

"USA Cycling Politics" - Les Earnest

0001

1 DISTRICT COURT, EL PASO COUNTY, COLORADO
2 20 E. Vermijo Street
3 Colorado Springs, Colorado 80903

4 _____
5 Plaintiff:

6 BRET WADE

7
8 vs.

9
10 Defendant:

COURT USE ONLY
Case No. 01CV2032

11
12 USA CYCLING

13 _____
14 Scheduling Attorney:

15
16 ANDREW ROSEN, ESQ.
17 Stone, Sheehy, Rosen & Byrne, P.C.
18 1510 28th Street, #100
19 Boulder, CO 80303
20 Phone No.: (303) 442-0802
21 Reg No.: 9930

22 _____
23 DEPOSITION OF STEVE JOHNSON
24 August 23, 2001
25 _____

0002

1 DEPOSITION OF STEVE JOHNSON, taken on behalf of
2 the Plaintiff pursuant to Notice, at 2 North Cascade, Suite
3 1080, Colorado Springs, Colorado, on August 28, 2001, at
4 approximately 11:08 a.m., before Karen S. Voepel,
5 Registered Professional Reporter and Notary Public for the
6 State of Colorado.

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A P P E A R A N C E S

For the Plaintiff: ANDREW ROSEN, ESQ.
Stone, Sheehy, Rosen & Byrne, P.C.
1510 28th Street, #100
Boulder, CO 80303

For the Defendant: BARTON ENOCH, ESQ.
Enoch & Enoch
2 North Cascade, Suite 1080
Colorado Springs, Colorado 80903

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1		WHEREUPON, the following proceedings were	
2	had:		
3		The following Deposition was taken pursuant	
4	to the Colorado Rules of Civil Procedure.		
5		WHEREUPON,	

6

STEVE JOHNSON

7 the witness herein, being first duly sworn to state the
8 whole truth, testified on his oath as follows:

9

EXAMINATION

10 BY MR. ROSEN:

11 Q Do you want to state your full name for the
12 record, please?

13 A Sure. It's Stephen -- S T E P H E N -- middle
14 initial C, last name Johnson.

15 Q And Mr. Johnson, have you ever had the pleasure
16 of having your deposition taken before?

17 A One time, yeah.

18 Q Okay. And before you took the deposition, did
19 they explain how a deposition works to you?

20 A Uh-huh.

21 Q Do you have any questions about what's going to
22 happen today?

23 A I don't think so, no, but I reserve the right to
24 stop and ask questions.

25 Q Absolutely. If at any point in time you don't

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1 understand the question I'm asking, please ask me to
2 rephrase it, I'll be happy to do so.

3 It's important for the court reporter that you
4 answer yes or no, not uh-huh or huh-uh or nod your head.
5 It's difficult for the court reporter to get that down
6 correctly. And --

7 A This is not videoed?

8 Q And the third rule, which is just what happened,
9 and that is you don't talk when I'm talking and I will try
10 not to talk when you're talking, because that makes it
11 really hard on the court reporter, okay?

12 A Absolutely.

13 Q Thank you. Tell me what your function is, your
14 job description is for USA Cycling, which I'll refer to
15 today probably more as USAC?

16 A Chief operating officer.

17 Q How long have you been in that capacity?

18 A A little over a year, since last June.

19 Q In your capacity as chief COO, to whom do you
20 directly report?

21 A The CEO, Lisa Voight.

22 Q And who reports directly to you within the staff?

23 A That's an interesting question because this year
24 we're in the process of reorganizing the company and at this
25 point in time everybody reports -- all the managing

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1 directors report directly to Lisa Voight. So we're not sure
2 who reports to the managing directors.

3 Q The upper level, we'll call the top of the
4 pyramid, reports to Lisa Voight?

5 A Uh-huh.

6 Q And then there's the second tier of people?

7 A Managing directors.

8 Q That includes the COO or chief operating officer?

9 A Our organizational chart has me on kind of a
10 sideline above the managing directors but between the COE.

11 But the directors do not report through me to Lisa Voight.

12 Q And who are the managing directors?

13 A Evan Call, managing director of USCF, and Eric
14 Moore is acting director of NORBA. Bob Tedesco is managing
15 director of NBL. And Evan Call is also serving as acting
16 director of US Pro.

17 Q Is there anybody that -- at the present time in
18 the system that is reporting directly to you versus
19 reporting to directly to Ms. Voight?

20 A For USA Cycling?

21 Q Yes.

22 A No.

23 Q Do the staff people, people below what we're
24 calling the managing directors, do they report to the
25 managing directors?

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1 A Yes.

2 Q And they in turn report to Lisa Voight as it
3 stands right now?

4 A Uh-huh.

5 Q And so in the sense of the chart, you're kind of
6 out in left field?

7 A Kind of, yeah. We have a chief marketing officer
8 who is also out in left field with us. And our chief
9 financial officer sits in a similar position. So basically
10 the mid-level position are the chiefs and are all on the
11 same line.

12 Q How about in terms of hiring and firing staff
13 people, who handles that at the current time?

14 A I work with Lisa on that but the final decision,
15 of course, is hers.

16 Q Okay. Do you also have a relationship with USA
17 Cycling Development Fund?

18 A Foundation.

19 Q Foundation.

20 A I do.

21 Q And I'm going to refer to that as USACDF for
22 simplification purposes.

23 A Executive director.

24 Q And what is the executive director's function in
25 USACDF?

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1 A I work directly with the board. I report to the
2 board directors for USACDF and I have one employee that
3 works underneath me, the development director for the
4 foundation. And we basically work with that group, which is
5 all -- it's a fund-raising group, a philanthropic group to
6 raise money for cycling development programs.

7 Q You're currently compensated by USAC?

8 A Correct.

9 Q Are you also compensated by USACDF?

10 A I am not personally. I would point out that all
11 of the accounts payable, accounts receivable for USACDF are
12 actually handled by USA Cycling. So even my quote/unquote
13 employee, the development director, is a USA Cycling
14 employee but is reimbursed by the foundation. We don't do
15 our own bookkeeping. We use USA Cycling and then pay them a

16 fee for that office.

17 Q And they are, as I understand it, two separate
18 entities, both controlled by separate boards of directors,
19 correct?

20 A That's correct.

21 Q How do you determine your responsibilities when
22 you're on the job as to whom you're working for?

23 A When I'm dealing with USA Cycling issues, I'm a
24 USA Cycling employee. If I'm dealing with USACD foundation
25 issues, I'm working with the foundation.

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1 The foundation is not a very time consuming
2 obligation. It's a very simple organization. The board
3 members themselves are quite busy and as a result, it's not
4 that difficult to manage. I also work about 80 hours a
5 week.

6 Q My condolences.

7 A Thank you.

8 Q I'm going to show you the cover page or the first
9 page of the USA Cycling 2001 annual election that was
10 printed in Cycling USA. And it lists a series of sponsors
11 for Proposition A. Can you tell me which of the people on
12 that list are members of the board of directors of USACDF?

13 A Only one, the first author, Mike Hellman.

14 Q Okay. The other sponsors, are they directors
15 of -- are any of them directors of USAC?

16 A No, they are not.

17 Q Has USAC --

18 A May I ask a question? You mean -- On directors
19 you mean on the board of directors?

20 Q Yes, on the board of directors.

21 A Same answer, no.

22 Q How about with respect to them being trustees of
23 any of the suborganizations? Do any of them serve as
24 trustees, do you know?

25 A One, Frankie Andreau is a trustee of US Pro.

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1 Actually, I have to correct myself. Mari Holden is athlete
2 director on the USA Cycling board. I apologize.

3 Q Okay. So there's one board of director from
4 USACDF, one board of director on the USAC and a trustee of
5 one of the subassociations?

6 A That's correct.

7 Q Have you received, in your capacity as executive
8 director of USACDF, any direction or instruction from that
9 board of directors with respect to taking any position or
10 assisting with respect to the election which is currently
11 before the members?

12 A Yes, the board unanimously approved appointing a
13 PR, get-out-the-vote-campaign, to stump for Proposition A.

14 Q And you have been directed to carry that function
15 out?

16 A Actually, I've hired someone to carry that out
17 for us.

18 Q And who is that person?

19 A Cheryl Herbert. She's --

20 Q Cheryl, did you say?

21 A C H E R Y L.
22 Q Okay. And does she -- Does she come from totally
23 outside these organizations or is she some internal person?
24 A No, she's from totally outside.
25 Q And I assume she's being compensated for her
0011
1 work?
2 A Absolutely.
3 Q And that is being paid by whom?
4 A Again, the checks come from USAC but it's
5 reimbursed from the account of the USA Cycling Foundation.
6 Q So if I understand this correctly, USAC writes
7 the check to pay Cheryl Herbert but there's an accounting
8 that's done and then there's a transfer to USACDF from USAC
9 to cover that expense?
10 A Yes.
11 Q Why is that being done?
12 A Because the foundation is mounting this vote
13 campaign, not us.
14 Q I understand, but why is USACDF not paying her
15 directly?
16 A We don't have any accounting system set up. It
17 was decided very early on that to reduce overhead for the
18 foundation and make sure that most of the money raised went
19 to athlete programs as opposed to cost of overhead with
20 respect to running the foundation organization is that
21 USACDF would handle the foundation.
22 Q Is there some kind of written agreement or is it
23 verbal?
24 A It's a verbal agreement.
25 Q Okay. I assume that USACDF has its own federal
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1 employer identification number?
2 A That's correct.
3 Q Do you know whether or not the payment that is
4 going to be made or have been made to Cheryl Herbert will be
5 reported under USAC's FDIN number or USACDF's FDIN number?
6 A I don't know.
7 Q Is there a CFO or an accountant that's
8 responsible for handling USACDF matters?
9 A There is a USA Cycling chief cycling manager and
10 he handles USACDF accounting as well.
11 Q And that would be?
12 A Tod Sowl. S O W L. And then we have an audit
13 firm, of course.
14 Q Right. Same audit firm is auditing the books of
15 both entities?
16 A Yes.
17 Q Again, wait until I finish, please.
18 A Yes.
19 Q And is Mr. Sowl compensated for the services that
20 he provided to USACDF in addition to the services he
21 provides to USAC?
22 A USACDF pays an administration fee to USA Cycling
23 to cover his general support and assistance. So, yes, he
24 is.
25 Q Okay. Now one of the things that I'd like that

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1 would be helpful today is there was a series of documents
2 that I asked you to produce, and I assume that Mr. Enoch has
3 those.

4 If at any point in time, rather than having to go
5 back over it again, if you're aware of any document that I
6 ask a question about that you have brought today, if you can
7 say I do have a document with respect to that and find it in
8 there and give it to me, it will save time of us having to
9 go over the same information twice. Okay?

10 Do you have any documents today that would
11 reflect anything that we've talked about so far? You said
12 there was no written agreement between the two entities?

13 A Not to my knowledge, no.

14 Q Okay. That's fine. When did you hire Ms.
15 Herbert on behalf of USACDF to try and solicit proxies for
16 Proposition A?

17 A We hired Ms. Herbert mid-June, approximately June
18 13 or 15, but it wasn't initially to solicit proxies.

19 Q Did you say Mr. or --

20 A Ms.

21 Q Ms., sorry. Why was she initially hired in June?

22 A To help design a vote campaign basically.

23 Q Okay. And when was she actually given the task
24 of working on soliciting proxies for Proposition A?

25 A As far as the first time she went into the field

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1 to solicit proxies or as far as --

2 Q When you gave her direction to start that
3 process.

4 A I don't recall specifically.

5 Q Okay. It's my understanding that there were
6 attempts to go out and solicit proxies at least as early as
7 July 15th at Super Week; is that correct? Is that correct,
8 were there were solicitations done?

9 A Yes, I believe so.

10 Q So it would have been sometime before July 15th
11 that she would have been given the instruction to do that?

12 A That's correct.

13 Q Can you tell me what other events, if any, were
14 there solicitations for proxies made of the membership prior
15 to the publication of Cycling USA magazine August/September
16 issue in which the actual ballot information was contained?

17 A None to my knowledge. With -- I guess there
18 would be -- that came out first of August so Junior Road,
19 I'm sorry, Junior National Road Championships there was also
20 a solicitation effort.

21 Q Okay. And what direction did you give to Ms.
22 Herbert in terms of what she was to do or how she was to
23 solicit votes, if you did, in any particular detail?

24 A Actually, I did not give her any specific
25 instructions. She has been hired to come up with a

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1 solicitation campaign and has been pretty much advising me.

2 Q Okay. Do you know has she in fact hired a staff
3 of people to do this for her or is she actually the person
4 going from site to site?

5 A She has gone from site to site. We have of
6 course, as you know, volunteers who work the organization
7 who actually support Proposition 1, so she has been
8 coordinating a lot of volunteer efforts.
9 Regional coordinators have stepped up and
10 volunteered their time, so she has been coordinating all of
11 the individuals who are in the field soliciting votes.
12 Q Do you know who actually went to Super Week and
13 did the solicitation?
14 A I believe it was Cheryl.
15 Q And do you know who actually went to Junior
16 Nationals?
17 A Not entirely. I know we had a regional
18 coordinator there, George Haggerty.
19 Q Okay. Do you know whether Ms. Herbert was also
20 there?
21 A I don't believe she was.
22 Q Okay. And you said Mr. Haggerty is a regional
23 director?
24 A Coordinator.
25 Q For which region is he the coordinator?
0016
1 A Southwest.
2 Q And the regional director I assume is the
3 position that currently exists in USA Cycling, which was
4 basically the consolidation of the district representatives?
5 A That's correct.
6 Q You may or may not know, I was at one time a
7 member of USAC, and I'm familiar with a lot of the structure
8 that has existed. I am no longer a member of USAC, so I may
9 have some knowledge and to the extent you can help me, that
10 would be great.
11 As I understand it, from witnesses that have
12 reported to me, that at Junior Nationals there were people
13 actually approaching riders as they were in a position to
14 roll out for their time trial. Do you know anything about
15 that?
16 A Only what's been communicated to me from a Mr.
17 Basi and a Mr. Howe. I wasn't there, so I have no direct
18 knowledge.
19 Q I think in the correspondence that you had
20 between them, you indicated that you were going to conduct
21 an investigation as to what exactly transpired.
22 A No, I did not indicate that.
23 Q So you don't intend to conduct an investigation
24 of what took place?
25 A No.
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1 Q Why not?
2 A I don't believe it's improper to solicit members
3 to vote.
4 Q Okay. Does USA Cycling have a policy with
5 respect to access to participants while they're in the
6 participant part of an event?
7 A Not to my knowledge.
8 Q Okay. As I understand it, people were at that
9 point in time -- because would it be accurate to say that at

10 that point because USA Cycling magazine had not come out,
11 that there was no general communication or dissemination of
12 the contents of any of the propositions at the time these
13 proxies were being solicited?

14 A That's difficult to say. I think Mr. Earnest's
15 proposition has remained basically unchanged from the time
16 it was posted on his website last year. So that's in the
17 public domain. It's not too difficult to discuss the
18 difficulties of Proposition A versus the current bi-products
19 of USAC. So it's -- they're not that different.

20 Q But the actual publication of the proposal
21 Proposition 1 had not been disseminated in the journal at
22 the time that these proxies were being solicited; is that
23 correct?

24 A Not to my knowledge.

25 Q Do you know whether or not Mr. Haggerty or Ms.

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1 Herbert actually had a copy of Proposition A at the time
2 they were soliciting proxies?

3 A No, I don't.

4 Q And you don't think it's appropriate to make that
5 determination either?

6 A I'm certain Ms. Herbert had a copy because, of
7 course, the materials had gone into our publisher in late
8 July and remained basically in that form until they were
9 published.

10 Q Okay. Do you know -- Speaking of that, do you
11 know what the cutoff date was for submitting information for
12 publication in this particular issue?

13 A It floated quite a bit, so I don't know the exact
14 cutoff date. We actually pushed our publisher to extend the
15 deadline so we could get our clients added into the
16 legislature issue.

17 Q What was your understanding of the cutoff date
18 that existed for any changes to take place with respect to
19 any of the stuff that would be published in that issue of --
20 I'm going to call it CUSA? I believe that's C U S A.

21 A I would say on or around July 20th.

22 Q Okay.

23 A Give or take a day or two. I don't know exactly.

24 Q Does USA Cycling, USAC, have a policy for
25 disseminating license numbers to people who are not staff of

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1 USA Cycling?

2 A Not to my knowledge.

3 Q Okay. If I want to call up and ask for what
4 member number John Doe was, would that information be
5 provided to me?

6 A If you were a proprietor or an official, probably
7 so.

8 Q What if I was not in that kind of a capacity?

9 A I don't know.

10 Q Okay. Are you aware that in fact proxies were
11 signed at these events in which member numbers were not
12 provided because the riders didn't know it when they were
13 asked to sign?

14 MR. ENOCH: Could I clarify one thing? You said

15 "these events," but immediately prior to that you were
16 focusing on Junior Nationals.

17 Q (By Mr. Rosen) Both Super Week and Junior
18 Nationals.

19 A Junior Nationals I'm aware of. Super Week I
20 hadn't heard.

21 Q And what -- Has USAC taken a position with how to
22 deal with those particular proxies?

23 A No, we haven't.

24 Q Who ultimately -- I assume you're going to have
25 to deal with that issue, correct?

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1 A I would assume so.

2 Q And who is going to be the person or persons who
3 will be responsible for making the determination of how to
4 deal with those proxies?

5 A Probably myself and Ms. Voight.

6 Q Do you have, since you now know this information,
7 do you plan on doing this before or after the proxies are
8 submitted?

9 A What do you mean?

10 Q Well, I assume the proxies are going to be turned
11 in. They haven't yet been turned in at this point, is that
12 an accurate statement?

13 A I think so, yes.

14 Q And they have to be turned in sometime, I would
15 assume, prior to the annual meeting, correct?

16 A Uh-huh. Correct.

17 Q Otherwise they won't count, right?

18 A Right.

19 Q And my question is are you going to wait until
20 you see the proxies to decide what you do or are you going
21 to make a preliminary determination with respect to that?

22 A That's a good question. I'll probably make a
23 preliminary determination.

24 Q And do you have any idea when you anticipate
25 doing that?

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1 A No, I don't.

2 Q Are any staff members of USAC involved in this
3 proxy effort or in the effort to obtain votes?

4 A As staff or as volunteers?

5 Q Well, let's talk about if they are staff members.

6 A Yes.

7 Q Okay. And how are those -- were those people
8 brought into the process?

9 A I'm not sure I understand where you're going.

10 Q Well, did they come to you and say I want to help
11 or did you send out a memo to people saying would you like
12 to help or that kind of a thing?

13 A We did not send out a memo asking for help.
14 People have stepped up and offered to help, so they have
15 been given every opportunity to help if they so desire.

16 Q Okay. And what kind of help are those people
17 providing at this time?

18 A Direct solicitation, input into campaign
19 materials.

20 Q So they're helping to write campaign materials?
21 A They're reviewing them.
22 Q So they're looking at the information and
23 commenting on it?
24 A Yes.
25 Q And they're also making direct solicitations?
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1 A That's correct.
2 Q And is that by mail or by telephone or both?
3 E-mail? What forms, I should ask, are they using to direct
4 solicit?
5 A The solicitations require signatures, so it has
6 to be personally. And it's at events and in their own
7 personal encounters with members.
8 Q Okay. And you said that it requires a signature
9 in order to direct solicit. You mean the signature of the
10 member to either give a ballot or to sign a proxy?
11 A Correct.
12 Q Okay. Are there efforts out there to actually
13 have people sign ballots versus the proxies that we talked
14 about, do you know?
15 A Define -- I mean, a ballot is a proxy under our
16 by-law description. They seem to be interchangeable. So
17 are there ballots being sent to individuals?
18 Q In addition to what appears in USA Cycling.
19 A Yes, there are.
20 Q And they're being mailed out to people?
21 A That's correct.
22 Q By staff members of USAC?
23 A No, by a mailing house.
24 Q Okay. And where did the mailing house obtain the
25 list of the people to mail to?
0023
1 A From USA Cycling.
2 Q And are they paying for that list?
3 A The USA Cycling Development Foundation has an
4 agreement with USA Cycling to use the member list to
5 solicit. That's what we do. We raise money from the
6 members.
7 Q So is there a solicitation that's both to donate
8 money and to vote or is it just to vote?
9 A There have been solicitations to raise money and
10 there is also a solicitation to vote.
11 Q Okay. And my question is are they being done
12 separately or are they being done in combination of a single
13 mailing?
14 A Separately.
15 Q And the directive to do that is coming from you?
16 A That's correct. From the board of the
17 foundation, actually.
18 Q The board of the foundation has directed you, as
19 the executive director of the foundation, to get this
20 mailing out and there are staff people at USA Cycling who
21 are participating in that activity?
22 A Again, they're being compensated by the
23 foundation.
24 Q Okay. So the people that are doing this that are

25 also staff members of USAC are being paid to do the work for
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1 USACDF?

2 A That's correct. We reimburse USA Cycling for
3 resources that we use among the staff.

4 Q Okay. And how is that accounted for? Are there
5 time slips? Are there reports that are done? How is that
6 done?

7 A It's a loose system. Each year the CFO and I sit
8 down and look at the services that we've used, and we are
9 invoiced by USA Cycling for this solicitation case. We've
10 tightened it up a little bit, so we're trying to track who's
11 going where and what the expenses are that are being
12 incurred, and it's charged to a separate line.

13 Q That would be in my eye one of the things that
14 I've asked you about. Did you bring that with you today?

15 A Our --

16 Q Your accounting system?

17 A Our accounting report documents, no, I didn't.

18 MR. ROSEN: I'd request that.

19 MR. ENOCH: Where is that on your production
20 request? I find nothing in here in terms of financial
21 documents or accounting documents.

22 MR. ROSEN: It says, "Each and every internal or
23 external document relating to the position taken by USAC,
24 its employees, directors or officers, or the foundation with
25 respect to any of the Propositions A through E." If there's

0025
1 accounting.

2 MR. ENOCH: That's not what --

3 MR. ROSEN: And then five says, "Each and every
4 internal or external document relating to your activities
5 which have taken place with respect to the solicitation of
6 votes or proxies with respect to Proposition A or against
7 Propositions B through E." And that would cover it as well.

8 MR. ENOCH: I respectfully disagree. I don't
9 think either one of those covers financial documents. It
10 covers positions taken and activities taken. It doesn't
11 have anything to do with who's paying for what. So I
12 just -- I just have to respectfully disagree. I don't think
13 it covers that.

14 MR. ROSEN: Okay. Mark that on the transcript
15 for me, please.

16 MR. ENOCH: And I should add, that's why we did
17 not bring anything, because I don't feel it was covered by
18 the production and I don't think it's relevant to any of the
19 issues in the case.

20 MR. ROSEN: Relevancy is not the test for
21 discovery as you know, Mr. Enoch.

22 Q (By Mr. Rosen) As I understand it, the original
23 Proposition A and B each had titles that were submitted by
24 the proponents. Proposition B, I believe, was called the
25 Democratic Reform Initiative. And Proposition A, I believe,

0026
1 was given the Responsible Democratic Reform Initiative; is
2 that correct?

3 A That's correct.

4 Q Okay. Who gave Proposition A the title
5 Democratic Reform Initiative?
6 A The first author, Michael Hellman.
7 Q And as I understand it, a decision was made not
8 to use names but to assign letters to them; is that correct?
9 A That's correct.
10 Q When was -- First of all, who made the decision
11 not to publish them pursuant to the titles that were
12 submitted by the authors?
13 A That emerged as group decision. As we were
14 putting together the legislation materials, it was apparent
15 that they were very confusing, so we decided to just use
16 propositions and letters.
17 Q And who was party to that group?
18 A Myself, our communications director.
19 Q Who would be? Give me names if you could.
20 A Patrice Quintero.
21 Q Okay.
22 A Marketing director, chief marketing officer Mary
23 Monroe.
24 Q Okay.
25 A Lisa Voight at some level.
0027
1 Q Okay. Anybody else?
2 A No.
3 Q Okay. And when was that subject first discussed?
4 A July, mid-July.
5 Q Okay. And was this in a single meeting or in a
6 series of meetings?
7 A I don't recall.
8 Q Were there any memos or any materials that were
9 disseminated with regard to that decision process?
10 A No, not to my knowledge.
11 Q What actually physically took place to do this?
12 A To do what?
13 Q To assign the letters to the propositions?
14 A A drawing from a hat in which the letters were
15 placed on pieces of paper and drawn at random.
16 Q So you took five pieces of paper?
17 A Took two pieces of paper for the first two
18 propositions and then put three pieces of paper in for the
19 remaining three.
20 Q You took two pieces of paper and put in what
21 Responsible Reform Initial and Democratic Reform Initiative?
22 A Put in A and B and then declared this is the
23 drawing for X and pulled out a letter.
24 Q Okay. And who was present at the drawing?
25 A Myself and my secretary, Debbie Francis. And
0028
1 there were others, but I don't recall specifically who.
2 Q And who wrote on the pieces of paper?
3 A I did.
4 Q Okay. And whose hat did you use?
5 A A hat that was in the office.
6 Q Okay. So you wrote A and B on two pieces of
7 paper, you threw them into a hat. And which one did you
8 draw for first?

9 A I believe we drew for Responsible Reform
10 Initiative first and pulled A out, that's correct.
11 Q And why did you do it that way for Mr. Earnest's
12 proposal first?
13 A It's a random drawing from a hat. It doesn't
14 make any difference which one you drew first.
15 Q And then you pulled out an A. And then you
16 defaulted to B for Mr. Earnest?
17 A Correct.
18 Q And why didn't you draw -- put all five in at one
19 time?
20 A Because we'd already used up two letters.
21 Q I'm talking about originally.
22 A Initial drawing?
23 Q Yes.
24 A It didn't occur to me.
25 Q Okay. So basically would it be fair to say that
0029

1 assuming that higher on the ballot is a better place to be,
2 that C, D and E were at a disadvantage to A and B?
3 A Actually, that's not true. The way the ballots
4 are structured in our legislation issue, it needed to be a
5 separate ballot for A and B and then an additional ballot --
6 Q We're going to talk about that in a minute.
7 Because the decision was made because of the way the ballot
8 was designed --
9 MR. ENOCH: Let him finish. Let him finish.
10 Whether he is answering the question that you're going to
11 ask in the future or not, this is his answer to this
12 question.
13 A For C, D and E. A and B are mutually exclusive,
14 so it was determined that they needed to be on a separate
15 ballot to avoid confusion.
16 Q (By Mr. Rosen) Let's talk about that mutual
17 exclusivity for a minute. Can you show me where in the
18 articles or the by-laws it would require that or that it
19 authorizes the use of a mutual exclusivity as to
20 propositions that are put on the ballot?
21 A No, I can't specifically in the by-laws.
22 Q Okay. So how was that matter decided?
23 A Based on advice of counsel, it was determined
24 that these two propositions, which dramatically basically
25 rewrote the articles and by-laws in the organization,
0030

1 couldn't exist together and were mutually exclusive.
2 Q Now, as I understand it, not only were they
3 considered to be mutually exclusive, but a decision was made
4 that a vote against one would count towards the total vote
5 count for the other; is that correct?
6 A That's consistent with mutual exclusivity.
7 Q And that was done based upon advice that was
8 obtained by whom? Who sought that information?
9 MR. ENOCH: You mean who sought it internally?
10 MR. ROSEN: Yeah.
11 A I did.
12 Q (By Mr. Rosen) And in terms of consulting other
13 than with counsel with respect to how to do it, who did you

14 consult with with respect to that decision?

15 A One director, Nigel Blair-Jones, our secretary
16 was involved in the discussion. He wasn't involved as a
17 consultant. He was as confused as I was.

18 Q Just the two of you though?

19 A And Mike Hellman, the director from the
20 foundation.

21 Q Okay. Did you consult with anybody that was a
22 proponent of Proposition B about how they felt it should be
23 done?

24 A No. Again, we didn't consult with Mike Hellman.
25 He was merely involved in the discussions.

0031

1 Q Okay. You didn't involve anybody that supported
2 Proposition B in the discussions though?

3 A No.

4 Q Now there's another part of the balloting that a
5 decision was made with respect to how to count the
6 affirmative votes for Proposition B.

7 A Correct.

8 Q Okay. And tell me how that came about? You can
9 say we talked with counsel; you --

10 A Talked with counsel.

11 Q You can't tell me what it is he said or didn't
12 say. You said you talked with counsel. And was it the same
13 people that were involved in the discussions with you and
14 Mr. Hellman and Nigel Blair-Jones?

15 A Yes, the topic came up.

16 Q Was anybody else involved in those discussions?

17 A No.

18 Q And based upon what counsel indicated to you, the
19 decision was made that in order for Proposition B to pass,
20 each class of membership would have to vote by a majority in
21 the affirmative to allow that proposition to pass; is that
22 correct?

23 A That's correct.

24 Q And again, nobody that supported Proposition B
25 was involved in those discussions, correct?

0032

1 A Correct.

2 Q Now, does Mr. Hellman serve a function within
3 USAC in addition to his involvement with USACDF?

4 A No.

5 Q Were any of the staff people of USAC or any of
6 the directors, other than I believe, Mary Holden, you
7 believe --

8 A Mari.

9 Q Mari, involved in the actual drafting of
10 Proposition A to your knowledge?

11 A Any staff?

12 Q Any staff or any directors, officers of USAC
13 involved in any way in the drafting of Proposition A?

14 A Yes.

15 Q Okay. And who was that?

16 A Mike Plant saw reviews or he reviewed the initial
17 drafts. Nigel Blair-Jones I think was involved in that
18 process.

19 Q Okay.
20 A And Lisa Voight was involved in that process.
21 Q Okay. Was Proposition A ever submitted to the
22 board of directors of USAC for a resolution on a position as
23 to how it viewed Proposition A or Proposition B?
24 A Proposition A was presented to the directors,
25 yes.

0033

1 Q In a formal meeting?
2 A Yes.
3 Q Okay. Do you have the minutes of that meeting?
4 A I don't.
5 Q Is there any reason why you didn't bring that?
6 A No.
7 Q Do you think that's not covered in my request?
8 MR. ENOCH: I'm not arguing with you, Mr. Rosen.
9 I'm not aware of any minutes. I will ask.
10 MR. ROSEN: Okay.
11 Q (By Mr. Rosen) And when did that meeting occur?
12 A I don't recall.
13 Q Was it an actual physical meeting?
14 A No, it was telephonic. And I can't even remember
15 if we had a quorum, to tell you the truth. I'd have to
16 check.
17 MR. ROSEN: Could you supplement your answers to
18 me so we don't have to reconvene this?
19 MR. ENOCH: I will inquire as to if any minutes
20 exist. I made other inquiries previously that did not
21 result in getting anything like that. So I will ask again
22 and we'll see what's there.
23 MR. ROSEN: And also I'd like to know if there
24 was a quorum or there wasn't a quorum and what the vote was
25 if there was a vote.

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1 MR. ENOCH: I assume Mr. Johnson can tell you
2 what the vote was. But in terms of the quorum, I'm assuming
3 that the minutes will reflect that if there are minutes.
4 Q (By Mr. Rosen) If there are minutes. But I
5 think you just indicated that you're not sure whether or not
6 there was a quorum for that meeting?
7 A Correct.
8 Q Was that kind of an informal meeting or did you
9 follow the procedures in the by-laws as to calling the
10 meeting?
11 A I would imagine that we followed the procedures
12 in the by-laws. We usually do.
13 Q Who would be responsible for doing that?
14 A Ms. Voight.
15 Q Who is responsible for the editorial and
16 advertising content of CUSA?
17 A Chief marketing officer Mary Monroe.
18 Q And was it Ms. Monroe's that made the initial
19 determination not to run the advertisement that was the
20 subject of this lawsuit -- I'll call it the "advertisement"
21 from now on -- in the earlier issue of Cycling USA?
22 A Actually, I don't know.
23 Q Okay.

24 A There was quite a bit of time that transpired
25 before I was made aware of the issues, so I don't know who
0035

1 was involved in the initial discussion.

2 Q Who made the ultimate decision, was my question,
3 not to allow the ad to run in the initial issue for which it
4 was submitted?

5 A Again, I don't know. I would presume it would be
6 Mary Monroe.

7 Q Okay. How did you find out about the fact that
8 there had been a decision not to allow the ad to run?

9 A I first heard about it in a directors meeting.
10 It came up as a topic of discussion.

11 Q In a board of directors meeting?

12 A No, no, in a staff meeting.

13 Q And do you recall when that occurred?

14 A No, I don't. It would have been, best guess,
15 late June, early July.

16 Q And can you tell me, to the best of your
17 recollection, what that discussion was and who brought it
18 up?

19 A I think it centered around -- it would have been
20 Mary Monroe that would have brought that to the table, and
21 it centered around our editorial policy toward our
22 advertising.

23 Q And does USAC have a written policy with respect
24 to advertising?

25 A Not to my knowledge.

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1 Q Does it have -- Prior to this incident, did it
2 have any kind of formal policy?

3 A I don't know. I've only been here a year.

4 Q Did somebody at the meeting say to you, well,
5 here's our policy and we need to apply it to this?

6 A I think the discussion centered around a policy
7 that was appropriate for publication in a member magazine.
8 And it was decided that derogatory, denigrating and
9 offensive materials were not appropriate.

10 Q And which of those three applied to this
11 particular ad?

12 A I think all three of them applied.

13 Q So it was decided by the staff that was
14 participating. And do you recall who was at this meeting
15 besides you and Ms. Monroe?

16 A It would have been our managing directors. I
17 don't remember specifically who was in town or out of town.

18 Q That would be you, Ms. Herbert, Mr. Call, Mr.
19 Moore and Mr. Tedesco if any of the three were there?

20 A Mr. Tedesco is actually -- his offices are in
21 Pennsylvania, so he doesn't participate in our staff
22 meetings. So it would have been Evan Call, I remember Rick
23 Moore, myself and Mary Monroe.

24 Q Okay. I can see where it was derogatory. I
25 don't think that's much of a question. Tell me what was

0037

1 offensive about the ad?

2 A Offensive is pretty subjective. I find it

3 offensive personally because it denigrates USA Cycling
4 cycling staff who work pretty hard.

5 Q Okay. Can you tell me specifically -- And I've
6 marked this as Exhibit 12. We'll just use these numbers
7 because that's how we'll use them at the hearing.

8 I'm showing you Deposition Exhibit 12 which I
9 believe is the ad; is that correct?

10 A That's correct.

11 Q Okay. Can you tell me where in the ad it refers
12 to denigrating the staff?

13 A By inference, I assume that USAC on the arms of
14 the big, burley guy ready to grab the cyclist relates to the
15 staff.

16 Q Without telling me what was said, did you in fact
17 consult with counsel about whether or not to run this ad
18 prior to making the decision not to do it?

19 A No.

20 Q Okay. Were you aware, for example, that this ad
21 had been submitted two years earlier to be run?

22 A I was not aware.

23 Q Okay. Now, to whom and how was it communicated,
24 to your knowledge, that the ad would not be run in the issue
25 that it had been submitted for?

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1 A Could you please repeat that?

2 Q Yes. How and to whom was it communicated that
3 USAC would not run the ad in the issue in which it was
4 submitted for? For which it was submitted?

5 A The only knowledge I have is how it was
6 communicated to me personally and that was through the chief
7 marketing officer. I have no idea how it was communicated
8 to your client.

9 Q As I understand it, USAC uses a local advertising
10 and publishing assistant that is not an employee of USAC.

11 A Not to my knowledge.

12 Q Have you ever heard of Mary Ellen Davis?

13 A She is an independent contractor of sales for
14 our publisher TPG.

15 Q And TPG is actually the company that does the
16 publishing of USAC?

17 A That's correct.

18 Q So if somebody wants to run an ad for USAC, they
19 can approach it through Ms. Davis and then she produces it
20 through TPG?

21 A I would imagine. I don't know the exact process
22 actually.

23 Q Have you had an opportunity to look at the
24 documents that I provided to Mr. Enoch a couple of weeks ago
25 with respect to the exhibits that we intend to use at the

0039

1 preliminary injunction hearing?

2 A Yes.

3 Q Let me show you this letter marked Exhibit 1.
4 And since you are one of the people copied on that, I assume
5 that you had seen that before?

6 A Yes.

7 Q That's a response from Mr. Rosenthal, the person

8 who was the advertising agent for the proponent of this ad
9 to Ms. Davis, questioning why it had been rejected, in
10 essence, correct?

11 A That's correct.

12 Q Using the date on that, being June 22nd, would
13 that help to refresh your recollection as to when the
14 meeting took place as to whether or not to run the ad?

15 A No. I'm not even sure if I've seen this before
16 to tell you the truth.

17 Q So I believe you're named as one of the people
18 copied on the letter. You don't --

19 A There are a lot of people.

20 Q You don't necessarily recall?

21 A Correct.

22 Q Okay. Did you ever, in terms of making the
23 decision not to run the ad, make a determination as to what
24 could be done to the ad that would allow the ad to be run?

25 A No. Never had that discussion with --

0040

1 Q Your internal people?

2 A No.

3 Q If it wasn't quite so offensive, we'd let it
4 run. Would it be fair to say that under no circumstances
5 was USAC prepared to run an ad that was in any way
6 criticizing USAC?

7 A I think it's fair to say that in no way we would
8 run an ad that was criticizing any of our member constituent
9 member group.

10 Q Or USAC?

11 A Or USAC.

12 Q This ad isn't derogatory toward any of the
13 submember groups and it doesn't refer to USACDF, US Pro or
14 NDL or NORBA, does it?

15 A They're all part of USA Cycling. And those
16 trustees are working on trustee boards. So by inference I
17 think it applies to basically the entire organization.

18 Q You were aware, were you not, of the prior
19 litigation that took place?

20 A Yes.

21 Q And you understood the suit was not filed against
22 any of the suborganizations for anything that they did, that
23 the suit was filed against what the board of directors had
24 done of USAC?

25 A Yes.

0041

1 Q Okay. I'm going to show you what's been marked
2 as Plaintiff's Exhibit 2. And this is a letter dated June
3 23rd, 2001. Had you ever seen that before you looked
4 through these documents?

5 A Again, not to my knowledge.

6 Q Is there somebody that opens your mail for you or
7 do you open your own mail?

8 A My secretary usually opens my mail actually but
9 she's pretty good about making sure that I get stuff that's
10 addressed to me.

11 Q And you have no recollection of that?

12 A No. I would have had a file that contained this

13 if I would have received it.

14 Q Were there any discussions that took place either
15 with you, Ms. Monroe or anyone at USAC as a follow-up to the
16 original decision not to run the ad prior to mid-July?

17 A Again, it's difficult to recall the exact time
18 frame, but I would say it's possible that discussions were
19 occurring prior to mid-July.

20 Q Looking at the list of the people that are shown
21 on both Exhibits 1 and 2, do you have any recollection of
22 talking to any of those people after -- with respect to this
23 ad -- after you made the initial decision not to run it?

24 A Again, the initial decision not to run it was
25 made I think in a time frame that I didn't participate in.

0042

1 So I had discussions with individuals Mike Plant, probably
2 Nigel Blair-Jones, board members.

3 Q Board members in particular?

4 A I don't recall.

5 Q Can you recall what position any of those people
6 took?

7 A Again, I would imagine, again, it's my
8 recollection from the context that there was a discussion of
9 our editorial policy or an editorial policy and that this ad
10 was kind of outside that policy.

11 Q Okay. But as I understand it, no formal policy
12 existed prior to this discussion that took place?

13 A Not to my knowledge.

14 Q Was this issue ever submitted to your knowledge?
15 As I understand it, the -- and I apologize if I'm repeating
16 something, but I just want to make sure I understand
17 chronology. There was a meeting that took place sometime
18 probably in June in which you participated, along with Ms.
19 Monroe and maybe others, in which it was brought to your
20 attention that a decision had been made not to run this ad?

21 A That's safe, yes, that's correct.

22 Q At that meeting there was not an actual decision
23 that was made. It was just more of an informative thing.
24 We have this ad and we don't think it ought to be run.

25 A That's correct.

0043

1 Q And I assume you agreed with that based upon your
2 testimony today?

3 A Absolutely.

4 Q Okay. Apparently something changed in July
5 because ultimately the ad was run, correct?

6 A That's correct.

7 Q What's your first recollection as to what took
8 place with respect to a change in position as to whether or
9 not the ad ought to have been run?

10 A I think you filed a complaint.

11 Q Okay. And you became aware of that?

12 A Yes.

13 Q At the time it was filed?

14 A Yes.

15 Q And what happened, other than conversations you
16 may have had with your counsel, what happened with respect
17 to the fact that a lawsuit had been filed?

18 A I participated in a discussion among the
19 directors regarding the policy in general and what the
20 implications were with respect to this complaint.

21 Q The directors being the managing directors, not
22 the board of directors?

23 A Correct.

24 Q And to help me so we don't get confused, if
25 you're referring to the board of directors if you'd talk in
0044

1 terms of the board and if you talk in terms of the
2 directors, we'll assume that you're talking about Call,
3 Monroe and Tedesco?

4 A I'll do my best.

5 Q I appreciate that. So there was a discussion
6 among the directors as to what ought to be done?

7 A That's correct.

8 Q Okay. And again, independent of what discussions
9 you may have had with counsel, was there in fact a decision
10 that was reached with respect to whether or not to run that
11 ad?

12 A Independent of counsel?

13 Q Independent of counsel.

14 A I think, yes, there was. We still felt that ad
15 did not deserve to be run.

16 Q Okay. But ultimately there was a decision to
17 offer to run the ad?

18 A That's correct.

19 Q Do you know to whom -- who participated in that
20 meeting in terms of deciding to run the ad?

21 A I'm not sure there even was a meeting.

22 Q Okay.

23 A And that decision would have been myself and Ms.
24 Voight and our chief marketing officer.

25 Q Who was it decided to communicate that fact to
0045

1 Mr. Earnest, Mr. Rosenthal or the proponent of the ad?

2 A As I recall, the chief marketing officer was
3 going to just contact him or have Patrice Quintero contact
4 him and let him know that we reconsidered and would be
5 willing to run the ad.

6 Q I'm going to show you what's been marked as
7 Plaintiff's Exhibit 3, which is a letter, and I think it was
8 sent by e-mail, I'm not sure, from Ms. Davis to Mr.
9 Rosenthal regarding the possibility that the ad might be
10 run. Had you ever seen that before?

11 A Not before, no.

12 Q Did you ever check back with Ms. Monroe to find
13 out whether or not the information had in fact been
14 communicated and how it was communicated?

15 A No, I did not.

16 Q Okay. If Ms. Davis were to testify that when she
17 learned about the fact that there was a possibility that the
18 ad would be run, that she virtually immediately communicated
19 that to Mr. Rosenthal, that there was not a substantial
20 delay, would the date of that letter, July 13th, give any
21 indication with respect to when the decision was made?

22 A Obviously the decision would have had to precede

23 this letter.
24 Q But I'm talking about was it a day before? Was
25 it a week before?

0046

1 A I have no idea.

2 Q That's fine. Just got to ask the questions.

3 A If I don't write it down in my book, it's gone.

4 Q And you don't have any notations in your book
5 about a meeting set up to do this?

6 A No, I don't.

7 Q Okay. Actually, I should point out there is a
8 second page to that. But I assume again you've seen this
9 document?

10 A Yes, I have.

11 Q In this particular letter, I believe it indicated
12 the need for a response relatively quickly. Is that because
13 of this mid-July deadline for the August/September issue?

14 A That's correct.

15 Q Okay. I'm going to show you what's been marked
16 as Plaintiff's Exhibit 4. And, again, had you ever seen
17 that letter before you saw it when it was produced?

18 A No.

19 Q Okay. And I'm going to show you Plaintiff's
20 Exhibit 5. And I would have to assume you've seen that,
21 because it's from you.

22 A Yes.

23 Q What precipitated that?

24 A Discussion with our communication director
25 Patrice Quintero to the effect that Mr. Rosenthal had been

0047

1 incommunicado while they had been trying to contact him to
2 get approval to run the ad.

3 Q So what did Ms. Quintero tell you? That she had
4 tried to contact him?

5 A I don't recall the exact context other than the
6 fact that we had a deadline coming up. We needed to get
7 feedback from Mr. Rosenthal as to whether the ad was going
8 to be placed in that upcoming issue or not.

9 Q Okay. And it was your understanding that Ms.
10 Quintero was attempting to get in touch with him?

11 A Yes, it was.

12 Q So why didn't she send the document? Why does it
13 come from you?

14 A I have no idea. I don't recall the context again
15 other than the fact that by then, based on advice from
16 counsel, we had decided it was very important for us to run
17 the ad, and I wanted to let him know that.

18 Q Okay. Whom did you speak to at TPG Sports?

19 A Actually I never spoke to anyone at TPG Sports.

20 Q So it's not accurate when you said, "Our
21 publisher informed me today"? That's the language in your
22 letter.

23 A Yes, that would be true. It came through Ms.
24 Quintero.

25 Q Ms. Quintero?

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1 A Is our staff person who liaises with our

2 publisher.

3 Q But then it still wouldn't be accurate to say
4 that TBG informed you. What you're saying is TBG informed
5 Ms. Quintero who informed you.

6 A That's correct.

7 Q And what did Ms. Quintero tell you that TPG told
8 her?

9 A As I recall, that they couldn't delay the
10 publication and get a decision as to whether we're going to
11 put it in this issue or not.

12 Q And I'm assuming that TPG told her that Mr.
13 Rosenthal felt that it didn't do any good to run the ad in
14 the August/September issue?

15 A That's correct.

16 Q That it really needed to be in the June/July
17 issue?

18 A Yes.

19 Q Now at this point in time that you wrote July --
20 the letter on July 18th, you knew, did you not, that you
21 were already out soliciting votes for Proposition A before
22 you ever wrote that letter?

23 A On July 18th?

24 Q Sure.

25 A What was the date of the time frame of Super

0049

1 Week?

2 Q It started July 15th.

3 A Super Week itself, solicitation started there.
4 Super Week is a long period. Actually I have no idea the
5 time frame for Cheryl's activities there. So it could have
6 been and I assume it was towards the end of the month.

7 Q Okay. Mr. Rosenthal promptly responded to your
8 e-mail or fax, however you sent it to him; is that correct?

9 A Yes. It was an e-mail.

10 Q And is that Exhibit 6?

11 A Yes.

12 Q Okay. And what did you do when you got Exhibit
13 6?

14 A I think we told our publisher to place the ad
15 and run it.

16 Q Okay.

17 A Which is what his response indicated.

18 Q Okay. What input, if any, does USAC have with
19 respect to the layout of Cycling USA?

20 A I don't know the operations of that.

21 Q Who would within USAC know that? Would that be
22 Ms. Quintero or Ms. Monroe?

23 A Both.

24 Q Did you in fact learn where the ad was going to
25 be run before it was run?

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1 A I knew, yes, I saw the proofs before it was
2 published.

3 Q Okay. Now you had reviewed the ad as early as
4 the time that you originally decided to reject it, which
5 would have been back sometime in June if these documents are
6 somewhat contemporaneous with the decisions, correct?

7 A I think the decision that was made to reject it
8 was before June. And I think I saw a copy of that in our
9 staff meeting, and it would have been late June, early July.
10 Q So you looked at the ad again when you made the
11 decision to allow it to run?
12 A No, I didn't actually.
13 Q Okay.
14 A I had seen it enough.
15 Q So you saw it the first time back maybe as early
16 as May or June?
17 A Late June.
18 Q And then you didn't look at it again when you
19 reconsidered whether or not to run it or not; is that
20 correct?
21 A Actually, that's probably true. I hadn't seen
22 any revisions to the ad before we decided to run it in this
23 time frame, July 19th time frame.
24 Q Now, whom did you believe was Mr. Rosenthal
25 working for to get the ad run?

0051

1 A It was very confusing to me actually, because he
2 seemed to be representing a bunch of people. But I assume
3 it was Mr. Wade who had placed the ad with him.
4 Q But you didn't know Mr. Wade?
5 A I do not know --
6 Q At the point in time that he was involved in the
7 running of the ad prior to that time, correct?
8 A No, that's correct, I did not.
9 Q You found out about that when you got sued?
10 A That's correct.
11 Q Because his name appeared on the complaint,
12 right?
13 A That's correct.
14 Q What efforts, if any, did you make to communicate
15 to Mr. Wade that fact you had intended to run the ad?
16 A I personally made none.
17 Q Okay. Now what was your understanding as to did
18 you direct anybody to convey to Mr. Wade the decision to run
19 the ad?
20 A No, I did not.
21 Q Didn't you think it would be important to let him
22 know, since he was the proponent of the ad, what it was that
23 you were doing?
24 A It seemed to be more expedient to talk with the
25 agents who actually had the copy and were placing it in the

0052

1 issue.
2 Q Did you at any time advise Mr. Rosenthal or Mr.
3 Wade that in fact the name -- Let me start -- Strike that.
4 Let's try again.
5 You were aware, were you not, that Mr. Wade was
6 one of the proponents of Proposition B?
7 A I was.
8 Q And what efforts, if any, did you make to convey
9 to either Mr. Wade or Mr. Rosenthal that in fact the
10 Proposition B had been given the designation Proposition B?
11 A None.

12 Q Didn't you think that would be an important thing
13 to let them know about?

14 A I let the first author know. That's who I was
15 communicating with on all of the propositions.

16 Q Okay. So you advised Mr. Earnest that it had
17 been designated as Proposition B?

18 A That's correct.

19 Q And do you recall when you did that?

20 A Late July.

21 Q Okay. How does July 23rd sound?

22 A Okay. Sounds good.

23 Q Okay. I'm going to show you Plaintiff's Exhibit
24 7 and ask if you've seen that document before you saw the
25 materials that I provided to Mr. Enoch.

0053

1 A Yes.

2 Q Okay. In that particular correspondence I
3 believe Mr. Rosenthal was informing you of a concern over
4 the confusing nature of the titles to the two relevant
5 initiatives, correct?

6 A That's correct.

7 Q And at that point in time, the decision had
8 already been made to designate them Propositions A and
9 Propositions B?

10 A That's correct.

11 Q Is this your response to Mr. Rosenthal's letter
12 to you dated July 25th?

13 A Yes, it is.

14 Q There's actually -- Let's see. Do you want to
15 tell me why you waited six days to respond to him?

16 A I don't know. Perhaps it was a weekend
17 intervening. I don't know when I actually received his
18 e-mail, regardless of the date, so I could have been
19 traveling. I would assume that I would have responded at
20 the first opportunity.

21 Q Okay. Actually this one, for some reason that
22 didn't get marked. I'm going to go ahead and mark this as
23 Plaintiff's Exhibit 13.

24 On July 31st you write to Mr. Rosenthal in which
25 you state, "Your client, Mr. Earnest, received a

0054

1 communication from this office." But you knew at the time
2 you got the lawsuit that Mr. Earnest was not Mr. Rosenthal's
3 client, didn't you?

4 A You know, that group is so confusing, I have no
5 idea who works for whom, so that's not a safe assumption.

6 Q Okay. But you knew at the time the lawsuit was
7 done that Mr. Wade was the one that was trying to run the
8 ad, didn't you?

9 A But Mr. Earnest is the first author of the
10 proposition. That's who we communicate with. We don't
11 communicate with the supporters of the proposition; they're
12 indirectly connected to it.

13 Q Okay. Then how do you know that Mr. Earnest was
14 the first proponent?

15 A He's the first author, that's how publications
16 work.

17 Q I guess I'm confused. When a proposition is
18 submitted and it has to contain, I believe under the
19 existing by-laws, the name of I think it's five or six
20 proponents.

21 A Five.

22 Q Okay. So --

23 A Those are proponents, not authors.

24 Q How do you know that Mr. Earnest was in fact the
25 author of Proposition B?

0055

1 A Because it was not materially different from what
2 he put on his website for the last year.

3 Q Who submitted the proposal back in 1995?

4 A I don't know, I wasn't here.

5 Q Okay. Mr. Rosenthal responds to you. And is
6 that the response? Do you see that?

7 A This I have never seen before. And you'll notice
8 that there is no 2 on the subject header.

9 Q Okay. So you don't recall ever having seen a
10 letter response from Mr. Rosenthal to your July 31st, 2001
11 letter; is that correct?

12 A I never received this response.

13 Q Okay. I'm going to show you what's been marked
14 as Plaintiff's Exhibit 9 and ask you if you've seen that
15 before.

16 A Yes, I have.

17 Q Okay. And that's a letter dated July 2nd to each
18 of the proponents, I assume of all five pieces of
19 legislation?

20 A To the best of my knowledge, I think it went out
21 to all five, yeah.

22 Q So would it be accurate, based on the date of
23 that letter, that the decision to designate the different
24 proposals by letter designation was made sometime prior --
25 on or prior to July 2nd?

0056

1 A Yes.

2 Q Can you tell me when you advised Mr. Earnest that
3 in fact his legislation which he was proposing was
4 designated as B?

5 A On July 23rd.

6 Q Okay.

7 A But I don't recall when the decision was made to
8 actually allocate the letters to the propositions.

9 Q It's clear, is it from this letter from Mr. Nigel
10 Blair-Jones, that the decision was made prior to July 2nd?

11 A To use the proposition as opposed to the actual
12 descriptive terms but not which would be which.

13 Q Correct. But at that point in time had you not
14 agreed that when published, all propositions will be labeled
15 with a capital letter and referenced as such, i.e.,
16 Proposition A, B and so on? Correct?

17 A Correct.

18 Q So prior to July 2nd or on or before, because it
19 could have been that day, a decision had been made to assign
20 proposition letters to the five propositions, correct?

21 A Correct.

22 Q But you don't tell Mr. Earnest about his
23 designation until July 23rd?

24 A That's correct.

25 Q In the interim, you advise Mr. Wade through Mr.
0057

1 Rosenthal that in fact you're going to run his ad, correct?

2 A Correct.

3 Q My question, and let me somehow show you --
4 Plaintiff's Exhibit 10 is a copy of an e-mail which is your
5 letter to Mr. Earnest and his response to you, correct?

6 A Correct.

7 Q And you'd seen your correspondence to him and his
8 correspondence to you?

9 A Yes.

10 Q How long did you wait between the time you made
11 the designation and the time you told Mr. Earnest what his
12 designation was?

13 A I don't recall specifically.

14 Q Okay. Would it be fair to say, based upon the
15 series of correspondence, either you waited a long time to
16 make the designation or you waited a long time to tell Mr.
17 Earnest the designation, one or the other?

18 A I would say a combination of the two. I would
19 imagine, the best of my recollection, the decision was made
20 sometime early July.

21 Q Well, you know it was before July 2nd.

22 A No, we don't. We know that it was after July
23 2nd.

24 Q We know the decision to do it was made on or
25 before July 2nd?

0058

1 A That's correct.

2 Q To actually to have done the hat drawing would
3 have to have been done conceivably after July 2nd?

4 A That's correct.

5 Q And if you didn't tell Mr. Earnest about it until
6 21 days or three weeks later, either you waited a long time
7 to make the designation or you waited a long time to tell
8 Mr. Earnest what his designation was, correct?

9 A Correct.

10 Q And what you're telling me today is you don't
11 recall when you actually made the determination?

12 A Not the exact date. Didn't mark it on a
13 calendar. But I would assume that it was sometime in early
14 July.

15 Q I'm going to show you what's been marked as
16 Plaintiff's Exhibit 11. And have you seen this before?

17 A Yes, I have.

18 Q Okay. And as I understand it, the first page is
19 an advertisement that was placed in VeloNews?

20 A That's correct.

21 Q Do you recall when the ad was submitted to
22 VeloNews to be run in that publication?

23 A No, I don't.

24 Q Would that have been something that Ms. Herbert
25 did?

0059

1 A I think it was something that Ms. Monroe did.
2 Q Okay. And who was she reporting to when that was
3 done?
4 A Reporting to me. I would have asked her to place
5 this ad in VeloNews, because she communicates with VeloNews.
6 Q And how did that ad come about, the decision to
7 run it in VeloNews and to design it and write the text?
8 A The foundation board was actually the driving
9 force behind this. As you see, it's from the president.
10 Another board member designed the copy.
11 Q Okay.
12 A And instructed me to place the place in VeloNews.
13 Q So you were instructed by somebody from USACDF to
14 place it in VeloNews. You went to Ms. Monroe and asked Ms.
15 Monroe to do that for you. You don't recall when that
16 happened?
17 A It was late July. This appeared, I think, in
18 publication the first week of August.
19 Q Okay. Was this also a material that was and has
20 been used for soliciting proxies to vote for Proposition A,
21 do you know?
22 A It's being used, yes, that's correct.
23 Q Do you know whether it was being used at Super
24 Week or not?
25 A I do not.
0060
1 Q Okay. The second page is actually, I believe,
2 the back side of this particular document that was then
3 being distributed?
4 A That's correct.
5 Q Okay.
6 A Actually, I don't know.
7 Q Okay. Can you tell me who designed and authored
8 the text for the advertisement, page 1 of Exhibit 11, the
9 person who did it?
10 A This text?
11 Q Yes.
12 A Yes. The text of the letter or the text of the
13 layout of the ad?
14 Q Let's talk about them separately.
15 A Okay.
16 Q Do you know did Mr. Weisel actually write the
17 text?
18 A He participated in it, yes.
19 Q Who else participated in the writing of the text?
20 A Rich Silverstein.
21 Q Who is what?
22 A Who is a foundation board member.
23 Q Anybody else to your knowledge?
24 A Not to my knowledge.
25 Q And who actually did the layout?
0061
1 A Rich Silverstein.
2 Q Okay. And then do you know who authored or
3 participated in the authorship of the second page of
4 Plaintiff's Exhibit 11?
5 A I believe it was Ms. Herbert.

6 Q Okay. And do you know where she obtained the
7 information for that?
8 A Probably through discussions with myself and Mr.
9 Hellman.
10 Q Okay. Can you tell me now as part of the actual
11 publication process, it allows for a place for all the
12 propositions in which to give a staff response?
13 A That's correct.
14 Q Or a staff position or whatever you want to call
15 it. Can you tell me who wrote the staff responses or
16 positions with respect to the five propositions?
17 A I did.
18 Q Okay. Did you use anybody else in terms of
19 passing it by them, asking for their comments?
20 A Ms. Voight.
21 Q Okay. Anybody else?
22 A No. Outside of legal counsel.
23 Q I understand. Other than consulting with Ms.
24 Voight, and so I understand correctly, and your counsel, you
25 wrote this and showed it to them for their comments?

0062

1 A That's correct.
2 Q Were there any changes made to the text either
3 with respect to Proposition A, Proposition B, C, D or E from
4 what you had written after you got the comments back from
5 those two individuals?
6 A Outside of legal counsel?
7 Q No, including -- My question is not what did he
8 tell you. I'm asking were there any changes made to the
9 text.
10 A You're asking if I made any changes to the text?
11 Q From your initial draft to what actually went
12 into the magazine.
13 MR. ENOCH: Just answer if you made any changes
14 to the text, regardless of the source.
15 A Yes.
16 Q (By Mr. Rosen) Do you recall what those changes
17 were?
18 A Some grammatical changes, not of substance that I
19 recall.
20 Q Okay. And when you are writing these staff
21 responses, which hat were you wearing? The one as executive
22 director of USACDF or the one as the chief operating officer
23 of USA Cycling?
24 A Chief operating officer of USAC.
25 Q There was also a concern raised, I believe, by

0063

1 Mr. Earnest to you as to whether or not the text should be
2 published as a clean version or as red-line strike-out so
3 that people could see the changes.
4 A That's correct.
5 Q Do you recall that? Are you aware how the
6 amendments that were done with respect to the board of
7 directors when they passed amendments to the by-laws and
8 Articles of Incorporation that were deemed to be void by the
9 court were submitted to them?
10 A No, I have no idea.

11 Q Let me tell you they were submitted by red line
12 and strike out to show the changes. Actually, I think they
13 used italics and strike out.

14 Can you tell me why -- Did you make the decision?
15 Were you the one that made the decision to publish them as
16 they were printed versus showing how they were changed?

17 A I sought the advice of counsel.

18 Q You don't have to tell me what he told you. Did
19 you consult with anybody else?

20 A No.

21 Q And based upon that, your decision was to print
22 them in the form that they would be adopted without
23 demonstrating the changes?

24 A That's correct.

25 Q Without putting in any thought process that you
0064

1 got from counsel, why did you feel that it was appropriate
2 to publish it that way versus publishing it -- and, again,
3 if you can't separate the things, you can say I can't
4 separate the things, but I need to ask the question. As to
5 why it should be published in the format you chose to do it
6 versus rather than using a red line italicized to let the
7 members know?

8 A I think what precipitated the question to counsel
9 is we needed to save space and cost to publish this
10 document.

11 Q Okay.

12 A And that's it.

13 Q And how many -- I see that Proposition A. And I
14 think A is printed as 11 pages.

15 A I'll take your word for it.

16 Q In that approximation. And I assume that the
17 Proposition B was similar or longer in length, am I right?

18 A I would assume so.

19 Q I don't have Proposition B. Maybe we can -- It
20 looks like Mr. Enoch has a copy. About a little over 14
21 pages.

22 Is it fair, just so I understand, what you ended
23 up publishing was the entire reprinting of the by-laws and
24 Articles of Incorporation, not just the changes, correct?

25 A That's correct.

0065

1 Q Had you published only the changes that were
2 proposed by Proposition A and Proposition B, do you know how
3 long they would have been?

4 A I think it was in the neighborhood of 47 pages.

5 Q Just the changed paragraphs, not the ones that
6 you didn't change?

7 A I have no idea.

8 Q Why would you publish them in that form? It
9 doesn't provide a context.

10 A They were submitted as a complete document. They
11 weren't submitted as changes.

12 Q I guess I would ask you why you would submit the
13 same thing to the board of directors by only submitting the
14 changes to them if that was the way it was done in 1999?

15 MR. ENOCH: If you can answer.

16 A Ask the question again.
17 Q Let me ask it this way. Would you then think it
18 would be inappropriate to have submitted legislation to the
19 board of directors just showing them the changes?
20 A Again, I would have asked advice from our counsel
21 in terms of the proper format to submit to legislation.
22 MR. ROSEN: If we can, why don't we take a little
23 break and let me look at the documents you have produced and
24 then I may have some more questions.
25 (A recess was taken.)

0066

1 Q (By Mr. Rosen) We're back on the record. And I
2 am currently looking at documents, which we'll produce
3 pursuant to the request for production attached to the
4 notice of deposition. And I'm going to show you what's been
5 marked as Plaintiff's Exhibit 14 and ask you if you can tell
6 me what that is.
7 A It appears to be a fax from Richard Rosenthal to
8 Mary Ellen Davis.
9 Q Okay. Dated April 19th. There is a note
10 handwritten to Stephanie 4-23-01 from Mary Ellen. Do you
11 know who Stephanie is?
12 A No, I don't.
13 Q And then it says, "Okay for Patrick and Kevin's
14 absence." And then it says -- I guess that's "Patrick
15 4-23-01." Do you know who Patrick is?
16 A No, I don't.
17 Q I'm going to assume that Kevin is Kevin Hartzell,
18 because I've seen his name appear. Would you know if that's
19 Kevin Hartzell?
20 A I wouldn't know.
21 Q This has a fax transmission date from TPG of July
22 19th. Is that how it got to USAC?
23 A I have no idea.
24 Q Do you know where the document came from?
25 A No, I don't.

0067

1 MR. ROSEN: Do you want to help us, Mr. Enoch, as
2 to where these documents come from? Are they just all the
3 files of USAC?
4 MR. ENOCH: They are out of the files.
5 Q (By Mr. Rosen) Let me show you what's marked as
6 Plaintiff's Exhibit 15. And it appears to be e-mail between
7 Mr. Rosenthal and some people at TPG Sports. And it also
8 shows an e-mail or a fax date of July 19th, 2001 at the
9 top. Do you know anything about that document in
10 particular?
11 A No.
12 MR. ROSEN: Again, Mr. Enoch, this came out of
13 the files of USAC; is that correct?
14 MR. ENOCH: Correct.
15 Q (By Mr. Rosen) And I'm going to show you what's
16 been marked as Plaintiff's Exhibit 16 which appears to be an
17 e-mail from Mr. Fallon. Do you know who Mr. Fallon is?
18 A Yeah I think he's CEO of TPG.
19 Q And "mmonroe." And I assume that's the M. Monroe
20 that we're talking about here at USA Cycling?

21 A Correct.
22 Q Have you seen that document before?
23 A No.
24 MR. ROSEN: Again, if the record indicated
25 that -- Let the record indicate that this came out of the
0068
1 files of USAC, correct?
2 MR. ENOCH: Correct.
3 Q (By Mr. Rosen) I'm going to show you what
4 appears to be a series of e-mails back and forth between
5 different individuals including Ms. Voight, Ms. Monroe, Mr.
6 Fallon, Ms. Quintero and yourself and ask if you'd seen this
7 before? It's Plaintiff's Exhibit 17.
8 A I was CCd on this thing at some point. I don't
9 remember specifically.
10 Q You don't have any recollection, but it appears
11 that you were copied on those?
12 A Yes.
13 MR. ROSEN: And again the record, Mr. Enoch, this
14 came out of the files of USAC?
15 MR. ENOCH: Everything came out of the files of
16 USAC.
17 Q (By Mr. Rosen) Let me show you what's been
18 marked as Plaintiff's Exhibit 18, which appears to be a
19 e-mail from Mr. Fallon to Ms. Monroe and ask if you'd seen
20 that before?
21 A No.
22 Q I'm going to show you what's been marked as
23 Plaintiff's Exhibit 19 and ask if you've seen that before?
24 A No, I don't believe so.
25 Q Let me show you what's been marked as Plaintiff's
0069
1 Exhibit 20, which is an e-mail from Mr. Hartzell to Ms.
2 Quintero, and ask if you've seen that before?
3 A Not that I know of.
4 Q Let me show you Plaintiff's Exhibit 21 and ask if
5 that's also an e-mail, and ask if you've seen that before?
6 A No.
7 Q Let me show you what's been marked as Plaintiff's
8 Exhibit 22. And I assume you've seen that before?
9 A I assume so. I wrote it.
10 Q Okay. And I believe that may be the same as what
11 appears to be some kind of e-mail transmission?
12 A That's correct.
13 Q So that would have been the hard copy that was
14 faxed in addition to an e-mail that was transmitted?
15 A I believe so, yes.
16 Q And this was the letter of July 17th that you
17 sent to Mr. Rosenthal?
18 A That's correct.
19 Q And I'm going to show you what's been marked as
20 Plaintiff's Exhibit 23. Would that be your hard copy of the
21 e-mail transmission?
22 A Yes, that's correct.
23 Q Okay. Of Exhibit 22, correct?
24 A Yes.
25 Q Okay. I'm going to show you Plaintiff's Exhibit

0070

1 24 and ask if you recognize that one.

2 A Yes, I have.

3 Q And that's your copy of what you received from
4 Mr. Rosenthal of which he provided a copy that's somewhere
5 between 1 and 11, correct?

6 A That's correct.

7 Q I'm going to show you Plaintiff's Exhibit 25 and
8 ask if you've seen that before?

9 A No, I haven't.

10 Q That is a fax or an e-mail from Hartzell to
11 Quintero. I'm going to show you Plaintiff's Exhibit 26,
12 which is a fax from Mr. Rosenthal to Ms. Quintero, and ask
13 if you'd seen that before?

14 A No, I haven't.

15 Q Okay. I'm going to show you what's been marked
16 as Plaintiff's Exhibit 27. It appears to be a fax log. Do
17 you know anything about that document?

18 A No. Unless this was the fax log of the attempted
19 fax transmission to Mr. Rosenthal.

20 Q Now this is from the period July 17th through
21 July 19th. And I'm going to show you Plaintiff's Exhibit
22 28. That appears to be the report generated when a fax
23 fails out of your machine.

24 A That's what it looks like to me.

25 Q But you have not seen it before?

0071

1 A I have not seen it before, no.

2 Q I'm going to show you Exhibit 29. This appears
3 to be something sent from you to Mr. Rosenthal and his
4 response to you about two hours or so later. Is that your
5 copies of what we've produced?

6 A Yes, it is.

7 Q Okay. I'm going to show you Exhibit 30. It
8 appears to be an e-mail from a Mr. Bosi to you. Have you
9 seen that before?

10 A Yes, I have.

11 Q What can you tell me about that document?

12 A I received this from Mr. Bosi on August 10th.

13 Q Okay. And that was his concern over these
14 solicited proxies at Junior Nationals, I believe?

15 A It was expressing his concern over the
16 solicitation of his son's proxy.

17 Q And that was what you testified to earlier, that
18 you were informed about but have not conducted an
19 investigation, correct?

20 A Correct.

21 MR. ENOCH: I would note, Mr. Rosen, this was
22 copied to you, but it was to the best of my recollection, I
23 don't have your disclosures here, but I don't recall this
24 being provided through your disclosures.

25 MR. ROSEN: I don't know that I have a copy of

0072

1 it. It may have been copied to me, but whether I have it on
2 my computer anymore, I have no idea. In all likelihood I
3 saw it and deleted it, I don't know.

4 MR. ENOCH: You deleted it?

5 MR. ROSEN: Yeah, when I get e-mails, I don't
6 always make hard copies of them. I'll go back and look and
7 see if I have it.
8 Q (By Mr. Rosen) I'm going to show you what's been
9 marked as Plaintiff's Exhibit 31 and ask if you've seen that
10 before?
11 A Is there another page to this?
12 Q Actually, is that a three-page one?
13 A I'm not exactly sure what is what here.
14 MR. ENOCH: There's another page to it.
15 Obviously it leads into communication. But this was also
16 copied to you, I would note.
17 MR. ROSEN: I don't know. I'm just looking at
18 the first, and I took them in order, there's a bunch of
19 stuff. I don't think I covered up anything below it. This
20 has no page pagination, so I'm not sure.
21 MR. ENOCH: Well, I assume that you've already
22 got this, because as I said, it's copied to you.
23 MR. ROSEN: I may have seen it. I'm just
24 identifying something that's in their files, okay? That's
25 all.

0073

1 Q (By Mr. Rosen) Well, I'm handing you the two
2 successive pages that came to me. And it doesn't appear
3 that the second page follows the first page.
4 A You're right.
5 Q So is that --
6 A Yes.
7 Q Okay. And this is an e-mail that you received
8 from Mr. Howe?
9 A Correct.
10 Q And I'm going to show you what's been marked as
11 Plaintiff's Exhibit 32, which appears to be an e-mail from a
12 C. Collins to you. Do you know what that is?
13 A Yes, I've seen this.
14 Q What is that?
15 A This is a copy of what Les Earnest's posts on
16 various list servers forwarded to me from the subscriber of
17 those list servers.
18 Q And who is that subscriber? Do you know who that
19 is?
20 A That would be Chuck Collins.
21 Q So Chuck Collins sent you a copy of what Mr.
22 Earnest was putting on his website?
23 A What Mr. Earnest was posting to list services.
24 Q I guess I'm -- Although I'm pretty computer
25 literate, what is a list server?

0074

1 A It's a general broadcast e-mail list so that you
2 send it to one address and it goes to anyone who subscribes
3 to that list. So, for example, you see the subscriber here
4 NCNCA, which is a northern California subscriber list. So
5 it looks like it was posted to that list. I assume Mr.
6 Collins is a subscriber, which means he received a copy and
7 forwarded it to me.
8 Q Okay. And Exhibit 33? I think that's two
9 pages. Do you recognize that one?

10 A Oh, yes, I do.
11 Q Is that the response you sent to Mr. Bosi from
12 the letter he sent to you?
13 A Yes, it is.
14 Q Okay. And Exhibit 34, do you recognize what that
15 is?
16 A I believe these are deadlines for our various
17 publications.
18 Q That were established back in -- I think it
19 indicates date of February 16, '01 down here on the bottom?
20 A Yes.
21 Q Okay. Are you aware of any more current
22 scheduling deadlines than what this provides?
23 A No, I'm not.
24 Q We talked about advertising standards and nothing
25 in writing, but I found this in there. Have you seen that
0075

1 before?
2 A No, I haven't.
3 Q So you don't know where that came from? You
4 don't know who wrote it? You don't know when it was
5 created? Nobody shared it with you before today?
6 A No.
7 Q I'd assumed you would be involved in any kind of
8 policy decisions of that nature, being the COO?
9 A Absolutely. But, again, I'm new.
10 Q I understand.
11 A A lot of these existed before I arrived.
12 Q But at the time you made this decision you had
13 not seen this document?
14 A At the time I participated in the decision-making
15 processing, I had not seen that document.
16 Q And you had not seen it before today?
17 A No, I hadn't. And one thing I'd reiterate, too,
18 is I did not make the decision to not run the ad.
19 Q I understand. But you were advised of that
20 decision.
21 A After the fact.
22 Q Okay. I'm going to show you what's been marked
23 as Plaintiff's Exhibit 36. Do you know what that is?
24 A It looks like web statistics for our website, but
25 I really don't know. I'm not familiar with it.
0076

1 Q Other than the actual text of the propositions
2 and the comments that were published, is there anything on
3 the website at USAC regarding these propositions?
4 A Not at USA Cycling, no.
5 Q Are there on any websites?
6 A On the USACDF there's information. I would add
7 we do have posted proxy forms on the USA Cycling website
8 which members have the ability to read and use them.
9 Q Proxy or ballot?
10 A What's the difference?
11 Q Proxy is where you would give somebody else power
12 to vote for you, however they would choose to vote. And
13 ballot is your vote.
14 A As I understand, the ballot is the proxy form.

15 They instruct the clerks to vote on their behalf. So they
16 would be called ballots under your description.

17 Q What I have submitted, or I haven't been able to
18 track down what was done at Super Week, but at Junior
19 Nationals it was a sheet.

20 A What we posted on our website is just a copy of
21 what we sent out on our legislation issue, a general ballot
22 form that allowed members to vote any way that they choose.

23 Q Okay. I'm going to show you Plaintiff's Exhibit
24 37 which is a two-page document which appears to have names
25 of people. And then it's got category "Cycling Endemic,"

0077

1 and "Cycling Nonendemic." Can you tell me what that is?

2 A I've seen this before. I believe it's a list of
3 individuals that we sent press releases to.

4 Q Press releases regarding balloting?

5 A Anything.

6 Q Just in general?

7 A Just general.

8 Q Was there anything that was sent to these
9 regarding the ballots to your knowledge?

10 A Not to my knowledge, no.

11 Q Last, but not least, is Exhibit 38. Have you
12 seen this before?

13 A Yes, I have.

14 Q Is that the direct mail piece that you referred
15 to in your testimony earlier that you were sending out to
16 people using USAC staff members but to be paid for by
17 USACDF?

18 A We sent that out through a mailing house so
19 actually didn't use USA Cycling members. But this is the
20 direct mail piece.

21 Q And who created that, do you know?

22 A It's a letter from Lance Armstrong.

23 Q I know that. But my question is do you know who
24 actually created the actual document?

25 A No, I don't. I would imagine either Cheryl

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1 Herbert or development director for the foundation, Steve
2 MaCaulay.

3 MR. ROSEN: I think that's all I have.

4 MR. ENOCH: Well, for the record, during the
5 break Mr. Johnson revealed to me that he had not, pursuant
6 to the request, looked at e-mails between himself and Ms.
7 Herbert. And so we do not know if there are any on his
8 machine. He intends to check that, and we'll provide copies
9 of those to you right away.

10 MR. ROSEN: Okay. Thank you.

11 (The deposition was concluded at approximately
12 1:25 p.m.)

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1 STATE OF COLORADO)
2) REPORTER'S CERTIFICATE
3 COUNTY OF PROWERS)
4

5 I, Karen S. Voepel, a Registered Professional
6 Reporter and Notary Public, State of Colorado, hereby
7 certify that previous to the commencement of the
8 examination, the said STEVE JOHNSON was duly sworn by me to
9 testify the truth in relation to the matters in controversy
10 between the said parties; that said deposition was taken
11 down by me by computer-aided transcription and reduced to
12 typewritten form; that said transcript is an accurate and
13 complete record of the proceedings so taken.

14 I further certify that I am not attorney nor
15 counsel nor in any way connected with any attorney or
16 counsel for any of the parties to said action or otherwise
17 interested in the outcome of the case.

18 Attested to by me this 5th day of Sept., 2001.
19
20

21 _____
22 Karen S. Voepel, CSR, RPR, Notary Public
23 O'Brien Krachmer and Associates
24 728 S. Cascade Ave.
25 Colorado Springs, Colorado 80903
719 635-0033

My commission expires May 22, 2005.

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1 I, STEVE JOHNSON, do hereby certify that I have
2 read the above and foregoing deposition, and that the same
3 is a true and accurate transcript of my testimony, except
4 for the attached amendments, if any.
5

6 _____
Steve Johnson

7 The signature above of STEVE JOHNSON was
8 subscribed and sworn to before me this _____ day of
_____ , _____.

9 _____
Notary Public

10 My commission expires: _____
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