

1 CHATSWORTH, CALIFORNIA; FRIDAY, APRIL 16, 2004
2 DEPARTMENT NV F-48 - HON. HOWARD J. SCHWAB, JUDGE

3 1:30 P.M.

4 APPEARANCES: (AS HERETOFORE NOTED.)
5 (WYNNE FORREST, OFFICIAL REPORTER.)
6

7 THE COURT: ESTRADA VERSUS RPS. ALL COUNSEL ARE
8 PRESENT. WE ARE THE MIDDLE OF THE PLAINTIFF'S MOTIONS IN
9 LIMINE. THIS IS GOING TO BE THE THIRD ONE THEY PRESENTED
10 HERE, WHICH I THINK IS SORT OF INTERESTING. MOTION IN
11 LIMINE TO EXCLUDE INTERNAL REVENUE SERVICE LETTERS AND
12 RELATED TESTIMONY, DOCUMENTS WITH REFERENCE THERETO.

13 MY TENTATIVE IS AS FOLLOWS. LISTEN
14 CAREFULLY. DENY ONLY AS TO STATE OF MIND OF THE
15 DEFENDANTS AS UNDER THE BORELLO STANDARD AND OTHERWISE
16 GRANT.

17 I THINK THE LETTER IN ISSUE IS OF VERY LITTLE
18 PROBATIVE VALUE EXCEPT TO SHOW THAT THE DEFENDANTS GOT
19 IT. IT IS ONE LITTLE PIECE OF EVIDENCE THEY CAN RELY
20 UPON UNDER THE BORELLO STANDARD. BEYOND THAT, I FEEL IT
21 HAS NO EVIDENTIARY VALUE, AND I WILL EXPLAIN WHY.

22 FIRST OF ALL, IT WAS IN THE COURSE OF A
23 SETTLEMENT OF AN IRS DISPUTE. THE LETTER ITSELF SAYS
24 THAT, ALTHOUGH I DO TAKE ISSUE WITH PLAINTIFF'S
25 ACCUSATIONS THAT THE IRS WAS "BOUGHT OFF" BY THIS
26 GENEROUS OFFER OF THE DEFENSE IN TERMS OF SETTLEMENT.

27 I THINK THE IRS ACTED TOTALLY ABOVEBOARD AND
28 TOTALLY IN AN HONEST MANNER. THAT ARGUMENT I FIND TO BE

1 OFFENSIVE AND IS REJECTED. HOWEVER, IT WAS IN THE COURSE
2 OF A SETTLEMENT.

3 SECONDLY, THE OPINION IS MERELY THAT, AN
4 OPINION OF THE IRS. WITH ALL DUE RESPECT TO THE IRS,
5 THEIR OPINION IS VERY IMPORTANT AND WORTHWHILE TO ME IN
6 MY TAX RETURNS, NOT TERRIBLY IMPORTANT IN TERMS OF THE
7 STATUS OF THE PLAINTIFFS AS TO WHETHER THEY ARE EMPLOYEES
8 OR THEY ARE INDEPENDENT CONTRACTORS.

9 IF ONE ACTUALLY READS THE LETTER ITSELF, THE
10 LETTER IS NOT TERRIBLY CONVINCING. I WILL SHOW YOU THE
11 PART HERE.

12 ON PAGES 5 AND 6 OF THE LETTER, WHICH IS THE
13 MOST IMPORTANT PART, THE LETTER READS AS FOLLOWS: THIS
14 IS A LETTER UPON SETTLEMENT, BECAUSE PAGE 1 OF THE LETTER
15 TALKS ABOUT THE SETTLEMENT. PAGES 5 AND 6 SAY THE
16 FOLLOWING, AND I QUOTE. "WE HAVE REVIEWED THE 1994
17 AGREEMENT, AND BASED UPON A THOROUGH CONSIDERATION OF ALL
18 THE REPRESENTATIONS MADE BY YOU AND YOUR COUNSEL, WE
19 CONCLUDE THAT OPERATIONS CONDUCTED IN ACCORDANCE WITH THE
20 TERMS OF THE 1994 AGREEMENT ARE NOT INCONSISTENT WITH AN
21 INDEPENDENT CONTRACTOR RELATIONSHIP WITH THE
22 OWNER-OPERATOR."

23 HOWEVER, THE LETTER GOES ON, AND I QUOTE,
24 "THIS LETTER DOES NOT PRECLUDE ANY
25 OWNER-OPERATOR FROM FILING A SS-8 TO REQUEST AN
26 EMPLOYMENT STATUS DETERMINATION OF THE RELATIONSHIP WITH
27 RPS. THE DETERMINATION OF EMPLOYMENT STATUS BY THE
28 SERVICE WILL BE BASED UPON AN ANALYSIS OF THE FACTS AS

1 PRESENTED BY THE WORKER AND RPS."

2 WHAT IT SHOWS IS AS FOLLOWS. THAT THE
3 OPINION OF THE IRS WAS BASED UPON A READING OF THE
4 AGREEMENT WHICH IS IMPORTANT, BUT ALSO ON THE
5 REPRESENTATIONS MADE BY MR. GLENN, THE VICE PRESIDENT AND
6 GENERAL COUNSEL OF RPS, AND HIS COUNSEL.

7 IN EFFECT, WHAT YOU HAVE HERE IS AN OPINION
8 BASED UPON THE REPRESENTATIONS AND STATEMENTS MADE BY THE
9 LAWYERS FOR RPS. IT WOULD BE ALMOST AS THOUGH SOMEONE
10 WERE TO COME IN THIS COURT EX PARTE AND TO TELL ME, "READ
11 THE AGREEMENT. AND BY THE WAY, TAKE ONLY MY
12 REPRESENTATIONS AS TO WHAT THE EMPLOYMENT STATUS IS."

13 THE FACT THE IRS BELIEVED THAT SUCH STATUS
14 WAS NOT STATIC IS BASED UPON THE NEXT-TO-LAST PARAGRAPH
15 WHICH I READ INTO THE RECORD. AS SUCH, I BELIEVE THE
16 LETTER IS RELEVANT ONLY TO SHOW THAT RPS RECEIVED THIS
17 LETTER AND IT THEREFORE GOES TO THE BELIEFS OF THE
18 PARTIES. BUT AS AN OPINION IN AND OF ITSELF, I THINK IT
19 IS REALLY NOT WORTH THE PAPER IT IS WRITTEN ON.

20 WITH THAT IN MIND, COUNSEL MAY ADDRESS THE
21 COURT.

22 MR. NELSON: YOUR HONOR, I THINK THAT -- WITH THAT
23 WELCOMING INVITATION, I UNDERSTAND, I BELIEVE, THE
24 COURT'S COMMENTS, BUT I THINK WE NEED TO GO BACK JUST A
25 LITTLE BIT.

26 THERE ARE REALLY TWO PIECES TO WHAT THE
27 LETTER WE ARE REFERRING TO DOES. ONE OF THEM IS, AS YOU
28 SAID, STATE OF MIND.

1 ACTUALLY, THERE ARE THREE PIECES. THE SECOND
2 PIECE WOULD BE THAT THE FACE OF THE AGREEMENT ITSELF, IF
3 YOU JUST LOOKED AT THE FACE OF THE AGREEMENT AND DIDN'T
4 LOOK AT ANY OF THEIR SURROUNDING OPERATIONS, WAS NOT
5 OFFENSIVE TO THE IRS IN TERMS OF CREATING AN INDEPENDENT
6 CONTRACTOR RELATIONSHIP.

7 THE COURT: AU CONTRAIRE. IF YOU READ THE LETTER,
8 THE LETTER SAYS THE AGREEMENT AND BASED UPON A THOROUGH
9 CONSIDERATION OF THE REPRESENTATIONS OF RPS. THEY ARE
10 NOT LOOKING AT THE AGREEMENT IN THE ABSTRACT. THEY ARE
11 SAYING THEY ARE LOOKING AT THE AGREEMENT AND EVERYTHING
12 YOUR COUNSEL HAD TO TELL THEM. THAT IS A LITTLE
13 DIFFERENT MATTER.

14 I MEAN, IF WE ARE HERE ALONE AND YOU ARE
15 TALKING TO ME AND SAID, "HEY, JUDGE. LOOK AT THIS
16 AGREEMENT. BY THE WAY, LET ME MAKE ALL THESE
17 REPRESENTATIONS TO YOU," AND COUNSEL FOR PLAINTIFF WERE
18 OUTSIDE THE DOOR, BARRED, I MIGHT COME TO A SIMILAR
19 CONCLUSION.

20 THIS IS A COURT OF LAW WITH DUE PROCESS
21 RIGHTS IN WHICH BOTH SIDES HAVE A RIGHT TO BE HEARD.

22 MR. NELSON: I THINK THERE IS A SLIGHT DISCONNECT
23 HERE. I THINK IF THE IRS -- IF YOU DO IT OTHER WAY, IF
24 THE IRS HAD LOOKED AT THE AGREEMENT AND SAID, "YOU KNOW
25 WHAT, CLAUSE 14.8" -- IF THERE WERE SUCH A THING -- "IS
26 WE BELIEVE INCONSISTENT ON PAPER WITH OUR UNDERSTANDING
27 OF THE INDEPENDENT CONTRACTOR RELATIONSHIP," THEY WOULD
28 HAVE SAID SO.

1 YOU ARE RIGHT. IT DOES NOT INCORPORATE ALL
2 THE REPRESENTATIONS AND UNDERSTANDINGS THAT WENT INTO THE
3 PROCESS ON THE WAY THE OPERATION WORKS. BUT IN TERMS OF
4 HOW THE DOCUMENT IS ASSEMBLED, WITH THE STRUCTURE THAT
5 THE DOCUMENT CONTEMPLATED WAS ASSEMBLED, THAT PARTICULAR
6 PIECE IS AN IRS DETERMINATION.

7 I WOULD SUGGEST TO YOU THAT IT IS MORE
8 RELEVANT THAN PERHAPS IT MAY FIRST APPEAR, ALSO, BECAUSE
9 AGAIN THE BORELLO STANDARD DOES MAKE A REFERENCE TO THE
10 IRS STANDARD. IT DOESN'T TO THE NLRB, BUT IT DOES TO THE
11 IRS STANDARD.

12 WHEN YOU LOOK AT THE IRS STANDARD AND YOU
13 LOOK AT THE BORELLO DECISION, ONE OF THE THINGS THAT
14 DISTINGUISHES THIS CASE FROM BORELLO IS BORELLO GOES TO
15 ITS FACTOR TEST AND SAYS, WELL, UNDER ANY OF THESE
16 CRITERIA, SHARECROPPERS IN BORELLO ARE EMPLOYEES.

17 WELL, IN THIS PARTICULAR SETTING WE KNOW
18 THERE IS ONE TEST REFERRED TO IN BORELLO WHICH THESE
19 PEOPLE ARE, AT LEAST PURSUANT TO THE LETTERS OF
20 ASSURANCE, NOT EMPLOYEES.

21 SO THERE IS A RELEVANCE DISTINCTION BETWEEN
22 THIS CASE AND BORELLO AS BROUGHT UP BY THIS OPERATING
23 AGREEMENT.

24 THE COURT: I HAVE TO LOOK AT WHAT THE LETTER WAS
25 BASED UPON. THE LETTER WAS NOT BASED UPON INDEPENDENT
26 EVALUATION AND INDEPENDENT INVESTIGATION. THAT WOULD BE
27 A DIFFERENT MATTER. BUT IT IS BASED PURELY UPON READING
28 THE AGREEMENT AND BASED UPON A THOROUGH CONSIDERATION OF 63

1 WHAT YOUR PEOPLE HAD TO SAY. THAT GIVES IT VERY LITTLE
2 CREDIBILITY IN MY MIND AS TO ANY EVIDENTIARY VALUE EXCEPT
3 TO SHOW YOUR STATE OF MIND. I THINK IT IS RELEVANT TO
4 THAT. BEYOND THAT, I THINK IT IS SORT OF WORTHLESS, TO
5 BE CANDID WITH YOU.

6 MR. NELSON: I THINK WHERE WE ARE IS WE ARE A
7 LITTLE BIT AHEAD OF OURSELVES. AS PART OF OUR CASE, WE
8 WERE GOING TO GIVE YOU THE FOUNDATION FOR WHAT THE IRS
9 WENT THROUGH IN THE ANALYSIS PROCESS. IT WASN'T JUST
10 SIMPLY "TAKE OUR WORD FOR IT."

11 THE COURT: MY INTENT IS TO REALLY SUSTAIN ANY
12 OBJECTION AS TO ANYTHING THAT THE IRS LETTER SAID EXCEPT
13 FOR THE FACT THAT YOU GOT IT. THE SAME WAY, THE FACT
14 THINK THAT YOU RECEIVED THE EDD LETTER AS WELL GOES TO
15 THE SAME ISSUE. THAT FACT THAT YOU RECEIVED THOSE
16 LETTERS, THAT GOES TO THE ISSUE OF WHAT BOTH SIDES KNEW.

17 ONE THING I MIGHT ALLOW IS WHO READ THIS IRS
18 LETTER, BECAUSE THAT MIGHT BE IMPORTANT AS TO WHO KNEW
19 WHAT, BUT AS TO ITS VALUE, I THINK IT IS WORTHLESS.

20 ANYTHING FROM THE PLAINTIFF ON THIS POINT?

21 MS. FARIS: NO, YOUR HONOR.

22 THE COURT: OKAY. THAT'S MY FINAL RULING.
23 ADMITTED ONLY FOR THE PURPOSE OF THE STATE OF MIND OF THE
24 DEFENDANT OR ANY OTHER PARTY THAT READ IT. THE ACTUAL
25 MERITS OF THE LETTER WILL NOT BE ADMITTED AND THE
26 OBJECTION TO THAT IS SUSTAINED.

27 NOW, WE WILL GO TO THE NEXT MOTION HERE,
28 WHICH IS THE LAST ONE OF THE PLAINTIFF. THIS IS A MOTION 64