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IN THE  
**Supreme Court of Virginia**

AT RICHMOND

---

RECORD NO. 920883

---

**MAREFIELD MEADOWS, INC.,**

*Appellant,*

v.

**REGULA LORENZ,**

*Appellee.*

---

**JOINT APPENDIX  
VOLUME I**

---

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*Counsel for Appellee*

*Co-Counsel for Appellee*



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V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

REGULA LORENZ,

Plaintiff

v.

IN CHANCERY NO. CH89-150

MAREFIELD MEADOWS, INC.,  
et al,

Defendants

MOTION UNDER §8.01-271.1

Now come the Defendants and seek relief and appropriate sanctions under §8.01-271.1, Code of Virginia, for the action of Complainant's counsel in signing the Bill of Complaint herein to include a Count seeking punitive damages when the claim for punitive damages is on its face not well grounded in fact or law, and is asserted, on belief, purely as an in terrorem tactic to harass these Defendants.

DEMURRER

Defendants Marion K. Poynter and Maxine A. Mickel, having been sued in their individual capacities, demur to the Bill of Complaint and the Counts thereof and state that they do not set forth a cause of action as to these Defendants in that:

With respect to Count I, this seeks dissolution of a partnership alleged to exist but with respect to which neither of said Defendants is alleged to be a partner.

With respect to Count II, the allegations thereof are insufficient to create a fiduciary duty on the part of individuals owed to Complainant and therefore the pleading is insufficient. No acts in an individual capacity are set forth in said count.

With respect to Count III, the same is wholly deficient in that it alleges certain acts which, even if true, are not alleged to have caused injury to Complainant and without injury resulting in a right to compensatory damage there can be no award of punitive damages. Further Count III is a statement of acts which, if true, constituted a breach of contract, contractual breaches being insufficient to support an award of punitive damages.

With respect to Count IV, the same is deficient as a cause of action since it is nothing more than a discovery request.

With respect to Count V, Defendants state that the allegations thereof do not state a separate cause of action but are repetitious of and subsumed in the allegations of Counts I and II.

These Defendants demur further to each and every Count since each is based upon allegations that an agreement of

partnership existed when in fact Exhibit A is not a partnership agreement in that the parties thereto by its terms do not have equal control and decision making authority and cannot bind the other parties to the actions of the one acting.

ANSWER

Now come the Defendants and for an Answer to the Bill of Complaint filed state:

1. The Defendants deny that the Complainant should have the recovery sought by her in this Bill of Complaint and in each Count thereof.

2. The Defendants Marion K. Poynter and Maxine A. Mickel deny that in their individual capacities they were parties to any agreement with respect to the Complainant, Regula Lorenz.

3. The Defendant Marefield Meadows, Inc., while admitting the existence of the agreement, Exhibit A to the Bill of Complaint, denies that the same constituted an agreement of partnership.

4. The Defendants, and each of them, admit paragraphs 1, 2, 3, 4, and 5 of the general allegations of the Bill of Complaint, except to state that there is a third member of the Board of Directors of Marefield Meadows, Inc.

5. The Defendants, and each of them, deny the allegations of paragraph 6, stating that is the agreement is



between the Complainant and the Defendant, Marefield Meadows, Inc., and that it speaks for itself.

6. The Defendants, and each of them, deny that a partnership exists as alleged in paragraph 7. The other allegations are allegations of law and are not required to be admitted or denied.

7. With respect to paragraphs 8, 9, 10, 11, and 12, the allegations thereof are admitted, except that all allegations respecting "partnership" are denied, and it is further stated that the said agreement speaks for itself and that allegations in conflict therewith are denied.

8. The allegation of joint ownership of paragraph 12 is denied, except as the same is reflected in Exhibit B which speaks for itself.

9. Except with respect to allegations concerning the agreement, improperly characterized as a partnership agreement, and which in fact speaks for itself, paragraphs 13, 15, 17, 18, 19, 20, and 21 are denied.

10. The allegations of paragraph 22 are denied, although Defendants acknowledge having requested of the Complainant that she pay obligations required of her by the said agreement and that they have not accepted payment of less than the full amount called for by said agreement.

11. With respect to Count I, the Defendants deny the allegations of paragraphs 24, 25, 26, and 27, constituting Count I.

12. With respect to Count II, the Defendant deny the allegations of paragraphs 29, 30, 31, 32, 33 and 34, constituting Count II.

13. With respect to Count III, the Defendants deny paragraphs 36, 37, 38, and 39, constituting Count III.

14. With respect to Count IV, the Defendants deny the allegations of paragraph 41 and further deny that there are any partnership records. They are prepared to validate the invoices and bills already furnished to the Complainant with a request for payment and to exhibit the only two stud contracts entered into.

15. The Defendants deny the allegations of paragraph 43 of the Bill of Complaint, constituting Count V.

WHEREFORE, these Defendants request the Court to deny the relief prayed for.

#### COUNTER-CLAIM

The Defendant/Cross-Claimant, Marefield Meadows, Inc., moves the Court for judgment against the Complainant/Cross-Defendant in the sum of FIFTY THREE THOUSAND THREE HUNDRED THIRY THREE DOLLARS AND THIRTY THREE CENTS (\$53,333.33), with interest since March 9, 1989, and expenses incurred

before and after that date and owed by the Counter-Defendant to the Counter-Claimant, for that:

1. Prior to March 9, 1989, the Counter-Claimant was the two-thirds owner of a stallion named "Maronjo" and the Counter-Defendant was a one-third owner.

2. The said stallion was stabled at Marefield Meadows and pursuant to agreement of the parties expenses incurred in the care of said stallion were to be divided between Counter-Claimant and Counter-Defendant in accordance with their respective interests.

3. Although substantial expenses were incurred during that period of time, the outstanding balance of ONE THOUSAND EIGHT HUNDRED FOURTEEN DOLLARS AND SIXTY TWO CENTS (\$1,814.62) owed by the Counter-Defendant as her share has never been paid.

4. On March 9, 1989, Counter-Claimant, Marefield Meadows, Inc., by its agent, accepted an offer theretofore made by the Counter-Defendant to purchase from Counter-Claimant its share in said stallion for the sum of FIFTY THREE THOUSAND THREE HUNDRED THIRTY THREE DOLLARS AND THIRTY THREE CENTS (\$53,333.33).

5. Despite the acceptance of this offer, Counter-Defendant has thereafter and to this date refused to abide by its agreement although often requested to do so and has not paid the corporation for said stallion, although the



Counter-Claimant has at all times stood ready to make delivery to the Counter-Defendant of the stallion upon payment of the consideration.

6. Since the date of the agreement, the Counter-Claimant has incurred additional expenses in the sum of EIGHT THREE DOLLARS AND NINETY ONE CENTS (\$83.91), being a one-third share of the expenses incurred since that date.

WHEREFORE, the Counter-Claimant prays of the Court that the Counter-Defendant be required to abide by her agreement of purchase, and pay the agreed consideration as well as the expenses incurred to the Defendant/Counter-Claimant, Marefield Meadows, Inc., with interest from the date of such acceptance of offer of purchase.

MAREFIELD MEADOWS, INC.,  
MARION K. POYNTER, AND  
MAXINE A. MICKEL

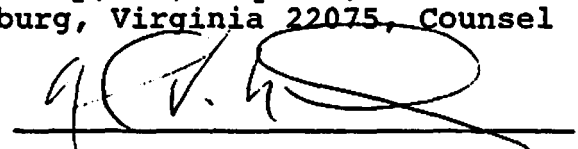
By 

Counsel

Thomas V. Monahan, Esquire  
HALL, MONAHAN, ENGLE, MAHAN & MITCHELL  
9 East Boscawen Street  
P. O. Box 848  
Winchester, Virginia 22601  
Counsel for Defendants

CERTIFICATE

I hereby certify that on this 7th day of June, 1989, a true copy of the foregoing pleadings was mailed or hand-delivered to John P. Flannery, II, Esquire, Shamrock Farm, Route 2, Box 144A, Leesburg, Virginia 22075, Counsel for Complainant.



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V I R G I N I A:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

REGULA LORENZ,  
Plaintiff and  
Third-Party Plaintiff,  
vs.

MAREFIELD MEADOWS, INC.,

MARION K. POYNTER, and

MAXINE A. MICKEL,

Defendants,

HANES, SEVILA, SAUNDERS and  
MCCAHILL

Serve: Registered Agent  
Richard R. Saunders, Jr.  
30 North King St.  
Leesburg, VA. 22075  
(703) 777-5700 22186

BURKE MCCAHILL, ESQ.

Hanes, Sevila, Saunders and  
McCahill  
30 North King St.  
Leesburg, VA. 22075

and

CRAIG WHITE, ESQ.

Hanes, Sevila, Saunders and  
McCahill  
30 North King St.  
Leesburg, VA. 22075

Third-Party Defendants.

IN CHANCERY NO. CH89-1

ANSWER, DEFENSES,  
PLEA IN EQUITY, AND  
CROSS-BILL AGAINST  
THIRD PARTY DEFENDANTS

I. ANSWER TO CROSS-BILL

Comes now Regula Lorenz, plaintiff herein, by undersig  
counsel, and for answer to the counterclaim filed by  
Defendant Marefield Meadows, Inc. ("Marefield Meadows") answ  
and says:

1. Plaintiff Lorenz admits that she jointly owns one-third of Maronjo, a prize-winning Hanoverian stallion, and otherwise denies the allegations of paragraph 1 of the counterclaim.

2. Plaintiff Lorenz admits she owned Maronjo pursuant to a partnership agreement plainly setting forth the duties and obligations of the partners as to expenses incurred for the care of Maronjo and otherwise denies the allegations in paragraph 2 of the counterclaim; as paragraph 2 does not describe what is meant by the term, "respective interests," Plaintiff is otherwise without sufficient information to admit or deny the remainder of said paragraph.

3. Plaintiff lacks sufficient information to admit or deny what expenses were incurred, "substantial" or otherwise, as the partnership's records have been withheld from her and denies the remaining allegations in paragraph 3.

4. Plaintiff denies the allegations in paragraph 4 of the counter-claim.

5. Plaintiff denies the allegations in paragraph 5 of the counter-claim.

6. Plaintiff denies the allegations in paragraph 6 of the counter-claim.

WHEREFORE, your Plaintiff/Counter-Defendant states that she is under no obligation to comply with the agreement as alleged and requests that the counter-claim be dismissed and that she be awarded her costs.



## II. DEFENSES

1. Plaintiff's counsel, the law firm of Hanes, Sev Sanders and McCahill ("the Hanes Sevila firm"), made no offer to buy Maronjo; plaintiff's counsel was instead engaged in ongoing settlement discussions, conducted in writing by correspondence between the parties' respective counsel at all times relevant to Defendant's counter-claim.

2. The writing that Defendant Marefield Meadow alleges "the offer" [White letter, dated February 23, 1989, Exhibit 1, Defendants' Bill of Particulars, dated July 10, 1989] was not an offer as it was inexact and incomplete leaving for further discussion: (a) the purchase price of Maronjo, (b) the allocation of expenses between and among the parties, (c) the distribution of breeding fees including booking fees, (d) breeding rights in Maronjo, and (e) the inspection of the partnership's financial records as they related to Maronjo.

3. The Hanes Sevila firm did not have apparent authority to make an unconditional offer to buy the stallion, Maronjo.

4. Plaintiff never authorized her counsel, the Hanes Sevila firm, or anyone else to make an unconditional offer to buy the stallion, Maronjo.

5. Plaintiff's counsel, the Hanes Sevila firm, advised Defendant Marefield Meadows' counsel that it had no authority to make an unconditional offer to buy the stallion, Maronjo, and no offer was intended by its earlier correspondence of February 23, 1989 [White letter, dated February 23, 1989, Exhibit 1].

Defendants' Bill of Particulars, dated July 10, 1989].

6. Defendants' oral response on March 9, 1989 to the so-called offer of February 23, 1989, constituted a rejection, not an acceptance, as it related only to [a] the purchase price, and did not meet and correspond to each and every one of the remaining terms asserted in the so-called offer, in particular, [b] the allocation of expenses, [c] breeding fees including booking fees, [d] breeding rights, and [e] the inspection of the financial records relating to Maronjo [see paragraph 2, supra]; nor was there any mention of a closing date for said sale.

7. Defendant's "acceptance" was defective as it was oral and not written.

8. Defendants' counsel, Georgia Herbert, forwarded a written "acceptance" after she had been informed orally and in writing that there was no "offer" to accept.

9. Defendants' written "acceptance" [Herbert letter, dated March 17, 1989, Exhibit Two, Defendants' Bill of Particulars, dated July 10, 1989] was also a rejection, not an acceptance as claimed, of the so-called offer because it failed to meet and correspond to the terms of the "offer," indeed introduced new terms and conditions at odds with the "offer" it purported to accept, expressly refusing Lorenz' pro rata payments for expenses, refusing to pay her the booking fees Defendants realized for breeding Maronjo, overlooking the question of the respective parties' breeding rights, unilaterally "agreeing to accept payment from her [Mrs. Lorenz] 60 days from now," and

seeking Plaintiff counsel's "earliest advice regarding setting a date to finalize the sale..." [emphasis supplied].

10. Defendant Marefield Meadows had no "agreement" as parties contemplated that any tentative agreement by and between counsel for the parties was subject to approval by the respective clients.

11. Defendant had no "agreement" as the parties contemplated that any agreement would be reduced to writing.

12. Any "agreement" arrived at by fraud, as here, is binding on the parties.

### III. PLEAS IN EQUITY

1. The Hanes Sevila firm did not have apparent authority to make the unconditional offer alleged in Defendant's counterclaim.

2. The Hanes Sevila firm did not have authority to make an unconditional offer alleged in Defendant's counter-claim.

### IV. CROSS-BILL

Comes now Plaintiff/Counterclaim-Defendant, Mrs. REBECCA LORENZ, by undersigned counsel, and sets forth the following in her cross-bill against third party defendants BURKE MCCAHILL, Esq. ("McCahill"), CRAIG WHITE, Esq. ("White"), and HANES, SEVILA, SAUNDERS and MCCAHILL ("the Hanes Sevila firm"):

1. Mr. McCahill is a member of the Hanes Sevila firm located in Leesburg, Virginia and was the partner retained by Mrs. Lorenz to represent her in her dispute with Defendant



Marefield Meadows, Inc.

2. Mr. White is an associate of the Hanes Sevila firm and was assigned by the Hanes Sevila firm to assist Mr. McCahill in his representation of Mrs. Lorenz.

3. Defendant Marefield Meadows, Inc. has filed a counter-claim against Plaintiff Lorenz claiming to have accepted an offer made by the Hanes Sevila firm on her behalf that, it is charged, entitles Defendant Marefield Meadows, Inc. to a \$53,333.33 payment from Mrs. Lorenz for the purchase of the prize-winning Hanoverian stallion, Maronjo, plus interest on the purchase price, and enumerated expenses relating to Maronjo.

4. Mrs. Lorenz never authorized Mr. McCahill, Mr. White or the Hanes Sevila firm to make the unconditional offer to buy that Marefield Meadows Inc. charges the third-party defendants did make.

5. Mr. McCahill, Mr. White and the Hanes Sevila firm have plainly stated to Defendant Marefield Meadows that Mrs. Lorenz did not authorize them to make the offer alleged in the counter-claim and so this offer, if indeed it was one, was made without Mrs. Lorenz's authority.

6. Mr. McCahill, Mr. White and the Hanes Sevila firm stated they did not intend to make an offer and so this offer, if it was one, was negligently made, that is, the third party defendants failed to exercise a reasonable degree of care in the performance of their duties.

7. Mr. McCahill, Mr. White and the Hanes Sevila firm did

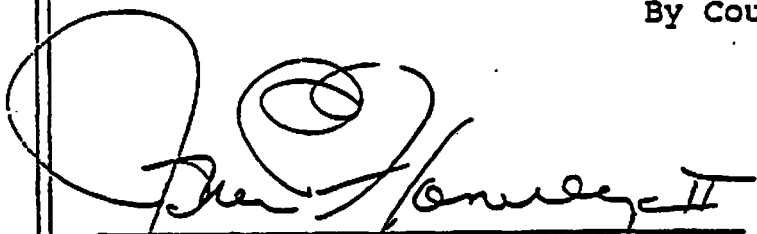
contract to represent Mrs. Lorenz's position in any negotiation with Defendant Marefield Meadows, Inc., and this offer, if it was one, did breach third party defendants' contractual obligation to represent Mrs. Lorenz faithfully.

8. The third-party defendants are, or may be, liable to Mrs. Lorenz or to Marefield Meadows Inc. for Marefield Meadows' conduct against her.

WHEREFORE, Mrs. Regula Lorenz, plaintiff and third-party plaintiff herein, prays of this Court that the third party defendants be required to indemnify Mrs. Lorenz for any judgment which may be entered against her in this suit at equity and for any damages which she may suffer as a result thereof and for court costs and attorney's fees in the defense of this claim.

Respectfully submitted,

REGULA LORENZ  
By Counsel



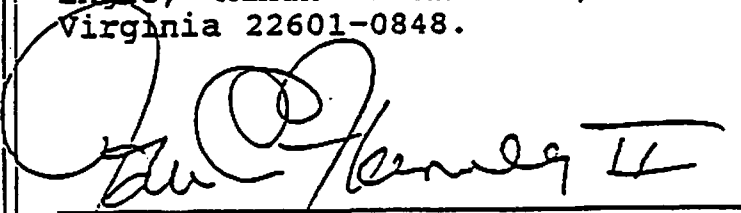
JOHN P. FLANNERY, II, Esq.  
Shamrock Farm  
Route 2, Box 144A  
Leesburg, Virginia 22901  
(703) 338-7248

Counsel for Plaintiff

August 29, 1977

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 1989, I caused one copy of the foregoing pleadings to be mailed by first class mail, postage pre-paid to Thomas V. Monahan, Esq., of Hall, Monahan, Engle, Mahan & Mitchell, Post Office Box 848, Winchester, Virginia 22601-0848.



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JOHN P. FLANNERY, ESQ.  
Route 2, Box 144A  
Leesburg, Virginia 22075  
(703) 338-7248

Counsel for Plaintiff Lorenz

V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

REGULA LORENZ,

Plaintiff,

vs.

IN CHANCERY NO. CH89-150

MAREFIELD MEADOWS, INC.,  
et al,

Defendants

MOTION FOR APPOINTMENT OF RECEIVER

Now come the Defendants in the above cause and move the Court for the appointment of a receiver to take possession of the stallion, Maronjo, provide for his care and maintenance, and see that he is properly trained and sold for his fair value, as determined at the time of sale, for the reasons that:

1) In the initial Bill filed in this cause by the Complainant, the Complainant asked for the appointment of a receiver but has never sought such appointment from the Court.

2) While it initially appeared that the disposition of this case could occur promptly, efforts on the part of the Defendants to conclude discovery have been frustrated

and the trial date has accordingly had to be postponed to an indefinite time.

3) Efforts on the part of the Defendants to obtain proper training and exercise for the stallion, Maronjo, have been frustrated by lack of cooperation on the part of Complainant.

4) The Complainant has made unfounded judicial and public accusations of continuing improper utilization of the stallion, Maronjo, by the Defendants when in fact the Defendants have complied in every respect with the initial agreement of the parties.

5) Complainant and her counsel have contended in Court and to print media that continued litigation is detrimental to the interests of the parties in that the value of the stallion, Maronjo, is deteriorating and accordingly it is believed proper to take those steps necessary to an early sale.

6) Defendants have offered to the Complainant to accomplish a present sale by agreement of the parties for all of the foregoing reasons and in order to establish the damages in this case but the Complainant has refused to agree to such sale and accordingly that the Court direct sale by a receiver is believed appropriate.

NOTICE

TAKE NOTICE that the Defendants, upon the next appearance of the parties before the Court, will ask the Court to rule on the above motion.

MAREFIELD MEADOWS, INC.,  
MARION K. POYNTER, and  
MAXINE A. MICKEL

By \_\_\_\_\_  
Counsel

Thomas V. Monahan, Esquire  
Hall, Monahan, Engle, Mahan & Mitchell  
9 East Boscawen Street  
P. O. Box 848  
Winchester, Virginia 22601  
Counsel for Defendants

CERTIFICATE

I hereby certify that on this 3rd day of November, 1989, a true copy of the foregoing Motion and Notice was mailed to John P. Flannery, II, Esquire, Shamrock Farm, Rt. 2, Box 144A, Leesburg, Virginia 22075, counsel for Plaintiff, and to William D. Cremins, Esquire, CREWS & HANCOCK, Suite 300, 3050 Chain Bridge Road, Fairfax, Virginia 22030, Counsel for Defendants, Hanes, Sevilla, Saunders and McCahill, Burke McCahill and Craig White.

\_\_\_\_\_

V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

REGULA LORENZ,

Plaintiff,

vs.

IN CHANCERY NO. CH89-150

MAREFIELD MEADOWS, INC.,  
et al,

Defendants

DECREE APPOINTMENT RECEIVER

The 24th day of January, 1990, came the parties in the cause in person and by counsel upon the motion of the Defendants seeking the appointment of a special receiver of the stallion Maronjo. The Court being satisfied from the pleadings and evidence taken that a proper case for the appointment of a receiver has been shown, it is hereby ORDERED and DECREED that And Zathu be and he is hereby appointed a special receiver for the stallion Maronjo for the following purposes:

1. To take the same into his physical possession and preserve the same.
2. To provide for the proper exercise and training of the same.



But before said special receiver shall act under this Decree he shall give bond with sufficient security to be approved by the Clerk of this Court in the penalty of 1000<sup>00</sup>, conditioned upon his faithful performance of his duties as such receiver.

The cost of such bond, if any, and the reasonable compensation of such special receiver shall be taxed as

costs in this proceeding. *as a sum due by the parties Plaintiff & Defendant to be paid on a monthly basis by the receiver*  
ENTER this 24<sup>th</sup> day of January, 1990.

[Signature]  
Judge

SEEN

[Signature]  
Thomas V. Monahan, Esquire  
Counsel for Defendants

[Signature] Objected  
John P. Flannery, II, Esquire  
Counsel for Plaintiff

[Signature]  
William D. Cremins, Esquire  
Counsel for Defendants, Hanes,  
Sevila, Saunders and McCahill,  
Burke McCahill and Craig White

A COPY TESTE: H. L. PEARSON, CLERK

BY [Signature] DEPUTY CLERK

FAUQUIER COUNTY CIRCUIT COURT, VA.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

REGULA LORENZ,

Plaintiff and  
Third-Party Plaintiff,

vs.

IN CHANCERY NO. CH89-150

MAREFIELD MEADOWS, INC.,  
MARION K. POYNTER, and  
MAXINE A. MICKEL,

Defendants

HANES, SEVILA, SAUNDERS &  
McCAHILL  
BURKE F. McCAHILL, ESQ., and  
CRAIG E. WHITE, ESQ.,

Third-Party Defendants.

DECREE

The 13th day of March, 1990, came the parties in the above cause, to include the Plaintiff, the Defendant, and the Defendant to the Cross-Claim, each by counsel, upon five (5) separate Praecipes filed in this cause.

It being considered by the Court that argument in this cause in order to dispose of the pending matters will occupy a considerably greater amount of time than is available on the Motions Day, it was and is ADJUDGED and ORDERED that this cause be set for hearing at 2:30 p.m. on the 2nd day May, 1990, the Court then sitting in Warrenton and allocating for the hearing two (2) hours.

The matters to be heard on that date are as follows:

1. The Motion of the Plaintiff to reconsider and vacate the previous Decree of this Court appointing a receiver.
2. The Motion of the Defendant, Marefield Meadows, Inc., that it be permitted to file its Bill of Complaint against the Cross-Defendant, Hanes, Sevilla, Saunders & McCahill, et al.
3. The Motion of the Plaintiff, Mrs. Regula Lorenz, that she be permitted to amend her Bill of Complaint against the Cross-Defendant, Hanes, Sevilla, Saunders & McCahill, et al.
4. The Motion of the Defendant that there be a cutoff for discovery in this cause and further that the matter be set for trial.
5. The Motion of the Third Party Defendants for Clarification of the Order Granting Severance.
6. The Motion of the Third Party Defendants to bifurcate the trial, so as to consider initially the legal effect of a certain letter from Craig E. White, counsel for Regular Lorenz, to Georgia A. Herbert, counsel for Marefield Meadows.

THEREUPON, the parties advised the Court that they had agreed upon a sale of the Stallion Maronjo which was the subject of the previous Decree of this Court appointing a

receiver but as to which the receiver had not yet qualified. The sale, as agreed, is to be by the consignment of the Stallion Maronjo by both Plaintiff and Defendants to a disbursal sale in the State of California to occur on April 29, 1990. The parties agree that they will advance the costs of transportation, insurance, and other necessary expenses for the preparation and appearance of the horse at the sale, to be divided one-third (1/3) paid by the Plaintiff, two-thirds (2/3) paid by the Defendant, Marefield Meadows, Inc., the total sum to be paid to Jeff Marsh, the agent selected to make the sale, who shall make all necessary arrangements. The horse will be placed in the auction to occur on that date with a reserve price of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00), subject to change by telephone communication should the bid not reach FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) and the communication by telephone to occur to both the Plaintiff and Marion Poynter or Maxine Mickel as representative of Marefield Meadows, Inc. and to be placed by Jeff Marsh before finalizing sale. If a price of FORTY-FIVE THOUSAND DOLLARS (\$45,000.00) or more is not received for the stallion, and if the parties do not agree at that time to accept such lower bid as is received, then the parties will decide whether to leave the horse on the West Coast in hopes of private sale or to return him to Virginia, the expenses

of return to be borne in the same proportional fashion as described above. In the event that the horse does sell, then it is further agreed that the expenses will first be taken out of the sales price and returned to the parties. The sales commission and consignment fee will then be paid to Jeff Marsh. The net figure from the sale will be divided in half and one-half (1/2) will be divided one-third (1/3) to the Plaintiff, two-thirds (2/3) to the Defendant, while the remaining half will be paid to the Clerk of this Court to be held <sup>\* in a non-interest bearing account</sup> and ultimately distributed in accordance with the final decision in the case. The Court finds the decision of the parties as to the disposition of the Stallion Maronjo to be appropriate under the circumstances.

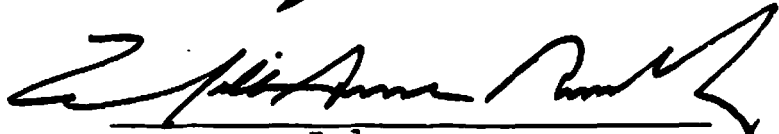
In view of the scheduling of a pretrial conference for May 2, 1990, subsequent to the sale of the Stallion Maronjo, depositions presently scheduled for March 20 and March 21, 1990 are continued to May 14 and May 15, 1990, the deposition of Maxine Mickel and that Christoph Lorenz to be taken beginning at 10:00 o'clock on May 14, 1990 at the office of counsel for the Plaintiff and the deposition of Regula Lorenz to be taken beginning at 10:00 o'clock on May 15, 1990 at the office of counsel for the Defendants.

And this matter is continued to May 2, 1990 at 2:30


ALL, MONAHAN, ENGLE  
MAHAN & MITCHELL  
ATTORNEYS AT LAW  
LEESBURG, VIRGINIA  
WINCHESTER, VIRGINIA


p.m.

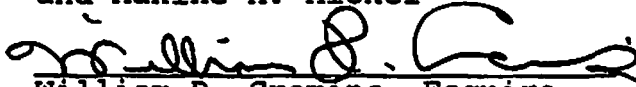
ENTER this 13<sup>th</sup> day of April, <sup>1990</sup>~~1989~~.

  
Judge

SEEN:

  
John P. Flannery, II, Esquire  
Counsel for Plaintiff  
and Third-Party Plaintiff

  
Thomas V. Monahan, Esquire  
Counsel for Defendants, Marefield  
Meadows, Inc., Marion K. Poynter,  
and Maxine A. Mickel

  
William D. Cremins, Esquire  
Counsel for Third-Party Defendants,  
Hanes, Sevila, Saunders & McCahill,  
Burke F. McCahill, and Craig E.  
White

copy to: Flannery II  
Monahan  
Cremins  
4-17-90

Entered April 13, 1990

# TRANSCRIPT OF PROCEEDINGS

**FILED** NOV 2 1990

VIRGINIA:

In the Circuit Court for Fauquier County

Regula Lorenz,

Plaintiff,

v.

Chancery No. CH-89-150

Marefield Meadows, Inc., et al,  
Defendants.

~~~~~  
The TRIAL held in the above-styled matter in the Circuit Court for Fauquier County, in the Courthouse thereof, Warrenton, Virginia, before the Honorable James A. Jamison, Judge of said Court, on the 19th and 20th of November, 1990, beginning at 10:00 o'clock a.m.

## A P P E A R A N C E S

### On Behalf of the Plaintiff:

John P. Flannery, II, Esquire

### On Behalf of the Defendant, Marefield Meadows, Inc.:

Thomas V. Monahan, Esquire  
HALL, MONAHAN, ENGLE, MAHAN & MITCHELL

Michael McGettigan, Esquire  
MURPHY, McGETTIGAN & WEST, P.C.

### On Behalf of the Defendants, Burke F. McCahill, Craig E. White, and the Law Firm of HANES, SEVILA, SAUNDERS & McCAHILL:

William D. Cremins, Esquire  
WA .SH & CREMINS, P.C.  
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EXHIBIT      DESCRIPTION      IDENTIFICATION      EVIDENCE

Plaintiff #8      Handwritten Document

dated July 10      186      187

Plaintiff #9      Handwritten Document

dated July 23      186      187

Plaintiff #10      Accounting owed by

Lorenz to Marefield

Meadows      93

Plaintiff #11      Letter from

Mr. Monahan      231      231

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Cross-Defendant

#1      Letter to Lorenz      405      405

Cross-Defendant

#2      Letter of Resignation

Lorenz from Mickle

dated 1/21/87      410      410

Cross-Defendant

#3      Letter from Poynter

to Lorenz dated

11/10/88      413      413

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I N D E XNovember 19, 1991EXHIBIT      DESCRIPTION      IDENTIFICATION      EVIDENCE

Cross-Defendant

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| #4 | Letter from Lorenz |     |     |
|    | to Poynter         | 416 | 416 |

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| #5 | Letter from Poynter |     |     |
|    | to Lorenz           | 421 | 421 |

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|     |              |     |  |
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| #10 | Veterinarian |     |  |
|     | Report       | 317 |  |

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|     |                       |     |     |
|-----|-----------------------|-----|-----|
| #11 | Contract of Sale for  |     |     |
|     | Moronjo from November |     |     |
|     | Hill to Marefield     |     |     |
|     | Meadows               | 324 | 326 |

Cross-Defendant

|     |                      |     |     |
|-----|----------------------|-----|-----|
| #12 | Letter to Elgin from |     |     |
|     | to Mickle            | 368 | 370 |

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EXHIBIT      DESCRIPTION      IDENTIFICATION      EVIDENCE

Cross-Defendant

#13                      Proposed Copy

Attachment to Letter to

Elgin from Mickle      368                      370

Cross-Defendant

#14                      Videotape                      376

Cross-Defendant

#15                      Postcard                      417 Withdrawn 420

Cross-Defendant

#16                      Letter to McCahill

from Lorenz                      427                      429

Cross-Defendant

#17                      Letter to White

from Lorenz

dated 2/1/89                      431                      434

Cross-Defendant

#18                      Letter to White

from Lorenz

dated 3/21                      455                      457

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November 19, 1991

EXHIBIT      DESCRIPTION      IDENTIFICATION      EVIDENCE

Cross-Defendant

#19                      Copy of Letter dated  
March 26, 1989              459

Cross-Defendant

#20                      Copy of Letter dated  
4/26/89                      459

Cross-Defendant

#21                      Letter dated  
5/8/89                      464

Cross-Defendant

#22                      Letter dated  
7/17/89                      464

Cross-Defendant

#23                      Letter dated  
7/25/89                      464

Cross-Defendant

#24                      Letter dated  
12/8/89                      464

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| <u>EXHIBIT</u> | <u>DESCRIPTION</u> | <u>IDENTIFICATION</u> | <u>EVIDENCE</u> |
|----------------|--------------------|-----------------------|-----------------|
|----------------|--------------------|-----------------------|-----------------|

|  |                 |  |  |
|--|-----------------|--|--|
|  | Cross-Defendant |  |  |
|--|-----------------|--|--|

|    |              |  |  |
|----|--------------|--|--|
| 25 | Letter dated |  |  |
|----|--------------|--|--|

|  |          |     |  |
|--|----------|-----|--|
|  | 12/11/89 | 464 |  |
|--|----------|-----|--|

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1 TRIAL

2 November 19, 1990

3 THE CLERK: The Circuit  
4 Court of Fauquier County is now in session. The  
5 Honorable Judge John A. Jamison is presiding. Be  
6 seated, please, and come to order.

7 MR. MONAHAN: Your  
8 Honor, before we begin I would like to introduce Mr.  
9 Michael McGettigan who will be working with me during  
10 this case.

11 THE COURT: All right, sir,  
12 glad to have you with us, sir. Would you spell your name  
13 for the Clerk, please, sir?

14 MR. McGETTIGAN: M-C-G-E  
15 T-T-I-G-A-N. Thank you, Your Honor.

16 THE COURT: All right, sir,  
17 you're welcome.

18 THE CLERK: The case of  
19 Regula Lorenz versus Marefield Meadows, Incorporated.  
20 And I just don't have the list of all the attorneys.

21 THE COURT: All right. I  
22 think I have seen it.

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1 All right, gentlemen, anything you would like to  
2 take up before we begin the evidence?

3 MR. MONAHAN: Your  
4 Honor, I would ask the Court's indulgence. In reading  
5 the Pleadings last night, I noticed that in one or two  
6 places there was an allegation that the sale of offer was  
7 made on February 28th. That was a typographical error,  
8 I'm sure.

9 The offer was, in fact, February 23 and I would  
10 move that that amendment be permitted to the Pleadings.

11 THE COURT: If there is no  
12 objection, that will be done.

13 All right, anything further? If not, Mr. Flannery  
14 would you care to proceed?

15 MR. FLANNERY: Your  
16 Honor, there is one matter. As I understand it Marefield  
17 Meadows will be proceeding, is that correct? And it  
18 would be helpful, as several witnesses have been  
19 subpoenaed, if we had some idea of what we were  
20 expecting by way of time because I would ask for a rule  
21 to apply for witnesses and don't want to necessarily just  
22 keep a witness sitting in a room if we can predict, with

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1 lawyer's precision in this thing, when they might be  
2 expected to be required to appear.

3 THE COURT: Well, how  
4 many witnesses do you have in that category?

5 MR. FLANNERY: Well, at  
6 least several who, I believe, are here. And I see several  
7 witnesses that apparently Mr. Monahan has subpoenaed  
8 and Mr. Cremins have subpoenaed.

9 MR. CREMINS: There are a  
10 couple in the witness room, Your Honor, that are not  
11 going to be on until our part of this case and that's going  
12 to be after Mr. Monahan.

13 THE COURT: Well, it  
14 wouldn't seem that we would need to keep your  
15 witnesses here this morning, to wait for that. That's...

16 MR. CREMINS: It wouldn't  
17 seem so, Judge, but I don't like to be presumptuous and  
18 just tell witnesses when they can come. I don't know  
19 whether Mr. Monahan expects to take just the morning or  
20 a whole day or a day and a half or what.

21 THE COURT: Well, can you  
22 help us on that, Mr. Monahan?

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1                   **MR. MONAHAN:** Well, yes,  
2     sir. I think in our view, the case boils down to such a  
3     simple case that I expect my case in chief to take not  
4     more than about an hour and a half to two hours,  
5     depending on whether or not the Court indulges cross  
6     examination outside the scope of the direct or whether it  
7     is limited to the direct, Your Honor.

8                   **THE COURT:** Well, Mr.  
9     Cremins, it would seem that if it would be helpful to your  
10    witnesses, and the rule has been moved for, I suppose  
11    maybe this afternoon, say after lunch, 2:00 o'clock.

12                   **MR. CREMINS:**       2:00  
13    o'clock?

14                   **THE COURT:** If that would  
15    be helpful to them. That would mean that they could  
16    have three hours or four, maybe...yes, three.

17                   **MR. MONAHAN:** With all  
18    due respect, Your Honor, I don't think we're going to go  
19    until 2:00 o'clock.

20                   **THE COURT:** You don't?  
21    Well, we certainly want...

22                   **MR. MONAHAN:** I don't

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1 know who Mr. Cremins' witnesses are in that room, but  
2 my case in chief will not take until the 1:00 o'clock lunch  
3 hour.

4 THE COURT: Let's be on  
5 the safe side. Tell them to...

6 MR. MONAHAN: I think  
7 1:00 o'clock will be...

8 THE COURT: We will  
9 probably go to lunch at, say 12:30, and if they got back  
10 by 1:30, that ought to do it.

11 All right, sir. Now, Mr. Flannery, as to your  
12 question, since you are going on first...

13 MR. MONAHAN: Your  
14 Honor, may I point out, Mr. Flannery has nonsuited all of  
15 his case. Therefore, the only pending case at this point  
16 is the cross-claim which has to do with whether or not  
17 there was a contract of sale. My case, I assume  
18 therefore, is the one that will go on initially.

19 THE COURT: All right.

20 MR. MONAHAN: The burden  
21 of proof will be on me to establish the contract. But as  
22 far as the original 25 page total Complaint, that's been

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1 nonsuited in its entirety.

2 THE COURT: Well, that's all  
3 right. I assume that the other attorneys agree with that?

4 MR. FLANNERY: That's  
5 correct, Your Honor. We do believe that it is his burden  
6 to go forward at this point.

7 Do you want to give us a chance to advise the  
8 witnesses when they may return and to have these  
9 witnesses be identified and...

10 THE COURT: Let's have  
11 them identified and sworn in.

12 THE CLERK: If all the  
13 witnesses who will testify will come down here, please.  
14 (WHEREUPON, the witnesses were duly sworn by the  
15 Clerk.)

16 THE CLERK: If you will go  
17 with the Deputy he can show you where to go.

18 THE COURT: Mr. Cremins,  
19 did you want to tell your witnesses when to come back.  
20 And in view of Mr. Monahan's very optimistic view here,  
21 it may be that 1:00 o'clock would be a better time.

22 MR. CREMINS: 1:00

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1 o'clock?

2 THE COURT: Yes, just so  
3 they will be back in plenty of time. I think 1:00 o'clock  
4 probably would be better.

5 MR. CREMINS: Would you  
6 give me 30 seconds to do that?

7 THE COURT: Sure.

8 MR. CREMINS: Thank you.

9 THE COURT: Now, you  
10 better tell your witnesses not to go away. I didn't want  
11 everybody to think...

12 MR. FLANNERY: Thank you,  
13 Your Honor.

14 THE COURT: You're  
15 welcome. All right, Mr. Monahan, if you would like to  
16 make a very brief opening statement, not as though we  
17 had a jury here, but just what you expect to go forward  
18 with by way of proof.

19 MR. MONAHAN: I  
20 appreciate the opportunity, Your Honor.

21 THE COURT: Yes, sir.

22 MR. MONAHAN: Well, Your

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1 Honor, as I have indicated, I think this case at this point  
2 involves simply a contract or a purported contract for the  
3 purchase of a horse. The horse's identity is a stallion  
4 known as Moronjo or Moronjo. I'm still, after two years,  
5 I'm not quite sure whether the J is silent or not.

6 But you will hear that name repeatedly and that  
7 will refer to the gray stallion, Hanoverian stallion, which  
8 was the initial purchase under a venture contract in  
9 which Mrs. Lorenz acquired a one-third interest in the  
10 horse and Marefield Meadows...

11 THE COURT: Now, that's  
12 the contract, the one that's an exhibit to the original Bill  
13 of Complaint?

14 MR. MONAHAN: That is the  
15 only formal contract.

16 THE COURT: Yes, the only  
17 one in writing. It's attached here, that just happens to  
18 be where it is, it's a attached to the Bill. All right, I'll  
19 get that out, go right ahead.

20 MR. MONAHAN: I don't  
21 think there is any issue as to the existence of that  
22 contract and the division of ownership which resulted.

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1           The evidence will further indicate...and as I  
2 say, I think this is a very simple case...that in February,  
3 February 23 to be exact, 1989, Craig White, who was  
4 then representing Mrs. Lorenz, communicated by letter to  
5 Georgia Herbert, who was then representing Marefield  
6 Meadows, the owner of the two-thirds interest.

7           The writing contained very simply an offer  
8 which was designed to terminate the effective  
9 ownerships of the parties in the stallion and it was quite  
10 simply written stating, if you want to buy my client's  
11 interest I'll sell it...or she will sell it for \$26,666.

12           On the other hand, if you don't want to buy her  
13 interest, she will buy the interest of your clients for  
14 twice that figure since it's two-thirds, at \$53,333.33.

15           There were no qualifications, we submit, in the  
16 letter and we submit that the letter is a written offer  
17 which speaks for itself.

18           At that point there had been no conversation as  
19 to the letter arriving, although Mrs. Herbert had asked  
20 that whatever his proposal was it be put in writing.

21           Relying upon the letter my client, Marefield  
22 Meadows, advised its attorney to accept the offer. The

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1 offer was accepted. Unfortunately, this \$53,333.33 was  
2 never paid and that's the genesis of this lawsuit.

3 There are two other items of damages claimed  
4 at this point against Mrs. Lorenz. One is in the sum of  
5 \$2,051.38 which is one-third of expenses with respect to  
6 the stallion until the date March 6th, 1989.

7 THE COURT: And that  
8 figure once more, please, two thousand what?

9 MR. MONAHAN: Two  
10 thousand...may I do this, Your Honor, I'll simply provide  
11 the letter for you.

12 THE COURT: All right.

13 MR. CREMINS: Do you have  
14 a copy for me?

15 MR. MONAHAN: I  
16 apologize, Mr. Cremins. The figure that I have just given  
17 is the \$2,051.38 figure.

18 THE COURT: Yes.

19 MR. MONAHAN: This is  
20 arrived at based upon expenses occurred prior to March  
21 6th, 1989 and is computed based upon the formula set  
22 forth in the agreement of that date, of the earlier date.

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1           In addition, since March 6th, 1989, there is an  
2 accumulated figure of \$1,493.37. This figure is arrived  
3 at by tabulating the expenses since that date incurred on  
4 behalf of the stallion, Moronjo, and giving credit for  
5 three stud fees that were earned by the horse during the  
6 same period and have been credited in accordance with  
7 the ratio one-third, two-thirds, as have the expenses.  
8 Accordingly, the total amount sued for is \$27,147.75 at  
9 this point.

10           Now, as I say, we believe that this case boils  
11 down to, was there a written offer, did the written offer  
12 constitute an acceptable document and was there an  
13 acceptance.

14           We believe the evidence will show that there  
15 were no qualifications, there were no limitations, there  
16 were no equivocations.

17           There is an additional issue, of course, in this  
18 case which has developed since the suit was filed in that  
19 when the cross-claim or counterclaim was filed, it was a  
20 suit simply on the contract against the other owner,  
21 Regula Lorenz, on whose behalf an offer to purchase had  
22 been made.

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1           Subsequent to that time, both Mrs. Lorenz and  
2           Mr. White claimed that Mrs. Lorenz is not bound because  
3           Mr. White exceeded his authority in extending that offer.

4           We take the position quite frankly, Your Honor,  
5           that Mr. White had the apparent authority to accept, we  
6           relied on that...excuse me...the apparent authority to  
7           make the offer which was accepted, that Mrs. Lorenz is  
8           bound by the conduct of her agent within his apparent  
9           authority but, if not, then this Court should award  
10          judgment against Mr. White and his law firm for the  
11          amount which was extended.

12          I will say at this point that it seems to me,  
13          based upon the subsequent discovery, that the direct  
14          person responsible, if there was no agency, is Mr. White  
15          and that the firm is responsible on the doctrine of  
16          respondeat superior.

17          Although Mr. McCahill was named, I am  
18          prepared to dismiss him individually as opposed to his  
19          partnership responsibility since I don't think he  
20          participated in the negotiations or rather that he did not  
21          participate in the misstatement, if it occurred, as to  
22          agency.

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1           That basically is the case, it seems to me. We  
2 intend to show the damages to the contract price. I  
3 should call to Your Honor's attention that last April on  
4 the record as a part of an Order entered by the Court the  
5 horse has since been sold.

6           He was sold by an agreement arrived at  
7 between all counsel and their respective clients. He was  
8 shipped to California in the care of an agent, Jeff Marsh.  
9 Mr. Marsh, in accordance with the agreement, sold the  
10 horse at a substantial price, commissions were paid.

11           Mr. Marsh made, again according to the  
12 agreement among counsel, a distribution of the proceeds  
13 to the extent of one-half. That's why you will notice on  
14 the document that I gave you simply for your assistance,  
15 that there are two items under the agreed sale price.

16           The sale price was \$53,333.33. That was the  
17 gross price, not the net price. Mr. Marsh has on hand...  
18 excuse me...has distributed to Marefield Meadows  
19 \$15,066.66. He holds on hand a sum which will net a  
20 further \$14,663.67, depending upon to whom it goes.

21           We have computed that based upon, again, the  
22 two-thirds balance of ownership which was the manner in

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1 which the distribution occurred with respect to the sale  
2 price to date.

3 I submit, Your Honor, that the evidence will be  
4 clear that there was a contract. The evidence, although  
5 we have had extensive discovery and gone far afield, this  
6 is a simple case. We believe that it should be limited to  
7 the evidence with respect to the actual written contract  
8 and its acceptance...excuse me...the written offer and  
9 its acceptance.

10 This Court should not be misled into attempting  
11 a lot of testimony with respect to the relationships of the  
12 parties in their joint venture. That is not what is before  
13 the Court at this time.

14 THE COURT: All right, sir.

15 MR. FLANNERY: Thank you,  
16 Your Honor. On behalf of Mrs. Lorenz, let me state the  
17 following which I believe is a fair, although brief, outline  
18 of what I think even the witnesses that Marefield  
19 Meadows will present will state.

20 Mrs. Lorenz resigned from the partnership in  
21 the latter part of 1988. By the terms of their written  
22 partnership agreement, notice of resignation constitutes

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1 notice to sell the horse.

2 And, in fact, she expressly stated to Marefield  
3 Meadows, that is Marion Poynter and Maxine Mickle, the  
4 other two-thirds of the partnership, that she wanted them  
5 either to buy her share or to present the horse for public  
6 auction or sale in accordance with the agreement.

7 So the clock began running, the 60 day clock,  
8 in the latter part of 1988. Two-thirds of the partnership  
9 had always been interested in Moronjo for his breeding  
10 ability. He's an exceptional horse and he was submitted  
11 to special testing to make him an especially valuable sire.

12 He not only has performance ability, that is  
13 how he would appear in the arena in dressage or jumping  
14 and the like, but he also has structurally what they call  
15 conformance. He has bone structure that suggests will  
16 carry over into the breeding, into the foals.

17 Marefield Meadows was interested in breeding  
18 and Mrs. Lorenz whose background and experience is in  
19 training and performance. So, thus, was the partnership  
20 developed. She was interested in performance, they  
21 were interested in breeding.

22 Now, although Mrs. Poynter responded they

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1 would promptly arrange for the public sale, they ignored  
2 Mrs. Lorenz's beseeching request, let's do something,  
3 from November through January. On four separate  
4 occasions, it will show, she was saying, do something,  
5 do something.

6 Unbeknownst to her, they intended to go  
7 forward with the breeding, no matter what, because that  
8 was their preeminent interest. And if they owned the  
9 stallion and continued it, terrific, but if it had to go to  
10 public sale...which were the only two choices they were  
11 considering...then they wanted to at least have finished  
12 their breeding on a contract they hoped to get and their  
13 own mares.

14 In January of 1989, they advertised the horse,  
15 that is the stallion, as if it was their own. That was  
16 another breach of the contract.

17 The first breach was that they did nothing by  
18 way of arrangement of a public sale. The second breach  
19 is that they advertised the stallion as if it was their own.

20 Mrs. Poynter wrote a letter to Mrs. Lorenz as if  
21 she was unaware of the refused request she had  
22 received. In fact, she even destroyed the letter Mrs.

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1 Lorenz wrote her in which she first resigned and asked to  
2 sell the horse.

3 In a nutshell, they wanted to breed, no matter  
4 what. And if it was going to go to public sale, then they  
5 wanted to make that they had the stallion through the  
6 breeding season which is generally the end of June with  
7 warm blood, which is what this is, it could be later.

8 Mrs. Lorenz turned to counsel, that is to Mr.  
9 McCahill and Mr. White to represent her because she  
10 wasn't getting anywhere. Marefield Meadows turned to  
11 Georgia Herbert and through Georgia Herbert they  
12 continued to try to delay these proceedings.

13 Instead of one appraiser they wanted four;  
14 instead of separate and different places the appraisals  
15 happening, they wanted it all at Marefield Meadows.  
16 Again, they were delaying it so they could breed the  
17 horse.

18 This is not unimportant in the contract dispute,  
19 that they wanted to breed the horse. And the reason that  
20 it's not unimportant is because there is no agreement  
21 ever between these parties as to what was going to  
22 happen with the breeding of the horse.

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1           And since breeding is the only reason they  
2 wanted the stallion, that is Marefield Meadows, if they  
3 can get breeding without, quote, buying the stallion, they  
4 were satisfied.

5           Mr. White tried to negotiate with them and he  
6 was told during these negotiations, tell us what the  
7 current state of the negotiations are. And so he wrote  
8 them a letter saying, we had an evaluation of the horse  
9 and you could buy us out at one-third.

10          And from the beginning, the authority of the  
11 law firm was to sell the horse either to Marefield  
12 Meadows or publicly. That was the authority and with an  
13 authority to negotiate.

14          And the law firm understood that and Mrs.  
15 Lorenz understood that and, Your Honor, Marefield  
16 Meadows understood that, Georgia Herbert understood  
17 that. And she understood the only condition under which  
18 Mrs. Lorenz could buy the horse would be if she got a  
19 syndicate.

20          So, in the latter part of February, there were  
21 negotiations. Mr. White on behalf of Mrs. Lorenz had  
22 done nothing to waive her right under the agreement to

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1 insist on the sale of this stallion if they weren't going to  
2 buy it.

3 And unbeknownst to her, while she was acting  
4 in good faith, Marefield Meadows was doing everything  
5 they could to delay the negotiations so that no matter  
6 what happened, they could get their breeding done.

7 And you don't have to take my word for it, Your  
8 Honor. Georgia Herbert apparently is going to take the  
9 stand here, her notes support that, there is  
10 correspondence from Maxine Mickle to that effect and  
11 there is correspondence right through this letter that  
12 they would take as an offer.

13 This February 23rd, quote, offer, says here's  
14 the price. How is that? That's what it is in effect  
15 because it also says, how are we going to handle  
16 expenses. Regi Lorenz would like to pay prorated at one-  
17 third, period.

18 What's the response to that? They say, no  
19 way, no way and they put that in writing later. She says,  
20 if you're going to buy the horse, what can we do about  
21 buying breeding rights.

22 There's no answer to her about her breeding

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1 rights and she certainly never told them, if she was going  
2 to buy the horse, what they could do by way of breeding.

3 It was made clear by Mr. White to their lawyer  
4 that if Mrs. Lorenz was ever going to buy the horse, she  
5 had to get a commitment, she couldn't afford it.

6 I know this is hysterical to you, but I tolerated  
7 an argument when you stood, Counsel, and I would  
8 appreciate it if you would just be quiet during my  
9 opening.

10 MR. MONAHAN: I  
11 apologize, Your Honor. I don't think I did anything...

12 MR. FLANNERY: This is  
13 characteristic of Mr. Monahan. We have been putting up  
14 with this for two years, Your Honor, and I implore the  
15 Court attention...

16 MR. MONAHAN: Your  
17 Honor, I object...

18 THE COURT: Just a  
19 minute...well, just a minute, Mr. Monahan, one at a time.  
20 All right, you're complaining about his...I didn't  
21 understand that he was laughing at you. I think it was  
22 some private joke between them, so I don't think you

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1 need to feel badly about that. I will watch...go ahead.

2 MR. FLANNERY: I  
3 appreciate it, Your Honor.

4 THE COURT: All right.

5 MR. FLANNERY: So, as I  
6 was saying, Mr. White made it clear to Marefield  
7 Meadows counsel...not Mr. Monahan, not then, but  
8 Georgia Herbert...that the only circumstance under which  
9 Mrs. Lorenz can buy this stallion was if she had a...and  
10 in the industry, specifically, there is vetting and all of  
11 these things that you need to do, that is to say horse is  
12 vetted before he changes hands into somebody else's  
13 hands, the date of closing is important. That is to say  
14 from the date you have a written agreement to the date  
15 you get the horse, who pays or do you pay for board, who  
16 pays or do you pay for training? If the person having the  
17 horse wants to breed is there an agreement for that?

18 None of this is in this February 23rd letter they  
19 claim is an offer. Now, that letter was in writing.

20 THE COURT: Were those  
21 provisions set out in the contract and was there any  
22 provision concerning the expenses you just mentioned in

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1 the contract or are you saying...

2 MR. FLANNERY: The  
3 contract provides, Your Honor, that expenses have to be  
4 approved in advance when management decisions are  
5 made in the absence of the agreement of one of the  
6 parties.

7 In this case, for example, the pivotal decision,  
8 although there were others, the pivotal decision was to  
9 move the stallion Moronjo from training where it was to  
10 Marefield Meadows for breeding.

11 Mrs. Lorenz did not...and this is in February of  
12 '89...Mrs. Lorenz did not want that to happen because  
13 she thought this horse was going to be sold and wanted  
14 it to be in good training condition. Marefield Meadows  
15 wanted the horse moved to their place so that they could  
16 breed it.

17 And the agreement also provides if its  
18 provisions are breached, then a person is not liable for  
19 expenses. And there were several breaches, as I have  
20 indicated, as we argue the facts will show, that would  
21 make Mrs. Lorenz not responsible for any expenses.

22 Now, the so-called acceptance, as I understand

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1 the facts and as the evidence will show, Mr. White sent  
2 a letter on March 9th to Mrs. Herbert saying Mrs. Lorenz  
3 was going to try and find partners, but as of this moment  
4 has not found any partners.

5 And, as I understand Mrs. Herbert's  
6 understanding, he sent that letter hours before she called  
7 up what is characterized here as her acceptance. The  
8 offer...if this was an offer, and we say that it's a letter  
9 of negotiation, the White letter, their acceptance I will  
10 submit it should have been in writing and there should  
11 have been agreement on all terms.

12 There was instead an intervening letter that  
13 went from Mr. White that said, Mrs. Lorenz doesn't have  
14 any partners, so you shouldn't consider that conduit.  
15 When Mrs. Herbert called Mr. White, Mr. White said,  
16 what are you talking about you're accepting an offer,  
17 there's no offer here. This is a letter of negotiation. I  
18 put down what you guys asked me for.

19 Subsequently, Mr. White received a letter from  
20 Mrs. Herbert saying, we accept the price but, by the way,  
21 we don't respect your view of the expenses here and we  
22 intend to breed and Mrs. Herbert was put on notice that

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1 her clients wanted agreements about breeding rights,  
2 both for their own mares and for other mares that they  
3 had made contracts for.

4 None of this is in the letter that's a, quote,  
5 offering, none of this was discussed or decided upon. As  
6 we stand here in this courtroom, the reason the horse  
7 was tied up for so long is because there was no  
8 agreement on any of these things.

9 Now, frankly, when you come in and ask for  
10 equitable jurisdiction...and I realize this is a contract  
11 theory... you should come in with clean hands.

12 Well, Marefield Meadows did whatever they  
13 could to delay and extend this thing so that they could,  
14 in the absence of any agreement about breeding, in the  
15 absence of any agreement about expenses, he sets down  
16 at their farm as long as was necessary to breed their  
17 mares.

18 And if by any stretch of the imagination there  
19 is a contract here...and I respectfully submit that Athey  
20 and Corbin and anybody who has ever written a treatise  
21 on contract law says there has to be a meeting of the  
22 mind on each and every material element. And there is

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1 no such thing in this case, not on price, not on  
2 termination date, not on breeding, not on expenses,  
3 nothing.

4 And they have tried to torture this thing to get  
5 out of it what they want in the absence of a contract.  
6 And then, to make matters worse, on March 17th, if there  
7 is any possibility that a written has been made, it has  
8 been withdrawn in writing and orally by Mr. White.

9 Then they send a letter on March 17th setting  
10 forth what terms and conditions they would like. And  
11 they say, we'll tell you the closing date, it will be 60  
12 days, thinking that will give us enough time to do the  
13 breeding. We'll tell you we're not accepting prorated  
14 expenses, we expect her to pay all, there's no agreement  
15 on that and they're going to decide whatever they want  
16 to pay Mrs. Lorenz.

17 That's not contract law. There is no meeting  
18 of the minds, there was no agreement here. This has  
19 been a ruse from beginning to end for Marefield Meadows  
20 to use this horse as if it was their own, to breed it and to  
21 get as much money as they could for it, deciding to spend  
22 the money instead on new mares outright, rather doing

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1        what was the right thing to do, buying this stallion, and  
2        keeping it on their farm and breeding it.

3                And they bred their mares past the 60 days  
4        they claim Mrs. Lorenz, quote, owned the horse, to a  
5        mare named Alexa.

6                Now, I'm sorry, I've gone on longer than I  
7        wanted to, Your Honor, and I'm sure longer than the  
8        Court wanted me to. I have tried to be clear about it and  
9        I'm sorry if I've confused the issue at all.

10               THE COURT: Well, in the  
11       present posture of the case, then, what's your position  
12       with respect to your client's rights here?

13               MR. FLANNERY: Well, my  
14       position, Your Honor, is they have divided expenses into  
15       two parts. There are expenses before the date of, quote,  
16       the acceptance on March the 9th.

17               In our view, Your Honor, we don't owe them  
18       any expenses through that period because of their  
19       repeated breaches of the contract and their bad faith.  
20       That is, they have a figure, and I believe Mr. Monahan  
21       passed you the slip of paper that says there is some  
22       \$2,000 that Mrs. Lorenz owes through, he says, March

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1 the 6th, which is interesting because, as I understood it,  
2 the acceptance was March the 9th. But there are other  
3 riddles for the argument of Marefield Meadows, so that's  
4 no surprise.

5 And we argue that because of the breach of the  
6 agreement, the repeated breaches, that is advertising  
7 without permission, moving the horse without  
8 permission, ignoring the request to terminate, that we  
9 don't owe them anything we didn't already pay for that  
10 period.

11 As for the second period, Your Honor, the only  
12 reason my client was interested in this horse, if she was  
13 ever interested in the horse, and tried to preserve it is  
14 because it's the one thing it had proven in February of  
15 '89, and that is performance.

16 By bringing it to Marefield Meadows they  
17 compromised its performance ability. They took it from  
18 November Hill which is an outstanding training facility  
19 where it was in condition and, over a period of about a  
20 year that they had it, they turned this horse into a  
21 nonperforming horse that was dangerously on the edge of  
22 foundering, which the Court may or may not know, is a

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1 very bad condition for the feet of a horse which would  
2 make it unable to perform.

3 And this horse in February of '89 had no record  
4 of his breeding, there wasn't a foal on the ground that  
5 anybody could point to to say this horse would amount to  
6 anything in breeding.

7 The only thing that this horse had in February  
8 of '89 was performance and these clients did everything  
9 they could to compromise it, by taking it out of training  
10 and putting it on their farm and breeding it to their  
11 mares.

12 So, we say there wasn't an arrangement after  
13 the March the 9th date because there wasn't an  
14 agreement and, basically, because of their misconduct  
15 with the horse.

16 And finally, as to their damage series, if there  
17 was any agreement here...and we have argued I think  
18 sufficiently that there wasn't...if there was any  
19 agreement here, they had no right after the date of the  
20 agreement to do anything with that horse.

21 They had no right to breed it, they had no right  
22 to train it or to do anything with it without the express

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1 consent of the owner. And this is sort of a back door  
2 way, Your Honor, of saying there was no agreement.

3 It is practice in the industry that if you're not  
4 taking the horse off the lot, off the farm the instant that  
5 you're buying a horse, that there's agreement about what  
6 happens during that interim and there was none here.

7 THE COURT: Now, you're  
8 saying that your position is that you owe nothing which  
9 was incurred after March 9th, is that....

10 MR. FLANNERY: That's  
11 correct, Your Honor.

12 THE COURT: So, what are  
13 you saying you do owe, if anything?

14 MR. FLANNERY: I think we  
15 don't owe anything. And I would expect that this Court  
16 will obviously give us a chance to argue when it has  
17 heard the evidence, as well.

18 But if this Court should reach the point that  
19 they say that there was an agreement here, there are  
20 several parts to that. First, I don't agree that it was  
21 apparent authority to do anything except to negotiate.

22 I don't believe there was apparent authority

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1 except to sell the horse, either to Marefield Meadows or  
2 to the public. I don't believe...and I believe this is  
3 agreed even by Marefield Meadows, I don't believe there  
4 was actual authority to make any offer and...

5 **THE COURT:** Just a minute,  
6 just a minute, let him get his...

7 **MR. CLARK:** Go ahead.

8 **THE COURT:** All right, go  
9 ahead.

10 **MR. FLANNERY:** Am I okay,  
11 Your Honor?

12 **THE COURT:** He says go  
13 ahead.

14 **MR. FLANNERY:** I don't  
15 believe there was actual authority in this case and if this  
16 Court finds any agreement, whether it's Mrs. Lorenz  
17 or...and I don't believe you should, but if it finds that  
18 Hanes, Sevilla is involved in a contract and for some  
19 reason or other, in this Court's view, has bought a  
20 horse...and I don't believe that's the case...that you're  
21 put in a ridiculous position that all mares that they have  
22 gotten as a result of having Moronjo during that period

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1 belong to Mrs. Lorenz and/or the law firm.

2 And we either get the mares, if they haven't  
3 been sold, which are of substantial value. Anywhere  
4 from \$12,000 to \$18,000 for each of three or so...foals,  
5 excuse me, Your Honor...what am I saying, mares...the  
6 foals, the offspring of their mares.

7 And they have substantial value. Those mares  
8 are our mares or their value is ours if we reach what we  
9 respectfully submit is the preposterous position  
10 suggested by Mr. Monahan on behalf of his clients, that  
11 there was a contract on March the 9th and that  
12 everything that happened afterwards, when they used  
13 Moronjo without our permission, belongs to us.

14 And those foals are ours or the value is ours  
15 and we are prepared to present to this Court evidence  
16 that they have such foals and that they are valuable.

17 Again, Your Honor, thank you for your  
18 indulgence.

19 THE COURT: All right.

20 MR. FLANNERY: It sounds  
21 perhaps more complicated than I think it is. Thank you.

22 THE COURT: All right. Mr.

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1      **Cremins?**

2                                   **MR. CREMINS:** Your Honor,  
3      may I use the lectern since I don't have a desk...

4                                   **THE COURT:** Certainly, yes.

5                                   **MR. CREMINS:** ...or a table  
6      here.

7                                   **THE COURT:** Certainly.

8                                   **MR. CREMINS:** First, Judge  
9      Jamison, may I introduce to you my clients whom I don't  
10     think you have ever had occasion to see before. Seated  
11     over here on my right is Mr. Craig White, who is an  
12     associate attorney with the law firm of Hanes, Sevilla  
13     and who is one of the attorneys that Marefield Meadows  
14     has seen fit to sue here today.

15                                  **THE COURT:** All right.

16                                  **MR. CREMINS:** On my left  
17     is Mr. Burke McCahill, who is a principal in the law firm  
18     of Hanes, Sevilla, Saunders & McCahill and who, up until  
19     a few moments ago, believed he was a Defendant. And,  
20     as I understand it from Mr. Monahan, he is now being  
21     dismissed or at least that suggestion was made.

22                                  I would like to follow up on that suggestion and

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1 ask Your Honor to grant Mr. Monahan's motion to dismiss  
2 him. Mr. McCahill would be staying as the law firm's  
3 representative, but certainly is extremely interested in  
4 having his name removed as a Defendant in this suit.

5 **THE COURT:** All right, sir.  
6 Mr. Monahan, if you don't care to be heard further on  
7 that, that motion will be granted.

8 **MR. MONAHAN:** No, sir.

9 **THE COURT:** All right, sir.

10 **MR. McCAHILL:** Thank you,  
11 Your Honor.

12 **THE COURT:** You're  
13 welcome.

14 **MR. CREMINS:** Judge, I'll  
15 be, then, very brief because I think you're beginning to  
16 get more of the picture than perhaps you had up to this  
17 point in time.

18 I'm going to ask you to focus on a couple of  
19 things that seem to have gotten lost in the shuffle. One  
20 of the most critical documents in this case, Judge, is the  
21 partnership agreement between these people which I  
22 think was attached to Mr. Flannery's Bill of Complaint

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1 originally.

2 Judge, what the evidence will tell you in this  
3 case is, that this is not a dispute over the sale of a horse  
4 exclusively. Mrs. Lorenz wanted her partnership  
5 dissolved. She did it. She then wanted it wound up and  
6 terminated properly.

7 Now, the horse was the principal asset of the  
8 partnership, but the horse was not the whole bundle of  
9 rights and obligations of these partners. And what seems  
10 to keep getting shuffled under the carpeting in this case  
11 is all of the other major issues that these parties would  
12 have to address to dissolve their partnership and go live  
13 in peace.

14 Putting a price tag on the horse was but one of  
15 a dozen, sir. And since no agreement was ever reached  
16 on anything, I'm at a loss to understand how we can be  
17 here with the suggestion that Mrs. Lorenz or the law firm  
18 somehow or other owes Mr. Monahan's client \$53,000  
19 because there was a number mentioned in a letter in  
20 February of 1989.

21 Now, briefly, Craig White and Mr. Monahan's  
22 predecessor attorney, Georgia Herbert, on behalf of

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1 Marefield Meadows began talking in January of '89 when  
2 the partners, the individuals, the three women in this  
3 partnership, had reached a point where they could not  
4 resolve their differences without attorneys.

5 And Craig White and Georgia Herbert had a  
6 number of discussions. And it will come as no surprise  
7 to Your Honor, that one of the principal discussions  
8 consistently was price. How are we going to value this  
9 horse, what are we going to do about price, are we going  
10 buy it privately, are you going to buy it Marefield  
11 Meadows, are you going to buy it Lorenz, are we going to  
12 sell it?

13 In about six weeks of telephone conversations  
14 they had gotten nowhere, they were flat nowhere, Judge.  
15 Mr. White will testify to that.

16 And so, in mid-February Georgia Herbert said to  
17 Craig White, she said, Mr. White, no more. No more  
18 phone calls, we're not having any more of this. We're  
19 not getting anywhere.

20 I want you to put in writing from now on what  
21 these negotiations are going to be. We're not going to  
22 deal on the basis of phone calls anymore.

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1           And it's interesting, Judge, to look at the first  
2 sentence of Mr White's letter that they're trying to wrap  
3 around his neck and say he made an offer. The very first  
4 sentence of the letter of February 23 to Georgia Herbert  
5 says, this is in response to your request for a status  
6 report, or words to that effect, I don't have the letter in  
7 front of me.

8           It doesn't say, hark, we are about to make an  
9 offer. It is a status letter, Judge. And if you look at the  
10 whole letter...and Mr. Monahan wants to pick out two  
11 sentences...and fine, the two sentences say what they  
12 say, I can't undo the words. The two sentences say what  
13 they say.

14           But look at the whole letter, Judge. The whole  
15 letter addresses the other issues that have to be  
16 resolved, that we want to dissolve the partnership at this  
17 point.

18           We then have, and the evidence will be from  
19 Georgia Herbert and from Craig White, on March the 9th  
20 two things happened in this case that were important.  
21 One, Craig White wrote another letter to Georgia Herbert  
22 and said, Dear Miss Herbert, my client is still trying to

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1 get that money put together. Mrs. Lorenz is looking for  
2 investors or looking for somebody to help her out. So far  
3 she hasn't and I just want to let you know that if she  
4 doesn't, we're going to have to sell the horse publicly.

5 **THE COURT:** What was the  
6 date of that letter, was that March 9th?

7 **MR. CREMINS:** March 9.

8 **THE COURT:** March 9th?

9 **MR. CREMINS:** Yes, sir.

10 And that letter was basically doing nothing more than  
11 confirming what he and Georgia White talked about on  
12 the telephone that day, the same thing.

13 **THE COURT:** I take it that  
14 letter will be made an exhibit? I don't...

15 **MR. CREMINS:** You bet.  
16 Yes, sir, it most definitely will be introduced.

17 **THE COURT:** All right, sir.

18 **MR. CREMINS:** The other  
19 thing that happened on that day is the so-called  
20 acceptance by Georgia Herbert of the \$80,000. When  
21 she called Craig White on the phone, contrary to her own  
22 instructions, called him on the phone and says, Mr.

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1 White, we accept. And you will hear the evidence.

2 Mr. White said, you accept what? She said, we  
3 accept the \$80,000. He said, whoa, not so fast, what  
4 about all the rest of these issues. What about the fact  
5 that my client has to get... What about the fact that I  
6 have told you my client does not have \$53,000 and needs  
7 to get financing if she is going to have any hope of  
8 buying this horse? What about breeding, what about  
9 expenses? What about all of the other issues that any  
10 lawyer who read that partnership agreement would say  
11 had to be resolved?

12 I won't burden you with ticking them off right  
13 now, but I will at the appropriate point in this case.

14 Interesting. A telephone acceptance, violating  
15 her own rule, her own command that thou shalt only  
16 communicate in writing, when she knows of the  
17 requirements for financing and knows that she is not  
18 accepting the terms of the letter as was sated and then,  
19 to make it worse, she turns around on the 17th and  
20 writes the other important document that Your Honor I  
21 know is going to look at if you haven't already.

22 St. Patrick's Day, 1989, March 17, Georgia

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1 Herbert to Craig White. Now she is doing what she said  
2 she is obligated to do and she is putting it in writing.

3 And if you compare, Judge, that March 17  
4 letter to Craig White's February 23 letter, you will  
5 conclude, A, there was never any meeting of the minds,  
6 B, there was never any offer as to price that was firm, C,  
7 even if there was a firm mention of price, there are so  
8 many other material issues in this partnership dissolution  
9 that are not addressed, that there cannot conceivably be,  
10 under the law of this state, a contract to dissolve this  
11 partnership and, D, worse yet, her letter is a counteroffer  
12 because she doesn't just say, oh, we accept the terms of  
13 your letter, Mr. White, thank you very much, very truly  
14 yours.

15 She writes a couple of pages putting in her own terms  
16 which are never agreed on.

17 The other and the last thing that I will submit  
18 to you, if, if Marefield Meadows honestly believed that  
19 there was a contract as of St. Patrick's Day, 1989...and  
20 I don't think they did for a minute...this is punishment  
21 for that lady right there. That's all this lawsuit it. But  
22 if they honestly believed it, boy, did they ever do some

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1 things inconsistent with it.

2 Do you know what they did, Judge? They took  
3 the horse, kept it away from her, bred it, kept the fruits  
4 of the breeding, let the horse go to pot so that by the  
5 time this horse was sold, he was fat, out of shape, they  
6 had bred him the way they wanted, they had bred him to  
7 their mares and had had two or three foals, I guess, that  
8 Mr. Monahan wants to give Mrs. Lorenz some part credit  
9 for. Those foals belong to her, all of them.

10 How can they stand here and say there was a  
11 contract when everything they did after their so-called  
12 contract was inconsistent with it? They exercised their  
13 management control over this horse, they controlled this  
14 horse's destiny right up until this past summer when  
15 Judge Robertson and the three of us finally said, all  
16 right, send him out to the West Coast and let him be  
17 sold.

18 And Mr. Monahan's exactly right, that's what  
19 happened in the summer of 1990...I don't remember the  
20 exact date, July or August...the horse finally, after a  
21 year and a half of battle, this horse that was now a shell  
22 of his former self, gets sent to the West Coast and

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1        auctioned off.

2                Judge, at the close of Mr. Monahan's hour and  
3        a half of testimony, I'm going to be before you and  
4        asking you for the only verdict in this case that, A,  
5        makes sense and, B, is consistent with the law of this  
6        state which is no contest. Thank you.

7                                **THE COURT:** All right, sir.  
8        Mr. Monahan, you can call your witnesses

9                                **MR. MONAHAN:** I would  
10       like to first of all call Mrs. Poynter to the stand, Your  
11       Honor.

12                                **THE COURT:** All right, sir.

13                                **THE CLERK:** You were not  
14       sworn?

15                                **MRS. POYNTER:** No, I was  
16       not.

17                                **MR. MONAHAN:** Your  
18       Honor, may I ask a point of privilege. Do you have a rule  
19       about counsel standing or sitting?

20                                **THE COURT:** No, you may  
21       sit. The only trouble is, you usually take longer to finish  
22       the examination, so maybe if you stood.

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**MR. MONAHAN:** That is so,  
I agree with that. There is a story about Justice Holmes  
who always wrote standing up, his opinions.

**MARION K. POYNTER, having been duly sworn by the Clerk of the Court, was examined and testified as follows:**

## DIRECT EXAMINATION

**BY MR. MONAHAN:**

**Q. Would you state your name please and your place of residence?**

A. My name is Marion K. Poynter, P O Y N T E R,  
I live in Warrenton, Virginia, near Warrenton , Virginia,  
Route 5, Box 303.

**Q. Is that on a farm?**

**A. It is a farm, yes.**

**Q. What is the name of the farm?**

**A. It's historic name is the Meadows.**

**Q. And what is your relationship to the corporation Marefield Meadows?**

**A. I am the president and treasurer of Marefield Meadows, Inc.**

**Q. Who owns stock in that?**

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1 A. I do.

2 Q. Anyone else?

3 A. No.

4 Q. Well, what is the purpose of the corporation?

5 A. The purpose of the corporation is to purchase,  
6 breed, raise and to a limited extent, train Hanoverian  
7 horses.

8 Q. I am going to hand you what I will refer to as a  
9 contract, but I will refer to for the purpose of  
10 identification as plaintiff's, excuse me, how is it marked?

11 THE CLERK: Exhibit.

12 THE COURT: Exhibit A, if  
13 it is the one we have been talking about, 9 June, '87. Is  
14 that the one?

15 MR. MONAHAN: I just  
16 want to know whether to refer to this as Exhibit 1 for the  
17 defendant or for the plaintiff. How did you mark it?

18 THE CLERK: Plaintiff 1D.

19 MR. MONAHAN: Well, I  
20 will refer to it as Exhibit Number 1 for the cross-  
21 plaintiff.

22 Q. Can you identify that, Mrs. Poynter?

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1       A.   Yes, it was an agreement made on the 9th day  
2 of June, 1987 between Marefield Meadows and Regula  
3 Lorenz to cover the acquisition of a stallion.

4       Q.   And did you in fact, jointly with Mrs. Lorenz,  
5 acquire a stallion known as Maronjo?

6       A.   Yes, we did.

7       Q.   Did there come a time when it became  
8 necessary to effect a division or separation of that  
9 venture?

10      A.   The time came when Mrs. Lorenz resigned as  
11 the sole trainer of Maronjo and forbid Marefield Meadows  
12 from having anyone else train this horse or in fact, let  
13 anyone handle that horse.

14      Q.   Did the question of the sale of the horse arise?

15      A.   Not at that time, at this time.

16      Q.   Did it subsequently arise?

17      A.   It subsequently arose, Mrs Lorenz wrote on  
18 several occasions in which she said, tell me what your  
19 wishes are in the case of Maronjo.

20      Q.   Now in January of 1989, did you have occasion  
21 to employ Georgia Herbert?

22      A.   Yes. We did.

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1 Q. What was the purpose of her employment?

2 A. The purpose of her employment was that Craig  
3 White had, on several occasion telephoned to Marefield  
4 Meadows to discuss various matters and it became clear  
5 that since Mrs. Lorenz had engaged an attorney, that we  
6 needed to have one ourselves.

7 Q. All right. Did there come a time when Mrs.  
8 Herbert forwarded to you a letter dated February 23,  
9 1989

10 and written to her by Mr. White?

11 A. Yes.

12 Q. I'll hand you what I will refer to as Plaintiff's  
13 Exhibit Number 2, for the purpose of identification and  
14 ask you if that is a letter that you received from Mrs.  
15 Herbert shortly after February 23?

16 A. Yes.

17 Q. Following the receipt of that letter did there  
18 come a time when you advised and authorized Mrs.  
19 Herbert to respond to it?

20 A. Yes.

21 Q. What was it that you advised her to do?

22 A. We had a very difficult time advising her what

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1 to do because we were...

2 MR. FLANNERY: It is not  
3 responsive.

4 Q. Tell me what your instructions to Mrs. Herbert  
5 were?

6 A. To accept the offer for \$53,333.33.

7 Q. Have you ever received payment for that horse?

8 A. No, Sir.

9 Q. Did there come a time when he was served in  
10 California?

11 A. Yes.

12 Q. Did you receive the amount of, at that time of,  
13 \$15,066.66?

14 A. Yes.

15 Q. So that should be credited against the purchase  
16 price as having already been received?

17 A. I would think.

18 MR. MONAHAN: That is  
19 all, Your Honor.

20 THE COURT: All right.

21 MR. FLANNERY: May I  
22 proceed, Your Honor?

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1 THE COURT: You may.

2 MR. FLANNERY: Thank

3 you.

4 CROSS EXAMINATION

5 BY MR. FLANNERY:

6 Q. Do you know a person by the name of Maxine  
7 Nichol?

8 A. Yes. I do.

9 Q. And what, if any, relationship did she have with  
10 Marefield Meadows?

11 A. She was vice president and secretary.

12 Q. And when did she first become involved with  
13 the original purchase of Maronjo of November Hill?

14 A. At the time when the horse was purchased from  
15 November Hill.

16 Q. Did you discuss with Maxine Nichol the decision  
17 to purchase Maronjo?

18 A. Probably so.

19 Q. And did she, to your knowledge, write certain  
20 correspondence that she forwarded in connection with  
21 the purchase of Maronjo?

22 A. I don't recall specifically.

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1 Q. And did you review with her in substance, if  
2 not exactly, the correspondence that she forwarded in  
3 connection with the purchase of Maronjo?

4 A. I believe so.

5 Q. I would like to direct your attention to what  
6 has been marked as Cross Defendant's Exhibit 1 of  
7 today's date and see if you can recognize ...

8 MR. MONAHAN: Now,  
9 Your Honor, I would like to object to this as being out of  
10 the scope of what this case is all about. This is a case  
11 involving a contract from a period of 1989. Mr.  
12 Flannery is talking about a different contract which was  
13 arrived at in 1987, and I submit that it has nothing  
14 whatsoever to do with the present claim. There is no  
15 counterclaim pending. There is no claim to be followed  
16 with any earlier contract and I submit that it is totally  
17 irrelevant at this point.

18 THE COURT: All right.

19 MR. FLANNERY: Thank  
20 you, Your Honor First of all, he put before the witness  
21 the earlier agreement in his opening remarks and made it  
22 clear that he intends to ask for expenses invoking the

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1 terms of this agreement, in addition to the letter which is  
2 before Mrs. Poynter, makes reference to the course of  
3 conduct of these parties in connection with any  
4 agreements, namely that they insist that any agreement  
5 be in writing because of bad experiences that they have  
6 had in the past and that is why they insisted in the first  
7 agreement. That is the bottom line, that it be in writing.

8 Therefore, it corroborates the course of conduct that  
9 both myself, and I believe Mr. Cremins, was saying in our  
10 opening statements, that similarly we understood there  
11 would be, if there was going to be any agreement at all  
12 to reduce to writing, but they put at issue the first  
13 agreement and I don't have to take their summary  
14 description.

15 **THE COURT:** Well, at this  
16 point, I am not so concerned with the contents of it, but  
17 simply as corroborative of the assertion that anything  
18 else after this had to be in writing. After that limited  
19 purpose I will allow it.

20 **MR. FLANNERY:** Okay,  
21 thank you, Your Honor.  
22

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**CONTINUATION OF CROSS**

**EXAMINATION BY MR. FLANNERY:**

Q. Directing your attention now, Mrs. Poynter, can you identify that letter?

A. It appears to be a letter written to Regula Lorenz from Maxine Nichol.

Q. And is it a case that you and Mrs. Nichol insist that after a bad experience in words or substance that it wouldn't matter if a saintly man with long flowing hair wearing a white gown walked across our pond and proposed something to us that we would still want it on paper. Was that your position in and around 1987?

A. Did we say that somewhere?

Q. Yes. Directing your attention to the end of the third full paragraph.

A. Yes. I think that is fair to say.

Q. I am sorry. You are going to have to speak so the reporter...

A. Would you repeat your question please to me?

Q. I said, you see that language in the letter that Maxine wrote in the past?

A. Yes. I see that.

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1 Q. And that was your position, wasn't it in 1987,  
2 January of '87 that you wanted any agreement in writing  
3 because of your bad experience with Barbara Stiener. Is  
4 that correct?

5 A. That is correct.

6 MR. FLANNERY: Now, I  
7 offer it for that limited purpose.

8 THE COURT: For that  
9 limited purpose, the Court will consider it simply as  
10 corroborative of the previous statement.

11 MR. FLANNERY: All  
12 right. Your Honor, if I could, I will withdraw my offer of  
13 evidence so as not to compromise my motion to strike  
14 and I will decide after the direct whether or not to offer  
15 it as part of...

16 THE COURT: Well, you  
17 have to introduce it as identification only so it will  
18 remain in that status until we make a final decision.

19 MR. FLANNERY: Thank  
20 you, Your Honor. I am sorry to change my position, but it  
21 may save us some time.

22 THE COURT: All right.

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1 Q. Now in or around January of 1987, what  
2 experience did you have with breeding, that is Marefield  
3 Meadows and you personally?

4 A. Do you mean numbers or...

5 Q. Do you have any mares that you had covered  
6 by...

7 A. Yes.

8 Q. How many?

9 A. I can't tell you exactly.

10 MR. MONAHAN: I submit  
11 he is making her his witness at this point. This is well  
12 beyond the scope of the direct examination.

13 THE COURT: Well, it does  
14 seem to be. Do you want to modify your question or not  
15 ask it?

16 MR. FLANNERY: Well,  
17 Mrs. Nichol is going to be...excuse me, Your Honor, Mrs  
18 Poynter is going to be here. If we need to, we can recall  
19 her as our witness for additional purposes.

20 THE COURT: All right.

21 Q. As I recall your direct testimony, you said that  
22 Mrs. Lorenz resigned as your trainer. Did you intend to

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1 limit her resignation just as your trainer, is that what you  
2 are saying?

3 A. I am sorry. I don't understand.

4 Q. Your direct testimony, as I recall, and that is  
5 what I am asking you, was that Mrs. Lorenz, in the latter  
6 part of 1988 resigned as your trainer. Is that correct?

7 A. As the trainer of Maronjo, yes. Not our  
8 trainer...the trainer of Maronjo.

9 Q. Now did you understand that she also resigned  
10 from your partnership in the latter part of 1988?

11 A. No.

12 Q. Do you recall Mrs. Lorenz riding your horse up  
13 to that she was waiting, of course, you hadn't made the  
14 decision as to whether you wanted to purchase her one-  
15 third ownership in Maronjo or release it for sale?

16 A. Yes.

17 Q. Do you remember her writing that?

18 A. Yes.

19 Q. Do you recall that in the latter part of 1988?

20 A. I recall really that she was asking us for our  
21 decision rather than that she was making either an offer  
22 or a direct statement as to her intent.

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1 Q. All right. You have before you the agreement  
2 that was referenced a moment ago?

3 A. The original one?

4 Q. Yes.

5 A. Yes.

6 Q. Can I see that just a moment, please? Now did  
7 you understand by the terms of the agreement that if one  
8 party expressed an interest in selling, that that  
9 terminated the agreement?

10 A. No. I don't think that was my understanding.  
11 May I look at the document again please?

12 Q. Sure. I direct your attention to Paragraph 16,  
13 specifically of the agreement.

14 A. I believe that this probably was what triggered  
15 the negotiations that we refer to between Mr. White and  
16 Georgia Herbert.

17 Q. Well, what triggered the negotiations was Mrs.  
18 Lorenz's written notice to you in 1988.

19 A. Whatever.

20 Q. I don't understand. Do you say you don't  
21 remember?

22 A. No. I didn't say I didn't remember. I am saying

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1 that negotiations were going on between ... once Mrs.  
2 Lorenz hired Craig White and then we got Georgia Herbert  
3 to represent us, that these very negotiations were begun.  
4 It says here that if one party wishes to sell it's interest,  
5 the other does not acquire that interest etcetera,  
6 etcetera or cannot agree. Negotiations were going on.

7 Q. Well, doesn't your agreement provide that  
8 either party, at any time, seek to terminate this  
9 agreement by directing that Maronjo be sold? The first  
10 sentence of paragraph 16 of your agreement?

11 A. It says that if the parties can't agree, then the  
12 stallion shall be sold.

13 Q. I am asking you a specific question. I am saying  
14 that in the first sentence of your agreement, doesn't it  
15 provide that either party may, at any time, seek to  
16 terminate this agreement by directing that Maronjo be  
17 sold. Yes or No.

18 A. Yes.

19 Q. Didn't your lawyer draw up this agreement?

20 A. Yes.

21 Q. And so there was no question, you were  
22 represented in the drafting of this agreement. Is that

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1 correct?

2 A. Yes

3 Q. Is there any question in your mind that in or  
4 around November of 1988, Mrs. Lorenz, in writing,  
5 directed that Maronjo be sold?

6 A. Yes. There is a question.

7 Q. What is the question?

8 A. I don't believe that to be the case.

9 Q. Is it a fact that the letter Mrs. Lorenz gave you  
10 resigning, that you destroyed?

11 A. It was not destroyed.

12 Q. Where is it?

13 A. It can't be. It's lost. It wasn't destroyed.

14 Q. Isn't it a fact that you told Sharon Nicholson to  
15 destroy that letter?

16 A. But she said she did not. But she can't find it.

17 Q. So the only reason that it is not destroyed is  
18 because Sharon Nicholson did not abide by your  
19 instructions.

20 A. I can't speak for her.

21 Q. Is it the case that you instructed Sharon  
22 Nicholson to destroy the letter of resignation given to

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1 you by Mrs. Lorenz?

2 A. I instructed her to destroy the letter. Not  
3 because it was the letter of resignation but it was full of  
4 such callous allegations.

5 Q. Well, whether it was, as you described it, "full  
6 of callous allegations", also included Mrs. Lorenz's  
7 resignation. Is that correct?

8 A. That is correct.

9 Q. If I can direct your attention, Mrs. Poynter, to  
10 Cross Defendant's Exhibit 2, marked for identification, I  
11 would like for you to look at the second page, second  
12 paragraph of that from Mrs. Lorenz, and if you would,  
13 read that for a moment. I would like to see if that  
14 refreshes your recollection as to Mrs. Lorenz directing  
15 you that she wanted to sell Maronjo.

16 A. On the...Mrs. Lorenz resigned on the 12th of  
17 December. This letter is dated the 11th of November, or  
18 the 6th of November. I believe this to be a wrong date.

19 Q. You believe the date is wrong?

20 A. Yes.

21 Q. I didn't direct your attention to the date. We  
22 can talk about the date in a moment. I am directing

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1 your attention to the second full paragraph on page two  
2 and I will ask you to look at that and say....doesn't that  
3 refresh your recollection that Mrs. Lorenz directed you to  
4 sell Maronjo in 1988?

5 A. She says until you have made your decision as  
6 to whether you want to purchase my one- third ownership  
7 or release him for sale. I don't know if that is a direction  
8 to sell.

9 Q. Did she say that she would honor her  
10 commitment to train until you have made a decision as to  
11 whether you wanted to purchase your one- third, her one-  
12 third ownership or release Maronjo.

13 A. She did not do that She would not train the  
14 horse anymore nor allow anybody else to train him. I don't  
15 know what it would say more than is written here.

16 Q. Do you now recall, however else you want to  
17 characterize it, in 1988, sometime in 1988, Mrs. Lorenz  
18 asked you to make some decision about selling Maronjo?

19 Do you remember that?

20 A. The decision to purchase or to release him for  
21 sale is what she said.

22 Q. Do you remember that?

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1           A.    Well, it is written right here, of course.

2           Q.    Okay. And did you respond to Mrs. Lorenz after  
3 her letter in the latter part of 1988, dated November 6th?  
4 Correct or incorrect?

5           A.    Not immediately. No.

6                       MR. CREMINS:       Judge,  
7 excuse me for a moment Mr. Lorenz came in. I don't know  
8 whether you have any reason for him or not. I just  
9 wanted to make sure you didn't mean to use him.

10                   MR. FLANNERY:       Your  
11 Honor, Mr. Lorenz might be a witness. I didn't notice  
12 when he was sitting there, but there are subject matters  
13 that have not been covered and, may not be covered  
14 depending upon my examination.

15                   THE COURT:       But he may  
16 be called?

17                   MR. FLANNERY:       That is  
18 right.

19                   THE COURT:       In this case  
20 I think we will have to be on the safe side. Mr. Lorenz  
21 will you please leave the courtroom? You may be called.

22                   MR. FLANNERY:       Please

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1 mark this Cross Defendant's Exhibit 3 for identification.  
2 (WHEREUPON, Cross Defendant's Exhibit 3 was marked  
3 for Identification).

4 Q. Now, directing your attention to what has been  
5 marked for identification Cross Defendant's Exhibit 3, I  
6 would like for you take a look at this and can you  
7 identify that as a letter you gave on November 10, 1988  
8 in response to Mrs. Lorenz?

9 A. Yes.

10 Q. And looking at that letter, does that refresh  
11 your recollection that you responded to Mrs. Lorenz just  
12 four days after you got the letter on November 6, 1988?

13 A. Sir, I told you that I believe that this letter is  
14 not the date. The initial letter is dated incorrectly, so if  
15 this was written on 10 November, I could not have  
16 responded to a letter written in December.

17 Q. Well, the original letter that you looked at was  
18 dated November 6th

19 A. I believe that to be an incorrect date.

20 Q. Well, just let me get straight.

21 A. I cannot say.

22 Q. We both can't speak at the same time. Wait

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1 until I have put a question down. Just as I understand it,  
2 the first letter you looked at from Mrs. Lorenz, correctly  
3 or incorrectly, had on it the date November 6, 1988. Is  
4 that correct?

5 A. That is correct.

6 Q. You say that that date is wrong?

7 A. Yes.

8 Q. So you say that Mrs. Lorenz made a mistake  
9 when she put November 6, 1988 on her letter of  
10 resignation to you. Is that correct?

11 A. Because...

12 Q. Is that correct or not?

13 A. Because I know physically when she resigned  
14 was December 6th.

15 Q. I am asking you, are you saying that the date on  
16 her letter to you is wrong?

17 A. Yes.

18 Q. Now, your response that you wrote on that  
19 letter November 10, 1988. Is that correct?

20 MR. MONAHAN: Your  
21 Honor, I am going to object to the question and form of  
22 the question. It contains a conclusion which is not in

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1 evidence. Formidably, her letter stated November 10th or  
2 11th, but to phrase the question that it is a response to  
3 is a double question. If he wants to ask her what it is  
4 dated, that is one thing. Or if he wants to ask her if it  
5 is in response...she can try to explain to him. Yes, it is  
6 dated November 11th, is not a response. The question is  
7 improper.

8 THE COURT: Well, I think  
9 she has explained the date on it as incorrect. Now  
10 suppose you divide your question into two parts.

11 MR. FLANNERY: Okay,  
12 Your Honor, if it was compounded, I will make it simple.

13 Q. Did you date a letter to Mrs. Lorenz November  
14 10, 1988?

15 A. That is what it says here.

16 Q Well, is that in your handwriting, because...

17 A. Yes. It is.

18 Q. And in your own handwriting, did you write out  
19 10 November?

20 A. Yes.

21 Q. And did you say to Mrs. Lorenz in that letter we  
22 will work out the details of what comes next about

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1 Maronjo in a business like way to the advantage of all?

2 A. Yes. I did.

3 Q. Now is it your testimony that you incorrectly  
4 put the date on that letter when you wrote the letter  
5 November 10, 1988?

6 A. I am not saying that, sir, no.

7 Q. So it was November 10th when you wrote that  
8 letter?

9 A. I am saying that I said what it says here. That's  
10 all that I am saying. We will work out the details of  
11 what comes next about Maronjo.

12 Q. And you don't quarrel with the fact that it was  
13 on November 10th when you wrote that letter?

14 A. No. I don't.

15 Q. Now did you subsequently receive further  
16 communications from Mrs. Lorenz asking when you were  
17 going to go forward with the decision to sell Maronjo?

18 A. Yes.

19 Q. And did you receive such communications in  
20 December again in writing in or around Christmas?

21 A. I don't recall exactly when, but...

22 Q. Do you recall receiving phone messages?

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1           A.    No.

2                           MR. MONAHAN:     Mrs....

3                           MR. FLANNERY:     Well,  
4   please let me finish in the matter of her interest. Do let  
5   me finish the question.

6           Q.    Do you recall...

7                           MR. MONNAHAN:     Now  
8   Your Honor, I am going to object to this.   It is not  
9   relevant to the issue before the Court at this time Again,  
10   he is well beyond any direct examination.   Because I  
11   think it is irrelevant, I object to this line of questioning  
12   unless he can make it relevant.

13                          MR. FLANNERY:     Well, it  
14   is relevant, Your Honor, because it relates to the entire  
15   course of conduct and the motivation for holding onto  
16   this horse as long as possible. Now, I don't have to take  
17   the face value and characterization by selection of the  
18   party to the suit and we have established I am not going  
19   to argue it now, Your Honor, but we are following a line  
20   of argument as to the purpose of a delay by Marefield  
21   Meadows, principally a breeding operation.

22                          THE COURT:         Well, I

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1 know that is your pretension and I will allow you to  
2 proceed to show what you say you are trying to show.  
3 That there was a delay, an improper delay and so forth,  
4 which is your position, but it seems to me that you might  
5 be detailing it a little too much. Can't you try to  
6 abbreviate it?

7 **MR. FLANNERY:** I will try  
8 to abbreviate it. I can do that.

9 **Q.** Do you recall receiving any phone messages  
10 from Mrs. Lorenz on your tape recorder in effect what is  
11 the decision in the latter part of December of 1988?

12 **A.** No, Sir.

13 **Q.** Do you recall receiving correspondence from  
14 Mrs. Lorenz in early January, 1989 asking you what your  
15 decision was on whether or not to sell Maronjo?

16 **A.** Possibly.

17 **MR. FLANNERY:** Mark this  
18 Defendant's Exhibit 4.

19 **Q.** Let me direct your attention to Cross  
20 Defendant's Exhibit 4. Does that refresh your  
21 recollection that Mrs. Lorenz wrote you on or around  
22 January 3, 1989?

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1 A. Yes.

2 Q. And do you recall Mrs. Lorenz writing you  
3 saying this is the fourth request for your decision on  
4 Maronjo?

5 A. Yes. But that is not correct.

6 Q. Excuse me?

7 A. This was not her fourth request. She has in the  
8 margin detailed them and some of these are messages on  
9 the answering machine which never occurred. We never  
10 got those. So my contention, it is not the fourth, it is  
11 not the fourth request.

12 Q. Well, let me ask you two different questions.  
13 First, didn't she write you saying this was her fourth  
14 request for a decision?

15 A. That was her contention.

16 Q. And you dispute that you knew that she asked  
17 four times. Is that correct?

18 A. I dispute that she asked four times, yes.

19 Q. Okay, you don't dispute that she wrote you a  
20 letter dated November 6, '88. You don't dispute she  
21 wrote such a letter?

22 A. I dispute the date.

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1 Q. But not the letter?

2 A. But not the letter.

3 Q. And it happened in 1988?

4 A. That is correct.

5 Q. And you had Sharon Nicholson you asked her  
6 to destroy it, but she did contend that it was lost. Is  
7 that correct?

8 A. That is correct.

9 Q. Now, do you recall receiving a New Year's card  
10 or whatever in the latter part of December, of 1988?

11 A. Yes.

12 Q. You do recall that. So the only thing you don't  
13 recall is the third method of request which is that she  
14 left a message on her machine?

15 A. Two messages, that would ...it takes two to  
16 make four. Two additional ones to make four according  
17 to her notations.

18 Q. Well, the letter says that it is her fourth  
19 request, doesn't it?

20 A. Yes, but saying that doesn't make it the fourth  
21 request. That makes it the fifth. She is saying that she  
22 made two letters, two letter requests and two telephone

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1 requests.

2 Q. Do you acknowledge that she made three  
3 requests by January 3, 1989. Is that true?

4 A. Well, She made two requests and then the  
5 third. One, is that she said she made four.

6 Q. And at any time did you take any steps from  
7 her first request to you to this one on January 3rd to do  
8 anything either to offer to buy Mr. Lorenz's share or to  
9 offer Maronjo for sale?

10 A. Between what periods of time?

11 Q. From whenever you say she first resigned until  
12 January, 1989?

13 A. I think we were all involved with holidays and  
14 nothing specific had occurred. That's correct.

15 Q. Your answer is that you did not?

16 A. Yes. That is correct.

17 Q. Now in fact did you take steps to arrange to  
18 breed Maronjo during that same period?

19 A. One does not take steps and had instant  
20 results that the breeding arrangements had to be made a  
21 year before and all of these Mrs. Lorenz was in on.

22 Q. Well, do you understand in early January when

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1 she said this my fourth request that she was asking for  
2 your decision? Are you going to buy me out or are you  
3 going to offer to stud.

4 A. Yes.

5 Q. You understand that?

6 A. I understand that.

7 Q. Now, isn't it a fact that you told Mrs. Lorenz  
8 that you didn't know what decision she was talking  
9 about? Directing your attention to a letter dated January  
10 10, 1989, can you identify that as a letter that you  
11 wrote on or about January 10, 1989?

12 A. Yes. I identify that..

13 Q. And did you in words or substance , on or about  
14 January 10, 1989, told Mrs. Lorenz that you didn't  
15 know..you wanted her to define what decision she was  
16 asking of you.

17 A. The reference is to four times, which I have  
18 just explained there were not four times.

19 Q. Didn't you, independent of the number of times,  
20 didn't your letter say in words or substance, I don't know  
21 what decision you are talking about?

22 A. Define the term of decision, I think is the term

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1 that was used.

2 Q. But you knew very well what decision she was  
3 asking for, didn't you?

4 A. It was to get an agreement, I think on the  
5 disposition or the future of this horse.

6 Q. Now, did you understand from your agreement  
7 with Mrs. Lorenz from the time one party or the other  
8 said that I want to sell my interest that there was 60  
9 day in which you had to make a decision?

10 A. If you can find that place yes. Okay item 19 of  
11 the arrangement. This agreement may be determined by  
12 either party plus 60 days prior written notice to the  
13 other, etcetera. So that's to the original agreement,  
14 yes.

15 Q. So if Mrs. Lorenz's date of November 6th was  
16 correct then 60 days ran on January 6th, is that right?

17 A. But that is my contention that that is not a  
18 correct date.

19 Q. Well, what do you contend is a correct date  
20 that she told you

21 A. The date that she resigned and left the  
22 premises.

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1 Q. Do you say it was December 6th?

2 A. Exactly.

3 Q. And so you were supposed to have made a  
4 decision by February 6th, is that it?

5 A. Well, we are all we are talking about

6 MR. MONAHAN: Your  
7 Honor, I will object to that. I think that that paragraph  
8 speaks for itself.

9 MR. FLANNERY: Well, I  
10 am asking for understanding, Your Honor. I think we  
11 have that.

12 MR. MONAHAN: You  
13 didn't ask what her understanding was.

14 THE COURT: Well, no, you  
15 didn't. I sustain it.

16 Q. Now, is it the case that ...now on or about  
17 January 10, didn't you arrange to have some advertising  
18 done on Maronjo?

19 A. Oh, and much before that.

20 MR. MONAHAN: Your  
21 Honor, I submit again, this is well beyond the scope of  
22 direct in which issues into the case is some other case

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1 making this...he is well beyond the scope of direct.

2 **MR. FLANNERY:** Well,  
3 Your Honor, the reference to the agreement as I  
4 understand it, is for the purposes of saying that my  
5 client is responsible under that agreement for expenses  
6 they are going through a separate witness. This witness  
7 has been asked to identify the agreement between the  
8 parties and this witness  
9 is in a position to offer evidence that impeaches the  
10 agreement that she is relying on in the case in chief and  
11 her direct testimony by her own breach. I think that goes  
12 directly to her direct testimony.

13 **THE COURT:** Well, yes, I  
14 realize that the position necessarily is somewhat  
15 nebulous because you do have to confine your  
16 examination to the your cross examination to the direct  
17 examination.

18 **MR. FLANNERY:** Well,  
19 Your Honor, I will suggest that it goes to the credibility  
20 of Mrs Poynter. She is going to rely on the agreement. It  
21 goes to impeach her direct testimony if she conducted  
22 herself inconsistent with the first agreement and that in

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1 respect

2 is characteristic of the their inconsistently of this  
3 second called White letter.

4 THE COURT: Well, I see  
5 your point but, what you are saying is that testimony is  
6 inconsistent.

7 MR. FLANNERY: Right,  
8 Your Honor. I am looking at it saying we abide by the  
9 agreement, when in fact, they didn't. She is invoking the  
10 agreement to say...this is the agreement and pursuant to  
11 the agreement, of the direct testimony, we did A, B and  
12 C, and it strikes me that appropriate impeachment  
13 material is that in fact their conduct was inconsistent  
14 with the agreement. That is, that they did not respond  
15 to the request to terminate the agreement as per  
16 paragraphs 16 and 19 and they misrepresented by  
17 advertising or breached by their advertising, that they  
18 were the sole owners of Maronjo and they took  
19 additional steps to breed Maronjo, which explained their  
20 course of conduct in trying to monkey around, if you will,  
21 with the White Letter.

22 THE COURT: Well, I

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1 understand that your position is they continued to breed  
2 Maronjo and they dragged their feet and all that I know  
3 that is your position, but it seems to me that they were  
4 getting into such nebulous material that you are asking  
5 the Court to draw a conclusion from and that you are  
6 trying to impeach previous testimony that it is just hard  
7 to see it. It is too spongy I can't see what, how this  
8 does it. I am looking for some hard evidence here.

9 MR. FLANNERY: Okay, I  
10 will move on, Your Honor.

11 THE COURT: Thank you.

12 Q. Did you conduct any of the negotiations with  
13 Mr. White, yourself?

14 A. No. I did not.

15 Q. Did Maxine Nichol, to your knowledge?

16 A. She took...she talked to him on the telephone  
17 several times, is all I know.

18 Q. And did you or Maxine Nichols speak to Georgia  
19 Herbert?

20 A. Speak to her on what occasion?

21 Q. In reference to the negotiations about the sale  
22 of Maronjo, breeding and closing date and so forth?

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1           A.   Well, she was our attorney Of course, both of  
2   us did. Yes.

3           Q.   Now, did you tell Georgia Herbert in words or  
4   substance that in or around January in or around January  
5   of 1989 let's take January of 1989 that you weren't  
6   interested in signing breeding contracts and so you  
7   wanted this question to be done as to whether or not you  
8   owned the stallion Maronjo?

9           A.   I don't recall any specific anything in that  
10   connection. No.

11          Q.   Now, did you say in words or substance, to  
12   Georgia Herbert, that you don't care at all how soon the  
13   appraisals are done after Maronjo comes back to  
14   Marefield Meadows?

15          A.   Sir. I think you are taking things out of  
16   context. May I say that we did have discussions with  
17   Georgia Herbert about appraisals and we all agreed that  
18   there should  
19   be four appraisals of white called off the other three.

20          Q.   I am asking you...well, let's back up and make  
21   this clear. In February, you were discussing having  
22   appraisals of Maronjo. Is that correct?

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1 A. That is correct.

2 Q. At that time, Maronjo was at November Hill  
3 Farm. Is that correct?

4 A. Yes.

5 Q. It is also correct that you could not breed  
6 Maronjo unless it came from Marefield Meadows?

7 A. That's correct.

8 Q. Now, in or around February 13, 1989, did you  
9 have a conversation with Georgia Herbert, in which you  
10 said in words or substance you don't care at all how soon  
11 the appraisals are done after Maronjo comes back to the  
12 Meadows?

13 A. No. I think that's misinterpretation of language.  
14 Some of the appraisers would not in fact come to  
15 Marefield Meadows.

16 MR. FLANNERY: Would  
17 you mark that Defendant's Exhibit 6 for identification?

18 Q. Directing your attention to what has been  
19 marked Cross Defendant's Exhibit 6 for identification,  
20 the notes of Georgia Herbert. I would like for you to look  
21 at those and see...looking at the highlighted portion  
22 reminds you or helps you to recall in sayings of words or

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1 substance, that you don't care at all how soon the  
2 appraisals are done after the horse comes back to the  
3 Meadows.

4 A. I really don't know what this means. I can't  
5 interpret somebody else's notes.

6 Q. I didn't ask you to interpret it. I am asking you  
7 if it helps you recollect that you said in words or  
8 substance, on or about February 13, 1989 to, Georgia  
9 Herbert, then your counsel, that you don't care at all how  
10 soon the appraisals are done after Maronjo comes back to  
11 Marefield Meadows?

12 A. It's meaningless to me. I would have to say,  
13 Sir.

14 Q. So it does not?

15 A. No. It does not.

16 Q. You said that some of the appraisers couldn't  
17 come to Marefield Meadows. Is that what you said?

18 A. I said that someone of them would not because  
19 they did training for us and felt that it would be a  
20 conflict of interest.

21 Q And didn't one of them say that they couldn't  
22 do an evaluation at Marefield Meadows because there

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1 wasn't a ring at the Meadows and they preferred to do  
2 the evaluation at November Hill where there was a horse  
3 ring where they could observe the horse move?

4 A. That's possible.

5 Q. I am sorry. Did you say that's possible or has...

6 A. I don't know. I can't testify that I personally  
7 know, but that would certainly be reasonable.

8 Q. Do you know a person by the name of Mr. Kent  
9 Koenig? K O E N I G?

10 A. Mr. who?

11 Q Koenig?

12 A. What's his first name?

13 MR. CREMINS: Terry.

14 Q. Robin Koenig?

15 A. Yes.

16 Q. And do you recall Robin Koenig saying that one  
17 of the reasons he didn't want to evaluate Maronjo at  
18 Marefield Meadows was that there was no ring at  
19 Marefield Meadows so that he could evaluate the  
20 performance of the horse?

21 A. Not to me, he didn't, but I think's that's  
22 reasonable.

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1 Q. And you do understand that part of the  
2 evaluation of a stallion is to see how it moves, is that  
3 correct?

4 A. That's right.

5 Q. Did you understand from Georgia Herbert that  
6 on your behalf because negotiations were going on so  
7 long that she was asking Mr. White to put these  
8 negotiations in writing to save time?

9 A. I don't think the two were linked. I think that  
10 it's reasonable to expect anything to be put in writing.

11 Q. Including an agreement. Is that right? Including  
12 an agreement?

13 A. Yes.

14 Q. All right. Now, did your counsel, Georgia  
15 Herbert on occasion make memoranda to the file that she  
16 circulated to you for your information following those  
17 conferences?

18 A. No, Sir. Yes.

19 Q. I am sorry.

20 A. Well, I mean she would advise us, but her notes  
21 were her own notes of course.

22 Q. Did she also make a type of moralization of her

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1 conferences with you that she circulated to you?

2 A. I can't recall.

3 Q. Didn't you tell your attorney, Georgia Herbert  
4 in February of '89 in words or substance, that as far as  
5 you were concerned, the horse could stand at stud at  
6 Marefield Meadows and get out of shape and atrophy as  
7 long... and the price would go down... as long as you  
8 could breed Maronjo?

9 A. Are you asking me if I said that?

10 Q. I am saying...I am asking you, did you say that  
11 in words or substance to your Counsel, Georgia Herbert?

12 A. No.

13 Q. I am asking you, to your knowledge, did Maxine  
14 Nichol say that in words or substance, to your Counsel,  
15 Georgia Herbert?

16 A. To my knowledge, no.

17 Q. Did you tell Georgia Herbert, in words or  
18 substance in and around early 1989...any time January or  
19 February that you wanted to have Maronjo to breed him  
20 to mares owned by Marefield Meadows?

21 A. We wanted him to fulfill any breeding contracts  
22 and that, of course, included under the terms of the

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1 contract any mares owned by Marefield Meadows or  
2 either party, but he could have bred a hundred mares.

3 Q. Well, let's go over the contract you are talking  
4 about. Terms of the contract you are talking about a  
5 partnership agreement of 1987, is that correct?

6 A. I object to the word partnership. It's a...

7 Q. The agreement of 1987, whatever you want to  
8 call it?

9 A. That's correct. Right. I am referring to that.

10 Q. But you do agree that Mrs. Lorenz had said  
11 that she wanted to send the contract...that is whether  
12 you want to call it a partnership contract or whatever.  
13 She told you in 1988 she wanted that contract over.  
14 Correct?

15 A. She kept asking what our decisions were on the  
16 regarding the horse Maronjo.

17 Q. And so, didn't you ask Georgia Herbert to make  
18 arrangements so that you could breed your mares?

19 A. No, Sir. I don't think that is a correct  
20 interpretation.

21 Q. Did you ever ask her to arrange to have in  
22 writing, your breeding rights to Maronjo in 1989?

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1           A. Our breeding right were clear in the original  
2 agreement.

3           Q. I am asking you, did you ask Georgia Herbert to  
4 have her put in writing what your breeding rights were in  
5 1989 with Maronjo?

6           A. In the event that Mrs. Lorenz were to buy us  
7 out, it's very common to assure that if you have any  
8 going that they are honored when another party buys the  
9 horse.

10          Q. And so you instructed your attorney that you  
11 wanted her to arrange to have a writing that would  
12 assure that you could have the breedings you had already  
13 contracted for in 1989...

14          A. In the event Mrs. Lorenz bought the stallion.  
15 Yes.

16          Q. And you did that in or around February, 1989.  
17 Is that correct? Told her that you wanted such a  
18 writing?

19          A. I am not sure of the date.

20          Q. And when does the breeding season at  
21 Marefield Meadows conclude...that is during which time  
22 in 1989 Maronjo would cover any mares, either yours or

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1 anyone elses?

2 A. The breeding season is...there is no set time.  
3 There are people who breed up until September and  
4 October.

5 Q. And in...I will withdraw my remark, partial  
6 remark, Your Honor. Did you in words or substance, ask  
7 Georgia Herbert to make sure that you had a breeding  
8 season for the full year and that this be put in writing?

9 A. Only in the event that Mr. Lorenz purchased the  
10 stallion.

11 Q. Was it your view in and around February of  
12 1989, that by May you could accomplish all of the  
13 breeding rights of your mares or anyone elses mares in  
14 1989.

15 A. It was...it would have been impossible to sell.

16 Q. Were you concerned, therefore, to be able to  
17 breed back any mares from Maronjo if the first cover, as  
18 it is called, didn't take?

19 A. That would have been a consideration.

20 Q. And you would have wanted that in writing.  
21 Isn't that correct?

22 A. In the event that she purchased the stallion.

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1 Q. And you told Georgia Herbert, your Counsel,  
2 that you needed and wanted it in writing. Isn't that  
3 right?

4 A. In the event that she purchased...none of these  
5 things were necessary otherwise.

6 Q. After the White Letter of February 23, 1989,  
7 did you have a long telephone conversation...withdraw it.  
8 Did you have a telephone conversation with Georgia  
9 Herbert in which you and Maxine and Georgia Herbert  
10 were on the phone?

11 A. I think so, yes.

12 Q. And in that conversation, did you say in words  
13 or substance that you would want as part of any  
14 agreement that Regula Lorenz should execute a standard  
15 breeding contract so that you could breed your mares and  
16 breed anybody else's mares in 1989?

17 A. This was only...No, Sir. That is not correct.  
18 That is ... an incomplete answer...I mean question.

19 Q. Well, do you say that one of the conditions of  
20 sale had to be that Mrs. Lorenz would execute a breeding  
21 contract with standard language?

22 A. These were all negotiations and this was in the

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1       eventuality that she buy the stallion.

2           Q.    So, if Mrs. Lorenz bought the stallion that a  
3       necessary condition of that agreement was that there  
4       would be a breeding contract that it allowed you to  
5       breed? Is that correct?

6           A.    No, Sir. That is not correct. It is only.

7           Q.    There is no question. I have your answer.

8           A.    All right.

9           Q.    During that conversation, did you or Maxine say  
10      in words or substance that time was not of the essence  
11      and the conclusion of these negotiations without  
12      Maronjo?

13          A.    I can't speak for Maxine. I don't recall saying  
14      anything of that sort.

15          Q.    Did you say or did Maxine say in words or  
16      substance that it suits you fine to let this take a while to  
17      resolve because that simply gives you more time to  
18      actually accomplish the breeding you want to accomplish?

19  
20          A.    I don't recall that. May also...

21          Q.    There is no question pending, Mr. Poynter.

22          A.    All right.

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1                                   **MR. FLANNERY:**       Would  
2     you mark this as Defendant's Exhibit.

3           **Q.**    Now, I will direct your attention to what I have  
4     marked Cross Defendant's Exhibit 7 for identification.

5                                   **MR. MONAHAN:**     Could I  
6     take a look at that?

7           **Q.**    Do you recognize...first of all, did you ever get  
8     a copy of Mrs. Herbert's notes of that conversation  
9     occurring on or about February 27, 1989?

10          **A.**    No, Sir.

11          **Q.**    Now, directing your attention....well, I would  
12     like you to read that document then I would like to see if  
13     that refreshes your recollection in any respect?

14                                   **THE COURT:**       All right,  
15     she is finished.

16                                   **MR. FLANNERY:**     Thank  
17     you, Your Honor.

18          **Q.**    Now, after looking at that, does that refresh  
19     your recollection to that item that you or Maxine said  
20     during that conversation, that time was of the essence  
21     because you wanted to get more time to accomplish the  
22     breeding of your own mares?

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1           A.    This was...this was...I cannot testify. This is  
2           not what I said, but I don't know what you are asking me  
3           to say. I did not say this is all I...

4           Q.    So are you saying that they were wrong or you  
5           just don't remember?

6           A.    I am saying that Maxine may have said it, but  
7           I did not.

8           Q.    Now, attached to that paper is a stallion  
9           service contract of Marefield Meadows, did you have at  
10          that time, that is of February of '89, a contract that you  
11          used whenever Maronjo or any other stallion was  
12          covering a mare?

13          A.    Yes.

14          Q.    Did you form such a contract with Mr. Herbert  
15          as an example of the kind of agreement that you wanted  
16          with Mrs. Lorenz if she bought Maronjo?

17          A.    Apparently.

18          Q.    So apparently...do you remember doing it?

19          A.    I did not do it.

20          Q.    Do you remember discussing it with Mrs.  
21          Herbert?

22          A.    I did not. This it's very possible that this

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1 is...it is attached. It was done, obviously.

2 Q. Now, do you recall writing a letter to Georgia  
3 Herbert on or about March 6, 1989 discussing the White  
4 letter of February 23rd to be considered part of the  
5 negotiations that you considered an offer?

6 A. I don't remember the exact date.

7 Q. Do you remember writing the letter to Georgia  
8 Herbert after the White Letter was received by Mrs.  
9 Herbert?

10 A. I believe so.

11 Q. And do you recall setting forth in that letter  
12 what you thought was appropriate or inappropriate about  
13 the terms in the White Letter?

14 A. If you have that letter, I would be grateful to  
15 look through it. Let me refresh my memory.

16 MR. FLANNERY: Would  
17 you mark this Defendant's Exhibit 3, please? If I may  
18 approach the witness, Your Honor, because I have... I  
19 will try to step back so that I project... so that it is  
20 not...

21 A. The signature is not legible on this page.

22 Q. Looking at the letter, do you recognize that

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1 letter?

2 A. I recognize the stationery.

3 Q. Do you recall recognizing that letter during your  
4 deposition?

5 A. I should like

6 Q. As the letter you wrote?

7 A. I should like to see the signature on this letter,  
8 if I could please.

9 Q. Looking at that letter now, you don't remember  
10 that letter, is that correct?

11 A. I am not saying that.

12 Q. Well, do you want to look at it more carefully  
13 and see if you remember if that is an exact copy of the  
14 letter that you sent to Georgia herbert? That was...

15 A. I don't believe that it is unreasonable to ask for  
16 a copy of this that has a signature on it and the reason  
17 that I am saying that is that I would like to know whether  
18 it had two signatures or one.

19 Q. I can make representation but that's...you have  
20 to testify now. Do you recall sending a letter to your  
21 attorney, Mrs. Herbert that was the original to your  
22 return?

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1           A.    It is not...I am not being contentious, sir. I am  
2 not sure whether it is my signature on this, Maxine's or  
3 both of us. That is the only reason that I ask.

4           Q.    Okay. Now that you are going through it, you  
5 can't recall looking at it when you make reference to we  
6 and so forth as to whether or not one signature or both  
7 signatures...

8           A.    I didn't say. I am just interested in who signed  
9 it.

10                   THE COURT:   Well, that is  
11 equivalent of saying that she doesn't know, so I think  
12 that you will just have to accept that and do something  
13 else.

14                   MR. FLANNERY:    Yes. I  
15 think so, Your Honor.

16           Q.    But if I may borrow the letter back to ask you  
17 about some particular terms.

18                   THE COURT:    I say that  
19 that clock is still on daylight savings

20                   MR. FLANNERY:    It is  
21 12:06.

22                   THE COURT:    Well, it is

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1 messed up. It is 8 minutes after 12 . Since you are still  
2 with one witness here, I would like for you to finish and  
3 then we will break for lunch about 12:30 How much  
4 longer do you have because we have numerous witnesses  
5 here?

6 **MR. FLANNERY:** That is  
7 true, Your Honor. I will try to be as efficient as I can.

8 **THE COURT:** Well, just  
9 give me an estimate. Can't you finish by 12:30?

10 **MR. FLANNERY:** I think I  
11 can, Your Honor. I don't know if Mr. Cremins...

12 **THE COURT:** Oh yes, but  
13 I...

14 **MR. FLANNERY:** I will  
15 finish by 12:30. Yes, Your Honor.

16 **THE COURT:** Well, I hope  
17 you can do better than that because...

18 **MR. FLANNERY:** I will try  
19 to do better than that. I am, sorry that I...

20 **Q.** Did you tell Mrs. Herbert in words or substance,  
21 that you wanted to be able to follow through on  
22 any contracts that you received before conveying to Mrs.

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1 Lorenz? Monroja?

2 A. I think that we wanted to be assured any  
3 contracts in existence could be serviced since Mrs.  
4 Lorenz

5 got a third of each fee. It was to her advantage as well.

6 Q. She got a third of the old 1987 agreement?

7 A. Correct.

8 MR. MONAHAN: Your  
9 Honor, I am going to object to this. He has not left her  
10 a copy. He is misstating what the letter says. The letter  
11 actually says that she hopes Mrs. Lorenz will follow  
12 through. It is a misstatement of the letter in which he has  
13 not been quoting what he has in front of her and now he  
14 says did you say such a thing in the letter.

15 MR. FLANNERY: I said  
16 without limitations to the letter in words or substance,  
17 did you say that to Mrs. Herbert. Now, if she does or  
18 doesn't recall it, then that is the answer. I didn't say did  
19 you say it.

20 MR. CREMINS: I have a  
21 different objection, Judge. My end of the objection  
22 assumes that the letter was signed by his client and if

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1 you are making that concession of that agreement on the  
2 record then I understand the objection, but if he is not...

3 **MR. MONAHAN:** I am not  
4 conceding anything. My objection is in reference to a  
5 letter being misquoted, no matter who signed it.

6 **THE COURT:** All right.

7 **MR. FLANNERY:** I was  
8 only asking if she remembered it, Your Honor. I will  
9 withdraw the question.

10 **THE COURT:** Yes, I think  
11 you can get that from some other witness or document  
12 so the question is withdrawn.

13 **MR. MONAHAN:** All right.

14 **Q.** On or about what date did you first talk to Mr.  
15 Monahan about litigating this matter?

16 **A.** I don't recall the exact date.

17 **Q.** Was it in or around March of 1989 that you first  
18 retained Mr. Monahan.

19 **MR. MONAHAN:** I will  
20 object to that. It is totally irrelevant. It has nothing to do  
21 with a formation of a contract.

22 **THE COURT:** Well, it does,

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1 it seems irrelevant to the Court. There may be some  
2 reason for it. I am going to sustain the objection.

3 MR. FLANNERY: Your  
4 Honor, might I address it or not?

5 THE COURT: I will sustain  
6 the objection.

7 Q. Directing your attention to on or around March  
8 17, 1989, do you recall on or about that date on the first  
9 time of being any discussion about the mating of the  
10 horse 60 days later?

11 MR. MONAHAN: Your  
12 Honor, is he asking whether it was the first time or is he  
13 asking for a specific date?

14 MR. FLANNERY: I ask  
15 Your Honor...

16 THE COURT: Well, Mrs.  
17 Poynter is trying her best to answer these questions.  
18 Mrs. Poynter, I can see that you have to hesitate for  
19 awhile because and usually you say, you can say if you  
20 don't know. I appreciate your attempting to answer the  
21 question, but if you don't know, just say so to begin  
22 with. There is nothing wrong with saying you don't know

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1 if you don't know, if you can't recall. That is perfectly  
2 all right.

3 MRS. POYNTER: Thank you,  
4 sir.

5 THE COURT: All right.  
6 Next question.

7 Q. In or around March of 1989, how many mares  
8 did you have that belonged to Marefield Meadows,  
9 yourself, or Maxine Nichol at the farm?

10 A. I think four.

11 Q. And what are their names?

12 A. Gallant, Elexa.

13 Q. Was Recognition a mare?

14 A. Recognition. Thank you.

15 Q. Was Flowerbulb?

16 A. Flowerbulb. Yes.

17 Q. As you say or do you recall when you covered  
18 these mares? The first date that you covered them with  
19 Maronjo?

20 A. There are breeding records by necessity that  
21 show that. Yes.

22 Q. Did you acquire in 1989?

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1 A. Yes.

2 Q. Do you recall the name of the mares that  
3 acquired?

4 A. Galatee.

5 Q. I am sorry. Can you spell that for the record?

6 A. G A L A T E E, I think it is.

7 Q. And you say that there are records of when  
8 these mares were covered and would Helen Poland, your  
9 Vet, have that information?

10 A. Yes. She would.

11 Q. Can you tell us, not the names, how many  
12 mares other than Marefield Meadows's mares were  
13 covered? How many mares do you know of that were  
14 covered?

15 A. I don't know the exact date but that is all in the  
16 records which you already have, Sir.

17 Q. And about how many would that be?

18 A. I really can't even I can't tell you. I can't even  
19 guess. More than Marefield Meadows.

20 Q. Now, is it safe to say that they were all  
21 covered after this March 9th?

22

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1 A. No. It is not safe to say. I can't say. I am not  
2 sure.

3 Q. And as a result of Maronjo covering your mares,  
4 do you not have foals?

5 A. Yes, Sir.

6 Q. And how many mares do you have as a result,  
7 in your opinion, as a result of Maronjo covering your  
8 mares?

9 A. Well, they are all the ones that are from  
10 Hanoverian Mares, which is the way it always goes.

11 Q. We are not talking about the way it always  
12 goes. The question was, how many foals do you have as  
13 a result of Maronjo covering your mares in 1989?

14 A. In 1989?

15 Q. Correct.

16 A. Only in 1989?

17 Q. In 1989.

18 A. There are 3 or 4.

19 Q. And what are their names? Is Mantissa one of  
20 those?

21 A. Mantissa is one. Yes.

22 Q. And is Maronjo one of those?

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1 A. Maronjo is one of those.

2 Q. And had you advertised these foals in various  
3 publications including The Chronicle of a Horse?

4 A. Those and others. Not those specifically

5 Q. Including those, but not exclusively those, is  
6 that what you are saying? Let me ask the question again.  
7 Have you advertised in The Chronicles of a Horse to sell  
8 the foals that resulted from Maronjo covering your  
9 mares?

10 MR. MONAHAN: Your  
11 Honor, I would object to this. It is totally irrelevant as  
12 to whether they advertised of certain foals. As a matter  
13 of law, horses, the foals belong to the mare and I don't  
14 believe even Mr. Flannery is any authority to the  
15 contrary. It is just a totally irrelevant issue again.  
16 Another way to put it. I object under this case.

17 THE COURT: Well, now it  
18 has a tendency to show that Mrs. Poynter received some  
19 benefits of Maronjo's presence while in her possession.

20 MR. MONAHAN: Your  
21 Honor, we would concede the issue of whether the foals  
22 belonged to her. We concede that there were foals and

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1 we concede that they were Maronjo's foals.

2 THE COURT: I think that is  
3 all you need to show really.

4 MR. FLANNERY: Well, I  
5 wasn't going past that until he entertained the objection.

6 THE COURT: Well.

7 MR. FLANNERY: There are  
8 two things. There are three things. (A) we have foals.  
9 (B) we are seeking to obtain property by selling them and  
10 (C) the extent of the campaign all goes to the motive  
11 wherein.

12 THE COURT: Well, the  
13 latter, the third question really covers the first two and  
14 Mr. Monahan can see that the first two questions have  
15 already been answered. So, just ask her the last  
16 question.

17 Q. Now, what have you estimated the sales value  
18 on each of these foals for?

19 A. I would have to consult a list. I don't have it  
20 with me.

21 Q. You don't know?

22 A. No.

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1 THE COURT: The amount is  
2 not too material.

3 MR. FLANNERY: All right.  
4 No further questions, Your Honor. Thank you. Thank you  
5 Mrs. Poynter.

6 MR. CREMINS: Your Honor,  
7 do you wish to get started?

8 THE COURT: Yes. I think  
9 so. Go ahead since she is on the stand. Move along as  
10 best you can. We will adjourn at 12:30 for lunch.

11 **CROSS EXAMINATION**

12 **BY MR. CREMINS:**

13 Q. Mrs. Poynter, can you give me the date in  
14 which it is your understanding or belief that you had a  
15 contract. You being Marefield Meadows. I don't mean  
16 you personally, ma'am, but Marefield Meadows had a  
17 contract to sell Maronjo to Regula Lorenz?

18 A. It's this date that has been used previously,  
19 March 9th.

20 Q. March 9, 1989?

21 A. That is correct.

22 Q. As of March 9, 1989, what was your agreement

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1 with Mrs. Lorenz with respect to a "Settlement", quote,  
2 end quote?

3 A. It was to be 60 days.

4 Q. All right, what is the source document that  
5 reflects that agreement that is dated March 9, so that we  
6 can all have it before us.

7 A. I am sorry. I don't understand the question.

8 Q. Your understanding was 60 days from March 9  
9 and as March 9 that 60 days has to be agreed on  
10 somewhere. I am just asking you if...

11 MR. MONAHAN: I object to  
12 that argument, Your Honor. That is not true. There  
13 could be a subsequent agreement that states 60 days if  
14 there is a problem then we can't sell the horse.

15 MR. CREMINS: I object to  
16 his objection, Your Honor. The counsel is trying to  
17 answer the question.

18 THE COURT: Well, it is  
19 cross examination. I will allow it. Overruled. Your  
20 objection is on the record. It is overruled.

21 Q. As of March 9, 1989, you say there was a  
22 contract. I would like to know from you, what document

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1 you could point me to that has this decision date,  
2 settlement date?

3 A. That document written as I recall by Mr.  
4 Monahan.

5 Q. And that was written before March 9th?

6 A. I am not sure when it was written.

7 Q. Well, would it matter when it was written? As  
8 you understand was March 9th, the date of that contract?

9 A. I am totally confused as to which jurisdictions  
10 overlap which and when Mr. Monahan came into this as  
11 opposed to Georgia Herbert.

12 Q. I appreciate your confusion and believe me, I  
13 sympathize with that and I will try not to make it any  
14 more acute. What agreement did you have with Mrs.  
15 Lorenz with respect to whether or not Maronjo would be  
16 used to cover your mare as of March 9th?

17 A. Well, in the absence of any termination of the  
18 existing agreement, we have the agreement that each  
19 party was entitled to cover any of their old mares without  
20 limit.

21 Q. In the absence of the termination of the 1987  
22 agreement, that was your preface to the entry?

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1 A. Yes, Sir.

2 Q. Could we just talk about this June 9, 1987  
3 agreement for a moment? I don't believe you have it up  
4 there, but I am not sure you need it to answer my....

5 A. Yes.

6 Q. Do you have it?

7 A. Yes. I do.

8 Q. Okay. You say that that is not a partnership.  
9 Is that true?

10 A. Yes.

11 Q. Okay. Could you tell us, please ma'am, what  
12 your understanding was of your relationship and Mrs.  
13 Nichol, Maxine Nichol and I don't know whether it was  
14 Miss or Mrs. I am sorry, the one that is correct.

15 A. What our relationship to...

16 Q. What was your legal relationship, Poynter and  
17 Nichol under this agreement?

18 A. Under this agreement?

19 Q. Yes.

20 A. Legally, it is Marefield Meadows, and we are  
21 both officers of the corporation, is the only connection  
22 that I can see.

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1 Q. And what was your and this is a personal  
2 question, now, Mary Ann Poynter's relationship with  
3 Regula Lorenz under this agreement if it was a  
4 partnership? What was your understanding?

5 A. She is one-third owner and the spelled out  
6 entitlement under this agreement, the ownership, the  
7 purchase price and would do what, under certain  
8 circumstances, etcetera.

9 Q. Was she just an employee of Marefield  
10 Meadows?

11 A. She was never an employee of Marefield  
12 Meadows.

13 Q. Was she simply a trainer under this agreement?

14 A. She was a...it was a joint venture, I suppose.  
15 She purchased one-third and we purchased two-thirds of  
16 the stallion.

17 Q. But you object to us using partnership.

18 MR. MONAHAN: I think that  
19 is totally irrelevant. It is just a delay of the case.

20 THE COURT: Yes, I believe  
21 that is irrelevant, Mr. Cremins.

22 Q. When Georgia sent you Craig White's February

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1 23rd letter, the so-called offer letter...

2 A. Yes. I have it right here.

3 Q. She did send that to you, I believe?

4 A. Yes.

5 Q. You reviewed it?

6 A. Yes.

7 Q. Now, I presume you discussed it with her?

8 A. Discussed it with her?

9 Q. Yes. With Georgia Herbert. Didn't she tell you  
10 that Mrs. Lorenz required financing before she could  
11 afford to pay fifty three thousand dollars?

12 A. No, Sir.

13 Q. Didn't she tell you that agreement, that letter,  
14 if it was an agreement on anything, was not in agreement  
15 on the other pertinent issues that needed to be resolved?

16 A. No, Sir.

17 Q. She didn't say anything about that? Didn't she  
18 tell you that any addition to whatever was in Mr. White's  
19 letter, you and Mrs. Lorenz were going to have to agree  
20 on the breeding rights issues?

21 A. No, Sir.

22 Q. Didn't she tell you that there was going to have

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1 to be an agreement on a settlement date?

2 A. No, Sir.

3 Q. Didn't she tell you that there was going to have  
4 to be an agreement about whether you owed Mrs. Lorenz  
5 or she owed Marefield Meadows money under the  
6 accounting problems that had arisen?

7 A. That was understood. Yes. I think.

8 Q. That wasn't the grievance, was it?

9 A. We are talking about an acceptance of an offer.  
10 That what we discussed.

11 Q. That wasn't my question. My question was, as  
12 of January, 1989, you had a demand for about seventeen  
13 hundred dollars of expenses. When I say you, I mean  
14 Marefield Meadows.

15 A. Uh, huh.

16 Q. That you claimed Mrs. Lorenz owed.

17 A. That she had not paid...

18 Q. That dispute had not been resolved, had it not?

19 A. That is correct.

20 Q. As a matter of fact, it has not been resolved as  
21 of this day. You still haven't gotten the seventeen  
22 hundred dollars, have you?

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1 A. That is correct.

2 Q. Okay. Did Georgia Herbert tell you that that  
3 was going to have to be resolved?

4 A. When you say tell...

5 Q. Discuss it with you, maybe.

6 A. No. I think we all, that is understood.

7 Q. It wasn't resolved though. Correct?

8 A. Correct.

9 Q. In connection with the way you saw this offer  
10 and acceptance and then what was really necessary after  
11 that, let's just presume now that that was an  
12 unconditional offer and you told Georgia Herbert, accept?  
13 Correct?

14 A. (No response)

15 Q. Didn't you also tell her to add that you wanted  
16 a cashier's check, not to take any personal checks from  
17 Mrs. Lorenz?

18 A. I don't recall.

19 Q. Does that sound like it might be correct?

20 A. It sounds like it could be correct. Yes.

21 Q. Well, would I be safe in assuming, and I don't  
22 mean this in a derogatory way to either side, but there is

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1 no love lost between you and Mrs. Lorenz as of this point  
2 and time, March of '89?

3 A. I think that is incorrect.

4 Q. As I say...

5 A. It is incorrect.

6 Q. That is incorrect?

7 A. Yes, sir.

8 Q. Did you also tell Georgia Herbert, that in  
9 connection with this proposed sale to Mrs. Lorenz that  
10 you wanted her, Lorenz's agreement, that in the event  
11 she ever sold the horse in the future, you be informed so  
12 that you might make a bid?

13 A. I don't recall.

14 Q. Did you also tell Mrs. Herbert that you  
15 considered it to be Mrs. Lorenz's legal, ethical, and moral  
16 obligation to live up to the breeding contracts that you  
17 had already arranged?

18 A. Yes, sir.

19 Q. And did you also tell Mrs. Herbert that you  
20 wanted to be sure that she agreed to that and that you  
21 wanted that in writing?

22 A. Probably. I can't really say.

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1 Q. Well, it would make sense, wouldn't it?

2 A. Yes.

3 Q. Okay. And did you also talk to Mrs. Herbert  
4 about the issue of Mrs. Lorenz says she only owes pro-  
5 rata expenses. You say that she owes it all. Wasn't that  
6 the basic dispute between you? You are saying 100  
7 percent and she was saying none?

8 A. Well, we were saying this was concerning  
9 insurance which is what's beyond checks that we  
10 received from her.

11 They are saying that we had to pay it all up  
12 front and they prefer to pay it monthly or quarterly or  
13 whatever is not correct. She had agreed to pay it all at  
14 the time it was paid to the insurance company.

15 Q. That issue has not been decided. You want it  
16 decided?

17 A. It is still out there. Somebody had to decide it.  
18 Yes.

19 THE COURT: All right,  
20 gentlemen. It is getting on about time for lunch. If you  
21 have another question you will complete that particular  
22 point that you are trying to make, otherwise, we will

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1 adjourn.

2 Can you ask one more question?

3  
4 MR. CREMINS: I don't have  
5 any.

6  
7 THE COURT: All right. We  
8 will take an hour for lunch.

9  
10 (WHEREUPON, the Court recessed for lunch)

11  
12  
13  
14 AFTERNOON SESSION

15  
16 MRS. POYNTER: I am sorry,  
17 Your Honor.

18 THE COURT: That is  
19 all right. We understood that you had a problem.

20 MRS. POYNTER: Yes.  
21 Thank you, Your Honor.

22  
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1 THE COURT: Do you need  
2 a moment to catch your breath?

3 MRS. POYNTER: No. I am  
4 fine. Thank you.

5  
6 CONTINUATION OF CROSS

7 EXAMINATION BY MR. CREMINS:

8 Q. Did Craig White ever represent Marefield  
9 Meadows in this case?

10 A. No, sir.

11 Q. Did Burke McCahill?

12 A. No.

13 Q. Did the law firm of Hanes, Sevilla, Saunders  
14 and McCahill represent Marefield Meadows at any time in  
15 this in this case?

16 A. No, sir.

17 THE COURT: Your answer  
18 is no?

19 MRS. POYNTER: No.

20 Q. As a matter of fact, he has never represented  
21 your business, has he?

22 A. No, they haven't.

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1 Q. Regardless of your agreement with Mrs. Lorenz,  
2 it is your testimony that that agreement was over by  
3 January, 1989 and is valid?

4 A. No.

5 Q. No. It is not?

6 A. Not to my understanding.

7 Q. Do you believe that that agreement still  
8 survives today?

9 A. That would be for the courts to decide. It had  
10 not been terminated, except, wait a minute, let me  
11 retract that. The sale of the horse would have some  
12 effect, of course, on the details of it.

13 Q. All right. I am not really asking you to be a  
14 lawyer, Mrs. Poynter. That is unfair, but, am merely  
15 asking you, if I understand you, what your understanding  
16 is of when that June of '87 agreement was terminated?

17 MR. MONAHAN: Your  
18 Honor, I am going to object to that. First, he hasn't  
19 established if it was terminated.

20 MR. CREMINS: Oh, yes.

21 MR. MONAHAN: If ever.

22 MR. CREMINS: I am sorry.

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1 I apologize. You are right.

2 Q. If ever. When was it terminated, if ever?

3 A. I really can't answer that.

4 Q. Have you treated it as being in existence up to  
5 the present time?

6 A Yes, sir.

7 Q. And have you conducted yourself, accordingly,  
8 to that agreement?

9 A. Yes, sir.

10 Q. Do you believe that you have lived up to these  
11 terms?

12 A. Yes, sir.

13 Q. I was a little unclear when Mr. Flannery was  
14 asking you about breeding and how many foals. Is that  
15 the right term, Maronjo had sired during the 1989  
16 breeding season? You had indicated three or four at your  
17 farm. Did you give us an estimate of how many others  
18 besides the ones...

19 A. I didn't. I would have to consult the records.

20 Q. Do you have...

21 A. But it is under 10 I would say.

22 Q. Under 10 total?

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1       A.   No. Under 10 outside ones.

2       Q.   Okay.

3                   THE COURT: These were  
4 the foals other than her...

5                   MR. CREMINS: These were  
6 other than Marefield Meadows.

7                   THE COURT: All right.

8                   MR. MONAHAN: Your Honor,  
9 we need a decision between foals and breedings. She is  
10 talking about breedings at this point.

11                   THE COURT: Breedings is  
12 that what you mean rather than foals?

13                   MRS. POYNTER: Yes.

14                   THE COURT: All right.

15       Q.   How many, you will have to understand that I  
16 don't understand your lingo, probably worse than you  
17 understand mine, but isn't a foal the live horse that is  
18 born?

19       A.   That is right.

20       Q.   Okay. How many live horses were born as a  
21 result of Maronjo's breeding, do you think?

22       A.   Oh, I would really have to consult the records

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1 because there were some complications.

2 Q. Okay. And how far into 1989 was Maronjo  
3 bred?

4 A. I think the last attempted breeding was when  
5 the horse went to Middleburg Equestrian Center to  
6 service one of Reggie's "Free Breedings" that occurred  
7 under the contract.

8 Q. That's fine. Could you answer my question  
9 now?

10 A. Which was?

11 Q. When?

12 A. How long?

13 Q. Yes. How far into 1989? August?

14 A. I would say that it was early summer.

15 Q. June?

16 A. I told you, sir, I don't recall the exact...it is in  
17 the files. We can find out though.

18 Q. I wasn't asking you for your answer or decision  
19 and I understand that you have records, I was just asking  
20 for your best recollection of when was the last time you  
21 bred Maronjo?

22 MR. MONAHAN: But she

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1 answered, Your Honor, by saying early summer.

2 THE COURT: Yes. Early  
3 summer. That is the best that she can do. I suppose that  
4 is it.

5 Q. What was the purchase price of Maronjo?

6 A. The original purchase price?

7 Q. Yes.

8 A. Fifty five thousand dollars.

9 MR. CREMINS: I don't have  
10 anything further, Your Honor.

11 THE COURT: All right, ~~Mr.~~  
12 If there are no further questions, you can step down.

13 MR. MONAHAN: Your  
14 Honor, I would like to ask a couple, if I could.

15 THE COURT: All right. Just  
16 a couple.

17 REDIRECT EXAMINATION

18 BY MR. MONAHAN:

19 Q. Mrs. Poynter, is it your understanding that the  
20 original purchase price was used to determine the sales  
21 price in the letter of Mr. White or another evaluation was  
22 used?

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1 A. Another evaluation was used.

2 Q. And whose evaluation was that?

3 A. This was an evaluation done by Lou Thompson,  
4 Jr., President of the American Hanoverian Society.

5 Q. All right. Could you tell me how Mr. Thompson  
6 became involved in the appraisal of Maronjo?

7 A. When there were discussions as to arriving at a  
8 fair price of this horse, Mrs. Lorenz suggested some  
9 other...she suggested two actually, and we suggested  
10 two.

11 Q. All right. I will show you what I refer to as  
12 Exhibit number 3 for the Cross Plaintiff and ask you if  
13 you have seen that before?

14 A. Yes, sir.

15 Q. And is that the appraisal of Mr. Thompson?

16 A. Yes, sir.

17 MR. MONAHAN: Thank you.

18 Your Honor, I would like to offer...I did not offer one and  
19 two I would like to offer one, two and three at this time,  
20 just so the record is clear.

21 THE COURT: There is no  
22 objection?

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1                   **MR. CREMINS:** I have no  
2 objection to number three, Your Honor.

3                   **MR. FLANNERY:**       No  
4 objection.

5                   **THE COURT:** If there is no  
6 objection, it will be.

7           Q. Can you tell me what, first of all, Mr.  
8 Thompson's position was?

9           A. He is the President of the American Hanoverian  
10 Society.

11          Q. In your beliefs, is it your understanding that he  
12 is knowledgeable?

13          A. Yes, sir.

14          Q. What was the figure that he appraised the horse  
15 at?

16          A. Eighty thousand dollars.

17          Q. How did you receive a copy of the appraisal, if  
18 you did?

19          A. I am not sure how it came to us. We did  
20 receive a copy. It came not directly, but some indirect  
21 fashion. I am not sure about that.

22          Q. I call your attention to the fact that that

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1 appraisal is directed to Craig White. Did you receive it  
2 from your attorney?

3 A. I believe so.

4 Q. Mrs. Poynter, I want to direct your attention to  
5 the original agreement arrived at with Mrs. Lorenz, which  
6 I believe I put into evidence as Exhibit number 1. Do you  
7 have a copy?

8 A. Yes, sir.

9 Q. Would you read me paragraph, I believe it is  
10 19?

11 A. Yes. This agreement may be terminated by  
12 either party upon 60 days, prior written notice to the  
13 other, in which event such notice shall be treated as  
14 direction to sell in accordance with paragraph 16 about  
15 and the party shall proceed accordingly. Similiarly, any  
16 breach of this agreement by either party shall be a  
17 direction to sell as herein provided.

18 Q. Was there any kind of any agreement on the  
19 part of you, yourself, for Marefield Meadows and Mrs.  
20 Lorenz to change that requirement of 60 days written  
21 notice, thereafter, which the agreement could be  
22 terminated?

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1           A.   No, sir.

2                           THE COURT:   Excuse me.

3       She is reading from...

4                           MR. MONAHAN: Paragraph  
5       19, Your Honor.

6                           THE COURT: 19. That is  
7       considered an Exhibit, I suppose? All right. I have it  
8       correct.

9           Q.   Your answer was that there was no such  
10       agreement to vary the terms of that?

11          A.   Yes, sir.

12                           THE COURT: You say there  
13       was no agreement to terminate that particular provision.  
14       Is that your question?

15                           MR. MONAHAN:       That  
16       provision was never agreed to terminate.

17          Q.   Mrs. Poynter, during the course of the month of  
18       January and February, it is my understanding that there  
19       discussions which resulted in method of appraisal?

20          A.   Yes, sir.

21          Q.   Was it ever communicated to you that Mrs.  
22       Lorenz was not in agreement with trying to work the

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1 matter out on that basis?

2 A. No, sir.

3 Q. Was that still your understanding at the time  
4 the Thompson Appraisal was rendered?

5 A. Yes.

6 Q. And was that still your understanding that you  
7 were still trying to work things out at the time that you  
8 learned of a letter dated February 23, 1989?

9 A. Yes.

10 Q. To your knowledge, was any action taken by  
11 Georgia Herbert that was not with your agreement?

12 A. No, sir.

13 MR. MONAHAN: Okay.

14 Thank you. That is all.

15 THE COURT: All right.

16 MR. FLANNERY: I have  
17 some questions, Your Honor.

18 THE COURT: All right, sir.

19 Very briefly.

20 **RECROSS EXAMINATION**

21 **BY MR. FLANNERY:**

22 Q. The appraisal that is before you, Exhibit 3 of

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1 the Cross Plaintiff, is it your understanding that  
2 evaluation was done exclusively based on performance of  
3 Maronjo as opposed to breeding?

4 A. I don't think I can say.

5 MR. MONAHAN: The record  
6 speaks for itself.

7 MR. FLANNERY: Well, I  
8 want to discuss the agreement of the method, Your  
9 Honor. Was her understanding on the basis of the eighty  
10 thousand dollar figure that she has testified as a fair  
11 figure of the horse.

12 MRS. POYNTER: Excuse me.

13 MR. MONAHAN: I submit  
14 the letter speaks for itself how he is appraised.

15 THE COURT: I think it is.  
16 Just a minute.

17 MR. FLANNERY: Well, if I  
18 can, Your Honor, I would like to read a relevant portion  
19 of the record and then ask a question of the witness  
20 about that.

21 THE COURT: All right.

22 Q. The report says in paragraph 6, Maronjo does

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1 not to my knowledge, have any foals by Maronjo at this  
2 time. However, it is not possible to make any judgment  
3 as to his quality as a breeding stallion. So did you  
4 understand, Mrs. Poynter that Maronjo's value was  
5 entirely based on his performance. Not on his ability to  
6 breed?

7 A. I can't speak for the appraiser, sir. I can't...that  
8 is not my understanding.

9 Q. Did you understand that this examination was  
10 done at November Hill because they had a ring?

11 A. Yes.

12 Q. And you gave reference to the agreement before  
13 you, and, I direct your attention to the agreement in  
14 paragraph 9 and 10. Did you understand the decision  
15 you made that resulted in expense, required prior  
16 approval of Mrs. Lorenz if you were abiding by that  
17 agreement?

18 MR. MONAHAN: Your  
19 Honor, may I suggest that he is now out of the scope of  
20 direct

21 THE COURT: Yes. That's  
22 true. I believe it does, Mr. Flannery.

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1 **MR. FLANNERY:** Okay.

2 Then I will stand corrected by the first correction.

3 **THE COURT:** All right.

4 Q. So there is no confusion in your mind, Mrs.  
5 Poynter, you understand paragraph 19 to be...not only to  
6 be told that I wanted to sell the horse, but any breach of  
7 the agreement directing to sell the horse Maronjo. Do  
8 you understand that?

9 A. I think that is a legal question.

10 Q. Well, the last sentence in paragraph 19 drawn  
11 by your attorney, says any breach of this agreement by  
12 either party shall be a direction to sell the horse.

13 A. Yes.

14 Q. The other part that says that if there is written  
15 notice to terminate the agreement, then that could be  
16 treated as a direction to sell. Do you understand that?

17 A. Yes.

18 Q. So you understand Mrs. Lorenz's letter to you,  
19 whatever date you say you received it, to be a direction  
20 to sell, don't you?

21 A. Yes.

22 **MR. FLANNERY:** No further

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1 questions, Your Honor.

2 THE COURT: All right, you  
3 may step down. Will you call your next witness please?

4 MR. MONAHAN: Mrs.  
5 Herbert, please.

6 GEORGIA HERBERT, having been duly sworn by the Clerk  
7 of the Court was examined and testified as follows:

8 DIRECT EXAMINATION BY

9 MR. MONAHAN:

10 Q. Would you state for the record, your name,  
11 please and where you reside?

12 A. I am Georgia Herbert, McLean, Virginia.

13 Q. Mrs. Herbert, what is your profession?

14 A. I am a lawyer.

15 Q. Are you admitted to the Virginia Bar?

16 A. Yes sir.

17 Q. And do you also practice in McLean?

18 A. Yes, sir.

19 Q. How long have you been practicing?

20 A. I have been practicing in private practice in  
21 McLean for three and a half years.

22 Q. And before that, where did you practice?

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1 A. I was on the staff of Piedmont, Barney and  
2 Counsel during law school.

3 Q. When were you admitted to the bar?

4 A. In 1983.

5 Q. Where did you go to law school?

6 A. Northeastern University Law School in Boston.

7 Q. All right. Now, Mrs. Herbert, did there come a  
8 time when you became employed to represent Marefield  
9 Meadows, Inc.?

10 A. Yes, sir.

11 Q. Do you know approximately when that was?

12 A. Late January '89.

13 Q. And were you given any instructions with  
14 respect to contacting Craig White at that time?

15 A. I was asked to call.

16 Q. Who did you understand he represented?

17 A. I understood he represented a Mrs. Lorenz  
18 and/or Chestnut Holland.

19 Q. Did you know Mrs. Lorenz?

20 A. No, sir.

21 Q. Do you know her now?

22 A. No, sir.

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1 Q. Did you call...In fact, get in touch with Mr.  
2 White?

3 A. He contacted me, actually.

4 Q. When he contacted you did he indicate he had  
5 a client?

6 A. Yes, sir.

7 Q. And on behalf of what client was he calling?

8 A. Mrs. Lorenz.

9 Q. At that point, did you undertake discussions  
10 with him designed to resolve differences between Mrs.  
11 Lorenz and Marefield Meadows?

12 A. Yes, sir.

13 Q. May I rephrase that. Position of his client in  
14 writing?

15 A. Yes, sir.

16 Q. Did he do so?

17 A. Yes, sir.

18 Q. I will show you...I will have you, what I will  
19 refer to as Exhibit number 4 by Cross Complainant, and  
20 ask you if that is a letter that you received from M.  
21 White?

22 A. Yes, sir. It is.

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1 **MR. MONAHAN:** I will  
2 offer this into evidence, Your Honor, as Exhibit number  
3 4.

4 **THE COURT:** If there is no  
5 objection, it will be admitted.

6 **Q.** Do you have a copy of this, Mrs. Herbert?

7 **A.** Yes, sir, I do.

8 **Q.** Well, upon receipt of that letter, did you  
9 communicate it's contents to your client?

10 **A.** I did.

11 **Q.** And what did you tell her with respect to that  
12 letter as depicted, I believe in the second paragraph?

13 **A.** I told her that I had received an offer from...on  
14 behalf of Mrs. Lorenz to buy my client's share in the  
15 horse at two-thirds of Mr. Thompson's appraised price.

16 **Q.** All right. Did there come a time when you  
17 received a direction as to what to do in respect to the  
18 offer?

19 **A.** Yes, sir.

20 **Q.** Did that come by mail?

21 **A.** It came in a letter that I think was hand  
22 delivered.

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1 Q. I will show you what I will refer to for the  
2 purpose of identification, as Exhibit number 5 for the  
3 Cross Complainant and ask you if that is the letter in  
4 which you refer?

5 A. Yes. It is.

6 Q. And you have a copy of that letter, don't you?

7 A. That's right.

8 Q. Upon receipt of that letter, what did you do?

9 A. I just...

10 MR. CREMINS: The White  
11 Letter?

12 MR. MONAHAN: No. No.  
13 No, this the letter from Marefield Meadows to Georgia  
14 Herbert received in March...February 23.

15 Q. And the next letter to your client was March  
16 9th?

17 A. Mr. Monahan, the March 6th letter was  
18 delivered to my office and it was only...it was a time  
19 when I was not there. It was a couple of days later when  
20 I did something about it.

21 Q. All right. When you reviewed the March 6th  
22 letter, did you make...did you have any contact with Mr.

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1 White?

2 A. I received a phone call from him on the morning  
3 of March 9th.

4 Q. All right. He called you?

5 A. That's...that's my best memory, Yes, sir. We  
6 had a telephone conversation and my records indicate  
7 that he called me.

8 Q. All right. Did you discuss the March 6th letter  
9 or have any conversation with reference to the March 6th  
10 letter?

11 A. Very little. We had a discussion of his February  
12 23rd letter.

13 Q. Tell me what you talked about...just relate the  
14 conversation from the time the phone rang when you  
15 were called to the phone, please. Tell the words.

16 A. I received a phone call and was in...  
17 trying to figure the legalities for another commitment and  
18 said that we wanted to accept his client's offer and  
19 his immediate reaction was, "Well, that's great".  
20 And in another couple of sentences, it became clear that  
21 he was saying, "Well, wait a minute, wait a minute". It  
22 became clear that he then understood that I meant that

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1 we were to sell. We were...We were accepting their  
2 offer to buy. And at that point...

3 Q. Could you tell the Court exactly what you said  
4 when he indicated that this was great, if you recall?

5 A. Well, I said, we...well, I had talked to my  
6 clients and we want to accept your offer.

7 Q. How did you define...differentiate between the  
8 offer to buy and sell?

9 A. He said, "Well, that's great and so forth" and  
10 I said "Well"...in a minute it became clear and I said now  
11 we...We are accepting your offer to buy at Thompson's  
12 price... appraised value...two-thirds of Thompson's  
13 appraised value.

14 Q. At that point, had you put any qualifications  
15 upon the acceptance?

16 A. No.

17 Q. During the course of the conversation  
18 were...did you place any qualifications or define any  
19 other terms that had to be met?

20 A. No, sir.

21 Q. I will call your attention to the March 6th letter  
22 from Marefield Meadows to you. It spoke in terms of a

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1 certified check. Did you even discuss that on that day?

2 A. No, sir.

3 Q. What then transpired after you said we accept  
4 the offer to buy her share?

5 A. Mr. White, then asked if...He said well, that is  
6 great and did you talk about any terms and I said no  
7 terms. An he said she would need some time to put the  
8 money together and what did I say they would accept 60  
9 days or something and I said, no. We didn't discuss that  
10 and within a moment it became clear that he needed to  
11 get back to his client and he said so. He said let me get  
12 back to her before we talk any further. And...And we got  
13 off of the phone.

14 Q. Did he...what, if anything was said about the  
15 syndication of the horse?

16 A. That she would need some time to get the  
17 money together.

18 Q. Did he say he had to have a syndicate?

19 A. He said that she...he didn't say very clearly in  
20 that conversation.

21 Q. All right. Now, this was March 9th. Did you  
22 receive any mail from him on or about that time?

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1 A. Either the next day or the day after that I  
2 received a letter from him dated March 9th. It said...

3 Q. Just a minute. I will show you what I will refer  
4 to as Exhibit 6 by the Cross Complainant and ask you if  
5 that is...

6 A. Yes, sir.

7 Q. The letter to which you refer. You say that you  
8 received that within a day or two of the date on that  
9 letter?

10 A. Yes, sir.

11 Q. Had you, at this time, given him any further  
12 time, in which to get together the money? I am talking  
13 about as of the 9th?

14 A. As of the 9th, we...in our conversation on the  
15 9th, he said that he wanted to get back to his client and  
16 see where we were. He indicated that she was going to  
17 be surprised by our accepting the offer and that she  
18 needed some time and that he needed to talk with her and  
19 I took this that he would get back to me. And I took this  
20 letter to be his getting back to me.

21 MR. MONAHAN: Yes sir.

22 I would also like to offer Exhibit 4 and 5 into evidence,

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1 Your Honor.

2 THE COURT: Then let it be  
3 if there is no objection.

4 Q. Did you have occasion to write to Mr. White on  
5 the 17th of March?

6 A. Yes, sir. I did.

7 Q. Had you had any phone conversation with him  
8 between the 9th and the 17th other than the ones that  
9 you have already talked about?

10 A. I don't believe we talked.

11 Q. I will show you a letter dated March 17th  
12 1989, in which I will refer to as Cross Complainant's  
13 Exhibit 7 for the purpose of identification. Have you  
14 seen that letter before?

15 A. Yes, sir.

16 Q. Is that the letter that you wrote and mailed to  
17 Mr. White?

18 A. Yes, sir.

19 Q. What next occurred, Mrs. Herbert?

20 A. I received a phone call from Mr. White on the  
21 20th in which he said a number of things to me about this  
22 including that his client could not put together resources

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1 to make this horse profitable at...at that price at her  
2 farm and he then said that he did not make an offer and  
3 that there was not an offer to accept and couldn't we  
4 reach some sort of settlement.

5 Q. And why did he tell you that he hadn't made an  
6 offer and there hadn't been an offer of acceptance.

7 MR. CREMINS: I  
8 objection, Your Honor, unless he told her.

9 THE COURT: Yes. Mr.  
10 Cremins he's right. You have to lay the...

11 Q. Were any reasons given as to why he had not  
12 made an offer or why he believed he had not made an  
13 offer?

14 A. I will have to look at the notes on that. No,  
15 sir. He said that he had indicated that he was concerned  
16 that this would be ...that there would be that there would  
17 be litigation and that his client's concern was about the  
18 same thing. And my notes indicate that he tried to argue  
19 to me that there had not been an offer of acceptance and  
20 that and surely I understood that and so forth and I told  
21 him that...that you had been retained and that they...and  
22 that my clients would be consulting with you about that

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1 matter.

2 Q. In the course of your conversation of March 9,  
3 1989, what, if anything was said, as to there being  
4 conditions to his making an offer?

5 A None. Except after I had said that we accept,  
6 he then registered surprise and indicated that his  
7 client...he needed to get back to his client to talk to her  
8 about her making arrangements about financing and that  
9 she would need to...

10 Q. When he said that he would need to get back  
11 and make arrangements about financing, was there any  
12 expression that that had been a condition of his offer to  
13 purchase?

14 A. No, sir.

15 Q. On that occasion, did he tell you that he did not  
16 have the authority of Mrs. Lorenz to act?

17 A. No, sir.

18 MR. MONAHAN: That's  
19 all. Thank you, Your Honor.

20 THE COURT: Please don't  
21 read anything into the Court's question. I am just trying  
22 to get it clear in my own mind as to what you are saying.

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1 Do you recall and take a moment to think of the wording.  
2 Do you recall exactly what he said when you called him,  
3 the first thing he said.

4 MRS. HERBERT: No.

5 THE COURT: What did he  
6 say about acceptance?

7 MRS. HERBERT: Well,  
8 Your Honor.

9 THE COURT: About your  
10 acceptance or whatever...what words were said as best  
11 that you can remember? I know that you can't give it to  
12 me verbatim.

13 MRS. HERBERT: He called  
14 me and wanted to know where we were and I said well, I  
15 had consulted with them and they had accepted his offer.  
16 And he said, well, that is great and...

17 THE COURT: To whom  
18 were you referring when you said they had accepted his  
19 offer?

20 MRS. HERBERT: My  
21 clients.

22 THE COURT: And when

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1 you said they had accepted your offer , exactly what did  
2 he say?

3 MRS. HERBERT: Either  
4 that's great or great.

5 THE COURT: What offer  
6 had...what offer exactly were you referring to?

7 MRS. HERBERT: The offer  
8 for Mrs. Lorenz to buy Marefield Meadow's interest in the  
9 horse at two-thirds of the Thompson appraised price. It  
10 was fifty three what ever that was.

11 THE COURT: All right, that  
12 is all. That is all for me.

13 MR. FLANNERY: May I  
14 proceed, Your Honor?

15 THE COURT: Yes, sir.

16 MR. FLANNERY: Thank  
17 you.

18 **CROSS EXAMINATION**

19 **BY MR. FLANNERY:**

20 Q. When you received your client's letter on or  
21 about March 6, 1989, did you have any further  
22 communications with him orally or in writing after that

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1 date, before you spoke to Mr. White?

2 A. After the 6th and before the 9th, is that what  
3 you are asking?

4 Q. That is correct. Your testimony on direct was  
5 that they delivered the letter about March 6th, but you  
6 weren't in your office. You got it sometime after that  
7 and then spoke to Mr. White. Is that the correct  
8 sequence?

9 A. I think...I think that is right...I believe...Yes,  
10 sir, that is right.

11 Q. So the letter is self explanatory. Once you got  
12 the letter, you went to speak to Mr. White, is that  
13 correct?

14 A. Well,...there had been...I had discussions with  
15 my client about Mr. White's February 23 letter.

16 Q. So you had conversations with them about the  
17 February 23rd letter?

18 A. You received a letter from them dated March  
19 and you had no further communications with them after  
20 the March 6th letter. Based on that letter confirming  
21 your understanding of their position, you called Mr.  
22 White. Is that right? If not, tell me what happened.

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1 A. All right. What happened...

2 MR. MONAHAN: She has  
3 twice testified that he called her. I am sure that is an  
4 oversight on your part, Mr. Flannery.

5 Q. Before your conversation on March 9th with Mr.  
6 White, whether it resulted from his call to you or you to  
7 him, or however you caught up with each other. After  
8 receiving the March 6th letter, did you have any  
9 communications between reviewing the March 6th letter  
10 and talking with Mr. White on March the 9th?

11 A. Communications with my client?

12 Q. Correct.

13 A. I don't believe so.

14 Q. And so when you called Mr. White, you were  
15 acting on their directions to you, as to how to handle  
16 this.

17 Is that right?

18 A. Based on previous conversations with them and  
19 that. Yes, sir. And I did not call Mr. White. He called  
20 me.

21 Q. Do you recall in your deposition testifying that  
22 you tried to get him and didn't remember whether he got

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1 you or you got him, do you recall that testimony in your  
2 deposition?

3 A. Yes.

4 Q. Was there any reference in Mr. White's letter to  
5 a certified check?

6 A. I don't know. May I read it?

7 Q. Sure.

8 A. I don't see one.

9 Q. Your client's, isn't it correct pm March 6th,  
10 directed you that payment would be by certified check?  
11 Isn't that correct?

12 A. Yes.

13 Q. So that is something that your client's wanted  
14 to happen. Is that correct?

15 A. Yes.

16 Q. It didn't come from Mr. White?

17 A. Correct.

18 Q. When you called on March 9th, you said that  
19 Mr. White was glad you accepted the offer, and correct  
20 me, if I am wrong, you understood that to mean that he  
21 believed you accepted the offer to buy Maronjo from Mrs.  
22 Lorenz. Is that correct?

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1 A. No, that is not correct.

2 Q. I thought you said he was happy...

3 A. No. Wait a minute. I am sorry. You will have  
4 to repeat your question.

5 Q. I am just looking at your testimony, Mrs.  
6 Herbert. I am sorry. Is it Miss or Mrs?

7 A. Either is fine.

8 Q. Your direct testimony was that he was happy  
9 to accept your offer. Now, you tell me what really  
10 happened?

11 MR. MONAHAN: I object  
12 to his telling her what her direct testimony was,  
13 particularly if he is telling her wrong.

14 MR. FLANNERY: Well, I  
15 can read the record back. I am sorry. I am trying to  
16 misstate. I am asking her really to repeat what I  
17 understood to be her testimony.

18 THE COURT: All right.  
19 Well, she said that he said great.

20 MR. MONAHAN: Yes, sir.

21 Q. And you understood that...correct me... you  
22 understood that to mean great, you have decided or your

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1 clients have decided to buy Mrs. Lorenz's interest. Is  
2 that correct?

3 A. No. That is not correct.

4 Q. It is not?

5 A. It was only after another couple of sentences  
6 that it became clear to me that was his  
7 misunderstanding. For the first bit of that conversation,  
8 I thought we were talking...

9 Q. He misunderstood. He believed that he was  
10 hearing you say that you were going to buy Mrs. Lorenz's  
11 share. That is what he thought you meant. Is that  
12 correct?

13 A. Possibly. Possibly.

14 Q. Now, if Mrs. Lorenz had sold the horse to  
15 Marefield Meadows, then there would be one set of  
16 requirements that you would have to satisfy about  
17 breeding. Didn't you understand that there were  
18 differences between the parties about breeding. How you  
19 were going to breed Maronjo, depending upon whether or  
20 not one of the other sold him or he went to a public sale?

21 A We had...as of March 9th, we had no  
22 discussions of those issues.

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1 Q. And as a result on March 6th, your clients  
2 wrote you that they would like to follow their plans for  
3 breeding Marefield Meadows' mares. Is that correct?

4 A. Yes.

5 Q. And what did Mr. White say in his letter of  
6 February 23rd, Marefield Meadows would do with it's  
7 mares if Marefield Meadows sold their part of Maronjo to  
8 Mrs. Lorenz?

9 A. Nothing.

10 Q. What did Mr. White say Marefield Meadows  
11 could do with the contracts they wanted to make with  
12 other people if Marefield Meadows sold Maronjo to Mrs.  
13 Lorenz in his letter of February 23rd?

14 MR. MONAHAN: Your  
15 honor, we are just going over documents that speak for  
16 themselves.

17 MR. FLANNERY: Well...

18 MR. MONAHAN: He is  
19 asking some questions other than what the letter says,  
20 then I think he is entitled to cross examine in that case,  
21 but to ask her what the letter says is obviously requiring  
22 her to recite a document in evidence.

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1 **MR. FLANNERY:** I will say  
2 this, Your Honor...

3 **THE COURT:** All right.

4 **MR. FLANNERY:** I don't  
5 see anything in the document that makes an agreement.  
6 I am at a loss to understand why that February 23rd  
7 letter covered any of these issues, but if there is any  
8 language in that Mrs. Herbert understands or Marefield  
9 Meadows understands that settles any of these issues, I  
10 want to know about it now.

11 **MR. MONAHAN:** All we're  
12 hearing is arguing.

13 **MR. FLANNERY:** And she  
14 got on the phone and said I accept and I, to this day,  
15 know what she accepted and I am trying to point it out on  
16 cross examination and I am entitled to do that.

17 **MR. MONAHAN:** Your  
18 Honor, all he is doing is, at this point, is making his final  
19 argument. He is entitled to cross examine her, but he is  
20 not entitled to ask her what the letter says, but point it  
21 out to her and ask her what her understanding of the  
22 letter was. That is something different.

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1 THE COURT: Well, I think  
2 that it is proper and I certainly get your answer of what  
3 he asked her. Ask her what it was in the letter that gave  
4 her the understanding

5 Q. What did Mr. White's letter give you the  
6 understanding that Marefield Meadows had a right to  
7 make any contract to breed, if Mrs. Lorenz bought the  
8 horse?

9 A. The only reference to...they talked about  
10 wanting breeding fees...to know what the breeding fees  
11 were and to have copies of any contracts related to  
12 breeding of the horse within 1989.

13 Q. That's it? I am sorry. Is that it?

14 A. Yes.

15 Q. Did Mr. White, in his letter, make any reference  
16 to a closing date.

17 A. No, sir.

18 Q. Now, in your testimony today that during your  
19 conversation, he made some reference to a closing date,  
20 that is March 9th conversation. Is that your testimony?

21 A. No.

22 Q. Did you make any reference to a closing date in

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1 your March 9th conversation?

2 A. No. Other than to see what terms. She might  
3 need some time to put this together.

4 Q. Who said that?

5 A. Mr. White.

6 Q. You made notes of this conversation with Mr.  
7 White, didn't you?

8 A. Yes, sir.

9 Q. Do you have those notes with you?

10 A. I do.

11 Q. Isn't it true that your notes made no reference  
12 to any closing dates?

13 A. That's right.

14 Q. In fact, in that conversation, wasn't Mr. White  
15 planning to negotiate with you to see if there was any  
16 other price, other than a public sale, that Marefield  
17 would buy out Mrs. Lorenz?

18 A. Not in that conversation.

19 Q. Would you check your notes of March 9th,  
20 please?

21 A. I have them.

22 Q. And in your notes of March 9th. You make

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1 reference to any price...say to twenty two thousand  
2 dollars or some such figure?

3 A. Yes, sir.

4 Q. And didn't he ask you in words or substance,  
5 would Marefield Meadows be interested in buying  
6 Maronjo from Mrs. Lorenz for twenty two thousand  
7 dollars, less the expenses Mrs. Lorenz had incurred?

8 A. It...yes.

9 Q. And did he say in that conversation, that if that  
10 price wasn't satisfactory to Marefield Meadows then is  
11 a quote "Sale", in words or substance?

12 A. No.

13 Q. Would you look at your notes of March 9,  
14 1989?

15 And did you make references in your notes quote,  
16 "otherwise it is not a sale"...

17 A. Private sale.

18 Q. Excuse me?

19 A. Private sale.

20 Q. Private sale. Pardon me. So did he say to you,  
21 otherwise, it is a private sale?

22 A. Mr. Flannery, these are my notes to myself as

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1 a result of that conversation.

2 Q. Yes.

3 A. And so I don't know whether he said those  
4 words to me or not.

5 Q. So the notes that you made when you were  
6 asked to recount the conversation following another  
7 sale...a private sale or involving, perhaps Marefield  
8 Meadows buying a horse, those you forgot in your  
9 testimony on direct and then you are telling me that you  
10 don't remember them now?

11 A. I have lost the train of your question.

12 Q. Do you remember in your discussion about  
13 Marefield Meadows buying Mrs. Lorenz's interest in that  
14 conversation on March 9th?

15 A. Yes. I do.

16 Q. Okay. And do you remember now that there  
17 was a discussion that they weren't going to buy Mrs.  
18 Lorenz's interest and there would have to be a private  
19 sale?

20 A. I remember him saying that he wanted to get  
21 back to his clients and then get back to me and it was  
22 then that the various possibilities were there right along.

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1 Q. When you were having this conversation with  
2 Mr. White, were you contemporaneously writing these  
3 notes down?

4 A. That was...that tended to be my way, but I  
5 also, sometimes, write them down right after, so I don't  
6 know.

7 Q. So, if you wrote these things right after you  
8 got off the phone, you were writing in your recollection,  
9 what was the most important things in the conversation.  
10 Isn't that correct?

11 A. Likely.

12 MR. FLANNERY: Your  
13 Honor, I would like to offer her notes, in so far as they  
14 make reference to what was said in that conversation,  
15 this past recollection, and have it marked Defendant's  
16 Exhibit 9 of today's date.

17 THE COURT: If there is no  
18 objection, it will be admitted for identification.

19 MR. FLANNERY: For  
20 identification, Your Honor.

21 THE COURT: All right.  
22 You can enter them for identification only.

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1 Q. Now, in Mr. White's letter of February 23rd, he  
2 makes reference to Mrs. Lorenz being prepared to pay  
3 pro-rata expenses, is that correct?

4 A. Yes.

5 Q. I direct your attention to the next to the last  
6 paragraph in the letter from your client's date March 6,  
7 1989. Don't they inform you that pro-rata expenses are  
8 unacceptable to them?

9 A. Yes.

10 Q. And when you spoke to Mr. White on March  
11 9th, did you tell him that you were, quote "Accepting",  
12 that pro-rata expenses were acceptable to your client?

13 A. No, sir.

14 Q. But, they weren't, were they?

15 A. That is correct.

16 Q. And didn't you write him in a letter on March,  
17 17th, telling him that pro-rated expenses weren't  
18 acceptable, that he would have to pay in full?

19 A. Yes, sir.

20 Q. How many contracts have you handled involving  
21 horses, including this one? Negotiations you will?

22 A. Professionally?

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1 Q. In your universe of experience, you have had  
2 how many contracts involving horses, that you have  
3 either been involved in negotiating them or writing them?

4 A. Four.

5 Q. And as of the time, you did this one, had you  
6 ever been involved in negotiations of a horse contract?

7 A. No.

8 Q. Isn't it a fact, that you had to ask Marefield  
9 Meadows to give you a stallion breeding contract,  
10 because you didn't know what one looked like?

11 A. Yes.

12 Q. Isn't it a fact that they were concerned and  
13 wanted to have it reduced to writing whatever their  
14 rights would be, so that they could breed if they sold to  
15 Mrs. Lorenz or they sold publicly?

16 A. Yes.

17 Q. Mr. White's February 23rd letter didn't offer  
18 you anything in writing about anything relating to  
19 breeding, did it?

20 A. No, sir.

21 Q. Now, on March 9th, when you spoke to Mr.  
22 White, did you tell him, "By the way, that I want my

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1 rights, regarding breeding, in writing?

2 A. No, sir.

3 Q. And isn't a fact that your clients were happy to  
4 let this go 60 to a 120 days so that they could get  
5 breeding for every mare that they had. Isn't that  
6 correct?

7 A. My clients were anxious to have this thing  
8 resolved.

9 Q. Directing your attention to your notes of  
10 February 13, 1989, would you look at those, please?

11 A. February, 13th?

12 Q. February 13, 1989. I am directing you to the  
13 last paragraph on that page. First of all, that is your  
14 handwriting. Is that correct?

15 A. That is correct.

16 Q. And you produced these notes to me at your  
17 deposition. Is that correct?

18 A. That is right.

19 Q. And did you, on February 13, 1989, have a  
20 conversation with Marion Poynter?

21 A. Yes.

22 Q. And in that conversation, did you say...did she

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1 say to you, in words or substance, they don't care how  
2 soon the appraisals are done after the horse comes back  
3 to the Meadows, meaning Marefield Meadows?

4 A. Yes.

5 MR. FLANNERY: Excuse  
6 me, Your Honor.

7 Q. Directing your attention to your memo of  
8 February 18, 1989, would you look for that?

9 A. Which one am I looking for?

10 Q. I am sorry. February 18, 1989. It is attached  
11 on the Marion Poynter file.

12 A. All right.

13 Q. Now, if you could glance at that briefly, to  
14 refresh your recollection as to the memo, I would like you  
15 to see if you recall having a conversation on or about  
16 February 18, 1989, with Maxine Nichol?

17 A. Yes.

18 Q. And in that conversation, did Maxine Nichol say  
19 to you, in words or substance, and I am directing your  
20 attention to the third paragraph, that in the final demos,  
21 the horse will simply stand at stud and his muscles will  
22 atrophy and his price will go down?

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1 A. She said that in words or substance. Yes.

2 Q. Directing your attention to the second page of  
3 that same memorandum, next to the last paragraph, did  
4 Maxine Nichol say to you in words or substance, that she  
5 was concerned that if the horse was sold to someone  
6 else that the breeding contracts they had wouldn't be  
7 honored?

8 A. She was concerned that they should be  
9 honored.

10 Q. She was concerned that they should be honored  
11 and she was concerned if it was sold to someone else  
12 that they might not be honored? Is that...

13 A. Well, that needed to be arranged for, if the  
14 horse wee sold so someone else.

15 Q. And did you make an observation yourself in  
16 that last paragraph, that you weren't sure how that  
17 atrophy worked in a horse and that you needed to look  
18 into it a little further?

19 A. Yes.

20 Q. Now, directing your attention to your notes,  
21 dated February 27, 1989, and directing your attention  
22 specifically to the last paragraph. First of all, do you

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1 recall that you had this conversation with Marion Poynter  
2 and Maxine Nichol on or about February 27, 1989?

3 A. Yes.

4 Q. And do you recall that they told you, in words  
5 or substance, that they were not in a tearing rush to  
6 dissolve all of this controversy about Maronjo?

7 A. Because they wanted to see Thompson's  
8 appraisal in writing.

9 Q. Yes. And didn't you go on to say in the last  
10 sentence there, that in other words that time is not of  
11 the essence as far as my clients are concerned and it  
12 suits them fine. I will let this take awhile to dissolve so  
13 that  
14 simply gives them more time to actually accomplish the  
15 breeding they want to accomplish?

16 A. What is the question?

17 Q. Isn't that your position as expressed to you on  
18 or about February 27, 1989?

19 A. Yes.

20 Q. And isn't that the conversation you refer to  
21 that you had met with your clients after receiving Mr.  
22 White's letter that you call an offer. Is that right?

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1 A. Yes.

2 Q. Directing your...your attention to your  
3 handwritten notes dated February 27, 1989, did you have  
4 another conversation with Maxine Nichol, your client on  
5 that date?

6 THE COURT: February  
7 27th?

8 MR. FLANNERY: Yes, sir.

9 A. Yes, Sir.

10 Q. And did she tell you in this conversation, that  
11 they wanted to breed Maronjo to the mares owned by  
12 Marefield Meadows?

13 A Yes.

14 Q. And did she tell you that they want to breed the  
15 mares back if it turns out that if Maronjo does not get the  
16 mares with foal if he doesn't present a live foal?

17 A. yes.

18 Q. And did they say that was conventional  
19 guarantee in the breeding contract?

20 A. Yes.

21 Q. And did she tell you that they wanted to breed  
22 any mares owned by Marefield Meadows through the

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1 current breeding season?

2 A. Yes.

3 Q. And did Maxine Nichol tell you in words or  
4 substance, that she wanted it all in writing before you  
5 responded to Mr. White?

6 A. No, sir.

7 Q. She didn't?

8 A. She wanted to see Mr. White's letter and Mr.  
9 Thompson's appraisal before I was to respond to Mr.  
10 White.

11 Q. Okay. You understood that the breeding season  
12 was going to be a full year, is that right?

13 A. I did not have an understanding about that.

14 Q. Well, looking at your notes, did Maxine Nichol  
15 tell you that a breeding season was a full year?

16 A. Apparently.

17 Q. Okay. And did Maxine Nichol tell you, in words  
18 or substance, that they could resolve all of this as soon  
19 as mid May? Perhaps it would take longer if they had to  
20 breed back the mares to Maronjo?

21 A. Yes.

22 Q. She told you, in essence, that they thought

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1 they could finish all of their breeding by mid may. Is that  
2 correct?

3 A. Right.

4 Q. Now, what is the first date that you told Mr.  
5 White that the 60 day clock would run? March 17th,  
6 wasn't it?

7 A. We offered to wait to hold off for 60 days if  
8 that would be a convenience to his client.

9 Q. And you indicated that in writing on March  
10 17th. Isn't that correct?

11 A. That is correct.

12 Q. And based on what you were told by Maxine  
13 Nichol, that it would take you to mid May when they  
14 would finish their breeding. Isn't that right?

15 A. No, sir.

16 Q. Let me direct your attention to your written  
17 memorandum, dated February 27, 1989. It was your  
18 suggestion, wasn't it, that as part of the settlement of  
19 the sale of the horse that Mrs. Lorenz execute a standard  
20 breeding contract. Isn't that right?

21 A. Right.

22 Q. Second paragraph of your typed memorandum,

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1 February 27, 1989?

2 A. Right.

3 Q. Now, wasn't it in March when Marion Poynter  
4 or Maxine Nichol, told you that they were all ready to  
5 retain Mr. Monahan to continue these negotiations. Is  
6 that right?

7 A. That is right.

8 MR. FLANNERY: No  
9 further questions, Your Honor. Thank you very much.

10 THE COURT: All right.  
11 Mr. Cremins.

12 MR. CREMINS: Thank you,  
13 Your Honor.

14 **CROSS EXAMINATION**

15 **BY MR. CREMINS:**

16 Q. Mrs. Herbert, my name is Bill Cremins. I  
17 represent the attorneys in this case. I want to see if I  
18 can summarize a little bit, some of the earlier goings on  
19 in this case and then move as quickly as we can. I don't  
20 want to do violence to your previous testimony. You  
21 stop me. I am not trying to misquote you or anything.  
22 From January to early...to mid February time frame, is

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1 one in which you and Craig White were on the phone a lot  
2 to each other?

3 A. That is right.

4 Q. And you in turn, were on the phone a lot to  
5 your client?

6 A. Yes, sir.

7 Q. And about mid February, would it be a fair  
8 statement that there was little or no progress toward  
9 resolving the issues in this case?

10 A. That's right.

11 Q. And about that time...about mid  
12 February...purging you notes of February, didn't you and  
13 Craig White have a phone conversation in which you said  
14 in essence, Mr. White, enough of the phone calls. We are  
15 not getting anywhere. We are just spinning our wheels.  
16 Now, could you give something in writing so that I can  
17 have something that I can share with my clients?

18 A. I certainly said that. That is not the reason I  
19 said it.

20 Q. First, did you say it?

21 A. Yes, sir.

22 Q. And on February 16th, according to your notes,

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1 you have got a third written paragraph...these are your  
2 hand written notes now, White will write us a letter  
3 saying all of this. What is all of this? What is that?

4 A. What that is about, is that in our discussion  
5 before February 16th. Virtually all of the conversation  
6 had revolved around who the appraisers would be and  
7 where the appraisals would occur and we had spoken as  
8 recently as the previous day making arrangements about  
9 appraisers and appraisals and how they would happen.  
10 Then on the 16th, I got a phone call that his client was  
11 going to insist on the Thompson appraisal only and if my  
12 clients would not accept that his client was going to  
13 insist on the absolute terms of the contracts, specifically  
14 paragraph 16 A and that that's where we would be. So  
15 it was a shift in time and communications and I said, if  
16 that is where we are I want you to confer with your client  
17 and write me your client's position at this time.

18 Q. Okay. Now, let me challenge you two days,  
19 February 18th. You have a typewritten set of notes, a  
20 memo to your file, if you will?

21 A. Right.

22 Q. And I want to direct your attention to that third

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1 paragraph. Before we get to that third paragraph, did you  
2 communicate Craig White's oral communication with you  
3 of the 16th to your clients?

4 A. Yes.

5 Q. Did you tell them about this shift?

6 A. Yes.

7 Q. And is your February 18th memo a memorandum  
8 of your client's response to that shift by Mr. White?

9 A. No.

10 Q. Did they, in response to your conveying to the  
11 February 16th conversation to them say okay, we are  
12 bringing Maronjo home from November Hill, we are  
13 bringing him back...

14 A. No, sir. That was established long in advance.  
15 In fact, a lot of our discussion earlier had been about  
16 when the horse would come back form November Hill.

17 Q. Was it in response to Mr. White shifting  
18 decision and Maxine Nichol said well, that is fine with  
19 them that the horse can simply stand at stud, his muscles  
20 can atrophy, and the price will go down?

21 A. No, sir.

22 Q. Well, what was that...

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1 A. Well, I...

2 Q. Position in response to?

3 A. Well, it...they have been anxious ...have things  
4 resolved. That is why so much effort had gone into  
5 trying to agree on appraisals, appraisers and coordinate  
6 the appraisals and involved in that was their concern the  
7 horse be brought back to Marefield Meadows from  
8 November Hill, for a lot of reasons not related to our  
9 conversation on the 16th.

10 Q. And they did bring him home?

11 A. That's right.

12 Q. What I am asking you is...could you explain to  
13 Judge Jamison, why the owners of two thirds of a living  
14 creature, would say destroy the value of this horse, bring  
15 it down when there...when there are people ...what is the  
16 rationale for that?

17 A What they were saying was that if Mrs. Lorenz  
18 was going to insist on this one appraisal and that she  
19 was going to look for that price that they felt that it was  
20 very likely the horse would not be bought at that price by  
21 anybody because fitness would certainly not improve and  
22 that his price would go down.

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1 Q. All conditions that they had the power to avert?  
2 Correct?

3 A. That is not my understanding.

4 Q. Now, who had custody of this horse, if i can  
5 use the term custody?

6 A. They had two first managers for October , but  
7 she had a veto on his arrival.

8 Q. Now, can you answer my question about who  
9 had custody?

10 A. They had two first managers for October.

11 Q. Who called the shots as to where the horse  
12 went as of February 18, 1989?

13 A. We were in...merely constant conversation  
14 about it.

15 Q. Who called the shots? Who made the decisions?  
16 Who had the two-thirds management decision?

17 A. My clients.

18 Q. Now, my questions is, did they give you any  
19 reason why they said , We will just bring him home and  
20 let him rot?

21 MR. MONAHAN: Now,  
22 Your Honor, I am going to object.

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1 THE COURT: Yes.

2 Objection sustained. It is a figure of speech but possibly  
3 a little inappropriate.

4 MR. CREMINS: I didn't  
5 mean it that way, Your Honor.

6 THE COURT: What?

7 MR. CREMINS: I didn't  
8 mean it that way.

9 THE COURT: All right.

10 Q. Did they tell you that they were so angry at  
11 Regula Lorenz that they would do anything to get them to  
12 run her one third value down if she wasn't going to play  
13 ball?

14 Now, you don't need to look at Mr. Monahan, he won't  
15 help you.

16 A. No, sir, they never said anything even remotely  
17 like that.

18 MR. MONAHAN: I resent  
19 his version about my professional capacity Judge. I  
20 certainly hope I will help these people.

21 THE COURT: He meant at  
22 the moment.

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1 Q. On February 27th, another typewritten memo to  
2 your file could you get that out?

3 A. Yes, sir.

4 Q. The first two lines of the second paragraph...

5 THE COURT: What are you  
6 reading from, Sir?

7 MR. CREMINS: I am  
8 reading from the February 27, 1989 memo, Your Honor,  
9 in which...I don't know if Your Honor has...

10 THE COURT: I don't think  
11 I have that up here, but go ahead. It is in the record.

12 MR. CREMINS: Is it...Is  
13 it...

14 THE COURT: I assume it  
15 is.

16 MR. CREMINS: The last  
17 exhibit I have...I don't know whether it is an exhibit yet  
18 or not.

19 THE COURT: I don't think  
20 so. I don't have it up here. Does the reporter have it by  
21 any chance?

22 MR. FLANNERY: It is

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1 marked for identification February 27th, Your Honor.

2 THE COURT: But... do you  
3 still have possession of it?

4 MR. FLANNERY: Actually,  
5 the witness has it.

6 THE COURT: All right. I  
7 will let you go ahead and we can get copies of it. That  
8 is alright.

9 Q. The first few lines read, "I suggested to  
10 them...I assume that means your clients, that as a part of  
11 the settlement of the sale of the horse, they have Reggie  
12 execute a standard breeding contract in standard  
13 language? Correct?

14 A. Right.

15 Q. Now, at the very end of the paragraph.  
16 Therefore, my suggestion is that they require the  
17 execution of that contract with Reggie if they have not  
18 actually been able to breed all of their mares before  
19 Maronjo leaves the farm. Correct?

20 A. Yes, sir.

21 Q. Look at your...somewhere or another you had a  
22 handwritten memo that same day, February 27th. Do you

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1 recall why...was there one dictated and one written at a  
2 different time or do you have any recollection as to why  
3 two?

4 A. Because it was easier to get some of these  
5 other things down.

6 Q. What I am interested in is a hand written, Mrs.  
7 Herbert, is the reference to they'll...again, meaning the  
8 clients, they will accept Reggie's offer, but...could you  
9 read the but...could you read your handwriting?

10 A. But they want right to breed him to...I have  
11 scratched out the number, mares owned by MFM and to  
12 breed mares back if it turns out he doesn't get them in  
13 foal or/if doesn't present a live foal. This is a  
14 conventional guarantee and a breeding contract. They  
15 want to breed free to any mares owned by Marefield  
16 Meadows during this breeding season.

17 Q. Now, on the 9th of March...you...correct that.  
18 You did not testify that you received that letter. When  
19 did you say you received Mr. White's March 9 letter?

20 A. It would have been the 10th or the 12th or  
21 something...

22 Q. Within a day or two...

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1 A. Within a day or two.

2 Q. Do you have that letter?

3 A. His March 9th letter?

4 Q. His March 9th letter.

5 A. Yes, sir.

6 MR. CREMINS: Now, does  
7 the Court still have the exhibit copy...

8 THE COURT: That is the  
9 short...

10 MR. CREMINS: That is the  
11 real short one...

12 THE COURT: Yes. I have  
13 it.

14 Q. Do you see language in there to the effect that  
15 and this is my paragraph, that unless Mrs. Lorenz is able  
16 to get financing, there is going to have to be a public  
17 sale?

18 MR. MONAHAN: Your  
19 Honor, again, I will object. The letter speaks for itself.

20 MR. CREMINS: I simply  
21 want to direct her attention to that and say...

22 THE COURT: Well, if that

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1 is all you want to do. I will allow it. Overruled.

2 Q. It was your testimony on direct examination  
3 that letter corroborated that Craig White had to you in  
4 your phone conversation as of March 9th?

5 A. It was my testimony that I took this letter to be  
6 his...to be his response to me when he had ended our  
7 March 9th conversation saying that he needed to consult  
8 with his client and then get back to me.

9 Q. This March 9 letter told you that you had a deal  
10 or didn't have a deal in your mind?

11 A. It said to me that we had a deal and that a  
12 private sale...I mean a public sale may be necessary.

13 Q. Why would a public sale be necessary if you  
14 had a deal?

15 A. If...If he...if she backed out of that deal.

16 Q. Oh, I see. So he was telling you that hey, if  
17 we can't go through with this, it is going to have to be a  
18 public sale?

19 A. Yes, sir. That is what I understood.

20 Q. All right. Now, in that March 9th telephone  
21 conversation, you said we accept or I accept. Correct?

22 A. Yes, sir.

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1 Q. You were accepting what you believe to be Mrs.  
2 Lorenz's offer to buy for fifty three thousand, those are  
3 the numbers?

4 A. Yes, sir.

5 Q. At some point shortly thereafter, Craig White  
6 said, "Whoa, not so fast. I was talking about your client  
7 buying Reggie Lorenz's interest for twenty six and  
8 change...

9 A. No, sir. That is not what he said. He said oh,  
10 I thought you meant.

11 Q. He thought that you meant that you, your  
12 client, was going to buy Mrs. Lorenz's interest for twenty  
13 six thousand?

14 A. Yes, Sir.

15 Q. You two never did, up to that point and time,  
16 understand what the other one was saying, did you?

17 A. Well, that is why I asked for the letter.

18 Q. But, this phone conversation, up to that point  
19 in the phone conversation, you were talking about apples  
20 and he was talking about oranges. Right?

21 A. It's possible.

22 Q. Would you agree?

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1           A. I was talking about his February 23rd letter and  
2           accepted his offer that was in it and he said great and  
3           then...but there was another offer in that ...in that as  
4           well, to sell.

5           Q. Right. You were talking about one and he was  
6           talking about a different one?

7           A. Right.

8           Q. Now, was it your understanding as of March 9th  
9           that there was to be, that this agreement was to be  
10          reduced to writing?

11          A. Not...no, no.

12          Q. It would not. Did you believe that you had done  
13          all that was necessary to effectively accept Mr. White's  
14          quote "Offer", end quote, in his February 23 letter as of  
15          March 9th?

16          A. I did.

17          Q. Then, your March 17th letter was sent for what  
18          purpose?

19          A. To confirm it.

20          Q. In your March 17th letter, you changed all of  
21          the provisions of your acceptance or is there anything  
22          missing?

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1 A. That was it.

2 Q. Why is it, that Marefield Meadows sought other  
3 counsel on or before the 17th of March, if you know?

4 A. I don't know. I didn't know they had.

5 Q. I thought you testified you did?

6 A. No. Not before the 17th.

7 Q. I thought that you testified that on the 17th,  
8 Mr. Monahan...

9 A. I apologize. As of the 17th...as of the 16th, I  
10 had been told that they would like to bring him in.  
11 Whether they had talked with him or not, I don't know.

12 Q. Why did they tell you that they would like to  
13 bring him in and I don't...why did they tell you?

14 A. Because they were concerned about the  
15 direction this discussion was going.

16 Q. They were concerned about Mr. White's March  
17 9 phone conversation with you in which you say we are  
18 talking about here today?

19 A. They were concerned. Yes.

20 Q. And were they also concerned about his March  
21 9 letter which I assume you had showed them...had you  
22 shared it with them?

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1 A. I am sure I did, but I couldn't tell you.

2 Q. Were they concerned about that letter at all?

3 A. Not that I remember.

4 Q. Do you have a letter, a copy of a letter  
5 Marefield Meadows wrote to you, dated March 6, 1989,  
6 in which you knew that the basis for your accepting...the  
7 reason I ask is, there was a signature that was blurred  
8 this morning and people were concerned about...

9 A. Yes, sir. I have it.

10 Q. May I see that? Whose signature appears on  
11 that?

12 A. Mrs. Poynter and Mrs. Nichol.

13 THE COURT: Is that the  
14 one on which the signature did not appear on March 6th?

15 MR. CREMINS: Yes. That  
16 is the one that Mrs. Poynter had some problems with.  
17 The signatures on the photo-copy were blurry.

18 THE COURT: It didn't  
19 seem to copy on this when it's an exhibit.

20 MR. CREMINS: Well, Your  
21 Honor, it is on the original. If you want to see the  
22 original.

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1                   **THE COURT:**     No. I will  
2     take your word for it, if you say they are on there.  
3     Maybe I should put it on the exhibit that I do have. I will  
4     have the Clerk to copy these signatures and I will give  
5     you this back.

6                   **MR. MONAHAN:**     Your  
7     Honor, I would be willing to enter into a stipulation, that  
8     on the original, signatures do appear...

9                   **THE COURT:**     All right.

10                  **MR. MONAHAN:**     Does the  
11     Court want me to read into the record what they are?

12                  **THE COURT:**     Well, she is  
13     going to copy it. Do you need that? If you do, you can  
14     have the Court's copy.

15                  **MR. CREMINS:**     Your  
16     Honor, no, I don't need that.

17                  **THE COURT:**     All right.  
18     Well, she is going to copy it. She will do it.

19                  **MR. MONAHAN:**     Do you  
20     want another copy?

21                  **MR. CREMINS:**     No. I have  
22     one.

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1                                   **THE COURT:**    We have a  
2 perfectly good copy. The signatures just don't show. It  
3 was probably written in blue ink or some ink that doesn't  
4 photograph. All right. Let's move along, please.

5           Q.    Could you look at your March 9 of a telephone  
6 message from Mrs. Poynter to you? Do you have the  
7 March 9 letter?

8           A.    Yes.

9           Q.    Could you read that message?

10          A.    The telephone message that my secretary wrote  
11 down was, "As a matter of principle, they are going to  
12 hold Reggie to her offer."

13          Q.    Did you talk to your client about what that  
14 message meant? Did you ever...

15          A.    We never discussed that. That message per  
16 se. No, sir.

17          Q.    Did you ever ask them what they meant when  
18 they said as a matter of principle they were going to  
19 hold Reggie to her offer?

20          A.    No, sir.

21          Q.    As of March 9, when you accepted this alleged  
22 offer, what was the date that this transaction was to

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1 accept?

2 A. Didn't have one.

3 MR. CREMINS: All right.

4 I think that is all.

5 THE COURT: All right.

6 You may step down. We will take a short break.

7 MR. MONAHAN: Your

8 Honor, may I ask her another question?

9 THE COURT: Yes, sir.

10 You may. Then, we will take a short break.

11 **REDIRECT EXAMINATION**

12 **BY MR. MONAHAN:**

13 Q. Mrs. Herbert, in response to the Court's  
14 inquiry, you stated that you made the statement to  
15 accept and it appeared that Mr.

16 THE COURT: White.

17 Q. White believed that you were accepting a  
18 different offer to purchase of Marefield Meadows. What  
19 was the subsequent conversation? Was that clarified  
20 before you hung up as to what...which one of the two  
21 you were talking about?

22 A. Yes, sir. It was made very clear that I was

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1 talking about the offer by her to purchase my client's  
2 interest and he was to get back to me after talking with  
3 her.

4 Q. Was there any withdrawal to that offer before  
5 you accepted it?

6 A. No, sir.

7 Q. Now, with respect to any kind of conditions  
8 that may have been reflected in an earlier letter between  
9 you and Maxine or your notes of phone conversations or  
10 anything like that were any of those reasons  
11 qualifications for your acceptance?

12 A. No, sir.

13 MR. MONAHAN: That is  
14 all.

15 THE COURT: All right.

16 MR. FLANNERY: I have  
17 two more questions.

18 THE COURT: One  
19 question. All right.

20 **RECROSS EXAMINATION**

21 **BY MR. FLANNERY:**

22 Q. The March 17th letter that you wrote which

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1 is...so you have the exhibit--

2 THE COURT: That is  
3 Exhibit Number 7.

4 MR. FLANNERY: 7.

5 Q. In the second sentence of that letter, you  
6 incorporate, by reference, the March 6th letter from your  
7 clients to you. Is that correct?

8 A. I refer to that letter. I think the letter speaks  
9 for itself. I refer to that letter in my letter.

10 Q. So you...what I am saying is, if I read this  
11 correctly, the March 6th letter we discussed, which was  
12 the last direction you had before you spoke to Mr. White,  
13 when you, in writing, confirmed your opinion, your  
14 acceptance to incorporate their letter into this March,  
15 17th letter...

16 A. I included it as an attachment.

17 Q. When you said this explains their position. Is  
18 that correct?

19 A. Mr. Flannery, it says, enclosed is my client's  
20 letter of March 6th, explaining their position, which I  
21 communicated to you, in numerous telephone  
22 conversations.

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1 MR. FLANNERY: I have no  
2 more questions, Your Honor.

3 THE COURT: All right. We  
4 will take a 15 minute break.

5 (WHEREUPON, a brief recess was taken.)

6 THE COURT: All right, sir,  
7 call your next witness, please?

8 MR. MONAHAN: I'd like to  
9 call Jeff Marsh at this point, Your Honor.

10 THE COURT: All right.

11 MR. MONAHAN: I might  
12 mention to Your Honor, I am not asking that these  
13 witnesses be excused. I want them to be around in the  
14 event that we need them for rebuttal.

15 THE COURT: You mean the  
16 witnesses who have testified?

17 MR. MONAHAN: All of  
18 them.

19 THE COURT: All right.

20 MR. MONAHAN: They may  
21 be called in rebuttal.

22 MR. MONAHAN: All right.

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1 ALFRED JEFFREYS MARSH, having been duly sworn by  
2 the Clerk, was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MONAHAN:

5 Q. Mr. Marsh, would you state your name, please?

6 A. Alfred Jeffreys Marsh.

7 Q. And where do you reside, sir?

8 A. 503 Blue Ridge Avenue, Culpeper, Virginia.

9 Q. What is your business?

10 A. I am owner of Eurosport Auctions which  
11 specializes in the promotion and sales of European  
12 sporting horses at auction. I am a licensed auctioneer,  
13 VAAR Number 200, certified with the Virginia Regulatory  
14 Board. I am also certified with the American Equine  
15 Appraisers Society as Senior Staff Appraiser for warm  
16 blooded horses. And we also do a little bit of consulting  
17 work for agricultural matters.

18 Q. Mr. Marsh, did there come a time this past  
19 spring when you were a party to an agreement to the  
20 disposal of a horse, a stallion name Moronjo?

21 A. Yes, sir, that's correct.

22 Q. Did you participate in the discussions leading

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1 to that agreement?

2 A. Yes, I did.

3 Q. And can you tell me whether, in fact, the  
4 stallion was disposed of in accordance with the  
5 agreement as quoted by the...

6 A. That's correct, we did, sir.

7 (WHEREUPON, Counsel conferred inaudibly.)

8 MR. FLANNERY: Your  
9 Honor, I will accommodate in any way that is possible,  
10 but I don't have the document. But if the Court and  
11 Counsel don't mind if I walk over, I'll do that.

12 THE COURT: All right, sir,  
13 I think that will be fine, go ahead.

14 MR. MONAHAN: I'm sorry  
15 about this, Your Honor, I just didn't realize I needed  
16 three copies.

17 THE COURT: All right.

18 Q. Mr. Marsh, I am going to hand you two  
19 documents which, one is dated July 10 and one is dated  
20 July 20 and I will ask you if you recognize those. I'll  
21 refer to them for the purpose of identification as Exhibits  
22 #7 and #8.

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1 THE CLERK: 8 and 9.

2 MR. MONAHAN: Is it 8 and  
3 9? I'm sorry, I lost them. 8 and 9. Let's refer to July  
4 10 as #8 and July 23rd, as #9, please.

5  
6 (WHEREUPON, the documents referred to were marked  
7 Plaintiff's Exhibits #8 and #9 for identification.)

8 A. Yes, Mr. Monahan, to answer your question,  
9 these are documents that I penned in my own hand to all  
10 parties concerned the litigation regarding the disposal of  
11 the funds on the stallion.

12 Q. All right.

13 A. And the appropriate bills, et cetera.

14 MR. MONAHAN: I'll offer  
15 these as Exhibits 8 and 9, Your Honor.

16 THE COURT: All right, if  
17 there is no objection they will be admitted.

18 MR. FLANNERY: Only as a  
19 point of clarification, Your Honor, I'm not sure I know  
20 which is 8 and which is 9.

21 MR. MONAHAN: The earlier  
22 dated one is 8 and the subsequently dated one is 9.

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THE COURT: July 10th is 8

and July 23rd is 9.

(WHEREUPON, Plaintiff's ExhibitS #8 and #9 for Identification were received in Evidence.)

Q. Mr. Marsh, do you still hold the funds on hand that are referred to in the documents?

A. I hold the balance of the funds, sir. If you recall, according to original court agreement half of the monies were initially disbursed on a one-third, two-third basis to the appropriate parties. The bills I was allowed to pay were paid out to the people they were owed to and the balance of the funds is in a certificate of deposit in Dominion Bank at Culpeper, Virginia.

Q. Looking at the documents or from any other information that you have, what is the amount now on deposit?

A. I can tell you as of 11/11 it's 22,000 and some odd dollars. I have a statement here from the bank. If you will give me just a minute, I'll...

Q. That would be with some interest at this time?

A. That's with the interest that has accrued, yes, sir, that's correct. Give me just a second and I'll find

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1 that little receipt that I got this week. And that's a 30  
2 day, two...or 32 day certificate of deposit. This is the  
3 original copy of the CD right here and...as soon as I can  
4 locate this little piece of cardboard, it will tell what...the  
5 last interest accrued for the 32 day period was \$139 if  
6 my memory strikes me correctly and we're just under  
7 \$23,000 worth of funds in the bank at the present time.

8 Bear with me a second and I'll find that note.  
9 Here it is...no, that's not the right one. But it's  
10 approximately \$23,000, 22,000 and some odd dollars.

11 Q. What was the...

12 A. It's...begging your pardon...\$22,730.76.

13 Q. 730...

14 A. I think this is the correct one.

15 Q. 36, did you say?

16 A. No, this is a 6...I beg your pardon, this is  
17 6/30/90. That was before the other bills were paid, the  
18 farrier bill, but it's \$22,000, I recall that very plainly. I  
19 read the thing this morning and I thought I put it in here  
20 and I don't see it, now. But it approximately 22,000 and  
21 some odd dollars in there right now accruing at the  
22 amount of \$139 per month. This is the original CD, if

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1       you all want it.

2           Q.    What was the sale price of the horse?

3           A.    The gross selling proceeds were \$56,500.

4           Q.    And what were the major expenses taken out?

5           A.    You have...well, I have the accounting here. Of  
6       course, the first expense that was taken out was my  
7       commission and that's always near and dear to my heart.  
8       There is a ten percent commission, \$5,650.

9           We had an agent's commission from the...a  
10       syndicate purchased the stallion, a syndicate in Vermont.  
11       Their agent was a gentleman named Vern Batchlitter and  
12       he received a ten percent commission which was \$5,650  
13       which was a total of \$11,300 deducted from the \$56,500  
14       which gave to the owning parties of the stallion, \$45,200  
15       prior to deduction of the miscellaneous bills such as the  
16       vet, the farrier, et cetera.

17           That would be the subject of the second, which  
18       I believe you called Document #9 at the present time, in  
19       which I did ask for approval to pay the Pioneer Equine  
20       Clinic, Bradshaw Vet Clinic and the farrier which those  
21       bills were paid accordingly.

22           THE COURT:   Can I have

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1 that price once again, 66, is that what you said?

2 A. I beg your pardon, sir?

3 MR. MONAHAN: 56.

4 THE COURT: 56.

5 A. \$56,500, yes, sir. Was the gross selling  
6 proceeds.

7 THE COURT: All right, just  
8 a minute, now. 56 what, now?

9 A. \$56,500.

10 THE COURT: All right, go  
11 ahead.

12 A. And then there were two commissions taken  
13 out, the sales company commission which is my  
14 company. That commission was \$5,650, a simple ten  
15 percent commission. And a simple ten percent  
16 commission to the agent, Vern Batchlitter, which was  
17 also \$5,650.

18 THE COURT: And what is  
19 the net that you had for distribution?

20 A. The net that I had for distribution immediately  
21 after the sale was \$45,200.

22 THE COURT: Forty-five,

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1 two.

2 A. Yes, sir. And according to our agreement I  
3 disbursed half of that \$45,200, sending to Marefield  
4 Meadows \$15,066.66 and to Ms. Lorenz, Chestnut  
5 Hollow farm, \$7,533.33. Gross disbursement at that  
6 time was \$22,600 leaving a balance in escrow of  
7 \$22,600.

8 And from that we paid Moronjo's bill to  
9 Bradshaw Vet Clinic which was \$75, we paid Moronjo's  
10 bill to Bradshaw Vet Clinic which was \$298 and we paid  
11 Moronjo's horseshoe bill which was \$96.

12 The balance of the proceeds are currently in a  
13 CD at Dominion Bank of Shenandoah Valley in Culpeper,  
14 Virginia, in a trust account set up as a CD bearing  
15 interest.

16 THE COURT: And the  
17 amount of the CD, the face value?

18 A. Well, let me pull it out, because I don't want to  
19 tell you wrong. It's approximately 22,000 and some  
20 dollars. This CD flips over every 32 days, Your Honor.

21 THE COURT: All right.

22 A. And I did have it out here a second ago, but let

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1           A.    The issue date was 8/1 of '90 and it has been  
2           flipped over automatically every 32 days.

3           Q.    My only other question, sir, you mentioned two  
4           commissions that are paid, were they standard in the  
5           business?

6           A.    Yes, sir, absolutely and required knowledge to  
7           all parties involved.

8           Q.    Are there any other charges, to your  
9           knowledge, to come out of the amount on hand?

10          A.    I did apply for one...or asked all parties  
11          involved for permission to pay the training bill for  
12          November Hill and thought I had pretty well gotten it  
13          squared away to where we could do that, and that was a  
14          bill of \$870.34 left outstanding for training the stallion  
15          Moronjo.

16                And at that time point in time, Mr. Flannery  
17          advised me not to issue those funds from the escrow  
18          account and that that issue was being litigated. And so,  
19          therefore, I have not paid it.

20          Q.    Are there any charges which you have, sir?

21          A.    No, sir.

22                               MR.   MONAHAN:       That

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1 me sort through my papers here and I'll pull it out again.  
2 It should be maturing again in December, if I'm not  
3 mistaken.

4 THE COURT: It must be  
5 \$22,730.76, is that it?

6 A. Yes, sir.

7 THE COURT: All right. I  
8 had it, I didn't realize that.

9 A. Actually, the amount after we paid the  
10 miscellaneous bills that went in on 8/1/90 was  
11 \$22,393.28. We had accrued interest on the original  
12 \$22,600 and that just about covered the bills that  
13 were...the small bills that were taken out to pay.

14 So, we redid the CD in the amount of  
15 \$22,393.28 and it has accrued from there, sir.

16 THE COURT: All right, sir.  
17 That's all I had, thank you.

18 Q. What is the interest, Mr. Marsh?

19 A. 6.60.

20 Q. And the maturity is when?

21 A. Every 32 days.

22 Q. Oh, okay.

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1 concludes my examination, Your Honor.

2 THE COURT: All right, sir.

3 Cross?

4 MR. FLANNERY: One  
5 question, Your Honor.

6  
7 **CROSS EXAMINATION**

8 **BY MR. FLANNERY:**

9 Q. The expenses at November Hill, you never  
10 understood that you were going to pay those expenses,  
11 you only agreed to the sale in California, is that correct?

12 A. Please rephrase that or ask that again. I'm not  
13 sure I follow the exact line.

14 Q. We never agreed to pay any monies involving  
15 November Hill, is that correct?

16 A. Did I agree to pay monies?

17 Q. No, I said, we, and that is Mrs. Lorenz, never  
18 told you we were going to pay any monies to November  
19 Hill?

20 A. Mrs. Lorenz never said to me that she was  
21 going to pay any monies to November Hill, that's correct.  
22 Now...

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1                   **MR. FLANNERY:** Okay, no  
2 further questions, Your Honor.

3                   **THE COURT:** All right.

4                   **MR. CREMINS:**       No  
5 questions, Judge.

6                   **THE COURT:** All right, sir.

7

8           **REDIRECT EXAMINATION**

9           **BY MR. MONAHAN:**

10           Q.   What was told you with respect to paying the  
11 bills?

12           A.   Beg your pardon?

13           Q.   What was told you with respect to the payment  
14 of the bills in connection with the disbursement of the  
15 horse?

16           A.   By which parties?

17           Q.   At the time of the meeting which was reduced  
18 to an Order of this Court, do you recall?

19                   **MR. FLANNERY:** Objection,  
20 beyond cross.

21                   **THE COURT:**   Well, I  
22 suppose so, but I think it has a premise, though. You

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1 asked if Mrs. Lorenz had authorized any payments to  
2 November Hill and he said, no. And then I guess this is  
3 a follow-up, but it may not be an exact...

4 **MR. MONAHAN:** Your  
5 Honor, let me suggest I withdraw the question and rely  
6 on the Court's file which contains the Order.

7 **THE COURT:** All right.  
8 That's all, then, you may step down.

9 All right, sir, your next witness.

10 **MR. MONAHAN:** I'd like to  
11 call at this point Sharon Nicholson, please.

12 **SHARON NICHOLSON,** having been duly sworn by the  
13 Clerk, was examined and testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. MONAHAN:**

16 **Q.** Would you state your name, please?

17 **A.** Sharon Nicholson.

18 **Q.** And where do you live, Miss Nicholson?

19 **A.** I live in Culpeper County.

20 **Q.** And what is the nature of your work?

21 **A.** I do business consulting with horse related  
22 businesses, farms.

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1 Q. And are you familiar with the business known  
2 as Marefield Meadows, Inc.?

3 A. Yes, I am.

4 Q. Are you, in fact, employed there?

5 A. I contract work, yes.

6 Q. Do you consult with them?

7 A. Mm-hmm. (Indicates affirmatively).

8 Q. How long have you been a consultant with that  
9 organization?

10 A. About three years.

11 Q. In connection with your work for or with  
12 Marefield Meadows, Incorporated, do you customarily  
13 handle the books and the billings?

14 A. Yes. Sometimes we have a bookkeeper, but  
15 usually everything ultimately goes through me before it  
16 goes to the accountant.

17 Q. You would say you supervise?

18 A. Yes.

19 Q. At my request did you make up an accounting  
20 of the amounts with respect to monies spent for a  
21 stallion known as Moronjo up until March 9 which were  
22 unpaid and also after March 9 which were unpaid by Mrs.

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1 Lorenz?

2 A. That's correct.

3 MR. MONAHAN: Your  
4 Honor, I don't know whether there is an issue of Mrs.  
5 Lorenz. She testified she had no...

6 MR. FLANNERY: Objection,  
7 this isn't a question.

8 MR. MONAHAN: I'm  
9 addressing the Court, I thought.

10 MR. FLANNERY: Well,  
11 we're talking about that it's outside the record and he's  
12 making proffers here. He's abandoning the witness.

13 THE COURT: All right.  
14 Well, would you have the witness step out for just a  
15 minute.

16 (WHEREUPON, the witness left the courtroom.)

17 THE COURT: All right,  
18 would you go ahead with your statement to the Court,  
19 then, Mr. Monahan.

20 MR. MONAHAN: Your  
21 Honor, I was simply going to suggest that, in the interest  
22 of time, Mrs. Lorenz in her deposition indicated she had

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1 no fault with the accounting rendered by Miss Nicholson,  
2 but she did object to the items as being a charge against  
3 her.

4 Now, Miss Nicholson is not going to testify  
5 whether they are or are not proper charges in that sense,  
6 but this is the accounting and I would tender it unless  
7 Mr. Flannery has some objection to it.

8 MR. FLANNERY: How about  
9 I never saw it, Your Honor. I don't even know what  
10 document he has in his hand.

11 THE COURT: Well...

12 MR. FLANNERY: Secondly,  
13 my client, when we filed her answers, made revisions to  
14 some of the answers she gave, including the specific one  
15 he referenced, the last...I think it was the last or the last  
16 few questions.

17 MR. MONAHAN: Well, if  
18 that's the case, I will be happy to take it back and  
19 withdraw that because I never saw this...

20 MR. FLANNERY: Well, if  
21 he's going to refer to it, Your Honor, I hope we're going  
22 to have a copy to look at. It's a multi-page letter that I

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1 have never seen before.

2 THE COURT: Well, he says  
3 he withdrawing the question and, presumably, the  
4 proposed exhibit.

5 MR. MONAHAN: I'm not  
6 withdrawing the exhibit, I withdraw the proffer, Your  
7 Honor.

8 THE COURT: All right.

9 MR. MONAHAN: Let's get  
10 Miss Nicholson back in and I'll have her identify it.

11 MR. FLANNERY: Your  
12 Honor, if Counsel wanted a stipulation, I am in the  
13 practice of giving them when I have some notice. I can't  
14 stand here, Your Honor, and look at...can I see the  
15 document a moment? Thank you..

16 THE COURT: Take a quick  
17 look and see if that's enough. If not, then you will have  
18 to have a copy.

19 MR. FLANNERY: It's a four-  
20 page, single spaced document with attachments that I  
21 received for the first time in this form, and it's dated  
22 November 15th, 1990.

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1           There has been no conversation between myself  
2 and Counsel by which I could have even considered  
3 expediting this process. And I hope Counsel has a copy  
4 for me to look at if he intends to use it.

5                   **THE COURT:** Well, it's  
6 something of a problem. Do you have an extra copy?

7                   **MR. MONAHAN:** Miss  
8 Nicholson, I believe has some, Your Honor. She has just  
9 given me this today during the course of the trial. I will  
10 be happy to ask her, I am sure that that's the case.

11                   **THE COURT:** Well...

12                   **MR. FLANNERY:** I assume  
13 she is going to have supporting documents, Your Honor,  
14 because if I don't know what this is, I am not going to  
15 stipulate to anything.

16                   **THE COURT:** Well, then, I  
17 think the best thing to do is to go ahead with your  
18 questions and not attempt to introduce it or use it and  
19 then you let him have a copy of it and it can be filed as  
20 soon as he's had an opportunity to see it. And he can  
21 advise the Court if he has any objections to it.

22                   **MR. FLANNERY:**

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1 Summaries, Your Honor, is questionable use in the  
2 Virginia case law, if that's what this is supposed to be.

3 THE COURT: I didn't hear  
4 that.

5 MR. FLANNERY: If this is a  
6 summary, there are certain requirements and evidence  
7 that are supposed to be satisfied including the supporting  
8 documents and...

9 THE COURT: You have Mr.  
10 Friend there, is that what you're going by?

11 MR. FLANNERY: Well, yes,  
12 all right. Our volume is, in essence, in Virginia is a  
13 guide.

14 THE COURT: All right.

15 MR. FLANNERY: I see Mr.  
16 Cremins may have something.

17 MR. CREMINS: Judge, I  
18 also have never seen it. And my only point is, I have no  
19 objection to her testifying to whatever Mr. Monahan is  
20 going to ask her, but before cross examination it would  
21 be nice to see a copy of this to prepare.

22 THE COURT: Well, he can

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1 examine her, but cannot use the document as an exhibit  
2 until it's been properly admitted either by stipulation or  
3 by some other notice which we will go into later.

4 All right, bring her back, please.

5 (WHEREUPON, the witness returned to the courtroom.)

6 CONTINUATION OF DIRECT

7 EXAMINATION BY MR. MONAHAN:

8 Q. Miss Nicholson, did you make up a...well, I'm  
9 sure you did, only for the purpose of knowing whether  
10 you have additional copies of this letter of November 15  
11 with its attachments?

12 A. Yes.

13 Q. Where are they?

14 A. Here you go.

15 THE COURT: Do you have  
16 two copies?

17 A. I do.

18 Q. Do you have three.

19 A. I have my own and that makes three.

20 MR. MONAHAN: Let's mark  
21 this 10 for purposes of identification.

22 (WHEREUPON, the document referred to was marked

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1 Plaintiff's Exhibit #10 for Identification.)

2 Q. All right, Miss Nicholson, would you look at  
3 your copy, please, and tell me what Exhibit #10 for the  
4 purpose of identification is?

5 A. It's...

6 MR. MONAHAN: I will  
7 tender this to the Court.

8 THE COURT: For  
9 identification.

10 A. It's an accounting of the amounts owed by Regi  
11 Lorenz to Marefield Meadows for expenses pertaining to  
12 Moronjo.

13 Q. And who made that up?

14 A. I did.

15 Q. During what period of time have you been  
16 custodian of the records which involved the amounts  
17 owed by Regi Lorenz to Marefield Meadows and...

18 MR. CREMINS: Your Honor,  
19 I'm going to object. I thought that the whole premise of  
20 this was that this witness was not going to testify of  
21 what anybody owed anybody, but was simply here to give  
22 us numbers.

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1           She is now testifying to, I guess, what her  
2 feeling is of what somebody else owes Marefield  
3 Meadows. I object.

4                           **MR. FLANNERY:** Also, Your  
5 Honor, the additional objection which would entitle us to  
6 voir dire and I think exclusion of the exhibit that he  
7 apparently is trying to get in which I did not understand  
8 that he was trying to do. This is a chart prepared in  
9 contemplation of litigation.

10                           **THE COURT:** Well, I've  
11 already said I can't...

12                           **MR. FLANNERY:** I'm sorry,  
13 I didn't hear you, Your Honor.

14                           **THE COURT:** He did hand it  
15 up, but I have not looked at it except to see that it's a  
16 typed sheet of paper. I'll have to sustain the objection  
17 with respect to the use of this to actually put figures into  
18 the record, but I don't see anything wrong with his  
19 asking her about these alleged debts. That's...

20                           **MR. FLANNERY:** My  
21 objection is that we should have some foundation.  
22 Maybe that's what he was about to do.

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1                   **THE COURT:** Well, maybe  
2       so. I have not admitted the exhibit, it's just been marked  
3       for identification. I don't intend to look at it yet,  
4       anyway. I see nothing wrong with his asking her  
5       questions about some alleged indebtedness to Marefield,  
6       so I'll allow that.

7           **Q.** All right, I was asking you how long have you  
8       been working with the bills incurred by the joint venture  
9       involving Regi Lorenz and Marefield Meadows.

10          **A.** I think I started putting it together in December  
11       of '88.

12          **Q.** And did you follow the billings at that point?

13          **A.** Yes, I followed them all the way through to the  
14       present.

15          **Q.** And have you rendered regular statements  
16       involving those billings?

17          **A.** Up until December of '89 we did regular  
18       billings.

19          **Q.** And can you tell me what the total of the  
20       billings were owed? Did you continue to compile the  
21       billings after that date?

22          **A.** Well, after that date there were no other

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1 billings as far as our expenses being prepaid on Moronjo,  
2 the horse went to November Hill at that time.

3 Q. Up until the date he went to November Hill,  
4 what was the total, if you know?

5 MR. CREMINS: Objection,  
6 Your Honor, that's totally outside the scope of this  
7 witness' ability to know. She can testify to pieces of  
8 paper that had numbers on it, but as to whether that bill  
9 is reasonable, what it's related to, whether it's proper  
10 under the circumstances, isn't that for the author of the  
11 bill to tell us rather than the recipient?

12 THE COURT: Well...

13 MR. CREMINS: Reasonable-  
14 ness as far as...I don't get to say...

15 THE COURT: I know some...

16 MR. CREMINS: Do you  
17 follow what I'm saying?

18 THE COURT: Courts look at  
19 that in different ways, the reasonableness. It may be  
20 open to question, but I think the only way you get to  
21 that, other than just not letting the witness testify any  
22 further, is for you to cross examine on it. She may or

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1 may not be able to answer your questions.

2 I think we're making a lot over one figure here.  
3 All I need to know...and in fact I'm not sure I need to  
4 know that...is how much is owed so far as she has  
5 knowledge.

6 MR. MONAHAN: May I ask  
7 that question, then?

8 THE COURT: Yes, sir. I will  
9 let that go in.

10 Q. What does the total compilation come to?

11 A. The total compilation comes to \$3,544.75.

12 Q. Could you break that down into before and after  
13 March 6th, 1989, just so I'll understand...

14 MR. CREMINS: Judge, so I  
15 don't have to interrupt, may I just have a continuing  
16 objection?

17 THE COURT: Yes, sir, your  
18 objection is continuing.

19 MR. FLANNERY: And if I  
20 may, as well, Your Honor.

21 THE COURT: All right, it's  
22 noted.

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1           A.    Okay, I broke it down and the balance due up to  
2   March the 9th was \$2,051.38. From March 9th onward,  
3   until Moronjo went to November Hill, the balance due is  
4   \$1,493.37 which gives us the total of \$3,544.75.

5           Q.    Now, in determining those figures which you  
6   have given the Court, had you given any credits to Mrs.  
7   Lorenz for stud fees?

8           A.    Yes, there were three separate credits given for  
9   stud fees received.

10          Q.    Were there any other stud fees collected during  
11   that period involving the stallion Moronjo?

12          A.    All stud fees that were collected were sent to  
13   you to hold and I believe that you disbursed one in  
14   addition to the three that we credited Miss Lorenz for.

15          Q.    And with respect to name one, do you know  
16   why it was disbursed in a different fashion?

17          A.    No, I cannot recall. I think we were waiting for  
18   the results of choice of stallion or I really cannot recall,  
19   but in any event it was...the mare was bred, she became  
20   in foal and so the money was disbursed. That's the only  
21   recollection I have.

22          Q.    Were any stud fees returned to the...

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1 A. Yes.

2 Q. ...owners?

3 Can you tell me how many that was?

4 A. I think we returned three as well.

5 Q. And why were they returned?

6 MR. FLANNERY: Basis.

7 Objection, basis for her knowledge.

8 THE COURT: All right, you  
9 can lay that foundation.

10 Q. Were you directed to send back those stud  
11 fees?

12 A. Yes, I was.

13 THE COURT: Well,  
14 objection, that's hearsay.

15 THE COURT: Well, it  
16 depends upon by whom.

17 A. By Maxine Mickle, who is the administrative  
18 manager of Marefield Meadows.

19 MR. FLANNERY: And by  
20 what exception would that be admissible?

21 THE COURT: Well, I think  
22 it would be admissible if she were directed by...well, I

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1 gather she is one of the Defendants here, wasn't she?

2 A. Yes.

3 MR. MONAHAN: Mrs.  
4 Mickle...or Miss Mickle, she stated.

5 THE COURT: Is that the  
6 same Miss Mickle who is a Defendant in this suit?

7 MR. MONAHAN: Yes, sir.

8 THE COURT: Well, I think  
9 that makes it admissible. It's a declaration or a  
10 statement by one of the parties. I think that admissible.

11 MR. FLANNERY: Well, it's  
12 not a conspiracy and I don't think it's an admission, but  
13 perhaps that's the intent and I have missed it. And I  
14 don't understand what other evidentiary foundation it is.  
15 And I supposed if I knew where it was going I might not  
16 even have an objection because it would be so harmless,  
17 but...

18 THE COURT: I think it's  
19 admissible as having come from someone who  
20 presumably, since she was a party, had the authority to  
21 do it.

22 MR. MONAHAN: Your

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1 Honor, the only purpose is to show...in the first place,  
2 the only purpose is to show that monies were received  
3 from owners of mares and returned to them and have not  
4 been withheld and she does know that of her knowledge.

5 THE COURT: Well, if she  
6 can state that of her knowledge, I'll admit it.

7 A. Ask me again so I understand the question.

8 Q. Were there stud fees received with respect to  
9 other mares that were returned to the owners?

10 A. Yes.

11 Q. And those are not in your accounting as a result  
12 of having been returned?

13 A. Well, we were giving...we gave credit when we  
14 received them. But when we returned them, we turned  
15 around and rebilled accordingly.

16 Q. So, they're not?

17 A. So, they just kind of cancelled when...

18 Q. Your net figure now does not include them?

19 A. No, it's been taken off.

20 Q. I see, okay.

21 MR. MONAHAN: That's all  
22 I have.

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1 THE COURT: All right, is  
2 that all?

3 MR. MONAHAN: That's all  
4 I have, Your Honor.

5 THE COURT: All right,  
6 cross examine, Mr. Flannery?

7 MR. FLANNERY: Yes, Your  
8 Honor.

9 **CROSS EXAMINATION**

10 **BY MR. FLANNERY:**

11 Q. When were you asked to prepare this  
12 accounting?

13 A. Several weeks ago, perhaps a month ago by Mr.  
14 Monahan.

15 Q. And did he tell you for what purpose?

16 A. No, he did not.

17 Q. Did anybody inform you that there was a trial  
18 coming up?

19 A. Yes, certainly.

20 Q. So, you knew that there was a trial coming up?

21 A. Of course.

22 Q. Did you know you were going to testify at the

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1 trial?

2 A. Yes, I did.

3 Q. Did you know you were going to testify at the  
4 trial before you prepared this accounting for Mr. Monahan  
5 for summary?

6 A. Yes, I did.

7 Q. Do you know when these covers occurred, that  
8 is when Moronjo covered these various mares, that is  
9 other than those owned by Marefield Meadows?

10 A. Not without looking it up, no.

11 Q. As you sit here today, you don't know when  
12 that happened?

13 A. No.

14 Q. And can you identify any one of the individual  
15 stud fees you received?

16 A. If you will look on the information I gave you,  
17 they are all identified.

18 Q. So, this is a summary?

19 A. It's a summary of the bills that were sent out  
20 to Regl before I put this all together. It's just simply a  
21 summary. The bills with the attached statements,  
22 invoices and back-up was sent every single month.

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1 Q. Do you have those?

2 A. Yes.

3 Q. Do you have them with you?

4 A. Yes.

5 Q. And you have support for each of them?

6 A. That's correct and so do you, I believe.

7 Q. Did Counsel teach you to do that?

8 A. No, sir. I'm just giving you my answer.

9 Q. You do that on your own?

10 A. I sent you copies, as well.

11 Q. You do this on your own?

12 A. That's correct.

13 THE COURT: You say you  
14 sent him copies, Mr. Flannery?

15 A. I sent...I would send copies toward the end to  
16 Mr. Flannery, I always sent them to Mr. Monahan and I  
17 sent them to Miss Lorenz, as well.

18 Q. You're not saying you sent me this summary,  
19 are you?

20 A. No, not the summary.

21 Q. You're not saying I saw the summary before you  
22 came into this court?

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1 A. I never said that.

2 Q. And you prepared that for Mr. Monahan, is that  
3 correct?

4 A. That's correct.

5 Q. And then you gave this to him on Friday?

6 A. No, he got it today, just like everybody else.  
7 I worked over the figures with him, I talked to him about  
8 the figures.

9 Q. You did discuss the figures?

10 A. Yes.

11 Q. How often did you meet with Mr. Monahan to  
12 discuss the figures?

13 A. Once.

14 Q. How long?

15 A. It was just a little while.

16 Q. And starting in December...

17 A. Actually...

18 Q. Is it right...

19 THE COURT: Let her answer  
20 the question.

21 A. All he wanted to know was what my numbers  
22 were. There was no discussion or manipulation of

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1 figures.

2 THE COURT: All right.

3 Q. Did I say there was manipulation of figures?

4 A. No.

5 MR. MONAHAN: Mr.  
6 Flannery, please...Your Honor, would you direct Mr.  
7 Flannery to just let her answer the question?

8 THE COURT: All right, yes.

9 MR. FLANNERY: I'm  
10 following up an answer that I got, Your Honor.  
11 She had finished the statement.

12 THE COURT: All right, next  
13 question.

14 Q. Your testimony was you first prepared these  
15 bills in December of '88, is that correct?

16 A. That's when I began to...yes, to get them  
17 together and start to prepare them.

18 Q. And so you began doing this job after Mrs.  
19 Lorenz resigned from Marefield Meadows, is that correct?

20 A. Well, no, actually that...if I go back and look at  
21 my first bill I can tell you exactly when I did it. Miss  
22 Lorenz was still with us at that time, but all the bills had

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1       been paid up-to-date up until that time.

2               I think actually when I started making note of  
3       it was in September of '88 I started writing the bills.  
4       September 3rd, 1988.

5               Q.   And it's your testimony that Mrs. Lorenz's bills  
6       were paid through December of '88, is that what you're  
7       saying?

8               A.   No, they were paid up through September of  
9       '88.

10              Q.   My question is, was she paid up, according to  
11       your recollection, through December of '88? Do you  
12       understand that question?

13              A.   I do understand that. I have to look that up to  
14       see. Well, evidently she was paid up through November  
15       because in December, on December 2nd, 1988, I billed  
16       her and she only paid a partial payment of that bill.

17              Q.   Are you familiar with Mrs. Lorenz's agreement  
18       with Marefield Meadows as to expenses?

19              A.   Yes.

20              Q.   Do you know, for example, whether or not she  
21       gave permission for an expenditure of money to bring  
22       Moronjo from November Hill to Marefield Meadows in

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1 February of 1989?

2 A. We were in communication at that time and it  
3 was...that was a normal routine expense as far as  
4 transport which was in her agreement, as far as I can  
5 recall.

6 Q. I'm asking you specifically, did she give her  
7 approval, her express approval, for Moronjo?

8 A. I do not know.

9 MR. MONAHAN: Your  
10 Honor, this is beyond the direct. This is an accountant  
11 who is talking about the bills. As to whether a client  
12 said something is not what she's testified to on direct.  
13 She has testified to bills incurred on behalf of Moronjo.

14 Whether they were authorized or not, that's  
15 what she has testified to. The Court has to decide that  
16 question.

17 THE COURT: Well, I  
18 think...I think the question is pertinent and relevant in  
19 that this lady apparently was present when some remark  
20 was made by Miss Lorenz and I think it's proper.  
21 Overruled, go ahead.

22 Q. Did Mrs. Lorenz give her permission to

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1 Marefield Meadows to move Moronjo?

2 THE COURT: If she knows.

3 Q. If you know?

4 A. I do not know.

5 THE COURT: Then that's as  
6 far as you can go.

7 MR. FLANNERY: That's as  
8 far as I am going to go.

9 Q. Did she give her permission to move Moronjo  
10 from Marefield Meadows to the Middleburg Equestrian  
11 Center?

12 A. I...I believe she did. I believe that was the only  
13 place she agreed that Moronjo could go. That was my  
14 understanding.

15 Q. Why did she agree to that?

16 A. I do not know.

17 Q. What is the basis of your knowledge that she  
18 agreed to it?

19 A. Just in general discussions with the people that  
20 I work for.

21 Q. So, you didn't get it from Mrs. Lorenz?

22 A. No.

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1 Q. Do you know if Mrs. Lorenz agreed to any of  
2 these other expenses?

3 A. She didn't disagree, she was given a bill every  
4 single month. She never disagreed...

5 Q. Do you realize where you are, do you realize  
6 where you are today?

7 A. Part of the...

8 Q. Do you know...

9 A. You're asking me a question and I'm...

10 MR. MONAHAN: Your  
11 Honor...

12 THE COURT: Just a  
13 minute...

14 MR. MONAHAN: ...I would  
15 ask you to direct him to stop arguing...

16 THE COURT: The question  
17 is argumentative.

18 MR. FLANNERY: It is, Your  
19 Honor, pardon me. You're absolutely correct, I withdraw  
20 the question.

21 Q. Mr. Marsh appeared to testify before. Are you  
22 related in any way to Mr. Marsh?

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1 A. No, I'm not related in any way to Mr. Marsh.

2 Q. Did you have any relationship with Mr. Marsh at  
3 any time while you were at Marefield Meadows?

4 A. I did. I once belonged to a corporation that  
5 both of us were part of.

6 Q. When did you first go on the payroll of  
7 Marefield Meadows?

8 A. I was first paid by Marefield Meadows in  
9 December of '87.

10 Q. And you continued on the payroll then until  
11 today?

12 A. I am not on the payroll. I charge for my  
13 services and I have been paid since that time, yes, since  
14 1987.

15 Q. And approximately how much a month are you  
16 paid by Marefield Meadows?

17 A. It depends on how many hours I put in.

18 Q. Well, what does it range from, what's the low  
19 and the high?

20 A. Anywhere from \$1,000 to \$3,000.

21 Q. On how many occasions, if you can say, on how  
22 many occasions did Moronjo cover any mares in 1989 for

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1 the stud fees?

2 A. That's...I can't say. I did not supervise that  
3 particular area.

4 Q. So, the information you got came to you from  
5 somebody else?

6 A. The information would come from the stable  
7 manager who kept the records, yes.

8 Q. And so you weren't at Marefield Meadows  
9 making entries at or about the time these things  
10 happened?

11 A. I could have been.

12 Q. I'm asking if sometimes you were and  
13 sometimes you weren't?

14 A. That's probably the case.

15 Q. So, it's unpredictable?

16 A. That's probably true.

17 Q. Who directly would tell you what to do when  
18 you arrived at Marefield Meadows when you came there  
19 to work on this contract basis?

20 A. Well, it depends. I would get advice, I would  
21 seek counsel from the people at Marefield Meadows as to  
22 what was going on, but I do my own work there, do my

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1 own job and it all...I'm not specifically told what to do in  
2 many areas.

3 Q. Who hired you in December of '87?

4 A. Marefield Meadows.

5 Q. Who specifically did you speak with...

6 A. The corporation.

7 Q. You spoke with...

8 A. Marion Poynter and Maxine Mickle.

9 Q. And having went there on individual occasions,  
10 who would you speak to if you wanted direction about  
11 what to do, would you speak to Marion Poynter?

12 A. I would speak to both parties, sometimes one  
13 and sometimes the other.

14 Q. And before you prepared this, quote, summary  
15 that you have made reference to, you spoke to Marion  
16 Poynter about this summary?

17 A. Only to tell them that that's what I was doing.

18 Q. Did Mr. Monahan call you directly to ask you to  
19 prepare this?

20 A. No, I think he asked me by letter.

21 Q. Do you have that letter with you?

22 A. I might.

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1 Q. Could I see it, please? You had a meeting with  
2 Mr. Monahan on about what date?

3 A. It was Friday, last Friday.

4 Q. Well, you had a meeting before this letter,  
5 didn't you? This letter is dated October 29th, 1990.

6 A. I had a meeting last Friday.

7 Q. Let me direct your attention to this letter. This  
8 letter is dated October 29th, 1990?

9 A. That's correct.

10 Q. Is that correct?

11 A. Yes.

12 Q. And before that letter you had a meeting with  
13 Mr. Monahan, isn't that correct?

14 A. At the time of our last meeting I did not have a  
15 meeting. I think he was at the house meeting with Mrs.  
16 Poynter and I was there and he asked me to just get these  
17 things together.

18 Q. Oh, I see. That wasn't a meeting?

19 A. Well, it wasn't specifically with me.

20 Q. So, Mr. Monahan was confused when he said  
21 that he met you?

22 A. I just told you that I met with him for a few

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1 minutes, but he wasn't there to have a meeting with me.  
2 I was just there at the house and I walked by and he said,  
3 oh, by the way. So, that was it.

4 Q. Did you talk to Mr. Monahan?

5 A. I just said I talked to Mr. Monahan.

6 Q. Okay. Well, what did you say?

7 A. I don't recall.

8 Q. Did you ask him to outline what it is that you  
9 would testify about on November 19th, 1990?

10 A. I asked him to break down how he wanted me to  
11 summarize the accounting.

12 Q. Now, you testified a little earlier, you may  
13 recall, that when you prepared this summary you didn't  
14 know that it was going to be used in court, is that  
15 correct?

16 A. No, that's...I don't think I said that.

17 Q. You don't think you said that. Let me direct  
18 your attention from Mr. Monahan and see if this refreshes  
19 your recollection that on October 29th he told you that  
20 he hoped you could testify about certain areas  
21 enumerated in this letter he sent you on or about that  
22 date.

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1           A. I think I...I think I agreed to that. I think that  
2 I said that I prepared these for today, to be in court, that  
3 that's the reason why I prepared these. You might want  
4 to check the record.

5                                           **MR. FLANNERY:** Excuse me  
6 just for a second, Your Honor.

7           Q. Now, you said you saw Mr. Monahan a week  
8 ago, that was the 9th of November, is that correct?

9           A. Whatever last Friday was.

10          Q. Okay. So, you saw Mr. Monahan before  
11 October 29th in which you asked him to outline for you  
12 what your testimony would be, is that correct?

13          A. No, I asked him to outline how he wanted me to  
14 break down the accounting.

15          Q. And he wrote you a letter on October 29th  
16 telling you...

17          A. To break it down...

18          Q. ...to break it down in a certain way. And is it  
19 your testimony you didn't bring any papers to this  
20 meeting that you had with Mr. Monahan on November the  
21 9th?

22          A. On Friday?

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1 Q. On Friday.

2 MR. MONAHAN: Your  
3 Honor...

4 A. I just said that I had the figures there and I  
5 went over the figures with him. I just said that.

6 Q. You had a draft of what is submitted?

7 A. I had a draft.

8 Q. May I see the draft?

9 A. No, I do not have a draft with me.

10 MR. MONAHAN: Friday was  
11 not the 9th, Your Honor. I don't wonder she's confused.

12 THE COURT: Friday was not  
13 the 9th, this is the 19th.

14 MR. MONAHAN: This is this  
15 past Friday. Since this is the 19th, it could not have  
16 been last Friday.

17 A. Whenever last Friday was.

18 Q. The 16th?

19 A. The 16th.

20 Q. So that we're absolutely clear, you met with  
21 him on Friday, November 16th, correct?

22 A. That's correct.

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1 Q. Okay. Your report is dated, is it not, November  
2 15th?

3 A. That's correct. That's when I did up my draft  
4 and I just didn't change my date for today.

5 Q. Did you then have a draft document that you  
6 reviewed with Mr. Monahan?

7 A. Yes, yes.

8 Q. And then, based on your conversation with Mr.  
9 Monahan, you changed that draft before today?

10 A. Not really. I really didn't change it, I just  
11 realigned it, I went over it with him to make sure that it  
12 was the way he wanted it broken down. I broke out  
13 certain things...

14 Q. So, Mr. Monahan, in fact, had seen this  
15 document essentially the way you're presenting it today,  
16 last Friday.

17 MR. FLANNERY: No further  
18 questions.

19 THE COURT: All right.

20 MR. CREMINS: I have just  
21 two questions, Judge.

22 THE COURT: All right.

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**CROSS EXAMINATION****BY MR. CREMINS:**

Q. Just so the record is clear, you are not an employee of Marefield Meadows, you are an independent contractor that supplies services?

A. That's correct.

Q. And the bills that you're testifying to are bills that were sent to Marefield Meadows, not to you?

A. Explain that again, I'm sorry, I don't follow you.

Q. Are these Marefield Meadows bills that are on this account?

A. These are Marefield Meadows...these are expenses that Marefield Meadows paid on behalf of Moronjo.

**MR. CREMINS:** I don't have anything further.

**THE COURT:** All right.

**REDIRECT EXAMINATION****BY MR. MONAHAN:**

Q. Is this the letter to which Mr. Flannery made reference?

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1           A.    Yes, it is.

2                               **MR. MONAHAN:** I offer this  
3 as Exhibit 11 for Cross-Complainant.

4                               **THE COURT:** It will be  
5 admitted if there is no objection.

6                               **MR. FLANNERY:** Objection.

7                               **THE COURT:** Well, you used  
8 the letter.

9                               **MR. FLANNERY:** All right.

10                              **THE COURT:** The objection  
11 is overruled.

12                              **MR. FLANNERY:** Okay, Your  
13 Honor.

14           (WHEREUPON, the document referred to was marked  
15 Plaintiff's Exhibit #11 for identification and received in  
16 Evidence.)

17                              **THE COURT:** You may step  
18 down.

19           **CONTINUATION OF REDIRECT**

20           **EXAMINATION BY MR. MONAHAN:**

21                      Q.    Excuse me. Now, did you bring the file of bills  
22 from which you made your compilation?

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1           A.    Yes.

2                           MR. MONAHAN: All right,  
3   Your Honor, I want to offer into evidence this now as  
4   Exhibit Number, I believe it's #10, and the supporting  
5   documents.

6                           THE COURT: Well, is there  
7   any objection to that?

8                           MR. CREMINS: Yes, sir, I  
9   object.

10                          THE COURT: All right, it's  
11   a continuing objection. I was in hopes, after having  
12   heard the examination and cross examination, you would  
13   have become familiar enough with it to withdraw your  
14   objection. If you can't do it or if you need more time to  
15   study it, I'll certainly be glad to let you do it.

16                          MR. CREMINS: I'll be happy  
17   to look at those over our evening recess until tomorrow,  
18   Judge.

19                          THE COURT: All right, let  
20   it continue, then, as an exhibit for identification only and  
21   tomorrow morning I will...

22   (WHEREUPON, the document referred to was marked

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1 Plaintiff's Exhibit #12 for Identification.)

2 MR. FLANNERY: Can I look  
3 this over and then perhaps ask her a couple of questions?  
4 Is she going to be available tomorrow?

5 A. Your Honor, I've given copies to everybody here  
6 before this, they've been getting them every month.

7 THE COURT: Well, just  
8 have a seat. If you have any more questions, I don't  
9 want to deprive you of that. There's no need bringing  
10 the witness back just for one or two questions tomorrow.  
11 So, go ahead and we'll get that out of the way, now.

12 MR. MONAHAN: I will  
13 submit, Your Honor, that she tendered those...that file to  
14 Mr. Flannery during his examination previously and he did  
15 not take advantage of it. That's how I found out she had  
16 it.

17 MR. FLANNERY: I don't  
18 know what you are talking about, I haven't examined this  
19 witness.

20 A. You've examined on...

21 THE COURT: Wait a minute.

22 You want to introduce this entire file?

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1                                   **MR. FLANNERY:**     Yes,  
2     apparently, Your Honor, that's what I'm talking about.

3                                   **THE COURT:** Well, I think  
4     you were saying that the exhibit was not documented and  
5     you needed to know more about it.

6                                   **MR. FLANNERY:** Yes, Your  
7     Honor.

8                                   **THE COURT:** I assume that  
9     what he is doing here is giving you the entire file so you  
10    can't say you weren't fully apprized of the  
11    documentation, if that's the purpose of it.

12                                  **MR. FLANNERY:**     Your  
13    Honor, if the witness is going to be available tomorrow,  
14    we can look at it tonight and see if we have questions.  
15    That's the only...

16                                  **MR. MONAHAN:** She will be  
17    here.

18                                  **MR. FLANNERY:** And I think  
19    it will be more expeditious to do it that way, frankly,  
20    because there might not be any questions, once we look  
21    at it. And if we have any...

22                                  **THE COURT:** You would be

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1 requiring her to come all the way for nothing, if that's  
2 the case.

3 MR. MONAHAN: Your  
4 Honor, I don't think she will be coming for nothing.

5 THE COURT: You don't?

6 MR. MONAHAN: There are  
7 other functions that I want her here for.

8 THE COURT: All right. Well  
9 then, in that case I'd certainly let you do it. And you  
10 have a copy of this summary?

11 MR. FLANNERY: Yes, thank  
12 you, Your Honor, we do.

13 THE COURT: Now, do you  
14 need to hold her any longer today?

15 MR. MONAHAN: No, sir.

16 MR. FLANNERY: Not for  
17 me, sir.

18 THE COURT: All right, we  
19 will need you back tomorrow and, presumably, you would  
20 be among the first witnesses, I hope, in the morning.

21 MR. MONAHAN: Your  
22 Honor, I'm going to bring her back on rebuttal. She may

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1 not be the first one I call.

2 THE COURT: Well, wait.  
3 All right, you will just have to come back tomorrow.

4 BAILIFF: Do you have a  
5 time tomorrow?

6 THE COURT: Well, we'll  
7 start at 10:00 o'clock.

8 BAILIFF: But she is free to  
9 go now?

10 THE COURT: Right.

11 BAILIFF: Okay.

12 THE COURT: All right, next  
13 witness.

14 MR. MONAHAN: I'd like to  
15 call Mrs. Lorenz, please.

16 THE COURT: Were you  
17 sworn, Mrs. Lorenz?

18 MRS. LORENZ: No.

19 THE COURT: All right, will  
20 you take the oath, please.

21 REGULA LORENZ, having been duly sworn by the Clerk,  
22 was examined and testified as follows:

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1 THE COURT: Let's see,  
2 you're calling her as an adverse witness, I assume?

3 MR. MONAHAN: Yes, sir, I  
4 am.

5 THE COURT: And I gather...

6 MR. MONAHAN: For a very  
7 narrow area of investigation.

8 THE COURT: I was about to  
9 say, this is probably going to take some time and other  
10 counsel want to examine her, too. I'm just wondering if  
11 you can finish or do any more than finish with this one  
12 witness today.

13 When I was asked the other day about how long  
14 I usually ran the court I said 6:00 o'clock. I would like  
15 to get away by 5:30, if possible, and so we have an hour  
16 and ten minutes.

17 I would like your appraisal of how long you will  
18 be examining this witness or approximately how long?

19 MR. MONAHAN: Your  
20 Honor, I take the position that all I'm going to ask her is  
21 her instructions to Mr. White with respect to making an  
22 offer and that I am not going to open up the door for all

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1 that Mr. Flannery may wish to put her on for tomorrow.

2 THE COURT: All right, if  
3 that's all you're going to do then you can go ahead. I  
4 was going to suggest that you let some of the other  
5 witnesses go on home, but if that's all you want...

6 MR. MONAHAN: I don't  
7 have any more witnesses.

8 THE COURT: You don't  
9 have any more witnesses?

10 MR. MONAHAN: Not today.

11 THE COURT: If that's all  
12 you want then, of course Mr. Flannery and Mr. Cremins  
13 have witnesses, I assume, but if that's all you're going  
14 to ask her, I would think then we should go ahead and  
15 we'll just keep all the witnesses here until we adjourn.

16 All right, sir.

17 **DIRECT EXAMINATION**

18 **BY MR. MONAHAN:**

19 Q. Would you state your name, please?

20 A. My name is Regula Lorenz.

21 Q. And where do you reside, Mrs. Lorenz?

22 A. At Chestnut Hollow Stables in Middleburg,

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1 Virginia.

2 Q. Do you conduct a business in that name?

3 A. Yes, I do.

4 Q. In February of 1989, did you have any business  
5 relations with a Mr. Craig White of the firm of Hanes,  
6 Seville, Saunders & McCahill?

7 A. Yes, I did.

8 Q. Did there come a time when you learned of an  
9 appraisal that Mr. Thompson had made...

10 A. Yes, I did.

11 Q. ...of a horse named Moronjo?

12 A. Yes.

13 Q. At that time did you give Mr. White any  
14 instructions as to what your desires were with respect to  
15 either purchasing or selling your interest in Moronjo?

16 A. Yes, I discussed with Mr. White on the phone  
17 that now we did have a price and I would certainly like to  
18 sell my share in the horse.

19 Q. Did you give him any instructions as to your  
20 purchasing the interests of Marefield Meadows?

21 A. He asked me specifically, are you yourself  
22 interested in the horse, are you still interested in the

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1 horse? I said, I am very much interested in the horse, but  
2 I could only purchase the horse if I could find partners  
3 and form a syndicate to do so.

4 Q. Did you understand that he was going to make  
5 an offer on your behalf to purchase as opposed to sell?

6 A. I thought he was going to negotiate with the  
7 figure we had.

8 Q. Did you understand with Mr. White that he was  
9 authorized to either make an offer of sale on your behalf  
10 in the amount of \$26,666.66 or an offer to purchase in  
11 any fashion on your behalf of \$53,333.33?

12 A. I thought he was qualified to negotiate in my  
13 behalf.

14 Q. Now, I would like you to listen very carefully to  
15 my question and answer it. Did you understand that he  
16 was authorized to offer your horse for sale at a figure of  
17 \$26,666.66? Not negotiate, but make an offer of sale?

18 THE COURT: You mean of  
19 her share?

20 MR. MONAHAN: Of her  
21 share.

22 A. Of my share?

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1 Q. Yes.

2 A. Yes.

3 Q. Did you understand that he also was going to  
4 make an offer, without defining the offer, to purchase on  
5 your behalf of shares of Marefield Meadows?

6 A. No, not on that figure because he knew I did  
7 not have to money to accept...to buy.

8 Q. So, if he made any offer it was without your  
9 authority?

10 A. It was certainly in my absence and I only gave  
11 him permission to negotiate.

12 Q. So, if he made an offer, it was without your  
13 authority, is that what you're saying?

14 A. Yes, it would have been.

15 MR. MONAHAN: Thank you  
16 very much.

17 MR. FLANNERY: I don't  
18 have any questions.

19 THE COURT: All right.

20 MR. CREMINS: No  
21 questions at this time.

22 THE COURT: All right, you

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1 may step down.

2 **MR. MONAHAN:** I'll rest,  
3 Your Honor.

4 **THE COURT:** All right sir.

5 **MR. FLANNERY:** Your  
6 Honor, if we could have a few moments, I think we would  
7 want to make a motion at this point.

8 **THE COURT:** All right, you  
9 may.

10 **MR. FLANNERY:** May I  
11 confer with Mr. Cremins...

12 **THE COURT:** Yes, we will  
13 take a little recess while you do that. Let me know as  
14 soon as you finish.

15 **BAILIFF:** All right.  
16 (WHEREUPON, a brief recess was taken.)

17 **BAILIFF:** Be seated, please,  
18 and come to order.

19 **THE COURT:** All right, sir.

20 **MR. CREMINS:** Your Honor,  
21 on behalf of Defendants Craig White and the law firm of  
22 Hanes, Sevilla, Saunders & McCahill, I have a motion at

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1 this point which has several prongs to it.

2 First of all, I would like to be sure that my  
3 understanding of the state of the evidence is accurate.  
4 It is my understanding that Mr. Monahan has rested his  
5 case and that there is no other evidence that is going to  
6 be introduced by him and that the only remaining issue is  
7 whether or not my objection to that compilation and all  
8 the supporting documents be withdrawn or not when I  
9 have had a chance to look at them.

10 But by making this motion at this time and by  
11 reciting for Your Honor what my legal position is in this  
12 case, I am not...it is my understanding that I am not  
13 providing him the right tomorrow to put on more evidence  
14 to rebut my Motion to Strike.

15 If our stand is not correct, then I would  
16 respectfully ask Your Honor to recess or adjourn tonight  
17 and let us address the last of the little damage issue the  
18 first thing in the morning before I make this motion.

19 MR. MONAHAN: Your  
20 Honor; naturally I take the position that for the purpose  
21 of the Motion to Strike, I offered that information and the  
22 Court has put it over until in the morning. I don't want

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1 to come up short on proof because you have not yet ruled  
2 on the admission of that information.

3 So, basically, Mr. Cremins is correct if in fact  
4 he intends to attack the damages which are represented  
5 by the file which is before you and as to which I have a  
6 motion pending.

7 I would rely on that information as being  
8 admissible and being before the Court until such time as  
9 the Court rules that it is not admissible. I can't do  
10 anything else.

11 THE COURT: Well, that's  
12 true. Of course, that puts Mr. Cremins in a Catch 22...

13 MR. MONAHAN: Well, I'm  
14 perfectly willing to go over until tomorrow.

15 THE COURT: ...because I  
16 understood that all counsel...not you but Mr. Cremins  
17 and Mr. Flannery...wanted to look at all of this  
18 supporting evidence. But you, I take it, if you made a  
19 motion, would make a motion to strike the evidence as  
20 against your two clients, Mister...

21 MR. CREMINS: White and  
22 the law firm, yes, sir.

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1 THE COURT: ...White and  
2 the law firm.

3 MR. CREMINS: The basis of  
4 my motion will not be that Mr. Monahan has not proved  
5 \$4,000, or whatever it is, of expenses. My motion is not  
6 even going to deal with that point, so that you won't  
7 have to look at that exhibit or consider it or think about  
8 it or refer to it in any way to respond to me.

9 But I just don't want there to be any other hole.  
10 other than that exhibit.

11 MR. FLANNERY: If I might  
12 say something that might be helpful, Your Honor.

13 THE COURT: All right.

14 MR. FLANNERY: I think that  
15 the purpose of the Motion to Strike I would make on  
16 behalf of Mrs. Lorenz, you could assume for the sake of  
17 this argument, that all the damages and the worst  
18 amounts that they said are in evidence.

19 My Motion to Strike is not going to go to the  
20 dollar amount that's in there on the dates that they fell  
21 on, for my Motion to Strike.

22 THE COURT: So, are you

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1 saying...I understand that you're going to make a Motion  
2 to Strike...but are you saying that you see no reason why  
3 Mr. Cremins' motion with respect to these two parties  
4 should not be granted?

5 **MR. FLANNERY:** I think it  
6 should be granted as to his clients, as well as to Mrs.  
7 Lorenz. And I think that we share the same concern and  
8 that is, if we make our respective motions which we are  
9 both going to make to strike as to the individual  
10 Defendants that we represent and are acting as co-  
11 counsel, as well, that this Court notwithstanding or not  
12 to indicate the validity of those records, we can still  
13 strike as a matter of law.

14 **THE COURT:** Well, Mr.  
15 Cremins, I don't think I could grant the Motion to Strike  
16 that Mr. Flannery is going to make, at least certainly not  
17 tonight. This requires some thought.

18 Now, I'm inclined to grant your motion, but I  
19 think if I'm not going to grant his I shouldn't grant yours.  
20 I regret the inconvenience of you having to come back  
21 and bring your clients back with you, but I think I would  
22 have to hear argument on this motion and take it under

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1 . advisement until tomorrow morning.

2 MR. CREMINS: Do you want  
3 us to then argue it now?

4 THE COURT: Well, if you're  
5 ready to argue it. Mr. Monahan has rested and this is the  
6 time. We have the time for it.

7 MR. CREMINS: That will be  
8 fine for me. All right, sir.

9 I was going to save this for last, Judge, the  
10 motion that my lawyer clients should be dismissed  
11 because they are not properly in this case as Defendants,  
12 not on the merits, but by procedure they are not in this  
13 case.

14 They never represented Marefield Meadows or  
15 had anything to do with Marefield Meadows, they don't  
16 owe any duty to Marefield Meadows. Whether Marefield  
17 Meadows liked or didn't like, agreed or didn't agree to  
18 what Craft White said, this is basically what we argued  
19 in the demurrer.

20 I'm going to set that aside for one moment and  
21 let me address what I think are really the core issues in  
22 this case.

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1       We went...and I say "we"...this young lady who  
2       is sitting out there, Donna Gaffney, Your Honor. She's  
3       from my office and she is not quite a member of the  
4       Virginia Bar yet, but she is a law school graduate and she  
5       has helped me a lot on this case. So, when I say "we,"  
6       she is the we and also Mr. White.

7               The three of us formed a team, I'm the one with  
8       no brains and they're propping me up with research. But  
9       it's interesting what those books have in them.

10              We went and looked for contracts by  
11       correspondence and, lo and behold, found two beautiful  
12       Virginia cases on just this issue. And I'm going to give  
13       you copies of these and I'm going to give Mr. Monahan  
14       copies. And I'm not going to stand up here and read  
15       them, but I just want to give you the nub, a kernel.

16              Bluebird v. Michael Furniture Company. To  
17       establish a contract by correspondence, there must  
18       appear on the face a clear accession by both partners to  
19       the same set of terms, period. The acceptance must be  
20       unqualified and nothing left open for consideration or  
21       negotiations, period, end of case, end of this case.

22              Think of the documents that you have in front

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1 of you in evidence and of Georgia Herbert's testimony  
2 and Mrs. Poynter's testimony. Think about the other  
3 issues besides price that were critical to the resolution  
4 of the dispute between Mrs. Lorenz and Marefield  
5 Meadows. Think of the testimony of Mrs. Poynter and  
6 Georgia Herbert that, indeed, they wanted written  
7 breeding contracts signed.

8 Think of the fact that they..."they" being the  
9 parties... were in the midst of a huge dispute about  
10 expenses which has not been resolved to this day. It's  
11 one of the things Your Honor is being asked to resolve  
12 that before 1989, a number that you have in front of you  
13 is part of it.

14 Think of the fact that there was never a  
15 settlement date set in this case. Think about the fact  
16 that Mrs. Poynter demanded a cashier's check in  
17 settlement of this case.

18 Look at her March 6th letter..."her" being Mrs.  
19 Poynter's letter to her lawyer. Two pages of conditions,  
20 Your Honor, which were never addressed by Georgia  
21 Herbert much less agreed upon by Georgia Herbert and my  
22 client, Craig White.

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1           Ask yourself, okay, if I take two sentences out  
2 of Craig White's letter, I'll buy, I'll sell, if I take those  
3 out, we could get into all kinds of legal arguments which  
4 you've got, that being the condition on financing.

5           You have the fact that Mr. White's letter of  
6 February 23 is his whole letter. They can't just pull two  
7 sentences out and say, hey, we want to take advantage  
8 of this, we're going to turn our backs on everything else  
9 you said, Mr. White.

10          Then look at the fact that following that letter  
11 there is this phone conversation, Herbert and White, in  
12 which White says, no, no, no, no. First there was a  
13 misunderstanding as to what was being accepted, clearly  
14 reflecting there was no meeting of the minds.

15          I thought Georgia Herbert's testimony about  
16 how she called up Mr. White...or he called her, I don't  
17 know which it was...and said, we accept and he said,  
18 great. And then they talked a little bit more and it  
19 became obvious that she was talking about wanting to  
20 sell to Mr. White's client and Mr. White was talking about  
21 wanting to sell to her client.

22          Where is the meeting of the minds in that phone

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1 conversation and where is it written that there should be  
2 an oral acceptance at all in this case when Georgia  
3 Herbert testified under oath not two hours ago, that she  
4 demanded of Craig White that from now on we're going  
5 to do business by letter. Her oral acceptance, even if  
6 that was one, is indefinite, it's of no legal value.

7 Thirdly, what about Craig White's March 9  
8 letter which you have up there? Now, Georgia Herbert  
9 didn't have that in front of her at the time she was  
10 talking to Craig. It was written the same day, but she  
11 testified she didn't have it.

12 She told you, Judge, as the trier of fact, that  
13 she finds his March 9 letter totally consistent with their  
14 conversation on March the 9th. If that's true, I ask you  
15 to look at the letter tonight, Judge Jamison, and ask  
16 yourself if that letter, that letter by itself, doesn't inject  
17 the conditional term of Mrs. Lorenz must get financing.  
18 If it wasn't done on February 23, if it wasn't done in the  
19 interim, was it done on the March 9 letter?

20 I know you will look at those letters and I know  
21 that you that will give them the consideration that they  
22 deserve tonight as you reflect on the law also.

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1 But as of March 9, the state of the evidence in  
2 this case, right now, is as follows: White wrote a letter,  
3 Marefield Meadows jumped on two sentences of the letter  
4 and said, we'll buy that, oh, yeah, we want that, yes, we  
5 accept. Ignore the rest of it, throw that out, we don't  
6 have to trifle ourselves with the rest of your letter, Mr.  
7 White. And it's okay if we call you up and say we  
8 accept, even though we demanded that everything be in  
9 writing and it's okay if we accept, even in the face of  
10 that letter which makes it conditional.

11 Now, that's the state of the evidence as of  
12 March 9, but it gets worse, it gets worse. Because what  
13 they do after March is, A, inconsistent and, B, definitely  
14 proof that there was never any meeting of the minds in  
15 this case. What did they, meaning Marefield Meadows,  
16 what did they do after March 9th?

17 Mr. Poynter writes her lawyer a letter, it get to  
18 her. It's dated the 6th, I don't know what date she got  
19 it, but you have it in front of you and I believe it's an  
20 exhibit, I don't know which number, but it's a two-page,  
21 typewritten letter in which additional conditions that  
22 Mrs. Poynter says to her lawyer, go ahead and accept and

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1 here's the other conditions we went to impose.

2 That letter gets transmitted to Craig White  
3 along with Georgia Herbert's letter of March 17th. Look  
4 at her letter of March 17th. Is that the kind of  
5 unqualified acceptance, leaving nothing open for  
6 consideration or negotiation that is required under  
7 Virginia law for there to be a meeting of the minds and an  
8 offer and acceptance?

9 THE COURT: Do you  
10 concede that there was an offer which she accepted, in  
11 that telephone conversation or which she is...

12 MR. CREMINS: No, I...

13 THE COURT: I don't mean  
14 that she, of course...that when she said that we are  
15 going to accept your offer and then he said, great, what  
16 offer was she speaking of that she was accepting? Was  
17 it...

18 MR. CREMINS: She was  
19 accepting...this is according to her testimony.

20 THE COURT: Yes, according  
21 to her testimony.

22 MR. CREMINS: I haven't

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1 put any evidence on, but...

2 THE COURT: No, I know.

3 MR. CREMINS: ...she's  
4 saying that she's accepting Craig's offer that Mrs. Lorenz  
5 will buy Marefield Meadows out. He thinks she is saying  
6 Marefield Meadows has agreed to buy Mrs. Lorenz out,  
7 rather than the other way around. And it's not until  
8 several minutes into the conversation that they realized  
9 that they're not even talking about about the same offer.

10 In connection with that discussion, Mr. White  
11 mentions to her that she is looking for financing, Mr.  
12 White mentions to her the possibility of a public sale  
13 which is the next step if one of the parties doesn't agree  
14 to buy him.

15 He confirms that with a letter, the March 9  
16 letter, the same two points are made in the March 9  
17 letter as were made in the phone conversation. She  
18 needs financing and if she doesn't get it, it's public sale  
19 time. That's the only other option left, we'll just have to  
20 sell it to some third party, auction it off or sell it  
21 privately.

22 We then have the March 17 letter, why did she

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1 write that? Why was that letter written at all if it's their  
2 position that they didn't need it, that there's a March 9th  
3 phone call that was all that was needed.

4 Why does Georgia Herbert send a two-page  
5 letter from Mrs. Poynter, together with her two-page  
6 letter to Craig White, both of which set up all new terms  
7 and conditions? They talk about all kinds of things that  
8 are yet to be decided.

9 Judge, what we come back to is the statement  
10 I made to you at the outset of this case, that this was a  
11 dispute that involved the dissolution of a partnership.  
12 The last witness, Mrs. Nicholson, is proof of that.

13 Her whole subject matter of testimony deals  
14 with issues that have nothing to do with the selling price  
15 of a horse. It has to do with who owes money in this  
16 partnership, was that ever agreed on, was it ever even  
17 discussed? The answer is no.

18 Breeding rights. There's money in breeding  
19 horses, that's one reason why this stallion was bred, to  
20 make money. What about those? Mrs. Poynter wanted it  
21 in writing. It was never in writing.

22 Even if that statement of Craig White's could

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1     somehow or other be classified as an unconditional offer,  
2     which we know it isn't, it was conditional. And we also  
3     know it's...you've got to read it with the rest of his  
4     letter.

5             Even if it could be, even if you could take that  
6     sentence out, their so-called acceptance was nothing  
7     more than a counteroffer. If you lay February 23 down  
8     on one side of your desk, Judge, and the March 17th  
9     reply down on the other side of your desk, they don't  
10    match.

11            I would like to leave you before you go tonight,  
12    with the cases dealing with contract by correspondence.  
13    I don't think we need to go any further than that.

14            Interestingly, though, there is also a body of  
15    case law which talks about how a contract must be  
16    definite and complete in its terms. And there are four  
17    cases...well, three cases and a restatement of a contract  
18    which we're relying on here.

19            There has to be a complete agreement, a  
20    complete meeting of the minds. Not so in this case.  
21    There has to be an acceptance of all of the terms of the  
22    offer. If your reply varies from the terms of the offer it's

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1 called a counteroffer, it's not an acceptance.

2 I will, when I sit down, pull these cases apart  
3 and hand them up to you. I know you're not going to  
4 read them right now.

5 **THE COURT:** Right.

6 **MR. CREMINS:** So, there  
7 isn't much point in me talking about the names of these  
8 cases. But that's the state of the evidence on author  
9 versus acceptance.

10 There is one other ground as to why you ought  
11 to strike the evidence, Judge. They haven't proven any  
12 damages, as a matter of law. Even if there's a  
13 breach...and for purposes of this argument, you have to  
14 concede that there is a breach...what damages have they  
15 incurred?

16 They have proved that they had a contract to  
17 sell for two-thirds at \$80,000. This is theirs. They  
18 proved that through the Thorton appraisal, that the value  
19 of the horse was \$80,000. Those are both in evidence.

20 Their damages for breach of contract, Judge, as  
21 we know, are measured by the difference between the  
22 contract price and the value of the goods at the time of

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1 the breach.

2 The later sale on the West Coast has absolutely  
3 zero to do with their damages in this case, nothing. It's  
4 not the proper measure of damages, it never has been and  
5 never....I won't say never will be in this state, but it's  
6 not. It is the difference between the contract price and  
7 the value at the time of the breach.

8 There's one, two, three, four cases that I will  
9 give Your Honor on that point alone. All of them say the  
10 same thing.

11 So, by their own evidence, they have proven a  
12 contract at 80, a value of 80 and, if my arithmetic is  
13 right, their damages are zero. And I suppose if there's a  
14 breach, you're obligated to award them a dollar as  
15 nominal damages, but that's not what I'm talking about.  
16 I'm talking about Mr. Monahan's claim for \$27,000 and  
17 change.

18 That's based on a faulty premise that they get  
19 to subtract the sales price a year and a half later and  
20 charge Mr. White and Mrs. Lorenz for the difference.

21 And lastly, Judge, from the law firm's  
22 perspective, all of those arguments I think fly equally to

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1 Mrs. Lorenz as well as to my clients, but my clients have  
2 the one last ground which Mrs. Lorenz doesn't have, and  
3 that is that they don't owe any duties to Marefield  
4 Meadows, they didn't breach any duties.

5 Taking every bit of evidence that Mr. Monahan  
6 has put on as being in the light most favorable to them,  
7 it doesn't give rise to a cause of action against Mr. White  
8 or the law firm.

9 THE COURT: All right, sir.

10 MR. FLANNERY: If I can,  
11 Your Honor, in support of our Motion to Strike, since we  
12 will be taking a similar line, I will try not to repeat what  
13 my brother counsel has said and I think said so well.

14 I will begin similarly citing the Court Miche's  
15 on the subject of contract and Section 22 provides, and  
16 I quote, "A party to whom the offer or contract is made  
17 must either accept it wholly or reject it wholly. A  
18 proposition to accept on terms varying from those offered  
19 is rejection of the offer and a substitution in its place of  
20 a counterproposition. It puts an end to the negotiation  
21 so far as the original offer is concerned. The offeree,  
22 having once rejected the offer, cannot actively revise it

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1 by tendering an acceptance of it."

2 And the same section provides, and I quote,  
3 "The acceptance to conclude the agreement must in every  
4 respect meet and correspond with the offer, neither  
5 falling within nor going beyond the terms proposed, but  
6 exactly meeting them at all points and closing the fees  
7 just as they stand. No point must be left open for future  
8 consideration or negotiation between the parties."

9 And interestingly, the last statement I made, a  
10 footnote invokes the same case that Mr. Cremins cited to  
11 you in support of this same proposition, which is the  
12 Bluebird case.

13 And so, Your Honor, I think that we don't find  
14 ourselves in some area of the law that is vague on this  
15 point. And an acceptance of a term when there are five,  
16 six, seven or whatever number of terms we might agree  
17 upon, that are unresolved and weren't covered in the  
18 White letter, which I consider a letter of negotiation, is  
19 not a contract. There is not a meeting of the minds.

20 And I think that the course of conduct  
21 beforehand...and I'll just summarize it so the Court can  
22 review its own notes to see if the Court's findings

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1 correspond to my respectful submission to the Court of  
2 what you may find from the evidence.

3 On February 13th, 1989, Poynter said to Mrs.  
4 Herbert, her counsel...or Mrs. Herbert acceded after  
5 reviewing her notes...that this was correct, that the  
6 clients didn't care how soon the appraisals were done  
7 after the horse comes back to the Meadows. And I know  
8 I'm visiting an old theme, but it relates directly to one of  
9 the terms of the contract.

10 On February 15th, 1989, one of the appraisers,  
11 Mr. Kennick, had apparently reported that he didn't see  
12 how he could appraise the horse at Marefield Meadows  
13 because it didn't have a ring.

14 But again, I would argue these facts towards  
15 the view that Marefield Meadows didn't care about a  
16 ring. They only cared about getting the stallion from  
17 November Hill back to Marefield Meadows so they could  
18 breed.

19 And, in fact, in Mrs. Herbert's notes of  
20 February 18th, 1989, she testified that her client said,  
21 the horse will simply stand as stud, his muscles will  
22 atrophy and his price will go down.

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1           And we recall some discussions when Mr.  
2           Cremins was cross examining and I was cross examining,  
3           but the bottom line of their position was, they're  
4           prepared, not withstanding the fact that they were  
5           holding this horse in trust, they were prepared to let his  
6           muscles atrophy because the only thing they cared about  
7           was breeding.

8           And, in fact, in that same conversation on  
9           February 18th, 1989, Mrs. Herbert was advised by her  
10          clients that they were concerned that the contracts be  
11          honored.

12          Then there is the February 23rd letter, which  
13          Your Honor, and I'm sure you're going to review that, and  
14          the important thing is, after that letter there is a  
15          conference between and among Mrs. Poynter, Maxine  
16          Mickle and Mrs. Herbert. And in that conversation they  
17          say they are concerned that one of the conditions of sale  
18          be that Mrs. Lorenz execute a breeding contract except  
19          the provision regarding the breeding fees would refer  
20          back to the 1987 contract between them regarding the  
21          ownership of Moronjo.

22          And in that same conversation, memorialized by

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1 Mrs. Herbert in her notes, testified to here earlier today,  
2 she said then that...the client said, they are not in a  
3 tearing rush to resolve all this and want to see  
4 Thompson's appraisal in writing before they respond to  
5 Craig's letter.

6 And they said, time is not of the essence as far  
7 as my clients are concerned...that's what Mrs. Herbert  
8 said...and it suits them fine to let this take a while to  
9 resolve.

10 And she said they forwarded a breeding  
11 contract to her and she had a second conversation along  
12 with Maxine Mickle...and you may recall and I think  
13 especially Mr. Cremins emphasized the fact...that she  
14 said, they were interested in that term involving price,  
15 but they want to breed their mares.

16 And for that, Your Honor, I refer you again to  
17 the Horne Book law we have been discussing, "No point  
18 must be left open for future consideration or negotiation  
19 between the parties." And this was one of those points  
20 that was left open and I'll discuss in a moment how they  
21 hoped to finesse it, if you will.

22 But even in the manner that they tried to

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1       finesse these other terms that were not discussed in the  
2       White letter, negotiating letter, they introduced still  
3       another term that they hope is going to encompass some  
4       of their concerns and perhaps get around them.

5               The conversation between Miss Mickle and Mrs.  
6       Herbert is followed up by a letter on March the 6th, 1989  
7       and she said she had no communication with her clients  
8       between that date and March the 9th. And she said...and  
9       that is Exhibit 5, Cross-Plaintiff's Exhibit 5, Your Honor,  
10      and that's in evidence...and in there they say they want  
11      the following things. And you may recall I took her  
12      through these things.

13             None of those are to be found in the February  
14      23rd White letter. That is, they want a certified check,  
15      they want to breed their own mares, they want to follow  
16      through on contracts and they say, no pro rata expenses.

17             And you may recall and you can review, that  
18      the February 23rd letter of Mr. White said there will be  
19      pro rata expenses, that she's prepared to pay that if they  
20      buy her out.

21             On March the 9th, 1989, you may recall on her  
22      direct testimony of Mrs. Herbert was, that she said she

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1       accepted. And the course of conduct to that date had  
2       been such that Mr. White presumed it was that they had  
3       accepted the original discussion, the thrust of the  
4       discussion from the time that Mrs. Lorenz sent her  
5       note...from whatever date Mrs. Poynter thinks it was  
6       forward...to buy her out.

7               And, obviously, that was an important term to  
8       decide, but it wasn't the only term to decide. And on  
9       that same date, Mr. White had sent a letter earlier...and  
10      that's uncontradicted...and that letter said that she was  
11      exploring what, if any, financing she could obtain.

12             And then there is the Exhibit 7, the Cross-  
13      Plaintiff's Exhibit 7 which is the March 17th letter. And  
14      in that letter they are incorporating all of these  
15      provisions. They are having a certified check, they are  
16      saying we will not accept prorated expenses and then  
17      giving themselves 60 days.

18             You heard the testimony of Mrs. Herbert to the  
19      effect that what Maxine Mickle told her, notwithstanding  
20      what Mrs. Poynter said back then, Maxine Mickle told  
21      her that by 60 days, by mid-May they could  
22

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1 have finished all of the breeding.

2 Now, that may have proven to be wrong, but  
3 that's the premise that their counsel was operating on  
4 and this Court can't ignore the fact, I think, that it is  
5 relevant and Mrs. Herbert herself had no experience, as  
6 she said, in equine law, if you will.

7 Now, I'd like to adopt the arguments of Mr.  
8 Cremins as to these differences and these distinctions,  
9 meaning there was not a meeting of the minds and to say  
10 I accept is not by itself an acceptance, particularly when  
11 you say, I accept in talking about a term and it is so  
12 confusing that the other party on the telephone  
13 conversation says, oh, and he clearly misunderstands it  
14 at the very outset.

15 And in a conversation in which he first tells us  
16 on direct that the conversation only related to how are  
17 you going to get financing, supposedly, she overlooks  
18 until we show her her notes, that there was a discussion  
19 about, well, are you going to buy out Mrs. Lorenz and, if  
20 not, there's going to be a private sale. Why would that  
21 conversation even be necessary?

22 As for the other aspect of the presentation by

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1 Marefield Meadows, let me point this out. Your Honor  
2 has before you a pile of expenses and I said that I don't  
3 think factually that offer is sufficient to carry the day  
4 here.

5 And the reason is, because they put in evidence  
6 the agreement. And this agreement I'm talking about is  
7 the June 9th, 1987 agreement. And it provides in  
8 various places that expenses have to be approved.

9 Now, if...

10 THE COURT: Suppose  
11 they're not proven, what do you have to say about  
12 prorating expenses?

13 MR. FLANNERY: Well, if not  
14 approved, then she doesn't have to pay it and they have  
15 to prove that she approved any of these expenses. It's  
16 not to say, we had to put shoes on a horse, we had to  
17 bring him to be vetted, we moved him from November Hill  
18 to Marefield Meadows to Bill Turner's Equestrian Center,  
19 back to November Hill again, we collected semen, the  
20 horse got hurt and it stifled him because he got kicked by  
21 one of these mares during one of these unauthorized  
22 breedings.

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1           None of those expenses have been approved.  
2           No one has testified they were approved. And that is  
3           relevant because the agreement they put in evidence  
4           upon which they would rely to have her pay any of those  
5           expenses require that they be approved.

6           There's no evidence she approved any  
7           expenses, ever, in the history of this contract. And there  
8           is certainly no evidence from the date that she resigned  
9           in the latter part of 1988 signaling the termination of  
10          this contract conceded by Marion Poynter that that's the  
11          effect of someone saying, I want to sell. Of course, by  
12          the language to concede that of their own contract that  
13          her lawyer drew up that it's over.

14          Now, what is Mrs. Lorenz's interest in  
15          breeding? That's what Marion Poynter and Marefield  
16          Meadows want. Why is she planning breeding, why is  
17          she moving the horse there when she has been told the  
18          contract is over unless she is going to buy the horse?

19          But that aside, excluding even for the moment  
20          what the specific expenses are, Paragraph 8 says, no  
21          expense to any third party, with respect to Moronjo, shall  
22          be incurred without the approval of both individuals

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1 except in the event of a medical or other emergency for  
2 Moronjo in which the other owner cannot be contacted in  
3 spite of best efforts.

4 There is no proof of approval, there is no proof  
5 of emergencies, they haven't proven we should pay them  
6 a dime.

7 Paragraph 9, as to assurances to insurance  
8 premiums...

9 THE COURT: What about  
10 veterinary expenses which may have been necessary?

11 MR. FLANNERY: There is no  
12 evidence...there is no evidence that there was a medical  
13 or other emergency, period, presented in this courtroom  
14 today...

15 THE COURT: Well, I was  
16 thinking about...I guess they weren't shown except in  
17 the testimony of Mister...the man from Culpeper who  
18 stated some expenses at some veterinary clinic.

19 MR. FLANNERY: Well, the  
20 irony is, when Mr. Marsh testified he said those expenses  
21 were paid.

22 THE COURT: By whom now?

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1                   **MR. FLANNERY:** He said  
2 they were paid out of the proceeds.

3                   **THE COURT:** All right.

4                   **MR. FLANNERY:** The  
5 expenses to transport the horse from Virginia to  
6 California for the sales, those were paid, that is the  
7 testimony. And the only expenses incurred for a vet in  
8 connection with that were paid and that was pursuant to  
9 a separate agreement.

10                  Now, if you go through the rest of this,  
11 Paragraph 10 says, as was pointed out during the  
12 examination, sure, Marefield Meadows had this  
13 management control because of the two-thirds. But it  
14 goes on to say in the next to the last sentence in  
15 Paragraph 10, "Nonetheless, no such decisions shall be  
16 made which shall force either party to make a payment  
17 which does not have that individual's prior approval."

18                  There is no evidence, there's none, of prior  
19 approval by Mrs. Lorenz for any of these expenses that  
20 are logged in this summary and the detail that has been  
21 provided.

22                  So, I respectfully submit, Your Honor, that

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1 there is no proof that we owe them anything independent  
2 of this March 9th date and the March 9th date, I  
3 respectfully submit, is fiction, given the contract  
4 argument. I mean, it's an artificial date that presumes  
5 something happened on March the 9th.

6 There's a continuum of events and letters that  
7 go back and forth from...well, conversations before  
8 February 23rd. And the March 17th letter, and I  
9 underscored this before, incorporates the March 6th  
10 letter of the clients with all their conditions, spelling out  
11 what all those conditions are in addition to putting them  
12 in the March 17th letter.

13 If there was ever a classic case of a failure of  
14 the minds to meet on a number of issues material and  
15 relevant to the disposition of the stallion that is used for  
16 breeding and is used in performance and what his health  
17 will be and how it will be used and who would bear what  
18 expenses and when, during what period, this is it.

19 And it's Marion Poynter's own testimony that  
20 they always wanted everything in writing, that is as of  
21 1987. You may recall her testimony about that in  
22 relation to the partnership agreement, even though she

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1 doesn't like to characterize it as that.

2 And I respectfully point out that the  
3 conversation even between Maxine Mickle on February  
4 27th and their counsel, Mrs. Herbert, is, we want it in  
5 writing, we want that breeding in writing. We don't want  
6 to lose those other contracts or we don't want to be put  
7 in a position to be compromised because of these other  
8 contracts if we can't agree.

9 And that sure wasn't the subject of any  
10 agreement to say, I accept, I like that price, but I'm not  
11 going to negotiate these other things, not this breeding,  
12 not these expenses, not the closing date, not the training  
13 fees, not the board fees. I don't want to negotiate  
14 those, those are going to be what I said, but I'll take that  
15 price, I like that price.

16 That isn't a contract, that isn't negotiation and  
17 Miche's, in the cases cited by my co-counsel, support  
18 that view. Thank you, Your Honor.

19 THE COURT: What about,  
20 as a concomitant consideration, what about the money  
21 that's being held by Mr. Marsh in that CD, what do you  
22 have to say about that?

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1                                   **MR. FLANNERY:** Well, that  
2     money I believe is one-third Mrs. Lorenz's and two-thirds  
3     Marefield Meadows. And we agreed to that hoping that  
4     when the horse sold the parties would walk away from  
5     this case and do what I think they should have done a  
6     long time ago which is put this...the reason we dismissed  
7     our suit, Your Honor, is we wanted to dissolve the  
8     partnership and, since she couldn't buy the horse, to sell  
9     it.

10                   When that finally happened, we came in here  
11     and we said, we nonsuit the case. And our view was and  
12     my argument is, that the parties should have...my client  
13     wanted to walk away from it. She doesn't see any reason  
14     to fight. This was a horse that she loved, that she had  
15     her heart in and this whole thing has been one eternal  
16     heartbreak, watching this horse risk breaking down  
17     because they didn't care to train him. By their own  
18     statements to their lawyer they didn't care to train him.

19                   And it is a sorrowful thing that the horse had to  
20     be sold under those circumstances, but she couldn't  
21     stand by another day and watch whatever else might  
22     happen to that horse.

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1           And so that horse was sold and the present  
2 agreement is that what remains in escrow is one-third  
3 hers and two-thirds to Marefield Meadows. And, Your  
4 Honor, I think you're doing justice, as well as you're  
5 following the law in this case, if you dismiss this case,  
6 their complaint, and we walk out of here and we take that  
7 and leave.

8           I think Regi Lorenz has done what she could to  
9 streamline the case, obviously hoping that would occur,  
10 avoiding even this day and this expense, but she couldn't  
11 do that. And that's where we stand, Your Honor.

12                   **THE COURT:** All right, sir.

13                   **MR. FLANNERY:** Thank you.

14                   **THE COURT:** All right, sir.

15                   **MR. MONAHAN:** I don't  
16 know where to begin, Your Honor, whether to do some  
17 testifying myself as to what happened in this case, since  
18 I disagree entirely with Mr. Flannery, or whether to go  
19 ahead and argue the Motion to Strike.

20           As far as what he has told you about the  
21 disposition of the horse, it is just totally not correct. We  
22 approached Mr. Flannery in the fall trying to get the

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1 horse sold because we knew the issue dealing with any  
2 damages case. It was April before we could get him to  
3 do it and then only because Judge Fox came forward.

4 **MR. FLANNERY:** I can tell  
5 you that the only reason we had an agreement is because  
6 of that gentleman there who finally got Mr. Monahan to  
7 agree to dispense some of the money to parties upon a  
8 sale.

9 We wanted to say we're going to sell the horse,  
10 let's be done with it because the Complaint in this case  
11 was for specific performance. And if Mrs. Lorenz was  
12 ever going to have this horse she couldn't really sell it  
13 and still have it and she had to come to grips with...

14 **MR. MONAHAN:** I submit  
15 that that's not the truth.

16 **MR. FLANNERY:** Well, then  
17 it's our position...

18 **THE COURT:** All right,  
19 well...

20 **MR. MONAHAN:** We're  
21 going about it in the order before the Court and I just  
22 don't think that's material at this point, Your Honor. You

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1 asked what should be done with the money. What should  
2 be done with the money is what the previous order of the  
3 Court based upon the agreements of the parties, that's it.

4 THE COURT: You mean  
5 the...

6 MR. MONAHAN: The money  
7 held in escrow.

8 THE COURT: ...1987  
9 contract?

10 MR. MONAHAN: Yes, sir.  
11 I think the simple answer is, is there's an order which  
12 covers it and we didn't need all that irrelevant  
13 information which is erroneous.

14 Now, if I may address the issues instead of  
15 testimony from the attorney...

16 MR. FLANNERY: That might  
17 be refreshing.

18 THE COURT: Well, let's not  
19 interrupt any more...

20 MR. FLANNERY: No, Your  
21 Honor.

22 THE COURT: All right, go

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1 ahead.

2 **MR. MONAHAN:** I just want  
3 to approach one thing, Your Honor. Mr. Cremins began  
4 by rearguing the issue which this Court ruled on in  
5 demurrer which was that in some fashion, as you will  
6 recall on demurrer, he argued that because there was a  
7 malpractice case, this case would require some kind of  
8 privilege.

9 At that point I presented to the Court  
10 authorities, American jurisprudence, I presented Miche's  
11 jurisprudence, I presented four cases from various states,  
12 all of which says that an agent who is in violation of his  
13 direction may open himself up to the personal liability  
14 either...depending on how the case between the two  
15 principals comes out...either a case brought by the  
16 principal or by the third party who has been misled by the  
17 agent.

18 So, this is not a case involving privity, that's  
19 not an issue before the Court. It's been ruled on and I  
20 think it's the law of the case that Mr. White, if the Court  
21 believes Mr. White is responsible for a misrepresentation  
22 not authorized by Mrs. Lorenz, then there may be and is

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1 a direct a cause of action against him and his law firm.  
2 I would ask the Court to not just disregard that.

3 Now, as far as the citations that have been  
4 given to the Court with respect to the Bluebird case, this  
5 Court has to decide exactly what we're dealing with.

6 I submit, Your Honor, and I stated it in opening  
7 argument and I still state, that this case has resolved  
8 itself down to a very simple proposition. It's true that  
9 the parties stopped and needed to wind up a venture  
10 governed by the agreement of June 9, 1987, but that's  
11 not what this case is about today.

12 This case is about whether or not, when  
13 somebody says, I will sell my Oldsmobile for \$800 and  
14 somebody else says, I'll buy it, that's a contract and  
15 that's all it is.

16 **THE COURT:** What about  
17 the argument that...of course what you have just said, as  
18 we have said before, is Horne Book law...but what about  
19 the failure, the statement by both attorneys that there  
20 was really not a meeting of the minds because the details  
21 were not agreed to?

22 **MR. MONAHAN:** Your

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1 Honor, I submit that that is a misstatement by both  
2 attorneys, with all due respect to Your Honor. Georgia  
3 Herbert testified...and that's the only evidence that's  
4 before you, I don't know who the other attorney is that's  
5 been referred to...Georgia Herbert testified...

6 THE COURT: Well, both Mr.  
7 Flannery and Mr. Cremins say it's...

8 MR. MONAHAN: Oh, oh, oh,  
9 those two say that there is no...

10 THE COURT: Yes.

11 MR. MONAHAN: Yes, let me  
12 address that, excuse me.

13 THE COURT: All right.

14 MR. MONAHAN: I think  
15 that's addressed very simply. You look at the letter of  
16 February 23, 1989 in which Mr. White said to Miss  
17 Herbert and then they said, both of them, you can't read  
18 it the way Mr. Monahan would have you read it, you've  
19 got to read the whole thing.

20 Well, I think you can read it, I think you can  
21 read it and I ask that you do read it to see what it, in  
22 fact, says not what they say it says.

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1 THE COURT: The letter of  
2 the 23rd?

3 MR. MONAHAN: The 23rd  
4 of February and in the second paragraph in its entirety it  
5 says, "We consider Mr. Thompson to be a mutually  
6 agreed upon appraiser and, in accordance with Paragraph  
7 16 of the parties agreement, Miss Lorenz grants  
8 Marefield Meadows, Incorporated, the option to purchase  
9 her interest for \$26,666.66, one-third of \$80,000.  
10 However, if Marefield Meadows, Inc. prefers, Miss Lorenz  
11 is willing to purchase its interest in Moronjo for  
12 \$53,333.33."

13 I'll buy your half of my Oldsmobile or you can  
14 buy mine, the price is \$500. I accept, I agree to buy  
15 yours or I agree to sell you mine..

16 The question is, the only confusion arises out  
17 of the fact that in the rigorous cross examination of Mrs.  
18 Herbert she said, when I first talked to Craig White, I  
19 said, we accept your offer and he said, great. And after  
20 a moment we realized he thought I was talking about the  
21 offer to buy the interest Miss Lorenz and I was talking  
22 about to sell the interest of Marefield Meadows. And she

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1 said, and I told him that and we left it on that basis, that  
2 I accepted that offer. And she didn't say he was  
3 confused when the conversation concluded. She said,  
4 well, I'll have to get back to my client and find out about  
5 the financing.

6 There wasn't any question about financing. If  
7 the man had said, I'll sell you Black Acres for \$100,000  
8 and you said, I'll buy it, that's a contract...it has to be  
9 writing, I realize since it's real estate, Your Honor...but  
10 it's a contract.

11 The fact that he may have to go down to the  
12 bank and arrange financing or if he says, I've got to get  
13 financing doesn't change the contract. And that's the  
14 point, it seems to me.

15 Now, Mr. Flannery says, well, there were all  
16 these other things that Miss Mickel set forth in her letter  
17 of March the 6th...March the 6th, which came as an  
18 attachment to the letter of March the 17th and they show  
19 that there was no meeting of the minds.

20 And I submit, Your Honor, and I again ask you  
21 to read that letter very carefully.

22 THE COURT: Which one is

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1 that, again?

2 **MR. MONAHAN:** The letter  
3 of March the 6th which is attached to the letter of March  
4 17th that Mrs. Herbert wrote confirming the oral  
5 agreement. Incidentally, before I  
6 pass to that, Your Honor, may I point out to you that, not  
7 only is the second paragraph of the letter of February  
8 23rd the offer made by Mr. White, as we would classify  
9 it, complete in and of itself, but the portions thereafter  
10 are expressly stated to apply in the event...and I read  
11 this...in the event Marefield Meadows does not accept  
12 Lou Thompson as the appraiser or elects neither to  
13 purchase Miss Lorenz one-third interest nor to sell its  
14 two-third interest to Miss Lorenz.

15 So, there is a very brief paragraph containing  
16 an absolute offer. And after that, qualified upon the  
17 offer not being accepted, there is some further  
18 discussion.

19 Now, you get over to the letter of March the  
20 6th attached to the letter of March the 17th, Mr.  
21 Flannery and Mr. Cremins indicate that this injects an  
22 issue of doubt into the nature of the offer.

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1 Well, in the first place, Your Honor, I would  
2 suggest to differ. If Mrs. Lorenz were here today saying,  
3 I bought the horse, here's the money now where's the  
4 horse, there wouldn't be any question that there was a  
5 valid contract.

6 The terms of the letter of March the 6th were  
7 not embodied in any conversation between Herbert and  
8 White and did not even come to the knowledge of Mr.  
9 White until he got this letter of the 17th. There had been  
10 a flat offer and a flat acceptance.

11 Now, I further point out to you, Judge, that in  
12 fact the letter of March the 6th, when read...and I'm not  
13 doing the paraphrasing because I think paraphrasing in  
14 this instance is totally improper. It says, "Nor can we  
15 afford to pass up Regi's offer to purchase our interest for  
16 \$53,333.33." I'm reading at the bottom of the third  
17 paragraph.

18 THE COURT: Yes, I see  
19 that.

20 MR. MONAHAN. As spelled  
21 out by Mr. White in Paragraph 2. Dropping down you get,  
22 we would like to request a few courtesies and

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1 considerations. Those are not, we want terms in a  
2 contract. We're saying, we're selling, we would like  
3 some courtesies and considerations.

4 And the first one it simply says, we would like  
5 to follow our plans for breeding. And the second one,  
6 should Regi wish to sell, we would like to be informed.  
7 And the third one, we hope that Regi will treat it as her  
8 legal, moral and ethical obligation. And in the fourth, we  
9 hope that.

10 There is not a single condition to the sale  
11 expressed in that letter except I will concede in terms of  
12 the form of payment, they would like a certified check.  
13

14 That's not a qualification on the contract  
15 derived at, that is simply a statement, gee, we'd like to  
16 get paid, which is pretty normal. And it wouldn't have  
17 taken place as a cash offer or any other kind of an  
18 appropriate payment. So, I submit that.

19 Now, Mr. Cremins cited to you the Bluebird  
20 case because he said, contracts by  
21 correspondence...when it's contemplated that a contract  
22 is to be reached by correspondence, that it has to be in

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1 writing.

2 And he relies upon a reconstruction of a  
3 statement made by Miss Herbert which throughout has  
4 simply been, I asked Mr. White to put everything in  
5 writing so that I would have his position. It wasn't, we  
6 can only have a written contract, it wasn't, I'm going to  
7 put everything in writing. It was, Mr. White, we've  
8 talked so much on the telephone, put your position in  
9 writing.

10 He put it in writing, on behalf of my client, I'll  
11 sell on behalf of my client. And that's all the writing  
12 said and she called up and said, I accept. It doesn't take  
13 a written contract to say, I accept.

14 So, the Bluebird case has no applicability here.  
15 There was correspondence which spells out that he would  
16 sell and there was an unqualified acceptance, I accept.

17 The other issues which Mr. Cremins spoke of,  
18 the other issues which Mr. Flannery addresses in terms of  
19 the pro rata for expenses, the...well, that's the only one  
20 I can think of because, as I said, breeding rights clearly,  
21 in the letter of the 6th, is not a condition.

22 The other items...remember, this arose out of

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1 a joint venture which they are trying to wind up. If they  
2 had sold this horse to a third party they still would have  
3 had to wind up the other issues.

4 This is not a unilateral great big single piece of  
5 string or a ball, this is a separate contract to sell the  
6 horse, whether it's between the parties or it's to a third  
7 party. And it is complete in and of itself whether  
8 they...we're here because, admittedly, we would like to  
9 get the money that's owed us out of the joint venture for  
10 expenses, yes, but that's not a condition of the contract.  
11 It's never been a condition of the contract and nothing  
12 can be pointed to in the offer and acceptance to support  
13 the idea that it had.

14 The idea that we cannot look to two sentences  
15 to establish a contract is simply untenable. You can  
16 establish a contract...I can do it in one sentence if the  
17 Court would like to make me an offer or like to hear my  
18 offer on my automobile.

19 Mr. Cremins and Mr. Flannery have referred to  
20 this letter of March 9, 1989, the letter is in evidence.  
21 Mr. Flannery testified that it was mailed before the  
22 conversation with Mr. White and with Mrs. Herbert. I

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1 don't think that's in evidence, I don't think that's  
2 material.

3 Whether it was written or mailed beforehand or  
4 whether it was mailed after, I submit that it does not in  
5 any way say, my offer is conditioned on my right to raise  
6 financing. Admittedly she says, I am trying to raise  
7 financing, but it does not condition the offer.

8 And I submit that it is curious that a letter  
9 would go out if Mr. White were concerned about  
10 qualifying his offer either after the phone conversation,  
11 if that's when it occurred, or not followed up by another  
12 letter qualifying this letter, if this is incorrect. So, I  
13 submit that March 9 offers no support for the claims now  
14 made for it.

15 I am somewhat handicapped with respect to the  
16 idea that this is a zero damage case. That's never  
17 injected its head before. Mr. Cremins knows that these  
18 people sold the horse. There is other evidence that we  
19 can't afford to keep it, the horse isn't worth that, but  
20 the Hanoverian man had appraised it and that was the  
21 basis for Mr. White's offer.

22 It is not to measure damages since, it seems to

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1 me, the horse has now been sold and that's the best they  
2 could have gotten for it and it is a fair price based upon  
3 what Mr. Marsh was able to dispose of the horse for.  
4 And his qualifications for the disposal were impeccable.

5 THE COURT: Now, that sale  
6 price that Mr. Marsh used, does that coincide with this  
7 amount of agreed sale price? It seems to me there was  
8 some difference between what he said the horse actually  
9 brought and what's you've got shown as the agreed sale  
10 price, \$53,333.33.

11 MR. MONAHAN: That's the  
12 sale price under the contract of purchase by Mrs. Lorenz  
13 from which I have worked to apply the return. You're  
14 right, the horse sold for \$56,500 gross, a net of about  
15 \$45,000 and he has disbursed a part of that and is  
16 disbursing the other part.

17 That was the fair market value of the horse  
18 when sold, \$56,500. The contract price which  
19 establishes the fair market...excuse me, which  
20 establishes the basis for our claim for damages.  
21 Obviously, the Court is well aware of the law which says  
22 that the damages in a contract case are not affected

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1 because somebody made a bad bargain. It's the contract  
2 price from which one works.

3 And the \$56,500 was the price that the horse  
4 sold for, \$80,000 was the amount Mrs. Lorenz used in  
5 arriving at her offer to purchase two-thirds for  
6 \$53,333.33. So, clearly, we have a basis for recovery  
7 based upon the information which is now before the  
8 Court.

9 As to why Mrs. Herbert confirmed the sale on  
10 the 17th of March if she thought she had a contract, I  
11 find that to be very peculiar. She said she confirmed it.  
12 Lawyers confirm, I prefer to confirm and I'm sure that  
13 there are many lawyers that prefer to confirm, but it  
14 doesn't change the fact that the information before your  
15 eyes on which you're going to rule on the Motion to  
16 Strike is, there was a letter of February 23 which  
17 contained an offer and I talked to the offeror...I, Herbert,  
18 talked to the offeror as agent for Mrs. Poynter or  
19 Marefield Meadows and I said, done or I accept or we  
20 accept. And we clarified what we were accepting and it  
21 was never backed off of during that conversation.  
22 Now...

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1 THE COURT: Now, is that  
2 what you say is \$53,333.33, is that...

3 MR. MONAHAN: Excuse me,  
4 that's what we're saying is that this offer in the February  
5 23 letter says, if Marefield Meadows prefers, Mrs. Lorenz  
6 is willing to purchase its interest in Moronjo for  
7 \$53,333.33 parentheses, two-thirds of \$80,000, close  
8 parentheses.

9 THE COURT: All right.

10 MR. MONAHAN: She called  
11 up and said, we accept and clarified, and when she hung  
12 up there was, according to the evidence of the Plaintiff,  
13 there was agreement and Mr. White was going to get  
14 back to his client, admittedly, and set up the structuring  
15 of the financing.

16 So, I submit that we have done everything we  
17 can, everything that should be done, that the evidence  
18 before the Court on a Motion to Strike, clearly supports  
19 a continuation of this case. Thank you.

20 THE COURT: All right.

21 MR. CREMINS: Judge, I'm  
22 not going to respond because of the hour and because I

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1 think after you have read these cases you may have some  
2 questions of counsel in the morning. May I hand you the  
3 cases I relied on, Judge?

4 **THE COURT:** Yes, you may.  
5 All right, I will rule on these motions after I study this  
6 and we'll be back tomorrow morning.

7 Let's talk a minute about...and this is purely  
8 for convenience of witnesses...nothing is to be read into  
9 what I say, now, about what my intentions are.

10 I do not know just yet because I must read  
11 these cases and I must read all the correspondence and  
12 look at the exhibits, but if I sustain the Motions to  
13 Strike, that's the end of it. If I don't, then what  
14 evidence would you go forward with, Mr. Monahan, so we  
15 can talk about what witnesses we're going to need back  
16 here or do you want them all back?

17 **MR. MONAHAN:** I'm not  
18 going forward with any further evidence unless it's in  
19 rebuttal.

20 **THE COURT:** Right, that's  
21 what I mean, rebuttal evidence, how many do you have?

22 **MR. MONAHAN:** I've got

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1 four or five.

2 THE COURT: All right. Well,  
3 I think since I haven't ruled on the Motions to Strike, I  
4 think we have to have those same witnesses back. If you  
5 want to bring them in, I'll tell them.

6 We've borrowed a letter of March the 6th. I  
7 think that's Mr. Monahan's letter, a copy.

8 THE CLERK: That's the  
9 original.

10 THE COURT: We have three  
11 witnesses here, do you have some more witnesses, you  
12 said four?

13 MR. MONAHAN: Your  
14 Honor, I arranged with the Deputy Sheriff that I would  
15 call witnesses tonight and tell them whatever you  
16 directed.

17 THE COURT: All right, but  
18 these are three witnesses. Now, you said four and  
19 possibly five.

20 MR. MONAHAN: These are  
21 not mine.

22 THE COURT: These are not

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1 your witnesses, all right.

2 MR. MONAHAN: Except  
3 for...well, Mr. Zuther is a witness for both of us. I will  
4 want him back, at any rate, yes.

5 THE COURT: I'm addressing  
6 this to you witnesses. I'm sorry you had to sit around all  
7 day and wait and still not be called today, but that's just  
8 the way, that's the nature of the beast. We can never  
9 say for sure whether you're going to be needed or not.

10 Now, it may well be that you will not be called  
11 in the morning, but we will need your presence here  
12 tomorrow morning at 10:00 o'clock. I hope that you  
13 won't have to wait around all day again tomorrow and  
14 that you can be released fairly early in the day, but I will  
15 need you back tomorrow.

16 Now, please do not talk about this case among  
17 yourself or allow anyone to talk to you about it. You are  
18 under oath and you are not permitted to discuss the case  
19 with anyone. Please return tomorrow morning at 10:00  
20 o'clock. Thank you day's presence.

21 All right, we'll adjourn until 10:00 a.m.  
22 tomorrow.

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1                                   **BAILIFF: All rise.**

2       **(WHEREUPON, the proceedings were adjourned to**  
3       **November 20, 1990 at 10:00 a.m.)**

4  
5  
6  
7  
8                                   **November 20, 1990**

9                                   **10:01 a.m.**

10                                  **THE COURT: Good Morning.**

11       Gentlemen, I have taken all of this home and made an  
12       attempt to read through all of it. It was not possible to  
13       complete all of the reading that was necessary because  
14       I had to make reference to the file which is quite large.

15               In any event, based upon the evidence I heard  
16       yesterday and from my study of all of the files it was  
17       possible to study and keeping in mind the familiar rule  
18       that the case must be viewed in the light most favorable  
19       to the one having the burden of proof, I have concluded  
20       that I will not be able to grant the Motions to Strike, so  
21       they are both denied and we will have to proceed with  
22       the rest of the case.

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1                                   **MR. CREMINS:** Your Honor,  
2       I would just like the record to respectfully reflect my  
3       objection and exception.

4                                   **THE COURT:** All right, sir,  
5       it will be noted.

6                                   **MR. FLANNERY:** Myself, as  
7       well, Your Honor.

8                                   **THE COURT:** It is so noted.  
9       I will have you proceed, now.

10                                  **MR. FLANNERY:** We'd like  
11       to call Mr. Zuther to the stand.

12                                  **THE CLERK:** Sir, were you  
13       sworn yesterday?

14                                  **MR. ZUTHER:** Yes.

15                                  **THE CLERK:** You were,  
16       okay.

17       **GERD ZUTHER**, having been duly sworn by the Clerk, was  
18       examined and testified as follows:

19       **DIRECT EXAMINATION**

20       **BY MR. FLANNERY:**

21               Q. Will you please state your name and spell it for  
22       the record?

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1           A.    My name is Gerd Zuther, G-E-R-D, last name is  
2   Z-U-T-H-E-R.

3           Q.    And Mr. Zuther, how are you employed?

4           A.    I'm employed with November Hill Farm in  
5   Charlottesville, Virginia and I am the President of  
6   November Hill Farm Corporation.

7           Q.    And for how long have you held that position?

8           A.    Since last year.

9           Q.    And what is the business of November Hill?

10          A.    The business is breeding horses, training horses  
11   and selling horses.

12          Q.    And in that regard what experience do you have  
13   other than November Hill, preceding November Hill?

14          A.    I am German and I am a certified riding  
15   instructor from Germany and I am licensed 17 years, this  
16   is my 17th licensed year, professionally in horses  
17   involving training, breeding and selling.

18          Q.    Can you approximate how many sales you have  
19   been involved in of horses?

20          A.    Here in the United States I'm sure that I have  
21   closed 300 horses sold. When I counted 280 and since  
22   then a couple more or 300 horses. And in Germany I was

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1 involved in the sale...I, myself, did most of the sales  
2 over here, but at the time of sales preparation or the  
3 contract preparation for selling horses.

4 MR. MONAHAN: Your  
5 Honor, I would object to this as being totally irrelevant  
6 at this point.

7 THE COURT: Well,  
8 obviously he's qualifying him for some sort of testimony  
9 later.

10 MR. FLANNERY: That's  
11 correct, Your Honor.

12 MR. MONAHAN: I assume  
13 he is also, Your Honor, and may I point out that we asked  
14 for identification of experts and Mr. Flannery indicated  
15 he had none.

16 MR. FLANNERY: That's  
17 correct.

18 MR. MONAHAN: And,  
19 therefore, I don't see how he can qualify this gentleman  
20 as an expert. I think he can testify as a fact witness that  
21 is true, but to qualify him as an expert now is contrary to  
22 the discovery which was provided by Mr. Flannery.

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1                                   **THE COURT:**     Whether  
2 expert or not, I submit that he's not...I don't know what  
3 he's...of course, you have to lay some foundation any  
4 witness that you examine. Is this an expert...

5                                   **MR. FLANNERY:** Pardon me,  
6 Your Honor, by way of background, Mr. Zuther was  
7 subpoenaed by Marefield Meadows, not by us, and is here  
8 on their subpoena. And this past weekend I called Mr.  
9 Zuther and I can represent to this Court and the witness  
10 can determine in a moment if I ask him that, that the first  
11 time I ever spoke to him was this past weekend about  
12 what his testimony would be. And...

13                                  **THE COURT:** Is that correct  
14 testimony or has he been advised about all this...

15                                  **MR. FLANNERY:** Well, as I  
16 understand it, he is going to be asked about certain  
17 events and practices in the sale of a horse and I am  
18 trying to establish a foundation to ask those questions in  
19 connection with the factual dispute about this stallion,  
20 Moronjo.

21                                  **THE COURT:** Well, if it goes  
22 to the facts, I think you're permitted to lay some

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1 foundation, but not as an expert. If you represent that  
2 you're not going to call him as expert, but as a factual  
3 witness in the case, I will overrule the objection.

4 Q. Now, are you a member of any societies,  
5 professional societies in the horse industry?

6 MR. MONAHAN: Your  
7 Honor, I would move that that's totally irrelevant.

8 MR. FLANNERY: It is not  
9 irrelevant, Your Honor, this stallion is a Hanoverian  
10 stallion that had to go through a certain testing  
11 procedure that gives it the value or doesn't give it the  
12 value it has which makes this the core of this dispute.

13 THE COURT: All right, I'm  
14 going to overrule the objection.

15 Q. Please Mr. Zuther, would you go on?

16 A. I am a member of the Hanoverian, the American  
17 Hanoverian Society and I am a member of the German  
18 Hanoverian Society, who are breeder organizations. And  
19 I am a member of the HSA, which is an American sport  
20 horse organization. I am a member of the USDS which is  
21 the ...of the organization of the...

22 Q. Now, is there a procedure that you're familiar

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1 with that involves the certification or registration of  
2 Hanoverian stallions?

3 A. Yes.

4 Q. Could you describe that procedure?

5 A. Yes. To become a licensed Hanoverian breeding  
6 stallion, the stallions have to go through two stages of  
7 evaluation. The first stage is the confirmation and grace  
8 of movement, documents to confirm, in hand, not on the  
9 saddle which is normally a two and a half year old  
10 stallion.

11 The horse is judged on conformation, like I say,  
12 body action also, and basic movement in hand and coming  
13 free jumping is all part of that, too.

14 The second stage...

15 Q. If I could just interrupt you about the first  
16 stage and ask a couple of questions because the Court  
17 and perhaps others present may not be familiar with some  
18 of the terms that you used.

19 You referred being shown on hand, what does  
20 that mean in contrast with anything to what else?

21 A. It means that the horse, the stallion, is leaded  
22 by a person who stays on the side of the horse and tries

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1 to show the movement and guiding the stallion on a  
2 triangle in walk and trot.

3 The canter, the gait, the cantor is shown in an  
4 aisle when the horse is running straight, and that also is  
5 for little jumps.

6 Q. And you also described free jumping, what does  
7 that mean?

8 A. Free jumping is, that means the horse, in  
9 practice we set up an aisle alongside of the horse, so it  
10 can not escape from the rider, et cetera, a little jump in  
11 front of him and he goes over this obstacle. And the  
12 judgment is on in how the horse handles his body over  
13 the obstacle, in what style, what approach and in what  
14 manner he goes over the obstacle. And this will be  
15 judged and scored.

16 And the outcome of this is all scored together  
17 and the horse gets, after the first inspection, gets a  
18 provisional license status.

19 Q. And then you said there was a second stage.  
20 What is that stage?

21 A. Yes. The second stage is the so-called stallion  
22 performance test or hundred day test, the titles mean the

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1 same, where the stallion is judged or put in a hundred day  
2 riding program, training program, where the stallion is  
3 judged by several independent judges. And after a  
4 hundred days he comes out of this whole judgment  
5 system with a score.

6 And in the Hanoverian breed there is a system  
7 that's required to score 90 to give him a permanent  
8 license, breeding license for his whole life. And in the  
9 case of Moronjo he had 130 something on the hundred  
10 day score.

11 Q. Now, you mentioned Moronjo, when did you  
12 first become aware of the stallion, Moronjo?

13 A. The stallion, Moronjo, to this time I saw, when  
14 he was still inside of his mother over in Germany,  
15 because I know his breeder and I know the stallion who  
16 was the sire of Moronjo. I did know the owner and I did  
17 a lot of cross business with him.

18 And I was very impressed on this horse from  
19 the beginning on, because he combines, from my feeling  
20 and my expertise, two very valuable gene pools, the  
21 Trakener gene pool and the Hanoverian gene pool.

22 Q. Could you spell Trakener for the record, sir?

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1           A.   T-R-A-K-E-N-E-R.

2           Q.   I'm sorry, I didn't mean to put you on the  
3 testing.

4           A.   I'm sorry, I'm not too good in English. He is  
5 very valuable alone out of that combination. Then, on  
6 top of this special combination, his father on one side is  
7 the sire gene pool and on the other side the jumping gene  
8 pool which, I would say gave it to him, available.

9                   And I kept the eyes on this young horse over my  
10 traveling to Germany for a while until he was two years  
11 old. And I had the chance to go into negotiations to buy  
12 this particular horse, Moronjo.

13           Q.   Okay. If I could short circuit it, did there come  
14 a time when you did buy the horse and bring it to the  
15 United States?

16           A.   Yes, I did buy him, I did buy him from the  
17 owner at this time, the breeder sold the horse or the  
18 stallion owner to the sire of Moronjo. I bought this horse  
19 from him, he brought it through the first step of the  
20 stallion approval that I just described before, the  
21 conformation approval.

22                   He did get approved, I brought him for

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1 November Hill Farms. He was imported to the United  
2 States and there he was.

3 Q. Now, did there come a time when he took the  
4 second test, that is the hundred day test?

5 A. Yes. Therefore, I have to say I was, by myself,  
6 in Germany for a couple years involved in the stallion  
7 performance testing by myself. I did one or I brought the  
8 assistant manager of the stallion testing station in  
9 Germany or one the stallion testing stations in Germany  
10 and the overwhelming success of the warm blooded  
11 horses, Hanoverian, is based on a very selective process  
12 of the stallion testing process is a very elite selecting  
13 process.

14 And I started to introduce this idea here to the  
15 American Hanoverian Society and we started this testing  
16 of horses here in the United States. And out of my  
17 experience we started this on November Hill Farm.

18 Q. Okay, I'm sorry, I would like to shorten it a  
19 little.

20 THE COURT: Yes, we can  
21 shorten the testimony along this. I don't see that there  
22 is any point in that.

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1 Q. Now, did Moronjo, in fact, take this test?

2 A. Yes, he did.

3 Q. And how did he do in that test?

4 A. He did very well and he did win this test. He  
5 did come out with the highest score.

6 Q. Now, do you know a person by the name of  
7 Regula Lorenz?

8 A. Yes.

9 Q. And in what context do you know her?

10 A. I met her on competitions, Hanoverian  
11 competition riding. She is a professional, she has been  
12 living in the area. I met her shortly after I entered the  
13 United States and I have known her since then.

14 Q. Have you ever worked with her to train her in  
15 any way?

16 A. Yes. She was coming occasionally to my place  
17 and we worked together.

18 Q. And have you observed her perform?

19 A. Yes.

20 Q. And how did she perform?

21 A. Very well. On the show she won many  
22 championships and high places and at the FEI level.

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1 Q. And what is an FEI level?

2 A. FEI level is the dressage test who are given on  
3 international competition. But that doesn't mean that  
4 this was international competition. They are given also  
5 on national competitions but, for example, in the Olympic  
6 games for championship tests.

7 Q. And do you know Marion Poynter or Maxine  
8 Mickle?

9 A. Yes, I know them both.

10 Q. And when did you meet them?

11 A. At the time of the upcoming sale of Moronjo.

12 Q. And do you recall approximately the year?

13 A. '87 or '86.

14 Q. And could you compare the experience of  
15 Marefield Meadows and Poynter, Mickle and Mrs. Lorenz?

16 A. To this time I was introduced from Waltraud  
17 Gorley to Marefield Meadows and I was on their place,  
18 their farm, very nice place. I tried to help with my  
19 experience as much as possible there because I ...

20 MR. MONAHAN: Your  
21 Honor, I object to this is not responsive to the question.

22 THE COURT: It's sustained.

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1 Q. How did their experience compare to Mrs.  
2 Lorenz?

3 A. Mrs. Lorenz was a professional, absolutely, and  
4 Marefield Meadows is a private amateur run farm.

5 Q. And what are the implications, if any, in terms  
6 of what does that mean in the conduct of the farm and so  
7 forth?

8 MR. MONAHAN: Your  
9 Honor, I'm going to object to that question as being too  
10 vague.

11 THE COURT: I just don't  
12 think it has much to...the witness to reach his point,  
13 would you...

14 MR. FLANNERY: Well, Your  
15 Honor, there is a question about the movement of the  
16 horse and the justification of Mrs. Lorenz taking the  
17 position she did. I'll try to get at it another way.

18 THE COURT: Well, let's get  
19 at it.

20 Q. When Marefield Meadows and Mrs. Lorenz  
21 bought Moronjo do you know what, if any, other stallions  
22 Marefield Meadows had?

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1           A.    The other stallion Grande Lowe.

2           Q.    And could you spell that for the record?

3           A.    G-L-R-A-N-D-E, capital letter, L-O-W-E.

4           Q.    And could you compare Grande Lowe to  
5 Moronjo?

6                       MR. MONAHAN:    Your  
7 Honor, I don't see that spelling anywhere, I'm sorry,  
8 but...

9                       THE COURT: Well...

10                      MR. FLANNERY: Well, Your  
11 Honor, the...

12                      THE COURT: ...Moronjo had  
13 the highest score of 134 to 136. He had scored very  
14 highly, but whether you need to compare him with any  
15 other horse...

16                      MR. FLANNERY: Well, to  
17 explain, by contrast, that Grande Lowe could not be a  
18 substitute for Moronjo if Moronjo was sold and why in  
19 the horse business that that's the case.

20                      Our explanation, Your Honor, for the conduct of  
21 Marefield Meadows in drawing out negotiations and so  
22 forth is so that they can breed Moronjo to their mares,

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1 not Glrande Lowe and there is a reason for that in the  
2 horse industry. And I think, since this is our answer to  
3 this case...

4 **THE COURT:** Well, just ask  
5 him that one question which you just...

6 **MR. FLANNERY:** Oh, okay.

7 **Q.** Would you compare Glrande Lowe and Moronjo?

8 **MR. MONAHAN:** Your  
9 Honor, I would object to that. That calls for an opinion  
10 on the part of the witness and he has not been called as  
11 an expert.

12 **THE COURT:** Well, I think  
13 he can, he has familiarity specifically to make  
14 comparisons without being an expert. I will let him state  
15 what...

16 **MR. MONAHAN:** Note my  
17 exception, Your Honor.

18 **THE COURT:** All right.

19 **Q.** You may proceed, Mr. Zuther.

20 **A.** If I had to compare, from the riding point, there  
21 are two points, breeding and riding. From the riding  
22 point, the stallion, Glrande Lowe, has not, it is my

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1 personal, professional expertise or opinion...

2 THE COURT: Well, he is  
3 getting into an expert opinion and he has really been  
4 qualified as an expert.

5 Q. Let me direct your attention to breeding.  
6 Would you tell us whether as for breeding, if there is any  
7 difference?

8 A. Grande Lowe is not accepted by the Hanoverian  
9 Society and Moronjo was accepted by the Hanoverian  
10 Society after his completion of the hundred day test.

11 Q. Now, did Grande Lowe submit to the hundred  
12 day test?

13 A. Yes.

14 Q. And the result of that test was?

15 MR. MONAHAN: Your  
16 Honor, I move that that's totally irrelevant. The answer  
17 is...

18 THE COURT: Yes, I think  
19 he's established a response.

20 Q. If a stallion is not recognized by the Hanoverian  
21 Society, will the filly or foal, the beget of such a stallion  
22 be recognized or be registered?

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1 A. No. Oh, no.

2 Q. So, in terms of Hanoverian breeding, then, a  
3 Moronjo foal is acceptable.

4 MR. MONAHAN: Your  
5 Honor, I think we should stick to the breeding at this  
6 point.

7 Q. How would you contrast, if there is any  
8 difference, between a Moronjo foal, therefore, and a  
9 Glrande Lowe foal?

10 MR. MONAHAN: Objection.  
11 He has responded to that...

12 THE COURT: Well, he's  
13 already said that Moronjo is superior in every respect. I  
14 think he has answered it, so I'll sustain it.

15 Q. Now, could you tell us during what period of  
16 time Moronjo was at November Hill in the period '88 to  
17 '89?

18 A. Yes. In the last period between, he was at  
19 November Hill more times than once. He was the first  
20 time from the buying part to completion of the hundred  
21 day test. Then he was taken away and was, for breeding  
22 purposes, whatever they, and showing purpose by Mrs.

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1 Lorenz, he was taken away.

2 I saw him in the meantime when he was brought  
3 back to us and...

4 Q. Well, directing your attention to the end of  
5 1988 in the period November and December, do you know  
6 where Moronjo was at that time?

7 A. He was delivered to our place on the 6th of  
8 December, 1988 and left on the 20th of February...

9 MR. CREMINS: Excuse me,  
10 what?

11 MR. MONAHAN: What was  
12 that?

13 Q. Now, the first...

14 A. February.

15 Q. February is when he left. And that was  
16 February 20th of what year?

17 A. '89.

18 Q. And what was his condition when he left  
19 November Hill on February 20th, 1989?

20 A. The best that I could do, in excellent condition  
21 from my knowledge.

22 Q. Now, when next was Moronjo at November Hill?

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1           A.    He was, to my knowledge, was back for training  
2           at November Hill on the 12th of July, 1989 and stayed  
3           over the year's change into April the 2nd, 1990.

4           Q.    And when he returned to November Hill in  
5           December of '89, what was his condition, then?

6           A.    He was in over-fat condition, that I feared for  
7           his soundness and health and I put him in training  
8           immediately and a little bit, so that I was, from my  
9           experience, tried to call in the veterinarian to state his  
10          soundness status and that my own judgment get security  
11          from the veterinarian, too, that I was not wrong in my  
12          health judgment, because I am not a veterinarian, I am a  
13          trainer.

14          Q.    And you personally observed the horse, is that  
15          correct?

16          A.    Yes.

17          Q.    And what specifically did you observe about  
18          Moronjo?

19          A.    In this arriving stage?

20          Q.    Yes, in that arriving stage.

21          A.    He was very fat or short in breath, we could not  
22          work like he should have worked in his, related to his age

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1 and I feared for his soundness insofar as my  
2 experience...

3 MR. MONAHAN: Your  
4 Honor, I would object to the balance of the answer to the  
5 question which is not responsive. What he observed  
6 was, he said he was fat and he said he was short of  
7 breath.

8 THE COURT: That's  
9 sustained.

10 Q. What is soundness?

11 A. That I feared for his soundness in regard...

12 Q. No, first describe...

13 A. ...to his training.

14 MR. FLANNERY: I'm asking  
15 the question, what is soundness, to demonstrate, Your  
16 Honor, that this witness could testify as...

17 THE COURT: I'll allow him  
18 to talk about his fatness and his shortness of breath,  
19 both of which, I assume, go to his soundness.

20 MR. FLANNERY: Yes, I  
21 think that's absolutely correct, Your Honor.

22 Q. Could you describe what condition of

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1 soundness, what does soundness mean?

2 MR. MONAHAN: Your  
3 Honor, I would object to that, he's being called as an  
4 expert.

5 THE COURT: Well, you can  
6 say what soundness is, as a lay person. He seems to  
7 know something about training and knows something  
8 about horses. You can define soundness.

9 MR. FLANNERY: Thank you,  
10 Your Honor.

11 Q. What do you mean by the term soundness?

12 A. A horse in this condition is when he is put to  
13 go, very able to founder or to tying up situations. This  
14 is a life threatening situation.

15 Q. And would you describe the founder and tying  
16 up?

17 A. Is it related to overfeeding from what he eats,  
18 to my knowledge found in the body system and  
19 foundering is a rotating of the lower spoon in the hoof  
20 where the spoon, in the worst case of it exceeds the hoof  
21 out of the hoof, and the horse loses absolutely his hoof  
22 protection and, therefore, his life.

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1 Q. And tying up?

2 A. Typing up is based on the same situation, but  
3 it goes to the back muscles and destroys over too much,  
4 the structure of the back muscles.

5 Q. And what was the name of the vet who looked  
6 at Moronjo?

7 A. Helen Poland.

8 MR. MONAHAN: Your.  
9 Honor, I would object to the introduction of this  
10 document. I would object to it as being nothing but  
11 hearsay.

12 THE COURT: Well, let me...

13 MR. FLANNERY: Well, I'm  
14 going to ask him to identify the document and perhaps  
15 lay a foundation and until something happens in a  
16 courtroom, I don't think there's anything inappropriate  
17 yet.

18 We have to see whether or not this witness can  
19 identify this document. I have never shown this witness  
20 this document.

21 THE COURT: All right, I  
22 certainly won't look at it until it is properly introduced,

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1 so go ahead.

2 (WHEREUPON, the document referred to was marked  
3 Cross Defendant's Exhibit #10 for Identification.)

4 Q. Let me direct your attention to what's been  
5 marked as Cross-Defendant...

6 THE COURT: Don't let him  
7 read from it, just let him identify it.

8 MR. FLANNERY: Yes.

9 Q. ...Cross-Defendant Exhibit 10, have you ever  
10 seen that document before?

11 MR. MONAHAN: Answer the  
12 question.

13 Q. Can you identify it...

14 MR. FLANNERY: Excuse me,  
15 Counsel, don't be so nervous, will you?

16 Q. Could you identify it generally, please, for the  
17 record? Not read anything from it, just identify it  
18 generally.

19 MR. MONAHAN: Your  
20 Honor, as a point of privilege, might I ask that Counsel  
21 direct their remarks to the Court?

22 THE COURT: Yes, so

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1 directed.

2 **MR. FLANNERY:** And could  
3 you advise Counsel to wait until there is either a question  
4 posed or something happens before...

5 **THE COURT:** Well, I think  
6 you just explained that to him.

7 **MR. FLANNERY:** Okay,  
8 thank you, Your Honor, pardon me. And I will not  
9 address Counsel.

10 **THE COURT:** All right.

11 Q. Sir, can you identify that document generally,  
12 what it is?

13 A. It's a call sheet from the veterinarian who takes  
14 an assignment.

15 Q. And did there come a time when you received  
16 such document?

17 A. Yes, every time our veterinarian examined one  
18 of the horses in the stable.

19 Q. And you maintained these records at your place  
20 of business in the regular course of business?

21 A. Yes.

22 Q. And is it the regular course of business to

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1 maintain such records?

2 A. Yes.

3 Q. And do you rely on those records to make  
4 decisions in the management of your business, that is  
5 this horse management business?

6 A. Yes.

7 Q. And you can identify this as an exact duplicate  
8 of the record that corresponds to the events reflected in  
9 that document before you?

10 A. Yes.

11 MR. FLANNERY: Your  
12 Honor, I offer this into evidence?

13 THE COURT: Well, is this  
14 somebody else's...I don't think we have...

15 MR. FLANNERY: Your  
16 Honor, I have...

17 THE COURT: ...that is what  
18 is ruled as admissible document simply because it's found  
19 in your records, but you don't let someone to testify  
20 with an introduction; it must be a record generated in  
21 the actual business. I don't think ...

22 MR. FLANNERY: Well, if I

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1 can ask a few more questions, I think I can ask a  
2 response to the Court's concerns.

3 Q. Does the vet appear and work under your  
4 direction and supervision as per your request, Mr.  
5 Zuther?

6 A. Can you repeat this?

7 Q. I'm sorry, I'll try to make my questions shorter,  
8 excuse me.

9 The clinic, do you direct them and make  
10 specific requests and supervise them when they come to  
11 your place of business?

12 A. Yes.

13 Q. And you specifically requested that this be  
14 done, is that correct?

15 A. Yes.

16 MR. FLANNERY: Your  
17 Honor, it's corroborative. It is a business record. If you  
18 supervise individuals, we have a much better instance  
19 here than I think you ordinarily see and it's inherent and  
20 reliable.

21 We have a person who has the experience who  
22 actually saw the event and has the document on or about

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1       that date that corroborates what he has to say.

2               I think you can discuss what weight you may  
3       want to give it, but I think it's a legitimate business  
4       record.

5                       **THE COURT:** Well, it's very  
6       much like using a medical report in a personal injury  
7       case, you can't use the doctor's letter. Now, that's what  
8       this is and I'll sustain the objection.

9                       **MR. FLANNERY:**     Your  
10      Honor, if I could offer it then, instead, not for the truth  
11      of the matter asserted, but for the limited purpose to  
12      corroborate that the examination was done.

13                      **THE COURT:** Well, what...  
14      was done, it can be testified that it was done.

15                      **MR. FLANNERY:** Well, he  
16      can, and this is a record from his place of business that  
17      corroborates that. And I would then offer it for the  
18      limited purpose it corroborates the date that the  
19      examination was done and the horse involved was  
20      Moronjo.

21                      **THE COURT:** Well, I think  
22      he can testify to that. You've had him testify to...and

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1 beyond that I'll sustain...

2 MR. FLANNERY: Very  
3 well...

4 THE COURT: ...sustain the  
5 objection.

6 MR. FLANNERY: Very well,  
7 Your Honor, I'll move on.

8 Q. Now, then, in connection with the sale of  
9 horses, did you have any contract of sales for Moronjo  
10 from November Hill to Marefield Meadows and/or Mrs.  
11 Lorenz?

12 A. Yes.

13 Q. Could I see that? Is this your only copy? Is  
14 this an original?

15 A. This is the only copy.

16 MR. FLANNERY: Your  
17 Honor, perhaps at a break we could make a copy for him.  
18 I won't mark it up now, but if we could deem it  
19 Defendant's Exhibit 11 for identification of Moronjo.

20 THE COURT: All right...

21 MR. FLANNERY: If I may  
22 approach the witness because I don't have a copy for

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1 myself.

2 **MR. MONAHAN:** Your  
3 Honor, would it be permissible, if perhaps, for Counsel to  
4 see what is...

5 **M R . F L A N N E R Y :**  
6 Absolutely, pardon me, Your Honor. Pardon me, I'm  
7 sorry, Your Honor.

8 **MR. CREMINS:** Just for my  
9 benefit, is that the contract that he could be sold?

10 **MR. MONAHAN:** All right.

11 **THE COURT:** Mr. Cremins...

12 **MR. FLANNERY:** Oh, I'm  
13 sorry.

14 **MR. CREMINS:** No, I wasn't  
15 sure whether this was the contract where he was sold to  
16 Marefield Meadows. That's all I needed to know. I don't  
17 have any objection to the exhibit.

18 **THE COURT:** All right. Go  
19 ahead with your questions.

20 **MR. FLANNERY:** Thank you,  
21 Your Honor.

22 Q. Directing your attention to what is being

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1 marked as Cross-Defendant 11 for identification.

2 (WHEREUPON, the document referred to was marked  
3 Cross-Defendant's Exhibit #11 for Identification.)

4 Q. This is the contract of sale of Moronjo from  
5 November Hill to Marefield Meadows, is that correct?

6 A. Yes.

7 Q. And do you keep such documents in the  
8 ordinary course of business?

9 A. Yes.

10 Q. And that's to say, these contract forms?

11 A. Yes. We changed from this here...

12 Q. Who did you negotiate with or discuss this  
13 when you drew up this contract?

14 A. With the lady from Marefield Meadows and  
15 Marion, Maxine and Mr. Lorenz.

16 MR. FLANNERY: ...Your  
17 Honor, I'm sorry.

18 Q. Now, this sale reflects certain conditions and  
19 so forth. Were these conditions also discussed and  
20 agreed upon before this document was signed?

21 A. Yes.

22 Q. Is it the ordinary course to have such

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1 conditions as are indicated here in contracts of sale?

2 A. If you have a stallion, probably yes. It depends  
3 on what your arrangements are. If you sell just simply a  
4 horse from here to there, sometimes there's nothing to  
5 agree to. Sometimes the training is agreed to,  
6 sometimes...

7 Q. This horse was sold subject to a veterinarian  
8 exam, is that correct?

9 A. Yes.

10 Q. And that was a requirement of Marefield  
11 Meadows?

12 A. Yes and it's quite normal, yes, it's a normal  
13 condition.

14 Q. And was it provided that November Hill would  
15 pay for Moronjo's expenses through May of '87, is that  
16 correct?

17 MR. MONAHAN: Your  
18 Honor, that document speaks for itself.

19 MR. FLANNERY: Well, let  
20 me move it into evidence then, Your Honor.

21 THE COURT: Well, the  
22 questions are leading, too, the objection is sustained.

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1                                   **MR. FLANNERY:** I would  
2 move it into evidence.

3                                   **THE COURT:** All right, any  
4 objections? All right, it is moved into evidence.

5                                   **MR. FLANNERY:** At the  
6 break we can substitute this by agreement of Counsel...

7                                   **THE COURT:** All right, it  
8 will be admitted.

9                                   **MR. FLANNERY:** ...because  
10 apparently this is the witness' only copy of it.

11 **(WHEREUPON, Cross-Defendant Exhibit #11 for**  
12 **Identification was received in evidence.)**

13                   **Q. Now, this reflects that there was a**  
14 **commission? That is correct?**

15                   **A. Yes.**

16                   **Q. And this is the commission to...**

17                   **A. ...by Moronjo.**

18                   **Q. And was that by the agreement of the parties,**  
19 **as well?**

20                   **A. Yes.**

21                   **Q. And there is a copy of the check here?**

22                   **A. Yes.**

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1 Q. By, I can't make it out.

2 A. This was the copy of the check as a down  
3 payment by signing this contract. The remaining balance  
4 was paid on June the 1st, '87 for the balance of  
5 \$49,000.

6 Q. Was it contemplated that either, after the date  
7 of this contract, that either November Hill or Marefield  
8 Meadows would have breeding rights, while the stallion  
9 was still at November Hill?

10 A. No, there was no breeding rights.

11 Q. If there were breeding rights, would you have  
12 provided for it in the agreement?

13 A. Certainly.

14 Q. Is it a consideration...

15 MR. MONAHAN: Your  
16 Honor, I'm going to object. We've permitted him to go on  
17 for about an hour now and I at least want to preserve for  
18 the record that I think this is totally irrelevant to the  
19 contract which is before the Court.

20 What the contract in 1987 was or what the  
21 custom of the training is even, because we know what  
22 the contract, and I have insisted throughout, we're

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1 dealing with a limited contract.

2 I wanted to make that objection and my  
3 objection is continued throughout the questioning.

4 MR. FLANNERY: Well, Your  
5 Honor, it seems to me that we would best serve the Court  
6 and ourselves by asking the person who is here if there  
7 is a custom in the industry, what it is.

8 That's not what I was doing when I asked the  
9 questions, but I think that we're better to have more  
10 information rather than less. And we have a person who  
11 knows something about the horse, Moronjo, and these  
12 negotiations.

13 THE COURT: Well, I think  
14 you have pretty well covered it.

15 MR. FLANNERY: Okay.  
16 Thank you very much, Your Honor, I have no further  
17 questions. Thank you, Mr. Zuther.

18 THE COURT: All right, sir.

19 CROSS EXAMINATION

20 BY MR. MONAHAN:

21 Q. Mr. Zuther, I know you paid...

22 A. I paid for him, if I'm not hundred percent

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1 mistaken, I think I paid \$27,000 deutsche marks for him.

2 Q. And could you tell me what that converts to in  
3 dollars?

4 A. I don't know for this time. The dollar was  
5 changing, they had changed the dollar. A deutsche mark  
6 was different then and higher than it is momentary. I  
7 don't know. I have no idea right now. I would have to  
8 look it up.

9 Q. You don't know approximately what the  
10 deutsche mark was at the time you were negotiating and  
11 buying horses and bringing them to America?

12 A. Yes.

13 Q. You don't know? You don't know  
14 approximately what it was?

15 A. I assume, but I'm not sure. I assume that the  
16 dollar was standing by 180 or by 170 to this time.

17 Q. A deutsche mark required either \$1.70 or \$1.80  
18 in cents?

19 A. Yes.

20 Q. Thank you. And how old was the horse at that  
21 time?

22 A. How old?

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1 Q. How old was the stallion?

2 A. Two and a half years old.

3 Q. And it had proceeded through the first trial, but  
4 not the second?

5 A. Yes, he did.

6 Q. And the second trial was a trial you staged?

7 A. Yes.

8 Q. And after doing that, sir, how long was it  
9 before...excuse me, I'm sorry...did you sell the horse  
10 before or after the second stage?

11 A. Before.

12 Q. Before the second stage. So, do I understand  
13 then that you are bringing the horse to the United  
14 States...

15 A. Mm-hmm. (Indicates affirmatively).

16 Q. ...and you are training, but no further testing,  
17 you felt the horse had increased in value to \$55,000?

18 A. Yes.

19 Q. Okay.

20 A. I sold him for it.

21 Q. And how many months was that?

22 A. I'd have to look it up. Just a second, please.

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1 Six months, but can I say something to clarify something  
2 here?

3 Q. Certainly.

4 A. I was able to buy this horse over my years long  
5 contact before for this price.

6 Q. Oh, you're just going to say now you bought it  
7 very cheap?

8 A. Right.

9 Q. And you sold it to...

10 A. Because over my personal...

11 Q. The answer is it was a very cheap purchase?

12 A. Yes.

13 Q. And when you sold it you felt you were entitled  
14 to get what you could get for it?

15 A. What the quality of the horse was worth.

16 Q. What you could get for it?

17 A. What the quality of the horse was. I have never  
18 overpriced my horses.

19 Q. I see. So, at that time the horse was worth  
20 \$55,000 and it had gone for that price...because you  
21 could get it cheap...it had gone from about \$14,000 to  
22 \$55,000 in value? Fair enough?

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1           A.    Yes.

2           Q.    Now, after the purchase do I understand the  
3 horse remained at November Hill and through the testing  
4 period?

5           A.    Yes.

6           Q.    Now, when did that conclude, the testing  
7 period?

8           A.    The hundred day training and boarding?

9           Q.    Yes, I'm asking you when did it conclude?  
10 When...

11          A.    I'm sorry, I didn't understand your question.

12          Q.    When did the hundred day testing period  
13 conclude?

14          A.    On the 5th, as I remember, exactly on the 5th  
15 of December of 1987. It could be the 6th, I'm not 100  
16 percent sure.

17          Q.    After that time or at that point how old would  
18 the horse have been?

19          A.    At the conclusion of the test he was three  
20 years of age.

21          Q.    That's because, what, you compute January 1  
22 as a birth date?

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1           A. Official birth date is the birth date on the  
2 paper, but in the horse world you relate to the year. Yes,  
3 the 1st of January.

4           Q. So, the three year old is related to the January  
5 date even though he was born in April of '84?

6           A. Yes.

7           Q. Thank you. And then after that time at the  
8 conclusion of the hundred day trials, Moronjo left  
9 November Hill Farms and when did you say he returned  
10 next?

11          A. Then he arrived back on my place on the 12th...  
12 December, on the 6th, '88 for board and training.

13          Q. On the 6th of December and he left on the 20th  
14 of February, 1989?

15          A. Yes.

16          Q. And when did you say he next came back?

17          A. Then he did come back December the 7th of '89  
18 and left on the 2nd of April in '90.

19          Q. So, if my notes indicate that he came back in  
20 July of '89 I'm in error, is that right? My notes are  
21 wrong, he actually came back in December of '89?

22               When I say my notes, I simply mean what I just

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1 wrote down.

2 A. Just a second.

3 Q. I may have been in error, sir?

4 A. Just a second, please, I...

5 Q. Let me simplify it for you, Mr. Zuther, the only  
6 question I have is, was November Hill (sic) in your care  
7 between the date February 20, 1989 and the December  
8 date that you have just given us all, was he at the farm?  
9 Moronjo, I think I may have said the wrong name.

10 MR. FLANNERY: I didn't  
11 hear it.

12 A. Yes, I have in my...yes, he was here, in my  
13 records here, is standing December the 7th to December  
14 the 31st of '89, board and training, paid \$700 and he  
15 should be on my farm to this place...to this time, yes.

16 Q. All right, that's the 7th. So it was from  
17 February to December you have no entries that he was  
18 with you, is that correct?

19 A. From February of what year?

20 Q. Of '89.

21 A. To December, '89.

22 MR. FLANNERY: I'm sorry,

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1 Mr. Monahan, I just couldn't hear you.

2 A. December '89?

3 Q. From February...

4 A. Yes?

5 Q. ...20, 1989...

6 A. Yes?

7 Q. ...when you said that the horse left your  
8 farm...

9 A. Yes?

10 Q. ...until the date you have just given us in  
11 December...

12 A. Yes?

13 Q....of '89, it's my understanding he was not with  
14 you?

15 A. This is correct.

16 Q. All right, fine. Do you know where he had been  
17 before he came to you? Did you pick him up?

18 A. No. I heard that he was in Middlefield...or  
19 Middleburg Equestrian Center for part of the time and  
20 part of the time, so far as I know, on Marefield Meadows.

21 Q. But you don't know when he was at either  
22 place?

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1 A. No, no.

2 Q. Now...

3 THE COURT: Let me get  
4 something straight there, too. You remarked about his  
5 bad condition, he was over fat, as you said, and short of  
6 breath, shortness of breath. Do you, of your own  
7 knowledge, know where he had been prior to his being  
8 brought back to you on that occasion, which I think you  
9 said was July 12th, '89?

10 A. So far as I know, he was on the place  
11 of...Middleburg Equestrian Center.

12 THE COURT: And it was  
13 from there that he came back to you in bad shape, is that  
14 it?

15 A. I cannot...I have not seen the stallion on this  
16 place. I am not 100 percent sure that it was the case,  
17 but I am...was told he was there prior to arriving on our  
18 place.

19 THE COURT: All right, go  
20 ahead, sir.

21 Q. Just to be clear now, the Judge's note is the  
22 same as mine, that you said the horse came back to you

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1 on July 20th. That's an error, isn't it? Or July 12th,  
2 excuse me.

3 THE COURT: July 12th, '89  
4 is what his first testimony was. I took it down at the  
5 time.

6 Q. And that was an error, wasn't it, sir?

7 A. July 12th to...he stays on my booking, board  
8 and training, in July 12th to 7/89. But I have to say  
9 here, my wife does the bookkeeping and I read this here  
10 and I don't have the memory to recall this out of my  
11 memory. I can only relay what I have here.

12 Q. So, since he returned to your farm in December,  
13 however, it is clear he was not with you from July 12,  
14 1989 to April 2, 1990 as you originally testified, is it  
15 not?

16 MR. FLANNERY: Objection.  
17 I think that misstates the record. I don't know whether  
18 he did it intentionally, but I thought that he misstated  
19 the record when he said that.

20 MR. MONAHAN: Well,  
21 that's my note that I want to be sure.

22 Q. If my notes show that, that's in error, isn't it

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1 sir? He was not with you constantly from July to April?

2 A. I think you are right. Now, I know that I had  
3 the horse prior to the sale, to leaving for the sale in  
4 California, I had him close to five months.

5 Q. From December to April?

6 A. Then it must be, yes.

7 Q. And during that period of time he was in  
8 training with you?

9 A. Yes.

10 Q. You gave him standard training at standard  
11 rates, charges? You gave him the training you felt was  
12 appropriate?

13 A. Yes, I think so.

14 Q. And at rates that you thought were fair,  
15 charges?

16 A. Yes, I think so.

17 Q. And when he left you on April 2, 1990, he was  
18 again in excellent shape, was he not?

19 A. Yes.

20 Q. My next question may have been answered by  
21 you or implied by you. You said he left your farm in April  
22 to go to the sale?

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1           A.    Yes.

2           Q.    And was that direct from your farm to the  
3 station in California?

4           A.    Yes.

5           Q.    The stallion station where he was sold?

6           A.    It was told to me that he was going directly  
7 there, yes.

8                       MR. MONAHAN: Thank you.

9                       THE COURT: All right, sir,  
10 Mr. Cremins, do you have questions?

11                      MR. CREMINS: No, Your  
12 Honor.

13                      THE COURT: All right, sir,  
14 you may step down. Call your next witness, please.

15                      MR. FLANNERY: Your  
16 Honor, we have one observation. I don't know if Mr.  
17 Monahan still wants the witness to stay here or not. I  
18 don't have any further need for him.

19                      THE COURT: All right.

20                      MR. MONAHAN: No, I don't  
21 think I will, either, Your Honor.

22                      THE COURT: All right, you

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1 are free to leave now, Mr. Zuther, if you like.

2 A. Thank you.

3 MR. FLANNERY: Helen  
4 Poland, Your Honor.

5 THE COURT: All right.

6 THE CLERK: Ma'am, were  
7 sworn yesterday?

8 MS. POLAND: Yes, I was.

9 THE CLERK: Okay, you  
10 continue under oath today.

11 MR. FLANNERY: May I  
12 proceed, Your Honor?

13 THE COURT: Yes.

14 HELEN POLAND, having been duly sworn by the Clerk,  
15 was examined and testified as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. FLANNERY:**

18 Q. Thank you for waiting for us. I'm sorry it's  
19 taken so long to get to you.

20 You were asked to bring certain records and so  
21 forth today concerning Moronjo. And, first of all, have  
22 you brought those with you?

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1 A. Yes, I have.

2 Q. Let me, for the record, first have you state your  
3 name and spell it.

4 A. Helen Poland, P-O-L-A-N-D.

5 Q. And can you tell us by whom are you employed?

6 A. I own a veterinary clinic and Marefield  
7 Meadows is one of my clients.

8 Q. You have a number of clients, I presume, is that  
9 correct?

10 A. Yes.

11 Q. Is it large animal veterinarian, is that fair to  
12 say?

13 A. Yes.

14 Q. And how long have you been a large animal  
15 veterinarian?

16 A. Eleven years.

17 Q. In 1989 did you do veterinarian services for  
18 Marefield Meadows?

19 A. Yes, I did.

20 Q. And you're familiar with the mares that  
21 Marefield Meadows had on their farm?

22 A. Yes.

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1 Q. Directing your attention to the mare,  
2 Recognition, do you know that mare?

3 A. Yes.

4 Q. Could you look at your records and tell us when  
5 first Moronjo covered Recognition?

6 A. It's going to take some time. I believe it was  
7 in February.

8 Q. Can I ask you, Mrs. Poland, did you complete  
9 any of the American Hanoverian Society forms for  
10 submission for registration of the foals?

11 A. I...

12 Q. Let me first show you this and see if this may  
13 help. I'm directing your attention to an American  
14 Hanoverian Society form.

15 A. Right. I...I don't complete anything on that  
16 page.

17 Q. Okay, so that's not going to help you?

18 A. No, it was...that mare was...

19 Q. Directing your attention to this form, does that  
20 help you?

21 A. Right, that is my form and, as far as I  
22 remember, she was bred first...yes, in February 24th.

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1 That's...that was what I remembered.

2 Q. And could you tell us when she was bred next?

3 A. March 18th.

4 Q. And could you tell us when she was bred for the  
5 third time?

6 A. It looks like May 2nd...no.

7 Q. You may want to look at your original form.

8 A. That's June...

9 MR. FLANNERY: Pardon me,  
10 Your Honor, for approaching the witness. I thought it  
11 might facilitate it.

12 THE COURT: You have  
13 permission to.

14 A. It was May 4th.

15 Q. Could you check and see if she was also  
16 covered on May the 3rd?

17 A. She was not.

18 Q. She was not. Now, were these live covers or  
19 was it by artificial insemination.

20 A. Artificial insemination.

21 Q. Now, does your form indicate whether or not it  
22 was a live cover?

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1           A. I don't have that one because it doesn't refer  
2 to Moronjo and I was told to bring the Moronjo copies.  
3 And that would have only mentioned what I did to  
4 Recognition.

5           Q. I've been directing you to a form from the  
6 Waterloo Equine...

7           A. Old Waterloo Equine Clinic, that's my practice.

8                               MR. MONAHAN: Dr. Poland,  
9 I apologize. Your Honor, might I ask that Dr. Poland  
10 speak up just a little?

11                           THE COURT: Yes, speak  
12 just a little louder, please.

13          A. Okay.

14          Q. Even though we're close, project, and I'll try to  
15 do the same so they can get your voice.

16               I've been asking you to look at a form that I  
17 believe you supplied on an earlier occasion.

18          A. That's my form and it's my handwriting.

19          Q. Okay, that's exactly what I wanted to ask you.

20                           MR. CREMINS: Excuse me,  
21 Your Honor, just a point of clarification. Dr. Poland has  
22 just ticked off a number off a number of dates with just

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1 a month and day and I don't want to...

2 A. They are all '89, 1989.

3 Q. Now, the May 4th one indicates, next to B, is  
4 that for breeding?

5 A. Yes.

6 Q. Artificial insemination?

7 A. That's right.

8 Q. And artificial insemination, for the record,  
9 means that you collect the sperm from the stallion and  
10 then inject it in the mare?

11 A. That's right.

12 Q. Now, March 18th has just a B, does that  
13 reflect, therefore, live coverage?

14 A. That is probably a live cover.

15 Q. And February 24th, which is the third and  
16 earliest cover, has a B and does that reflect a live cover,  
17 as well?

18 A. It could. It's possible that it was artificial, I  
19 don't know.

20 Q. Now, are you aware that Marefield Meadows  
21 has a mare named Flower Bow?

22 A. Yes.

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1 Q. And could you check your records to confirm on  
2 what date, if at all, Moronjo covered Flower Bow?

3 A. Those were all live covers and they were in  
4 February of '89 and I doubt if they would be in these  
5 records because I did nothing to Moronjo on those dates.

6 Q. Well, let me direct your attention to this form.  
7 Is this your handwriting for Flower Bow in 1989?

8 A. Right.

9 Q. And directing your attention to March the 24th,  
10 that same B, does that reflect the breeding on that date  
11 to Flower Bow?

12 MR. MONAHAN: Your  
13 Honor, I...

14 Q. Or does that refresh your recollection?

15 MR. FLANNERY: Sorry,  
16 Counsellor.

17 MR. MONAHAN: Your  
18 Honor, I thought I heard the witness say that these are  
19 not coverages by Moronjo. If that's the case I object,  
20 but maybe I misheard.

21 MR. FLANNERY: No, I think  
22 you're absolutely right, let me clarify that. Yes, Your

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1 Honor.

2 THE COURT: All right,  
3 clarify it.

4 MR. FLANNERY: Pardon me  
5 because I didn't pay attention.

6 Q. Did Moronjo cover Flower Bow in 1989?

7 A. Yes, he did.

8 Q. Directing your attention to March of 1989...

9 A. What I said, Your Honor, was that the records  
10 that did not pertain to Moronjo were private client  
11 veterinarian records that I normally would not let other  
12 people have access to, so I didn't bring those with me.

13 The request said only bring forms that  
14 specifically pertained to Moronjo. So, anything that had  
15 his name on it we brought.

16 THE COURT: All right, I  
17 understand.

18 Q. Directing your attention to March of 1989, did  
19 Moronjo cover Flower Bow in March on or about March  
20 24th?

21 A. The breeding is checked...is crossed out for  
22 some reason. It looks like she was bred on March 24th,

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1 1989, one breeding.

2 Q. Now, did you confirm that Flower Bow was in  
3 foal by palpation or whatever appropriate manner after  
4 that date?

5 A. Yes.

6 Q. And was she in foal?

7 A. Yes, she was.

8 Q. And when did you determine that she was in  
9 foal?

10 A. Again, I wouldn't have the records. It would be  
11 on that sheet.

12 Q. Let me understand this, you mean Flower Bow's  
13 sheet has that information and you don't have that with  
14 you?

15 A. I don't have that with me because I didn't  
16 touch Moronjo. That was Flower Bow and that's  
17 Marefield's horse that has nothing at all to do with  
18 Moronjo. I mean, that's a client/doctor relationship and  
19 so I didn't think that was necessary.

20 Q. Excuse me, a client/doctor relationship when  
21 services are performed on a horse, is that what you're  
22 saying?

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1           A.   That's right. I don't give those out to anybody  
2 who calls me and says, I want to know something about  
3 a horse that belongs to someone else.

4           Q.   Were you subpoenaed?

5           A.   I was subpoenaed for Moronjo's records.

6                           **MR. FLANNERY:** Excuse me  
7 a second. Do you have a copy of the subpoena?

8           Q.   You haven't made a Motion to Quash it or alter  
9 it in any way...

10          A.   I brought all Moronjo's records.

11                       **MR. MONAHAN:**     Your  
12 Honor, I don't know whether she was subpoenaed the  
13 second time or not. She was subpoenaed originally in  
14 this case and Judge Robertson held that all she had to  
15 produce, on a motion, all she had to produce was the  
16 Moronjo information.

17                       **THE COURT:** Well, that's  
18 what she is telling the Court.

19                       **MR. MONAHAN:** So, she is  
20 staying consistently with what Judge Robertson held  
21 when Mr. Flannery attempted to reach this information  
22 some months ago, in fact, I think more than a year ago.

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1                   **MR. FLANNERY:** And the  
2 Court said we were entitled to the breeding records for  
3 the obvious reasons, Your Honor. That any breeding  
4 involving Moronjo, not records unrelated to Moronjo's  
5 breeding mares, for obvious reasons.

6                   **THE COURT:** She may have  
7 that. If she brought Moronjo's records, she may have it.

8                   **MR. MONAHAN:** In defense  
9 of Dr. Poland, these records were produced to Mr.  
10 Flannery over a year ago. They were deleted, the  
11 information that she held as confidential was deleted.  
12 Mr. Flannery has never gone back and said she didn't  
13 comply with Judge Robertson's subpoena.

14           A. In this...

15                   **THE COURT:** All right.

16           A. I thought I was doing what was requested of  
17 me. "We request that the subpoena requires the above-  
18 named witnesses to bring with them any and all  
19 documents in their possession, custody or control which  
20 has in any way concern to a stallion named Moronjo."  
21 And I brought anything that has his name on it that  
22 I...anything I did to him.

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1 THE COURT: Well, that's  
2 about all you can expect, I think.

3 MR. FLANNERY: Well,  
4 anything involving the breeding of Moronjo is also related  
5 to that.

6 THE COURT: Only if she  
7 had one.

8 MR. FLANNERY: In fact,  
9 Your Honor, I have the request made to the Clerk's Office  
10 was, that the documents requested include, but are not  
11 limited to, memoranda, correspondence, veterinary files,  
12 breeding records, laboratory reports, fertility reports and  
13 surgical records concerning or in any way relating to  
14 Moronjo. That's what we requested.

15 Well, let me see what we can do with what we  
16 have.

17 THE COURT: Yes, see what  
18 you can do, that's pretty broad. She, obviously, hasn't  
19 brought everything you would like, so let's make do, if  
20 you can.

21 Q. Now, did Recognition come into foal?

22 A. Yes, she did.

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1 Q. And are you familiar with a mare named Alexa?

2 A. Yes, I am.

3 Q. And is that owned by Marefield Meadows?

4 A. Yes.

5 Q. And do you recall that Moronjo was bred to  
6 Alexa in May, 1989?

7 A. That's right.

8 Q. And do you recall if that was an artificial or a  
9 live cover?

10 A. I do not remember.

11 Q. And can you recall how many times Alexa was  
12 covered?

13 A. I believe she was just covered one time.

14 Q. And did Alexa come into foal?

15 A. Yes, she did.

16 Q. What other mares did Marefield Meadows have  
17 in 1989, that belonged to Marefield Meadows?

18 A. There were several other mares, Donnavetter  
19 and Gala were the two...

20 Q. And was Gala covered by Moronjo?

21 A. No.

22 Q. And what was the other mare you mentioned,

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1       pardon me?

2           A.   Donnavetter.

3           Q.   Donnavetter. Was that covered by Moronjo?

4           A.   No.

5           Q.   Was she, pardon me, covered by Moronjo. Were  
6 any other mares belonging to Marefield Meadows covered  
7 by Moronjo?

8           A.   No.

9                           THE COURT: Well, how  
10 many were there, if you know? Do you know how many  
11 there were?

12          A.   There were five mares total in 1989.

13                          THE COURT: Bred to  
14 Moronjo?

15          A.   No, there were only three mares bred to  
16 Moronjo.

17                          THE COURT: All right.

18          Q.   And how many other mares was Moronjo bred to  
19 at Marefield Meadows?

20          A.   I believe he was bred to four other mares, but  
21 I don't...

22                          THE COURT: Is that a total

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1 of seven, in all?

2 A. Something like that.

3 Q. Now, the breeding of mares that belonged to  
4 Marefield Meadows that Moronjo was bred to, did they  
5 have any foals?

6 A. All three mares had live foals.

7 Q. And do you know the corresponding names of  
8 the foals? For example, Recognition, is it Mantissa?

9 A. Yes, it is.

10 Q. And Miranda, is that a foal out of another one  
11 of the mares?

12 A. Yes, it is.

13 Q. And which mare is that?

14 A. That's Flower Bow.

15 Q. And Alexa's foal?

16 A. Marpessa.

17 Q. I'm sorry, could you spell that for the record?

18 A. M-A-R-P-E-S-S-A.

19 Q. During the time that Moronjo was being used to  
20 cover the mares, did he suffer an injury?

21 A. No.

22 Q. Do your records reflect him suffering any kicks

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1 or injuries to his stifle?

2 A. No, I don't think so. Let me look. Yes. He got  
3 kicked in the stifle on March 24th.

4 Q. Is that when he was covering Flower Bow?

5 A. No.

6 Q. Do you know what the circumstances were?

7 A. I...that may have been when we were collecting  
8 for an outside mare and we were going to breed more  
9 than one mare.

10 Q. And how did he get kicked, by a teaser mare?

11 A. He got kicked by...I suppose he got kicked by  
12 one of the mares.

13 Q. And as a result of the injury what, if  
14 anything...

15 A. There wasn't any injury.

16 Q. So, you came just to make sure that he was  
17 okay?

18 A. That's right.

19 Q. And you found that he was.

20 A. He was fine.

21 Q. Now, the four other mares, do you know when  
22 the breedings occurred involving the four other mares?

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1           A.    One of the other mares was a Conamora mare  
2           and one was a thoroughbred mare. I believe that one  
3           was, the thoroughbred mare, was bred in May and the  
4           Conamora mare was bred either in April or May, I don't  
5           remember.

6                    There was a draft mare that I never saw. I  
7           think Dr. Mayo took care of that one.

8           Q.    Do you know about when that happened?

9           A.    I don't remember when that...I never saw the  
10          mare, wasn't involved in the breedings at all.

11          Q.    And the fourth mare?

12          A.    And there was a mare, a warm blood mare, that  
13          we tried...that we bred artificially and I believe that was  
14          in April or May.

15          Q.    And you say the warm blood mare was in April  
16          or May and that was artificial. Were the others live  
17          covers, to your knowledge?

18          A.    The Conamora pony was not a live cover, that  
19          was artificially. And I think, now that I remember, there  
20          was a dark thoroughbred mare that was also bred, I  
21          believe. I...and I think that mare may have been covered  
22          artificially, I don't remember.

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1 Q. Do you know about when the dark thoroughbred  
2 mare was covered?

3 A. They were all in the middle of the springtime.

4 THE COURT: '89?

5 A. Of 1989. We...it was all one breeding season.

6 THE COURT: All right, so  
7 let's move along, please.

8 MR. FLANNERY: I have no  
9 further questions. Thank you for your patience.

10 THE COURT: All right.  
11 Cross examine? We'll take a break right after this cross.

12 CROSS EXAMINATION

13 BY MR. MONAHAN:

14 Q. You have mentioned, I believe you stated...let  
15 me make that a question. Did you state on one occasion  
16 that Moronjo was kicked in the stifle?

17 A. That's right.

18 Q. And what is the stifle? I'm sorry.

19 A. The rear limb, high up on the leg. It is the  
20 same joint as our knee.

21 Q. So, if I were bending over it would be in this  
22 area?

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1           A.   It's higher up on a horse's leg. It's closer to  
2 the body, but yes, it's...

3           Q.   Closer to the groin?

4           A.   Yes.

5           Q.   Do you know the name Iris Wojcik?

6           A.   Yes.

7           Q.   Was it her horse that did that?

8           A.   I don't remember which horse kicked him in the  
9 leg.

10          Q.   But there was no injury?

11          A.   There was no injury.

12          Q.   Now, in fact, did you participate in a breeding  
13 of a horse named, I guess it's Garatessa or something  
14 like that, belonging to Iris Wojcik or a horse belonging to  
15 Iris Wojcik?

16          A.   There was a mare belonging to Eris, I don't  
17 know what the name was.

18          Q.   Eris, I'm sorry. And were you advised as to  
19 how that horse came into breeding?

20          A.   That...Dr. Mayo took care of that. The mare  
21 was just brought down to the barn and I was told to  
22 breed the mare. She would not stand for the stallion, so

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1 we bred her artificially.

2 Q. Do you know whether this was at the request of  
3 Mrs. Lorenz or Marefield Meadows?

4 A. I don't know whose request that was.

5 Q. Was there any further attempt to breed the  
6 horse, that particular mare?

7 A. I think she was brought back again and refused  
8 again to stand for the stallion.

9 Q. Was attempt made to breed her over at  
10 Middleburg Equestrian Center, if you know?

11 A. I don't know that.

12 Q. Dr. Poland, you are familiar with the,  
13 obviously, the breeding of these animals and the  
14 ownership of the foals?

15 A. They belonged to Marefield.

16 Q. What is the custom as to who owns...

17 MR. FLANNERY: Objection.

18 She's here for the truth, Your Honor. Is he calling her as  
19 an expert witness?

20 MR. MONAHAN: Yes, sir.

21 MR. FLANNERY: Well, we  
22 had no notice of it.

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1                   **MR. MONAHAN:** I didn't  
2 receive an interrogatory asking me to tell them who my  
3 experts were, Your Honor. I think there is a slight  
4 difference between failing to comply with discovery  
5 requests and not getting any.

6                   **THE COURT:** Well...

7                   **MR. FLANNERY:** Well, Your  
8 Honor, that's a legal question...

9                   **THE COURT:** I was fairly  
10 liberal with you, so, I'll do the same for him. Go ahead.

11            **Q.** When stallions and mares are bred, who owns  
12 the foal?

13            **A.** The person who has control of the mare.

14                   **MR. MONAHAN:** That's all.  
15 Thank you very much.

16                   **THE COURT:** All right.

17 **REDIRECT EXAMINATION**

18 **BY MR. FLANNERY:**

19            **Q.** Do you have any experience with breeding by a  
20 stallion that's been unauthorized?

21            **A.** I wouldn't know. If it was unauthorized, I  
22 certainly wouldn't be part of it. I have an ethical...

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1 Q. That's right, I wouldn't expect you to.

2 MR. FLANNERY: Thank you.

3 THE COURT: All right, Mr.  
4 Crimins, do you have anything?

5 MR. CREMINS: No, sir.

6 THE COURT: All right, you  
7 may step down. Any reason to hold the doctor?

8 (No response.)

9 MR. FLANNERY: Are we  
10 going to break now, Your Honor, or...

11 MR. MONAHAN: Oh, yes,  
12 sir. Wait a minute, there is something that's outside the  
13 scope of direct, Your Honor. Therefore, I would ask Dr.  
14 Poland to be available.

15 THE COURT: All right, tell  
16 her to wait until just a little later. I assume you can ask  
17 your question when we come back from the break?

18 MR. MONAHAN: Yes, sir,  
19 I'd be perfectly happy to call her out of order if...

20 THE COURT: All right.

21 MR. MONAHAN: ...so she  
22 can go home.

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1                   **THE COURT:** We'll take a  
2 15 minute break.

3                   **BAILIFF:** All rise.  
4 **(WHEREUPON, a brief recess was taken.)**

5                   **BAILIFF:** Be seated and  
6 come to order. This Court again is in session.

7                   **MR. FLANNERY:** Your  
8 Honor, I would like to call Carina Elgin at this time.

9                   **THE COURT:** Are you  
10 sworn?

11                   **MS. ELGIN:** Yes, sir.

12                   **THE COURT:** All right, you  
13 are still under oath. Just take the stand, please.

14  
15  
16  
17  
18 **CARINA ELGIN, having been duly sworn by the Clerk, was**  
19 **examined and testified as follows:**

20 **DIRECT EXAMINATION**

21 **BY MR. FLANNERY:**

22           Q.    Would you please state your name and spell it

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1 for the record?

2 A. Carina Elgin. It's C-A-R-I-N-A, last name,  
3 E-L-G-I-N.

4 Q. And by whom are you employed and in what  
5 capacity?

6 A. Well, I own a little...a small video production  
7 company in Middleburg, Virginia.

8 Q. And what is the name of that?

9 A. Little River Productions.

10 Q. And what title, if any, do you have?

11 A. President.

12 Q. And in your business, have you had occasion to  
13 come in contact with anyone from Marefield Meadows?

14 A. Yes, I have.

15 Q. And whom?

16 A. The owners and the staff. I've done two videos  
17 for them.

18 Q. Did there come a time when there was any  
19 discussion with you about any video involving any foals  
20 of Marefield Meadows or mares?

21 A. Yes. During the summer I was approached and  
22 I was asked if I would do a sales tape of the foals that

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1 they currently have.

2 Q. And who approached you?

3 A. I don't remember. I think it was Maxine that  
4 called me, Miss Mickie.

5 Q. Maxine Mickie, is that?

6 A. Yes or Marion Poynter. I talked with both of  
7 them about the project.

8 Q. What year is that?

9 A. This year, 1990.

10 Q. Now, have you received any specific oral or  
11 written directions as to what you should do?

12 A. For the sales tape I...we discussed...I went out  
13 on several occasions to videotape the foals because there  
14 were different problems. I probably went out four...four  
15 times to videotape different mares and foals. And I did  
16 receive a letter with a typed sheet.

17 MR. MONAHAN: Your  
18 Honor, I'm going to object to this line of questioning as  
19 totally irrelevant to the case. The fact that she may have  
20 taken some videotapes, it seems to me, to have no  
21 relevancy at all and I suggest that this line of questioning  
22 be circumscribed accordingly.

1                                   **MR. FLANNERY:**     Your  
2     Honor, I understand that there have been certain  
3     directions which I may argue are admissions. That is,  
4     directions and descriptions of these foals in relationship  
5     to Moronjo. And that's the line of questioning I'm  
6     pursuing right now.

7                   And I also think, I think the conduct of  
8     Marefield Meadows with these foals is important. I think  
9     it's also important what they had to say and I'm about to  
10    ask her what her directions were.

11                               **THE COURT:** Did you want  
12    to say something?

13                               **MR. CREMINS:** Just so the  
14    record is clear on this point, I've said this before and I'm  
15    going to say it again to Your Honor and Counsel.

16                   I take the position, absolutely take the  
17    position, that if somehow or other you believe there is a  
18    contract in this case and my client ends up having to pay  
19    damages for breach of contract, I take the position that  
20    we, Mr. White, becomes the owner of every ill begotten,  
21    illegal breeding of what amounts to his horse as of March  
22    9 and any information that we can get into this record

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1 dealing with the foals of Moronjo, I think is, A, not only  
2 relevant, but critical on the issues of set-offs and  
3 damages.

4 I don't want there to be any mistake because  
5 I've been silent all morning. Basically that was my  
6 position to start with, it is now and it will be at the end  
7 of the case, Your Honor.

8 I have never talked to this lady, I don't know  
9 what her evidence is going to be, but if it deals with  
10 Moronjo foals, I think you ought to hear it and hear all of  
11 it.

12 **MR. FLANNERY:** I believe,  
13 that as far as what her testimony is going to be, she was  
14 told by Marefield Meadows that they bought a mare  
15 specifically to be covered by Moronjo in 1989.

16 And I think that's very relevant to our argument  
17 from the beginning about their conduct and how  
18 important it was for them to have either an agreement on  
19 breeding rights and to have the horse and why that was  
20 a material element of any, quote, agreement before there  
21 could be an agreement.

22 **THE COURT:** Well, it seems

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1 to me that it could be relevant. I'm going to admit the  
2 testimony.

3 **MR. FLANNERY:** Thank you,  
4 Your Honor.

5 Q. You said that you received correspondence?

6 A. Mm-hmm. (Indicates affirmatively).

7 Q. And on or about what date did you receive  
8 correspondence?

9 A. It was in August some time. I had taped the  
10 foals and I was preparing to put the audio on the video.  
11 And I must add that this is...the tape that I do have is  
12 not a final tape by any means. It hasn't been approved  
13 for final payment or anything like that.

14 And I have been trying to get together with the  
15 Marefield Meadows people, but there have been other  
16 things taking up their time recently and so that the video,  
17 the audio that exists on this tape was to be changed.

18 Q. Okay. Now, do you have that correspondence  
19 with you?

20 A. Yes.

21 Q. May I see it, please?

22 A. I mean, it basically says what I am to put in the

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1 audio of the tape and is what ended up on the audio of  
2 the tape.

3 Q. Okay. Now, you've handed me two documents  
4 that we will mark for identification. One is a letter and  
5 one is some enclosure?

6 A. Right.

7 Q. And you received them at the same time?

8 A. Yes.

9 MR. FLANNERY: Could we  
10 mark these Defendant's exhibit...

11 Q. Are these your only copies?

12 A. Mm-hmm. (Indicates affirmatively).

13 MR. FLANNERY: Your  
14 Honor, if we could do the same thing we did before,  
15 perhaps, and deem these marked...if there is no objection  
16 from counsel...and have the copies become the exhibits.  
17 That would be Exhibit 12 for the letter and 13 for the  
18 attachment.

19 THE COURT: All right, that  
20 will be permitted.

21 (WHEREUPON, the documents referred to were marked  
22 Cross- Defendant's Exhibit #12 and #13 for

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1 Identification.)

2 MR. MONAHAN: Did I  
3 understand you to say they would be admitted, Your  
4 Honor?

5 THE COURT: No, permitted.  
6 We're going to copy the originals at the next break and  
7 substitute them for the originals. If you have any  
8 objection, I'd be glad to hear it.

9 MR. MONAHAN: Well, since  
10 I haven't seen them I don't know, sir.

11 MR. FLANNERY: I'm  
12 preparing to show them to Counsel, because I don't  
13 believe anybody has seen them. I haven't seen them,  
14 myself.

15 (WHEREUPON, the Court and the Clerk conferred  
16 inaudibly.)

17 Q. If I can direct your attention to what has been  
18 deemed marked Exhibits 12 and 13 by the Cross-  
19 Defendant. 12 is the letter of correspondence from  
20 Maxine Mickle to you, is that correct?

21 A. Yes, sir.

22 Q. And does she make reference to some copies

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1 she prepared for you to use in connection with your  
2 videotape?

3 A. Yes.

4 Q. And is what's been marked for identification  
5 Exhibit 13, the proposed copy that she offered you?

6 A. Right. I was told to, you know, improve upon  
7 the English and whatever I wanted to do, but the basic  
8 facts about each of the foals and the one mare for sale is  
9 there.

10 MR. FLANNERY: I offer  
11 these documents, Your Honor.

12 THE COURT: All right, if  
13 there is no objection they will be admitted.

14 (WHEREUPON, Cross-Defendant's Exhibits #12 and #13  
15 for Identification were received in Evidence.)

16 Q. Now, on this document did you have any  
17 conversation about the foal, Mantissa, with either Maxine  
18 or...Maxine Mickle, pardon me, or Marion Poynter?

19 A. I had many conversations in preparing to go out  
20 and videotape and also when I went to videotape and  
21 then also afterwards when I was preparing the text.

22 Q. And similarly, did you have conversations about

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1 the foal, Miranda?

2 A. Yes, sir.

3 Q. And both of those foals are mentioned in the  
4 copy that was provided you by Maxine Mickle, is that  
5 correct?

6 A. Yes, sir.

7 Q. They describe, in relation to Miranda, the...

8 MR. MONAHAN: Your  
9 Honor, there of course is no controversy as to what those  
10 documents state. Therefore...

11 MR. FLANNERY: Okay.

12 MR. MONAHAN: ...I don't  
13 think it's appropriate for Mr. Flannery to proceed to read  
14 portions of them.

15 MR. FLANNERY: What I  
16 would like to do, then, is to read portions of this  
17 document for the record and then ask the witness  
18 questions about it.

19 Q. Under Flower Bow, identified as the mother of  
20 Miranda with Moronjo the father, it states in part, quote,  
21 "At the age of 21 she..." referring to Flower Bow, "...  
22 was purchased by Marefield Meadows for the specific

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1 purpose of breeding to Moronjo," end of that quote.

2 Did you have any conversation with Maxine  
3 Mickle or Marion Poynter about Flower Bow and/or  
4 breeding to Moronjo?

5 A. No.

6 Q. So, that's the limit of the communication you  
7 had?

8 A. That was the limit of it and I think that's what  
9 ended up in the video but, you know, it hasn't been  
10 finally approved.

11 Q. Was there any discussion of when they hoped  
12 to sell these foals?

13 A. No. I know that they have been advertising  
14 them quite a lot in some of the national horse  
15 publications and I think people like to sell their horses as  
16 soon as they can.

17 Q. Now, to your knowledge, have they stated any  
18 price or range of prices for the various foals, specifically  
19 Mantissa and Miranda?

20 A. No, I was never informed nor did I ask.

21 Q. Now, in connection with this project, you did  
22 prepare a tape of these foals, is that correct?

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1 A. Yes, sir.

2 Q. And you said that it's not in final form. Has  
3 this tape been shown publicly or privately at any time  
4 since you have prepared it?

5 A. Yeah, I've had different people review it and  
6 I've done a demonstration tape for some of my different  
7 videos that I have done. It includes a previous video I  
8 did for Marefield Meadows and it included part of the foal  
9 video.

10 Q. Did you bring a copy of that video with you  
11 today?

12 A. Yes, sir.

13 Q. And during the break did you, at my request,  
14 view the tape to the portion involving Moronjo?

15 A. Yes.

16 Q. And...

17 A. Well, it's at the beginning.

18 Q. Well, is the Moronjo portion the first part of the  
19 tape?

20 A. Yes.

21 MR. FLANNERY: And, Your  
22 Honor, if we could deem that marked Defendant's...

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1 Q. Let me ask you another question. How long is  
2 the portion involving Moronjo?

3 A. It's about seven minutes. The whole tape is  
4 about 15 minutes.

5 MR. FLANNERY: If we  
6 could, Your Honor, I would like to have that videotape  
7 which is in the machine deemed marked Cross-  
8 Defendant's Exhibit 14 and to have it played at this time.

9 THE COURT: If there's no  
10 objection.

11 MR. MONAHAN: Yes, sir, I  
12 don't think that's relevant to this case, since the witness  
13 prepared that she prepared this tape. It's not a  
14 statement by my client. My client's statement is  
15 contained in the exhibit previously entered into evidence.

16 The tape is the product of this witness. I'm  
17 sure she did an excellent job, I'm not questioning her  
18 excellence, but it is her tape.

19 What my clients did is on record in terms of a  
20 letter and a basis for a narrative by this witness which  
21 she was to edit and put together, both in terms of the  
22 pictures and the dialogue. And I don't think that,

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1       therefore, it's relevant.

2                               **MR. FLANNERY:** I'll wait on  
3       Mr. Cremins and see where he comes...

4                               **MR. CREMINS:** It's relevant  
5       because we may have a claim to the property that's going  
6       to be shown in this tape, Judge, and I would like to see  
7       it.

8                               **MR. MONAHAN:** Judge, the  
9       fact that he would like to see it doesn't make it relevant.  
10      I know he might like to see it, my children might like to  
11      see it.

12                              **MR. FLANNERY:** Well, Your  
13      Honor, I think that the fact finder is in a position to  
14      evaluate what is the value of such foals. I think it is  
15      probably evident from the foals exactly what is the  
16      motivation here to either violate the contract, if there  
17      was one, in which case those foals should be ours, or to  
18      explain why there wasn't an agreement and why no one  
19      in their right mind would consider there was an  
20      agreement in the absence of making an express provision  
21      to protect these foals so that they could keep them for  
22      themselves.

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1 THE COURT: Well, it might  
2 be helpful to the Court. I'll overrule the objection and  
3 see the movie.

4 (WHEREUPON, the tape referred to was marked Cross-  
5 Defendant's Exhibit #14 for Identification.)

6 MR. FLANNERY: Now, Miss  
7 Elgin, you will have to come down, with the Court's  
8 permission, come down.

9 THE COURT: She may.

10 MR. FLANNERY: And if I  
11 may stand over by the witness stand so I can see...

12 THE COURT: Can you turn  
13 it a little more. I can see it all right.

14 MR. CREMINS: May I come  
15 over and stand...

16 THE COURT: You gentleman  
17 may...you can turn it even more, if you wish, I can still  
18 see it. Even more.

19 (WHEREUPON, the videotape was shown to the Court.)

20 MR. MONAHAN: Your  
21 Honor, at this point I would move that the Court  
22 specifically exclude the evidence with respect to the

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1 third foal, Racurious, which the tape stated was born in  
2 1989 and, therefore, would have been covered before  
3 this dispute between the parties arose.

4 MR. FLANNERY: I don't  
5 have any problem excluding it, either.

6 THE COURT: All right, it  
7 will be excluded.

8 MR. FLANNERY: I think  
9 that's an appropriate observation.

10 CONTINUATION OF DIRECT

11 EXAMINATION BY MR. FLANNERY:

12 Q. During the showing of that videotape, I tried to  
13 review the transcript or proposed copy that you received  
14 by Maxine Mickle and it seemed to compare in almost all  
15 respects, is that a correct analysis of the...

16 MR. MONAHAN: Your  
17 Honor, I will submit that you have now heard the tape,  
18 you've got the information written in front of you, this is  
19 not an appropriate question.

20 MR. FLANNERY: I withdraw  
21 the question and I think Counsel is correct.

22 THE COURT: All right.

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1                   **MR. FLANNERY:** I have no  
2 further questions, Your Honor.

3                   **THE COURT:** All right.

4                   **MR. FLANNERY:** The only  
5 thing left is to replace the original copies.

6                   **THE COURT:** All right, sir.

7                   **MR. FLANNERY:** Thank you.

8                   **THE COURT:** Cross?

9                   **CROSS EXAMINATION**

10                  **BY MR. MONAHAN:**

11                  **Q.** There is only one question which I have. In the  
12 cover letter which indicated that you have perhaps  
13 wished to rearrange the order in which the foals appear  
14 on the tape, did you in fact do that?

15                  **A.** Yes, sir. I don't remember which ones. I think  
16 she put them in the order that I videotaped them, so...for  
17 my ease, but then I...I felt it was logical to group them  
18 by stallion. And then I made the decision to start with  
19 Moronjo.

20                  **Q.** Well, let me just ask, there is some handwriting  
21 on the letter, is that yours or hers?

22                  **A.** That's mine and that was not in...

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1 Q. So, that was added?

2 A. Yeah.

3 Q. That was added.

4 A. Up-dated information.

5 Q. And you took her basic bare bones...

6 A. Right.

7 Q. ...information and you wrote the audio and it  
8 was your decision to group in a different order and which  
9 ones to show first?

10 A. Yes. And, as I said, it hasn't been...has not  
11 met final approval.

12 MR. MONAHAN: Thank you.

13 THE COURT: All right, any  
14 reason to hold...excuse me.

15 MR. CREMINS: No  
16 questions.

17 THE COURT: Any reason to  
18 hold the witness?

19 MR. MONAHAN: None on  
20 my part, Your Honor.

21 MR. FLANNERY: No, Your  
22 Honor. The only thing we have to be aware of is this is

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1 her equipment, as I understand it.

2 THE COURT: All right, you  
3 are free to leave, if you like. You may have some  
4 problem getting your equipment. If this is all yours, you  
5 may need a little more time.

6 A. Okay.

7 THE COURT: We will go on  
8 until about 12:30 and then break for lunch, but you may  
9 step down, now.

10 A. Okay.

11 THE COURT: You can just  
12 leave it there and come back.

13 All right, do you have other witnesses?

14 MR. FLANNERY: Yes, we  
15 do, Your Honor. I would like to call Mrs. Lorenz.

16 THE COURT: All right.

17 MR. FLANNERY: I don't  
18 want to start now and...

19 THE COURT: Do you have  
20 any other witness that you could call that would not take  
21 very long that we could...

22 MR. FLANNERY: I don't

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1 think I have a short one. What I was going to propose is  
2 that we come back now rather than start this off, but  
3 whatever is the Court's pleasure.

4 **THE COURT:** Do you want  
5 to say something?

6 **MR. MONAHAN:** Your  
7 Honor, I may have misunderstood, but I thought that  
8 when Dr. Poland left the stand it was agreed that she  
9 would be brought back in before any other witnesses.

10 **THE COURT:** I think you're  
11 right about that, I overlooked that.

12 **MR. MONAHAN:** She's been  
13 advised of that and she's sitting out there.

14 **THE COURT:** Yes, I  
15 overlooked that. Maybe we could finish with her in just  
16 a few minutes. Let's do that.

17 All right, let's complete her.

18 **HELEN POLAND,** having been previously sworn by the  
19 Clerk, was recalled and testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MR. MONAHAN:**

22 Q. Dr. Poland, may I address some questions to

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1 you on another subject.

2 Are you the, I'll say, the regular veterinarian  
3 for Marefield Meadows?

4 A. Yes, I am.

5 Q. And does that involve your regular attendance  
6 at the farm?

7 A. Yes, it does.

8 Q. Who had the veterinarian responsibility for  
9 Moronjo while he was at the farm?

10 A. I was responsible.

11 Q. For the entire period that he was there at the  
12 farm?

13 A. I believe so.

14 Q. Now, would you characterize his condition  
15 when you first took him over as a patient, if that's the  
16 proper word?

17 MR. FLANNERY: I'm sorry,  
18 I can't hear you, Counsellor.

19 MR. MONAHAN: I'm sorry.

20 Q. I said, can you describe his condition when you  
21 first...is the term patient?

22 A. Yes, that's acceptable.

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1 Q. All right. When you first took the stallion,  
2 Moronjo, into your care as a patient, what was his  
3 condition?

4 A. He was purchased as a three-year-old and I did  
5 the examination on him at that time and he was in good  
6 condition and he remained in fairly good condition during  
7 that time.

8 Q. Now, when you say "during that time"...

9 A. He was.

10 Q. ...to what time are you referring, the entire  
11 time you were seeing him or during the initial stages?

12 A. He was never really sick in the terms that you  
13 would think of a horse as requiring medication or  
14 anything like that.

15 Q. All right. What, if any, unusual conditions did  
16 he have?

17 A. He had...he colicked at one point which is a  
18 gastrointestinal upset. I think he did that one or two  
19 times.

20 Q. Is that unusual in a horse of this type?

21 A. It's not unusual for mild colic in horses. It is  
22 unusual to happen frequently, but it happened...I

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1 forget...I think twice in two years.

2 Q. You would not then characterize that as  
3 frequent?

4 A. No.

5 Q. Did he suffer any ill effects from the colic?

6 A. No, that was very short. He also had sore  
7 raised areas underneath the saddle a year later. That  
8 was due to irritation of the saddle. That...

9 Q. Could you put a date on that event?

10 A. Yes, that was April 18th, 1988.

11 Q. All right.

12 A. And that responded to topical medication.

13 Q. And that was before, then, November of 1988?

14 A. Yes.

15 Q. You said, April, I believe.

16 A. Right.

17 Q. All right, any other conditions?

18 A. I'm trying to look here. He was lame June 9th  
19 of '88.

20 Q. Did that result in any permanent disability?

21 A. That did not.

22 Q. Okay.

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1           A.   And he responded to that. All of this is mostly  
2 routine work. In August 17th of '88 he had some  
3 swelling on his central abdomen, probably another  
4 irritation due to the girth of the saddle.

5           So, he was checked...I mean, they were all  
6 relatively...these were relatively minor things. We did a  
7 physical exam in March 2nd of '89. I guess there had  
8 been some concern about how he was behaving during  
9 exercise. We exercised him for ten minutes and heart  
10 rate was normal and his lungs were clear at that point.

11          Q.   So, nothing unusual then...

12          A.   I think at that point they were concerned that  
13 he wasn't behaving correctly during exercise. I'm not  
14 sure why that was, but he was on a lunge line.

15          Q.   My question is, was anything unusual found in  
16 the examination?

17          A.   No.

18          Q.   All right.

19          A.   And he did have, later on, a skin irritation. He  
20 had hives and what is urticaria, large, raised swellings on  
21 his left side that was an allergic reaction. And then he  
22 did have a fungus which was very prevalent that summer.

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1 Q. And did he recover without incident from those  
2 things?

3 A. Yes.

4 Q. And you were constantly treating him?

5 A. Yes, I was.

6 Q. Do you know when you last saw this horse?

7 A. I did an insurance exam at Middleburg  
8 Equestrian Center on December 5th, 1989.

9 Q. And at that time, December 5th, 1988...excuse  
10 me...

11 A. '89.

12 Q. ...1989, would you describe first of all, his  
13 appearance and then his condition from a medical point  
14 of view?

15 A. He was in...he was overweight, probably, but  
16 medically, heart, eyes, lungs were in normal condition,  
17 his feet were in good condition and he was not lame.

18 Q. Did you find anything of a physical nature other  
19 than the fact that he needed to lose some weight?

20 A. No. No, he had to be exercised for the  
21 insurance exam, jogging back and forth, and there was no  
22 sign of any impairment.

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1 Q. And he had not foundered?

2 A. No, he had not foundered.

3 Q. And I assume he wouldn't have been overweight  
4 if he could have been exercised?

5 A. I think when he was at Marefield, even turning  
6 him out in a paddock he didn't exercise himself.

7 Q. Is that his nature or habit, is that what you're  
8 saying?

9 MR. FLANNERY: Objection.  
10 Nature or habit, is this what a veterinarian testifies to,  
11 Your Honor, nature or habit?

12 THE COURT: Well, it's sort  
13 of nebulous.

14 Q. Well, let me ask you this: Was this an active  
15 horse or was he passive...

16 MR. FLANNERY: Objection...

17 MR. MONAHAN: Well, she  
18 could have said that from her observations.

19 MR. FLANNERY: I don't  
20 know how she can say that. That's why I made the  
21 objection.

22 THE COURT: Well, she

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1 attended the horse during the entire summer, she says.  
2 I think she can answer that. Keep in mind that these  
3 terms are sort of relative and rather nebulous in  
4 description. Maybe she has a medical term she could  
5 use.

6 A. For his mental?

7 THE COURT: A medical  
8 term rather than passive or active or lethargic, can you...

9 A. Actually, lethargic is a medical term.

10 THE COURT: Is it?

11 Q. Can you just describe his condition on being  
12 turned out in the pasture, that's all I'm asking.

13 A. He was relatively quiet when he was turned out  
14 in his pasture. He didn't exercise himself.

15 THE COURT: All right.

16 Q. Thank you very much.

17 MR. MONAHAN: That's all  
18 I have, Your Honor.

19 MR. FLANNERY: I just have  
20 a couple of questions, Your Honor.

21 THE COURT: All right, a  
22 couple of questions.

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**CROSS EXAMINATION**

**BY MR. FLANNERY:**

Q. What were the dates that you said that the colic occurred?

A. December 7th, '87.

Q. Was there a second date? I thought that's what I heard.

A. I couldn't find it. I was looking for it. I thought that he had colic, but now that I think about it, it was another horse. So, that was the only time he colicked.

Q. Colic is not a trivial condition, when is colic...

A. It can be...colic describes any kind of abdominal pain. So, it can be from mild gas pain to displaced intestines.

In this case, he had some mild abdominal discomfort and that was treated and disappeared that one time.

Q. And isn't it true that in the medical profession they don't know what causes colic?

A. There are innumerable causes of colic. I mean, we can...we know some of the causes, but not all.

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1 Q. One of them has to do with diet, isn't that  
2 right?

3 A. Yes.

4 MR. FLANNERY: No further  
5 questions.

6 THE COURT: All right.

7 MR. CREMINS: I have a  
8 couple, Judge, if the Court will indulge me on it.

9 THE COURT: All right, go  
10 ahead.

11 **CROSS EXAMINATION**

12 **BY MR. CREMINS:**

13 Q. When you did your physical exam on March 2,  
14 1989, was the horse overweight?

15 A. March 2. I did not make any notation about the  
16 horse being overweight.

17 Q. And can you conclude from that that he  
18 probably wasn't or you would have noted it?

19 A. He wasn't grossly overweight or I would have  
20 noticed it...noted it.

21 Q. Since you did note it nine months later on  
22 December 5, 1989, can we then say that he was grossly

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1 overweight in your insurance exam on December 5, '89?

2 A. I wouldn't call him grossly overweight. I mean,  
3 I was asked what his general condition was.

4 Q. I thought you just told me the only way you  
5 would put it down was if he was grossly overweight.

6 A. I didn't write it down on December 5th. I was  
7 asked what I saw as his condition.

8 THE COURT: Well, now,  
9 excuse me. I couldn't quite understand that, did you say  
10 he was or was not grossly overweight?

11 A. He was overweight, not grossly overweight.

12 THE COURT: Not grossly,  
13 all right.

14 Q. Was he short of breath?

15 A. On?

16 Q. Either one of them, March or December.

17 A. No.

18 Q. There are, in the horse industry, a number of  
19 occasions when you do examinations on animals. I'm not  
20 limiting this to Moronjo, now, I'm talking about  
21 generally, correct?

22 A. Yes.

1 Q. For insurance purposes would be one. The  
2 insurance company wants you to certify the soundness of  
3 the animal, right?

4 A. That's right.

5 Q. And, obviously, if the animal is sick you go out  
6 and do an exam. How about in the transfer of animals in  
7 a sale of these horses, do you regularly do a veterinarian  
8 exam?

9 A. The veterinary examination is requested of me  
10 by the buyer.

11 Q. That wasn't my question. My question was, do  
12 you regularly, as part of your duty, do examinations on  
13 horses when they're to be sold?

14 A. I'm not sure I understand your question. For  
15 the seller?

16 Q. Which part of it don't you understand?

17 A. Are you asking me do I examine the horse for  
18 the seller?

19 Q. I'm asking you if you examine the horse, make  
20 a physical exam. Is that something you regularly do?

21 A. Well, I think I answered your question. I do  
22 purchase exams, but that is not quite...I'm not...I'm not

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1 sure where you're leading me.

2 Q. Well, if I could be sure of the answer I could  
3 ask the next question and then we both would know  
4 where...

5 A. Okay. Well, what I...I can explain to you that  
6 when people are buying and selling horses the buyer, who  
7 is usually already my client, will ask me to come and look  
8 at the horse and do a complete physical exam before he  
9 buys contingent on the findings of my exam to buy the  
10 horse.

11 Q. Sure.

12 A. Is that what you were asking?

13 Q. Yes, yes.

14 A. And I did that on Moronjo when he was  
15 purchased by my clients at Marefield Meadows.

16 Q. And when he was purchased in 1987?

17 A. Yes.

18 Q. But you did not do one in the spring of '89 for  
19 the so-called purchase by Mrs. Lorenz?

20 A. No, I was never asked to do it.

21 MR. CREMINS: I don't have  
22 anything else, Judge.

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1 **THE COURT:** All right, sir.  
2 Anything in response?

3 **MR. MONAHAN:** Just a final  
4 question.

5 **REDIRECT EXAMINATION**

6 **BY MR. MONAHAN:**

7 Q. You did say that the colic was in 1987?

8 A. That's right.

9 Q. And there were no residual results of that?

10 A. There were no residuals.

11 Q. And you say that sometimes it can be the result  
12 of diet?

13 A. It can be. It can...

14 Q. And did you diagnose this as a result of diet?

15 A. No, I did not.

16 Q. Were you familiar with the dietary habits of the  
17 horse, Moronjo?

18 A. Yes, I was.

19 Q. Were they in accordance with your program?

20 A. They were...he was not on my program.

21 Q. Did you approve of or...

22 A. I...

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1 Q. ...or find satisfactory the diet habits or dietary  
2 program of the horse, Moronjo, after that date?

3 A. I did not...still did not provide any diet for him  
4 at that point.

5 Q. I see, but did you know what he was eating?

6 A. His diet changed and he got a more complicated  
7 diet than the other horses on the farm.

8 Q. Did you try to follow the diet which he was  
9 eating?

10 A. I didn't go back and analyze it, so it may have  
11 been...I can't really answer that question.

12 Q. Well, are you aware of any problems today?

13 A. No.

14 Q. Now, when you say that you do, in response to  
15 Mr. Cremins, that you do a physical examination of the  
16 horses for the buyer, is that on request?

17 A. Yes, the...I do it for the buyer, requested by  
18 the buyer.

19 Q. And in situations where not a whole horse, but  
20 interest in a horse is changing and the percentages are  
21 changing as to the owners, do they always have a  
22 physical?

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1           A. Not always, but I have been requested by  
2 share...people who want to buy a share in a horse to do  
3 a physical exam on a horse they want to buy a share into.

4           Q. When they're going into the horse?

5           A. Yes.

6           Q. And do horses ever exchange hands without  
7 examinations?

8           A. Yes.

9                           MR. MONAHAN: That's all.

10                          MR. FLANNERY: I have just  
11 a question to follow up on this new area. Excuse me just  
12 a second.

13           **RECROSS EXAMINATION**

14           **BY MR. FLANNERY:**

15           Q. At Marefield Meadows did you actually have  
16 several horses you followed?

17           A. Yes, I did.

18           Q. How many horses?

19                           MR. MONAHAN: I'm sorry,  
20 what was that question you asked her?

21                          MR. FLANNERY: The  
22 question she answered was if there were several horses

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1 at Marefield Meadows that she treated or followed.

2 MR. MONAHAN: Oh.

3 Q. How many horses?

4 A. Two.

5 Q. Which ones?

6 A. Galarette and I don't remember the name of a  
7 yearling.

8 Q. Did they lose any horses?

9 A. Galarette.

10 Q. Died?

11 A. Yes after a protracted illness.

12 MR. FLANNERY: No further  
13 questions.

14 THE COURT: All right. We  
15 will take a lunch break now. Do you need the Doctor any  
16 longer? Any objection to her being excused?

17 MR. MONAHAN: No, Your  
18 Honor.

19 MR. CREMINS: No  
20 objection.

21 MR. FLANNERY: None, Your  
22 Honor.

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1                                   **THE COURT:** All right, you  
2   are free to leave, Doctor.

3                   We will take a lunch break. I have a question  
4   of Mr. Cremins. I don't think it concerns the rest of you,  
5   but you are welcome to step up to the bench. There's  
6   just a question of some paper here that's in the  
7   pleadings. I don't want to shut anybody off, but would  
8   you step up a minute, Mr. Cremins. You're welcome to  
9   listen.

10                                   **B E N C H**

11   **CONFERENCE**

12                                   **THE COURT:** In the original  
13   Bill of Complaint here, your client, Mr. Craig White is not  
14   named, but he does appear in the answer to the Cross-  
15   Bill. Is that his first appearance in the suit or was  
16   he...he wasn't left out of the original Bill of Complaint by  
17   mistake, was he?

18                                   **MR. CREMINS:** Well, what  
19   happened I think, Judge, is Mrs. Lorenz filed suit to  
20   dissolve the partnership. Marefield Meadows then  
21   counterclaimed and said, you made a contract to buy this  
22   horse. At that point Mrs. Lorenz brought Craig White and

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1 the law firm into the case as Third Party Defendants.

2 THE COURT: I see.

3 MR. CREMINS: That claim  
4 was settled. The first time we ever appeared before you,  
5 Judge, was when Mr. Flannery and I settled our claim...

6 THE COURT: Yes, he  
7 wanted to dismiss the third party.

8 MR. CREMINS: And that  
9 was being dismissed. I assume it was, I assume that  
10 Order was entered.

11 THE COURT: Well, I think  
12 it is. I think Mr. Monahan said he wanted about a week  
13 to decide whether he was going to interpose any real  
14 objection and ask for some time. Consequently I did not  
15 enter this Order and I was...

16 MR. CREMINS: I think it  
17 ought to be. I don't think there was ever any...I don't  
18 think he came up with any objection.

19 THE COURT: Well, that's  
20 my point.

21 MR. CREMINS: He then  
22 added...just to complete the cycle....all of us, I believe

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1 assumed, Judge, that you had signed that and that the  
2 lawyers are out of the case.

3 Then Mr. Monahan added me as a Defendant and  
4 that's why I'm here on that.

5 THE COURT: He brought the  
6 lawyers back...

7 MR. MONAHAN: You were  
8 added as a Defendant before the settlement.

9 MR. CREMINS: I  
10 understand, you've got a motion pending, I understand.

11 THE COURT: Well, Mr.  
12 White is still in the case, isn't he?

13 MR. CREMINS: Mr. White  
14 and the law firm are both in it.

15 THE COURT: Because he  
16 brought them back in?

17 MR. CREMINS: Yes, sir.

18 MR. MONAHAN: They never  
19 were out. Chronologically they were never out.

20 THE COURT: Well, I think  
21 I ought to enter this Order and I'll ask you, if you have no  
22 objection, to endorse it so I can enter it, then.

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1                   **MR. MONAHAN:** No, sir, I  
2 wrote you a letter several months ago saying that I...

3                   **THE COURT:** Yes, I  
4 remember that, it's in the file. We can take the time to  
5 look at it, if you want.

6                   All right, if you will just pass it. If you  
7 gentlemen will kindly put your signatures of your  
8 endorsements on that Order there and then I'll enter it.  
9 I just want the record to be complete.

10                  All right, Mr. Flannery, you can pick up these  
11 original exhibits.

12                  **MR. FLANNERY:** Oh, thank  
13 you, Your Honor. We need to have these copied.

14                  **THE COURT:** We just copied  
15 them.

16                  **THE CLERK:** I have copied  
17 them.

18                  **MR. FLANNERY:** Oh, you  
19 did?

20                  **THE COURT:** Yes.

21                  **MR. FLANNERY:** I'll give  
22 them to the witness when we break, then.

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1 THE CLERK: Thank you.

2 THE COURT: You can copy  
3 that and pass it around when they come back. We will  
4 come back at 1:40.

5 BAILIFF: All rise.

6 (WHEREUPON, a luncheon recess was taken.)

7 BAILIFF: Be seated and  
8 come to order. This Court is again in session.

9 THE COURT: Let's see now,  
10 where were we?

11 MR. FLANNERY: We were  
12 ready to call Mrs. Lorenz, I believe. I don't think there  
13 was anything else.

14 THE COURT: Yes, I think  
15 that's right.

16 MR. FLANNERY: I believe  
17 she was sworn yesterday.

18 THE COURT: That's  
19 correct, she is still under oath.

20 REGULA LORENZ, having been previously sworn by the  
21 Clerk, was recalled and testified as follows:

22 DIRECT EXAMINATION

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