

1990

# Kasco Services Corporation v. Larry D. Benson and Connie A. Benson, dba Tri-B-Supply : Addenda

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

900260

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IN THE UTAH SUPREME COURT

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KASCO SERVICES CORPORATION, )

Plaintiff-Appellant, )

vs. )

LARRY D. BENSON and )  
CONNIE A. BENSON dba )  
TRI-B-SUPPLY, )

Defendant-Appellee, )

Case No. 900260

Priority No. 11

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ADDENDUM OF APPELLANT

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**FILED**

OCT 10 1990

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Clerk, Supreme Court, Utah

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IN THE UTAH SUPREME COURT

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KASCO SERVICES CORPORATION,	)	
	)	
Plaintiff-Appellant,	)	
	)	Case No. 900260
vs.	)	
	)	
LARRY D. BENSON and	)	Priority No. 11
CONNIE A. BENSON dba	)	
TRI-B-SUPPLY,	)	
	)	
Defendant-Appellee,	)	
	)	

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ADDENDUM OF APPELLANT

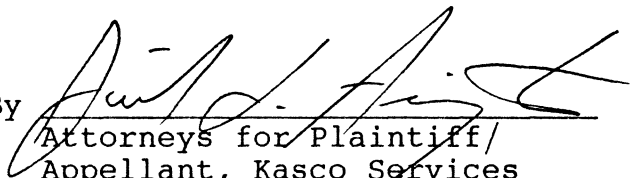
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Pursuant to Rule 24(f), Utah Rules of Appellate Procedure, Plaintiff-Appellant Kasco Services Corporation submits this Addendum concurrently with its opening brief.

DATED this 10th day of October, 1990.

VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
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By



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Tab A

## AGREEMENT

This Agreement is entered into between the Keene Cutting Services Division of Keene Corporation (hereinafter referred to as "Keene"), having a place of business at 1569-71 Tower Grove Avenue, St. Louis, Missouri 63110 and Larry Benson (hereinafter referred to as "Sales Representative").

WHEREAS, Keene is engaged in the business of servicing, selling and renting certain products to businesses throughout the United States and has developed a large, valuable and extensive trade and goodwill in such business and confidential information relating thereto.

WHEREAS, Sales Representative desires to enter into the employ of Keene as a sales representative and Keene is willing to employ Sales Representative in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration for Keene employing Sales Representative, the parties covenant and agree as follows:

### 1. Definitions

1.1 As used herein the following terms shall have the following meanings:

(a) "Butcher Products" shall mean any products currently or at any time hereafter sold, rented or serviced by Keene including, without limitation, products for the meat cutting trade including, without limitation,

chopper plates and knives, band saw blades, hand saws and blades, seasonings, cutlery, butcher supplies, power saw parts as well as retail grocery market case decorations for meat, produce, deli and bakery departments and businesses.

(b) "Keene Customer" shall mean any customer and potential customer of Butcher Products who the Sales Representative calls upon on behalf of Keene during his employment and all customers who are reflected on the route sheets or invoices in any route or territory previously served by the Sales Representative during his employment with Keene.

(c) "Confidential Information" shall mean:

(i) Keene Customers' names, address and locations; Keene Customer contacts at each location; current and previous Butcher Products sales and rentals experience; prior Butcher Products servicing experience; Keene Customer service dates; Keene Customer shipping dates; any and all information gathered by Keene or the Sales Representative relating to potential customers of Butcher Products

(ii) Keene route sheets, invoices, daily activity reports, price lists and supplements, Reporting and Administrative Manual and all other Keene reports and data,

- (iii) Names and locations of other Sales Representatives, Supervisors and their routes or territories and customers and other similar information as set forth in subparagraph (i) above,
- (iv) Keene sales volume, strategy and market information.

## 2. Employment

2.1 Keene hereby employs Sales Representative, subject to the conditions hereinafter set forth, as a sales representative to sell, rent and service Keene's Butcher Products in such territory (or territories) or such route (or routes) as assigned and established from time to time by Keene.

2.2 Sales Representative hereby accepts such employment with Keene and shall devote his entire time and best and most diligent efforts to sell, rent and service Keene's Butcher Products.

2.3 Sales Representative's duties, responsibilities, compensation, reimbursement for expenses, vacation schedules, hours of work, and other terms and conditions of employment shall be as set forth from time to time in the Keene Cutting Services Division Reporting and Administration Manual, as may from time to time be additionally set forth in writing by Keene, and as explained to the Sales Representative by Keene at the time of employment and at any time subsequent thereto.

2.4 Sales Representative acknowledges that prior to the execution of this Agreement that he received, read and understood the policies of Keene as set out in the Keene Cutting Services Division Reporting and Administration Manual and as further explained to him by Keene at the interviews for such employment and shall abide by these policies and conduct his actions in accordance with them, and any further modifications as set forth in section 2.3 hereof, during his employment.

2.5 Nothing in this Agreement shall be construed as giving the Sales Representative any continuing employment rights and employment hereunder is terminable by Keene at will.

3. Confidential Information, Goodwill and Inventions

3.1 Sales Representative acknowledges that Keene has developed (and shall continue to develop) valuable, substantial and unique information which has been previously defined in section 1.1(c) as Confidential Information which, prior to his employment, was unknown to him, and which by virtue of his employment will become known to him, including, without limitation, becoming personally acquainted with the customers and trade of Keene in such routes or territories assigned to him.

3.2 Sales representative acknowledges that Keene has developed a substantial goodwill in its business and has

a need to protect its goodwill in the territories or routes to be served by him.

3.3 Except as required by the duties of his employment with Keene, Sales Representative shall never, directly or indirectly, use, publish, disseminate or otherwise disclose his knowledge of Keene's business, policies or practices, including without limitation any Confidential Information, without the prior written consent of the President of the Keene Cutting Services Division.

3.4 During his employment with Keene, Sales Representative shall exercise all due and diligent precautions to protect the integrity of the Confidential Information and, upon termination of employment, Sales Representative shall return to Keene all documents embodying such Confidential Information or any part thereof (including any copies thereof) in his possession or control.

3.5 Sales representative shall promptly and fully disclose and assign to Keene any and all inventions, discoveries, developments, concepts and ideas, whether or not patentable and whether or not conceived, developed, reduced to practice by Sales Representative alone or by himself and others, or both, during the period of his employment with Keene relating to Butcher Products or any other product or service which would be a natural expansion of activity for Keene.

#### 4. Restrictive Covenants

4.1 Sales Representative acknowledges and agrees that Keene will suffer great loss and damage if during his employment or at any time subsequent to his employment he were to improperly use Keene's Confidential Information or goodwill and, therefore, agrees that he must comply with the restrictive covenants hereinafter set forth, it being understood that at the execution of this Agreement the parties acknowledge and agree that such restrictions are reasonable and necessary for the protection of Keene's business and compatible with their respective rights.

4.2 During his employment with Keene, Sales Representative shall not in any way be engaged, directly or indirectly:

(i) in the sale, rental or servicing of any other products other than Keene Butcher Products, or

(ii) at any place, as an employee, partner, principal, officer, director, consultant, agent or stockholder (except as a stockholder with an interest of less than one (1) percent in a publicly owned company) of any corporation, partnership, proprietorship or other form of business entity whether or not it is competitive with Keene,

without the prior written consent of the President of the Keene Cutting Services Division.

4.3 Subsequent to his employment by Keene, Sales Representative shall not for himself or in behalf of or in conjunction with any other corporation, partnership, proprietorship, or other form of business entity, whether as an employee, partner, principal, officer, director, consultant, agent or stockholder or otherwise:

(i) call upon any Keene Customer for the purpose of soliciting, selling, renting and/or servicing Butcher Products,

(ii) directly or indirectly, solicit, divert, take away or attempt to take away any Keene Customer, or the business or patronage of any such customer for Butcher Products, or

(iii) directly or indirectly, engage in any manner in the business of the sale, rental or servicing of Butcher Products in any geographic territory in which Sales Representative had called upon Keene Customers during the period of his employment with Keene, for a period of eighteen months immediately following termination of his employment by Keene.

4.4 Subsequent to his employment by Keene, Sales Representative shall not for himself or in behalf of or in conjunction with any other corporation, partnership, proprietorship or other form of business entity, use, publish,

disseminate or otherwise disclose any Confidential Information.

4.5 During his employment and for a period of two (2) years subsequent thereto, Sales Representative shall not suggest or seek to persuade any director, officer or other employee of Keene to discontinue that individual's status or employment with Keene, nor to become employed in any activity in competition with Keene.

- agree  
LB sought  
to persuade  
Clark.

4.6 Sales Representative acknowledges and agrees that all post employment obligations contained in this Agreement shall remain in full force and effect whether his employment was occasioned, with or without cause, by Keene, by himself, or by mutual agreement.

## 5. Governing Law

5.1 This Agreement shall be construed in accordance with and governed for all purposes by the laws and public policy applicable to contracts and post-employment restrictions of the State of Missouri as though made in and performed within that State.

5.2 If for any reason any paragraph, term or provision of this Agreement is held to be invalid or unenforceable, all other valid provisions herein shall remain in full force and effect and all terms, provisions and paragraphs of this Agreement shall be deemed to be severable in nature. If any of the restrictions on post-employment activities contained in Section 4 hereof shall for any reason be held

to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it then shall appear.

## 6. Remedies

6.1 Sales Representative acknowledges and agrees that were he to breach the provisions of Sections 3 or 4 that:

(i) it will be difficult to compute the amount of Keene's loss or damages,

(ii) by reason of Sales Representative's financial circumstances he may not be able to fully respond in damages to compensate Keene for its loss or damages,

(iii) Keene's injury would be irreparable, and

(v) Keene, accordingly, would be without an adequate legal remedy

and he therefore agrees that, in addition to provable damages and reasonable attorneys' fees, Keene shall be entitled to enjoin any such breach in any Court having jurisdiction thereof.

## 7. Arbitration

7.1 Except as provided in Paragraph 6.1 hereof in which Keene may seek to enjoin Sales Representative in any Court having appropriate jurisdiction, each and every other controversy or claim arising out of or relating to this

Agreement, or the breach thereof, shall be settled in St. Louis, Missouri by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator may be entered in any Court having jurisdiction thereof.

8. Assignment

8.1 This Agreement and the rights and obligations of the parties hereto shall bind and inure to the benefit of Keene and shall also bind and inure to the benefit of any successor or successors of Keene by reorganization, merger, consolidation or liquidation, or any assignee(s) of all or substantially all of the business or assets of the Keene Cutting Services Division, and, except as to any such successor or assignee(s) of Keene, neither this Agreement nor any rights or benefits hereunder may be assigned by Keene or Sales Representative.

9. Waivers

9.1 No provision or right or obligation herein set forth may be waived or be deemed to be waived, by any act or failure to act, unless such waiver is set forth in writing and executed by Sales Representative and the President of Keene Cutting Services Division. Any such written waiver shall not be deemed to constitute a waiver of any subsequent breach of the same provision unless expressly stated in such written waiver, or any other term, provision, right or obligation.

10. Entire Agreement

10.1 This Agreement contains the entire understanding and agreement between the parties hereto and supersedes any prior discussions and cannot be amended, modified or supplemented in any respect, except by a subsequent written agreement executed in a manner similar hereto by both the Sales Representative and the President of the Keene Cutting Services Division.

11. Headings

11.1 The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning hereof.

IN WITNESS whereof the parties hereto have set forth their signatures below and this Agreement is entered into in full force and effect as of the date set forth hereinafter.

Dated: St. Louis, Missouri  
8-2, 1982

KEENE CORPORATION

By J. H. Dool  
President, Keene  
Cutting Services Division

SALES REPRESENTATIVE

[Signature]  
(Print Name Under Signature)  
Residing at \_\_\_\_\_

Tab B

# CERTIFIED COPY

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

\* \* \*

KASCO SERVICES CORPORATION,	)	
	)	
Plaintiff,	)	Civil No. 89-0901724
	)	Judge David S. Young
vs.	)	
	)	Deposition of:
LARRY D. BENSON and CONNIE	)	
A. BENSON, dba TRI-B-SUPPLY,	)	<u>LARRY D. BENSON</u>
	)	
Defendants.	)	
	)	
	)	

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Deposition of LARRY D. BENSON, taken at the instance and request of the Plaintiff, at Vancott, Bagley, Cornwall & McCarthy, 50 South Main, Salt Lake City, Utah, on Wednesday, the 31st day of May, 1989, at the hour of 9:20 a.m., before VICKY MCDANIEL, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, Utah License No. 285.

\* \* \*

1           A       It was not manned at the time I took it.

2           Q       Did Archway have cookies up there?

3           A       They were here. They were being handled by a  
4 supervisor from the main bakery. They were trying to keep  
5 what accounts they had alive. It had been abused when I  
6 took it over.

7           Q       How long were you with Grandma Cookie Company?

8           A       Up until about 60 days before I went to work with  
9 KASCO--Keene, excuse me. That's 60 days prior to going to  
10 work for Keene I was working for a food broker, and don't  
11 ask me his name because I don't even want to remember that,  
12 but it was a good interim job, I guess.

13          Q       You started with Keene in January of '77; is that  
14 correct?

15          A       February.

16          Q       February of '77?

17          A       Uh-huh.

18          Q       So would have been December of '76, roughly, when  
19 you left Grandma Cookies?

20          A       Yeah, it was.

21                   MRS. BENSON: That's when it was.

22          A       December of '76.

23          Q       Why did you leave?

24          A       I had a--what had happened there, there had been  
25 some things transpire. Grandma's had put this territory up

1           A       Actually to Ontario.

2           Q       North to Ontario?

3           A       Yes, encompassed all of Idaho except the  
4 panhandle.

5           Q       Those two states?

6           A       (Nodding head.)

7           Q       No others?

8           A       Not at the time.

9           Q       Did anyone accompany you when you first started?

10          A       Yes.

11          Q       Did they provide training to you, introductions?

12          A       Oh, at the time it was on-the-job training. I  
13 think I introduced them to a lot of people.

14          Q       Who accompanied you?

15          A       Ed Mason.

16          Q       And how long did he accompany you?

17          A       Oh, I think he was with me two or three weeks,  
18 and then he went back to St. Louis for some training himself  
19 in management.

20          Q       Did he return and join you?

21          A       Periodically--with me periodically. I don't know  
22 what dates he would have been with me or anything.

23          Q       How much training did you receive concerning the  
24 use of the equipment that you were selling? How many  
25 seminars did you attend, for example?

1           A       I attended one day of saw training at La Habra,  
2 California.

3           Q       Did Keene pay for that training?

4           A       They paid for my flight down there and back, they  
5 didn't pay me to be there.

6           Q       Were you receiving a salary at the time?

7           A       No, and I had one day of slicer training at La  
8 Habra, California which was basically handled the same way,  
9 they paid my flight down and back and I paid the--I lost the  
10 wages while I was gone.

11          Q       Did they pay for the training session? Did you  
12 have to pay for the training session?

13          A       If there was any pay involved, I assume they paid  
14 it. I don't know that there was any pay involved.

15          Q       Do you recall other seminars or training  
16 sessions--

17          A       No.

18          Q       --in other locations?

19          A       Nothing other than sales meetings.

20          Q       Tell me about the sales meetings.

21          A       Well, they had a lot of different types of  
22 meetings. They had their roadrunner meeting, which was a  
23 meeting that they had with all of the top producing  
24 salesmen, as many as ten of them, which at that time they  
25 were meeting every six months; and there was a company

1           A       Everyone in the meat department, actually.

2           Q       And anyone in the meat department?

3           A       (Nodding head.)

4           Q       How long do you think it takes, in this  
5       territory, for example, if someone coming in to take your  
6       place or, for example, you coming in to take Ed Mason's  
7       place, how long would it take to develop a relationship with  
8       the meat department, the meat managers or those responsible  
9       for purchasing in the meat department?

10           MR. TATEOKA: Are you assuming he doesn't know  
11       anyone in the meat department from the start? Just coming  
12       totally fresh?

13           MR. ARRINGTON: Right, assuming they're from  
14       Utah.

15           A       Never had that experience. On what do you want  
16       me to base my answer?

17           Q       Just your experience.

18           A       I've had no experience because I know--

19           Q       You would know how long it would take?

20           A       No.

21           Q       How long do you feel it took you to develop a  
22       relationship once you came in and took over Ed Mason's place  
23       directly with a meat department that would solidify your  
24       relationship as a Keene representative to give you regular  
25       business opportunities with that particular meat department

1 in a given store?

2 A Oh, it took me couple of calls on each department  
3 before they got to the point where they--they always are  
4 leery, they wondered if you really know your business and if  
5 what you tell them is factual, or if you're trying to bull  
6 them a little bit, but I did have some experience with that,  
7 and that was in the Boise area.

8 Q What was your experience?

9 A Because when I went in to Boise there was a few  
10 of the shops there that I'd never met any of the people in  
11 those shops and I had to go in dead cold. And like I say,  
12 KASCO had just got that business and because of a misunder-  
13 standing or some kind of a foul-up between the manager that  
14 was running that made that sale and the--possibly the route  
15 Ed Mason, the route territory manager at that time, they put  
16 the wrong equipment in some of stores. Of course I had no  
17 knowledge of what that situation was because I was the new  
18 man on the block. But they were charging them the price for  
19 the more expensive equipment and giving them the lesser  
20 expensive equipment at the time, which caused the problem  
21 and why they lost Albertson's in Idaho.

22 So my first call on some of those meat  
23 departments up there, they were very cold and very hard  
24 toward me, but by the second time I'd called on them, I had  
25 a good relation with most of them and some of them it was

1 they'd buy them. I'd sell ice to Eskimos if they'd buy it.

2 That would be definitely be a good idea.

3 Q Had you started ordering inventory and equipment  
4 as of the time that you obtained this business name  
5 application?

6 A I think I probably placed a couple orders.

7 Q Do you remember what you'd ordered at that point?

8 A You mean volume-wise, or--

9 Q Yeah, the types of things that you ordered and  
10 the number.

11 A I remember the types of things I ordered, but I  
12 don't remember the numbers.

13 Q What were they? What types of things did you  
14 order?

15 A I'd placed an order with Atlanta Saw Company for  
16 saw blades and grinder plates and knives. I'd also placed  
17 an order with Speco for grinder plates, I think.

18 Q Who is the first order from?

19 A Who was the first order from?

20 Q Yes. You said you ordered saw blades, grinder  
21 plates and knives from--

22 A Atlanta Saw.

23 Q Atlanta Saw? And you placed a similar order from  
24 Speco?

25 A I don't know whether I'd ordered from Speco at

1 that point or not. I think I had placed an order with  
2 Speco.

3 Q Do you have an idea of the amount that you  
4 ordered?

5 A I don't have any idea.

6 Q Would it have been the equivalent to like a 30-  
7 day inventory while you were with KASCO?

8 A If I was going to order I'd probably order a  
9 30-day supply, yes. If you can say a supply, who knows?  
10 You go out peddling, it's hard to say what's a 30 day  
11 supply. 30-day supply might last you five years.

12 Q Well, what does that term mean to you? When you  
13 say that if made those orders as you indicated you did, and  
14 that it probably would have been a 30-day supply, what sort  
15 of volume are you talking about?

16 A If I was to get every account that I contacted,  
17 would have been a 30-day supply.

18 Q And how many accounts had you contacted?

19 A How many had I contacted when?

20 Q Well, you said if you got all the accounts that  
21 you contacted it would have been a 30-day supply.

22 A If I had--yeah, if I went out contacting accounts  
23 and I got everything I contacted, it would have been a  
24 30-day supply. But I had no idea because I hadn't contacted  
25 anyone.

1           Q       So these would have been orders that you placed  
2 around January of 1989?

3           A       Negatory. There wasn't an order placed until  
4 after February 27th or 28th.

5           Q       Okay.

6           A       In fact, I'm not so sure; probably in March when  
7 I ordered them. I know it was after I left KASCO.

8           Q       Well, we can look at some of those. As a KASCO  
9 territory manager did you receive catalogs and price  
10 quotations and related documents and materials from Atlanta  
11 and Speco?

12          A       No.

13          Q       When did you receive materials from which to make  
14 orders from Atlanta Saw and Speco?

15          A       After I left KASCO I met with the representative  
16 from Atlanta Saw and he had the materials with him that I  
17 needed to order.

18          Q       Do you remember who that was?

19          A       Yes, I do--Fred Dixon.

20          Q       Do you remember when that meeting took place?

21          A       About February 20. Gosh, it was the last day of  
22 February, I think.

23          Q       And you were still a KASCO employee until March  
24 1st; is that correct?

25          A       Well, actually I wasn't supposed to be an

1 Connie had one of the phones taken out, the phone a lot of  
2 the customers called on. We had that phone removed and we  
3 turned the recorder off.

4 Q But you eventually decided to go into the butcher  
5 supply business--or had already decided to go into the  
6 butcher supply business; is that correct?

7 A At what point had I already decided?

8 Q At the time that you started getting these calls.

9 A Well, I don't know. I was still kind of in shock  
10 from KASCO at that point. As a matter of fact, I didn't  
11 even know if I was going to go into the butcher supply  
12 business when I ordered the inventory, but it sounded like a  
13 good idea.

14 Q How were you going to finance the butcher supply  
15 business?

16 A The only way poor people finance anything, with  
17 borrowed money.

18 Q Did you borrow money to finance the business?

19 A I did.

20 Q When did you do that?

21 A I don't know. Sometime in February, I think.  
22 May have been sometime in February, as I recall.

23 Q Could it in fact have been in January of 1989?

24 A I don't think so.

25 MR. TATEOKA: You're asking if he personally

1 borrowed money?

2 MR. ARRINGTON: I'm asking how he financed the  
3 company.

4 Q (By Mr. Arrington) You said that you borrowed  
5 money; is that correct?

6 A The company was financed with borrowed money,  
7 yes.

8 Q Where did the money come from?

9 A Investors, I presume. That's where the banks get  
10 their money.

11 Q What bank? I infer from that that you got some  
12 money from the bank.

13 A Yes.

14 Q Was that in the form of a loan?

15 A Yes, it was.

16 Q It wasn't a gift?

17 A No.

18 Q In February of 1989. What bank?

19 A Valley Bank.

20 Q Which branch?

21 A I believe they call it Fashion Place.

22 Q Did you sign for the loan?

23 A I presume I did. They wouldn't have gave it to  
24 me if I hadn't.

25 Q Did anyone else?

1           A       I'm sure Connie signed for it. Like to get all  
2 the signatures they can.

3           Q       Do you know whether or not she signed, or are you  
4 just presuming?

5           A       I couldn't--I'm sure she did.

6           Q       Did you both go down together to get the loan?

7           A       She was with me, yes.

8           Q       Did you witness her signing?

9           A       I didn't sign as a witness, no.

10          Q       I didn't ask that.

11          A       I'm telling you the best I can recollect. As far  
12 as I know, she signed the loan.

13          Q       Did you post any collateral for the loan?

14          A       It's an Equiline loan.

15          Q       What's the collateral for it? What's the equity?

16          A       The home.

17          Q       Your personal residence?

18          A       It's a home Equiline.

19          Q       On your personal residence?

20          A       Yeah.

21          Q       Where is that residence?

22          A       1064 West 9840 South.

23          Q       9840?

24          A       Uh-huh.

25          Q       Do you own that home, buy your home?

1           A       No, I don't own any part of it now.

2           Q       Is title in your name?

3           A       Yeah, it's titled in my name and Connie's, I'm  
4 sure. I try to title everything in her and my name.

5           Q       As joint tenants?

6           A       Yes.

7           Q       How much was the loan?

8           A       Thiry thousand, a limit of thirty thousand.

9           Q       Did you specify a reason for the loan on the loan  
10 documents?

11          A       Yeah, told them I was starting a business. I  
12 don't know whether it specifies that on the loan documents  
13 or not, but I know I told him that.

14          Q       Told who?

15          A       The loan officer, the loan arranger.

16          Q       Did you tell them what kind of business you were  
17 starting?

18          A       I don't know that I did. He already knew what I  
19 did. Bankers know everything about you.

20          Q       How much of that \$30,000 has been drawn down to  
21 be invested in the business, purchasing inventory and any  
22 other related--

23          A       Couldn't tell you one thing about it. I have no  
24 idea.

25          Q       Has that loan by paid off?

1 obtaining samples or in the process of obtaining those  
2 things.

3 A Correct.

4 Q Were you going to be in charge of pricing butcher  
5 supplies? Let's go off the record. Do you want to take a  
6 break?

7 (Brief recess.)

8 Q (By Mr. Arrington) Prior to March 21st did  
9 Connie order any inventory in the butcher supply business?

10 A I really don't know.

11 Q As far as you know, you're the only one who had  
12 ordered any inventory for the butcher supply business?

13 A I may have told her to order something and she  
14 did. I really don't remember.

15 Q You have no recollection of anyone other than you  
16 ordering inventory for the butcher supply business?

17 A Not at that time.

18 Q Did you send back any inventory after the  
19 preliminary injunction was entered on March 21st?

20 A I didn't do anything.

21 Q You didn't send back any inventory, though?

22 A I didn't do anything as far as that. You're  
23 talking about butcher supply inventory?

24 Q Right.

25 A I didn't have anything to do with any of it. I

1 either of them to make an order such as this?

2 A Well, this isn't an order for knives. I can read  
3 that. It says quantity 64, part number 62 for knives, and  
4 it says sharpen, one dollar each, 64 dollars.

5 Q So these would be knives that were sent back to  
6 be sharpened?

7 A That's the way it appears to me, yes.

8 Q What experience would they have to send knives to  
9 HuWa Sales and Service if they had not been in the butcher  
10 supply business before the day that you were enjoined?

11 MR. TATEOKA: Objection, foundation.

12 Q (By Mr. Arrington) You can answer.

13 A The only reason I would know that they would  
14 have--or knowledge they would have to sent back there was  
15 they went back there for training and they knew the  
16 equipment they had.

17 Q When did they go back to training?

18 A Sometime in March.

19 MRS. BENSON: 28th.

20 Q (By Mr. Arrington) Did you suggest that they go  
21 back to HuWa Sales and Service for training?

22 A I didn't suggest anything.

23 Q What experience do you think either of them could  
24 have that would lead them to seek HuWa Sales and Service  
25 training? because they had not been in the butcher supply

1 business prior to the time that you were enjoined.

2 MR. TATEOKA: Objection, foundation.

3 Q (By Mr. Arrington) You can go ahead and answer.

4 MR. TATEOKA: If you know the answer as to why  
5 they knew, then go ahead.

6 A All I can tell you is Dan called me quite  
7 frequently because he wanted to know how I was doing and how  
8 I felt about things, and he had called on a couple of  
9 occasions and talked to Connie, and as I recall, had  
10 offered--when he found out that I was restrained had offered  
11 for her to come in and receive some training.

12 Q When did he call her?

13 A I have no idea. Sometime in March.

14 Q How do you know he called her?

15 A She told me he called, and I wasn't in at the  
16 time.

17 Q Did HuWa Sales and Service provide free training  
18 to Connie and Robert?

19 A As far as I know. I haven't seen a bill on it.

20 MR. TATEOKA: Same objection, foundation.

21 A I really don't know, Dave.

22 Q Do you know whether or not HuWa Sales and Service  
23 provided transportation for Connie Robert to go back there  
24 to wherever--Denver, is that where it was?

25 A I know they didn't provide transportation.

1 Q How was transportation financed, if you know?

2 A I assume they bought their own fuel.

3 Q They drove?

4 A Yes, they drove.

5 Q Do you know if the financing for that trip for  
6 the training came from the loan for the business?

7 A I don't know where it came from.

8 Q Were there other possible sources of income at  
9 that time coming into the family?

10 A A little bit in ceramics business, probably. I  
11 don't know.

12 Q You're not sure how much was coming into the  
13 household that period of time?

14 A No. Connie handled the finances.

15 Q The next page seems to be a purchase order  
16 from--is that Pieco, Inc.--that's how you pronounce it?

17 A Pieco.

18 Q Pieco, Inc., do you recognize that?

19 A Yes, I do.

20 Q Did you make that order?

21 A Yes, I did.

22 Q Do you remember when that was made?

23 A Last February.

24 Q The next page seems to be another invoice from  
25 Pieco, does it not?

1           A       Based on the price, I would assume it's a  
2 sandblaster.

3           Q       Is that used in the butcher supply business?

4           A       It's used in the ceramics business and the  
5 butcher supply business.

6           Q       Next page seems to be the back side of a Speco  
7 invoice, does it not?

8           A       Yes.

9           Q       And then there's an Atlantic Saw Company  
10 invoice--

11          A       Atlanta Saw.

12          Q       Excuse me, Atlanta Saw Company to Tri-B Supply,  
13 and then it's blacked out and says Connie Benson. But I  
14 believe that we looked at originals that show that it said  
15 Larry Benson; is that correct, Mr. Tateoka?

16               MR. TATEOKA: I believe that's correct.

17          Q       (By Mr. Arrington) And it was dated March 29th,  
18 1989 for the shipping date. Do you recall placing that  
19 order that was sent to Larry Benson?

20          A       I don't recall shipping--or making that order,  
21 but I know Atlanta's procedure; and they use the--when I  
22 established that account I was the distributor and used the  
23 distributor name as a PO, and until I called and told them  
24 they had to get me the heck out of the business, why, they  
25 had continued to use my name.

1           Q       Did you have a distributorship agreement with  
2 Atlanta Saw?

3           A       As per se, nothing signed or anything.

4           Q       You had no written agreement?

5           A       No.

6           Q       Who did you talk to at Atlanta Saw?

7           A       Fred Dixon.

8           Q       Did he agree to create a distributorship for  
9 Atlanta Saw with you being the regional distributor?

10          A       It's a broad question.

11          Q       Give me a broad answer.

12          A       That was our basis for our conversation at the  
13 time, yes.

14          Q       What would that entitle you to as an Atlanta Saw  
15 distributor? Did that give you a territory?

16          A       No.

17          Q       Could there be another Atlanta Saw distributor  
18 next door to you working the same territory?

19          A       That would be at their discretion.

20          Q       Did he agree to give you new exclusive rights or  
21 privileges?

22          A       The original agreement was that he would give me  
23 Utah and parts of Idaho.

24          Q       What about other states? Colorado?

25          A       No.

1 Q Wyoming?

2 A No, parts of Wyoming, parts of Nevada.

3 Q Did you say parts of Wyoming?

4 A Yeah. Parts of Nevada, areas where they didn't  
5 have other established distributors.

6 Q All of Idaho?

7 A No.

8 Q Parts of Idaho?

9 A Yup.

10 Q All of Utah?

11 A Yup.

12 Q Did he indicate that he was going to send you  
13 something in writing?

14 A No.

15 Q Just based on your oral agreement you would have  
16 this exclusive territory?

17 A Yes.

18 Q Why do you think that he was willing to give you  
19 an exclusive territory like that?

20 A I don't know if there's anything exclusive about  
21 it. He needed someone in the area. They were looking for a  
22 distributor. They're still an Atlanta distributor here in  
23 Salt Lake.

24 Q What?

25 A There is still an Atlanta distributor here in

1 Salt Lake.

2 Q There still is?

3 A Yes.

4 Q Is that Tri-B Supply?

5 A No.

6 Q Who is it?

7 A Great Basin Distributing.

8 Q So that relationship that you established with  
9 him no longer exists; is that correct?

10 A I would say that Great Basin was here. At the  
11 time I talked to him, I knew they were here.

12 Q So they had a distributorship and he was going to  
13 give you an exclusive distributorship?

14 A I don't know that he was going to give me--he  
15 didn't say he was going to throw them out.

16 Q Okay, but at any rate, he said that you could  
17 have a distributorship for those territories whether or not  
18 there was someone else?

19 A Yes.

20 Q But you couldn't in territories beyond those that  
21 he discussed with you?

22 A Right.

23 Q Has Tri-B Supply continued with that  
24 distributorship?

25 A I assume they're buying stuff from Atlanta. I

1 don't know where else they'd get it.

2 MR. TATEOKA: Object to the extent it calls for  
3 speculation.

4 THE WITNESS: Strictly speculation.

5 Q (By Mr. Arrington) Let's see if maybe there's  
6 something more than speculation. When you talked to him, to  
7 Fred Dixon at Atlanta Saw, told him you needed to get the  
8 heck out of the business or to have him get you out of the  
9 letterhead or whatever, to remove your name from the  
10 invoices and whatnot, did you tell him why?

11 A I told him at the time that the reason why, and  
12 my exact words with him were, I have been restrained, I  
13 can't deal in the butcher supply business for a year, and if  
14 you're going to continue on, you'll have to deal with Connie  
15 or whoever was going to run this place.

16 Q When did you talk with him and ask him to take  
17 your name off the "bill to" section of their invoices?

18 A As I recall, it was shortly after the court  
19 hearing.

20 Q Somewhere around the 21st or 2nd or 3rd of March?

21 A I don't recall exactly, Dave, but it was shortly  
22 after.

23 Q Okay. Did you say you recall this particular  
24 invoice?

25 A No, I don't.

1 supply products, what percentage would have been KASCO  
2 customers? Lower? About the same?

3 A Probably a lower percentage, because we had--  
4 KASCO had lost a lot of business over the last three, four  
5 years.

6 Q Why do you think they did?

7 A I know why they did. They priced theirselves out  
8 of the market.

9 Q Were there any other loans or contributions to  
10 Tri-B Supply's butcher and ceramics business at the time  
11 that--or at any time before March 21, 1989 in addition to  
12 the Valley Bank loan?

13 A I put some stock in but I don't know when it went  
14 in.

15 Q What stock?

16 A Some of my Bairnco stock.

17 Q Do you know what its market value was at the time  
18 you put it in?

19 A At the time I put it in where?

20 Q You said you put it in at some point, and I  
21 assume--

22 A You mean at the time I put it into the business?

23 Q Yes.

24 A Right around \$23 a share.

25 Q How many shares?

1           A       How many shares did I put in?

2           Q       Yes.

3           A       I don't recall. Right around \$9,000.

4           Q       Worth?

5           A       Yes. I'm not sure it all went in there.

6           Q       In where?

7           A       I'm not sure that--I'm not sure what amount of it  
8       went into Tri-B Supply.

9           Q       Why aren't you sure?

10          A       Because Connie handles the money and I know that  
11       there was a lot of it went into the ceramics business.

12          Q       How do you know that?

13          A       Because I spent that.

14          Q       What did you purchase with it?

15          A       I was there when she bought it. She purchased  
16       four tables and items like that for the ceramics business,  
17       molds and pour table.

18          Q       Did you sell that stock?

19          A       Did I sell it? Yes.

20          Q       But say you sold it, sold the stock?

21          A       Yes.

22          Q       How much did you spend when you were with Connie  
23       on ceramics items out of that stock money?

24          A       I don't know. Four or five thousand.

25          Q       Sounds like about 50 percent.

1           A       Yeah.

2           Q       And the other 50 percent was destined for the  
3 butcher supply business, I take it?

4           A       Probably was used for household bills. I don't  
5 know where it went.

6           Q       Where did the funds from the sale of that stock  
7 go? In other words, which account or accounts, if any, were  
8 they deposited in?

9           A       I didn't deposit it.

10          Q       Do you know who did?

11          A       Connie deposited it.

12          Q       Do you know which account she deposited it in?

13          A       No.

14          Q       Deposits slips would probably reflect that,  
15 wouldn't you think?

16          A       I'm sure.

17          Q       Do you have any knowledge of--a moment ago you  
18 testified that some stock money was put into Tri-B Supply's  
19 ceramic business. Is that correct? You weren't sure what  
20 amount.

21          A       Yes.

22          Q       Do you recall what was purchased with that money?

23          A       I just told you molds, pour tables.

24          Q       No, the Tri-B Supply's butcher supply aspect.

25          A       No, I have no idea.

1           Q       You don't know if any of that money at all, even  
2 one sent went into the butcher supply business; is that  
3 correct?

4           A       I can't say for sure, no.

5           Q       When did you sell that stock?

6           A       Don't even know that for sure.

7           Q       1989?

8           A       It was February or--yeah, February of '89.

9           Q       Had that stock appreciated in value from the time  
10 you acquired it, or parts of it?

11          A       Yes, some, yes. It had also taken a heck of a  
12 bruiser.

13          Q       Really?

14          A       Yeah. One time it was \$35 a share.

15          Q       Did you report a loss on any of that stock during  
16 1988 on your 1988 tax forms?

17          A       No.

18          Q       Did you experience a gain in 1988 based on income  
19 from?

20          A       Whatever I experienced I reported.

21          Q       Did you prepare your taxes by yourself?

22          A       No.

23          Q       You had a CPA do it for you?

24          A       Yes.

25          Q       Who was that?

Tab C

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SALT LAKE COUNTY, STATE OF UTAH

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Be it remembered that on the 30th day of June 1989 the deposition of Craig M. Smart, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending, was taken before Sharon A. Merritt, a Certified Shorthand Reporter and Notary Public, in and for the State of Utah, at the offices of VanCott, Bagley, Cornwall & McCarthy, 2404 Washington Boulevard, Suite 900, Ogden, Utah.

That said deposition was taken pursuant to notice.

1 A. No.

2 Q. Is the business address you gave the address for  
3 Mountain West Meats? Is that correct?

4 A. Yes.

5 Q. Who owns Mountain West Meats?

6 A. I do. I don't own the property itself. I lease  
7 the property, but I own the business.

8 Q. Own the business with anyone else or by yourself?

9 A. By myself.

10 Q. How long have you owned Mountain Land Meats? (sic)

11 A. Five years. Going on five years.

12 (pause)

13 MR. MCGARVEY: I'll be right back.

14 (pause)

15 MR. MCGARVEY: Q. Did you say five years?

16 A. Yes, just going on five years.

17 Q. Did Mountain Meats (sic) exist before five years or  
18 did you start the business up at that time?

19 A. I started it. It was a meat business before I was  
20 there. They had a fire, burned down, and they were out of  
21 business for about a year, and then I bought the equipment and  
22 leased the building and started my own.

23 Q. Did you have any involvement with the meat business  
24 that existed before the fire?

25 A. No.

1           A.       Slush punch, yeah, that's just a frozen slushy  
2 punch that they use at weddings, banquets, get-togethers.

3           Q.       What did you do before you started up this  
4 business?

5           A.       I worked at a retail meat business in Logan.

6           Q.       What was the name of that business?

7           A.       Horlacher Meats.

8           Q.       Was it the same type of operation that you  
9 presently own?

10          A.       Basically, the same. We did do more wholesale up  
11 there.

12          Q.       How long were you with that company?

13          A.       About 12 years.

14          Q.       What were your duties there?

15          A.       I was the Retail Meat Manager and General Manager  
16 there.

17          Q.       Did you have responsibilities at that store? How  
18 do you pronounce the name again? Horlach- --

19          A.       Horlacher. H-o-r-l-a-c-h-e-r-s.

20               MR. MCGARVEY: Q.       Did your duties while at  
21 Horlacher involve responsibilities for the purchase of butcher  
22 supply products?

23          A.       Yes. Yeah. We did do side -- help out some there.

24          Q.       Who did Horlacher purchase their butcher supply  
25 products from?

1           A.       From Kasco. I think it was called Keene  
2 Corporation before that?

3           MRS. BENSON: (nodding head affirmatively)

4           THE WITNESS: (nodding head affirmatively)

5           MR. MCGARVEY: Q.       So you're familiar with Keene  
6 Corporation?

7           A.       Um-hum. (affirmatively)

8           Q.       What representatives of Keene Corporation had you  
9 had contact with at Horlacher?

10          A.       With Larry. Larry Benson.

11          Q.       Anyone else besides Larry, that you can recall?

12          A.       Not that I can recall.

13          Q.       I want to better understand what your specific  
14 duties were with respect to the purchase of butcher supply  
15 products while at Horlacher. Did you share that responsibility  
16 with anyone else?

17          A.       Yeah, the -- the owners there. They were also --  
18 basically, we just had a -- they came in quarterly, or I can't  
19 remember how often, and --

20          Q.       Kasco came in quarterly?

21          A.       Um-hum. (affirmatively) And just replaced the  
22 knives, the blades, things for the grinders and so forth. And,  
23 basically, the responsibility just signing for it when they  
24 came in if they weren't there, making sure we got the right  
25 ones.

1           Q.       So you weren't responsible actually for determining  
2 what products to purchase or order, is that correct?

3           A.       No, that was pretty well all pre-determined because  
4 it was set through the years. They knew what which -- what we  
5 used.

6           Q.       So when Mr. Benson would come in, and service  
7 Horlacher, he would know what products that they would need and  
8 would bring those in?

9           A.       Yes.

10          Q.       And then you would sign the invoices?

11          A.       Um-hum. (affirmatively) (nodding head  
12 affirmatively)

13          Q.       Would Mr. Benson be paid cash at that time or would  
14 he bill you later?

15          A.       I -- I don't recall if I used the payment out of  
16 the till or if we billed him. I really can't remember. I just  
17 can't remember what we did there.

18          Q.       Do you recall how often Mr. Benson serviced  
19 Horlacher's?

20          A.       It seems to me like every four months. It was  
21 either three- or four-month intervals.

22          Q.       Did you know Mr. Benson for any other reason other  
23 than the fact that he was a representative of Keene or Kasco  
24 and serviced Horlacher?

25          A.       No.

1 Q. You had no other associations or contact with him?

2 A. No.

3 Q. Who at Horlacher had the responsibility for  
4 determining who to purchase butcher supply products from  
5 specifically?

6 A. Specifically, Donnell Horlacher.

7 Q. So if you were not pleased with Mr. Benson's  
8 services or Kasco's products and services, it would not have  
9 been your position to change companies?

10 A. No.

11 Q. But that would be your responsibilities now?

12 A. Yes.

13 Q. And you say you started your new business, which is  
14 Mountain West Meats, about five years ago.

15 A. Um-hum. (affirmatively) (nodding head  
16 affirmatively) October of '8- -- '84 or '85.

17 Q. And when you first started your business did you at  
18 that time also continue your relationship with Larry Benson and  
19 have him service you in your new business?

20 A. I had, I think, a couple other companies call on me  
21 about that time.

22 Q. Who did you decide to --

23 A. And I went with Larry. Because I was familiar with  
24 him.

25 Q. So at that time you did have other companies

1 approach you and say, "Why don't you buy your products from  
2 us?"

3 A. Um-hum. (affirmatively)

4 Q. Do you recall who they were?

5 A. I don't, uh-huh.

6 Q. Did you ever try any of them?

7 A. Not for the grinder blades and parts that we mostly  
8 used. I did buy a few saw parts from some of the others.

9 Q. Do you continue that relationship to buy some saw  
10 parts and other things from other companies?

11 A. If they happen to come in at the time we happen to  
12 need it and Larry or someone was not available, you know, then  
13 I would buy some from them.

14 Q. Is it important for you to have a service call made  
15 at specific times?

16 A. Yes, um-hum.

17 Q. Is that because there are certain times during the  
18 course of your business that you have needs for products?

19 A. The main reason we need them there is because they  
20 wear down. The knives and the blades will, you know, become  
21 dull and need to be replaced. So it's just kind of quarter or  
22 everything that they keep coming around to replace.

23 Q. Do you actually now in your present business  
24 purchase the products or rent them?

25 A. I purchase some products, saw blades. I rent the

1 A. I think I only called on him twice.

2 Q. So he only responded to special needs twice?

3 A. Um-hum. (affirmatively)

4 Q. In addition to the regular service calls that he  
5 would make?

6 A. Yeah. And the other call was just -- he had to  
7 mail a grinder knife to me.

8 Q. So the last time you spoke with him was in October.  
9 And that was during a special -- to handle a special need that  
10 you had.

11 A. It seems like that's what it was.

12 Q. When would your regular service have been?

13 A. I believe he was coming around about September.

14 Q. So then his next service call would have been in  
15 January of 1989?

16 A. Probably. (nodding head affirmatively)

17 Q. Did he make that service call?

18 A. No, I don't believe so.

19 Q. Do you know why he did not?

20 A. I believe because he was leaving that company.

21 Q. Did he ever talk to you about leaving Kasco?

22 A. He had mentioned it, uh-huh. (affirmatively)  
23 (nodding head affirmatively)

24 Q. When did he mention that to you, if you recall?

25 A. It would have been about October.

1 the conclusion that you just stated other than your receipt of  
2 some correspondence that you just testified to that you can't  
3 really remember that much about?

4 A. I don't follow what you mean.

5 Q. Is there anything other than the correspondence  
6 that you just referred to that you received from Connie Benson  
7 that caused you to come to the understanding that Larry Benson  
8 had severed his relationship with Kasco and would not be  
9 allowed to be in the business for a year? And I'm not trying  
10 to put words in your mouth. If that's not what you said, you  
11 know, please feel free to correct me.

12 A. The actual not being in business for the year --  
13 I'm not sure I came across that information -- if Connie  
14 mentioned that to me during their service call or if Larry had  
15 mentioned it in that October discussion that we had had.

16 Q. So in your mind it may have been possible that  
17 Larry may have mentioned in October that he couldn't be  
18 involved in the business for a year.

19 A. It could have been.

20 Q. Let me hand you what's been marked as Exhibit  
21 Number 3. And ask you if you recognize that letter.

22 A. (looking at exhibit) Okay. Yeah, that's probably  
23 where I -- (nodding head affirmatively) Like I say, the actual  
24 letter. But that's probably what it was I received.

25 Q. That letter also seems familiar to you?

1           A.       Um-hum. (affirmatively) (nodding head  
2 affirmatively) That's probably where I --

3           Q.       You notice that letter doesn't have a date on it.  
4 Do you recall when you might have received that letter?

5           A.       There's someone over there. Uh --

6           Q.       Go ahead and answer that.

7           A.       (looking at exhibits) I'm not sure which one I  
8 would have received first, but -- (looking at exhibits) I  
9 would almost think I received that second. (indicating) But  
10 like I say, I couldn't guarantee the -- guarantee it. Because  
11 I didn't pay that much attention to them.

12          Q.       Okay. There's someone at the door, so let's go off  
13 the record a minute, and I'll allow you a chance to look at  
14 those letters a little bit further --

15          A.       Um-hum. (affirmatively) (nodding head  
16 affirmatively)

17          Q.       -- when we come back.

18                   (break at 1:33 p.m.)

19                   (reconvened at 1:37 p.m.)

20                   (Deposition Exhibits 5 and 6 marked.)

21           MR. MCGARVEY: Let's go back on the record.

22          Q.       Coming back on the record, now, and having thought  
23 a little bit about your receipt of those letters, can you add  
24 anything to your testimony?

25          A.       All I can say is I do think I received it second

1 over the first letter.

2 Q. I'm sorry. Is it your understanding that you did  
3 receive both of these letters? Or just one of them?

4 A. Something similar, yes.

5 Q. Okay.

6 A. And Exhibit 3 I would have received after Exhibit  
7 2.

8 Q. Okay. And do you specifically recall -- although  
9 not maybe these specific letters, do you specifically recall  
10 receiving two letters?

11 A. Yes, um-hum.

12 Q. So you can say at least that much?

13 A. Yes.

14 Q. And the substance of those two letters were similar  
15 to these --

16 A. Um-hum. (affirmatively)

17 Q. -- two exhibits?

18 A. Yes.

19 Q. Again, do you have any further recollection as to  
20 when you received either of these two letters?

21 A. No, I can just go by what date you've got on there.  
22 It's the first part of the year.

23 Q. You said it was possible that it could have been in  
24 January. Is it also possible that you received Exhibit 2 in  
25 March?

1 A. Oh, yes. Yeah. That's possible.

2 Q. All right. Did you talk with Larry over the  
3 telephone or have any other contact with him after the time  
4 that you met with him in October when he serviced you?

5 A. You know, I really don't. I'd have to look at my  
6 invoices, see if -- you know, if he had --

7 Q. If I hand --

8 A. -- represented Kasco. You know. After that I  
9 really can't recall.

10 Q. Now, you have the documents there in front of you.

11 A. Yes.

12 Q. Go ahead and look at those invoices now.

13 A. See the dates. (looking at documents) Okay. I've  
14 got one -- one here from 12/2- -- looks like 12/28/88. So I  
15 must have dealt with him at that time. 10/31/88. So I must  
16 have dealt with him the end of December representing Kasco.

17 Q. So what's been marked as Exhibit Number 5, which  
18 are Kasco's invoices, one of the invoices dated 12/28/88  
19 refreshes your memory that Larry must have serviced your store  
20 on that date; is that correct?

21 A. Yeah.

22 Is that his signature on the bottom?

23 MRS. BENSON: Um-hum. (affirmatively) (nodding head  
24 affirmatively)

25 THE WITNESS: Okay. Yeah.

1 MR. MCGARVEY: Q. And where it's written, "Paul."  
2 I believe that's, "Paul."

3 MRS. BENSON: "Paid."

4 THE WITNESS: "Paid."

5 MR. MCGARVEY: Q. Oh, is that, "Paid"? Who would  
6 have written that?

7 A. Larry would have written that.

8 Q. Was he, then, paid in cash --

9 A. Yes, uh-huh.

10 Q. -- at that time? Is that your regular course of  
11 business?

12 A. Yes, uh-huh. With him. It's usually cash.  
13 Well -- sometimes I paid check. Here on 10/31/88 I paid by  
14 check. But this particular one looks like I paid him in cash.

15 Q. Whether by cash or by check, however, you always  
16 paid him at the time he delivered the equipment.

17 A. Generally, yeah, if I'm there, that's when I wrote,  
18 "Pay it," um-hum. (affirmatively)

19 Q. Continuing to look at Exhibit Number 5, which are  
20 Kasco's invoices, one dated 9/15/88 lists certain products  
21 which appear to be similar on the subsequent invoices. Did it  
22 continue to be your practice and Larry's practice, then, to  
23 know in advance what equipment and products you needed?

24 A. Yes.

25 Q. And bring those in on each service call?

1           A.       Um-hum. (affirmatively) "Yes." I should say.

2           Q.       Now that we've established the last time that you  
3 can recall that you met with Larry was in December of 1988, do  
4 you recall any time after that that you might have met with  
5 him, spoken to him, with respect to butcher supplies or  
6 anything else?

7           A.       I don't recall. Unless you have some more exhibits  
8 that can refresh my memory. But I don't -- I really don't  
9 recall.

10          Q.       Okay. When was the next time you had any contact  
11 from either Kasco, Larry Benson, Tri-B-Supply, Connie Benson?

12          A.       Okay. Let me look at these invoices here and get  
13 an idea. (looking at documents) Okay. Looks like February  
14 1st.

15          Q.       What happened on February 1st?

16          A.       Looks like there I bought a three-way sharpening  
17 stone and a six-inch flex semi-knife.

18          Q.       Who did you buy that from? Tri-B-Supply?

19          A.       Tri-B-Supply. And looking at the, "Paid,"  
20 signatures of that compared to this one, and apparently I must  
21 have been with Larry that time, because the pay signatures look  
22 identical there. So, apparently, there's another time I had  
23 met with him.

24          Q.       So on February 1st of this year Larry Benson  
25 serviced you, and was this service a special service or a

1 regular service?

2 A. Yes, it looks like I had ordered a couple of things  
3 from him that I don't normally get.

4 Q. And Larry Benson actually came to your store, then?

5 A. Yeah, I believe he did. I think he did deliver  
6 that personally.

7 Q. How did you order these products? Did you call  
8 him?

9 A. (pause)

10 Q. Do you recall?

11 A. I don't recall how I -- I don't know if I called  
12 him or if I talked to him before his previous visit. I had an  
13 employee that was interested in his equipment, too, and I asked  
14 him on some prices. And so I -- probably talked to him on a  
15 previous visit in December. Because that's about the time my  
16 other employee had started. And I, apparently, must have  
17 called or something to order it.

18 Q. In any event, then, the invoice from Tri-B-Supply,  
19 which is a part of Exhibit 6, invoice dated 2/1/89, refreshes  
20 your memory that Larry Benson came to your store and serviced  
21 you at that time. With respect to the two items listed on that  
22 invoice?

23 A. Uh -- I believe he did, yes, uh-huh.

24 Q. Did you have any discussions with Larry at that  
25 time with respect to his quitting Kasco?

1           A.       I don't recall if we did or not.

2           Q.       Did you recall talking to Larry, having any concern  
3 over the fact that this particular invoice is indicated as  
4 being Tri-B-Supply rather than from Kasco?

5           A.       No, because, you know, back in October he mentioned  
6 he was going to go on his own.

7           Q.       So it didn't surprise you, then, that he had come  
8 and serviced you on his own with a new company?

9           A.       No, huh-uh.

10          Q.       Do you have any understanding of what Tri-B-Supply  
11 is?

12          A.       Of what it is?

13          Q.       Yes.

14          A.       I don't. I just anticipate that must have been his  
15 own -- his own name for his own company or his -- something  
16 like that.

17          Q.       So you believe that Tri-B-Supply is Larry Benson's  
18 company?

19          A.       (pause)

20          Q.       Wherein he supplies butcher supply products?

21          A.       At that time I figured that was his company, yes.  
22 Probably before I had the correspondence that he couldn't  
23 operate.

24          Q.       In February, at least, you believed Tri-B-Supply to  
25 be Larry's company, and then later on when you received the

1 with your recollection of the time that the Kasco  
2 representative visited you?

3 A. Yes, uh-huh.

4 Q. What are the circumstances of that particular  
5 visit? What happened?

6 A. He came in to see about doing our service and I  
7 just mentioned that he was over -- over in cost so I was going  
8 to stay with Larry Benson because he was, you know, a lower  
9 price and that. And he just -- I can't remember if he filled  
10 this out right then -- he must have. I must have signed it.  
11 And he just picked up his products and left.

12 Q. When you say he filled it out, he wrote on the  
13 back, "Going to use Tri-B," wrote his name and, "Yes," and the  
14 date and wrote your name, "Craig Smart."

15 A. Yeah.

16 Q. And then you signed it at paragraph five?

17 A. Um-hum. (affirmatively)

18 Q. And did you also write then, "Stay with Larry  
19 Benson"?

20 A. (looking at exhibit) I probably did, uh-huh.  
21 (affirmatively)

22 Q. Is it your understanding that in purchasing butcher  
23 supply products from Tri-B-Supply you're doing business with  
24 Larry Benson?

25 A. At that -- no, huh-uh. No, I believe I knew at

Tab D

# ORIGINAL

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

---oOo---

KASCO SERVICES CORPORATION,

Plaintiff,

vs

LARRY D. BENSON and CONNIE A. BENSON,  
DBA TRI-B-SUPPLY,

Defendants.

CIVIL NO. 89-0901724

DEPOSITION OF:

F. SCOTT DOXEY

---oOo---

Be it remembered that on the 30th day of June 1989 the deposition of F. Scott Doxey, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending, was taken before Sharon A. Merritt, a Certified Shorthand Reporter and Notary Public, in and for the State of Utah, at the offices of VanCott, Bagley, Cornwall & McCarthy, 2404 Washington Boulevard, Suite 900, Ogden, Utah.

That said deposition was taken pursuant to notice.

1 Q. And the products?

2 A. Um-hum. (affirmatively) (nodding head  
3 affirmatively)

4 Q. When you started your own business then you became  
5 directly involved in the purchase of butcher supplies, I take  
6 it?

7 A. Yes.

8 Q. Was that you yourself that took on that  
9 responsibility or did someone else initially take on the  
10 responsibility for the purchase of butcher supplies and  
11 products?

12 A. It probably would have been a joint -- joint  
13 venture.

14 Q. Between you and your partner?

15 A. Uh-huh. (affirmatively) Between me and Jack.

16 Q. And Jack also was a meat cutter?

17 A. Yes.

18 Q. Who did you do business with when you started up  
19 Champion Meats, with regard to the purchase of butcher  
20 supplies?

21 A. With Larry Benson.

22 Q. And why did you go with Larry Benson?

23 A. Just knew him previous. He was with -- serviced  
24 Smith's account then.

25 Q. So you knew Larry went he serviced Smith's. Did

1 A. Something.

2 Q. -- in an emergency?

3 A. Right.

4 Q. But you don't recall ever receiving that particular  
5 letter that's Exhibit Number 3?

6 A. This I really don't remember receiving.

7 Q. And you don't recall receiving any other type of  
8 letter from Larry or Connie or Tri-B-Supply?

9 A. From Tri-B-Supply I think they had something that  
10 wanted to continue service. I don't know, it had Larry's name  
11 on it.

12 Q. It did not have Larry's name on it?

13 A. It did.

14 Q. It did have Larry's name on it?

15 A. Uh-huh. (affirmatively) It did have Larry's name  
16 on it. I just threw it away, I think. I don't think I have it  
17 any more.

18 Q. You don't have any correspondence, notes?

19 A. Yeah. No, Huh-uh.

20 Q. Or anything with respect to conversations with  
21 Larry, Connie Benson or Robert Benson?

22 A. No, huh-uh.

23 Q. Do you know Robert Benson?

24 A. I've met him twice.

25 Q. When did you meet him first?

1 A. Uh-huh. (affirmatively) Tri-B.

2 Q. And on Kasco's invoice, then, there is some  
3 information written on the back with respect to the  
4 cancellation of this account with Champion Meats. Do you  
5 recall that?

6 A. Uh-huh. (affirmatively)

7 Q. Is that your writing on the back?

8 A. Yes, uh-huh.

9 Q. What does that say at paragraph five on the back of  
10 this exhibit?

11 And, again, for the record, we're referring to Exhibit  
12 5.

13 A. (looking at exhibit) Oh. "Serviced by" -- what  
14 was it? (looking at exhibit) "Bill and Larry's wife April  
15 5th." Serviced. Yeah.

16 Q. Okay. "Serviced by Bill," meaning Robert Benson?

17 A. Right.

18 Q. And Larry's wife.

19 A. (nodding head affirmatively)

20 Q. At the time that Robert and Connie Benson, then,  
21 came to service you, prior to the time that the Kasco  
22 representative came and took back the equipment, and that you  
23 wrote this note on the back of their invoice, did you know that  
24 Larry Benson had quit his employment with Kasco?

25 A. Yeah, I think he mentioned that he was going to.

1 Was going to quit.

2 Q. Was that at any other time other than October, I  
3 think, which you said was the last time that you had talked  
4 with him?

5 A. Uh --

6 Q. I'm just trying to refresh your memory.

7 A. Yeah.

8 Q. As to whether there was another time that you  
9 talked with Larry.

10 A. (pause)

11 Q. Or was it back in October that he mentioned that?

12 A. It probably would have been before. Something  
13 like --

14 Q. Before what?

15 A. Like -- oh, like the service before or something  
16 maybe.

17 Q. Meaning in October when he gave you --

18 A. Yeah.

19 Q. -- that service?

20 A. Uh-huh. (affirmatively)

21 Q. The prior service done by the one by Connie and  
22 Robert in April of this year?

23 A. Even the service before that one it could have  
24 been.

25 Q. Oh. So early in 1988. Four months prior to

1       October?

2           A.       Yeah. It would have been the service prior to  
3       that.

4           Q.       Seems like that it was then in your mind that he  
5       told you he would probably be quitting?

6           A.       Uh-huh. (affirmatively)

7           Q.       Were you surprised then when he came back as a  
8       representative for Kasco in October, then, of 1988 or did you  
9       have any thoughts regarding that? Any conversations with Larry  
10      regarding that topic?

11          A.       No, huh-uh.

12          Q.       What were your thoughts, then, when Connie and  
13      Robert came to service you in April of 1989, rather than Larry  
14      Benson?

15          A.       That he must have went out on his own.

16          Q.       So you thought at that time that he had, in fact,  
17      done what he had indicated to you he was going to do?

18          A.       Uh-huh. (affirmatively)

19          Q.       And that was quit his employment with Kasco?

20          A.       Uh-huh. (affirmatively)

21          Q.       Had you ever met Robert or Connie Benson prior to  
22      the time that they came to service you in April of this year?

23          A.       No. No, I probably talked to her on the phone, but  
24      never met her.

25          Q.       And you would have talked to her on the phone at

1 A. Involvement?

2 Q. In the Tri-B-Supply's business?

3 A. That they was gonna' start -- you know, start one

4 up.

5 Q. So was -- your understanding was that it was

6 Larry's, Connie's and Robert's business?

7 A. Yeah. Yeah, I would assume that.

8 Q. Is it your understanding that Larry is still

9 involved with the business?

10 A. Not physically involved, I don't think, but

11 mentally involved, probably.

12 Q. Is it your decision, then, to continue your

13 business with the Bensons because of --

14 A. Past service.

15 Q. -- past service and reputation?

16 A. (nodding head affirmatively)

17 Q. Have you been pleased with the service you have

18 received so far from Connie and Robert Benson?

19 A. What little we've had, uh-huh. (affirmatively)

20 (nodding head affirmatively)

21 Q. Other than that one service, then, in April of 1989

22 have you ordered any other products from the Bensons?

23 A. Well, I told them that I need a knife sharpener, a

24 grinder -- I would like a sander deal, a knife grinder.

25 Q. When you told them you told them at the time they

Tab E

# CERTIFIED COPY

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY  
STATE OF UTAH

\* \* \*

KASCO SERVICES CORPORATION,	)	
	)	
Plaintiff,	)	Civil No. 89-0901724
	)	Judge David S. Young
vs.	)	
	)	Deposition of:
LARRY D. BENSON and CONNIE	)	
A. BENSON, dba TRI-B-SUPPLY,	)	<u>CONNIE A. BENSON</u>
	)	
Defendants.	)	
	)	
	)	

---

Deposition of CONNIE A. BENSON, taken at the instance and request of the Plaintiff, at VanCott, Bagley, Cornwall & McCarthy, 50 South Main Street, Salt Lake City, Utah, on Wednesday, the 3rd day of May, 1989, at the hour of 9:00 a.m., before VICKY MCDANIEL, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, Utah License No. 285.

\* \* \*



Associated Professional Reporters  
10 West Broadway / Suite 200 / Salt Lake City, Utah 84101

1           A       Yes, I know what a contract is, yes.

2           Q       Please let me ask the question before you answer,  
3           and I'll try to wait also. You do know what one would be,  
4           but you haven't entered into any contracts with suppliers,  
5           correct?

6           A       Yes.

7                   MR. TATEOKA: Again, I object to the extent it  
8           calls for a legal conclusion.

9           Q       (By Mr. McGarvey) Have you entered into any  
10          contract with Larry Benson?

11          A       No.

12          Q       Do you have any agreement--

13                   MR. TATEOKA: Let me go off the record just for a  
14          second.

15                   (Discussion off the record.)

16          Q       (By Mr. McGarvey) Let's go back on the record.  
17          Do you have an agreement either in writing or not in writing  
18          with Larry Benson pertaining to the butcher supply business?

19          A       As to with Tri-B-Supply?

20          Q       No, pertaining to the butcher supply business  
21          with Larry.

22          A       I have no contract, no understanding, nothing  
23          with Larry with this, no.

24          Q       Do you have any understanding, agreement, et  
25          cetera with Robert Benson pertaining to the butcher supply

1 business?

2 A We have an understanding.

3 Q What's that understanding?

4 A We go to work, we make money, make our business  
5 grow.

6 Q Are you equal partners with Robert Benson, then?

7 MR. TATEOKA: Object to the extent it calls for a  
8 legal conclusion.

9 THE WITNESS: Equal partners?

10 Q (By Mr. McGarvey) Yes.

11 A Not--well, in name. His name's on the document.

12 Q Do you share the profits of the business equally  
13 with Robert Benson?

14 A No, he gets more than I do.

15 Q How much has he got?

16 A He gets paid, I don't.

17 Q How much has he gotten?

18 A How much has he got compensated for? \$2,000 so  
19 far.

20 Q How much have you been compensated for?

21 A None.

22 Q Why is he compensated and not yourself?

23 A Because there was an agreement made.

24 Q Was that agreement in writing?

25 A No.

1           Q       It's just an oral agreement between you and  
2 Robert?

3           A       Yes.

4           Q       Anybody else a party to that agreement?

5           A       No.

6           Q       When did you enter into this agreement with  
7 Robert?

8           A       I don't know. One day.

9           Q       How did you come up with the sum of \$2,000 to pay  
10 Robert?

11          A       He told me what he needed to pay his bills.

12          Q       So it wasn't based on hours worked, was it?

13          A       It was based on \$500 a week.

14          Q       So it wasn't based on what he needed to pay his  
15 bills?

16          A       Well, he told me what he needed to pay his bills  
17 and we figured out what he needed to do, and it came down to  
18 \$500 a week.

19          Q       So your oral agreement with Robert is that he  
20 will be paid \$500 a week?

21          A       Yes.

22          Q       When did he receive this check? Or--I don't want  
23 to put words in your mouth. I don't know if it was a check.  
24 When did he receive the \$2,000?

25          A       Last Friday.

1 Q How?

2 A He got a check.

3 Q From who?

4 A From me, from the business, from me. I made the  
5 check out from the business.

6 Q Have you brought documents reflecting payment of  
7 this money to Robert?

8 A I did not.

9 Q Does Tri-B-Supply have a bank account, then?

10 A Yes.

11 Q With what bank?

12 A Valley--or Jordan Credit Union.

13 Q And does it have its own checks?

14 A Yes.

15 Q And payment to Robert was made out of  
16 Tri-B-Supply's check; is that correct?

17 A Yes.

18 Q Has Tri-B-Supply made out any other checks to  
19 employees or payment for services?

20 A Employees, yes; services I don't understand.

21 Q What other check, then, first, to employees?

22 A None to any other employees.

23 Q Okay, I'm confused again. I asked were any other  
24 checks written out on Tri-B-Supply's bank account to any  
25 other employees, and you said yes. I thought--

1           A       We had no supply business before.

2           Q       You had no--is it your testimony that there was  
3 no butcher supply business prior to the hearing last month  
4 on plaintiff's motion for preliminary injunction?

5           A       Yes.

6           Q       There was no butcher supply business at that  
7 time?

8           A       No. We were not selling.

9           Q       But you did have a bank account at that time and  
10 Larry's name was on the bank account?

11          A       Yes.

12          Q       But it was for purposes only of the ceramics  
13 business?

14          A       Yes.

15          Q       Were you contemplating going into the butcher  
16 supply business with Larry at that time?

17                 MR. TATEOKA: Excuse me. What time?

18                 MR. McGARVEY: At the time that the prior bank  
19 account existed with Connie and Larry Benson's names on it.

20                 THE WITNESS: We were--maybe better ask the  
21 question again.

22          Q       (By Mr. McGarvey) Did you and Larry Benson  
23 contemplate going into the butcher supply business prior to  
24 the date of Kasco's hearing on its motion for preliminary  
25 injunction last month?

1           A       Yes.

2           Q       Did you and Larry have an agreement, oral or  
3 written, regarding going into the butcher supply business at  
4 the same time?

5           A       Yes.

6           Q       Was the agreement in writing or was it oral?

7           A       Oral.

8           Q       What was that oral agreement?

9           A       That he would go out and do the butcher supplies  
10 and I would do the ceramics, and we'd do it under the same  
11 building.

12          Q       What was to be your involvement under your oral  
13 understanding or agreement at that time? What was your  
14 understanding as to what your involvement would be in the  
15 butcher supply business?

16          A       I would do the bookkeeping, the invoices, as  
17 setting them up--more or less just a secretary, whatever you  
18 want to call it.

19          Q       And you were to have no actual contact with  
20 Tri-B-Supply's customers or potential customers for the  
21 butcher supply business?

22          A       No.

23          Q       You were to be involved in soliciting customers,  
24 however, for the ceramics business, correct?

25          A       Yes.

1 please, which stores that letter was sent to.

2 A What store it was sent to?

3 Q Yes, which customers the March 10th letter was  
4 sent to.

5 A It wasn't sent. Oh, yes, it was. It was sent to  
6 Exhibit 9--

7 MR. ARRINGTON: Who was that?

8 MR. MCGARVEY: Dick's Market.

9 THE WITNESS: Dick's Market and Bob and Mike's  
10 Foodliner, Wasatch Meats and Van Wagoner Meat Shop, and  
11 Tingey's Cold Storage and Ream's, and Mountain West Meats  
12 and Champion Meats, and Winegar's Thriftway, and Hamblin's  
13 Foodtown, Bowman's Foods and Market, Glenn's House of Meats,  
14 Child's Custom Meats, Oscar's, OP Skaggs Market, there's  
15 Macey's, Stone Meat, Wangsgard's, Palmer Packing, Palmer  
16 Meat, Kent's Thriftway, and Feller Meat Company.

17 Q (By Mr. McGarvey) Were there any invoices in  
18 there that you skipped over?

19 A No.

20 Q So the letter was actually sent to every customer  
21 that you have to date?

22 A Yes.

23 Q Was it also sent to other potential customers  
24 that have not yet become customers of Tri-B-Supply?

25 A No.

1 MR. TATEOKA: Excuse me.

2 (Witness consults with counsel off the record.)

3 MR. TATEOKA: Would you rephrase your question?

4 Q (By Mr. McGarvey) Did you not understand my last  
5 question? I just noticed that your counsel was talking with  
6 you, and so I kind of suspect that perhaps you didn't  
7 understand my last question. Is that true?

8 A Yes.

9 Q Would you like me to repeat it?

10 A Yes.

11 Q Are there any other stores, then, other than the  
12 ones indicated on your invoices that you sent the March 10th  
13 letter to that have not yet become your customers?

14 A Yes.

15 Q Do you remember the names of any of those stores?

16 A No, I don't.

17 Q Approximately how many were there?

18 A I do not know.

19 Q Was it more or less than ten?

20 A It would be more.

21 Q More or less than a hundred?

22 A I don't know.

23 Q It could be more than a hundred?

24 A It could be.

25 Q Could it be more than two hundred?

1           A       I have no idea.

2           Q       Could it be more than five hundred?

3           A       I wouldn't think so.

4           Q       Probably less than five hundred, then? Is that  
5 your recollection?

6           A       I would say that it was less than four or five  
7 hundred with these.

8           Q       Now, we're talking only about the stores that are  
9 not yet your customers.

10          A       There wouldn't have been.

11          Q       That are not indicated on the rosters?

12          A       There would not be more than three or four  
13 hundred, no.

14          Q       Who paid for the postage on these letters?

15          A       I did.

16          Q       Out of your personal bank account?

17          A       I think it was cash.

18          Q       Okay. Was it cash from the ceramics business?

19          A       I think it was.

20          Q       Who actually signed the letters, you or Larry?

21          A       Nobody signed--

22                   MR. TATEOKA: Objection.

23          Q       The letters went out unsigned?

24          A       Yes.

25          Q       They went out exactly as it appears on Deposition

1 Exhibit No. 3?

2 A Exactly like that.

3 Q So the stores' names also were not put on the  
4 letter?

5 A No.

6 Q They were just put on the envelope?

7 A Yes.

8 Q Who does Albertson's now do business with, do you  
9 know?

10 A Southwest Saw and PBI.

11 Q Connie, I'm going to hand you the yellow pages in  
12 the room and have you describe and show me how you used it  
13 to find customers.

14 A Okay. Meat retail, meat packing equipment.

15 Q Okay, you're looking at headings entitled meat  
16 retail and meat packing equipment?

17 A I see Dan's Foods they were sent to, and all  
18 these.

19 Q And that lists the address of Dan's and various  
20 stores in Salt Lake City; is that correct?

21 A Yup, uh-huh.

22 MR. TATEOKA: When you say all these, you mean  
23 you went down the columns in the yellow pages?

24 THE WITNESS: Yes.

25 Q (By Mr. McGarvey) And did you make a written

1           Q       So it was basically Utah, southern up towards the  
2 middle of Idaho, and the southwest corner of Wyoming?

3           A       Yes.

4           Q       Is that a fair description?

5           A       That would be about where it's at, yeah.

6           Q       While we're on the topic of this March 10th  
7 letter, who prepared this letter?

8           A       Who prepared it?

9           Q       Yes.

10          A       I did.

11          Q       And how did you prepare the letter, Connie?

12          A       Well, my husband and I wanted to go into business  
13 and make this a real family type of an organization where we  
14 could be honest and true and care about these customers the  
15 way Larry had in the past.

16                 MR. TATEOKA: When you say prepared, you mean who  
17 drafted the letter or who physically typed it up?

18          Q       (By Mr. McGarvey) Who drafted the letter?

19          A       Well, I did, and I can see that there's some real  
20 problems there because I used a lot of we's, and I didn't  
21 think there was any problems with it.

22          Q       What is the problem that you perceive now with  
23 "we"?

24          A       Well, because evidently you--I'm sitting here.

25          Q       What did you mean by "we" in the letter?

1           Q     Do you mean a lawyer with respect to this present  
2 lawsuit?

3           A     No.

4           Q     Did you consult with a lawyer when you decided to  
5 start a butcher supply business?

6           A     No. He talked to a lawyer about this noncomplete  
7 agreement.

8           Q     When did he do that?

9           A     I don't know.

10          Q     Was it in 1989?

11          A     I don't know.

12          Q     And he discussed that with you, though, the event  
13 of discussing with a lawyer the noncomplete clause?

14          A     He told me.

15          Q     And employment contract?

16          A     He told me he wanted to see a lawyer about  
17 whether--I don't know. I don't remember exactly what he  
18 said.

19          Q     Did he actually see the lawyer?

20          A     Yeah.

21          Q     Did he discuss with you his conversation with the  
22 lawyer?

23          A     No.

24          Q     Do you know who the lawyer was?

25          A     His name's Robert P-u-s-s-y.

1 truth.

2 Q Because no customers need to come to your home?

3 A No. My kids live there. Larry will in a little  
4 while.

5 Q Do you ever use any names besides Tri-B-Supply?

6 A Well, sometimes I was talking about calling them  
7 Connie's Classics, some of figurines that I'll sell that are  
8 the porcelain Jesus and different things, but we was going  
9 to put it on Larry's truck.

10 Q Connie's Classics?

11 A Yeah. But we haven't got to that yet.

12 Q Are you still planning to do that?

13 A I want to, but it's going to--I have to take the  
14 time first.

15 Q Do you eventually, then, hope that your ceramics  
16 business will be called Connie's Classics, or just this one  
17 side part of it?

18 A Well, it would just be a part of my ceramics. It  
19 will always be Tri-B-Supply.

20 Q What inspired you to get involved in the butcher  
21 supply business?

22 A Because of you guys.

23 Q No other reason?

24 A Well, I was going to do my ceramics and Larry was  
25 going to do his thing.

1           Q       If this lawsuit wouldn't have happened you'd  
2 prefer to be doing your ceramics?

3           A       You're not a' kiddin'. I don't like this  
4 contention that's here.

5           Q       You feel like you're able to keep up in your  
6 ceramics business?

7           A       I am now.

8           Q       Why now?

9           A       Because Bob's on the truck and he's able to do it  
10 on his own now.

11          Q       Do you go out with Bob anymore?

12          A       Nope, not unless we need to see a--go in for a  
13 chain headquarter call or something like that.

14          Q       Did you go out with Bob after Bob's deposition?

15          A       Not till we were able to.

16          Q       But there were times that you went out with him  
17 after that?

18          A       Yeah. We spent a lot of time for me training him  
19 more because you guys didn't give me a chance to train him,  
20 so you guys got a real dummy there.

21                   MR. TATEOKA: Just answer the questions, Connie.

22                   THE WITNESS: Sorry.

23          Q       (By Mr. McGarvey) Did Bob ever have his training  
24 seminar at--was it Atlanta Saw Company?

25          A       How about HuWa Sales and Service?

1 will. The people are tired of the high, high prices. They  
2 will not compete, they will not. They would not compete  
3 when Larry was working for them. That's why he quit, they  
4 would not complete. He could not make any decisions  
5 whatsoever.

6 And these customers love Larry and they--if  
7 Larry's not there, they love us and they will accept what  
8 they've done to Larry, but they still want us. And the  
9 service is there, we are here locally, we can get our  
10 equipment, and they want to be treated as a person. They  
11 don't want to be a number any more.

12 Q They want to be treated the way Larry's been  
13 treating them?

14 A That's right. And they say, As long as you treat  
15 me the way Larry has done in the past, we will be with you.

16 Q Do you know what Kasco's prices were?

17 A What they were when Larry was with them?

18 Q Yes.

19 A I have no idea. I do now because of your little  
20 papers that you had around.

21 Q How did you know that they were high?

22 A Because they're different than mine.

23 Q How did you know yours would be lower?

24 A How did I know? I didn't know mine would be  
25 lower. I just--I went into--let's see. What's the name of

1           A       I hope they did.

2           Q       It was your intention to have mailed a copy of  
3 that letter to each place that you visited?

4           A       Yeah. I was hoping that I would get them. I  
5 didn't hear--I think maybe out of the ones I sent I heard  
6 from maybe a dozen, I don't know, as we were going around.

7           Q       You tried to send that letter, then, to everyone  
8 in the phone books that you identified; is that accurate?

9           A       Yes.

10          Q       So naturally, then, when you'd use the phone  
11 books and go out make the visits, they would be the same  
12 people you sent the letter to?

13          A       Yes.

14          Q       Why do you think this particular meat manager  
15 greeted you openly as you described?

16          A       He found out who we were first. We walked in--  
17 when we walked in he didn't know us from Adam, so we weren't  
18 greeted openly. But as we spoke he was very cordial and--

19          Q       Did you feel like when you left, then, you were  
20 on good terms with this individual?

21          A       Yes.

22          Q       Let's go to the next exhibit, No. 82. The number  
23 in the box under invoice, which is 123-2, again area 2,  
24 store number 123, meaning that in this particular district  
25 this store, Feller Meat Company, would geographically come

1 to Tri-B?

2 MR. TATEOKA: If you know.

3 A I think so. I really--I never went there before,  
4 so I don't know.

5 Q Go to Exhibit No. 83. Did you actually make the  
6 visit at Bowman's Market?

7 A I did.

8 Q Who did you meet when you went there?

9 A Oh, what was his name? Dave, I think his name  
10 is. I think. It could be Randy. I don't know. I don't  
11 remember that guy's name right now.

12 Q Was he the meat manager there?

13 A Yes.

14 Q Did you talk about Larry Benson?

15 A Yes.

16 Q What did you say?

17 A That he was restrained from working and that we  
18 were there to do him a service, if he wanted us to supply  
19 him with grinder plates and knives and saw blades, and that  
20 we were able to--we were trained and ready to fix saws and  
21 grinders and slicers and whatever they required.

22 Q And how did he receive you?

23 A They were all nonchalant at first, you know, just  
24 nice but, you know, kind of at arm's length, and then they  
25 get to talking to you, and some of them warm up to you and

1 some are still cold.

2 Q That introduction that you just gave, did you  
3 give basically that same introduction with respect to every  
4 store you approached?

5 A Yes, because we had to tell them that if they  
6 called the store that Larry was restrained and that he could  
7 not talk this business for one year.

8 Q Did this person at this store have a list of  
9 things that he wanted also, or did you suggest things for  
10 him to buy?

11 A Well, first of all, what some of them do, they  
12 pull out their last invoice from Kasco, because a lot of  
13 them, well, they either do that or they--they show us the  
14 plates and the knives that they've been using. And that's  
15 how we know what equipment they need. As to however many,  
16 then they tell us that and--

17 Q Then you'd give them a price?

18 A Well, the price comes first, you know. They want  
19 to know the price first.

20 Q Are any of these customers--or were any of these  
21 customers previously serviced by anyone other than Larry, to  
22 your knowledge?

23 A Before me?

24 Q Yes.

25 A I have no idea.

1 prices, or told him our prices.

2 Q What did he say?

3 A And he was--he wanted our business. He said yes.

4 Q And you discussed Larry Benson?

5 A Well, I told him that he was restrained and that  
6 if he wanted to do business with Tri-B-Supply that he would  
7 need to do business with Bob and I.

8 Q And did he indicate he wanted to do business with  
9 Tri-B-Supply?

10 A Yes, and he had some equipment that he wanted us  
11 to sell, let us know what he had, that we could sell for him  
12 because we told him we have a store front that we could put  
13 his merchandise in. He wanted to put it there on  
14 consignment.

15 Q Did he have you do that?

16 A No.

17 Q What else did he say, if anything?

18 A I don't recall. It wasn't a real long visit. He  
19 was just really nice and he wanted to know how Larry was  
20 doing, and he asked what Larry was doing.

21 Q Is this particular customer a part of or related  
22 to Bowman's Foods indicated on the next invoice, Exhibit  
23 No. 84?

24 A Are they related?

25 Q Are they the same store?

1 very slow to accept our proposal. We were there a long  
2 time.

3 Q Was he being serviced prior to Tri-B-Supply by  
4 Kasco?

5 A By Larry, yes.

6 Q Did you tell Kelly and other individuals that you  
7 met with and represented as with other customers that Larry  
8 would be doing business with Tri-B-Supply in the future?

9 A I think they assumed that where the restraining  
10 order is for one year and that Bob and I are doing it now.

11 Q So you specifically told them that the  
12 restraining order was only for one year?

13 A Yes, as I recall.

14 Q And you also told them that for now you and Bob  
15 would be doing the routes?

16 A Yes.

17 Q Did you discuss anything other than what we've  
18 already talked about with invoices we've looked at different  
19 with any other customer that you met with?

20 A Well, one of them showed me the particular letter  
21 that Kasco had sent to them, and he was upset about that  
22 letter. He didn't think that Kasco was very nice to Larry  
23 by what the letter said.

24 Q What letter that Kasco sent to that customer?

25 A Telling them that Larry was no longer with the

1           A       Yes.

2           Q       And you ended up meeting with the owner or some  
3 manager of some sort?

4           A       He was the owner at the end.

5           Q       And how did he receive you?

6           A       Same as the others. Pretty much, you know, just,  
7 you know, wanted to know who we were and what we had to, you  
8 know, tell him and what our prices were.

9           Q       Did he know Larry?

10          A       Yeah, he did, yeah.

11          Q       Do you know how that came about that he knew  
12 Larry?

13          A       Well, yeah, because Larry had been in there to  
14 service him before.

15          Q       So he had been with Kasco--

16          A       In the past.

17          Q       --sometime but not that particular time that you  
18 visited him?

19          A       Yes.

20          Q       The other stores that you can't recall right now  
21 that you say were being serviced by someone other than  
22 Kasco, did the people you met at those stores know Larry  
23 also?

24          A       Yes. They had quit Kasco because of their  
25 prices. They had told me that.

1 would market his products and services under the name  
2 Tri-B-Supply?

3 A I figured he knew what he was going to do.

4 Q Didn't have any specific understanding as to how  
5 he would do that?

6 A No.

7 Q Larry made all the decisions with respect to what  
8 customers would be contacted, what the prices would be?

9 A When he was ready, yes, he would go out and do  
10 that, yes.

11 Q Did you discuss with Larry prior to the time that  
12 Exhibit 1 was filed how you two were going to share profits  
13 from either or both the ceramics and butcher supply  
14 business?

15 A We never discussed it, we just figured we would  
16 pay our bills.

17 Q It would all be shared amongst you, then?  
18 Whatever he earned would be both your money; whatever you  
19 earned from the ceramics business would be both of your  
20 money? As far as the business goes, it would be the  
21 business's money?

22 A Well, yeah. We really didn't discuss--we didn't  
23 discuss that kind of stuff. I don't think we still have.  
24 He can go out and go to work, I'd stay home and pay the  
25 bills.

1           Q       Prior to the time that you filed that Exhibit  
2 No. 1 with the state, had Larry purchased any equipment for  
3 the butcher supply business?

4           A       Before this?

5           Q       Yes, before the date of that.

6           A       No.

7           Q       Had he called and requested that any equipment be  
8 sent? In other words, did he order any equipment?

9           A       Before this day?

10          Q       Yes.

11          A       Oh, no. He was working for Kasco; there was no  
12 need to. We hadn't even got a building to this date. We  
13 didn't know where we'd put anything.

14          Q       When did he first start ordering equipment for  
15 the business?

16          A       You know what, I don't even know because I didn't  
17 do it. I didn't have anything to do with ordering for the  
18 supply business or butcher supply business.

19          Q       And so all the equipment that was ordered as well  
20 as the seasonings, supplies, and knives and that sort of  
21 thing were ordered by Larry?

22          A       Yes, it was. I would say it was after he quit  
23 Kasco.

24          Q       You don't know exactly when he did make the  
25 orders, but you know that he did in fact make those orders?

1           A       I know he did, because I didn't; and I know they  
2 came, and I didn't do it.

3           Q       What sort of equipment does Tri-B-Supply have at  
4 its Cottage Avenue shop?

5           A       What kind of supplies?

6           Q       Well, what equipment, first. What machinery--do  
7 you have machinery for sharpening or repairing anything?

8           A       I have a machine to sharpen the plates and  
9 knives.

10          Q       Is that the only machine, then, that you require  
11 in your business?

12          A       No. We have a sandblaster and a grinder and an  
13 air compressor. There's two different grinders. One's a  
14 grinder that you use for the plates, and then there's  
15 another one you use for the knives.

16          Q       Are these big pieces of machinery that require a  
17 room--

18          A       A warehouse.

19          Q       --to set them up in and that sort of thing, or  
20 are they hand-held tools?

21          A       They're big. We have a warehouse.

22          Q       How did you pay for the equipment?

23          A       We had a loan.

24          Q       Was that with West Jordan Credit Union?

25          A       No, it's with Valley Bank.

1 Q Here in Salt Lake City?

2 A Yes.

3 Q What's the amount of the loan?

4 THE WITNESS: Do I have to answer that?

5 MR. TATEOKA: Yeah.

6 THE WITNESS: \$30,000.

7 Q (By Mr. McGarvey) Have you made any payments on  
8 it yet?

9 A Yes.

10 Q Are you personally guaranteeing that loan?

11 A Am I? Our home is.

12 Q Did you sign any documents in getting that loan  
13 yourself?

14 A I did.

15 Q Did Larry sign any documents in getting that  
16 loan?

17 A He did.

18 Q The same documents that you signed?

19 A Yes.

20 Q I just asked this already but I don't remember  
21 the answer. Have you made payments on that loan?

22 A Yes.

23 Q About how much?

24 A Whatever they asked.

25 Q How much are your payments on the loan?

1           A       Three hundred dollars.

2           Q       Per month?

3           A       For the present.

4           Q       And you took that loan out when?

5           A       Oh, sometime in April--or no, no--February,  
6       probably right around the 13th.

7           Q       13th of February?

8           A       Yup.

9           Q       Is it a home equity loan?

10          A       That's right.

11          Q       And did you take the money out for the express  
12       purpose of paying for the equipment?

13          A       No.

14          Q       Why did you take out the loan?

15          A       To start our business.

16          Q       The ceramics business and the butcher supply  
17       business?

18          A       Yes.

19          Q       Have you used any--

20                   MR. ARRINGTON: Can we go off the record a  
21       minute?

22               (Discussion off the record.)

23          Q       (By Mr. McGarvey) What amount of that \$30,000  
24       loan have you used for your ceramics business?

25          A       I have no idea. I have not sat down and done it

1 yet.

2 Q But you have used some amount for the ceramics  
3 business; is that right?

4 A Yes.

5 Q More than a thousand?

6 A Yes.

7 Q More than five?

8 A No.

9 Q More than two, or is that where it gets fuzzy?

10 A It would be more than two.

11 Q Three?

12 A I have no idea.

13 Q Somewhere between two and three is your best  
14 recollection, then?

15 A More like three and four.

16 Q Okay. The remainder, then, has been used to  
17 purchase equipment and supplies for the butcher supply  
18 business?

19 A Yes.

20 Q Do you have any other loans in order to start up  
21 the butcher supply business?

22 A No.

23 Q Did you borrow or receive any gifts from any  
24 family members?

25 A No.

1           Q       Have you used any personal savings to start up  
2 the butcher supply business?

3           A       Yes.

4           Q       That would be out of the joint account of both  
5 you and Larry?

6           A       No.

7           Q       What account would that have been out of?

8           A       Out of his stock.

9           Q       Out of Larry's stock?

10          A       That's right.

11          Q       How much was that?

12          A       \$9,000.

13          Q       And all of that has been used for the butcher  
14 supply business?

15          A       It has.

16          Q       Any other monies from any other source?

17          A       No.

18          Q       The loan and the money from Larry's stock was  
19 used to purchase both equipment and supplies that you  
20 presently have on stock in order to service your customers?

21          A       Yes.

22          Q       And do you store all of your supplies also at  
23 your business address at Cottage Avenue?

24          A       Yes.

25          Q       Did the training at HuWa Sales cost anything?

1 Q So you do buy saws from National Bandsaw, too?

2 A Saws?

3 Q Saws, plates.

4 A Oh, well, some I have, but--

5 Q Mostly seasonings?

6 A Just some that they can--I don't know. I didn't  
7 do that, Larry did.

8 Q Okay. What's the cost of the seasonings to you?

9 A For the Uncle John's is \$29.70 plus freight.

10 Q These are all in the 40-pound buckets?

11 A That one is.

12 Q Is that how you sell them to your customers also?

13 A That one we put in--oh, no. These aren't in  
14 buckets. These are--the Uncle John's is in a 25-pound box.

15 Q And that's how you sell it also? You don't break  
16 it down?

17 A No, I do not break it down unless they want  
18 samples, then I break them down.

19 Q Dixie Country, the cost of that?

20 A \$20.74 plus freight.

21 Q And you charge your customers \$48.95?

22 A I do.

23 Q Carl's Barbeque, what's the cost to you for a  
24 40-pound bucket?

25 A \$44.10.

1 Q And you charge \$66.15?

2 A Yup.

3 Q The last group of items on your price list, are  
4 they all purchased from one particular company?

5 A You know, I don't have some of these yet. I  
6 don't know why I've got them down other than I guess to tell  
7 the customer if they needed them we could, we could get  
8 them, because a lot of them I don't have at this time.

9 Q So you don't have invoices for them yet from the  
10 suppliers?

11 A I do not.

12 Q What did you rely on coming up with the prices  
13 for those products?

14 A I don't even remember.

15 Q Did Larry Benson set those prices?

16 A I don't even know.

17 Q Did you rely on the slicer parts book, the saw  
18 parts book, which are Exhibits numbers 113 and 114, in  
19 setting any prices?

20 A Yes.

21 A This book is prepared by the National Bandsaw  
22 company; isn't that right?

23 A Yes.

24 Q So the products that you purchased from National  
25 Bandsaw were mostly seasonings, true?

1           A       Excuse me?

2           Q       The products you purchased from National Bandsaw,  
3 weren't they mostly seasonings?

4           A       No.

5           Q       What was the company, then, that you purchased  
6 the seasonings from?

7           A       National Bandsaw.

8           Q       Didn't you testify earlier that it was mostly  
9 seasonings and occasional knives?

10          A       No.

11          Q       What was your earlier testimony?

12          A       There's two National Bandsaw companies, that's  
13 what.

14          Q       We've gone through your price list now, and you  
15 haven't indicated any items on there that you purchased from  
16 National Bandsaw other than the seasonings.

17          A       Well, right.

18          Q       So what is the distinction between the two  
19 companies? Why is that important?

20          A       Because National Bandsaw as in your Deposition  
21 Exhibit 4 is where you buy parts for saws, grinders,  
22 slicers. That's where these come in.

23          Q       And you haven't included those on your price  
24 list, then?

25          A       I have not.

1           MR. TATEOKA: Just for clarification: Exhibit 40  
2 has an invoice that's entitled National Bandsaw Company, and  
3 Exhibit 31 and 30 have an invoice entitled National Bandsaw  
4 Service.

5           THE WITNESS: And there's two different addresses  
6 for them, too, so they are two different companies.

7           Q        (By Mr. McGarvey) And you bought your spices  
8 from which one, the service or the company? The service?

9           A        The service, which is a friend of ours.

10          Q        You didn't order any of the parts from National  
11 Bandsaw Company, did you?

12          A        From here? No.

13          Q        Larry ordered those?

14          A        I did not order them.

15          Q        Larry ordered those?

16          A        That is correct.

17          Q        And you haven't priced those, have you?

18          A        In there?

19          Q        Anywhere.

20          A        Yes, they were marked in there. Bob priced them.

21          Q        Where are they marked?

22          A        In the books.

23          Q        Which book?

24          A        In Exhibit 114 and 113.

25          Q        Show me in these books where Bob marked the

1 prices for those parts.

2 A See?

3 Q What page are you referring to?

4 A On page 19. It says Hobart at the top and it  
5 says page 19.

6 Q My page 19 says Biro at the top.

7 A Well, you're in the front further yet.

8 Q What exhibit are you looking at?

9 A Slicer.

10 MR. TATEOKA: 115?

11 THE WITNESS: Exhibit 115.

12 Q (By Mr. McGarvey) You're referring to the back  
13 part of the book--

14 A I'm looking--

15 Q --that deals with dealer confidential price list?

16 A No.

17 Q Page 19 from the front of the book?

18 A It's kind of in the middle.

19 Q Okay, it says Hobart. Where are the prices for  
20 the parts?

21 A Where are they? Is that what you said?

22 Q Yes.

23 A If you look, there's a check mark and then  
24 there's HS92A.

25 Q Yes.

1           A       Okay. In that particular part you'll see a  
2 29150.

3           Q       What does that mean?

4           A       That means it is \$291.50.

5           Q       And who came up with that price?

6           A       Bob did.

7           Q       And how did he do that?

8           A       Through National Bandsaw.

9           Q       The National Bandsaw Company told him that that  
10 would be the price to charge?

11          A       Well, for what--the parts we have to pay  
12 and--yeah.

13          Q       So Bob is relying totally on what National  
14 Bandsaw advised him?

15          A       No, by what we purchased it, and then there was a  
16 40 to 60 percent markup.

17          Q       So how did Bob rely on information from National  
18 Bandsaw?

19          A       Because of the invoice that was sent to us.

20          Q       So Bob received the invoice, added 40 percent,  
21 and then wrote that figure on that diagram?

22          A       Yes.

23          Q       When did he do that?

24          A       I don't know. The last little while, the last  
25 week or so.

1 Q Did he do that at your request?

2 A He did.

3 Q Why didn't you price these parts?

4 A Because I've had other things to do. I can't do  
5 it all.

6 Q Have you prepared a price list indicating the  
7 prices you're going to charge to all these various parts for  
8 National Bandsaw Company?

9 A Excuse me?

10 Q Have you prepared a price list indicating the  
11 various prices of all these various parts from National  
12 Bandsaw Company?

13 A Price list, no.

14 Q So the only record you have of what you're going  
15 to charge customers for these parts is what's written on  
16 these pages of this exhibit?

17 A In that book, yes. That's the book we carry  
18 around.

19 Q Do you have any of these parts already in your  
20 shop?

21 A I do.

22 Q Who ordered those? Larry?

23 A Larry did.

24 Q Have you sold any of these parts from National  
25 Bandsaw Company to anyone?

1           A       Yes.

2           Q       Who in particular?

3           A       I don't know.  Whoever you have an invoice here  
4 for.

5           Q       And invoice from you to the particular customer?

6           A       Yes.

7           Q       So do you carry this exhibit around with you when  
8 you go and meet with people?

9           A       That's correct--not when we meet people, no.  It  
10 stays in the truck.

11          Q       And then if they ask for a part, you go out in  
12 the truck and look up the price?

13          A       That's correct.

14          Q       So you didn't sell any of these parts prior to  
15 just a short time ago; is that right?

16          A       Could have done.

17          Q       Bob didn't price them until just a short while  
18 ago, so when you contacted people the first of April you  
19 couldn't have sold any of these parts; isn't that right?

20          A       Yes.  He had to call up and I had to figure it  
21 out, and there was a lot of time involved.

22          Q       You had to figure what up?

23          A       From the invoice or the invoice that the company  
24 sent me, and he would be on the truck.  He would call me and  
25 say, what do I charge this person for such-and-such, and I

1           A       No, I don't know when it was opened. Oh, it had  
2 to be right there, yeah, March 22nd, okay.

3           Q       Do you also have a statement from Jordan Credit  
4 Union pertaining to your prior account?

5           A       You mean as in my ceramics supply?

6           Q       Yes.

7           A       Yes. Yes, I do.

8           Q       And Larry Benson was--the new account, then,  
9 rather the prior account that I just mentioned was the  
10 account that both you and Larry were on?

11          A       Yes.

12          Q       So after the preliminary injunction against  
13 Larry, you then closed that account and opened this account  
14 in your own name?

15          A       In mine and Bob's name.

16          Q       In your and Bob's name?

17          A       Yes.

18          Q       And the \$1,938.71 deposited into this account on  
19 March 22nd was from your prior account that was in yours and  
20 Larry's name?

21          A       That is correct.

22          Q       Same time you opened this account you withdrew  
23 \$400?

24          A       Yes.

25          Q       Was that money used for the Tri-B-Supply, for the

1 butcher supply business?

2 A I think it was for us to go to Denver, if I'm not  
3 mistaken.

4 Q Us meaning you, Larry and Bob?

5 A Yes.

6 Q Bob's wife?

7 A Yup.

8 Q Your children?

9 A No.

10 Q The share deposit on March 31 of \$336.07, where  
11 did that money come from?

12 A From people paying their bills.

13 Q So those were from your customers?

14 A Yes.

15 Q The payments indicated also on this exhibit, your  
16 check receipts, have dates from--appear to be from March 2nd  
17 through March 27th--well, also into April. Were all of  
18 these checks on this account that we're looking at for the  
19 statement that we're looking at?

20 A Most of them.

21 Q Have you questioned the credit union as to why  
22 they haven't shown up on your statement?

23 A Because they only send them out quarterly.

24 Q They only send what out quarterly?

25 A A statement.

Tab F



# TRI-B-SUPPLY

266 West 8750 South , Sandy, Utah 84070  
(801) 566-8070

March 10, 1989

Dear friend,

We would like to inform you that we have started our own business, in butcher supplies, meat cutting blades, grinder plates & knives, seasoning, service and repair of all major brands of saws, grinders, slicers, and tenderizers.

We will be contacting you soon in hopes to supply you with your service needs.

We will be operating our routes on a 3 month service program in order to give you more frequent service and to provide for your needs in a more efficient manner.

Because of decreased over head costs we will be able to provide less expensive service in the future.

Please direct all calls to our new Phone Number (801) 566-8070. We will also be maintaining an wholesale, retail store and equipment processing plant at 266 West Cottage Avenue (8755 South) Sandy, Utah 84070.

Thank you for your support in the past and look forward to serving you in the future.

Sincerely,

Connie A. Benson, President  
Larry D. Benson, Service Rep.

Tab G

# CERTIFIED COPY

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

\* \* \*

KASCO SERVICES CORPORATION,	)	
	)	
Plaintiff,	)	Civil No. 89-0901724
	)	Judge David S. Young
vs.	)	
	)	Deposition of:
LARRY D. BENSON and CONNIE	)	
A. BENSON, dba TRI-B-SUPPLY,	)	<u>ROBERT BENSON</u>
	)	
Defendants.	)	
	)	
	)	

---

Deposition of ROBERT BENSON, taken at the instance and request of the Plaintiff, at Vancott, Bagley, Cornwall & McCarthy, 50 South Main Street, Salt Lake City, Utah, on Thursday, the 13th day of April, 1989, at the hour of 9:35 a.m., before VICKY MCDANIEL, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, Utah License No. 285.

\* \* \*



Associated Professional Reporters  
10 West Broadway / Suite 200 / Salt Lake City, Utah 84101

1 calls for a legal conclusion, I object.

2 You can go ahead and answer.

3 THE WITNESS: Please repeat the question.

4 Q (By Mr. McGarvey) Certainly. You've testified  
5 that to your understanding you are in a partnership with  
6 Connie Benson. I'm asking additionally what your  
7 understanding is with respect to how the profits will be  
8 divided in this partnership.

9 A We have not discussed that as of yet.

10 Q Have you been paid anything for your services?

11 A Not as of yet, no.

12 Q Have you been given any sort of compensation  
13 whatsoever as an owner or partner of this business?

14 A No, I haven't.

15 Q When do you first expect to receive any  
16 compensation?

17 A I don't have any idea.

18 Q Has anyone received any compensation, to your  
19 knowledge?

20 A Not to my knowledge, no.

21 Q With respect to the expenses of the business,  
22 have you put up any money--

23 A No.

24 Q --towards the partnership--

25 A No, I haven't.

1           A       I believe at that time he was under a restraining  
2 order.

3           Q       How would you know that?

4           A       Well, we're family, so we know quite a bit.

5           Q       Who told you that? Do you recall?

6           A       Connie told me.

7           Q       Was it at that meeting that she told you?

8           A       No, it wasn't.

9           MR. ARRINGTON: Excuse me. What was the date of  
10 that meeting, again?

11           THE WITNESS: It was around the first of March.  
12 I don't recall the day.

13           MR. ARRINGTON: First or second day of March?

14           THE WITNESS: No, it would be like the first or  
15 second week in March. Probably like the second week in  
16 March.

17           Q       (By Mr. McGarvey) When did the business actually  
18 start operating? By that I mean providing services or  
19 products.

20           A       To my knowledge, the first of last week, because  
21 that's when I started.

22           Q       That being April 3rd?

23           A       Yes.

24           Q       What inspired you to become involved with the  
25 butcher supply business, not having done that before?

1           A       Probably because I was tired of seasonal  
2 employment, was the biggest reason.

3           Q       Have you ever discussed the business with Larry  
4 Benson?

5           A       No, I haven't.

6           Q       You've never mentioned at all the fact that you  
7 were going to be in business with Connie to Larry?

8           A       I don't recall saying that to him.

9           Q       Has he ever mentioned to you the fact that Connie  
10 was doing this business, Tri-B-Supply butcher supply  
11 business?

12          A       No. I believe I found out most of this  
13 information myself.

14          Q       Do you get together often with your family for  
15 social events and family occasions?

16          A       Yes, I do.

17          Q       How often, would you guess? Weekly basis?

18          A       Weekly.

19          Q       About how long would you stay on these occasions  
20 together as a family?

21          A       Approximately two hours.

22          Q       Would you consider your relationship with Connie  
23 and Larry Benson to be a close relationship?

24          A       Yes, I would.

25          Q       Has it always been a close relationship?

1           Q       Well, as I understand from the tenderizer, what  
2   it indicates here is that someone will look at the  
3   tenderizer, replace fast wear parts, check and lube and  
4   actually do something to the tenderizer.

5           A       I actually do that.

6           Q       Have you done that before?

7           A       Yes, I have.

8           Q       When have you done that before?

9           A       As far as the business?

10          Q       No, the first time.

11          A       The first time? In training.

12          Q       When was that?

13          A       I can't recall the exact date.

14                 MR. TATEOKA: If you can't recall, that's your  
15   answer.

16                 THE WITNESS: I can't recall the exact date.

17          Q       (By Mr. McGarvey) Give me an idea of the time.

18          A       Latter part of March.

19          Q       Of this year?

20          A       Of this year.

21          Q       And where did you receive that training?

22          A       In Denver, Colorado.

23          Q       From what company or individual?

24          A       HuWa Sales and Service.

25          Q       Is that a company?

1           A       Yes, it is.

2                   MR. ARRINGTON:   Lewis?

3                   THE WITNESS:   HuWa.

4                   MR. ARRINGTON:   How is it spelled?

5                   THE WITNESS:   H-u-w-a.

6           Q        (By Mr. McGarvey)   How long were you in Denver in  
7 that training?

8           A        For two days.

9           Q        How many class hours was that?

10          A        It was approximately 12 hours.

11          Q        How many instructors does HuWa have?

12          A        Three.

13          Q        And did you receive instructions from all three?

14          A        Yes, I did.

15          Q        What were the topics of the areas of that they  
16 instructed you on?

17          A        It was on maintaining saws and tenderizers and  
18 slicers and grinders as well as patty machines.

19          Q        Did it involve major repairs?

20          A        Yes, it did.

21          Q        How much did that cost to have that training?

22          A        I have no idea.

23          Q        Do you know whether it cost anything at all?

24          A        I have no idea.

25          Q        How many people were in your class?

1           A       There was just the two of us, myself and Connie.

2           Q       So both you and Connie were individually trained  
3 by three separate instructors?

4           A       Yes, we was.

5           Q       Is this a school that does training for a fee?

6           A       No.

7                   MR. TATEOKA: Object. I don't know that he  
8 testified that it was a school.

9                   MR. McGARVEY: I'm asking him whether it was.

10                  THE WITNESS: No, it's not a school.

11           Q       (By Mr. McGarvey) What are they in the business  
12 of doing, if you know?

13           A       Servicing the meat industry, servicing their  
14 equipment--saws, grinders, et cetera.

15           Q       Do you know of anyone else who received training  
16 from them besides Connie?

17           A       No, I don't. I don't have any idea.

18           Q       How did you learn of their availability to train  
19 you?

20           A       Through Connie.

21           Q       Do you have any understanding as to how she  
22 learned of their existence?

23           A       I wouldn't have any idea.

24           Q       Did Larry go with you to Denver on this occasion?

25           A       No, he did not.

1           Q       So you never saw him in Denver at all during the  
2 time that you were there for training?

3           A       No.

4           Q       I'm going to hand to you now what's been marked  
5 as Deposition Exhibit No. 5.

6           (Witness consults with counsel off the record.)

7           THE WITNESS: Okay, I need to clarify the  
8 statement about Larry being in Denver. He was there but he  
9 was not with me during the training at all.

10          Q       (By Mr. McGarvey) Did you fly or drive over with  
11 him?

12          A       Drove over with him. He drove me over there and  
13 Connie over there.

14          Q       Did he go to HuWa at all?

15          A       Not with me during the training, no.

16          Q       Do you know of any time that he went to HuWa at  
17 all?

18          A       Not that I know of.

19          Q       Did you discuss with him your training  
20 experiences at HuWa at any time?

21          A       No, I did not.

22          Q       Do you know whether he had any prior knowledge of  
23 HuWa?

24          A       I wouldn't know what he knew about them or not.

25          Q       I'm just asking you what you know.

1     you?

2                     MR. TATEOKA:  Objection; asked and answered.

3             Q        (By Mr. McGarvey)  Subsequent--I realize that I  
4     asked that earlier, and I would like to know now after the  
5     time that you started working for Tri-B-Supply.

6             A        We have not discussed it, no.

7             Q        You indicated before that you have not been paid  
8     any compensation whatsoever for your efforts in the business  
9     so far.  Do you expect to be paid in the future?

10            A        I hope to be paid in the future, yes.

11            Q        On what basis?

12            A        We haven't discussed that in any means yet.

13            Q        So you don't know whether it will be on an hourly  
14     basis?

15            A        No, I do not.

16            Q        You don't know whether you'll share in the  
17     profits of the company?

18            A        I do not.

19            Q        To your knowledge to date, is there any  
20     understanding at all as to who will share in the profits of  
21     the company other than yourself?

22            A        Well, this is all just too new.  We haven't  
23     really had time to discuss it as of yet, so--but yeah, I'd  
24     say there will be some talks in the future about it, yeah.

25            Q        Have you had any discussions with Connie about

1 Larry's role in the business?

2 A No, I have not.

3 Q What is your understanding as to why Larry's not  
4 involved with the business?

5 A Just to the fact that he has a restraining order  
6 against him.

7 Q Is it your intention that Larry will become  
8 involved in the business in the future as the restraining  
9 order expires or is otherwise lifted?

10 A I would think that would be what he'd want to do,  
11 yes.

12 Q What would be his duties or role in the business  
13 at that time?

14 MR. TATEOKA: Objection, calls for speculation.  
15 Also object, lack of foundation. You can answer if you  
16 know.

17 THE WITNESS: I have no idea.

18 Q (By Mr. McGarvey) Are you familiar with Larry  
19 having worked for Kasco?

20 A Yes, I am.

21 Q When were you first aware that he was an employee  
22 of Kasco or its predecessor company?

23 A Well, I was still living at home at that time, so  
24 that's how I knew.

25 Q What did he do at that time when you first

1 running a business than I would, because I was not--I've  
2 never owned my own business.

3 Q When you first became an owner of Tri-B-Supply,  
4 was it indicated to you by Connie or anyone else that you  
5 would be contacting customers with Connie?

6 A She stated that I'd be calling on customers with  
7 her.

8 Q So it was your understanding from the beginning  
9 that you'd be doing it together?

10 A Yes.

11 Q Was that also with the understanding that it was  
12 just for a limited time period until you learned what to do?

13 A Yes, it was.

14 Q And how long of a time period was that, if there  
15 was a set time?

16 A There was no set time.

17 Q Do you still plan to make contacts with Connie  
18 together?

19 A If need be, yes.

20 Q Do you plan to go and make contacts with  
21 customers tomorrow?

22 A I don't have any knowledge of that whatsoever. I  
23 don't know what's going to happen tomorrow.

24 Q So you don't have any plans to do that right now?

25 A I have no plans to do that right now, no.

1 too big of variance.

2 Q I don't want you to guess. Did you enter into  
3 contacts with these customers to service them in the future,  
4 written contracts?

5 A No written contracts.

6 Q Did you enter into oral agreements to service  
7 them for certain periods of time in the future?

8 A Yeah, I guess you could assume it is an oral  
9 contract, yeah.

10 Q What products did you actually sell to these  
11 various customers that you in fact entered into agreements  
12 with to sell products? And you can refer back to the  
13 exhibit list if you'd like to. Were there major or specific  
14 products that you sold a lot of and others that didn't sell  
15 at all?

16 A There were several that didn't sell at all.

17 Q Which ones were those?

18 A It's really hard to say because, like I say, your  
19 biggest part of the business is in your saw blades and in  
20 your grinder rental equipment.

21 Q So those sell the most?

22 A Yes, they do.

23 Q On any of these visits that you made to any of  
24 these customers or potential customers, not just those that  
25 you entered into agreements with, did you discuss Larry

1 Benson at all with them?

2 A Very limited. They would ask about Larry because  
3 they associate with him so well. I mean, they knew who he  
4 was. They asked, Where is he?

5 Q How would you respond?

6 A To the fact that he had left Kasco and that he  
7 was under a restraining order and wasn't able to be in the  
8 area for a period of one year.

9 Q Did they know you were Larry's son?

10 A Yes, they did.

11 Q Did they know that Connie was Larry's wife?

12 A Yes, they did.

13 Q Did they know that Tri-B-Supply was yours and  
14 Connie's business?

15 A We stated that every time that we went in.

16 Q To every contact that you made you made that  
17 statement?

18 A We tried to clarify that, yes.

19 Q 50 to 60 percent of your contacts have become  
20 your customers so far. What is the reason, to your  
21 understanding, why you were unable to get the remaining  
22 contacts?

23 MR. TATEOKA: Objection, foundation. You can  
24 answer if you know.

25 THE WITNESS: Well, I would say that most of them

1 would--you know, you give them an oral proposal and they  
2 want to think about it before they step into anything or  
3 make a change. Most of them prefer to, you know, see which  
4 is the better way to go.

5 Q (By Mr. McGarvey) So they wanted to think about  
6 it?

7 A Sure.

8 Q Have any of them gotten back with you or Connie  
9 so far, that you know?

10 A Not to my knowledge, no.

11 Q Do you know who is presently servicing any of  
12 those particular companies or potential customers of  
13 Tri-B-Supply's?

14 A Could be several.

15 Q You don't have any knowledge of who specifically  
16 was servicing them?

17 A I don't have any idea who was specifically  
18 servicing them at the time.

19 Q But you do know that out of the contacts that you  
20 have made, 50 to 60 percent of them are now Tri-B-Supply's  
21 customers?

22 A Yes. That's a fair assumption, yes.

23 Q That's your best estimate as to the percentage  
24 of--

25 A Yes, it is.

1 Q The product would be mailed?

2 A Yes, it would.

3 Q So far in the life of the business of  
4 Tri-B-Supply, have you in fact mailed products to customers?

5 A Yes, I have.

6 Q Before we leave these invoices, do you know what  
7 the first invoice number is?

8 A I do not.

9 Q Do these invoice numbers have any meaning at all  
10 to you?

11 A They have no meaning to me at all.

12 Q Let me hand to you what's been marked as  
13 Deposition Exhibit 26 and ask you to review that.

14 (Witness reviews document.)

15 Q Have you seen this document before?

16 A No, I've never read this before, no.

17 Q When you've made contacts with customers with  
18 Connie on the occasions that we've discussed previously,  
19 have you or Connie indicated to any of the customers that  
20 although Larry is presently restrained that he will be with  
21 the business in the future?

22 A Yeah, I guess you could assume that.

23 MR. ARRINGTON: Assume?

24 THE WITNESS: Assume that. Meaning that we don't  
25 say the same thing to everybody, but they do ask what he's

1 going to be doing. And as far as what we tell them, we tell  
2 them right now that he's going to be having surgery and he's  
3 going to be out for about three months.

4 Q (By Mr. McGarvey) Then what did you tell them  
5 will happen after three months?

6 A Well, he'll be under the restraining order and he  
7 wouldn't be able to do anything with them until the  
8 restraining order time is due.

9 Q Then after the restraining order is lifted or  
10 expires, do you tell them that he'll be back with the  
11 business?

12 A He'll be back in the business to some extent,  
13 yeah.

14 Q And your customers are informed of that in one  
15 way or the other?

16 A Sure, they are.

17 Q I'm going to hand to you now what's been marked  
18 as Deposition Exhibit 27 and ask you to review that. Have  
19 you ever seen that document before?

20 A No, I haven't.

21 Q Have you ever heard of the company Alfa  
22 International Corporation?

23 A Only as of right now.

24 Q The address given as Tri-B-Supply on this bill is  
25 266 West Cottage Avenue. Do you know that address?

1 weeks?

2 A It could have been, yeah. As far as whether the  
3 guy that you talked to, meaning the owner of Rocky Mountain  
4 Pools, I would have no idea if he would have any, you know,  
5 remembrance of that at all.

6 Q It even could have been after you signed Exhibit  
7 No. 2?

8 A It's possible, yes. The guy I worked with before  
9 was a very lax type of person. He was a nice guy, you know;  
10 he understands.

11 Q Is it also fair to say that you really did not  
12 have any dealings with the business in any sense prior to  
13 the date that you signed Exhibit No. 2, whenever that was?

14 A I did not, no. I had no dealings at all.

15 Q Just one other area. Earlier you testified that  
16 your duties as sales representative for Tri-B-Supply would  
17 be to make proposals, go out and show equipment, and make  
18 service calls. The contacts that we discussed today that  
19 you made with Connie and the one that you made by yourself,  
20 were they mainly to make proposals rather than for the other  
21 two purposes of showing equipment and making service calls  
22 at this point in the business's development?

23 A They were strictly to make proposals. We went in  
24 and showed them; and if they wanted our service, we serviced  
25 them.

Tab H

ORIGINAL

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

---oOo---

KASCO SERVICES CORPORATION,

Plaintiff,

vs

LARRY D. BENSON and CONNIE A. BENSON,  
DBA TRI-B-SUPPLY,

Defendants.

CIVIL NO. 89-0901724

DEPOSITION OF:

LELAND CHILD

---oOo---

Be it remembered that on the 30th day of June 1989 the deposition of Leland Child, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending, was taken before Sharon A. Merritt, a Certified Shorthand Reporter and Notary Public, in and for the State of Utah, at the offices of VanCott, Bagley, Cornwall & McCarthy, 2404 Washington Boulevard, Suite 900, Ogden, Utah.

That said deposition was taken pursuant to notice.

1 Q. And the name of the business is Child's Custom Meat  
2 Cutting?

3 A. Child's Custom Meat Cutting.

4 Q. And you're the owner of that business?

5 A. Yes. Well, I'm partner.

6 Q. Who are you in partnership with?

7 A. Thane Stokes.

8 Q. Is Mr. Stokes involved in the operation of the  
9 business?

10 A. He's mainly involved in the slaughtering part of  
11 it.

12 Q. What are your duties?

13 A. I'm -- I'm the meat cutter. I run the meat cutting  
14 part of it.

15 Q. What does your business do?

16 A. We -- mainly we cut beef for people that raise  
17 their own. We do have some retail sales and locker beef sales.

18 Q. Do you sell to the public, then?

19 A. Yes.

20 Q. Out of the business address that you've given?

21 A. Yes.

22 Q. And also to, then, other stores, I take it, the  
23 meat that you cut; is that true?

24 A. Not much stores. We have one small restaurant.

25 Q. That you sell meat to?

1 prior to the time that you started this business 17 years ago?

2 A. No.

3 Q. So when you first started you immediately began  
4 with your own business?

5 A. Yes.

6 Q. That's great. And you began doing business with  
7 Keene, then, from the very beginning?

8 A. Yes.

9 Q. Do you remember the name of the representative of  
10 Keene that you dealt with at that time?

11 A. Larry's Supervisor.

12 MRS. BENSON: Ed Mason?

13 THE WITNESS: What's his name?

14 MRS. BENSON. Ed Mason.

15 MR. MCGARVEY: Q. Does "Ed Mason" sound familiar?

16 A. Yeah. That's it.

17 Q. So it was Ed Mason back at that time?

18 A. Ed Mason.

19 Q. And was it Ed Mason the entire time until Larry  
20 Benson took over?

21 A. Yes.

22 Q. At the time Larry took over it was still Keene  
23 Corporation, is that right?

24 A. Yes.

25 Q. Have you ever had any contact with any other

1 right sure, but I think it was the President of the company.

2 Q. Do you still have a copy of that letter?

3 A. Yes, I do.

4 Q. In the subpoena I asked that you also bring  
5 correspondence that you've had with Kasco or any of the  
6 defendants.

7 A. Yes. And I didn't remember --

8 Q. I realize you might not have had time to find that  
9 letter. Would you look for that letter and send a copy to me,  
10 please?

11 A. I can do that.

12 Q. And that goes also for other correspondence that  
13 you may not have had time to locate yet. You indicated that  
14 that was the first contact you had from anybody --

15 A. Well, that --

16 Q. -- since Larry serviced you. Were there other  
17 contacts that you've had?

18 A. That, as far as I can remember, is the only contact  
19 I had from Keene.

20 Q. Or Kasco?

21 A. Well, Kasco, yeah.

22 Q. Okay.

23 Q. That was the only contact from Kasco since the time  
24 that Larry serviced you in December of 1988?

25 A. Well, other than --

1 Q. Is that what you're saying?

2 A. Yeah.

3 Q. Okay.

4 A. But then after that their new representative did  
5 come.

6 Q. Okay. Who was that?

7 A. I don't know. He -- I never seen him before. He  
8 come in. He says, "I'm the new representative from Kasco."  
9 And I'm here to do your service." And I said, "Well," I said,  
10 "I've been with Larry Benson for a long time and Larry's been  
11 good to me and he's starting out on his own now," and I says,  
12 "I think I'll just stay with him." Then he says --

13 Q. Stay with who?

14 A. With Larry Benson. He says, "I can understand  
15 that." He said, "Most of his customers have decided to do  
16 that." And he says, "I'm just here more or less to pick up our  
17 equipment."

18 Q. And so that's what he did, then, is pick up the  
19 equipment?

20 A. Yes.

21 Q. So do you consider yourself now to not be doing  
22 business with Kasco?

23 A. Yes.

24 Q. Had you had contact from Larry Benson, then, prior  
25 to the time that that representative that you just referred to

1 A. Tri-B-Supply.

2 Q. And why Tri-B-Supply?

3 A. Why am I doing business with them?

4 Q. What is Tri-B-Supply to you?

5 A. The butcher supply.

6 Q. It's a business?

7 A. Business. (nodding head affirmatively)

8 Q. Who owns Tri-B-Supply?

9 A. Well, the letter says Connie Benson's the  
10 President. That's what I go by.

11 Q. Anybody else?

12 A. Robert. However, I am -- I decided to stay with  
13 them because of the good service I got from Larry.

14 Q. Is Larry involved in the business, to your  
15 understanding?

16 A. Not that I know of. Not right now, anyway.

17 Q. How do you know that?

18 A. Well, because Connie told me that Larry was taking  
19 a year off and her and Robert would be doing the service.

20 Q. When did she tell you that?

21 A. About the time they come to the first service call.

22 Q. So your understanding, then, is that Larry would be  
23 back with the business in the future?

24 A. Yes.

25 Q. Does that form part of the reason why you intend to

Tab I

COPY

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

---oOo---

KASCO SERVICES CORPORATION,

Plaintiff,

vs

LARRY D. BENSON and CONNIE A. BENSON,  
DBA TRI-B-SUPPLY,

Defendants.

CIVIL NO. 89-0901724

DEPOSITION OF:

RANDALL HEATH

---oOo---

Be it remembered that on the 30th day of June 1989 the deposition of Randall Mitchell Heath, produced as a witness herein at the instance of the plaintiff, in the above-entitled action now pending, was taken before Sharon A. Merritt, a Certified Shorthand Reporter and Notary Public, in and for the State of Utah, at the offices of VanCott, Bagley, Cornwall & McCarthy, 2404 Washington Boulevard, Suite 900, Ogden, Utah.

That said deposition was taken pursuant to notice.



1 responsibility, then, to determine who to purchase butcher  
2 supplies from?

3 A. Yeah. I -- you know, I was awfully young. It was  
4 my first job. And, basically, I just went with who we had.

5 Q. Tom's Thriftway had been purchasing their supplies  
6 from Kasco?

7 A. Yeah.

8 Q. And so you continued to do that?

9 A. Yeah.

10 Q. And you got to know Larry Benson at that time?

11 A. Yeah.

12 Q. About how many service calls did he make while you  
13 were at Tom's Thriftway, if you can recall?

14 A. Probably three a year, four. Two or three years,  
15 so --

16 Q. You were there about five or six years?

17 A. I was there for five years. Probably the first two  
18 years, though, I didn't -- I was just mainly working in the  
19 deli and cleaning up. So just about in the last three years.

20 Q. Last three years?

21 A. Yeah.

22 Q. When he would make service calls?

23 A. Yeah.

24 Q. You would see him, and at those times would you  
25 talk to him?

1 affirmatively)

2 Q. Backing up just for a moment, was this service call  
3 in December of '88 a regular service call? As opposed to one  
4 of the special service calls where you --

5 A. This was a regular service call because of the  
6 amounts that we took of these items.

7 Q. Going back, then, to this letter, that you say you  
8 recognize, which is Exhibit Number 2, do you have any  
9 recollection as to when you might have received it?

10 A. The date on that says March 10th. I would assume,  
11 you know -- we get so much stuff through the mail. I would  
12 assume it was around then.

13 Q. You don't have any reason to believe it was prior  
14 to March 10th?

15 A. No.

16 Q. It's reasonable that it could have been received  
17 sometime in March?

18 A. Yeah.

19 Q. You just don't know exactly when?

20 A. I don't know exactly when, no.

21 Q. You do recognize the substance of this letter,  
22 having received a letter --

23 A. Yes.

24 Q. Do you recall whether the letter you received was  
25 signed?

1           A.       No. I have no idea.

2           Q.       Does this letter refresh your memory as to any  
3 other times that you might have received a correspondence or  
4 message from Larry Benson?

5           A.       No. I didn't remember receiving the letter until I  
6 read it.

7           Q.       Until you read it just now?

8           A.       Yeah, till just now.

9           Q.       It doesn't jog your memory with respect to anything  
10 else?

11          A.       Now, I remember Connie contacting me on the phone  
12 saying that they would like to meet with me to discuss, you  
13 know, switching over to their new company.

14          Q.       Okay. When did that telephone conversation occur?

15          A.       I would think it was sometime -- let's see, this  
16 invoice is dated 4/5.

17          Q.       You're referring to Deposition Exhibit 5?

18          A.       Exhibit 5.

19          Q.       Okay.

20          A.       I would say it was sometime in early April, because  
21 she would like to have talked -- she said she'd like to talk to  
22 me before the -- we had our next scheduled delivery from Kasco.

23          Q.       When was your next scheduled delivery from Kasco?

24          A.       I believe they go in four-month service calls, so  
25 it would probably be middle of April.

1 Q. Would have been in April, then?

2 A. Uh-huh. (affirmatively)

3 Q. And the first of April's when she called you to  
4 make an appointment to meet with you?

5 A. Yes.

6 Q. And she indicated then she wanted to meet with you  
7 before Kasco serviced you?

8 A. Yes.

9 Q. And at that time that she called you do you recall  
10 whether or not you had received this letter dated March 10th,  
11 which is Exhibit 2?

12 A. (pause) I remember receiving the letter. I -- I  
13 don't know exactly -- I'm sure I read the letter before she  
14 talked to me, yes.

15 Q. Okay. I'm also going to hand to you now what's  
16 been marked as Exhibit 3. See if you recognize that letter.

17 A. (looking at exhibit) Yeah.

18 Q. Did you receive that letter through the mail?

19 A. That again I can't tell you.

20 Q. You just recall having read the substance of that  
21 letter before?

22 A. Yeah. Keeping in mind, you know, we get just all  
23 kinds of things in the mail. New products. And most of them  
24 we don't even read.

25 Q. Sure.

1 chance of running out of products. And I looked at the prices,  
2 and I had -- I went and got a copy of my last Kasco invoice, I  
3 believe, (indicating) and I looked at them, and I knew their's  
4 was on a four-month. On a three-month their prices looked a  
5 lot cheaper on paper. But in reality they aren't that much  
6 cheaper when you consider you're going to be serviced four  
7 times a year instead of three times a year. So pricewise they  
8 were about the same, a little bit cheaper, but -- but,  
9 basically, we just talked about that. You know, we just --  
10 just decided to give them a try.

11 Q. And you made that decision yourself?

12 A. Yes.

13 Q. Did you consult with anyone else?

14 A. No. I did tell my boss, Rich Christensen,  
15 afterwards that I'd made the decision.

16 Q. What did he say?

17 A. He asked me why.

18 Q. What did you say to him?

19 A. I told him that, you know, I've known Larry for a  
20 long time, even though it wasn't his company, it was his  
21 family's company. And that, basically, they were a small  
22 company starting out and just a -- that the service was the  
23 same. I'd rather go with a small local company than a major  
24 company.

25 Q. And you expected the service to be the same?

1 Q. Other than the date on the document?

2 A. No.

3 Q. I am going to ask you to do an unusual thing. I am  
4 going to ask you to turn the document over, which is Exhibit  
5 Number 4. And hold it up to the light. Can you see where it's  
6 written, "Randy Heath"?

7 A. (looking at exhibit)

8 MRS. BENSON: Right there. (indicating)

9 THE WITNESS: Yeah.

10 MR. MCGARVEY: Q. Did you sign that or do you  
11 recall having signed that?

12 A. No. That's not my signature. If it was my  
13 signature, you couldn't read it.

14 MR. MCGARVEY: Q. Okay.

15 A. That's my signature right there. On the bottom.

16 Q. On the bottom of Exhibit 5?

17 A. Yes.

18 Q. Describe what happened when the Kasco  
19 representative came in on that day.

20 A. Well, Connie had told me that they would -- I  
21 didn't know it, but we don't purchase these knives -- these  
22 hard knives, four wings, or the grinding plates. We do  
23 purchase the saw blades. We just rent those. And they bill us  
24 for sharpening. So I had the -- the -- the knives that -- that  
25 we had there, the plates that we had -- we had them set aside.

1 The blades were ours. We have a sharpening stone. And we  
2 went -- I talked to -- who did I talk to? Somebody at the  
3 store in bookkeeping. And they said that, "We don't pay for  
4 that stone, and that stone was purchased several years ago."  
5 So all I had was the plates and the blades sitting on the  
6 table, and he walked in and he said, "Well, I see Tri-B's  
7 already talked to you." And I said, "Yes." He, basically,  
8 just explained that he was the new Kasco serviceman. Service  
9 rep. That -- and then explained that their prices do look  
10 cheaper on paper, but, in affect, they're about the same  
11 because of the four-month service call versus the three-month.  
12 And that I already knew. And I says, "Yeah, I understand  
13 that," but I told them I decided to give Tri-B a go.

14 Q. So after you had talked with Connie that morning  
15 you had made the decision to go with Tri-B.

16 A. Yes.

17 Q. And you, as I understand your testimony, collected  
18 all of Kasco's equipment and set it aside for Kasco to pick up?

19 A. Yes.

20 Q. So it was ready for the rep to pick it up when he  
21 arrived?

22 A. Yes.

23 Q. You didn't know, however, that he was going to  
24 arrive that afternoon; did you?

25 A. Right now I'm still not sure he came that

Tab J

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Attorneys for Petitioner  
Kasco Services Corporation

---

IN THE UTAH SUPREME COURT

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KASCO SERVICES CORPORATION,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF JOANNE SCHOEMEHL
	)	
vs.	)	
	)	
LARRY D. BENSON and	)	
CONNIE A. BENSON dba	)	
TRI-B-SUPPLY,	)	Trial Court No. 89-0901724
	)	
Defendant.	)	Supreme Court No. 900260
	)	

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STATE OF MISSOURI            )  
                                  : ss.  
ST. LOUIS CITY COUNTY        )

Joanne Schoemehl, having been duly sworn upon oath,  
deposes and states as follows:

1. I have personal knowledge of and am competent to testify to the matters stated herein.
  2. I am employed by Kasco Services Corporation as Manager of Marketing Services.
  3. In 1989, Kasco lost 167 customers to Tri-B-Supply.
  4. Kasco continues to lose customers to Tri-B-Supply.
- As of June 19, 1990, Kasco has lost at least 16 customers to Tri-B-Supply in 1990. The lost customers include the following:

<u>Customer Name</u>	<u>Date Loss Reported</u>
Lin's Thriftway	February 7, 1990
Service Market	June 19, 1990
Feller Meat Company	April 2, 1990
Food For Less	June 14, 1990
Food Ranch	May 4, 1990
Kelley Draper	May 3, 1990
Draper Meat Processing	May 4, 1990
The Old Store	February 6, 1990
M & D Foodtown	February 6, 1990
Storehouse Market	February 7, 1990
Stewart's Thriftway	May 23, 1990
Duff's Smorgasbord	May 1, 1990
Parnell Packing	April 9, 1990
Bridgerland Vacationl Ct	April 5, 1990

DATED this 7<sup>th</sup> day of August, 1990.

Joanne Schoemehl  
Joanne Schoemehl

SUBSCRIBED AND SWORN TO before me this 7<sup>th</sup> day of  
August, 1990.

Joan M. Belpedio  
NOTARY PUBLIC  
Residing at: 7517 N. St.

My Commission Expires:

6/9/92

JOAN M. BELPEDIO  
NOTARY PUBLIC, STATE OF MISSOURI  
MY COMMISSION EXPIRES 6/9/92  
CITY OF ST. LOUIS

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Attorneys for Petitioner  
Kasco Services Corporation

---

IN THE UTAH SUPREME COURT

---

KASCO SERVICES CORPORATION, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LARRY D. BENSON and )  
CONNIE A. BENSON dba )  
TRI-B-SUPPLY, )  
 )  
Defendant. )

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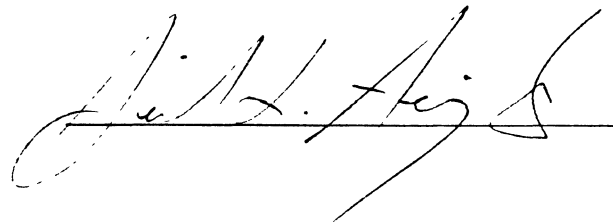
CERTIFICATE OF SERVICE

Trial Court No. 89-0901724

Supreme Court No. 900260

I hereby certify that I caused a true and correct copy  
of the Affidavit of JoAnne Schoemehl to be hand delivered this  
8th day of August, 1990, to the following:

Reid Tateoka, Esq.  
McKAY, BURTON & THURMAN  
1200 Kennecott Building  
Salt Lake City, UT 84133



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Attorneys for Petitioner  
Kasco Services Corporation

---

IN THE UTAH SUPREME COURT

---

KASCO SERVICES CORPORATION,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF JOANNE SCHOEMEHL
	)	
vs.	)	
	)	
LARRY D. BENSON and	)	
CONNIE A. BENSON dba	)	
TRI-B-SUPPLY,	)	Trial Court No. 89-0901724
	)	
Defendant.	)	Supreme Court No. 900260
	)	

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STATE OF MISSOURI )  
: ss.  
ST. LOUIS CITY COUNTY )

Joanne Schoemehl, having been duly sworn upon oath,  
deposes and states as follows:

1. I have personal knowledge of and am competent to testify to the matters stated herein.
  2. I am employed by Kasco Services Corporation as Manager of Marketing Services.
  3. In 1989, Kasco lost 167 customers to Tri-B-Supply.
  4. Kasco continues to lose customers to Tri-B-Supply.
- As of June 19, 1990, Kasco has lost at least 16 customers to Tri-B-Supply in 1990. The lost customers include the following:

Customer Name

Date Loss Reported

Lin's Thriftway	February 7, 1990
Service Market	June 19, 1990
Feller Meat Company	April 2, 1990
Food For Less	June 14, 1990
Food Ranch	May 4, 1990
Kelley Draper	May 3, 1990
Draper Meat Processing	May 4, 1990
The Old Store	February 6, 1990
M & D Foodtown	February 6, 1990
Storehouse Market	February 7, 1990
Stewart's Thriftway	May 23, 1990
Duff's Smorgasbord	May 1, 1990
Parnell Packing	April 9, 1990
Bridgerland Vacationl Ct	April 5, 1990

DATED this 7<sup>th</sup> day of August, 1990.

Joanne Schoemehl  
Joanne Schoemehl

SUBSCRIBED AND SWORN TO before me this 7<sup>th</sup> day of  
August, 1990.

Joan M. Belpedio  
NOTARY PUBLIC  
Residing at: 7517 Xeta St.

My Commission Expires:

6/9/92

JOAN M. BELPEDIO  
NOTARY PUBLIC, STATE OF MISSOURI  
MY COMMISSION EXPIRES 6/9/92  
CITY OF ST. LOUIS

VAN COTT, BAGLEY, CORNWALL & McCARTHY  
Michael F. Richman (4180)  
David L. Arrington (4267)  
50 South Main Street, Suite 1600  
P. O. Box 45340  
Salt Lake City, Utah 84145  
Telephone: (801) 532-3333

Attorneys for Petitioner  
Kasco Services Corporation

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IN THE UTAH SUPREME COURT

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KASCO SERVICES CORPORATION, )

Plaintiff, )

vs. )

LARRY D. BENSON and )

CONNIE A. BENSON dba )

TRI-B-SUPPLY, )

Defendant. )

CERTIFICATE OF SERVICE

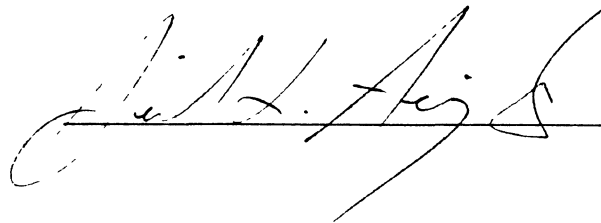
Trial Court No. 89-0901724

Supreme Court No. 900260

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I hereby certify that I caused a true and correct copy  
of the Affidavit of JoAnne Schoemehl to be hand delivered this  
8th day of August, 1990, to the following:

Reid Tateoka, Esq.  
McKAY, BURTON & THURMAN  
1200 Kennecott Building  
Salt Lake City, UT 84133



Tab K

APR 10 1989

By *C. Tateoka*  
SALT LAKE COUNTY  
Clerk

Reid Tateoka (3193)  
McKAY, BURTON & THURMAN  
Attorneys for Defendants  
1200 Kennecott Building  
10 East South Temple Street  
Salt Lake City, Utah 84133  
Telephone: (801) 521-4135

IN THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH

---

KASCO SERVICES CORPORATION,	:	
	:	
Plaintiff,	:	ORDER OF PRELIMINARY
	:	INJUNCTION
vs.	:	Civil No. 890901724
	:	
LARRY D. BENSON and	:	Honorable David S. Young
CONNIE A. BENSON, dba	:	
TRI-B-SUPPLY,	:	
	:	
Defendants.	:	

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Kasco Services Corporation's ("Kasco") hearing on its Temporary Restraining Order, granted on March 17, 198, and Kasco's motion for preliminary injunction came before the Court for hearing at the hour of 2:00 p.m. on Tuesday, March 21, 1989. Kasco was represented by its counsel of record, Michael F. Richman and David L. Arrington, and defendants were represented by Reid Tateoka. The Court, having read the pleadings and affidavits submitted by the parties and having heard the proffered evidence and arguments of counsel, and for good cause shown,

IT IS HEREBY ORDERED that Kasco's motion for preliminary injunction is granted over defendants Larry D. Benson and Larry D. Benson, dba, Tri-B-Supply, or any partnership with Larry Benson as a partner and denied with respect to defendant Connie A. Benson, and that Mr. Benson and Larry D. Benson dba, Tri-B-Supply or any partnership with Larry Benson as a partner shall hereafter be prohibited for a period of eighteen months from August, 1988 from doing the following:

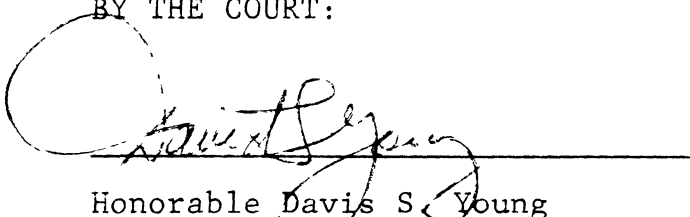
- (a) contacting or calling upon, either directly or indirectly, any of Kasco's customers for the purpose of soliciting, selling, renting, and/or servicing products in competition with Kasco;
- (b) soliciting, diverting, taking away or attempting to take away, either directly or indirectly, any of Kasco's customers or the business or patronage of any such customers for products and services which Kasco provides;
- (c) engaging either directly or indirectly or in any manner in the business of selling, renting or servicing products in competition with Kasco in the geographical territory in which Mr. Benson had called upon Kasco's customers during the period of his employment with Kasco; and
- (d) communicating, conversing, revealing, discussing,

aiding, or assisting his wife, defendant Connie A. Benson, in engaging in the business of selling, renting or servicing products in competition with Kasco or otherwise contacting, calling upon, soliciting or diverting Kasco's customers, for the purpose of competing with Kasco or allowing others to obtain such customers as set forth more fully in subparts a through c of this Order, or in any manner circumventing this Order through the use of Mrs. Benson or anyone else.

IT IS FURTHER ORDERED that Kasco shall post security in the amount of \$50,000.

DATED this 10<sup>th</sup> day of April, 1989.

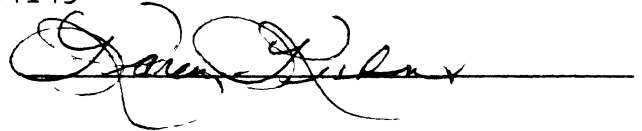
BY THE COURT:

  
Honorable Davis S. Young

MAILING CERTIFICATE

This is to certify that on the 31st day of March, 1989, a true and correct copy of the foregoing Order of Preliminary Injunction was mailed first class, postage prepaid to the following:

Michael F. Richman  
David L. Arrington  
VAN COTT, BAGLEY, CORNWALL & McCARTHY  
50 South Main street  
Suite 1600  
Salt Lake City, Utah 84145

A handwritten signature in dark ink, appearing to read "David L. Arrington", is written over a horizontal line.

REID26

Tab L

Reid Tateoka (3193)  
McKAY, BURTON & THURMAN  
Attorneys for Defendant  
1200 Kennecott Building  
10 East South Temple Street  
Salt Lake City, Utah 84133  
Telephone: (801) 521-4135

FILED DISTRICT COURT  
Third Judicial District

MAY 09 1990

SALT LAKE COUNTY

By \_\_\_\_\_  
Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY,  
STATE OF UTAH

---

KASCO SERVICES CORPORATION,	:	
	:	
Plaintiff,	:	ORDER
vs.	:	
	:	
LARRY D. BENSON,	:	
CONNIE A. BENSON	:	Civil No. 89-0901724
dba TRI-B-SUPPLY,	:	
	:	Judge David S. Young
Defendants.	:	

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The above-entitled matter came on for Hearing on April 5, 1990. Plaintiffs were represented by their counsel David L. Arrington and Michael F. Richman, Defendants were present and represented by their counsel, Reid Tateoka. The Court having heard the argument of counsel and having reviewed the Affidavits, Motions, Memorandums and pleadings on file, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's Motion to Modify the Preliminary Injunction of Larry Benson is denied.
2. Plaintiff's Motion to Amend the Complaint is denied.
3. Plaintiff's Motion for Preliminary Injunction as to Connie Benson is denied.

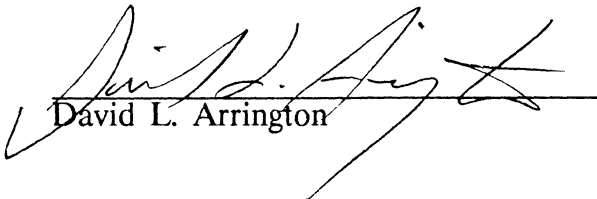
4. Plaintiff's Motion for Preliminary Injunction as to Robert Benson is denied.

DATED this 9<sup>th</sup> day of ~~April~~<sup>May</sup> 1990.

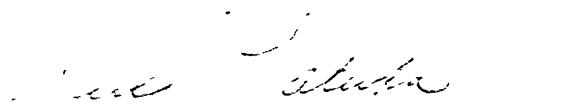
BY THE COURT:

  
District Court Judge

APPROVED AS TO FORM

  
David L. Arrington

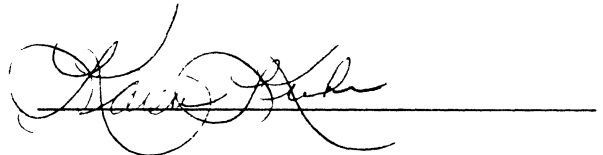
APPROVED AS TO FORM

  
Reid Tateoka

MAILING CERTIFICATE

This is to certify that on the 9<sup>th</sup> day of April, 1990, a true and correct copy of the foregoing Order was mailed first class, postage prepaid to the following:

Michael F. Richman  
David L. Arrington  
Casey K. McGarvey  
VAN COTT, BAGLEY, CORNWALL & McCARTHY  
50 South Main Street, Suite 1600  
P.O. Box 45340  
Salt Lake City, Utah 84145



kk\rt\benenson1.ord

Tab M

SUPREME COURT OF UTAH

STATE OF UTAH

SALT LAKE CITY, UTAH

AUGUST 14, 1990

OFFICE OF THE CLERK

---

Michael F. Richman, Esq.  
David L. Arrington, Esq.  
VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
50 South Main Street, Suite 1600  
P.O. Box 45340  
Salt Lake City, Utah 84145

Kasco Services Corporation,  
Plaintiff and Appellant,  
v.  
Larry D. Benson and  
Connie A. Benson dba  
Tri-B-Supply,  
Defendants and Appellees.

No. 900260

THIS DAY, Motion for injuction granted, pending determination of interlocutory appeal by this court. The injuction shall enjoin Tri-B Supply, Larry D. Benson and Connie A. Benson and Robert Benson from further soliciting or accepting business from Kasco's customers. The case is remanded to the district court for the purpose of setting a bond to be posted by Kasco.

Geoffrey J. Butler

Tab N

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IN THE SUPREME COURT OF THE STATE OF UTAH

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50-00  
01440121 Regular May Term, 1990

July 17, 1990

Kasco Services Corporation,  
Plaintiff and Appellant,  
v.  
Larry D. Benson and  
Connie A. Benson dba  
Tri-B-Supply,  
Defendants and Appellees.

No. 900260

890901724CN

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Appellant's petition for Interlocutory Appeal having been considered, and the Court being sufficiently advised in the premises, it is ordered that an Interlocutory Appeal be, and the same is, granted as prayed.

Geoffrey J. Butler, Clerk

FILED DISTRICT COURT  
Third Judicial District

JUL 27 1990

SALT LAKE COUNTY  
By L. Dean Parker