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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JEFFREY S. WHITE, JUDGE

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. CR 11-573 JSW
)	
WALTER LIEW, ET AL.,)	
)	
DEFENDANTS.)	
_____)	

SAN FRANCISCO, CALIFORNIA
THURSDAY, JUNE 7, 2012

TRANSCRIPT OF PROCEEDINGS

APPEARANCES :

FOR PLAINTIFF:	UNITED STATES ATTORNEY'S OFFICE
	450 GOLDEN GATE AVENUE
	SAN FRANCISCO, CALIFORNIA 94102
BY:	PETER BENJAMIN AXELROD
	JOHN HENRY HEMANN
	ASSISTANT UNITED STATES ATTORNEYS

FOR DEFENDANT	QUINN EMANUEL URQUHART & SULLIVAN
PANGANG GROUP:	555 TWIN DOLPHIN DRIVE
	5TH FLOOR
	REDWOOD SHORES, CA 94065
BY:	ROBERT P. FELDMAN
	VALERIE RODDY
	NICOLE ALTMAN
	ATTORNEYS AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY:	JAMES YEOMANS, CSR #4039, RPR
	OFFICIAL REPORTER

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1 **APPEARANCES:** (CONTINUED)

2 FOR DEFENDANT MC KENNEY & FROELICH
 3 MAEGERLE: 1349 WEST PEACHTREE ST.
 4 TWO MIDTOWN PLAZA
 SUITE 1250
 ATLANTA, GA 30309
 5 BY: **JEROME J. FROELICH, JR.**
ATTORNEY AT LAW

6 FOR DEFENDANT KEKER & VAN NEST
 7 WALTER LIEW: 633 BATTERY STREET
 SAN FRANCISCO, CA 94111
 8 BY: **STEVEN PAUL RAGLAND**
ATTORNEY AT LAW

9 DORON WEINBERG
 10 ATTORNEY AT LAW
 523 OCTAVIA ST.
 11 SAN FRANCISCO, CA 94102

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1 IN MY OFFICE THIS SUMMER?

2 **THE COURT:** SURE, PLEASE DO.

3 **MR. FELDMAN:** CHARLIE --

4 **THE COURT:** STAND UP, SO WE KNOW WHO THEY ARE. GIVE
5 THEM THEIR DAY IN THE SUN.

6 **MR. FELDMAN:** THANK YOU.

7 CHARLIE STEINBERG FROM HARVARD LAW SCHOOL, WEI WANG
8 FROM CALIFORNIA BERKELEY LAW SCHOOL, PATIENCE RENN FROM
9 HASTINGS LAW SCHOOL, JENNIFER MADISTICK FROM CAL BERKELEY LAW
10 SCHOOL.

11 THANK YOU, YOUR HONOR.

12 **THE COURT:** WELCOME. I APPRECIATE YOU'RE GETTING THE
13 CORRECT NAME OF -- THE NEW NAME OF THE WHAT USE TO BE, WE ALL
14 KNOW AS BOLT.

15 ALL RIGHT. DO WE HAVE ALL THE ATTORNEYS MAKE THEIR
16 APPEARANCES?

17 **MR. AXELROD:** WE HAVE NOT. PETE AXELROD AND JOHN
18 HEIMANN FROM U.S. ATTORNEY'S OFFICE.

19 WE'RE ALSO JOINED A COLLEAGUE FROM THE
20 COUNTERESPIONAGE SECTION RICHARD SCOTT.

21 **THE COURT:** WHERE'S IS MR. SCOTT?

22 **MR. AXELROD:** SITTING AT COUNSEL TABLE.

23 **THE COURT:** SO A COUPLE OF PRELIMINARY QUESTIONS.
24 WE'RE OBVIOUSLY HERE ON MOTIONS THAT WERE FILED WITH RESPECT TO
25 SERVICE, BUT WE ALSO HAVE SCHEDULED A STATUS FOR NOT ALL THE

1 DEFENDANTS, BUT SINCE WE HAVE ALL THE DEFENDANTS HERE I DECIDED
2 TO CALL THE CASE TOGETHER AND SEE WHERE WE ARE.

3 I THINK, ONE QUESTION HAS BEEN ALREADY -- THE QUESTION
4 I HAD -- THE COURT HAD INITIALLY HAS ALREADY BEEN ANSWERED BY
5 THE APPEARANCES.

6 I WAS GOING TO ASK WHEN USAPTI WAS SCHEDULED TO APPEAR
7 BEFORE THIS COURT. AND, COUNSEL, YOU'RE ABSOLUTELY -- YOU'RE
8 REPRESENTING?

9 **MR. RAGLAND:** I REPRESENT MR. LIEU AS WELL USAPTI.

10 **THE COURT:** GREAT. SO, I THINK, IT'S APPROPRIATE AND
11 FAIR THAT -- AS TO THOSE DEFENDANTS WHO HAVE NOT FILED MOTION
12 AND WERE NOT HERE -- WHO ARE HERE FOR STATUS THAT WE SET THE
13 STATUS.

14 MY -- I APPRECIATE YOUR BEING HERE BECAUSE OBVIOUSLY
15 MAYBE JUMPS ONE STEP, BUT YOU NEED TO MAKE APPEARANCE ON BEHALF
16 OF YOUR CLIENT BEFORE THE MAGISTRATE JUDGE. THE DUTY
17 MAGISTRATE JUDGE, HAVE YOU DONE THAT ALREADY?

18 **MR. FROELICH:** WE HAVE ALREADY DONE THAT. IN FACT,
19 WE'RE LITIGATING PROTECTIVE ISSUE ON THE 20TH OF JUNE IN FRONT
20 OF JUDGE COUSINS.

21 **THE COURT:** SORRY ABOUT THAT. SO I WANT TO HAVE A
22 STATUS REPORT AND CONFERENCE WITH RESPECT TO THE DEFENDANTS WHO
23 HAVE NOT APPEARED ESPECIALLY.

24 BECAUSE EVEN THOUGH THE OUTCOME OF THE MOTIONS MAY OR
25 MAY NOT EFFECT THE SCHEDULE IN THE CASE, THEY SHOULD HAVE THEIR

1 CASE MOVED ALONG.

2 SO I'LL START WITH GOVERNMENT COUNSEL. WHAT THE
3 STATUS WITH RESPECT TO THOSE DEFENDANTS WHO ARE HERE FOR
4 STATUS?

5 **MR. AXELROD:** THE STATUS IS THE PARTIES HAVE REALLY
6 BEEN WORKING ON RESOLVING DISCOVERY ISSUES AT THIS POINT. WE
7 HAVE MET AND CONFERRED, THE GOVERNMENT HAS PROVIDED SOME
8 DISCOVERY, CERTAIN SEARCH WARRANT PLEADINGS, THINGS LIKE THAT,
9 CERTAIN REPORTS, BUT THE BULK OF THE DISCOVERY IS THE SUBJECT
10 OF A PROTECTIVE ORDER MOTION THAT IS IN THE MIDDLE OF THE
11 BRIEFING PROCESS RIGHT NOW.

12 IT'S SCHEDULE FOR ARGUMENT ON JUNE 20 IN FRONT OF
13 JUDGE COUSINS. I WOULD EXPECT AT THAT POINT ONCE THAT'S
14 RESOLVED THERE'S GOING TO BE VERY LARGE PRODUCTION OF MATERIALS
15 TO THE DEFENDANTS.

16 **THE COURT:** AND IN LIGHT OF THAT, OF COURSE, I'LL ASK
17 THE DEFENDANTS TO ADDRESS THIS ISSUE, WHEN WOULD THE GOVERNMENT
18 PROPOSE WOULD BE THE APPROPRIATE TIME TO COME BACK WITH RESPECT
19 TO THOSE DEFENDANTS WHOSE STATUS WE'VE CONSIDERING?

20 **MR. AXELROD:** I THINK, IT WOULD BE APPROPRIATE TO COME
21 BACK PROBABLY THE END OF AUGUST, YOUR HONOR. I THINK, THAT
22 WILL GIVE THE PARTIES SOME TIME TO START TO DIGEST ALL THE
23 MATERIALS AND WORK THROUGH ISSUES. THAT'S A SUGGESTION.

24 **THE COURT:** ALL RIGHT. MR. WEINBERG, WHAT YOUR VIEW
25 ABOUT THAT?

1 **MR. WEINBERG:** WE AGREE THE MATTER IS CURRENTLY
2 FOCUSED ON THE DISCOVERY ISSUES THAT ARE BEING LITIGATED BEFORE
3 MAGISTRATE COUSINS.

4 WE ASSUME WE'LL HAVE A RESOLUTION OF THAT SHORTLY
5 AFTER THE 20TH, AND THEN WE WERE THINKING ABOUT 60 DAYS FOR A
6 STATUS.

7 SO WE'VE IN AGREEMENT WITH THE GOVERNMENT'S PROPOSAL
8 AND WE WOULD SUGGEST STATUS DURING THE WEEK OF AUGUST 20TH.

9 **THE CLERK:** YOUR UNAVAILABLE. DISREGARD ME.

10 **THE COURT:** AUGUST 20TH. I NEVER DO THAT.

11 **THE CLERK:** THE 23RD WOULD BE FINE.

12 **THE COURT:** 23RD?

13 **THE CLERK:** YES.

14 **THE COURT:** 23RD. THAT'S FINE. MR. -- ARE THERE ANY
15 DEFENSE ATTORNEYS WHO HAVE A DIFFERENT VIEW ABOUT THAT DATE?

16 **MR. RAGLAND:** THAT'S FINE WITH US.

17 **MR. FROELICH:** THAT'S FINE. THERE'S GOING TO BE A
18 TREMENDOUS AMOUNT OF DISCOVERY. IT'S GOING TO TAKE AWHILE.
19 THAT WILL GIVE US SOME TIME TO GET INTO IT. I THINK, IT'S IN
20 THE INTEREST OF JUSTICE.

21 **THE COURT:** I HAVE A QUESTION, SINCE WE HAVE ALL
22 COUNSEL HERE, I DON'T KNOW, I TRULY HAVEN'T THOUGHT ABOUT
23 ASKING THIS QUESTION.

24 BUT AS THE DISCOVERY PROCESS GOES FORWARD AND, OF
25 COURSE, WITHOUT KNOWING THE OUTCOME OF THE MOTION THAT'S

1 PENDING, WHICH MAY OBVIOUSLY HAVE AN IMPACT, DOES THE
2 GOVERNMENT PLAN ON SUPPLYING THE MOVING DEFENDANTS WITH ANY
3 DISCOVERY UNTIL THAT MOTION -- THOSE MOTIONS ARE RESOLVED OR
4 THAT MOTION IS RESOLVED?

5 **MR. AXELROD:** I THINK, IT'S THE GOVERNMENT'S POSITION
6 THAT WITH RESPECT TO THE MOVING DEFENDANTS, THE CHINESE
7 ENTITIES, THAT WE ARE NOT PROVIDING THEM ANY DISCOVERY PENDING
8 THE COURT'S RESOLUTION OF THIS MOTION, THE MOTION TO QUASH.

9 AND THAT IF -- DEPENDING ON THE RESOLUTION OF THAT
10 MOTION THEY'LL BE ADDITIONAL ISSUES VIS-A-VIS PROTECTIVE ORDER
11 TO WORK THROUGH WITH THOSE DEFENDANTS.

12 THEIR CIRCUMSTANCES ARE A LITTLE BIT DIFFERENT THAN
13 THE CO-DEFENDANTS THAT ARE HERE.

14 **THE COURT:** ALL RIGHT. WHERE'S MR. FELDMAN?

15 **MR. FELDMAN:** SITTING DOWN, YOUR HONOR.

16 **THE COURT:** DO YOU -- I KNOW YOU TO SOME EXTENT YOU
17 DON'T HAVE A DOG IN THE DISCOVERY RACE AT THIS POINT, BUT DO
18 YOU HAVE A DIFFERENT VIEW ABOUT YOUR CLIENT'S ENTITLEMENT TO
19 DISCOVERY WHILE THE MOTIONS ARE PENDING BUT NOT YET DECIDED?

20 **MR. FELDMAN:** I HAVEN'T ACTUALLY THOUGHT ABOUT IT, BUT
21 MY INCLINATION WOULD BE TO SAY I DO NOT.

22 **THE COURT:** ALL RIGHT.

23 **MR. FELDMAN:** THE ONLY THING THAT I COULD IMAGINE, AND
24 I HAVEN'T THOUGHT ABOUT IT AS I WAS SITTING DOWN, IS THAT IT'S
25 POSSIBLE THAT WE MAY HAVE SOME VIEWS ABOUT THE SHARING OF OUR

1 INFORMATION THAT HAS BEEN SEIZED, BUT THAT WOULD NOT BE THE
2 SAME THING YOU ASKED ABOUT.

3 **THE COURT:** GREAT. WELL, I THINK, WHAT WILL HAPPEN IS
4 THAT ONCE THE COURT RESOLVES THE MOTION IN ITS ORDER IT WILL
5 SET A SCHEDULE, SET THE MATTER DOWN FOR SCHEDULING TO SEE
6 EITHER WAY WHERE WE GO FROM THERE, WHAT THE STATUS IS.

7 AS PART OF -- THAT'S TIED UP TO SOME EXTENT IN THE --
8 SOME OF THE COURT'S QUESTIONS TODAY. AND I'VE GOTTEN SOME
9 AUTHORITY ON THAT POINT.

10 SO IS THERE ANYTHING FURTHER FROM THE NON-MOVING
11 PARTIES AT THIS POINT?

12 THERE IS, OF COURSE. MR. WEINBERG, DO YOU THINK THIS
13 TIME IS PROPERLY, IF YOU COULD SPEAK ON BEHALF OF THE OTHERS,
14 PROPERLY EXCLUDED FROM SPEEDY TRIAL ACT CALCULATION?

15 **MR. WEINBERG:** ABSOLUTELY, YOUR HONOR. FOR THE
16 EFFECTIVE REPRESENTATION OF THE DEFENDANTS WE NEED TO GET THE
17 DISCOVERY, CONTINUITY OF COUNSEL AND EFFECTIVE REPRESENTATION.

18 **THE COURT:** DO OTHER COUNSEL AGREE WITH THAT.

19 **MR. FROELICH:** YES.

20 **MR. RAGLAND:** YES.

21 **THE COURT:** PREPARE THE ORDER?

22 **MR. AXELROD:** I WILL. YOUR HONOR, I'D ALSO JUST
23 REMIND THE PARTIES AND THE COURT THAT THE COURT HAS PREVIOUSLY
24 DECLARED THE MATTER COMPLEX AS WELL.

25 **THE COURT:** DOES THAT OBTIATE THE NEED TO HAVE A

1 FURTHER ORDER?

2 **MR. AXELROD:** NO, I THINK, IT'S HELPFUL TO HAVE THE
3 ORDER FOR RECORD KEEPING PURPOSES.

4 **THE COURT:** WE CAN CITE THAT GROUND AS WELL.

5 **MR. AXELROD:** YES.

6 **THE COURT:** SO THE LAST QUESTION I HAVE WITH RESPECT
7 TO THE NON-MOVING PARTIES. I HAVEN'T THOUGHT ABOUT -- I
8 HAVEN'T CONCLUDED WHETHER THE OTHER DEFENDANTS HAVE A RIGHT TO
9 BE PRESENT, BUT BECAUSE THEY'RE PHYSICALLY HERE I WOULD ALLOW
10 THEM TO BE PRESENT.

11 MR. WEINBERG, DOES YOUR CLIENT WISH TO REMAIN DURING
12 THE MOTIONS HEARING?

13 **MR. WEINBERG:** SHE DOES NOT WISH TO REMAIN.

14 **THE COURT:** ALL RIGHT. ANY OF THE OTHER --

15 **MR. FROELICH:** WE MAY SIT HERE, DOESN'T WISH TO, WE
16 MAY SIT THROUGH PART OF IT. MY CLIENT NOR I NEED TO REMAIN.

17 **THE COURT:** OKAY. YOU'RE OBVIOUSLY FREE TO REMAIN AND
18 THE ISSUE RELATES TO THE IN CUSTODY.

19 **MR. RAGLAND:** MR. LIEW WILL STAY AND HEAR THE
20 ARGUMENT.

21 **THE COURT:** VERY WELL. I'LL ALLOW THAT TO HAPPEN.

22 AS TO THE OTHERS YOU'RE FREE TO STAY OR GO AS YOU
23 CHOSE. BECAUSE, OBVIOUSLY, I DON'T KNOW THE EXTENT TO WHICH IT
24 EFFECTS YOUR CLIENTS, BUT YOU OBVIOUSLY HAVE A RIGHT TO BE
25 HERE. WE'LL GO FORWARD.

1 ANYTHING FURTHER WITH RESPECT TO THE NON-MOVING
2 DEFENDANTS?

3 **MR. AXELROD:** NO, YOUR HONOR.

4 **MR. HEMANN:** NO, YOUR HONOR.

5 **THE COURT:** THANK YOU VERY MUCH, COUNSEL.

6 I'M SORRY, MR. WEINBERG, I APOLOGIZE. I MEANT TO DO
7 THIS. AND I'VE BEEN DOING THIS IN MOST OF MY COMPLEX CASES.

8 I'D LIKE TO GET A STATUS REPORT ONE CALENDAR WEEK
9 BEFORE THE 23RD, SIGNED BY WHOEVER IS RELEVANT TO, IF YOU WILL,
10 AS TO WHAT'S GOING ON. JUST SO I CAN BETTER PREPARE FOR THE
11 HEARING, AS TO WHAT'S COMING DOWN THE PIKE.

12 SO ON THE 16TH PLEASE SUBMIT A JOINT STATUS REPORT
13 TELLING THE COURT THE STATUS OF THE CASE. ALL RIGHT.

14 **MR. RAGLAND:** I THINK IT'S FINE WITH THE MARSHALS CAN
15 I ASK THE COURT PERMISSION FOR MR. LIEW TO SIT IN THESE CHAIRS
16 HERE -- I DON'T WANT TO GET IN THEIR WAY. MAYBE SIT RIGHT HERE
17 BY THE WATER COOLER.

18 **THE COURT:** IS THAT ACCEPTABLE, MR. MARSHAL?

19 **THE MARSHAL:** YES, YOUR HONOR.

20 **THE COURT:** GRANTED.

21 **MR. FROELICH:** DID YOU SET A TIME FOR THE 23RD?

22 **MR. FELDMAN:** IT'S ALSO 2:00 O'CLOCK.

23 **MR. FROELICH:** THANK YOU VERY MUCH.

24 **MR. HEMANN:** CAN THE INTERPRETER CAN BE EXCUSED GIVEN
25 MS. LIEW IS NOT STAYING FOR THE HEARING?

1 **THE COURT:** DOES MR. LIEW NEED --

2 **MR. HEMANN:** NO, YOUR HONOR.

3 **THE COURT:** YES, SHE'S EXCUSED. THANK YOU VERY MUCH.

4 ALL RIGHT. SO ON TO THE MOTIONS. I WANT TO MAKE SURE
5 BOTH SIDES RECEIVED THE COPY OF THE COURT'S NOTICE OF THE
6 QUESTIONS.

7 **MR. RAGLAND:** YES, YOUR HONOR.

8 **MR. AXELROD:** WE HAVE.

9 **THE COURT:** AND IN THE INTERIM THE COURT DID RECEIVE
10 SOME ADDITIONAL AUTHORITY FROM THE DEFENDANTS WHICH I HAVE
11 CONSIDERED, BUT I WOULD APPRECIATE AS THE ARGUMENT PROCEEDS FOR
12 COUNSEL TO PLEASE INCORPORATE THE NEWER AUTHORITY WITH THE PIN
13 CITES BECAUSE I CAN READ IT THESE CASES.

14 I HAVE READ THEM, BUT FIGURING OUT EXACTLY THE PRECISE
15 PURPOSE FOR WHICH THEY'RE BEING URGED ON THE COURT WOULD BE --
16 IS NOT ALWAYS FULLY APPARENT TO THE COURT.

17 SO AND THE WAY FOR THOSE OF YOU WHO MAY NOT HAVE BEEN
18 ARGUING IN THIS COURT IF YOU'RE NOT -- DON'T DO CIVIL WORK YOU
19 DON'T SEE QUESTIONS IN ADVANCE, BUT I TEND TO DO IT IN ALL MY
20 PROCEEDINGS.

21 I CONTROL THE AGENDA HERE, SO YOU ANSWER THE QUESTIONS
22 AND THEN YOU MOVE ONTO THE NEXT ONE.

23 IT'S NOT -- IN OTHER WORDS, I'M NOT SAYING THAT
24 LIGHTLY OR FACETIOUSLY, I READ YOUR PAPERS, VERY INTERESTING
25 ISSUES, I READ THE PAPERS AND THE AUTHORITIES, SO THESE ARE THE

1 QUESTIONS RIGHT OR WRONG THAT I NEED TO MAKE UP MY MIND. MAYBE
2 THE WRONG QUESTIONS, BUT YOU CAN'T TELL ME THAT.

3 BUT YOU CAN'T REFRAME THE QUESTION OR REFRAME PREMISE,
4 BUT THEN I'LL GIVE YOU AN OPPORTUNITY IF YOU WANT TO ARGUE AT
5 THE END OF THE QUESTION, YOU KNOW, THE COURT'S PREMISE MAYBE
6 NOT WANT TO AGREE WITH THAT'S PERFECTLY OKAY, BUT I WANT TO
7 STICK WITHIN SPECIFIC CONTOUR TO THESE QUESTIONS.

8 AND THEN AT THE END IF ANYBODY IS JUST BURSTING TO SAY
9 SOMETHING THAT WE MISSED THAT YOU THINK WASN'T IN YOUR PAPERS
10 OR WASN'T EMPHASIZED, THEN I'LL GIVE YOU A CHANCE TO DO SO,
11 IT'S AN IMPORTANT MATTER.

12 IT'S PRETTY CLEAR THE WAY I CONDUCT THESE PROCEEDINGS,
13 OBVIOUSLY, I HAVE TO START SOMEPLACE, IT'S PRETTY CLEAR FROM
14 THE QUESTIONS, AND I'LL MAKE IT EVEN CLEARER, WHO GOES FIRST,
15 AND THEN I'LL GIVE BOTH SIDES A CHANCE TO GO BACK AND FORTH
16 UNTIL I FEEL I HAVE ENOUGH, THEN WE'LL MOVE ONTO THE NEXT
17 QUESTION.

18 THESE AREN'T TRICK QUESTIONS. SOME OF THEM ARE YES OR
19 NO QUESTION. LIKE THE FIRST ONE, FOR EXAMPLE. LET'S START
20 WITH THE FIRST QUESTION.

21 **MR. AXELROD:** YES.

22 **THE COURT:** DO YOU AGREE WITH THAT?

23 **MR. RAGLAND:** I DO.

24 **THE COURT:** SEE WE'VE MOVING ALONG HERE. IF THE REST
25 GOES THIS EASILY WE WILL ALL GET ALONG VERY WELL.

1 SO QUESTION NUMBER TWO. AND, OF COURSE, THE MLAA THAT
2 I'M REFERRING IS MUTUAL LEGAL ASSISTANCE AGREEMENT, AND SO THE
3 FIRST QUESTION FOR THE GOVERNMENT IS:

4 DID YOU ATTEMPT TO SERVE THE PANGANG DEFENDANTS UNDER
5 THE MLAA WITH THE PRC?

6 **MR. AXELROD:** NO.

7 **THE COURT:** DO YOU AGREE WITH THAT?

8 **MS. RODDY:** YES.

9 **THE COURT:** COULD YOU RESTATE YOUR APPEARANCE?

10 **MS. RODDY:** VALARIE RONNEY.

11 **THE COURT:** THANK YOU VERY MUCH.

12 SO THEN THE NEXT QUESTION 2B IS NOT A YES OR NO
13 QUESTION. LET ME ASK YOU -- I HAVE A POP QUIZ QUESTION, THAT
14 IS: WHY DIDN'T YOU ATTEMPT TO SERVE UNDER THE MLAA?

15 **MR. AXELROD:** THANK YOU, YOUR HONOR.

16 I THINK, THAT'S GOING TO ADDRESS SOME OF THESE OTHER
17 QUESTIONS IN 2B. ESSENTIALLY THE SHORT ANSWER IS, BECAUSE IT
18 WOULD BE FUTILE. I'D LIKE TO EXPLAIN THAT NOW.

19 **THE COURT:** LET'S WAIT UNTIL WE GET TO 2B NOW. IT'S
20 INCORPORATED. I WAS BURNING TO ASK IT, COULDN'T WAIT.

21 SO QUESTION B: WHAT -- DO YOU HAVE ANY AUTHORITY WITH
22 RESPECT TO THOSE TERMS NOT TO BE OBLIGATED OR AS BEING
23 CONSTRUED TO BE PRECLUDED?

24 **MR. AXELROD:** WHAT I HAVE IS THE GUIDANCE OF THE
25 OFFICE OF INTERNATIONAL AFFAIRS WHICH, OF COURSE, IS THE

1 COMPONENT OF THE DEPARTMENT OF JUSTICE THAT HAS THE
2 RESPONSIBILITY FOR THE EXPERTISE IN ALL MATTERS OF
3 INTERNATIONAL COOPERATION, SO I'M HAPPY TO --

4 **THE COURT:** WHY DON'T YOU TELL ME WHAT YOU THINK THAT
5 AUTHORITY STANDS FOR?

6 **MR. AXELROD:** SO THE AGREEMENT SAYS WHAT IT SAYS, AND
7 IN THAT REGARD THE LANGUAGE THAT THE COURT IS INTERESTED IN,
8 NOT BE OBLIGATED TO EFFECT SERVICE DOES NOT MEAN PRECLUDED. IT
9 DOES NOT MEAN THAT THE UNITED STATES IS PRECLUDED FROM ASKING
10 THE CHINESE AUTHORITIES TO EFFECT SERVICE.

11 BUT THAT'S -- THAT ONLY GOES SO FAR BECAUSE THE
12 QUESTION IS WHAT WOULD HAPPEN IF WE DID. AND IT'S THE -- AND
13 WHAT I'M GOING TO SAY NOW I ALSO MAKE AS AN OFFER OF PROOF FOR
14 THE COURT'S CONSIDERATION, AND THAT IS THAT BASED ON THE
15 LANGUAGE OF THAT AGREEMENT, AND THE -- THIS NOT OBLIGATE TO
16 EFFECT SERVICE, COUPLED WITH THE EXPERIENCE IN THE RELATIONSHIP
17 WITH THE CHINESE AUTHORITIES, IT'S THE JUDGMENT OF OIA THAT IF
18 WE ASK THE CHINESE AUTHORITIES TO EFFECT SERVICE IN THE CASE
19 THEY WOULD NOT DO SO.

20 THEY HAVE THE DISCRETION NOT TO DO SO. THAT'S WHAT
21 THE LANGUAGE THAT THE COURT INTERESTED IN MEANS AND IT'S THE
22 JUDGMENT OF THE DEPARTMENT THAT THEY WOULD NOT EFFECT SERVICE.

23 **THE COURT:** IS THAT JUDGMENT BINDING ON THIS COURT OR
24 IS -- WHY SHOULD IT BE AUTHORITATIVE? WE'RE IN COURT THIS IS
25 NOT ADMINISTRATIVE PROCEEDING, WHY IS THEIR JUDGMENT IN ANY

1 WAY -- MAYBE PERSUASIVE, BUT IS IT BINDING ON THE COURT?

2 **MR. AXELROD:** I'M NOT SUGGESTING IT'S BINDING ON THE
3 COURT. WHAT I AM SAYING IS, THAT IS THE -- THAT SORT OF THE
4 SUM TOTAL OF THE DEPARTMENT'S PERSPECTIVE, AND THEY'RE THE
5 ONES -- WE, THE DEPARTMENT, ARE THE ONES WHO ARE IN THIS
6 AGREEMENT WITH THE CHINESE AUTHORITIES, WE HAVE THE EXPERTISE
7 AND EXPERIENCE IN WORKING THROUGH IT.

8 SO THAT IS THE DEPARTMENT'S PERSPECTIVE ON THIS AND,
9 YOU KNOW, I THINK THAT'S WHERE THE MATTER STANDS.

10 **THE COURT:** IF YOU SAY, YOU STARTED BY SAYING THIS IS
11 IN THE NATURE OF AN OFFER OF PROOF --

12 **MR. AXELROD:** THAT'S CORRECT.

13 **THE COURT:** -- THAT SIGNALS ME IT'S NOT IN THE CURRENT
14 RECORD, CORRECT?

15 **MR. AXELROD:** THAT'S CORRECT.

16 **THE COURT:** WHAT IS -- IS THERE A SPECIFIC DOCUMENT
17 THAT YOU HAVE REFERENCE TO?

18 **MR. AXELROD:** WELL, WE HAVE THE AGREEMENT IN THE --
19 THE AGREEMENT IN THE RECORD BECAUSE WE MADE AN EXHIBIT. THERE
20 IS NO DECLARATION FROM THE OFFICE OF INTERNATIONAL AFFAIRS,
21 ALTHOUGH IF THAT IS IMPORTANT TO THE COURT THAT'S SOMETHING
22 THAT WE COULD OBTAIN.

23 **THE COURT:** BUT YOU'RE NOT SAYING THERE SOME SORT OF
24 ADMINISTRATIVE RULING OR REGULATION?

25 **MR. AXELROD:** NO, I'M NOT SAYING THAT.

1 **THE COURT:** THIS IS AN OPINION OF SOME REPRESENTATIVE
2 OF THAT AGENCY?

3 **MR. AXELROD:** CORRECT.

4 **THE COURT:** AND YOU'VE SPOKEN TO THEM AND THAT'S WHAT
5 YOU'RE REPRESENTING TO THE COURT?

6 **MR. AXELROD:** THAT IS CORRECT.

7 **THE COURT:** ALL RIGHT. MS. RODDY, WOULD YOU LIKE TO
8 RESPOND?

9 **MS. RODDY:** YES, YOUR HONOR. I WOULD POINT OUT THAT
10 AND IN ADDITION TO THE LANGUAGE IN ARTICLE 8, AND WE AGREE
11 COMPLETELY WITH THE GOVERNMENT THAT THERE IS NO AUTHORITY THAT
12 NOT BEING OBLIGATED TO DO SOMETHING MEANS YOU'RE PRECLUDED.

13 BUT ARTICLE 21 IN THAT SAME AGREEMENT ALSO SAYS THAT
14 THE PARTIES MAY ALSO PROVIDE ASSISTANCE PURSUANT TO ANY OTHER
15 ARRANGEMENT, AGREEMENT OR PRACTICE.

16 AND THE PANGANG DEFENDANTS HAVE SUBMITTED A COUPLE OF
17 LARGE VIEW NOTES THAT DEAL WITH THE ISSUE OF EXTRADITION
18 RELATIONS BETWEEN THE UNITED STATES AND CHINA WHICH WAS THE
19 CLOSEST WE COULD GET IN TERMS OF AUTHORITY IS EXTRADITION OF
20 INDIVIDUALS.

21 **THE COURT:** THERE IS AN EXTRADITION TREATY?

22 **MS. RODDY:** THERE IS NO EXTRADITION.

23 **THE COURT:** THAT'S WHAT I UNDERSTOOD THE ARTICLES TO
24 SAY.

25 **MS. RODDY:** CORRECT. THERE SO NO EXTRADITION TREATY

1 BETWEEN THE UNITED STATES AND CHINA, MORE BECAUSE OF THE UNITED
2 STATE'S POSITIONS THEN BECAUSE OF CHINA'S.

3 CHINA IS MORE ENTHUSIASTIC ABOUT PARTICIPATING IN
4 INTERNATIONAL CRIMINAL JUSTICE COOPERATION THAN THE U.S. WHEN
5 IT COMES TO CHINA.

6 BUT WHAT THOSE ARTICLES -- OR THOSE NOTES DO SHOW
7 THROUGH ANTIDOTAL EVIDENCE IS THAT BEFORE AND AFTER THE MLAA
8 WAS EXECUTED THE U.S. AND CHINA HAD BOTH PARTICIPATED
9 INFORMALLY ON AN AD HOC BASIS IN WORKING TOGETHER WITH
10 EXTRADITION, AND BOTH HAVE RETURNED SUSPECTS TO THE OTHER
11 COUNTRY.

12 SO I'M NOT SURE THAT IT'S CONCLUSIVE THAT JUST BECAUSE
13 THE CHINESE GOVERNMENT HAS DISCRETION UNDER THE MLAA THAT IT
14 NECESSARILY MEANS THAT IT WOULD BE FUTILE TO ASK THE CHINESE
15 GOVERNMENT.

16 **THE COURT:** YOU'RE ARGUING BY ANALOGY THIS TREATY?

17 **MS. RODDY:** IT'S NOT -- THERE'S NO TREATY.

18 **THE COURT:** THE AGREEMENT?

19 **MS. RODDY:** YES.

20 **THE COURT:** THE MLAA?

21 **MS. RODDY:** RIGHT. ATTEMPTING TO ASK THE CHINESE
22 GOVERNMENT, THE LANGUAGE IN THE AGREEMENT IN NO WAY MEANS THAT
23 IT'S A FORGONE CONCLUSION THAT THE CHINESE GOVERNMENT WOULD SAY
24 NO OR THAT EFFORTS TO APPROACH THE CHINESE GOVERNMENT WOULD BE
25 FUTILE.

1 **THE COURT:** WANT TO REPLY TO THAT?

2 **MR. AXELROD:** I DO. A COUPLE POINTS.

3 FIRST OF ALL, THE -- I THINK, THAT THE DEPARTMENT'S
4 POSITION IS ENTITLED TO SOME DEFERENCE BECAUSE THIS AGREEMENT
5 SPECIFICALLY SAYS IT DOESN'T CREATE ANY RIGHTS ANY PRIVATE
6 PARTIES, IT'S AN AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED
7 STATES AND THE GOVERNMENT OF CHINA.

8 AND SO, YOU KNOW, THE UNITED STATES IS ENGAGED AND IN
9 THE PRACTICE OF THIS RELATIONSHIP AND THE USE OF THIS
10 AGREEMENT, AND SO THE FACT THERE'S A THEORETICAL POSSIBILITY
11 THAT WE COULD MAKE THE REQUEST EXIST, BUT IT'S GOT TO BE
12 BALANCED AGAINST THE CONSIDERED JUDGMENT OF THE DEPARTMENT WHO
13 ROUTINELY IS ENGAGED IN THESE BACK AND FORTH WITH THE CHINESE
14 AUTHORITIES.

15 I ALSO THINK THAT, YOU KNOW, IN LOOKING AT THE LAW
16 REVIEW ARTICLES, SURE IT'S ONE THING TO FIND, YOU KNOW, ONE
17 EXAMPLE OF AN EXTRADITION WHERE THERE'S A MUTUALLY BENEFICIAL
18 INTEREST, IT'S QUITE ANOTHER TO IMAGINE IT IN THE CONTEXT OF
19 THIS PARTICULAR CASE WHERE THE ALLEGATIONS IN THE INDICTMENT
20 ARE THE VERY ENTITIES THAT ARE HERE BEFORE THE COURT ARE
21 CONTROLLED BY THE CHINESE GOVERNMENT.

22 **THE COURT:** MS. RODDY, LET ME ASK YOU A QUESTION.
23 GOVERNMENT COUNSEL HAS MADE AN OFFER OF PROOF -- PROFFER WITH
24 RESPECT TO THE OFFICIAL GOVERNMENT POSITION FROM THE AGENCY WHO
25 HAS JURISDICTION, WHAT IS THE DEFENDANT'S POSITION WITH RESPECT

1 TO THE WEIGHT TO BE GIVEN OR WHETHER I SHOULD BE EVEN ALLOW THE
2 GOVERNMENT TO FILE SOMETHING OF THAT ILK?

3 **MS. RODDY:** YOUR HONOR, IT'S CERTAINLY SOMETHING TO BE
4 CONSIDERED. I AGREE THAT IT IS. I AGREE WITH MR. AXELROD IT'S
5 NOT BINDING ON THIS COURT IN ANY WAY, AND IT DOES SOUND IT, AS
6 HE MENTIONED, IT'S THEIR OPINION OF WHAT WOULD HAPPEN IF THEY
7 TRIED TO USE THESE EXISTING CHANNELS.

8 **THE COURT:** ALL RIGHT. I UNDERSTAND.
9 YES.

10 **MR. AXELROD:** JUST ON THIS ISSUE OF SERVICE I JUST
11 WANT TO POINT OUT TO THE COURT THAT EVEN IF, AS I UNDERSTAND, I
12 DON'T WANT TO RUN AFOUL OF THE COURT'S RULING, SO PLEASE STOP
13 ME IF I'M GOING TOO FAR, BUT IT SEEMS TO ME THAT UNDER THE
14 DEFENDANT'S ARGUMENT EVEN IF WE WERE TO EFFECT SERVICE, EVEN IF
15 THE CHINESE SERVE THESE PEOPLE IN CHINA, THE DEFENSE WOULD
16 STILL SAY THAT'S INSUFFICIENT UNDER RULE 4.

17 IN OTHER WORDS, EVEN IF YOU GO TO THAT TROUBLE AND
18 EVEN IF THE CHINESE WERE TO DO IT WOULDN'T MAKE A DIFFERENCE
19 BECAUSE YOU STILL WOULDN'T SATISFY RULE 4.

20 SO THERE'S A, I THINK, THAT'S PART OF THIS AND THAT'S
21 PROBLEMATIC.

22 **THE COURT:** ALL RIGHT. I'LL CHANGE WHAT I SAID
23 BEFORE, WHAT'S YOUR RESPONSE TO THAT?

24 **MS. RODDY:** WELL, I THINK, WHAT HE'S GETTING AT IS,
25 REGARDLESS, I THINK WHAT THE GOVERNMENT IS SAYING, REGARDLESS

1 IT WOULD BE FUTILE. THAT THEY'RE NEVER GOING TO BE ABLE TO
2 MEET THE REQUIREMENTS OF RULE 4.

3 **THE COURT:** I THINK, THEY'RE SAYING THAT YOU'RE SAYING
4 IT --

5 **MS. RODDY:** FAIR ENOUGH.

6 **THE COURT:** DO YOU AGREE THAT, LET'S ASSUME THE
7 GOVERNMENT IS WRONG AND THE GOVERNMENT WERE TO EFFECT SERVICE
8 ON THE MLAA, THAT -- BECAUSE I DON'T -- I THINK THE DEFENDANTS
9 SORT OF HAS TO TAKE A POSITION HERE, WOULD YOUR POSITION -- AND
10 I DON'T WANT TO GO THROUGH ANOTHER ROUND OF MOTIONS FOR
11 NOTHING, SO LET'S SEE WHAT WERE REALLY DEALING WITH.

12 MR. FELDMAN.

13 **MR. FELDMAN:** YOUR HONOR, TO BE AS CANDID I HAVE TO BE
14 WITH YOUR HONOR, I DON'T KNOW THE ANSWER TO THAT QUESTION. I
15 REALLY DO NOT. I ABSOLUTELY DO NOT.

16 SO I SEE NO AUTHORITY ABOUT IT. DON'T KNOW ANYTHING
17 ABOUT IT. NOT BEFORE YOU TODAY.

18 **THE COURT:** ALL RIGHT.

19 **MR. AXELROD:** I JUST WANT TO MAKE IT CLEAR BECAUSE THE
20 ARGUMENT, AS I UNDERSTAND IT FROM THE DEFENSE, IS LOOK RULE 4
21 HAS TWO COMPONENTS, RIGHT?

22 ONE IS YOU GOT TO SERVE THE MANAGING AGENT, GENERAL
23 AGENT, ET CETERA, AND THE OTHER IS THIS MAILING REQUIREMENT.
24 YOU GOT TO MAIL TO THE PRINCIPLE PLACE OF BUSINESS IN THE
25 UNITED STATES OR IN THE DISTRICT.

1 AND IT SEEMS TO ME BY THE ARGUMENT THAT THEY'VE MADE
2 AND THE LOGICAL EXTENSION OF THAT ARGUMENT IS, WELL, MAYBE,
3 MAYBE, AND THE CASE THAT THEY CITED, YOU KNOW, AND THIS DOESN'T
4 SAY MAKING SERVICE THROUGH THE TREATY WOULD ACTUALLY BE
5 SUFFICIENT, BUT MAYBE YOU MAKE -- YOU EFFECT SERVICE THROUGH
6 THE TREATY, THEY'RE SERVED, BUT YOU DON'T GET THERE ANYWAY
7 BECAUSE THEY DON'T HAVE PRINCIPLE PLACE OF BUSINESS IN THE
8 UNITED STATES.

9 NOW, WE ENTIRELY DISAGREE WITH THE EXISTENCE OF
10 PRINCIPLE PLACE OF BUSINESS IN THE UNITED STATES, BUT THAT'S
11 THEIR POSITION.

12 SO IT SEEMS TO ME THE LOGICAL NEXT STEP FROM THAT
13 POSITION IS, WELL, YEAH, YOU CAN GO THROUGH THIS TROUBLE TO
14 EFFECT SERVICE IN CHINA AND IT WOULDN'T MAKE A DIFFERENCE WE'D
15 STILL BE RIGHT BACK HERE BEFORE THE COURT ARGUING ABOUT THE
16 SAME ISSUES.

17 **THE COURT:** LET'S ARGUE ABOUT WHAT WE HAVE NOW AND
18 WE'LL WORRY ABOUT THAT IF WE EVER HAVE TO DO IT AGAIN.

19 QUESTION 1C, THE COURT ASKED ABOUT ALTERNATIVE MEANS
20 BY WHICH THE GOVERNMENT COULD ATTEMPT TO EFFECT SERVICE ON
21 PANGANG DEFENDANTS?

22 **MR. AXELROD:** RIGHT. THE ANSWER THERE IS THERE ARE NO
23 ALTERNATIVE MEANS. THE COURT INDICATED ONE IS ROGATORY AND THE
24 WAY I'VE EXPLAINED IT IS THIS.

25 YOU HAVE -- THERE'S THE MUTUAL LEGAL ASSISTANCE

1 AGREEMENT, RIGHT, THERE'S THE EXECUTIVE BRANCH TREATY WITH THE
2 CHINESE AUTHORITIES, AND THAT'S A LEGALLY BINDING AGREEMENT
3 WHICH REQUIRES THE PARTIES TO DO CERTAIN THINGS.

4 AND WITH RESPECT TO THE PROVISION THAT WE'VE
5 INTERESTED IN, IT INVESTS IN THE PARTIES THE DISCRETION WHETHER
6 TO EFFECT SERVICE OR NOT.

7 STEP DOWN. THEN YOU'RE AT THE LETTERS ROGATORY
8 PROCESS. THE LETTERS ROGATORY IS AN ENTIRELY DISCRETIONARY
9 PROCESS. IT IS A JUDICIAL CREATURE THAT'S BASED ON PRINCIPLES
10 OF COMEDY, AND SO THERE'S NO -- THERE'S MUCH LESS GUARANTEE OR
11 ASSURE THAT ANYTHING IS GOING TO BE DONE IN THE LETTER ROGATORY
12 CONTEXT BECAUSE YOU'RE IN AN ENTIRELY DISCRETIONARY REALM.

13 PUT DIFFERENTLY IF THEY'RE NOT GOING TO DO IT UNDER
14 TREATY THEY'RE NOT GOING TO DO IT UNDER LETTER ROGATORY. THAT,
15 AGAIN, THAT IS THE EXPERIENCE OF THE DEPARTMENT, NOT JUST IN
16 THE CONTEXT OF CHINA, BUT IN THE CONTEXT OF ITS RELATIONS
17 GENERALLY.

18 **THE COURT:** THE QUESTION IS, LET ME SEE IF I CAN
19 RECHARACTERIZE YOUR ANSWER AND I'LL LET YOU CORRECT THE COURT
20 IF I'M WRONG.

21 THERE ARE ALTERNATE MEANS BY WHICH THE GOVERNMENT
22 COULD HAVE ATTEMPTED TO EFFECT LEGAL PROCESS, BUT YOU'RE
23 SAYING, EG THE LETTERS ROGATORY, BUT THAT AS WELL WOULD BE
24 YOU'RE SAYING EVEN MORE FUTILE ACT THEN TRYING TO GO UNDER THE
25 MLAA?

1 **MR. AXELROD:** THAT'S CORRECT.

2 **THE COURT:** MS. RODDY.

3 **MS. RODDY:** YOUR HONOR --

4 **THE COURT:** HERE YOU'RE BACK IS AGAINST THE WALL A
5 LITTLE BIT BECAUSE IF YOU SAY TO ME, SURE, THEY COULD HAVE DONE
6 IT THIS WAY, THEN THEY GO AND DO IT THAT WAY AND THEY'RE
7 SUCCESSFUL, YOUR MAKE AN ADMISSION -- A JUDICIAL ESTOPPEL ON
8 THE PART OF YOUR CLIENT, POSSIBLY, I DON'T KNOW, BUT THAT'S WHY
9 I NEED A VERY DIRECT ANSWER FROM YOU.

10 **MS. RODDY:** YOUR HONOR, WE WOULD AGREE WITH
11 MR. AXELROD'S STATEMENT REGARDING HOW LETTERS ROGATORY WORK,
12 AND WE ARE -- LIKE THE GOVERNMENT WE ARE NOT AWARE OF ANY
13 MECHANISM THAT EXISTS THAT WOULD REQUIRE CHINA TO SERVE OUR
14 CLIENTS.

15 **THE COURT:** SO YOU DON'T THINK IT'S DISPOSITIVE THAT
16 THERE MAYBE THIS OTHER METHOD OUT THERE, DISPOSITIVE OF THIS
17 MOTION, THAT THERE MAYBE THIS OTHER WAY OUT THERE THAT MAY --
18 WHERE THE GOVERNMENT MIGHT IN ITS WISDOM THE CHINESE GOVERNMENT
19 MIGHT AGREE TO ACCEPT SERVICE. THAT DOESN'T REALLY -- CONTROL
20 THE OUTCOME OF THIS MOTION.

21 **MS. RODDY:** EXACTLY. I THINK, BOTH SIDES OF THAT
22 POINT ARE TRUE. WHEN WE'RE TALKING ABOUT FUTILITY, FROM OUR
23 PERSPECTIVE FUTILITY, THE EXISTENCE OF IT DOES NOT GET US TO A
24 POINT WHERE THE REQUIREMENTS OF RULE 4 DON'T HAVE TO BE
25 COMPLIED WITH.

1 **THE COURT:** SO WHEN YOUR STRIP IT ALL DOWN THE
2 DEFENDANTS THEY'RE ESSENTIALLY SAYING THE GOVERNMENT'S OUT OF
3 LUCK, THERE REALLY ISN'T ANYWAY GIVEN THE FACTS OF THIS CASE BY
4 WHICH THEY COULD BRING THE PANGANG DEFENDANTS BEFORE THIS
5 COURT?

6 **MS. RODDY:** I THINK, THAT OVERSTATES THE POSITIONS
7 SLIGHTLY, IN THAT THEIR METHOD, THERE'S AVENUES THAT THE
8 GOVERNMENT COULD HAVE PURSUED UNDER THE MLAA.

9 WE HAVE THE PROFFERED OPINION OF THEIR OFFICE OF
10 INTERNATIONAL AFFAIRS. THAT IS AN OPINION, BUT WE DON'T KNOW
11 IF THEY TRIED THIS EXISTING AVENUE.

12 AND IT'S ALSO UNCLEAR THE OFFICE OF INTERNATIONAL
13 AFFAIRS WORKS VERY CLOSELY WITH THE SECRETARY OF STATE, I
14 THINK, THESE ARE ISSUES THAT WE ADDRESSED IN OUR PAPERS, BUT
15 THE -- THIS IS REALLY A MUCH LARGER ISSUE.

16 AND I'M NOT SURE IF THEY CONSULTED WITH THE DEPARTMENT
17 OF STATE OR OTHER ENTITIES ABOUT HOW TO MAKE THIS HAPPEN WITH
18 THE CHINESE GOVERNMENT. BUT WE DO AGREE THAT THERE IS NOTHING
19 THAT WOULD COMPEL CHINA TO COMPLY.

20 **THE COURT:** WANT TO SAY SOMETHING?

21 **MR. AXELROD:** I DON'T UNDERSTAND THAT LAST POINT
22 BECAUSE THERE IS A LEGALLY BINDING AGREEMENT BETWEEN THE TWO
23 GOVERNMENTS. THE OFFICE OF INTERNATIONAL AFFAIRS IS THE
24 COMPETENT AUTHORITY FROM THE UNITED STATES, THEY DEAL WITH THIS
25 ALL THE TIME, THEY HAVE THE EXPERTISE.

1 THERE'S NO OTHER AVENUE TO GO DOWN. I DON'T
2 UNDERSTAND THE STATE DEPARTMENT ISSUES. I MEAN, THERE'S AN
3 AGREEMENT, IT HAS CERTAIN PROVISIONS, THAT'S THE LANDSCAPE.

4 **THE COURT:** THE LANDSCAPE IS ALSO THAT THE DEPARTMENT
5 OF INTERNATIONAL AFFAIRS BELIEVES THAT THE CHINESE ARE NOT
6 REQUIRED TO COMPLY WITH THE MLAA.

7 **MR. AXELROD:** WITH RESPECT TO THAT PROVISION, THAT'S
8 CORRECT. THEY HAVE THE DISCRETION.

9 **THE COURT:** LET'S MOVE ONTO QUESTION NUMBER THREE AND
10 START WITH THE GOVERNMENT HERE. THIS HAS TO DO WITH THE
11 ARGUMENT MADE OR THE HOLDING OF THE KRAMER MOTORS CASE WITH
12 RESPECT TO THE FACT THERE -- ALLEGEDLY A GOVERNMENT ENTITY
13 INVOLVED IN THIS CASE AND HOW THAT MIGHT IMPACT THE COURT'S
14 RULING.

15 **MR. HEMANN:** SO, YOUR HONOR, WE THINK THE ANSWER TO
16 THE COURT'S QUESTION IS NO.

17 AND THE REASON FOR THAT, IS THAT THE KRAMER -- THE
18 SECTION OF THE KRAMER DECISION THE COURT REFERS TO RAISES A
19 JURISDICTIONAL ISSUE UNDER CIRCUMSTANCES THAT ARE NOT PRESENT
20 IN THIS CASE.

21 AS I UNDERSTAND THE KRAMER OPINION IT HAD TO DO WITH A
22 STATEMENT MADE BY A COURT IN THE SECOND CIRCUIT WITH REGARD TO
23 A -- I'M SORRY, THE NINTH CIRCUIT, WITH REGARD TO A
24 CIRCUMSTANCE THAT ARISES UNDER THE FOREIGN ACTS WITH FORUM
25 AFFECTS JURISDICTIONAL PRINCIPLE.

1 AND THAT IS NOT WHAT IS AT ISSUE IN THIS CASE. WE
2 DON'T HAVE A SITUATION IN WHICH OUR CASE RESTS IN ANY WAY ON
3 FOREIGN ACTIONS THAT HAVE AN EFFECT IN THE UNITED STATES.

4 SO WE THINK WE'RE OUT OF THE REALM THAT THE COURTS ARE
5 TALKING ABOUT CONSIDERING THE IMPACT OF THE OWNERSHIP OF THE
6 DEFENDANTS BY THE CHINESE GOVERNMENT AS IT'S RAISED IN THE
7 KRAMER CASE. OKAY.

8 NOW, OBVIOUSLY, WE ARE ALLEGING IN THE COMPLAINT OR IN
9 THE INDICTMENT, IT'S IN THE VERY NATURE OF THE ECONOMIC
10 ESPIONAGE ACT CHARGES, THAT A FOREIGN GOVERNMENT WAS THE
11 BENEFICIARY OF THE THEFT OF TRADE SECRETS. IT'S PART AND
12 PARCEL OF THE CHARGES.

13 AND SO CONGRESS CLEARLY GAVE SOME THOUGHT TO THE IDEA
14 THAT SOME FOREIGN DECISION MAKING WAS AT ISSUE AND THAT THAT --
15 THOSE ISSUES WOULD BE LITIGATED IN U.S. COURTS. PART OF THE
16 ISSUE.

17 NOW, WHETHER WE CAN BRING THESE DEFENDANTS INTO THIS
18 COURT WE THINK IS NOT A MATTER FOR RULE 4 IN TERMS OF SERVICE.
19 PARTICULARLY THE WAY THAT WE HAVE ATTEMPTED TO EFFECT SERVICE
20 THROUGH A COMMERCIAL SUBSIDIARY IN THE UNITED STATES.

21 **THE COURT:** LATER TIME. GOD FORBID WE HAVE MORE
22 MOTIONS.

23 **MR. HEMANN:** GOD FORBID WE HAVE MORE MOTIONS.

24 **THE COURT:** THAT ISSUE IS RAISED, LET'S SAY, THE COURT
25 FIND SERVICE WAS PROPER, COULD BE PROPER, THEY'RE NOT, AT

1 LEAST, THE COURT WILL HAVE RULED THERE'S VALID SERVICE.

2 I'M ASSUMING THAT STANDS AND THE DEFENDANTS THEN MOVE
3 TO DISMISS THE INDICTMENT FOR LACK OF PERSONAL JURISDICTION,
4 THEN YOU'RE SAYING THE KRAMER DECISION MIGHT COME INTO PLAY?

5 **MR. HEMANN:** IT MIGHT. IF THE PREMISE FOR EXERCISING
6 JURISDICTION IS FOREIGN ACTS WITH A DOMESTIC EFFECT, WHICH IS
7 WHAT I UNDERSTAND THE KRAMER DECISION TO BE FOCUSED ON.

8 OUR CASE OUR JURISDICTIONAL ARGUMENT WOULD BE THAT
9 IT'S BASED ON CONTACTS WITH -- DIRECT CONTACTS WITH THE UNITED
10 STATES NOT, YOU KNOW, YOU CAN IMAGINE MOST OF THE PERSONAL
11 JURISDICTION CASES INVOLVING OVERSEAS DEFENDANTS ARE A PRODUCT
12 DESIGN IN SOME OTHER COUNTRY THAT 10 YEARS LATER HAS A CAR
13 ACCIDENT HAPPENING IN INDIANA AND WHETHER THAT FOREIGN DECISION
14 CAN BRING THE DEFENDANT INTO THE STATE OF INDIANA.

15 THIS IS A CASE IN WHICH WE HAVE EMPLOYEES OF THE
16 DEFENDANT COMPANIES COMING INTO THE UNITED STATES. WE HAVE
17 CONTRACTS BETWEEN PARTIES IN THE UNITED STATES AND FOREIGN
18 COMPANIES OWNED BY THE CHINESE GOVERNMENT, AND WE HAVE
19 SIGNIFICANT SUMS OF MONEY BEING PAID FROM CHINA INTO THE UNITED
20 STATES.

21 SO OUR CASE IS BASED ON ACTUAL CONTACTS WITH THE
22 FORUM, NOT A FOREIGN DECISION THAT HAS AN INDIRECT EFFECT IN
23 THE UNITED STATES, WHICH IS WHAT I UNDERSTAND THIS TO BE.

24 IT COULD ALSO BE RAISED IF THERE'S A FOREIGN SOVEREIGN
25 IMMUNITY TYPE ARGUMENTS, I TELL THE COURT THERE'S A FAIRLY

1 SIGNIFICANT BODY OF CASES, BOTH UNDER INTERNATIONAL LAW AND THE
2 FOREIGN SOVEREIGN IMMUNITIES ACT, IN WHICH COMMERCIAL
3 ACTIVITIES ARE ACCEPTED FROM FOREIGN SOVEREIGN IMMUNITY.

4 SO IF A FOREIGN GOVERNMENT IS ACTING IN A COMMERCIAL
5 MANNER AS WE ALLEGED THE PANGANG GROUP COMPANIES WERE IN THIS
6 CASE, YOU CAN BRING A CASE AGAINST THE ENTITY AND PRESUMABLY,
7 ALTHOUGH, WE HAVEN'T, AGAINST THE FOREIGN GOVERNMENT ENTITY
8 THAT WAS DRIVING THE COMMERCIAL BEHAVIOR.

9 BUT, AGAIN, THAT'S NOT BEFORE THE COURT RIGHT NOW, AND
10 I WOULD SUGGEST THAT MAYBE SOMETIME DOWN THE ROAD THAT WOULD
11 BE, GOD FORBID AS YOU SAID, ANOTHER MOTION, BUT NOT FOR RULE 4
12 PURPOSES.

13 **THE COURT:** MR. FELDMAN.

14 **MR. FELDMAN:** YOUR HONOR, AS MR. MR. HEMANN CORRECTLY
15 SAID THE ISSUE OF FOREIGN GOVERNMENT INVOLVEMENT IS AN ELEMENT
16 OF THE GOVERNMENT'S CASE.

17 SO I AM NOT GOING TO, IF YOU WILL, WITH RESPECT ACCEPT
18 -- ACCEPT -- EXCEPT FOR PURPOSES OF ARGUMENT THE PREMISE OF
19 QUESTION THREE. BUT ACCEPTING IT FOR THE PURPOSE OF ARGUMENT
20 --

21 **THE COURT:** WHICH PART OF THE PREMISE DO YOU --
22 WHETHER THE PANGANG DEFENDANTS ARE STATE OWNED?

23 **MR. FELDMAN:** OF COURSE. I DO NOT ACCEPT.

24 **THE COURT:** IT'S AN ALLEGATION, I UNDERSTAND THAT.

25 **MR. FELDMAN:** BUT IF YOUR HONOR WERE TO ASK ME TO

1 ACCEPT THAT FOR PURPOSE OF THIS ARGUMENT -- I HAVE SOME
2 ANSWERS.

3 **THE COURT:** I DO.

4 **MR. FELDMAN:** I THINK, ACTUALLY THE FIRST THING I
5 WOULD SAY, IS THAT MR. MR. HEMANN REFERRED TO -- AND THE FIRST
6 THING I WOULD SAY, I HADN'T REALLY THOUGHT ABOUT IT UNTIL YOU
7 ASKED THE QUESTION.

8 WE DID IN OUR PAPERS URGE UPON YOU CAUTION FOR A
9 RELATED REASON, WHICH IS THAT IT WOULD BE A DANGEROUS PRECEDENT
10 WERE THE UNITED STATES TO, IF YOU WILL, WILLIE NILLIE SAY THAT
11 SUBSIDIARIES GIVE JURISDICTION OVER FOREIGN PARENTS BECAUSE
12 TURNAROUND WOULD BE FAIR PLAY.

13 AND WHILE WE HAVE NO SPECIFIC EXAMPLES, THE DEPARTMENT
14 HAS NO SPECIFIC EXAMPLES WITH RESPECT TO THE FIRST QUESTION
15 THAT YOU ASKED AND YOU DIDN'T HEAR ANY, WE HAVE NO SPECIFIC
16 EXAMPLES.

17 IT'S NOT FAR FETCHED TO IMAGINE THAT IF WE START DOING
18 THAT WITH NO BASIS, THAT IS TO SAY, HOLDING PARENT CORPORATIONS
19 RESPONSIBLE FOR THE ACTS OF SUBSIDIARIES, THE SAME WOULD HAPPEN
20 TO THE UNITED STATES CORPORATIONS.

21 THAT WE DID URGE UPON YOUR HONOR IN OUR PAPERS, WITH
22 NO AUTHORITY BECAUSE IT'S JUST COMMON SENSE. WE HAVE NO BASIS
23 FOR THAT.

24 **THE COURT:** YOU'RE NOT ARGUING IF IT'S TRUE AS THE
25 GRAND JURY ALLEGES THAT THE CHINESE GOVERNMENT CAUSED CRIMINAL

1 ACTIONS TO OCCUR IN THE UNITED STATES, THAT IF THEY'RE CHINESE
2 STATE OWNED ENTITIES HAVE DONE SO, THAT THEY SHOULDN'T BE HELD
3 ACCOUNTABLE IN THE UNITED STATES?

4 **MR. FELDMAN:** I'M NOT ARGUING THAT. THAT'S NOT THE
5 POINT THAT WE'RE MAKING.

6 WHAT MY POINT WAS THAT IF CORPORATIONS WHICH ARE
7 PROPERLY FORMED ARE HELD RESPONSIBLE FOR ACTIONS OF
8 SUBSIDIARIES WHICH ARE PROPERLY FORMED, UNDER THE CIRCUMSTANCES
9 PRESENT BEFORE YOUR HONOR, IN THIS CONTEXT THE SAME CAN BE DONE
10 TO UNITED STATES CORPORATIONS AND WE DON'T THINK THAT WOULD BE
11 A GOOD PRECEDENT.

12 BUT THAT'S A DIFFERENT QUESTION THAN THE ONE THAT YOU
13 ASKED.

14 **THE COURT:** ALL RIGHT.

15 **MR. FELDMAN:** THE QUESTION THAT YOU ASKED I MUST
16 CONFESS I HADN'T THOUGHT ABOUT VERY MUCH UNTIL YOUR HONOR POSED
17 IT TO US.

18 AND IT DID OCCUR TO ME -- US UPON LOOKING AT IT THAT
19 IT IS A TREMENDOUS CONCERN AND A TREMENDOUS COMPLEXITY.

20 THE SIMPLE ANSWERS, IN MY VIEW TO THE QUESTION THAT
21 YOU POSED, LIE IN A COMPARISON OF CRIMINAL RULE 4 AND CIVIL
22 RULE 4.

23 BECAUSE IN CIVIL RULE 4 THERE ARE SPECIFIC -- I WANT
24 TO BE VERY CLEAR ABOUT THIS, THERE ARE SPECIFIC PROVISIONS FOR
25 SERVING FOREIGN CORPORATIONS THAT ARE ABROAD.

1 AND EVEN MORE IMPORTANTLY IN ANSWER TO YOUR HONOR'S
2 QUESTION, THERE'S AN ENTIRE PROVISION OF CIVIL RULE 4 FOR
3 SERVING FOREIGN INSTRUMENTALITIES, WHICH IS WHAT THE INDICTMENT
4 ALLEGES THE PANGANG DEFENDANTS ARE.

5 TO ANSWER YOUR SPECIFIC QUESTION, THERE IS NO
6 COMPARABLE PROVISION IN CRIMINAL RULE 4. SO CIVIL RULE 4 HAS
7 SPECIFIC RULES FOR SERVING FOREIGN CORPORATIONS AND FOREIGN --
8 AND MORE IMPORTANTLY FOREIGN INSTRUMENTALITIES.

9 THE DRAFTERS OF THE RULES CONTEMPLATED THAT. THERE IS
10 NOTHING COMPARABLE IN CRIMINAL RULE 4. THAT'S A GLARING
11 DIFFERENCE. THAT'S NUMBER ONE.

12 NUMBER TWO, WITH RESPECT TO THE STATUTE THAT WE ARE
13 HERE ABOUT, THAT IS TO SAY, THE ECONOMIC ESPIONAGE STATUTE
14 WHICH WAS RAISED BY COUNSEL, THERE IS NOTHING IN THAT STATUTE
15 THAT WOULD REQUIRE THAT FOREIGN INSTRUMENTALITIES BE
16 PROSECUTED.

17 SO LET THE COURT NOT BE CONFUSED OR LEAD INTO THINKING
18 THAT THE EXISTENCE OF THAT STATUTE REQUIRES THAT AN ALLEGED TO
19 BE FOREIGN INSTRUMENTALITY NEEDS TO BE PROSECUTED FOR THERE TO
20 BE ENFORCEMENT AND STRENGTH TO THAT STATUTE. THAT IS NOT
21 CORRECT.

22 ONE COULD ARGUE THAT THE STATUTE DOESN'T EVEN
23 CONTEMPLATE THOSE KINDS OF PROSECUTIONS, THAT IS TO SAY,
24 PROSECUTIONS OF FOREIGN INSTRUMENTALITIES, BUT YOU DON'T NEED
25 TO REACH THAT.

1 **THE COURT:** THAT WOULD BE THE PROPER SUBJECT OF A
2 MOTION TO DISMISS THE INDICTMENT.

3 **MR. FELDMAN:** CORRECT. CERTAINLY NOT REQUIRED, THAT
4 IS TO SAY, CERTAINLY NOT REQUIRED FOR THAT STATUTE TO HAVE
5 FORCE AND EFFECT AND POWER.

6 SO THE ANSWER TO YOUR QUESTION 3B, IN MY VIEW, IS A
7 COMPLICATED ONE. IT RELATES TO THE FACT THERE'S AN ENTIRE BODY
8 OF LAW THAT MR. MR. HEMANN REFERRED TO WITH RESPECT TO FOREIGN
9 SOVEREIGN IMMUNITY, WHICH IS NOT BEFORE YOU.

10 IT SHOULD BE RESOLVED, IN MY VIEW, BY COMPARING THE
11 VERY SIMPLE CRIMINAL RULE TO THE VERY COMPLICATED AND SPECIFIC
12 CIVIL RULE, AND BY RECOGNITION OF THE FACT THAT THE STATUTE
13 THAT WE'RE HERE ABOUT CAN BE WELL ENFORCED WITHOUT AFFECTING
14 FOREIGN INSTRUMENTALITIES.

15 **MR. HEMANN:** AND, I THINK, THAT MR. FELDMAN'S
16 PRESENTATION UNDERSCORES THE DEFENDANT'S BASIC POINT THAT
17 MR. AXELROD ALLUDED TO EARLIER.

18 THE DEFENDANT'S POSITION IS THAT IT IS IMPOSSIBLE TO
19 SERVE THESE COMPANIES IN THIS CASE AT ALL. WE CAN NEVER MAIL
20 THE SUMMONS TO THE COMPANIES.

21 AND WHAT THEY WANT THE COURT TO DO IS TO INTERPRET
22 RULE 4 TO PRECLUDE THE UNITED STATES FROM TAKING ACTION AGAINST
23 CHINESE COMPANIES THAT STOLE TRADE SECRETS IN THE UNITED
24 STATES.

25 **THE COURT:** ISN'T WHAT MR. FELDMAN SAID TRUE IN A

1 SENSE THAT, LET'S SAY, JUST MAKING THIS SORT OF EXTREME
2 EXAMPLE, JUST LIKE I GRANTED MR. FELDMAN WASN'T MAKE ANY
3 ADMISSIONS, THE GOVERNMENT ISN'T, THERE'S NO GENERAL AGENT HERE
4 AND THE PARENT, THE INDICTED DEFENDANT PANGANG GROUP, THAT
5 ORGANIZATION IS NOT IN THE UNITED STATES, THAT THEN THEY CANNOT
6 BE PROSECUTED BECAUSE THEY COULD NEVER BE SERVED?

7 **MR. HEMANN:** CORRECT.

8 **THE COURT:** SO, I THINK, YOU ALL AGREE THAT WHAT --
9 YOU DON'T AGREE, IT MAY VERY WELL BE THE WAY THIS CASE IS
10 POSTURED, THE WAY THIS MOTION IS POSTURED, THAT IF THE MOTION
11 IS GRANTED, IT MAY WELL BE THAT THE PANGANG GROUP CANNOT BE
12 PROSECUTED IN THE UNITED STATES.

13 **MR. HEMANN:** BUT THERE'S AN ADDITION TO MR. FELDMAN'S
14 ARGUMENT THAT THE COURT DIDN'T MENTION. WHICH IS, EVEN WHEN
15 THERE IS A GENERAL AGENT IN THE UNITED STATES, WHICH IS
16 OBVIOUSLY THE SUBJECT OF OUR DISAGREEMENT, THE DEFENDANT'S
17 POSITION IS WE STILL CAN NEVER SERVE.

18 BECAUSE YOU HAVE A CIRCUMSTANCE, AND THIS LEADS A
19 LITTLE BIT INTO WHAT THE EVIDENCE IS IN RESPONSE TO THE COURT'S
20 QUESTION NUMBER FOUR, BUT WE HAVE A CIRCUMSTANCE IN THIS CASE
21 WHERE A CONSCIOUS DECISION WAS MADE BY THE CHAIRMAN OF THE
22 PANGANG GROUP TO PLACE AN AGENT IN THE UNITED STATES, TO ENJOY
23 THE BENEFITS AND PROTECTIONS OF AMERICAN LAW.

24 AND THE POSITION IS NOTWITHSTANDING THAT AND A
25 DECISION, YOUR HONOR, TO PUT A NORTH AMERICAN HEADQUARTERS,

1 THAT'S THE -- I'LL POINT THE COURT TO THAT LANGUAGE IN THE
2 LETTER FROM CHAIRMAN FAN, CHAIRMAN FAN WRITES A LETTER TO THE
3 CUSTOMS AND IMMIGRATION SERVICE SAYING OUR NORTH AMERICAN
4 HEADQUARTERS IS GOING TO BE WITH PAN AMERICA IN NEW JERSEY.

5 SO WE NEED TO BE VERY SPECIFIC ABOUT WHERE WE ARE
6 IN -- WITH REGARD TO THIS BEING A CHINESE GOVERNMENT ENTITY AND
7 THE ROLE OF THAT.

8 THEY'RE ENGAGED IN A COMMERCIAL PURPOSE AND CHINA FOR
9 BETTER OR WORSE, ALL JUDGMENT ASIDE, ORGANIZES ITS ECONOMY
10 AROUND STATE OWNED ENTERPRISES.

11 SO CHINA HAS MADE A CHOICE TO ENGAGE IN COMMERCIAL
12 ACTIVITIES THAT INCLUDE COMMERCIAL ACTIVITIES THAT DIRECTLY
13 IMPACT THE UNITED STATES AND COMMERCIAL ENTITIES THAT ARE
14 TAKING ADVANTAGE OF THE BENEFITS AND PROTECTIONS OF U.S. LAW.

15 THEY PUT A NORTH AMERICAN HEADQUARTERS HERE AND NOW
16 THEY'RE SAYING HAVING DONE THAT YOU CAN'T SERVE US, YOU CAN
17 NEVER SERVE US, BECAUSE WE DON'T HAVE A GENERAL AGENT.

18 BUT MORE IMPORTANTLY, AND THIS IS THE CRUX OF THE
19 DEFENDANT'S ARGUMENT IN THEIR OPPOSITION BRIEF, WE DON'T HAVE A
20 HEADQUARTERS HERE. OUR HEADQUARTERS IS IN CHENGDU, YOU CAN'T
21 MAIL IT TO CHENGDU BECAUSE YOU'RE PRECLUDED BY LAW FROM MAILING
22 IT TO CHENGDU, SO YOU'RE OUT.

23 SO, I MEAN, IT IS A CURIOUS ARGUMENT TO SAY THAT YOU
24 REACH INTO THE UNITED STATES TO DO BUSINESS IN THE UNITED
25 STATES. THERE ARE REAMES OF PAPER IN FRONT OF YOUR HONOR

1 REFLECTING THEIR BUSINESS ACTIVITIES IN THE UNITED STATES, BUT
2 YOU SIMPLY CAN'T NOW AND CAN NEVER SERVE THESE ENTITIES BECAUSE
3 THEY DON'T HAVE AN ADDRESS SOMEWHERE IN THE UNITED STATES.

4 **THE COURT:** ALL RIGHT. DO YOU NEED TO ADDRESS THAT?

5 **MS. RODDY:** NO.

6 **THE COURT:** LET'S MOVE ON. I HAVE THE INFORMATION I
7 NEED ON THAT ONE. LET'S MOVE ON TO QUESTION FOUR.

8 I GAVE THE PREMISE THAT I DID WITH THE INSTRUCTION TO
9 THE GOVERNMENT THIS IS NOT AN OPPORTUNITY TO REALLY
10 CHARACTERIZE IT, YOU CAN CHARACTERIZE IT I NEED CITATIONS TO
11 THE RECORD FIRST WITH RESPECT TO PGSVTC AND WHETHER IT'S A
12 WHOLLY OWNED SUBSIDIARY OR ANY OF THE OTHER PANGANG DEFENDANTS
13 SET FORTH IN THE CITATION.

14 **MR. HEMANN:** I WILL ANSWER THAT QUESTION VERY
15 DIRECTLY. WE DO CONCEDE THAT PGSVTC IS NOT A WHOLLY OWNED
16 SUBSIDIARY OF ANY OF THE OTHER DEFENDANTS.

17 **THE COURT:** IS THERE SOMETHING YOU MORE YOU WANTED TO
18 SAY?

19 **MR. HEMANN:** WELL, I WAS GOING TO ANSWER --

20 **THE COURT:** ALL RIGHT. LET'S GO --

21 **MR. HEMANN:** THERE'S MORE TO THE QUESTION I WAS GOING
22 TO ANSWER.

23 **THE COURT:** WELL, I ASSUME YOU AGREE WITH THAT,
24 MR. FELDMAN?

25 **MR. FELDMAN:** YES.

1 **THE COURT:** GOOD. SO NOW LET'S GO ONTO QUESTION 5A.

2 **MR. HEMANN:** SO QUESTION 4, QUESTION 4A THE ONLY
3 QUESTION? WAS THERE MORE TO THE QUESTION?

4 **THE COURT:** NO. I WANT YOU TO -- I WANTED TO GET THE
5 SPECIFIC ANSWER, NOW I WANT YOU TO ANSWER THE FIRST QUESTION IN
6 THE PREMISE TO THE QUESTION.

7 WHAT IS YOUR BEST ARGUMENT THAT HAS MET YOUR BURDEN TO
8 CLEARLY ESTABLISH THE CHAIN NECESSARY TO ESTABLISH THE
9 REQUISITE AGENCY OR ALTER EGO RELATIONSHIPS BETWEEN THESE FOUR
10 DEFENDANTS?

11 AND THIS IS NOT AN OPPORTUNITY TO ARGUE THAT THE COURT
12 HAS ASKED THE WRONG QUESTION, WHY IS IT EVEN RELEVANT, WHY ARE
13 WE TALKING ABOUT ALTER EGO, I KNOW THAT'S YOUR POSITION, BUT I
14 WANT TO GET AN ANSWER TO MY QUESTION.

15 **MR. HEMANN:** ON THAT POINT WE DO THINK IT'S RELEVANT
16 TO TALK ABOUT ALTER EGO, BOTH AGENCY AND ALTER EGO.

17 I WANT TO MAKE SURE I UNDERSTAND THE QUESTION, YOUR
18 HONOR, I'M NOT CHALLENGING THE PREMISE OF THE QUESTION. I READ
19 THIS TO BE ASKING, PERHAPS, TWO QUESTIONS.

20 BECAUSE THE FIRST LINE OF THE COURT'S QUESTION TALKS
21 ABOUT CHAIN OF OWNERSHIP THAT RENDERS PAN AMERICA THE AGENT OR
22 ALTER EGO.

23 AND AS WE ANALYZED THE QUESTION THERE'S TWO ISSUES.
24 ONE IS, CHAIN OF OWNERSHIP THAT SHOWS WHAT COMPANIES OWN WHAT
25 COMPANIES.

1 THERE'S ALSO THE EVIDENTIARY CHAIN THAT ESTABLISHES
2 AGENCY OR ALTER EGO THAT DOESN'T NECESSARILY -- AND THE NINTH
3 CIRCUIT HAS SAID, DOESN'T REQUIRE OWNERSHIP.

4 **THE COURT:** I'D LIKE THE ANSWER TO BOTH.

5 **MR. HEMANN:** I'LL GIVE YOU THE ANSWER TO BOTH, YOUR
6 HONOR.

7 NUMBER ONE, WE PREPARED A LITTLE DEMONSTRATIVE TODAY,
8 WE'VE GIVEN A COPY TO THE DEFENSE AND THIS IS OUR BEST
9 UNDERSTANDING.

10 **THE COURT:** NOW, IS THIS SUPPORTED BY WHAT YOU
11 SUBMITTED?

12 **MR. HEMANN:** THIS IS SUPPORTED BY WHAT WE HAD
13 SUBMITTED IN EVIDENCE, YOUR HONOR.

14 **THE COURT:** LET ME SORT OF POINT HERE, DO YOU AGREE
15 WITH THIS CHART?

16 **MR. FELDMAN:** NO.

17 **THE COURT:** I NEED CITATIONS.

18 **MR. FELDMAN:** EXCUSE ME, YOUR HONOR, WHEN I SAID I
19 DON'T AGREE WITH IT, I DO NOT BELIEVE THAT THIS CHART WITH A
20 FEW EXCEPTIONS IS SUPPORTED BY THE RECORD.

21 **THE COURT:** THAT'S ALL I'M ASKING. IT'S NOT SUPPORTED
22 BY THE RECORD, THIS IS NOT ABOUT EMASCULATE CONCEPTION.

23 **MS. RODDY:** I DO AGREE, IF I MAY, I DO AGREE WITH YOUR
24 HONOR, THIS NEEDS TO BE SUPPORTED BY CITATIONS TO THE RECORD.

25 **THE COURT:** THAT'S WHY I ASKED.

1 **MR. HEMANN:** SO I'M GOING TO GIVE THE COURT CITATIONS
2 TO THE RECORD. THE CITATIONS TO THE RECORD, THIS CHART IS
3 DERIVED FROM PRIMARILY TWO PLACES.

4 PLACE NUMBER ONE, IS THE DECLARATION OF OUR EXPERT
5 MR. SZAMOSSZEGI. AND THERE ARE A SERIES OF PARAGRAPHS IN HIS
6 DECLARATION, WHICH I BELIEVE PARAGRAPHS 18 THROUGH 20 AND 23,
7 THAT LAYOUT WITH EXHIBITS ATTACHED TO THEM, IT'S 18 THROUGH 20
8 AND 23, WHAT THE OWNERSHIP STRUCTURE OF THE PANGANG GROUP
9 COMPANIES ARE AS RELEVANT TO THE ALLEGATIONS IN THE INDICTMENT.

10 **THE COURT:** ALL RIGHT.

11 **MR. HEMANN:** IT IS ALSO SUPPORTED BY INFORMATION
12 OBTAINED BY THE FBI AND RECITED IN SPECIAL AGENT PATTILLO'S
13 DECLARATION AT PARAGRAPH SEVEN AND EIGHT WHICH DESCRIBE THE
14 OWNERSHIP OF THE COMPANIES FROM THE PERSPECTIVE OF THE TWO
15 EXECUTIVE EMPLOYEES OF PAN AMERICA.

16 **THE COURT:** RIGHT.

17 **MR. HEMANN:** AND IT IS ALSO SUPPORTED BY THE
18 ATTACHMENT TO MR. AXELROD'S DECLARATION, AND I APOLOGIZE, YOUR
19 HONOR, I MISPLACED THE EXACT CITATION TO IT. IT'S ONE OF THE
20 ATTACHMENTS TO MR. AXELROD'S DECLARATION THAT LAYS OUT THE --
21 THERE WE GO, IT'S EXHIBIT D AT PAGE EIGHT.

22 AND ALSO THERE IS AN ORGANIZATIONAL CHART THAT WAS
23 PROVIDED BY PANGANG GROUP TO THE CUSTOMS AND IMMIGRATION
24 SERVICE THAT'S ATTACHED TO MR. AXELROD'S DECLARATION AS AN
25 EXHIBIT, AND THOSE ARE THE SOURCES FOR THIS DOCUMENT.

1 NOW, I WOULD NOTE, YOUR HONOR, THAT IN THEIR
2 OPPOSITION TO THEIR REPLY TO THE GOVERNMENT'S OPPOSITION THE
3 DEFENDANTS POINT OUT, WELL, WE'RE WRONG ABOUT OUR OWNERSHIP
4 HYPOTHESIS, BUT DON'T EXPLAIN TO THE COURT WHAT THE ACCURATE
5 OWNERSHIP STRUCTURE --

6 **THE COURT:** THEY'RE NOT OBLIGED TO DO THAT, ARE THEY?

7 **MR. HEMANN:** THEY'RE CERTAINLY NOT OBLIGED TO DO THAT,
8 BUT IT'S --

9 **THE COURT:** IF IT'S A CIVIL CASE THEY MIGHT DO IT.

10 **MR. HEMANN:** BUT IN THIS CASE WE'RE GIVING YOU THROUGH
11 THIS DOCUMENT WHAT WE UNDERSTAND THROUGH OUR EXPERT IN HIS
12 EXAMINATION OF THE DOCUMENTS AS SET FORTH IN HIS DECLARATION,
13 AND THE EXPLANATION OF THE CORPORATE STRUCTURE BY THE PAN
14 AMERICAN EMPLOYEES WHAT THE CORPORATE STRUCTURE LOOKS LIKE.

15 I CAN TELL THE COURT, OBVIOUSLY, BECAUSE WE HAVE NOT
16 BEEN THROUGH DISCOVERY BECAUSE WE WERE NOT ABLE TO SERVE
17 PROCESS ON THE PANGANG COMPANIES OUTSIDE OF THE UNITED STATES
18 THAT THIS IS BASED ON THE EVIDENCE THAT WE HAVE.

19 I CAN'T BE A HUNDRED PERCENT SURE THAT IT'S ACCURATE,
20 BUT THE DOCUMENTS THAT ARE PUBLICLY AVAILABLE AS ANALYZED BY
21 OUR EXPERT SUGGESTS THAT THIS IS THE STRUCTURE.

22 I WOULD TELL THE COURT THAT WE DON'T BELIEVE THAT THE
23 CASES SAY, THE NINTH CIRCUIT CASES SAY THAT OWNERSHIP IS
24 RELEVANT TO THE QUESTION OF EITHER AGENCY OR ALTER EGO.

25 AND, I THINK, BOTH THE BOWMAN DECISION TALKING ABOUT

1 GENERAL AGENCY AND ALTER EGO AND THE WELLS FARGO DECISION
2 SPECIFICALLY SAY THAT OWNERSHIP IS NOT RELEVANT.

3 WHAT'S RELEVANT IS THE RELATIONSHIP BETWEEN THE
4 ENTITIES AND THE SERVED -- THE PARENT ENTITIES AND THE SERVED
5 ENTITIES, AND I'M PREPARED, YOUR HONOR, TO GO THROUGH WHAT WE
6 BELIEVE THE EVIDENCE IS THAT ATTACHES EACH ONE OF THE CHARGED
7 ENTITIES TO PAN AMERICA, INC. AND I'M ASSUMING THAT'S WHAT THE
8 COURT --

9 **THE COURT:** THAT'S THE ULTIMATE QUESTION. FIRST, I
10 WANT JUST VERY ELEMENTAL LEVEL I WANT TO UNDERSTAND THE
11 GOVERNMENT'S POSITION, WHETHER IT'S DISPUTE OR NOT, WHAT IS --
12 WE WERE TRYING TO ON OUR PART, THE COURT WAS TRYING TO SKETCH
13 THIS OUT, AND FRANKLY WAS VERY DIFFICULT.

14 I WANTED TO GET THE GOVERNMENT'S POSITION, OF COURSE,
15 I'LL HEAR FROM THE DEFENDANTS, THEN THE QUID ESSENTIAL QUESTION
16 WHAT DOES THIS MEAN VIS-A-VIS THE QUESTION OF GENERAL AGENCY
17 AND ALTER EGO?

18 **MR. HEMANN:** SO THE ANSWER YOUR HONOR'S QUESTION, OUR
19 POSITION IS THAT ALTHOUGH THE FORMAL OWNERSHIP RELATIONSHIPS
20 ARE INSTRUCTIVE AND HELPFUL IN FIGURING OUT, WHAT YOU CAN SEE
21 HERE IS THAT AS WE ALL KNOW, AND I DON'T THINK IS IN DISPUTE,
22 PAN AMERICA, INC. IS OWNED BY TWO COMPANIES.

23 IT'S OWNED BY PANGANG GROUP AND PIETC, WHICH IS THE
24 INTERNATIONAL TRADING COMPANY FOR PANGANG GROUP IN THE
25 PROPORTIONS OF 75 AND 25 PERCENT.

1 **MR. FELDMAN:** SO STIPULATED.

2 **THE COURT:** ALL RIGHT.

3 **MR. HEMANN:** THAT IS THE OTHER ANOTHER DEFENDANT WHICH
4 IS IT'S THE PUBLICLY LISTED COMPANY ON THE CHEN JEN EXCHANGE,
5 WHICH IS PGSVTC IS THE OWNER OF PIATC IN -- IT'S THE 100
6 PERCENT OWNER OF PIATC.

7 **THE COURT:** DO YOU AGREE WITH THAT?

8 **MR. FELDMAN:** THERE'S NO PROOF OF THAT.

9 **THE COURT:** GO AHEAD.

10 **MR. HEMANN:** WE WOULD AGAIN SUBMIT.

11 **THE COURT:** I'LL READ THE EVIDENCE YOU CITE THE COURT
12 TO.

13 **MR. HEMANN:** AND THAT IT IS ALSO THE OWNER OF THE
14 TITANIUM INDUSTRY COMPANY DEFENDANT.

15 **MR. FELDMAN:** SAME.

16 **THE COURT:** ALL RIGHT.

17 **MR. HEMANN:** THAT IS INSTRUCTIVE TO SOME DEGREE
18 BECAUSE IT DRAWS SOME OWNERSHIP RELATIONSHIP BETWEEN PAI AND
19 TWO OF THE DEFENDANT COMPANIES. BUT IT DOESN'T GET EITHER THE
20 COURT OR US ALL THE WAY TO WHERE WE'RE COMFORTABLE WITH THIS.

21 THE COURT ASKED WHAT OUR POSITION WAS AS A GENERAL
22 MATTER. OUR POSITION AS A GENERAL MATTER IS THAT PAI IS THE
23 GENERAL AGENT IN THE UNITED STATES OF THE PANGANG GROUP OF
24 COMPANIES.

25 WE BELIEVE THAT IS WAS THE INTENTION OF THE PANGANG

1 GROUP OF COMPANIES WHEN PAI WAS CREATED AS REFLECTED IN
2 CHAIRMAN FAN'S TWO LETTERS TO THE CUSTOMS AND IMMIGRATION
3 SERVICE.

4 AND WE BELIEVE THAT IS THE EVIDENCE SHOWS THAT PAI HAS
5 ACTED CONSISTENTLY WITH THAT SINCE 2008 WHEN THE COMPANY WAS
6 FORMED. I'M GOING TO TALK A LITTLE BIT ABOUT BOTH THE
7 FORMATION AND THE ACTIONS OF THE COMPANY, BUT TO BE VERY CLEAR
8 THE PURPOSE WAS TO CREATE A PANGANG GROUP OF COMPANIES PRESENCE
9 IN THE UNITED STATES.

10 NOT TO MAKE FINE DISTINCTIONS BETWEEN WHICH ONE OF THE
11 PANGANG GROUP OF COMPANIES PAI WAS GOING TO BE THE AGENT FOR.

12 AND IF YOU LOOK THROUGH THE ENTIRE RECORD AND
13 SPECIFICALLY TO THE DOCUMENTS THAT WERE CREATED BY THE PANGANG
14 DEFENDANTS THEMSELVES, WHAT YOU WILL SEE IS THE NAMES OF THE
15 COMPANIES BEING USED INTERCHANGEABLY, WHICH I WOULD SUBMIT IS
16 PART OF THE CONFUSION THAT THE COURT IS SUFFERING FROM WITH
17 REGARD TO THIS BECAUSE IT'S NOT CLEAR.

18 THE BEST EXAMPLE OF THAT IS IN CHAIRMAN FAN'S LETTER
19 WHERE HE INTERCHANGEABLY USES THE TERMS PANGANG GROUP AND
20 PISCO, PISCO BEING A WHOLLY OWNED SUBSIDIARY OF THE PANGANG
21 GROUP. SO IT'S NOT CLEAR FROM THE DOCUMENTS THEMSELVES THAT
22 WERE PREPARED BY THE CHINESE COMPANIES THEMSELVES.

23 WE BELIEVE THAT IT WASN'T MEANT TO BE CLEAR NOR DOES
24 IT NEED TO BE CLEAR. BECAUSE UNDER RULE 4 THE COURT CAN LOOK,
25 AND THIS GOES TO MR. FELDMAN'S POINT ABOUT THE DIFFERENCE

1 BETWEEN THE CRIMINAL RULES AND THE CIVIL RULES, WHICH ARE
2 OBVIOUS. THE CRIMINAL RULE IS THIS LONG AND ASKS THE COURT TO
3 MAKE --

4 **THE COURT:** FOR THE RECORD YOUR HOLDING YOUR HANDS
5 ABOUT THREE INCHES.

6 **MR. HEMANN:** ABOUT TWO INCHES I GUESS I MEANT, YOUR
7 HONOR. IT'S ABOUT TWO INCHES OF TEXT AND IT'S MEANT FOR THE
8 COURT TO MAKE A SIMPLE DECISION, A SIMPLE JUDGMENT IN THE
9 INTEREST OF JUSTICE FOR THE PURPOSES OUTLINED IN THE
10 CRIMINAL -- IN THE CRIMINAL RULES.

11 AND IT IS DIFFERENT, IT'S MEANT TO BE A SIMPLER
12 ANALYSIS. IF YOU LOOK AT THE BODY OF EVIDENCE HERE YOU'LL SEE
13 THAT PAI IS ACTING AS THE AGENT OF THE PANGANG GROUP OF
14 COMPANIES IN THE UNITED STATES. AND THAT'S OUR POSITION.

15 NOW, WHAT I'D LIKE TO DO IS GO THROUGH WITH YOU -- I'M
16 SORRY, I MENTIONED EARLIER IT'S EXHIBIT F IN MR. AXELROD'S
17 DECLARATION THAT WE WERE RELYING ON FOR THIS DOCUMENT.

18 **THE COURT:** ALL RIGHT.

19 **MR. HEMANN:** SO --

20 **MR. FELDMAN:** MAY I INTERRUPT YOU FOR JUST ONE MOMENT,
21 WOULD THAT BE OKAY?

22 **MR. HEMANN:** SURE.

23 **MR. FELDMAN:** I WOULD ASK THE COURT TO NOTE THUS FAR,
24 THE LAST FIVE MINUTES ANYWAY, MR. MR. HEMANN HAS MADE A LOT
25 STATEMENTS WITH NO CITATIONS TO THE RECORD AS YOU REQUESTED.

1 **THE COURT:** THERE WERE SOME CITATIONS. WE CITED TO
2 EXHIBITS TO THE -- I CAN'T PRONOUNCE HIS NAME
3 S-Z-A-M-O-S-S-Z-E-G-I.

4 **MR. HEMANN:** SZAMOSSZEGI.

5 **THE COURT:** DECLARATION, MR. AXELROD'S DECLARATION AND
6 DOCUMENTS CITED THEREIN.

7 **MR. FELDMAN:** I MEANT IN THE LAST FIVE MINUTES.

8 **THE COURT:** I HAVEN'T BEEN KEEPING TIME, SO ALL RIGHT.

9 **MR. HEMANN:** SO I'D LIKE TO GO THROUGH THE EVIDENCE
10 THAT TIES PAI TO EACH ONE OF THE ENTITIES TO THE BEST THAT
11 WE'RE ABLE TO DO SO BASED ON THE RECORD.

12 AND THE COURT ASKED FOR OUR BEST ARGUMENTS, AND SO I
13 WOULDN'T SUGGEST THIS IS ALL OF THE EVIDENCE, BUT I THINK THIS
14 IS THE BEST EVIDENCE.

15 NUMBER ONE, ARE THE LETTERS FROM CHAIRMAN FAN THIS IS
16 FOCUSING ON THE CONNECTION BETWEEN PAI AND THE PANGANG GROUP
17 ITSELF. NUMBER ONE, ARE THE LETTERS FROM CHAIRMAN FAN TO CIS,
18 CUSTOMS AND IMMIGRATION SERVICE. THOSE ARE ATTACHED TO
19 MR. AXELROD'S DECLARATION AT EXHIBIT D AND F.

20 AND THE KEY PROVISIONS OF THAT ARE SET FORTH IN OUR
21 OPPOSITION BRIEF AT PAGE EIGHT. AND THE MOST COMPELLING
22 STATEMENT MADE BY CHAIRMAN FAN IS HIS DESCRIPTION OF PAI AS
23 BEING FOR THE PURPOSE OF QUOTE "DEVELOPING OUR BUSINESS
24 RELATIONSHIPS AND OPPORTUNITIES IN THE UNITED STATES." THAT
25 WAS, WE SUBMIT, PAI'S CHARGE IN THE UNITED STATES.

1 THE OTHER HIGHLY RELEVANT, AND THIS IS RELEVANT MORE
2 TO THE ALTER EGO ANALYSIS THAN THE GENERAL AGENCY ANALYSIS, IS
3 THE FACT THAT CHAIRMAN FAN ACTUALLY SIGNED THE LETTERS ON PAI
4 LETTERHEAD, PURPORTING TO BE, WHICH HE IS NOT, AN OFFICER OF
5 PAI.

6 NUMBER TWO, IN TERMS OF EVIDENCE CONNECTING PAI TO
7 PANGANG GROUP, THE APPLICATIONS FOR --

8 MR. FELDMAN: EXCUSE ME, DID YOU SAY WHICH COMPANY
9 AGAIN? SORRY.

10 MR. HEMANN: PANGANG GROUP.

11 MR. FELDMAN: THANK YOU.

12 MR. HEMANN: THE APPLICATION FOR L1A INTERCOMPANY
13 TRANSFERS THAT ARE ATTACHED TO MR. AXELROD'S DECLARATIONS AND
14 THE LEGAL PREDICATE FOR THOSE APPLICATIONS WHICH IS THE CONTROL
15 REQUIREMENT THAT WE'LL BE GETTING INTO IN THE COURT'S NEXT
16 QUESTION.

17 THE THIRD PIECE OF EVIDENCE WITH REGARD TO PANGANG
18 GROUP ARE THE P PASSPORTS THAT ARE ISSUED TO THE TWO EXECUTIVE
19 EMPLOYEES OF PAI IN THE UNITED STATES.

20 THOSE ARE DISCUSSED IN, AMONG OTHER PLACES BUT MOST
21 POINTEDLY, IN THE MC GOVERN DECLARATION WHERE MR. MC GOVERN
22 WHO'S A STATE DEPARTMENT EMPLOYEE EXPLAINS THAT KEY PASSPORTS
23 ARE ISSUED TO EMPLOYEES OF CHINESE STATE OWNED ENTERPRISES FOR
24 THE PURPOSE OF DOING THE BUSINESS OF THOSE ENTERPRISES
25 OVERSEAS.

1 **MR. FELDMAN:** MAY I MAKE INQUIRY, YOUR HONOR? THAT GO
2 TO AGENCY OR ALTER EGO, THE P PASSPORT?

3 **MR. HEMANN:** IT GOES TO BOTH.

4 **MR. FELDMAN:** ALL RIGHT. THANK YOU.

5 **MR. HEMANN:** WITH REGARD TO THESE ALL WOULD GO TO
6 BOTH, YOUR HONOR, AS I UNDERSTOOD THE QUESTION.

7 THE NEXT PIECE OF EVIDENCE WITH REGARD TO THE PANGANG
8 GROUP ARE -- IS THE POLICIES AND PROCEDURES MANUAL WHICH IS
9 ATTACHED TO SPECIAL AGENT PATTILLO'S DECLARATION AT EXHIBIT O,
10 AND IS IDENTIFIED -- THE KEY PROVISIONS WHICH ARE IDENTIFIED IN
11 OUR OPPOSITION BRIEF AT PAGE SIX.

12 AND THAT'S THE DOCUMENT, YOUR HONOR, THAT DISCUSSES
13 APPROVAL REQUIREMENTS BY THE HEAD OFFICE WHICH FROM THE CONTEXT
14 OF THE DOCUMENT DENOTES AN OFFICE AT THE PANGANG GROUP.

15 THE NEXT PIECE OF EVIDENCE THAT WE WOULD POINT THE
16 COURT TO WITH REGARD TO THE PANGANG GROUP IS THE FACT THAT THE
17 BOOKS AND RECORDS OF PAI ARE AUDITED BY AUDITORS SENT TO THE
18 UNITED STATES BY THE PANGANG GROUP. AND THAT IS ATTACHED TO
19 SPECIAL AGENT PATTILLO'S DECLARATION AT EXHIBIT T.

20 I'M AVOIDING ARGUMENT WITH REGARD TO THE SIGNIFICANCE
21 OF THESE AND I'M SIMPLY GOING THROUGH THE LIST. I JUST WANTED
22 TO MAKE SURE I'M DOING THAT.

23 **THE COURT:** ABSOLUTELY.

24 **MR. HEMANN:** THE NEXT PIECE OF EVIDENCE IS EVIDENCE
25 THAT PAI IS FUNDED ENTIRELY BY PANGANG GROUP AND PIATC AND I'M

1 COMBINING THEM HERE BECAUSE IT APPLIES TO BOTH.

2 THE COMPANY WAS CAPITALIZED BY A COMBINATION OF MONEY
3 FROM PANGANG GROUP AND PAITC AND ALL OF ITS INCOME --

4 **THE COURT:** THAT WAS AN INITIAL CAPITALIZATION,
5 CORRECT?

6 **MR. HEMANN:** WITH ITS INITIAL CAPITALIZATION.

7 THE SECOND PART OF THIS IS THAT ALL OF ITS INCOME IS
8 DERIVED FROM DEALS ENTERED INTO BY PANGANG GROUP AND PIATC. IT
9 HAS NO SOURCE OF INCOME OTHER THAN COMMISSION INCOME OFF OF
10 PANGANG PIATC DEALS.

11 THE EVIDENCE OF THAT IS IN SPECIAL AGENT PATTILLO'S
12 DECLARATION IN PARAGRAPHS SEVEN AND EIGHT AND MR. SZAMOSSZEGI'S
13 DECLARATION AT PARAGRAPH 24 AND EXHIBIT 17 AND 24 WHICH ARE AN
14 ANALYSIS OF THE IMPORT BUSINESS ASSOCIATED WITH PAN AMERICA,
15 INC. AND EVIDENCE THAT ALL OF IT COMES FROM PANGANG SOURCES.

16 THE 7TH PIECE OF EVIDENCE WITH REGARD TO PANGANG GROUP
17 IS THE LETTER TO EP PETROL ECUADOR, THERE ARE TWO VERSIONS OF
18 THAT LETTER THAT WERE SEIZED FROM PAN AMERICA, INC. AND THEY'RE
19 ATTACHED TO SPECIAL AGENT PATTILLO'S LOST DECLARATION AT
20 EXHIBITS F AND G.

21 AND IN THAT LETTER THAT PAI REPRESENTS THAT IT IS THE
22 REPRESENTATIVE OF THE PANGANG GROUP IN THE AMERICAS.

23 **THE COURT:** BY THE WAY, AS AN ASIDE THERE WERE SIX
24 EXHIBITS THAT WERE ATTACHED TO MR. SZAMOSSZEGI'S DECLARATION
25 WHICH ARE IN CHINESE WITHOUT TRANSLATION, I NEED TO GET -- I

1 DON'T SPEAK CHINESE. A LITTLE BIT.

2 **MR. HEMANN:** WE WILL ENDEAVOR TO GET THOSE, AND IF THE
3 COURT WOULD PERMIT IT I CAN TALK TO THE FBI TRANSLATORS ABOUT
4 THE TRANSLATIONS. WE COULD PROVIDE SUMMARIES RELATIVELY
5 QUICKLY. I HAVE TO LOOK AT THEM AND TALK TO THEM ABOUT HOW
6 LONG IT WILL TAKE TO DO TRANSLATIONS.

7 **MR. FELDMAN:** PUNT PASS.

8 **THE COURT:** LET'S PUT THAT ON HOLD FOR NOW.

9 **MR. HEMANN:** THANK YOU, YOUR HONOR.

10 I GUESS, A COROLLARY TO THE FUNDING ARGUMENT THAT I
11 JUST IDENTIFIED AND WITH THE SOURCES BEING IN THE SAME PLACES,
12 THE FACT THAT PAI DOES WORK FOR NO OTHER ENTITY THAN PANGANG
13 GROUP AND PANGANG AFFILIATES. THE SOURCES ARE THE SAME WITH
14 REGARD TO FUNDING.

15 SO THOSE WE THINK ARE THE BEST PIECES OF EVIDENCE THAT
16 GO SOLELY OR PRIMARILY TO THE PANGANG GROUP. AND IT GETS A
17 LITTLE SHORTER FROM HERE, YOUR HONOR, BUT WITH REGARD TO --
18 THERE'S LOTS OF EVIDENCE, YOU KNOW -- WITH REGARD TO PAITC,
19 YOUR HONOR, NUMBER ONE, THE FACT THAT CHUN ZENG WHO IS THE
20 SECOND IN CHARGE FELLOW AT PAI IS ACTUALLY A PAITC EMPLOYEE.
21 AND THAT IS REFLECTED IN MR. AXELROD'S DECLARATION EXHIBIT E AT
22 PAGE 13.

23 THE REPRESENTATION TO THE COUNCILOR AUTHORITIES IN
24 CHENGDU WAS THAT MR. ZHENG WOULD -- WAS A PIATC EMPLOYEE WHO
25 WAS GOING TO THE UNITED STATES AND LEADING A DELEGATION FOR

1 THAT PURPOSE. WE BELIEVE THAT'S CONSISTENT WITH THE
2 INTER-COMPANY TRANSFER ISSUE.

3 NUMBER TWO, IS A DOCUMENT IN WHICH PAI DESCRIBES
4 ITSELF IN COMMUNICATIONS WITH THE CUSTOM AND IMMIGRATION
5 SERVICE AS AN AGENCY FOR THE TRADE BUSINESS OF PAITC, THAT IS
6 MR. AXELROD'S DECLARATION EXHIBIT D, PAGES FIVE AND NINE.

7 WE THINK THAT THE CUSTOMER, THE VARIOUS CUSTOMER
8 DECLARATIONS, PERHAPS, PROVIDE THE BEST EVIDENCE THAT PAI
9 ACTING AS THE AGENT IN THE ALTER EGO OF PIATC, I WON'T GO
10 THROUGH ALL OF THEM EXCEPT TO MAKE THE POINT THAT, FOR EXAMPLE,
11 IN THE DECKER DECLARATION AT PARAGRAPH THREE, MR. DECKER
12 PROVIDES WHAT IS CONSISTENTLY SHOWN THROUGH THE CUSTOMER
13 DECLARATIONS AS EVIDENCE THAT SERVICES THAT ARE NOW BEING
14 PERFORMED BY PAI ARE THE SERVICES THAT PRIOR TO THAT -- THE
15 CREATION OF PAI WERE PERFORMED BY PIATC AND PANGANG GROUP
16 EMPLOYEES.

17 AND THE RELATED MATTER THAT YOU SEE IN ALL FIVE OF THE
18 CUSTOMER DECLARATIONS IS THAT AS TO LEGAL MATTERS PAI ACTS AS A
19 CONDUIT BETWEEN THE COMPANIES IN THE UNITED STATES, THE
20 CUSTOMERS IN THE UNITED STATES AND PAITC AND THE PANGANG GROUP
21 IN CHINA.

22 SO A CLAIM COMES UP WITH REGARD TO A DEFECTIVE
23 PRODUCT, AND THE INSTRUCTION TO THE COMPANY IS THE CUSTOMER IS
24 TO REACH OUT TO PAI, PAI ACTS AS A CONDUIT IN RESOLVING THAT
25 CLAIM BETWEEN PANGANG GROUP, PIATC AND THE CUSTOMER IN THE

1 UNITED STATES.

2 WE WOULD POSIT THAT THAT IS PRECISELY THE ROLE THE
3 THAT WE SUGGESTED THE COURT SHOULD HOLD PAI TO IN THIS CASE.

4 TWO MORE MATTERS WITH REGARD TO PIATC. NUMBER ONE IS,
5 A MEMO POSITIONS DIRECTING PAI AND OUTLINING PAI'S
6 RESPONSIBILITIES, A MEMO CREATED -- ISSUED BY PIATC THAT
7 DESCRIBES PAI'S SUBORDINATE AND SUPPORTIVE RESPONSIBILITIES IN
8 THE UNITED STATES, VIS-A-VIS THE BUSINESS OF PIATC AND PANGANG
9 GROUP. AND THAT IS MS. PATTILLO'S DECLARATION AT EXHIBIT O.

10 AND FINALLY THE OFFICE MOVE THAT WAS DIRECTED BY PIATC
11 WHICH, I BELIEVE, IS ALSO -- THERE'S A MEMORANDUM ATTACHED TO
12 SPECIAL AGENT PATTILLO'S DECLARATION, I BELIEVE, IT'S EXHIBIT
13 W.

14 THAT PIATC ONCE THE PANGANG MERGER TOOK PLACE IN 2011
15 NOTIFIED PAI THAT IT WOULD BE MOVING ITS OFFICE INTO AN OFFICE
16 SHARED BY -- SHARED WITH THE NEW MERGER PARTNER ONGONG GROUP.

17 THAT'S THE BEST EVIDENCE WE BELIEVE CONNECTING PIA
18 WITH PIATC IN AN AGENCY AND ALTER EGO RELATIONSHIP.

19 THE TITANIUM COMPANY RELATIONSHIP AND THE PGSVTC
20 RELATIONSHIPS ARE SIGNIFICANTLY LESS CONSTANT, IF YOU WILL,
21 THAN THE PIATC AND PANGANG GROUP RELATIONSHIPS.

22 AND OUR THEORY WITH REGARD TO THESE TWO COMPANIES, AND
23 I GUESS I'LL START WITH THE TITANIUM COMPANY, IS THAT THE
24 RELATIONSHIP BETWEEN PAI AND THE TITANIUM COMPANY IS A FUNCTION
25 OF THE DECISION OF THE PANGANG GROUP TO PLACE AN AGENT IN THE

1 UNITED STATES TO DEAL WITH PROBLEMS THAT ARISE WITH REGARD TO
2 PANGANG GROUP COMPANIES.

3 BECAUSE THE RELATIONSHIP BETWEEN THE PANGANG --
4 BETWEEN PAI AND THE TITANIUM GROUP COMPANY CAME UP FOR THE
5 FIRST TIME, THE DIRECT RELATIONSHIP WHEN THIS INVESTIGATION
6 BEGAN.

7 WHEN THIS INVESTIGATION BEGAN AND TITANIUM GROUP
8 EMPLOYEES WERE DETAINED UNDER A MATERIAL WITNESS WARRANT IN SAN
9 FRANCISCO, THE EVIDENCE IN SPECIAL AGENT PATTILLO'S DECLARATION
10 IS THAT PANGANG GROUP DIRECTED PAI TO ASSIST THE TITANIUM
11 COMPANY EMPLOYEES IN THE UNITED STATES OR IN SAN FRANCISCO.

12 AND THAT THEY WERE DIRECTED TO ADVANCE THE LEGAL FEES,
13 AND THEY ENTERED INTO AN AGREEMENT WITH PIATC TO ADVANCE THE
14 LEGAL FEES ON BEHALF OF THE TITANIUM GROUP EMPLOYEES.

15 THIS EVIDENCE GOES TO WHAT WE BELIEVE THE TEST FOR
16 GENERAL AGENCY IS, WHICH IS THAT IF IT WERE NOT FOR THESE
17 EMPLOYEES IN THE UNITED STATES, EMPLOYEES OF THE OTHER COMPANY
18 WOULD BE REQUIRED TO UNDERTAKE THESE RESPONSIBILITIES.

19 SOMEBODY HAD TO DO THIS. THEIR AGENTS IN THE UNITED
20 STATES WAS THE ONE THAT WAS BOTH LOGICALLY AND CONVENIENTLY
21 ABLE TO UNDERTAKE THESE TASKS.

22 YOU CAN'T SEPARATE THIS EVIDENCE FROM THE OVERALL
23 CONTEXT OF THE CHAIRMAN FAN LETTERS AND THE DESCRIPTION OF
24 CHAIRMAN FAN'S DECISION THAT HE WRITES IN HIS LETTERS IN '08
25 AND 2010 WITH, YOU KNOW, TO CREATE PAI.

1 SO I WOULD SAY THAT THE EVIDENCE WITH REGARD TO THE
2 TITANIUM COMPANY ARE BOTH THE CHAIRMAN FAN LETTERS REGARDING
3 THE CREATION OF PAI AND THAN SEVERAL YEARS LATER THE ACTIONS OF
4 PAI WITH REGARD TO THE TITANIUM COMPANY EMPLOYEES WHEN AN ISSUE
5 ACTUALLY AROSE IN THE UNITED STATES THAT REQUIRED AN AGENT IN
6 THE UNITED STATES.

7 FINALLY, YOUR HONOR, WITH REGARD TO PGSVCT, VGC,
8 SORRY, THE LISTING COMPANY, NUMBER ONE, I WOULD REFER THE COURT
9 TO MR. SZAMOSSZEGI'S DECLARATION WHERE HE DESCRIBES THE ROLE OF
10 LISTED COMPANIES IN CHINESE STATE OWNED ENTERPRISES.

11 AND THE FACT THAT THESE ARE LARGELY CREATED TO BE
12 FUNDING MECHANISM, FINANCING MECHANISMS AND THEY ARE USED BY
13 STATE OWNED ENTERPRISES FOR THAT PURPOSE.

14 THE REASON THAT PGSVCT IS NAMED AS A DEFENDANT HERE IS
15 BECAUSE ITS AGENTS, INCLUDING THE PEOPLE NAMED AND REFERRED TO
16 IN THE INDICTMENT AND WE BELIEVE THE EVIDENCE WILL SHOW, WERE
17 ACTUALLY ENGAGED IN THE CONDUCT.

18 AS TO WHETHER IT CAN BE SERVED THROUGH PAI WE,
19 FRANKLY, YOUR HONOR, HAVE ONE PIECE OF EVIDENCE, AND WE BELIEVE
20 IT'S AN IMPORTANT PIECE OF EVIDENCE, IT IS PGSVCT THAT SETS THE
21 SALARIES FOR THE TWO EXECUTIVE EMPLOYEES, THE INTERCOMPANY
22 TRANSFER EMPLOYEES IN THE UNITED STATES, MR. WONG AND
23 MR. ZHENG.

24 THAT IS SPECIAL AGENT PATTILLO'S DECLARATION AT
25 EXHIBIT H AND REQUIRES JUST A SMALL AMOUNT OF EXPLANATION, YOUR

1 HONOR.

2 IT IS A MEMORANDUM THAT IS WRITTEN BY PANGANG GROUP
3 STEEL TITANIUM COMPANIES HUMAN RESOURCES DEPARTMENT. IT
4 DIRECTS THE INTERNATIONAL, THE PIATC COMPANY TO SET THE
5 SALARIES OF PAI AND THE OTHER FOREIGN SUBSIDIARIES PER CERTAIN
6 FORMULAS THAT ARE DESCRIBED IN THE LETTERS.

7 AND I WOULD SAY THAT IT'S HARD TO POSIT MORE GREATER
8 CONTROL THAN THE CONTROL TO SET THE SALARIES OF THE TWO
9 MANAGERIAL EMPLOYEES OF PAI.

10 SO IT'S NOT A LOT. I WOULD CONCEDE TO YOU WITH REGARD
11 TO PGSVCT, BUT IT ALSO ILLUSTRATES THE RELATIONSHIP BETWEEN
12 THESE COMPANIES THAT GOES BACK TO THE FIRST POINT THAT I MADE.

13 IT'S VERY DIFFICULT TO ARGUE THAT THEY'RE RESPECTING
14 SOME SORT OF VERY LOCK STEP U.S. STYLE CORPORATE FORMALITY WHEN
15 YOU HAVE ONE COMPANY INSTRUCTING ANOTHER COMPANY TO SET THE
16 SALARIES FOR A THIRD COMPANY, TO EMPLOYEES AT THE THIRD COMPANY
17 IN A CERTAIN WAY.

18 SO WE THINK THAT FOR THAT REASON THAT'S ACTUALLY VERY
19 COMPELLING EVIDENCE THAT SUPPORTS BOTH THE DIRECT TIE BETWEEN
20 PAI AND THE LISTING COMPANY, BUT ALSO THE GOVERNMENT'S THEORY
21 THAT SERVICE ON PAI AS THE REPRESENTATIVE OF THE GROUP COMPANY
22 AND ITS ENTITIES IS A VALID INTERPRETATION IN THIS CASE OF RULE
23 4 IN THE GENERAL AGENCY REQUIREMENTS.

24 **THE COURT:** ALL RIGHT.

25 **MR. FELDMAN:** YES, YOUR HONOR. I'M MINDFUL OF THE

1 FACT THAT YOU SET THE AGENDA. I COULDN'T KEEP TRACK OF
2 EVERYTHING MR. MR. HEMANN SAID, SO I'M NOT GOING TO BE ABLE TO
3 RESPOND TO EACH AND EVERY DOCUMENT THAT HE REFERRED TO.

4 I THINK, I COULD BE OF MOST ASSISTANCE TO THE COURT BY
5 SPOTLIGHTING A FEW THINGS THAT WOULD RESPOND GENERICALLY AND A
6 FEW THINGS SPECIFICALLY. IT WILL NOT TAKE ME ANYTHING LIKE THE
7 AMOUNT OF TIME MR. HEMANN WAS FORCED TO USE.

8 **THE COURT:** LET ME JUST -- I WANT TO MENTION ONE THING
9 TO ALL OF YOU BECAUSE IT'S GOING ON 3:30.

10 AS YOU PROBABLY KNOW THERE'S AN INVESTITURE OF A NEW
11 JUDGE DOWN IN OAKLAND THIS AFTERNOON AT 4:30, I HAVE TO LEAVE
12 HERE AT A QUARTER TO 4:00. WE'RE NOT GOING TO FINISH, I TELL
13 YOU RIGHT NOW.

14 SO WE'LL HAVE TO TALK ABOUT WHEN WE CAN CONTINUE THIS,
15 WHETHER IT'S -- I DON'T KNOW WHAT YOUR SCHEDULES ARE TOMORROW,
16 THAT WOULD BE MY INCLINATION.

17 **MR. FELDMAN:** FINE WITH ME.

18 **THE COURT:** TOMORROW MORNING IF YOU'RE AVAILABLE?

19 **MR. FELDMAN:** FINE WITH ME.

20 **MR. HEMANN:** FINE WITH US.

21 **THE COURT:** I DON'T WANT TO UNFAIRLY CUT YOU OFF. I
22 DON'T WANT TO SAY OKAY STOP. YOU DON'T HAVE TO SPEAK QUICKLY
23 BECAUSE THERE'S NOT GOING TO BE ANY BENEFIT TO PRIVACY OR
24 RECENCY, SO MUCH INFORMATION THAT I'LL BE DRIVING TO OAKLAND IN
25 ABOUT 15 MINUTES YOU WON'T BE PREJUDICE BY THAT.

1 **MR. FELDMAN:** HOW ABOUT IF I DO WHAT ONE DOES WITH THE
2 JURY, ALTHOUGH, JUDGE LEGGE ONCE SAID TO ME, MR. FELDMAN, IT'S
3 JUST ME HERE. HOW ABOUT IF I JUST POINT YOU TO ONE THING,
4 WOULD THAT BE OKAY?

5 **THE COURT:** FINE.

6 **MR. FELDMAN:** I WOULD ASK YOU TO LOOK AT AGENT -- DO
7 YOU HAPPEN TO HAVE ALL THAT MASS OF MATERIALS?

8 **THE COURT:** I DO.

9 **MR. FELDMAN:** CAN I IMPOSE UPON YOU TO JOIN ME AT
10 AGENT PATTILLO'S DECLARATION?

11 **THE COURT:** YES.

12 **MR. FELDMAN:** EXHIBIT W, I BELIEVE.

13 **THE COURT:** I HAVE THAT IN FRONT OF ME.

14 **MR. FELDMAN:** THEIR ARE TWO DOCUMENTS THAT'S ATTACHED
15 TO HER DECLARATION, BOTH ARE ENTITLED IN EFFECT AGREEMENT ON
16 ADVANCED DISBURSEMENT.

17 **THE COURT:** YES.

18 **MR. FELDMAN:** AND THEY REFER TO PARTY A AND PARTY B.

19 **THE COURT:** CORRECT.

20 **MR. FELDMAN:** YOU HEARD ABOUT THIS JUST NOW IN MR.
21 HEMANN'S EXCELLENT PRESENTATION.

22 **THE COURT:** RIGHT.

23 **MR. FELDMAN:** AND YOU'VE SEEN REFERENCE TO THIS IN
24 THEIR EXCELLENT MEMORANDUM. THEY JUST GOT IT BACKWARDS,
25 THOUGH. COMPLETELY STONE COLD BACKWARDS.

1 IT WOULDN'T MATTER IF THEY WERE RIGHT, BUT THEY HAPPEN
2 TO BE WRONG. WHAT HAPPENED WAS THAT PANGANG GROUP
3 INTERNATIONAL ECONOMIC AND TRADING CORPORATION SENT MONEY TO
4 PAN AMERICA WHICH PAN AMERICA THAN DISBURSED.

5 PAN AMERICA DID NOT ADVANCE MONEY AND THEN GET
6 REIMBURSED. THE CHINESE ENTITY THAT IS PARTY B SENT MONEY IN
7 ADVANCE TO PAI AND THAT'S EXACTLY WHAT HAPPENED IN JULY AND
8 THAT'S EXACTLY WHAT HAPPENED IN NOVEMBER.

9 SO NOT THAT IT WOULD MATTER IF IT WERE THE OPPOSITE,
10 BUT THEY JUST GOT THIS WRONG. THERE'S A CLAIM IN THE PAPERS
11 THAT SOMEHOW PAN AMERICA WAS DONE OUT OF INTEREST, SO THIS
12 ENTIRE EDIFICE APPEARS ON ONE OF THE DEFENDANTS TO RELATE TO
13 WHO GOT INTEREST OR WHO DIDN'T.

14 THE FACT OF THE MATTER IS THAT MONEY WAS SENT
15 BEFOREHAND AND THEN DISBURSED. IT DOESN'T REALLY MATTER THAT
16 MUCH, BUT THEY JUST GOT THAT WRONG.

17 AND I WOULD -- SO THAT'S ALL I HAVE TO SAY.

18 **MR. HEMANN:** MAY I RESPOND VERY BRIEFLY, YOUR HONOR?

19 **THE COURT:** YES.

20 **MR. HEMANN:** WE DON'T THINK WE'RE WRONG. WE DON'T
21 THINK IT'S IN THE RECORD AND WE THINK THAT MR. WONG BOTH WROTE
22 DOWN IN HIS OWN HAND --

23 **THE COURT:** WHEN YOU SAY DON'T THINK IT'S IN THE
24 RECORD, WHAT?

25 **MR. HEMANN:** THE STATEMENT THAT MR. FELDMAN JUST MADE.

1 **MS. RODDY:** I READ A DOCUMENT.

2 **THE COURT:** HE REFERRED -- WAIT A SECOND, MR. FELDMAN
3 REFERRED ME TO A DOCUMENT, WHICH WE'LL DO WITH ALL THE
4 DOCUMENTS YOU CITED, I WILL READ THAT AND I WILL MAKE MY
5 DETERMINATION.

6 **MR. HEMANN:** FINE.

7 **MR. FELDMAN:** FINALLY, WHEN I RESUME TOMORROW, I WILL
8 ADDRESS THE LEGAL STANDARDS, SO THAT WE'RE CLEAR ABOUT WHAT
9 WE'RE TALKING.

10 **THE COURT:** FAIR ENOUGH. SO WE'RE GOING TO START --
11 WE ARE COMPLETED THROUGH QUESTIONS CONTAINED IN THE PREMISE IN
12 4 AND 4A AND WE'LL START WITH 4B AND WE'LL CONTINUE THROUGH THE
13 END.

14 **MR. HEMANN:** YOUR HONOR, CAN I ASK --

15 **THE COURT:** BEFORE I DO THAT, THOUGH, I SHOULD DO
16 SOMETHING. I'M NOT GOING TO CLOSE YET, WE SHOULD HAVE ASKED
17 YOU FIRST. WE ARE OKAY FOR TOMORROW MORNING?

18 **THE CLERK:** 10:00. IS IT OKAY 9:00 A.M. TO BRING.

19 **MR. FELDMAN:** COULD I ASK MR. LIEW'S PRESENCE BE
20 EXCUSED?

21 **THE COURT:** ALL RIGHT.

22 **MR. FELDMAN:** JUST CLEAR TO THE MARSHALS HE DOESN'T
23 GET HAULED BACK HERE TOMORROW.

24 **THE COURT:** FAIR ENOUGH.

25 **MR. HEMANN:** CAN I ASK FOR CLARIFICATION YOU?

1 **THE COURT:** YES.

2 **MR. HEMANN:** YOU SAID WE'RE GOING TO START WITH 4B
3 TOMORROW, I DON'T THINK THERE'S A 4B.

4 **THE COURT:** THAT'S CORRECT.

5 **MR. HEMANN:** SORT OF IN THE MIDST OF MAYBE 4 RIGHT
6 NOW.

7 **THE COURT:** I'M TAKING NOTES ON MY OWN DOCUMENT. SO
8 WE'RE IN THE MIDST OF 4. YES, WE ARE. ALL RIGHT. I KNOW
9 WHERE WE ARE.

10 **MR. HEMANN:** SO WRAP UP 4 AND GO TO 5?

11 **THE COURT:** JUST A MOMENT. IN LIGHT OF -- I'VE BEEN
12 TOLD THERE ARE OTHER APPOINTMENTS THE COURT HAS TO DEAL WITH,
13 IF YOU CAN GAUGE PAST THIS PROLOGUE HOW MUCH TIME YOU THINK
14 ADDITIONAL YOU'LL NEED?

15 YOU'RE ALL VERY WELL PREPARED AND THE BRIEF IS VERY
16 WELL DONE. I'D LIKE A REALISTIC, I'M NOT GOING TO PUT A
17 DEADLINE ON YOU, BUT I DO NEED TO RESCHEDULE SOME THINGS.

18 **MR. HEMANN:** FROM OUR PART, YOUR HONOR, I WOULD ASSUME
19 THAT MR. FELDMAN IS GOING TO ADDRESS THE LEGAL STANDARDS, WE
20 HAVE SOMETHING TO SAY ABOUT THE LEGAL STANDARDS, I WOULD MAYBE
21 POSIT WE GOT FIVE MINUTES TO SAY ABOUT THE LEGAL STANDARD.

22 I THINK OUR PART WITH REGARD TO 5, NUMBER 5 IS VERY
23 SHORT. AND THEN WITH REGARD TO THE QUESTIONS IN NUMBER 6 I
24 WOULD SAY THAT OUR PART IS VERY SHORT AS WELL.

25 SO OUR I WOULD SAY CERTAINLY FROM OUR PERSPECTIVE

1 SOUTH OF A HALF AN HOUR, 20 MINUTES.

2 **THE COURT:** ALL RIGHT.

3 **MR. FELDMAN:** SAME.

4 **THE COURT:** SO IF WE SAID AN HOUR WE CAN BE PRETTY
5 COMFORTABLE?

6 **MR. FELDMAN:** I WOULD HOPE IT WOULD BE LESS, BUT I
7 WOULD ASK YOUR HONOR TO SET IT FOR AN HOUR AND A HALF.

8 **THE COURT:** WE'LL DO. SO ORDERED. THANK YOU VERY
9 MUCH, COUNSEL. SEE YOU TOMORROW MORNING.

10 **MR. AXELROD:** THANK YOU.

11 **MR. FELDMAN:** THANK YOU.

12

13 (PROCEEDINGS ADJOURNED.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 17TH DAY OF JULY, 2012.

/S/ JAMES YEOMANS

JAMES YEOMANS, CSR, RPR