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Jo-Ann W. Kilpatrick, George L. Gonzales, Joseph C. Lee, Sidney W. Foulger, Brent K. Pratt, Mountain West Television Company, MWT Corporation v. Wiley, Rein and Fielding, Richard E. Wiley : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Jo-Ann W. Kilpatrick, George L. Gonzales, Joseph C. Lee, Sidney W. Foulger, Brent K. Pratt, Mountain West Television Company, MWT Corporation v. Wiley, Rein and Fielding, Richard E. Wiley*, No. 900901064.00 (Utah Supreme Court, 1990).
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IN THE UTAH SUPREME COURT

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID B.
LEE, MARILYN D. LEE, SIDNEY W.
FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general partnership, and
MWT CORPORATION, a Utah corporation,

Appellees/Plaintiffs,
vs.

WILEY, REIN & FIELDING, a
professional law partnership, and
RICHARD E. WILEY,

Appellants/Defendants.

**ADDENDUM TO
BRIEF OF APPELLANTS
WILEY, REIN & FIELDING and
RICHARD E. WILEY**

Appeal Nos. 990784 SC
990785 SC

Trial Court No. 900901064 CV

URAP 29(b) Priority -- 15

**APPEAL FROM THE JANUARY 19, 1999 JUDGMENT ON SPECIAL
VERDICTS AND AUGUST 26, 1999 ORDER DENYING DEFENDANTS
POST-TRIAL MOTIONS ISSUED BY THE HONORABLE
GLENN K. IWASAKI OF THE THIRD JUDICIAL DISTRICT COURT**

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FILED

JUN 16 2000

**CLERK SUPREME COURT
UTAH**

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16. DX72 July 28, 1986 Communications Partners, Ltd. offer of financing for Channel 13 (R.030686-030700).
17. DX112 Nov. 18, 1996 Credit Agreement for MWT Ltd. (R.031102-031146).
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TITLE 78. JUDICIAL CODE
PART III. Procedure

CHAPTER 27. MISCELLANEOUS PROVISIONS

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Current through End of 1999 General Session

78-27-38 Comparative negligence.

- (1) The fault of a person seeking recovery shall not alone bar recovery by that person.
- (2) A person seeking recovery may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit, exceeds the fault of the person seeking recovery prior to any reallocation of fault made under Subsection 78-27-39(2).
- (3) No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant under Section 78-27-39.
- (4) (a) In determining the proportionate fault attributable to each defendant, the fact finder may, and when requested by a party shall, consider the conduct of any person who contributed to the alleged injury regardless of whether the person is a person immune from suit or a defendant in the action and may allocate fault to each person seeking recovery, to each defendant, and to any other person whether joined as a party to the action or not and whose identity is known or unknown to the parties to the action, including a person immune from suit who contributed to the alleged injury. In the case of a motor vehicle accident involving an unidentified motor vehicle, the existence of the vehicle shall be proven by clear and convincing evidence which may consist solely of one person's testimony.
(b) Any fault allocated to a person immune from suit is considered only to accurately determine the fault of the person seeking recovery and a defendant and may not subject the person immune from suit to any liability, based on the allocation of fault, in this or any other action.

EDIT

History: C. 1953, 78-27-38, enacted by L. 1986, ch. 199, § 2; 1994, ch. 221, § 1999, ch. 95, § 2.

ST s 78-27-38

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C.A. 1953 § 78-27-38

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78-27-39 Separate special verdicts on total damages and proportion of fault.

(1) The trial court may, and when requested by any party shall, direct the jury, if any, to find separate special verdicts determining the total amount of damages sustained and the percentage or proportion of fault attributable to each person seeking recovery, to each defendant, and to any other person whether joined as a party to the action or not and whose identity is known or known to the parties to the action, including a person immune from suit who contributed to the alleged injury.

(2) (a) If the combined percentage or proportion of fault attributed to all persons immune from suit is less than 40%, the trial court shall reduce that percentage or proportion of fault to zero and reallocate that percentage or proportion of fault to the other parties in proportion to the percentage or proportion of fault initially attributed to each party by the fact finder. After this reallocation, cumulative fault shall equal 100% with the persons immune from suit being allocated no fault.

(b) If the combined percentage or proportion of fault attributed to all persons immune from suit is 40% or more, that percentage or proportion of fault attributed to persons immune from suit may not be reduced under Subsection (2) (a).

(c) (i) The jury may not be advised of the effect of any reallocation under Subsection (2).

(ii) The jury may be advised that fault attributed to persons immune from suit may reduce the award of the person seeking recovery.

(3) A person immune from suit may not be held liable, based on the allocation of fault, in this or any other action.

EDIT

History: C. 1953, 78-27-39, enacted by L. 1986, ch. 199, § 3; 1994, ch. 221, §

ST s 78-27-39

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1999, ch. 95, § 3.

C.A. 1953 § 78-27-39

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-27-40 Amount of liability limited to proportion of fault --No
contribution.

(1) Subject to Section 78-27-38, the maximum amount for which a defendant
be liable to any person seeking recovery is that percentage or proportion
the damages equivalent to the percentage or proportion of fault attributed
that defendant.

(2) A defendant is not entitled to contribution from any other person.

(3) A defendant or person seeking recovery may not bring a civil action
against any person immune from suit to recover damages resulting from the
location of fault under Section 78-27-38.

EDIT

story: C. 1953, 78-27-40, enacted by L. 1986, ch. 199, § 4; 1994, ch. 221, §

C.A. 1953 § 78-27-40

ST § 78-27-40

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-27-41 Joinder of defendants.

(1) A person seeking recovery, or any defendant who is a party to the litigation, may join as a defendant, in accordance with the Utah Rules of Civil Procedure, any person other than a person immune from suit who may have caused or contributed to the injury or damage for which recovery is sought, for the purpose of having determined their respective proportions of fault.

(2) A person immune from suit may not be named as a defendant, but fault may be allocated to a person immune from suit solely for the purpose of accurately determining the fault of the person seeking recovery and a defendant. A person immune from suit is not subject to any liability, based on the allocation of fault, in this or any other action.

(3) (a) A person immune from suit may intervene as a party under Rule 24, Utah Rules of Civil Procedure, regardless of whether or not money damages are sought.

(b) A person immune from suit who intervenes in an action may not be held liable for any fault allocated to that person under Section 78-27-38.

(4) A party seeking to allocate fault shall identify in its answer those persons then known to that party who may be at fault and shall identify within reasonable time any additional persons later discovered to have been at fault.

EDIT

History: C. 1953, 78-27-41, enacted by L. 1986, ch. 199, § 5; 1994, ch. 221, § 1999, ch. 95, § 4.

C.A. 1953 § 78-27-41

ST § 78-27-41

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-27-42 Release to one defendant does not discharge other defendants.

A release given by a person seeking recovery to one or more defendants does
not discharge any other defendant unless the release so provides.

EDIT

History: C. 1953, 78-27-42, enacted by L. 1986, ch. 199, § 6.

C.A. 1953 § 78-27-42

ST § 78-27-42

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-27-43 Effect on immunity, exclusive remedy, indemnity, contribution.

Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any
common law or statutory immunity from liability, including, but not limited to,
governmental immunity as provided in Title 63, Chapter 30, and the exclusive
remedy provisions of Title 34A, Chapter 3, Workers' Compensation Act. Nothing

Sections 78-27-37 through 78-27-42 affects or impairs any right to
indemnity or contribution arising from statute, contract, or agreement.

EDIT

History: C. 1953, 78-27-43, enacted by L. 1986, ch. 199, § 7; 1996, ch. 240, §
5; 1999, ch. 95, § 5.

C.A. 1953 § 78-27-43

ST § 78-27-43

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PART III. Procedure

CHAPTER 27. MISCELLANEOUS PROVISIONS

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-27-37 Definitions.

As used in Sections 78-27-37 through 78-27-43:

(1) "Defendant" means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

(2) "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.

(3) "Person immune from suit" means:

(a) an employer immune from suit under Title 34A, Chapter 3, Workers' Compensation Act, or Chapter 3a, Utah Occupational Disease Act; and

(b) a governmental entity or governmental employee immune from suit pursuant to Title 63, Chapter 30, Governmental Immunity Act.

(4) "Person seeking recovery" means any person seeking damages or reimbursement on its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

EDIT

story: C. 1953, 78-27-37, enacted by L. 1986, ch. 199, § 1; 1994, ch. 221, § 1996, ch. 240, § 374; 1999, ch. 95, § 1.

C.A. 1953 § 78-27-37

ST § 78-27-37

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Tab 2

IMAGED

FILED DISTRICT COURT
Third Judicial District

JAN 19 1999

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID B.
LEE, MARILYN D. LEE, SIDNEY W.
FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general partner-
ship, and MWT CORPORATION, a Utah
corporation,

Plaintiffs,

vs.

WILEY, REIN & FIELDING, a
professional law partnership,
and RICHARD E. WILEY,

Defendants.

JUDGMENT ON SPECIAL VERDICTS

Case No. 900901064CV

Judge Glenn K. Iwasaki

ENTERED IN REGISTRY
OF JUDGMENTS

DATE

1-25-99

This action came on for trial before the Court and a jury beginning on September 15, 1998, and concluding on December 14, 1998, the Honorable Glenn K. Iwasaki presiding. On December 11, 1998, the jury completed a special verdict form containing various interrogatories, a copy of which is attached hereto as Exhibit "A." Thereafter, on December 14, 1998, the jury completed a special verdict form regarding punitive damages, a copy of which is attached hereto as Exhibit "B." The Court accepted both of the jury's special verdicts.

20534

Based upon the answers given in response to the interrogatories contained in the jury's special verdicts, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Judgment is hereby entered against defendant Wiley, Rein & Fielding and in favor of the listed plaintiffs for compensatory damages as follows:

<u>Party</u>	<u>Amount</u>
Jo-Ann W. Kilpatrick	\$ 2,234,528.00
Joseph C. Lee	8,250,083.00
Sidney W. Foulger	6,344,971.00
George L. Gonzales	1,824,000.00
MWT Corporation	92,000.00

2. Judgment is hereby entered against defendant Richard E. Wiley in favor of MWT Corporation for compensatory damages in the amount of \$92,000.00.

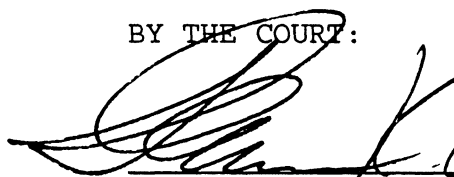
3. Judgment is hereby entered against defendant Richard E. Wiley in favor of MWT Corporation for punitive damages in the amount of \$150,000.00.

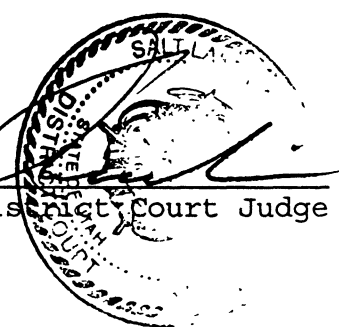
4. Costs shall be awarded in the amount and to such parties as determined by the Court in accordance with Rule 54(d) and (e) of the Utah Rules of Civil Procedure.

5. Each of the above judgment amounts shall bear post-judgment interest from December 15, 1998, at the rate of 7.468%.

DATED AND ENTERED this 19th day of January, 1999.

BY THE COURT:


Glenn K. Iwasaki, District Court Judge



Approved as to form:

BERMAN GAUFIN TOMSIC & SAVAGE

By 

Peggy A. Tomsic
Counsel for Defendants

Date 1/19/99

N:\15556\1\KAC\JUDGMENT.PLD

Tab 3

FILED DISTRICT COURT
Third Judicial District

DEC 14 1998

SALT LAKE COUNTY

Deputy Clerk

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

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID B.
LEE, MARILYN D. LEE, SIDNEY W.
FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general partnership, and
MWT CORPORATION, a Utah corporation,

Plaintiffs,

vs.

WILEY, REIN & FIELDING, a professional
law partnership, and RICHARD E. WILEY,

Defendants.

**SPECIAL VERDICT FORM
REGARDING PUNITIVE
DAMAGES**

Case No. 900901064CV

Judge Glenn K. Iwasaki

Now that you have determined that the plaintiffs are entitled to recover punitive damages from the defendants Richard E. Wiley and Wiley, Rein & Fielding, state the amount of punitive damages in accordance with the Court's instructions you award in favor of each of the following plaintiffs and against each of the defendants. The amounts you fill in in the questions below should not be duplicative. In other words, you should separately state the amount of punitive damages against each defendant and in favor of each plaintiff. Six members of the jury may find and return a verdict. At least six jurors must agree to the answers listed below. As soon as six or more of you have agreed on the answers to the amounts below and you have filled in those

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answers on the form, have the verdict signed and dated by your foreperson and notify the bailiff that you have done so.

State the amount of punitive damages that you award separately against Richard E. Wiley for the following plaintiff:

MWT Corporation \$ 150,000

State the amount of punitive damages that you award separately against Wiley, Rein & Fielding for the following plaintiffs:

Jo-Ann W. Kilpatrick \$ - 0 -


Joseph C. Lee \$ - 0 -

Sidney W. Foulger \$ - 0 -

George L. Gonzales \$ - 0 -

MWT Corporation \$ - 0 -

DATED this 14 day of December, 1998.


Foreperson

Tab 4

DEC 11 1998

SALT LAKE COUNTY

By

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID B.
LEE, MARILYN D. LEE, SIDNEY W.
FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K. PRATT,
MOUNTAIN WEST TELEVISION
COMPANY, a Utah general partnership, and
MWT CORPORATION, a Utah corporation,

Plaintiffs,

vs.

WILEY, REIN & FIELDING, a professional law
partnership, and RICHARD E. WILEY,

Defendants.

SPECIAL VERDICT FORM

Case No. 900901064CV
Judge Glenn K. Iwasaki

MEMBERS OF THE JURY:

Please answer the following questions from a preponderance of the evidence, unless you are instructed to do otherwise. If you find the evidence preponderates in favor of the issue presented, answer "Yes." If you find the evidence is so equally balanced that you cannot determine a preponderance of the evidence, or if you find that the evidence preponderates against the issue presented, answer "No." Also, any damages assessed must be proven by a preponderance of the evidence.

Six members of the jury may find and return a verdict. At least six jurors must agree on the answer to each question, but it need not be the same six on each question. As soon as six or more of you have agreed on the answers to the questions below and you have filled in those answers on the form, have the verdict signed and dated by your foreperson and notify the bailiff that you have done so.

Issues Regarding Liability

1. With regard to each of the plaintiffs listed below, do you find, by a preponderance of the evidence, that the plaintiff had an attorney-client relationship with the defendant Wiley, Rein & Fielding? If you find that the plaintiff had an attorney-client relationship with defendant Wiley, Rein & Fielding, answer the question "Yes." If you find the plaintiff did not have an attorney-client relationship with defendant Wiley, Rein & Fielding, answer the question "No."

ANSWER:	<u>Yes</u>	<u>No</u>
Jo-Ann W. Kilpatrick	<u>X</u>	_____
Joseph C. Lee	<u>X</u>	_____
Sidney W. Foulger	<u>X</u>	_____
George L. Gonzales	<u>X</u>	_____
David B. Lee	<u>X</u>	_____
Marilyn D. Lee	<u>X</u>	_____
Clayton F. Foulger	<u>X</u>	_____
Bryant F. Foulger	<u>X</u>	_____
Brent K. Pratt	<u>X</u>	_____
MWT Corporation	<u>X</u>	_____
Mountain West Television Company	<u>X</u>	_____

(Defendant Wiley, Rein & Fielding does not dispute that it had an attorney-client relationship with plaintiff Mountain West Television Company from the spring of 1981 through November 20, 1986.)

2. Answer this question only with respect to those plaintiffs for whom you answered "Yes" in Question No. 1 above. Do not answer this question with respect to any plaintiff for whom

you answered "No" in Question No. 1 above.

For each plaintiff, if any, for whom you answered "Yes" in Question No. 1 above (including Mountain West Television Company), do you find, by a preponderance of the evidence, that the defendant Wiley, Rein & Fielding breached its fiduciary duties to such plaintiff? Mark your answer, either "Yes" or "No":

ANSWER:	<u>Yes</u>	<u>No</u>
Jo-Ann W. Kilpatrick	<u>X</u>	_____
Joseph C. Lee	<u>X</u>	_____
Sidney W. Foulger	<u>X</u>	_____
George L. Gonzales	<u>X</u>	_____
David B. Lee	<u>X</u>	_____
Marilyn D. Lee	<u>X</u>	_____
Clayton F. Foulger	<u>X</u>	_____
Bryant F. Foulger	<u>X</u>	_____
Brent K. Pratt	<u>X</u>	_____
MWT Corporation	<u>X</u>	_____
Mountain West Television Company	<u>X</u>	_____

3. Answer this question only with respect to those plaintiffs for whom you answered "Yes" in Question No. 2 above. Do not answer this question with respect to any plaintiff for whom you answered "No" in Question No. 2 above.

For each plaintiff, if any, for whom you answered "Yes" in Question No. 2 above, do you find, by a preponderance of the evidence, that the defendant Wiley, Rein & Fielding's breaches of fiduciary duties actually and proximately caused such plaintiff injury and damage? Mark your answer,

either "Yes" or "No":

ANSWER:	<u>Yes</u>	<u>No</u>
Jo-Ann W. Kilpatrick	<u>X</u>	_____
Joseph C. Lee	<u>X</u>	_____
Sidney W. Foulger	<u>X</u>	_____
George L. Gonzales	<u>X</u>	_____
David B. Lee	<u>X</u>	_____
Marilyn D. Lee	<u>X</u>	_____
Clayton F. Foulger	<u>X</u>	_____
Bryant F. Foulger	<u>X</u>	_____
Brent K. Pratt	<u>X</u>	_____
MWT Corporation	<u>X</u>	_____
Mountain West Television Company	<u>X</u>	_____

4. Answer this question with respect to all plaintiffs listed below regardless of your answers to Questions 1-3 above.

With regard to each of the plaintiffs listed below, do you find, by a preponderance of the evidence, that the plaintiff had an attorney-client relationship with the defendant Richard E. Wiley? If you find that the plaintiff had an attorney-client relationship with defendant Richard E. Wiley, answer the question "Yes." If you find the plaintiff did not have an attorney-client relationship with defendant Richard E. Wiley, answer the question "No."

ANSWER:	<u>Yes</u>	<u>No</u>
Jo-Ann W. Kilpatrick	_____	<u>X</u>
Joseph C. Lee	_____	<u>X</u>

Sidney W. Foulger	_____	<u>X</u>
George L. Gonzales	_____	<u>X</u>
David B. Lee	_____	<u>X</u>
Marilyn D. Lee	_____	<u>X</u>
Clayton F. Foulger	_____	<u>X</u>
Bryant F. Foulger	_____	<u>X</u>
Brent K. Pratt	_____	<u>X</u>
MWT Corporation	<u>X</u>	_____
Mountain West Television Company	_____	<u>X</u>

5. Answer this question only with respect to those plaintiffs for whom you answered "Yes" in Question No. 4 above. Do not answer this question with respect to any plaintiff for whom you answered "No" in Question No. 4 above.

For each plaintiff, if any, for whom you answered "Yes" in Question No. 4 above, do you find, by a preponderance of the evidence, that the defendant Richard E. Wiley breached his fiduciary duties as a lawyer to such plaintiff? Mark your answer, either "Yes" or "No":

ANSWER:	<u>Yes</u>	<u>No</u>
Jo-Ann W. Kilpatrick	_____	_____
Joseph C. Lee	_____	_____
Sidney W. Foulger	_____	_____
George L. Gonzales	_____	_____
David B. Lee	_____	_____
Marilyn D. Lee	_____	_____

Clayton F. Foulger	_____	_____
Bryant F. Foulger	_____	_____
Brent K. Pratt	_____	_____
MWT Corporation	<u>X</u>	_____
Mountain West Television Company	_____	_____

6. Answer this question only with respect to those plaintiffs for whom you answered “Yes” in Question No. 5 above. Do not answer this question with respect to any plaintiff for whom you answered “No” in Question No. 5 above.

For each plaintiff, if any, for whom you answered “Yes” in Question No. 5 above, do you find, by a preponderance of the evidence, that the defendant Richard E. Wiley’s breaches of fiduciary duties actually and proximately caused such plaintiff injury and damage? Mark your answer, either “Yes” or “No”:

ANSWER:	<u>Yes</u>	<u>No</u>
Jo-Ann W. Kilpatrick	_____	_____
Joseph C. Lee	_____	_____
Sidney W. Foulger	_____	_____
George L. Gonzales	_____	_____
David B. Lee	_____	_____
Marilyn D. Lee	_____	_____
Clayton F. Foulger	_____	_____
Bryant F. Foulger	_____	_____
Brent K. Pratt	_____	_____
MWT Corporation	<u>X</u>	_____
Mountain West Television Company	_____	_____

Issues Regarding Damages

7. Answer this Question 7a-d only if your answer to Question 3 and/or 6 is "Yes," and only with respect to each plaintiff for whom you answered "Yes" in Question 3 and/or 6. For purposes of all of this Question 7a-d, do not subtract any amounts due to the apportionments of fault to the plaintiffs, if any, pursuant to your answers to Questions 8 - 18, below.

- a. State the amount of damages, if any, sustained by the following plaintiffs attributable to their alleged lost *ownership interest* in Channel 13. (Note: In your answer to this Question 7.a., state the amount, if any, for Mountain West Television Company **OR** the amount, if any, for the four individual partners of Mountain West Television Company, **but not for both** Mountain West Television Company **AND** its four partners.)

ANSWER: Mountain West Television Company \$ _____
Jo-Ann W. Kilpatrick \$ 1,968,000
Joseph C. Lee \$ 7,216,000
Sidney W. Foulger \$ 5,576,000
George L. Gonzales \$ 1,640,000

- b. State the amount of damages, if any, sustained by the following plaintiffs attributable to their alleged lost *cash distributions (stream of income)* from Channel 13. (Note: In your answer to this Question 7.b., state the amount, if any, for Mountain West Television Company **OR** the amount, if any, for the four individual partners of Mountain West Television Company, **but not for both** Mountain West Television Company **AND** its four partners.)

ANSWER: Mountain West Television Company \$ _____
Jo-Ann W. Kilpatrick \$ 768,000

Joseph C. Lee	\$ <u>2,816,000</u>
Sidney W. Foulger	\$ <u>2,176,000</u>
George L. Gonzales	\$ <u>640,000</u>

- c. State the amount of damages, if any, sustained by the following plaintiffs attributable to their alleged lost employment income.

ANSWER: Joseph C. Lee	\$ <u>280,604</u>
Jo-Ann W. Kilpatrick	\$ <u>57,160</u>
Sidney W. Foulger	\$ <u>179,214</u>

- d. State the amount of damages, if any, sustained by the following plaintiffs attributable to the alleged "cash call."

ANSWER: Jo-Ann W. Kilpatrick	\$ _____
Joseph C. Lee	\$ _____
Sidney W. Foulger	\$ _____
George L. Gonzales	\$ _____
David B. Lee	\$ _____
Marilyn D. Lee	\$ _____
Clayton F. Foulger	\$ _____
Bryant F. Foulger	\$ _____
Brent K. Pratt	\$ _____
MWT Corporation	\$ <u>184,000</u>

Issues Regarding Apportionment of Fault

For purposes of Questions 8-18, you must consider the percentage of each plaintiffs' total damages, if any, that was actually and proximately caused by each of the defendants, and the percentage, if any, that was actually and proximately caused by each particular plaintiff, as indicated

in the specific questions below.

8. If you have found that plaintiff Joseph C. Lee has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Joseph C. Lee's damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to Joseph C. Lee on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to Joseph C. Lee on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Joseph C. Lee	<u>20</u> %
Defendant Richard E. Wiley	<u>0</u> %
Defendant Wiley, Rein & Fielding	<u>80</u> %
TOTAL = 100%	

9. If you have found that plaintiff Jo-Ann W. Kilpatrick has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Jo-Ann W. Kilpatrick's damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to Jo-Ann W. Kilpatrick on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to Jo-Ann W. Kilpatrick on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Jo-Ann W. Kilpatrick	<u>20</u> %
Defendant Richard E. Wiley	<u>0</u> %
Defendant Wiley, Rein & Fielding	<u>80</u> %
TOTAL = 100%	

10. If you have found that plaintiff George L. Gonzales has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff George L. Gonzales' damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to George L. Gonzales on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to George L. Gonzales on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff George L Gonzales	<u>20</u> %
Defendant Richard E. Wiley	<u>0</u> %
Defendant Wiley, Rein & Fielding	<u>80</u> %

TOTAL = 100%

11. If you have found that plaintiff Sidney W. Foulger has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Sidney W. Foulger's damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to Sidney W. Foulger on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to Sidney W. Foulger on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Sidney W. Foulger	<u>20</u> %
Defendant Richard E. Wiley	<u>0</u> %
Defendant Wiley, Rein & Fielding	<u>80</u> %

TOTAL = 100%

12. If you have found that plaintiff David B. Lee has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff David B. Lee's damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to David C. Lee on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to David B. Lee on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff David B. Lee	_____%
Defendant Richard E. Wiley	_____%
Defendant Wiley, Rein & Fielding	_____%
TOTAL = 100%	

13. If you have found that plaintiff Marilyn D. Lee has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Marilyn D. Lee's damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to Marilyn D. Lee on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to David B. Lee on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Marilyn D. Lee	_____%
Defendant Richard E. Wiley	_____%
Defendant Wiley, Rein & Fielding	_____%
TOTAL = 100%	

14. If you have found that plaintiff Clayton F. Foulger has any sustained damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Clayton F. Foulger's damages to total 100%, what percentage of fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to Clayton F. Foulger on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to Clayton F. Foulger on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Clayton F. Foulger	_____ %
Defendant Richard E. Wiley	_____ %
Defendant Wiley, Rein & Fielding	_____ %
TOTAL = 100%	

15. If you have found that plaintiff Bryant F. Foulger has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Bryant F. Foulger's damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to Bryant F. Foulger on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to Bryant F. Foulger on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Bryant F. Foulger	_____ %
Defendant Richard E. Wiley	_____ %
Defendant Wiley, Rein & Fielding	_____ %
TOTAL = 100%	

16. If you have found that plaintiff Brent K. Pratt has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Brent K. Pratt's damages to total 100%, what percentage of that fault is attributable to the following individuals and entity? If you did not answer "Yes" with respect to Brent K. Pratt on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to Brent K. Pratt on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Brent K. Pratt %

Defendant Richard E. Wiley %

Defendant Wiley, Rein & Fielding %

TOTAL = 100%

17. If you have found that plaintiff Mountain West Television Company has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff Mountain West Television Company's damages to total 100%, what percentage of that fault is attributable to the following individual and entities? If you did not answer "Yes" with respect to Mountain West Television Company on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to Mountain West Television Company on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff Mountain West Television Co. %

Defendant Richard E. Wiley %

Defendant Wiley, Rein & Fielding %

TOTAL = 100%

18. If you have found that plaintiff MWT Corporation has sustained any damages pursuant to Question 7a-d, then, and only then, answer the following question:

Assuming all of the fault that actually and proximately caused plaintiff MWT Corporation's damages to total 100%, what percentage of that fault is attributable to the following individual and entities? If you did not answer "Yes" with respect to MWT Corporation on Question No. 3, then you must write in "0" for Wiley, Rein & Fielding. If you did not answer "Yes" with respect to MWT Corporation on Question No. 6, then you must write in "0" for Richard E. Wiley. Otherwise, please answer as you feel is appropriate.

Plaintiff MWT Corporation 0 %

Defendant Richard E. Wiley 50 %

Defendant Wiley, Rein & Fielding 50 %

TOTAL = 100%

Issues Regarding Punitive Damages

19. As to each plaintiff for whom you answered "Yes" in Question 3 above, and for whom you awarded damages in Question 7a-d above, do you find by clear and convincing evidence that any such plaintiff is entitled to recover punitive damages from defendant Wiley, Rein & Fielding? (Do not answer this question with respect to any plaintiff for whom you did not answer "Yes" in Question No. 3, or for whom you did not award damages in Question 7a-d.)

Mountain West Television Company	Yes _____	No _____
----------------------------------	-----------	----------

Jo-Ann W. Kilpatrick	Yes <u>X</u>	No _____
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Joseph C. Lee	Yes <u>X</u>	No _____
---------------	--------------	----------

Sidney W. Foulger	Yes <u>X</u>	No _____
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George L. Gonzales	Yes <u>X</u>	No _____
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David B. Lee	Yes _____	No _____
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Marilyn D. Lee	Yes _____	No _____
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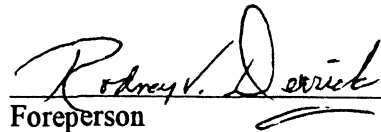
Clayton F. Foulger	Yes _____	No _____
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Bryant F. Foulger	Yes _____	No _____
Brent K. Pratt	Yes _____	No _____
MWT Corporation	Yes <u>✓</u>	No _____

20. As to each plaintiff for whom you answered "Yes" in Question 6 above, and for whom you awarded damages in Question 7a-d above, do you find by clear and convincing evidence that any such plaintiff is entitled to recover punitive damages from defendant Richard E. Wiley? (Do not answer this question with respect to any plaintiff for whom you did not answer "Yes" in Question No. 6, or for whom you did not award damages in Question 7a-d.)

Mountain West Television Company	Yes _____	No _____
Jo-Ann W. Kilpatrick	Yes _____	No _____
Joseph C. Lee	Yes _____	No _____
Sidney W. Foulger	Yes _____	No _____
George L. Gonzales	Yes _____	No _____
David B. Lee	Yes _____	No _____
Marilyn D. Lee	Yes _____	No _____
Clayton F. Foulger	Yes _____	No _____
Bryant F. Foulger	Yes _____	No _____
Brent K. Pratt	Yes _____	No _____
MWT Corporation	Yes <u>✓</u>	No _____

DATED this 11 day of December, 1998.


 Foreperson

Tab 5

REED L. MARTINEAU (A2106)
REX E. MADSEN (A2052)
RICHARD A. VAN WAGONER (A4690)
KEITH A. CALL (A6708)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Plaintiffs
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Telecopy: (801) 363-0400

FILED DISTRICT COURT
Third Judicial District

AUG 26 1999
SALT LAKE COUNTY
By [Signature]
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID B.
LEE, MARILYN D. LEE, SIDNEY W.
FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general partner-
ship, and MWT CORPORATION, a Utah
corporation,

Plaintiffs,

vs.

WILEY, REIN & FIELDING, a
professional law partnership,
and RICHARD E. WILEY,

Defendants.

ORDER DENYING DEFENDANTS'
POST-TRIAL MOTIONS

Case No. 900901064CV

Judge Glenn K. Iwasaki

The Motion of defendant Wiley, Rein & Fielding for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for a New Trial or Remittitur, and defendant Richard E. Wiley's Motion for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for a New

Trial or Remittitur, and Defendants' Motion to Supplement the Record came on for hearing before the Court on July 1, 1999, at 8:30 a.m., the Honorable Glenn K. Iwasaki presiding. Plaintiffs were represented by Reed L. Martineau, Rex E. Madsen, Richard A. Van Wagoner and Keith A. Call of the law firm of Snow, Christensen & Martineau, and defendants were represented by Daniel L. Berman, Peggy A. Tomsic and David P. Williams of the law firm of Berman Gaufin Tomsic Savage & Campbell. The Court, having reviewed the memoranda and exhibits submitted by the parties, and having heard oral argument regarding defendants' motions, and having issued its Memorandum Decision on August 13, 1999, and good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

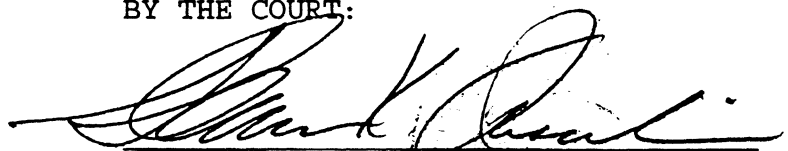
1. Defendant Wiley, Rein & Fielding's Motion for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for a New Trial or Remittitur is hereby denied;

2. Defendant Richard E. Wiley's Motion for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for a New Trial is hereby denied; and

3. Defendants' Motion to Supplement the Record is hereby denied.

DATED this 26th day of August, 1999.


BY THE COURT:

A handwritten signature in black ink, appearing to read "Glenn K. Iwasaki", written over a horizontal line.

Glenn K. Iwasaki,
District Court Judge

Approved as to form:

BERMAN GAUFIN TOMSIC SAVAGE & CAMPBELL

By 
Daniel L. Berman
Peggy A. Tomsic
David P. Williams
Attorneys for Defendants
Date 8/24/99

N:\15556\1\RLM\POST-TRI.ORI

Certificate of Service

Gloriann Egan states:

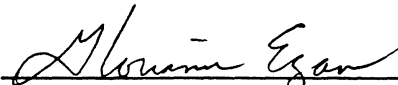
That she is employed in the law offices of Snow, Christensen & Martineau, attorneys for plaintiffs herein; that she served the attached proposed ORDER DENYING DEFENDANTS' POST-TRIAL MOTIONS, Case No. 900901064CV, Third Judicial District Court, Salt Lake County, State of Utah, upon the following parties by placing a true and correct copy thereof in an envelope to:

Mr. Daniel L. Berman
Ms. Peggy A. Tomsic
Mr. David P. Williams
Berman Gaufin Tomsic Savage & Campbell
50 South Main, Suite 1250
Salt Lake City, Utah 84144
Attorneys for Defendants

and causing the same to be

- ☒ mailed first class, postage pre-paid,
☐ hand delivered,

on the 25th day of August, 1999.



Gloriann Egan

Tab 6

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

FILED DISTRICT COURT
Third Judicial District

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID
B. LEE, MARILYN D. LEE, SIDNEY
W. FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general
partnership, and MWT
CORPORATION, a Utah corporation,

Plaintiff,

vs.

WILEY REIN & FIELDING, a
professional law partnership,
and RICHARD E. WILEY.

Defendant.

AUG 13 1999

SALT LAKE COUNTY

By

Deputy Clerk

MEMORANDUM DECISION

Case No. 900901064CV

Honorable GLENN K. IWASAKI

Court Clerk: Janet Banks

August 12, 1999

The above-entitled matter comes before the Court pursuant to (1) Defendant Wiley Rein & Fielding's ("WR&F") Motion for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for a New Trial or Remittitur, (2) Defendant Richard E. Wiley's ("Wiley") Motion for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for New Trial, (3) Defendants' Motion to Supplement the Record, (4) Plaintiff's Motion to Strike or in the Alternative to Tax Defendants' Itemized and Verified Cost Bill, and (5) Plaintiffs' Motion for Rule 54(d). The Court heard oral argument with respect to these motion on July 1, 1999. Following the hearing, the

matters were taken under advisement.

The Court having now considered the motions, memoranda, as well as the applicable statutory and case law, hereby enters the following ruling.

1. WR&F's Motion for Judgment Notwithstanding the Verdict; for Partial Judgments Notwithstanding the Verdict and for a New Trial or Remittitur

With this motion, WR&F argues the following: (1) the Court committed error in instructing the jury that WR&F had an attorney-client relationship with the plaintiff/limited partners of MWT, Ltd. from the date of conversion through the cash call; (2) WR&F is entitled to partial JNOV on each of the jury's damage awards; (3) under Utah's comparative fault statute-§78-27-37 Utah Code Ann-WR&F was entitled to have the comparative fault of all plaintiffs and all defendants allocated; (4) WR&F is entitled to a new trial on the ground the jury's award of \$22,800,000 in ownership and cash distribution damage was based on insufficient evidence and was excessive or alternatively, WR&F is entitled to a remittitur reducing the jury's damage award to a range between \$2-5 million; (5) the Court's instructions to the jury and the failure to instruct on the law erroneously and insufficiently advised the jury and misled them resulting in prejudice to WR&F, entitling defendant to a new trial; (6) WR&F is entitled to a partial judgment notwithstanding the verdict on the plaintiffs' claim for breach of

the duty of confidentiality as there was not sufficient evidence to submit that claim to the jury; and (7) the Court's admission of plaintiffs' exhibits relating to the indemnity agreement between defendants and Allstate is clear error in law commanding a new trial.

Plaintiffs oppose the motion arguing (1) the Court's instruction and partial directed verdict that WR&F had an attorney-client relationship with the plaintiffs/limited partners of MWT, Ltd. from the date of conversion to the cash call were correct pursuant to Margulies v. Upchurch, 696 P.2d 1195 (Utah 1985), (2) Schutz provided a more than adequate basis for the damage awards and the jury clearly did not derive its award amounts based on speculation, (3) the Court properly concluded that the jury should not compare the fault of each plaintiff 11 different times to determine the damages recoverable by each plaintiff, (4) all the verdicts were well within the range of evidence and should be upheld, (5) all instructions correctly reflected the current state of the law and accordingly, no prejudice was sustained by the defendant, and (6) based upon the testimony of Lee and Kilpatrick, it can easily be said the resulting advice of Wood and Quale indicated defendant misused information provided to them to the detriment of plaintiffs, accordingly breaching the duty of confidentiality. Finally, with respect to the indemnity

agreements, plaintiffs argue they demonstrated the control Northstar and Allstate had over WR&F at the time of the sale and accordingly, their admission was proper.

A. Applicable Standards

1. Judgment Notwithstanding the Verdict.

"A . . . judgment n.o.v. [is] justified only if, after looking at the evidence and all reasonable inferences in a light most favorable to the non-moving party, 'the trial court concludes that there is no competent evidence which would support a verdict in his favor.'" Cornia v. Wilcox, 898 P.2d 1379, 1383 (Utah 1995); Braithwaite v. West Valley City Corp., 921 P.2d 997, 999 (Utah 1996); Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060, 1066 (Utah 1996).

2. New Trial

"[A] trial judge may properly grant a new trial under Rule 59(a)(6) when he or she can reasonably conclude that the verdict is clearly against the weight of the evidence or that there is insufficient evidence to justify the verdict" Crookston v. Fire Ins. Exchange, 817 P.2d 789, 799 n.9 (Utah 1991). "To demonstrate that the evidence is insufficient to support the jury verdict, the one challenging the verdict must marshal the evidence in support of the verdict and then demonstrate that the evidence is insufficient when viewed in the light most favorable to the

verdict." Id.

3. Remittitur

The standard for granting a remittitur is whether the jury award is so excessive as to shock the conscience of the court. Dixon v. Prothro, 840 P.2d 491, 493 (Kan. 1992).

Turning first to the Court's peremptory instruction and partial directed verdict that WR&F had an attorney-client relationship with the plaintiff/limited partners of MWT, Ltd. from the date of conversion through the cash call, after reviewing the record as well as the applicable case law the Court is persuaded such was wholly appropriate for the reasons set forth in its August 20, 1998 Memorandum Decision. Moreover, in light of the fact that the jury awarded no damages to David Lee, Marilyn Lee, Clayton Foulger, Bryant Foulger or Brent Pratt, it appears this instruction had little if any effect on the jury's decision to award damages.

With respect to the jury's award of damages, after looking at all the evidence and drawing all reasonable inferences in a light most favorable to the non-moving party, the Court cannot say there was no competent evidence to support the verdict in plaintiffs' favor. Indeed, Schutz' analysis and resulting testimony were accurate under the applicable case law and provided a more than adequate basis upon which the jury could have reached its verdicts.

Next, on the issue of comparative fault, the Court is

convinced its conclusion, not allowing the jury to compare the fault of all plaintiffs and all defendants, is clearly supported by the plain language of the statute as well as the applicable case law. Accordingly, a new trial is not appropriate with respect to this issue.

As to the jury's award of \$22,8000,000, the Court is not persuaded such is clearly against the weight of the evidence or that there was insufficient evidence to justify the verdict. Indeed, the damage evidence in this case, including the Frazier, Gross & Kadelc, Barry Wood, CPL and Northstar analyses, as well as Schutz's reports and testimony, more than adequately support the verdicts which were all well within the range of evidence.

With respect to the Court's instructions to the jury, a review of the record in this matter demonstrates that the instructions, as given, set forth the applicable law. Additionally, on the issue of waiver and estoppel, these concepts were given in substance.

Focusing on the duty of confidentiality, both Joseph Lee and Jo-Ann Kilpatrick testified that they provided confidential information to the defendants. Moreover, according to the evidence at trial, Lee sent letters to Wood regarding the partner's limited financial resources and Wood sent those letters to Quale. In sum, viewing the evidence in the light most favorable to plaintiffs, it can easily be said that the resulting advice of Wood and Quale

indicated defendant misused this information to the detriment of plaintiffs.

Finally, after once again reviewing defendants' argument on the issue of the indemnity agreements, the Court concludes that such demonstrated the control Northstar and Allstate had over WR&F at the time of the sale and accordingly, their admission was proper for the limited purposes delineated by the Court.

Based upon the forgoing, WR&F's Motion for Judgment Notwithstanding the Verdict; for Partial Judgments Notwithstanding the Verdict and for a New Trial or Remittitur, is denied.

2. Richard E. Wiley's Motion for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for a New Trial

With this motion, Wiley argues the following: (1) there is insufficient evidence to sustain a finding that Wiley, individually, had an attorney-client relationship with the plaintiff, MWT Corp.; (2) there is insufficient evidence to sustain the jury's award of compensatory damages against Wiley in favor of the plaintiff, MWT Corp.; (3) because of the insufficiency of this evidence, there is no basis for any award of punitive damages; (4) there is insufficient evidence to sustain the jury's award of punitive damages against Wiley; and (5) in any event, the punitive damages award was excessive.

Plaintiffs oppose the motion arguing the evidence shows that

Wiley and his firm represented MWT, Ltd. and Northstar at all relevant times. Moreover, with respect to the jury's award of compensatory damages, plaintiffs assert this award, based on the cash call that defendant improperly issued to plaintiff on behalf of MWT Ltd. and Northstar, was more than adequately supported by the evidence in the record. Furthermore, argue plaintiffs, since the compensatory damages were appropriate, there is a sufficient basis for the jury's award of punitive damages. Indeed, with respect to the award of punitive damages, it is plaintiffs' position there is an abundance of evidence on the part of Wiley with respect to wilful misconduct and in fact, this has already been considered and ruled upon by this Court. Finally, as to the issue of the amount of the award, plaintiffs assert that such was well within the allowed range under Utah case law. Moreover, when all other relative factors are considered the damage amount was appropriate.

After reviewing the evidence and all reasonable inferences in a light most favorable to the plaintiffs, the Court concludes there was sufficient competent evidence which demonstrates that either an express or implied attorney-client relationship existed between Wiley and MWT Corp. at all relevant times.

With respect to the compensatory damages awarded by the jury, such were derived from the cash call defendants issued to

plaintiffs on behalf of MWT Ltd. and Northstar. Further, based upon the evidence in the record as well as the November 12, 1998 ruling of this Court with respect to defendants' statute of limitations argument, the jury's award was wholly appropriate. This having been said, the Court further concludes there was a sufficient basis for the jury's award of punitive damages against Wiley.

Turning to the actual amount of punitive damages awarded, the evidence in the record, again when viewed in the light most favorable to the plaintiffs, clearly and convincingly establishes the Wiley wilfully, knowingly, and recklessly disregarded the rights of MWT Corp. Moreover, the jury's punitive damage award of \$150,000 is well within the acceptable limits for punitive damages as set forth under the applicable case law. Further, when all other relevant factors are considered the damage amount was appropriate.

Based upon the forgoing, Wiley's Motion for Judgment Notwithstanding the Verdict, for Partial Judgments Notwithstanding the Verdict and for New Trial is denied.

3. Defendants' Motion to Supplement the Record

With this motion, defendants ask this Court pursuant to Rule 4-2-1(1) (A) of the code of Judicial Administration, to approve and designate Ms. Tomsic's affidavit as the official supplemental

record of the November 23, 1998 and December 4, 1998 hearings.

Plaintiffs oppose this motion arguing the parties were aware, or at least should have been aware, the proceedings on these dates were not being recorded. Moreover, assert plaintiffs, Ms. Tomsic's affidavit is incomplete and inaccurate.

Based upon the Court's recollection of events, it was clearly understood by the parties that these would be informal proceedings which were merely to provide guidance to the Court and the parties as both worked through the process of preparing jury instructions. Moreover, all parties understood they would be, and were, provided the opportunity at a later date to state their objections and arguments relating to the jury instructions on the record before a court reporter. Finally, in light of the wide disagreement between the parties with respect to the alleged content of the record, the Court does not find supplementing with Ms. Tomsic's affidavit would be in the best interests of justice. Accordingly, the motion is denied.

4. Plaintiffs' Motion to Strike, or in the Alternative to Tax Defendants' Itemized and Verified Cost Bill.

With this motion, plaintiffs seek an order from this Court striking defendants' itemized and verified cost bill. The grounds for this request are that defendants are not the prevailing parties and therefore, not entitled to their costs pursuant to Rule 54(d)(1). Alternatively, plaintiffs move this Court to tax

defendants' cost bill and reduce the costs claimed by defendants on the basis that the transcript fees and fees for exemplification and copying are contrary to law.

Defendants oppose the motion arguing they are the prevailing parties with regard to over half of the plaintiffs. Moreover, argue defendants, they are entitled to the costs of photocopying and exemplification charges as such were necessary for the defense of the case. Finally, with respect to transcript fees, defendants note that plaintiffs include such costs in their bill of costs and accordingly, cannot now claim defendants are not entitled to the same consideration.


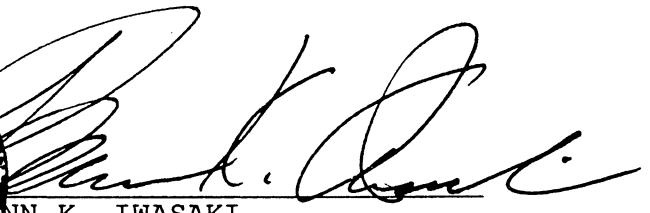
The determination of who is the prevailing party is complicated in cases involving multiple parties. Accordingly, the Utah Court of Appeals has emphasized "the need for a flexible and reasoned approach deciding . . . who actually is the prevailing party.'" Mountain States Broadcasting Co. v. Neale, 783 P.2d 551, 556 (Ct. App. 1989). On the basis of such an approach, the Court in Mountain States Broadcasting concluded that under the circumstances of that case, "the party in whose favor the 'net' judgment is entered must be considered the 'prevailing party' and is entitled to an award of its fees." Id.

Applying such an approach in this case, plaintiffs are the "net winners." Indeed, the jury in this case found that WR&F

breached its fiduciary duties owing to each plaintiff and as a result, they are entitled to the recovery of money damages of \$19 million from WR&F and Wiley. Of this, each individual plaintiff will recover a portion either individually and/or as shareholders of MWT Corporation. Accordingly, plaintiffs were the prevailing parties and as such they are entitled to their costs under Rule 54(d). As a result of this finding, Defendants' Cost Memorandum is stricken.

Further, after reviewing Plaintiffs' [verified] Rule 54(d) Memorandum of Costs and Necessary Disbursements and given the lack of any opposition, the Court finds such costs were reasonable under the circumstances and accordingly, awards \$25,324.61 to plaintiffs for costs and disbursements.

DATED this 13th day of August, 1999.

 
GLENN K. IWASAKI
DISTRICT COURT JUDGE

Case No. 900901064


Certificate of Mailing

I certify that on the 13th day of August, 1999, I sent by first class mail a true and correct copy of the attached document to the following:

REED L. MARTINEAU
REX E. MADSEN
RICHARD A. VAN WAGONER
KEITH A. CALL
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P.O. BOX 45000
SLC, UTAH 84145

DANIEL L. BERMAN
PEGGY A. TOMSIC
DAVID P. WILLIAMS
50 SOUTH MAIN, SUITE 1250
SLC, UTAH 84144

District Court Clerk

By: 
Deputy Clerk

****Individuals with disabilities needing special accommodations during this proceeding should call 238-7300, at least three working days prior to the proceeding.
TDD phone for hearing impaired, 238-7391.**

Tab 7

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

FILED DISTRICT COURT
Third Judicial District

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID
B. LEE, MARILYN D. LEE, SIDNEY
W. FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general
partnership, AND MWT
CORPORATION, a Utah corporation,

Plaintiffs,

vs.

WILEY, REIN & FIELDING, a
professional law partnership,
and RICHARD E. WILEY

Defendant.

DEC 2 1998
SALT LAKE COUNTY
By 
Deputy Clerk

MEMORANDUM DECISION

Case No. 900901064CV

Honorable GLENN K. IWASAKI

Court Clerk: Janet Banks

The above-entitled matter comes before the Court pursuant to Plaintiffs' Motion for Partial Directed Verdict. The Court heard oral argument with respect to this motion at the close of defendants' case in chief on December 1, 1998. Following argument, the matter was taken under advisement.

The Court having now considered the motion and the arguments of counsel, hereby enters the following ruling.

1. Standard Required for a Directed Verdict.

"Under Utah law, a party who moves for a directed verdict has the very difficult burden of showing no evidence exists that raises a question of material fact." *Alta Health Strategies, Inc. v. CCI Mechanical Service*, 930 P.2d 280, 283 (Utah Ct. App. 1996) (citing *Kleinert v. Kimball Elevator Co.*, 905 P.2d 297, 299 (Utah App. 1995) (stating, in motion for directed verdict, "where there is **any** evidence that raises a question of material fact, no matter how improbable the evidence may appear, judgment as a matter of law is improper" (emphasis added)), *cert. denied*, 913 P.2d 749 (Utah 1996). A directed verdict is justified only if, after looking at the evidence and all reasonable inferences in a light most favorable to the nonmoving party, the Court concludes there is no competent evidence which would support a verdict in plaintiffs' favor. *DeBry v. Cascade Enterprises*, 879 P.2d 1353, 1359 (Utah 1994) (citations omitted). A directed verdict is not appropriate if after reviewing the evidence, the Court finds there is doubt as to whether reasonable minds might arrive at different conclusions. *Winess v. M.J. Conoco Distributors, Inc.*, 593 P.2d 1303, 1304 (Utah 1979) (citations omitted.)

2. Express Attorney-Client Relationship

After reviewing the evidence in the record, and drawing all reasonable inferences in the light most favorable to defendants,

the Court concludes as a matter of law that at all relevant times WRF had an attorney-client relationship with Mountain West Television Company, a Utah general partnership. Indeed, such has been conceded by defendants. However, with respect to any attorney-client relationship beyond that with Mountain West Television Company, there remain disputed issues of fact which preclude the entry of a directed verdict at this time.

3. Implied Attorney-Client Relationship.

While the Court concedes the general rule is that representation of a limited partnership does not itself require allegiance to the interests of the limited partners, the exception set forth in *Margulies v. Upchurch*, 696 P.2d 1195 (Utah 1985), clearly applies in the instant case. Specifically, as stated by the Utah Supreme Court in *Margulies*:

If the limited partners stand to gain nothing more from the attorney's representation of the limited partnership than the incidental gain which will accrue to them as partners, and not in their individual capacities, no attorney-client relationship should be implied. **When, however, the individual interests of the limited partners are directly involved, as they are here, there may be sufficient grounds for implying the existence of an attorney-client relationship.**

696 P.2d at 1200-01 (emphasis added).



Indeed, forgoing any possibility that the statute of limitations has run, at the relevant period in time, the individual

plaintiffs in this case stood to lose much more than any incidental gain which would have accrued to them merely as a result of their role as partners. At a minimum, they each had personal liability on a cash call which, when combined, totaled over two million dollars. Under these circumstances, the Court is persuaded that as a matter of law, the exception set for *Margulies* applies to the plaintiffs in this case.

4. Breach

Based upon the evidence in the record, the Court is persuaded sufficient evidence has been presented upon which a jury could reasonably conclude that WRF and Wiley did not breach their fiduciary duty to plaintiffs. Accordingly, a directed verdict with respect to this issue is not appropriate.

DATED this 25th day of December, 1998.



GLENN K. IWASAKI
DISTRICT COURT JUDGE


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Court's December 2, 1998 Memorandum Decision was hand delivered this 3rd day of December, 1998, to the following:

Reed L. Martineau, Esq.
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Clerk of the Court

Tab 8

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

FILED DISTRICT COURT
Third Judicial District

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID
B. LEE, MARILYN D. LEE, SIDNEY
W. FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general
partnership, AND MWT
CORPORATION, a Utah corporation,

Plaintiffs,

vs.

WILEY, REIN & FIELDING, a
professional law partnership,
and RICHARD E. WILEY

Defendant.

NOV 13 1998

SALT LAKE COUNTY

By

Deputy Clerk

MEMORANDUM DECISION

Case No. 900901064CV

Honorable GLENN K. IWASAKI

Court Clerk: Janet Banks

The above-entitled matter comes before the Court pursuant to Defendants' Motions for Directed Verdict and Partial Directed Verdict. The Court heard oral argument with respect to these motions at the close of plaintiffs' case in chief on November 3, 1998. Following argument, the matter was taken under advisement to allow time for plaintiffs to file a written memorandum in opposition and defendants to submit any reply.

The Court having now considered the motions, memoranda, exhibits attached thereto, and with the added benefit of oral

argument hereby enters the following ruling.

1. Standard Required for a Directed Verdict.

"Under Utah law, a party who moves for a directed verdict has the very difficult burden of showing no evidence exists that raises a question of material fact." *Alta Health Strategies, Inc. v. CCI Mechanical Service*, 930 P.2d 280, 283 (Utah Ct. App. 1996) (citing *Kleinert v. Kimball Elevator Co.*, 905 P.2d 297, 299 (Utah App. 1995) (stating, in motion for directed verdict, "where there is **any** evidence that raises a question of material fact, no matter how improbable the evidence may appear, judgment as a matter of law is improper" (emphasis added)), *cert. denied*, 913 P.2d 749 (Utah 1996). A directed verdict is justified only if, after looking at the evidence and all reasonable inferences in a light most favorable to the nonmoving party, the Court concludes there is no competent evidence which would support a verdict in plaintiffs' favor. *DeBry v. Cascade Enterprises*, 879 P.2d 1353, 1359 (Utah 1994) (citations omitted). A directed verdict is not appropriate if after reviewing the evidence, the Court finds there is doubt as to whether reasonable minds might arrive at different conclusions. *Winess v. M.J. Conoco Distributors, Inc.*, 593 P.2d 1303, 1304 (Utah 1979) (citations omitted.)

2. Attorney-Client Relationship Between Wiley and WRF and Plaintiffs.

A. Express attorney-client relationship.

Although this Court has already determined that no express attorney-client relationship existed following Wood's departure in 1987, in light of the evidence presented by plaintiffs, the Court is persuaded there is a sufficient basis upon which the jury could find the existence of an express attorney-client relationship between the plaintiffs and the firm, as well as Wiley himself, from 1981 up to the time Wood left WRF. Specifically, in addition to the fact that Wood, a member of the firm, represented Mountain West Television--and according to testimony, the individual plaintiffs--the record indicates that Wiley (1) billed for time spent representing plaintiffs' interests, (2) appeared for Mountain West at the FCC hearings, and (3) routinely received documents that had been created during the course of the firm's representation of the plaintiffs. Indeed, there is evidence which indicates Wood attracted plaintiffs to himself and WRF by telling them of Wiley's background as an extremely influential lawyer with the FCC who formerly chaired the Commission. Moreover, plaintiffs have testified they believed Wiley was personally representing their interests.

B. Implied attorney-client relationship.

In addition to the aforementioned, there is evidence in the record indicating WRF and Wiley himself represented MWT, Ltd. from

May 1988 (the date of conversion) through the cash call in 1991. Furthermore, as the Court noted in its August 20, 1998 Memorandum Decision, in certain situations, representation of a limited partnership can give rise to an implied attorney-client relationship with the limited partners. Specifically, the Supreme Court in *Margulies v. Upchurch*, 696 P.2d 1195 (Utah 1985) stated:

If the limited partners stand to gain nothing more from the attorney's representation of the limited partnership than the incidental gain which will accrue to them as partners, and not in their individual capacities, no attorney-client relationship should be implied. When, however, the individual interests of the limited partners are directly involved, as they are here, there may be sufficient grounds for implying the existence of an attorney-client relationship.

696 P.2d at 1200-01 (emphasis added).

While it is indeed the general rule that representation of a limited partnership does not of itself require allegiance to the interests of the limited partners, the evidence presented thus far supports a finding that this case fits the exception rather than the general rule. Specifically, plaintiffs have presented testimony and supporting documentation which indicates the partners in this matter stood to lose much more than any incidental gain which would have accrued to them merely as a result of their role as partners. Indeed, at a minimum, the evidence manifests the possibility that each of them could be held personally liable on a

cash call which, when combined, totaled over two million dollars. Under these circumstances, there is sufficient support for the determination that continued representation of MWT Ltd. gave rise to an attorney-client relationship between Wiley, the firm and plaintiffs.

C. Duties to clients of the firm.

While it is true that the disciplinary rules do not provide a basis for a civil action, they may "nonetheless be considered to define the minimum level of professional conduct required of an attorney, such that a violation of one of the [rules] is conclusive evidence of a breach of the attorney's common law fiduciary obligations." *Avianca, Inc. v. Corriea*, 705 F.Supp. 666, 679 (D. D.C. 1989). As stated by Ronald Mallen, "[u]nlike the disciplinary rules regarding negligent conduct, those concerning the fiduciary obligations commonly are cited by the courts in civil damage actions to determine the propriety of the attorney's conduct." Mallen & Smith, *Legal Malpractice* § 14.4 at 238-239 (4th ed. 1996).

One such disciplinary rule applicable in this case is Rule 1.10 of the Rules of Professional Conduct which states "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any of them practicing alone would be prohibited from doing so by Rule [] 1.7." As Professor Morris

testified, the concept enunciated by the Rule is not simply for attorney discipline, but applies as a standard of conduct with respect the fiduciary duties a law firm and each member of that firm owe to a client.

In the case at bar, WRF was a collection of lawyers who shared a common interest, namely the success of the general partnership. Moreover, plaintiffs in this case have testified it was their belief and intent that they were being represented not only by Wood, but Wiley and indeed, the entire WRF firm.

A second rule of importance is Rule 1.9 which provides that lawyers in a firm owe a duty to former clients of the firm when they wish to represent a current client against the former in the same or a substantially related matter. Based upon the aforementioned, and in light of the evidence and testimony in the record thus far, it is clear this Rule also provides a potential basis for liability.

3. Assignment

After reviewing the evidence in the record, and drawing all reasonable inferences in the light most favorable to the plaintiffs, the Court concludes there are disputed facts which preclude the entry of a directed verdict with regard to this issue. Specifically, reasonable minds might arrive at different conclusions regarding the effects of the assignment particularly in light of the alleged facts surrounding its inception. Accordingly,

a directed verdict is not appropriate at this juncture.

4. Breach

Based upon the record thus far, specifically the testimony of Professor Morris and Ronald Mallen, the Court is persuaded sufficient evidence has been presented upon which a jury could reasonably conclude WRF and Wiley breached their fiduciary duty to plaintiffs. Accordingly a directed verdict with respect to this issue is not appropriate.

5. Proximate Cause

Based upon the evidence presently in the record, the Court is persuaded plaintiffs have provided a sufficient basis to support a jury determination that "but for" the alleged breaches by defendants, plaintiffs would have been able to obtain a better business result than that which actually occurred. Accordingly, the motion for directed verdict is denied with respect to this issue.

6. Damages

As this Court previously noted in its August 20, 1998 Memorandum Decision, "[t]he amount of damages may be based upon approximations, if the fact of damage is established and the approximations are based upon reasonable assumptions or projections." *Atkins Wright & Miles v. Mountain States Tel. and*

Tel. Co., 709 P.2d 330-336 (Utah 1985). As stated by the Utah Supreme Court:

Once a defendant has been shown to have caused a loss, he should not be allowed to escape liability because the amount of the loss cannot be proved with precision. . . . Consequently, the reasonable level of certainty required to establish the amount of a loss is generally lower than that required to establish the fact or cause of a loss.

Cook Assocs., Inc. v. Warnick, 664 P.2d 1161 (Utah 1983) (citations omitted). "The certainty requirement is met as to the amount of lost profits if there is sufficient evidence to enable the trier of fact to make a reasonable approximation." Id.

In the instant matter, the Court is persuaded plaintiffs, via David Schutz and Cris Lewis, presented sufficient evidence for a jury to reasonably determine the amount of damages sustained by plaintiffs.

7. Allocation of Damages

Based upon the evidence in the record, the Court concludes plaintiffs have provided a sufficient basis upon which the jury may allocate damages to each plaintiff.

With respect to plaintiffs' contention that damages do not have to be allocated to each plaintiff separately, the Court is not convinced. In support of their position, plaintiffs have cited the case of *Whittenburg v. Holding Co.*, U.S. Dist. LEXIS 18597, 1993 WL 545207 (D. Kan. 1993). However, a review of that case indicates

it is factually distinguishable and has no applicability in this matter. Specifically, the *Whittenburg* case dealt with allocating the fixed value of an aircraft among the aircrafts' owners. In the instant case, there are eleven different plaintiffs with varying interests. Furthermore, unlike the *Whittenburg* case, the Court is persuaded defendants could possibly be prejudiced if judgment is granted collectively in favor of the plaintiffs.


8. Punitive Damages

Based upon the evidence in the record, and drawing all reasonable inferences in the light most favorable to the plaintiffs, the Court is persuaded there is sufficient evidence for a jury to determine by clear and convincing evidence that an award punitive damages against Wiley and WRF is in order.

9. Jurisdiction Over Wiley

Based upon the evidence in the record, and for the reasons stated with greater particularity in the Court's September 22, 1997 Memorandum Decision, the Court finds jurisdiction over Wiley has been properly imposed.

DATED this 13th day of November, 1998.


GLENN K. IWASAKI
DISTRICT COURT JUDGE

Case No. 900901064CV

Certificate of Service

I certify that on the 13th day of November, 1998, I hand delivered a true and correct copy of the attached document to the following:

\ Daniel L. Berman, Esq.
Peggy A. Tomsic, Esq.
David P. Williams, Esq.
BERMAN, GAUFIN, TOMSIC & SAVAGE
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\ Reed L. Martineau, Esq.
Rex E. Madsen, Esq.
Richard A. VanWagoner, Esq.
Keith A. Call, Esq.
SNOW, CHRISTENSEN & MARTINEAU
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P.O. Box 45000
Salt Lake City, Utah 84145

District Court Clerk

By: 

Deputy Clerk

****Individuals with disabilities needing special accommodations during this proceeding should call 238-7300, at least three working days prior to the proceeding.
TDD phone for hearing impaired, 238-7391.**

Tab 9

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
FILED DISTRICT COURT
Third Judicial District

~~AUG 21 1998~~

SALT LAKE COUNTY

By

[Signature]
Deputy Clerk

JO-ANN W. KILPATRICK, GEORGE L.
GONZALES, JOSEPH C. LEE, DAVID
B. FOULGER, CLAYTON F. FOULGER,
BRYANT F. FOULGER, BRENT K.
PRATT, MOUNTAIN WEST TELEVISION
COMPANY, a Utah general
partnership, and MWT
CORPORATION, a Utah corporation,

Plaintiffs,

vs.

WILEY REIN & FIELDING, a
professional law partnership,
and RICHARD E. WILEY,

Defendants.

MEMORANDUM DECISION

Case No. 900901064CV

Honorable GLENN K. IWASAKI

Court Clerk: Janet Banks

August 20, 1998

The above-entitled matter comes before the Court pursuant to Plaintiffs' Motion in Limine Re: Testimony and Report of Paul A. Randle, Defendants' Motion in Limine to Exclude Evidence of and Reference to Indemnity Agreement, Defendants' Motion in Limine to Exclude Evidence of and Reference to Plaintiffs' Deposition Exhibit 111, Defendants' Motion in Limine to Exclude Plaintiffs' Purported Damage Reports and Testimony of Plaintiffs' Purported Damage Experts, and Defendants' Motion for Partial Summary Judgment. The Court heard oral argument on the motions on July 28, 1998. Following the hearing, the Court, ruling from the bench, denied Defendants' Motion in Limine to Exclude Evidence of and Reference

to Indemnity Agreement as well as Defendants' Motion in Limine to Exclude Evidence of and Reference to Plaintiffs' Deposition Exhibit 111. The remaining issues were taken under advisement.

The Court having considered the motions, memoranda, the exhibits attached thereto, the arguments of counsel, and for the good cause that has been shown hereby enters the following ruling.

1. Plaintiffs' Motion in Limine Re: Testimony and Report of Paul A. Randle

With this motion, plaintiffs seek to exclude (1) the entire written report of Paul A. Randle ("Randle"), (2) any reference by Randle relating to the issues of whether or not the defendants caused plaintiffs any injury or whether defendants are liable to plaintiffs, (3) any testimony by Randle attempting to rebut the expert testimony of David Schutz ("Schutz") or otherwise relating to market values of Channel 13 at any point in time, (4) any testimony by Randle relating to certain "miscellaneous damage claims," and (5) any reference by Randle to any summary of billing records or other documents in this case.

In support of their position, plaintiffs assert Randle is not qualified as an expert pursuant to Rule 702 of the Utah Rules of Evidence to testify as to any non-economic matters and his conclusions will not assist the trier of fact. Accordingly, argue plaintiffs, Randle's testimony should be excluded.

Defendants oppose the motion asserting Randle never, in his

deposition testimony or report, gives any legal standard or states that legal liability should not be found. Moreover, contend defendants, Randle is clearly qualified to evaluate business transactions and opine as to damages--which is exactly what he is doing in this case. Further, assert defendants, Randle's testimony will help assist the jury in this highly complicated case. With respect to the Randle's summary of the billing records, defendants argue that the material he will be summarizing has all been in the possession of plaintiffs for the last seven years and defendants will have sufficient time to review the summary once it is prepared.

Pursuant to Rule 702, Utah R. Evid.:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 704(a), Utah R. Evid which provides:

Except as provided in subparagraph (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Reading the aforementioned together with relevant case law leads to the conclusion "[t]he old shibboleth that an expert should not be permitted to invade the province of the jury has been largely displaced by recognition that opinions, if based on an adequate

foundation, are helpful and that the powerful tool of cross-examination and the jury's good judgment are sufficient to place the opinion in proper perspective. Edwards v. Didericksen, 579 P.2d 1328, 1330 (Utah 1979).

However, even in courts following the modern view allowing testimony on ultimate facts, some types of ultimate issues may not be the subject of opinions. Specifically, "[q]uestions which merely authorize the witness to tell the jury what result to reach are not permitted." Steffensen v. Smith's Management Corp., 862 p.2d 1342, 1347 (Utah 1993).

In light of the complicated nature of this case, encompassing seven business transactions, spanning four years, and involving numerous parties, the Court is persuaded Randle's testimony will assist the trier of fact and accordingly, is admissible. Unfortunately, however, "there is no bright line between permissible questions under Rule 704 and those that call for over broad legal responses." Davidson v. Prince, 813 P.2d 1225, 1231 (Ct. App. 1991).

In the instant case, given his qualifications, Randle is clearly entitled to evaluate business transactions and provide his opinion as to whether or not plaintiffs' damage claim is based on reasonable valuations and accurate data. What Randle is not permitted to do under the rules and case law is opine regarding whether there was any legal causation in this matter. Although,

the Edwards case cited by defendants indicates that an expert may testify regarding factual causation, recent case law makes clear any conclusions with respect to legal causation is best left to the trier of fact. See e.g. Davidson v. Prince, 813 P.2d 1225 (Ct. App. 1991); Steffensen v. Smith's Management Corp., 862 p.2d 1342, 1347 (Utah 1993).

With respect to Randle's evaluations of Schutz, to the extent Randle's testimony addresses whether the valuations and opinions constitute a proper measure of damages in this case, Randle may testify. As an experienced economist and damage expert, Randle is qualified to render opinions with respect to these issues.

As to the billing summaries, given that Randle is merely summarizing information which has been in the possession of plaintiffs for almost seven years, such will be permitted. Defendants are, however, directed to provide plaintiffs with the billing summaries post haste.

Finally, in light of the Court's decision to allow Randle to testify and based upon Ms. Tomsic's statement during oral argument that the written report would not be necessary if Randle was allowed to testify, the written report is superfluous and accordingly, excluded.

2. Defendants' Motion in Limine to Exclude Plaintiffs' Purported Damage Reports and Testimony or Plaintiffs' Purported Damage Experts.

With this motion, defendants seek an order barring plaintiff

from (1) referring to the reports or testimony of their designated experts, Schutz, Al Seethaler ("Seethaler") and Chris Lewis ("Lewis") in their opening statement, and (2) introducing, using or referring to the reports and testimony of Schutz, Seethaler and Lewis at trial. Defendants base this motion on the grounds that the evidence lacks a sufficient rational basis and is too speculative of a basis for the jury to measure the damages alleged by plaintiffs.

Plaintiffs oppose the motion asserting their damage evidence is not speculative and easily satisfies the liberal Utah standard for admitting evidence as to the amount of damages. Further, argue plaintiffs, their damage theories and facts are based on the reality of what happened in this case and have a solid, rational basis in the record. It is plaintiffs' position that defendants' arguments relate to weight and credibility and may be appropriate for consideration by the jury, but are not grounds, under Utah law, to exclude plaintiffs' evidence of substantial economic losses.

The goal in a breach of fiduciary duty case is to place the injured party, as nearly as possible, in the position he or she would have been in had there been no breach. See e.g. Ong Int'l (U.S.A.) Inc. v. 11th Avenue Corp., 850 P.2d 447, 457 (Utah 1993). As noted in Sampson v. Richins, 770 P.2d 998, 1007 (Utah Ct. App. 1989),

[a]lthough an award of damages based only on

speculation cannot be upheld, it is generally recognized that some degree of uncertainty in the evidence of damages will not suffice to relieve a defendant from recompensing a wronged plaintiff. As long as there is some rational basis for a damage, award, it is the wrongdoer who must assume the risk of some uncertainty. Where there is evidence of the fact of damage, a defendant may not escape liability because the amount of damage cannot be proved with precision.

770 P.2d at 1007 (quoting Bastian v. King, 661 P.2d 953, 957 (Utah 1983)). Indeed, "[t]he amount of damages may be based upon approximations, if the fact of damage is established and the approximations are based upon reasonable assumptions or projections." Atkins Wright & Miles v. Mountain States Tel. and Tel. Co., 709 P.2d 330-336 (Utah 1985).

The Utah Supreme Court has also stated:

Once a defendant has been shown to have caused a loss, he should not be allowed to escape liability because the amount of the loss cannot be proved with precision. . . . Consequently, the reasonable level of certainty required to establish the amount of a loss is generally lower than that required to establish the fact or cause of a loss.

Cook Assocs., Inc. v. Warnick, 664 P.2d 1161 (Utah 1983) (citations omitted). "The certainty requirement is met as to the amount of lost profits if there is sufficient evidence to enable the trier of fact to make a reasonable approximation." Id.

A. Schutz

In the instant case, Schutz intends to offer the following:

1. Two valuation appraisals comparing the likely value of Channel 13, absent defendants' breaches, at two points in time, assuming plaintiffs had obtained a 40% interest in Channel 13, an investor had contributed \$10 million to buy out the other applicants and place the station in operation, and Channel 13 had gone into competition with Channel 20 and the three network stations;
2. two feasibility studies (the "CPL study" and the "HSMC study") (a) indicating there were alternative sources of workable financing available in the amount of \$10 million in addition to the Allstate financing, (b) indicating Channel 13 was a valuable asset, and (c) showing the dollar value of plaintiffs' 40% ownership interest in Channel 13 under these two scenarios, again assuming Channel 13 had gone into competition with Channel 20;
3. a valuation of cash flows or distributions that plaintiffs would have likely received from 1987 to 1997.

Based upon Schutz's extensive background¹ and the facts in evidence, it is clear Schutz's expert reports and testimony are admissible. Schutz's reports and testimony are based on reasonable

¹ According to his deposition testimony, Schutz has prepared over 300 appraisals of television and radio stations and has participated in over 700 transactions involving the purchase or sale of a radio or television station.

assumptions or projections and historical data and assumptions derived from that data. Specifically, Schutz uses a discounted cash flow method of valuation--a standard method of valuing a television station or other business opportunity. See e.g. Price Orem Investment Co. v. Rollins, Brown & Gunnell, Inc., 784 P.2d 475, 477 (Utah Ct. App. 1989). Further, Schutz's method, involving use of financial projections is the same methodology used by Wood, Northstar, CPL and Fraizer, Gross & Kadlec in preparing their appraisals and valuations in 1986.

Defendants take issue with Schutz's appraisals contending they are contradictory because the 1986/87 and 1997 appraisals use different income and expense projections. However, a closer review indicates the studies are consistent when one considers the points in time from which they were conducted. Specifically, the 1986/87 appraisal was conducted from the perspective of a knowledgeable buyer in 1986/87, while the stream-of-income analysis in the 1997 appraisal was conducted from a 1997 perspective looking back in time.

Because things did not go as originally designed, Schutz was required to appraise the station that could have been, under the initial plan. This also explains why Schutz did not use actual revenue and expense figures for the Channel 13 that was created after the purchase of Channel 20. Indeed, actual revenue and expense figures for that Channel 13 would not give an accurate

picture of the station that could have existed--the one that, under plaintiffs' plan, would have gone into competition with Channel 20. Accordingly, Schutz's appraisals are "the best evidence available under the circumstances, and are therefore, admissible to establish the amount of damages." Penelko, Inc. v. John Price Assocs., Inc., 642 P.2d 1229, 1233 (Utah 1992). Further, the Court is not persuaded, the fact that Schutz assumes the station went on the air on January 1, 1997, when, in fact, it did not go on the air until November 1987, makes a difference substantial enough to warrant exclusion of the report and testimony.

With respect to Schutz's two financing feasibility studies, such show that the CPL offer was workable and would likely have been successful. Moreover, they provide further support for Schutz's opinion that there were sources of adequate investment capital in 1986 in addition to Allstate and CPL. These feasibility studies are based on the same sort of standard information as are the appraisals, and like the appraisals, these studies satisfy the standard for admissibility under Utah law.

B. Seethaler

In his report, Seethaler has appraised the Fox-owned, Channel 13, as it currently exists. In arriving at his appraisal value, Seethaler relies on his technical and specialized knowledge of the television industry generally and the Salt Lake City market specifically. Although Seethaler's appraisal is not based upon the

actual financial data from Channel 13, such is still admissible as the actual financial data from Channel 13 is not available to plaintiffs. Accordingly, Seethaler's appraisal is the best possible estimate under the circumstances and may be used by plaintiffs in the instant case. Penelko, 642 P.2d at 1233.

C. Lewis

With respect to Lewis' testimony and report, plaintiffs assert such are important for at least three purposes: (1) to give an estimate of the money value of income that four of the plaintiffs would have received pursuant to their 5-year employment contracts with MWT Ltd.; (2) to rebut the testimony of Randle, defendants expert economist; and (3) to address certain elements of Mr. Schutz's evaluations, primarily in response to Randle's report and deposition testimony.

With respect to use of Lewis' testimony to estimate contractual losses, the Court is deferring ruling on this issue until trial at which time the Court will be in a better position to rule on whether there is a sufficient foundation to allow such testimony.

As to the remaining two purposes for Lewis' testimony, the Court is persuaded such testimony will assist the trier of fact to understand the evidence or to determine a fact in issue and accordingly, is admissible.

3. Defendants' Motion for Partial Summary Judgment on Breach of Fiduciary Duty Claims with Regard to the Sale of Channel 13 to Fox.

With this motion defendants seek partial summary judgment on plaintiffs' claims of breach of fiduciary duty with respect to the sale of Channel 13 to Fox Television Stations, Inc., and Richard Wiley's role as a director of Northstar Communications ("Northstar") and Farragut Communications Inc., in authorizing that transaction. Defendants base their motion on the grounds there is no genuine issue of material fact as to the following: (1) Northstar, the corporate general partner of MWT Ltd. and its directors had a contractual right to sell Channel 13 under § 5.11 of the MWT Ltd. Amended and Restated Agreement of Limited Partnership, dated November 18, 1986; (2) Northstar's and its directors' liability were limited by § 5.05 of the Partnership Agreement for fraud, bad faith or gross negligence and there is no evidence in this record of any such conduct; (3) even if Northstar's and its directors' fiduciary duties are not limited by the Partnership Agreement, the common law business judgment rule forecloses any claim with regard to Wiley's authorization of the sale of Channel 13 as a Northstar director; and (4) neither Wiley Rein & Fielding nor any lawyer at Wiley Rein & Fielding represented any plaintiff for over two years before the sale of Channel 13 to Fox and defendants therefore did not breach any fiduciary duty as lawyers with regard to the sale of Channel 13.

Plaintiffs oppose the motion asserting an attorney-client relationship existed between plaintiffs and defendants at the time of the sale, giving rise to the highest fiduciary duties of loyalty and confidentiality. Furthermore, assert plaintiffs, they have cited specific facts raising a material issue as to whether defendants breached their duties of loyalty and confidentiality to plaintiffs when they authorized the sale of Channel 13 to Fox.

Summary judgment is appropriate only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(c). "In considering a summary judgment motion, the Court must evaluate all the evidence and all reasonable inferences fairly drawn from the evidence in the light most favorable to the party opposing summary judgment." Cinder v. A.L. Williams & Assocs., 739 P.2d 634, 634 (Utah Ct. App. 1987).

In the instant case, defendants assert the rights and obligations of the partners, as between themselves, are fixed by the terms of the partnership agreement. Consequently, there can be no claim for breach of fiduciary duty with regard to the sale of Channel 13. Plaintiffs respond by arguing they were coerced into signing the partnership agreement and are therefore, not limited by its terms in their claims against defendants for breach of fiduciary duties as lawyers.

When reviewing the evidence in the light most favorable to

plaintiffs and drawing all reasonable inferences therefrom, it is apparent that events leading up to the execution of the partnership agreement clearly provide for the possibility that if defendants owed plaintiffs any fiduciary duties, such could have been breached thereby tainting the very partnership agreement defendants are relying on for this motion. Accordingly, the Court is not persuaded the rights and obligations of the parties are necessarily fixed by the partnership agreement.

In light of the aforementioned, the issue becomes whether, in fact, defendants owed any duty to plaintiffs. In support of their position that such a duty did exist, plaintiffs initially assert there was an express attorney client relationship. Specifically, contend plaintiffs, at no time did the Wiley Firm inform them it had withdrawn from representation of their interests in the business of channel 13.

"[A] factor in evaluation the [existence of an attorney-client] relationship is whether the client thought an attorney-client relationship existed." Breuer-Harrison, Inc. V. Combe, 799 P.2d 716, 727 (Utah App. 1990).

In general, except where an attorney is appointed by a court, the attorney-client relationship is created by contract. . . . The contract may be express or implied from the conduct of the parties. . . . The relationship is proved by showing that the party seeks and receives the advice of the lawyer in matters pertinent to the lawyer's profession. . . . Such a showing is

subjective in that a factor in evaluating the relationship is whether the client thought an attorney-client relationship existed. . . . However, a party's belief that an attorney-client relationship exists, unless reasonably induced by representations or conduct of the attorney, is not sufficient to create a confidential attorney-client relationship. . . . In sum, it is the intent and conduct of the parties which is critical to the formation of the attorney-client relationship.

799 P.2d at 727-728 (citations omitted). In the instant case, plaintiffs assert an express agreement existed because they were limited partners of MWT Ltd--which was represented by the Wiley Firm--consequently, the firm continued to represent them as limited partners. This assertion, however, falls against the backdrop of several letters from Wood to Joe Lee indicating he had left Wiley Rein to join plaintiff David Lee at Jones, Waldo's Washington, D.C. law office, and had taken plaintiff's files with him. Based upon this uncontroverted evidence, the Court is not persuaded plaintiffs' belief, that an express contract existed, is warranted. Indeed, the representations and conduct of Wood indicated just the opposite, that any representation on Wiley Rein's part had terminated with his leaving.

Next, plaintiffs contend that even if an express attorney-client relationship cannot be found, an implied relationship was created under the authority of Margulies v. Upchurch, 696 P.2d 1195 (Utah 1985). In Margulies, the Supreme Court, in holding that

Jones, Waldo's representation of a limited partnership gave rise to an attorney-client relationship between the firm and certain limited partners, stated

If the limited partners stand to gain nothing more from the attorney's representation of the limited partnership than the incidental gain which will accrue to them as partners, and not in their individual capacities, no attorney-client relationship should be implied. When, however, the individual interests of the limited partners are directly involved, as they are here, there may be sufficient grounds for implying the existence of an attorney-client relationship.

696 P.2d at 1200-01 (emphasis added). In the case at bar, Margulies is clearly satisfied. Indeed, in 1991, defendants and Northstar made a "cash call" on plaintiffs for over \$2 million in accordance with Section 2.08 of the partnership agreement. Clearly, the limited partners were, therefore, directly involved. Further, under these circumstances, Wiley Rein's continued representation of MWT Ltd. gave rise to an attorney-client relationship between the firm and plaintiffs, with a consequent obligation to conform to all applicable standards of professional behavior.

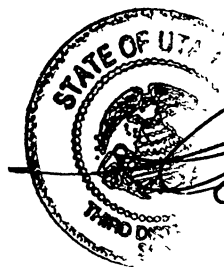
Even assuming plaintiffs were only former clients at the time of the sale of the station, defendants owed them a duty not to misuse confidential information provided by plaintiffs or represent another client against them in a matter substantially related to plaintiffs' representation without plaintiffs' informed consent. See Rule of Professional Conduct 1.9(a) and (b).


Finally, with respect to the issue of whether any breach occurred when defendants accepted the indemnification, represented Northstar/Allstate in the sale of Channel 13 or when Wiley voted as a director of Northstar to sell the station, the Court finds that in light of the number of disputed facts surrounding this issue, such will remain for the jury to determine based upon the evidence at trial.

Based upon the forgoing, Defendants' Motion for Partial Summary Judgment on Breach of fiduciary Duty Claims with regard to the Sale of Channel 13 to Fox is respectfully denied.

This Memorandum Decision constitutes the order of the Court regarding the matters addressed herein. No further order is required.

DATED this 21ST day of August, 1998.




Glenn K. Iwasaki
District Court Judge

Case No. 900901064

Certificate of Mailing


I certify that on the 24th day of August, 1998, I sent by first class mail a true and correct copy of the attached document to the following:

✓ DANIEL L. BERMAN
PEGGY A. TOMSIC
50 SOUTH MAIN, SUITE 1250
SLC, UTAH 84144

✓ REED. MARTINEAU
REX E. MADSEN
KEITH A. CALL
10 EXCHANGE PLACE, 11TH FLOOR
P.O. BOX 45000
SLC, UTAH 84145

✓ LOREN M. LAMBERT
P.O. BOX 112003
SLC, UTAH 84147-2003

District Court Clerk

By: 
Deputy Clerk

****Individuals with disabilities needing special accommodations during this proceeding should call 535-5581, at least three working days prior to the proceeding.
TDD phone for hearing impaired, 535-5009.**

Tab 10

INSTRUCTION NO. 31

I instruct you that, as a matter of law, defendant Wiley, Rein & Fielding had an attorney-client relationship with Joseph Lee, Jo-Ann Kilpatrick, George Gonzales, Sidney Foulger, David Lee, Marilyn Lee, Clayton Foulger, Bryant Foulger, Brent Pratt, and MWT Corporation between May 2, 1988 through the date of the cash call.

Tab 11

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

-----)
JO-ANN KILPATRICK, et al.)
)
Plaintiffs,) Case No. 900901064 CV
)
vs.) Transcript of:
)
WILEY, REIN & FIELDING, et al.)
) Objections to Jury
Defendants.) Instructions and
-----) Verdict Forms.

BEFORE THE HONORABLE GLENN K. IWASAKI

SCOTT M. MATHESON COURTHOUSE
450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84114-1860

FILED DISTRICT COURT
Third Judicial District

JAN 12 1999

SALT LAKE COUNTY

By *Jo Ann B. Hume*

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

DECEMBER 7, 1998

ORIGINAL

REPORTED BY: DEBRA A. BOLLMAN, RPR, CSR

1 ones.

2 Ms. Tomsic?

3 MS. TOMSIC: Your Honor, we're getting
4 close to the finish line and I hate creating any
5 issues, but let me just propose one additional
6 thing.

7 THE COURT: Sure.

8 MS. TOMSIC: And that is I think that this
9 jury form is going to get so cumbersome that I get
10 concerned about that. And my suggestion would
11 simply be to leave the separate jury forms as they
12 are and to have one comparative fault jury form,
13 that includes both defendants, that they fill out if
14 they've answered everything yes.

15 THE COURT: I'm going to keep it just one
16 form. Thank you. I appreciate the suggestion, but
17 I'm going to keep it in one form.

18 MS. TOMSIC: And your Honor, could I just
19 for the record make our objection that obviously we
20 believe -- that we're not opposed to putting both
21 defendants on the comparative fault, but we also
22 think that you need to put all the plaintiffs per
23 plaintiff in -- just to preserve our position, if I
24 could.

25 THE COURT: As you have previously argued

1 it.

2 MS. TOMSIC: Yes, sir.

3 THE COURT: And I tell you, Ms. Tomsic,
4 that has also caused me some problems, and I'm going
5 to have to cut it somewhere. But that was an
6 argument that I saw because it talks in terms of all
7 defendants and all plaintiffs, and that's what the
8 statute says. But in doing it the way that we're
9 doing, eventually all plaintiffs are compared to all
10 defendants in this separate way, but I understand.

11 So as to the second one, now that I've
12 granted your first motion, Mr. Call, how are we
13 going to change the jury instruction form to reflect
14 that?

15 MR. CALL: Let's see. Are you referring to
16 the motion for order resolving inconsistency in jury
17 instructions?

18 THE COURT: Yes.

19 MR. CALL: Could I have just a moment to
20 review our instruction A and see that it comports
21 with the one form?

22 THE COURT: Well, I'm not going to give
23 your instruction number A, especially as to the term
24 of the fault. I previously heard argument on fault,
25 and what's contained in 64 is going to be the fault

Tab 12

1 IN THE THIRD JUDICIAL DISTRICT COURT
2 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

3 -----
4 JO-ANN KILPATRICK, et al.)

ORIGINAL

5 Plaintiffs,)

Case No. 900901064 CV

6 vs.)

Transcript of:

7 WILEY, REIN & FIELDING, et al.)

Defendants' Objections
to Jury Instructions

8 Defendants.)
9 -----

10
11 BEFORE THE HONORABLE GLENN K. IWASAKI

12
13 SCOTT M. MATHESON COURTHOUSE
14 450 SOUTH STATE STREET
15 SALT LAKE CITY, UTAH 84114-1860

FILED DISTRICT COURT
Third Judicial District

DEC 16 1998

Lu Ann B. Hanks
SALT LAKE COUNTY
Deputy Clerk

16
17
18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 DECEMBER 7, 1998
20
21
22
23

24 REPORTED BY: JODY L. EDWARDS, CSR, RPR, CRR
25 238-7531

1 The defendants also object to the Court's
2 failure to instruct by giving the defendants'
3 instructions -- proposed instructions No. 11 and 12
4 with -- which properly state the entity rule and the
5 exceptions to the entity rule under Margulies.

6 Instruction No. 31. The defendants object
7 to instruction No. 31 on the grounds that
8 instruction No. 31 is an erroneous instruction of
9 law in that it is a preemptory instruction as to the
10 existence of an attorney-client relationship based
11 on an erroneous and inappropriate application of the
12 exception in Margulies to the entity rule. Under
13 Margulies there are no facts in this record from
14 which the Court could find that the jury should even
15 be instructed that the exception to the entity rule
16 may apply. Even if there were facts in this record
17 from which the Court could -- or a jury could be
18 instructed that the Margulies exception applied,
19 there is no factual foundation for its application
20 in this case. And even if there were a factual
21 application for the Margulies' exception, it is a
22 question of fact for the jury and not a matter of
23 law for the Court.

24 And finally, the basis of this instruction
25 is the existence of the cash calls in December of

1 1991, and the fact that the Court may find that
2 there is a factual foundation for the exception in
3 December of '91 does not create a factual foundation
4 for the existence of an attorney-client relationship
5 between May of '88 and November of '91.

6 And finally, the defendants object to the
7 Court's failure to instruct on the correct rule of
8 law and to give defendants' proposed instruction
9 No. 12 which properly states the entity rule and the
10 exceptions to the entity rule under Margulies.

11 Instruction No. 34. The defendants object
12 to instruction No. 34 on the grounds that
13 instruction No. 34 is an erroneous instruction of
14 law in that it misstates the law as to when an
15 attorney-client relationship ends and what an
16 attorney's duty to a former client is. The correct
17 rule of law is that an attorney-client relationship
18 ends when either the lawyer's or the client's action
19 show a clear intent that the attorney-client
20 relationship has ended or when it is objectively
21 reasonable under the circumstances for the client to
22 understand that the relationship has ended.

23 The correct rule of law with regard to the
24 duty that an attorney owes to former clients is that
25 the attorney only owes a former client the duty of

1 on the grounds that instruction No. 54 is an
2 erroneous instruction of law in that it presents a
3 statement of law to the jury where there is no
4 factual foundation for such an instruction and it
5 misstates the law that is applicable to this case.
6 This instruction only applies in a case where there
7 has been absolutely no disclosure, including no
8 disclosure that there was a conflict of interest.

9 The defendants further object to
10 instruction No. 54 on the grounds the Court has not
11 properly instructed on the rule of law and that it
12 has failed to give defendants' proposed instruction
13 No. 20.

14 The defendants object to instruction No. 55
15 on the grounds that instruction No. 55 is an
16 erroneous instruction of law in that there is no
17 factual foundation for simultaneous, adverse
18 representation instructions in this case, and that
19 it misstates the law with regard to the required
20 disclosures. It is not the law that there must be
21 full disclosure of the effects of the adverse
22 representation. Moreover, instruction No. 55 is
23 erroneous because there is no such rule of law that
24 would require such an instruction.

25 The defendants further object to

1 instruction No. 55 on the grounds that the Court has
2 wholly failed to instruct on the rule of law
3 regarding waiver and estoppel. Every party is
4 entitled to an instruction regarding their theory of
5 the case if it is supported by the evidence and the
6 law. In this case, both the evidence and the law
7 support the giving of an instruction that correctly
8 and simply states the law with regard to waiver and
9 estoppel. The correct rule of law with regard to
10 waiver and estoppel is set forth in defendants'
11 proposed instruction No. 26. The defendants object
12 to instruction No. 55 on the ground that the Court
13 failed to give defendants' instruction No. 26 which
14 is a correct statement of the law.

15 Defendants object to instruction No. 56 on
16 the grounds instruction No. 56 is an erroneous
17 instruction of law in that it is duplicative. The
18 Court, in instruction No. 49, has already defined
19 what is a consentible conflict and this duplication
20 prejudices the defendants by stating this rule twice
21 in two separate ways.

22 The defendants object to instruction No. 58
23 on the grounds that instruction No. 58 is an
24 erroneous instruction of law in that it adds a
25 provision at the end of paragraph 2 which states,

1 defendants of a full and fair instruction with
2 regard to its claims of comparative fault in this
3 case.

4 The defendants object to instruction No. 66
5 on the grounds instruction No. 66 is an erroneous
6 instruction of law in that it misstates the law with
7 regard to the proper measure of damages. The
8 correct rule of law with regard to the proper
9 measure of damages in legal malpractice cases based
10 on conflicts of interest is measured based on the
11 value of the better business result proven with
12 reasonable certainty. And the value must be
13 established at the time of the injury.

14 The defendants further object to
15 instruction No. 66 on the ground that the Court
16 failed to instruct on the correct rule of law and to
17 give defendants' instruction No. 43 which is a
18 correct statement of law with regard to the
19 measurement of damages.

20 The defendants object to instruction No. 68
21 on the grounds instruction No. 68 is an erroneous
22 instruction of law in that it is incomplete and
23 therefore unbalanced. The correct rule of law
24 should have included instructions with regard to the
25 jury not engaging in speculation or basing any

1 damage award on speculation.

2 The defendants further object to
3 instruction No. 68 on the grounds that the Court
4 failed to instruct on the correct rule of law with
5 regard to damages and failed to give defendants'
6 proposed instruction No. 44 in addition to
7 instruction No. 68.

8 The defendants object to instruction No. 69
9 on the grounds instruction No. 69 is an erroneous
10 instruction of law in that it misstates the law with
11 regard to punitive damages. This instruction is
12 simply a statement of the factual foundation that
13 the Court used in Holland versus Moreton, 353 P.2nd
14 989, Utah, 1960, to determine that it was
15 appropriate for the Court to have instructed the
16 jury on punitive damages if proper instructions were
17 given to the jury. This foundation does not
18 constitute a proper basis of an instruction.

19 The defendants object to instruction No. 22
20 on the grounds instruction No. 22 is an erroneous
21 instruction of law in that the Court fails to
22 include statements within the instruction making it
23 clear that these are plaintiffs' claims and not
24 findings of the Court. For example, at the end of
25 paragraph one it states, "In performing these

1 which is a correct statement of the law. Proposed
2 instruction No. 38 reflects not only the law but one
3 of defendants' theories in this case and the Court's
4 failure to give this instruction creates an
5 ambiguity which could result in the jury improperly
6 holding the defendants liable as guarantors of the
7 business results or transactions of the plaintiffs.

8 The defendants object to the Court's
9 failure to instruct on the correct rule of law and
10 to give defendants' instruction No. 39 which is a
11 correct statement of the law. Proposed instruction
12 No. 39 sets forth one of the defendants' theories in
13 this case which is supported by Utah law, including
14 that law set forth in proposed instruction No. 39,
15 and which is merited and required by the claims and
16 facts and the record of this case.

17 The defendants object to the plaintiffs --
18 strike that.

19 The defendants' object to the Court's
20 failure to instruct on the correct rule of law and
21 to give defendants' proposed instruction No. 39-A
22 which is a correct statement of the law based on the
23 facts of this case. The Court has taken judicial
24 notice that the applicable statute of limitations on
25 the cash calls is six years. The Court has also

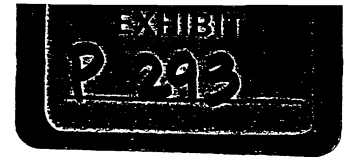
1 taken judicial notice that the cash calls were
2 issued in December of 1991. As a matter of law,
3 plaintiffs are not entitled to recover any claims
4 based on the cash calls.

5 The defendants object to the Court's
6 failure to instruct on the correct rule of law and
7 to give defendants' proposed jury instruction
8 No. 39-B which is a correct statement of the law.
9 Based on the evidentiary foundation in this case,
10 the Court must instruct as a matter of law that
11 Joseph Lee, Jo-Ann Kilpatrick and Sidney Foulger are
12 not entitled to recover any damages based on the
13 suspension of payments under their employment
14 contracts. It is uncontroverted that the
15 subordinate agreement with Aetna and the Aetna
16 financing was signed by those plaintiffs and the
17 explicit terms of those agreements required
18 suspension based on the financial condition of
19 Channel 13.

20 The defendants object to the Court's
21 failure to instruct on the correct rule of law and
22 to give defendants' proposed instruction No. 40
23 which is a correct statement of the law. Under the
24 facts and defendants' theory of this case,
25 defendants are entitled to have the jury instructed

Tab 13

Hoffman
Schutz
Media
Capital, Inc.



December 27, 1993

Mr. Rex E. Madsen
Snow, Christensen & Martineau
10 Exchange Place
Salt Lake City, Utah 84145

Re: Appraisal Certificate - Channel 13, Salt Lake City, Utah

Dear Mr. Madsen:

In accordance with your request, Hoffman Schutz Media Capital, Inc. ("HSMC"), has appraised selected assets used and useful in the operation of the commercial television station known as "channel 13", Salt Lake City, Utah. HSMC has also estimated the likely earnings of the television station during a seven year operating span, as indicated herein. HSMC has appraised the following assets at the indicated points in time:

1. Fair Market Value of the channel 13 FCC license as of the approximate date (1987) that the station began broadcasting, and assuming that local channel 20 had not been purchased.
2. Fair Market Value of all of the assets used and useful in the operation of channel 13 as of today, assuming that channel 20 had not been purchased.
3. Estimation of the likely cash disbursements that would have been made to the partners in channel 13 between 1987 and today. This estimate assumes that channel 20 had not been purchased and that channel 13's assets had not been sold to Fox Broadcasting in 1989.

HSMC understands that its valuations are likely to become evidence in a civil complaint involving parties associated with channel 13's formation and operation.

This appraisal certificate is one part of a comprehensive written appraisal report. It is subject to the constraints of the methodology and forecasting assumptions used in its compilation. These are clearly delineated in the attached written report, along with related background information, and economic analyses. This appraisal certificate is not to be separated from the complete text of the detailed appraisal report, of which it is an integral part. When considered together, all of these materials form the basis of expert appraisal opinion.

This appraisal places primary emphasis upon the Discounted Cumulative Cash Flow method of valuation, subject to appropriate assumptions and adjustments. This is a standard valuation method used in American business and is the preferred method used in the commercial broadcasting industry to determine the Fair Market Value of a television station.

80 Park Avenue, 11-P • New York, NY 10016 • 212-297-0620 • Fax: 212-297-0878
42 Monmouth Hills • Highlands, NJ 07732 • 908-291-9807 • Fax: 908-291-9094

029534

Mr. Rex E. Madsen
December 27, 1993
Page 2

On the basis of this valuation technique, which is described in detail in the accompanying report, the various values of the assets described on the preceding page are as follows:

1. Fair Market Value of a 40% interest in the channel 13 FCC license as of the approximate date (1987) that the station began broadcasting, and assuming that local channel 20 had not been purchased; \$10,137,000.
2. Fair Market Value of all of the assets used and useful in the operation of channel 13 as of today, assuming that channel 20 had not been purchased; \$40,044,000. A 40% interest in these assets, allowing for pay-off of the equipment lease, would be: \$15,818,000.
3. Estimation of the likely cash disbursements that would have been made to the partners in channel 13 between 1987 and today. This estimate assumes that channel 20 had not been purchased and that channel 13's assets had not been sold to Fox Broadcasting in 1989; 4,377,000.

The preceding valuations assume cash sales of the assets on a free and clear basis and excludes the values of cash, accounts receivable, marketable securities and similar current assets as well as all accounts payable and other liabilities. In the case of the valuation of the channel 13 license in 1987, it assumes compliance with the FCC's one-year license holding regulation.

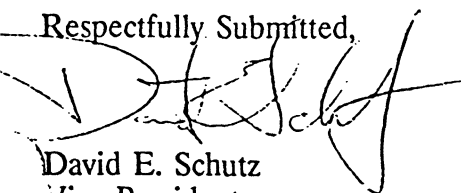
In order to verify the validity of the results obtained through the use of the previously described valuation methods, an examination of sales of broadcasting stations similar to the subject property was undertaken which generally confirmed the reasonableness of the results obtained by the Cumulative Discounted Cash Flow valuation method.

HSMC has not undertaken an examination of the liabilities, if any, which may exist against the assets appraised herein.

HSMC has also utilized financial reports and verbal representations of station operating policies, supplied by representatives of Mountain West Television as well as numerous documents noted as "exhibits" to the existing civil complaint. All of these sources are believed to be reliable, but HSMC has not undertaken any form of audit to verify their accuracy.

HSMC and David E. Schutz, whose qualifications are appended to this report, represents that this valuation study is based upon his best knowledge and belief. Neither the undersigned nor any member of HSMC, or its affiliated companies, have any personal or financial interest in the assets appraised herein or in any company associated with the law firm of Snow, Christensen & Martineau; or Fox Broadcasting, or the principals of Mountain West Television.

Respectfully Submitted,


David E. Schutz
Vice President

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Hoffman
Schutz
Media
Capital, Inc.

INTRODUCTION

Hoffman Schutz Media Capital, Inc., of Highlands, New Jersey ("HSMC"), has been retained by the law firm of Snow, Christenson & Martineau; of Salt Lake City, Utah ("Snow-Chistensen") for the purpose of determining the "Fair Market" value of selected assets used and useful in the operation of commercial television station known as channel 13, Salt Lake City, Utah. HSMC has also estimated the likely earnings of the television station during a seven year operating span, as indicated herein.

HSMC's appraisal and valuation work is summarized below:

1. Fair Market Value of the channel 13 FCC license as of the approximate date (1987) that the station would have begun broadcasting; assuming that local TV station channel 20 had not been purchased.
2. Fair Market Value of all of the assets used and useful in the operation of channel 13 as of today (1993); assuming that channel 20 had not been purchased.
3. Estimation of the likely cash disbursements that would have been made to the partners in channel 13 between 1987 and today. This estimate assumes that channel 20 had not been purchased and that channel 13's assets had not been sold to Fox Broadcasting in 1989.

HSMC understands that this valuation is being undertaken in relation to a pending civil complaint relating to events associated with the construction and financing of channel 13 as a new television station in late 1986 and the economic consequences associated with such events.

These valuations are based upon business plans and projections used by the parties involved in the ownership of the channel 13 FCC license and their agents. All such documents bore labels suggesting that they were recognized "exhibits" in the associated civil complaint. HSMC has not made any audit of the financial representations made in these documents nor have we attempted to determine the extent of liens or encumbrances, if any, which may have existed against the assets.

This valuation has also made extensive use of statistical information from sources widely used in the broadcasting industry as well as HSMC's proprietary Television Station Data Base. Among the primary outside sources were: N.A.B. Television Financial Reports for the years 1983-1985, Sales and Marketing Management's Survey of Buying Power, BIA's Investing in Television, and Arbitron reports.

In the report which follows, the factors and methodology used in the valuation of the channel 13 license will be discussed in detail. An Appraisal Certificate is included, and summarizes these findings.

FORECASTING ASSUMPTIONS

The accuracy and validity of any economic study is based on the reasonableness of the assumptions and forecasting techniques employed, as well as the accuracy of the data bases utilized. In the compilation of this report, HSMC has relied upon standard industry reference sources, as listed previously. All of these represent sources which were commonly accepted and used throughout the broadcasting industry in late 1986. Financial projections utilize data arrangement and statistical methods most commonly used for forecasting in the broadcasting industry.

In formulating its conclusions, HSMC used certain broad assumptions which we feel are representative of those that were employed by knowledgeable buyers of commercial broadcasting stations in late 1986 and are still followed today. These assumptions are summarized below:

The commercial television station known as channel 20, KSTU-TV, would continue in operation as a direct competitor to the new channel 13.

Within the next decade, there will not be a significant increase in the number of fully competitive, full power television stations in the Salt Lake City market or in adjacent communities, except as specifically noted. Likewise, technological developments in the home entertainment industry, such as direct satellite broadcasting to homes, home computer terminals, video cassette players, compact disc players and similar items, would not have a serious impact upon the aggregate audience levels of commercial television broadcasting stations beyond what is envisioned from today's perspective, nor will they represent significant competing advertising vehicles.

It appeared in 1986 that both the U.S. economy in general, and the Salt Lake City metropolitan area's economy specifically, were engaged in a continuing pattern of economic growth which showed little prospect of subsiding. This assumption would later be disproved in late 1989 when the market fell into a recession. By 1993, economic expansion had returned to Salt lake City, but at rates substantially below those of the mid-1980's.

The revenues of the broadcasting industry, in general, will continue to exhibit the general growth patterns and relationships to local retail sales and population changes which they have demonstrated during the last several years. Likewise, historic patterns of broadcast profitability, after allowances for long-term changes in network compensation to affiliates, will remain unchanged.

The Federal government will not institute any regulations which will restrict the revenue generating capability of broadcasting stations, such as blanket prohibitions on the advertising of certain products as it did with cigarettes in 1971.

The projections contained in this report utilize standard forecasting techniques. However, it is important to recognize that the projections contained herein are primarily intended for investment evaluation purposes only. They also should not be considered as either a direct or indirect predictions of what would actually occur. Rather, the projections represent a duplication of the forecasting process used by knowledgeable buyers of broadcasting stations in their preparation of purchase offers for specific broadcasting stations. The enclosed projections make no allowance for the unexpected variations in revenue and expense levels which normally occur in any business and which are routine characteristics which are recognized and accepted by knowledgeable buyers of broadcast television stations.

Background and Perceived Business Prospects for Channel 13

In the early 1980's the FCC began a regulatory procedure which resulted in the of several new VHF (channels 2-13) commercial television station licenses in recognized TV markets. These became known in the broadcasting industry as "VHF Drop-Ins." Most notable among these were new stations assigned to Charleston, West Virginia; Knoxville, Tennessee; and Salt Lake City, Utah.

At the time there was a great deal of excitement and high expectations regarding the ultimate success, of these VHF Drop-Ins. This resulted from the inherent transmission superiority of VHF stations over the UHF frequencies (channels 14-69) which are normally the only channels available for new stations. The excitement surrounding the VHF Drop-Ins was also based upon the fact that they were the first VHF channels made available in markets as large as Salt Lake City in more than 25 years. Likewise, cable television penetration was still below 40%, which enhanced the value of VHF commercial channels.

As might be expected, the FCC received numerous applications from various parties interested in obtaining the license for channel 13 in Salt Lake City ("channel 13"). To determine the ultimate licensee, the FCC started the long and cumbersome process of holding "comparative hearings" to choose among the applicants.

Around 1986 the FCC issued an initial decision in the channel 13 comparative hearings. Under FCC policy existing at the time, the various applicants were free to enter into settlement agreements to prevent the inevitable series of appeals that was believed would follow the FCC's initial comparative findings. At the time, such settlements permitted all of the applicants to be fully reimbursed for the time and expenses associated with the pursuit of their license applications.

HSMC understands that Mountain West Television ("MWT") was able to enter into settlement agreements with the other applicants for channel 13, wherein MWT would emerge as the sole FCC licensee of the station. HSMC understands that the aggregate consideration paid by MWT under these settlement agreements was about \$5,000,000.

Again it is important to recognize that in late 1986 there was a tremendous amount of enthusiasm regarding the business prospects of commercial broadcast television stations in general, and for VHF independent stations in larger-medium markets, like Salt Lake City. At the time the broadcast industry trade press was filled with stories of commercial broadcast stations selling for prices which equated with multiples of their operating cash flow⁽¹⁾ as high as 11 to 13 times. In the mind of knowledgeable buyers and investors, there was little question that even with local channel 20 remaining in operation, channel 13 would be a profitable (positive cash flow) business. There also was a strong belief that within a couple of years channel 13's audience size, advertising revenues and operating cash flows would surpass those of channel 20, then Salt Lake City's leading independent station.

THE MARKET

Salt Lake City, Utah

In 1986, Salt Lake City was the nation's 39th largest television market (Arbitron). The entire "Wasatch Front" region had undergone dramatic growth during the preceding ten years, and a general mood of optimism prevailed in the region.

In the broadcasting industry the aggregate revenues of local television and radio stations tend to move in a pattern which coincides with trends in local retail sales and related demographic factors. Throughout the first half of the 1980's the combined advertising revenues of Salt Lake City's commercial television stations grew at very rapid rate. Below are the market's aggregate, non-network, gross time sales. While the year-to-year change in revenue varied, the effective average annual (compound) growth rate was 10.5%.

<u>Year</u>	<u>Salt Lake City Gross Television Spot Time Sales</u>	<u>% Change</u>
1980	\$38,254,000	-
1981	44,182,000	+ 15%
1982	49,872,000	+ 13%
1983	52,524,000	+ 5%
1984	61,317,000	+ 17%
1985	66,682,000	+ 8%
1986	69,592,000	+ 4%

1) Operating profit, excluding income taxes, despreciation and debt service.

In 1986 there were only five significant commercial television station operating in the Salt Lake City market. These are listed below:

<u>Station</u>	<u>Channel</u>	<u>Network</u>	<u>Audience Share⁽²⁾</u>
KTVX-TV	4	ABC	29%
KUTV-TV	2	NBC	32%
KSL-TV	5	CBS	30%
KSTU-TV	20	Ind	9%
KOOG-TV	30	Ind	0%

In the television broadcasting industry most knowledgeable station buyers assume that there is essentially a "pool" of television advertising revenue that exists at a point in time. The challenge for local station operators is to attempt to gain the largest possible share (portion) for their station. A station's final share will be dependent upon the size and composition of its audience; the relative amount of commercial time it has available for sale; and the effectiveness of its local/national selling personnel.

Considering the composition of the Salt Lake City market, wherein it is the only medium market in the nation where there are two VHF educational stations plus four commercial VHF stations, the prospects for channel 13 to rapidly eclipse the existing channel 20 were very good. An examination of the audience shares of first VHF "Independent" stations in similar sized markets suggests that channel 13 would have been expected to attain a 14% share of the audience among local commercial stations within three years of commencing operation. This audience share is predicated on the assumption that channel 20 had remained in operation, and event which did not actually take place.

Programming

In early 1987 the Fox television network was still in its infancy and was not the vibrant network which we think of it as today. Independent stations, (those not affiliated with ABC, CBS, or NBC) had to rely on syndicated program materials purchased from outside vendors as their programming source. Channel 13 would have been such an Independent station. Channel 13 had one unique advantage, which was it had obtained a verbal commitment to broadcast the games of the Utah "Jazz" basketball team. Broadcasting of the Jazz was certain to gain immediate recognition for the new channel. This recognition would help rapidly expand its overall viewership, even when games were not being broadcast, among the market's TV viewers and advertisers.

2) Shares (TV Hshlds) among local commercial stations; 4-book average; 9 AM to Midnight, 7-day, Arbitron, 1986 "Season".

Sales Performance

The principal tool for analysis of a station's sales effectiveness is examine the station's Revenue to Audience Index ("R/A Index") which is the station's share of market time sales divided by its average share of audience in the 9 AM to Midnight period for the full week, with the result expressed as an index (base 100). For an affiliate of the three traditional networks, a R/A Index of 100 indicates that a station's revenue and audience shares are at parity; numbers less than 100 indicate substandard performance.

In 1987 the anticipated R/A Index for a VHF, second independent (wherein the other independent is UHF) would have been about 120. The fact that both of these numbers are over 100 is due to the fact that Independents and Fox affiliates have a larger amount of advertising time available for sale than do affiliates of the traditional networks. Thus in the projections which will follow channel 13 is anticipated to attain an R/A Index of 120 from the fourth year onward.

Revenue Projections

HSMC has formulated three sets of revenue projections for channel 13. The first of these takes the perspective of a knowledgeable buyer at the beginning of 1987. The second of these is as of the start of 1994 (today). The third attempts to look at the performance of the station in the interim period between 1987 and today, so as to estimate cash distributions available to stockholders. All of these projections assume that channel 20 had remained in operation.

In the seven year span between 1987 and the beginning of 1994, there have been monumental changes in the economy of the U.S. overall, and in the economy of the Salt Lake City TV market. A few of the salient changes were a long-lasting national economic recession, a reduction in monetary inflation to historically low levels, and a pronounced recession from 1988 to about 1992 in the Salt Lake City market. As might be expected, knowledgeable buyers looking at channel 13 at these two different points in time would have significantly different expectations regarding the station's future financial performance.

Financial Projections - 1987

Throughout the first portion of the 1980's the economy of Salt Lake City market was booming. This was reflected in the aggregate revenues of the market's commercial television stations as shown in the accompanying table. Total non-network advertising revenue rose from \$38,254,000 in 1980 to \$69,592,000 in 1986. This is a gross increase of 82%, and an effective average annual compound rate of 10.5%. With this in mind, it is HSMC's opinion that a knowledgeable buyer would have assumed that the combined revenues of the Salt Lake City commercial TV stations could be expected to grow at the rate of an effective rate of 8% per year into the foreseeable future. (This includes the assumption that channel 20 were to remain as a functioning competitor to channel 13.)

A knowledgeable buyer of channel 13 in 1987 would have assumed that the station should ultimately be able to attain about a 14% share of the television viewing to local commercial stations. As a new station, attainment of this viewing level would not occur instantaneously. Rather it would take at least two years to accomplish, with the result that the station would not be expected to have such a viewing share until its third year of operation.

Direct operating costs at channel 13 would have been projected as totalling about \$6,200,000 during the first year of operation. The largest single component of these would have been for "programming"; \$2,800,000. During the first year of new operation of a station sales expense, which is normally variable as a function of revenue consumes a higher share of revenue than would be the case for a more mature property. In the case of channel 13, first year sales expense of \$1,000,000 is nearly 17% of revenue, compared with about 13% from the second year onward. Promotion expense would also total about \$500,000 during the first year of operation, then decline the second before starting a slow, gradual increase from the third year onward. Excluding sales, the other operating expenses at the station would be expected to increase at annual rates of between 7% and 8% per year.

On the basis of the previous revenue and expense projections it is possible to estimate the broadcast cash flow for channel 13 during each of the 10 years comprising the projection period.⁽³⁾ This has been done in the Table on the following page.

Financial Projections - 1994

HSMC has also made a series of financial projections for channel 13 so as to estimate the value of the station today; late November of 1993. Because of the delay in FCC processing of broadcast station license assignments this valuation essentially reflects the value of the station if sold at the beginning of 1994.

This second set of projections embodies the implicit assumption that competing channel 20 was not purchased by channel 13. This is the same assumption used in the formulation of the previous 1987 projections.

As noted previously, the aggregate revenues of the Salt Lake City television stations did not actually attain the levels projected from the 1987 perspective. This was the result of factors beyond the control of the local TV stations, most notably the economic recession that disrupted the market in the 1989-1991 period.

3) Operating profit from continuing operations, excluding; depreciation, interest, debt service and income taxes.

The table below shows the actual gross, non-network revenues of the market's commercial TV stations during the period.

<u>Year</u>	<u>Salt Lake City Gross Television Spot Time Sales</u>	<u>% Change</u>
1987	\$68,872,000	
1988	70,774,000	+ 3%
1989	73,683,000	+ 4%
1990	74,774,000	+ 1%
1991	73,362,000	- 2%
1992	76,000,000	+ 4%
1993	78,000,000	+ 3%

These figures are for 4 commercial TV stations, and reflect the fact that channel 20 no longer operates. Italics are estimates of HSMC.

Throughout the final portion of the 1980's and on into the early 1990's the economy of Salt Lake City was beginning to cool. This was reflected in the aggregate revenues of the market's commercial television stations as shown in the table on page 5. Total non-network revenue rose from \$68,872,000 in 1987 to an estimated \$79,341,000 in 1992. This is a gross increase of 15%, and an effective average annual compound rate of 3%. This represents a marked contrast from the growth rates present from a 1987 perspective.

With this in mind, it is HSMC's opinion that a knowledgeable buyer would assume that the recession had ended and that the combined revenues of the Salt Lake City commercial TV stations could be expected to grow at the rate of an effective rate of 4% per year into the foreseeable future. (This includes the assumption that channel 20 were to remain as a functioning competitor to channel 13.)

A knowledgeable buyer of channel 13 today (1993) would assume that the station should ultimately be able to attain about a 15% share of the television viewing to local commercial stations. As a Fox affiliate, this viewing level assumption is actually below the recent experience of the station (19%) and results from the fact that channel 20 is no longer a competitor and that the station is now owned and operated by the Fox company.

A knowledgeable buyer of channel 13 would assume first year operating expenses of about \$7,350,000. Thereafter, revenues would be expected to rise at the rate of about 4% per year. These operating expense estimates, combined with the previous revenue estimates suggest that today's knowledgeable buyer of the station would anticipate channel 13 to generate about \$5,202,000 in broadcast cash flow in 1994, the first year of new ownership. This represents an operating margin of about 39%, which is about what would be expected for a now mature VHF Fox affiliate in a market like Salt Lake City.

On the basis of the previous revenue and expense projections it is possible to estimate the broadcast cash flow for channel 13 during each of the 10 years between 1994 and 2003 which comprise the projection period.⁽⁴⁾ This has been done in the Table on the following page.

- 4) Operating profit from continuing operations, excluding; depreciation, interest, debt service and income taxes.

Channel 13, Salt Lake City, Utah Table A; Projected Revenues, Expenses & Cash Flow - 1987 Perspective

(Dollars In Thousands)

(Assuming Continuing Operation of Channel 20)

- Years -

	1987	1988	% Chg	1989	% Chg	1990	% Chg	1991	% Chg	1992	% Chg	1993	% Chg	1994	% Chg	1995	% Chg	1996	% Chg
	(1 st)	(2 nd)		(3 rd)		(4 th)		(5 th)		(6 th)		(7 th)		(8 th)		(9 th)		(10 th)	
REVENUE																			
Market Gross Time Sales (Non-Network)	\$75,000	\$81,000	8%	\$87,480	8%	\$94,478	8%	\$102,037	8%	\$110,200	8%	\$119,018	8%	\$128,537	8%	\$138,820	8%	\$149,925	8%
Channel 13 - Audience Share	8.0%	12.0%		14.0%		14.0%		14.0%		14.0%		14.0%		14.0%		14.0%		14.0%	
"R/A Index"	1.00	1.00		1.10		1.20		1.20		1.20		1.20		1.20		1.20		1.20	
Channel 13 - Gross Advertising Revenue	\$8,000	\$9,720	62%	\$13,472	39%	\$15,872	18%	\$17,142	8%	\$18,514	8%	\$19,995	8%	\$21,564	8%	\$23,322	8%	\$25,187	8%
Channel 13 - Revenue Share	8.0%	12.0%		15.4%		18.8%		18.8%		18.8%		18.8%		18.8%		18.8%		18.8%	
Less Agency Commissions	14%	-640	-8%	-1,361	-30%	-2,222	-18%	-2,400	-8%	-2,592	-8%	-2,799	-8%	-3,023	-8%	-3,265	-8%	-3,529	-8%
Channel 13 - Net Revenue	\$5,160	\$8,359	62%	\$11,566	39%	\$13,650	18%	\$14,742	8%	\$15,922	8%	\$17,195	8%	\$18,571	8%	\$20,057	8%	\$21,661	8%
Expenses & Cash Flow																			
Channel 13 - Direct Expenses																			
Technical	\$600	\$642	7%	\$687	7%	\$735	7%	\$786	7%	\$842	7%	\$900	7%	\$963	7%	\$1,031	7%	\$1,103	7%
Promotion	500	390	-28%	389	0%	420	8%	453	8%	490	8%	529	8%	571	8%	617	8%	668	8%
Programming	2,800	3,024	8%	3,206	6%	3,527	10%	3,809	8%	4,114	8%	4,443	8%	4,799	8%	5,183	8%	5,597	8%
Sales (13% of Revenue)	1,000	1,264	26%	1,751	39%	2,063	18%	2,228	8%	2,407	8%	2,599	8%	2,807	8%	3,032	8%	3,274	8%
General & Administrative	1,300	1,391	7%	1,488	7%	1,593	7%	1,704	7%	1,823	7%	1,951	7%	2,088	7%	2,234	7%	2,390	7%
Total Cash Expense	\$6,200	\$6,681	8%	\$7,581	13%	\$8,338	10%	\$8,982	8%	\$9,678	8%	\$10,423	8%	\$11,228	8%	\$12,096	8%	\$13,031	8%
Channel 13 - CASH FLOW	-\$1,040	\$1,679	-	\$4,004	130%	\$5,312	33%	\$5,760	8%	\$6,246	8%	\$6,772	8%	\$7,343	8%	\$7,961	8%	\$8,630	8%
Cash Flow Margin		20%		35%		39%		39%		39%		39%		40%		40%		40%	

Channel 13, Salt Lake City, Utah Table B; Projected Revenues, Expenses & Cash Flow - 1993 Perspective

(Dollars in Thousands)

(Assuming Continuing Operation of Channel 20)

- Years -

	1994	1995	% Chg	1996	% Chg	1997	% Chg	1998	% Chg	1999	% Chg	2000	% Chg	2001	% Chg	2002	% Chg	2003	% Chg
	(1 st)	(2 nd)		(3 rd)		(4 th)		(5 th)		(6 th)		(7 th)		(8 th)		(9 th)		(10 th)	
REVENUE																			
Market Gross Time Sales (Non-Network)	\$83,000	\$86,320	4%	\$89,773	4%	\$93,364	4%	\$97,008	4%	\$100,962	4%	\$105,021	4%	\$109,222	4%	\$113,591	4%	\$118,135	4%
Channel 13 - Audience Share	15.0%	15.0%		15.0%		15.0%		15.0%		15.0%		15.0%		15.0%		15.0%		15.0%	
"RVA Index"	1.20	1.20		1.20		1.20		1.20		1.20		1.20		1.20		1.20		1.20	
Channel 13 - Gross Advertising Revenue	\$14,940	\$15,538	4%	\$16,159	4%	\$16,805	4%	\$17,478	4%	\$18,177	4%	\$18,904	4%	\$19,660	4%	\$20,446	4%	\$21,264	4%
Channel 13 - Revenue Share	18.0%	18.0%		18.0%		18.0%		18.0%		18.0%		18.0%		18.0%		18.0%		18.0%	
Less: Agency Commissions	14%	-2,082	-2,175	-2,292	-2,353	-2,447	-2,545	-2,647	-2,752	-2,862	-2,977								
Channel 13 - Net Revenue	\$12,848	\$13,362	4%	\$13,897	4%	\$14,453	4%	\$15,031	4%	\$15,632	4%	\$16,257	4%	\$16,908	4%	\$17,584	4%	\$18,287	4%
Expenses & Cash Flow																			
Channel 13 - Direct Expenses																			
Technical	\$750	\$773	3%	\$796	3%	\$820	3%	\$844	3%	\$869	3%	\$896	3%	\$922	3%	\$950	3%	\$979	3%
Promotion	550	572	4%	595	4%	619	4%	643	4%	669	4%	696	4%	724	4%	753	4%	783	4%
Programming	3,350	3,451	3%	3,554	3%	3,661	3%	3,770	3%	3,884	3%	4,000	3%	4,120	3%	4,244	3%	4,371	3%
Sales (13% of Revenue)	1,942	2,020	4%	2,101	4%	2,185	4%	2,272	4%	2,363	4%	2,458	4%	2,556	4%	2,658	4%	2,764	4%
General & Administrative	1,600	1,664	4%	1,731	4%	1,800	4%	1,872	4%	1,947	4%	2,025	4%	2,105	4%	2,190	4%	2,277	4%
Total Cash Expense	\$8,192	\$8,479	3%	\$8,776	3%	\$9,063	3%	\$9,402	3%	\$9,732	3%	\$10,074	3%	\$10,428	3%	\$10,794	3%	\$11,174	3%
Channel 13 - CASH FLOW	\$4,656	\$4,883	5%	\$5,121	5%	\$5,389	5%	\$5,629	5%	\$5,900	5%	\$6,184	5%	\$6,480	5%	\$6,790	5%	\$7,113	5%
Cash Flow Margin	36%	37%		37%		37%		37%		38%		38%		38%		39%		39%	

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Hoffman
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Capital

DISCOUNTED CASH FLOW VALUATIONS

Fair Market Valuations of Channel 13

Modern capital budgeting techniques consider the gross returns (earnings) that can be expected from a capital investment. In the commercial broadcasting industry, these monetary returns are normally expressed in terms of "Broadcast Cash Flow", as mentioned previously. This is defined as the gross operating earnings (profit) anticipated from the ownership and normal operation of a broadcast station before consideration of "trade revenue," income taxes, depreciation, amortization of goodwill, interest charges, capital expenditures and indirect "corporate overhead." This differs somewhat from the standard accounting definition of cash flow in that expenditures for income taxes and interest payments are also excluded. This is done so as to eliminate the effects of varying capital structures, depreciation rates and effective tax rates among different stations and owners. Thus, broadcast cash flow emerges as the most unbiased and systematic measure of the earnings capability of broadcast stations.

The discounted broadcast cash flow method of valuation of a broadcast station consists of the process of estimating the future cash flows which are likely to accrue to the new owner of the subject station through its prudent operation, wherein recent operating experience is tempered with industry and market averages to predict future performance. The estimated future cash flows for the station are then discounted to determine their present values using an interest rate that is representative of the prevailing interest rate on long-term, unrated (non-investment grade) bonds of small corporations. In addition to the cash flows generated from routine operations, the ultimate resale (liquidation) value of the station(s) is estimated using a multiple of future cash flow which is equivalent to the multiple that were being paid at the corresponding time for similar stations in similar markets.

The first step in the discounted cash flow valuation process involves the projection of the level of broadcast cash flow that a knowledgeable buyer would expect to occur given their perspective at a given point in time and the relative maturity of the underlying station. As noted previously, this valuation study occurs at two different points in time; 1987 and today (start of 1994). At these specific dates the station was also in different states of maturation. In the 1987 scenario it was a new station, just signing-on. In the second scenario it is now a mature station (7 years old). In both scenarios it assumes that channel 20 has not been purchased.

The two sets of projected cash flows for channel 13 have been discounted at 16% to determine their present values and then accumulated, as shown in the following tables. The 16% discount rate is representative of the "blended cost of capital" currently existing at both points in time for television station acquisitions of this type. The cost of capital was calculated as shown on the following page.

<u>Component</u>	<u>Rate</u>	<u>Proportion</u>	<u>Effective Rate</u>
Senior Debt	10%	60%	6%
Junior Debt	22%	15%	3%
Equity	30%	25%	<u>7%</u>
Total:			16% (rounded)

The future resale (liquidation) values of the station has also been estimated assuming a value of 10.0 times the applicable year's cash flow with the 1987 perspective and a 9.0 multiple from today's perspective. These multiples are based upon HSMC's knowledge of knowledgeable buyer expectations at these two different points in time. The resale values have also been discounted at 16% to determine their present values.

The two sets of future discounted accumulated cash flows from operations are added to the discounted resale (liquidation) values in the final lines of the tables. A ten year forecasting period was selected for the cash flow analysis so as to fully consider the subject market's overall growth trends. This time span also represents a standard forecasting period used by knowledgeable buyers of broadcast television stations such as this.

Value of Channel 13 License - 1987

At the moment it began operation in 1987, (assuming channel 20 was not purchased), channel 13 would have made a total of about \$8,000,000 in expenditures and capital investments and working capital reserves so as to be ready to operate the station. As a new station these items, as listed below, plus the stations FCC license would have comprised its only assets. Since it was not yet an operating station, there would not be any goodwill or similar "going concern" values. Calculation of the value of the station's FCC license would proceed as follows:

Discounted Cash Flow Valuation (1987):	\$33,342,000
Less: Buy-out of Competing Applicants:	-5,000,000
Working Capital & Lease Deposits:	<u>-3,000,000</u>
Value of Channel 13 License (1987):	\$25,342,000
Value of MWT's 40% Interest in License:	<u>\$10,137,000</u>

Value of Channel 13 License - Today [1993]

Application of the previously presented revenue and expense projections for the period 1994-2003, to the discounted cash flow model, appears on the following page. The one significant difference in this valuation, versus that of 1987, is the change in the multiple used to determine the future resale value of the station; which is now 9.0. Likewise the investment is now viewed in the ninth year instead of 10th year. Reference to the table shows that on this basis, channel 13 would have a Fair Market Value today [channel 20 still operating] of \$40,044,000. With allowance for a pay-off value on the equipment lease of about \$500,000; the value of a 40% carried equity interest in the station would have been: \$15,818,000.

Channel 13 - Discounted Cash Flow Valuation As of 1987

(ASSUMING CHANNEL 20 REMAINED IN OPERATION)

(Dollars in Thousands)

27-Dec

- Y e a r s -

Revised: December 27, 1993

		<u>1987</u> (1st)	<u>1988</u> (2nd)	<u>1989</u> (3rd)	<u>1990</u> (4th)	<u>1991</u> (5th)	<u>1992</u> (6th)	<u>1993</u> (7th)	<u>1994</u> (8th)	<u>1995</u> (9th)	<u>1996</u> (10th)
Channel 13 - Operating Cash Flow		-\$1,040	\$1,679	\$4,004	\$5,312	\$5,760	\$6,246	\$6,772	\$7,343	\$7,961	\$8,630
Present Value Factor	16%	0.8621	0.7432	0.6407	0.5523	0.4761	0.4104	0.3538	0.3050	0.2630	0.2267
Discounted Cash Flow:		-1,206	-1,206	1,075	2,212	2,529	2,364	2,210	2,066	1,931	1,805
Accumulated Discounted Cash Flow:		-\$1,206	-\$2,413	-\$1,337	\$874	\$3,403	\$5,768	\$7,978	\$10,044	\$11,974	\$13,779
Future Resale Value (10.0 times c.f.):								67,725	73,428	79,607	86,302
Discounted Value of Future Sales Price:								23,963	22,397	20,933	19,563
Accumulated Cash Flow + Resale: *								\$31,941	\$32,441	\$32,907	\$33,342

* Value of "Accumulated Discounted Cash Flow" plus "Discounted Value of Future Sales Price" of the station

Less: Working Capital & Equipment: -3,000
Buy-out of Competing Applicants: -5,000

Value of License (000): **\$25,342**

Value of 40% of License (000): **\$10,137**

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Channel 13 - Discounted Cash Flow Valuation As of Today (1993)

(ASSUMING CHANNEL 20 REMAINED IN OPERATION)

(Dollars in Thousands)

27-Dec

- Years -

Revised: December 27, 1993

		<u>1994</u> (1st)	<u>1995</u> (2nd)	<u>1996</u> (3rd)	<u>1997</u> (4th)	<u>1998</u> (5th)	<u>1999</u> (6th)	<u>2000</u> (7th)	<u>2001</u> (8th)	<u>2002</u> (9th)	<u>2003</u> (10th)
Channel 13 - Operating Cash Flow		\$4,656	\$4,883	\$5,121	\$5,369	\$5,629	\$5,900	\$6,184	\$6,480	\$6,790	\$7,113
Present Value Factor	16%	0.8621	0.7432	0.6407	0.5523	0.4761	0.4104	0.3538	0.3050	0.2630	0.2267
Discounted Cash Flow		4,014	3,460	3,129	2,828	2,556	2,310	2,088	1,886	1,704	1,539
Accumulated Discounted Cash Flow		\$4,014	\$7,474	\$10,603	\$13,431	\$15,988	\$18,298	\$20,386	\$22,272	\$23,976	\$25,515
Future Resale Value (9.0 times c.f.)								55,654	58,321	61,107	64,019
Discounted Value of Resale								19,692	17,789	16,068	14,512
Accumulated Cash Flow + Resale: *								\$40,078	\$40,061	<u>\$40,044</u>	\$40,027

* Value of "Accumulated Discounted Cash Flow" plus "Discounted Value of Future Sales Price" of the station

Less: Buy-out of Equipment Lease: -500

Value of Station Assets: \$39,544

Value of 40% of Station Assets: \$15,818

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Company, Inc.

Value of Cash Flow From Operations

HSMC has also prepared an estimate of the likely net cash distributions that the MWT partners in channel 13 might have received during the period between the start of 1987 and the end of 1993. These are based upon HSMC's best estimates of what the station's actual revenues and distributable profits would have been if the following conditions had prevailed;

1. Northstar and MWT retained ownership of channel 13 from 1987 to the present.
2. Channel 20 had remained in operation.
3. Consideration is given to the actual market revenue conditions which prevailed during the 1987-1993 period. *This differs from the perspective of a knowledgeable buyer who can only look into the future.*
4. Capital reinvestment requirements average \$300,000/year in the second through 7th years.
5. Capital Leases, mostly for plant/equipment, average \$340,000/year.
6. All surplus cash is distributed on a pro-rata basis with MWT receiving 40%.
7. The marginal personal income tax rate, federal/state, is 33%.

The table on the following page shows the result of the application of these assumptions during the period projection period. Reference to the tables shows that MWT's partners could have expected a cumulative amount of \$4,377,000 in net benefit from the operation of the station. The reader should note that these estimates do not provide for any return reflecting "lost interest" on these distributions, inclusion of which would produce a higher outcome.

Channel 13, Salt Lake City, Utah Projected Revenues, Expenses & Cash Flow - 1987 through 1993
(Dollars In Thousands) (Assuming Continuing Operation of Channel 20)

- Years -

	1987	1988	% Chg	1989	% Chg	1990	% Chg	1991	% Chg	1992	% Chg	1993	% Chg
	(1 st)	(2 nd)		(3 rd)		(4 th)		(5 th)		(6 th)		(7 th)	
REVENUE													
Gross Time Sales (Non-Network)	\$72,000	\$74,313	3%	\$77,367	4%	\$78,513	1%	\$77,030	-2%	\$79,341	3%	\$81,721	3%
Channel 13 - Audience Share	8.0%	12.0%		14.0%		14.0%		14.5%		15.0%		15.0%	
"R/A Index"	1.00	1.00		1.10		1.20		1.20		1.20		1.20	
Channel 13 - Gross Advertising Revenue	\$5,700	\$9,918	86%	\$11,915	34%	\$13,190	11%	\$13,403	2%	\$14,261	7%	\$14,710	3%
Channel 13 - Revenue Share	8.0%	12.0%		15.4%		18.8%		17.4%		18.0%		18.0%	
Less: Agency Commissions	14%	-800		-1,248		-1,847		-1,878		-1,999		-2,058	
Channel 13 - Net Revenue	\$4,954	\$7,669	55%	\$10,247	34%	\$11,344	11%	\$11,527	2%	\$12,262	7%	\$12,650	3%
Expenses & Cash Flow													
Channel 13 - Direct Expenses													
Technical	\$900	\$930	3%	\$962	3%	\$995	3%	\$729	-2%	\$706	-3%	\$804	8%
Promotion	500	300	-26%	389	3%	420	8%	453	8%	490	8%	529	8%
Programming	2,800	3,024	8%	3,064	2%	3,146	2%	3,209	2%	3,273	2%	3,339	2%
Sales (13% of Revenue)	1,000	1,159	16%	1,549	34%	1,715	11%	1,742	2%	1,857	7%	1,912	3%
General & Administrative	1,300	1,378	6%	1,461	6%	1,546	6%	1,641	6%	1,740	6%	1,844	6%
Total Cash Expense:	\$6,200	\$6,581	6%	\$7,144	8%	\$7,524	5%	\$7,778	3%	\$8,128	4%	\$8,428	4%
Channel 13 - CASH FLOW	-\$1,246	\$1,118	-	\$3,102	178%	\$3,820	23%	\$3,751	-2%	\$4,157	11%	\$4,222	2%
Cash Flow Margin		15%		30%		34%		33%		34%		33%	
Less:													
Capital Lease Payments	-340	-340		-340		-340		-340		-340		-340	
Capital Improvements	0	-300		-300		-300		-300		-300		-300	
Net Cash Available for Distribution	-\$1,586	\$478		\$2,462		\$3,180		\$3,111		\$3,517		\$3,582	
Distribution to M.W.T. (40%)	0	191		985		1,272		1,245		1,407		1,433	
Less: 33% Effective Personal Income Tax	0	-63		-325		-420		-411		-464		-473	
Net Value of Earnings to M.W.T.'s Owners	\$0	\$128		\$860		\$852		\$834		\$843		\$860	
Cumulative Value of New Earnings	\$0	\$128		\$788		\$1,640		\$2,474		\$3,416		\$4,377	

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Tab 14

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Capital, Inc.

May 3, 1997

Mr. Rex Madsen
Snow Christensen & Martineau
10 Exchange Place
Salt Lake City, Utah 84145

Re: Update to KSTU-TV Financial Analyses

Dear Mr. Madsen:

This letter will serve as an update to the financial analyses which we performed for you in December of 1993 involving broadcast television channel 13 in Salt Lake City, Utah. This update will serve to bring our analyses forward to the start of 1997. It also provides minor refinements to our original report.

The analyses in this letter are based upon the same assumptions, methodologies and data sources used in our original 1993 study. You should refer to that document for a complete listing of these.

As was the case in 1993, we are examining three specific issues involving channel 13:

1. Fair Market Value of channel 13's FCC license as of the date that the station began broadcasting (1987); assuming that local TV station channel 20 had not been purchased.
2. Fair Market Value of all of the assets used and useful in the operation of channel 13 as of today (1997); assuming that channel 20 had not been purchased.
3. Estimation of the likely cash distributions that would have been made to the Mountain West partners (40% beneficial owners) in channel 13 during the period 1987 and today. This estimate assumes that channel 20 had not been purchased and that channel 13's assets had not been sold to Fox Broadcasting in 1989-90.

Fair Market Value of Channel 13 License - 1987

It remains our opinion, as stated in the 1993 report and amended in my 1993 deposition, that the Fair Market Value of a 40% interest in channel 13's license as of late 1986 and early 1987 was: \$10,137,000.



Fair Market Value of Channel 13 - Start of 1997

Since our original report there have been significant overall improvements in the financial performance of broadcast TV stations, like channel 13. Among these are:

- The Gross Advertising revenues of Salt Lake City TV stations have risen nearly 50% from 1993 to 1996.
- The audience levels of Channel 13 have remained essentially stable despite the growth in competing local broadcast channel 14.
- Overall buyer interest in commercial TV stations, in particular those associated with the Fox network, have become stronger. This has lead to higher overall station pricing levels expressed in terms of "cash flow multiples."

Utilizing the same methodology contained in our original report we have formulated a new series of revenue and expense projections for channel 13 from 1997 onward for 10 years (see attachment). This methodology is the same as that used by knowledgeable station buyers when they prepare a bid to purchase a station.

The projections assume that channel 13 maintains a 14.5% share of local audience. Likewise, its "Revenue/Audience Index" should remain at 1.10 which is normal for Fox affiliates of this type. The projections continue to be based upon the assumption that channel 20 was not purchased by channel 13. They are also assume that a knowledgeable buyer of the station would seek to maximize near-term operating profitability.

Reference to the table shows that channel 13's gross revenues are expected to be about \$23,800,000 in 1997 and then rise to about \$33,900,000 in 2006. Operating cash flow is estimated at about \$6,400,000 in 1997 and rising to about \$10,200,000 in 2006.

Each of the future year's operating cash flows have been discounted back to present value at a 16% rate. In addition the future estimated resale value of the station has also been discounted back. All of the future discounted cash flows have then been accumulated for 10 years, as was done in the 1993 report.

Reference to the 10th year (2006) of the "Discounted Cumulative Cash Flow" table (attachment) shows that all of the assets (excluding cash equivalents, receivables, and all liabilities) would be \$58,808,000. To this amount has been added \$2,648,000 for accounts receivable which would normally remain the property of the seller. A \$500,000 deduction has been made to allow for an "Equipment Lease Payoff," producing a total of \$60,957,000 that would have been available for distribution to the stockholders. A 40% interest in this would then be worth \$24,383,000.

Since 1993 there has been only one significant sale of a VHF network station in the market. This was the 1994 sale of KUTV (ch. 2, NBC) for \$109,000,000. While this station's levels of profitability are somewhat higher than those projected for channel 13, the sale clearly demonstrates the significant value that a network affiliated VHF television station can have in Salt Lake City.

Channel 13, Salt Lake City
May 3, 1997
Page 3

1987 to 1996 Operating Projections

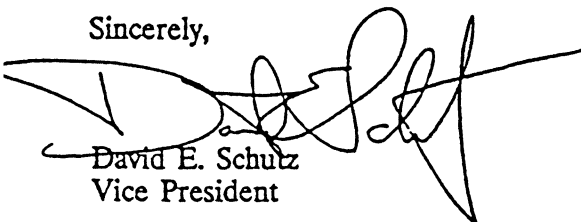
Even if Channel 20 had remained in operation, there is little doubt that Channel 13 would have been able to attain a positive operating cash flow by the second year of operation. Subject to the assumptions contained on page 17 of our original report, we have updated our revenue and cash flow projections for the station during the 1987 to 1997 period. These updated projections appear as an attachment to this letter.

Reference to the projections shows that Mountain West Television would have received a total of \$8,751,000 in net cash distributions from channel 13's operations. This amount does not provide any allowance for the "time value of money" (potential lost interest income) which Mountain West might have realized through investment of its cash distributions during the 1987 through 1996 period.

HSMC and David E. Schutz represents that the information and analyses contained in this report are based upon their best knowledge and belief. Neither the undersigned, nor any member of HSMC have any personal or financial interest in the business enterprises examined herein, or with any company associated with the law firm of Snow, Christensen & Martineau, Fox Broadcasting, or Mountain West Television.

Respectfully submitted,

Sincerely,



David E. Schutz
Vice President

Attachments: Ch. 13 financial projections 1997 forward
Ch. 13 discounted cash flow analysis
Ch. 13 operating projections 1987-1996

DES:grm

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Channel 13, Salt Lake City, Utah

Projected Revenues, Expenses & Cash Flow - 1987 through 1996
Including Proceeds Available for Distribution to Stockholders

Dollars in Thousands)

(Assuming Continuing Operation of Channel 20)

7-Jun-97

- Years -

REVENUE

	1987	1988	1989	% Chg	1990	% Chg	1991	% Chg	1992	% Chg	1993	% Chg	1994	% Chg	1995	% Chg	1996	% Chg
	(1st)	(2nd)	(3rd)		(4th)		(5th)		(6th)		(7th)		(8th)		(9th)		(10th)	
Over Time Sales (Non-Network)	\$68,871	\$70,774	\$72,000	2%	\$74,773	4%	\$73,362	-2%	\$80,000	8%	\$86,977	8%	\$113,661	31%	\$120,711	6%	\$155,000	12%
Channel 13 - Audience Share	0.0%	8.0%	11.0%		13.0%		15.0%		15.0%		15.0%		14.5%		14.5%		14.5%	
"R/A Index"	1.00	1.00	1.10		1.10		1.10		1.10		1.10		1.10		1.10		1.10	
Channel 13 - Gross Advertising Revenue	\$0	\$5,662	\$8,712	54%	\$10,693	23%	\$12,105	13%	\$13,200	8%	\$14,351	8%	\$18,166	27%	\$19,253	6%	\$21,533	12%
Channel 13 - Revenue Share	0.0%	8.0%	12.1%		14.3%		16.5%		16.5%		16.5%		16.0%		16.0%		16.0%	
Less: Agency & Rep. Commissions	0	(1,019)	(1,568)	54%	(1,925)	23%	(2,179)	13%	(2,376)	8%	(2,563)	8%	(3,270)	27%	(3,466)	6%	(3,876)	12%
Channel 13 - Net Time Sales	\$0	\$4,643	\$7,144		\$8,768		\$9,926		\$10,824		\$11,788		\$14,896		\$15,788		\$17,657	
Add: "Other Revenue"	150	154	157		163		160		174		189		248		263		294	
Channel 13 - Net Revenue	\$0	\$4,643	\$7,144	54%	\$8,768	23%	\$9,926	13%	\$10,824	8%	\$11,788	8%	\$14,896	27%	\$15,788	6%	\$17,657	12%

Expenses & Cash Flow

Channel 13 - Direct Expenses

Technical	\$0	\$500	\$535	7%	\$572	7%	\$613	7%	\$655	7%	\$701	7%	\$750	7%	\$803	7%	\$859	7%
Promotion	0	750	800	33%	500	0%	540	8%	583	8%	630	8%	680	8%	736	8%	793	8%
Programming	0	2,500	2,700	2%	2,916	8%	3,149	2%	3,401	8%	3,673	8%	3,967	8%	4,285	8%	4,627	8%
News	0	0	0		0		0		0		750		900	20%	963	7%	1,030	7%
Sales (10% of Net Time Sales)	0	464	714	54%	877	23%	993	13%	1,082	8%	1,177	8%	1,490	27%	1,579	6%	1,766	12%
General & Administrative	0	1,400	1,512	8%	1,633	8%	1,764	8%	1,905	8%	2,057	8%	2,222	8%	2,399	8%	2,591	8%
Total Cash Expense:	\$0	\$5,614	\$8,961	54%	\$8,498	23%	\$9,058	6%	\$9,627	6%	\$10,368	8%	\$11,009	7%	\$11,763	7%	\$12,567	7%
Channel 13 - DIRECT CASH FLOW	\$0	(\$972)	\$1,162		\$2,270	92%	\$2,868	26%	\$3,197	11%	\$2,780	-13%	\$4,887	76%	\$5,025	3%	\$5,959	19%

Cash Flow Margin

Less:

Capital Lease Payments	(340)	(340)	(340)		(340)		(340)		(340)		(340)		(340)		(340)		(340)	
Capital Improvements	0	(300)	(300)		(300)		(500)		(500)		(500)		(500)		(500)		(500)	

Net Cash Available for Distribution

Distribution to M.W.T. (40%)

Cumulative Value of M.W.T. Distributions

Assumes total capitalization of \$10 MM. of which \$8 MM. is common equity and \$2 MM. is Lease Financing.

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Channel 13 - Discounted Cash Flow Valuation As of January 1, 1997

ASSUMING CHANNEL 20 REMAINED IN OPERATION)

Dollars in Thousands)

02-Jun

- Years -

		<u>1997</u> (1st)	<u>1998</u> (2nd)	<u>1999</u> (3rd)	<u>2000</u> (4th)	<u>2001</u> (5th)	<u>2002</u> (6th)	<u>2003</u> (7th)	<u>2004</u> (8th)	<u>2005</u> (9th)	<u>2006</u> (10th)
Channel 13 - Operating Cash Flow		\$6,405	\$6,758	\$7,128	\$7,515	\$7,918	\$8,340	\$8,780	\$9,240	\$9,720	\$10,222
Present Value Factor	16%	0.8621	0.7432	0.6407	0.5523	0.4761	0.4104	0.3538	0.3050	0.2630	0.2267
Discounted Cash Flow		5,521	4,760	4,330	3,937	3,578	3,250	2,951	2,678	2,430	2,203
Accumulated Discounted Cash Flow		\$5,521	\$10,281	\$14,611	\$18,548	\$22,125	\$25,375	\$28,326	\$31,004	\$33,434	\$35,637
Future Resale Value (10.0 times c.f.)								87,800	92,398	97,202	102,218
Discounted Value of Resale								31,066	28,184	25,559	23,171
Accumulated Cash Flow + Resale:								\$59,392	\$59,188	\$58,993	\$58,808
Value of "Accumulated Discounted Cash Flow" plus "Discounted Value of Future Sales Price" of the station											

Add: Accts. Receivable 2,648

Less: Buy-out of Equipment Lease: (500)

Value of Station Assets: **\$60,957**

Value of 40% of Station Assets: **\$24,383**

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Channel 13, Salt Lake City, Utah

Projected Revenues, Expenses & Cash Flow - 1997 Perspective

(Dollars in Thousands)

(Assuming Continuing Operation of Channel 20)

02-Jun-97

- Years -

REVENUE

	1996	1997	1998 % Chg	1999 % Chg	2000 % Chg	2001 % Chg	2002 % Chg	2003 % Chg	2004 % Chg	2005 % Chg	2006 % Chg
	(Historic)	(1 st)	(2 nd)	(3 rd)	(4 th)	(5 th)	(6 th)	(7 th)	(8 th)	(9 th)	(10 th)
Market Gross Time Sales (Non-Network)	\$135,000	\$144,450	7%	\$150,228	4%	\$156,237	4%	\$162,467	4%	\$168,996	4%
Channel 13 - Audience Share	14.6%	16.0%		16.0%		15.0%		15.0%		15.0%	
"R/A Index"	1.10	1.10		1.10		1.10		1.10		1.10	
Channel 13 - Gross Advertising Revenue	\$21,533	\$23,634		\$24,768		\$25,779		\$26,810		\$27,863	
Channel 13 - Revenue Share	16.0%	16.6%		16.6%		16.6%		16.6%		16.6%	
Less: Agency & Rep Commissions	(3,676)	(4,290)		(4,462)		(4,640)		(5,019)		(5,426)	
Channel 13 - Net Time Sales	\$17,857	\$19,544		\$20,326		\$21,139		\$22,664		\$23,778	
Add: "Other Revenue"	150	161		167		174		181		195	
Channel 13 - Net Revenue	\$17,807	\$19,705	3%	\$20,493	4%	\$21,312	4%	\$22,165	4%	\$23,052	4%

Expenses & Cash Flow

Channel 13 - Direct Expenses

Technical	\$659	\$665	3%	\$671	3%	\$677	3%	\$683	3%	\$1,026	3%	\$1,057	3%	\$1,088	3%	\$1,121	3%	\$1,155	3%
Promotion	793	825	6%	856	4%	893	4%	928	4%	965	4%	1,004	4%	1,044	4%	1,129	4%	1,174	4%
Programming	4,627	4,766	6%	4,909	3%	5,056	3%	5,206	3%	5,364	3%	5,525	3%	5,691	3%	5,862	3%	6,038	3%
News	1,030	1,030	0%	1,030	0%	1,030	0%	1,030	0%	1,030	0%	1,030	0%	1,030	0%	1,030	0%	1,030	0%
Sales (13% of Revenue)	1,766	3,096	76%	3,222	4%	3,351	4%	3,485	4%	3,625	4%	3,770	4%	3,921	4%	4,077	4%	4,240	4%
General & Administrative	2,591	2,695	4%	2,803	4%	2,915	4%	3,031	4%	3,153	4%	3,279	4%	3,410	4%	3,546	4%	3,688	4%
Total Cash Expense:	\$11,667	\$13,300	14%	\$13,734	3%	\$14,184	3%	\$14,650	3%	\$15,133	3%	\$15,634	3%	\$16,163	3%	\$16,890	3%	\$17,247	3%
Channel 13 - CASH FLOW	\$6,139	\$6,405	4%	\$6,758	6%	\$7,126	5%	\$7,515	6%	\$7,916	6%	\$8,340	6%	\$8,780	6%	\$9,240	6%	\$9,720	6%
Cash Flow Margin	34%	33%		33%		33%		34%		34%		35%		35%		36%		36%	

S20519

029560

CPL Proposal

Channel 13 - Salt Lake City
Calendar Years

SUMMARY FINANCIAL STATEMENTS

02-Jun-97

(Dollars in Thousands)

1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
------	------	------	------	------	------	------	------	------	------

02-Jun-97

Net Revenue	\$0	\$4,643	\$7,144	\$8,768	\$9,926	\$10,824	\$11,768	\$14,896	\$15,788	\$17,657
Less: Direct Operating Expenses	0	<u>5,614</u>	<u>5,961</u>	<u>6,498</u>	<u>7,058</u>	<u>7,627</u>	<u>8,988</u>	<u>10,009</u>	<u>10,763</u>	<u>11,667</u>
Operating Cash Flow	\$0	(\$972)	\$1,182	\$2,270	\$2,868	\$3,197	\$2,780	\$4,887	\$5,025	\$5,989

02-Jun-97

SOURCE & APPLICATION OF FUNDS

02-Jun-97

Buy-Out Competing Applicants	\$5,000	Senior Loan - Bank	\$3,400
Cost of Equipment	2,000	Buy-Out-Notes	3,000
Working Capital	3,000	Equipment Loan	1,000
PreClose MWT Expenses	200	Conv. Preferred -Investor	2,800
Working Capital	0	Common Equity - Mgmt.	0
Total Funds Required	\$10,200	Total Funds Provided:	\$10,200

520520

029561

PL Proposal

Jun-97

CASH AVAILABLE FOR LOAN & PREFERRED STOCK REPAYMENTS

(Dollars in Thousands)

		1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
CASH FLOW (From Operations)		\$0	(\$972)	\$1,182	\$2,270	\$2,868	\$3,197	\$2,780	\$4,887	\$5,025	\$5,989
Less:											
Senior Loan Interest	10.0%		(340)	(323)	(289)	(238)	(170)	(85)	0	0	0
Buy-Out Debt Interest	10.0%	(300)	(278)	(218)	(158)	(98)	(38)	0	0	0	0
Equipment Loan Interest	10.0%	(94)	(78)	(61)	(43)	(22)	0	7	0	0	0
Depreciation & Amortization			(75)	(395)	(583)	(652)	(736)	(715)	(370)	(326)	(250)
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
AVAILABLE INCOME			(1,743)	185	1,196	1,857	2,253	1,987	4,517	4,699	5,739
Loss Carry Forward)			(1,743)	(1,559)	(362)	0	0	0	0	0	0
Less: Income Taxes	33%		0	0	(270)	(607)	(738)	(650)	(1,485)	(1,545)	(1,889)
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
NET INCOME			(1,743)	185	927	1,250	1,515	1,337	3,032	3,154	3,851
Less: Capital Expenditures	\$0	200	200	200	200	200	200	200	200	200	200
Add: Depreciation & Amortization			75	395	583	652	736	715	370	326	250
Deferred Interest - Sub. Debt			78	61	43	22	0	7	0	0	0
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
CASH - DIRECT OPERATIONS			(1,390)	841	1,752	2,124	2,451	2,259	3,602	3,680	4,301
Plus: Cash - Start of Year			3,000	909	850	1,544	2,467	2,389	2,714	5,262	7,965
Yield on Cash @	3%		69	40	52	78	111	108	135	213	303
Less: Debt Repayments			(770)	(940)	(1,110)	(1,280)	(1,450)	(850)	0	0	0
Preferred Stock Redemptions			0	0	0	0	(1,190)	(1,190)	(1,190)	(1,190)	(1,190)
		-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
CASH POSITION - End of Year			\$909	\$850	\$1,544	\$2,467	\$2,389	\$2,714	\$5,262	\$7,965	\$11,380

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029562

2PL Proposal

2-Jun-97

LOAN AMORTIZATION SCHEDULE

(Dollars in Thousands)

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
ENIOR LOAN - Start of Year	\$0	\$3,400	\$3,230	\$2,890	\$2,380	\$1,700	\$850	\$0	\$0	\$0
Less: Loan Repayments (2)	0	(170)	(340)	(510)	(680)	(850)	(850)	0	0	0
	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
ENIOR LOAN - End of Year	\$0	\$3,230	\$2,890	\$2,380	\$1,700	\$850	\$0	\$0	\$0	\$0
Buy-Out-Notes - Start of Year (1)	\$3,000	\$3,000	\$2,400	\$1,800	\$1,200	\$600	\$0	\$0	\$0	\$0
Less: Repayments	0	(600)	(600)	(600)	(600)	(600)	0	0	0	0
	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Buy-Out-Notes - End of Year	\$3,000	\$2,400	\$1,800	\$1,200	\$600	\$0	\$0	\$0	\$0	\$0
Equipment Loan - Start of Year	\$1,000	\$856	\$694	\$516	\$321	\$105	(\$133)	\$0	\$0	\$0
Less: Repayments	(144)	(162)	(178)	(195)	(216)	(238)	133	0	0	0
	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Equipment Loan - End of Year	\$856	\$694	\$516	\$321	\$105	(\$133)	\$0	\$0	\$0	\$0
Preferred Stock - Start of Year	\$2,800	\$3,080	\$3,388	\$3,727	\$4,099	\$4,509	\$3,771	\$2,958	\$2,065	\$1,081
Add: Cumulative Dividend 10.0%	280	308	339	373	410	451	377	298	206	108
Less: Stock Repurchased	0	0	0	0	0	(1,190)	(1,190)	(1,190)	(1,190)	(1,190)
	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Preferred Stock - End of Year	\$3,080	\$3,388	\$3,727	\$4,099	\$4,509	\$3,771	\$2,958	\$2,065	\$1,081	(\$0)

1) Buy-Out Notes are Assumed to be Placed on 1/1/1987

2) Loan Repayments are by HSMC's Estimates

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Valuation of Common Equity - End of 1996

Less Cash Available to Common Shareholders (3)	\$72,836
-------------------------------------------------------	-----------------

1) Assumes Subchapter "S" Election

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Tab 15

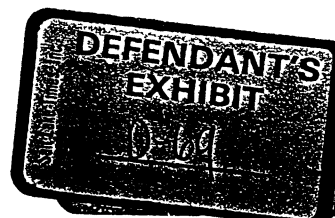
MEMORANDUM

TO: Ralph W. Hardy, Jr.
FROM: Thomas J. Hutton
RE: Mountain West/Northstar
DATE: July 22, 1986

You asked whether Mountain West would be obligated to disclose any arrangement it might make with Northstar in connection with a settlement of the Salt Lake City Channel 13 proceeding. The arrangement contemplated is for Northstar to finance the settlement and the construction of the station in return for a cognizable minority ownership interest in the construction permit and the option to acquire control of the station once it commences operation.

Section 73.3525 of the Commission's Rules calls for the filing of the following documents in connection with a settlement: (1) a joint request for approval of the settlement; (2) a copy of each settlement agreement; and (3) the affidavit of each party to the settlement stating the public interest reasons supporting the settlement and stating that its application was not filed for purposes of reaching a settlement. Because the Mountain West-Northstar agreement would not be a settlement agreement -- i.e., an agreement between competing applicants providing for settlement of a case -- it would not have to be filed under Section 73.3525.

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However, I believe the Mountain West-Northstar arrangement would have to be disclosed pursuant to Section 1.65 of the Rules. Section II, Question 9 of the 301 application form asks: "Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)? Even an oral agreement between Mountain West and Northstar would fall within this language. See, e.g., Cascade Video of Oregon, Ltd., 99 F.C.C.2d 1001 (Rev. Bd. 1984), recon. denied, FCC 84R-67 (released September 21, 1984) (issue added to determine whether applicant misrepresented facts, lacked candor, or violated Section 73.3514 of the Rules by failing to disclose future plans to syndicate out its ownership.)

Section 1.65 of the Rules requires an applicant to report within 30 days when information in an application is not substantially accurate and complete in all significant respects and to report other substantial changes in matters which may be of decisional significance. Merrimack Valley Broadcasting, Inc., 99 F.C.C.2d 680 (1984), app. pending. This reporting requirement applies until the application is granted or denied by a final order. Section 1.65. Thus, Northstar's acquisition of an ownership interest would have

to be reported in an amendment filed within 30 days of the acquisition unless the application has been granted by a final order.

The best hope for avoiding escalating settlement demands due to Northstar's involvement appears to be execution of settlement agreements (and perhaps even approval of the settlement) before a deal is struck with Northstar. The competing applicants then would be in a poor position to argue that the settlement would not serve the public interest. There is a risk they would argue Northstar has been a "real party in interest" all along, but this would be based merely on conjecture on their part. If Mountain West decides to take this approach, it should have access to an alternative source of financing so that Northstar will not have undue leverage.

An underlying consideration here involves Mountain West's integration commitment. If Mountain West's percentage of quantitative integration drops due to Northstar's involvement, it could expose Mountain West to claims that its integration proposal was not made in good faith. In Partial Initial Decision of Administrative Law Judge Byron E. Harrison, FCC 86D-32 (A.L.J., released May 2, 1986), the ALJ castigated the president of a company for his company's failure to fully effectuate its integration proposal at a station it obtained through settlement of a comparative hearing. In the Cascade Video case, the Review

Board expressed concern about dilution of an integration proposal through sale of ownership interests in the station. If the Mountain West integration proposal is being diluted, I would feel much more comfortable if that were done through an amendment approved by the Commission rather than by merely filing the agreement with the Commission after the application is granted by a final order.

Other Issues

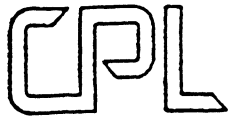
I agree with Nancy's memo as to the procedures for introducing a new party such as Northstar to the application. If the application is amended pursuant to Section 1.65 to disclose Northstar's involvement, Mountain West would have to make a "good cause" showing under Section 73.3522. This should not be an obstacle. If a deal with Northstar is struck after the grant of the Mountain West application is final, the agreement should be filed pursuant to Section 73.3613 and Northstar's ownership interest reflected on the ownership report filed under Section 73.3615 within 30 days of the final order granting the application.

I agree with Nancy that an application in hearing status can be amended to bring in a new minority principal, and perhaps a majority principal. However, in my view the theory that a new majority principal can be brought in through an amendment conflicts with Calhoun County Broadcasting Co., 57 R.R.2d 641 (1985), in which the

Commission dismissed with prejudice a construction permit application by an applicant who stated it was his intention to assign the permit once it was issued. "The Commission will not grant a construction permit application to an applicant who has previously agreed to assign the permit and thus has no intention to construct and operate as proposed." 57 R.R.2d at 646. I can see no reason for the Commission to permit assignment of a controlling interest in an application as a one-step transaction before an application is granted but not as a two-step transaction before and after the application is granted. (In both cases, the Commission's power to pass on the qualifications of the new party is the same.) In any event, the basic point here is that there should be no way for Northstar to take a majority interest in the construction permit, as opposed to the application (which may be permissible) or the program test authority/license. I agree with Nancy that the one-year holding requirement of Section 73.3597 does not apply to licenses issued pursuant to a settlement, as the underlying policy goal of the requirement is to obtain at least a minimal public interest benefit from the comparative process. Transfer of Broadcast Facilities, 52 R.R.2d 1081, 1090 (1982), modified on other grounds, 99 F.C.C.2d 971 (1985).

Nancy's memo mentioned that at least one of the applicants has applied for a city of license other than Salt Lake City. In this situation, Section 73.3525 requires a finding that the goal of Section 307(b) ("a fair, efficient and equitable distribution of radio service") will not be unduly hindered by the settlement. Unless the Review Board decision turned on Section 307(b), this is unlikely to be an impediment. The Commission has been emphasizing the areawide nature of television service lately. Nevertheless, any settlement agreement and any agreement with Northstar should recognize and deal with the possibility of a republication order.

Tab 16



COMMUNICATIONS PARTNERS, LTD.

ERIC C. NEUMAN
MANAGING PARTNER

(15)

July 28, 1986

Mr. Ralph W. Hardy
Down, Lohnes & Albertson
1255 Twenty-Third Street
Washington, D.C. 20037

Dear Ralph:

Once again, we at Communications Partners appreciate very much your spending the time to travel to Dallas to visit with us last Thursday. As we discussed, we are very excited about the potential of Channel 13 in Salt Lake City, and are very anxious to find a way to work together.

In order to follow-up on the items we reviewed last Thursday, I have marked the Memorandum of Understanding to reflect what I believe we discussed at the meeting. I have also enclosed a clean copy of this Memorandum for your use. If there is anything that I missed in this Memorandum, or if you or your group would like to discuss any of the issues again, we would be more than happy to do so.

As we also discussed, we have prepared a financial analysis of the transaction that I scratched out on the board. You will notice that we have designed a \$10 million financing arrangement that will provide all of the money that we project is necessary for this venture, plus another \$1 million of a contingency reserve. Of this financing, the Mountain West Principals would be required only to convert their existing investment into preferred stock of the continuing company, plus perhaps invest a nominal amount in common stock. Communications Partners would be responsible for arranging all the rest of the financing.

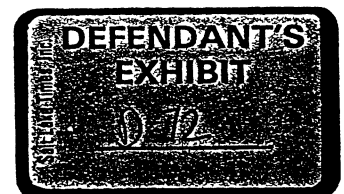
In the financial analysis, we project that the preferred stock, including that held by the Mountain West Principals, could be repaid in the third year, and by the fifth year the company would be worth somewhere between \$61-\$98 million. At this point, it might be advisable for certain shareholders to sell and others to purchase the shares of those wishing to sell. We would very flexible in this regard.

Again, we are quite anxious to work with your group on this project, and if there is anything that Brad or I can do to help move along a positive decision, please let me know.

Cordially,

Eric C. Neuman

Eric C. Neuman



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ECN:mjb
Enclosures

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II. Projected Transactions at Closing (assumed to occur 9/30/86):

A) Cash Transactions:

1) Sources of Cash:

- Purchase by CPL of Preferred Stock	\$ 2,000
- Purchase by MWT Principals, CPL, & Woods of Common Stock	10
- Initial Draw on Bank Loan	<u>600</u>
Total Sources of Cash	<u>\$ 2,610</u>

2) Uses of Cash:

- Cash payments to buy-out competing applicants	\$ 2,000
- Payment of 20% on equipment order	400
- Miscellaneous Closing Costs	<u>100</u>
Total Uses of Cash	<u>\$ 2,500</u>
Assumed Initial Cash Balance	<u>\$ 110</u>

B) Non-Cash Transactions:

- 1) Conversion by MWT Principals of their estimated \$200,000 of claims against MWT into MWT Preferred Stock.
- 2) Creation of \$3.0 million by Buy-Out Notes, evidencing the non-cash portion of the estimated \$5.0 million to be paid in total to the Competing Applicants. It is assumed that these Notes will bear interest at 10% per annum, and will pay interest only for the first three years commencing at Closing, and then will amortize in even installments of principal over the next five years.
- 3) Creation of a \$1.6 million equipment loan (or lease), which will amortize in even quarterly installments of principal and interest beginning after 9/30/87 (the assumed date that installation is assumed to be completed).

III. Projected Statements of Income and Cash Flow

These are presented in Exhibit I to this memorandum. Page 1 contains an analysis depicting the projected Salt Lake City market TV revenue through 1994, Channel 13's projected share of such revenues, and Channel 13's projected operating margin. Page 2 contains a projected income statement, and Page 3 contains a projected statement of cash flow. In the projected income and cash flow statements, it was assumed that the preferred and initial bank loan were entirely retired through a refinancing loan that was obtained on 9/30/89, based on the operating results of the station. Following these three pages are amortization schedules relating to the various financings assumed in the analysis.

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IV. Return Analysis:

If the station were to be sold after five years at two assumed multiples of cash flow, the projected returns to each party would be as follows:

	<u>Sales Multiples</u>	
	<u>10x Trailing 12 Month Cash Flow</u>	<u>12x Next 12 Month Cash Flow</u>
Sale Proceeds Resulting from an assumed sale as of 12/31/91	\$ <u>63,940</u>	\$ <u>98,400</u>
Less, Debt Outstanding:		
- Refinancing Bank Loan	\$ 550	\$ 550
- Buy-Out Notes	1,050	1,050
- Equipment Loan	<u>922</u>	<u>922</u>
Total Debt Outstanding	<u>2,522</u>	<u>2,522</u>
Common Equity*	<u>\$ 61,418</u>	<u>\$ 95,878</u>
Shares of Equity:		
- MWT Principals	<u>\$ 24,567</u>	<u>\$ 38,351</u>
- Woods	<u>\$ 18,425</u>	<u>\$ 28,763</u>
- CPL	<u>\$ 18,425</u>	<u>\$ 28,763</u>

* This analysis assumes that the Preferred Stock created at the Closing was retired with accumulated dividends through the payment of \$2,650,000 to CPL and \$265,000 to the MWT Principals.

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July 28, 1986

CHANNEL 13 - SALT LAKE CITY

CPL Proposal for a Joint Venture
With Mountain West T.V.

Financial Analysis

I. Assumed Sources and Uses of Funds: (000)

A) Sources of Funds:

1) Debt

- Buy-Out Notes	\$3,000
- Equipment Notes	1,000
- Bank Loan	<u>3,400</u>

Total Debt \$ 8,000

2) Preferred Stock:

- Mountain West Principals	\$ 200
- CPL	<u>2,000</u>

Total Preferred \$2,200

3) Common Stock:

- Mountain West Principals	\$ 4
- CPL	3
- Woods	<u>3</u>

Total Common \$ 10

Total Equity \$ 2,210

Total Sources of Funds \$10,210

B) Uses of Funds:

1) Cash expected to be expended by MWT Principals by the Closing	\$ 200
2) Buy-Out of Competing Applicants	5,000
3) Equipment	2,000
4) Working Capital	2,000
5) Contingency Reserve	<u>1,010</u>

Total Uses of Funds \$10,210

T05281

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Marked to Show Changes
from Draft dated July 23, 1986

July 28, 1986

MEMORANDUM OF UNDERSTANDING

Joint Venture among Charles Woods, Communications Partners, Ltd.
and Mountain West Television to own and operate
Channel 13, Salt Lake City, Utah

Parties:

- 1) Charles Woods ("Woods"), either individually or in concert with Charles Woods Communications ("CWC").
- 2) Communications Partners, Ltd. ("CPL"), in concert with InterFirst Venture Corporation ("IFVC").
- 3) Mountain West Television ("MWT"), which is presently owned by Joe C. Lee, Sid W. Foulger, Jo-Ann Wong and George L. Gonzales (the "MWT Principals").

Transaction Summary: Woods and CPL will invest in MWT a sufficient amount of capital to permit MWT to construct, own and operate a television station (the "Station") that will broadcast over Channel 13 in Salt Lake City. In addition to this capital, Woods and CPL will agree as follows:

- ^
- 1) Woods will assist with the following items:
(1) overseeing the selection and installation of the operating equipment of the Station, and
(2) providing or otherwise locating the operating management of the Station.
 - 2) CPL will assist with (1) providing guidance to Barry Woods in the negotiating the terms of the buyout (the "Buyout Agreements") of each of the three groups competing for the license to operate the Station (the "Competing Applicants"), (2) providing for all of the financing, up to a maximum of \$10.0MM, required to construct and operate the Station, and (3) overseeing the financial affairs of Newco on an on-going basis.

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Financing:

- 1) Elements: The Financing will consist of the following elements:
 - a) Notes given to each of the Competing Applicants pursuant to the Buyout Agreement (the "Buy-Out Notes")
 - b) An equipment loan or lease ("Equipment Financing") relating to the equipment being acquired for the Station.
 - c) A bank loan ("Bank Loan"), probably to be guaranteed by Woods and CPL.
 - d) Preferred Stock, paying a 10% cumulative dividend, that will amortize in years 6-10.
- 2) Amount: The financing will total \$10.2 million, based upon the following assumed uses:

a) Sums already spent by MWT Principals	\$.2MM
b) Buy-Out of Competing Applications	5.0MM
c) Cost of Equipment	2.0MM
d) Working Capital and Contingency	3.0MM
Total	<u>\$10.2MM</u>

The amount of the Financing may be reduced below \$10.2 million to the extent that the financing required for either of items (b) and (c) above are less than the amounts set forth.

Preferred Stock
Issuable to MWT:

MWT will receive an amount of Preferred Stock equal to the amount of the MWT shareholders' investment in the assets of MWT at the time of the investment in MWT by Woods and CPL. It shall be the intention of [^] MWT to retire such Preferred Stock, in addition to that set forth above, as soon as MWT's financial situation permits it to obtain funds to do so by means of a debt refinancing.

Ownership of Newco:

The Common Stock of [^] MWT will be sold for nominal amounts to the following parties in the following amounts:

<u>Party</u>	<u>Amount</u>
a) [^] MWT Principals	40%
b) CPL	30% [^]
c) Woods	30% [^]

[^] Legal Fees: All legal fees incurred by Woods, CPL and the MWT Principals from the date of this memorandum to the Closing Date shall be reimbursed by [^] MWT at the Closing. Thereafter, all legal fees incurred by [^] MWT will be paid by [^] MWT.

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Salaries/Management
Fees:

- 1) Ongoing Management Fees: All of the MWT Principals, Woods and CPL who serve as employees of MWT after the Closing will be paid a salary and/or consulting fee equal to the amount that would be payable to a third party in an arms length transaction for providing comparable services.
- 2) Investment Banking Fee: At the Closing, CPL will be paid an Investment Banking Fee based upon the amount of the Financing raised.
- 3) Amounts: The amounts of the fees specified in numbers 1 and 2 above shall be set by MWT's Board of Directors.

Conditions Precedent:

- 1) The obligation of each of Woods, CPL and the MWT Principals to procede with this transaction is subject to the execution of definitive documentation governing the transaction among MWT, Woods, and CPL, as briefly described in this memorandum, which documentation shall be satisfactory to all parties.
- 2) The obligation of Woods and CPL to procede with this transaction is subject to:
 - a) The determination by Woods and CPL that (1) the Station can be equipped for a cost of no more than \$2.0 million, (2) Equipment Financing shall be made available to Newco such that no more than \$400,000 shall be paid for this equipment by Closing, and (3) the other terms of the Equipment Financing shall be reasonably satisfactory to all parties,
 - b) The determination by all parties that (1) the Buy-Out of the Competing Applicants can be accomplished for a total cost not in excess of \$5.0 million, (2) Of such total cost, a sufficient amount shall be paid by MWT in the form of Buy-Out Notes such that no more than \$2.0 million shall be payable in cash, and (3) The terms of the Buy-Out Notes shall be reasonably satisfactorily to all parties, and
 - c) The award to MWT of the Construction Permit for Channel 13, which award shall not be subject to any further appeal.
- 3) The obligation of the MWT Principals to procede with this transaction is subject to the provision by CPL of the Financing pursuant to the terms expressed herein.

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7/23/86

CHANNEL 13 - SALT LAKE CITY, UTAH
OPERATIONS ANALYSIS

	PROJECTED							
	1987(1)	1988	1989	1990	1991	1992	1993	1994
NET NON-NETWORK REVENUES	73,300	82,000	90,300	97,300	109,300	122,300	134,600	148,000
AUDIENCE SHARE	5.0	6.0	10.0	11.0	12.0	13.0	13.0	13.0
MARKET REVENUE SHARE	4.0%	6.0%	10.0%	12.0%	13.0%	14.0%	14.0%	14.0%
STATION NET REVENUE % INCREASE	733	6,560	9,030	11,916	14,209	17,122	18,644	20,720
		2.24	1.38	1.32	1.19	1.21	1.10	1.10
OPERATING EXPENSES	(2) 800	5,300	6,000	6,950	7,815	8,922	9,422	9,800
% INCREASE		1.72	1.09	1.16	1.12	1.14	1.06	1.04
OPERATING INCOME (LOSS)	(67)	1,060	3,030	4,966	6,394	8,200	9,422	10,920
% MARGIN	N/A	10.12%	33.55%	41.68%	45.00%	47.89%	50.00%	52.70%

FOOTNOTES:

(1) OPERATIONS ARE ASSUMED TO BEGIN OCTOBER 1, 1987; THEREFORE REVENUES AND EXPENSES REFLECT ONLY THREE MONTHS OF THIS YEAR.

(2) DOES NOT INCLUDE PRE-OPERATING COSTS.

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CHANNEL 13, SALT LAKE CITY, UTAH
PROJECTED INCOME STATEMENT

	1986	1987	1988	1989	1990	1991	1992	1993	1994
REVENUE		733	6,560	9,030	11,916	14,209	17,122	18,844	20,720
OPER EXPENSE		800	5,500	6,000	6,950	7,815	8,922	9,422	9,800
OPERATING INCOME (LOSS)	0	(67)	1,060	3,030	4,966	6,394	8,200	9,422	10,920
EXPENSES:									
PRE-OPER EXPENSES	200	600							
BANK LN INT	14	41	203	164	0				
REFINANCING LN INT				106	371	199	6	(10)	(10)
EQUIP LN INT		40	151	136	118	105	84	62	37
BUYOUT NOTES INT	75	300	300	263	203	143	83	23	
DEPREC		75	395	583	652	736	715	370	326
TOTAL EXPENSES	289	1,056	1,049	1,251	1,344	1,182	888	444	333
PRE-TAX PROFIT	(289)	(1,123)	11	1,779	3,622	5,212	7,312	8,978	10,587
INCOME TAX	0	0	0	174	1,666	2,398	3,364	4,130	4,861
NET INCOME (LOSS)	(289)	(1,123)	11	1,605	1,956	2,815	3,948	4,848	5,706

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CHANNEL 13 - SALT LAKE CITY, UTAH
CASH FLOW ANALYSIS

	1986	1987	1988	1989	1990	1991	1992	1993	1994
SOURCES:									
NET INCOME (LOSS)	(289)	(1,123)	11	1,605	1,956	2,815	3,948	4,848	5,706
DEPRECIATION	0	75	395	583	652	736	715	370	326
REFINANCING LOAN				4,225					
BANK LOAN DRAWS	300	1,125	300						
TOTAL SOURCES	11	77	706	6,413	2,608	3,551	4,663	5,218	6,032
USES:									
CAPITAL EXPENDITURES	0	0	400	400	400	400	400	200	200
PRIN PAYMENTS:									
BANK LOAN	0	0	0	2,275	0				
EQUIP LOAN	0	35	110	160	177	195	216	238	263
BUYOUT NOTES	0	0	150	600	600	600	600	450	
REFINANCING LOAN					1,375	2,300	650	0	0
REPAY PREFERRED	0	0	0	2,915					
TOTAL USES	0	35	660	6,350	2,552	3,495	1,866	888	463
INCREASE (DECREASE) IN CASH	11	42	46	63	56	55	2,798	4,330	5,569
CUMULATIVE CASH -	11	52	98	161	217	272	3,070	7,399	12,969

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BANK LOAN
9.5% INTEREST RATE

QUARTER ENDING	BEGIN PRIN	INT	PRIN PAY	PRIN ENDING
12/31/1986	600	14	(300)	900
3/31/1987	900	21	(281)	1,181
6/30/1987	1,181	28	(281)	1,462
9/30/1987	1,462	35	(281)	1,743
12/31/1987	1,743	41	(282)	2,025
3/31/1988	2,025	48	(75)	2,100
6/30/1988	2,100	50	(75)	2,175
9/30/1988	2,175	52	(75)	2,250
12/31/1988	2,250	53	(75)	2,325
3/31/1989	2,325	55	25	2,300
6/30/1989	2,300	55	25	2,275
9/30/1989	2,275	54	2,275	0

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BUYOUT NOTES
10% INTEREST RATE

QUARTER ENDING	BEGIN PRIN	INT	PRIN PAY	PRIN ENDING
12/31/1986	3,000	75	0	3,000
3/31/1987	3,000	75	0	3,000
6/30/1987	3,000	75	0	3,000
9/30/1987	3,000	75	0	3,000
12/31/1987	3,000	75	0	3,000
3/31/1988	3,000	75	0	3,000
6/30/1988	3,000	75	0	3,000
9/30/1988	3,000	75	0	3,000
12/31/1988	3,000	75	150	2,850
3/31/1989	2,850	71	150	2,700
6/30/1989	2,700	68	150	2,550
9/30/1989	2,550	64	150	2,400
12/31/1989	2,400	60	150	2,250
3/31/1990	2,250	56	150	2,100
6/30/1990	2,100	53	150	1,950
9/30/1990	1,950	49	150	1,800
12/31/1990	1,800	45	150	1,650
3/31/1991	1,650	41	150	1,500
6/30/1991	1,500	38	150	1,350
9/30/1991	1,350	34	150	1,200
12/31/1991	1,200	30	150	1,050
3/31/1992	1,050	26	150	900
6/30/1992	900	23	150	750
9/30/1992	750	19	150	600
12/31/1992	600	15	150	450
3/31/1993	450	11	150	300
6/30/1993	300	8	150	150
9/31/1993	150	4	150	0

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EQUIPMENT LOAN
10% INTEREST RATE

QUARTER ENDING	BEGIN PRIN	INT	PRIN PAY	PRIN ENDING
12/31/1987	1600	40	35	1565
3/31/1988	1565	39	36	1529
6/30/1988	1529	38	37	1492
9/30/1988	1492	37	38	1455
12/31/1988	1455	36	39	1416
3/31/1989	1416	35	40	1376
6/30/1989	1376	34	41	1336
9/30/1989	1336	33	42	1294
12/31/1989	1294	32	43	1252
3/31/1990	1252	31	44	1208
6/30/1990	1208	30	45	1163
9/30/1990	1163	29	46	1117
12/31/1990	1117	28	47	1070
3/31/1991	1070	27	48	1022
6/30/1991	1022	26	49	972
12/31/1991	972	24	51	922
3/31/1992	922	23	52	870
6/30/1992	870	22	53	816
9/30/1992	816	20	55	762
12/31/1992	762	19	56	706
3/31/1993	706	18	57	649
6/30/1993	649	16	59	590
9/31/1993	590	15	60	530
12/31/1993	530	13	62	468
3/31/1994	468	12	63	404
6/30/1994	404	10	65	340
9/30/1994	340	8	67	273
12/31/1994	273	7	68	205

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REFINANCING LOAN
10% INTEREST RATE

QUARTER ENDING	BEGIN PRIN	INT	PRIN PAY	PRIN ENDING
12/31/1989	4,225	106	0	4,225
3/31/1990	4,225	106	344	3,881
6/30/1990	3,881	97	344	3,537
9/30/1990	3,537	88	344	3,193
12/31/1990	3,193	80	343	2,850
3/31/1991	2,850	71	575	2,275
6/30/1991	2,275	57	575	1,700
9/30/1991	1,700	43	575	1,125
12/31/1991	1,125	28	575	550
3/31/1992	550	14	550	0

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ESTIMATE DEPRECIATION & AMORTIZATION									
CAPITAL EXPS	0	400	400	400	400	400	200	200	
YEAR	1987	1988	1989	1990	1991	1992	1993	1994	TOTAL
PRE-1987 ASSETS	75	335	435	420	420	315			2,000
1987 ASSETS	0	0	0	0	0	0			0
1988 ASSETS		60	88	84	84	84			400
1989 ASSETS			60	88	84	84	84		400
1990 ASSETS				60	88	84	84	64	400
1991 ASSETS					60	88	84	84	316
1992 ASSETS						60	88	84	232
1993 ASSETS							30	44	74
1994 ASSETS								30	30
TOTAL DEPREC	75	395	583	652	736	715	370	326	3,852

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Tab 17

\$6,166,667

CREDIT AGREEMENT DATED

AS OF

NOVEMBER 18, 1986

AMONG

MWT, LTD

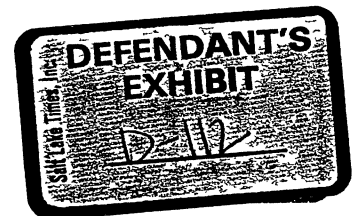
AND

SIDNEY W FOULGER

AND

NORTHSTAR COMMUNICATIONS, INC

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"Default Rate" shall mean, with respect to any amount of the Loans not paid when due a rate per annum equal to a rate 2% above the Interest Rate thereon.

"Designated Financial Partner" shall mean the Partner designated by the Partnership to review and deliver to Northstar and Foulger all financial statements required by the terms of this Agreement.

"Dollars" and the sign "\$" shall mean lawful money of the United States of America.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, including any rules and regulations promulgated thereunder

"Event of Default" shall have the meaning given such term in Section 7 hereof.

"FCC" shall mean the Federal Communications Commission.

"Final Order" shall mean (1) action by the FCC granting its consent and approval to the Conversion with respect to which no action, request for stay, petition for rehearing or reconsideration or appeal is pending, and as to which the time for filing any such request, petition or appeal has expired and with respect to which the time for agency action taken on its own motion has expired, or (11) in the event of the filing of such request, petition or appeal, an action which shall have been reaffirmed or upheld and with respect to which the time for seeking further administrative

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THIS AGREEMENT, dated as of November 18, 1986, by and among MWT, LTD., a Utah limited partnership (the "Partnership"), SIDNEY W. FOULGER ("Foulger") and NORTHSTAR COMMUNICATIONS, INC., a Delaware corporation ("Northstar").

W I T N E S S E T H:

WHEREAS, the Partnership intends to file an application with the Federal Communications Commission (the "FCC") for approval of the settlement of comparative proceedings before the FCC for the issuance of a construction permit to establish a VHF television station to be licensed to Salt Lake City, Utah (the "Station"); and

WHEREAS, the Partnership desires to borrow and Northstar and Foulger desire to lend, certain funds for financing the settlement of the comparative proceedings before the FCC and for the construction and initial operation of the Station, and

WHEREAS, Northstar and Foulger desire to provide a secured, non-recourse term loan facility to the Partnership upon the terms and subject to the conditions hereof;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

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SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.

1.01. Certain Definitions. As used in this Agreement:

"Amended and Restated Partnership Agreement" shall mean the Amended and Restated Agreement of Limited Partnership dated as of the date hereof, executed by Northstar and the Partners, in the form of Exhibit E attached hereto.

"Capital Lease" shall mean any lease which has been or should be capitalized on the books of the lessee in accordance with generally accepted accounting principles.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Conversion" shall have the same meaning as given in the Amended and Restated Partnership Agreement. Upon Conversion, the Notes shall be converted to demand Notes.

"Conversion Date" shall mean the date on which the Conversion occurs. Said date shall mean the date which is within thirty (30) days after FCC consent to the Conversion has become a Final Order.

"Default" shall mean any event which with the giving of notice or lapse of time, or both, would become an Event of Default under Section 7 hereof.

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or judicial review shall have expired without the filing of any request for such further review

"Foulger" shall mean Sidney W. Foulger.

"Foulger Loan" shall have the meaning given such term in Section 2.01 hereof.

"Foulger Note" shall have the meaning given such term in Section 2.04 hereof.

"Head Office" shall mean the principal office of Northstar located at 1776 K Street, N.W., 9th Floor, Washington, D.C. 20006, or such other address as Northstar may from time to time designate.

"Interest Rate" shall mean a rate of ten percent (10%) per annum.

"Lien" shall mean any mortgage, deed of trust, lien, pledge, conditional sale, title retention agreement, financing lease or other security interest, encumbrance or any right of others which would limit the free and clear disposition of any asset of the Partnership.

"Loans" shall have the meaning given such term in Section 2.01 hereof.

"Loan Documents" shall mean this Agreement, the Notes, the Security Agreements, the Amended and Restated Partnership Agreement, the Pledge Agreement and any other instrument required by Northstar or Foulger to evidence the Loans.

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"Maturity Date" shall be (i) June 1, 1937 unless the grant by the FCC of a construction permit for the Station has become a Final Order; (ii) the date which is one hundred eighty (180) days after the Station has commenced regular operations pursuant to FCC program test authority for the Station, unless the Conversion has occurred; (iii) the date on which an Event of Default occurs; (iv) the date on which the Rescission occurs; (v) the date on which the FCC issues an initial order denying the the Conversion; or (vi) the date which is the fourth anniversary of the commencement of regular operations by the Station pursuant to FCC program test authority, whichever is earlier.

"Mountain West Television Company" shall mean Mountain West Television Company, a Utah general partnership, its successors and assigns.

"Northstar Loan" shall have the meaning given such term in Section 2.01 hereof.

"Northstar Note" shall have the meaning given such term in Section 2.04 hereof.

"Notes" shall have the meaning given such term in Section 2.04 hereof.

"PBGC" shall mean the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"Partners" shall mean George L. Gonzales, Joseph C. Lee, Sidney W. Foulger, Jo-Ann Wong and MWT

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Corporation, a Utah corporation, all the current partners of the Partnership prior to the date hereof.

"Permitted Liens" shall mean (i) pledges or deposits by the Partnership under workers' compensation or unemployment insurance or similar laws; (ii) Liens imposed by law, such as carriers', warehousemen's, materialmen's and mechanic's liens; (iii) Liens for property taxes not yet subject to penalties for non-payment and Liens for property taxes the payment of which is being contested in good faith; (iv) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, rights of way, highways and railroad crossings, sewers, electric lines, telephone and telegraph lines and other similar purposes, or zoning or other restrictions which do not adversely affect in a material manner the use of real properties owned by the Partnership; (v) Liens granted to Northstar and Foulger, and (vi) other Liens consented to by Northstar and Foulger.

"Person" shall mean any individual, partnership, corporation, business trust, joint stock company, governmental authority or other entity of whatever nature.

"Plan" shall mean any employee benefit or other plan maintained for the employees of the Partnership and covered by Title IV of ERISA or to which Section 412 of the Code applies.

"Pledge Agreement" shall mean the Pledge Agreement dated as of the date hereof given by the Partners

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listed on Schedule I attached hereto in favor of Northstar and Foulger substantially in the form of Exhibit D attached hereto

"Prohibited Transaction" shall mean any transaction set forth in Section 406 of ERISA or Section 4975 of the Code.

"Regulation U" shall mean Regulation U of the Board of Governors of the Federal Reserve System as the same may be amended or supplemented from time to time.

"Reportable Event" shall mean any of the events set forth in Section 4043(b) of ERISA as to which event the PBGC by regulation has not waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA shall be a Reportable Event regardless of any waivers given under Section 412(d) of the Code.

"Rescission" shall have the meaning given such term in Section 8 hereof.

"Security Agreements" shall mean the Security Agreements dated as of the date hereof given by the Partnership in favor of Northstar and Foulger substantially in the forms attached hereto as Exhibits B and B-1.

"Subsidiary" shall mean any corporation, business trust or similar organization of which a majority of

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the securities having ordinary voting power for the election of directors, or their equivalent (other than securities having such power only by reason of the happening of a contingency), are at the time owned by the Partnership and/or one or more Subsidiaries.

1.02. Accounting Principles. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles (hereinafter referred to as "GAAP") and, unless otherwise expressly provided for herein, all calculations shall be made in accordance with such principles.

SECTION 2. THE LOANS.

2.01. The Loans. Northstar and Foulger agree, on the terms and conditions of this Agreement, to make loans to the Partnership on the date hereof in the aggregate principal amount of \$6,166,667 (the "Loans"). The loan by Northstar shall be in the aggregate principal amount of \$3,566,667 (the "Northstar Loan"). The loan by Foulger shall be in the aggregate principal amount of \$2,600,000 (the "Foulger Loan"). Disbursements of the Loans shall be made pursuant to Section 2.06.

2.02. Interest. The Partnership shall pay interest to Northstar and Foulger on the outstanding unpaid principal balance of the Loans from the date of this Agreement until

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the entire unpaid principal balance of the Loans is paid in full.

Interest on the Loans shall be calculated on the basis of a year of 365 or 366 days, as appropriate, for the number of days elapsed. Interest on the Loans shall accrue at the Interest Rate and shall be due and payable in full on the Maturity Date, on the occurrence of an Event of Default, or upon payment of the outstanding principal balance of the Loans.

2.03. Payments. The Loans (including all accrued interest thereon) shall be payable in full on the Maturity Date, on the occurrence of an Event of Default (except as otherwise provided in Section 7), or on demand after Conversion. Payments not made as required by this Agreement shall bear interest at the Default Rate. Any payment with respect to the Northstar Loan (including payment of interest) shall be made, in immediately available funds, to Northstar at the Head Office. Any payment with respect to the Foulger Loan (including payment of interest) shall be made, in immediately available funds, to Foulger c/o Foulger Pratt, 2nd Research Place, Rockville, Maryland 20854.

2.04. Notes. The Northstar Loan shall be evidenced by a promissory note of the Partnership substantially in the form attached hereto as Exhibit A (the "Northstar Note"). The Foulger Loan shall be evidenced by a promissory note of the Partnership substantially in the form attached hereto as

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Exhibit A-1 (the "Foulger Note"). The Northstar Note and the Foulger Note are sometimes hereinafter referred to collectively as the "Notes".

2.05. No Prepayment. The Partnership may not prepay the Loans, in whole or in part, at any time prior to the Conversion, except as a return of the Loans is contemplated by the Rescission required by Section 8.

2.06. Disbursements. Subject to the terms and conditions of this Agreement, disbursements of funds to the Partnership from the Loans shall be made in accordance with the drawing schedule set forth in Schedule II attached hereto. If Foulger fails to make any disbursement as required on Schedule II, he shall be deemed to have forfeited his right to collect any prior disbursement, provided, however, that in no event shall Foulger be deemed to have forfeited disbursements in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000).

SECTION 3. CONDITIONS PRECEDENT.

Section 3.01. Conditions Precedent. The obligations of Northstar and Foulger to make the Loans are subject to the conditions precedent that Northstar and Foulger shall have received on or before the date of such Loans each of the following, in form and substance satisfactory to Northstar, Foulger and their respective counsel:

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(a) Notes. The Northstar Note and the Foulger Note both duly executed by the Partnership.

(b) Security Agreements. The Security Agreements duly executed by the Partnership together with acknowledgment copies of the financial statements (UCC-1) duly filed as soon as practicable after the date hereof under the Uniform Commercial Code of all jurisdictions necessary or, in the opinion of Northstar and Foulger, desirable to perfect the security interest created by the Security Agreements;

(c) Pledge Agreement. The Pledge Agreement duly executed by each Partner listed on Schedule I attached hereto, together with: (i) duly endorsed transfer or assignment of Partnership interests; and (ii) such other documents with respect thereto as Northstar and Foulger shall reasonably request;

(d) Certified Resolutions of MWT Corporation. Certified copies of the resolutions of MWT Corporation dated as of the date hereof authorizing the execution, delivery and performance of the Loan Documents by MWT Corporation and each other document to be delivered by MWT Corporation pursuant to this Agreement;

(e) Signature Certificate of the Partnership. A certificate of the Partnership, dated the date hereof, certifying the names and true signatures of the Partners of the Partnership authorized to sign the Loan Documents to which it

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is a party and the other documents to be delivered by the Partnership or the Partners under this Agreement;

(f) Opinion of Counsel for Partnership. A favorable opinion of counsel for the Partnership, dated the date hereof, in form reasonably acceptable to Foulger and Northstar, provided that actual delivery of the final opinion may occur after the date of this Agreement, but no later than five (5) business days thereafter.

(g) Amended and Restated Partnership Agreement. The Amended and Restated Partnership Agreement.

(h) Escrow Agreement. The Escrow Agreement.

(i) Settlement Agreements. The Settlement Agreements between Mountain West Television Company and West Valley, Intermountain and UTA.

SECTION 4. REPRESENTATIONS AND WARRANTIES.

The Partnership represents and warrants that:

4.01. Due Organization, Good Standing and Qualification. The Partnership is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Utah, has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign partnership and in good standing under the laws of each other jurisdiction in which such qualification is required.

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4.02. Power and Authority; No Conflicts. The execution, delivery and performance by the Partnership of the Loan Documents to which it is a party have been duly authorized by all necessary action and do not and will not: (a) contravene its partnership certificate or agreement; (b) violate any provision of, or require any filing (other than the filing of the financing statements contemplated by the Security Agreements or filings with the FCC), registration, consent or approval under, any law, rule, regulation (including, without limitation, Regulation U), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Partnership; (c) result in a breach of or constitute a default or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Partnership is a party or by which it or its properties may be bound or affected; (d) result in, or require, the creation or imposition of any Lien (other than as created under the Security Agreement), upon or with respect to any of the properties now owned or hereafter acquired by the Partnership; or (e) cause the Partnership to be in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

4.03. Legally Enforceable Agreements. Each Loan Document to which the Partnership or any of the Partners is a

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party is, or when delivered under this Agreement will be, a legal, valid and binding obligation of the Partnership and the Partners enforceable against the Partnership and the Partners in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally, except that the enforceability of this Agreement and the Security Agreements may be affected by laws governing loans and security agreements between a partnership and its limited partners.

4.04. Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Partnership, threatened, against or affecting the Partnership before any court, governmental agency or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or business of the Partnership or the ability of the Partnership to perform its obligations under the Loan Documents to which it is a party, except as described on Schedule IV attached hereto.

4.05. Purpose. The Partnership will use the proceeds of the Loans for payments to settle the comparative proceedings before the FCC for the issuance of a construction permit to the Station, to purchase furniture, fixtures and equipment required to construct and operate the Station, to purchase programming, to lease tower and studio space and to fund pre-opening and operating expenses. The proceeds of the

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Loans will not be used to "purchase" or "carry" "margin stock" as defined in Regulation U. The Partnership is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying such margin stock.

4.06. Financial Statements. The balance sheet of the Partnership as of November 17, 1986 for the period then ending, copies of which have been furnished to Northstar and Foulger, are complete and correct and fairly present the financial condition of the Partnership as of such date for the period covered by such statement. There are no liabilities of the Partnership, fixed or contingent, which are material but are not reflected in the financial statements or in the notes thereto, other than liabilities arising in the ordinary course of business since November 17, 1986. Since November 17, 1986, there has been no material adverse change in the condition (financial or otherwise), business or operation of the Partnership.

4.07. Ownership and Liens. The Partnership has title to, or valid leasehold interests in, all of its properties and assets, real and personal, including the properties and assets, and leasehold interest reflected in the financial statement referred to in Section 4.06 (other than any properties or assets disposed of in the ordinary course of business), and none of the properties and assets owned by the Partnership and none of its leasehold interests is subject to

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any Lien, except as disclosed in such financial statement, on Schedule III, or as may be permitted hereunder and except for the Lien created by the Security Agreements.

4.08. Taxes The Partnership has filed all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments and governmental charges and levies shown thereon to be due, including interest and penalties.

4.09. ERISA. To the extent applicable, the Partnership is in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred and is continuing with respect to any Plan, no notice of intent to terminate a Plan has been filed nor has any Plan been terminated; no circumstances exist which constitute grounds under Section 4042 of ERISA entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings.

4.10. Debt. Schedule III is a complete and correct list of all credit agreements, indentures, purchase agreements, guarantees, Capital Leases and other investments, agreements and arrangements presently in effect providing for or relating to extensions of credit (including agreements and arrangements for the issuance of letters of credit or for acceptance financing) in respect of which the Partnership is

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in any manner directly or contingently obligated in excess of an aggregate of \$10,000, and the maximum principal or face amounts of the credit in question, outstanding and which can be outstanding, are correctly stated, and all Liens of any nature given or agreed to be given as security therefore are correctly described or indicated in such Schedule.

4.11. Operation of Business. The Partnership possesses all licenses, permits, franchises, patents, copyrights, trademarks and trade names, or rights thereto, to conduct its business substantially as now conducted, and the Partnership is not in violation of any valid rights of others with respect to any of the foregoing.

4.12. No Defaults on Outstanding Judgments or Orders. The Partnership has satisfied all judgments and the Partnership is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, state, municipal or other governmental authority, commission, board, bureau, agency or instrumentality, domestic or foreign.

4.13. No Defaults on Other Agreements. The Partnership is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any restriction which could have a material adverse effect on the business, properties, assets, operations or conditions, financial or otherwise, of the Partnership, of the ability of the Partnership to carry out its obligation under

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the Loan Documents to which it is a party. The Partnership is not in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument material to its business to which it is a party.

4.14. Compliance With Laws. To the best of its knowledge, the Partnership is in material compliance with all federal and state statutes and governmental rules and regulations applicable to it, including, but not limited to, FCC rules and regulations, rules and regulations of municipalities and other governmental entities having jurisdiction over the Partnership's business and operations.

4.15. Location of Property. All of the Partnership's property, both real and personal, is located in the State of Utah. The Partnership's principal place of business is located at 2257 Texas Street, Salt Lake City, Utah 84109. The Partnership keeps its books and records with respect to accounts and contract rights in the State of Utah.

4.16. Partners. Schedule I is a complete list of the names of the partners of the Partnership and the respective percentage interests of each of the Partners.

4.17. Subsidiaries. As of the date hereof there are no Subsidiaries of the Partnership.

4.18. Disclosure. To the best of its knowledge, no information, exhibit, certificate, schedule or report furnished by the Partnership to Northstar and Foulger in

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connection with this Agreement contains or will contain any misstatement of material fact or omits or will omit to state a material fact or any fact necessary to make the statements contained therein not misleading

SECTION 5. AFFIRMATIVE COVENANTS.

So long as the Notes shall remain unpaid and any obligations of the Partnership hereunder shall remain unsatisfied, the Partnership shall:

5.01. Maintenance of Existence. Preserve and maintain its existence and good standing in the jurisdiction of its organization, and qualify and remain qualified, as a foreign partnership in each jurisdiction in which such qualification is required.

5.02. Conduct of Business. Continue to engage in an efficient and economical manner in the business stated in Section 2.03 of the Partnership Agreement.

5.03. Maintenance of Properties. Maintain, keep, and preserve all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

5.04. Maintenance of Records. Keep adequate records and books of account, in which complete entries will be made in accordance with GAAP, reflecting all material financial transactions of the Partnership.

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5.05 Maintenance of Insurance Maintain insurance with financially sound reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof.

5.06. Compliance with Laws Comply in all material respects with all applicable laws, rules, regulations, and orders, such compliance to include without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property

5.07. Right of Inspection At any reasonable time and from time to time, permit Northstar or any agent or representative thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Partnership, and to discuss the affairs, finances and accounts of the Partnership with the Partnership's independent accountants.

5.08. Reporting Requirements. Furnish to Northstar and Foulger:

(a) Annual Financial Statements. As soon as available and in any event within 90 days after the end of each fiscal year of the Partnership, balance sheets of the Partnership as of the end of such fiscal year and statements of changes in financial position of the Partnership for such fiscal year, all in reasonable detail and stating in compara-

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tive form the respective figures for the corresponding date and period in the prior fiscal year and all prepared in accordance with GAAP, accompanied by an opinion thereon reasonably acceptable to Northstar and Foulger by independent accountants of national standing selected by the Partnership,

(b) Quarterly Financial Statements. As soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Partnership, balance sheets of the Partnership as of the end of such quarter and statements of income and retained earnings of the Partnership for the period commencing at the end of the previous fiscal year and ending with each of such quarter, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year and all prepared in accordance with GAAP and certified by the Designated Financial Partner of the Partnership (subject to year-end adjustments);

(c) Monthly Financial Statements. As soon as available and in any event within 30 days after the end of each month, balance sheets of the Partnership as of the end of such month and statements of income and retained earnings of the Partnership for the period commencing at the end of the previous month and ending with the end of the then current month, and a rolling three month cash flow projection, all in reasonable detail and prepared in accordance with GAAP

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and certified by the Designated Financial Partner of the Partnership;

(d) Management Letters Promptly upon receipt thereof, copies of any reports submitted to the Partnership by independent certified public accountants in connection with examination of the financial statements of the Partnership made by such accountants;

(e) Certificate of No Default. Within 45 days after the end of each of the first three quarters of each fiscal year and within 90 days after the end of each fiscal year of the Partnership, a certificate of the Designated Financial Partner of the Partnership certifying that to the best of his or her knowledge no Default or Event of Default has occurred and is continuing or, if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto;

(f) Accountants' Report. Simultaneously with the delivery of the annual financial statements referred to in Section 5.08(a), a certificate of the independent public accountants who audited such statements to the effect that, in making the examination necessary for the audit of such statements, they have obtained no knowledge of any condition or event which constitutes a Default or Event of Default, or if such accountants shall have obtained knowledge of any such condition or event, specifying in such certificate each such

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condition or event of which they have knowledge and the nature and status thereof;

(g) Notice of Litigation. Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental agency or department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Partnership which, if determined adversely to the Partnership, could have a material adverse effect on the financial condition, properties, or operations of the Partnership;

(h) Notice of Defaults and Events of Default. As soon as possible and in any event within 10 days after the occurrence of each Default or Event of Default a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Partnership with respect thereto;

(i) ERISA Reports. To the extent applicable, promptly after the filing or receiving thereof, copies of all reports, including annual reports, and notices which the Partnership files with or receives from the PBGC of the U.S. Department of Labor under ERISA; and as soon as possible and in any event within 10 days after the Partnership knows or has reason to know that any Reportable Event or Prohibited Transaction has occurred with respect to any Plan or that the PBGC or the Partnership has instituted or will institute proceedings under Title IV of ERISA to terminate any Plan,

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the Partnership will deliver to Northstar a certificate of the Designated Financial Partner of the Partnership setting forth details as to such Reportable Event or Prohibited Transaction of Plan termination and the action the Partnership proposes to take with respect thereto;

(j) Reports to Other Creditors. Promptly after the furnishing thereof, copies of any statement or report furnished to any other party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to Northstar and Foulger pursuant to any other clause of this Section 5.08;

(k) Organization Documents. On the date hereof, certified copies of all organizational agreements of partnership, partnership resolutions and minutes of partnership meetings of the Partnership and certified copies of the articles of incorporation and bylaws of MWT Corporation.

(l) General Information. Such other information respecting the condition or operations, financial or otherwise, of the Partnership or any of its Subsidiaries, including any business plans which the Partnership may prepare, as Northstar and Foulger may from time to time reasonably request.

5.09. Insurance. Obtain casualty insurance covering the loss of all assets of the Partnership relating to the Station in the amount of at least \$4,000,000 and cause Northstar and Foulger to be named loss payee on any and all

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such casualty insurance The Partnership shall furnish Northstar and Foulger a certificate evidencing compliance with this Section 5 09

5.10 Conversion On the Conversion Date, cause the Conversion to occur.

SECTION 6. NEGATIVE COVENANTS.

So long as the Notes shall remain unpaid and any obligations of the Partnership hereunder shall remain unsatisfied, the Partnership or any of the Partners on behalf of the Partnership shall not:

6.01. Liens. Create, incur, assume or suffer to exist, any Lien, upon or with respect to any of the Partnership's properties, not owned or hereafter acquired, except Permitted Liens.

6.02. Debt. Except as otherwise permitted hereunder, create, incur, assume or suffer any debt, other than.

(a) Debt of the Partnership under this Agreement, or the Notes;

(b) Debt described in Schedule III, but no renewals, extensions or refinancings thereof;

(c) Accounts payable to creditors for goods or services provided or rendered in the ordinary course of business which are not aged more than 90 days from due date and current operating liabilities (other than for borrowed money) which are not more than 90 days past due, in each case

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incurred in the ordinary course of business and paid within the specified time, unless contested in good faith and by appropriate proceedings.

6.03. Guarantees, Etc Assume, guarantee, endorse or otherwise be or become directly or contingently responsible or liable (including, but not limited to, an agreement to purchase any obligation, stock, assets, goods or services or to supply or advance any funds, assets, goods, or services, or an agreement to maintain or cause such Person to maintain a minimum working capital or net worth or otherwise to assure the creditors of any Person against loss) for obligations of any Person other than the Partnership, except guarantees by endorsement of negotiable instruments for deposit or collection or similar transaction in the ordinary course of business

6.04. Mergers, Etc. Merge or consolidate with, reorganize, liquidate or dissolve or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired), to any Person, or acquire all or substantially all of the assets or the business of any Person.

6.05. Investments. Make any loan or advance to any Person or purchase or otherwise acquire any capital stock, obligations or other securities of, make any capital contribution to, or otherwise invest in, or acquire any interest

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in, any Person, except (a) direct obligations of the United States of America or any agency thereof with maturities of one year or less from the date of acquisition; (b) commercial paper of a domestic issuer rated at least "A-1" by Standard & Poor's Corporation or "P-1" by Moody's Investors Service, Inc.; (c) certificates of deposit with maturities of one year or less from the date of acquisition issued by any commercial bank operating within the United States of America having capital and surplus in excess of \$50,000,000; (d) purchases in the ordinary course of the business of the Station; and (e) for stock, obligations or securities received in settlement of debts (created in the ordinary course of business) owing the Partnership.

6.06. Premium Payments. Except as provided in the Amended and Restated Partnership Agreement, purchase, redeem, retire or otherwise acquire for value any of the percentage interests in the Partnership now or hereafter outstanding, or make any distribution of assets to the Partners as such whether in cash, assets or in obligations of the Partnership, or allocate or otherwise set apart any sum for the payment of the premium or distribution on, or for the purchase, redemption or retirement of any of its Units, or make any other distribution by reduction of capital or otherwise in respect of any of its percentage interests.

6.07. Leases. Create, incur, assume or suffer to exist any obligation as lessee for the rental or hire of any

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real or personal property, except leases which do not in the aggregate require the Partnership to make payment (including taxes, insurance, maintenance and similar expense which the Partnership is required to pay under the terms of any lease) in any fiscal year of the Partnership in excess of \$50,000.

6.08. Sale of Assets. Sell, lease, assign, transfer or otherwise dispose of any of its now owned or hereafter acquired assets (including, without limitation, shares of stock, receivables and leasehold interests); except: (a) for assets disposed of in the ordinary course of business, (b) the sale or other disposition of assets no longer used or useful in the conduct of its business, but not exceeding \$50,000 in value, and (c) as otherwise provided in the Partnership Agreement.

6.09. New Partners Admit new limited or general partners to the Partnership, except as expressly permitted by the Amended and Restated Partnership Agreement.

6.10. Program Contracts. Renew, extend or enter into any film or programming contracts requiring a commitment in excess of \$100,000.

6.11. Amendment of Amended and Restated Partnership Agreement. Amend or modify any of the terms of the Amended and Restated Partnership Agreement, except as required to effect the Conversion and as otherwise required by law.

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SECTION 7. EVENTS OF DEFAULT

7.01. Events of Default. If any of the following events ("Events of Default") shall occur

(a) The Partnership shall fail to pay the principal of, or interest on, the Notes or any other amount payable under this Agreement, as and when due and payable; or

(b) Any representation or warranty made or deemed made by the Partnership in this Agreement or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with any Loan Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) The Partnership shall fail to perform or observe any term, covenant or agreement contained in any Loan Document to which it is a party on its part to be performed or observed and such failure continues uncured for ten (10) days after notice; or

(d) The Partnership shall fail to (i) pay any indebtedness for borrowed money (other than the payment obligation described in (a) above) of the Partnership, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) if the effect of such failure to pay is to accelerate the maturity of such indebtedness; or (ii) perform or observe any term, covenant or condition on its part to be performed

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or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate the maturity of such indebtedness, or any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(e) The Partnership (i) shall generally not, or be unable to, or shall admit in writing its inability to, pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (iii) shall, as Debtor, commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether, now or hereafter in effect; or (iv) shall have had any such petition or application filed, or any such proceeding shall have been commenced, against it, in which an adjudication or appointment made or order for relief entered and which remains undismissed for a period of 60 days or more; or (v) by any act or omission shall indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all

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or any substantial part of its properties, or (vi) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of 60 days or more; or

(f) One or more judgments, decrees or orders for the payment of money in excess of the aggregate amount of \$10,000 shall be rendered against the Partnership and such judgments, decrees or orders shall continue unsatisfied and in effect for a period of 30 consecutive days without being vacated, discharged, satisfied or stayed or bonded pending appeal; or

(g) The issuance by the FCC, its staff, or any court of competent jurisdiction of a decision (including an initial decision), order, authorization, or other determination which (i) denies any application for approval of the Conversion; (ii) revokes or denies any application for renewal of the Partnership's construction permit, or when issued, its license to operate the Station; (iii) grants to any party other than the Partnership a license, construction permit or other authorization to operate the Station whether on an interim or permanent basis; (iv) imposes any sanction or condition on the Partnership or any other party or requires any action by the Partnership to any other party which in either event will or is likely to have a materially adverse effect on the financial or other affairs of the Partnership or the Station, or which will materially adversely affect the ability of the Partnership to make any payment

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when due hereunder or otherwise to satisfy the terms of any of the Loan Documents, or which will result in any of the Partners listed in Schedule I hereto ceasing to be the beneficial owners of the percentage of Partnership interests pledged under the Pledge Agreement; or

(h) Except as contemplated by the Amended and Restated Partnership Agreement, any of the Partners listed on Schedule I attached hereto shall cease to be the beneficial owner of the percentage of Partnership interests listed on said Schedule I, or

(1) Any of the following events shall occur or exist with respect to the Partnership: (i) any Prohibited Transaction involving any Plan; (ii) any Reportable Event shall occur with respect to any Plan; (iii) the filing under Section 4041 of ERISA of a notice of intent to terminate any Plan or the termination of any Plan; (iv) any event or circumstance exists which might constitute grounds entitling the PBGC to institute proceedings under Section 4042 of ERISA for the termination of, or for the appointment of a trustee to administer, any Plan, or the institution by the PBGC of any such proceedings; (v) complete or partial withdrawal under Section 4201 or 4204 of ERISA from a multiemployer Plan or the reorganization, insolvency, or termination of any multiemployer Plan; or

(j) Subject to the qualification in Section 4.03, the Security Agreements or Pledge Agreement shall at any time

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after their execution and delivery and for any reason cease (1) to create a valid and perfected first priority security interest in and to the property purported to be subject to such Agreement except Permitted Liens, or (11) to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by any of the parties thereto or any such party shall deny it has any further liability or obligation under the Security Agreements or Pledge Agreement, as the case may be, or shall fail to perform any of its obligations thereunder,

(k) The Station shall not have initiated program tests by August 1, 1988 as a result of causes within the control of the management of the Partnership;

then, and in any such event, Northstar and Foulger may, by notice to the Partnership declare the outstanding principal of the Notes, all interest thereon and all other amounts payable under this Agreement and the Notes to be forthwith due and payable, whereupon the Notes, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Partnership; provided that, in the case of an Event of Default referred to in Section (e) above, the Notes, all interest thereon and all other amounts payable under this Agreement shall be automatically immediately due and payable without presentment, demand, protest or other formalities of

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any kind, all of which are hereby expressly waived by the Partnership.

SECTION 8. RESCISSION.

8.01. Rescission. Within ten (10) days of the execution hereof, MWT Corporation shall prepare and file with the FCC a petition for leave to amend the pending application of Mountain West Television Company for a construction permit to build and operate the Station. The petition shall request amendment of the application to reflect the reorganization of the applicant in accordance with the terms of the Amended and Restated Partnership Agreement. If the petition should be denied, within five (5) days of the date the FCC releases its denial, MWT Corporation shall take all actions necessary to rescind this Agreement, to cause the Partnership to revert to its structure pursuant to the Initial Agreement (as defined in the Amended and Restated Partnership Agreement), and to return to Northstar and Foulger all disbursements of the proceeds of the Loans, with interest accrued thereon, and capital contributions made by each of them to the Partnership up to the date of rescission (the "Rescission").

SECTION 9. MISCELLANEOUS.

9.01. Amendments and Waivers. No amendment or waiver of any provision of this Agreement nor consent to any departure by the Partnership therefore, shall in any event be

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thereof granted to Northstar and Foulger herein or otherwise.

9.05 Notices. Unless the party to be notified otherwise notifies the other party in writing, notices shall be given to Northstar, Foulger, Allstate and to the Partnership by ordinary mail or telex, telecopy or other writing addressed to such party at its address on the signature page of this Agreement. Notices to Northstar and Foulger shall be effective upon receipt.

9.06. Captions. The captions and headings hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

9.07. Further Assurances. The parties hereto agree that, at any time and from time to time, they shall promptly execute and deliver all such further instruments, documents, and certificates and agreements and take all such further action as may be required to effectuate the terms of this Agreement.

9.08. Severability. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof

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subordinate the Foulger Note and his rights under the Loan Documents to banks, insurance companies or other financial institutions providing financing which the Partnership reasonably determines is necessary for the operations of the Station or is used to refinance the Loans, provided that (i) the terms of such financing and subordination are commercially reasonable, (ii) the entity providing such financing is not affiliated with or an investor in Northstar, and (iii) Northstar shall subordinate the Northstar Note and its rights under the Loan Documents on exactly the same terms and conditions as Foulger has subordinated the Foulger Note and his rights under the Loan Documents.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

MWT, LTD.

By: MWT Corporation, General
Partner

By:

Title:

Address:

2257 Texas Street
Salt Lake City, Utah 84109

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NORTHSTAR COMMUNICATIONS, INC.

By: Wm M. D. Finner
Title: PRESIDENT

Address:

1776 K Street, N.W.
Suite 900
Washington, D.C. 20006

Sidney W. Foulger
SIDNEY W. FOULGER

Address:

241 North Vine Street
Salt Lake City, Utah 84103

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SCHEDULE I

List of Partners

MWT Corporation, a Utah corporation.	20% General Partner
Sidney W. Foulger	: 21% Class A Limited Partner 3.4% Class B Limited Partner
George L. Gonzales	: 1% Class B Limited Partner
Jo-Ann Wong	: 1.2% Class B Limited Partner
Joseph C. Lee	: 4.4% Class B Limited Partner
Northstar Communications, Inc., a Delaware corporation	: 49% Class A Limited Partner

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SCHEDULE II

Disbursements

- A. Northstar shall disburse the following amounts not later than following dates:

	<u>Amount</u>	<u>Date</u>
1.	\$1,666,667 ¹	11/19/86
2.	1,650,000 ¹	12/1/86
3.	250,000 ¹	1/1/87

- B. Foulger shall disburse the following amounts not later than following dates:

	<u>Amount</u>	<u>Date</u>
1.	\$ 50,000 ¹	12/1/86
2.	100,000 ¹	2/1/87
3.	200,000 ¹	3/1/87
4.	2,250,000 ¹	4/1/87

- ¹ Other than the Northstar disbursement required by A 1. above, subsequent disbursements shall not be made prior to the date which is fourteen (14) days after the date that FCC grant of the construction permit for the Station becomes a Final Order.

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Schedule III

<u>Item</u>	<u>Amount</u>
Professional Services - Legal	\$ 118,000
Note to Foulger-Pratt Construction Company	135,000
Contingent Obligations to Fund Notes to Competing Applicants	
- West Valley	500,000
- Inter-Mountain	600,000
- UTA	600,000
Contingent Obligations for Initial Settlement Payments	
- Family	2,000,000
- West Valley	500,000
- Intermountain	400,000
- UTA	400,000

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Schedule IV

Litigation

1). Competing applicants before the FCC for the construction permit for Channel 13, Salt Lake City, Utah, Docket Numbers 84-11 et seq.

2). Proceedings before courts and the FCC affecting the television industry generally and to which the Partnership is not a party.

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Tab 18

MWT, LTD.
AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP

This Amended and Restated Agreement of Limited Partnership is executed as of the 18th day of November, 1986 by and among MWT Corporation, a Utah corporation, Northstar Communications, Inc. ("Northstar"), a Delaware corporation, Sidney W. Foulger ("Foulger"), George L. Gonzales ("Gonzales"), Joseph C. Lee ("Lee"), and Jo-Anne Wong ("Wong").

This Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") amends and restates the Certificate of Limited Partnership of MWT, Ltd., which was filed with the County Clerk of Salt Lake County on November 14, 1986 (the "Initial Agreement"). This Partnership Agreement shall be effective on the Effective Date, as hereinafter defined. Until the Effective Date, MWT, Ltd. shall be governed by the terms and conditions of the Initial Agreement.

In consideration of the mutual covenants hereinafter expressed, the parties agree as follows:

ARTICLE I

DEFINITIONS

As used in this Partnership Agreement, the following terms have the meanings indicated:



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Section 1.01 ADVANCE. Any transfer of money or property by a Partner to the Partnership, and any amount paid on behalf of the Partnership by a Partner, in excess of the Partner's Capital Contribution. For purposes of this Section 1.01, property is to be valued at its fair market value (net of liabilities) or its value agreed upon by the Partners on the date of transfer. Advances shall bear interest at a rate of ten percent (10%).

Section 1.02 CAPITAL ACCOUNT. Each Partner shall have an initial Capital Account equal to the amount of cash and the fair market value (net of liabilities) or the value agreed upon by the Partners of any property contributed to the Partnership, plus, in the case of a Partner who was a Partner prior to the Effective Date, the amount of the Partner's Capital Account in the Partnership at the Effective Date. A Partner's Capital Account shall be adjusted as provided in Section 704 of the Internal Revenue Code or the regulations promulgated thereunder.

Section 1.03 CAPITAL CONTRIBUTION. The money or property contributed by a Partner in accordance with Section 2.08.

Section 1.04 CAPITAL TRANSACTION. Any one of the following: (a) a casualty loss of all or substantially all of the assets of the Partnership; (b) a sale of all or substantially all of the assets of the Partnership; or (c) any financing or refinancing of the debts of the Partnership

or debts secured by Partnership property resulting in (and to the extent of) loan proceeds in excess of the principal amount of the refinanced debts plus transaction costs.

Section 1.05 CLASS A LIMITED PARTNERS. Northstar, or its successors or assigns, Foulger, and any transferee of them or of a Class A Limited Partner admitted to the Partnership pursuant to Section 6.06.

Section 1.06 CLASS B LIMITED PARTNERS. Before Conversion, Foulger, Lee, Gonzales, and Wong, or their successors and assigns and any transferee of them or of a Class B Limited Partner who is admitted to the Partnership pursuant to Section 6.06; after Conversion, the Persons named above and MWT Corporation or their successors and assigns and any transferee of them or of a Class B Limited Partner who is admitted to the Partnership pursuant to Section 6.06.

Section 1.07 CONVERSION. The withdrawal of MWT Corporation as General Partner, the addition of Northstar as General Partner, and the addition of MWT Corporation as a Class B Limited Partner, as described in this Partnership Agreement and in the Credit Agreement to which this Partnership Agreement is attached as Exhibit E.

Section 1.08 CONVERSION DATE. The date on which Conversion shall be consummated.

Section 1.09 CREDIT AGREEMENT. The Agreement by and among the Partnership, Foulger and Northstar dated as of November 18, 1986, whereby Northstar and Foulger agree to

provide secured non-recourse loans to the Partnership upon certain terms and conditions.

Section 1.10 DISTRIBUTION. Any transfer of money or other property to a Partner, in its capacity as a Partner, from the Partnership. For purposes of this Section 1.10, a Distribution of property is to be valued at its fair market value, net of liabilities and consideration paid by the Partner. A transfer of money or other property to a Partner shall not be deemed a Distribution if made to a Partner acting in the capacity of employee, consultant or creditor.

Section 1.11 EFFECTIVE DATE. The date of filing with the County Clerk of Salt Lake County of the Certificate of Limited Partnership which reflects this Partnership Agreement.

Section 1.12 FINAL ORDER. Federal Communications Commission ("FCC") action with respect to which (i) no action, request for stay, petition for rehearing or reconsideration or appeal is pending, and as to which the time for filing any such request, petition or appeal has expired and with respect to which the time for agency action taken on its own motion has expired; or (ii) in the event of the filing of such request, petition or appeal, an action which shall have been reaffirmed or upheld and with respect to which the time for seeking further administrative or judicial review shall have expired without the filing of any request for such further review.

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Section 1.13 FISCAL YEAR. From January 1 to December 31 of each year or such portion thereof as the Partnership shall be in existence.

Section 1.14 GENERAL PARTNER. Prior to Conversion, MWT Corporation; after Conversion, Northstar.

Section 1.15 LIMITED PARTNER. Any Class A or Class B Limited Partner.

Section 1.16 MOUNTAIN WEST TELEVISION COMPANY. Mountain West Television Company, a Utah general partnership, its successors or assigns.

Section 1.17 MWT CORPORATION. A Utah corporation organized and incorporated on November 14, 1986, whose shareholders are Lee, Foulger, Wong, and Gonzales.

Section 1.18 NET CASH FLOW. Gross receipts of the Partnership derived from the operation of the Partnership reduced by the sum of: (a) all expenses of the Partnership, excluding depreciation and amortization; (b) capital expenditures; (c) the repayment of any amounts borrowed by the Partnership other than repayment of principal on Advances; (d) any payment of interest, premium or penalty on any amounts borrowed by the Partnership, including Advances; (e) any other expenditures authorized by this Partnership Agreement; and (f) such reserves as the General Partner deems reasonably necessary for the proper operation of the Partnership's business.

Section 1.19 NET PROCEEDS OF CAPITAL TRANSACTIONS.

Gross proceeds of a Capital Transaction reduced by all costs and expenses of the Capital Transaction, the principal amount of all debts secured by the Station or payable as a result of the Capital Transaction, and all expenses, interest, premiums and penalties payable as a result of or resulting from the Capital Transaction.

Section 1.20 NORTHSTAR. Northstar Communications, Inc., a Delaware corporation, its successors or assigns.

Section 1.21 PARTNER. Any General or Limited Partner.

Section 1.22 PARTNERSHIP. MWT, Ltd., the partnership reorganized by this Partnership Agreement.

Section 1.23 PERSON. An individual, a corporation, a partnership, a trust, an unincorporated organization or a government or an agency or political subdivision thereof.

Section 1.24 PRO RATA SHARE. Prior to Conversion, the Pro Rata Share of MWT Corporation as sole General Partner shall be twenty percent (20%); the Pro Rata Share of the Class A Limited Partners shall be seventy percent (70%), with Northstar having a forty-nine percent (49%) Pro Rata Share and Foulger having a twenty-one percent (21%) Pro Rata Share; and the Pro Rata Share of the Class B Limited Partners shall be ten percent (10%), with Gonzales having an one percent (1%) Pro Rata Share, Wong having an one and two-tenths percent (1.2%) Pro Rata Share, Lee having a four and four-tenths percent (4.4%) Pro Rata Share, and Foulger having a

three and four-tenths percent (3.4%) Pro Rata Share. After Conversion, the Pro Rata Share of Northstar in its capacity as the sole General Partner shall be one percent (1%); the Pro Rata Share of the Class A Limited Partners shall be sixty-nine percent (69%), with Northstar having a forty-eight percent (48%) Pro Rata Share and Foulger having a twenty-one percent (21%) Pro Rata Share; and the aggregate Pro Rata Share of the Class B Limited Partners shall be thirty percent (30%), with MWT Corporation having a Pro Rata Share of twenty percent (20%) and the other Class B Limited Partners each having the Pro Rata Share set forth above.

Section 1.25 STATION. The assets, subject to the liabilities, of a VHF television station to be licensed on Channel 13 to Salt Lake City, Utah.

Section 1.26 TAXABLE INCOME OR LOSS. Taxable Income or Loss for any Fiscal Year means the difference between gross receipts of the Partnership and all expenses and deductions of the Partnership during the Fiscal Year, determined on an accrual basis in accordance with the accounting methods followed by the Partnership for federal income tax purposes. Every item of income, gain, loss, deduction, credit or tax preference entering into the computation of Taxable Income or Loss, or applicable to the Fiscal Year during which Taxable Income or Loss was realized, shall be allocated to each Partner in the same proportion as Taxable Income or Loss is allocated to the Partner.

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ARTICLE II
ORGANIZATION

SECTION 2.01 FORMATION. The Partnership was organized under the laws of the State of Utah, and is being continued thereunder pursuant to the terms of this Partnership Agreement.

Section 2.02 NAME. The name of the Partnership is MWT, Ltd. The Partnership may also do business under such other names as the General Partner may designate by written notice to the Limited Partners.

Section 2.03 PRINCIPAL PURPOSE. To engage generally in the radio and television broadcast business, within and without the State of Utah.

Section 2.04 OTHER PURPOSES. To enter into any partnership agreements in the capacity of a general partner or a limited partner, to become a member of a joint venture, or to participate in any form of corporation, syndication or association for investment; and to buy, sell, lease, mortgage or otherwise deal in and with services, personal property, and real property, of every kind and character, and to do any and all things necessary, convenient or incident to any of the above stated purposes.

Section 2.05 PLACE OF BUSINESS. The principal place of business of the Partnership shall be in Salt Lake City, Utah, but additional places of business may be located within and

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without the State of Utah as may be determined by the General Partner.

Section 2.06 ADDRESS. The mailing address of the Partnership shall be 2257 Texas Street, Salt Lake City, Utah, or such other address as determined by the General Partner, with copies of correspondence to be sent to Northstar Communications, Inc., 1776 K Street, N.W., Suite 900, Washington, D.C. 20006 and to Allstate, Investment Department, Allstate Plaza, Northbrook, Illinois 60062, Attention: Paul J. Renze.

Section 2.07 TERM. The Partnership began on November 14, 1986, and shall continue until dissolved in accordance with the terms of this Partnership Agreement or the laws of the State of Utah.

Section 2.08 CAPITAL CONTRIBUTIONS.

(a) Each Partner has contributed or will contribute to the capital of the Partnership the property set forth in subparagraphs (i), (ii), (iii) of (iv) of this paragraph (a):

(i) Northstar has contributed the sum of Two Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars (\$233,333.00) with respect to its Class A Limited Partnership interest.

(ii) Foulger has contributed the sum of One Hundred Thousand Dollars (\$100,000.00) with respect to its Class A Limited Partnership interest.

(iii) On the Conversion Date, Northstar shall contribute the sum of Five Hundred Thousand Dollars (\$500,000.00) cash with respect to its General Partnership interest.

(iv) Foulger, Gonzales, Lee and Wong, with respect to their Class B Limited Partnership interests, and MWT Corporation, as assignee of Foulger, Gonzales, Lee and Wong, with respect to its General Partnership interest, have contributed their respective interests in the assets of Mountain West Television Company, including without limitation its application before the FCC for a construction permit for the Station.

(b) No Partner shall have any right of partition with respect to the assets of the Partnership.

(c) A Partner shall be required to make additional Capital Contributions to the Partnership upon the dissolution of the Partnership in an amount equal to any deficit in the Partner's Capital Account following the allocation of Taxable Income provided in Section 4.02. Except as provided in this Section 2.08(c), no Partner shall be personally liable for, or required to make up, any deficit in its Capital Account.

Section 2.09 ORGANIZATIONAL EXPENSES. The Partnership shall pay all reformation and organizational expenses of the Partnership, including all costs of, and all fees and expenses incurred in connection with, admitting the Limited Partners and the subsequent Conversion. The Partnership

shall also pay all partnership expenses of Mountain West Television Company incurred in connection with the application, and prosecution thereof, for a construction permit for the Station, up to an amount of Two Hundred Thirty Thousand Dollars (\$230,000.00), and the Partnership shall pay all actual legal expenses of Northstar related to its acquisition of an interest in MWT, Ltd., its predecessors or assigns.

ARTICLE III

CONVERSION

Section 3.01 OPTION.

(a) At the option of either Northstar or MWT Corporation, which option may be exercised at any time after the Station begins regular operations pursuant to FCC program test authority and prior to the expiration of the option as provided below, MWT Corporation shall resign as General Partner and become a Class B Limited Partner and Northstar shall become the sole General Partner of the Partnership, subject to the prior approval of the FCC. To exercise the option, Northstar or MWT Corporation shall notify all other Partners in writing of its exercise. All Partners shall cooperate in the prompt filing of an application with the FCC for its consent to the Conversion. The Conversion shall be consummated on the first business day which is thirty (30) days after FCC consent to the Conversion has become a Final

Order. The option of MWT Corporation or Northstar shall expire on the date which is one hundred eighty (180) days after the Station has commenced regular operations pursuant to FCC program test authority, unless Northstar or MWT Corporation has previously given notice of its exercise of the option.

(b) Notwithstanding paragraph (a), MWT Corporation shall not be permitted to make the election provided in paragraph (a) hereof if at that time there is an Event of Default of the Partnership under the Credit Agreement, which Event of Default may have a material adverse effect on the financial condition, properties or operations of the Partnership (other than a material adverse effect arising solely from the exercise by any lender under the Credit Agreement of its rights thereunder as a result of an Event of Default which in itself would not have a material adverse effect on the financial condition, properties or operations of the Partnership).

(c) If the FCC, or any bureau or division thereof, designates for hearing the application of the Partnership for FCC consent to Conversion, and such designation is not reversed within a period of ninety (90) days, Northstar shall have the option, exercisable within thirty (30) days of the expiration of said ninety (90) day period, to require the Partnership to repurchase all of its Limited Partnership interest. To exercise the option granted hereby Northstar

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shall notify the General Partner in writing of its intention to sell its interest back to the Partnership. Upon notification, the provisions of Section 7.02 hereof shall apply.

(d) In the event the General Partner breaches its obligation under paragraph (c) hereof to repurchase the Limited Partnership interest of Northstar, Northstar may compel the General Partner to use its best, diligent efforts to cause the Partnership to sell the Station as soon as practicable at a commercially reasonable price and to dissolve the Partnership upon the consummation of said sale. The Class A Limited Partners shall not unreasonably withhold their consent to any sale pursuant to this paragraph (d), which consent is required by Section 6.02 hereof.

Section 3.02 LIABILITY.

(a) Upon notification of exercise of the option described in Section 3.01, the Partners shall be required to take all actions necessary to cause Conversion to occur, including without limitation the execution of appropriate documents, and shall take no actions inconsistent with their obligations under this paragraph (a). The failure of MWT Corporation to meet its requirements hereunder shall be an event of default under the Credit Agreement. In the event of default, Northstar shall have available to it all remedies at law or equity to enforce performance of the Credit Agreement, including, but not limited to, specific performance.

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(b) In addition to the remedies described in paragraph (a) hereof, and notwithstanding the provisions of Section 5.05, each of Northstar and MWT Corporation shall be liable to the Partnership and to the other Partners for any failure by it to cause Conversion to occur.

ARTICLE IV

ALLOCATIONS AND DISTRIBUTIONS

Section 4.01 TAXABLE INCOME OR LOSS.

Except as provided in Section 4.02, Taxable Income or Loss for each Fiscal Year of the Partnership shall be allocated to each Partner based upon its Pro Rata Share of such Taxable Income or Loss. All allocations of Taxable Income or Loss shall be made on the basis of each Partner's interest in the Partnership as of the end of each Fiscal year, unless otherwise required by law and except that, in the event of an assignment of an interest in the Partnership pursuant to Section 6.03, Taxable Income or Loss for the Fiscal Year in which the assignment is made shall be allocated, with respect to the interest assigned, between the assignor and the assignee in accordance with the ratio that the number of days in the Partnership's Fiscal Year before and after assignment bears to the total number of days in the Partnership's Fiscal Year.

Section 4.02 ALLOCATION OF TAXABLE INCOME ARISING FROM A DISPOSITION OF SUBSTANTIALLY ALL PARTNERSHIP ASSETS. Any

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Taxable Income arising from a sale or other disposition of all or substantially all the assets of the Partnership shall be allocated first to the Partners to the extent of and in proportion to any deficits in the Partners' Capital Accounts; second to the Class A Limited Partners to the extent of the Preferred Distribution to which they would be entitled under Section 4.04(c) at the time of the sale; and third to all Partners based upon their Pro Rata Shares.

Section 4.03 DISTRIBUTIONS. The General Partner shall distribute, not less frequently than annually, substantially all Net Cash Flow.

Section 4.04 ALLOCATIONS AND DISTRIBUTIONS. Net Cash Flow and Net Proceeds of Capital Transactions (other than proceeds from liquidation which shall be distributed as provided in Section 8.02(b) shall be paid or distributed to the extent available, in the following order of priority:

(a) An amount equal to thirty-four percent (34%) of the Taxable Income of the Partnership for any Fiscal Year (reduced by (i) any tax credits generated by the Partnership for that Fiscal Year, and (ii) the amount, if any, by which the Taxable Losses of the Partnership for all preceding Fiscal Years exceeds the Taxable Income of the Partnership for those years) shall be distributed by April 1 of the following Fiscal Year to all the Partners in accordance with their Pro Rata Shares.

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(b) After the Distribution required by paragraph (a) hereof, the Partnership shall use Net Cash Flow and Net Proceeds of Capital Transactions to repay Advances.

(c) After the Distributions and payments required by paragraphs (a) and (b) hereof, all Distributions shall be allocated to the Class A Limited Partners in accordance with their respective Pro Rata Shares until the Partnership has made Cash Distributions to the Class A Limited Partners equal to their Capital Contributions, less prior Distributions under this paragraph (c), plus a cumulative ten percent return calculated on the total amount of the Distributions to which the Class A Limited Partners are entitled under this paragraph (c).

(d) After the Distributions and payments required by paragraphs (a), (b), and (c) hereof, Distributions shall be made to the Partners in accordance with their respective Pro Rata Shares.

ARTICLE V

THE GENERAL PARTNER

Section 5.01 POWERS OF GENERAL PARTNER. The General Partner has complete discretion in the management and control of the business of the Partnership and shall use its best efforts to carry out the purpose of the Partnership. In addition to powers provided by law, the General Partner is hereby authorized to expend Partnership funds in furtherance of the purpose of the Partnership; to acquire, sell,

transfer, convey, lease (as lessor) or otherwise deal with the assets of the Partnership; to negotiate, enter into, and execute agreements for the sale of advertising on, and to hire employees, purchase supplies and equipment, and otherwise enter into agreements with respect to the Station; to incur obligations for and on behalf of the Partnership in connection with its business; to borrow monies for and on behalf of the Partnership on such terms and conditions as the General Partner may deem advisable and proper and to pledge the credit of the Partnership for such purposes; to repay in whole or in part, refinance, recast, modify or extend any security interest affecting the Station or other property owned by the Partnership, and in connection therewith to execute for and on behalf of the Partnership any or all extensions, renewals, or modifications of such security interests; to prepare, execute, file and deliver any document, or take such other action, as may be necessary or desirable to carry out the purpose of the Partnership; to employ such agents, employees, independent contractors, attorneys and accountants as the General Partner deems reasonably necessary; to obtain insurance for the proper protection of the Partnership, the General Partner, and the Limited Partners; to commence, defend, compromise or settle any claims, proceedings, actions or litigation for and on behalf of the Partnership (including claims, proceedings, actions or litigation involving the General Partner in its

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capacity as General Partner) and to retain legal counsel in connection therewith and to pay out of the assets of the Partnership any and all liabilities and expenses (including fees of legal counsel) incurred in connection therewith; and to make such decisions and enter into such agreements as it may reasonably believe to be necessary.

Section 5.02 DUTIES OF GENERAL PARTNER. The General Partner shall have responsibility for, and control over, the ordinary and usual day-to-day management and operation of the Station and the Partnership's business, including acts necessary to cause Conversion to occur. The General Partner shall devote such of its time as it deems necessary to the affairs of the Partnership. The General Partner shall cause to be filed all required Certificates of Limited Partnership with the County Clerk of Salt Lake County to reflect changes in the interests of Partners; keep, or cause to be kept, all books and records required by this Partnership Agreement; prepare or cause to be prepared all statements and reports; and obtain or cause to be obtained and kept in force such insurance, in such amounts, on such terms, and with such carriers as may be required to reasonably protect the Partnership and its property. In the event additional financing is required for the operation of the Station after Conversion, the General Partner shall use its best efforts to secure non-recourse secured or unsecured financing on behalf of the Partnership.

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Section 5.03 RESCISSION. Within ten (10) days of the execution hereof, MWT Corporation shall prepare and file with the FCC a petition for leave to amend the pending application of Mountain West Television Company for a construction permit to build and operate the Station. The petition shall request amendment of the application to reflect the reorganization of the applicant in accordance with the terms of the Initial Agreement and this Partnership Agreement. If the petition is denied, within five (5) days of the date the FCC releases its denial, MWT Corporation shall take all actions necessary to rescind this Agreement, to cause the Partnership to revert to its structure pursuant to the Initial Agreement, and to return to Northstar all Advances, with interest earned thereon, and Capital Contributions made by it to the Partnership up to the date of rescission.

Section 5.04 PARTNERSHIP TAX MATTERS. The General Partner has the authority to make elections for the Partnership with respect to the tax laws of the United States, the several states and other relevant jurisdictions. The General Partner shall not have the authority, without the affirmative vote of seventy-five percent (75%) in interest of all Partners affected thereby, to settle any dispute with the Internal Revenue Service or any state income tax authority concerning the Taxable Income or Loss of the Partnership or the allocation thereof. Any expense incurred by the Partnership in contesting, with the Internal Revenue Service

or any state income tax authorities, any change in its Taxable Income or Loss or the allocation of its Taxable Income or Loss to any Partner shall be an expense of the Partnership.

Section 5.05 LIABILITIES OF GENERAL PARTNER. The General Partner shall not be liable, responsible or accountable in damages or otherwise to the Partnership or to any Limited Partner, except as described in Section 3.02, and except for any loss, damage or liability due to, or arising out of, the General Partner's fraud, bad faith or gross negligence. The General Partner shall indemnify and hold the Partnership harmless from any loss, damage or liability due to, or arising out of, the General Partner's fraud, bad faith or gross negligence. The Partnership shall indemnify and save harmless the General Partner from any loss or damage incurred, by reason of any acts or omissions performed or omitted in good faith and reasonably believed to be within the scope of the authority conferred by this Partnership Agreement, except for fraud, bad faith or gross negligence. Any indemnity by the Partnership under this Section 5.05 shall be paid out of, and to the extent of, Partnership assets only.

Section 5.06 MANAGEMENT OF BUSINESS. Except as otherwise provided in this Agreement, the General Partner shall have sole and complete charge of the affairs of the

Partnership and shall operate its business for the benefit of all Partners.

Section 5.07 AUTHORITY OF GENERAL PARTNER. In no event shall any person dealing with the General Partner with respect to any property of the Partnership be obligated to see that the terms of this Partnership Agreement have been complied with, or be obligated to inquire into the necessity or expediency of any act or action of the General Partner. Every contract, agreement, lease, promissory note, mortgage or other instrument or document executed by the General Partner with respect to the Station, or any other property of the Partnership, shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that:

(a) at the time of the execution or delivery thereof, the Partnership was in full force and effect;

(b) such instrument or document was duly executed in accordance with the terms and provisions of this Partnership Agreement and is binding upon the Partnership and all of the Partners hereof; and

(c) the General Partner was duly empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

Section 5.08 FEES AND EXPENSES. All expenses incurred in connection with the construction, management and operation of the Station shall be borne by the Partnership. In

addition, the costs of preparing the reports and statements required by Section 9.02 shall be borne by the Partnership.

Section 5.09 RESIGNATION OF GENERAL PARTNER. Except in the course of the Conversion, the General Partner shall have no right to resign or withdraw from the Partnership or to transfer, assign, grant, convey, mortgage, or otherwise encumber its General Partnership interest, or to enter into any agreement as a result of which any other Person shall become interested in the Partnership as a general partner, without the written consent of the Limited Partners. If the General Partner purports to resign or withdraw from the Partnership in violation of the foregoing provision, it shall remain liable for the debts, obligations and liabilities of the Partnership to the same extent as if it had not resigned or withdrawn and, in addition, shall be liable to the Partnership and the Limited Partners for any damages sustained by reason of such purported resignation or withdrawal.

Section 5.10 INDEMNITY. Following Conversion, Northstar, its successors and assigns, hereby agrees to indemnify and hold MWT Corporation harmless from and against any loss, cost, liability, damage or expense (including legal and other expenses incident thereto) incurred by it as a result of liabilities (including without limitation any contractual liabilities) of the Partnership asserted by "third parties" against it by reason of MWT Corporation

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having been a General Partner of the Partnership and its capacity as such. Notwithstanding the preceding sentence, MWT Corporation shall not be entitled to indemnity for any act or failure to act on its part which involved dishonesty, intentional wrongdoing or gross neglect. For purposes of this Section 5.10, the term "third party" shall not include the Partnership.

Section 5.11 SALE OF THE STATION. Upon receipt of an unsolicited offer and/or prior to soliciting offers for a sale of the Station by the Partnership, the General Partner shall deliver written notice to the Limited Partners of its intention to sell the Station, setting forth the proposed terms of sale and soliciting offers from the Limited Partners to purchase the Station from the Partnership. If the General Partner does not receive any offers from any of the Limited Partners within forty-five days and/or determines in good faith not to accept any offers received from the Limited Partners, the General Partner may then solicit offers from third parties for the purchase of the Station. Upon the receipt of any bona fide offer from a third party for the purchase of the Station which the General Partner intends to accept, the General Partner shall deliver notice of the proposed terms of sale and afford the Limited Partners and the third party, for a period of fifteen days, the opportunity to make further bids for the Station.

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ARTICLE VI

LIMITED PARTNERS

Section 6.01 LIABILITY OF LIMITED PARTNERS. No Limited Partner shall be obligated to make any contribution to the capital of the Partnership in addition to the contributions specified in Section 2.08. No Limited Partner shall be obligated to make loans or Advances to the Partnership, except as required by the Credit Agreement. No Limited Partner shall have any personal liability with respect to the liabilities or obligations of the Partnership.

Section 6.02 MANAGEMENT OF BUSINESS. No Limited Partner in its capacity as a Limited Partner shall take part in the management or control of the Partnership business, except that (a) the General Partner may not cause any of the following to occur without the affirmative vote of a majority of interest of the Class A Limited Partners: (i) a merger, consolidation, reorganization or sale of material assets of the Partnership outside the ordinary course of business; (ii) a liquidation, dissolution or recapitalization of the Partnership; (iii) any acquisition of stock or other securities; (iv) any acquisition of assets outside the ordinary course of business; (v) the issuance of any securities, including any senior equity security; (vi) borrowing, except under the Credit Agreement or in the ordinary course of business; (vii) repurchase of partnership interests, except as required by Section 3.01(c) or Section

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7.01; or (viii) admission of new Partners; and (b) the General Partner may not employ a general manager for the Station without the affirmative vote of a majority in interest of the Class B Limited Partners. Notwithstanding the foregoing and the provisions of Sections 5.01, 5.02 and 5.06, beginning with the eighth full year of Station operation, the Class B Limited Partners, by affirmative vote of seventy-five percent (75%) in interest of the Class B Limited Partners, may compel the General Partner to use its good faith efforts to sell the Station as quickly as practicable on commercially reasonable terms.

Section 6.03 ASSIGNMENT OF PARTNERSHIP INTERESTS.

(a) Except as provided in Sections 6.01, 6.07 or 6.08 hereof or as required by the Credit Agreement, no Limited Partner shall withdraw its Capital Contribution or transfer, assign, grant, convey, mortgage, or otherwise encumber any part of its Limited Partnership interest, or enter into any agreement as a result of which any other Person shall become interested in the Partnership, without (i) the written consent of the General Partner, and, (ii) in the case of a Limited Partner which is also the General Partner or which controls, is controlled by, or is under common control with the General Partner, the written consent of a majority in interest of the other Limited Partners. The granting of any consent by a Partner under this Section

6.03(a) shall be within that Partner's sole discretion and may be withheld arbitrarily.

(b) Notwithstanding paragraph (a) hereof, upon the bankruptcy, assignment for the benefit of creditors, dissolution, death, disability or legal incapacity of any Partner, the interest held by that Partner shall descend to and vest in his successors, trustees, receivers, assignees for the benefit of creditors, heirs, legatees or other legal representatives.

Section 6.04 FORM OF ASSIGNMENT.

(a) No assignment of all or part of a Limited Partner's Limited Partnership interest, though otherwise permitted by Section 6.03, shall be valid and effective, and the Partnership shall not recognize the same for the purpose of Distributions or for the allocation of Taxable Income or Loss with respect to that interest, until there is filed with the General Partner an instrument in writing in the following form, with blanks appropriately filled in and subscribed by both parties to the conveyance:

I, _____, hereby assign to _____ my right, title and interest in and to _____ of my Class _____ Limited Partnership interest in MWT, Ltd., a limited partnership organized under the laws of the State of Utah, and direct that all future Distributions and allocations of Taxable Income or Loss on account of such interest be paid or allocated to such assignee.

_____, as assignee, hereby accepts said interest
subject to all terms, covenants and conditions of the Amended
and Restated Agreement of Limited Partnership dated as of
November 18, 1986.

Dated: _____.

Assignor

Assignee

Assignee's Address

Assignee's Social Security
Number

STATE OF _____)
COUNTY OF _____) SS.

On this ____ day of _____, 19__, before me
personally appeared _____ and _____, to me known and known
to be the persons described in, and who executed, the
foregoing instrument and they duly acknowledged to me that
they executed the same.

Notary Public

(b) After receiving an executed assignment in the
form prescribed in paragraph (a) hereof, and all required

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approvals under Sections 6.02(a) and 6.03(a) to the assignment, the Partnership shall make all further Distributions and allocate any Taxable Income or Loss to the assignee with respect to the interest transferred regardless of whether such transfer, as between the parties thereto, is or is intended to be by way of pledge, mortgage, encumbrance or other hypothecation, until such time as the interest transferred shall be further transferred in accordance with the provisions of this Partnership Agreement.

Section 6.05 RIGHTS OF ASSIGNEE. Unless admitted to the Partnership as a Limited Partner in accordance with Section 6.06, the transferee of an interest in the Partnership, by assignment, bequest, operation of law or otherwise, shall not be entitled to any of the rights, powers, or privileges of its predecessor in interest, except that it shall be entitled to receive and have allocated to it the share of Distributions and Taxable Income or Loss attributable to the assigned interest.

Section 6.06 ADMISSION OF LIMITED PARTNER. A permitted assignee of an interest in the Partnership may be admitted to the Partnership as a Limited Partner upon furnishing to the General Partner all of the following:

(a) acceptance, in form satisfactory to the General Partner, of all the terms of this Partnership Agreement;

(b) a certified copy of a resolution of its Board of Directors or comparable body (if it is a corporation or similar organization) authorizing it to become a Limited Partner under the terms of this Partnership Agreement;

(c) a Power of Attorney substantially identical to that contained in Section 10.14 hereof;

(d) such other documents or instruments as may be required by the General Partner in order to effect the transferee's admission as a Limited Partner; and

(e) payment of such reasonable expenses as may be incurred in connection with the transferee's admission as a Limited Partner.

Section 6.07 PLEDGE OF INTERESTS. The Limited Partners agree to pledge their Partnership interests (a) as required by the Credit Agreement and (b) to secure the repayment of any bank financing obtained by the Partnership that the General Partner reasonably determines is necessary for the operations of the Station or is used to repay Advances, provided that the terms of the bank financing and the pledge of the Partners' interests are commercially reasonable.

Section 6.08 SALE OF CLASS A LIMITED PARTNERSHIP INTERESTS. Foulger may elect, by delivery of written notice of its election to Northstar at any time on or after February 1, 1988 and before March 1, 1988 to require Northstar to purchase Foulger's Class A Limited Partnership interest at a price equal to Foulger's Capital Contribution

for its Class A Limited Partnership interest plus ten percent (10%) per annum. Northstar shall purchase the Foulger interest within ninety (90) days of its receipt of the written notice.

Section 6.09 FAILURE TO ADVANCE FUNDS UNDER CREDIT AGREEMENT. If any Class A Limited Partner fails to make Advances to the Partnership as required by the Credit Agreement, that Partner (the "Defaulting Partner") shall forfeit its Class A Limited Partnership interest and the Capital Contribution made therefor, and shall forfeit certain Advances as provided in the Credit Agreement, and the Capital Contribution and Advances shall be retained by the Partnership. In that event, the other Class A Limited Partner may elect, within ninety (90) days of the Defaulting Partner's failure to make a required Advance, by (a) making a Capital Contribution equal to the forfeited Capital Contribution, (b) making Advances to the Partnership equal to the amount of any Advances forfeited by the Defaulting Partner under the terms of the Credit Agreement, (c) making any other Advance that would then be due from the Defaulting Partner under the Credit Agreement, and (d) agreeing to make any other Advances that the Defaulting Partner would be required to make under the Credit Agreement, to purchase a Class A Limited Partnership interest from the Partnership with a Pro Rata Share equal to that of the forfeited Class A Limited Partnership interest. If the other Class A Limited

Partner does not elect to purchase a Class A Limited Partnership interest pursuant to the preceding sentence, the Pro Rata Shares of the Partners (including the Defaulting Partner) following the forfeiture of the Class A Limited Partnership interest shall be increased proportionately so that the aggregate Pro Rata Shares of all Partners shall be 100%, effective as of the date of such forfeiture.

ARTICLE VII

REPURCHASE OF PARTNERSHIP INTEREST

Section 7.01 REPURCHASE OPTION. Any Limited Partner, at its option, exercisable after four (4) years of operation of the Station, may require the Partnership to repurchase all of its Limited Partnership interest. To exercise the option granted hereby the Limited Partner shall notify the General Partner in writing of its intention to sell its interest back to the Partnership.

Section 7.02. REPURCHASE PRICE. Upon receipt by the General Partner from a Limited Partner of notice of the Limited Partner's exercise of its repurchase option, the General Partner and the Limited Partner shall attempt to agree upon a value for the interest to be repurchased. If they are unable to agree, each shall promptly appoint an appraiser to determine the value of the business and assets of the Partnership. If either the General Partner or the Limited Partner fails to appoint an appraiser within twenty (20) days of receipt of written notice of the intention to

exercise the option, the appraiser appointed by the other shall determine the value and his decision shall be final and binding. If two appraisers are appointed, they shall attempt to agree upon a value. If they are unable to agree upon a value within thirty (30) days, they shall appoint a third appraiser. The third appraiser shall, within thirty (30) days after his appointment, choose which of the determinations of value is more reasonable and that determination shall be final and binding upon the parties. The Partnership shall repurchase the interest within ninety (90) days of the appraiser's determination for cash, at a price equal to the amount that the Limited Partner would have received upon the liquidation of the Partnership if the Partnership had sold its business and assets at the appraised value. The fees and expenses incurred by exercise of the repurchase option shall be borne one-half by the Partnership and one-half by the selling Limited Partner or Limited Partners.

Section 7.03 EFFECT OF REPURCHASE. Upon the repurchase of any Partner's Partnership interest pursuant to this Article VII or Section 3.01(c), the Pro Rata Shares of the other Partners shall be increased proportionately so that the aggregate Pro Rata Shares of all Partners shall at all times be 100%.

ARTICLE VIII

DISSOLUTION

Section 8.01 DISSOLUTION. The Partnership shall be dissolved upon the happening of any of the following events:

(a) disposal of all or substantially all of the assets of the Partnership; provided, however, that if the Partnership receives a purchase money mortgage or other non-cash consideration in connection with such disposal, the Partnership shall continue until the non-cash consideration is converted into cash;

(b) the written consent of all Partners to dissolve the Partnership; or

(c) the voluntary or involuntary bankruptcy, dissolution or liquidation of the General Partner or the transfer of the interest of the General Partner (whether or not as a result of voluntary or involuntary bankruptcy, dissolution or liquidation of the General Partner) except by Conversion, unless within sixty days after the transfer all remaining Partners, including any Person who has acquired or represents the General Partner's interest, elect by an agreement in writing to conduct the business under the terms and conditions of this Partnership Agreement.

Section 8.02 LIQUIDATION.

(a) Upon the dissolution of the Partnership, the General Partner (which term, for the purpose of this Section 8.02, shall include any trustee, receiver or other person

required by law to wind up the affairs of the Partnership) shall liquidate the assets of the Partnership.

(b) All proceeds from the sale or disposition of Partnership property and any other assets of the Partnership following dissolution shall be distributed in the following order of priority: (i) to the payment of Partnership debts, liabilities and obligations other than Advances; (ii) to the establishment of such reserves as the General Partner may reasonably deem necessary for any contingent liabilities of the Partnership; (iii) to the repayment of Advances; and (iv) in accordance with the Partners' Capital Accounts, taking into account the allocation of Taxable Income required by Section 4.02 and any Capital Contributions under Section 2.03(c).

Section 8.03 FINAL STATEMENT. As soon as practicable after the dissolution of the Partnership, a final statement of the Partnership's assets and liabilities and the Capital Accounts of all of the Partners shall be prepared by an independent certified public accountant and furnished to all Partners.

ARTICLE IX

BOOKS AND ACCOUNTS

Section 9.01 BOOKS. The General Partner shall keep or cause to be kept books of account in accordance with standards established by a national accounting firm, in which shall be entered fully and accurately the transactions of the

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Tab 19

WILEY REIN & FIELDING

1776 K STREET N.W.
WASHINGTON, D.C. 20006
202: 429-7000

BARRY D WOOD
202: 429-7025

August 31, 1987

Mr. Joseph C. Lee
Executive Vice President
MWT Corporation
2257 Texas Street
Salt Lake City, Utah 84109

Dear Joe:

This will confirm that, as we have discussed over the telephone, I will be moving over to the Washington, D. C. office of Jones, Waldo, Holbrook & McDonough effective September 8, 1987. I am very much looking forward to this new setting because I believe I will be able to serve you even better there.

My new address will be 1001 22nd Street, N.W., Suite 350, Washington, D.C. 20037. The telephone number there is (202) 296-5950.

As you know, Jones, Waldo, Holbrook & McDonough is an outstanding full-service firm with an excellent reputation in all areas of its practice, including corporate, tax, patent, litigation and securities work. Jones, Waldo's communications practice has concentrated on such areas as transactional work, First Amendment issues and libel defense in the past, but has not involved extensive representation of clients before the Federal Communications Commission. I feel honored by the firm's confidence in our ability to build a practice group in this important field in Washington.

We are most fortunate that Ron Maines, one of the most promising young lawyers in the communications bar, has agreed to join me at Jones, Waldo. Ron has been an associate with the firm of Gordon & Healy for the past four years, and has gained a great deal of experience not only in broadcast regulation and transactional work, but also in the common carrier, private radio and microwave areas.

Please be assured that this separation is on the most amicable terms, and that Wiley, Rein & Fielding will cooperate in ensuring a smooth transition. Enclosed is a suggested letter for you to authorize the transfer of your

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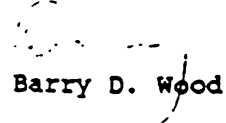
WILEY, REIN & FIELDING

Mr. Joseph C. Lee
September 1, 1987
Page 2

files to my new firm. I would appreciate it if you could return this, or a similar letter, to Wiley, Rein & Fielding as soon as possible.

Most of all, I appreciate the faith you have placed in me as we embark on this exciting new venture.

Sincerely,



Barry D. Wood

Enclosure

cc: Mrs. Jo-Ann Wong
Mr. George Gonzales
Mr. Sid W. Foulger
Mr. Clayton Foulger

V01701

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September , 1987

Mr. Barry L. Strauss
Firm Administrator
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Strauss:

I hereby request the transfer of all of the files
(current and closed) compiled and maintained by your firm
concerning matters for which you provided representation on
our behalf, including the following matters:

Your file no.

MWT, LTD. re Channel 13,
Salt Lake City, Utah

3188

to Barry D. Wood, at the law firm of Jones, Waldo, Holbrook &
McDonough, 1001 22nd Street, NW, Suite 350, Washington, D.C.
20037. In addition, please submit a final billing for
services rendered and costs advanced by Wiley, Rein &
Fielding in connection with the above-described
representations.

We also wish to thank you for your assistance in serving
our needs over the past years, and wish you all the best in
the future.

Very truly yours,

Joseph C. Lee

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Partnership. All books and records and this Partnership Agreement and all amendments thereto shall at all times be maintained at the principal office of the Partnership and shall be open to the inspection and examination of each Partner or his representatives at reasonable times.

Section 9.02 REPORTS.

(a) The General Partner shall, within seventy-five days after the expiration of each Fiscal Year, deliver to each Partner a statement showing: (i) all information necessary for the preparation of the Partner's income tax returns; (ii) the cash receipts and expenses of the Partnership for the Fiscal Year; (iii) a statement showing the profit or loss of the Partnership for the Fiscal Year; (iv) a statement showing the assets and liabilities of the Partnership as of the end of the Fiscal Year; and (v) an itemization showing the amounts and sources of any Distributions and repayments of Advances to Partners. The statements of profit or loss and assets and liabilities shall be prepared in accordance with generally accepted accounting principles consistently applied and shall be certified by an independent certified public accountant.

(b) The General Partner shall prepare and deliver to each Partner within fifteen (15) days after the end of each calendar month a statement showing the cash receipts and expenses of the Partnership for the preceding month. The

statement need not be audited but shall be signed by the chief financial officer of the General Partner.

(c) In addition to the reports required by paragraphs (a) and (b) hereof, the General Partner shall prepare and deliver to each Partner, as appropriate, reports showing all transactions with the General Partner and the fees, commissions, compensation and other benefits paid or accrued to the General Partner and other pertinent information with respect to the Partnership and its activities.

Section 9.03 BANK ACCOUNTS. The General Partner shall open and maintain in the name of the Partnership accounts with one or more financial institutions in which shall be deposited all funds of the Partnership. Partnership funds shall be used solely for the business of the Partnership. Withdrawals of funds may be made only upon the signature of a Person authorized by the General Partner to make withdrawals.

Section 9.04 PARTNERSHIP CERTIFICATES. The Partnership shall prepare and issue Certificates to each Partner, executed by the General Partner on behalf of the Partnership, evidencing the Partner's interest in the Partnership.

ARTICLE X

GENERAL

Section 10.01 SETTLEMENT AGREEMENTS. The Partnership shall assume and undertake to pay all obligations of Mountain West Television Company under any settlement agreements entered into between Mountain West Television Company and any of the other applicants before the FCC for a construction permit for the Station, including without limitation settlement agreements entered into prior to the Effective Date. In addition, Northstar agrees that its significant investor, Allstate Insurance Company (a) shall have agreed to purchase those promissory notes evidencing certain of the obligations under those settlement agreements if the Partnership shall be in default in its performance thereof; (b) shall have agreed in a separate writing not to proceed against any of the individual general partners of Mountain West Television Company to enforce any rights acquired upon its purchase of the notes and in the event it proceeds against Mountain West Television Company or any of its successors and assigns, Allstate's recourse shall be limited to the assets of Mountain West Television Company or its successors or assigns; and (c) shall have agreed in a separate writing unconditionally to indemnify and hold Mountain West Television Company and each of its general partners harmless from any liabilities incurred as a result of Allstate's failure to purchase the notes pursuant to the terms of the note repurchase agreements so long as the holders of such notes have complied with the procedures set forth in such agreements.

Section 10.02 OTHER BUSINESS INTERESTS. Each Partner may have other business interests and may engage in any other business, trade, profession, or employment whatsoever, on its own account or in partnership, or as an employee, officer, director, or stockholder of any other Person, provided that no Partner shall own any equity interest in, directly or indirectly, or be an officer or director of any entity which owns or operates any television or radio station, cable television system, or daily newspaper which, when combined with the interest created hereby, would violate the FCC's attribution or multiple ownership rules.

Section 10.03 NOTICES. Unless otherwise specified in a writing sent to the Partnership, the address of each Partner for all purposes shall be as set forth below. Any notices and demands required to be given hereunder shall be in writing and sent postage prepaid by certified mail, return receipt requested, to such address or addresses and also to Allstate at the address specified in Section 2.06.

Section 10.04 CAPTIONS. The Section titles and captions contained in this Partnership Agreement are for convenience only and shall not be deemed part of this Partnership Agreement.

Section 10.05 PRONOUNS AND PLURAL. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural and the plural shall include the singular.

Section 10.06 ENTIRE AGREEMENT. This Partnership Agreement and the Credit Agreement contain the entire understanding among the Partners and supersede any prior understandings or written or oral agreements between or among any of them respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among any of the Partners relating to the subject matter of this Partnership Agreement which are not fully expressed herein or in the Credit Agreement.

Section 10.07 FURTHER ACTION. The Partners shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purpose of the Partnership.

Section 10.08 BINDING EFFECT. This Partnership Agreement shall be binding on and inure to the benefit of the Partners and their heirs, executors, administrators, successors, legal representatives and assigns.

Section 10.09 VALIDITY. If any provision of this Partnership Agreement is held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Partnership Agreement.

Section 10.10 GOVERNING LAW. This Partnership Agreement shall be governed by the laws of the State of Utah.

Section 10.11 PERSONAL JURISDICTION. The Partners hereby consent to personal jurisdiction in the District of Columbia and waive any and all rights they may have to cause any actions or

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proceedings to be brought or tried elsewhere and any and all objections to jurisdiction or venue they might otherwise have to the commencement of any suit in the District of Columbia to construe or enforce the provisions of this Agreement or to remedy any breach thereof.

Section 10.12 ACCOUNTING METHOD. The Partnership shall use the accrual method of accounting for income tax purposes and for general accounting purposes.

Section 10.13 AMENDMENT. This Partnership Agreement may be amended or modified only by the affirmative written consent of all the Partners.

Section 10.14 POWER OF ATTORNEY.

(a) Each Limited Partner hereby irrevocably constitutes and appoints the General Partner as its true and lawful attorney-in-fact, in its name, place and stead, to make, execute, acknowledge and file a certificate of limited partnership reflecting this Partnership Agreement and any amendments thereto reflecting actions properly taken by the Partners.

(b) The power of attorney is coupled with an interest and shall survive an assignment by any Limited Partner of its interest until such time as the General Partner has taken the action necessary or appropriate to effect the substitution of the assignee as a Limited Partner including, without limitation, the execution, acknowledgment and filing of an amendment to the certificate of limited partnership.

(c) The power of attorney shall, to the extent permitted by law, survive any merger, bankruptcy, receivership or dissolution of a Limited Partner.

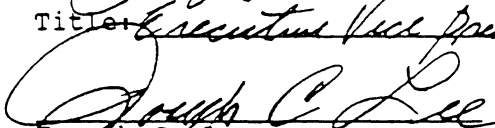
(d) Each Limited Partner shall execute such instruments as the General Partner may request in order to give evidence of, and to effectuate, the granting of this power of attorney, whether by executing a separate counterpart thereof or otherwise.

IN WITNESS WHEREOF, this Partnership Agreement is signed on the day and year first above written.

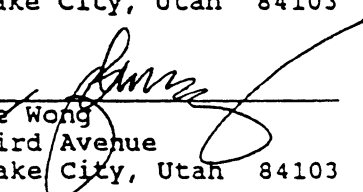
MWT Corporation
2257 Texas Street
Salt Lake City, Utah 84109

By: 

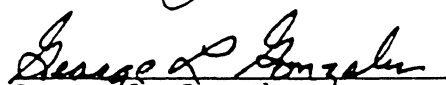
Title:  Executive Vice President


Joseph C. Lee
2257 Texas Street
Salt Lake City, Utah 84109

Sidney W. Foulger
241 North Vine Street
Salt Lake City, Utah 84103



Jo-Anne Wong
809 Third Avenue
Salt Lake City, Utah 84103



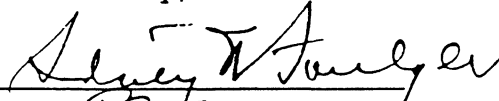
George L. Gonzales
1278 East North
Ogden, Utah 84404

(c) The power of attorney shall, to the extent permitted by law, survive any merger, bankruptcy, receivership or dissolution of a Limited Partner.

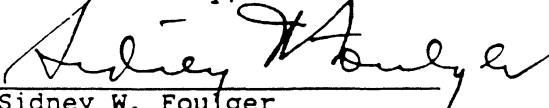
(d) Each Limited Partner shall execute such instruments as the General Partner may request in order to give evidence of, and to effectuate, the granting of this power of attorney, whether by executing a separate counterpart thereof or otherwise.

IN WITNESS WHEREOF, this Partnership Agreement is signed on the day and year first above written.

MWT Corporation
2257 Texas Street
Salt Lake City, Utah 84109

By: 
Title: PRESIDENT

Joseph C. Lee
2257 Texas Street
Salt Lake City, Utah 84109


Sidney W. Foulger
241 North Vine Street
Salt Lake City, Utah 84103

Jo-Anne Wong
809 Third Avenue
Salt Lake City, Utah 84103

George L. Gonzales
1278 East North
Ogden, Utah 84404

Northstar Communications, Inc.
1776 K Street, N.W.
Suite 900
Washington, D.C. 20006

By: Wm. M. D. Fines

Title: PRESIDENT

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Tab 20

MEMORANDUM

TO: Class B Limited Partners of MWT, Ltd.

FROM: Katherine T. Glakas, President
Northstar Communications, Inc.

DATE: December 30, 1991

RE: Dissolution of MWT, Ltd.

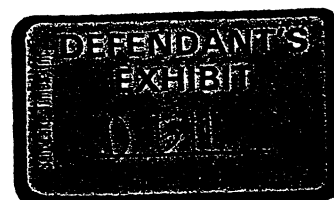
=====

This is to inform you that as is required by Section 8.01(a) of the Agreement of Limited Partnership of MWT, Ltd., on October 28, 1991, the Board of Directors of Northstar Communications, Inc., in its capacity as General Partner of MWT, Ltd., voted to dissolve the Partnership as a result of the disposal of substantially all of the assets of the Partnership in the sale of KSTU-TV. As is provided in Section 8.02 of the Partnership Agreement, upon dissolution the General Partner is responsible for winding up the affairs of the Partnership. At the end of the winding up process the Partnership is to be liquidated. A copy of the Plan of Liquidation adopted by the Board is attached.

The Partnership was dissolved effective October 31, 1991. The Partnership's debts, to the extent of funds available, have been paid in accordance with the Plan of Liquidation. The remaining cash of the Partnership (approximately \$15,000) was assigned to the General Partner to be used to pay accounting and other costs of liquidation. A compilation of the Partnership's assets and liabilities and the capital accounts of all the Partners as of the date of dissolution was prepared by Deloitte & Touche, independent certified public accountants to the Partnership. I attach a copy of this compilation for your review.

Capital accounts were maintained for each of the Partners throughout the life of the Partnership in accordance with Section 5.02 of the Partnership Agreement and relevant tax regulations. Accordingly, each Partner's capital account was increased by (i) the amount of money or the fair market value of property contributed by such Partner to the Partnership and (ii) such Partner's share of allocations of income or gain of the Partnership. Each capital account was decreased by (iii) any distributions of money or property to such Partner and (iv) such Partner's share of allocations of losses of the Partnership. The annual Partnership financial

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statements distributed to the Partners reflected the aggregate capital accounts of the Class A and Class B Limited Partners and General Partner as of the date of each such financial statement.

In order to liquidate the Partnership, Section 2.08 (c) of the Partnership Agreement requires each Partner to make additional capital contributions to the Partnership in amounts equal to any deficit in such Partner's capital account. . Additional capital contributions shall be distributed to the creditors of the Partnership in accordance with the Plan of Liquidation.

The capital accounts must be settled before Deloitte & Touche will prepare a final accounting in accordance with Section 8.03 of the Partnership Agreement. The final accounting will be distributed to all of the Partners and a Certificate of Cancellation will be filed with the State of Utah which will terminate the Partnership.

As is reflected in the attached compilation, the aggregate negative capital accounts of the Class B limited Partners as of the date of dissolution is \$2,007,133. I attach a schedule showing each Partner's share of this total figure. In order to facilitate the orderly completion of the liquidation process, the Partnership must either collect the additional capital contributions from those Partners with negative capital accounts or reach a settlement between all Partners that will satisfy the creditors. Payments should be made by check or wire transfer to the account of the General Partner in the amount of your negative capital account as follows:

Mail: MWT, Ltd.
P.O. Box 9565
McLean, VA 22102-0565

Wire Transfer:

Bank: Riggs National Bank
Address: 4835 Massachusetts Ave., NW
Washington, D.C. 20016
ABA No.: 0540-0003-0
Account Name: Northstar Communications, Inc.
Account No.: 1 830 90 2

If you have any questions regarding the liquidation process please contact our attorneys, John C. Quale or Dag Wilkinson at (202) 429-7000.

Parties	Percentage of Total Class	Negative Capital Account
Class B		
<i>Gonzalez</i>	3.33%	\$66,904.43
<i>David & Marilyn Lee</i>	7.33%	\$147,189.75
<i>Joe Lee</i>	7.33%	\$147,189.75
<i>Joanne Wong</i>	4.00%	\$80,285.32
<i>Sid Foulger</i>	2.83%	\$56,868.77
<i>Bryant Foulger</i>	2.83%	\$56,868.77
<i>Clayton Foulger</i>	2.83%	\$56,868.77
<i>Brent Pratt</i>	2.83%	\$56,868.77
<i>MWT Corp.</i>	66.67%	\$1,338,088.67
<i>Total</i>	100.00%	\$2,007,133.00

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Deloitte & Touche



Suite 1800
50 South Main Street
P O Box 158
Salt Lake City, Utah 84144-0458
Telephone (801) 328-4706

Facsimile (801) 355-7515

INDEPENDENT ACCOUNTANTS' COMPILATION REPORT

The Partners of MWT, Ltd.:

We have compiled the accompanying balance sheet of MWT, Ltd. (a Utah Limited Partnership) as of October 31, 1991, and the related statements of operations, partners' capital (deficiency), and cash flows for the period April 19, 1990 (the day after the sale of the Partnership's operating assets) to October 31, 1991, in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting, in the form of financial statements, information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit from the financial statements substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Partnership's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Deloitte & Touche

December 3, 1991

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MWT, LTD. (A Utah Limited Partnership)

BALANCE SHEET, OCTOBER 31, 1991 (UNAUDITED)

	<u>Note</u>	
<u>ASSETS</u>	<u>3</u>	<u>NONE</u>
<u>LIABILITIES AND PARTNERS' DEFICIENCY</u>		
<u>CURRENT LIABILITIES:</u>		
Demand notes payable		\$ 3,214,441
Interest payable		148,833
Accrued partners' salaries	<u>1</u>	824,242
Accrued management fees	<u>2</u>	<u>374,697</u>
Total current liabilities		<u>4,562,213</u>
<u>PARTNERS' DEFICIENCY</u>		<u>(4,562,213)</u>
<u>TOTAL</u>		<u>NONE</u>

Unaudited - see accountants' compilation report and notes to financial statements.

MWT, LTD. (A Utah Limited Partnership)

STATEMENT OF OPERATIONS

FOR THE PERIOD APRIL 19, 1990 (THE DAY AFTER THE SALE

OF THE PARTNERSHIP'S OPERATING ASSETS) TO OCTOBER 31, 1991 (UNAUDITED)

	<u>Notes</u>	
OPERATING EXPENSES:		
Management fees and expenses	1	\$ 596,846
General and administrative:		
Legal expense		81,703
Accounting expense		25,685
Estimated expenses of dissolution	3	13,074
Insurance		3,096
Taxes		4,830
Travel		1,430
Other		<u>3,726</u>
Total general and administrative		<u>133,544</u>
NET OPERATING LOSS		730,390
OTHER (INCOME) EXPENSE:		
Interest expense		722,373
Gain on sale of operating assets	4	(93,642)
Interest income		<u>(90,375)</u>
NET LOSS		<u>\$1,268,746</u>

Unaudited - see accountants' compilation report and notes to financial statements.

MWT, LTD. (A Utah Limited Partnership)

STATEMENT OF PARTNERS' CAPITAL (DEFICIENCY)
FOR THE PERIOD APRIL 19, 1990 (THE DAY AFTER THE SALE
OF THE PARTNERSHIP'S OPERATING ASSETS) TO OCTOBER 31, 1991 (UNAUDITED)

<u>Description</u>	<u>Partners' Capital (Deficiency)</u>			<u>Total</u>
	<u>General</u> <u>Partner</u>	<u>Class A</u> <u>Limited</u> <u>Partner</u>	<u>Class B</u> <u>Limited</u> <u>Partners</u>	
PARTNERS' CAPITAL (DEFICIENCY), APRIL 19, 1990	\$470,485	\$(2,238,942)	\$(1,525,010)	\$(3,293,467)
NET LOSS	<u>(12,688)</u>	<u>(773,935)</u>	<u>(482,123)</u>	<u>(1,268,746)</u>
PARTNERS' CAPITAL (DEFICIENCY), OCTOBER 31, 1991	<u>\$457,797</u>	<u>\$(3,012,877)</u>	<u>\$(2,007,133)</u>	<u>\$(4,562,213)</u>

Unaudited - see accountants' compilation report and notes to financial statements.

MWT, LTD. (A Utah Limited Partnership)

STATEMENT OF CASH FLOWS
FOR THE PERIOD APRIL 19, 1990 (THE DAY AFTER THE SALE
OF THE PARTNERSHIP'S OPERATING ASSETS) TO OCTOBER 31, 1991 (UNAUDITED)

CASH FLOWS FROM OPERATING ACTIVITIES:

Net loss	\$(1,268,746)
Adjustments to reconcile net loss to net cash used in operations:	
Change in operating assets and liabilities:	
Accounts receivable	2,136,012
Interest payable	(1,328,767)
Accounts payable	(332,656)
Accrued partners' salaries	596,846
Other accrued liabilities	<u>(238,560)</u>
Net cash used in operating activities	<u>(435,871)</u>

CASH FLOWS USED IN FINANCING ACTIVITIES -

Payment of demand notes payable	<u>(1,406,046)</u>
---------------------------------	--------------------

NET DECREASE IN CASH AND CASH EQUIVALENTS (1,841,917)

CASH AND CASH EQUIVALENTS:

Beginning of period	<u>1,841,917</u>
End of period	<u>NONE</u>

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:

Cash paid during the period for interest	<u>\$ 2,051,140</u>
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Unaudited - see accountants' compilation report and notes to financial statements.

MWT, LTD. (A UTAF LIMITED PARTNERSHIP)

NOTES TO UNAUDITED FINANCIAL STATEMENTS

1. ACCRUED PARTNERS' SALARIES

At October 31, 1991, MWT, Ltd. has accrued partners' salaries through the end of the contract period. Accrued but unpaid salaries at October 31, 1991 were \$824,242. Partners' salaries of \$596,846 were charged to expense during the period April 19, 1990 to October 31, 1991.

2. ACCRUED MANAGEMENT FEES

Management fees payable to Farragut Communications, a related party, have been accrued through the date of the sale of the operating assets to Fox Television. Accrued but unpaid management fees at October 31, 1991 were \$374,697. No management fees relating to the Management Agreement with Farragut Communications have been charged to expense during the period April 19, 1990 to October 31, 1991.

3. ESTIMATED EXPENSES ON DISSOLUTION

On July 31, 1991, MWT, Ltd. transferred remaining cash balances of \$15,574 to Northstar Communications, Inc., a related party, in return for Northstar's agreement to pay certain remaining obligations of MWT, Ltd. including legal, accounting, and tax obligations, \$2,500 of which had been previously accrued.

4. GAIN ON SALE OF OPERATING ASSETS

The gain on sale of operating assets of \$93,642 for the period April 19, 1990 to October 31, 1991 is the final settlement of the gain reported in the April 18, 1990 financial statements and is a result of information not previously available and from adjustments with Fox Television in the final settlement.

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Tab 21

DOW, LOHNES & ALBERTSON

1255 TWENTY-THIRD STREET

WASHINGTON, D. C. 20037

TELEPHONE (202) 857-2500

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Page 1

February 20, 1987

Mountain West Television Company
c/o Sid Foulger & Joseph Lee
Foulger-Pratt Construction
2 Research Place
Rockville, MD 20850

Invoice 63404

Our File # 03483.0002 For Services Through 02/19/87
Advice re Financial Partner

07/15/86 Telephone with B. Pratt of Mountain West;
conference at DLA with Pratt; review of Northstar
and other settlement proposals; analysis of same.
HARDY 3.40 hrs.

07/15/86 Work on projections of Northstar proposal.
WILD 1.50 hrs.

07/16/86 Conference with B. Pratt re Northstar proposal;
work on analysis of offer and computer models;
conference with Wild.
HARDY 4.20 hrs.

07/16/86 Work on analysis of Allstate investment proposal.
WILD 3.10 hrs.

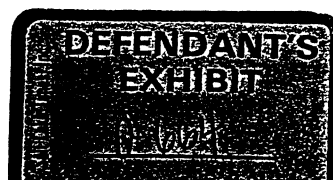
07/17/86 Work on analysis of Northstar offer; memo to Hardy
re projections.
WILD 2.80 hrs.

07/17/86 Telephone with B. Pratt; work on projections and
analysis of proposed transactions with Northstar
and Dallas group.
HARDY .50 hrs.

07/18/86 Work on analysis of Northstar financing proposal.
WILD 5.70 hrs.

07/19/86 Conference Brent Pratt at home; review of
projections and investment criteria in development
of possible settlement with third party Northstar
or Dallas group.
HARDY 2.00 hrs.

07/21/86 Work on analysis of financing options.
WILD 4.00 hrs.



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February 20, 1987

Mountain West Television Company

Invoice 63404

07/22/86 Telephone from Brent Pratt and Katie Glakas re
Northstar.
HARDY .10 hrs.

07/23/86 Work on projections for Northstar proposals.
WILD 1.00 hrs.

07/23/86 Negotiation with C. Woods, Brad Bulkley and
InterFirst in Dallas re Channel 13; conferences
with B. Pratt and J. Lee.
HARDY 8.00 hrs.

07/24/86 Neotiations Chicago with Northstar in Chicago;
meeting with First National Bank of Chicago;
confer with Pratt.
WILD 5.00 hrs.

07/24/86 Negotiation with Northstar principals at Ramada
O'Hare Hotel re Channel 13; meetings with First
National Bank of Chicago officer re Channel 13
financing.
HARDY 4.20 hrs.

07/26/86 Work on revised analysis of financing options.
WILD .50 hrs.

07/28/86 Telephone from Brent Pratt; discuss new parameters
from Northstar; telephone from Bill Lincoln at
Northstar and Brad Bulkley.
HARDY .70 hrs.

07/29/86 Work on analysis of Northstar and Dallas
proposals; calls from Lincoln of Northstar.
HARDY .40 hrs.

07/29/86 Work on analysis of latest North Star proposal.
WILD .90 hrs.

07/31/86 Telephone with J. Lee and D. Lee re Northstar and
Dallas proposals for partnerships with Mountain
West on Channel 13 in event of settlement.
HARDY 1.00 hrs.

07/31/86 Work on analysis of CPL proposal.
WILD 4.30 hrs.

08/01/86 Telephone from B. Pratt (2) (at Kitty Hawk) and
Brad Bulkley in Dallas; further work on
projections.
HARDY .50 hrs.

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Page 3

February 20, 1987

Mountain West Television Company

Invoice 63404

08/01/86 Work on analysis of CPL proposal.
WILD 1.50 hrs.

08/02/86 Conference with Wild re projections and analysis
of Dallas proposals; telephone with B. Pratt re
same.
HARDY 1.50 hrs.

08/02/86 Work on analysis of CPL proposal.
WILD 7.00 hrs.

08/08/86 Work on analysis of CPL proposal.
WILD .60 hrs.

08/12/86 Telephone with Brad Bulkley.
HARDY .20 hrs.

08/14/86 Telephone from B. Pratt (2) and from Joe Lee re
CPL and Northstar proposals; review of same.
HARDY .60 hrs.

08/29/86 Telephone with Rick of CPL in Dallas; telephone
and conference with B. Pratt re same.
HARDY .80 hrs.

09/15/86 Telephone B. Pratt; calls to several banks re
finance.
HARDY .50 hrs.

09/16/86 Memorandum Re Channel 13 settlement; conferences
Pratt (2) and telephone C. Maddox of AmeriTrust
Bank re financing; calls (2) with K. Glakes of
Northstar.
HARDY 1.20 hrs.

10/04/86 Conference S. Foulger and telephone B. Pratt re
Channel 13 prospects and developments.
HARDY .60 hrs.

10/06/86 Conference with executive of local Salt Lake TV
owner re Salt Lake television situation, Channel
13 and related matters.
HARDY 2.00 hrs.

10/09/86 Work on obtaining material from the FCC re status
and history of KAHT-TV, Channel 14.
Legal Asst (Walsh) 3.20 hrs.

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(45)

February 20, 1987

Mountain West Television Company

Invoice 63404

10/09/86 Conference with R. Hardy re antitrust issues in
potential joint venture for Channel 13.
MERDEK .30 hrs.

10/09/86 Review materials obtained from FCC re Channel 14
construction permit and intent of Skaggs to
proceed; telephone C. Foulger re same.
HARDY 1.10 hrs.

10/10/86 Research re KAHT-TV, Salt Lake City, Utah.
Legal Asst (Walsh) .60 hrs.

10/15/86 Telephone Pratt and D. Lee; telephone C. Foulger
re Channel 14 and Mountain West.
HARDY .90 hrs.

10/16/86 Telephone Pratt (2) and conference re
Skaggs/Channel 14 application and strategy on
merger; telephone J. Lunt.
HARDY 1.30 hrs.

10/17/86 Telephone D. Lee, Pratt re Northstar and Skaggs.
HARDY 1.20 hrs.

10/22/86 Telephone Pratt re Skaggs meeting.
HARDY .10 hrs.

10/23/86 Meeting in Salt Lake with Skaggs, Foulgers, Lees,
Utah Jazz ownership re Channel 13 participation.
HARDY 8.00 hrs.

10/28/86 Telephone Pratt and Jack Lunt of Skaggs.
HARDY .50 hrs.

10/29/86 Telephone Pratt re Northstar and Skaggs.
HARDY .20 hrs.

10/29/86 Telephone J. Lunt re Skaggs interest and review
Northstar memorandum; telephone from Linda re
programming and business veto problem.
HARDY .70 hrs.

Fees for legal services.....\$ 15052.50

Reproduction, Telephone &

Miscellaneous Expenses.....\$ 832.36

Total current billing for this file.\$ 15884.86

T02128

034000

(44)

February 20, 1987

Mountain West Television Company

Invoice 63404

Our File # 03483.0003 For Services Through 02/19/87
Northstar/Settlement
Negotiations

07/21/86 Research re FCC restrictions applicable to
 proposed settlement.
 HUTTON 7.20 hrs.

07/21/86 Conference Hutton re FCC aspects of Channel 13
 proceeding and settlement; telephone B. Pratt re
 Northstar and projections.
 HARDY .40 hrs.

07/22/86 Work on memo to Ralph Hardy re FCC aspects of
 settlement of channel 13 proceeding.
 HUTTON 1.00 hrs.

07/25/86 Telephone from Barry Wood (2).
 HARDY .30 hrs.

07/31/86 Telephone call with R. Hardy re Fcc aspects of
 potential settlement.
 HUTTON .20 hrs.

08/06/86 Telephone from C. Kadlec of Northstar.
 HARDY .10 hrs.

08/08/86 Telephone from Bill Lincoln of Northstar.
 HARDY .30 hrs.

08/15/86 Conference with Northstar officers, B. Pratt and
 Clayton Foulger at Wiley & Rein; review elements
 of proposed transaction.
 HARDY 1.00 hrs.

08/25/86 Telephone Brent Pratt.
 HARDY .10 hrs.

09/03/86 Telephone Pratt re Channel 13.
 HARDY .10 hrs.

09/09/86 Telephone B. Wood.
 HARDY .20 hrs.

09/10/86 Telephone Pratt (2) re Northstar agreement.
 HARDY .40 hrs.

TU2129

034005

(43)

February 20, 1987

Mountain West Television Company

Invoice 63404

09/11/86 Telephone K. Glakas.
HARDY .20 hrs.

09/12/86 Telephone with B. Pratt (2) re Mountain West
developments; further review of settlement
agreement; calls to Glakas and Tom Davidson re
second opinion.
HARDY 1.20 hrs.

09/17/86 Conference with Northstar principals Glakas and
Lincoln, Pratt; telephone with Lincoln (2) and
Glakas; work on same.
HARDY 2.90 hrs.

09/17/86 Meeting with Northstar; work on projections of
65.35 split and 15% coupon.
WILD 1.80 hrs.

09/18/86 Work on analysis of Northstar proposal; calls with
Lincoln, Pratt.
WILD 2.50 hrs.

09/18/86 Telephone B. Pratt (3), C. Foulger and C. Kadlec
re Northstar impasse; conference Wild re return on
investment.
HARDY .80 hrs.

09/19/86 Meeting with Lincoln, Glakas, Pratt re Northstar
proposals.
WILD 1.80 hrs.

09/19/86 Negotiation With Northstar principals Lincoln and
Glakes; conferences B. Pratt and Wild; telephone
C. Kadlec; review projections.
HARDY 2.00 hrs.

09/24/86 Telephone K. Glakas (in Utah) re put and call;
telephone Pratt.
HARDY .60 hrs.

09/25/86 Telephone with Pratt (2) re negotiations with
Northstar (from N.Y.)
HARDY .50 hrs.

09/29/86 Conference B. Pratt and telephone (2) re
negotiations with Northstar.
HARDY .50 hrs.

TU2130

034006

(46)

February 20, 1987

Mountain West Television Company

Invoice 63404

10/01/86	Telephone with Renze, Pratt, C. Foulger, Glakas re Channel 13 matter. HARDY	.70 hrs.
10/02/86	Telephone Pratt re Channel 13 matters; Northstar negotiations. HARDY	.20 hrs.
10/08/86	Negotiation with Northstar principals at Wiley & Rein (Lincoln, Renze, Glakas) and Pratt, Foulger. HARDY	3.00 hrs.
10/14/86	Telephone C. Foulger and B. Pratt, work on Northstar agreement. HARDY	.60 hrs.
10/18/86	Draft programming/business statements for Northstar agreement. HARDY	.50 hrs.
10/20/86	Draft programming/business statement; conference Glakas, Lincoln; negotiations J. Lunt. HARDY	3.50 hrs.
10/21/86	Telephone with Pratt and Lincoln re partnership guidelines on programming and business. HARDY	.40 hrs.
10/30/86	Review Northstar proposal. WILD	1.10 hrs.
10/30/86	Telephone J. Lee, Pratt and work on negotiation matters; conference Wild. HARDY	.70 hrs.
10/31/86	Conference and negotiations with Northstar principals Renze, Kadlec, Glakas and Mountain West. HARDY	4.00 hrs.
10/31/86	Meeting with Northstar re partnership. WILD	5.90 hrs.
11/03/86	Telephone Lee and Pratt; review Skaggs letter. HARDY	1.10 hrs.
11/05/86	Telephone call with T. Danello re agreement. WILD	.20 hrs.

T02131

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February 20, 1987

Mountain West Television Company

Invoice 63404

11/07/86 Negotiation with Shattanfield, Siebert re Channel
13 settlement; conferences B. Pratt (2) and D.
Lee.
HARDY 2.10 hrs.

11/10/86 Telephone Pratt (2), Wood and Lincoln of
Northstar.
HARDY .70 hrs.

11/11/86 Review settlement agreements; telephone Pratt (2),
Wood, Lee; review Northstar agreements.
HARDY 1.80 hrs.

11/11/86 Review settlement agreements re payment
obligations; research Utah partnership law.
WILD .40 hrs.

11/12/86 Work on Partnership Agreement.
FRITTS 3.00 hrs.

11/12/86 Review proposed partnership and credit agreement;
meeting with Northstar; meeting with Pratt,
Foulger, Lee.
WILD 9.60 hrs.

11/12/86 Work on settlement issues -- indemnity, limited
partnership arrangement.
HUTTON 2.00 hrs.

11/12/86 Work on Channel 13 negotiations; meeting with
Foulger, Pratt; conferences with Glakas.
HARDY 3.90 hrs.

11/13/86 Meeting with Pratt, Foulger, Lee re partnership;
call to Danello (WR&F) re restructure.
WILD 2.80 hrs.

11/14/86 Negotiation with Northstar.
WILD 12.00 hrs.

11/14/86 Research Partnership tax issues.
FRITTS .50 hrs.

11/14/86 Work on negotiations and structure of Channel 13
in allnight/all day session with Wiley & Rein,
Foulgers and others.
HARDY 18.00 hrs.

T02132

(48)

February 20, 1987

Mountain West Television Company

Invoice 63404

11/15/86	Negotiation with Northstar. WILD	10.50 hrs.
11/15/86	Preparation for Channel 13 Closing. KELLEY	12.50 hrs.
11/15/86	Work on documentation of Northstar transaction; conference with Foulger, Lee, Wood, D. Hardy, Wild, Kelley. HARDY	10.20 hrs.
11/16/86	Negotiation with Northstar. WILD	17.00 hrs.
11/16/86	Work on Settlement and Credit Agreements. KELLEY	12.00 hrs.
11/16/86	Negotiation on Channel 13 all day and late night at Wiley and Rein. HARDY	13.50 hrs.
11/17/86	Negotiation of Partnership, credit agreements with Northstar. WILD	11.00 hrs.
11/17/86	Work on Settlement and Credit Agreements. KELLEY	11.50 hrs.
11/17/86	Work on negotiations on Channel 13 at Wiley & Rein with Foulgers, Lee, Wood, D. Hardy, Quale, Oxenford, Williams and others. HARDY	14.80 hrs.
11/17/86	Work on problem re disbursement schedule. WILD	1.00 hrs.
11/18/86	Work on analysis of change in terms; prepare for closing. WILD	4.90 hrs.
11/18/86	Work on Channel 13 Closing. KELLEY	12.00 hrs.
11/18/86	Negotiation on Channel 13 matter at Wiley & Rein with D. Oxenford, Intermountain, UTA, work with principals on project. HARDY	15.00 hrs.

T02133

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49

February 20, 1987

Mountain West Television Company

Invoice 63404

11/19/86 Negotiation with Northstar; prepare for closing.
WILD 11.00 hrs.

11/19/86 Work on FCC issues in connection with settlement
of hearing and funding of settlement.
HUTTON 2.20 hrs.

11/19/86 Work on Northstar Closing.
KELLEY 10.00 hrs.

11/19/86 Negotiation with Northstar, Mountain West and
other principals on Channel 13; review and
negotiate agreements with Channel 13 parties.
HARDY 11.30 hrs.

11/20/86 Work on Northstar Closing.
KELLEY 5.30 hrs.

11/20/86 Work on closing; draft assignment of application
to partnership.
WILD 1.00 hrs.

11/20/86 Negotiation and work on Northstar/Mt. West
transaction at Wiley & Rein.
HARDY 5.80 hrs.

11/21/86 Work on assignment to limited partnership;
indemnity language.
WILD .30 hrs.

11/21/86 Telephone from B. Wood (2) and D. Hardy re
delivery of settlement documentation.
HARDY .40 hrs.

11/21/86 Work on post closing matters; telephone calls with
Danallo, Wood, Oxenford, Pratt and Foulger.
KELLEY 2.10 hrs.

11/24/86 Telephone from B. Wood, T. Schattenfield, D.
Hardy; conference with C. Foulger, B. Pratt and S.
Foulger.
HARDY .60 hrs.

11/24/86 Conference Sid and Clayton Foulger; post closing
matters.
KELLEY 1.90 hrs.

T02134

034010

(50)

February 20, 1987

Mountain West Television Company

Invoice 63404

11/25/86 Meeting Clayton Foulger; telephone calls with
Barry Wood and Tim Danello.
KELLEY .70 hrs.

11/25/86 Conference C. Foulger re repurchase agreement
disagreement with Northstar and conclusion of
documentation.
HARDY .20 hrs.

12/01/86 Research at FCC re KAHT Channel 14.
Legal Asst (Womack) 1.80 hrs.

12/02/86 Review of proposed petition for leave to amend and
related materials.
HUTTON .80 hrs.

12/02/86 Research where to file financing statements.
KELLEY .30 hrs.

12/03/86 Review B. Wood's petition for leave to amend
Mountain West application; make changes;
conferences with Hutton and Wild re same;
telephone Wood (3); telecopy.
HARDY 1.30 hrs.

12/03/86 Review of petition for leave to amend and related
materials. ..
HUTTON 1.50 hrs.

12/04/86 Collect and index closing documents.
Legal Asst (Walsh) 1.20 hrs.

12/04/86 Telephone from C. Foulger, Quale, Wood (2) re
partnership matters, Allstate Repurchase
Agreement; work on revision of Petition and
transmittal letter Allstate.
HARDY .80 hrs.

12/04/86 Draft letter regarding West Valley Repurchase
Agreement.
KELLEY 1.50 hrs.

12/05/86 Conference C. and B. Foulger re West Valley repo;
negotiations Quale re opinion; repo draft;
telephone Wood from SLC; long luncheon meeting
with D. Lee re MWT.
HARDY 2.40 hrs.

T02135

634011

(5)

February 20, 1987

Mountain West Television Company

Invoice 63404

12/05/86 Review legal opinion; phone call with David
Hardy's firm.
KELLEY 1.20 hrs.

12/08/86 Telephone from C. Foulger and with B. Wood (2) re
petition for leave to amend; review of pleading
and documentation.
HARDY .40 hrs.

12/15/86 Telephone S. Foulger re Bonneville approach; and
consideration of meeting with LDS First Presidency
re mountain site.
HARDY .20 hrs.

12/16/86 Telephone C. Foulger and B. Lincoln.
HARDY .10 hrs.

12/23/86 Telephone conference Hardy and Foulger.
KELLEY .30 hrs.

12/24/86 Telephone from B. Wood re construction permit;
problem with footnote and other matters;
conference Wild re same.
HARDY .10 hrs.

12/24/86 Telephone call with B. Wood re prepayment of West
Valley.
WILD .30 hrs.

01/02/87 Telephone with David Lee re Footnote No. 1
problem.
WILD .30 hrs.

01/05/87 Telephone C. Foulger; look at Channel 13 documents
sent by Wiley & Rein.
HARDY .10 hrs.

01/07/87 Draft letter to Northstar; telephone C. Foulger.
HARDY .50 hrs.

01/09/87 Work on letter to Northstar.
HARDY .10 hrs.

01/12/87 Draft letter to Quale re Footnote No. 1 problem;
telephone call with Joe Lee; call with David Lee.
WILD .60 hrs.

T02136

CA012

(52)

February 20, 1987

Mountain West Television Company

Invoice 63404

01/12/87 Telephone from C. Foulger, Lee re Footnote No. 1
of Credit Agreement; revise letter to Quale.
HARDY .10 hrs.

01/13/87 Telephone with C. Foulger and J. Quale re Footnote
No. 1 issues.
HARDY .40 hrs.

01/14/87 Telephone C. Foulger (2), J. Lee and J. Quale re
Footnote 1 problem; conferences with D. Hardy's
office re letter.
HARDY .80 hrs.

01/15/87 Telephone Quale.
HARDY .20 hrs.

01/16/87 Meeting at Wiley, Rein with Quale, Northstar re
Footnote 1.
WILD 2.00 hrs.

01/16/87 Conference with C. & B. Foulger, Quale, Wood,
Wiley & Rein, Northstar principals re Footnote 1;
telephone from D. Lee.
HARDY 1.50 hrs.

01/28/87 Telephone B. Wood, C. Foulger.
HARDY .30 hrs.

02/04/87 Review Proposed assignment and assumption
agreement between partnership and Mountain West
Television Company.
WILD .40 hrs.

02/04/87 Research regarding finality of orders.
HUTTON 1.80 hrs.

02/04/87 Research re petitions of reconsideration filed
against Mountain West Television Company
settlement M84-101.
Legal Asst (Lehr) 1.00 hrs.

Fees for legal services.....\$ 58490.00

Reproduction, Telephone &
Miscellaneous Expenses.....\$ 724.14

Total current billing for this file.\$ 59214.14

T02137

000013

65

February 20, 1987

Page 14

Mountain West Television Company

Invoice 63404

Our File # 03483.0004
Channel 13 Construction
Matters

For Services Through 02/19/87

2 1/2 weeks

12/23/86 Telephone from C. Foulger; B. Wood re Channel 13;
calls from D. Hardy re opinion letter and changes;
review disputed footnote.
HARDY .30 hrs.

01/27/87 Telephone from Bonneville General Counsel re
meeting; confirm with C. Foulger.
HARDY .40 hrs.

3 1/2 weeks

01/30/87 Telephone from B. Wood re Channel 13 and Channel
14; conferences with Home Shopping Network counsel
re suggestion of their purchase of Channel 14.
HARDY .50 hrs.

01/30/87 Telephone C. Foulger; conference Wild.
HARDY .20 hrs.

Fees for legal services.....\$ 370.00

Total current billing for this file.\$ 370.00

PLEASE REMIT TOTAL BALANCE DUE.....\$ 75469.00

T02138

634014

W. LOHMEYER & ALDERSON

PLEASE REMIT TO:
P.O. BOX 17324
BALTIMORE, MARYLAND 21203

February 20, 1987

Mountain West Television Company
c/o Sid Foulger & Joseph Lee
Foulger-Pratt Construction
2 Research Place
Rockville, MD 20850

Invoice 63404

Our File # 03483

For Services Through 02/19/87

PLEASE REMIT TOTAL BALANCE DUE.....\$ 75469.00

Remittance Copy

TO RECEIVE PROPER CREDIT
PLEASE RETURN THIS COPY WITH YOUR PAYMENT.
THANK YOU.

PAYMENT IN FULL DUE UPON RECEIPT.
A FINANCE CHARGE OF 1% PER MONTH WILL BE ASSESSED
ON ALL ACCOUNTS MORE THAN 60 DAYS PAST DUE.

T02139

634015

Tab 22

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

-----)	ORIGINAL
JO-ANN KILPATRICK, et al.)	
)	
Plaintiffs,) Case No. 900901064 CV	
)	
vs.) Transcript of:	
)	
WILEY, REIN & FIELDING, et al.)) <u>SEVENTH TRIAL DAY</u>	
) Partial Trial Testimony	
Defendants.) Given by Witness	
-----) RALPH W. HARDY	

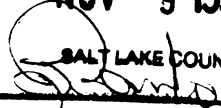
BEFORE THE HONORABLE GLENN K. IWASAKI

SCOTT M. MATHESON COURTHOUSE
450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84114-1860

REPORTERS TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 24, 1998
(Volume II of this day)

FILED DISTRICT COURT
Third Judicial District

NOV 9 1998
SALT LAKE COUNTY
By  Deputy Clerk

Reported By: SUZANNE WARNICK, RDR, CM
238-7529

1 Rein was their attorney -- that a client of
2 Wiley Rein was a party that they were
3 talking to about providing financial
4 support and that, because of that, it would
5 be necessary for their group to have an
6 independent or a different -- you know, a
7 lawyer to represent them in those
8 discussions."

9 Were you asked those questions and did you
10 give those answers?

11 A I did.

12 Q And going over to page 53, Mr. Hardy,

13 "Question --"

14 A What line are you on?

15 Q "Did Mr. Pratt explain to you that Wiley
16 Rein would be representing or was
17 representing a company by the name of
18 Northstar, who had an interest in becoming
19 involved with Mountain West Television
20 Company, in connection with the Channel 13
21 application?

22 "ANSWER: That is my recollection.

23 "QUESTION: And did he explain, because
24 of that, Mountain West Television Company
25 needed its own lawyer?

1 "ANSWER: That is my recollection, yes."

2 Were you asked those questions and did you
3 give those answers?

4 A I did.

5 Q And from July 15th on, you represented
6 Mountain West and the partners in their negotiations
7 with Northstar; isn't that true?

8 A I did.

9 Q Your firm represented Mountain West and the
10 partners in the negotiations with Northstar, true?

11 A We did.

12 Q Your firm and you represented Mountain West
13 and the partners in an attempt to find some financial
14 investor, whether it was Northstar or somebody else,
15 true?

16 A We did.

17 Q Your firm and you represented Mountain West
18 and the partners in their negotiations with -- excuse
19 me, in the MWT, Ltd. transaction -- that is, the
20 transaction leading up to the formation of MWT, Ltd.
21 True?

22 A Yes.

23 Q And it's true, isn't it, Mr. Hardy, that in
24 1987, Dow, Lohnes & Albertson and you personally
25 represented MWT, Ltd. and the general partner of MWT,

Tab 23

1 IN THE THIRD JUDICIAL DISTRICT COURT
2 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
3

4 JO-ANN KILPATRICK, et al.)

5 Plaintiffs,)

6 vs.)

7 WILEY, REIN & FIELDING, et al.)

8 Defendants.)

ORIGINAL

Case No. 900901064 CV

Transcript of:

Partial Proceedings,

Examination of

Ralph Hardy

9
10 BEFORE THE HONORABLE GLENN K. IWASAKI
11
12

13 SCOTT M. MATHESON COURTHOUSE
14 450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84114-1860

FILED DISTRICT COURT
Third Judicial District

NOV 13 1998

16 *Lu Ann B. Henke*
17 by Deputy Clerk

18 REPORTERS' TRANSCRIPT OF PROCEEDINGS

19 SEPTEMBER 25, 1998
20
21
22

23 REPORTED BY: DEBRA A. BOLLMAN, RPR, CSR
24 238-7530
SUZANNE WARNICK, RDR, CSR
25 238-7529

1 one plaintiff in this room, one plaintiff in this room
2 prior to the sale of Channel 13 to Fox, prior to
3 October of 1989, that came to you and said, Mr. Hardy,
4 we want you to object to Wiley Rein's representation
5 of Northstar?

6 A They did not.

7 Q Was there one plaintiff in this room prior to
8 the sale of Channel 13 to Fox in October of 1989 who
9 came to you and said, Mr. Hardy, we want you to file a
10 complaint, or object, or raise in some manner that
11 Wiley Rein has an impermissible conflict of interest
12 by representing Northstar?

13 A They did not.

14 Q I mean, you sat there for years in
15 transaction after transaction with your firm and you
16 on one side representing the plaintiffs. Isn't that
17 true?

18 A That's true.

19 Q And for years in transaction after
20 transaction with Northstar on the other side where
21 there were disputes, where there were adverse
22 interests, with Wiley Rein representing Northstar.
23 True?

24 A True.

25 Q You never made an objection?

1 A I did not.

2 Q And nobody ever asked you to?

3 A They did not.

4 Q Now, Mr. Hardy, I want to get you on your
5 plane, and I'll tone down.

6 A You don't have to shout at me. I can hear
7 pretty well.

8 Q I do it for myself.

9 Here we go: On getting the financing from
10 Aetna, it was a cooperative effort, wasn't it, among
11 all sides, Mr. Hardy? Everybody looked for the best
12 financing available?

13 A I think that's fair. We looked for
14 alternatives.

15 Q Cooperative?

16 A I think that's fair.

17 Q And you went with Aetna because it was the
18 best financing available. Isn't that true?

19 A It was.

20 Q Mr. Hardy, that Hutton memo, Defendants'
21 Exhibit 69, it's a memo from Mr. Hutton to you about
22 the strategy that we talked about. Do you remember
23 that?

24 A Right.

25 Q I want to do this quickly. Is your

Tab 24

ORIGINAL

Defendants.

(Conclusion of his
Testimony)

Reported By: SUZANNE WARNICK, RDR, CM
238-7529
And: DEBRA BOLLMAN, RPR
238-7530

1 Q And the total again was \$2,007,133?

2 A Yes.

3 Q And that page has the cash call buy amount
4 for each plaintiff that you received on or about
5 December 30th, 1991. Fair?

6 A Yes.

7 Q All right. Now, first of all, Mr. Lee, no
8 plaintiff, as you sit here to this date, has ever paid
9 any of these amounts, ever paid the cash call. Isn't
10 that true?

11 A They have not. We protested them of course.

12 Q And you haven't paid them?

13 A We haven't paid them.

14 Q And secondly, to date no one has sued you to
15 recover these cash calls, no one has: MWT, Ltd.,
16 Northstar, Allstate, no one, correct?

17 A No.

18 Q True?

19 A True. There has been no suit.

20 MR. BERMAN: Your Honor, we would ask the
21 Court to take judicial notice that the applicable Utah
22 statute of limitations is Section 78-12-23 of the Utah
23 Code Annotated.

24 THE COURT: The Court on previous -- based
25 upon previous argument and decision, will, in fact,

1 take judicial notice of that. And I ask Mr. Berman to
2 explain to the jury -- well, to read to the jury the
3 statute and the applicable provisions regarding this.

4 Meaning, members of the jury, that I am
5 taking judicial notice of the fact that there is an
6 existence of a statute which may be applicable in this
7 matter with specific terms that may be applicable in
8 this matter. Mr. Berman will read to you the statute
9 and the applicable terms.

10 MR. BERMAN: "78-12-23. Within six years --
11 Mesne profit of real property --" which isn't
12 applicable, or " -- instrument in writing." And the
13 statute says.

14 "An action may be brought within six years:
15 (1) for the mesne profits of real
16 property --" which is not applicable --
17 "(2) upon any contract, obligation or
18 liability founded upon an instrument in
19 writing, except those mentioned in Section
20 78-12-22 --" which is not applicable.

21 THE COURT: Thank you, Mr. Berman.

22 Q (BY MR. BERMAN) And the cash calls were
23 based on an instrument in writing, specifically the
24 Partnership Agreement, Defendants' Exhibit 114; isn't
25 that true?

1 A Yes. From that flawed Partnership Agreement,
2 yes.

3 MR. BERMAN: And your Honor, we would then
4 ask the Court also to take judicial notice that, in
5 fact, the period of limitation under the statute I
6 just read is six years.

7 THE COURT: And the Court will also, pursuant
8 to what was read to you, take judicial notice of the
9 fact that it was a six-year statute of limitation.

10 Q (BY MR. BERMAN) Last, Mr. Lee, from
11 December 30th of 1991 to today, the six years has long
12 past. Over a year ago, true?

13 A Yes.

14 Q Another subject, Mr. Lee. You have told us a
15 number of times that you didn't get the financial
16 information that you wanted on a timely basis during
17 1989 when you were looking to find a buyer or some
18 solution to the Channel 13 financial problems. Fair?

19 A That is true.

20 Q Now, I want, Mr. Lee -- were you in court the
21 other day when I went through this issue with
22 Mr. Lincoln?

23 A Yes, I was.

24 Q And I want to do this as quickly as I can,
25 but I think I need to do it just to make sure we're on

Tab 25

1 IN THE THIRD JUDICIAL DISTRICT COURT
2 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

3 -----
4 JO-ANN KILPATRICK, et al.)

5 Plaintiffs,)

6 vs.)

7 WILEY, REIN & FIELDING, et al.)

8 Defendants.)

Case No. 900901064 CV

Transcript of:

Partial Proceedings,

~~Portion of~~ Testimony

Given by Brent Pratt
9 -----

10 BEFORE THE HONORABLE GLENN K. IWASAKI

11
12
13 SCOTT M. MATHESON COURTHOUSE
14 450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84114-1860

FILED DISTRICT COURT
Third Judicial District

15 DEC 3 1998

16 SALT LAKE COUNTY
17 *L. Ann B. Hanko*
Deputy Clerk

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS
19 (Partial Transcript)

20 October 6, 1998

21 **ORIGINAL**

22
23
24 REPORTED BY: DEBRA A. BOLLMAN, RPR, CSR
SUZANNE WARNICK, RPR, CM
25

1 full-time employees of the station. And so we
2 dropped out of that process, that partnership.

3 Q That was you and Doug Cardon, you say?

4 A Doug Cardon.

5 Q And do you know whether David Lee dropped
6 out also?

7 A He did drop out also.

8 Q So who was left in the partnership as
9 general partners?

10 A That would be Joe Lee, Sid Foulger, Jo-ann
11 Wong and George Gonzales.

12 Q Once you withdrew as a partner of Mountain
13 West Television Company, did you continue to be
14 involved in the company in any way?

15 A I did. I kind of represented Sid's
16 day-to-day interest. But these -- this was not a
17 day-to-day thing. It was very intermittent. But we
18 were always getting a lot of papers and documents
19 from Wiley Rein.

20 Q When you say, represented Sid's interest,
21 you're talking about --

22 A I was kind of like an agent for Sid.

23 Q Sid Foulger?

24 A Sid Foulger, yes.

25 Q And Mr. Foulger is your father-in-law?

1 Exhibit 99. Did you sign -- was the West Valley
2 Settlement Agreements signed on October 23rd, 1991?

3 A This says October 21st.

4 Q Okay. I'll take the 21st. October 21st,
5 correct you are. And you filed it with the FCC,
6 didn't you? Mountain West filed it on October 31st,
7 true?

8 A Yes. Barry Wood did this.

9 Q I don't question that Mr. Wood drafted that
10 agreement. But he did it under your direction, didn't
11 he, Mr. Pratt?

12 A I wouldn't say that he did.

13 Q Mr. Pratt --

14 A I was working with him but he didn't do it
15 under my direction.

16 Q You were the guy who spearheaded the
17 negotiations with all of the applicants; isn't that
18 true?

19 A I went to the principals and agreed on a
20 dollar amount.

21 Q You worked out the business terms, true?

22 A The dollar amount, yes.

23 Q It's true, isn't it, that in the case of
24 Intermountain and UTA, the settlements were
25 conditioned on the issuance of the permit; isn't that

Tab 26

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

JO-ANN KILPATRICK, et al.)
)
)
Plaintiffs,) Case No. 900901064 CV
)
vs.) Transcript of:
)
WILEY, REIN & FIELDING, et al.) Partial Transcript of
) SEVENTEENTH TRIAL DAY
) Completion of Testimony
Defendants.) given by BARRY D. WOOD

ORIGINAL

BEFORE THE HONORABLE GLENN K. IWASAKI

SCOTT M. MATHESON COURTHOUSE
450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84114-1860
FILED DISTRICT COURT
Third Judicial District

NOV 5 1998
[Signature]
By Deputy Clerk

REPORTERS' TRANSCRIPT OF PROCEEDINGS

OCTOBER 13, 1998

Reported By: ED MIDGLEY, RPR, CM
238-7533
And: SUZANNE WARNICK, RDR, CM
238-7529

1 A Yes.

2 Q On all of those documents, you aren't
3 representing Allstate, you were representing MWT, Ltd.
4 True?

5 A That was my understanding at the time, yes.

6 Q Mr. Wood, I'm moving around because I am
7 trying to move along. I want to ask you, Mr. Wood,
8 some questions with regard to confidentiality. And I
9 am going to ask you first: You recognize, as a
10 lawyer, a lawyer has a duty of confidentiality to a
11 client, don't you?

12 A Yes.

13 Q And you had such a duty to Mountain West.
14 Isn't that true?

15 A Right.

16 Q Mr. Wood, to your knowledge did you ever
17 breach your duty of confidentiality to Mountain West?

18 A No. I remember trying to keep confidences.
19 In fact, you remember I told you about during this
20 time I had conversations occasionally with David Lee
21 and Joe Lee about the progress of their funding and so
22 forth. But I made a conscious effort not to pass any
23 of that on to John Quale or Bill Lincoln or Katie
24 Glakas, anyone who would represent the Northstar side.

25 Q I appreciate that. Mr. Wood, I want to ask

1 you some questions. And again, if you have some
2 concerns and you want me to slow down, you tell me and
3 I'll do it in a more deliberate manner. But first of
4 all, you got information from Mountain West on the
5 Mountain West partners that you filed with the FCC.
6 True?

7 A Right.

8 Q Secondly, you got -- and you did that with
9 the Mountain West and its partners' authority. Isn't
10 that true?

11 A Sure.

12 Q Secondly, you wrote letters, mailed
13 circulars, gave circulars to potential investors. And
14 I'd be happy to show you an example of that:
15 Plaintiffs' Exhibit 170, Plaintiffs' Exhibit 101. You
16 recall?

17 A I remember those, yes.

18 Q And that had information concerning the
19 plaintiffs; isn't that true?

20 A Right.

21 Q And again, the information set forth in those
22 circulars which was reasonably detailed, isn't that
23 true, about their plans and hope for things; isn't
24 that true?

25 A Yes.

1 Q And that was sent with plaintiffs' authority,
2 with Mountain West's authority and the partners'
3 authority?

4 A Right.

5 Q And I take it on occasion you would elaborate
6 on that information in phone conversations and
7 face-to-face meetings with the investors.

8 A Yes, I think that's fair.

9 Q And you did that with Mountain West and the
10 partners' authority; isn't that true?

11 A Yes, sure.

12 Q Now, I want to ask you a couple of detailed
13 questions. Putting the information that you supplied
14 to the FCC, the information in potential circulars,
15 your elaboration on that information with potential
16 investors where you gave more information, sometimes
17 in the presence of plaintiffs but in any event with
18 their authority, did you, did you, Mr. Wood, have at
19 the time of the MWT, Ltd. transaction any confidential
20 information with regard to the Mountain West partners
21 or Mountain West?

22 A I'm trying to think now. I know I was over
23 at David Lee's office earlier that week, maybe the
24 10th or 11th or 12th, when he gave me a copy of the
25 Credit Agreement and probably the Partnership

1 Agreement. And it's possible that he told me
2 something then about the state of the other funds
3 available to the plaintiffs that could be considered
4 confidential. But if so, I don't recall it.

5 Q So, if you would -- let me help you, all
6 right?

7 MR. BERMAN: Would you give him Defendants'
8 Exhibit 1047.

9 Q Do you have it Mr. Wood?

10 A Yes.

11 Q Mr. Wood, Defendants' Exhibit 1047 is an
12 Affidavit that you signed and attested to in this
13 action, correct?

14 A Yes.

15 Q And for those of us who aren't into this
16 business on a daily basis, you were sworn to tell the
17 truth in this Affidavit just the way you are in your
18 deposition and just as you are here now as a witness.
19 Isn't that true?

20 A Right.

21 Q Now, if you would turn over with me to page 6
22 of the Affidavit.

23 A That's where I am.

24 Q I am going ask you some questions. If you
25 look at paragraph 14. In your Affidavit did you,

1 Mr. Wood, assert under oath,

2 "I [did] not know of any confidential
3 information with regard to the Mountain
4 West partners or Mountain West that I had
5 at the time of the MWT, Ltd. transaction."
6 You made that statement, didn't you, and
7 that assertion?

8 A In the copy of the Affidavit I have in front
9 of me, it's in the present tense. I think when you
10 stated it you said I "did" not know.

11 Q At the time of the Affidavit you did not know
12 any confidential information. Fair to say?

13 A Right.

14 Q Let me ask, at the time did you not say,
15 "I do not know of any confidential
16 information with regard to the Mountain
17 West partners or Mountain West that I had
18 at the time of the MWT, Ltd. transaction."

19 A Right.

20 Q You asserted that and it was true to the best
21 of your knowledge. True?

22 A Yes.

23 Q And as you sit here today, do you know of any
24 confidential information that you, Mr. Wood, had with
25 regard to the Mountain West partners or Mountain West

1 at the time of the MWT, Ltd. transaction?

2 A Okay. See, the only difficulty I have is, A,
3 my memory isn't perfect and complete; B, that what was
4 confidential or what wasn't confidential at that time.

5 So with regard to this issue, I just
6 mentioned about how, based on what David Lee told me,
7 I may have had a sense that, going into the November
8 14 meetings, the Mountain West partners did not have
9 other sources ready and available to put up money on
10 Monday. But I think that was not confidential because
11 Brent and Clayton had already pretty much let that be
12 known to Northstar in the context of their numerous
13 meetings.

14 Q And as you sit here now -- and I know -- but
15 as you sit here now, do you know of any confidential
16 information with regard to the Mountain West partners
17 or Mountain West that you had at the time of the MWT,
18 Ltd. transaction that had not been disclosed to the
19 FCC, disclosed in written memoranda to potential
20 investors or stated by you to potential investors in
21 connection with elaborating on reasons for their
22 investment, do you know of anything that you had at
23 the time other than those?

24 A I can't think of anything, Mr. Berman. There
25 were things that maybe I would not have disclosed to

1 Wiley Rein lawyers or to Northstar that Brent
2 disclosed to them, you see, because I would hear about
3 this stuff back from Mr. Quale that would say things
4 about the negotiations with the Mountain West partners
5 that I maybe would not have disclosed but Brent had.

6 Q Then let's move to the disclosure. Did you
7 provide Northstar, Allstate or any lawyers at the
8 Wiley Rein firm representing Northstar in the MWT,
9 Ltd. transaction with any confidential information
10 concerning the Mountain West partners or Mountain
11 West?

12 A I agree with the statement here in the
13 Affidavit. I'm not sure if you read it in the form of
14 the affirmative.

15 Q I asked you a question.

16 A Did I provide? No.

17 Q In your Affidavit you state,

18 "I did not provide Northstar or Allstate or
19 any lawyers at the Wiley Rein firm
20 representing Northstar in the MWT, Ltd.
21 transaction with any confidential
22 information concerning the Mountain West
23 partners or Mountain West."

24 Is that correct?

25 A Right.

1 Q Mr. Wood, to the best of your knowledge, did
2 any lawyer at the Wiley firm misuse any confidential
3 information with regard to any plaintiff in this
4 action?

5 A I have no knowledge that any lawyer at the
6 Wiley firm misused any confidential information.

7 Q And in your Affidavit you state,
8 "No lawyer at the Wiley firm misused any
9 confidential information with regard to any
10 plaintiff."
11 To your knowledge?

12 A That's correct.

13 Q And that was true?

14 A Yes.

15 Q And it's true today, isn't it?

16 A As far as I know, yes.

17 MR. BERMAN: And that, your Honor, concludes
18 my cross examination.

19 THE COURT: Thank you, Mr. Berman.

20 Mr. Martineau, redirect?

21 MR. MARTINEAU: Yes, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MARTINEAU:

24 Q Do you remember in your Memorandum to
25 Mr. Wilson dated January 31, 1990, you indicated that

Tab 27

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
Third Judicial District

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JAN 21 1999

JO-ANN KILPATRICK, GEORGE I. :
GONZALES, JOSEPH C. LEE, DAVID :
B. LEE, MARILYN D. LEE, SIDNEY W. :
FOULGER, CLAYTON F. FOULGER, :
BRYANT F. FOULGER, BRENT K. :
PRATT, MOUNTAIN WEST TELEVISION :
COMPANY, a Utah general partnership, :
and MWT CORPORATION, a Utah :
corporation, :

Plaintiffs, :

vs. :

WILEY, REIN & FIELDING, a :
professional law partnership, :
and RICHARD E. WILEY, :

Defendants. :

SALT LAKE COUNTY
Juliana B. Hancock
Deputy Clerk

Reporters' Partial Transcript
of Trial Proceedings:
Chambers Colloquy:
Cont'g Direct and
Commencing Cross-Exam
of Professor Morris

ORIGINAL

Case No. 900901064

Hon. Glenn K. Iwasaki

BE IT REMEMBERED that on the 27th day of October,
1998, the above-entitled matter continued in trial in Courtroom No. W44 of
the Scott M. Matheson Courthouse, 450 South State Street, P.O. Box 1860,
Salt Lake City, UT 84111-1860 before the Honorable Glenn K. Iwasaki,
Judge in the Third Judicial District, State of Utah, and a Jury of Eight.

APPEARANCES

Reed L. Martineau, Rex E. Madsen, Richard A. Van
Wagoner, Keith A. Call, Attorneys-at-Law, Snow, Christensen & Martineau,
10 Exchange Place, Eleventh Floor, P.O. Box 45000, Salt Lake City, UT
84145 Telephone 521-9000 Fax 363-0400 appearing variously on behalf of
the Plaintiffs.

Daniel L. Berman, Peggy A. Tomsic, David P. Williams,
Berman, Gaufin, Tomsic & Savage, 50 South Main, Suite 1250, Salt Lake
City, UT 84144 Telephone 328-2200 Fax 531-9926 appearing variously on
behalf of the Defendants.

1 Q It sure doesn't.

2 A I need a clarification about what point in
3 time you're talking about, because --

4 Q Is it your testimony that Wiley, Rein &
5 Fielding breached their professional duties as lawyers
6 to a plaintiff prior to January 1st, 1987 when Wiley,
7 Rein & Fielding had no attorney-client relationship
8 with that plaintiff prior to that date?

9 A My testimony is that you can't breach a duty,
10 that is owed to a client, to someone who is not a
11 client.

12 Q And if Wiley, Rein & Fielding didn't have an
13 attorney-client relationship with an individual
14 plaintiff, prior to January 1st 1987, you wouldn't
15 find any breach of duty by Wiley, Rein to that
16 plaintiff, true?

17 A That's true.

18 Q Did you -- were you aware, were you aware
19 that Mr. Clayton Foulger testified in this action --
20 and I just want to quote his testimony to you. This
21 is his examination.

22 MR. VAN WAGONER: Your Honor is this from a
23 certified transcript or is it from the dailies? I
24 would ask that clarification.

25 THE COURT: And if you're objecting, it's

1 A Yes.

2 Q Did you fulfill that obligation when you came
3 down and testified that Wiley, Rein had represented
4 all of the individual plaintiffs in this action,
5 without knowing who the individual plaintiffs were?

6 A Mr. Berman, all I can say to you is -- in
7 response to that question -- is the same thing I said
8 earlier when I used the expression "all the
9 plaintiffs" or "plaintiffs" or "partners" or "MWT."

10 I was not using the phrase in the precise
11 meaning that it has in listing of the parties in the
12 caption.

13 And it didn't -- wasn't important for the
14 purposes of what I was saying at that time to me to
15 make that distinction; or at least I failed to make
16 the distinction. That's all I can say.

17 Q Well, you understand that your opinion is
18 being used for the purposes of asserting liability
19 against Wiley, Rein and Richard Wiley; don't you?

20 A Yes.

21 Q By the way, did you have sufficient facts to
22 base an opinion as to whether Mr. Wiley personally had
23 an attorney-client relationship with any plaintiff
24 prior to January 1st, 1987?

25 A I'm not sure exactly -- what do you mean by

1 "personally had a relationship"?

2 Q Individually, individually. Were you of the
3 opinion that you had sufficient facts to express an
4 opinion as to whether Richard Wiley individually had
5 an attorney-client relationship with any plaintiff
6 prior to January 1st, 1987?

7 A I had very few facts, because again it's
8 based on Barry Wood's testimony concerning Mr. Wiley
9 at all.

10 Q Well, I noted in your direct examination that
11 you did not express an opinion as to whether Mr. Wiley
12 individually -- not talking about the law firm -- but
13 Mr. Wiley individually had an attorney-client
14 relationship with any client. That's true?

15 A I -- that's true, and I didn't mean to
16 express an opinion -- yeah, that's true. That's true.

17 Q And the reason you didn't express any such
18 opinion is you felt you didn't have sufficient facts
19 on which to base an opinion in that regard; that is,
20 whether Richard Wiley individually had an
21 attorney-client relationship, true?

22 A Well, I wasn't asked to express the opinion
23 with respect to Richard Wiley, so that's what
24 I --that's --

25 Q You believe, as you sit here now, you don't

Morris: Cross-Exam by Berman

1 have sufficient facts to express that opinion, true?

2 A Well, I have only certain facts about
3 Mr. Wiley's participation in this representation, and
4 I believe that in order to answer that question in a
5 fair way, I need to have a hypothetical framed for me
6 that includes more information about Mr. Wiley's
7 participation as an individual attorney as opposed to
8 as a partner in the partnership.

9 Q But at least as you came here and testified,
10 and at least as you prepared for your testimony, you
11 weren't aware of any facts that were sufficient for
12 you to express an opinion as to whether Mr. Wiley
13 individually had an attorney-client relationship with
14 any plaintiff, prior to January 1st, 1987; true,
15 Professor Morris?

16 A There were some facts about Mr. Wiley's
17 participation -- before I expressed an opinion on his
18 individual participation, I would want more facts.

19 Q Now, let's talk about -- let's talk about the
20 period, the period, from August, '81 through the end
21 '83. I think I'm covering -- I hope I am -- almost 30
22 months. You want to throw the first couple of months
23 into '84, two-and-a-half years.

24 A All right.

25 Q Do you know of any legal services performed

Tab 28

1 IN THE THIRD JUDICIAL DISTRICT COURT
2 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
3

4 JO-ANN KILPATRICK, et al.)

5 Plaintiffs,)

6 vs.)

7 WILEY, REIN & FIELDING, et al.)

8 Defendants.)

Case No. 900901064 CV

Transcript of:

Partial Proceedings,

Portion of Testimony

Given by John K. Morris

10 BEFORE THE HONORABLE GLENN K. IWASAKI
11
12

13 SCOTT M. MATHESON COURTHOUSE
14 450 SOUTH STATE STREET
15 SALT LAKE CITY, UTAH 84114-1860

FILED DISTRICT COURT
Third Judicial District

FFR 5 1998

16
17 *Lu Ann B. Hanks*
Deputy Clerk

18 REPORTER'S TRANSCRIPT OF PROCEEDINGS

19 OCTOBER 29, 1998
20
21

22 **ORIGINAL**
23

24 REPORTED BY: JODY L. EDWARDS, CSR, RPR, CRR
25 238-7531

1 to the duty of confidentiality.

2 A All right.

3 Q Professor, in order for there to be a
4 breach of a lawyer's duty of confidentiality, does
5 the lawyer have to actually misuse or make
6 unauthorized disclosures of a client or former
7 client's confidences or confidential information?

8 A I think in general your statement is
9 correct. Surely there are -- there's also an issue
10 about whether the lawyer can, even without
11 disclosure, make use of the information in a way
12 that is not necessarily disadvantageous to the
13 client, but advantageous to the lawyer. But I think
14 in general, yes, if there is a -- the breach -- the
15 duty of confidentiality is to not disclose and to
16 not use to the disadvantage of a client. That's the
17 principal thrust of that.

18 Q And I just want to be clear. It either has
19 to be, in order for there to be a breach, there
20 either has to be disclosures, unauthorized
21 disclosures --

22 A Correct.

23 Q -- or actual misuse of the client's
24 confidences or confidential information?

25 A And I think the way the rule is framed, is

1 used to the disadvantage of a client, something like
2 that.

3 Q But do you have any problem with the actual
4 concept of actual misuse?

5 A Yeah, I think they mean the same thing.

6 Q Fair?

7 A Correct.

8 Q Because I think we can move along.

9 A Good, that's what I'd like to do.

10 Q All right. Now, it's also -- again
11 bringing back -- you back to your review of
12 Mr. Wood's testimony.

13 A Right.

14 Q Were you aware, Mr. Morris, that Mr. Wood
15 testified on cross-examination -- and this may be a
16 problem -- but on cross-examination that he did not
17 provide Northstar, Allstate or any lawyers in the
18 Wiley firm representing Northstar in the MWT, Ltd.
19 transaction with any confidential information
20 concerning Mountain West or the Mountain West
21 partners?

22 A That's -- is that a -- you're reading that
23 from -- that was a response on cross-examination?

24 Q And I'm not -- I just want to know are you
25 aware that he testified -- and indeed he did testify

1 A Sure.

2 Q You -- I think you testified, clearly you
3 don't know the precise facts that occurred in this
4 case, fair enough?

5 A Fair.

6 Q And fair that you don't even know the
7 precise testimony, don't have a photographic memory
8 with what Mr. Wood said?

9 A Right, exactly.

10 Q You're not purporting to base your
11 testimony, your opinion, that there is a breach of
12 the duty of confidentiality based on the fact that
13 there was actual unauthorized disclosure of
14 confidential information or that there was actual,
15 in fact, actual misuse of confidential information,
16 are you?

17 A In fact, I think I tried to make it very
18 clear during my direct that my testimony with
19 respect to breach of confidentiality assumed certain
20 things that were certain -- that there was
21 anything -- but that I think I -- I was quite clear
22 that I did not have any knowledge based on my review
23 of Barry Wood's testimony or from any other source
24 that a specific piece of confidential information
25 was either disclosed at a specific time or used at a

1 specific time.

2 Q And in fairness to you, I'm trying to get
3 at the basis of your opinion. I think you've
4 answered that question.

5 A Right.

6 Q But I think as I understood the basis of
7 your opinion, that there was a breach of the duty of
8 confidentiality, was that Wiley Rein represented
9 Northstar and because Wiley Rein represented
10 Northstar, Wiley Rein had a duty to use information
11 that would be of advantage to Northstar, including
12 any confidential information that Wiley Rein had
13 that they had derived from the plaintiffs?

14 A I think that's a fair general statement.

15 Q And you base that deductive premise with
16 regard to Wiley Rein having a duty to represent
17 Northstar zealously?

18 A Yes.

19 Q It's true, isn't it, Professor Morris, that
20 the duty of zealous representation is limited by the
21 lawyer's obligation not to act illegally or
22 unethically?

23 A That's right, and I testified to that.

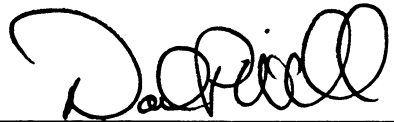
24 Q And tell me, it would be unethical for a
25 lawyer to actually misuse confidential information

CERTIFICATE OF SERVICE

David P. Williams, Esq. (7346)
BERMAN, GAUFIN, TOMSIC, SAVAGE & CAMPBELL
50 South Main Street, Suite 1250
Salt Lake City, Utah 84144
(801) 328-2200

I hereby certify that two true and correct copies of the foregoing **ADDENDUM TO BRIEF OF APPELLANTS WILEY, REIN & FIELDING and RICHARD E. WILEY** were hand-delivered this ~~16th~~ day of June, 2000, to the following:

Reed L. Martineau, Esq.
Rex E. Madsen, Esq.
Richard A. Van Wagoner, Esq.
Keith A. Call, Esq.
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
Salt Lake City, Utah 84145
Attorneys for Appellees

A handwritten signature in black ink, appearing to read "D. Williams", is written over a horizontal line.

David P. Williams