob's declaration attached a copy of this
10 letter, do you recall that?
11 A Mr. Grob's declaration?
12 MR. HELLER: Perhaps you can show the witness
13 Mr. Grob's declaration.
14 MR. DOMBROSKI: Okay.
15 MR. HELLER: You don't have to mark it as an
16 exhibit unless you want to.
17 BY MR. DOMBROSKI:
18 Q I'll show you the declaration of Mr. Grob and
19 attached is Exhibit B.
20 A I see it.
21 Q And my question was -- I have forgotten the
22 question. What was it?
23 A It is getting late.
24 MR. JARBLUM: Do you want me to refresh your
25 recollection? Were you aware if it was given to Mr.

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1 Goldsworthy.
2 THE WITNESS: No, I was not aware it was given
3 to Mr. Goldsworthy.
4 MR. JARBLUM: For the record, Mr. Grob's
5 declaration doesn't state it was given to Mr.
6 Goldsworthy.
7 MR. HELLER: Therefore, we should object as
8 assuming facts not in evidence.
9 BY MR. DOMBROSKI:
10 Q To your knowledge, Mr. Wilcoxon, are you aware,

11 as you sit here today, whether this letter was ever
12 provided to Mr. Goldsworthy prior to the contract
13 signing on May 7?

14 A I'm not aware of that.

15 Q Just so it's noted, did you have any
16 communications with Mr. Giannetto?

17 A I had one phone call with him. I guess two
18 phone calls.

19 Q Was that prior to May 7, 2001?

20 A I believe there was one phone call prior to and
21 one phone call after.

22 Q And the phone call after -- the phone call
23 prior, was the issue of the placement of \$70 million
24 discussed?

25 A No.

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1 Q And, if you'll note. On his letter he makes
2 reference to acquisition development of advanced
3 electrical transmission technology.

4 Was your understanding that the placement he
5 makes reference to, was it in reference to the advanced
6 teleconductor technology?

7 A No.

8 Q How do you know that?

9 A Do you see teleconductors here? I don't see
10 it.

11 Q So the reference to advanced, was that a
12 misnomer?

13 A It means new electrical transmission

14 technology, advanced as of the state of the art today,
15 which is steel reinforced.

16 MR. HELLER: Not to be confused with Advanced
17 CRAC.

18 THE WITNESS: He has no knowledge of any
19 technology.

20 BY MR. DOMBROSKI:

21 Q I'm going to change subjects real quick because
22 I want to get this thing ground down here. I'll refer
23 to your declaration marked 509, the supplemental
24 declaration, and direct your attention to paragraph 23.

25 This paragraph was making reference to

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1 Mr. Eastman's declaration, as indicated on line 13 of
2 page 6, and paragraph 34 states, "The preliminary
3 business plan was from a company called Gift/MDC
4 apparently owned by Mr. Eastman and Mr. Grob, and it
5 contained information that could not be substantiated
6 and it contained no factual information about the
7 performance of CRAC but included the government DOE
8 sheet on CRAC."

9 Do you see that?

10 A Yes, I do.

11 Q I'm going to show you -- you know what, this is
12 why I screwed up. I'll show you -- I had marked this
13 524 --

14 MR. HELLER: You were about to show it to him
15 and then we took a break.

16 (Defendant Exhibit 527 marked for
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17 identification by the court reporter.)

18 BY MR. DOMBROSKI:

19 Q This is the document that is now marked Exhibit
20 527, and I'll ask you if you have ever seen this
21 document prior to today?

22 A No.

23 Q Have you seen any documents that were similar
24 to this document that were prepared by Mr. Eastman at or
25 about the time the contract was signed?

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1 A No.

2 Q Do you recall Mr. Eastman providing any kind of
3 budget analysis to Mr. Arrington or yourself at or about
4 the time the contract was signed?

5 A I believe that Mr. Eastman sent some electronic
6 file after the contract was signed.

7 Q Do you recall whether that was the document
8 that he sent in the electronic file?

9 A It doesn't look like the document.

10 Q Do you have a copy of that document he sent by
11 electronic transmission?

12 A I may have one. I doubt that I had one --
13 certainly not one this large. It was a very small file.

14 Q So, in terms of Mr. Eastman's testimony that
15 you referred to in paragraph 34, the only document that
16 you may have received from him would have been the
17 document referenced in paragraph 34, which you refer to
18 as the preliminary business plan from a company called
19 Gift/MDC and the electrical transmission document you

20 received after the contract was signed; is that a fair
21 summary?

22 A Electrically transmitted document -- a lot of
23 transmission here. I think I lost my train of thought.

24 Q You indicated that you don't recall receiving
25 that document, but you recall receiving something from

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♀

1 Mr. Eastman after the contract was signed --

2 A I didn't say it exactly. I recall getting
3 something from Mr. Arrington that said he asked
4 Mr. Eastman to provide him with some factual information
5 as to costings.

6 Q And so it's absolutely clear, do you have a
7 copy of that in your files?

8 A This document, no.

9 Q The copy of the document you just testified
10 to.

11 A I may or may not. It was a useless document so
12 I never paid attention to it.

13 Q Now you heard Dr. Hiel's testimony at his
14 deposition last night with respect to conversations he
15 had with you, and the fact that he became a consultant
16 for TTC; correct?

17 A That's correct.

18 Q Did you initiate the call with him after he
19 left the employment with Goldsworthy & Associates,
20 Inc.?

21 A Either myself or Bill. It was probably Bill.

22 Q Did you offer him a position as a consultant to

23 TTC?

24 A Not in the first days.

25 Q But eventually you offered him a position;

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1 correct?

2 A Do you call a consultant a position?

3 Q Forget the terminology. He became a consultant

4 for TTC; correct?

5 A Yes.

6 Q And was he paid compensation?

7 A Yes.

8 Q How much?

9 A I don't recall. About what he said.

10 Q Which was approximately \$15,000?

11 A Yes.

12 Q And did you have any discussions with him about
13 this CRAC and Advanced CRAC after he left the employment
14 with Mr. Goldsworthy?

15 A No.

16 Q So it's absolutely clear, you and Dr. Hi el
17 traveled to Northern California sometime in mid
18 September; is that correct?

19 A I would have to check the date, but we traveled
20 to Northern California.

21 Q And you met with someone in San Ramon
22 concerning x-ray technology; correct?

23 A That's correct.

24 Q And is it your understanding that that x-ray
25 technology has nothing to do with Goldsworthy &

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1 Associates, Inc.?

2 A That's correct.

3 Q And that understanding is from what source?

4 A From both Dr. Hiel and from the company on the
5 reverse x-ray technology.

6 Q Let me direct your attention to your
7 supplemental declaration marked -- excuse me -- this is
8 the declaration filed in support of motion of
9 preliminary injunction marked as Exhibit 511, if I can
10 direct your attention to that document.

11 Go to the contract which is attached as
12 Exhibit A.

13 A What page?

14 Q Page 11.

15 MR. HELLER: The license agreement starts at
16 page 10.

17 MR. DOMBROSKI: I want to go to page 11.

18 Q And, again, Mr. Wilcoxon, did you draft the
19 clause entitled "2.2 Consideration" and the four bullets
20 that follow under that, did you draft that provision?

21 MR. HELLER: Objection; asked and answered. He
22 testified at length to that earlier.

23 MR. DOMBROSKI: I have not asked any questions
24 about it.

25 MR. HELLER: You haven't but your colleagues

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1 have.

2 MR. DOMBROSKI: And if he answers the question,
3 I'll move right on.

4 MR. HELLER: You can answer it again, Mr.
5 Wilcoxon.

6 THE WITNESS: What do you mean by draft?

7 BY MR. DOMBROSKI:

8 Q Did you prepare that provision?

9 MR. HELLER: You're asking if he prepared it by
10 himself?

11 BY MR. DOMBROSKI:

12 Q Yes, by yourself.

13 A I stated before that we negotiated the terms of
14 this agreement and sent a draft of this to Tom Sawyer by
15 e-mail and received a return e-mail with modifications
16 and, thereafter, with further modifications in the
17 meeting with Goldsworthy on the 7th, several times,
18 particularly in regards to royalties and so on.

19 Therefore, I don't know how to answer your
20 question.

21 Q Fair enough. Directing your attention to your
22 supplemental declaration, 509, paragraph 19, you state
23 that the consideration for the agreement was that TTC
24 agreed to pay substantial royalty fees.

25 Do you see that?

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♀

1 A That's correct.

2 Q Based on what I just referred to, page 11 of

3 your declaration, this Exhibit 511, that statement is
4 inaccurate, isn't it?

5 A This is a response to Goldsworthy's declaration
6 so you have to get Goldsworthy's declaration out and
7 take it in context.

8 Q But, as this sentence reads, the consideration
9 for the agreement was that TTC agreed to pay substantial
10 royalty fees, my question then, in light of what you
11 just said, is the consideration was not limited to
12 substantial royalty fees; is that correct?

13 A That's correct.

14 MR. HELLER: The declaration doesn't say that.

15 MR. DOMBROSKI: I know. That's why I'm asking
16 the question.

17 MR. HELLER: I object to the form of the
18 question.

19 BY MR. DOMBROSKI:

20 Q Just directing your attention to the commercial
21 product line development clause, where it says TTC
22 understands and agrees it must advance funds to WBG --
23 do you see that?

24 A Yes.

25 Q You have testified previously that, as I

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1 understand it -- and correct me if I'm wrong -- that you
2 maintain that there was no obligation to advance funds
3 until WBG provided the due diligence information you
4 requested; is that correct?

5 A Yes. And we made a budget and schedule under a

6 mutually agreed budget and schedule.

7 Q Is it your testimony that the information
8 provided to you by Mr. Eastman regarding a budget and
9 schedule was insufficient?

10 A Absolutely.

11 Q Was that position ever communicated to Mr.
12 Goldsworthy at or about the time this contract was
13 signed?

14 A We didn't have this or whatever you're talking
15 about, which we don't know what it is, at the time the
16 contract was signed.

17 Q You indicated in paragraph 34 of your
18 supplemental declaration that you received a preliminary
19 business plan.

20 Was that preliminary business plan insufficient
21 for purposes in your mind requiring TTC to advance funds
22 to WBG?

23 MR. HELLER: First of all, look at paragraph 34
24 of your declaration. That's what is being referenced.

25 Let's hear the question again.

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1 (Record read.)

2 THE WITNESS: First of all, this 34 is in
3 answer to Eastman's declaration, and now we have to read
4 what's it's in answer to and take it in proper context.
5 It has nothing to do with the business we were planning
6 on doing.

7 BY MR. DOMBROSKI:

8 Q I appreciate the time of day and how long this

9 has been, but I'll have to move to strike the answer as
10 being nonresponsive.

11 MR. HELLER: I think the problem is with your
12 question, but go ahead and ask it again.

13 MR. DOMBROSKI: I'll try again.

14 Q So it's absolutely clear, TTC based on this
15 clause that is contained on page 11, paragraph 2.2, the
16 third bullet, entitled Commercial Product Line
17 Development, which states that TTC understands and
18 agrees that it must advance funds to WBG for each phase
19 as required under a mutually agreed upon budget and
20 schedule.

21 So it's absolutely clear, Mr. Wilcoxon, it is
22 your testimony, is it not, that there was no acceptable
23 budget and schedule presented to TTC that required TTC
24 to advance funds to WBG?

25 A That is clear.

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♀

1 Q That's all I wanted to know.

2 Let me direct your attention to the document
3 that is attached to this contract, this license
4 agreement, and it's at page 16, and this is Exhibit 511
5 which is your declaration in support of the motion for
6 preliminary injunction, and at the top of this document
7 it looks like there is handwriting that indicates
8 Exhibit A. Do you see that?

9 A Yes.

10 Q Is that your handwriting?

11 A It's not clear enough to determine from this.

12 Q Is there anything on this document, any
13 reference on this document, which supports your
14 position, TTC's position, taken in this lawsuit that
15 pages 16 through 29 are, in fact, Exhibit A?

16 MR. HELLER: Counsel, the question --.

17 MR. DOMBROSKI: I'll rephrase it.

18 Q Are the pages labeled 16 through 29, labeled
19 Exhibit A to the contract, which is the subject of this
20 litigation, do you see it anywhere that it's labeled
21 Exhibit A?

22 MR. HELLER: Other than what's written on top?

23 BY MR. DOMBROSKI:

24 Q Other than what is written on top, and I'll
25 take Mr. Heller's fine suggestion.

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1 A No, I don't see Exhibit A, except there.

2 Q So the only way that we have of knowing whether
3 these pages numbered 16 to 29 are Exhibit A is the
4 marking at the top of this page; is that correct?

5 MR. HELLER: What do you mean the only way?

6 BY MR. DOMBROSKI:

7 Q The only way we have of identifying what
8 Exhibit A is attached to this technology license
9 agreement, which is the subject of the TTC lawsuit, is
10 by the marking on top of page 16 in someone's
11 handwriting that indicates Exhibit A?

12 MR. HELLER: Mr. Dombroski, I still don't
13 understand what you mean by the only way. You heard the
14 witness' testimony about his recollection as to what was

15 attached to the contract. You're talking about what's
16 physically on the document?

17 MR. DOMBROSKI: Right.

18 MR. HELLER: Rephrase the question.

19 MR. DOMBROSKI: I'll make it clearer.

20 Q In the definition section of the technology
21 license agreement of page 10, section 1.1, it states
22 that teleconductors are described in Exhibit A attached
23 hereto.

24 My question, Mr. Wilcoxon, is how can you
25 sitting here today testify that the pages attached as

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1 pages 16 to 29 are Exhibit A, as referenced in 1.1?

2 MR. HELLER: Objection; that ignores all the
3 testimony given in the course of the day.

4 MR. DOMBROSKI: No, it doesn't.

5 Q I'll asking a very simple question.

6 A I don't understand.

7 Q As you sit here today, and you look at this
8 agreement, this technology license agreement, can you
9 tell me how anyone who was unaware of this contract, who
10 sat down and looked at it, could ascertain that these
11 pages 16 through 29 are, in fact, Exhibit A as
12 referenced in 1.1?

13 MR. JARBLUM: Objection as to form and calls
14 for speculation.

15 MR. HELLER: You want to know how someone else
16 can tell, as opposed to how this witness knows it was
17 the exhibit?

18 MR. DOMBROSKI: That's a good way.

19 Q How can someone else tell that pages 16 through
20 29 are Exhibit A, as referenced in paragraph 1.1?

21 MR. JARBLUM: Calls for speculation.

22 THE WITNESS: I don't really understand what
23 we're doing here. I don't understand it. This is
24 Exhibit A, and it was attached to the contract, and it
25 was said in the deposition yesterday by Dr. Hiel -- I

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1 don't know what -- it has been Exhibit A, and is Exhibit
2 A. I don't know what the question is.

3 BY MR. DOMBROSKI:

4 Q Are you aware, as you sit here today, that Mr.
5 Goldsworthy, Mr. Eastman and Mr. Grob have all testified
6 in opposition to the preliminary injunction motion that
7 there was no Exhibit A attached when the contract was
8 signed? Are you aware of that?

9 A I'm aware they lied about many things.

10 Q You're saying they're lying. Explain to me how
11 you can possibly -- explain to Judge King, who is
12 deciding this issue, that these pages 16 through 29 are
13 Exhibit A?

14 MR. HELLER: Objection as to the form.
15 Objection to the assumption. This is an issue that's
16 going to be decided by arbitrators and not Judge King,
17 and objection that you're being argumentative, and the
18 witness answered this question repeatedly and you're
19 harassing him.

20 BY MR. DOMBROSKI:

21 Q Is page 16 of this document labeled Exhibit A
22 anywhere other than the unknown handwriting at the top
23 that appears to say Exhibit A?

24 MR. HELLER: That question was specifically
25 asked and answered at least two times before.

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1 Answer it a third time. Does it say Exhibit A
2 anywhere else besides the first page at the top?

3 THE WITNESS: I'll go through and look at it.
4 The contract discusses all teleconductors, past and
5 future, however it's worded, and maybe there are
6 additional teleconductors that Goldsworthy has not
7 included, but no one thought it was a particularly
8 complicated issue at the time, since it included all
9 teleconductors.

10 MR. HELLER: You're not responding to the
11 question. He wants to know whether it says Exhibit A
12 anywhere else other than the top of the first page.

13 THE WITNESS: I don't see it in this copy.

14 BY MR. PERKINS:

15 Q Exhibit 528 is a copy of the TTC complaint file
16 in this case, dated August 15, and I'm going to direct
17 your attention to the document that is attached to the
18 complaint, starting at page 10, and I'm going to ask you
19 to look at page 16 of this document.

20 Do you see the document I referred to,
21 technology license agreement, and it starts at page 10
22 and goes through page 15, and pages 16 through 29 are
23 additional pages.

24 Is it your testimony here today that pages 16
25 through 29 are Exhibit A, as referenced in paragraph 1.1

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1 of the agreement?

2 A We'll have to go page by page. The subject
3 matter is the same. The top front page is a different
4 one than the other one, since this is -- there's many
5 copies of this floating around, and it may have been
6 mixed up in the copying.

7 (Defendant Exhibit 528 marked for
8 identification by the court reporter.)

9 BY MR. DOMBROSKI:

10 Q So it's clear on the record, Mr. Wilcoxon,
11 pages 16 through 29 are not labeled Exhibit A; correct?

12 MR. HELLER: What do you mean labeled Exhibit
13 A? What documents are you referring to?

14 MR. DOMBROSKI: Pages 16 through 29 are not
15 identified as Exhibit A, as referenced in 1.1 of the
16 agreement.

17 MR. JARBLUM: You're talking about the document
18 attached to the complaint or the documents attached
19 to --

20 MR. DOMBROSKI: I'm talking about pages 16
21 through 29 attached to the complaint, which is Exhibit
22 528.

23 MR. HELLER: It doesn't have the handwriting
24 Exhibit A at the top of page 16.

25 MR. DOMBROSKI: You'll stipulate it doesn't

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1 have the handwritten entry as the copy attached to Mr.
2 Wilcoxon's supplemental declaration has? Will you
3 stipulate to that?

4 MR. JARBLUM: We will point out that it's been
5 refaxed and probably the fax superseded and went over
6 the exhibit line, and it may not be visible. We have no
7 idea why it doesn't showed up. It was subsequently
8 faxed and the very top was cut off.

9 BY MR. DOMBROSKI:

10 Q Do you have a copy, Mr. Wilcoxon, of an
11 agreement, technology license agreement, that has a
12 document that has been identified and marked as Exhibit
13 A to this technology license agreement? Do you have
14 that?

15 A Yes.

16 Q Where?

17 A In our files either here or in Colorado.

18 Q So the record is absolutely clear, the
19 complaint does not have that document attached?

20 MR. JARBLUM: Excuse me. That's not true.

21 MR. DOMBROSKI: Can you furnish it to me today,
22 right now? Can I see it?

23 THE WITNESS: Today?

24 MR. HELLER: You misstated the testimony and I
25 object. You have a copy of the complaint that has an

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1 additional fax generation that may be covering what is
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2 partially obliterated on the declaration.

3 MR. DOMBROSKI: This is a document you attached
4 to the complaint that you filed on behalf of TTC, and it
5 doesn't have Exhibit A identified on the document that
6 you claim is Exhibit A.

7 MR. HELLER: You don't know that because there
8 is an additional fax line that may be covering it, and
9 it's clearly visible on the version that is attached to
10 the declaration.

11 MR. PERKINS: You don't know which one came
12 first and it's impossible to tell which of these
13 documents predates the other.

14 MR. HELLER: That's not true. You have to look
15 at the fax line.

16 MR. JARBLUM: You can clearly tell --

17 MR. DOMBROSKI: Are you representing to us,
18 counsel, that you have a document --

19 MR. PERKINS: Where is the original?

20 MR. JARBLUM: We have the original.

21 MR. DOMBROSKI: Right here?

22 MR. JARBLUM: I've seen the original. Either
23 he has it in his possession or we have it in ours.

24 MR. DOMBROSKI: Can we see it tomorrow?

25 MR. JARBLUM: You have not subpoenaed any

1 documents --

2 MR. DOMBROSKI: I'm raising this point because
3 it is significant and there is a dispute as to the
4 existence of Exhibit A, and I'm asking you to provide us

5 with what you purport is marked Exhibit A and identified
6 as Exhibit A.

7 MR. HELLER: You made a request and we'll take
8 it under consideration, and move on.

9 MR. JARBLUM: We'll certainly have it in court
10 on the 10th.

11 MR. DOMBROSKI: I want the opportunity to
12 cross-examine Mr. Wilcoxon and Mr. Arrington about what
13 you claim, and what we contested, and we provided three
14 or four declarations that say there was no Exhibit A at
15 the time the contract was signed, and Mr. Goldsworthy is
16 available to testify to that, and, if you have Exhibit
17 A, a document identified and marked as Exhibit A, I'd
18 like to see it so I can ask Mr. Wilcoxon some
19 questions.

20 And I think it's especially, in view of the
21 fact that someone entered and marked Exhibit A on the
22 document attached to Mr. Wilcoxon's supplemental
23 declaration, and we don't know who that is, and I think
24 we're entitled to see it.

25 So on that basis, I would ask that you

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1 immediately make that available, preferably tomorrow,
2 and give me a few minutes more time to ask Mr. Wilcoxon
3 some questions about it.

4 MR. PERKINS: Does this witness recall, as he
5 sits here today, whether or not the handwritten notation
6 Exhibit A appears on the original executed contract that
7 you have in your possession?

8 THE WITNESS: I believe it does.

9 MR. PERKINS: Then you don't have any objection
10 to show that to us?

11 THE WITNESS: No.

12 MR. DOMBROSKI: Tomorrow?

13 MR. HELLER: We said we'll take your request
14 under consideration.

15 BY MR. DOMBROSKI:

16 Q Now just directing your attention to the
17 complaint 528, Mr. Wilcoxon --

18 MR. PERKINS: I want to make a statement for
19 the record. If that document is in the attorney's
20 office now, given the fact that there is a great deal of
21 discrepancy in the record and challenges from one side
22 to the other as to who is lying and who isn't about this
23 document, I would object and protest your decision not
24 to provide that document immediately.

25 What is happening is you are being given time,

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1 and I don't know that you'd do it, and I'm not saying
2 you would, but if you provided it now, we'd all know
3 that no one switched Exhibit A.

4 MR. HELLER: I think the suggestion is
5 ridiculous. You made your statement and let's move on
6 with the deposition.

7 MR. JARBLUM: I specifically take umbrage to
8 the fact that you'd say that an attorney who is
9 representing someone in this case in the United States
10 District Court would modify a document.

11 MR. HELLER: It's a highly offensive comment --

12 MR. JARBLUM: And you suggested it might
13 happen --

14 MR. PERKINS: Attorneys have accused at least
15 four people of lying about Exhibit A --

16 MR. JARBLUM: Not attorneys of record in this
17 case --

18 MR. PERKINS: I'm not saying you'll do it, but
19 would Mr. Wilcoxon and Mr. Arrington --

20 MR. HELLER: When you're finished making your
21 statement, I'll ask that you finish his questions --.

22 MR. DOMBROSKI: I have a few more and I'm
23 struggling along.

24 Q Exhibit 511, if I can direct your attention
25 very quickly, page 72 -- this is 511 -- and this is

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1 Exhibit M, and this is a copy of the demand for
2 arbitration before the American Arbitration Association,
3 starting at page 72 -- do you see that, Mr. Wilcoxon?

4 A I see 72, yes.

5 Q And at the top of there it says name, WBG,
6 Inc., and W. Brandt Goldsworthy & Associates, Inc.?

7 A Yes.

8 Q Directing your attention to page 73, it defines
9 the nature of the dispute and refers to both WBG and
10 W. Brandt Goldsworthy & Associates, Inc. Do you see
11 that?

12 A Yes.

13 Q And I'll represent to you that, in sum and
Page 109

14 substance, this is a demand for arbitration as against
15 WBG, Inc. and W. Brandt Goldsworthy & Associates, Inc.

16 Do you understand that? This is a request by
17 your attorneys that WBG, Inc. and W. Brandt Goldsworthy
18 & Associates, Inc. be subject to arbitration pursuant to
19 the American Arbitration Association.

20 Do you see that?

21 MR. HELLER: Is that his understanding?

22 BY MR. DOMBROSKI:

23 Q Is that your understanding?

24 A Yes, it's my understanding.

25 Q And it's clear, is it not, Mr. Wilcoxon that

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1 TTC has no contract with W. Brandt Goldsworthy &
2 Associates, Inc.?

3 MR. HELLER: Objection; calls for a legal
4 conclusion.

5 BY MR. DOMBROSKI:

6 Q Are you aware of any written agreement between
7 TTC and W. Brandt Goldsworthy & Associates, Inc.?

8 MR. HELLER: Calls for a legal conclusion.

9 BY MR. DOMBROSKI:

10 Q Are you aware of any written agreement between
11 TTC and W. Brandt Goldsworthy & Associates, Inc.?

12 MR. HELLER: Same objection.

13 THE WITNESS: I have a written letter on WBGA
14 that calls for the completion of an assignment of
15 patents called for under the contract, I believe on
16 about May 10, and subsequent letters written by Mr.

17 Goldsworthy on WBGA.

18 I'm not aware that he's performed on that and,
19 therefore, I believe there is something which Mr.
20 Goldsworthy has not completed.

21 BY MR. DOMBROSKI:

22 Q And that's the basis for the demand for
23 arbitration that we just referred to; correct?

24 MR. HELLER: Objection. That clearly calls for
25 a legal conclusion. This witness did not prepare the

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1 demand for arbitration and he's not a lawyer and you're
2 asking for legal conclusions.

3 BY MR. DOMBROSKI:

4 Q But you've just described what your
5 understanding is for including a demand for arbitration
6 as against W. Brandt Goldsworthy & Associates, Inc. and
7 WBG; correct?

8 MR. HELLER: Same objection. The witness has
9 no knowledge regarding what binds one company versus
10 another, and who contractually is obligated to do what.
11 Those are legal questions.

12 MR. DOMBROSKI: Fair enough.

13 Q Directing your attention to page 8 of the
14 complaint, No. 528, page 8 of the complaint -- marked as
15 Exhibit 528 -- states "Wherefore plaintiff TTC prays
16 judgment in favor against defendants WBG and WBG as
17 follows" --

18 MR. HELLER: You misread it.

19 MR. DOMBROSKI: "Wherefore plaintiff TTC prays

20 judgment in its favor against defendants WBG & A and WBG
21 as follows: One, as to the first cause of action for
22 specific performance that defendant WBG submit to
23 binding arbitrations provided by section 8.1 of the
24 agreement.

25 Q Do you see that?

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1 A Yes.

2 Q Now, Mr. Wilcoxon, I will represent to you that
3 no where in this complaint is a request made for a
4 judgment requiring or requesting that defendant WBG
5 submit to a binding arbitration.

6 My question, Mr. Wilcoxon, is do you have any
7 basis for -- let me rephrase that. Let me ask you why
8 WBG & A was not made a party to the agreement between
9 TTC and WBG to your best knowledge?

10 MR. JARBLUM: We're talking about this
11 document. Listen to the question.

12 Repeat the question.

13 (Record read.)

14 THE WITNESS: Because Mr. Goldsworthy said he
15 wanted to do this agreement under WBG and stated that
16 the technology for the teleconductors was present in
17 WBG.

18 MR. DOMBROSKI: Let me take a quick -- just let
19 me talk to Jeff real quick.

20 MR. JARBLUM: And I want to talk to
21 Mr. Heller.

22 (Recess.)

23 MR. JARBLUM: I asked if you're done.

24 MR. DOMBROSKI: You asked if I'm done, and I
25 said subject to the understanding that we'll be able to

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♀

1 conduct full and open discovery regarding all matters
2 that need to be addressed, assuming that -- depending on
3 what Judge King does with the ruling on the arbitration
4 question, I'm finished.

5 MR. HELLER: We have no understanding regarding
6 discovery after the issue of the competition to compete
7 arbitration on the preliminary injunction is decided and
8 if this goes to arbitration, as we expect it will, that
9 all discovery is subject to the rules by the
10 arbitrators. If we remain before Judge King, we'll take
11 discovery pursuant to the federal rules.

12 MR. JARBLUM: Do you have any additional
13 questions?

14 MR. PERKINS: Of this witness, no.

15 MR. HELLER: Mr. Perkins is finished. Let me
16 make a statement for the record.

17 I am personally offended by the suggestion that
18 counsel in this case, Mr. Jarblum or myself, would
19 engage in any unethical conduct relating to switching
20 documents and the suggestion that can occur is
21 obnoxious.

22 Mr. Jarblum and I have gone down the hall and,
23 although not obligated to do so, in order to deal with
24 this allegation, which is infuriating to us, we have the
25 original technology license agreement here with Exhibit

♀

1 A, and, if you want to question the witness on that one
2 issue with respect to Exhibit A being labeled at the top
3 of page 16 -- the first page of Exhibit A, page 16,
4 being marked in the declaration and complaint, you can
5 go ahead and do so.

6 MR. DOMBROSKI: Can you make a copy of this one
7 page and we'll be done real quick.

8 MR. HELLER: We'll do that.

9 Mr. Perkins, if you want to ask any questions
10 about the page, since you made the accusation, go ahead
11 and ask it.

12 FURTHER EXAMINATION

13 BY MR. PERKINS:

14 Q We have marked this document as No. 529 and I
15 don't --

16 MR. HELLER: Has Mr. Dombroski finished his
17 examination?

18 MR. PERKINS: Yes, and he turned it over to
19 me.

20 MR. DOMBROSKI: He can go forward until I have
21 a chance to review.

22 (Defendant Exhibit 529 marked for
23 identification by the court reporter.)

24 MR. PERKINS: I only have a few questions since
25 I'm the one that brought up the issue.

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1 Can we have a stipulation, Counsel, that
2 Exhibit 529 is a copy of the original Exhibit A which
3 was made by you within the last 5 to 10 minutes?

4 MR. JARBLUM: The original Exhibit A attached
5 to the ribbon copy of the technology license group.

6 MR. PERKINS: And it contains the original
7 signatures by the four signing parties?

8 MR. JARBLUM: Yes, sir.

9 BY MR. PERKINS:

10 Q Would you refer, sir, to Exhibit 529, which is
11 now in front of you?

12 A Yes.

13 Q This document, Exhibit 529, has the word
14 "Exhibit A" printed on the top fairly clearly, correct,
15 on some of the pages but not all the pages?

16 A That's correct.

17 Q Is it your testimony -- I believe you testified
18 earlier you don't know whose handwriting that is?

19 A This handwriting is mine.

20 Q It is your handwriting?

21 A Yes.

22 Q And do you know when you affixed that notation
23 "Exhibit A" to Exhibit 529 in its original form?

24 A Presumably at the time but I don't recall
25 exactly.

1 Q It's fairly important that we try to pin this
2 down, as closely as we can. Is it your testimony that

3 you believe it was done at the time but you're not sure?

4 A The first page I am certain was done at the
5 time they were stapled together.

6 Q Which were stapled together?

7 A All of the exhibits were stapled together.

8 MR. HELLER: All the pages to the exhibit?

9 THE WITNESS: Yes. The pages to the exhibit,
10 that's correct, were stapled together and were attached
11 with a clip to the contract.

12 BY MR. PERKINS:

13 Q And when were they attached with a clip to the
14 contract in that stapled form?

15 A On the -- I believe on the 7th.

16 Q Before or after the contract was executed by
17 the parties?

18 A I believe they were attached after the contract
19 was executed by the parties.

20 Q After that you at some point wrote the term
21 "Exhibit A" across the top --

22 A I believe I wrote it on at the time because we
23 were identifying the stapled group as Exhibit A.

24 Q I see there is also an "Exhibit A" on the
25 second page. Do you see that?

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1 A I do see that.

2 Q And there is also an "Exhibit A" handwritten on
3 the third page?

4 A Yes, I see that.

5 Q And there is also an "Exhibit A" written on the

6 fourth page, which is the copy of the letter from Robert
7 Schaap the attorney?

8 A Yes.

9 Q And an "Exhibit A" which is on the second page
10 of Mr. Schaap's letter?

11 A Yes.

12 Q And the next page, which apparently is the
13 application from the Department of Commerce from the
14 patent trademark office filing receipt -- do you see
15 that?

16 A Yes.

17 Q It has no "Exhibit A" written across it, does
18 it?

19 A That's correct.

20 Q You may want to satisfy yourself by looking at
21 the original to be sure we didn't miss it in xeroxing,
22 and your counsel is looking at the original. Can we
23 stipulate, counsel --

24 MR. JARBLUM: We can stipulate to that.

25 MR. PERKINS: The filing receipt has no

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1 "Exhibit A" written on it?

2 MR. HELLER: Yes.

3 BY MR. PERKINS:

4 Q The first five pages we talked about, which
5 contain the handwritten "Exhibit A" were they -- did
6 they contain the handwritten "Exhibit A" at or about the
7 time the agreement was signed or was that added later?

8 A Sorry. I need to hear the question again.

9 Q You testified that you were not sure but you
10 believe that the first page was delineated with the term
11 "Exhibit A" by you shortly after or after the contract
12 was signed by the four parties?

13 MR. JARBLUM: Objection; misstates the
14 testimony.

15 MR. PERKINS: Read back that testimony about
16 the fourth question back.

17 (Record read.)

18 BY MR. PERKINS:

19 Q Is that correct what the reporter just read?
20 It correctly reflects your recollection as to when
21 Exhibit A was attached to the agreement?

22 A Yes. Exhibit A was attached to the agreement
23 immediately after signing the contract.

24 Q Okay. And it contained the handwritten
25 notation "Exhibit A" across the top?

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1 A At least the first page did.

2 Q And you're not sure if you added the "Exhibit
3 A" to the subsequent pages at that time?

4 A Yes, I don't recall. It was another tiring
5 day.

6 Q And I notice that the sixth page, the filing
7 receipt, doesn't contain the handwritten notation
8 "Exhibit A," and we've gone through that?

9 A Yes.

10 Q Do you recall why you didn't put the notation
11 on that page?

12 A I don't recall why it's not on that page.
13 Q The next page, which is the license for foreign
14 filing, under Title 35, the seventh page in, it doesn't
15 contain the handwritten notation "Exhibit A" either,
16 does it?
17 A That's correct.
18 Q And the next page, which is a document dated
19 February 19, 1999, references CRAC Conductor Project, do
20 you see that?
21 A Yes, I see that.
22 Q That doesn't contain the handwritten notation,
23 does it?
24 A No.
25 Q And the next page, titled Advantages of CRAC

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1 Conductor, doesn't contain the handwritten notation,
2 does it?
3 A That's correct.
4 MR. HELLER: Would it save time to ask the
5 witness why some of the pages have "Exhibit A" and some
6 don't?
7 MR. PERKINS: I want to make it clear on the
8 record and I will ask that, believe me.
9 Q The next page refers to Advanced CRAC, does it
10 not?
11 A Yes.
12 Q And it contains the wording "Exhibit A" on the
13 top?
14 A Yes.

15 Q And the next page has no notation, although
16 it's part of the Advanced CRAC page, is it not?

17 A No, it's not.

18 Q It's not?

19 A No.

20 Q None of these remaining pages have "Exhibit A"
21 on it.

22 Your counsel properly suggested I should ask
23 you why some have "Exhibit A" on them and some don't.
24 Can you answer the question for me?

25 MR. HELLER: It's 7:30, and I'm trying to save

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1 some time.

2 THE WITNESS: And I appreciate that. I'm
3 not -- I don't recall at the moment.

4 MR. PERKINS: I don't think that was effective
5 in terms of time-saving.

6 MR. HELLER: We tried.

7 BY MR. PERKINS:

8 Q I guess it couldn't be that -- it is not true,
9 I guess, that the pages that don't have the words
10 "Exhibit A" across them were not present as Exhibit A
11 at the time the contract was signed?

12 MR. JARBLUM: Objection as to form.

13 Answer the question.

14 THE WITNESS: I will just state that all these
15 pages were present in Exhibit A at the time the contract
16 was signed.

17 BY MR. PERKINS:

18 Q Shortly after the contract was signed, you
19 inserted "Exhibit A" on some of the pages and not all,
20 and you don't remember why you picked some and not
21 others?

22 A There were problems with the copy machine at
23 Goldsworthy's organization, and I don't know in the
24 process of making the different copies and so on, I'm
25 not sure exactly what occurred. Perhaps someone else

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1 has a better recollection. I don't know.

2 Q The sixth page, which is the license for
3 foreign filing under Title 35, do you know if that deal
4 is with Advanced CRAC or CRAC Technology?

5 A This one is a license for foreign filing, and
6 it appears to deal with -- it appears -- I can't tell --
7 as I stated in previous testimony to you, early in the
8 day, it says in the title "composite reinforced
9 electrical transmission conductor" and tends to be
10 similar to the previous page of the letter by Schaap,
11 wherein it says U.S. patent application, serial number
12 09602,847 on the composite reinforced electrical
13 transmission conductor generic application, parents, and
14 I don't know which phase or part we're talking about.

15 These documents were handed to us by
16 Goldsworthy along with marketing documents, phase 2,
17 from the California Energy Commission on CRAC and
18 marketing on CRAC and a few other reports.

19 He asked us to select out of it something
20 quickly, immediately, for it. If I recall correctly, he

21 thought that this ought to be adequate to describe the
22 first two pages.

23 Q You're holding up the first two pages of a
24 document entitled Inventions and Innovations?

25 A Right.

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1 Q When did he tell you that?

2 A During the course of discussing Exhibit A.

3 Q Before or after the contract was signed?

4 A Before, when we were discussing the exhibit.

5 Q Would this be on May 5, as opposed to May 7?

6 A No. On May 7. We wanted more and wanted
7 copies of the patent applications and scurried around
8 looking for it, and I don't know if they wanted to give
9 it to us or not but, eventually, they did provide us
10 with a copy of the patent application for CRAC but not
11 that day.

12 MR. PERKINS: I have nothing further.

13 MR. DOMBROSKI: Can I ask one question that I
14 completely forgot to ask. It's one question and it has
15 nothing to do with this.

16 MR. JARBLUM: We want you to know that you owe
17 us one.

18 FURTHER EXAMINATION

19 MR. DOMBROSKI: One question.

20 Q If I can direct your attention to your
21 supplemental declaration, page 14, Exhibit 509, and it's
22 the letter from George Korzeniowski to Mr. Goldsworthy
23 dated November 7, and my question, Mr. Wilcoxon -- my

24 one and only question -- is where did you obtain this
25 document?

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1 A It arrived at our office, I believe, by fax and
2 we were puzzled, and it came to me by Mr. Arrington, who
3 brought it in and said, "Where did this come from?" As
4 it was laying on his -- he said it was laying on his
5 desk, like the secretary hands things and drops them
6 onto the table, and I said that I don't know.

7 Q And --

8 MR. HELLER: I thought you had one question.

9 MR. DOMBROSKI: I have to ask the second
10 question.

11 Q Where was Mr. Arrington at the time this was
12 laid on his desk? Colorado or here?

13 A Here, Irvine.

14 Q To your knowledge you don't know where this
15 document came from?

16 A That's actually correct, I don't know.

17 Q Do you know if Mr. Arrington does?

18 A He didn't appear to know because he asked if I
19 put it on his desk.

20 MR. DOMBROSKI: Thanks.

21 MR. JARBLUM: I'd like to ask one question.

22 EXAMINATION

23 BY MR. JARBLUM:

24 Q Looking at Exhibit 529, page 1 and 2 that says
25 "Exhibit A," do they deal with CRAC or Advanced CRAC?

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1 A CRAC.

2 Q Page 3, with "Exhibit A" on top that says,
3 "Patent No. 1 CRAC" on the top, does it deal with CRAC
4 or Advanced CRAC?

5 A But it says it deals with a process and system
6 for producing reinforced thermoplastic composite
7 articles, and that is the core in CRAC, I assume.

8 Q The next page, which has "Exhibit A" written on
9 the top, Patent No. 2, Advanced CRAC, and the following
10 page which has "Exhibit A," is that CRAC or Advanced
11 CRAC?

12 A It says composite reinforced electrical
13 transmission conductor, which appears to be CRAC.

14 Q And, finally, the last page that has "Exhibit
15 A" on top and a configuration of Advanced CRAC
16 conductor, is that CRAC or Advanced CRAC?

17 A That's Advanced CRAC.

18 MR. JARBLUM: I have no further questions.

19 MR. HELLER: Anything further, gentlemen?

20 Can we enter into a stipulation?

21 MR. DOMBROSKI: In terms of this document
22 that's been attached, I want to know where that document
23 was delivered? What's the location?

24 THE WITNESS: This was at the 1881 Von Karmen,
25 Suite 1630, Irvine, California.

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1 MR. HELLER: I'll never let you ask one
Page 124

2 question again.

3 (Recess.)

4 MR. HELLER: Mr. Perkins, it's your deposition
5 and you can put a stipulation on the record.

6 MR. PERKINS: I understand the original will be
7 retained by counsel for the plaintiffs for filing with
8 the court on or before Wednesday, December 5.

9 MR. HELLER: Unless otherwise agreed.

10 MR. PERKINS: Due to circumstances. I guess we
11 don't have to stipulate about documents or anything.

12 MR. DOMBROSKI: The additional one is that
13 Mr. Wilcoxon will, hopefully, have an opportunity to
14 review and, since we're holding it until Wednesday -- to
15 make corrections by Monday, and then Mr. Arrington,
16 assuming he gets it -- assuming we get Mr. Arrington
17 finished by tomorrow, conceivably he will have until
18 Tuesday.

19 MR. DOMBROSKI: Mr. Sawyer, too.

20 MR. HELLER: So the witnesses will have until
21 close of business Tuesday to read, correct and sign
22 their deposition transcripts.

23 If they don't sign the deposition transcript,
24 the deposition transcript can be used for all purposes
25 after the witness has been given an opportunity to

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1 review and sign it. Agreed?

2 MR. PERKINS: So stipulated.

3 MR. DOMBROSKI: And we're talking about

4 Mr. Sawyer and Mr. Wilcoxon and Mr. Arrington. With

5 respect to Mr. Goldsworthy, if we can do him tomorrow or
6 Saturday --

7 MR. HELLER: We'll agree at his deposition,
8 depending when it's completed, allowing him an adequate
9 amount of time to review his deposition and correct it.

10 MR. DOMBROSKI: I don't have control over
11 Mr. Eastman or Mr. Korzeniowski, but I'll encourage them
12 to review and sign by Tuesday, if that is acceptable.

13 MR. HELLER: It depends when we're able to
14 complete their depositions.

15 MR. JARBLUM: The reporter is not retaining the
16 documents and we're keeping the documents here.

17 MR. HELLER: We're keeping the exhibits here,
18 the original exhibits, so they can be used for
19 tomorrow's depositions. So stipulated?

20 MR. PERKINS: So stipulated.

21 MR. DOMBROSKI: So stipulated.

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WILCOXON 2 (2)

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I, BENTON WILCOXON, do hereby declare under penalty of perjury that I have read the foregoing transcript of my deposition; that I have made such corrections as noted herein, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____,
2001, at _____, _____.
(City) (State)

BENTON WILCOXON

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate

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11 transcription thereof.

12 I further certify that I am neither financially
13 interested in the action nor a relative or employee of
14 any attorney of any of the parties.

15 IN WITNESS WHEREOF, I have this date subscribed
16 my name.

17

18 Dated: _____

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VIRGINIA PETERAITIS
CSR No. 6205

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